

**CITY OF FAIR OAKS RANCH
AGENDA – CITY COUNCIL REGULAR MEETING**

November 7, 2019 9:30 AM
City Hall Council Chambers
7286 Dietz Elkhorn, Fair Oaks Ranch

I. OPEN MEETING

- A. Roll Call – Declaration of a Quorum.
- B. Pledge of Allegiance.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

To address the Council, please sign the Attendance Roster located on the table at the entrance of the Council Chamber. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda.

- A. Citizens to be heard.
- B. Introduction of city new hires: Rick Riojas, Utility Technician, and Joaquin Wilson, Maintenance Worker.
- C. Presentation of Life Saving Award to Police Officers Lacey Gonzalez and Allen Paz. Pg. 4
- D. Presentation of Employee of the Quarter Award.
- E. BISD Pie In The Sky Campaign Yvette Reyna, Boerne ISD
- F. Transportation Committee Update. Mayor Manitzas

III. CONSENT AGENDA

All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.

- A. Approval of October 10, 2019 Joint City Council and Planning & Zoning Commission Public Hearing Minutes. Pgs.5-6
- B. Approval of October 17, 2019 Regular City Council Meeting Minutes. Pgs.7-9
- C. Approval of October 29, 2019 Special City Council Meeting Minutes. Pgs. 10-11
- D. Approval of the second reading of an Ordinance for a Special Use Permit allowing for a commercial equine boarding facility on land currently zoned Neighborhood Residential (NR) and commonly known as Setterfeld Estates 1A, Lot 1, Comal County Texas (30350 Ralph Fair Road, Fair Oaks Ranch, Texas). Pgs. 12-32
- E. Approval of the second reading of an Ordinance amending Chapter 4 “Business Regulations”, Article 4.02 “Solicitors” of the City of Fair Oaks Ranch Code of Ordinances Pgs. 58-61. Pgs. 33-44

IV. CONSIDERATION/DISCUSSION ITEMS

- A. Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement with M&S Engineering for engineering design services relative to the emergency generator for the former Police Building.
Julio Colunga, Public Works Superintendent Pgs. 45-65
- B. Consideration and possible action to provide input to staff on decision making process for the elevated storage tank site and tank design decision.
Roy Elizondo, Council Member Pgs. 66-69
- C. Consideration and possible action regarding cancelling the December 19, 2019 Council Meeting.
Christina Picioccio, City Secretary Pg. 70
- D. Consideration and possible action accepting a private donation of holiday decorations for the purpose of decorating the City Hall Complex.
Carole Vanzant, Assistant City Manager Pg. 71
- E. Consideration and possible action rejecting all bids for the Renovation of the Fair Oaks Ranch Former Police Building.
Carole Vanzant, Assistant City Manager Pgs. 72-73
- F. Consideration and possible action authorizing the advancement of calling a special election for the re-authorization of the quarter cent local and sales use tax for the maintenance and repair of municipal streets.
Carole Vanzant, Assistant City Manager Pgs. 74-79
- G. Consideration and possible action on Home Rule Charter amendment submissions.
Carole Vanzant, Assistant City Manager Pgs. 80-85

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

- A. Update on Council Meeting recordings on website. Christina Picioccio, City Secretary

VI. CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:

- A. 551.071 (Consultation with Attorney) - Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs Edward I. Hill, Robert E. Heckendorn, Craig M. Luitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.
- B. 551.071 (Consultation with Attorney) - to receive legal advice regarding claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.
- C. 551.071 (Consultation with Attorney) - to receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.

VII. RECONVENE INTO OPEN SESSION

Discussion and possible action on items discussed in Executive Session.

VIII. ADJOURNMENT

Requests for City topic needing additional information/research; or, potential consideration for a future agenda.

Signature of Agenda Approval: _____



I, Christina Picioccio, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times. Said Notice was posted by 9:30 AM November 4, 2019 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch City Hall is wheelchair accessible at the side entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to *Texas Government Code* Chapter 551. Section 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).



CITY OF FAIR OAKS RANCH POLICE DEPARTMENT

7286 DIETZ ELKHORN ROAD
FAIR OAKS RANCH, TEXAS 78015

PHONE: (210) 698-0990 FAX: (210) 698-1647
NON-EMERGENCY/DISPATCH: (830) 249-8645

November 07, 2019

To: Officer Lacey Gonzalez & Officer Allen Paz

Life Saving Award

The Fair Oaks Ranch Police Department believes in the recognition of officers, their actions and outstanding efforts in service to our community. In keeping with this belief, the Fair Oaks Ranch Police Department recognizes Officer Lacey Gonzalez and Officer Allen Paz for their heroic efforts that occurred in September 2019.

On September 28th, at approximately 7:30pm, Officers with the Fair Oaks Ranch Police and first responders with Leon Springs VFD were dispatched to a residence on Northview Pass for a female patient who had overdosed on opioid medication. Officer Gonzalez was the first to arrive on scene and found the female unresponsive, not breathing, and detected no pulse. Officer Gonzalez immediately began providing CPR to the patient while relaying information to other responding units as well as utilizing the AED to assist her in her life saving efforts. Officer Allen Paz arrived shortly after and began assisting in administering CPR with Officer Gonzalez. Both Officers continued to provide CPR to the patient for 12 minutes until first responders arrived. Upon their arrival a pulse was detected in the patient and Narcan was effectively administered. As EMS units departed the scene in route to the Hospital the patient was alive and speaking with medical staff.

Officers Gonzalez and Paz's quick response, recognition of the severity of the medical emergency, and their immediate actions including CPR were directly responsible in the saving of a human life that would have otherwise been lost.

Officer Lacey Gonzalez and Officer Allen Paz's actions hereby qualify them for the Fair Oaks Ranch Police Department's Life Saving Award and bestows upon them both the Department's and the City's appreciation.

Respectfully,

Tim Moring
Interim Chief of Police
Fair Oaks Ranch Police Dept.

**CITY OF FAIR OAKS RANCH
JOINT CITY COUNCIL and PLANNING AND ZONING COMMISSION
PUBLIC HEARING MINUTES
October 10, 2019
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015**

I. OPEN MEETING

A. Roll Call – Declaration of a Quorum

Present: Mayor Manitzas and Mayor Pro Tem Elizondo
Council Members: Havard and Maxton

A quorum was present.

Planning and Zoning Commission Members:

Present: Chairperson Rey and Vice Chairperson Trapasso
Commissioners: Barnes, Horwath, Leonard, Pearson and Tom

A quorum was present and the Special Joint Workshop was called to order at 6:31 PM.

II. PURPOSE OF THE JOINT PUBLIC HEARING

A. The City Council and the Planning and Zoning Commission conducted a joint public hearing to receive public testimony regarding a Special Use Permit (SUP Application SUP 2019-01: A request for a special use permit on approximately 45 acres allowing for a commercial equine boarding facility on land currently zoned as Neighborhood Residential.

1. The Mayor provided opening comments and opened the Public Hearing at 6:34 PM.
2. City Manager, Tobin Maples, provided an overview of the proposed special use permit application.
3. Applicant, Tim Taylor, provided a summary of the intended use of the 45 acre property: to improve on the already existing barn and arena to create a small boutique English riding and training facility.
4. Council and P&Z ask questions of applicant and staff relating to the business plan, parking, and anticipated noise level generated from events.
5. Public testimony was provided by Christine Graham who spoke on behalf of her neighbor, Troy Slinkard who has the following concerns:
 - (a) Moving of the flood plain boundary closer to the properties which may place them in a high risk category from moderate risk for insurance purposes. Jeff Tyler, engineer for Core Engineering, noted that there was an error in the mapping and that they will be updating the mapping to reflect the actual current flood path conditions, which addresses the floodway only; the floodplain will remain the same.
 - (b) Why there is no city ordinance establishing maximum number of livestock per acreage square footage. City Manager Maples and Mayor Pro Tem Elizondo interjected that it was determined to leave that to deed restrictions which vary amongst home owners association versus an overarching ordinance which would be too hard to keep it all reconciled.

6. The Mayor closed the public hearing at 7:22 PM.
7. There was no addition discussion between the Council and Planning & Zoning Commission.

III. ADJOURNMENT

Mayor Manitzas adjourned the meeting at 7:23 PM.

Garry Manitzas, Mayor

ATTEST:

Christina Picioccio, City Secretary

**CITY OF FAIR OAKS RANCH
CITY COUNCIL MEETING MINUTES
October 17, 2019
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015**

I. OPEN MEETING

A. Roll Call – Declaration of a Quorum

Present: Mayor Manitzas and Mayor Pro Tem Elizondo
Council Members: Hartpence, Havard, Koerner, and Maxton

Absent: Council Member Patel

With a quorum present, the Mayor called the City Council meeting to order at 6:30 PM.

B. The Pledge of Allegiance was led by Mr. Robert Kolodziej, father of newly appointed Municipal Court Judge, Kim Keller.

II. CITIZENS and GUEST FORUM/PRESENTATIONS

A. Citizens to be heard:

1. John Hill, resident requested that the City Council remove Site A from consideration as a location for the elevated storage tank citing aesthetics and value of his home and its negative effect on security for his family.
 2. Nancy Hill, resident, informed the City Council that she had a petition signed by 395 residents to remove Site A from the list of possible locations for the elevated storage tank. She noted decrease of property values as a concern which would generate a decrease in property taxes for the City.
 3. Kris Purchatzke, representing Stone Creek Ranch as well, requested that the City Council remove Site A from the list of possible locations for the elevated storage tank. She noted that the possibility of an elevated storage tank being placed near their home was not disclosed to them or 10 other neighbors when purchasing their homes. She indicated that she wouldn't buy such a property had she been informed.
- B. Mayor Manitzas provided the Oath of Office to the City's new Municipal Court Judge, Kim Keller, and Municipal Court Prosecutor, Cynthia X. Trevino of Denton Navarro Rocha Bernal & Zech, P.C.
- C. Mayor Manitzas and Court Administrator Debbie Landrum recognized Court Clerk Maria Pinedo for achieving Court Clerk Level 1 Certification.
- D. Director of Human Resources & Communications, Joanna Merrill presented City Council with the Top Workplace Award. This award was a result of employee evaluations regarding company leadership, compensation and training, workplace flexibility and diversity.
- E. Ryan Sowa, P.E., of Kimley-Horn and Associates provided a summary of community workshops regarding the elevated storage tank. He noted of the five potential sites and three tank styles, residents have indicated preference for Site B (uninhabited site furthest to the east) and a composite style. Both of these selections result in the highest construction costs.

III. CONSENT AGENDA

- A. Approval of September 19, 2019 Regular City Council Meeting Minutes.**
- B. Approval of October 3, 2019 Regular City Council Meeting Minutes.**
- C. Approval of Council Member Havard's absence for the October 3, 2019 Council Meeting.**
- D. Approval of Council Member Patel's absence for the October 17, 2019 Council Meeting.**

The Mayor presented the Consent Agenda and with no discussion, the Consent Agenda was approved by unanimous consent.

IV. DISCUSSION/CONSIDERATION ITEMS

- A. Consideration and possible action approving the first reading of an Ordinance for a Special Use Permit allowing for a commercial equine boarding facility on land currently zoned Neighborhood Residential (NR) and commonly known as Setterfeld Estates 1A, Lot 1, Comal County Texas (30350 Ralph Fair Road, Fair Oaks Ranch, Texas)**

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Maxton to approve the first reading of the Ordinance as recommended by the P&Z Commission.

VOTE: 7-0; Motion Passed.

- B. Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement for Auditing Services with ABIP, P.C.**

MOTION: Made by Council Member Havard, seconded by Mayor Pro Tem Elizondo to authorize the City Manager to sign the Professional Services Agreement ("Engagement Letter") with ABIP, P.C. for the FY 2018-19 audit at a cost of \$21,600 plus out of pocket expenses.

VOTE: 7-0; Motion Passed.

- C. Consideration and possible action approving the first reading of an Ordinance Amending Chapter 4 "Business Regulations: Article 4.02 "Solicitors" of the City of Fair Oaks Ranch Code of Ordinances.**

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Hartpence to approve the first reading of an Ordinance amending the City's Code of Ordinances Article 4.02 "Solicitors".

VOTE: 7-0; Motion Passed.

V. REPORTS FROM STAFF / COMMITTEES / COUNCIL

VI. CONVENE INTO EXECUTIVE SESSION

City Council did not convene into Executive Session regarding:

- A. 551.071 (Consultation with Attorney) - Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs Edward I. Hill, Robert E. Heckendorn, Craig M. Luitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.**
- B. 551.071 (Consultation with Attorney) - to receive legal advice regarding claims made on behalf of a real property owner against the City's operation of the K-3 Trinity Glen Rose Water Well.**

- C. 551.071 (Consultation with Attorney) – to receive legal advice from Special Counsel and the City Attorney regarding the City’s ground water rights.

VII. RECONVENE INTO OPEN SESSION

- A. Not applicable.

VI. ADJOURNMENT

Council Member Elizondo requested that the Council review the list of criteria for the elevated storage tank and assign weights and values to balance between costs and aesthetics.

Mayor Manitzas adjourned the meeting at 8:07 PM.

Garry Manitzas, Mayor

ATTEST:

Christina Picioccio, City Secretary

CITY OF FAIR OAKS RANCH
CITY COUNCIL SPECIAL MEETING MINUTES
Oct 29, 2019
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

I. OPEN MEETING

A. Roll Call – Declaration of a Quorum

Present: Mayor Manitzas and Mayor Pro Tem Elizondo
Council Members: Hartpence, Havard, and Patel

Absent: Council Members Koerner and Maxton

With a quorum present, the Mayor called the City Council meeting to order at 10:00 AM.

B. The Pledge of Allegiance was led by Special Counsel, Joe Davis.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

A. There were no citizens to be heard.

III. CONVENE INTO EXECUTIVE SESSION

City Council convened into Executive Session at 10:02 AM:

A. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights and existing well sites and to deliberate the options for the purchase, exchange, lease or value of same.

IV. RECONVENE INTO OPEN SESSION

Mayor Manitzas reconvened into open session at 11:11 AM.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Havard to approve a resolution of the City Council of the City of Fair Oaks Ranch, Texas authorizing the power of eminent domain for the acquisition of permanent easements and certain property rights necessary for securing a public water supply and the provision of water to citizens who receive water from Fair Oaks Ranch; acquisition of temporary access; directing the City Manager or the City Manager's designee to execute all documents to institute eminent domain proceedings; and directing the City Attorney and Special Counsel to initiate condemnation proceedings when and if necessary.

VOTE: 5-0; Motion Passed as recorded:

In Favor: Mayor Manitzas; Mayor Pro Tem Elizondo; Council Member Hartpence; Council Member Havard; and Council Member Patel.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Havard to authorize the legal counsel to take any necessary action to secure the continuing access and use of the existing water well sites pending the condemnation process.

VOTE: 5-0; Motion Passed

V. CONSIDERATION/DISCUSSION ITEMS

A. Consideration and possible action regarding means and methods for scheduling Special Called City Council meetings.

Council Member Patel asked that as there are two council members absent and that she herself has to leave, that this discussion be deferred to a later meeting.

VI. ADJOURNMENT

Mayor Manitzas adjourned the meeting at 9:26 AM.

Garry Manitzas, Mayor

ATTEST:

Christina Picioccio, City Secretary



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 7, 2019

AGENDA TOPIC: Approval of the second reading of an Ordinance for a Special Use Permit allowing for a commercial equine boarding facility on land currently zoned Neighborhood Residential (NR) and commonly known as Setterfeld Estates 1A, Lot 1, Comal County, Texas (30350 Ralph Fair Road, Fair Oaks Ranch, Texas.

DATE: November 7, 2019

DEPARTMENT: Administration

PRESENTED BY: Tobin Maples, City Manager

INTRODUCTION/BACKGROUND:

A joint public hearing was held with City Council and the Planning and Zoning (P&Z) Commission on October 10, 2019 for the special use permit application, SUP 2019-01. The applicant is requesting approval of a special use permit to allow for the operation of a commercial *equine* boarding facility (commercial stable/boarding) on the subject property which is currently zoned Neighborhood Residential (NR). If the special use permit is approved, the property will remain zoned for Neighborhood Residential (NR) uses but will allow for commercial stable/boarding uses as well.

Following the joint public hearing on October 10, 2019, the P&Z Commission conducted their regularly scheduled meeting. The P&Z Commission voted to recommend approval of the special use permit application to the City Council subject to the following conditions:

1. No building permits will be issued until the applicant receives necessary approvals from FEMA and/or the City for required drainage studies (hydrologic/hydraulic, grading, and/or conditional letters of map amendments for modifications to areas within the floodplain. This includes a Water Pollution Abatement Plan (WPAP) if required due to proximity to the Edwards Aquifer Recharge Zone.
2. All commercial stable and boarding activity shall be limited to the equine family of livestock and shall remain secondary and accessory to an established primary residential use on the property.
3. Boarding stalls shall be limited to a maximum of 18.
4. Shows and teaching clinics are limited to English riding events.
5. Structures east of the floodway are prohibited (see attached floodplain map).
6. Structures or facilities used for stabling, storing, showing or training of equine must be set back a minimum of 80 feet from any adjacent privately-owned property. Dwelling units and accessory structures incidental to the dwelling units and irrigated pasturage may occur within the 100-foot setback area.
7. All outdoor lighting shall comply with the City's Dark Sky requirements.

8. All laws applicable to animal feeding operations or concentrated animal feeding operations (AFO and CAFO), disposal of manure, water pollution and abatement (WPAP), treatment of dust and erosion control, and concentration of equine (livestock unit) must be complied with for the entire period of the special use permit.
 - a. AFO's & CAFO's: Requirements are based on the number of animals. Operations of less than 150 horses requires notification only.
 - b. Manure Disposal: Allowed in the floodplain under certain conditions. Further, Chapter 2, Section 2.04.004 of the City Code of Ordinances states that the owner of every animal shall be responsible for the removal of any excreta deposited by their animal(s) on public walks, recreation areas, public or private property, including the property of the owner.
 - c. Water Pollution Abatement Plan (WPAP): May be required due to the construction of the covered arena. This is the applicant's responsibility to verify/comply with the TCEQ review process.
 - d. Concentration of Equine: One (1) livestock unit per 20,000 sq. ft. of land area. One (1) acre equals 43,560 sq. ft.

The City Council is the final authority on all zoning change applications. An ordinance is required to amend the Official Zoning Map of the City.

The first reading of this Ordinance was approved by Council at the October 17th Council Meeting.

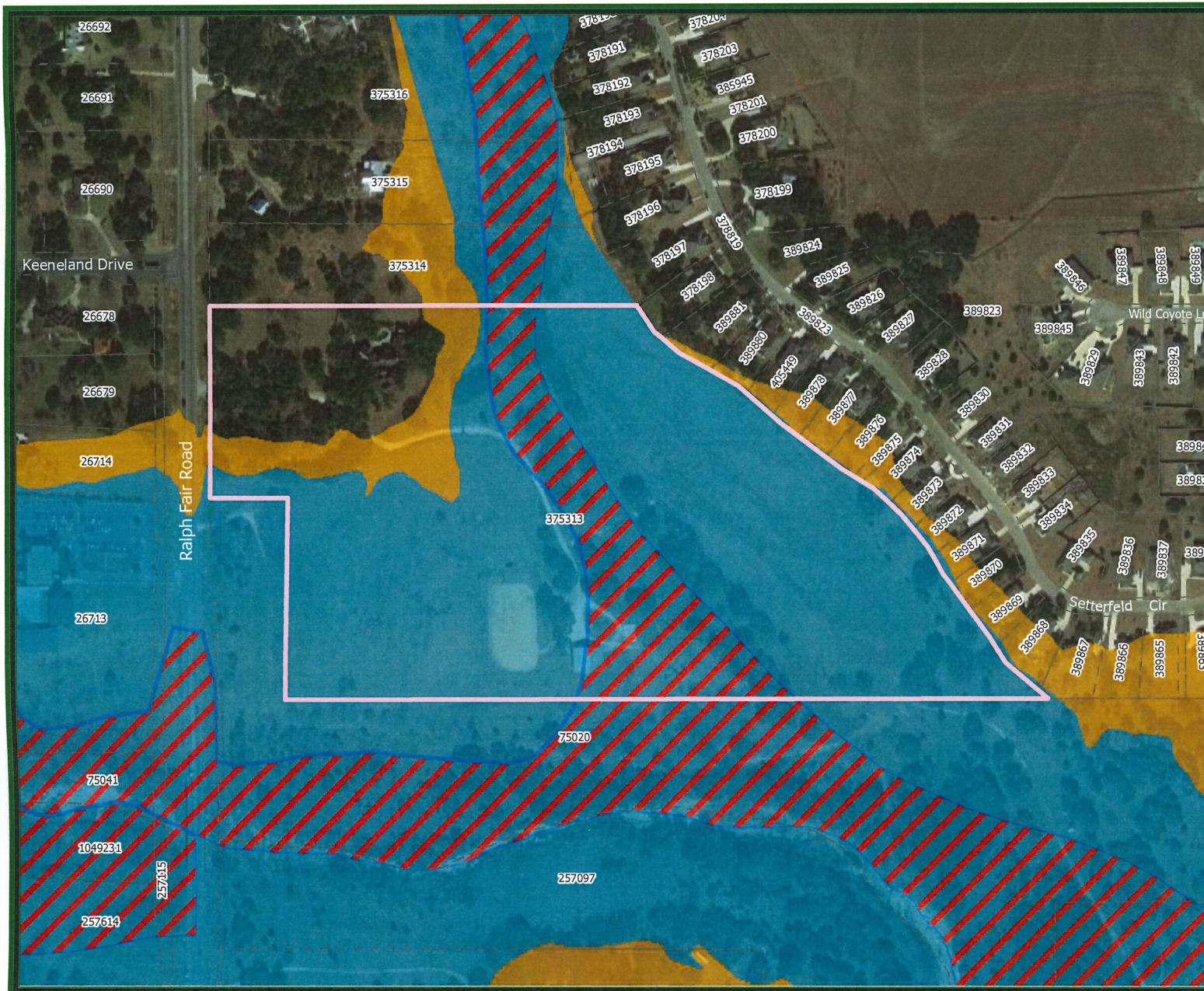
LEGAL ANALYSIS:

Ordinance approved as to form.

RECOMMENDATION/PROPOSED MOTION:

Sample Motion(s):

- I move to approve the second reading of an Ordinance for a Special Use Permit.



FLOODPLAIN MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

- Subject Property
- High Risk Area
- High Risk Area - Floodway
- Moderate Risk Area



August, 2019



1" ≈ 400'

Disclaimer – The City of Fair Oaks Ranch (COFOR) does not guarantee the accuracy, adequacy, completeness, or usefulness of any information. COFOR does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS Data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. GIS data is derived from public records that are constantly undergoing revision. Under no circumstances should GIS products be used for final design purposes. COFOR provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

STAFF REPORT

To: City Council and Planning and Zoning Commission
From: Public Works Department
Date: October 17, 2019
Re: Special Use Permit No: SUP 2019-01

A request from Tim Taylor, property owner, to receive a special use permit on approximately 45 acres allowing a commercial equine boarding facility on land currently zoned as Neighborhood Residential (NR).

Physical Address: 30350 Ralph Fair Road, Fair Oaks Ranch, TX 78015

Summary of Request

The applicant is requesting approval of a special use permit to allow for the operation of a commercial *equine* boarding facility (commercial stable/boarding) on the subject property. More information regarding the proposed intended use and site plan for the property can be found in **Exhibit 1** – Applicant Packet and statement.

The Unified Development Code (UDC) defines a Commercial Stable as follows:

Commercial Stables: Means any structure or place where livestock are kept for boarding, riding, feeding, or training for compensation, inclusive of the provision of livestock riding facilities such as covered arenas. For the purposes of Commercial Stables, livestock will include all animals of equine, bovine class including goats, sheep, mules, horses, cattle, and other grazing animals. Save and except for project animals (e.g., 4-H and FFA projects), livestock in the swine class are prohibited, and fish are excluded.

By way of background, the first draft of the Unified Development Code (UDC) did not address commercial stables from a zoning perspective. Accordingly, a group of volunteer citizens keenly familiar with uses of this nature assisted staff with developing the above referenced definition and the assignment of appropriate zoning districts within the permitted use table. The subject property is currently zoned Neighborhood Residential which allows for a commercial stable subject to City Council approval of a Special Use Permit (SUP). Applications for a SUP are processed in the same manner as a rezoning application. Similar to zoning, a SUP is tied to the land.

Site History

In May of 2010, this property was platted as Lot 1, in the Setterfeld Unit 1A subdivision. Upon adoption of the future land use map and zoning map in June 2018, the property was zoned Neighborhood Residential (NR). Mr. Taylor acquired the deed for this property in September of 2018.

This site is generally located along the north side of the Cibolo Creek, immediately east of Ralph Fair Road, across the street from Cibolo Creek Community Church and west and south of the Setterfeld Estates Subdivision. A summary of the surrounding land uses and zoning designations can be found in the following table:

Zoning		Current Land Use
NORTH	Neighborhood Residential	Residential
SOUTH	Rural Residential	Rural Acreage
EAST	Existing Residential -2	Residential
WEST	Existing Residential -3	Residential
SOUTHWEST	Civic and Community Facilities	Church

Conformance with Future Land Use Map

The Future Land Use Map adopted in June of 2018 designates this property as Neighborhood Residential (NR). The NR zoning district is described “serves as the residential district for areas where low-to-medium density development is appropriate in Fair Oaks Ranch. The lots are a minimum of 1 acre (or an average of 0.75 acres using the Conservation Development Alternative Minimum to incentivize conservation areas). The NR district allows a variety of lot sizes and housing. NR developments provide pedestrian-friendly residential neighborhoods, protected from incompatible uses. Residences in the NR district are appropriate primarily for direct access to Local Connector streets, Local Neighborhood Residential streets and Rural Residential streets.” Uses permitted by right in the NR zoning district, include the following:

- Parks, greens, plazas, squares, and playgrounds
- Single Family Residential
- Accessory Building Residential Unit (Garage Apt.)
- Home Occupations

Uses permitted with a Special Use Permit (S) in the NR zoning district, include the following:

- Family home child care
- Transitional Housing
- Telecommunications and broadcasting (radio, TV, cable, wireless communications, telephone, etc.)
- Commercial Stables/Boarding

The applicant is requesting approval of a special use permit to allow for the operation of a commercial *equine* boarding facility (Commercial Stables/Boarding) on the subject property. Save and except for grading modifications, the only new structure being proposed is a cover/roof for the existing open-air arena.

Availability of Utilities

The agricultural portion of this parcel is serviced by a private well for water supply and operates a septic system for wastewater.

Public Notification

As required, City staff sent public notices, public comment forms, and location maps to all properties within 200 feet of the subject property, inclusive of the applicant/owner. Additionally, notice of the public hearing was published in the Boerne Star newspaper on September 20, 2019.

Opposition to or Support of Proposed Request

City staff has not received any returned notices in opposition to or in support of the special use permit application. Staff did receive a letter from a resident in the Setterfeld Estates subdivision (**see exhibit 2**) outlining questions about the SUP application/proposed use. Staff responses have been added to the letter via track changes mode. Since the October 17th Council Meeting, the City received one additional comment form in support of the zoning change (**see exhibit 3**).

Staff Recommendation

Subject to the conditions outlined below, Staff recommends approval of the Special Use Permit for the following reasons:

1. The small scale of the proposed special use is consistent with commercial equine operations within other parts of the city with similar existing zoning and surrounding land uses. Accordingly, the proposed use is consistent with the character and spirit of the community for properties of this size.
2. The intensity (scale) of the proposed use is compatible with the existing surrounding properties. Staff does not believe the surrounding property owners or the general public will experience negative impacts associated with this use.
3. Staff does not believe the proposed use will have a significant impact on the health, safety and welfare of the surrounding neighborhoods.
4. Staff does not believe the proposed use will have a significant impact on public infrastructure such as roads, parking facilities and water and sewer systems. However, the applicant has indicated they may desire to host small private teaching clinics and small private shows in the future. A discussion regarding traffic control and additional off-street parking may be warranted depending on the size and number of clinics/shows.
5. Staff does not believe the proposed use will have a significant impact on public services such as police and fire protection and solid waste collection. The City's solid waste franchise contract does not include solid waste disposal for commercial properties. Commercial users are responsible for securing private solid waste disposal services.
6. Staff does not believe the proposed use has a significant impact on the ability of existing infrastructure and services to adequately serve this proposal.

Conditions:

Staff agrees with the P&Z recommendation



City of Fair Oaks Ranch
ZONING CHANGE APPLICATION

(special use permit)

(Please type or Print)

Property Owner Information:

Name: Tim TAYLOR (TAYLOR LIVING TRUST)
 Contact Person: _____
 Address: 30350 RALPH FAIR RD
CITY: FAIR OAKS RANCH State: TX Zip: 78015
 Telephone No: 210 382 8511
 E-Mail: doctortimtaylor1@me.com
 Owner Signature: [Signature] Date: 8/14/2019

I am the owner of the herein described property and _____ is
 authorized to file this application on my behalf.

Applicant Information:

Name: SAME ↑
 Contact Person: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone No: _____
 E-Mail: _____
 Applicant Signature: [Signature] Date: _____

Planner/Engineer Information: Civil Engineer

Name: Jeff Tyler
 Contact Person: JT
 Address: 2907 Red Sky Pass
CITY: San Antonio State: TX Zip: 78259
 Telephone No: 210 900 2448
 E-Mail: JTyler@TCOre.com

Surveyor Information:

Name: GE Reaves
 Contact Person: _____
 Address: 5250 Callaghan Rd
CITY: San Antonio State: TX Zip: 78228
 Telephone No: 210 490 4506
 E-Mail: _____



Subject Property Information

Lot: Prop ID: 375313 , Geo ID: 500670000100
Block: Comal County
Subdivision: Settlerfield Estates 1A Lot 1 (not in HOA)
General location: 30350 Ralph Fair Rd

* If the request is for a portion of a platted lot or the property is not platted, a legal description of the property for which the zoning change is requested must be completed as "EXHIBIT A" and attached hereto. The legal description shall include the distance and bearing calls starting and closing from a point of beginning, inclusive of a map/survey exhibit.

Existing Zoning: NR
Acreage: 45 acres
Future Land Use Map Recommendation: _____
Proposed Zoning, Justification, Uses, _____
Acreage, etc. (use attachment if needed): See attached

City Office Use Only

Date Received: _____
Application Fee Due: _____
Application Fee Attached: Yes: ☒ No: ☐
Application Administratively Complete: Yes: ☒ No: ☐*
*Explanation: Paid \$600.00

Special Use Permit
Commercial Equine Boarding Facility

(Attachment)

Existing: Property currently has a 6-horse barn with a 40,000sf riding arena.

Proposed:

- Construction of New Horse Barn (10-12) stalls.
- Construction of cover for existing riding arena.
- Construction of 60ft diameter round pen.

Special Use:

We would like to open a small equine boarding facility for dressage riders and horses.

Taylor Boarding Facility
Special Use Permit

8/20/2019

Dear City of Fair Oaks Ranch,

There are many properties in Fair Oaks Ranch with horses and the city has a long history of being horse friendly. In fact, many streets have horse related names and there is a riding trail in the City of Fair Oaks Ranch. There are several horse related businesses currently existing in the city and in this letter I will attempt to share my vision for a boutique horse boarding facility. Over the past year, I have had several meetings and many email exchanges with city staff to address the issue of horse related facilities in Fair Oaks Ranch and small “mom and pop” equine operations and how they could be addressed. When I started having these conversations and meetings, there was no language in the new unified development code that addressed horse related properties and the small equine related businesses that were in existence.

My 45-acre property at 30350 Ralph Fair Road has an existing riding arena and a 6-horse barn. I am proposing to build one new structure. This would be a cover over my existing riding arena. Covering the arena will allow us to ride in the 100 degree summers and also on the few days when there is inclement weather. Covering the arena also helps to protect the specialized footing (synthetic fiber mixed with sand) that can easily dry out and get ruined. At the north end of the arena, I would like to include 10-12 horse stalls under the cover of the arena. Our facility will cater to the equine sport of dressage. Dressage is the art of riding and training the horse in a manner that develops obedience, strength, flexibility, and balance. Dressage is an Olympic sport and some people refer to it as ballet for horses. There is an existing equine dressage boarding facility in the City of Fair Oaks on Venturer that I think might be similar to what we are proposing. Our boarding facility will charge monthly rent to select clients and we will provide hay, clean the stalls, and offer the covered riding arena for dressage practice.

In terms of community need, the boarding facility on Venturer is at capacity. Another similar facility in Boerne on Vallerie Lane has recently closed and the boarding facilities at Double Diamond in Boerne are no longer taking new boarders. Our understanding is that when the facility was recently sold, the new owners want to focus on events, weddings, and corporate meetings. We, like many others, think that horses are beautiful creatures and horse facilities make a neighborhood happier and improve the quality of life of its residents. Although small, our facility will provide a collaborative community for residents of Fair Oaks Ranch who love the sport of dressage and need a place to board their horses. Please understand that this is not a business that will be profitable. The expense of building the covered

arena will never be recouped. It will take time, sweat, and money to build the barn and cover the arena, but having a small community of dressage boarders will allow our family to share our interest and love of horses with a few other like-minded equine enthusiasts. In short, we hope to have a few other people to ride with.

I understand and appreciate that the city must do its best to safeguard all of its residents and to make sure impacts of even small mom and pop businesses do not affect surrounding property owners. In my opinion, our facility should have no to very minimal impact on traffic. I suspect that with 10 boarding horses, each owner may visit the barn 3-4 times each week. There will also be deliveries of hay and shavings that will occur once each month. Horse trainers may regularly visit the facility to help coach and train the horses and provide teaching clinics. We may invite friends and other dressage riders to use the arena from time to time and may have practice schooling shows. The facility will not be open to the public, so there will not be retail traffic.

The proposed new stalls will draw water from my existing well to water the horses and to provide water to the single restroom. Under the cover of the arena near the new horse stalls, we will have a single restroom (one toilet and one sink) that will utilize the septic system that has recently been permitted, installed, and inspected by Comal County.

Our property has an extensive floodplain and I have been working with a civil engineer, Jeff Tyler from T-Core Engineering, who will be doing the hydrology studies, grading and site plan, and submitting the plans to the City of Fair Oaks and then the CLOMA to FEMA once there has been local approval of his plan. The new barn will utilize solar panels to operate fans in each of the stalls and a refrigerator in the tack room. There will be no residence or personal dwelling in the proposed barn. All manure will be stored and disposed of in a hygienic manner. Republic Waste has a service to remove manure.

Criteria for City Council Approval:

1. [There will be no significant negative impact upon residents of surrounding property or upon the general public.](#) As discussed above, the facility will add value to existing properties by providing and maintaining a beautiful facility. Although the horses themselves may not be visible to many existing homes, they will be visible from Ralph Fair Rd. The facility might also add value to the residents of Fair Oaks Ranch that may want to board their horses and have no current facility to use. The location of the proposed covered arena is not located near any existing homes and the work of the civil engineer will mitigate any potential drainage or water impact to surrounding properties.
2. [Review the Special Use Permit application based on the potential use's impact on the health, safety and welfare of the surrounding neighborhood.](#) There should be virtually no impact on traffic because of the nature of this proposed special use. The new horse stalls and arena are well away from any

property lines. Manure will be handled and disposed of in a professional way and there should be no impact on the health and safety of the surrounding neighborhood.

3. Review the Special Use Permit application based on its impact on public infrastructure such as roads, parking facilities and water and sewer systems. The proposed business will not utilize city water or sewage systems. The parking facilities will be minimal because there won't be retail clients and the facility will be private with a coded gate entry for only boarding clients.
4. Review the Special Use Permit application based on its impact on public services such as police and fire protection and solid waste collection. I don't anticipate this facility to impact police, fire, or solid waste collection.
5. Review the Special Use Permit application based on the ability of existing infrastructure and services to adequately provide services. Again, I don't anticipate any infrastructure or service limitations.

As a private resident of Fair Oaks Ranch (not a land developer), I'm trying my best to answer the questions on the special use permit. Please contact me anytime by phone, text, or email for any necessary documents, drawings, or information.

Sincerely,

Tim Taylor
210-382-8511
doctortimtaylor1@me.com

September 27, 2019

City of Fair Oaks Ranch

Attn: Tobin Maples

7286 Dietz Elkhorn

Fair Oaks Ranch, TX 78015

Re: SUP No. 2019-01 Special Use Permit Request by Tim Taylor, 30350 Ralph Fair Rd

Dear Mr. Maples,

Per our conversation today, please find following some of the questions/concerns we would like addressed before the above referenced Special Use Permit is issued.

- Flooding. Our property at 30352 Setterfeld Circle backs up to this properties fence line on the East. We have experienced flooding in our back yard, more than once, from the Channel built to divert the water directly out to the Flood Plain located on this 45-acre parcel. If allowed to build in the Flood plain how will this impact the safety of our homes as well as our children and animals. Health concerns would arise from standing water if runoff is diverted. What type of impact would this have on property values or insurance costs? Prior to issuance of building permits in the floodplain, the applicant will be required to perform and submit for approval a drainage study (hydrologic and hydraulic analyses) in accordance with standard engineering practice and the City's Unified Development Code. This study must demonstrate plans where the drainage system peak flows are managed and accounted. Furthermore, the land owner remains responsible if he/she creates a drainage impact to any adjacent and downstream properties. Drainage studies of this nature tend to be costly and are typically performed subsequent to establishing land use entitlements (zoning, SUP's, etc.) from the governing jurisdictions. This may include a Water Pollution Abatement Plan (WPAP) if required by TCEQ due to proximity to the Edwards Aquifer Recharge Zone.
- How long is a Special Permit issued for; life of property under current owner? Is the Special Use Permit transferrable? Just like zoning, approval of a SUP goes with the land not the owner.
- Can a Special Permit be revoked? The City's Legislative body (City Council) has the authority to approve, revoke, and modify all SUP's.

- Will a Special Use Permit allow for easier re-zoning by the property owner or additional Special Use Permit applications? Zoning regulates the use of land. Once established, the City Council has the discretion to approve or disapprove requests for changes to the zoning map. The adopted future land use map is one of many tools utilized to evaluate zoning change applications.
- How many Special Use Permits may a property owner hold? No limit but all SUP applications require public notice and public hearings.
- Would a Special Use Permit have any effect, positive or negative, on neighboring homes? SUP's are uses that zoning ordinances permit but are screened and specially approved based on particular conditions and suitability. Regarding this particular SUP application, staff does not believe the proposed use will have a significant impact on the health, safety and welfare of the surrounding neighborhoods.
- Will a Special Use Permit make it easier for the property owner to apply for FEMA approval of building in the flood plain or obtaining any type of City permit? No. FEMA approvals are based on hydrologic and hydraulic engineering analyses. Land Use entitlements (Zoning, SUP's, etc.) are not authorization to modify the floodplain.

As we discussed I do not believe we would have any opposition to an Equine Boarding Facility at this location; if that is all it is. However, we would want to know how the following would be addressed?

- How many horses could be boarded at this facility? (Assumption a horse requires a certain amount of footage to maintain its health.) Is there a possibility they could Board something other than horses? The City does not regulate the number of horses. However, the Texas Administrative Code (TAC) provides standards relative to concentrated feeding, disposal of manure, etc. (see Exhibit 9). The applicant has stated he intends to build 10-12 stalls but only wants to board 5-6 horses. The remaining stalls are programmed to allow the property owner to grow their herd.
- What type of amenities would be available? Additional clarification is needed to respond to this question. Please refer to the applicant's letter and site plan to determine if it addresses your definition of amenities.
- What is the requirement for safe disposal of manure? (We wouldn't want it piled up in a heap near our home or buried to leach into our water source.) The applicant has stated they intend to contract for commercial disposal of manure. Activities of this nature are regulated by the Texas Administrative Code (TAC). The TAC allows for the disposal of manure in the floodplain on certain conditions. The TAC is attached as Exhibit 9. Further, Chapter 2, Section 2.04.004 of the City Code of Ordinances states that the owner of every animal shall be responsible for the removal of any excreta deposited by their animal(s) on public walks, recreation areas, public or private property, including the property of the owner.
- Would they be allowed to have horse shows? The applicant has indicated they may try to host small teaching clinics and/or shows. The City Council has the authority to approve or disapprove shows as a condition.
- Would there be arena lighting, or extra lighting of some kind somewhere? If the SUP is approved, lighting will be discussed and reviewed as part of the owners building permit application. One of the staff recommended conditions is to ensure compliance with the City's Dark Sky Regulations.

- Additional noise and pollution? Additional clarification is needed to respond to this question. Please refer to the applicant's letter and site plan to determine if it addresses your definition of noise and pollution.
- Effect on traffic? Based on the small scale of the proposal, a traffic impact study is not required. Accordingly, staff does not believe there will be a significant traffic impact. However, the applicant has indicated they may desire to host small private teaching clinics and small private shows in the future. A discussion regarding traffic control and additional off-street parking may be warranted depending on the size and number of clinics/shows.
- Would they build a parking lot for cars and or horse trailers? Off-street parking will be provided as shown on the attached site plan.
- Would they build structures of any kind in the flood plain; e.g. barns, sheds, corals, arenas, etc. The applicant's letter indicates the only new structure will be a roof to cover the existing open-air arena.
- Depending on the size of the commercial equine boarding facility we will assume there will be a need to hire employees to run this facility. Would some employee(s) live on site? The application package and statement does not include a request for employee housing. Regardless of the SUP, the existing zoning on the property allows for a guest house.
- Will this facility operate 24/7 or will there be specific hours of operation? The City does not govern the hours of operation for businesses.
- Did we mention we're concerned about flooding? Yes, see response to your first bullet point.

We will watch for the posting of this application online at the Fair Oaks Ranch City website this coming October 4th. We also plan to attend the Oct. 10th hearing. We would like to thank you in advance for the time it will take to address our questions and concerns.

Always With HOPE,
Garry & Christine Graham
30352 Setterfeld Circle

Property Owner Public Comment Form

(RETURN THIS FORM TO)

City of Fair Oaks Ranch
Engineering Department
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015

RE: SUP No. 2019-01

This form may be used for the purpose of expressing your opinion on the proposed zone change request. Please complete the form below and return it to the City of Fair Oaks Ranch Engineering Department prior to the Joint Public Hearing date referenced below and in your property owner notification.

The Joint Public Hearing will be held in the City Council Chamber at City Hall located at
7286 Dietz Elkhorn, Fair Oaks Ranch, Texas 78015 on
Thursday, October 10, 2019 at 6:30 p.m.

☒ I am **FOR** the zone change request as explained on the attached public notice for SUP No. 2019-01.

☐ I am **AGAINST** the zone change request as explained on the attached public notice for SUP No. 2019-01.

(PLEASE PRINT)

All comments forms **MUST** be returned prior to the City prior to October 3, 2018

Name: Michelle Bastian
Address: 30324 Settenfeld Cir, 78015
Signature: Michelle Bastian
Date: 10/25/19

Comments:

AN ORDINANCE

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS AMENDING THE OFFICIAL ZONING MAP BY ZONING, SETTERFELD ESTATES 1A, LOT 1, COMAL, COUNTY TEXAS (30350 RALPH FAIR ROAD, FAIR OAKS RANCH TEXAS) FOR A SPECIFIC USE PERMIT (SUP APPLICATION 2019-01) ALLOWING FOR A COMERCIAL EQUINE BOARDING FACILITY ON LAND CURRENTLY ZONED NEIGHBORHOOD RESIDENTIAL (NR)

WHEREAS, an application for a Specific Use Permit (SUP Application 2019-01) on approximately 45 acres located at 30350 Ralph Fair Road, Fair Oaks Ranch, Texas allowing for a commercial equine boarding facility on land currently zoned as Neighborhood Residential (NR) and more particularly described in the attached **Exhibit 1** (herein, the “Property”) has been filed with the City; and,

WHEREAS, the City Council of the City of Fair Oaks Ranch, Texas as previously created and appointed a Planning and Zoning Commission as authorized by the Texas Local Government Code; and,

WHEREAS, the Texas Local Government Code authorizes a municipality to adopt zoning districts after compliance with statutory notice provisions; and,

WHEREAS, on October 10, 2019, the Planning and Zoning Commission conducted a public hearing on the potential Specific Use Permit application and after considering the testimony and evidence, hereby makes a recommendation of approval of the Specific Use Permit (SUP Application 2019-01) subject to the conditions described in the attached **Exhibit 2** and as generally shown on **Exhibit 3**, site plan; and,

WHEREAS, on October 19, 2019, the City Council conducted a public hearing and after considering the testimony, evidence and recommendation by the Planning and Zoning Commission, determined it to be in the public interest to approve the Specific Use Permit (SUP Application 2019-01) subject to the conditions described in the attached Exhibit 2 by amending the City’s Zoning Map, which in its best judgment promotes the health, safety, morals, and general welfare and protect the use and enjoyment of property throughout the City.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

- Section 1. The Property commonly known as 30350 Ralph Fair Road, Fair Oaks Ranch, Texas, and platted as **SETTERFELD ESTATES 1A, LOT 1, COMAL, COUNTY TEXAS** as shown and more particularly described in the attached Exhibit A, is hereby zoned for a Specific Use Permit for allowing for a commercial equine boarding facility on land currently zoned Neighborhood Residential (NR).
- Section 2. The Official Zoning Map of the City of Fair Oaks Ranch, shall be revised to reflect the above amendment.
- Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.
- Section 4. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the

provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

- Section 5. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.
- Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.
- Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.
- Section 8. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.
- Section 9. This Ordinance shall be cumulative of all other ordinances of the City of Fair Oaks Ranch, and this Ordinance shall not operate to repeal or affect any other ordinances of the City of Fair Oaks Ranch except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, are hereby repealed.

PASSED and APPROVED on first reading the 17th day of October, 2019.

PASSED, APPROVED AND ADOPTED on second reading this 7th day of November, 2019.

Garry Manitzas, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

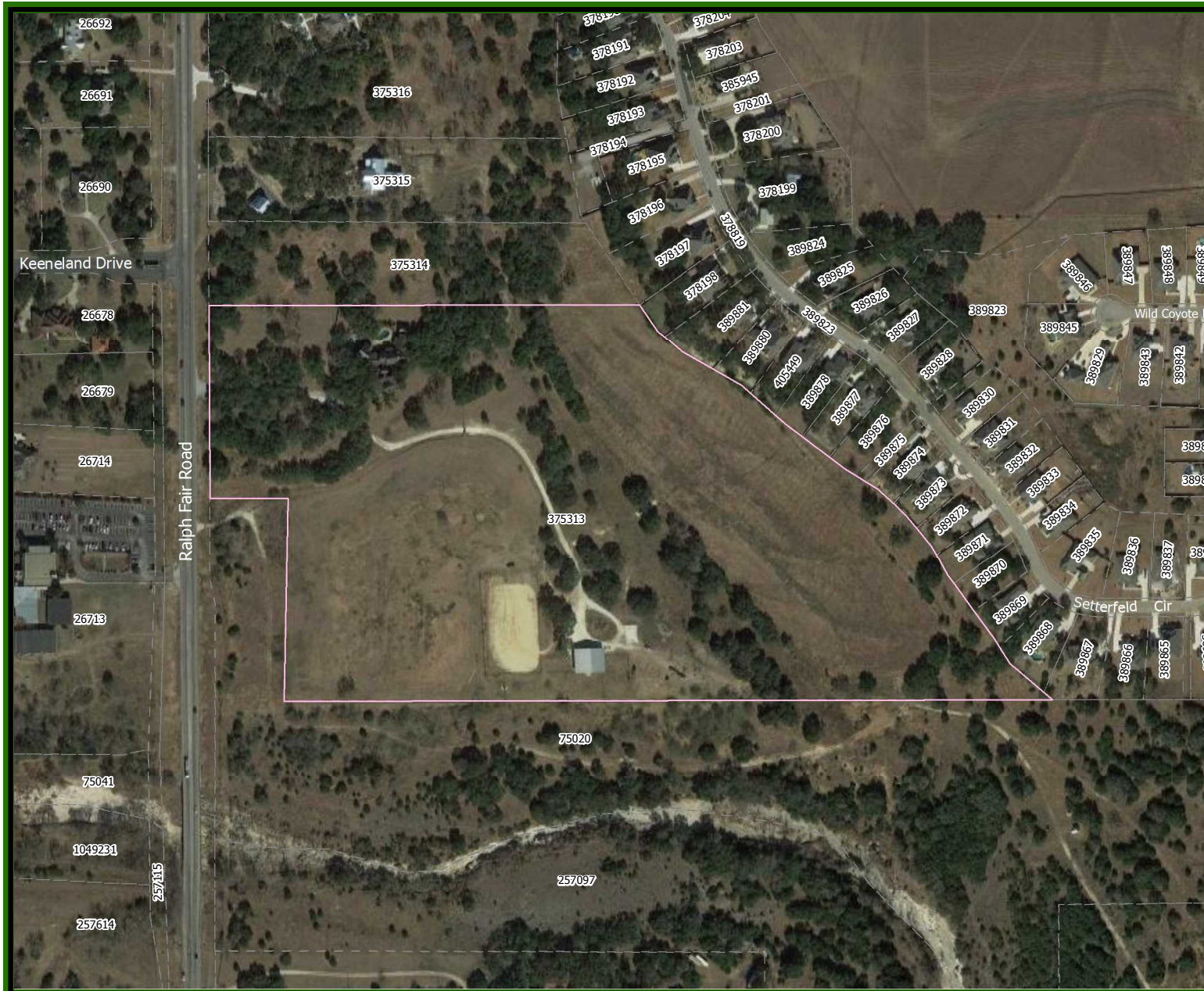


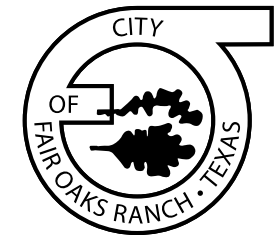
Exhibit 1 AERIAL MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

 Subject Property



August, 2019



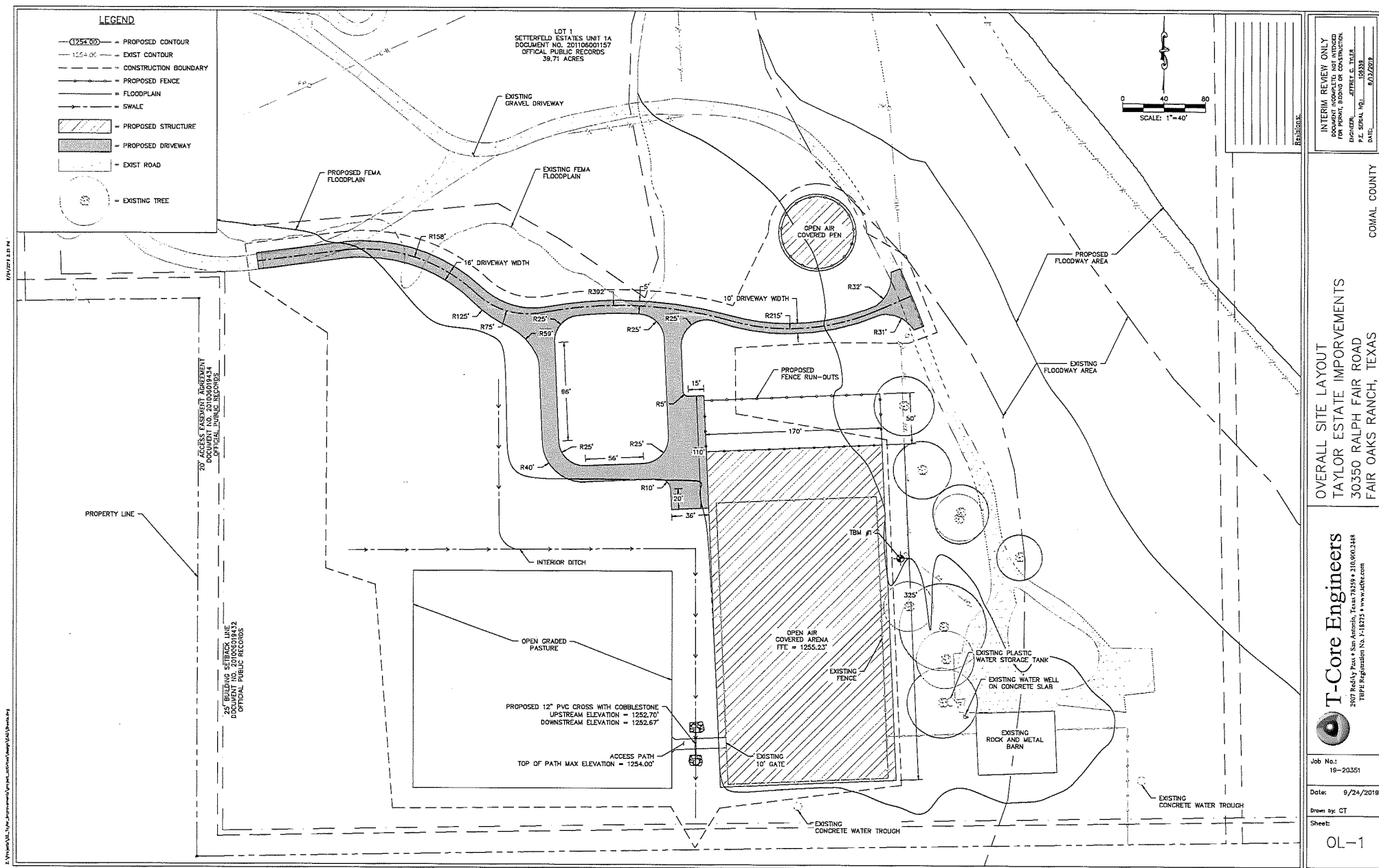
1" ≈ 400'

Disclaimer – The City of Fair Oaks Ranch (COFOR) does not guarantee the accuracy, adequacy, completeness, or usefulness of any information. COFOR does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS Data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. GIS data is derived from public records that are constantly undergoing revision. Under no circumstances should GIS products be used for final design purposes. COFOR provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

Exhibit 2

Conditions:

1. No building permits will be issued until the applicant receives necessary approvals from FEMA and/or the City for required drainage studies (hydrologic/hydraulic, grading, and/or conditional letters of map amendments for modifications to areas within the floodplain. This includes a Water Pollution Abatement Plan (WPAP) if required due to proximity to the Edwards Aquifer Recharge Zone.
2. All commercial stable and boarding activity shall be limited to the equine family of livestock and shall remain secondary and accessory to an established primary residential use on the property.
3. Boarding stalls shall be limited to a maximum of 18.
4. Shows and teaching clinics are limited to English riding events.
5. Structures east of the floodway are prohibited.
6. Structures or facilities used for stabling, storing, showing or training of equine must be set back a minimum of 80 feet from any adjacent privately-owned property. Dwelling units and accessory structures incidental to the dwelling units and irrigated pasturage may occur within the 100-foot setback area.
7. All outdoor lighting shall comply with the City's Dark Sky requirements.
8. All laws applicable to animal feeding operations or concentrated animal feeding operations (AFO and CAFO), disposal of manure, water pollution and abatement (WPAP), treatment of dust and erosion control, and concentration of equine (livestock unit) must be complied with for the entire period of the special use permit (see Exhibit 9, Texas Administrative Code).
 - a. AFO's & CAFO's: Requirements are based on the number of animals. Operations of less than 150 horses requires notification only.
 - b. Manure Disposal: Allowed in the floodplain under certain conditions. Further, Chapter 2, Section 2.04.004 of the City Code of Ordinances states that the owner of every animal shall be responsible for the removal of any excreta deposited by their animal(s) on public walks, recreation areas, public or private property, including the property of the owner.
 - c. Water Pollution Abatement Plan (WPAP): May be required due to the construction of the covered arena. This is the applicant's responsibility to verify/comply with the TCEQ review process.
 - d. Concentration of Equine: One (1) livestock unit per 20,000 sq. ft. of land area. One (1) acre equals 43,560 sq. ft.





CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 7, 2019

AGENDA TOPIC: Approval of the second reading of an Ordinance amending Chapter 4 “Business Regulations”, Article 4.02 “Solicitors” of the City of Fair Oaks Ranch Code of Ordinances.

DATE: November 7, 2019

DEPARTMENT: Administration

PRESENTED BY: Dan Santee, City Attorney

INTRODUCTION/BACKGROUND:

An updated Solicitation Ordinance was presented to Council on September 5, 2019. After a thorough discussion the Council voted to allow staff and city attorney to research and address their questions. Subsequent research performed by the City Attorney indicated that the panhandling prohibitions warranted removal due to recent legal challenges in court.

The updated Ordinance includes:

- Broadened and clarified definitions
- Comprehensive application process
- Thorough background checks
- Enhanced general prohibitions
- Requirement to display license for resident identification
- Complaint driven revocation of license
- Regulations regarding the distribution of handbills and commercial flyers

The current Ordinance (83.1) is provided as Attachment A.

The first reading of this Ordinance was approved by Council at the October 17th Council Meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. Further protects public health, safety and welfare of citizens
2. Implements improved administrative permit issuance procedures
3. Provides for enhanced background checks on peddlers, solicitors and itinerant vendors

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

The Ordinance has been provided by legal.

RECOMMENDATION/PROPOSED MOTION:

I move to approve the second reading of an Ordinance amending the City’s Code of Ordinances Article 4.02 “Solicitors”.

AN ORDINANCE

REPEALING ORDINANCE 83 AND ADOPTING ORDINANCE 83.1; REGULATING SOLICITORS OF SERVICES, FUNDS, OR PROPERTY FOR COMMERCIAL AND NON-PROFIT PURPOSES; PROVIDING FOR A PERMIT APPLICATION AND ISSUANCE OF A PERMIT TO SOLICIT; PROVIDING FOR AN ADMINISTRATIVE APPEAL; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council finds that unregulated door-to-door solicitation is a nuisance and endangers not only the right of quiet use and enjoyment of the citizens of Fair Oaks Ranch have in their homes but also the health, safety and welfare of the community; and,

WHEREAS, the City of Fair Oaks Ranch has in place an ordinance regulating door-to-door solicitation in the City's limits; and,

WHEREAS, the City of Fair Oaks Ranch desires to update its ordinance in light of recent pronouncements of the United States Supreme Court regarding the impact of such regulation on the rights guaranteed by the First Amendment to the United States Constitution; and,

WHEREAS, the City Council has determined that the update of this ordinance is necessary to protect against criminal activity, including fraud and burglary, minimize the unwelcome disturbance of citizens and the disruption of privacy and to otherwise preserve the public health, safety and welfare by regulating, controlling and licensing door-to-door solicitors and peddlers; and

WHEREAS, the City Council believes that our citizens should be protected from disturbance by uninvited individuals who solicit door-to-door or who deliver flyers, pamphlets, handouts, handbills, or advertisements to homes, and so desires to regulate such activity to the extent permitted by the First Amendment and the protection it affords to individuals engaged in such activity.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF FAIR OAKS RANCH:

1. Old ordinance repealed.

The City of Fair Oaks Ranch Ordinance No. 83.0 is hereby repealed.

2. Definitions.

(a) **Solicitor** as the term is used in this ordinance shall mean any person who goes upon the premises of any private residence in the City, not having been invited by the occupant thereof, for the purpose of taking or attempting to take orders for the sale of goods, merchandise, wares, or other personal property of any nature for immediate or future delivery, or for services to be performed, either immediately or in the future, and shall include the term peddler, hawkers, itinerant merchant or vendor, and canvasser. This definition also includes any person who, without invitation, goes upon private property, to request contribution of funds or anything of value, or sell goods or services for political, charitable, religious, or other non-commercial purpose.

(b) **Soliciting** and **solicitation** includes all activities ordinarily performed by a solicitor as indicated under paragraph (a) of this Section.

(c) **Person** shall mean any individual, firm, company, partnership, corporation association, club, society or other organization.

(d) **License**, unless the context requires otherwise, shall be synonymous with a permit issued under this ordinance.

3. Soliciting without permit unlawful.

It shall be unlawful for any person to go soliciting from house to house or from place to place in the City without first obtaining a permit to do so from City Hall.

4. Application for permit.

(a) Every person subject to the provisions of the Ordinance shall file with City Hall an application in writing on a form to be furnished by the City, which shall provide the following information:

(1) proof of age, address and identification of the applicant, to be provided through the applicant's driver's license, articles of creation or incorporation as applicable, or other legally recognized form of identification;

(2) a brief description of the business or activity to be conducted;

(3) the dates and hours for which the right to solicit is desired;

(4) if soliciting pursuant to employment, the name, address and telephone number of the employer; or, if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form establishing the relationship and authority of the employee or agent to act for the employer or principal, as the case may be;

(5) a statement as to whether or not the applicant has been convicted of a felony, misdemeanor or ordinance violation (other than traffic violations), the nature of the offense or violation, the penalty or punishment imposed, the date when and place where such offense occurred, and other pertinent details thereof;

(b) At the time the application is filed with the City, the applicant shall pay a fee to cover the cost to the City of processing the application and investigating the facts stated therein. The application fee shall be ten dollars (\$10).

(c) The City Secretary shall review the application for compliance with this ordinance. If the City Secretary finds the application to be satisfactory, an endorsement of approval will be noted on the application and the required permit will be delivered to the applicant upon payment of a forty dollar (\$40) permit fee. The permit will be good for the licensing period applied but no more than 3 months.

(d) The City Secretary may refuse to issue a permit to the applicant under this ordinance for any of the following reasons:

(1) the location and time of the solicitation would fall outside of the times or locations permitted for solicitation by this ordinance;

(2) an investigation reveals that the applicant falsified information on the application;

(3) the applicant has been convicted of a felony, misdemeanor or ordinance violation involving a sex offense, trafficking in controlled substances, theft, burglary, robbery, or any violent acts against persons or property, or any crime against the elderly, such conviction being entered within the five (5) years preceding the date of application or any time thereafter;

(4) the applicant is a person against whom a judgment based upon, or a conviction involving, fraud, deceit or misrepresentation, conversion or theft, or any crime against the elderly, has been entered within the five (5) years immediately preceding the date of application or any time thereafter;

(5) there is no proof as to the authority of the applicant to serve as an agent of the principal; or

(6) the applicant has been denied a permit under this Ordinance within the immediate past 12 months, unless the applicant can and does show to the satisfaction of the City Secretary that the reasons for such earlier denial no longer exist.

(e) The City Secretary's denial and the reasons for denial shall be noted on the application, and the applicant shall be notified that his or her application has been denied and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form.

(f) A solicitor who is exempt from the permitting requirements of this ordinance may request the issuance of an exempt permit from the City for the purpose of demonstrating to City residents the solicitor's compliance with this ordinance, provided however, that any person desiring the issuance of such a permit shall make an application in accordance with this section. The City Secretary shall grant or deny the issuance of such a permit on the same basis as for an applicant required to apply under this ordinance.

5. Exemptions.

The permitting requirements of this ordinance shall not apply to any person:

(a) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, or candidate, even if incidental to such purpose the person accepts the donation of money for or against such cause; or,

(b) distributing a handbill or flyer providing notification of a non-commercial event or service.

6. Hours of solicitation.

Permissible solicitation hours are from 10:00 a.m. to 6:00 p.m. Monday through Saturday. No solicitation is permissible on Sunday whatsoever.

7. Certain entry upon premises unlawful.

It shall be unlawful for any person, whether a permittee or not, while soliciting, to enter upon any residential premises in the City where the owner, occupant or person legally in charge of the premises has posted, at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Peddlers," "No Solicitors," or words of similar import.

8. Revocation of license.

Permits and licenses issued under provisions of this Ordinance may be revoked by the City Administrator for any of the following causes:

(a) fraud, misrepresentation, or false statement contained in the application for license;

(b) fraud, misrepresentation, or false statement made in the course of carrying on a business as solicitor;

(e) conducting the business of a solicitor in such a manner as to constitute a breach of the peace, or to constitute a menace to the health, safety, or general welfare of the public

9. Administrative Appeal.

Any person aggrieved by the denial of the permit application or by revocation of a permit or license shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the Council, within ten (10) days after the action complained of, a written statement setting forth fully the grounds for the appeal. The Council will hear such appeal at its next regular scheduled city council meeting. The decision of the Council on such appeal shall be final and conclusive.

Notice of the hearing shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be given by telephone to the licensee at his last known telephone number at least three (3) days prior to the date set for hearing.

10. Penalty.

Any person, firm or corporation violating any provisions of this ordinance or failing to observe any provisions hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than \$500 and each and every day or fraction of a day during which this ordinance or any part thereof, shall be violated, shall be deemed a separate offense and punishable as such.

11. Severability.

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part.

12. Effective date.

This ordinance shall become effective immediately upon its passage, approval and publication, as provided by law.

Passed and Approved this the 20th day of September, 2007.



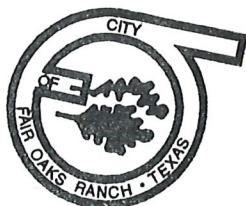
Mayor Pro Tem

Attest:

Approved as to form:


City Secretary


City Attorney



AN ORDINANCE

AN ORDINANCE AMENDING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES CHAPTER 4 BUSINESS REGULATIONS, ARTICLE 4.02 REGULATING SOLICITORS; PROVIDING FOR NEW REGULATIONS REGARDING SOLICITORS, CANVASSERS, AND ITINERANT VENDORS; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, it is the intent of City Council in enacting this Ordinance to recognize free speech rights for all citizens while at the same time protecting the coexistent rights for all citizens to enjoy the privacy of their homes, safe and convenient travel in public spaces free from intimidation, threats, and harassment that stem from certain types of abusive solicitation, or that may give rise to interference with other's activities if they occur in particular settings and context; and

WHEREAS, the United States Supreme Court has observed that "requests for immediate payment of money create a strong potential for fraud or undue pressure, in part because of lack of time for reflection." Intern. Soc. For *Krisna Consciousness v. Lee*, 112 S.Ct. 2722 (1992) (concurrence by Justice Kennedy); and

WHEREAS, an important part of the freedom enjoyed by all citizens and residents of the United States is the right to speak freely, to express ideas that may be unpopular, and to engage others in debate without government interference; and

WHEREAS, the Supreme Court of the United States has consistently recognized the right and obligation of local governments to protect their citizens from fraud and harassment, particularly when solicitation of money is involved; and

WHEREAS, City Council finds that the presence of panhandlers near banks or automatic teller machines in specified "captive audience locations" or at night can be especially threatening to person; and

WHEREAS, City Council finds that certain solicitation impedes the orderly flow of pedestrian and vehicular traffic that leads to concerns regarding traffic and public safety; and

WHEREAS, this Ordinance is not intended to impermissibly limit an individual's right to exercise free speech associated with panhandling; rather it aims to impose specific time, place, and manner restrictions on solicitation and associated conduct in certain limited circumstances; namely, aggressive panhandling, panhandling at locations or times deemed particularly threatening and dangerous, and/or panhandling in places where people are a "captive audience" and there is a wish to avoid or reduce a threat of inescapable confrontations; and

WHEREAS, this Ordinance is not intended to impermissibly limit an individual's right to exercise free speech associated with solicitation; rather it aims to impose specific time, place, and manner restrictions on solicitation and associated conduct in certain limited circumstances; and

WHEREAS, in promulgating this Ordinance, City Council seeks to impose regulations that are narrowly tailored to serve the aforementioned significant government interests.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS, AS FOLLOWS:

PART 1. That Chapter 4 Business Regulations, Article 4.02 Solicitors, of the City of Fair Oaks Ranch Code of Ordinances is hereby amended as set forth in the attached Exhibit A

PART 2. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

PART 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.

PART 4. That it is officially found, determined and declared that the meeting at which this Ordinance 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 ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 5. This ordinance shall take effect immediately from and after its second reading, passage and publication as may be required by governing law.

PART 6. The repeal or amendment 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 of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 7. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED AND APPROVED on the first reading on ____ day of _____, 2019.

PASSED, APPROVED, AND ADOPTED on the second reading, this _____ day of _____, 2019.

ATTEST:

Garry Manitzas, Mayor

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech,
P.C., City Attorney

Exhibit A

The City's Code of Ordinances Chapter 4 Business Regulations, Article 4.02 is hereby repealed in its entirety and replaced as follows:

Division 1. Peddler, Solicitor, Canvasser and Itinerant Vendor Regulations

Sec. 4.02.001 Definitions

- A. "Peddler" is a person who carries actual merchandise offered for sale and attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell and deliver the merchandise at the time the sale is consummated.
- B. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: obtaining orders for goods or services that will be delivered or performed at a later date.
- C. "Canvasser" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of: furthering religious, social or political advocacy. Canvassing activities may include: Asking for signatures on a petition; requesting support for a political candidate or position; espousing religious beliefs or causes; seeking donations, organization memberships, or other financial support for their religious, social, or political organizations; and, taking orders for goods, to be delivered at a later time, in order to raise money for a non-profit or other charitable organization's operations
- D. "Itinerant Vendor" is a person who sets up and operates a temporary business on privately owned property in the city, whether improved or unimproved, soliciting, selling, taking orders for, or offering to sell or take orders for any goods or services. A temporary business is one that continues for forty-five days or less; and, exists whether solicitation is from a stand, vehicle, or freestanding.

Sec. 4.02.002. Exceptions.

This ordinance shall not apply to a federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer.

Sec. 4.02.003. License Required for Peddlers, Solicitors, and Itinerant Vendors.

No person shall act as a peddler, solicitor or itinerant vendor within the city without first obtaining a License in accordance with this ordinance. A canvasser is not required to have a License.

Sec. 4.02.004. Fees.

The fee for the issuance of each License shall be that fee as adopted by City Council pursuant to the then existing and current fee schedule.

Sec. 4.02.005. Application for License.

Any person or organization (formal or informal) may apply for one or more licenses by completing an application form at the office of the issuing officer, during regular office hours. The license shall be issued promptly after application but in all cases within forty business hours of completion of an application and submittal of background check to third party vendor, unless it is determined within that time that:

- A. the applicant has been convicted of a felony or a misdemeanor involving moral turpitude within the past seven years;
- B. with respect to a particular license, the individual for whom a card is requested has been convicted of any felony or a misdemeanor involving moral turpitude within the past seven years; or
- C. any statement upon the application is false, unless the applicant can demonstrate that the falsehood was the result of excusable neglect.

Sec. 4.02.006. Contents of Application.

To obtain a License, each applicant shall provide the following information on a City application and submit in person.

- 1. Name of applicant.
- 2. Photograph and physical description to include height, weight, and hair color (State ID card, passport, or other US government-issued ID card acceptable.)
- 3. Phone number.
- 4. E-mail address.
- 5. Background check through City's third party vendor. (Form to be provided).
- 6. The permanent and (if any) local address of the applicant and organization.
- 7. A brief description of the proposed activity related to this license. (Copies of literature to be distributed may be substituted for this description at the option of the applicant).
- 8. Date and place of birth.
- 9. A list of all infraction, offense, misdemeanor and felony convictions of each person for whom a license is requested for the seven years immediately prior to the application.
- 10. The motor vehicle make, model, year, color, and state license plate number of any vehicle which will be used by each person for whom a license is requested.
- 11. Proof of motor vehicle insurance; in which applicant is named on the policy.

12. If license is sought pursuant to employment, the name, address and telephone number of the employer; or, if acting as an agent, the name, address and telephone number of the principal who is being represented, with credentials in written form on company letterhead establishing the relationship and authority of the employee or agent to act for the employer or principal, as the case may be.
13. Last 5 cities/towns where applicant has conducted business.
14. A copy of the principal's sales tax license as issued by the State of Texas (as applicable).

Sec. 4.02.007. Investigation.

During the time following the application for one or more licenses and its issuance, the city shall investigate as to the truth and accuracy of the information contained in the application. If the city has not completed this investigation within the forty business hours provided in section 4.02.005, the license will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation.

Sec. 4.02.008. Revocation of license.

A. Grounds.

1. Any license issued hereunder may be revoked if the license holder is convicted of a violation of any provisions of this Ordinance or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a license under the terms of this Ordinance.
2. If more than one complaint of misconduct by a licensee or group of licensees working for the same company is received, the license(s) may be immediately revoked by the city.

B. Notice. If the issuing officer denies (or upon completion of an investigation revokes) the license to one or more persons he shall immediately convey the decision to the applicant orally and shall within twenty-four working hours after the denial prepare a written report of the reason for the denial which shall be immediately made available to the applicant.

C. Appeal. The licensee shall have ten (10) business days from the date of revocation or denial in which to file notice of his appeal to the city council from the date of the order denying or revoking the license. The applicant shall have at his option an appeal of the denial of his application before the city council, at its next regular meeting, if filed before 5 business days of posting the agenda. In the event of the filing of an appeal from a revocation issued under the provisions of this Ordinance, then, until such appeal has been determined by the city council such revocation order shall be stayed.

D. Hearing. The hearing will be held in accordance with city council rules and procedures. After holding the hearing on the revocation or denial, the city council shall by majority vote either sustain the action or issue an order reinstating the license.

Sec. 4.02.09. Display of License.

Each city issued license shall be worn on the outer clothing of the individual or otherwise displayed, as so to be reasonably visible to any person who might be approached by said person.

Sec. 4.02.010. Validity of License.

A license shall be valid within the meaning of this ordinance for a period of no more than 90 days from its date of issuance or the term requested, whichever is less.

Sec. 4.02.011. Distribution of Handbills and Commercial Flyers.

In addition to the other regulations contained herein, the following regulations shall apply to the leaving of handbills or commercial flyers about the community:

- A. No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way. The police and/or City's authorized personnel are authorized to remove any handbill or flyer found within the right-of-way.
- B. No handbill or flyer shall be left at, or attached to any privately-owned property in a manner that causes damage to such privately-owned property.
- C. No handbill or flyer shall be left at, or attached to any of the property having a "No Solicitor" sign posted.

Sec. 4.02.012. General Prohibitions.

No person issued a license shall:

- A. Enter upon any private property where the property has clearly posted in the front yard a sign visible from the right of way (public or private) indicating a prohibition against peddling, soliciting and/or canvassing. Such sign need not exceed one square foot in size and may contain words such as "no soliciting" or "no solicitors".
- B. Remain upon any private property where a notice in the form of a sign or sticker is placed upon any door or entrance way leading into the residence or dwelling at which guests would normally enter, which sign contains the words "no soliciting" or "no solicitors" and which is clearly visible.
- C. Use or attempt to use any entrance other than the front or main entrance to the dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
- D. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.
- E. Engage in activities other than those set out in the application upon which the license was issued.

F. Engage in activities authorized by this chapter between the hours of 8:00 PM and 9:00 AM.

Sec. 4.02.013. Penalties.

Any person violating any part of this Article or failing to observe any provision of this Article shall be subject to the penalties as set forth in Sec. 1.01.009 of this code or the administrative penalties as stated herein.



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 7, 2019

AGENDA TOPIC: Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement with M&S Engineering for engineering design services relative to the emergency generator for the former Police Building.

DATE: November 7, 2019

DEPARTMENT: Public Works

PRESENTED BY: Julio Colunga, Public Works Superintendent

INTRODUCTION/BACKGROUND:

Staff has requested M&S Engineering perform engineering and consultant services for the development of design specifications associated with an emergency generator for the Public Safety/Municipal Court Building.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The public safety/municipal court building is currently operating without a backup generator. The police department is designated as the city's emergency command center but cannot fulfill that purpose without a generator. The installation of a generator would allow for all regular operations to continue within the building in the event of a power outage. The proposed work is to have M&S size the new generator, placement of the generator, bidding out, and overseeing completion of this project. The scope also includes sizing and pre-bid work for a generator to service the building.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Staff budgeted \$110,000 for the project. The proposal for the engineering and consulting work is \$16,000 with the remaining budget to be used for purchase, constructions and installation.

LEGAL ANALYSIS:

Contractor will be required to sign and adhere to the City's Standard Professional Services Agreement prior to the commencement of work.

RECOMMENDATION/PROPOSED MOTION:

I move to authorize the City Manager to sign a Professional Services Agreement with M&S Engineering for engineering and consulting services at a fee of \$16,000.00.

CITY OF FAIR OAKS RANCH
STANDARD PROFESSIONAL SERVICES AGREEMENT

THE STATE OF TEXAS §
 §
BEXAR COUNTY §

This Professional Services Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and M&S Engineering ("Professional").

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project". Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Professional may rely upon the accuracy of reports and surveys provided to It by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Professional shall be paid in the manner set forth in Exhibit "B" and as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A) and accounted for in the total contract amount in Exhibit "B". If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work: Additional Work.

(A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

(B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit C, Professional shall maintain the following limits and types of insurance:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the City certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the AM. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

Section 7. Miscellaneous Provisions.

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive,

perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

(C) *Professional's Seal.* To the extent that the Professional has a professional seal it shall placed on all documents and data furnished by the Professional to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the City and Professional. The City acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.

(D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to

Professional under or pursuant to this Agreement.

(G) *Force Majeure*. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Professional and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses

other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 9. Indemnification. Professional shall indemnify, defend and hold harmless the City of Fair Oaks Ranch, Texas and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as "Professional") (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional's liability to such employee or former employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Bexar County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Bexar County, Texas.

Section 15. Paragraph Headings: Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Professional with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in

accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL Gov'r CooE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 24. Disclosure of Business Relationships/Affiliations: Conflict of Interest Questionnaire. Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Section 25. Boycott Israel. The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas government code chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of the agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

EXECUTED, by the City on this the _____ day of _____, 20____

CITY:

By: _____

____ Name: Tobin Maples

Title: City Manager

PROFESSIONAL:

By: _____

Name: Thurl D. Sims III, P.E.

Title: MEP Department Manager

ADDRESS FOR NOTICE:

PROFESSIONAL

City of Fair Oaks Ranch
Attn: City Secretary
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

with a copy to:

City Attorney
City of Fair Oaks Ranch, Texas
Attn: Charles E. Zech
2517 N. Main Avenue
San Antonio, Texas 78212

Exhibit "A & B"

Scope of Services and Compensation



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FIRM F-1394
376 LANDA STREET
NEW BRAUNFELS, TX 78130
WWW.MSENGR.COM | (830) 228-5446

October 29, 2019

City of Fair Oaks Ranch
Attn: Julio Colunga
7286 Dietz Elkhorn Rd
Fair Oaks Ranch, TX 78015
jcolunga@fairoaksranchtx.org

Reference: Police Station Generator

Mr. Colunga,

Thank you for your interest in the capabilities of M&S Engineering (M&S) and allowing us the opportunity to work with you on this project. This proposal is based on our discussions with you and the following:

Project Description

1. The City request M&S to design and assist with bid documents; to install new generator and transfer switch serving the police station.
2. We understand the City desires the construction and installation of the generator to be completed in 2020.
3. The city request that M&S evaluate and present comparison of diesel vs propane gas.
4. The police station has an existing concrete pad, spare conduits and junction box in place to receive a new generator and transfer switch. However, M&S feels that a new larger pad may be required to support a properly sized generator. Further evaluation will be required to determine if the current pad is suitable and/or area to be improved.

Scope of Work

M&S Engineering will provide professional services to assist you with the engineering for the project as described above. Our proposal includes providing the following services in support of the engineering required for this project:

Engineering

1. Attend design coordination meeting with the City.
2. Site assessment for generator placement and electrical requirements.
3. Electrical Design
 - a. Coordinate with CPS Energy on existing demand.
 - b. Select and specify generator and transfer switch.
 - c. Provide riser diagram and applicable panel schedule(s).
 - d. Develop electrical site plan based on site plan or survey (provided by others).
 - e. Provide applicable sheet specifications.
4. Structural Design - Generator foundation and details.
5. Develop engineer opinion of probable cost.
6. Construction Support & Administration
 - a. Pre-bid and bid opening would be conducted by the City – M&S representation not included in scope.
 - b. Attend pre-construction meeting.



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- c. Evaluate and tabulate bids – furnished by the City.
- d. Submittal reviews and RFI coordination.
- e. Provide four (4) on-site visual observations/meetings during construction. Additional site visits may be provided hourly as additional service.
 - Progress observation.
 - Pre-pour inspection of new slab.
 - Attend generator start up and witness test.
 - Final observation and close out.
- f. Review and approve payment applications.
- g. Compensation for Construction administration is based on an estimated duration of three months (six months maximum) of total construction time. If construction is not completed within this time, our services beyond this limit may be provided as an additional service. Engineer will consult with City prior to invoicing any additional services.

Deliverables: Electronic Copies to the City.

1. Conceptual Design
 - a. SD Progress
 - b. Engineer opinion of probable cost
2. Construction Documents
 - a. 90% progress set
 - b. 100% engineer sealed plans
 - c. Engineer opinion of probable cost
3. Construction admin as previously indicated above under Scope of Work.

Assumptions

Our proposal is based on the following:

1. Final approved civil plans in Revit and/or AutoCAD. All M&S deliverable drawings will be provided in PDF format. Note that any changes to plans or designs after completion of engineering plans will be considered an additional service and may incur additional cost.
2. Free access to the site will be provided to M&S Staff.

Pricing

M&S Engineering will provide the scope of work as described for the estimated hourly amount of \$16,000.

Conceptual Design	20%	\$3,200
Construction Documents	40%	\$6,300
Construction Admin	40%	\$6,500

Exclusions

1. M&S Engineering's proposal is exclusive of any federal, county, and city permits required for the project. All submittals of plans for building permits and payment of permits shall be done by others.
2. Construction support and administration does not include Special Inspections, if required.
3. Any service not specifically listed in the above scope of work is excluded from this proposal.



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Our proposal is based upon work being performed per attached M&S standard terms and conditions. We truly appreciate the opportunity to support you in this project. If there is anything that you would like to discuss about this proposal, please do not hesitate to contact us. Should you find this proposal and terms acceptable, please indicate so by signing and dating this document below.

Sincerely,

(Trey) Thurl D. Sims III, PE
MEP Department Manager

Approved: _____

Date: _____

Print: _____

Title: _____



Engineering Fee Estimate

	EIT (\$100)	Tech (\$125)	PE (\$160)	Total
Engineering				
1. Attend design coordination meetings with the City.	5.00	-	5.00	10.00
2. Electrical Design	40.00	5.00	5.00	50.00
3. Structural Design	10.00	-	5.00	15.00
4. Develop engineer opinion of probable cost.	1.00	5.00	1.00	7.00
Design Subtotal	\$ 5,600.00	\$ 1,250.00	\$ 2,560.00	\$ 9,410.00
5. Construction Support & Administration				
a. Pre-bid and bid opening would be conducted by the City – M&S representation not included in scope.	-	-	-	-
b. Attend pre-construction meeting.	5.00	-	5.00	10.00
c. Evaluate and tabulate bids – furnished by the City.	4.00	-	1.00	5.00
d. Submittal reviews and RFI coordination.	5.00	-	1.00	6.00
e. Provide four (6) on-site visual observations/meetings during construction. Additional site visits may be provided hourly as additional service.				
• Progress observation.	5.00	-	-	5.00
• Pre-pour inspection of new slab.		-	5.00	5.00
• Attend generator start up and witness test.	5.00	-	-	5.00
• Final observation and close out.	5.00	-	5.00	10.00
f. Review and approve payment applications.	2.00	-	2.00	4.00
Design Subtotal	\$ 3,410.00	\$ -	\$ 3,040.00	\$ 6,450.00
Totals				\$15,860.00



Terms of Sale

The following terms of sale shall apply except as otherwise stated in written quotations or by written acceptance of an order or contract.

PRICE POLICY – Quotations are valid for 30 days from date of quotation unless otherwise notes. Prices quoted are firm for all services performed within 90 days after the date of quotation. Services performed later than 90 days from the date of quotation or later than the dates established in the quotation will be invoiced at prices in effect at time of performance.

TERMS OF PAYMENT – Terms of payment are net 30 days from date of invoice for services completed within a 30 day period. If payment is not received within 30 days, your project will be placed on hold and a charge of 1.5% per month will be added to the account until such time the account is made current. Reimbursable costs including, but not limited to, plotting, faxes, travel, or other reasonable expenses shall be billed at cost plus 15%.

TERMINATION – Any order or contract may be terminated or delayed by the Purchaser only upon payment of reasonable charges based upon expenses already incurred and commitments made by M&S Engineering. If Purchaser defaults in the performance of any payment obligation under this contract and fails to correct such default within seven (7) days following receipt of written notice thereof from M&S Engineering, LLC. M&S Engineering may, without prejudice to any other rights or remedies it may have, upon twenty-four (24) hour notice to Purchaser, cease performance of the contract and suspend its Work thereunder until such failure to pay is cured. In addition, in the event of Purchaser's and/or Owner's (a) bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors, or (b) evidencing financial or organizational instability, M&S Engineering may, upon twenty-four (24) hour notice to Purchaser, cease performance of the Subcontract and suspend its Work thereunder until M&S Engineering, LLC receives reasonable assurance that its right to payment hereunder shall not be adversely impacted thereby.

INDEMNIFICATION AND LIMITATION OF LIABILITIES – Purchaser shall indemnify and hold harmless M&S Engineering, LLC, its owners, officers, employees, affiliated companies, parents, agents and representatives ("M&S Engineering, LLC Indemnitees") against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and reasonable attorney's fees ("Liabilities") to the extent they arise from or in connection with the willful misconduct or negligence of the Purchaser, its officers, employees, agents and/or representatives. Purchaser shall not be required hereunder to indemnify M&S Engineering, LLC Indemnitees to the extent of their negligence, act or omission, nor that of their invitees, workmen, subcontractors and/or suppliers or any of them. M&S Engineering, LLC shall not indemnify Purchaser, Owner, or any other party to the extent of such party's negligence, act or omission, nor that of their respective parents, affiliates, subsidiaries, agents, their officers, directors, shareholders, employees, agents, invitees, workmen, subcontractors and/or suppliers, (except for M&S Engineering, LLC's and its subcontractors and suppliers) or any of them. Except as expressly provided for herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation; provided further, and notwithstanding anything to the contrary contained in this agreement, M&S Engineering, LLC's total liability with respect to any and all claims, losses or damages shall not exceed the value of the services performed under the terms of this agreement.



2019 Engineering Rate Schedule

The following rate schedule is in effect for the 2019 calendar year and will be reviewed annually for appropriate changes as may be required.

Labor Classification	Base Rate
Technician I	\$ 60.00
Technician II	\$ 65.00
Technician III	\$ 70.00
Technician IV	\$ 75.00
Project Technician I	\$ 80.00
Project Technician II	\$ 85.00
Project Technician III	\$ 90.00
Project Technician IV	\$ 95.00
Project Technician V	\$ 100.00
Senior Technician I	\$ 105.00
Senior Technician II	\$ 110.00
Senior Technician III	\$ 115.00
Senior Technician IV	\$ 120.00
Project Manager I	\$ 150.00
Project Manager II	\$ 160.00
Project Manager III	\$ 170.00
Project Manager IV	\$ 180.00
Project Engineer I	\$ 135.00
Project Engineer II	\$ 145.00
Project Engineer III	\$ 150.00
Project Engineer IV	\$ 155.00
Project Engineer V	\$ 160.00
Administrative I	\$ 65.00
Administrative II	\$ 75.00
Administrative III	\$ 80.00

Labor Classification	Base Rate
Technical Specialist I	\$ 125.00
Technical Specialist II	\$ 135.00
Technical Specialist III	\$ 145.00
Technical Specialist IV	\$ 155.00
Graduate Engineer/SIT I	\$ 100.00
Graduate Engineer/SIT II	\$ 110.00
Graduate Engineer/SIT III	\$ 120.00
Graduate Engineer/SIT IV	\$ 130.00
CAD Operator I	\$ 70.00
CAD Operator II	\$ 75.00
Senior CAD Operator I	\$ 80.00
Senior CAD Operator II	\$ 85.00
Senior Engineer I/RPLS I	\$ 165.00
Senior Engineer II/RPLS II	\$ 170.00
Senior Engineer III/RPLS III	\$ 175.00
Senior Engineer IV/RPLS IV	\$ 180.00
Principal Engineer I	\$ 190.00
Principal Engineer II	\$ 200.00
Principal Engineer III	\$ 210.00
1 Man Survey Crew	\$ 110.00
2 Man Survey Crew	\$ 155.00
3 Man Survey Crew	\$ 175.00
Software Level I ¹	\$ 10.00
Software Level II ²	\$ 20.00

¹ Includes AutoCAD, MicroStation, L-Pile, SAG10 and other common licensed software packages

² Includes PLS-CADD, Bentley Systems, e-tap and other premium licensed software packages

³ Rates are inclusive of all surveying equipment, including stakes, marking paints, and other consumable items required. Special request items such as T-posts, 36" Laths, concrete monuments, etc. will be billed on a cost plus 15% basis.

⁴ Overtime Rates shall be 1.35 times the base rate.



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2019 Reimbursable & Miscellaneous Pricing

The following reimbursable schedule is in effect for the 2019 calendar year and will be reviewed annually for appropriate changes as may be required.

Deliverable/Printing Pricing Schedule

DESCRIPTION	COST
Small job books (1" to 1 1/2" binder)	\$25.00
Medium job books (2" to 2 1/2" binder)	\$45.00
Large job books (3" and above binder)	\$65.00
Plots - "C" size (18x 24) Black & White	\$1.50
Plots - "C" size (18x 24) Color	\$2.50
Plots - "D" size (22X34) Black & White	\$2.50
Plots - "D" size (22X34) Color	\$3.50

*Any additional reimbursable items shall be billed at cost plus 15%.

- Shipping
 - All shipping of drawings, job books, and other deliverables will be invoiced based on actual cost plus 15%.

Additional Equipment

For site specific requirements that do not allow for access via 4x4 trucks, M&S will provide use of various all-terrain vehicles to facilitate field work. Reimbursement for usage of such equipment will be billed at the following rates:

Equipment	Rate
4 Wheeler	\$100/day
Utility Vehicle (Mule)	\$150/day

Travel Reimbursement Rates

- Hotel charges for overnight accommodations will be invoiced based upon actual cost plus 15%.
- Meals for traveling personnel will be invoiced based upon actual cost plus 15%.
- Air Travel
 - Air travel will be invoiced based on actual cost plus 15%.
 - Approval
 - Air travel costs in excess of \$500 per individual will require prior approval by client personnel requesting travel.
 - Air travel less than \$500 per individual will be considered pre-approved by client personnel requesting travel.
- Rental Car
 - Auto rentals (including fuel) will be invoiced based upon actual cost plus 15%.
- Mileage
 - Vehicle mileage will be invoiced based upon current IRS standard rates (plus \$0.05 per mile for 4x4 vehicles)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/23/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Bank of San Antonio Insurance Group, Inc. 1900 NW Loop 410, Suite 200 San Antonio TX 78213	CONTACT NAME: Cathy Rauschuber PHONE (A/C, No, Ext): (210) 822-1571 FAX (A/C, No): (210) 822-6027 E-MAIL ADDRESS: cathy.r@thebankofsainsurance.com														
INSURED M & S Engineering, LLC; Sherwood Surveying & Sue LLC; P.O. Box 970 Spring Branch TX 78070	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Utica Lloyds of Texas</td> <td>10990</td> </tr> <tr> <td>INSURER B: Texas Mutual Insurance Company</td> <td>22945</td> </tr> <tr> <td>INSURER C: Evanston Insurance Co</td> <td>35378</td> </tr> <tr> <td>INSURER D: Travelers Casualty & Surety</td> <td>19046</td> </tr> <tr> <td>INSURER E: Utica National Insurance of Texas</td> <td>43478</td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Utica Lloyds of Texas	10990	INSURER B: Texas Mutual Insurance Company	22945	INSURER C: Evanston Insurance Co	35378	INSURER D: Travelers Casualty & Surety	19046	INSURER E: Utica National Insurance of Texas	43478	INSURER F:	
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INSURER F:															

COVERAGES**CERTIFICATE NUMBER:** 2018**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY			5101333	11/04/2018	11/04/2019	EACH OCCURRENCE
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person)
							PERSONAL & ADV INJURY
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE
	☐ POLICY ☒ PROJECT ☐ LOC						PRODUCTS - COMP/OP AGG
	OTHER:						\$
D	AUTOMOBILE LIABILITY			5090474	11/04/2018	11/04/2019	COMBINED SINGLE LIMIT (Ea accident)
	☒ ANY AUTO						BODILY INJURY (Per person)
	☒ OWNED AUTOS ONLY	☐ SCHEDULED AUTOS					BODILY INJURY (Per accident)
	☒ HIRED AUTOS ONLY	☐ NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)
							Uninsured motorist
A	☒ UMBRELLA LIAB			5101334	11/04/2018	11/04/2019	EACH OCCURRENCE
	☐ EXCESS LIAB						AGGREGATE
	☐ DED ☐ RETENTION \$						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			TSF0001278328	11/04/2018	11/04/2019	☒ PER STATUTE ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A				E.L. DISEASE - EA EMPLOYEE
							E.L. DISEASE - POLICY LIMIT
C	Professional Liability			MKLV7PL0003397	11/08/2018	11/08/2019	Each Occurrence
	D - Cyber Liability						Each Occurrence

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Blanket additional insured in regards to the General Liability policy and including primary & non-contributory coverage as described in policy forms #8-E-3548 and #GC 20 01 04 13. Blanket additional insured in regards to the Automobile Liability policy as described in policy forms #8-E-2419. Blanket waiver of subrogation in regards to the General Liability, Automobile Liability and Workers Compensation policies as described in policy forms #8-E-3548, #8-E-2419 and #WC 42 03 04 B.

CERTIFICATE HOLDER**CANCELLATION**

City of Fair Oaks Ranch 7286 Dietz Elkhorn Fair Oaks Ranch TX 78015	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 7, 2019

AGENDA TOPIC: Consideration and possible action to provide input to staff on decision making process for the elevated storage tank site and tank design decision

DATE: November 7, 2019

DEPARTMENT: City Council

PRESENTED BY: Council Member Elizondo

INTRODUCTION/BACKGROUND:

Group decision making works better when there is a defined structured process. Following a process that is understood by the participants promotes collaboration and enables consensus building. A structured process also aids in documenting decisions to help ensure that others will understand the group's reasoning after the decision is made.

Various tools exist that are used to facilitate group decision making. One example is a weighted decision matrix (WDM). WDMs are useful in evaluating alternatives that involve multiple criteria. WDMs provide a structured process for decision making groups to establish selection criteria, weight the criteria according to importance to the success of the project, and maintain focus during the deliberation of scoring the alternative solutions.

WDMs are a tool to aid in the tabulation the groups' joint assessment of the alternatives. They are not intended to provide a pure quantitative final decision. A WDM is only one example of a group decision making tool that could be used to enable effective, efficient group decision making. An example is attached.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Use of leading practices for project tasks enables effective, efficient project management and transparency.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

Provide input to Staff on use of a structured group decision making process for the Elevated Storage Tank Site and Tank Design deliberations.

Alternative Evaluation Matrix (Discussion Draft)

Important Note: This matrix assists in keeping the evaluation on focus. It is not meant to "compute" a final decision.

Purpose: To tabulate evaluation of viable alternative solutions by weighted criteria as an aid to decision making process

Scoring Process: 1) agree on criteria; 2) agree on criteria weighting; 3) score each viable alternative for each criterion using a multi-point scale, with high value = best fit; 3) review tabulated results and eliminate obvious least favorable alternatives; 4) review short list and discuss other factors to narrow and close on best fit alternative

Alternative Solutions	1. Get consensus on criteria							
	Financial		Engineering & Technical			Aesthetic		
Criteria	F1	F2	T1	T2	T3	A1	A2	Tabulated Values
Criteria Weighting	15%	15%		14%	14%	14%	14%	100%
Alternative 1			2. Get consensus on weighting					0
Alternative 2								0
Alternative 3	3. Get consensus on list of viable alternatives to evaluate							0
Alternative 4								0
Alternative 5			4. Score alternatives using multi-point scale (1-3 or 1-5)					0
Alternative 6								0
						5. Use tabulated scores as an indicator of best fit		

EST Alternative Evaluation Matrix (Test Template for Discussion)

Purpose: To tabulate evaluation of alternative solutions by weighted criteria as an aid to decision making process

Scoring Process: 1) agree on criteria weighting; 2) score each alternative for each criterion using a three-point scale, with 3 = best fit; 3) review tabulated results and eliminate obvious least favorable alternatives; 4) review short list and discuss other factors to narrow and close on best fit alternative

Alternative Solutions	Criteria							Tabulated Values
	Financial		Engineering & Technical			Aesthetic		
Criteria	Initial Capital	Maintenance Cost	Site Location & Footprint Constraints	Hydraulic Analysis & System Improvement	Pros & Cons of Internal Tank Storage	Stakeholder Input	Additional criteria based on public input	
Criteria Weighting	10%	20%	15%	15%	10%	15%	15%	100%
Site A, Tower A								0
Site A, Tower B								0
Site A, Tower C								0
Site B, Tower A								0
Site B, Tower B								0
Site B, Tower C								0
Site C, Tower A								0
Site C, Tower B								0
Site C, Tower C								0
Site D, Tower A								0
Site D, Tower B								0
Site D, Tower C								0
Site E, Tower A								0
Site E, Tower B								0
Site E, Tower C								0

Discussion Draft

City of Fair Oaks Ranch – Elevated Storage Tank Scoring Matrix

	Opinion of Probable Construction Cost ¹	Community Input ²	Hydraulic Analysis ³	Land Acquisition Process (Developer Agreements, Landowner Coordination)	Stakeholder Coordination / Permits ⁴	Total
Weight (%)						
Site A						
Site B						
Site C						
Site D						
Site E						
Total						

	Capital Costs ⁵	Life-Cycle Costs ⁶	Community Input ⁷	Pedestal Storage ⁸	Total
Weight (%)					
Composite					
Multi-Column					
Spheroid					
Total					

¹ Opinion of Probable Construction Cost (OPCC) includes site work, tank capital cost, and mobilization – Lowest OPCC receives a score of five (5). All others, Score = (Lowest OPCC Site / OPCC of Current Site) * 5.

² Site with highest number of votes receives a score of 5; All others, Score = [# of votes (site) / highest # of votes (site)] * 5.

³ 2040 Buildout Conditions Zone A – Score = [(# Junctions >35psi / Total # of junctions) * 2.5] + [(# of Junctions > 1,500 gpm / Total # of junctions) * 2.5]

⁴ Site B located within Comal County requires an additional TCEQ Contributing Zone Permit and received a score of 4; all other sites received a score of 5 for requiring the same permits.

⁵ Capital cost includes tank construction cost. Site work not included. Lowest capital cost receives a score of five (5). All others, Score = (Lowest Capital Cost / Capital Cost of Tank) * 5.

⁶ 60-year life cycle cost; assumes 3 repaints (every 15 years) at a 3% inflation rate – Lowest life-cycle cost receives a score of five (5). All others, Score = (Lowest life-cycle / Life-Cycle cost of current tank style) * 5.

⁷ Tank style with highest number of votes receives a score of 5; All others, Score = [# of votes (tank style) / highest # of votes (tank style)] * 5.

⁸ Tank with largest amount of pedestal storage available receives a score of 5; Tank with minimal pedestal storage receives a score < 5; Tank with no pedestal storage receives a score of 1.

Matrix Notes:

- Five (5) Point Scale (5 = highest; 1 = lowest).
- Community input was based on the most recent feedback received at Community workshop #2.



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 7, 2019

AGENDA TOPIC: Consideration and possible action regarding cancelling the December 19, 2019 Council Meeting.

DATE: December 19, 2019

DEPARTMENT: Administration

PRESENTED BY: Christina Picioccio, City Secretary

INTRODUCTION/BACKGROUND:

Resolution 2017-01 regarding the City Council Meeting Rules of Procedure indicates that City Council shall meet in regular session on each first Thursday in each calendar month beginning at 9:30 AM and the third Thursday in each calendar month beginning at 6:30 PM unless postponed or cancelled for valid reason(s). The City Council, by a majority vote, may reschedule any regular meeting. With this in mind and due to the upcoming holiday season, staff suggests cancelling the December 19, 2019 Council Meeting,

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

N/A

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

I move to approve cancelling the December 19, 2019 Council Meeting.



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 7, 2019

AGENDA TOPIC: Consideration and possible action accepting a private donation of holiday decorations for the purpose of decorating the City Hall complex

DATE: November 7, 2019

DEPARTMENT: Administration

PRESENTED BY: Carole Vanzant, Assistant City Manager

INTRODUCTION/BACKGROUND:

A private donation of holiday wreaths, garlands, ornaments, and a tree has been offered to the City of Fair Oaks Ranch to be used for decorating the City Hall complex exterior. The items of donation do not contain a religious aspect that would have the effect of endorsing a particular religious belief in violation of the Establishment Clause of the United States Constitution.

The following statutes, ordinances, or policies have been reviewed for compliance:

- Texas Local Government Code §51.076(a) states *the municipality may hold property, including any charitable or trust fund, that it receives by gift, deed, devise, or other matter.*
- The City Charter does not address accepting private donations.
- Section 2.06 of the City of Fair Oaks Ranch Employee Personnel Manual states *employees will not accept gifts or gratuities, except generic gifts given to all for special events, from contractors, vendors, or other persons.*

Accordingly, City Council consideration and action is required whether the City desires to accept the gifts as a donation for the stated purpose.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. The donation will enhance the City Hall complex during the holiday season.
2. Accepting the donation complies with state statute and the city's personnel manual.
3. Minimal staff time for assisting in the setup of holiday display.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

Minimal staff time for assisting in the setup of the display and short term electrical cost. No negative long-term financial impact.

LEGAL ANALYSIS:

Reviewed for legality purposes.

RECOMMENDATION/PROPOSED MOTION:

I move the City of Fair Oaks Ranch accepts the private donation of holiday decorations for the purpose of decorating the City Hall complex.



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
November 7, 2019

AGENDA TOPIC: Consideration and possible action rejecting all bids for the Renovation of the Fair Oaks Ranch Former Police Building.

DATE: November 7, 2019

DEPARTMENT: Administration

PRESENTED BY: Carole Vanzant, Assistant City Manager

INTRODUCTION/BACKGROUND:

In 2018 City Council, in addressing the lack of office space, authorized staff to proceed with plans to renovate the vacant former police building. Scope of work included the entire former police building inclusive of demolition, lead-paint and asbestos removal, new wall construction, gypsum ceilings, tile, carpeting, painting, and, mechanical, electrical and plumbing updates. For FY2019/2020 City Council approved a project renovation budget of \$450,000.

On August 2, 2019, after working with an Architect and an Environmental Consultant for several months, the Renovation Project was released for bid. On October 2, 2019 at 4:00 p.m. bids were opened with the following bid tabulations:

COMPANY NAME	BID AMOUNT
Northstar	\$597,957.00
Valla Construction	\$541,389.58
Gonzalez De La Garza	\$606,761.05
CGC General Contractors	\$622,460.17
Henock Construction	\$694,955.60
Crownhill Builders	\$545,972.45
Quoin Construction	\$468,794.00

After a careful review of the bid documents, the architect and city staff recommend that City Council reject all bids as they exceed the funds available to complete the project. The architect and City Manager will present revised conceptual plans at an upcoming City Council meeting.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. The renovation project aims to address the need of additional office space.
2. Staff's awareness of funding shortfall.

3. Complies with the statement in the bid documents, "In submitting the bid, it is understood that the City of Fair Oaks Ranch reserves the right to reject any and all bids."

LONGTERM FINANCIAL & BUDGETARY IMPACT:

The City budgeted \$450,000 in FY2019-20 for this project. With rejection of the bids, no long-term financial impact.

LEGAL ANALYSIS:

Decision of accepting or rejecting bids shall be performed by City Council.

RECOMMENDATION/PROPOSED MOTION:

I move to reject all bids received for the Renovation of the Fair Oaks Ranch former police building.



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 7, 2019

AGENDA TOPIC: Consideration and possible action authorizing the advancement of calling a special election for the re-authorization of the quarter cent local and sales use tax for the maintenance and repair of municipal streets

START DATE: November 7, 2019

DEPARTMENT: Administration

PRESENTED BY: Carole Vanzant, Assistant City Manager

INTRODUCTION/BACKGROUND:

State law allows for an 8.25% combined rate of all local sales taxes in Texas. Accordingly, the State sales and use tax for taxable goods and services is 6.25% leaving the *local* sales and use tax at 2%. Allowable taxing entities imposing portions or all of the 2% *local* sales and use tax include:

- Cities
- Counties
- Special purpose districts; and,
- Transit authorities

Of the 2% available for local entities, .5% is collected by the Fair Oaks Ranch Municipal Development District, with the City collecting the remaining 1.5% which is dedicated as follows:

- 1% for placement to the City's general fund.
- .25% for maintenance and repair of municipal streets that existed on the date of the election adopting the tax.
- .25% for property tax reduction.

Pursuant to state law, the street maintenance and repair tax expires four years after enactment, but can be re-adopted upon a successful election prior to the expiration of the tax. In 2012 and 2016, citizens, by election, authorized the re-adoption of the street maintenance and repair tax.

The collection of this tax, by years, is as follows:

YEAR	COLLECTIONS
2008-2009	\$41,325
2009-2010	\$47,118
2010-2011	\$50,838
2011-2012	\$54,188
2012-2013	\$62,726
2013-2014	\$71,929
2014-2015	\$86,340
2015-2016	\$92,813
2016-2017	\$104,981
2017-2018	\$121,266
2018-2019	\$118,157

As the sales tax provides supplemental funding for the city's annual street maintenance program, staff recommends City Council authorizes the advancement of an appropriate ballot proposition for the May 2020 election.

If Council desires not to do so, they can ask the voters to dedicate all or a portion of the .25% (in increments of .125%) to one or more of the following:

- An increase to the general revenue fund
- Creation of a Type B economic development
- Creation of crime control and prevention district
- Funding of a sport and community "venue" project such as a civic centers, park systems, auditoriums, etc.

See attached State Comptroller's Guide for complete details on the above options

Please note that if none of the above are successfully adopted, other entities will have the opportunity to adopt the .25% tax for their use.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. Re-adopting the quarter cent tax ensures the continuance of the City's annual street maintenance and repair program.
2. Adopting a quarter cent, in whole or portion, for other options ensures the sales tax collections benefit the city.
3. Affords the opportunity for citizenry voice.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

Estimated special election cost for May 2, 2020 - \$6,000

LEGAL ANALYSIS:

N/A at this time but will be utilized for ballot proposition.

RECOMMENDATION/PROPOSED MOTION:

I move to authorize the advancement of calling a special election in May 2020 for the re-authorization of the quarter cent local and sales use tax for the maintenance and repair of existing municipal streets; or,

I move to authorize the advancement of calling a special election for the purpose of dedicating a quarter of one cent sales tax as follows:

LOCAL SALES TAX OPTIONS

JANUARY 2018



Glenn Hegar

Texas Comptroller of
Public Accounts

A city, county or special purpose district may adopt a sales tax provided the combined rate of all local sales taxes would not exceed 2 percent at any location within its territorial limits. All local sales taxes require voter approval.

SALES TAX OPTIONS FOR CITIES

SALES AND USE TAX

(Increments of 0.125 percent) – Most cities in Texas have this form of sales tax. It may be imposed by any incorporated city. Revenues are deposited into the city's general revenue fund and may be used for any lawful purpose. (**Tax Code, Chap. 321.**)

SALES TAX FOR ECONOMIC DEVELOPMENT*

(Increments of 0.125 percent) – Two options are available for a city to adopt this tax:

- **Type A** – This form of tax may be imposed by most incorporated cities. (There are exceptions in certain counties with mass transit systems). Revenues must be turned over to a development corporation formed to act on behalf of the city to carry out programs related to industrial development, business infrastructure and the promotion of new and expanded business enterprises that create or retain primary jobs.
- **Type B** – This form of tax may be imposed by any incorporated city. Revenues must be turned over to a development corporation formed to act on behalf of the city to carry out programs related to a wide variety of projects including business development and public parks.

For more detailed information, see the Comptroller's **Economic Development Sales Tax** brochure (PDF). (**Loc. Govt. Code, Chap. 501-505.**)



STREET MAINTENANCE SALES TAX

(Increments of 0.125 percent) – All cities are authorized to hold an election to adopt a sales tax to repair and maintain existing city streets. For most cities, the tax expires after four years unless a new election is held to reauthorize the tax. The revenue from this tax may be used only to maintain and repair existing city streets and sidewalks. For more detailed information, see the Comptroller's **Street Maintenance Sales Tax** brochure (PDF). (**Tax Code, Chap. 327.**)

MUNICIPAL DEVELOPMENT CORPORATION*

(0.125, 0.25, 0.375 or 0.5 percent) – A city may create a municipal development corporation to undertake projects that provide job training, early childhood education, after-school programs, scholarships, literacy promotion and other projects.

* This tax is actually imposed by a board, district or authority created by and for the benefit of a city or county.

The Comptroller's

online sales tax rate

tool locates all sales tax

rates in effect for any

Texas address.

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This publication is intended as a general guide and not as a comprehensive resource on the subjects covered.
It is not a substitute for legal advice.

LOCAL SALES TAX OPTIONS

Local sales tax rates
may not exceed a
combined 2 percent.

Voters in the city may authorize adoption of a sales tax to fund activities of the corporation. (**Loc. Govt. Code, Chap. 379A.**)

MUNICIPAL DEVELOPMENT DISTRICT*

(0.125, 0.25, 0.375 or 0.5 percent) – Cities may hold an election in all or part of a city, including the extraterritorial jurisdiction, to create a municipal development district and adopt a sales tax to fund the district. The district may undertake a variety of projects including a convention center, civic center, auditorium and other projects eligible for Type B Corporations under Chapter 505 of the Local Government Code. (**Loc. Govt. Code, Chap. 377.**)

FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES (EMS) DISTRICTS*

(0.125, 0.25, 0.375 or 0.5 percent) – Cities with a population between 25,000 and 550,000 or more than 1.9 million may create an EMS district. The district may include all or any part of a city. The district may finance the operation of a fire control, prevention and EMS program. (**Loc. Govt. Code, Chap. 344, and Tax Code, Sect. 321.106.**)

MUNICIPAL SALES TAX FOR PROPERTY TAX RELIEF

(Increments of 0.125 percent) – This “additional sales tax” may be imposed by most incorporated cities (there are exceptions in certain counties with rapid transit systems). Revenues are deposited into a city’s general revenue fund. Cities adopting this form of local sales tax must reduce the effective and rollback property tax rates within the city. For more detailed information, see the Comptroller’s **Using Sales Tax To Reduce The Property Tax Rate** brochure (PDF). (**Tax Code, Chap. 321.**)

SALES TAX OPTIONS FOR CITIES & COUNTIES

CRIME CONTROL AND PREVENTION DISTRICT*

(Increments of 0.125 percent up to 0.5 percent maximum rate) – This sales tax may be imposed by a city located in a county with a population of

more than 5,000 or by a county with a population of more than 130,000. The governing body in a municipality or commissioners court may specify the number of years (5, 10, 15 or 20) the district would be continued. Revenues from the sales tax may be used to finance a wide variety of crime control and prevention programs. (**Loc. Govt. Code, Chap. 363, and Tax Code, Sec. 323.105.**)

VENUE TAX “STADIUM BILL”

(Increments of 0.125 percent) – This sales tax is one of several revenue options available to a city or county to fund sports and community “venue” projects. Multiple cities and counties in any combination may join to form a venue district under Chapter 335, Local Government Code, as well. Some examples of a “venue” are a stadium, convention center, park or economic development-type facility. (The rate for a county imposing the tax is capped at one-half of one percent.)

For more detailed information, see the Comptroller’s **Sports and Community Venue Tax** brochure (PDF). (**Loc. Gov. Code, Chap. 334 and 335.**)

METROPOLITAN AND RAPID TRANSIT AUTHORITIES/MUNICIPAL TRANSIT DEPARTMENTS*

(0.25, 0.5, 0.75 or 1 percent) – In certain instances, authorities may be created to levy a sales tax to provide transportation services in participating cities. These are not offered statewide to all cities and are



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generally found in metropolitan areas. Cities may opt to join and, in some cases, withdraw from an authority with voter approval. The tax rate is generally implemented in 0.25-percent increments under **Transportation Code, Sect. 453.401. (Tax Code, Chap. 322 and Transportation Code, Chap. 451, 452, and 453.)**

SALES TAX OPTIONS FOR COUNTIES

COUNTY SALES TAX FOR PROPERTY TAX RELIEF

(0.5 or 1 percent) – This sales tax may be imposed by most by most counties also imposing an ad valorem tax. Revenues are deposited into a county's general revenue fund. The rate is 0.5 percent, except in counties with no territory within the limits of a municipality where the rate is 1 percent. Hospital districts also may impose this sales tax, but at different rates.

For more detailed information, see the Comptroller's **Using Sales Tax To Reduce The Property Tax Rate** brochure (PDF). (**Tax Code, Chap. 323.**)

COUNTY ASSISTANCE DISTRICT*

(Increments of 0.125 percent) – Counties may hold an election in all or part of the county, to create one or more county assistance districts and adopt a sales tax to fund the districts. A district may undertake a variety of projects including roads or highways; provision of law enforcement and detention services; the maintenance or improvement of libraries, museums, parks or other recreational facilities; or other services that benefit the public welfare.

For more detailed information, see the Comptroller's **County Assistance District Sales Tax** brochure (PDF). (**Loc. Govt. Code, Chap. 387.**)

EMERGENCY SERVICES DISTRICT (ESD)*

(Increments of 0.125 percent) – Counties may hold an election in all or part of the county, to create one or more emergency services districts and adopt a sales tax to fund the districts. Funds may be used to hire emergency personnel, contract with other entities to provide emergency services, and/or purchase equipment and facilities. (**Health and Safety Code, Chapters 775.**)

* This tax is actually imposed by a board, district or authority created by and for the benefit of a city or county.

Sales taxes paid on purchases this month are generally remitted to the Comptroller next month and allocated to local taxing entities the following month.

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Glenn Hegar

Texas Comptroller of Public Accounts

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Fireworks Tax
Mixed Beverage Taxes
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Equipment Surcharge
Oyster Fee
Sales and Use Taxes

800-531-5441

Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

800-531-5441, ext. 3-3630

WebFile Help

800-252-1381

Bank Franchise
Franchise Tax

800-252-7875

Spanish

800-531-1441

Fax on Demand (Most frequently requested
Sales and Franchise tax forms)

800-252-1382

Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge,
Rental and Seller Financed Sales Tax
Motor Vehicle Registration Surcharge

800-252-1383

Fuels Tax
IFTA
LG Decals
Petroleum Products Delivery Fee
School Fund Benefit Fee

800-252-1384

Coastal Protection
Crude Oil Production Tax
Natural Gas Production Tax

800-252-1387

Insurance Tax

800-252-1385

Coin-Operated Machines Tax
Hotel Occupancy Tax

800-252-1386

Account Status
Officer and Director Information

800-862-2260

Cigarette and Tobacco

888-4-FILING (888-434-5464)

TELEFILE: To File by Phone

800-252-1389

GETPUB: To Order Forms and Publications

800-654-FIND (800-654-3463)

Treasury Find

800-321-2274

Unclaimed Property Claimants
Unclaimed Property Holders
Unclaimed Property Name Searches
512-463-3120 in Austin

877-44RATE4 (877-447-2834)

Interest Rate



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

November 7, 2019

AGENDA TOPIC: Consideration and possible action on Home Rule Charter amendment submissions

START DATE: November 7, 2019

DEPARTMENT: Administration

PRESENTED BY: Carole Vanzant, Assistant City Manager

INTRODUCTION/BACKGROUND:

At the May 6, 2017 General Election, a majority of votes were cast for the adoption of the City of Fair Oaks Ranch Home Rule Charter. On May 18, 2017, the City Council, under Resolution 2017-08, declared the City Charter adopted. The Texas Constitution, Article XI, Section 5 (b) states “no city charter shall be altered, amended, or repealed more often than every two years”. At the September 5th City Council meeting, Council voted, as authorized by Local Government Code, Section 9.004, to submit Home Rule Charter amendments to the city’s qualified voters for their approval at the May 2020 election.

Accordingly, on September 20th, the Assistant City Manager provided Council members, legal, and senior staff a copy of the current City Charter along with instructions on submitting proposed amendments to her by October 11, 2019. Due to time challenges and because the City Charter is an important city document, the submission deadline was extended to October 25, 2019.

For your discussion and action today, attached are the submissions received by staff and council members:

1. First two pages list proposed submissions, by Charter section, as a draft amendment.
2. Last two pages list other submissions but not proposed as an amendment as discussion/clarification is needed to determine their fate.

At the conclusion of the discussion, staff and legal will need a clear understanding of which submissions, if any, are to be placed on the ballot so that the appropriate amendment language can be drafted. Once drafted, the amendments will be presented to the City Council for their approval of placement on the ballot. If City Council desires more time to review and discuss the submissions, staff will place the item on the November 21st City Council meeting agenda.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

1. To ensure the City Charter continues to properly define the organization, powers, functions and essential procedures of the City of Fair Oaks Ranch government.
2. Complies with the approval of City Council proposing Home Rule Charter amendments.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

Special election cost and legal services.

LEGAL ANALYSIS:

N/A at this time.

RECOMMENDATION/PROPOSED MOTION:

I move to place the amendments, as discussed during today's presentation, on the city's May 2020 election and authorize the city attorney to draft appropriate language for each amendment.

SUBMISSIONS FOR CONSIDERATION

<u>Section</u>	<u>Submission</u>	<u>Submitter</u>
3.06.C. – Meetings	Amend to read: “Vote. No action of the City Council, except as specifically provided in this Charter, shall be valid or binding unless adopted by the affirmative vote of a majority <i>at least four members</i> of the City Council.” Reason: As currently written, it is ambiguous because it doesn’t say whether it is a majority of the entire Council or a majority of those present. For example, if five members are present, three members could pass an ordinance. It just makes sense that a majority of the entire Council should be required for a resolution, ordinance, etc. to pass.	Councilmember Hartpence
3.06.D.1 - Agendas	Amend to read: “The item shall be placed on the next City Council meeting occurring on or after the 5th calendar day after receiving the request <i>at next council meeting, or the council meeting as determined between the council member and Staff</i>”. Reason: It’s not always possible to meet the current mandate.	Finance Director Buckelew
3.06.D.1	Amend to read: “The Member of City Council desiring to place an item on an agenda shall submit in writing the request to place the item on an agenda <i>and supportive documentation</i>, to the City Secretary. The item shall be placed on an the next appropriate <i>the next appropriate</i> City Council meeting <i>in accordance to the policy on file in the City Secretary’s office</i> occurring on or after the 5th calendar day after receiving the request.” Reason: Depending on the date request and supportive documents are provided to the City Secretary, additional research and/or legal assistance may be required, which may delay packet production.	City Secretary Picioccio
3.06.F.3 - Legislation by Ordinance	Amend to read: “Every ordinance shall become effective upon final adoption or at any later time(s) specified in the ordinance, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after its caption having been published twice <i>once</i> after adoption in a newspaper designated as the official newspaper of the City”. Reason: Current requirement increases cost and a creates a time delay in enforcing the law.	City Secretary Picioccio
Section 3.09.B – Forfeiture of Office	Amend to read: “A Council Member or the Mayor shall forfeit his/her office if he/she: 1. Fails to maintain at any time during the term of office any qualification for the office prescribed by this Charter or by law; 2. Is convicted of a misdemeanor involving moral turpitude, a violation of any state laws regulating conflicts of interest of municipal officers, a felony, or is assessed a deferred adjudication or probation for a felony or any state laws regulating conflicts of interest of municipal officers; 3. Failure to regularly attend City Council meetings without an approved absence obtained by a majority vote of City Council either before or after the absence. There shall be a presumption of failure to regularly attend when three (3) regular meetings are missed during a term year without obtaining an approved absence from City Council. 1. <i>Lacks at any time during his term of office any qualification for the office prescribed by this Charter of by law;</i> 2. <i>Violates any express prohibition of this Charter;</i> 3. <i>Fails to attend three (3) consecutive regular Council meetings without being excused by the majority vote of the City Council;</i> 4. <i>Is convicted of a felony and/or a misdemeanor involving moral turpitude, such forfeiture shall be declared and enforced by a majority vote of the Council;</i> 5. <i>Is adjudged mentally incompetent in accordance with the laws of Texas and is unable or unfit to discharge promptly and properly official duties because of mental defect that did not exist at the time of the officer’s election.</i>	Mayor Pro Tem Elizondo
Section 3.10.C – Prohibitions.	Amend to read: “Interference with Administration. <i>Freedom of Interference.</i> Except for the purpose of inquiries and investigations, unless otherwise provided in this Charter, the City Council and Members of City Council shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Council nor Members of City Council shall give orders to any such officer or employee, either publicly or privately. It shall be unlawful for the City Council or any of its members to dictate to the City Manager the appointment of any person to office or employment. The City Council or its persons will not interfere in any manner with the City Manager in the performance of the duties of that office or prevent him from exercising his own judgment in the appointment of officers and	Mayor Pro Tem Elizondo

	<i>employees whose employment, appointment, and supervision are reserved by this Charter for the City Manager. Except for the purpose of inquire, the City Council and its persons shall deal with the City Staff solely through the City Manager, and neither the Council nor any member not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager, either publicly or privately</i>	
4.02.B. - Regulation of Elections	Amend to read: “The City Council shall appoint the election judges and other election officials <i>or ratify their appointments through the approved joint election contract.</i> Reason: We currently contract with counties to run our elections and therefore Council is not appointing election judges and officials.	City Secretary Picioccio
5.04 - City Secretary	Amend to repeal entire section: A. The City Council shall appoint, and may remove without cause, the City Secretary upon the affirmative vote of a majority of the City Council. B. The City Council shall fix the compensation of the City Secretary, and the City Secretary's compensation may be amended, from time to time, in accordance with the City Secretary's experience, qualifications and performance. The City Secretary shall report administratively to the City Manager but may be removed from office only by the Council. C. The City Secretary shall: 1. Give notice of all official public meetings of the City Council, Commissions, and Boards in a manner consistent with this Charter and state laws; 2. Attend all public meetings and hearings of the City Council; 3. Keep the minutes of the proceedings of all public official meetings and hearings of the City Council in a manner prescribed by the City Council consistent with applicable law; 4. Act as custodian of all official records of the City Council; 5. Hold and maintain the seal of the City and affix this seal to all appropriate documents; 6. Authenticate, by signature and seal, and record all ordinances, resolutions and proclamations of the City; 7. Perform such other duties, as may be required by the City Council, which are consistent with this Charter and state and federal law; and 8. Schedule and oversee all City elections in accordance with the Texas Election Code [Tex. Election Code, § 1.001 et seq.] and any other applicable law. Reason: It makes no sense to have an important staff member report to City Council instead of the City Manager.	Councilmember Hartpence
5.04.B	Amend to read: “The City Secretary shall report administratively to the City Manager but may be removed from office only by the Council is appointed, removed and works directly for the City Manager.	Councilmember Maxton
5.05.A - Departments	Amend to read: "Police, Finance, Public Works, <i>Human Resources, Administration,</i> and such other departments as may be established by the City Council as hereinafter provided”.	Finance Director Buckelew/ HR Director Merrill
7.02.A.4 - Activities Prohibited	Amend to read: “No person who holds any compensated City position shall solicit or receive any contribution to the campaign funds of any candidate for municipal office <i>the City of Fair Oaks Ranch</i> or take any part in the management, affairs, or political campaign of any municipal office <i>City of Fair Oaks Ranch</i> candidate”. Reason: Potential violation of an employee’s First Amendment.	Asst City Manager Vanzant
7.13 – Comprehensive Plan	Amend to add: “<i>Each proposed revision to the Comprehensive Plan along with the final draft requires the affirmative vote of at least five Council members</i>”. Reason: As currently written, Comprehensive Plan revisions could be presented to the Council as a “take it or leave it” package. That is what was done with the original HRC which is why we are now considering a lot of revisions. It is important to give each proposed change full debate and a vote. A supermajority of five Council votes should be required because a tremendous amount of work went into its preparation and future Council members are unlikely to have this background. These are not changes to be taken lightly which is why a supermajority is important.	Councilmember Hartpence
7.15 – Penalty Clause	Amend to repeal entire section:	

~~A. Criminal Penalty. Any person who by himself or with others violates any provision of this charter shall, in addition to any other penalty, be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than \$500.00. City Council shall enact an ordinance enforcing this section.~~ Councilmember Hartpence

~~B. Civil Penalty. Upon the affirmative vote of two thirds of the City Council any person who by himself or with others violates any provision of this charter shall be, in addition to any other penalty provided for herein, subject to a civil fine of not more than \$500.00~~

Reason: Every Council member is already subject to federal, state and local laws. It makes no sense to add additional criminal and civil penalties unique to Council members. Few enough residents run for Council as it is without hanging this over their heads.

FOR DISCUSSION/CLARIFICATION OF CURRENT HOME CHARTER

Council Member Maxton

5.04.C - City Secretary shall:

Should the title be amended to add: "The City Secretary shall, but not limited to:"

7.12 – Disaster Clause - In case of disaster when a legal quorum of the City Council cannot otherwise be assembled due to multiple deaths or injuries, the surviving persons of the City Council, or highest surviving City official, if no elected official remains, shall, within 24 hours of such disaster, request the highest surviving officers of the Kendall County Commissioners Court to appoint a number of residents of Fair Oaks Ranch equal to the number necessary to make a quorum to act during the emergency as the City Council. The newly appointed City Council shall call a City election within 15 days of their appointment, or as provided in the Texas Election Code, for election of the vacant offices, if for good reasons it is known a quorum of the present City Council will never again meet. If it is determined that a quorum of the present City Council will meet again, the appointed Council Members shall serve in their position until such time as the present Council Members may begin serving.

I question the requirement to hold a City election within 15 days. The way I read this is that within 24 hours a new council is appointed and then 15 days later an election is held to fill the vacant spots. If this is happening just after a significant emergency condition has occurred in the City, I don't think the focus in the 2 weeks after is going to be on setting up and conducting an election IAW the Texas Election Code. Realistically, my belief is that this should be a longer time, more like 60 day or even longer, if I understand this correctly.

Section 8.03 - Pending Matters.

All rights, claims, actions, orders, contracts and legal administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the City department, office, or agency appropriate under this Charter.

This paragraph was specific to the original adoption of the Charter. I believe the paragraph is still needed, but should be worded in a manner that is related to the adoption of the Charter.

Section 8.04 - Manner of Submission to Electors.

In preparing this Charter, the Charter Commission finds and decides that it is impractical to segregate each subject so as to permit a vote of "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function, it is necessary that it should be adopted in its entirety.

This paragraph was specific to the original adoption of the Charter. I believe the paragraph is still needed, but should be worded in a manner that is related to the adoption of the Charter.

Finance Director Buckelew

5.04.C.4 –City Secretary shall act as custodian “of official records of the City Council” .

Can we define which of our records are “of City Council” versus other documents?

City Secretary Picioccio

Section 3.01 – Regarding the terms and election cycle of Council Members.

Current arrangement causes an election every year. Depending on which county we contract with, and the number of other entities sharing the cost this can cost between \$10,000 to \$40,000 annually. It also is a significant investment of staff time.

Section 3.04.D – The Mayor

The Mayor shall appoint, upon nomination by majority vote of the City Council, the members of citizen advisory boards and commissions.

Currently the whole Council performs the interview process for board members & commissions. This is not necessary according to the Charter.

Section 3.09.B.3. – Failure to regularly attend City Council meetings without an approved absence obtained by a majority vote of City Council either before or after the absence.

It seems odd to request approval after the fact.

Section 3.11.B.2. - Hearings Process for Forfeitures of Office and Prohibitions.

The officer holder subject to any investigation and/or hearing under this section shall be entitled to written notice, delivered by certified mail return receipt request, of the allegations of forfeiture and/or the alleged violation of this Charter as applicable; **delivery shall be complete on the fifth business day following upon deposit of the written notice, postpaid and properly addressed in the mail.**

Does the bolded statement mean the post office must deliver the written notice by 5 days? This makes the City responsible for the post office's timely delivery? Or does it mean the City must deliver/post mark the notice by 5 days?

Section 3.09.B.3. – Vacancies; Forfeiture of Office; Filling of Vacancies

Question of requesting approval of routine absences *prior to* the Council Meetings.

It seems odd to request approval after the fact.

Section 3.11.B.2. - Hearings Process for Forfeitures of Office and Prohibitions.

The officer holder subject to any investigation and/or hearing under this section shall be entitled to written notice, delivered by certified mail return receipt request, of the allegations of forfeiture and/or the alleged violation of this Charter as applicable; **delivery shall be complete on the fifth business day following upon deposit of the written notice, postpaid and properly addressed in the mail.**

Does the bolded statement mean the post office must deliver the written notice by 5 days? This makes the City responsible for the post office's timely delivery? Or does it mean the City must deliver/post mark the notice by 5 days?

Section 4.07 – Taking of Office

Each newly elected person to the City Council shall be inducted into office at the first regular City Council meeting following the canvass of the votes.

What is the definition of inducted? Ceremonial versus formal swearing in? What if this is not possible? Should some alternate language be added?

Council member Hartpence

In several places in the Charter a 2/3 vote of the Council is required to take an action. For example, 5.01B2 says “A two-thirds (2/3) vote of the City Council is required to appoint the City Manager.” I recommend that this and every other similar occurrence be changed to “A vote of five City Council members is required to appoint the City Manager.”

Reason: “2/3 vote” is an ambiguous statement. Does it always mean 2/3 of seven members which would be 4 and 2/3 votes? What if only five members are present? Is it 2/3 of five members or 2/3 of seven members? For clarity, I suggest these super majority votes always require five votes. These issues are obviously important and should require a supermajority of the entire Council.