



CITY OF FAIR OAKS RANCH
AGENDA – CITY COUNCIL REGULAR MEETING

October 17, 2019 6:30 PM
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. Speakers shall limit their comments to five (5) minutes each.

- A. Citizens to be heard.
- B. Swearing in of Municipal Judge and Prosecutor.
- C. Presentation of Court Clerk Level 1 Certification for Maria Pinedo, Court Clerk.
- D. Presentation of Top Workplace Award in San Antonio Area.
- E. Elevated Water Storage Tank Presentation: Summary of Community Workshop #2.

Ryan Sowa, P.E., Kimley-Horn and Associates Pgs. 3-12

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 September 19, 2019 Regular City Council Meeting Minutes. Pgs. 13-17
- B. Approval of October 3, 2019 Regular City Council Meeting Minutes. Pgs. 18-19
- C. Approval of Council Member Havard's absence for the October 3, 2019 Council Meeting. Pg. 20
- D. Approval of Council Member Patel's absence for the October 17, 2019 Council Meeting. Pg. 21

IV. CONSIDERATION/DISCUSSION ITEMS

- A. Consideration and possible action approving the first reading of an Ordinance for a Specific 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)
Tobin Maples, City Manager Pgs. 22-32
- B. Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement for Auditing Services with ABIP, P.C.
Sarah Buckelew, Finance Director Pgs. 33-52

- 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.

Dan Santee, City Attorney

Pgs. 53-77

V. REPORTS FROM STAFF/COMMITTEES/COUNCIL

- A. Update on Home Rule City Charter Amendment Election Process.

Carole Vanzant, Assistant City Manager

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

- A. Consideration 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 5:00 PM October 14, 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, TX

Elevated Storage Tank Project
Council Briefing – October 17, 2019

Ryan Sowa, P. E.



Kimley»Horn

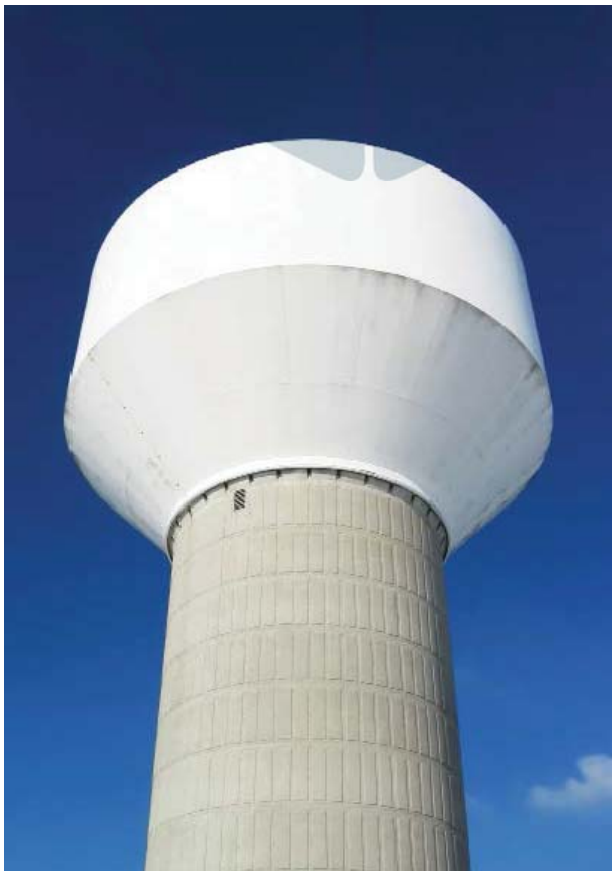
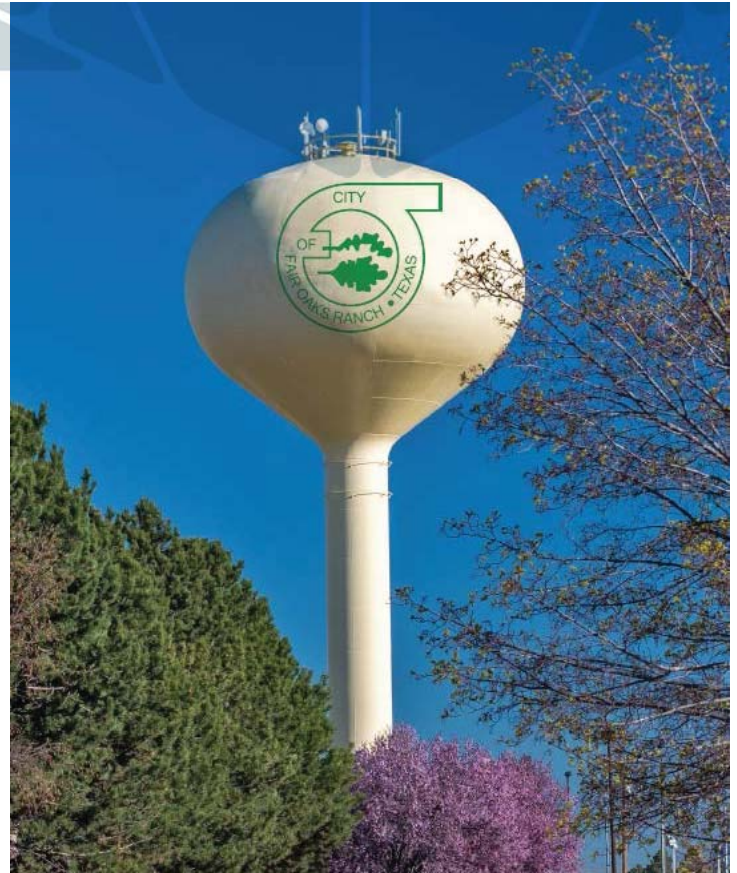


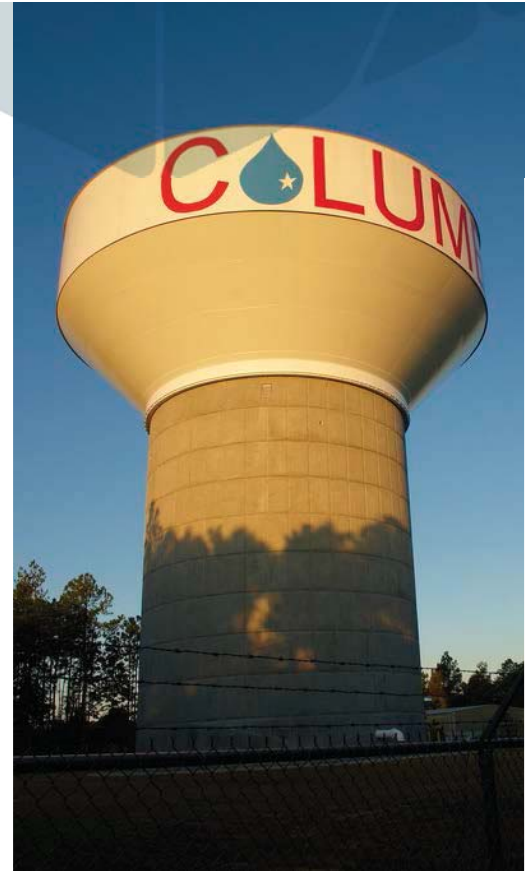
Table of Contents

- Introduction
- Background on Elevated Storage Tank
- Community Workshop #1
- Community Workshop #2
- Site and Tank Style Cost Analysis
- Overview of Project Schedule

Background on Elevated Storage Tank

Benefits of Elevated Storage

- Maintains constant water supply and pressure for public and fire flow demands
- Operational flexibility during emergencies and provides additional water storage during peak water demands and droughts
- **Operational Cost Savings** – Reduced pumping
- **Long-term Savings** – Less pump capacity needed
- **Lower Risk** – Able to meet system demands in power outage



Community Workshop #1

- Hosted at Spring Creek United Methodist Church on June 18, 2019

34 Total Attendees

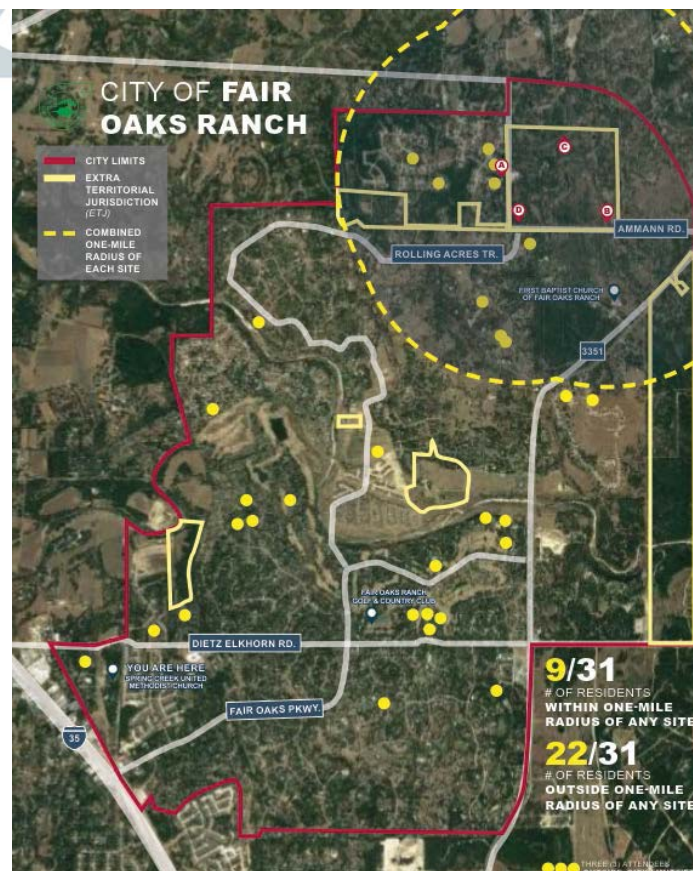
- **31** City of Fair Oaks Ranch Residents
- **9** Residents identified as living within 1-mile radius of any four potential tank sites

Potential Tank Site Results

Option A	0 votes
Option B	8 votes ■■■■■■
Option C	20 votes ■■■■■■■■■■■■■■■■■■
Option D	0 votes

Tank Design Results

Multi-Column Tank	0 votes
Composite Tank	10 votes ■■■■■■■■
Spheroid Tank	12 votes ■■■■■■■■■■



Community Workshop #2

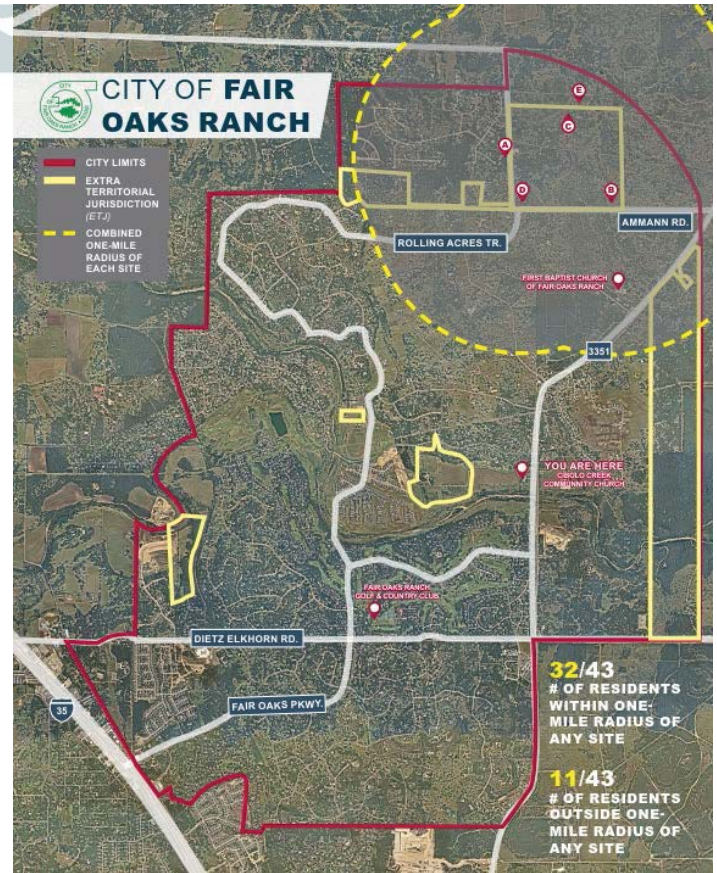
- Hosted at Cibolo Creek Community Church on September 10, 2019

49 Total Attendees

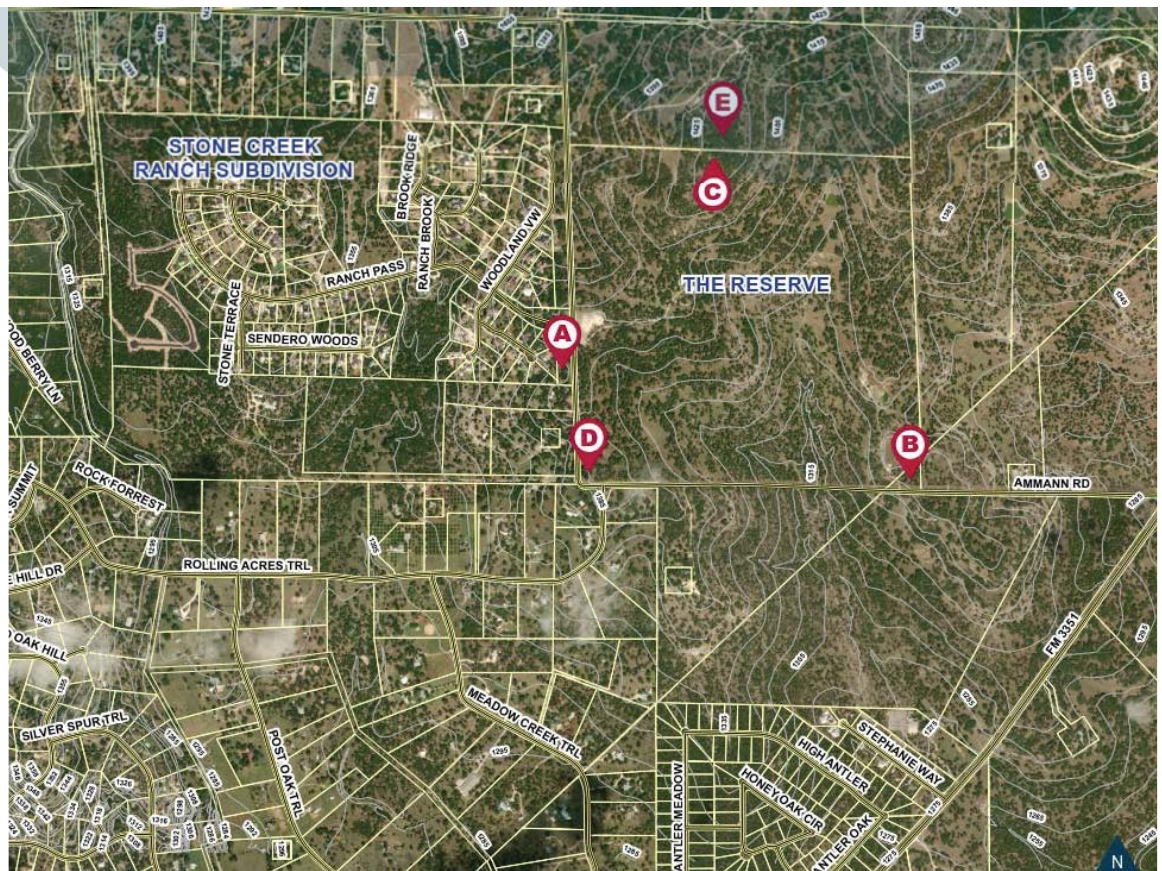
- 43 City of Fair Oaks Ranch Residents
- 11 Residents identified as living within 1-mile radius of any four potential tank sites

Workshop Format

- Presentation
- Exhibit Stations



Station 1: Potential Tank Location



Community Workshop #2: Potential Tank Site Results

Option A	0 votes
Option B	34 votes 
Option C	6 votes 
Option D	3 votes 
Option E	1 vote 

Feedback Received:

- Strong preference for avoiding sites near existing residences.

Station 2: Site/Tank Evaluation Criteria

- Tank Styles
- Tank/Site Evaluation Criteria
 - Cost
 - Aesthetics
 - Construction Impacts
 - City's Long-Term Master Plan
 - Permit/Approvals
 - Community Concerns



Composite



Multi-Column



Spheroid

Community Workshop #2: Tank Design Results

Multi-Column Tank	0 votes
Composite Tank	31 votes 
Spheroid Tank	6 votes 

Tasks Performed Since Last Briefing

- Tank Site Evaluation
 - Engineering Analysis
 - Water System Modeling
 - Projected Construction Costs
- Tank Style Evaluation
 - Capital Costs
 - Long Term Maintenance Costs
- Stakeholder Outreach

Site A – Ground Elevation: 1382 feet

- Tank Height to overflow: 150 feet
- Waterline extension required: 225 feet
- Access via Ammann Rd
- Three-phase electric power available
- Existing berm – significant grading and drainage analysis required
- Approx. 150 feet to closest residential structure

Opinion of Probable Construction Cost	
Various Tank Styles	\$2.2 – \$2.7 M

Site B – Ground Elevation: 1357 feet

- Tank height to overflow: 170 feet (Tallest tank)
- Waterline extension required: 3,650 feet (Longest pipe extension)
- Access via Ammann Rd
- Three-phase electric power available
- Location of future City Pump Station (per Water Master Plan)
- Approx. 2,600 feet to closest residential structure

Opinion of Probable Construction Cost	
Various Tank Styles	\$2.9 - \$3.5 M

Site C – Ground Elevation: 1432 feet

- Tank height to overflow: 100 feet
- Waterline extension required: 1,950 feet
- Access off Ammann Road – Approx. 1,700 feet of access road required
- Single-phase electrical line extension required: 350 feet
- Approx. 1,100 feet to closest residential structure

Opinion of Probable Construction Cost	
Various Tank Styles	\$2.4 - \$3.0 M

Site D – Ground Elevation: 1390 feet

- Tank height to overflow: 140 feet
- Waterline extension required: 200 feet
- Access via Ammann Rd
- Three-phase electric power available
- Approx. 380 feet to closest residential structure

Opinion of Probable Construction Cost	
Various Tank Styles	\$2.1 - \$ 2.7 M

Site E – Ground Elevation: 1435 feet

- Tank height to overflow: 95 feet (Shortest tank)
- Waterline extension required: 2,250 feet
- Access off Ammann Rd – Approx. 1,950 feet of access road required
- Single-phase electrical line extension required: 550 feet
- Approx. 750 feet to closest residential structure

Opinion of Probable Construction Cost	
Various Tank Styles	\$2.7 - \$3.1 M

Capital Cost by Tank Style



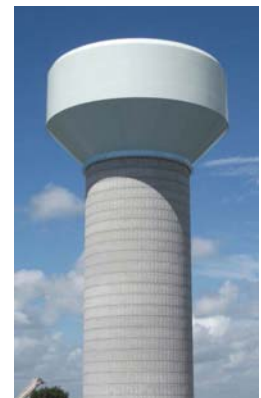
Multi-Column

Lowest Cost



Spheroid

Middle Cost



Composite

Highest Cost

Site/Tank Style Analysis: Construction Cost Comparison*

Site Locations	Composite	Spheroid	Multi-Column
Site A	\$2,700,000	\$2,600,000	\$2,200,000
Site B	\$3,500,000	\$3,300,000	\$2,900,000
Site C	\$3,000,000	\$2,700,000	\$2,400,000
Site D	\$2,700,000	\$2,400,000	\$2,100,000
Site E	\$3,100,000	\$2,800,000	\$2,700,000

Lowest Overall Construction Cost: Site D, Multi-Column

*Construction costs include estimates for a water elevated storage tank, site work, electrical and controls, mobilization, and off-site work including access roads, extension of existing utilities, and drainage. Land acquisition costs are not included.

Life Cycle Cost by Tank Style*



Composite

Lowest Cost

\$220,000/repaint



Spheroid

Middle Cost

\$300,000/repaint



Multi-Column

Highest Cost

\$330,000/repaint

*Life cycle costs were created assuming a 60-year life cycle, with repaints every 15 years.



Overview of Project Schedule

- **City Council Approves Final Tank Site** – November 21, 2019
- **Design Completion** – August 2020
- **Construction Begin** – November 2020
- **Construction Completion** – November 2021

*Subject to change

**CITY OF FAIR OAKS RANCH
CITY COUNCIL MEETING MINUTES
September 19, 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, Maxton, and 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 Fair Oaks Ranch Police Officer Amanda Pina.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

A. Citizens to be heard

1. Dr. Vince Caldarola, resident, spoke regarding land ownership and the city wanting him to sign away his land and water rights.
2. Brett Mussey, resident, spoke regarding drainage easements noting that the infrastructure/engineering page on the city website indicates that the maintenance of the turf within the easement shall be the duty and responsibility of the property owner; he asked why then is the city/tax payers paying for it. He also questioned why nothing was done regarding drainage after the 2009 Drainage Study.
3. Debra Doyle, resident, requested that sign in sheets used for citizens to be heard, be used to verify the correct spelling of citizens names. She then spoke on the following: Drainage - noting that a drainage study was done in 2009 but never implemented, Easements: recommending that a land acquisition plan be initiated in advance of the next legislative session for the City to acquire easements critical to drainage, Maintenance – reviewing funds earmarked for reserves to see if any is available to clean up culverts and mitigate the existing poor drainage system prior to fall & winter rains. She questioned development of a schedule of fines to be assessed to property owners not in compliance with maintaining their culverts & easements and volunteered to note addresses & vacant lots not in compliance. She requested the establishment of a Beautify Fair Oaks Committee.
4. Kelly Miller, resident, spoke on behalf of her husband David and indicated they are not going to sign over their water rights.

B. Police Chief Rubin Mayor Manitzas provided the Oath of Office to Police Officer Amanda Piña.

C. Mayor Manitzas and Public Works Director, Ron Emmons, P.E., offered special recognition to Adrian Garcia, P.E., Manager of Engineering Services. Adrian Garcia P.E., recently submitted his resignation and will be taking on the role of City Engineer for the City of Bulverde.

III. CONSENT AGENDA

- A. Approval of August 6, 2019 Special City Council Meeting Minutes.**
- B. Approval of September 5, 2019 Regular City Council Meeting Minutes.**
- C. Approval of August 6, 2019 Town Hall Meeting Minutes.**
- D. Approval of September 12, 2019 Special City Council Meeting Minutes.**

- E. **Approval of the second reading of an Ordinance Amending Chapter 12 “Traffic & Vehicle” Article 12.03 “Trucks” for the City of Fair Oaks Ranch Code of Ordinances regulating the weight load of vehicles traveling on city streets.**

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

IV. **CONSIDERATION/DISCUSSION ITEMS**

- A. **Consideration and possible action approving the second reading of an Ordinance adopting the City Budget for fiscal year beginning October 1, 2019 and ending September 30, 2020.**

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Havard to approve the 2019-2020 Fiscal Year Budget Ordinance.

VOTE: 7-0; Motion Passed as recorded:

Mayor Manitzas – For; Mayor Pro Tem Elizondo – For; Council Member Hartpence – For; Council Member Havard – For; Council Member Koerner – For; Council Member Maxton – For; and Council Member Patel – For.

- B. **Consideration and possible action ratifying the 2019 property tax rate increase reflected in the Fiscal Year 2019-2020 general fund and debt service fund budgets.**

MOTION: Made by Council Member Hartpence, seconded by Council Member Maxton to ratify the property tax increase reflected in the fiscal year 2019-2020 budget.

VOTE: 7-0; Motion Passed.

- C. **Consideration and possible action approving the first reading of an Ordinance levying a property tax rate of .3735 per \$100 taxable valuation on property in the City of Fair Oaks Ranch for tax year 2019; and determining due and delinquent dates.**

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Patel to approve that the property tax rate be increased by the adoption of a tax rate of \$.3735, which is effectively a 5.6 percent increase in the tax rate, as prescribed in the property tax rate ordinance.

VOTE: 7-0; Motion Passed as recorded:

Mayor Manitzas – For; Mayor Pro Tem Elizondo – For; Council Member Hartpence – For; Council Member Havard – For; Council Member Koerner – For; Council Member Maxton – For; and Council Member Patel – For.

- D. **Consideration and possible action to approve a Resolution appointing the Municipal Judge and Alternate Municipal Judge and to authorize the City Manager to execute the Agreements.**

MOTION: Made by Council Member Hartpence, seconded by Council Member Koerner to approve a Resolution appointing the Fair Oaks Municipal Court Judge and Alternate Judge for judicial services for two years beginning October 1, 2019 and ending

September 31, 2021 and authorize the City Manager to sign a Letter of Engagement with each appointee.

VOTE: 7-0; Motion Passed.

E. Consideration and possible action to approve a Resolution appointing the City Prosecutor and Alternate City Prosecutor and to authorize the City Manager to execute the Agreements.

MOTION: Made by Council Member Maxton, seconded by Mayor Pro Tem Elizondo to approve a Resolution appointing the Fair Oaks Ranch Municipal Court Prosecutor and Alternate Prosecutor for prosecutorial services.

VOTE: 7-0; Motion Passed.

F. Consideration and possible action to approve a Sanitarian Agreement and to authorize the City Manager to execute the Agreement.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Havard to approve the Sanitarian Services Agreement for sanitarian services and authorize the City Manager to execute the Agreement with a commencement date of October 1, 2019.

VOTE: 7-0; Motion Passed.

G. Consideration and possible action to approve a Fire Inspector Agreement Renewal and to authorize the City Manager to execute the Agreement.

MOTION: Made by Council Member Koerner, seconded by Council Member Patel to approve the renewal of the Fire Inspector Service Agreement and authorize the City Manager to execute the Agreement with a commencement date of October 1, 2019.

VOTE: 7-0; Motion Passed.

H. Consideration and possible action to approve a 3 month extension of a 2014 Bank Depository Agreement.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Hartpence to authorize the City Manager to sign the three (3) month extension of the 2014 Bank Depository Agreement with Frost Bank.

VOTE: 7-0; Motion Passed.

I. Consideration and possible action authorizing the City Manager to sign the First Amendment of the Memorandum of Understanding (MOU) to evaluate Regional Wastewater Treatment Options between the City of Boerne, the City of Fair Oaks Ranch, and the Guadalupe-Blanco River Authority.

MOTION: Made by Council Member Hartpence, seconded by Mayor Pro Tem Elizondo to authorize the City Manager to sign the First Amendment of the Memorandum of Understanding to Evaluate Regional Wastewater Treatment Options between the City of Boerne, the City of Fair Oaks Ranch, and the Guadalupe-Blanco River Authority.

VOTE: 5-2; Motion Passed. Nay's: Council Members Hartpence and Patel.

J. Consideration and possible action to approve authorizing the City Manager to sign an Interlocal Participation Agreement to be a member of the Public Employee Benefits Alliance.

MOTION: Made by Council Member Hartpence, seconded by Council Member Maxton to authorize the City Manager to sign an Interlocal Participation Agreement with Public Employee Benefits Alliance with a commencement date of October 1, 2019.

VOTE: 7-0; Motion Passed

K. Consideration and possible action to approve the preliminary plat that establishes Elkhorn Ridge Unit 8.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Koerner to approve the preliminary plat that establishes Elkhorn Ridge Unit 8.

VOTE: 7-0; Motion Passed

L. Discussion regarding transient equipment and material storage on city owned property (Fire Station) located 30955 Meadow Creek Trail, generally the southwest corner of FM 3351 and Meadow Creek Trail.

This discussion item was deferred by Council Member Hartpence.

V. REPORTS FROM STAFF / COMMITTEES / COUNCIL

Assistant City Manager Carole Vanzant, provided an update on the Home Rule Charter amendment election process noting that the due date for submittals to the Assistant City Manager will be due October 11, 2019.

VI. CONVENE INTO EXECUTIVE SESSION

City Council did not convene into closed 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.

City Council convened into Executive Session at 8:00 PM regarding:

- 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.
- D. 551.071 (Consultation with Attorney) - to receive legal advice from City Attorney and Consultant regarding performance assessment and information collection.

Council Member Hartpence leaves the meeting at 9:21 PM.

VII. RECONVENE INTO OPEN SESSION

Mayor Manitzas reconvened into open session at 9:26 PM; no action was taken.

VIII. ADJOURNMENT

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

Council Member Patel noted that she would like the topic of the parameters that will be used in making the final recommendation on the Elevated Storage Tank.

Mayor Manitzas adjourned the meeting at 9:26 PM.

ATTEST:

Garry Manitzas, Mayor

Christina Picioccio, City Secretary

**CITY OF FAIR OAKS RANCH
CITY COUNCIL MEETING MINUTES
October 3, 2019
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015**

I. OPEN MEETING

A. Roll Call – Declaration of a Quorum

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

Absent: Council Member Havard

With a quorum present, the City Council meeting was called to order at 9:33 AM.

B. The Pledge of Allegiance was led by Freese & Nichols Consultant, Jessica Vasser.

II. CITIZENS and GUEST FORUM / PRESENTATIONS

A. Citizens to be heard.

1. Rich Nichols, citizen, requested that the council consider making the intersections of Hansel Drive & Battle Intense and Venturer & Keenland Drive into 4 way stops citing safety and welfare concerns.
2. Frank Trapasso, citizen, voiced skepticism regarding the developer of the Pfeiffer Property's eagerness to donate land for the elevated storage tank and urged the City Council to remember that he has his own unknown motivation.

B. Joanna Merrill, Human Resource Director, introduced the city's newest employee, Amber Little, Code Compliance Officer.

III. CONSENT AGENDA

A. None.

IV. DISCUSSION/CONSIDERATION ITEMS

A. Discussion and possible action of a Resolution appointing a Director to the Fair Oaks Ranch Municipal Development District (FORMDD) Board of Directors.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Koerner to approve Carolyn Knopf as the FORHA Director Representative to the MDD Board of Directors effective immediately.

VOTE: 6-0; Motion Passed.

B. Discussion and possible action regarding the criteria to evaluate the elevated water storage tank style and location.

Council Member Patel asked to defer Item IVB until after Item IVC was discussed.

C. Presentation and discussion regarding the Water and Wastewater Impact Fee update.

Jessica Vasser, consultant from Freese & Nichols provided an overview of the impact fee principles and purpose inclusive of land use assumptions for water & wastewater buildout, and capital improvement plans based on demand projections. Ms. Vasser noted that her goal was to ensure that council was in agreement with calculations and assumptions before progressing forward.

Council Members discussion included: concerns that inclusion of 645 lots from The Reserve/Pfeiffer Property would artificially inflate projected capital improvement costs (Council Member Hartpence), current Reserve/Pfeiffer development agreement allows for 645 lots therefore that number must be factored in (City Manager Maples), clarification that any water/wastewater improvements would be dedicated to the city which we will then own and operate (City Manager Maples), concerns that calculations are based on worse case scenarios thus artificially inflating requirements (Council Member Hartpence), having faith in decisions made during the comprehensive planning stage based on consultant reports and recommendations (Mayor Manitzas, Mayor Pro Tem Elizondo, Council Members: Koerner, Maxton, and Patel). No vote was taken, but by consensus of the Council, authorization was provided to proceed with current calculations and assumptions.

B. Discussion and possible action regarding the criteria to evaluate the elevated water storage tank style and location.

Council Member Patel withdrew the discussion of this item.

V. 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.

City Council convened into Executive Session at 10:37 AM regarding:

- 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.

Council Member Koerner left the meeting at 11:46 AM.

III. RECONVENE INTO OPEN SESSION

The Mayor reconvened into Open Session at 11:58 AM. No action was taken.

VIII. ADJOURNMENT

Council Member Patel announced that she would not be present at the October 17th Council Meeting.

Mayor Manitzas adjourned the meeting at 11:58 PM.

ATTEST:

Garry Manitzas, Mayor

Christina Picioccio, City Secretary



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
October 17, 2019

AGENDA TOPIC: Approval of Council Member Havard's absence from the October 3, 2019 City Council Meeting.

DATE: October 17, 2019

DEPARTMENT: City Council

PRESENTED BY: Council Member Havard (Consent Agenda)

INTRODUCTION/BACKGROUND:

Council Member Havard's absence from the October 3, 2019 City Council meeting was due to being out of town.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Complies with Section 3.09 of the Home Rule Charter

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

(Consent Agenda) I move to approve Council Member Havard's absence from the October 3, 2019 City Council Meeting.



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
October 17, 2019

AGENDA TOPIC: Approval of Council Member Patel's absence from the October 17, 2019 City Council Meeting.

DATE: October 17, 2019

DEPARTMENT: City Council

PRESENTED BY: Council Member Patel (Consent Agenda)

INTRODUCTION/BACKGROUND:

Council Member Patel's absence from the October 17, 2019 City Council Meeting due to being out of town.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Section 3.09 of the Home Rule Charter

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

N/A

RECOMMENDATION/PROPOSED MOTION:

(Consent Agenda) I move to approve Council Member Patel's absence from the October 17, 2019 City Council Meeting.



CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

October 17, 2019

AGENDA TOPIC: Consideration and possible action approving the first reading of an Ordinance for a Specific 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: October 17, 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 specific 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 specific 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 (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.
9. 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.

LEGAL ANALYSIS:

Ordinance approved as to form.

RECOMMENDATION/PROPOSED MOTION:

Sample Motion(s):

- I move to recommend approval of the first reading of the ordinance as recommended by the P&Z Commission.
- I move to recommend approval of the first reading of the ordinance as recommended by the P&Z Commission, inclusive of the following conditions (insert conditions here).
- I move to recommend denial of the ordinance.
- I move to table/continue consideration of the ordinance subject to receiving the following information (insert request here).

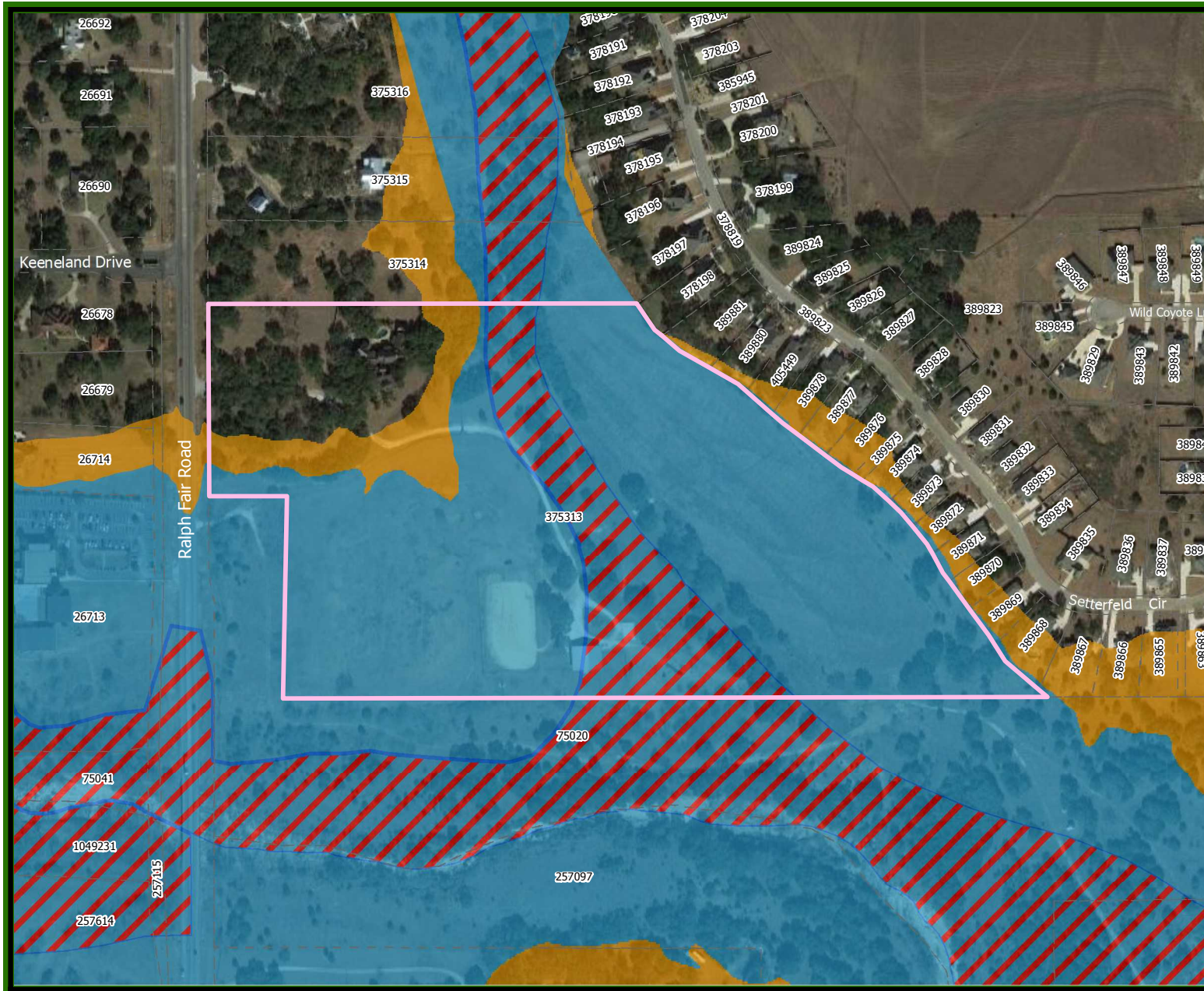


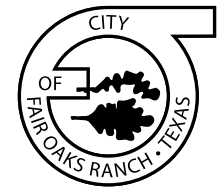
Exhibit 5 FLOODPLAIN MAP

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 7 – 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. More information regarding the proposed intended use of this property can be found in Exhibit 7 – Applicant Packet and statement.

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 8) outlining questions about the SUP application/proposed use. Staff responses have been added to the letter via track changes mode.

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 specific 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

AN ORDINANCE

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS AUTHORIZING AND APPROVING A SPECIFIC USE PERMIT (SUP APPLICATION 2019-01) ALLOWING FOR A COMERCIAL EQUINE BOARDING FACILITY ON LAND CURRENTLY ZONED NEIGHBORHOOD RESIDENTIAL (NR), LOCATED AT SETTERFELD ESTATES 1A, LOT 1, COMAL, COUNTY TEXAS (30350 RALPH FAIR ROAD, FAIR OAKS RANCH TEXAS); FINDING THIS ORDINANCE TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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, which in its best judgment promotes the health, safety, morals, and general welfare and protect the use and enjoyment of property throughout the City; and,

WHEREAS, in making such determination, the city council specifically finds that the proposed use when conducted with any required conditions will not negatively impact the health, safety and welfare of the surrounding neighborhood, public infrastructure such as roads, parking facilities and water and sewer systems, public services such as police and fire protection and solid waste collection or the ability of existing infrastructure and services to adequately provide services.

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

Section 1. That the City Council of the City of Fair Oaks Ranch, Texas, hereby authorizes and approves the issuance of a Specific Use Permit for allowing for a commercial equine boarding facility on land currently zoned Neighborhood Residential (NR) and 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 1, subject to the conditions described in the attached Exhibit 2 and as generally shown on Exhibit 3, site plan.

- Section 2. 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 3. 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 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.
- Section 5. 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 6. 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 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.
- Section 8. 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

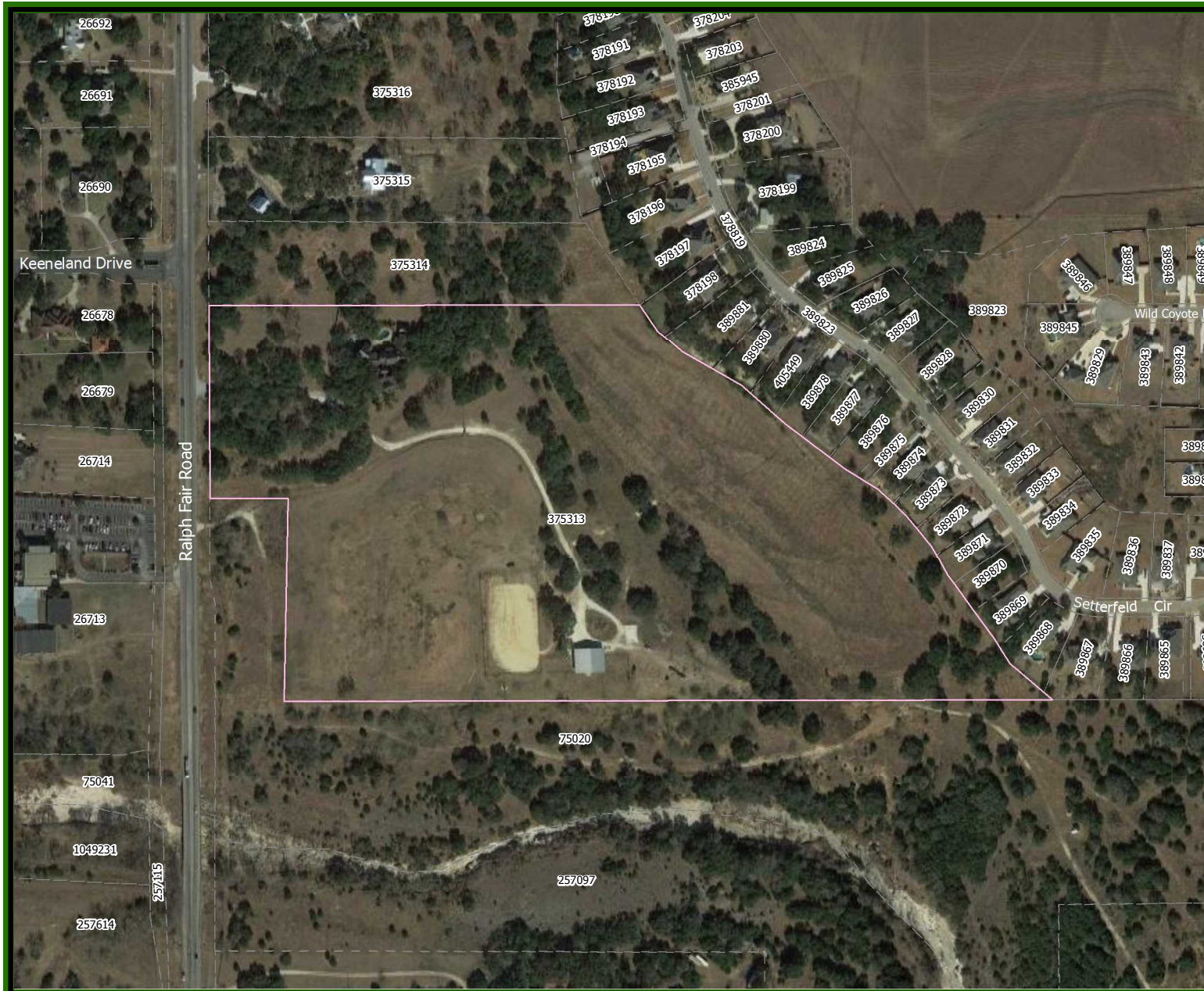


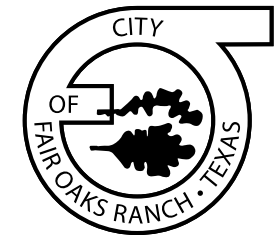
Exhibit 1 AERIAL MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

 Subject Property



August, 2019



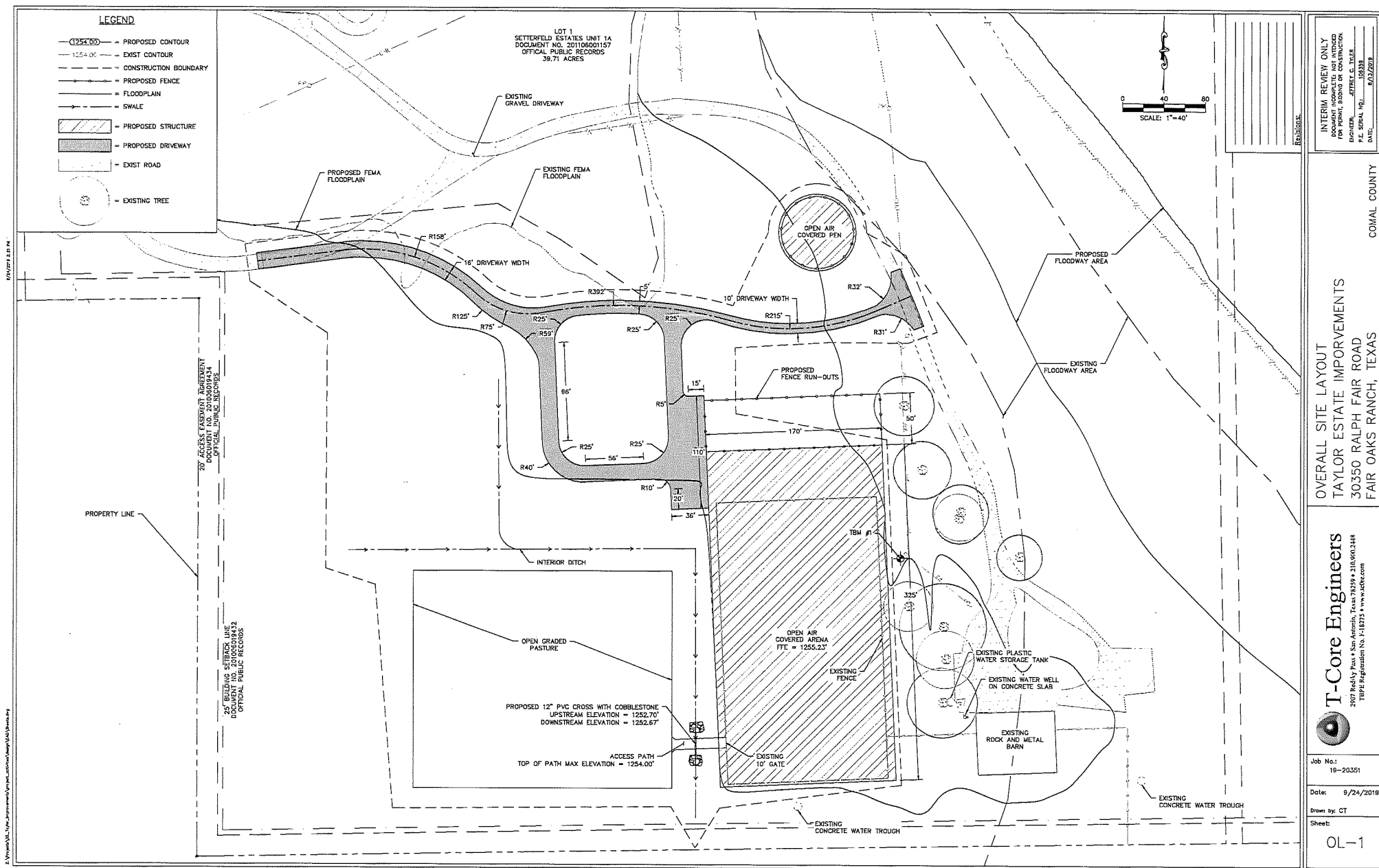
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Exhibit 2

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

October 17, 2019

AGENDA TOPIC: Consideration and possible action authorizing the City Manager to sign a Professional Services Agreement for Auditing Services with ABIP, P.C.

DATE: October 17, 2019

DEPARTMENT: Finance

PRESENTED BY: Sarah Buckelew, Finance Director

INTRODUCTION/BACKGROUND:

Financial Integrity is a top priority in the City's master plan over the next several years. To this end, the City Council selected ABIP, P.C. ("ABIP") for both the City's and MDD's audit engagements beginning with the FY 2016-17, after having engaged with a different firm for ten years prior.

GFOA recommends governmental entities should enter into multiyear agreements of at least five years in duration to allow for greater continuity and help to minimize the potential for disruption in connection with the independent audit. Therefore, it is advised to engage ABIP, P.C. for the FY 2018-19 annual audit as this will be the third consecutive audit serviced by said firm.

The City budget for 2018-19 audit services is \$21,424. Fees per the engagement letter are stated at \$21,600 plus any out of pocket costs (such as report production, postage and travel). Staff intends to manage the \$176 budget overage with savings in other professional services engagements. Staff is not recommending a budget adjustment at this time.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Obtaining an independent audit of the financial statements plays a vital role by helping to preserve the integrity of the finance functions and by maintaining citizens' confidence in their elected leaders.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

N/A

LEGAL ANALYSIS:

The attached engagement letter complies with the City's standard Professional Services Agreement guidelines and was reviewed by the City Attorney's office. Upon mutual agreement, ABIP and the City of Fair Oaks Ranch are utilizing an already executed master services agreement previously approved by both parties' legal representation. The engagement letter and required supplements are attached to the master services agreement.

RECOMMENDATION/PROPOSED MOTION:

I move 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.

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 ABIP Advisors, LLC ("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 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). 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 B throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit B, 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 A.M. 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 "B".

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 Indemnatee for the Indemnatee'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. Responsibilities of the City. In performing the services outlined in this Agreement, Professional will rely on the accuracy and reliability of information provided by the City. Please also note that the services rendered in conjunction with this Agreement cannot be relied upon to disclose any and all errors, fraud, or other illegal acts that may exist. The City agrees to hold Professional harmless for any liability and all reasonable costs (including legal fees) that Professional may incur in connection with claims based on the failure to develop an appropriate accounting system or to detect material errors resulting from known false representations made to Professional by any City personnel.

The City is responsible for management decisions and functions, and for designating a competent individual to oversee Professional's services. The City is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

Section 24. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, 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 25. 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.

[SIGNATURE PAGE FOLLOWS]

EXECUTED, by the City on this the 19 day of November, 2018.

CITY:

By: 
Name: Tobin Maples
Title: City Manager

PROFESSIONAL:

By: 
Name: Andrew Barbe
Title: Partner

ADDRESS FOR NOTICE:

CITY

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

PROFESSIONAL

ABIP Advisors, LLC
Attn: Andrew Barbe
1717 Saint James Place, Ste 500
Houston, TX 77056

Exhibit A

July 8, 2019

To the City Council and Mayor
City of Fair Oaks Ranch, Texas
7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015

We are pleased to confirm our understanding of the services we are to provide the City of Fair Oaks Ranch, Texas (the City) for the year ended September 30, 2019. We will audit the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City as of and for the year ended September 30, 2019.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Budgetary Comparison Schedules
- 3) Schedule of Changes – Net Pension Liability and Related Ratios
- 4) Schedule of Contributions - Pension
- 5) Schedule of Changes – OPEB Liability and Related Ratios
- 6) Schedule of Contributions - OPEB

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

- 1) Nonmajor Fund Combining Statements
- 2) Budgetary Comparison Schedule – Debt Service Fund

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information:

- 1) Introductory Section
- 2) Statistical Section

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records of the City and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the City's financial statements. Our report will be addressed to the city council and management of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or may withdraw from this engagement.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Other Services

We will also assist in preparing the financial statements and related notes of the City in conformity with U.S. generally accepted accounting principles based on information provided by you. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for designing, implementing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws and regulations.

With regard to including the auditor's report in an exempt offering document, you agree that the aforementioned auditor's report, or reference to ABIP, PC, will not be included in any such offering document without our prior permission or consent. Any agreement to perform work in connection with an exempt offering document, including an agreement to provide permission or consent, will be a separate engagement.

With regard to an exempt offering document with which ABIP, PC, is not involved, you agree to clearly indicate in the exempt offering document that ABIP, PC, is not involved with the contents of such offering document

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon.

Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

You agree to assume all management responsibilities for financial statement preparation services and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

The audit documentation for this engagement is the property of ABIP, PC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the State of Texas or its designee. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of ABIP, PC personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

We began our audit in July 2019 and expect to issue our reports no later than February 2020. Michael Del Toro is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

Our fee for these services will be at our standard hourly rates. We estimate that our fees for these services will be \$21,600, plus any out of pocket costs (such as report production, postage, and travel). Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your

personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to the City and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,
ABIP, PC

ABIP, PC

San Antonio, Texas

RESPONSE:

This letter correctly sets forth the understanding of the City of Fair Oaks Ranch, Texas.

By: _____

Title: _____

EXHIBIT B

Please refer to separate Proof of Insurance provided along with this Services Agreement



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/30/2018

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 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 Pearl Insurance 1200 E Glen Ave Peoria Heights IL 61616		CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL: ADDRESS:															
INSURED ABIP, PC and ABIP Advisors, LLC 1717 Saint James Pl, Ste 500 Houston TX 77056-3404		INSURER(S) AFFORDING COVERAGE <table border="1"><thead><tr><th>INSURER</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Twin City Fire Insurance Company</td><td>29459</td></tr><tr><td>INSURER B: Property and Casualty Insurance Co. of Hartford</td><td>34690</td></tr><tr><td>INSURER C: General Star National Insurance Company</td><td>11967</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>		INSURER	NAIC #	INSURER A: Twin City Fire Insurance Company	29459	INSURER B: Property and Casualty Insurance Co. of Hartford	34690	INSURER C: General Star National Insurance Company	11967	INSURER D:		INSURER E:		INSURER F:	
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INSURER D:																	
INSURER E:																	
INSURER F:																	

COVERAGES**CERTIFICATE NUMBER:****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 SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ EPLI - CLAIMS-MADE ☒ Fire GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC	Y	Y	83SBAIX6164	06/25/2017	06/25/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 EPLI \$ 10,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS	Y	Y	83SBAIX6164	06/25/2017	06/25/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$ 10,000	Y	Y	83SBAIX6164	06/25/2017	06/25/2018	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	N	83 WBC AB4T7G	06/06/2018	06/06/2019
C	Professional Liability Retroactive Date: 10/01/2001	N	N	NJA329730A	12/31/2017	12/31/2018	\$2,000,000 per claim/\$2,000,000 aggregate \$25,000 deductible

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

CERTIFICATE HOLDER**CANCELLATION**

Proof of Insurance	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

ACORD 25 (2010/05)

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CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
October 17, 2019

AGENDA TOPIC: 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.

DATE: October 17, 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.

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 first 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.



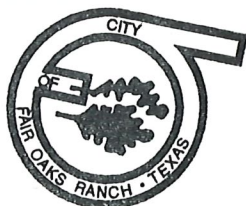
Mayor Pro Tem

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.



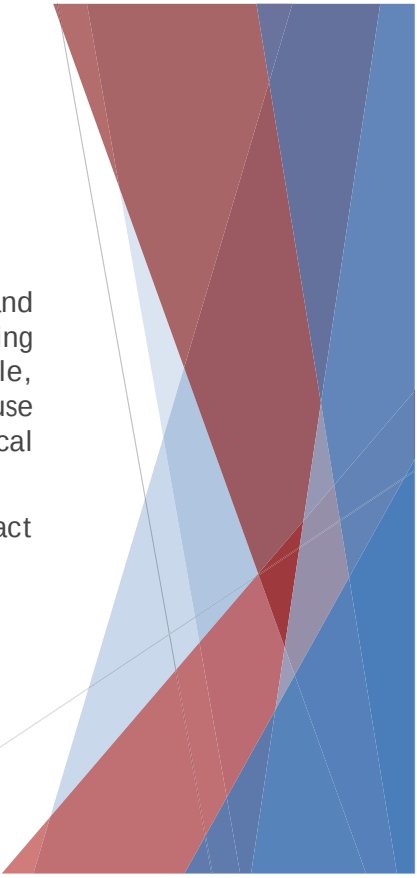
Municipal Regulation of Door to Door Solicitation

T.Daniel Santee

Partner

Denton Navarro Rocha Bernal & Zech P.C.

Why regulate peddlers, solicitors or transient merchants

- ▶ Peddlers, solicitors, and transient merchants can provide benefits and challenges to cities and their residents. They provide an opportunity to bring interested parties (such as buyers and sellers, or donors and charitable, religious or nonprofit organizations) together. However, they can also cause problems not typically associated with permanently established local businesses.
 - ▶ Bad experiences can lead disgruntled home and business owners to contact their local officials demanding relief, including:
 - ▶ Protection from fraud, scam artists, and other unwanted intrusions.
 - ▶ Prevention of crimes and unlawful activities.
 - ▶ A direct city response to their uneasiness and need for safety in the community
- 

Classifications

- ▶ State and local governments have used different terms to describe individuals who travel city-to-city or door-to-door offering products and services for sale, or expressing ideological and religious beliefs. Among the most commonly used names for those participating in these general practices include:
 - ▶ Peddlers
 - ▶ Solicitors
 - ▶ Itinerant Vendors
 - ▶ Canvasser
- ▶ Despite the use of these various terms for generally similar practices, there are fundamental differences in actual operations that affect a local government's ability to regulate a particular type of activity

Peddlers

- ▶ A peddler is generally described as someone who:
 - ▶ Travels about from place to place with no fixed place of business.
 - ▶ Carries the actual merchandise offered for sale, not merely samples of such products.
 - ▶ Sells the merchandise at the time it is offered for sale.
 - ▶ Delivers the merchandise at the time the sale is consummated.
 - ▶ Sells to the ultimate consumer and not to a retail establishment for an expected resale of the merchandise.
- ▶ Cities generally have the authority to either license or register peddlers who wish to operate within the city's jurisdiction.
- ▶ The licensing or regulation of peddlers usually does not raise constitutional concerns under the Commerce Clause because both product delivery and payment occur during the initial interaction

Solicitors

- ▶ A solicitor also engages in door-to-door activities. However, unlike a peddler, a merchant solicitor goes from place to place and only obtains orders for goods or services that will be delivered or performed at a later date. Solicitors do not carry the merchandise they are offering for sale with them
- ▶ The major restriction on local licensing of solicitors is the Commerce Clause of the U.S. Constitution
- ▶ A municipal ordinance requiring all solicitors, including interstate merchants, to simply register with local authorities before engaging in their business activities is likely a reasonable local regulation of interstate commerce

Canvasser

- ▶ Canvassing refers to the practice of going from location to location with the primary purpose of furthering religious, social, or political advocacy. Unlike solicitors, financial profit is not the canvassers' primary motivation.
- ▶ If the activity is pure advocacy (the expression of one's views or religious principles), a local unit of government cannot impose a prior restraint, such as obtaining a license or registration before engaging in the activity
- ▶ A canvasser may:
 - ▶ Ask for signatures on a petition.
 - ▶ Request support for a political candidate or position.
 - ▶ Espouse religious beliefs or causes.
 - ▶ Seek donations, organization memberships, or other financial support for their religious, social, or political organizations.
 - ▶ Take 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

Itinerant Vendor/Transient Merchant

- ▶ An itinerant vendor/transient merchant is someone who demonstrates the traits of both a peddler and the typical permanent business. Itinerant vendors are regulated under state law as far as sales in the right of way.
- ▶ An itinerant vendor/transient merchant is:
 - ▶ Any person, individual, partnership, limited liability company, or corporation.
 - ▶ That sells goods, wares, or merchandise.
 - ▶ From a vehicle, portable shelter, vacant building, structure, lot, or railroad car.
 - ▶ With the intent to remain in business at any one location for a limited period of time, usually no more than a few weeks

The Nature of the Business

- ▶ In addition to categorizing conduct as peddling, soliciting, or transient merchant sales, these activities also need to be evaluated as to whether they are commercial or non-commercial in nature
 - ▶ The resident, unbothered when non-profits ring the doorbell selling candy bars, but infuriated when a vacuum salesperson comes calling.
 - ▶ The resident, who doesn't mind the vacuum salesperson who maintains an office on Main Street, but doesn't want to be disturbed by similar salespersons who live and work in another city, county, or state
 - ▶ The resident who pretends to be out whenever a member of a particular religious group knocks on the door, just wanting to talk about their beliefs, but opens her door when the parish priest or pastor stops by seeking donations for the church's latest initiative

Regulations

- ▶ The government's interest in regulating door-to-door and transient merchant activities is generally two-fold:
 - ▶ 1) To ensure residents' privacy rights in their homes; and
 - ▶ 2) To protect residents from fraud and other crimes
- ▶ Regulations take different forms, from elaborate licensing schemes, to more simple requirements such as registering with the police department and agreeing to abide by time, place, and manner restrictions.
 - ▶ Content neutral. (A city generally cannot target or treat individuals differently because of who they are or for their particular message).
 - ▶ Narrowly tailored to serve the government's interest.
 - ▶ Open for alternative methods for the same or similar communications to occur.

Time, place, and manner

- ▶ Cities have some discretion in regulating the time, place, and manner in which peddlers, solicitors, and transient merchants operate. If a restriction is not content-based, a city may impose reasonable restrictions. The city's discretion is not, however, absolute.
- ▶ Local restrictions are generally reviewed by the courts using a test that has been defined as intermediate scrutiny (Is an important governmental interest furthered substantially by the regulation used?)
- ▶ However if the restriction is not content neutral (i.e., only applies to a particular group or specific activity), it will be subject to a more stringent test known as strict scrutiny (Is there a compelling governmental interest? Is the regulation narrowly tailored to achieve that interest? Is that regulation the least restrictive way possible to accomplish that goal?)

Time

- ▶ City regulations often include restrictions that limit the time during which door-to-door activities may occur.
- ▶ For instance, regulations often prohibit uninvited calls that are too early in the morning or too late at night.
- ▶ As with all regulations, time restrictions must be reasonable, affording peddlers and solicitors a reasonable period of time for their activities.
- ▶ Time restrictions should be content neutral (applying to all door-to-door calls and narrowly tailored to fit the city's interests).
- ▶ A city must be careful not to be so restrictive when establishing permissible hours that the average working person would never be home or available.

Place

- ▶ Cities can establish provisions that prohibit peddlers and transient merchants from conducting their operations at locations that would be harmful to the community.
- ▶ A common example of a place regulation would be reasonable location restrictions that prevent traffic hazards or interference with movement on streets and sidewalks.

Manner

- ▶ Cities can also provide reasonable prohibitions on the manner or techniques used by peddlers, solicitors, and transient merchants. Common examples of manner regulations would be to prohibit or restrict the use of:
 - ▶ Whistles.
 - ▶ Air horns.
 - ▶ Megaphones.
 - ▶ Amplifiers.
 - ▶ Other loud noise devices.
 - ▶ Flashing or strobe lights.
 - ▶ Other devices that may be used to attract attention to the merchant, yet would have a demonstrable negative impact on the health, safety, and welfare of the community

Alternative methods - door hangers

- ▶ Not all transient merchant activities include face-to-face interactions. An example of “alternative” activities is leaving donation request forms, restaurant menus, or other order forms on a residence’s doorknob or on the windshield of a vehicle
- ▶ If there is no actual contact with the homeowner, common concerns with solicitors and peddlers (invasion of privacy, fraud, or criminal activity) and the justifications for city regulations diminish
- ▶ The use of door hangers or other leaflets would trigger a city’s authority in regard to regulating the amount of garbage accumulating on city streets and sidewalks
- ▶ One remedy allows citizens to themselves indicate whether they are willing to entertain these merchants at their residences by posting a sign indicating if they do not want to be disturbed

Licensing—authority

- ▶ A license is a regulatory device used to ensure compliance with regulations governing a specific occupation, profession, commercial trade, or other activity.
- ▶ The authority to regulate includes the power to establish standards and minimum requirements for meeting those standards.
- ▶ Licensing is typically a formal process with an application, fee, and council or city administration determining whether the applicant meets all licensing requirements.
- ▶ Background checks are common
- ▶ Licensing is an exercise of police power (protecting and promoting the public welfare).

Constitutional implications

- ▶ Many municipal regulations have been struck down for violating constitutional protections. Most often, challenges to city peddler, solicitor, or transient merchant regulations are based on alleged violations of
 - ▶ Freedom of speech.
 - ▶ Equal protection.
 - ▶ Commerce Clause.
 - ▶ Freedom of religion
- ▶ Because concerns over these and other constitutional rights are often raised by local regulation of peddlers, solicitors, and transient merchants, courts must balance the rights of these individuals against the government's interests to protect the citizens' rights to privacy, prevention of crimes, and avoidance of frauds

Freedom of speech

- ▶ The First Amendment provides that communications are generally protected from censorship by the government.
- ▶ Social, political, and religious door-to-door canvassing that does not involve the solicitation of money or the sale of goods (a commercial purpose) is among the most protected activities under the First Amendment
- ▶ Commercial speech is also provided with limited protections; protections “commensurate with its subordinate position in the scale of First Amendment values.”
- ▶ This allows for some governmental regulations that would not be permitted if noncommercial speech was involved.

Prior restraint

- ▶ A prior restraint is a government attempt, either through a total ban or as a consequence of local licensing, to suppress communications before they can reach the general public
- ▶ Concerns with prior restraint are demonstrated by the situation where a government official is provided absolute discretion in granting or denying a permit and, ultimately, whether the speech is allowed to occur
- ▶ To avoid claims of unbridled restraint and violations of the individual's (or organization's) freedom of speech, the local ordinance must:
 - ▶ Contain narrow, objective, and definite standards used to guide the licensing authority.
 - ▶ Provide limits on the time within which the licensing authority has to make its determination

Commercial speech

- ▶ Commercial speech typically does no more than propose a business transaction.
- ▶ As distinguished from religious, political, or social speech, where the dialogue may include the sharing of a viewpoint on an issue, commercial forms of expression generally relate to economic interests.
- ▶ Limited First Amendment protections have been extended to speech that “does no more than propose a commercial transaction.”
- ▶ Regulations on commercial speech are subject to a four-part test

Commercial speech

- ▶ Is the proposed activity protected by the First Amendment to the extent that it concerns lawful activity and is not misleading?
 - ▶ The First Amendment does not protect false or misleading commercial speech.
- ▶ Are the asserted governmental interests substantial?
 - ▶ A local government's interests in privacy, crime prevention, and fraud are usually considered sufficient “substantial interests.”
- ▶ Does the regulation directly advance the asserted governmental interests?
 - ▶ If the purpose of the regulation is to prohibit fraud, there must be a link between that regulation and the prevention of fraud, not mere happenstance.
- ▶ Is the regulation not more extensive than necessary to serve those interests?
 - ▶ While court decisions indicate use of the least restrictive means to achieve the government's interest, the absolutely least severe restriction possible is not required.

Non-commercial speech

- ▶ Non-commercial speech occurs in many forms
- ▶ Often, it is the exercise of First Amendment rights by sharing religious or political information during doorstep conversations or distributing door hangers, flyers, and other written materials
- ▶ Cities generally cannot require all religious, social, or political solicitors to obtain a license or register when the primary purpose behind their activities is to share a viewpoint
- ▶ Despite the ideological or constitutional differences between commercial and non-commercial conduct, many homeowners don't value or draw such distinctions
- ▶ A person who does not want to be disturbed by salespeople may also find charitable canvassing a nuisance
- ▶ Regulations that apply to non-commercial door-to-door solicitations must be narrowly drafted to meet the legitimate interests of the city and not significantly prohibit otherwise protected activities

Equal protection

- ▶ Equal protection concerns arise when:
 - ▶ Local regulations treat in-state ("locals") different than out-of-state merchants.
 - ▶ City-based merchants are treated differently than other in-state businesspeople.
 - ▶ Within general definitions for peddlers, solicitors, or transient merchants, groups of merchants are distinguished from one another.
 - ▶ Local regulations specifically allow the door-to-door or transient sale of one type of product or service, but prohibit the similar sale of another

Commerce Clause

- ▶ The Commerce Clause prohibits state and local laws that promote local economic protection
- ▶ An ordinance may establish local protectionism because of either a discriminatory purpose or discriminatory effect
- ▶ The U.S. Supreme Court has invalidated regulations that:
 - ▶ Required only nonresident merchants to obtain licenses.
 - ▶ Charged higher fees to nonresidents.
 - ▶ Prohibited merchants from using nonresidents as salespersons

Freedom of religion

- ▶ Cities are prohibited from even registering individuals going from place to place to exercise their constitutional rights to freedom of speech and freedom of religion
- ▶ In one case, the city required all solicitors to register and obtain a permit from the mayor's office before entering private property to promote any cause. The Court held that a licensing requirement for social, political, and religious door-to-door canvassing would inhibit the free exercise of a person's right to express ideas or solicit support anonymously or spontaneously
- ▶ City regulations must be narrowly tailored to meet their purpose of protecting city residents from crimes and fraud but cannot overreach and significantly burden noncommercial solicitors and their advocacy
- ▶ City regulations—requiring licensing, permitting, or registration for the dissemination of ideas—will be considered inherently suspect

QUESTIONS?

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