

CITY OF FREDERICKSBURG CITY COUNCIL MEETING

WEDNESDAY, July 5, 2017 ~ 6:00 p.m.

Law Enforcement Center ~ 1601 East Main Street

Linda Langerhans, Mayor
Charlie Kiehne, Council Member
Jerry Luckenbach, Council Member

Gary Neffendorf, Council Member
Bobby Watson, Council Member
Kent Myers, City Manager

(REQUEST ALL PAGERS AND PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL)

A G E N D A

CALL TO ORDER

PLEDGE OF ALLEGIANCE

Page Ref

1. EMPLOYEE RECOGNITIONS

2. **MINUTES** - Approve minutes of May 2017 Meetings 1-10

3. PUBLIC HEARING

- A. Public Hearing - 2018 Budget 11-12

4. ORDINANCES - RESOLUTIONS- ACTION ITEMS

- A. Consider Revisions to Historic Preservation Ordinance - 1st Reading 13-42

5. INDIVIDUAL ITEMS FOR CONSIDERATION AND POSSIBLE ACTION

- A. Receive Presentation and Consider 5 Year Capital Improvements Plan (CIP) 43-44
B. Receive Presentation - Tennis Association 45-47
C. Consider Revised Plans for Oakcrest Sports Park 48-51
D. Discussion of Fee Waivers for Affordable Housing 52-63
E. Consider Approval of Engagement Letter and Reimbursement Agreement for Legal Services Related to Hotel/Conference Center Project 64-85
F. Consider Approval of Bids for Pump Station 86-90

6. CITY MANAGERS REPORT

- A. Update on 2018 City Budget
B. Update on Community Visioning Process
C. July 6th Special City Council Meeting
D. July 10th Special City Council Meeting
E. July 11th Special City Council Meeting
F. July 26th Special City Council Meeting

7. ITEMS FOR FUTURE AGENDAS

8. **PUBLIC COMMENTS** - *This time is for citizens to address the City Council on issues and items of concern not on this agenda. There will be no City Council action at this time.*

9. **COUNCIL COMMENTS** - No discussion or action may take place

10. ADJOURN

**STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG**

**SPECIAL CITY COUNCIL MEETING
MAY 1, 2017
NOON**

On this the 1ST day of May, the City Council of the CITY OF FREDERICKSBURG convened in special session at City Hall, with the following members present to constitute a quorum:

LINDA LANGERHANS - MAYOR
GARY NEFFENDORF - COUNCIL MEMBER
GRAHAM PEARSON - COUNCIL MEMBER
BOBBY WATSON - COUNCIL MEMBER
CHARLIE KIEHNE - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
CLINTON BAILEY – ACM/DPWU
BRIAN JORDAN – DIR OF DEVELOPMENT SERVICES

DOWNTOWN PARKING STUDY – Council held a lengthy discussion of the Downtown Parking Study; no action was taken.

With no further discussion, Council Member Watson made a motion to adjourn the meeting at 1:30 PM. Council Member Neffendorf seconded the motion. Motion carried.

PASSED AND APPROVED this the 5th day of July, 2017.

SHELLEY BRITTON, CITY SECRETARY

LINDA LANGERHANS, MAYOR

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**STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG**

**REGULAR CITY COUNCIL MEETING
MAY 1, 2017
6:00 PM**

On this the 1st day of May, 2017, the City Council of the CITY OF FREDERICKSBURG convened in regular session at the Law Enforcement Center, with the following members present to constitute a quorum:

LINDA LANGERHANS - MAYOR
BOBBY WATSON - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER
GRAHAM PEARSON – COUNCIL MEMBER
JERRY LUCKENBACH - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT:

KENT MYERS - CITY MANAGER
SHELLEY BRITTON - CITY SECRETARY
PAT McGOWAN - CITY ATTORNEY
CLINTON BAILEY – A.C.M./D.P.W.U.
BRIAN JORDAN – DIR OF DEVELOPMENT SERVICES
RUSSELL IMMEL – IT MANAGER
LAURA HOLLENBEAK – DIR OF FINANCE

The meeting was called to order at 6:00 PM following the Pledge of Allegiance.

EMPLOYEE RECOGNITIONS – The City Manager recognized Fire/EMS employees as well as Scott Allen from the Fredericksburg Standard for his recent award.

CONSENT AGENDA - It was moved by Council Member Watson, seconded by Council Member Kiehne, to approve the consent agenda as follows:

- Abandonment of Sewer Line Easement
- Ft. Martin Scott Advisory Board Appointment
- Purchase of Portable Generator
- Resolution for Historic Preservation Month
- Interlocal Agreement and Board Resolution to Join TIPS Program

All voted in favor; motion carried.

ANNUAL AUDIT REPORT – CPA Patrick Klein presented an “unmodified, clean opinion”, the highest possible rating, for the 2016 fiscal year. It was moved by Council Member Pearson, seconded by Council Member Watson, to accept the report as presented. All voted in favor and the motion carried.

KAYAKING CONTRACT – It was moved by Council Member Pearson, seconded by Council Member Watson, to approve the contract with Hill Country Outdoor Sports for non-motorized watercraft concessions at Lady Birds Johnson Park from Memorial Day weekend through Labor Day weekend. All voted in favor and the motion carried.

CITY MANAGER’S REPORT - City Manager’s Report included (1) April 24 Council Retreat Follow-Up Items, (2) Regulation of Bed & Breakfast Establishments, and (3) Highway 290 Meeting.

PUBLIC COMMENTS – Tom Musselman commented on the sale of land to the county.

COUNCIL COMMENTS – Councilman Pearson also commented on the sale of land to the county, and the PCAA summers concerts. Charlie Kiehne commented on the Wings Over the Hills event.

EXECUTIVE SESSION - It was moved by Council Member Neffendorf, seconded by Council Member Watson, to recess the regular session and go into Executive Session at 6:55 PM. All voted

in favor and the motion carried. At 9:13 PM, it was moved by Council Member Watson, seconded by Council Member Pearson, to adjourn the Executive Session and reconvene the regular session. All voted in favor and the motion carried.

Following Executive Session, the following action was taken:

SALE OF CITY OWNED LAND TO GILLESPIE COUNTY – No action taken.

HOTEL CONFERENCE CENTER PROJECT – PHASE 2 – It was moved by Council Member Watson, seconded by Council Member Luckenbach, to approve Murphree and Company, Inc. for Phase 2 of the Hotel Conference Centre Project. All voted in favor and the motion carried.

With no further discussion, Council Member Pearson made a motion to adjourn the meeting at 7:45 PM. Council Member Watson seconded the motion. Motion carried.

PASSED AND APPROVED this the 5th day of July, 2016.

SHELLEY BRITTON, CITY SECRETARY

LINDA LANGERHANS, MAYOR

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**STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG**

**REGULAR CITY COUNCIL MEETING
MAY 15, 2017
6:00 PM**

On this the 15th day of May, 2017, the City Council of the CITY OF FREDERICKSBURG convened in regular session at the Law Enforcement Center, with the following members present to constitute a quorum:

LINDA LANGERHANS - MAYOR
BOBBY WATSON - COUNCIL MEMBER
GARY NEFFENDORF - COUNCIL MEMBER
CHARLIE KIEHNE - COUNCIL MEMBER
JERRY LUCKENBACH - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
CLINTON BAILEY – ACM/D.P.W.U.
SHELLEY BRITTON - CITY SECRETARY
PAT McGOWAN - CITY ATTORNEY
BRIAN JORDAN – DIR OF DEVELOPMENT SERVICES
LAURA HOLLENBEAK – DIR OF FINANCE
RUSSELL IMMEL – IT MANAGER
STEVE WETZ – POLICE CHIEF

The meeting was called to order at 6:00 PM., followed by the Pledge of Allegiance.

PUBLIC HEARING Z-1702 BY PARKER ATKINS FOR A LAND USE PLAN CHANGE FROM LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL ON APPROX. 24.8 ACRES LOCATED ON THE WEST SIDE OF SMOKEHOUSE RD., NORTH OF THE EXTENSION OF WINDCREST DR. AND TO ESTABLISH R-2 MIXED RESIDENTIAL ZONING ON SAID PROPERTY – It was moved by Council Member Luckenbach, seconded by Council Member Watson, to recess the regular session and open a public hearing on Z-1702 by Parker Atkins for a Land Use Plan Change from Low Density Residential to Medium Density Residential on approx. 24.8 acres, located on the West Side of Smokehouse Rd., North of the Extension of Windcrest Dr. and to establish R-2 Mixed Residential Zoning on said property. All voted in favor and the motion carried.

Council received comments from the following: Marlene Pylate, Ken Carsey, Hugh Jons, Priscilla Murphy, Helen Usener, Stephen Harris, David Pedregon, Suzie Thompson, Jill Elliott, Jim Roeder, Troy Sifford, Danny Elliott, Tim Squyres, Eleizabeth Loggie, Ivy Lozano, Laura Rice, Jerry Smith, Jody Yonki, and Larry Adhrens

Following a lengthy discussion, it was moved by Council Member Luckenbach, seconded by Council Member Neffendorf, to adjourn the public hearing and reconvene the regular session. All voted in favor and the motion carried.

RECOMMENDATION ON Z-1702 – No action was taken.

CONSENT AGENDA - It was moved by Council Member Neffendorf, seconded by Council Member Watson, to approve the consent agenda as follows:

- Appointment of New CVB Board Member
- Performance Agreement for Keller Subdivision Lot 2R-PT

All voted in favor; motion carried.

REVISIONS TO SOUND ORDINANCE – It was moved by Council Member Luckenbach, seconded by Council Member Watson, to approve the 2nd reading of the revisions to the Sound Ordinance, along with the changes submitted. The vote was as follows: AYE: Neffendorf, Luckenbach, Watson, and Kiehne; NAY: Langerhans. Motion carried.

ORDINANCE NO. 27-006

AN ORDINANCE AMENDING, RESTATING AND ADDING SECTIONS TO CHAPTER 20 SECTIONS 20-207 THROUGH 20-213 (SOUND ORDINANCE) OF THE CITY OF FREDERICKSBURG CODE OF ORDINANCES TO PROVIDE DEFINITIONS, PROHIBITIONS, PROVISIONS WITH REGARD TO NOISY ANIMALS AND BIRDS, METHODS OF SOUND MEASUREMENT, PERMITS FOR CONSTRUCTION OR USE OF TOOLS, EQUIPMENT, EXEMPTIONS AND DEFENSES, PENALTIES, SUNSET, AND AMENDMENT TO APPENDIX A ESTABLISHING A PERMIT FEE, PROVIDING FOR

SEVERABILITY, REPEAL, PENALTIES AND AN EFFECTIVE DATE. (Recorded in Ordinance Book)

COUNCIL POLICY STATEMENT – WORKFORCE HOUSING – It was moved by Council Member Neffendorf, seconded by Council Member Watson, to approve the Policy Statement Regarding Workforce Housing as presented. All voted in favor and the motion carried.

CITY OF FREDERICKSBURG
WORKFORCE HOUSING POLICY STATEMENT

General Statement

The City of Fredericksburg has identified the need for additional workforce housing as an important community issue that requires a combined effort by both the public sector and the private sector. We have determined that the failure to address this issue in the near future will cause a negative impact on the local economy and community growth. With this in mind, the City wants to take an active role in facilitating and encouraging the development of quality workforce housing that fits into the overall character of the community.

City Assistance

The City understands that, due to land prices and other factors, developers may need assistance from the City in order to develop housing that is affordable to our local workforce. This assistance may include incentives such as the waiver of building permit fees and construction of infrastructure such as electrical, water, wastewater and street improvements. The types of workforce housing developments that qualify for waiver of City permit fees are defined by a separate City ordinance.

The City Council will consider requests for assistance with the development of infrastructure on an individual project by project basis. This consideration will be based upon a number of different factors including, but not limited to, the following:

1. Financial status of the City and its capability to finance the requested improvements.
2. Number of units provided by the project.
3. Projected monthly rents or sales prices for units.
4. Location of the project including proximity to major work sites.
5. Benefits provided by improvements to other adjacent properties.
6. Total cost of the improvements.

All requests for City assistance should be submitted in writing to the City Manager for the City of Fredericksburg. City staff will evaluate each proposal including the estimated costs and provide a recommendation to the City Council.

Passed and approved by the City Council on May 15, 2017.

RESOLUTION APPROVING SUBMISSION OF SIDEWALK GRANT APPLICATION -

It was moved by Council Member Watson, seconded by Council Member Neffendorf, to approve the submission of an Sidewalk Grant Application. The vote was as follows: AYE: Langerhans, Neffendorf, Kiehne, Luckenbach, and Watson; NAY: None. Motion carried.

RESOLUTION
CITY OF FREDERICKSBURG

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS, AUTHORIZING AND DIRECTING THE CITY MANAGER TO APPLY FOR THE TRANSPORTATION ALTERNATIVES SET-ASIDE (TA SET-ASIDE) PROGRAM; FINDING AND DETERMINING THAT THE

MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the Texas Department of Transportation's (TxDOT) Public Transportation Division administers federal grant programs including Federal Highway Administration (FHWA) grants relating to TxDOT's Bicycle and Pedestrian Program and Federal Transit Administration (FTA) grants for transit in Texas; and

WHEREAS, TxDOT has announced a statewide call for projects under its TA Set-Aside Program for population areas of 200,000 or less; and

WHEREAS, eligible project activities are limited to pedestrian and bicycle infrastructure projects, infrastructure projects for non-driver access to public transportation, projects that enhance mobility, and Safe Routes to School infrastructure projects; and

WHEREAS, the TA Set-Aside Program reimburses up to 80% of eligible construction expenditures for selected projects; and

WHEREAS, the Fredericksburg City Council, having already committed to improving sidewalk conditions throughout the City as part of the annual Citywide and Main St. Sidewalk Improvement Programs, finds it in the best interest of the citizens of Fredericksburg to apply for funding for eligible projects through the TA Set-Aside Program; and

WHEREAS, the City of Fredericksburg supports funding this project as described in the 2017 TA Set-Aside Nomination Form (including the construction budget, the department's 15% administrative cost, and the required local match) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing; and

WHEREAS, the City of Fredericksburg is willing and able to enter into an agreement with the department by resolution or ordinance, should the project be selected for funding; and

WHEREAS, the Fredericksburg City Council designates the City Manager as the grantee's authorized official.

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

1. The Fredericksburg City Council authorizes and directs the City Manager to apply for the TA Set-Aside Program. The authorized official is given the power to apply for, accept, reject, alter, or terminate the grant on behalf of the applicant agency.
2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that the public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED this, the 15th day of May, 2017.

THE CITY OF FREDERICKSBURG, TEXAS

/s/ Linda Langerhans, Mayor
City of Fredericksburg

ATTEST: /s/ Shelley Britton, City Secretary
City of Fredericksburg

**RESOLUTION APPROVING SUBMISSION OF APPLICATION FOR DESIGNATION
AS AN INTERNATIONAL DARK SKY COMMUNITY**

– It was moved by Council Member Watson, seconded by Council Member Neffendorf, to approve the submission of an application for designation as an International Dark Sky Community. The vote was as follows: AYE: Langerhans, Neffendorf, Kiehne, Luckenbach, and Watson; NAY: None. Motion carried.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG
SUPPORTING THE APPLICATION TO THE INTERNATIONAL DARK-SKY ASSOCIATION
FOR DESIGNATION AS AN INTERNATIONAL DARK SKY
COMMUNITY**

Whereas, the residents of the City of Fredericksburg recognize the importance of a clear view of the starry night skies as part of our rural heritage and of the breathtaking natural beauty of the Fredericksburg area; and

Whereas, the influx of people into the region and accompanying light trespass from area lighting fixtures has been steadily on the rise, and these factors have impacted the natural environment and quality of life of the people of this region; and

Whereas, the historical view of the night skies has been eroding in many nearby areas and generations are growing up with limited, if any, view of the wonders of the universe; and

Whereas, several Hill Country communities and parks have received International Dark Skies distinctions, including Enchanted Rock State Natural Area, South Llano State Park, and Dripping Springs; and

Whereas, preserving the rich historic heritage that is embodied in the starry night skies of Fredericksburg is a significant part of preserving our history and enhancing tourism; and

Whereas, the City of Fredericksburg, has shown its commitment to supporting practices that limit or minimize light trespass from night lighting fixtures in order to protect the beauty of the night skies by adopting the Resolution Supporting the Preservation of our Night Skies, on March 18, 2013 (the Resolution); and

Whereas, the City of Fredericksburg has continued in its commitment to protect the beauty of the night skies by enacting an outdoor lighting ordinance in August 2014 at Ord. No. 24-014, 8-18-2014 (the Outdoor Lighting Ordinance);

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

1. The City Council of the City of Fredericksburg continues to support the use of outdoor lighting fixtures and practices that preserve and restore our historic starry night skies as described in the Resolution and as reflected in the Outdoor Lighting Ordinance.

2. The City Council of the City of Fredericksburg supports the application to the International Dark-Sky Association for the City of Fredericksburg to obtain the designation as an International Dark Sky Community.

PASSED AND APPROVED THIS 15th OF MAY, 2017, BY THE CITY OF FREDERICKSBURG CITY COUNCIL.

/s/ Linda Langerhans, Mayor

City of Fredericksburg

/s/ Gary Neffendorf, Council Member

/s/ Bobby Watson, Council Member

/s/ Charlie Kiehne, Council Member

/s/ Jerry Luckenbach, Council Member

ATTEST: /s/ Shelley Britton, City Secretary

MID YEAR BUDGET REPORT – The Mid-Year Budget Report was presented; no action was taken.

CHANGE MONDAY JULY 3 MEETING TO WEDNESDAY JULY 5 – Due to the July 4th Holiday, it was moved by Council Member Watson, seconded by Council Member Kiehne, to change the Monday July 3 meeting to Wednesday July 5. All voted in favor and the motion carried.

CITY MANAGER'S REPORT – City Manager Kent Myers reported on (1) Community-wide Visioning Process, (2) Hotel Conference Center, (3) 2018 Budget Process, and (4) Future City Annexations.

PUBLIC COMMENTS – None.

COUNCIL COMMENTS – None.

EXECUTIVE SESSION - It was moved by Council Member Luckenbach, seconded by Council Member Watson, to recess the regular session and go into Executive Session at 8:00 PM. All voted in favor and the motion carried. At 8:55 PM, it was moved by Council Member Watson, seconded by Council Member Kiehne, to adjourn the Executive Session and reconvene the regular session. All voted in favor and the motion carried.

Following Executive Session, the following action was taken:

SALE OF CITY OWNED LAND TO GILLESPIE COUNTY – It was moved by Council Member Neffendorf, seconded by Council Member Watson, to approve the sale of approximately 10 acres of land off the southwest part of the 52.23 acres recently acquired from the Ham Estate, for a total price of \$653,400.00. The vote was as follows: AYE: Langerhans, Neffendorf, Kiehne, Luckenbach, and Watson; NAY: None. Motion carried.

MUNICIPAL JUDGE POSITION – No action taken.

With no further discussion, Council Member Kiehne made a motion to adjourn the meeting at 9:00 PM. Council Member Watson seconded the motion. Motion carried.

PASSED AND APPROVED this the 5th day of July, 2017.

SHELLEY BRITTON, CITY SECRETARY

LINDA LANGERHANS, MAYOR

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**STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG**

**SPECIAL CITY COUNCIL MEETING
MAY 24, 2017
4:00 PM**

On this the 24th day of May, the City Council of the CITY OF FREDERICKSBURG convened in special session at City Hall, with the following members present to constitute a quorum:

LINDA LANGERHANS - MAYOR
GARY NEFFENDORF - COUNCIL MEMBER
GRAHAM PEARSON - COUNCIL MEMBER
BOBBY WATSON - COUNCIL MEMBER
CHARLIE KIEHNE - COUNCIL MEMBER

ABSENT: NONE

ALSO PRESENT: KENT MYERS - CITY MANAGER
PAT McGOWAN – CITY ATTORNEY

EXECUTIVE SESSION - It was moved by Council Member Watson, seconded by Council Member Kiehne, to recess the regular session and go into Executive Session at 4:00 PM. All voted in favor and the motion carried. At 5:07 PM, it was moved by Council Member Watson, seconded by Council Member Luckenbach, to adjourn the Executive Session and reconvene the regular session. All voted in favor and the motion carried.

Following Executive Session, the following action was taken:

APPOINT NEW MUNICIPAL COURT JUDGE – Following interviews for Municipal Court Judge, it was moved by Council Member Luckenbach, seconded by Council Member Neffendorf, to appoint Terry Langehennig as Municipal Court Judge, at a salary of \$51,510.00. The vote was as follows: AYE: Langerhans, Neffendorf, and Luckenbach. NAY: Kiehne and Watson. Motion carried.

With no further discussion, Council Member Watson made a motion to adjourn the meeting at 5:10 PM. Council Member Neffendorf seconded the motion. Motion carried.

PASSED AND APPROVED this the 5th day of July, 2017.

SHELLEY BRITTON, CITY SECRETARY

LINDA LANGERHANS, MAYOR

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STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG

SPECIAL CITY COUNCIL MEETING
MAY 30, 2017
1:00 PM

On this the 30th day of May, the City Council of the CITY OF FREDERICKSBURG convened in special session at City Hall, with the following members present to constitute a quorum:

LINDA LANGERHANS - MAYOR
GRAHAM PEARSON - COUNCIL MEMBER
BOBBY WATSON - COUNCIL MEMBER
CHARLIE KIEHNE - COUNCIL MEMBER

ABSENT: GARY NEFFENDORF - COUNCIL MEMBER

ALSO PRESENT: KENT MYERS - CITY MANAGER
CLINTON BAILEY – ACM/DPWU
LAURA HOLLENBECK – DIR OF FINANCE

2018 BUDGET WORKSHOP – Council held a budget workshop, no action was taken.

With no further discussion, Council Member Watson made a motion to adjourn the meeting at 2:30 PM. Council Member Kiehne seconded the motion. Motion carried.

PASSED AND APPROVED this the 5th day of July, 2017.

SHELLEY BRITTON, CITY SECRETARY

LINDA LANGERHANS, MAYOR



CITY COUNCIL MEMO

DATE: June 27, 2017

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Budget Hearing

Summary:

The City has scheduled a public hearing on the 2018 City Budget at next Wednesday's Council meeting.

Recommendation:

It is recommended that the Council accept public comments on proposed changes to next year's City Budget.

Background / Analysis:

According to State law, the City is required to conduct a public hearing prior to the adoption of the City Budget. This public hearing will be held on August 21. This year the Council agreed to conduct an earlier public hearing that will provide local citizens the opportunity to comment on the City Budget prior to it being presented and discussed by the Council. At Wednesday's Council meeting we expect several local citizens will offer comments on changes that they would like to see to next year's budget in terms of City programs and services.

Attachments:



The City of Fredericksburg


Department Approval


City Manager Approval

12
The City of Fredericksburg



CITY COUNCIL MEMO

DATE: July 5, 2017

TO: Mayor and City Council

FROM: Anna Hudson, Historic Preservation Officer

SUBJECT: Adoption of amendments to Historic Preservation Ordinance

Summary:

The City of Fredericksburg hired its first Historic Preservation Officer (HPO) in February of 2017. The City Ordinance Chapter 23- Article III-Historic Preservation does not refer to a historic preservation officer, rather the building official, as the duties were handled by the building official until the creation of the historic preservation officer. While making changes formally creating the role of the HPO, it was determined that other changes should be made.

Recommendation:

The Historic Review Board made a recommendation of approval at their June 13, 2017, meeting. Staff also recommends approval of the proposed ordinance.

Background / Analysis:

The Historic Review Board's (HRB) duties and functions are defined in the historic preservation ordinance along with the role that City Staff has in protecting historic properties in the City of Fredericksburg. Now that a full time employee is dedicated to historic preservation the city ordinance needs to reflect the professional nature of the position. As a Certified Local Government the Texas Historical Commission

conducts reviews of the HRB and city staff. The THC staff has reviewed the proposed changes and made comments that were integrated into the proposed ordinance.

Attachments:

1. Summary of changes to the ordinance by section.
2. Proposed ordinance


Department Approval


City Manager Approval

MEMO

From: Anna Hudson, Historic Preservation Officer

To: City Council

Date: July 5, 2017

Subject: Proposed changes to City Ordinance Chapter 23, Article III – Historic Preservation

Summary

The City of Fredericksburg hired its first Historic Preservation Officer in February of 2017. The City Ordinance Chapter 23, Article III Historic Preservation does not refer to a historic preservation officer, rather the building official, as the duties were handled by the building official until the creation of the historic preservation officer.

The following is a summary of changes made by section:

Section 23-55 Definitions: expanded or added definition for “Administrative C of A”, “Appurtenance”, “Insignificant Alteration”

Section 23-56 explains duties of Historic Preservation Officer including ability to review all demolitions and building relocations, including those not currently designated historic, so as to be able to designate properties not previously identified in surveys.

Section 23-57 defines role HRB (moved from 23-56) clarifies that members must be eligible to vote in Gillespie County

Section 23-58 reformatted order

Section 23-59 added role of HPO

Section 23-60 clarified that HPO can issue Administrative C of A for insignificant alterations.

Section 23-61 changes from building official to HPO

Section 23-62 clarifies that HRB purview is for all exterior changes to historic resource, not just those visible from street.

Section 23-63 demolition – adds ability of HPO to review all demolitions and relocations to try to catch any significant properties that have not previously been designated. Adds requirement that replacements plans must be approved and ready for building permit before demolition permit of historic structure will be issued.

Former section 23-63 –Advisory Function of the board removed

Section 23-64 adds explanation of Economic Hardship requirements for demolition

Section 23-65 clarifies timeline for demo by neglect

Section 23-66 – changes appeal process to go through Board of Adjustment instead of City Council

Section 23-67 – Penalties and Enforcement – allows for Stop Work to be issued for unapproved work, sets for \$300 fee for work done without C of A, allows building permit to be revoked if work does not comply with C of A.

We are also proposing a place holder to create more specific guidelines for signage in the historic district.

Enclosed you will find a “clean” version of the proposed ordinance. The tracked-changes version had significant small edits which made the document difficult to read.

Respectfully Submitted for your approval,

Anna Hudson
Historic Preservation Officer; City of Fredericksburg

DRAFT FOR COUNCIL REVIEW

Ordinance No. _____

AN ORDINANCE AMENDING AND RESTATING THE HISTORIC PRESERVATION ORDINANCE OF THE CITY OF FREDERICKSBURG TO ADD THE POSITION OF HISTORIC PRESERVATION OFFICER; TO REMOVE CERTIFICATES OF REVIEW, TO BETTER DEFINE THE RECOURCES OF THE CITY WHICH ARE SUBJECT TO REVIEW, TO AMEND THE GENERAL DEFINITIONS, TO ESTABLISH A PROCEDURE FOR ORDINARY REPAIR AND MAINTENANCE, TO CLAIRFY THE ROLES OF THE CITY COUNCIL, THE HISTORIC REVIEW BOARD AND THE BORAD OF ADJUSTMENT, TO AMEND THE PROVISIONS REGARDING DEMOLITION, REMOVAL AND RELOCATION OF HISTORIC RESOURCES, TO AMEND THE APPEAL PROCESS, PROVIDE FOR APPLICATION FEES, PROVIDE FOR ENFORCEMENT, SEVERABILITY, REPEAL OF INCONSISTENT PROVISIONS, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Fredericksburg has determined that in order to establish the position of Historic Preservation Officer for the City of Fredericksburg and to better protect the City's historic resources, and in furtherance of the purposes outlined below, that the existing historic preservation ordinance of the City should be amended as follows; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG THAT THE FOLLOWING ORDINANCE BE AND IS HEREBY ENACTED AND THAT THE CODE OF ORDINANCES, CHAPTER 23, PLANNING ARTICLE III, HISTORIC PRESERVATION AND CHAPTER 5, BUILDINGS AND BUILDING REGULATION, ARTICLE III, SECTION 5-48. BUILDING PERMITS BE AMENDED AS FOLLOWS:

ARTICLE III. - HISTORIC PRESERVATION

Sec. 23-54. - Statement of purpose.

(a) The City of Fredericksburg, Texas (herein after called the "City") hereby recognizes it is known for its unique stone architecture, historic sites, collection of German pioneer Sunday houses, Victorian inspired homes, and thriving historic Marktplatz (Market Square) and downtown area.

(b) The City's unique qualities have proven to be increasingly attractive to residents, businesses, and tourists.

(c) As a matter of public policy, the City desires to preserve those aspects of the City which have historical, cultural, or architectural merit. Such preservation activities will promote the health, safety, prosperity, education, and general welfare of the people living in and visiting Fredericksburg.

(d) This historic preservation article is intended to achieve the following policy goals:

(1) Protect, enhance, and perpetuate historic landmarks which represent or reflect distinctive and important elements of the City's and state's architectural, landscape architectural, archeological, cultural, social, economic, ethnic and political history, and to develop appropriate settings for such places;

(2) Safeguard the City's historic and cultural heritage, as embodied and reflected in such historic landmarks by appropriate regulations;

(3) Stabilize and improve property values in such locations;

(4) Foster civic and cultural pride in the beauty and accomplishments of the past;

(5) Protect and enhance the City's attractions to tourists and visitors and provide incidental support and stimulus to business and industry;

(6) Strengthen the economy of the City;

(7) Promote the use of historic landmarks and historic landmark districts for the culture, prosperity, education, and general welfare of the people of the City and visitors to the City; and

(8) Provide a review process for the continued preservation and appropriate development of the City's historic resources.

• **Sec. 23-55. - Definitions.**

Administrative Certificate of Appropriateness. A document evidencing the approval of the Historic Preservation Officer, signed and dated by him or her for Insignificant Alterations of a Resource as further defined herein where approval for the same is required.

- *Appurtenance.* A feature related to a parcel of land or to a building, structure, object, site, or a related group thereof. The term includes, but is not limited to, buildings, structures, cisterns, barns, windmills, objects sites, landscaping features, walls, fences, light fixtures, steps, paving, sidewalks, shutters, awnings, and signs. An

appurtenance has the same rating as the main structure, unless the owner requests that individual ratings be given to each appurtenance. Such requests will be processed as an original application for a rating.

Certificate of appropriateness. A document evidencing the approval of the Historic Review Board signed and dated by the chairman of the Historic Review Board, or the Historic Preservation Officer, as applicable for the addition, installation, construction, alteration, change, restoration, removal, or demolition of any exterior architectural feature, resource or other significant appurtenance of any historic landmark or of any building or structure located within the Historic District to be issued in cases further defined in this article, where approval for the same is required.

Demolition. An act or process which destroys a site or structure in its entirety, or which destroys a part of a site or structure or Appurtenance and permanently impairs its structural, historic or architectural integrity.

Design guidelines for the City of Fredericksburg. Written guidelines adopted by the City Council in 1997, as the same may be amended from time to time without the necessity of re-adoption, as a reference and guide to provide information on appropriate methods for rehabilitation or restoration of historic resources.

Exterior architectural feature. The architectural style, design, general arrangement and components of all of the outer surfaces of a building or structure, or Appurtenance as distinguished from the interior surfaces enclosed by such outer surfaces. Exterior architectural features shall include, by way of example but not by limitation, the kind, color, texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures of such building, structure or Appurtenance.

Fredericksburg Historic Resource Survey. A comprehensive architectural survey of all properties within the City's historic district and adjoining areas, as updated in 2002; future amendments to the same shall be automatically included herein.

Historic district. An area of the City designated by the City council under subsection [23-58\(a\)](#) of this article, as having definable geographic boundaries, a significant concentration, linkage, or continuity of sites, buildings, or structures united historically or aesthetically by plan, appearance, or physical development. The designation "historic district" recognizes that the component Resources, being historic buildings, structures, accessory buildings, fences, or other appurtenances of the district are of basic and of vital importance for the preservation of culture and neighborhoods and economic development and promotion of tourism.

Historic landmark. A Resource which is an individual property (including its component parts as are regulated for properties in the Historic District) designated by the City council under subsection [23-58\(b\)](#) of this article, as having outstanding historical and cultural significance in the nation, region, or community. The designation "historic landmark" recognizes that the historic place, or the building(s), structure(s), accessory building(s), fences, or other appurtenances at the place are of basic and

vital importance for the preservation of culture and neighborhoods and economic development and promotion of tourism.

Historic Preservation Officer. The person who is appointed by the City to administer the provisions of this Article, or his or her designee.

Insignificant Alteration. Those activities which constitute minor alterations, additions, repairs or maintenance to any Resource include but are not limited to:

Ordinary repair and maintenance which is repairs, replacement or repainting using the same design and color and the same, or updated similar materials which match the original material as closely as possible, and which does not require structural alteration and, and the following exterior alterations:

replacement of a non-historic door with one in keeping with the character and era in which the home was built,

removal of extraneous non-historic features such as burglar bars, awnings, inappropriate shutters and the like,

restoration of original window openings, replacement of non-historic windows with those that match the original windows as closely as possible,

slight modification to exterior steps, walkways or stairways using same material or that which matches the original material as closely as possible,

reopening of porch,

addition of louvers and vents in if placed in an existing opening with no other exterior alteration needed,

removal of non-historic siding to expose historic siding materials,

removal of roofing and replacement with original material, changing color of roofing material if within the color guidelines

construction of rear addition under two hundred (200) square feet using same (non-historic) material as existing structure as well as existing roof ridgeline for low rated structures

changes to paint colors on previously painted surfaces or changes of fabric colors which are consistent with the color guidelines, removal of paint to expose original masonry

changes to landscape as follows: replacement of inappropriate fence or construction of new fence historically appropriate materials, design and color,

changes to sign content that involve no other changes,

new construction of ADA ramps, rear porches, decks, pools, fountains and other backyard amenities,

demolition of non-historic accessory structure, addition or carport that is made of non-historic materials

installation of temporary features to protect a historic resource or to weatherize or stabilize subject to formal approval within a reasonable time

installation of mechanical units, electrical or plumbing facilities or fixtures, antennas, rooftop HVAC, mechanical or communication equipment that is not visible from the public right-of-way and results in no modifications to the Resource

Preservation priority rating. Three-tier rating system used in the 2002 Fredericksburg Historic Resource Survey to evaluate all Resources (including components of properties) within, and adjoining to, the City's historic district. Ratings are based upon current determinations of architectural value and integrity and, if known, historical and cultural value, and may be altered from time to time as additional information is discovered or circumstances change. No rating shall be considered vested and the same may be established or changed at any time in accordance with subsections [23-58\(d\)](#) and 23-58 (e) below. Additionally, structures or properties may have more than one rating (e.g., the main structure may be high but an addition or Appurtenance may be medium or low):

- (1) *High rating.* The most significant Resources identified in the 2002 Fredericksburg Historic Resource Survey. These properties are considered to be outstanding, unique, or good examples of architecture, engineering, or design. Some are unique to the Fredericksburg area and are indicative of German-Texan vernacular forms and/or building techniques. Others are noteworthy examples of 19th and early 20th century architectural types, styles, and forms, erected using local building materials and construction technologies. Properties designated with a high rating are to be the most protected from alteration and demolition.
- (2) *Medium rating.* Resources that may or may not be identified as architecturally significant on an individual basis, but are nonetheless valuable resources that add to the historic district's overall character, and may be so ranked due to their or its proximity or contribution to the cultural, historic, architectural, or archeological character of the historic district or surrounding properties. These properties may have been moderately altered or are typical examples of a common architectural style or form, but generally retain their historic integrity to a good or moderate degree. Properties designated with a medium rating shall be protected from demolition and where possible will be required or encouraged to maintain or improve architectural features.
- (3) *Low rating.* Resources that minimally enhance the district's ability to convey a sense of time and place. These properties may be typical examples of more recent, common local building forms, architectural styles, or plan

types; be examples of distinctive building forms, architectural styles, or plan types that have been significantly altered; lack the necessary age to meet the usual 50 year threshold for possible National Register of Historic Places listing and do not appear to meet the National Register of Historic Places standard for exceptional significance for properties less than 50 years of age, but which nevertheless may have relative value within the historic district, meriting preservation. Properties or improvements with a low rating may be considered for relocation or demolition upon a determination by the Historic Review Board that the same can be accomplished with little or no consequence to the historical, cultural, architectural, or archeological character of the district or property.

Resource. A landmark, landmark site, and all land or water within a preservation district, together with the structures, Appurtenances and improvements, if any. The term Resource includes, but is not limited to, separate districts, buildings, structures, sites, objects, landscape features, and related groups thereof. In the event of a conflict between an address in the Fredericksburg Historic Resource Survey and its pictorial, the picture shall be used to identify the historic resource.

Secretary of the Interior's Standards for Rehabilitation. A set of ten basic philosophical principles created by the U.S. Secretary of the Interior and administered by the National Park Service, to help preserve the distinctive character of a historic building and its site, while allowing for reasonable change to meet new needs. The Standards for Rehabilitation are codified at 36 CFR 67, as the same may be amended from time to time.

Secretary of the Interior's Standards for the Treatment of Historic Properties with guidelines for preserving, rehabilitating, restoring, and reconstructing historic buildings. Basic philosophical principles (standards) and recommended actions and approaches (guidelines) developed by the U.S. Secretary of the Interior, for each of the four primary treatment options for historic properties: preservation, rehabilitation, restoration, and reconstruction. The Guidelines are meant to establish a model process to follow when planning for treatment, providing technical and design recommendations within a consistent philosophical context.

Standards for signs- additional Basic requirements and guidelines as are established in the Sign Ordinance for the City of Fredericksburg.

Unreasonable economic hardship. The inability of an owner to obtain a reasonable return or a reasonable beneficial use from a resource as required by the United States Supreme Court in *Penn Central Transportation Company vs. New York City*, 438 U.S. 104 (1978), and subsequent decisions, and as further defined by the provisions of Section 23-64 below.

- **Sec. 23-56 - Historic Preservation Officer.**

The city Historic Preservation Officer shall administer this article and shall advise the Historic Review Board on each application under this article that shall come before the Board. This person shall have expertise in archaeology, history, architectural history, historic preservation, city planning or a closely related field. The Historic Preservation Officer shall have the following powers and duties:

- (a) To coordinate the city's preservation activities with those of local, state and federal agencies and with local, state, and national preservation organizations in the private sector,
- (b) To recommend to the Historic Review Board buildings, objects, sites, structures, and districts for designation as landmarks or historic districts in accordance with the criteria established by this chapter,
- (c) To recommend to the Historic Review Board buildings, objects, sites, structures, and districts for nomination to the National Register of Historic Places. Such recommendations shall be guided by the criteria established in the National Historic Preservation Act of 1966, as amended,
- (d) To maintain and hold open for public inspection all records pertaining to the provisions of historic preservation regulations, and to keep a copy available for public viewing all historic district guidelines, Secretary of the Interior Standards, and any other guidelines. Public viewing may include available office of historic preservation website,
- (e) To review, approve or deny applications for relocation or demolition permits as set forth in Section 23-63 below.
- (f) To review plans for proposed development to assure that all necessary permits have been obtained from these federal, state or local government agencies from which prior approval is required as provided in this chapter for historic and design review,
- (g) To administratively review historic preservation applications and forms for completeness,
- (h) To approve administrative certificates of appropriateness,
- (i) To convene meetings of committees of the historic review Board, and
- (j) To provide orientations for all new members of the Board, and to provide other training as the Historic Preservation Officer deems appropriate. Board member are expected to participate in such orientation and training.

• **Sec. 23-57. - Historic Review Board.**

- (a) *Creation of Board.* There is hereby created a Historic Review Board of the City, hereinafter sometimes called the "Board," consisting of seven members and three alternates appointed by the City council.

- (b) *Term of appointment.* Each Board member and alternate shall be appointed for a term of three years, except that of the members of the first Board to be appointed, two shall be appointed to serve for two years, and two for one year. One alternate shall be appointed each year except for the year 2007, in which three alternates with staggered terms shall be appointed. The term shall expire on July 1 of the appropriate year. Any vacancy on the Board shall be filled by the City council for the remainder of the non-expired term. Any regular member of the Board who fails to attend at least 75 percent of all regular meetings of the Board within any 12-month period shall be removed from the Board, unless such failure to attend was the result of illness or other acceptable excuse as determined by the City council.
- (c) *Qualifications.* Each Board member and alternate shall be a resident of the City who is qualified to vote in City elections or a resident of Gillespie County, Texas, who owns real property located within the City's historic district or which is designated as a historic landmark and who is qualified to vote in Gillespie County elections.
- (d) *Composition.* The Board shall include at least one member of the Gillespie County Historical Society or Gillespie County Historical Commission. Not less than two Board members shall reside in or own, a historical landmark or reside in or own property within the historic district. Not less than one Board member shall have a license, degree, or professional experience in the field of architecture, architectural history, history, historic preservation or historic restoration. Alternates must have at least one of the previously stated attributes. All Board members and alternates shall be persons who, in the opinion of the City council, have demonstrated interest in and knowledge of the historical preservation of the City.
- (e) *Chairman and vice chairman of the Board.* The chairman and vice chairman of the Board shall be elected annually by a majority of the members of the Board, and shall serve a term of one year and until their successors are elected.
- (f) *Secretary of the Board.* The Historic Preservation Officer or his/her representative shall act as secretary of the Board and shall attend and keep the minutes of all meetings.
- (g) *Ex officio members.* The Historic Preservation officer and City Attorney or their representatives may serve on the Board as ex officio members. Ex officio members shall have no right to vote or count toward establishment of a quorum, but shall assist the Board in its various functions.

- (h) *Functions of the Board.* The Board shall review all applications proposing additions, alterations, changes, construction, demolition, or relocation within the historic district and historic landmarks. In addition:

(1) The Board shall grant or deny certificates of appropriateness contingent upon review according to the further provisions of this Article -

(2) The Board shall make recommendations to the City council regarding the designation or re-designation of Resources as historic landmarks or districts, or amendment or removal of such designation(s), and shall determine the preservation priority rating of each Resource subject to this article.

(3) The Board shall make an annual report to the City council on the state of historic preservation in the City and shall include in the report a summary of its activities for the past year and a proposed program for the next year.

(4) The Board shall have the further responsibility of recommending to the City council, planning and zoning commission, and City departments the adoption of policies, the source of funds, and designation of historic districts and historic landmarks that may further the City's preservation effort.

- (i) *Meetings.* The Board shall meet at least once a month at a regularly scheduled time. Special meetings may be called upon request of the chairman or vice chairman, or upon the written request of four members, or upon a notice from the Historic Preservation Officer that a matter requires the consideration of the Board. All meetings shall have advance notice posted in accordance with the Texas Open Meetings Act and shall be conducted in full compliance therewith. Four members, which may include one or more alternates, shall constitute a quorum and action taken at a meeting shall require the affirmative vote of a majority of the members present and voting at such meeting. Alternates shall not participate in constituting a quorum or in voting if all regular members of the Board are present, and then only so many of them as are necessary to constitute seven (designated by the Chairman) shall participate in any meeting or action of the Board.

- (j) The Board shall otherwise determine its own rules of procedure except as may be specifically set forth in this article.

- **Sec. 23-58. - Designation of historic districts, historic landmarks, and preservation priority rating.**

(a) *Historic districts.*

Historic district zoning designation. The City Council may, from time to time, after receiving a recommendation either for or against such designation by the Historic Review Board and Planning and Zoning Commission, designate certain areas in the City as historic districts, and define, amend, or eliminate the boundaries of same. Such districts shall bear the word "historic overlay" in their zoning designation. Such designation and the requirements thereof shall be in addition to any other zoning district designation or requirement established in the City's zoning ordinance and in this article. All zoning maps shall reflect the historic district by the letters "HO" as a suffix to the use designated. This area shall encompass the area shown on the map adopted herewith and on file in the office of the Historic Preservation Officer, as may be amended from time to time.

(b) *Historic landmarks.*

Historic landmark designation. The City council may, from time to time, designate individual property, part or parts thereof or a Resource thereon (Resources) in the City as historic landmarks. Each such property or Resource shall bear the words "historic landmark" (HL) in its zoning designation. Such designation shall indicate that such property/ Resource is subject to the terms of this article. Provided, however, with regard to site plans, uses, setbacks and other development and/or building regulations, such property shall be governed by its zoning district. Initially, the historic landmarks shall consist of the properties shown on the list adopted herewith and on file in the office of the Historic Preservation Officer as may be amended from time to time.

(c) *Criteria*

(1) *Historic district criteria.* In making the designation of an area as a historic district, the City council shall affirmatively find that the area has one or more of the following characteristics:

- A. Character, interest, or value as a part of the development, heritage, or cultural characteristics of the City;
- B. Location as the site of a significant historical event;
- C. Embodiment of distinctive characteristics of an architectural type or specimen;
- D. Relationship to other distinctive buildings, sites, districts, or structures which are historically significant;
- E. Unique location of singular physical characteristics representing an established and familiar visual feature of a neighborhood, community or the City;
- F. Value as an aspect of community sentiment or public pride;

G. Identification with a person or persons who significantly contributed to the development or culture of the City, the state or the nation;

H. Value as protective of a historical resource.

(2) *Historic landmark criteria.* In making the designation of a place as a historic landmark, the City council shall follow the criteria set forth in the historic district criteria subsection of this section as the same relate to an individual property, part of a property or Resource thereof.

(d) *Establishment of preservation priority rating.* At such time as a Resource/ property is either incorporated into the historic district or designated as a historic landmark, such Resource/property shall be rated high, medium, or low by the Board. The Board shall rate the same at its meeting considering the request or application and the Board's rating shall become effective at such time as the City Council either incorporates the Resource/ property or designates it as a historic landmark. Appeals of the rating (see 23-66 below) may occur only following incorporation into the historic district or following designation as a historic landmark, and shall follow the procedure set forth below. The burden of proof shall be upon the applicant seeking to change the rating.

(e) *Changes to district and landmarks*

(1) Districts. Changes to the same may be initiated by any person by request submitted to the Historic Review Board which will forward its recommendation to the Planning and Zoning Commission prior to the submittal to the City council. The Historic Review Board shall consider the request at a meeting held in accordance with the procedures set forth in subsection [23-61\(f\)](#) below. Upon forwarding of a recommendation to the Planning and Zoning Commission, the designation process will follow the procedures provided for in section 5.200 of the City's zoning ordinance, pertaining to hearing and action by the Planning and Zoning Commission and the City Council. Applications for changes in the boundaries of the historic district shall be on forms and shall contain the information required thereon as determined by the City's Historic Preservation Officer and shall be accompanied by the fee set forth in subsection [23-61\(c\)](#). An application initiated by the Historic Review Board or the City staff shall not require the payment of a fee.

(2) Landmarks. The designation of new historic landmarks or the removal of the designation may be initiated by any person by request submitted to the Historic Review Board which will forward its recommendation to the City Council. The Historic Review Board shall consider the request at a meeting held in accordance with the procedures set forth in subsection

[23-61](#)(f) below. The City Council shall consider the request at the next regular meeting of the City Council following the meeting of the historic review Board at which the request was heard. Applications for designation of or changes to historic landmarks shall be on forms and shall contain the information required thereon as determined by the Historic Preservation Officer, and shall be accompanied by the fee set forth in subsection [23-61](#)(c) unless initiated by the Historic Review Board or City staff.

Sec. 23-59. - Review required by Historic Review Board or Historic Preservation Officer.

(a) No person or entity shall install, construct, reconstruct, alter, change, restore, remove, or demolish any Resource, structure or exterior architectural feature or other significant appurtenance of any historic landmark or of any building or structure located within the historic district unless and until such person or entity has completed review of his/her/its proposed changes by the Historic Review Board or the Historic Preservation Officer, and has obtained a certificate of appropriateness in accordance with the further provisions hereof.

(b) Such review shall consist of the granting or denial of a Certificate of Appropriateness with regard to the subjects set forth in sections [23-62](#), and [23-63](#), as applicable. With regard to the subject matters thereof, obtaining a Certificate of Appropriateness is mandatory and compliance with its requirements is mandatory.

Sec. 23-60. - Certificates of Appropriateness.

(a) No exterior feature of any Resource, whether designated as a landmark or whether located in the historic district, shall be installed, constructed, reconstructed, altered, changed, restored, removed, or demolished, nor shall any new structure be constructed in the historic district until after a Certificate of Appropriateness of such work has been issued by the Board or by the Historic Preservation Officer as applicable. Additionally, neither a demolition permit nor a building permit may be granted for a property in the historic district or designated as a landmark unless the Board or Historic Preservation Officer issues a certificate of appropriateness.

(b) Certificates of Appropriateness shall be issued by the Board. Provided however, if the application sought to be approved under this article qualifies as an Insignificant Alteration (SEE DEFINITION OF INSIGNIFICANT ALTERATION ABOVE), an Administrative Certificate of Appropriateness may be issued by the

Historic Preservation Officer as an administrative approval without review by the Board.

(c) Therefore:

- (1) In reviewing, approving and denying applications for certificates, the Board and the Historic Preservation Officer shall seek to accomplish the purposes of this article.
- (2) All decisions of the Board and Historic Preservation Officer shall be in writing and shall state the findings ~~of the Board, its recommendations~~ or requirements. The same may appear in the written minutes of the Board's meetings.
- (3) A certificate shall expire 12 months after its issuance and shall continue as long as work is not discontinued for a period of 12 months in which case a new certificate is required.
- (4) An application for certificate of Appropriateness shall not be resubmitted for review sooner than 12 months following its initial review unless it is submitted with a significant change, or if the originally approved plans have changed significantly as determined by the Historic Preservation Officer with an additional fee.
- (5) Certificates of Appropriateness may be issued for distinct and separate phases of an ongoing project

Sec. 23-61. - Certificates; application and procedure.

- (a) *Application.* The applicant shall submit to the Historic Preservation Officer application for certificate of appropriateness which includes data and information in writing which thoroughly describes the project as determined by the Historic Preservation Officer, including but not limited to the following:
- (1) Name and signature of applicant and property owner.
 - (2) Mailing address, phone number and email address of applicant (including owner's representative if applicable) and address, phone number and email address of property owner.
 - (3) Location of property which is the subject of the application.
 - (4) A detailed description of the nature of the proposed work.
 - (5) A description of the history of the property or the measures taken to determine the same, and how the proposed change will be in character with the architectural or historical aspect of the structure or site.
 - (6) Any circumstances or conditions concerning the property or financial hardship which may affect compliance with the article.
 - (7) Drawings and photographs of all sides of the Resource which would explain the proposed work.

- (8) Color chips of the colors which will be used, and examples and/or samples of other materials requested to be used which are not original to the Resource.
- (b) *Completeness.* The applicant shall submit all required data and information to the Historic Preservation Officer, not less than 14 days prior to the next scheduled regular meeting of the Board. The application shall not be accepted and processed until it is deemed complete by the Historic Preservation Officer, including sufficient description to adequately and completely convey the full effect of the work to be done. In cases which do not require Board review, the Historic Preservation Officer shall have at least 5 business days to review a completed application.
- (c) *Fee.* An administration fee will be assessed to the applicant reflecting the cost to the City for processing the application. (See appendix A to this Code.) The application will not be deemed complete, nor will it be processed until such fee is paid in full.
- (d) *Insignificant alteration.* If the Historic Preservation Officer determines that the application is for an Insignificant Alteration (SEE DEFINITION OF INSIGNIFICANT ALTERATION ABOVE), or if the Historic Preservation Officer receives an application to renew an expired certificate of appropriateness, he/she may, within fourteen (14) days, approve the application and issue or deny the certificate of appropriateness. The *Design Guidelines for the City of Fredericksburg*, *The Secretary of the Interior's Standards for Rehabilitation* and *The Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings*, the *Sign Ordinance* will be used when assessing the application. These documents will be made available to the public in the office of the City secretary and/or Historic Preservation Officer on the City's website, and/or at the local public library.
- (e) *All other alteration.* If the Historic Preservation Officer determines that the application does not qualify as an Insignificant Alteration, or for any other reason does not desire to act under subsection (d) above; he/she shall refer the application to the Board and call for a meeting of the Board to consider the Certificate of Appropriateness application.
- (f) *Time for approval.* The Board shall hold a meeting to consider the application within 40 days after the receipt of a completed application. The applicant shall be given notice of the time and place of the meeting by regular mail to the applicant's address on the application or, if provided, solely to the email address of the applicant. Notice of the meeting and subject matter shall be posted in accordance with the Texas Open Meetings Act. The Board may hold any additional meetings within 60 days following submission of a completed application as may be necessary to carry out its responsibilities under this article. The applicant or his/her agent or representative, shall

attend at least one meeting of the Board during which his/her application is considered, otherwise the Board shall not take action, and the application will be deemed to be incomplete and added to the agenda of the next regular meeting of the Board for up to two additional times, and if the applicant or his/her agent or representative fails to attend, then the application shall be deemed withdrawn. The Board shall make its determination and report the same to the Historic Preservation Officer within 60 days after receipt of a completed application unless the Board and the applicant mutually agree to extend the period of review. If action is not taken within 60 days after receipt of a completed application, (except as to demolition cases as set out below) it shall be deemed that the Board recommends approval of the application and the certificate of appropriateness will be issued.

The certificate of appropriateness shall be issued within three days following the decision of the Board.

- (g) The Historic Preservation Officer shall issue a certificate of appropriateness for administrative approvals within 14 days following receipt of a completed application. If it is not issued for whatever reason the same shall be presented to the Board and processed as a regular application.
- (h) *Special time period for demolition.* Anything in this article to the contrary notwithstanding, the Board shall make its determination within 120 days after receipt of a completed application for a permit to demolish an historic Resource, landmark or building within the historic district, an historic landmark or Resource outside the historic district, or to move a historic landmark, or to move a building (Resource) into or out of a historic district.

Sec. 23-62. - Criteria for approval of a certificate of appropriateness.

- (a) In determining the recommendation and action on an application for a Certificate of Appropriateness, the Historic Preservation Officer and historic review Board shall review and decide the appropriateness of the proposed work of the following with regard to:
 - (1) *Removal, addition or modification of architectural detail.* The distinguishing historic qualities or character of a building, structure, or site and its environment shall not be destroyed. Removal or modification of any historic material or distinctive architectural features may be accomplished upon issue of a certificate of appropriateness; however, this should be avoided when possible. Architectural features include, but are not limited to, exterior wall materials, windows, railings, decorative woodwork, masonry, or stone elements.
 - (2) *Paint color and application.* Traditionally, the base colors of Fredericksburg's buildings have been soft muted shades of greens, blues, whites, and tans. In order to continue the historic integrity of the

buildings in the district, these colors continue to be acceptable today, and do not require review or issuance of a certificate. The Historic Preservation Officer shall determine whether the proposed color is within the approved list of colors, as outlined in the Fredericksburg Design Guidelines. If the Historic Preservation Officer determines the color is inconsistent with said guidelines, then the proposed color application will be referred to the Board for approval or denial. Base colors such as vibrant or "hot" shades, deep dark shades, and black shades are not acceptable. A certificate of appropriateness must be granted in advance of paint application. The painting of existing materials such as unpainted stone or unpainted masonry is prohibited.

- (3) *New construction in historic districts.* The Board will review all new construction plans within historic districts in order to ensure visual compatibility with the surrounding buildings and environment in relation to design, height, gross volume, massing, scale, proportion, and setback in accordance with the Design Guidelines.
- (4) *Additional criteria for issuance of certificate of appropriateness.* The Board will also consider and make determinations on the following additional criteria prior to the issuance of a certificate of appropriateness. It will consider the following as to new construction as are applicable.
 - (A) The proposed change will not negatively impact the general historic, cultural, unique, and architectural nature of the historic district or landmark.
 - (B) The proposed change will not negatively impact exterior architectural features.
 - (C) The proposed change to the general design, arrangement, texture, color, and material of the building, or structure, will be compatible with and not negatively impact the relation of such factors to similar features of buildings, or structures, in the district. This consideration shall not be the aesthetic appeal of the structure to the Board nor the proposed remodeling, but rather its conformity to the general character of the particular historic area involved.
 - (D) The signage conforms to the general historic, cultural, and architectural character of the historic district or landmark and the City's Sign Ordinance.
 - (E) The *Design Guidelines for the City of Fredericksburg*, the *Secretary of the Interior's Standards for Rehabilitation*, the *Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings* and *Sign Ordinance*, will be used when assessing the application *subject to the further requirements of all applicable city ordinances*. These documents will be

made available to the public in the office of the Historic Preservation Officer or on the City's website.

- (F) The importance of finding a way to meet the current needs of the property owner and the importance of approving plans that will be economically reasonable for the property owner to carry out.

- (b) The decision of the Historic Preservation Officer or the decision of the Board, as applicable, are mandatory, and must be met in order to receive a certificate of occupancy upon completion of construction.

Sec. 23-63. - Demolition/removal.

(a) In addition to the requirements of obtaining Board approval for demolitions, all demolitions in the City of Fredericksburg which are required to have a demolition permit, will be reviewed by the Historic Preservation Officer prior to the issuance of a demolition permit by the Building Official of the City. This is to assure that a historic Resource is not inadvertently overlooked in the rating or landmark designation process. If the Historic Preservation Officer determines, with fourteen (14) days following the submission of a request to demolish that the Resource should be preserved, then the demolition permit will be abated for a period of one hundred twenty (120) days. During such time, the Historic Preservation Officer shall process the Resource under the historic landmark or rating provisions of this Article, and if it is determined to be a historic landmark, or require rating or re-rating, then the provisions of section (b) below will be used to further process the demolition request. The application for demolition will contain the information and be on the forms described in section 23-61 (a) above. No building permit will be issued for any demolition of an historic structure which is subject to regulation under Chapter 23 Article III. Historic Preservation of the Code of Ordinances of the City of Fredericksburg unless a building permit for the construction of the replacement structure at the same site is issued at the same time.

(b) In addition to the criteria specified in [section 23-62](#), the Board shall use the following additional criteria will be used when reviewing and determining the recommendation and action on an application for a certificate of appropriateness with regard to demolition or removal or relocation, as applicable, of a historic landmark or a Resource within a historic district:

- (1) The demolition, removal or relocation of an historic Resource with a rating of "high" or the demolition or removal of an historic Resource with a rating of "medium" in the *Fredericksburg Historic Resource Survey* is strictly prohibited.

- (2) The demolition, removal or relocation of a Resource with a rating of "low," or of a historic resource not rated in the *Fredericksburg Historic Resource Survey*, may occur only when the Board issues a certificate of appropriateness for that express purpose. Refer to [section 23-55](#) and the *Fredericksburg Historic Resource Survey* for a more detailed definition of the preservation priority rating system.
- (c) As an exception to (b) above, any Resource with a rating of Medium or Low may be relocated within the same tract of land upon which it is located, or to a tract so close as to be considered essentially the same location, if permitted by the Board which must issue a certificate of appropriateness for such purpose, and the Board may place reasonable conditions and safeguards for the Resource when issuing its Certificate.
- (d) As a further exception to (b) above, a resource may be demolished or removed if the Board determines that it is a hazardous or dangerous building, or that the requirements of Sec. 23-64, economic hardship, below are met.
- (e) The *Design Guidelines for the City of Fredericksburg*, *The Secretary's Standards for Rehabilitation* and *The Secretary's Guidelines for Rehabilitating Historic Buildings* will be used to guide the Board in decisions regarding issuance of a certificate of appropriateness for demolition or removal of a Resource, historic landmark or within the historic district when permitted.
- (f) In the case of a demolition application, the Board shall affirmatively find that:
- (1) Reasonable measures could not be, taken to adaptively reuse, rehabilitate, or restore the Resource_building or structure at its existing site;
 - (2) Reasonable measures have been taken to relocate the Resource to a new site first within the same property, secondly within the historic district (if applicable), or thirdly to an area that will be enhanced by the Resource or where the goals of this article will be furthered and that the same cannot reasonably be done;
 - (3) The condition of the Resource building or structure is such that it has been so altered or deteriorated that it has lost its value for promoting the goals of this article, and is no longer significant, and in such event that the condition is not due to demolition by neglect or action of the owner or another related person or entity;
 - (4) Plans for proposed new construction or other reuse of the property, and their effects on the historical, cultural, social, or architectural identity of the surrounding area will be positive and promote the goals of this article.
- (e) In the case of a removal application, the Board shall affirmatively find that:

- (1) Reasonable measures could not be taken to adaptively reuse, rehabilitate, or restore the Resource building or structure at its existing site;
 - (2) The Resource is no longer significant to the area in which it is situated;
 - (3) Reasonable measures have been taken to relocate the Resource within the same property, and that the same cannot reasonably be done;
 - (4) Reasonable measures have been taken to relocate the Resource within the historic district (if applicable), or that it will be relocated to an area that will be enhanced by the resource and where the goals of this article will be furthered; and
 - (5) That the condition is not due to demolition by neglect.
- (f) In making the determination to permit demolition or removal of an historic Resource, the Board may place reasonable conditions on the same even if such conditions are not related to the mandatory requirements of this article but which are related to the demolition or removal, and to ensure compliance with the plans approved by the Board. The same may include, but is not limited to, the requirement that all conditions be fulfilled prior to issuance of a building permit for the original Resource's location.
- (g) Prior to demolition, the Historic Preservation Officer may, as a condition of approval of a certificate of appropriateness for demolition or removal, require the owner, at the owner's expense, to provide documentation of the subject Resource's in accordance with the standards of the Historic American Building Survey. Such documentation may include photographs, floor plans, measured drawings, an archeological survey, or other information specified.
- (h) The special time period for demolition as described in Sec. 23-61 (g) above shall apply to all requests under this section.

Sec. 23-64 Economic Hardship.

No Certificate of Appropriateness for demolition or removal as applicable, involving a claim of economic hardship may be approved by the Board, nor shall a demolition permit be issued by the city based upon economic hardship unless the Board finds:

- (a) The property is incapable of earning a reasonable return in its current or rehabilitated state, regardless of whether that return represents the most profitable return possible, and
- (b) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return, and
- (c) Earnest and reasonable efforts to find a purchaser interested in acquiring the property and preserving it have failed, and
- (d) The property cannot be moved or relocated to another site similar site or within the District.

(e) Reasonable return, for the purposes of determination of economic hardship shall include consideration of the following information, but is not limited therto:

- (1) Purchase date price and financing arrangements
- (2) Current market value
- (3) Form of ownership
- (4) Type of occupancy
- (5) Cost estimates of demolition and post demolition plans for development
- (6) Maintenance and operating costs
- (7) Inspection report by licensed architect or structural engineer having experience working with historic properties
- (8) Costs and engineering feasibility for rehabilitation
- (9) Property tax information
- (10) Rental rates and gross income from the property
- (11) Other additional information as deemed appropriate

(f) Claims of economic hardship by the owner shall not be based on conditions resulting from:

- (1) Evidence of demolition by neglect or other willful and negligent acts by the owner
- (2) Purchasing the property for substantially more than market value at the time of purchase
- (3) Failure to perform normal maintenance and repairs
- (4) Failure to diligently solicit and retain tenants
- (5) Failure to provide normal improvements or accommodations for tenants

(g) That throughout the process, the applicant has consulted in good faith with the Historic Preservation Officer, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

Sec. 23-65. - Prevention of demolition by neglect.

(a) *Duty to maintain.* All historic Resources landmarks and all significant buildings, objects, sites, and structures located in the historic district, shall be preserved against decay, deterioration, and kept free from certain structural defects by the owner thereof or such person, persons, or entities who may have custody or control thereof. Such owners, or other persons shall repair such building, object, site, or structure if it has any of the following defects:

- (1) Deteriorated or inadequate foundations;
- (2) Defective or deteriorated flooring or floor supports of insufficient size to carry imposed loads with safety;
- (3) Members of walls or other vertical supports that split lean, list, or buckle due to defective material, workmanship, or deterioration;

- (4) Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
 - (5) Members of ceilings, roofs, and their support system, or other horizontal members which sag, split, or buckle due to defective material, workmanship, or deterioration;
 - (6) Members of ceiling and roof supports or other horizontal members that are insufficient to carry imposed loads with safety;
 - (7) Fireplaces or chimneys which list, bulge, or settle due to defective material, workmanship, or deterioration;
 - (8) Deterioration or defects in paints, coating systems, or flashing resulting in destructive moisture penetration or rot;
 - (9) Any fault, defect, or condition in the building which renders the same structurally unsafe or not properly watertight.
- (b) *Neglect*

(1) *Determination of neglect.* If the Board upon recommendation or presentation by the Historic Preservation Officer or a building official of the City or his or her designee, makes a determination that a Resource is being demolished or deteriorated by neglect, it shall direct the Historic Preservation Officer to notify the owner or owners of the Resource of this preliminary determination, stating the reasons therefor, and shall give the owner of record 30 days from the date of such notice to correct the defects or present to the Board a plan for remediation if the defect cannot be remedied within such 30 days period.

(2) *Subsequent determination.* If, within 30 days following such initial determination, the Board shall again determine that the resource is being demolished or deteriorated by neglect, it may direct the Historic Preservation Officer to file a complaint for a violation of a zoning ordinance of the City, against the owner or owners if the necessary repairs are not completed within 90 days of the second determination by the Board that the subject building or structure is being demolished or deteriorated by neglect.

(3) *City stabilization.* Additionally, the Historic Review Board may direct the Historic Preservation Officer to accomplish the repairs necessary to stabilize and protect the Resource. The City shall then pay therefor, and charge the expenses incurred in doing such work or having such work done or improvements made to the record owner of such Resource. If such work is done or improvements made at the expense of the City, then such expenses shall be assessed as a lien on the real estate, lot or lots upon which such expense was incurred except as prohibited by law. The City, and the City's authorized assistants, employees, contracting agents, or other representatives, are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of completing repairs necessary for the stabilization and repair of a Resource. Any court having jurisdiction over such cases including the municipal court of the City shall have authority to issue all orders necessary to enforce this article. Neither the

City nor its employees, agents or contractors shall be answerable in damages or otherwise for damage to property due to the enforcement of this article.

(4) *Lien establishment.* The City Manager or other person authorized to act on behalf of the City shall file a statement of such expenses incurred by filing the amount of such expenses, the date on which said work was done or improvements made, with the county clerk of Gillespie County, Texas in the Real Property Records of such county. The City shall have a privileged lien on such lot, lots or real estate upon which said work was done or improvements made to secure the expenditures so made. Said lien amount shall bear interest per annum from the date said statement was filed at the greater of the maximum rate published by the state Board of control, or the rate of 10 percent. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the City. The statement of expenses so made, as aforesaid, shall be a prima facie proof of the amount expended for such work or improvements.

Sec. 23-66. - Appeal.

(a) An applicant or owner may appeal any decision of the Board to the City's Board of Adjustment under the following conditions:

(1) That a written notice of appeal by the applicant or owner be received by the Historic Preservation Officer ~~City secretary~~ within ten days following the decision to be appealed. The application shall follow the form required for a variance request under the City's Zoning Ordinance.

(2) The Board of Adjustment may overturn the Board's decision or requirement if it makes affirmative findings of fact on each of the following criteria:

(A) The historic review regulations set forth herein, or findings of the Board do not allow for a reasonable use.

(B) The action of the Board was not based upon the preponderance of the evidence presented to the Board.

(C) The plight of the owner of the property is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the zoning district in which the property is located.

(D) The reversal of the Board's decision or requirement will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property and will not impair the purposes of this article or regulations to the Zoning District in which the property is located.

(E) In addition, or alternately, other legal precedent or established law or is challenging or requesting a change to a rating.

(F) The Board of Adjustment may apply conditions to its decision or modification of the Board's decision or requirement.

(3) The Board of Adjustment shall schedule a hearing on such appeal within 30 days after the receipt of the notice of appeal, or as soon thereafter as is reasonably practicable. Notice of such hearing shall be published in the City's official newspaper not less than the 10th day before the date of the hearing. At the hearing, the applicant, owner and all interested parties, including local preservation groups, will have the opportunity to be heard. The Board of Adjustment shall uphold, reverse or modify the decision or requirement of the Historic Review Board or the Historic Preservation Officer within 30 days of the appeal hearing unless a continuance is agreed to by the owner. The Board of Adjustment will consider the same criteria and standard of review considered by the Historic Review Board or the Historic Preservation Officer.

(b) Only one appeal shall be allowed.

(c) Prior to an appeal to judicial authorities or institution of suit, and as a mandatory prerequisite thereof, the applicant must file a written notice of appeal with the City secretary within ten days following the adverse Board of Adjustment decision, as applicable, stating specifically grounds for such appeal, and the resultant appeal or suit shall be had on that ground or those grounds.

Sec. 23-67. – Penalties and Enforcement.

Violation of article. A person, firm, corporation or other entity commits an offense if he/she/it violates this article. Each day the offense continues constitutes a separate offense. The following penalties, which are nonexclusive, and in addition to other provisions of this Article III, and the exercise of one or more of which shall not preclude exercise of the others, shall be imposed on those persons or entities found to have violated this article:

(a) The same penalties as set forth in the zoning ordinance of the City for all violations of requirements set forth in the said zoning ordinance; or the penalties set forth in [section 1-6](#) of this Code of Ordinances of the City for zoning violations (currently up to \$2,000 per day).

(b) A certificate of occupancy will not be granted for any proper until compliance with all Certificate of Appropriateness requirements are verified by the Historic Preservation Officer or building official of the City.

(c) Stop Work order

(1) Whenever the building official finds any work regulated by this Article being performed in a manner either contrary to the provisions of this Article or dangerous or unsafe, the building official is authorized to issue a stop work order.

(2) The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon

issuance of a stop work order the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume.

(3) Any person, firm, corporation or other entity who or which shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove the violation or unsafe condition, shall be subject to penalties as prescribed by law.

(d) If work, which is required to be reviewed, is commenced without a Certificate of Appropriateness, or if a stop-work order is issued, an administrative fee, which is in addition to any other applicable fees, of Three Hundred and no/100 (\$300.00) Dollars shall be due in order to apply or re-apply for a building permit or to re-start construction as applicable.

(e) In the event the requirements of the Board or Historic Preservation Officer, as applicable, are not met, the building permit shall be revoked. Notice of Revocation shall be delivered or mailed to the applicant by the building official or his or her designee to the address provided on the application.

(f) *Restrictions on future development.* If a Resource, either a landmark or one located within the boundaries of the historic district is demolished, removed or relocated without a certificate of appropriateness, or in the event the plans are changed for the property from which the Resource was demolished removed or relocated without approval of the changed plans by the Historic Review Board, then the following restrictions, in addition to any other penalties or remedies set forth in this article, shall be applicable to the site where the Resource was formerly located:

(1) No building or other permits will be issued for construction on the site, with the exception of a permit to restore such Resource after obtaining a certificate of appropriateness, for a period of five years after the date of such demolition, or removal or relocation.

(2) No permits shall be issued by the City for any curb cuts on the site for a period of five years from and after the date of such demolition, removal or relocation.

(3) No parking lot for vehicles shall be operated whether for remuneration or not on the site for a period of five years from and after the date of such demolition, ~~and~~ removal, or relocation.

(4) The owner of the site shall maintain the site in a clean and orderly state and shall properly maintain all existing trees and landscaping on the site. When these restrictions become applicable to a particular site, the Historic Preservation Officer shall cause to be filed a notice thereof in the real property records of Gillespie County and such restrictions shall then be binding on future owners of the property.

(g) *Civil action.* As an additional remedy in addition to the penalties stated above, the City Attorney for the City of Fredericksburg or his or her designee shall have the power to take all necessary civil action to enjoin non-compliance or enforce the provisions hereof and to request appropriate legal or equitable remedies or relief.

(h) *Cumulative remedies.* The provisions of this section shall apply in addition to other enforcement procedures or penalties which are available at law or in equity, including, but not limited to, those available for adversely affecting historic structures or property under Texas Local Government Code § 315.006 and Texas Government Code § 442.016 as the same may be amended from time to time.

- **ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION**

- **Sec. 5-48. - Building permits.**

(a) *Permit required.* No building shall be in any manner constructed, altered, repaired, remodeled, demolished or moved within the city limits unless a building permit is obtained. No building permit will be issued for any demolition of an historic structure which is subject to regulation under Chapter 23 Article III. Historic Preservation of the Code of Ordinances of the City of Fredericksburg unless a building permit for the construction of the replacement structure at the same site is issued at the same time. Fees shall be paid for building permits as set forth in the fee schedule found in appendix A to this Code.

END OF CODE TEXT

Severability / Invalidity.

If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Repealer

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Penalties

Penalties provided for in the Code Ordinances of the city of Fredericksburg shall apply to violations hereof in addition to any other remedies or penalties hereof.

This ordinance shall take effect from and after the date of its passage and publication in accordance with the law.

PASSED AND APPROVED this the _____ day of _____, 2017.

Linda Langerhans, Mayor
City of Fredericksburg

ATTEST:

Shelley Britton, City Secretary

APPROVED AS TO FORM:

Pat McGowan, City Attorney

6/19/17



CITY COUNCIL MEMO

DATE: July 5, 2017

TO: Mayor and City Council

FROM: Clinton Bailey, P.E., Assistant City Manager/Director of Public Works and Utilities

SUBJECT: Capital Improvements Plan Presentation – Presentation I

Summary:

The 2018 Capital Improvement Plan will be presented during two City Council meetings this year according to the following schedule:

July 5th

Presentation I – Police Department, Building Maintenance/Expansion, Fire, Emergency Management, Street, Park, EMS, Electric, Sanitation, Golf and Information Technology

July 17th

Presentation II – Water/Wastewater and Drainage

Recommendation:

N/A

Background / Analysis:

The capital improvement plan (CIP) process was established to provide a routine process and procedure for identifying, evaluating, and advocating the current and future capital needs of the City of Fredericksburg. The capital planning process not only provides an orderly and routine method of proposing the planning of capital improvements, but the process also makes capital expenditures more responsive to community needs by informing the public. The CIP does not appropriate funds, but supports the budget process and the appropriations made through the adoption of the budget. A successful CIP provides for considerable advance notification, planning, evaluation, scope definition, design, public discussion, cost estimation, and financial planning. Objectives utilized to develop the CIP are:

- To preserve and improve the infrastructure of Fredericksburg
- To identify and examine current and future infrastructure needs and minimize the financial impact on residents
- To maximize the useful life of capital investments by scheduling major renovations and modifications at the appropriate time in the life-cycle of facilities
- To improve financial planning by comparing needs with resources, and estimating future funding issues

The CIP ensures coordination between City departments and City Council in the planning and implementing of capital projects. The CIP Identifies and determines future infrastructure needs and establishes priorities among projects so the available resources are used to the greatest extent possible.



Department Approval



City Manager Approval



The City of Fredericksburg



CITY COUNCIL MEMO

DATE: July 5, 2017

TO: Mayor and City Council

FROM: Andrea Warren, Parks & Recreation Director

SUBJECT: Fredericksburg Tennis Association presentation

Summary:

The Fredericksburg Tennis Association (FTA), a nonprofit 501 C 3 Corporation, supports and promotes social and competitive youth and adult tennis play through organized play and tournaments, provides financial assistance to needy youth involved in tennis activities and generally promotes increasing interest in tennis as an ideal sport for our community. They would like to give a presentation to City Council on the status of tennis now and the future of tennis in Fredericksburg.

Recommendation:

Receive the Fredericksburg Tennis Association's presentation on the long term plan for tennis.

Background / Analysis:

In October, 1975, a small group of community-minded local tennis enthusiasts organized at Lady Bird Johnson Municipal Park to create the Fredericksburg Tennis Association ("FTA"). Some of those early visionaries remain active today. The FTA is a United States Tennis Association ("USTA") certified Community Tennis Association ("CTA"). A CTA is an organized group dedicated to provide and support programs that promote and develop tennis. As a CTA, they enthusiastically support the current moniker "providing fitness, friendship and charity to our community." The FTA aids under privileged and needy youth and combats juvenile delinquency by promoting youth tennis through development programs,

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The City of Fredericksburg

clinics, tournaments and scholarships. The FTA sponsors and promotes tennis activities to people of all ages and abilities.

Attachments:

None



Department Approval



City Manager Approval



The City of Fredericksburg

FACTS ABOUT THE FREDERICKSBURG TENNIS ASSOCIATION



Established in 1975

Currently a tax exempt 501 (c) (3) organization

Historically:

Paramount in ensuring construction of the HEB Tennis Facility at the Fredericksburg High School

Runs 4 area tennis tournaments for 32 years

Constructed equipment building at Lady Bird Johnson Tennis Courts

Provided college scholarships to Fredericksburg High School tennis seniors (Nikki Bryla Memorial Scholarship) for over 10 years

Provided needs-based financial support to youth attending summer tennis camps/clinics

Supports area High School and Middle School tennis (facilities, fundraising)

Organizes tennis play among members and youth

Hosts gatherings for social tennis

"Monitors" Lady Bird tennis court-related issues

Provides manpower for improvement projects

Tennis Challenges

Tennis Court shortage

Lady Bird Johnson Tennis Court major maintenance

Other maintenance items/needs



CITY COUNCIL MEMO

DATE: July 5, 2017

TO: Mayor and City Council

FROM: Andrea Warren, Parks & Recreation Director

SUBJECT: Oak Crest Sports Park cost options

Summary:

Our parks consultant, Dennis Sims, will be at the meeting to present the cost options for the Oak Crest Sports Park.

Recommendation:

Receive the cost options for the Oak Crest Sports Park and provide staff with direction on any needed changes.

Background / Analysis:

At the June 5, City Council meeting conceptual plan D was chosen as the layout for the sports park. The consultant, Dennis Sims, has prepared some phasing options for the park. He will be at the meeting to go over these options in more detail and answer questions.

Attachments:

Oak Crest Sports Park phasing options

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The City of Fredericksburg

Andrea Warren

Department Approval

[Signature]

City Manager Approval

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The City of Fredericksburg

126 W. Main St. • Fredericksburg, Texas 78624-3708 • (830) 997-7521 • Fax (830) 997-1861



MASTER PLAN D

OAKCREST SPORTS COMPLEX

CITY OF FREDERICKSBURG, TEXAS

Preliminary Cost Estimate
OAK CREST SPORTS PARK
Master Plan with 10 Acre Airport Parcel- Concept D
July 5, 2017



ITEM			Master	Phase 1
1	INFRASTRUCTURE			
2	Effluent Line	\$ 125,000.00	Other City Funds	Other City Funds
3	Water Line		\$ 100,000.00	\$ 100,000.00
4	Sewer Line - 2 Lift Stations / Force		\$ 90,000.00	\$ 90,000.00
5	Pond Excavation & Construction (1 Acre)	\$ 400,000.00	Other City Funds	Other City Funds
6	Irrigation Wet Well	\$ 125,000.00	Other City Funds	Other City Funds
7	Pump House	\$ 20,000.00	Other City Funds	Other City Funds
8	Future Electrical Conduit		\$ 5,000.00	\$ 15,000.00
9	INFRASTRUCTURE TOTAL:		\$ 195,000.00	\$ 205,000.00
10	SOCCER FIELDS			
11	Soccer Fields (5 Unlighted)		\$ 585,000.00	\$ 585,000.00
12	30 FC Field Lighting (2) (1)		\$ 300,000.00	\$ 150,000.00
13	Irrigation/ Hydromulch (Approximately 6 Acres) (4 Acres)		\$ 162,000.00	\$ 108,000.00
14	Earthwork		\$ 75,000.00	\$ 75,000.00
15	Restroom / Concession Building		\$ 600,000.00	\$ 600,000.00
16	Concession Restroom Paving (9.500 Sq. Ft.)		\$ 57,000.00	\$ 57,000.00
17	Pavilion (1)		\$ 75,000.00	\$ 75,000.00
18	Playground with Shade Structure		\$ 125,000.00	\$ 125,000.00
19	Landscaping / Trees (Not in Phase 1)		\$ 25,000.00	\$ -
20	Soccer Entry Sign (Not in Phase 1)		\$ 15,000.00	\$ -
21	SOCCER FIELDS TOTAL:		\$ 2,019,000.00	\$ 1,775,000.00
22	NEW BASEBALL / SOFTBALL FIELD COMPLEX			
23	Baseball - Softball Fields 225' (4)		\$ 650,000.00	\$ 650,000.00
24	Baseball - Softball Fields 300' (2) (Not in Phase 1)		\$ 375,000.00	\$ -
25	Bleacher Shade Canopies (8) (Not in Phase 1)		\$ 150,000.00	\$ -
26	Dugout Metal Roof (10) (Not in Phase 1)		\$ 50,000.00	\$ -
27	50/30 Field Lighting (6) (3)		\$ 900,000.00	\$ 450,000.00
28	Irrigation/ Hydromulch (Approximately 16.5 Acres) (5 Acres)		\$ 445,000.00	\$ 135,000.00
29	Scoreboards (6) (Not in Phase 1)		\$ 150,000.00	\$ -
30	Large Field Plaza Pavement (3) (1)		\$ 146,400.00	\$ 50,000.00
31	4 Plex Plaza Paving (31,705 Sq.Ft.)		\$ 190,000.00	\$ 190,000.00
32	Concession Restroom Paving (10.500 Sq. Ft.)		\$ 63,000.00	\$ 63,000.00
33	Sidewalks to Fields (13,280 Sq. Ft.)		\$ 80,000.00	\$ 80,000.00
34	Area Lighting		\$ 50,000.00	\$ 50,000.00
35	Earthwork		\$ 250,000.00	\$ 250,000.00
36	Landscaping / Trees (Not in Phase 1)		\$ 50,000.00	\$ -
37	Restroom / Concession Building		\$ 600,000.00	\$ 600,000.00
38	Pavilion (1) (Not in Phase 1)		\$ 75,000.00	\$ -
39	Playground with Shade Structure (Not in Phase 1)		\$ 125,000.00	\$ -
40	Baseball Entry Sign (Not in Phase 1)		\$ 10,000.00	\$ -
41	NEW BASEBALL / SOFTBALL FIELD COMPLEX TOTAL:		\$ 4,359,400.00	\$ 2,518,000.00
42	OAK CREST BASEBALL / SOFTBALL FIELD COMPLEX			
43	Baseball - Softball Fields 225' (2) Fencing (Not in Phase 1)		\$ 40,000.00	\$ -
44	Baseball - Softball Fields 300' (1) Renovated (Not in Phase 1)		\$ 475,000.00	\$ -
45	Bleacher Shade Canopies (1) (Not in Phase 1)		\$ 20,000.00	\$ -
46	Dugout Metal Roof (2) (Not in Phase 1)		\$ 10,000.00	\$ -
47	Scoreboards (1) (Not in Phase 1)		\$ 25,000.00	\$ -
48	Plaza Paving / Sidewalks (Reduced)		\$ 15,000.00	\$ 10,000.00
49	Area Lighting (Not in Phase 1)		\$ 40,000.00	\$ -
50	Earthwork		\$ 20,000.00	\$ 20,000.00
51	Landscaping / Trees (Not in Phase 1)		\$ 20,000.00	\$ -
52	Pavilion (Not in Phase 1)		\$ 75,000.00	\$ -
53	Relocate Playground with Shade Structure (Not in Phase 1)		\$ 20,000.00	\$ -
54	Concession ADA Compliance		\$ 15,000.00	\$ 15,000.00
55	OAK CREST BASEBALL / SOFTBALL FIELD COMPLEX TOTAL:		\$ 775,000.00	\$ 45,000.00
56	PARKING AREA			
57	Sidewalks (2,120 L.F. @ 10' Wide)		\$ 127,200.00	\$ 127,200.00
58	Asphalt Parking + Entrance Drive (698 Spaces)		\$ 1,700,000.00	\$ 1,700,000.00
59	Parking Lot Lights		\$ 350,000.00	\$ 200,000.00
60	Earthwork		\$ 250,000.00	\$ 250,000.00
61	Irrigation (Common Areas)		\$ 50,000.00	\$ 50,000.00
62	Landscaping / Trees		\$ 50,000.00	\$ 50,000.00
63	PARKING AREA TOTAL:		\$ 2,527,200.00	\$ 2,377,200.00
64	OTHER			
65	10' Loop Trail (50,350 SqFt.) (Not in Phase 1)		\$ -	\$ -
66	Park Benches, Trash Receptacles, Soccer Goals, Bleachers		\$ 100,000.00	\$ 100,000.00
67	Entry Feature with Signage (2) (Reduce Complexity)		\$ 30,000.00	\$ 30,000.00
68	Top Soil Import		\$ 175,000.00	\$ 175,000.00
69	Erosion Control		\$ 60,000.00	\$ 60,000.00
70	Storm Sewer / Drainage		\$ 425,000.00	\$ 425,000.00
71	Electrical Complex Service		\$ 30,000.00	\$ 30,000.00
72	Construction Testing		\$ 50,000.00	\$ 50,000.00
73	Maintenance Building (Metal Building / Outside Storage)		\$ 700,000.00	\$ 700,000.00
74	6' High Chain-Link Fence		\$ 50,000.00	\$ 50,000.00
75	OTHER TOTAL:		\$ 1,620,000.00	\$ 1,620,000.00
76	SUB TOTAL:		\$ 11,495,600.00	\$ 8,540,200.00
77	Pre-Design Contingency (5%):		\$ 574,780.00	\$ 427,010.00
78	ESTIMATED CONSTRUCTION TOTAL:		\$ 12,070,380.00	\$ 8,967,210.00
79	A & E Fees: (10%):		\$ 1,207,038.00	\$ 896,721.00
80	CONSTRUCTION AND A&E TOTAL:		\$ 13,277,418.00	\$ 9,863,931.00
	COUNTY LAND SALE:		\$ (674,433.00)	\$ (674,433.00)
81	GRAND TOTAL:		\$ 12,602,985.00	\$ 9,189,498.00



CITY COUNCIL MEMO

DATE: June 28, 2017

TO: Mayor and City Council

FROM: Brian Jordan, AICP

SUBJECT: Draft Fee Waiver Ordinance.

Summary:

The City adopted an ordinance in 2015 (attached), providing for fee waivers for rental property and owner occupied single family dwellings that met certain affordability criteria. The ordinance was established for one year and was only utilized by the Habitat for Humanity for one of their homes. The qualifying fees included building permits, impact fees and park dedication fees.

At the housing charrette held earlier this year, waiver of certain fees was discussed and considered to be a reasonable incentive for providing affordable housing. The draft ordinance is intended to generate discussion amongst the council and for staff to get direction on a new ordinance.

Recommendation:

No action is requested, however it is recommended that the council discuss and give staff direction on the format of the ordinance, fees being considered, the qualifying criteria, the percentage of the cost of the home or rental unit being considered and duration requirement.

Background / Analysis:

The basis of the draft ordinance is that both rental and owner occupied dwellings could qualify. In order to simplify the application and enforcement process, the ordinance sets the qualifying criteria on a percentage of the mean or average monthly rates or sales price of comparable sized units. Rental units would be compared to rental units and owner occupied homes would be compared to home sales.

Attachments:

Ordinance 25-009, Draft Ordinance.


Department Approval


City Manager Approval

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 5, BUILDING AND BUILDING REGULATIONS ARTICLES III SECTION 5-48 PERMITS AND FEES FOR CONSTRUCTION AMENDING SECTION 5-48 (b) FEES FOR QUALIFIED RENTAL HOUSING AND SECTION 5-48 (c) PAYMENT OF FEES FOR QUALIFIED PRICE HOUSING, AND ARTICLE X IMPACT FEES, AMENDING SECTION 5-290 FEES FOR QUALIFIED RENTAL HOUSING AND SECTION 5-291 FEES FOR QUALIFIED PRICE HOUSING, AND CHAPTER 38 SUBDIVISION ORDINANCE, SECTION 6 SUBDIVISION DESIGN STANDARDS AMENDING SECTION 6.15 E. AND ADDING SECTION 6.15 F. PARK LAND DEDICATION OF THE CODE OF ORDINANCES OF THE CITY OF FREDERICKSBURG

WHEREAS, the City Council of the City of Fredericksburg is aware of the lack of attainable rental housing and housing for purchase for its workforce and for persons and families with average or income which deficit has not been filled by the ordinary forces of the local economy , and

WHEREAS, the City Council has determined that certain fee payment by the city or waivers of fees would reduce the cost of construction for such housing and would encourage the construction of rental and owner-occupied housing which will meet the identified need; and

WHEREAS, the City Council of the City of Fredericksburg hereby adopts the following amendments to the following sections of its Code of Ordinances to incorporate such payment of fees or waiver thereof;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS THAT THE FOLLOWING ORDINANCE BE AND IS HEREBY ENACTED AND THAT CHAPTER 5, BUILDING AND BUILDING REGULATIONS ARTICLES III SECTION 5-48 PERMITS AND FEES FOR CONSTRUCTION AND ARTICLE X IMPACT FEES, AMENDING SECTION 5-290 FEES FOR QUALIFIED RENTAL HOUSING AND SECTION 5-291- FEES FOR QUALIFIED PRICE HOUSING, AND CHAPTER 38 SUBDIVISION ORDINANCE, AMENDING SECTION 6 SUBDIVISION DESIGN STANDARDS SECTION 6.15 E. AND SECTION 6.15 F. PARK LAND DEDICATION OF THE CODE OF ORDINANCES CITY OF FREDERICKSBURG BE AMENDED AS FOLLOWS:

Chapter 5 - BUILDINGS AND BUILDING REGULATIONS
ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION

Sec. 5-48. - Fees for building permits.

(a) Fee required. No building shall be in any manner constructed, altered, repaired, remodeled, or moved within the city limits unless a building permit is obtained. Fees shall be paid for building permits as set forth in the fee schedule found in appendix A to this Code.

(b) **Waiver of fee for Qualified Rental Housing-** Building permit fees are waived, or will be reimbursed, for each (NEW?) rental housing unit of whatever type (eg multi-family or single family residential) which:

1. qualifies as Affordable Housing under 42 U.S. CODE Section 12745 (a), and for which Federal Tax Credits have been granted, or

2. which will be rented for a monthly rent equal to or less than eighty (80%) percent of the average (or mean) monthly rental rates for units of comparable size (note, not location) for the previous calendar year in Gillespie County. Said average (mean) rates will be determined by the Gillespie County Board of Realtors- suggest to use the director of the Gillespie County Economic development commission-, or if the same is unavailable, the Director of Development will use a comparable method to establish the average (or mean) monthly rental, and

under the following conditions AS ARE APPLICABLE:

A. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development to include a full legal description of the property/units and ownership and other reasonably required information, and

B. Proof that the housing units qualify for rental under 42 U.S. CODE Section 12745 (a), and that the Federal Tax credits for the same have been granted for the specific number of qualifying units must be submitted along with the application, OR proof that the requisite number of rental units will be rented for no more than the amount specified above, and

C. The units must continue to qualify for rental under said U.S. Code section or for the specified amount for at least ten (10) years from the date the unit is first rented hereunder, and the City shall file a lien statement to such affect in the Deed Records of Gillespie County, Texas. The owner of the property shall file an annual report to the City's Director of Development, due by the 30th day of January of each calendar year during the ten year period of waiver certifying compliance. In the event the units are not so maintained for the Ten (10) year period, or if the annual report is not filed as required, the City will be paid for the full amount of fees waived plus interest at the rate of ten (10%) percent from the date the qualification is lost. The then owner of the property shall be personally responsible therefor, and the same shall constitute a lien against the property for which the waivers were granted.

D. With regard to a development containing both qualifying and non-qualifying units, the qualifying units need not be the exact same units within the development for the 10 year period as long as the number and kind of units is maintained.

(c) **Waiver of fee for Qualified Price Housing- owner occupied.** Building permit fees are waived, or will be reimbursed by the City, for any new unit of owner-occupied housing, which includes townhouses and condominiums, which is sold:

- (1) to persons who will occupy the house as his, her or their primary residence, and
- (2) the total sales price of which is no more than ninety-five percent (95%) of the

average/ mean home sales price for comparably sized homes within the City of Fredericksburg for the year previous to that of the year of the sale. The average/mean home price will be that established by the Gillespie County Board of Realtors, or if the same is unavailable, the Director of Development will use a comparable method to establish the mean home price, and

Under the following conditions:

A. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development to include a full legal description of the property/units and ownership and other reasonably required information, and

B. Proof, satisfactory to the Director of Development, must be submitted along with the application that the housing units qualify under (c) 1 and 2 above, and that the mortgage loans, in the determination of the Director of Development, for the sales contain financing provisions that do not exceed the terms and conditions of average thirty year conventional financing available for mortgage loans in Gillespie County with regard to interest rates, costs of the loan, closing costs and all other fees to the borrower, and contain no premiums or payments to any person or entity above the purchase price and the loan requirements (this applies to subsequent transactions during the ten (10) year period described in C below), and

C. The units must continue to qualify under (c) 1 and 2 above, even as to subsequent owners for at least ten (10) years, and the Homestead exemption for all applicable ad valorem taxes must be continuously maintained for such period. The City shall file a statement to such affect in the Deed Records of Gillespie County, Texas. The owner of the property shall file an annual report to the city's director of development, due by the 30th day of January of each calendar year during the ten year period of waiver certifying compliance. In the event the units are not so maintained for the Ten (10) year period, or if the annual report is not filed as required, the City will be paid for the full amount of fees waived plus interest at the rate of ten (10%) percent from the date the qualification is lost. The then owner of the property shall be personally responsible therefor, and the same shall constitute a lien against the property for which the waivers were granted.

ARTICLE X. - IMPACT FEES

Sec. 5-290- Payment of fees for Qualified Rental Housing- residential rental

Impact fees will be paid by the City, for rental housing meeting the definition and requirements of Qualified Rental Housing described in Chapter 5 - BUILDINGS AND BUILDING REGULATIONS, ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION, Sec. 5-48. - Fees for building permits, subsection (b). The same will be implemented and enforced as set out in said subsection.

Sec. 5-291- Payment of fees for Qualified Price Housing- owner occupied family residential

Impact fees will be paid by the City, for housing meeting the definition and requirements of Qualified Price Housing described in Chapter 5 - BUILDINGS AND BUILDING REGULATIONS, ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION, Sec. 5-48. - Fees for building permits, subsection (c). The same will be implemented and enforced as set out in said subsection.

Chapter 38 – SUBDIVISIONS

Section 6. - Subdivision Design Standards

6.15. - Park Land Dedication

E. Park land dedication requirements, both dedication of land and payment of the development fee, are waived for rental housing meeting the definition and requirements of Qualified Rental Housing described in Chapter 5 - BUILDINGS AND BUILDING REGULATIONS, ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION, Sec. 5-48. - Fees for building permits, subsection (b). The same will be implemented and enforced as set out in said subsection.

F. Park land dedication requirements, both dedication of land and payment of the development fee are waived for any unit of housing meeting the definition and requirements of Qualified Price Housing described in Chapter 5 - BUILDINGS AND BUILDING REGULATIONS, ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION, Sec. 5-48. - Fees for building permits, subsection (c). The same will be implemented and enforced as set out in said subsection.

-----End of Code Text-----

Severability / Invalidity.

If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Repealer

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Penalties

Penalties provided for in the Code Ordinances of the city of Fredericksburg shall apply to violations hereof.

This ordinance shall take effect from and after the date of its passage and publication in accordance with the law.

PASSED AND APPROVED this the _____ day of June, 2017.

Linda Langerhans, Mayor
City of Fredericksburg

ATTEST:

Shelley Britton, City Secretary

APPROVED AS TO FORM:

Pat McGowan, City Attorney 6-1-17

AN ORDINANCE AMENDING CHAPTER 5, BUILDING AND BUILDING REGULATIONS ARTICLES III SECTION 5-48 PERMITS AND FEES FOR CONSTRUCTION AMENDING SECTION 5-48 (b) AND ADDING SECTION 5-48 (c) AND ARTICLE X IMPACT FEES, AMENDING SECTION 5-290 AND ADDING SECTION 5-291 PAYMENT OF FEES FOR AFFORDABLE HOUSING, AND CHAPTER 38 SUBDIVISION ORDINANCE, SECTION 6 SUBDIVISION DESIGN STANDARDS AMENDING SECTION 6.15 E. AND ADDING SECTION 6.15 F. PARK LAND DEDICATION OF THE CODE OF ORDINANCES OF THE CITY OF FREDERICKSBURG

WHEREAS, the City Council of the City of Fredericksburg is aware of the lack of affordable rental housing for its workforce and for persons and families with lower income which deficit has not been filled by the ordinary forces of the local economy, and

WHEREAS, the City Council has determined that certain fee payment by the city or waivers of fees would reduce the cost of construction for such housing and would encourage the construction of rental and owner-occupied housing which will meet the need for workforce and affordable housing,

WHEREAS, the City Council of the City of Fredericksburg hereby adopts the following amendments to the following sections of its Code of Ordinances to incorporate such payment of fees or waiver thereof;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS THAT THE FOLLOWING ORDINANCE BE AND IS HEREBY ENACTED AND THAT CHAPTER 5, BUILDING AND BUILDING REGULATIONS ARTICLES III SECTION 5-48 PERMITS AND FEES FOR CONSTRUCTION AND X IMPACT FEES, AMENDING SECTION 5-290 PAYMENT OF FEES FOR AFFORDABLE HOUSING- APARTMENTS- MULTI-FAMILY RESIDENTIAL AND ADDING SECTION 5-291- PAYMENT OF FEES FOR AFFORDABLE HOUSING-SINGLE FAMILY RESIDENTIAL, AND CHAPTER 38 SUBDIVISION ORDINANCE, AMENDING SECTION 6 SUBDIVISION DESIGN STANDARDS SECTION 6.15 E. AND ADDING SECTION 6.15 F. PARK LAND DEDICATION OF THE CODE OF ORDINANCES CITY OF FREDERICKSBURG BE AMENDED OR ADDED AS FOLLOWS:

Chapter 5 - BUILDINGS AND BUILDING REGULATIONS

ARTICLE III. - PERMITS AND FEES FOR CONSTRUCTION

Sec. 5-48. - Fees for building permits.

(a) Fee required. No building shall be in any manner constructed, altered, repaired, remodeled, or moved within the city limits unless a building permit is obtained. Fees shall be paid for building permits as set forth in the fee schedule found in appendix A to this Code.

(b) Waiver of fee for affordable housing- apartments- multi-family residential. Building permit fees are waived, or will be reimbursed, for any unit of rental housing within an apartment-multi-family residential development which qualifies as Affordable Housing under 42 U.S. CODE Section 12745 (a), and for which Federal Tax Credits have been granted, under the following conditions:

1. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development.

2. Proof that the housing units qualify for rental under 42 U.S. CODE Section 12745 (a), and that the Federal Tax credits for the same have been granted for the specific number of qualifying units must be submitted along with the application.

3. The units must continue to qualify for rental under said U.S. Code section for thirty years, and the City shall file a statement to such affect in the Deed Records of Gillespie County, Texas. In the event the units are not so maintained for the thirty year period, the City will be paid for the fees waived, and the then owner of the property shall be responsible therefor, and the same shall constitute a lien against the property for which the waivers were granted.

4. With regard to an apartment development containing both qualifying and non-qualifying units, the waiver of fees will be determined on a percentage basis which the fee for the number of qualifying units bears to the total fee which would be payable if there were no qualifying units.

(c) Waiver of fee for affordable housing- single family residential. Building permit fees are waived, or will be reimbursed by the City, for any unit of owner- occupied housing, or rental housing which qualifies as Workforce Housing under the following conditions:

1. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development.

2. Proof that the housing units qualify as Workforce Housing must be submitted along with the application. Workforce Housing for the purposes hereof are:

(a) Houses, which include townhouses and condominiums, which are sold or rented to persons who will occupy the house as his, her or their primary residence the total sales price of which is no more than ninety percent (90%) of the mean home price for home sales within the City of Fredericksburg for the year previous to that of the year of the sale. The mean home price will be that established by the Gillespie County Board of Realtors, or if the same is unavailable, the Director of Development will use a comparable method to establish the mean home price.

(b) Houses, which include townhouses and condominiums, which are financed to the borrower, if financed, must meet FHA financing guidelines with regard to interest rates, costs of the loan, closing costs and all other fees to the borrower.

3. That the sale occur on or before June 30, 2016.

ARTICLE X. - IMPACT FEES

Sec. 5-290- Payment of fees for affordable housing-apartments-multi-family residential.

Impact fees will be paid by the City, for any unit of rental housing within an apartment development-multi-family residential which qualifies as Affordable Housing under 42 U.S. CODE Section 12745 (a), and for which Federal Tax Credits have been granted, under the following conditions:

1. An application for such payment shall be filed with the City Development Department on forms promulgated by the Director of Development.
2. Proof that the housing units qualify for rental under 42 U.S. CODE Section 12745 (a), and that the Federal Tax credits for the same have been granted for the specific number of qualifying units must be submitted along with the application.
3. The units must continue to qualify for rental under said U.S. Code section for thirty years, and the City shall file a statement to such affect in the Deed Records of Gillespie County, Texas. In the event the units are not so maintained for the thirty year period, the City will be paid for the fees paid, and the then owner of the property shall be responsible therefor, and the same shall constitute a lien against the property for which the waivers were granted.
4. With regard to an apartment development containing both qualifying and non-qualifying units, the payment of fees will be determined on a percentage basis which the fee for the number of qualifying units bears to the total fee which would be payable if there were no qualifying units.

Sec. 5-291- Payment of fees for affordable housing-single family residential

Impact fees will be paid by the City, for any unit of owner-occupied housing, or rental housing, which qualifies as Workforce Housing under the following conditions:

1. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development.
2. Proof that the housing units qualify as Workforce Housing must be submitted along with the application. Workforce Housing for the purposes hereof are:
 - (a) Houses, which include townhouses and condominiums, which are sold or rented to persons who will occupy the house as his, her or their primary residence the total sales price of which is no more than ninety percent (90%) of the mean home price for home sales within the City of Fredericksburg for the year previous to that of the year of the sale. The mean home price will be that established by the Gillespie County Board of Realtors or if the same is unavailable, the Director of Development will use a comparable method to establish the mean home price.

(b) Houses, which include townhouses and condominiums, which are financed to the borrower, if financed, must meet FHA financing guidelines with regard to interest rates, costs of the loan, closing costs and all other fees to the borrower.

3. That the sale occur on or before June 30, 2016.

Chapter 38 – SUBDIVISIONS

Section 6. - Subdivision Design Standards

6.15. - Park Land Dedication

E. Waiver of dedication requirements for affordable housing- apartments/ multi-family residential. Park land dedication requirements, both dedication of land and payment of the development fee, are waived for any unit of rental housing within an apartment development-multi-family residential which qualifies as Affordable Housing under 42 U.S. CODE Section 12745 (a), and for which Federal Tax Credits have been granted, under the following conditions:

1. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development.

2. Proof that the housing units qualify for rental under 42 U.S. CODE Section 12745 (a), and that the Federal Tax credits for the same have been granted for the specific number of qualifying units must be submitted along with the application.

3. The units must continue to qualify for rental under said U.S. Code section for thirty years, and the City shall file a statement to such affect in the Deed Records of Gillespie County, Texas. In the event the units are not so maintained for the thirty year period, the City will be paid for the fees waived, and the then owner of the property shall be responsible therefor, and the same shall constitute a lien against the property for which the waivers were granted. The Director will apply the cash in lieu of dedication of land criteria and the park development fee in effect at the time of the application to determine the amount of fees waived for each qualifying unit for which a fee is waived.

4. With regard to an apartment development containing both qualifying and non-qualifying units, the waiver of dedication and fees will be determined on a percentage basis which the fee for the number of qualifying units bears to the total fee which would be payable if there were no qualifying units. The Director will fairly determine this percentage in the event park land is dedicated for the non-qualifying units.

F. Park land dedication requirements, both dedication of land and payment of the development fee are waived for any unit of owner-occupied housing, or rental housing below, which qualifies as Workforce Housing under the following conditions:

1. An application for such waiver shall be filed with the City Development Department on forms promulgated by the Director of Development.

2. Proof that the housing units qualify as Workforce Housing must be submitted along with the application. Workforce Housing for the purposes hereof are:

(a) Houses, which include townhouses and condominiums, which are sold or rented to persons who will occupy the house as his, her or their primary residence the total sales price of which is no more than ninety percent (90%) of the mean home price for home sales within the City of Fredericksburg for the year previous to that of the year of the sale. The mean home price will be that established by the Gillespie County Board of Realtors or if the same is unavailable, the Director of Development will use a comparable method to establish the mean home price.

(b) Houses, which include townhouses and condominiums, which are financed to the borrower, if financed, must meet FHA financing guidelines with regard to interest rates, costs of the loan, closing costs and all other fees to the borrower.

3. That the sale occur on or before June 30, 2016.

-----End of Code Text-----

Severability / Invalidity.

If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Repealer

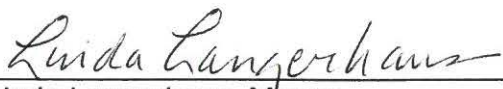
All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Penalties

Penalties provided for in the Code Ordinances of the city of Fredericksburg shall apply to violations hereof.

This ordinance shall take effect from and after the date of its passage and publication in accordance with the law.

PASSED AND APPROVED this the 1st day of June, 2015.


Linda Langerhans, Mayor
City of Fredericksburg

ATTEST:


Shelley Britton, City Secretary



CITY COUNCIL MEMO

DATE: June 28, 2017

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Engagement Letter and Reimbursement Agreement-Legal Services for Hotel/Conference Center Project

Summary:

The City needs to retain outside legal services to assist us in negotiating a long-term economic development agreement for development of the new hotel/conference center.

Recommendation:

It is recommended that the City Council approve the attached Engagement Letter to retain the legal services of Denton, Navarro, Rocha, Bernal, Hyde & Zech P.C. (DNRBH&Z) to assist the City with negotiating an economic development agreement with Murphree and Company for development of the new hotel/conference center. It is also recommended that the Council approve the attached Reimbursement Agreement that provides the City with reimbursement of legal fees.

Background / Analysis:

Recently the City received a packet of information from Murphree and Company confirming their continued interest in developing a hotel/conference center at the intersection of Highway 87N and 290W. This information satisfies the Phase 2 requirements of the hotel/conference center RFP. It includes details on how the project will be financed and the incentives that the developer requests that the City consider for facilitating this project.



The City of Fredericksburg

On July 29 the Hotel/Conference Center Screening Committee will be meeting with our consultants from HVS to discuss this phase 2 information. It is anticipated that they will recommend that the City proceed with this project. If so, one of the next steps is to begin negotiations with the developer of an economic development agreement. This agreement will include the responsibilities of the developer related to the hotel/conference center (i.e. schedule for development, size of conference center and any other city requirements). It will also include what incentives that the City will provide to assist with the project.

In anticipation of this recommendation, I would like to proceed with retaining legal services which are important for representing the City in the negotiation of this agreement. I have attached information on DNRBH&Z, a law firm located in San Antonio that has negotiated economic development agreements representing other Texas cities. They recently negotiated the agreement for the Live Oak Hotel/Conference Center.

The engagement letter that is attached summarizes the experience of this firm and defines their fees for services. The reimbursement agreement that is attached indicates a maximum fee of \$20,000 for these services and defines how the City will be reimbursed for these costs under the terms of the economic development agreement. This fee is reasonable particularly when it is recognized that this project represents a total investment in the community of about \$76 million.

We want to make sure that we clearly define the responsibilities of the developer for this significant project to ensure a high quality development at this strategic location. In addition, though the City wants to participate in assisting with this project, we want to make sure that our participation is reasonable and ultimately acceptable to the City Council. If the attached agreements are approved, one of the next steps is to schedule an executive session with the Council to discuss your recommendations regarding the negotiations of the economic development agreement.

Attachments:

Information on DNRBH&Z
Proposed Engagement Letter
Proposed Reimbursement Agreement



Department Approval



City Manager Approval


The City of Fredericksburg



San Antonio | Austin | Rio Grande Valley

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Harlingen, TX 78550-9151

(956) 421-4904 Telephone

(956) 421-3621 Fax



Denton Navarro Rocha Bernal Hyde & Zech, P.C. was organized in 1990 and offers our cities a full service municipal law firm team. Our firm has three locations; San Antonio, 2517 N. Main Ave., San Antonio, Texas 78212, (210) 227-3243; Rio Grande Valley, 701 E. Harrison, Suite 100, Harlingen, Texas 78550, (956) 421-4904 and Austin, 2500 W. William Cannon Dr., Austin, Texas 78745, (512) 279-6431.

Our practice, by design, is limited to the representation of public entities and officials. Absent specific circumstances our law firm can handle most any issue which may arise for a city without the need for hiring additional outside counsel. All of the partners and most of our associates have served as city attorneys, assistant city attorneys or assistant county attorneys in the public sector and as a result understand that our services are paid from tax dollars and that the Council and Mayor in your city, are accountable to the citizens for the expenditure of those funds. As such, we strive to provide the best all-around legal services for the price. Denton Navarro Rocha Bernal Hyde & Zech, P.C. holds merit certification in municipal law from the Texas City Attorneys Association.

Denton Navarro Rocha Bernal Hyde & Zech, P.C., represents local government, city officials and their staff as city attorneys, general counsel, special legal counsel, litigators, and labor negotiators in all areas of the law. We are organized into four practice sections: City Attorney/General Counsel Services, Special Counsel Services, Litigation Defense, and Labor Negotiations. Our offices are comprised of twenty-three lawyers supported by other professionals and staff, with five shareholders who have years of combined municipal legal expertise. Our firm structure enables us to offer a customized service to cities in need with infinite possibilities, as every attorney in our firm has experience in multiple practice areas. Our legal team works collaboratively to give you the best of who we are and what we have to offer. Our approach to providing legal services ensures that you have access to the attorney on our legal team with the most appropriate experience to meet your needs. Our responsiveness to our clientele is validated every day by every lawyer and legal professional at Denton Navarro Rocha Bernal Hyde & Zech, P.C. and our philosophy of providing our clients with the most experienced and best prepared attorneys in the municipal field means that no other firm practicing in the field of municipal law can match the combined general counsel, city attorney, and litigation experiences that the lawyers in our firm possess.

For further information please visit our website at www.rampagelaw.com

**DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C. -
PRINCIPALS**

Lowell F. Denton is the Founding Partner/Shareholder of Denton Navarro Rocha Bernal Hyde & Zech, P.C. He practices in the areas of municipal law and civil litigation and his expertise also lies in land use, civil rights, meet and confer, collective bargaining, civil service, tax, voting rights issues, and religious freedom claims for over 30 years. Mr. Denton earned his Juris Doctorate from Baylor University School of Law in 1978, and his Bachelor of Arts from Baylor University in 1976. He was admitted by the State Bar of Texas in 1978. Mr. Denton began his legal practice as the City Attorney for the City of College Station, then was the City Attorney for the City of San Antonio. Prior to establishing the Firm in 1990, he served as the chief attorney for the Heard, Goggan, Blair & Williams Government section. Mr. Denton has dedicated his career to the representation and legal defense of local governments and is an experienced litigator, with an expertise in helping city officials avoid litigation where possible and try cases effectively when necessary. Mr. Denton is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization. He is admitted to practice before the United States Supreme Court, Supreme Court State of Texas, United States Court of Appeals Fifth Circuit, United States District Courts for the Southern District of Texas, Western District of Texas, and Northern District of Texas. Mr. Denton has been recognized as a Texas Super Lawyer each year since 2008 for Government/Cities/Municipalities, Employment & Labor. Mr. Denton is Board Certified in Civil Trial Law by the Texas Board of Legal Specialization and has practiced law in the area of local government litigation defense for over 30 years. He is a member of the State Bar College, Texas City Attorneys Association, and American Board of Trial Advocates.

Ricardo J. Navarro is a Partner/Shareholder in the Firm. He joined the Firm in 1991, and is the Managing Partner of the Firm's Rio Grande Valley office, located in Harlingen, Texas. Mr. Navarro earned his Juris Doctorate from the University of Texas School of Law in 1984, and his Bachelor of Arts from the University of Texas at Austin in 1978. He was admitted by the State Bar of Texas in 1985. Mr. Navarro began his legal practice as a Briefing Attorney for the Honorable Reynaldo G. Garza on the U.S. Court of Appeals for the Fifth Circuit, and then served as Chief of the Civil Division of the Bexar County District Attorney's office. His areas of expertise are local government and municipal law generally, with an emphasis on labor and employment law, civil service law and practice, collective bargaining, meet and confer, and litigation in state and federal courts. Mr. Navarro was admitted by the United States Supreme Court in 1992, the United States Court of Appeals Fifth Circuit in 1986, and the United States District Courts Southern and Western District of Texas in 1986. He is also currently the Panel Chair of the District 12 Grievance Committee for the State Bar of Texas, which involves the administration and enforcement of the attorney disciplinary system for lawyers in the State of Texas in Region 12. He is also a member of the Texas City Attorneys Association, Hidalgo County Bar Association, Cameron County Bar Association, and Corpus Christi Bar Association.

Patrick C. Bernal is a Partner/Shareholder with the Firm. He joined the Firm in 1991, and focuses primarily in the areas of municipal law and litigation. Mr. Bernal earned his Juris Doctorate from the University of Texas School of Law in 1983, his Master of Public Affairs from the University of Texas at Austin in 1983, and his Bachelor of Arts from Texas A&M University in 1979. He was admitted by the State Bar of Texas in 1983. Mr. Bernal began his legal practice as an Assistant

City Attorney for the City of San Antonio, advising various city departments as general counsel and representing the City in litigation. He continued his litigation practice as a tax attorney for the law Firm of Heard, Goggan, Blair and Williams, handling property tax suits on behalf of governmental entities. Mr. Bernal has practiced civil trial law in the area of local government defense since joining the Firm, and has handled a variety of cases ranging from employment law, land use, annexation, flooding, civil rights, torts, contracts, personal injury and property damage claims in federal and state courts at the trial and appellate levels. Mr. Bernal is licensed to practice in the Fifth Circuit Court of Appeals, and the Western and Southern Districts of Texas.

George E. Hyde is a Partner/Shareholder with the Firm. He joined the Firm in 2001, and is the managing Partner of the Firm's Austin office. Mr. Hyde earned his Juris Doctorate *cum laude* from St. Mary's University School of Law in 1998, and his Bachelor of Science in Criminal Justice from Texas State University in 1988. He was admitted by the State Bar of Texas in 1999. Mr. Hyde began his legal practice at O'Connell & Benjamin, PC, after having served as a Peace Officer for over eight years. He has served as the City Attorney and a Commissioned Peace Officer for the Pflugerville Police Department since 2011, holding a Texas Master Peace Officer license with Texas state certifications as an Instructor and a Firearms Instructor, achieving the rank of Lieutenant serving as Special Operations, Professional Standards and Training Commander for a San Antonio suburban city. Mr. Hyde defends local government and officials in state and federal courts on claims based in tort, contract, property, federal and state statutory claims, civil rights, administrative law and in employment matters. Mr. Hyde is appointed as City Attorney for multiple cities and serves as General Counsel for Economic Development Corporations. He established the Firm's municipal prosecution services practice in 2003. He has served several cities and other local governments as litigation counsel, special counsel, city attorney and in economic development matters. He is approved legal counsel to represent members of the Texas Municipal League Intergovernmental Risk Pool and the Texas Association of Counties Risk Pool in litigation and administrative law matters. Mr. Hyde was admitted by the U.S. District Court Western District of Texas in 1999, the U.S. District Court Southern District of Texas in 2001, the U.S. Court of Appeals 5th Circuit in 2001, the U.S. Supreme Court in 2003, and the U.S. District Court Northern District of Texas in 2011. He is a member of the Austin Bar Association, State Bar of Texas, Texas Municipal League, Federal Bar Association of the Fifth Federal Circuit, and the Texas City Attorneys Association.

Charles E. Zech is a Partner/Shareholder with the Firm and is the Managing Partner of the Firm's City Attorney services. Mr. Zech has over 18 years of legal experience and over 16 years of municipal legal experience. Mr. Zech was previously employed as the City Attorney for the city of New Braunfels. He specializes in land use, contract, economic development and local government law. He handles all aspects of representation for local governmental agencies across Texas by providing representation and legal advice to the various City Councils, Commissions, Boards and Development Corporations while focusing his special project work on a variety of local government issues. Mr. Zech is past President of the Board of Directors of the Texas City Attorneys Association. He is an IMLA Local Government Fellow since 2007, previously served as chair of its Ethics Section and is a member of the San Antonio Bar Association, Travis County Bar Association, Texas City Managers Association, The College of the State Bar Association, the University of Texas Land Use Planning Conference Faculty and has served as faculty speaker to the suing and Defending Governmental Entities State Bar Program. He is a veteran of the U.S.

Navy and the Gulf War. He received his Juris Doctorate from St. Mary's School of Law, his Master's Degree in Public Administration from Texas State University, and his Bachelors Business Administration in Economics and Finance from Southwest Texas State University. Mr. Zech is licensed to practice in all County and District Courts of Texas, the Texas Supreme Court, the U.S. District Court, Texas Western District, and the U.S. District Court, Texas Northern District. Mr. Zech is the 2011 recipient of the State Bar of Texas, Governmental Section, and Outstanding Government Lawyer Award.

Mr. Zech currently serves as legal counsel for the following entities: Cities of Bandera, Burnet, Castrovilla, Charlotte, Cibola, Copperas Cove, Fair Oaks Ranch, Falls City, Jouranton, Kenedy, La Vernia, Live Oak, Natalia, Poth, Schertz, Shavano Park, St. Hedwig, Sterling City, Stockdale, Sweetwater, Taft, and Universal City, Austin Urban Renewal Agency, Bastrop Economic Development Corporation, Cibola Economic Development Corporation, Comal County Emergency Services District #1, Dickinson Economic Development Corporation, Fair Oaks Ranch Municipal Development District, Floresville Economic Development Corporation, La Vernia Municipal Development District, Live Oak Economic Development Corporation, Natalia Municipal Development District, Schertz Economic Development Corporation, and Schertz-Tax Increment Reinvestment Zone #2.

In addition, the Firm serves as counsel for the following: Cities of Bay City, Brady, Brownsville, Buda, Carrollton, Falfurrias, Garden Ridge, Groesbeck, Hidalgo, Harlingen, La Feria, McAllen, Missouri City, Mountain City, Pflugerville, Pharr, Rosenberg, San Benito, San Juan, and Victoria, Bandera CAD, Bay City Community Development Corporation, Brady Economic Development Corporation, Cameron County Regional Mobility Association, Capital Area Council of Governments, Cow Creek Groundwater Conservation District, Garden Ridge Quarry Issues, Hutto Type A Economic Development Corporation, Karnes/Wilson County Juvenile Probation Department, Lower Rio Grande Valley Development Council, Pflugerville Community Development Corporation, Pflugerville Tax Increment Reinvestment Zone, and the Tropical Texas Behavioral Health Center.

**RÉSUMÉS OF
DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C. -
ATTORNEYS AND COUNSELORS**

Habib H. Erkan, Jr. is a Senior Associate with the Firm. Mr. Erkan has been representing economic development corporations for over 4 years. Mr. Erkan currently serves as general counsel to the Cibolo Economic Development Corporation. He joined the Firm in 2012, and handles representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel. Mr. Erkan earned his Juris Doctorate from St. Mary's University School of Law in 1990, and his Bachelor of Science in Behavior Science from the University of Houston in 1985. He was admitted by the State Bar of Texas in 1990. Mr. Erkan began his legal practice as a Briefing Attorney for the Texas First Court of Appeals. He later served eight years as an Assistant City Attorney for the City of San Antonio, where he was the attorney directly responsible for providing legal counsel to the planning, building inspection, code compliance and purchasing departments; and seven years as a City Attorney for the City of Helotes, where he provided legal counsel to all aspects of the municipality's operation. Mr. Erkan was admitted by the Federal Western District of Texas in 2004. He also serves on the Elder Board of Bandera Road City Church.

Alberto J. Peña is a Non-Equity Partner with the Firm. He joined the Firm in 2001, and handles employment litigation, arbitration, civil service, collective bargaining, FLSA, and civil trial litigation. Mr. Peña earned his Juris Doctorate from the University of Texas at Austin in 1973, and his Bachelor of Business Administration from the University of Texas at Austin in 1970. He was admitted by the State Bar of Texas in 1973. Mr. Peña began his legal practice with a general private law practice in Brownsville for 13 years, and then served as Assistant City Attorney for the City of San Antonio for 15 years. In addition to representing several public entities, he served as the Civil Service Director for the City of Brownsville Fire Fighters' and Police Officers' Civil Service Commission, and worked as a legal advisor while working at the City Attorney's office in San Antonio. His expertise has been in discipline and related employment matters. Mr. Peña was admitted by the U.S. District Court Southern and Western District of Texas in 2002, and the U.S. Supreme Court in 2003. He is a member of the Bexar County Bar Association, the Texas City Attorneys Association, and Federal Bar Association.

Alan T. Ozuna is a Partner with the Firm. He joined the Firm in 2003, and handles civil litigation. Mr. Ozuna earned his Juris Doctorate from St. Mary's University School of Law in 1997, and his Bachelor of Arts in English from The University of Texas at Austin in 1993. He was admitted by the State Bar of Texas in 1998. Mr. Ozuna's areas of practice include general counsel for local governmental entities regarding employment, planning and land use issues. He also assists with representing cities and counties in labor negotiations with fire, police, and sheriff unions. He is a member of the Texas City Attorneys Association (TCAA). Mr. Ozuna was admitted by U.S. District Courts for the Southern Districts of Texas in 1998, and by U.S. District Courts for the Western Districts of Texas in 2003.

Robert L. Drinkard is a Partner with the Firm. He joined the Firm in 2002, and handles State and Federal Civil Trials and Appeals. Mr. Drinkard earned his Juris Doctorate from The University of Texas School of Law in 1998, and his Bachelor of Arts in Government from The University of

Texas in 1995. He was admitted by the State Bar of Texas in 1998. Mr. Drinkard defends governmental employers in labor and employment issues including Whistleblower Act, First Amendment, due process, FMLA, and discrimination and harassment claims made pursuant to Title VII, ADEA, ADA and state laws. Mr. Drinkard also defends governmental entities in federal civil rights claims, state law tort claims and takings claims. He represents governmental entities as general and special projects counsel. Mr. Drinkard was admitted by the Texas Supreme Court in 1998, the U.S. District Court Southern District of Texas in 2001, and the U.S. Court of Appeals Fifth Circuit in 2003. He is a member of the Cameron and Hidalgo County Bar Associations, and the Texas City Attorneys Association.

Clarissa M. Rodriguez is a Senior Associate with the Firm. Ms. Rodriguez has been representing economic development corporations for over 7 years. She currently serves as general counsel to the Floresville Economic Development Corporation and the Live Oak Economic Development Corporation. She joined the Firm in 2008, and handles representation of municipalities, economic development corporations, and counties as City Attorney and General Counsel. In addition handles representation of clients in state and federal litigation matters in civil defense litigation, including motion practice, discovery and depositions for governmental entities. Ms. Rodriguez earned her Juris Doctorate from Drake University School of Law in 2006, her Masters of Public Administration, School of Urban Professional Programs from The University of Texas at San Antonio in 2001, and her Bachelors of Speech Communication, College of Liberal Arts from Texas A&M University in 1998. She was admitted by the State Bar of Texas in 2006. Ms. Rodriguez began her law practice at Shelton & Valadez, PC, representing clients in state and federal trial and arbitration matters in a wide range of commercial, work injury and civil defense litigation disputes. Ms. Rodriguez was admitted by the U.S. District Court Southern District of Texas in 2009, the U.S. District Court Western District of Texas in 2007 and the Fifth Circuit Court of Appeals in 2011. She is also a member of the Texas City Attorneys Association, San Antonio Bar Association, American Bar Association and Mexican American Bar Association.

T. Daniel Santee, II is a Senior Associate with the Firm. Mr. Santee has been representing economic development corporations for over 15 years. He joined the Firm in 2015, and handles city attorney and general counsel matters. Mr. Santee earned his Juris Doctorate from St. Mary's University School of Law in 1994 and his Bachelor of Arts-Psychology from Baylor University in 1991. He was admitted by the State Bar of Texas in 1995. Mr. Santee began his legal practice as a legal intern with the Bexar County District Attorney's Office Family Violence Unit, and then joined the Henderson County Attorney's Office as a prosecutor. Before joining the Firm he served as an Assistant City Attorney, Interim City Attorney, and as the City Attorney for the City of Abilene since 1997. Mr. Santee is admitted to practice in the U.S. District Court Northern District of Texas and the U.S. Court of Appeals 5th Circuit. He holds merit certification for distinguished service in municipal law.

Jameene Y. Williams is an Associate in the Firm. She joined the Firm in 2009, and handles general counsel matters, litigation and municipal court prosecutions in the Firm's city attorneys practice. Ms. Williams earned her Juris Doctorate from Texas Southern University - Thurgood Marshall School of Law in 2007, and her Bachelor of Arts in Political Science from the University of Chicago in 2001. She was admitted by the State Bar of Texas in 2007. Ms. Williams began her legal practice at the Harris County Attorney's Office, and later worked as a sole proprietor focusing

on criminal defense. Her solo practice also involved high profile matters in which she represented police officers, as well as parents against public school boards and districts. Ms. Williams was admitted by the U.S. District Courts Southern District of Texas in 2008. She is also a member of the San Antonio Bar Association, Texas Young Lawyers Association and Texas City Attorneys Association.

Megan R. Santee is a Senior Associate with the Firm. She joined the Firm in 2016, and handles city attorney and general counsel matters. Mrs. Santee earned her Juris Doctorate from Texas A&M University School of Law in 1997 and her Bachelor of Arts from Baylor University in 1991. She was admitted to the State Bar of Texas in 1997. She began her legal career at the 11th District Court of Appeals of Texas as a briefing attorney. Before joining the Firm she served as an Assistant City Attorney and as the Director of Public Works for the City of Abilene. She also maintained a private appellate practice for over 12 years.

Rebecca S. Hayward is an Associate with the Firm. She joined the Firm in 2012, and handles civil litigation matters and special counsel work for governmental entities. Ms. Hayward earned her Juris Doctorate from Ave Maria School of Law in 2011, and her Bachelor's Degree in History from Texas A&M International University in 2008. She was admitted by the State Bar of Texas in 2012. While attending Ave Maria School of Law, she served on the Moot Court Board, and on that Board's Publications Committee. After her second year of law school, Ms. Hayward worked as a summer intern with U.S. District Court Judge Micaela Alvarez, of the Southern District of Texas.

Scott M. Tschirhart is a Senior Associate in the Firm. He joined the Firm in 2013, and handles the Firm's Special Counsel and Litigation groups and assists with legal services currently provided to a number of clients. Mr. Tschirhart earned his Juris Doctorate from Baylor University School of Law (Cum Laude) in 1999, and his Bachelor of Arts in Criminal Justice University of Texas at San Antonio (Magna Cum Laude) in 1996. He was admitted by the State Bar of Texas in 1999. Mr. Tschirhart began his legal practice at Naman Howell Smith & Lee, and later at Earl & Associates where he represented several cities as their city attorney, and served as the municipal prosecutor for the Cities of Castroville and Grey Forest. While attending Baylor Law School, he served on Law Review and later as an Adjunct Professor providing guidance to ABA Client Counseling and Negotiations Teams. Mr. Tschirhart currently assists with legal services provided the Texas cities of Bay City, Brady, Bryan, Buda, Castroville, Del Rio, El Paso, Pflugerville, and Garden Ridge, as well as litigation assistance for the Texas Association of Counties Risk Pool, the Texas Counsel Risk Management Fund, Bandera County, Bosque County, Gillespie County, Karnes County, Kendall County, the Guadalupe-Blanco River Authority and the Cow Creek Groundwater Conservation District. In addition to providing City Attorney services, Mr. Tschirhart is an active litigator, handling cases ranging from police-involved shooting incidents to USERRA and other employment issues. Mr. Tschirhart was admitted by the Northern, Southern, Eastern and Western U.S. District Courts of Texas in 1999.

Cynthia X. Trevino is an Associate with the Firm. She joined the Firm in 2014, and handles general counsel and municipal court prosecution matters. Ms. Trevino earned her Juris Doctorate from St. Mary's University School of Law in 2009, and her Bachelor of Arts Degree in Psychology from Texas A&M University – San Antonio in 2009. She was admitted by the State Bar of Texas in 2013. Ms. Trevino began her legal practice as a research fellow for the Center for Terrorism

Law, where she assisted in defending military personnel wrongly accused of rules of engagement violations. She was also previously a City Secretary coupled with five years of municipal experience, and an enforcement officer for the Attorney General Child Support Division for over seven years. Ms. Trevino is a member of the Bexar County Women's Bar Association, the San Antonio Bar Association, and the Texas City Attorney Association.

John-Michael Hayward is an Associate with the Firm. He joined the Firm in 2014, and handles special counsel and civil litigation matters. Mr. Hayward earned his Juris Doctorate from Ave Maria School of Law in 2012, and his Bachelor of Science degree in Criminology from California State University in 2008. He was admitted by the State Bar of Texas in 2013. Mr. Hayward began his legal practice as a pre-litigation attorney with the Law Offices of Thomas J. Henry. While attending Ave Maria School of Law, he studied Constitutional Law under Justice Samuel Alito.

Catarina R. Gonzales is an Associate with the Firm. She joined the Firm in 2015, and handles municipal prosecution, general counsel and litigation for the Firm's City Attorney practice. Ms. Gonzales earned her Master of Laws in Energy, Environmental and Natural Resources Law from the University of Houston Law Center in 2014. She was admitted by the State Bar of Texas in 2004. Ms. Gonzales possesses extensive knowledge of public and environmental law, including government and legislative relations, air and water quality issues, energy issues, flood control issues, land use, and state and federal rulemaking. She was previously the Committee Clerk and Counsel to the Texas House Committee on Local Government Ways and Means and represented the Office of the Harris County Judge before the Texas Legislature for three legislative sessions. Ms. Gonzales is a 2011 recipient of the Houston Business Journal "40 under 40" award, which recognizes up and coming leaders in their respective fields and was a 2011 League of Women Voter's "Rising Star" award honoree.

M. Shannon Kackley is a Senior Associate with the Firm. He joined the Firm in 2015, and handles city attorney/general counsel, litigation and appellate matters. Mr. Kackley earned his LL.M. from Southern Methodist University Dedman School of Law in 2001, his Juris Doctorate from Baylor University School of Law in 1994, and his Bachelor of Arts from The University of Texas at Austin in 1991. He was admitted by the State Bar of Texas in 1994. Mr. Kackley was previously employed at Gay, McCall, Isaacks, Gordon & Roberts, P. C. where he represented governmental entities and handled defense litigation. Prior to that, he served as Assistant City Attorney for the City of Garland, Texas. He was the Chief Municipal Prosecutor before transferring to the Civil Litigation Division. He taught Fourth Amendment classes at the City of Garland's Police Academy and successfully defended the constitutionality of Garland's Municipal Court before the Court of Appeals. In the Civil Litigation Division, Mr. Kackley worked with the Police Department and Code Enforcement to abate public nuisances within the city. In addition, he advised departmental directors on legal issues. Mr. Kackley served in the U.S. Army from 1986 to 1989. He graduated from Airborne School and served as an Assistant Squad Leader on a Bradley Fighting Vehicle with the 24th ID in Fort Stewart, GA. Mr. Kackley has served as a Housing Trust Fund Board Member for the City of Frisco, and a Grant Judge for Plano I.S.D. He currently volunteers with the House on the Corner Project with his church.

Sarah M. Griffin is a Senior Associate Attorney. She joined the Firm in 2016. Ms. Griffin obtained her Bachelor of Arts in English from Trinity University in 1986 and her Juris Doctorate

from St. Mary's School of Law in 1989. She started her practice as Assistant City Attorney for the City of Leon Valley, Texas, where she later became City Attorney. During her time with the City, Ms. Griffin advised the City Council, Zoning Commission and Board of Adjustment. She was a hands-on partner in the development of a Comprehensive Master Plan and a complete rewrite of the Zoning Code. Ms. Griffin was also involved in the drafting of legislation on behalf of the City for the creation of a 4B corporation for Economic Development. Ms. Griffin created drought management ordinances and implemented water use regulations. In addition, she represented the City in various employment matters. In 1999, Ms. Griffin moved her practice to become the Corporation Counsel for her hometown of Freeport, Illinois and remained there for 17 years. While in Illinois, Ms. Griffin acted as Lead Negotiator on behalf of the City for numerous union contracts with the Fire, Police, and American Federation of County and Municipal Employees. Ms. Griffin was an active participant in the regional Public/Private partnership for Economic Development and was involved with various development incentive programs, including an Enterprise Zone and several Tax Increment Financing Districts. She also represented the City in election contests, created an administrative hearing process and tribunal for code violations and advised the City in employment grievances and administrative complaints.

Bradley "Scott" Osburn is an Associate in the Firm. He joined the Firm in 2016, and handles city attorney and general counsel matters. He earned his Juris Doctorate from Gonzaga University School of Law, in Spokane, Washington, in 2004 and his Bachelors of Arts, English from Eastern Washington University, in Cheney, Washington in 1998. He was admitted into the State Bar in 2005. He previously worked for the City of Killeen and is currently serving as a member of the City of Killeen's executive management team providing leadership and executive oversight for the City's Public Works Department, which consists of six divisions, three hundred personnel and an annual operating budget exceeding \$70 million. Mr. Osburn is part of the International Municipal Lawyers Association, Texas City Attorneys Association, Texas Municipal League Texas Bar Association, Texas Public Works Association and Girl Scouts of Central Texas (Volunteer).

Sameer S. Birring is an Associate in the Firm. He joined the Firm in 2017 and handles Federal Litigation cases and Civil cases. Mr. Birring graduated magna cum laude with High Honors in Metropolitan Studies from New York University and attended and studied law at the University of Harvard. He was admitted by the State Bar of Texas in 2013 where he practices in the State of Texas Courts and US District Courts, in the Northern, Southern and Western Divisions in Texas. Mr. Birring previously drafted pleadings and motions, represented clients at court appearances, prepared and responded to discovery requests, and negotiated settlements.

CURRENT MUNICIPAL CLIENTS

Our firm currently represents the following municipal clients:

Firm's Current City Attorney Appointments:

City of Harlingen (74,950 pop.)
City of Pflugerville (59,245 pop.)
City of Schertz (39,453 pop.)
City of Rosenberg (36,937 pop.)
City of Copperas Cove (33,919 pop.)
City of Cibolo (27,855 pop.)
City of Universal City (20,359 pop.)
City of Bay City (17,809 pop.)
City of Live Oak (15,749 pop.)
City of Buda (15,023 pop.)
City of Fair Oaks Ranch (8,645 pop.)
City of La Feria (7,338 pop.)
City of Burnet (7,100 pop.)
City of Brady (5,946 pop.)
City of Falfurrias (4,981 pop.)
City of Jourdanton (4,327 pop.)
City of Garden Ridge (3,957 pop.)
City of Shavano Park (3,684 pop.)
City of Kenedy (3,421 pop.)
City of Taft (3,079 pop.)
City of Castroville (2,883 pop.)
City of St. Hedwig (2,406 pop.)
City of Poth (2,370 pop.)
City of Natalia (1,883 pop.)
City of Charlotte (1,637 pop.)
City of Stockdale (1,442 pop.)
City of La Vernia (1,249 pop.)
City of Bandera (957 pop.)
City of Mountain City (724 pop.)
City of Falls City (610 pop.)

Firm's General Counsel Appointments:

Austin Urban Renewal Agency
Bastrop Economic Development Corporation
Brady Economic Development Corporation
Capitol Area Council of Governments
Cibolo Economic Development Corporation
Comal County Emergency Services District #1
Copperas Cove Economic Development Corporation (Interim)

Cow Creek Groundwater Conservation District
Dickinson Economic Development Corporation
Fair Oaks Ranch Municipal Development District
Floresville Economic Development Corporation
Hutto Type A Economic Development Corporation
La Vernia Municipal Development District
Live Oak Economic Development Corporation
Natalia Municipal Development Corporation
Pflugerville Community Development Corporation
Pflugerville – Tax Increment Reinvestment Zone (TIRZ)
Schertz Economic Development Corporation
Schertz – Tax Increment Reinvestment Zone #2
Tropical Texas Behavioral Health
Kenedy 4B Corporation

Firm Special Counsel Appointments:

City of Abilene
City of Alvin
City of Big Lake
City of Boerne
City of Brownsville
City of Bryan
City of city of
City of Carrollton
City of Converse
City of Del Rio
City of Denton
City of Devine
City of Floresville
City of Gonzales
City of Granbury
City of Groesbeck
City of Hidalgo
City of Laredo
City of Mason
City of McAllen
City of Missouri City
City of Pharr
City of San Benito
City of San Juan
City of Sterling City
City of Sweetwater
City of Victoria
Town of Pecos City
Alamo Area Council of Government
Bay City Community Development Corporation

Cameron County Regional Mobility Association
Center for Health Care Services
Converse Economic Development Corporation
Karnes – Wilson County Juvenile Probation Department
Lower Rio Grande Valley Development Council
McMullen County Water Control and Improvement District

AREAS OF PRACTICE

In general, but without limitation, the following are examples of qualifications and experience in various areas in municipal work:

Experience with City Councils, Boards and Commissions: Part of a City Attorney's responsibility is assisting Elected and Appointed Officials and their Boards and Commissions with agendas and postings under the Texas Open Meetings Act and the Texas Public Information Act. Our attorneys are very familiar with both Acts and deal with questions from our City Councils and their Boards and Commissions on a daily basis regarding compliance. Because the Firm represents only governmental entities, every lawyer in our firm has experience dealing with City Councils and the various boards and commissions that exist within local government.

Land Use: Various members of DNRBH&Z have extensive experience with platting and zoning, including representing City Councils and Planning and Zoning Commissions, as well as Boards of Adjustment. Mr. Santee personally represented the City of Abilene's Planning and Zoning Commission during his 18 years as City Attorney for the City. Mr. Zech, Mr. Santee, and Mr. Erkan all have over 15 years' experience in representing Zoning Board of Adjustments

Contracts: The Firm has a depth of experience in the negotiation, drafting and review of numerous types of contracts including economic development agreements, contracts for the sale of goods and services, such as architectural and engineering services, independent contractor agreements and information technology services, franchise agreements, easement and rights-of-way access agreements, and many others. As the sole in house City Attorney for the City of New Braunfels, and as City Attorney for the City of Abilene, Mr. Zech and Mr. Santee respectfully were involved in every RFP and RFQ proposal that was solicited, negotiated and drafted for their communities. Mr. Zech, Mr. Santee and Mr. Erkan have all negotiated multiple types of contracts to include construction contracts (including the modification of AIA agreements), contracts for placement of Wi-Fi in a community, airport contracts, hangar agreements and leases, sale of water contracts, franchise agreements for use of streets and other rights-of-way, multitudes of economic development and development agreements, and the routine purchasing and competitive bid negotiations.

Human Resources: All attorneys with DNRBH&Z routinely advise cities on the hiring, discipline, and termination of city employees. The Firm both counsels and successfully defends local governments in this practice area. The Firm combines our experience from multi-city comprehensive City Attorney and Special Project representation with our varied litigation practice and experience to provide a "best practice" approach to our clients in an effort to avoid potential liability and risk through improving internal practices and policies.

Open Government: The Firm routinely counsels cities on issues relating to the Texas Open Meetings Act and the Texas Public Information Act. Our attorneys and staff are experienced in handling requests for public information, meeting statutory deadlines

associated with those requests, and advocating before the Office of the Attorney General.

Municipal Court Prosecutor Services: Our firm provides Municipal Court prosecution services for various cities.

Utilities: Various attorneys in the Firm have routinely advised cities on legal issues related to municipal utilities. Mr. Erkan serves City Attorney for the City of Castroville, a general law city with water, wastewater, and electric utilities. Mr. Santee routinely advised the City of Abilene on municipal utility issues. Lawyers in the Firm have negotiated multiple water contracts in the purchase and lease of water rights. In its capacity of City Attorney for the City of Schertz, the firm plays an important role in the Schertz Seguin Local Government Corporation, which was specifically created for the purpose of water acquisition and distribution for its community.

Public Safety: The Firm is well versed in the legal issues impacting police departments and law enforcement entities. Mr. Hyde is a former police officer and has unique insight into police issues. Our attorneys have significant experience covering the spectrum of law enforcement and other public safety issues – from establishing a police department (as the Firm did with the City of Buda) and advising officers on substantive procedural matters, to handling personnel matters and defending departments in litigation. Mr. Denton and Mr. Peña routinely represent cities such as Abilene, Houston, Austin and other cities in meet and confer and collective bargaining negotiations. Mr. Peña has over 30 years' experience in police and fire personnel issues.

Economic Development: As General Counsel for Development Corporations and in our role as City Attorneys and Special Project counsel, our Firm helps negotiate and draft numerous incentive agreements, industrial district agreements, tax abatements and other economic development packages all of which are vital to supporting a municipality's tax base. In this context, the Firm is well versed in the areas of tax increment financing, tax abatements, hotel occupancy tax, reinvestment zones, 380 agreements, development agreements, industrial districts and other alternative urban renewal and economic development laws and projects.

Annexation: The Firm assists cities with annexation, both in the annexation process as well as defending lawsuits brought by property owners challenging annexations. Our firm, led by Mr. Bernal, was successful in striking down an unconstitutional state law which would have prevented the City of San Antonio from annexing certain portions of its IH 10 corridor. Mr. Zech, in his role as City Attorney, was personally involved in the first lawsuit brought under the new annexation regulations in 2001 which resulted in a successful mediation of said suit.

Municipal Litigation: DNRBH&Z offers litigation defense services to our city clients which has included representation in cases involving EEOC discrimination claims, whistleblower claims, personal injury and property damage, First Amendment and defamation, land use/vested rights claims, federal and state overtime pay, FMLA claims, ADEA and ADA claims, labor contract arbitrations, as well as negotiations of collective

bargaining/meet and confer agreements, annexation and extra territorial jurisdiction challenges. DNRBH&Z is approved litigation defense counsel for both the Texas Municipal League Intergovernmental Risk Pool and the Texas Association of Counties Risk Pool.

Charter Creation, Review and Amendments: DNRBH&Z assists cities with the development and adoption of their initial Home Rule Charters and in the periodic amendment of Home Rule Charters. Mr. Zech is the author of a research project designed to assist the Texas Municipal League in an update to Terrell Blodgett's monograph Texas Home Rule Charters and is considered to be one the leading authorities in the area.

Training: The Firm offers training sessions to our Elected and Appointed Officials on the laws that govern their conduct and impact city operations including conflict of interest statutes, mandatory financial disclosure, open meetings, public information, nepotism, competitive bidding, land use regulations, ethics, legislative updates, etc. These statutes apply specifically to Elected and Appointed Officials and often have civil and criminal penalties. The Firm can also provide general training for City employees and Elected and Appointed Officials on such areas as planning and zoning, sexual harassment, ethics, tax increment financing, economic development, procurement, and other areas affecting governmental entities. The Firm has presented legal training at the Alamo Area Council of Governments Conference for Newly Elected Officials.

San Antonio | Austin | Rio Grande Valley
2517 N. Main Avenue | San Antonio, Texas 78212-4685
V 210-227-3243 | F 210-225-4481

June 28, 2017

Kent Myers
City Manager
City of Fredericksburg
126 W. Main St.
Fredericksburg, Texas 78624

Via Email: kmyers@fbgtx.org

RE: Agreement for Legal Services – Special Counsel

Dear Mr. Myers,

We thank you for the opportunity for Denton Navarro Rocha Bernal Hyde & Zech, P.C. (“DNRBHZ”) to provide limited special counsel legal services for the City of Fredericksburg, Texas, regarding transactional negotiations and document preparation related to the proposed Fredericksburg Hotel and Conference Center.

Our practice, by design, is limited to the representation of public entities and officials. The majority of our lawyers have served as city attorneys, assistant city attorneys or assistant county attorneys in the public sector. As a result, we understand our services are paid from tax dollars and that the Council and Mayor in your City are accountable to the citizens for the expenditure of those funds. We therefore strive to provide the best all-around legal services for the cost. Denton Navarro Rocha Bernal Hyde & Zech, P.C. holds merit certification in municipal law from the Texas City Attorneys Association.

DNRBHZ, represents local governments, City officials and their staff as City attorneys, general counsel, special legal counsel, litigators, and labor negotiators in all areas of the law. We are organized into four practice sections: City Attorney/General Counsel Services, Special Counsel Services, Litigation Defense, and Labor Negotiations. Our three offices are comprised of twenty-two lawyers supported by other professionals and staff, with five shareholders who have over 90 years of combined municipal legal expertise. Our firm structure enables us to offer a customized service to cities in need with infinite possibilities, as every attorney in our firm has experience in multiple practice areas. Our legal team works collaboratively to give you the best of who we are and what we have to offer. Our approach to providing legal services ensures that you have access to the attorney on our legal team with the most appropriate experience to meet your needs. Our responsiveness to our clientele is validated every day by every lawyer and legal professional at DNRBHZ and our philosophy of providing our clients with the most experienced and best prepared attorneys in the municipal field means that no other firm practicing in the field

of municipal law can match the combined general counsel, city attorney, and litigation experiences that the lawyers in our firm possess.

Charles Zech will act as the supervising attorney with senior associate Habib H. Erkan Jr., being your main contact for this matter. If circumstances warrant, other attorneys of the firm may be assigned. Unless identified below, all staff member support time is provided at no charge. Our hourly billing rates for this engagement are as follows:

Special Counsel: \$290 per hour for Partners; \$260 per hour for Senior Associates; \$210 per hour for Associates; \$125 per hour for Law Clerks; and \$85 per hour for Paralegals

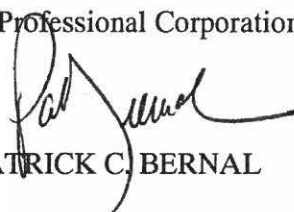
We bill on the tenth of an hour. All related expenses are charged "at cost" with no "mark-up" and all related mileage is charged pursuant to the then in effect IRS Rules. All invoices shall be sent to the appropriate individual as directed.

Please execute this letter in the space provided below to acknowledge formal acceptance of the terms and conditions of our engagement as Special Counsel on behalf of the City of Fredericksburg, Texas.

If you have any questions or need clarification regarding the above information, please do not hesitate to contact Mr. Zech at (210) 227-3243.

Very truly yours,

DENTON NAVARRO ROCHA BERNAL HYDE & ZECH
A Professional Corporation



PATRICK C. BERNAL

pcb/ec

APPROVED:

City Manager, City of Fredericksburg

Date

This letter is to memorialize an agreement between the City of Fredericksburg, Texas ("City"), a municipal corporation, and Murphree and Company, ("Murphree") (collectively the "Parties"). This agreement is in connection with joint efforts of the Parties to encourage economic development through the development of a 150 room hotel and conference center, with a retail component (the "project"), and the economic incentives that Murphree intends to request from the City in connection therewith. This project will increase employment, job opportunity, ad valorem real property values and associated tax revenue in an effort to promote economic development, and tourism in the city. This agreement shall be effective upon execution by the Parties. A copy of this agreement shall be enforceable as if it is an original.

The Parties agree that in exchange for the efforts to be put forth by the City and its employees and representatives to be performed in the future Murphree hereby agrees to reimburse the City for all actual and reasonable legal and professional fees and expenses expended by it for outside legal counsel, which are incurred in relationship to the Parties' efforts to support and develop a mutually acceptable economic incentive agreement in support of this project.

This reimbursement agreement shall be related only to this project. Upon receipt of an invoice for services provided by the Special Counsel, the City upon payment, shall present the invoices (with any attorney-client communication redacted) for reimbursement to Murphree, who shall in turn reimburse such payment to the City within 10 days of receipt of the demand. Such demand by the City shall be made to Murphree by delivering a copy of the invoice to **Dennis Murphree** by electronic mail or other acceptable means.

The Parties acknowledge and agree that the execution of this agreement and the performance required by this agreement by any party or legal counsel does not establish an attorney-client relationship between legal counsel representing the City of Fredericksburg and Murphree or any representative thereof. The attorneys of Denton Navarro Rocha Bernal Hyde & Zech, P.C. only represent the City and do not represent any other party in this transaction. The Parties acknowledge that each shall have their own legal counsel and that the Parties shall ultimately rely on their own legal counsel's advice in connection with any and all matters in connection with this project.

The Parties further acknowledge that this agreement is only a legal professional fee and expense reimbursement agreement between the Parties for the work performed by Denton Navarro Rocha Bernal Hyde & Zech, P.C., which shall always remain work performed on behalf of its client, the City of Fredericksburg, Texas.

All attorney time spent on the project shall be billed at the rate of \$290 per hour for Partners, \$260 per hour for Senior Associates, \$210 per hour for Associates, and \$125 per hour for Law Clerks. All paralegal time spent on the project shall be billed at the rate of \$85 per hour. All expenses are charged at actual cost. This agreement does not apply to any other fees or expenses incurred by the City for any other legal counsel or professional engineering work for the City. This agreement only applies to the work performed by Denton Navarro Rocha Bernal Hyde & Zech, P.C. in connection with the Project.

The Parties agree that work may be performed in multiple phases. The purpose of the first phase is to determine the feasibility of securing an economic development agreement and obtaining initial approvals from the City. The aggregate legal fees for the Special Counsel's work on the project shall not exceed **\$20,000.00**.

The Parties agree that best efforts will be made to include in the final incentive agreement between the Parties, an incentive to Murphree equal in value to the money expended to reimburse the City under this agreement.

Please execute this letter in the space provided below and indicate your representative capacity binding the Corporation. Upon execution, please return this letter to the City of Fredericksburg, Attention: City Manager by email at kmyers@fbgtx.org.

AGREED:

Kent Myers
City Manager
City of Fredericksburg, Texas

Dennis Murphree
Manager
Murphree and Company



CITY COUNCIL MEMO

DATE: July 05, 2017

TO: Mayor and City Council

FROM: Kris Kneese, P.E. – Assistant Director of Public Works and Utilities

SUBJECT: MLSS Pump Station Rehabilitation Project - Construction Contract Award

Summary:

Receive construction bids for the MLSS Pump Station Rehabilitation Project.

Recommendation:

City staff recommends awarding the MLSS Pump Station Rehabilitation construction contract to Payton Construction, Inc. in the total amount of \$936,120.00.

Background / Analysis:

The Mixed Liquor Suspended Solids (MLSS) Pump Station Rehabilitation Project is a Water Department FY 2017 Capital Improvement Project located at the City of Fredericksburg Water Reclamation Facility (WRF) with an approved budget amount of \$1,000,000. The project includes the rehabilitation of the pumps, piping, valves, electrical, and ventilation equipment within the MLSS building.

The MLSS Pump Station is a critical treatment facility at the City's WRF that operates 365 days per year. The pump station lifts the MLSS out of the oxidation ditch and into the clarifiers. The MLSS Pump Station was constructed in 1995 as part of the 1994 Treatment Plant Expansion Project. Over the last three (3) years, the pumps and isolation valves within the MLSS Pump Station have failed resulting in City Staff

having to install temporary pumping equipment to keep the treatment plant operational and within TCEQ regulatory compliance.

After public advertisement, three (3) secure bids were received at the bid opening on June 22, 2017. Payton Construction, Inc. submitted the low bid of \$936,000.00.

The following table provides a summary of the lump sum bids the City received for the project:

Contractor	Lump Sum Bid
Payton Construction, Inc.	\$936,120
Austin Engineering, Inc.	\$1,050,000
Blackcastle General Contractor	\$1,375,000

During the FY 2017 budget discussion, Council budgeted \$1,000,000 in the Water Department budget to rehabilitate the MLSS Pump Station. A professional service contract for the engineering and design of the project was awarded to HDR Engineering on November 7, 2016 in the amount of \$125,600.00. The total project cost, without contingency, including the construction and professional services contract, equals \$1,061,720, which is \$61,720.00 over the budgeted amount. With the critical operation of the MLSS Pump Station, City Staff recommends funding the budget shortfall with the Water Department budget.

Additionally, HDR has reviewed Payton's bid and qualification to perform the project work. After review, HDR is recommending award of the construction contract to Payton Construction, Inc. in the amount of \$936,000.00, which is 10.4 percent lower than the engineer's opinion of probable construction cost. Also, as noted in HDR recommendation letter, Payton Construction was the contractor that completed the recent improvements to the City's WRF in 2015 and performed very well.

Attachments:

- HDR Letter of Recommendation
- Bid Tabulation

Department Approval



City Manager Approval



June 27, 2017

Mr. Kris Kneese, P.E.
Assistant Director of Public Works and Utilities
126 W. Main Street
Fredericksburg, Texas 78624

RE: City of Fredericksburg Mixed Liquor Suspended Solids (MLSS) Pump Station Rehabilitation Project
Recommendation of Award

Dear Mr. Kneese,

Bids were received for the City of Fredericksburg MLSS Pump Station Rehabilitation project on Thursday, June 22, 2017. A total of three (3) bids were received with the apparent low bidder being Payton Construction, Inc. of Wimberley, Texas. Of the bidders, Payton Construction submitted the lowest lump sum bid. Payton Construction's total lump sum bid is \$936,120.00.

The engineer's opinion of probable construction cost (OPCC) was \$1,159,000.00, including \$125,000.00 of engineering services. If the engineering services are removed from the OPCC, the engineer's OPCC was \$1,034,000.00. One (1) of the bids was below the engineer's OPCC and two (2) of the bids were above the engineer's OPCC. See the attached bid tabulation for a summary of the bids received.

The lowest bid of \$936,120.00 was 10.8 percent lower than the next highest bid of \$1,050,00.00. The average bid was \$1,120,373.33, which was 19.7 percent higher than the lowest bid. The average bid was 8.4 percent higher than the engineer's OPCC (with engineering services removed). The highest bid was \$1,375,000.00 which was 33 percent higher than the engineer's OPCC (with engineering services removed).

Communication with Payton Construction on June 26, 2017 confirmed their confidence in the bid prices as submitted and their availability to perform the work. There are no noted irregularities in the bid as submitted by Payton Construction. A Bid Bond for five (5) percent of the total amount bid was provided with the bid package. Addendum No. 1 was acknowledged on the Bid Form.

Payton Construction provided qualification materials to HDR. The qualification materials included:

- Reference information for similar projects
- Business Organizational Chart
- Proposed Project Manager, Project Superintendent, and resumes of each
- Safety program and records

- Financial information
- List of current projects under contract

HDR also acquired the DNB Risk Management report for Payton Construction. The report indicates that Payton Construction has a relatively low risk viability score and risk portfolio comparison compared to all other businesses within the same model segment. The DNB report indicates that Payton Construction has a moderately high risk of financial stress, but is in a relatively low risk credit score class.

HDR checked on two (2) of the references provided for projects completed in the last five (5) years. The references were quick to praise Payton Construction on the project work they performed. They completed projects on time, on budget, and with minimal change orders. When change orders happened they were due to unforeseen conditions or suggested improvements to the project accepted by the Owner. There was good communication during the projects, and the references said they would work with Payton Construction again. HDR has also completed at least three (3) projects with Payton Construction, including the improvements to the Fredericksburg wastewater treatment plant completed in 2016. HDR has also had similar good experience with Payton Construction.

Based on the information available to us for review, HDR would recommend an award for construction be made to Payton Construction, Inc. Based on the City's budget availability, it is recommended to award the total lump sum bid of \$936,120.00.

If you have any questions or need any information, please feel free to contact me at 210-841-2826.

Sincerely,
HDR Engineering, Inc.



Heather Lindner, P.E.
Project Manager

Enclosure – Bid Tabulation

Cc: Cale J. Underberg, P.E. – HDR
Albert Rodriguez, P.E. – HDR
HDR File

City of Fredericksburg - MLSS Pump Station Rehabilitation
Bid Opening: June 22, 2017 at 10:00 a.m.

Company Name	Payton Construction, Inc.	Austin Engineering Co., Inc.	Black Castle General Contractor
ADDRESS:	P.O. Box 1734	P.O. Box 342349	2115 Stephens Place, Suite 210
CITY, STATE, ZIP:	Wimberley, Texas 78676	Austin, Texas 78734-2349	New Braunfels, Texas 78130
REPRESENTATIVE:	Wendell Payton	Austin Keller	Rodney Schwarzlose
TELEPHONE NO.:	512-847-3702	512-327-1464	830-387-4623
EMAIL ADDRESS:	wpayton@anvilcom.com	akeller@aecoi.net	iinfo@blackcastlegc.com
ADDENDA ACKNOWLEDGED:	Yes	Yes	Yes
BID BOND PROVIDED:	Yes	Yes	Yes
LUMP SUM BASE BID	\$ 936,120.00	\$ 1,050,000.00	\$ 1,375,000.00

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