# NOTICE OF REGULAR CITY COUNCIL MEETING
# CITY OF TOMBALL, TEXAS

## MONDAY, SEPTEMBER 18, 2017

## 6:00 P.M.

**Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, September 18, 2017 at 6:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.**

1.0 Call to Order

2.0 Invocation

- Led by Pastor Scott Zbylot - Silver Springs Baptist Church, Magnolia

3.0 Pledges to U.S. and Texas Flags

4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*

5.0 Reports and Announcements

- September 25, 2017 – 5:00 p.m. – Public Hearing on the Proposed 2017 Tax Rate
- September 30, 2017 – **7th Annual Beetles, Brew & Barbeque Festival**– 10:00

a.m. to 6:00 p.m.

- October 2, 2017 – 6:00 p.m. – Public Hearing on the Proposed 2017 Tax Rate
- October 9, 2017 – 5:00 p.m. – Vote on the Proposed 2017 Tax Rate
- October 7, 2017 – ***5th "Annual Paces for Pink" 5K Run***
- October 14, 2017 – **"Zomball in Tomball"**
- October 16, 2017 – 6:00 p.m. – Vote on the Proposed 2017 Tax Rate
- October 21, 2017– **2nd Annual *Freight Train Food Truck Festival***– 11:00 a.m. to 5:00 p.m.
- October 28, 2017 – **6th Annual Tomball Bluegrass Festival** – 11:30 a.m. to 6:00 p.m.
- November 11, 2017 – **2nd Saturday at the Depot**
- November 17, 2017 – ***"Holiday Lamp Post Stroll"***
- November 18, 2017 – ***52nd Annual Tomball Holiday Parade***
- November 23-24, 2017 – **Thanksgiving Holidays** – City offices closed
- Reports by City staff and members of council about items of community interest on which no action will be taken

6.0 Approve the Minutes of the September 5, 2017 Regular Tomball City Council Meeting

7.0 New Business:

7.1 Approve Resolution No. 2017-15, a Resolution of the City of Tomball, Texas, Adopting and Ratifying the City of Tomball's Investment Policy, as set forth in the City's Administrative Policy No. 13, entitled "Investment Policy".

7.2 Adopt, on First Reading, Ordinance No. 2017-30, an Ordinance Amending Article VI, Erosion and Sediment Control, of Chapter 18, Environment, of the Code of Ordinances of the City of Tomball, to Add Provisions to Support the City's Compliance with Permitting Requirements for Stormwater System; Allowing an Application for a Site Development Permit as an Alternative to an Erosion and Sediment Control Plan; Adopting Penalties in Accordance with Chapter 54 of the Texas Local Government Code; Adopting a New Article VIII, Illicit Discharge Program, of Chapter 18, Environment, Providing Definitions, Regulation and Enforcement of Illicit Discharges Into the City's Stormwater System; Adopting a New Article IX, Post-Construction Runoff Control Program, to Chapter 18, Environment, Establishing Definitions, Regulations, and Enforcement Regarding Discharge of Pollutants in the City's Stormwater Runoff from New Development and Significant Redevelopment; Adopting a New Article X, Pet Waste Management, to Chapter 18, Environment, to Establish Definitions, Regulations and Enforcement Regarding Discharge of Bacteria in Stormwater Runoff from Pet Waste; Providing a Penalty in an Amount Not to Exceed $2,000.00 for any Violation of any Provision of this Ordinance; Repealing All Ordinances or Parts of Ordinances Inconsistent or in Conflict Herewith; Providing for Publication; and Providing for Severability.

7.3 Adopt, on First Reading, Ordinance No. 2017-31, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Deleting the Word "Burglar" from Section 16-59, False Alarm Notification, of Division 2, Permits/Registration Accounts and Registration, of Article II, Emergency Alarm Systems, of Chapter 16, Emergency Services; Providing a Repealer, and Providing for Severability

7.4 Adopt, on First Reading, Ordinance No. 2017-32, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas, by Deleting the Wording "Possibility of Imprisonment for Violation of the International Fire Code" from

Section 20-28 (c), Amendments to the 2012 International Fire Code, of Article II, Fire Code, of Chapter 20 Fire Prevention and Protection; Providing a Repealer, and Providing for Severability

7.5 Adopt, on First Reading, Ordinance No. 2017-34, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Adding a Penalty Provision to Article VI, Right of Way Management, and Article VII, Telecommunications and Wireless Facilities, of Chapter 38, Streets, Sidewalks and Other Public Places, Providing for Severability, Making Other Findings

7.6 Award Contract for E&P Project Number 2017-10002 Critical Needs Improvements for the North and South Wastewater Treatment Plants to JTR Constructors, Inc. in the Amount of $4,368,250 and approve Change Order No. 1 decreasing the contract amount to $3,612,103.

7.7 Approve Request by Dana Kelly, Owner of the Empty Glass, for Approval to Stage the 4th Annual Texas Wine Festival at the Depot, to be Held on Saturday, October 7, 2017

7.8 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.071 - Consultation with the City Attorney regarding a matter that the Attorney's duty requires to be discussed in closed session.

8.0 Adjournment

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 14th day of September 2017 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

*Doris Speer*

________________________

Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Regular City Council
Agenda Item
Data Sheet

Meeting Date: September 18, 2017

**Topic:**

- Led by Pastor Scott Zbylot - Silver Springs Baptist Church, Magnolia

**Background:**

**Origination:**

**Recommendation:**

**Party(ies) responsible for placing this item on agenda:**

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

Regular City Council
Agenda Item
Data Sheet

Meeting Date: September 18, 2017

**Topic:**

- September 25, 2017 – 5:00 p.m. – Public Hearing on the Proposed 2017 Tax Rate
- September 30, 2017 – **7th Annual Beetles, Brew & Barbeque Festival** – 10:00 a.m. to 6:00 p.m.
- October 2, 2017 – 6:00 p.m. – Public Hearing on the Proposed 2017 Tax Rate
- October 9, 2017 – 5:00 p.m. – Vote on the Proposed 2017 Tax Rate
- October 7, 2017 – ***5th "Annual Paces for Pink" 5K Run***
- October 14, 2017 – **"Zomball in Tomball"**
- October 16, 2017 – 6:00 p.m. – Vote on the Proposed 2017 Tax Rate
- October 21, 2017– **2nd Annual *Freight Train Food Truck Festival*** – 11:00 a.m. to 5:00 p.m.
- October 28, 2017 – **6th Annual Tomball Bluegrass Festival** – 11:30 a.m. to 6:00 p.m.
- November 11, 2017 – **2nd Saturday at the Depot**
- November 17, 2017 – ***"Holiday Lamp Post Stroll"***
- November 18, 2017 – ***52nd Annual Tomball Holiday Parade***
- November 23-24, 2017 – **Thanksgiving Holidays** – City offices closed
- Reports by City staff and members of council about items of community interest on which no action will be taken

**Background:**

**Origination:**
Various

**Recommendation:**
N/A

**Party(ies) responsible for placing this item on agenda:**
City Secretary

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Public Hearings on the Proposed 2017 Tax Rate
Notice of Vote on the Proposed 2017 Tax Rate

# NOTICE OF PUBLIC HEARINGS ON TAX INCREASE
# CITY OF TOMBALL, TEXAS

**MONDAY, SEPTEMBER 25, 2017**
**5:00 P.M.**
**and**
**MONDAY, OCTOBER 2, 2017**
**6:00 P.M.**

## Public Hearings on Tax Revenue Increase for Proposed 2017 Tax Rate of $0.341455/$100 Assessed Value for the City of Tomball, Texas.

The City of Tomball will hold two public hearings on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 0.26 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code). Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

The first public hearing will be held on Monday, September 25, 2017 at 5:00 p.m., at City Hall, 401 Market Street.

The second public hearing will be held on Monday, October 2, 2017 at 6:00 p.m., at City Hall, 401 Market Street.

The members of the governing body voted on the proposal to consider the tax increase as follows:

FOR: Councilmembers Ford, Stoll, Degges, Townsend, and Klein Quinn
AGAINST: None
PRESENT and not voting: None
ABSENT: None

The average taxable value of a residence homestead in Tomball, Texas last year was $175,597. Based on last year's tax rate of $0.341455 per $100 of taxable value, the amount of taxes imposed last year on the average home was $599.58.

The average taxable value of a residence homestead in Tomball, Texas this year is $182,646. If the governing body adopts the effective tax rate for this year of $0.340585 per $100 of taxable value, the amount of taxes imposed this year on the average home would be $622.06.

If the governing body adopts the proposed tax rate of $0.341455 per $100 of taxable value, the amount of taxes imposed this year on the average home would be $623.65.

Members of the public are encouraged to attend the hearings and express their views regarding the above-proposed 2017 Tax Rate for the City of Tomball, Texas.

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 6th day of September 2017 by 4:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

*Doris Speer*
Doris Speer
City Secretary, TRMC/MMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

# NOTICE OF TAX REVENUE INCREASE

The CITY OF TOMBALL, TEXAS
(name of taxing unit)

conducted public hearings on SEPTEMBER 25,2017 and OCTOBER 2, 2017 on a proposal to
(date of first hearing) (date of second hearing)

increase the total tax revenues of the CITY OF TOMBALL, TEXAS from properties
(name of taxing unit)

on the tax roll in the preceding year by 0.26 percent.
(percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax rate calculated under this chapter)

The total tax revenue proposed to be raised last year at last year's tax rate of $0.341455
(insert tax rate for the preceding year)

for each $100 of taxable value was $ 6,151,585 .
(insert total amount of taxes imposed in the preceding year)

The total tax revenue proposed to be raised this year at the proposed tax rate of $0.341455
(insert proposed tax rate)

for each $100 of taxable value, excluding tax revenue to be raised from new property added to the tax roll this

year, is $ 6,008,999 .
(insert amount computed by multiplying proposed tax rate by the difference between current total value and new property value)

The total tax revenue proposed to be raised this year at the proposed tax rate of $0.341455
(insert proposed tax rate)

for each $100 of taxable value, including tax revenue to be raised from new property added to the tax roll this

year, is $ 6,156,147 .
(insert amount computed by multiplying proposed tax rate by current total value)

The CITY OF TOMBALL, TEXAS is scheduled to vote on the
(governing body of the taxing unit)

tax rate that will result in that tax increase at a public meeting to be held on OCTOBER 9 & OCTOBER 16, 2017
(date of meeting)

at CITY HALL, 401 MARKET STREET, TOMBALL, TEXAS 77375 .
(location of meeting, including mailing address)

at 5:00 P.M. AND 6:00 P.M., RESPECTIVELY .
(time of meeting)

The TOMBALL CITY COUNCIL proposes to use the increase in total tax revenue for the purpose of
(governing body of the taxing unit)

GENERAL FUND AND DEBT SERVICE EXPENDITURES .
(description of purpose of increase)

# Regular City Council Agenda Item Data Sheet

Meeting Date: September 18, 2017

**Topic:**
Approve the Minutes of the September 5, 2017 Regular Tomball City Council Meeting

**Background:**

**Origination:**
City Secretary

**Recommendation:**
N/A

**Party(ies) responsible for placing this item on agenda:**
City Secretary

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Draft Minutes of the September 5, 2017 Regular Council Meeting

# MINUTES OF REGULAR CITY COUNCIL MEETING
# CITY OF TOMBALL, TEXAS

## TUESDAY, SEPTEMBER 5, 2017
## 6:00 P.M.

1.0 Call to Order

The Council meeting was called to order at 6:00 p.m. by Mayor Fagan. Other members present:

Councilman Ford
Councilman Stoll
Councilman Degges
Councilman Klein Quinn

Members absent:

Councilman Townsend – Excused

Others present:

City Manager – George Shackelford
Assistant City Manager – Rob Hauck
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Police Chief – Billy Tidwell
Fire Chief – Randy Parr
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Director of Public Works – David Esquivel
Director of Community Development – Craig Meyers
City Engineer – Beth Jones
Assistant City Secretary – Tracy Garcia
Executive Director-TEDC – Kelly Violette

2.0 The invocation was led by Rob Hauck.

3.0 Pledges to U. S. and Texas Flags were led by Dylan Morgan, THS Student Council, and members of Tomball Police Department Explorers

4.0 The following public comments were received:

| | | |
|---|---|---|
| Mark Stoll<br>14226 Spring Pines Drive, 77375 | - | Expressed, on behalf of himself and City Council, appreciation for the service provided and commitment shown by City personnel prior to, during, and following Hurricane Harvey. |
| Dylan Morgan<br>1011 Village Square Drive, 77375 | - | Extended an invitation to Mayor, Council, City staff, and attendees to the 10th Annual Homecoming Parade and Pep Rally at Tomball High School on September 13. |

5.0 Presentations:

- Mayor Fagan presented a Proclamation to Hirma Gomez, Pastor of Templo La Hermosa - "Hirma Gomez, Pastor - 50th Anniversary Appreciation Day".
- Mayor Fagan and Police Chief Tidwell honored the members of the Tomball Police Department Explorers for their outstanding performances at several regional contests.

6.0 Reports and Announcements:

- September 30, 2017 – **7th Annual Beetles, Brew & Barbeque Festival** – 10:00 a.m. to 6:00 p.m.
- October 7, 2017 – ***5th "Annual Paces for Pink" 5K Run***
- October 14, 2017 – **"Zomball in Tomball"**
- October 21, 2017– **2nd Annual *Freight Train Food Truck Festival*** – 11:00 a.m. to 5:00 p.m.
- October 28, 2017 – **6th Annual Tomball Bluegrass Festival** – 11:30 a.m. to 6:00 p.m.
- Reports by City staff and members of council about items of community interest on which no action will be taken

7.0 Motion was made by Councilman Degges, second by Councilman Stoll, to approve the Minutes of the August 21, 2017 Regular Tomball City Council Meeting and the August 28, 2017 Special Tomball City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

8.1 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to adopt, on Second Reading, Ordinance No. 2017-27, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Granting a Conditional Use Permit (CUP) to Catalyst Technical Group, Inc. to Operate a "Motel"; said Property Being Approximately 2.1879 Acres, and Being Legally Described as Lot 1

Block 1 Dixie Properties, Harris County, Texas, Generally Located on the South Side of FM 2920 East of Tomball Cemetery Road; Providing Requirements and Conditions for This CUP; Containing Findings and Other Provisions Relating to the Subject; Providing a Penalty in an Amount Not to Exceed $2,000 for Violations Hereof; and Providing for Severability. Vote was as follows:

| | |
|---|---|
| Councilman Ford | Aye |
| Councilman Stoll | Aye |
| Councilman Degges | Aye |
| Councilman Townsend | Aye |
| Councilman Klein Quinn | Aye |

Motion carried unanimously.

8.2 Motion was made by Councilman Ford, second by Councilman Stoll, to adopt, on Second Reading, Ordinance No. 2017-28, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Classification of Approximately One Acre of Land, Legally Described Lot 2 Block 1 Park Manor, within the City of Tomball, Harris County, Texas, from the Agricultural District to the commercial district; Said Property Being Generally Located on the South Side of Medical Complex Drive, West of School Street; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an Amount Not to Exceed $2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; and Providing for Other Related Matters. Vote was as follows:

| | |
|---|---|
| Councilman Ford | Aye |
| Councilman Stoll | Aye |
| Councilman Degges | Aye |
| Councilman Townsend | Aye |
| Councilman Klein Quinn | Aye |

Motion carried unanimously.

9.0 New Business:

9.1 Motion was made by Councilman Stoll, second by Councilman Ford, to ratify the FY 2017-2018 Budget and Find that the Proposed Tax Rate of $.341455/$100 Exceeds the Effective Tax Rate and Will Generate More Property Tax Revenue than the FY 2016-2017 Budget.

Motion carried unanimously.

9.2 Motion was made by Councilman Ford, second by Councilman Stoll, to set September 25, 2017 at 5:00 p.m. and October 2, 2017 at 6:00 p.m. as the dates for the Required Public Hearings on the Proposed 2017 Tax Rate.

Motion carried unanimously.

9.3 Motion was made by Councilman Stoll, second by Councilman Klein Quinn to set the Dates for the Vote on the Proposed 2017 Tax Rate and Announce that Voting on the Proposed 2017 Tax Rate will be held at a Special Council Meeting on October 9, 2017 at 5:00 p.m. and at a Regular Council Meeting on October 16, 2017 at 6:00 p.m.

Motion carried unanimously.

9.4 Motion was made by Councilman Degges, second by Councilman Stoll, to approve the Tomball Economic Development Corporation (TEDC) Fiscal Year 2017-2018 Budget.

Motion carried unanimously.

9.5 Motion was made by Councilman Klein Quinn, second by Councilman Stoll, to approve Spring Creek County Historical Association's Request for $30,000 fiscal budget for 2017-2018 Annual Operations.

Motion carried unanimously.

9.6 Motion was made by Councilman Klein Quinn, second by Councilman Stoll, to approve Tomball Sister City Organization's Request for Support, Funding, and Road Closures, in the amount of $57,750 for the 2017 Tomball German Christmas Market, to be held December 7 through December 10, 2017, and in the amount of $57,750 for the 2018 Tomball German Heritage Festival, to be held March 22 through March 25, 2018.

Motion carried unanimously.

9.7 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to approve Resolution No. 2017-13, a Resolution of the City of Tomball, Texas regarding Release of an Approximately 18.739-Acre Tract of Land located at 16000 FM 2920 from the Extraterritorial Jurisdiction of the City of Houston (Tomball Golf Driving Range).

Motion carried unanimously.

9.8 Motion was made by Councilman Degges, second by Councilman Stoll, to approve Agreement for Professional and Administrative Services Involving the Management of the City of Tomball Public Improvement Districts (the "PIDs") between the City of Tomball and Hawes Hill & Associates, LLP.

Motion carried unanimously.

10.0 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 18th day of September 2017.

| | |
|---|---|
| Doris Speer, TRMC, MMC | Gretchen Fagan |
| City Secretary | Mayor |

Regular City Council
Agenda Item
Data Sheet

Meeting Date: September 18, 2017

**Topic:**

Approve Resolution No. 2017-15, a Resolution of the City of Tomball, Texas, Adopting and Ratifying the City of Tomball's Investment Policy, as set forth in the City's Administrative Policy No. 13, entitled "Investment Policy".

**Background:**

Administrative Policy No. 13 - Investment Policy identifies those types of investments into which the City may place its funds. The City's policy is guided by the Texas Public Funds Investment Act. Each year, the Public Funds Investment Act requires that the governing body review and adopt the policy by resolution. There are no changes to the current policy and none are recommended at this time.

The Public Funds Investment Act is attached for reference purposes (Chapter 2256 of the Local Government Code)

**Origination:**

Finance

**Recommendation:**

Adoption of Resolution 2017-15

**Party(ies) responsible for placing this item on agenda:**

Glenn Windsor, CPA Finance Director

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Resolution No. 2017-15
Administrative Policy 13, Investment Policy, Rev. 2-12-17
Public Funds Investment Act (PFIA)
Resolution 2017-05 - Amended Administrative Policy 13, Investment Policy

# RESOLUTION NO. 2017-15

**A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, ADOPTING THE CITY OF TOMBALL'S INVESTMENT POLICY, AS SET OUT IN CITY OF TOMBALL ADMINISTRATIVE POLICY NO. 13, ENTITLED "INVESTMENT POLICY".**

* * * * * * * * * *

**WHEREAS,** Texas Government Code, Section 2256.005(a), states that "the governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control"; and

**WHEREAS,** the governing body of an investing entity shall review its investment policy and investment strategies not less than annually, adopting a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies;

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

**<u>Section 1</u>.** The City Council has reviewed the investment policy and now desires to reaffirm and re-adopt said investment policy, as set forth in City of Tomball Administrative Policy No. 13, entitled "Investment Policy", a copy of which is attached hereto and made a part hereof as Exhibit "A".

**<u>Section 2</u>.** All resolutions or parts of resolutions inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**<u>Section 3</u>**. In the event any clause phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**PASSED, APPROVED, AND RESOLVED** this the 18th day of September, 2017.

GRETCHEN FAGAN, Mayor
City of Tomball

ATTEST:

DORIS SPEER, City Secretary
City of Tomball

| SUBJECT | NUMBER: 13 | EFFECTIVE DATE: July 27, 1992 | PAGE 1 OF 8 |
|---|---|---|---|
| **INVESTMENT POLICY** | REVISED: February 20, 2017 | APPROVED BY CITY MANAGER: February 20, 2017 | |
| | SUPERSEDES: September 6, 2016 | APPROVED BY CITY COUNCIL: February 20, 2017 | |

CITY OF TOMBALL

INVESTMENT POLICY

## I. SCOPE OF POLICY

PURPOSE:

This policy is developed to be in accordance with the Public Funds Investment Act, Chapter 2256 and with the Public Funds Collateral Act, Chapter 2257 of the Texas Government Code, as amended. This investment policy applies to the investment activities of the City of Tomball. This policy serves to satisfy the statutory requirement to define and adopt a formal investment policy. The investment portfolio shall be designed and managed in a manner to be responsive to public trust and to be in compliance with legal requirements and limitations.

INVESTMENT FUNDS:

All financial assets of all funds of the City of Tomball, Texas, at the present time and any funds to be created in the future shall be administered in accordance with the provisions of this policy. For investment purposes, all funds of the City shall be combined in a common pool, except as provided by applicable federal or state statues, City ordinance, or other law. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

## II. PRIMARY OBJECTIVES

SAFETY OF PRINCIPAL:

The safety of the principal invested always remains the primary and foremost objective. All investments shall be designed and managed in a manner responsive to the public trust and consistent with state and local law. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk, the risk of loss due to the failure of the security issuer or backer, and interest rate risk, the risk that the market value of securities in the portfolio will fall due to changes in general interest rates.

LIQUIDITY:

The City's investment portfolio will remain sufficiently liquid to enable the City to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by structuring the portfolio so that investments mature concurrent with forecasted cash flow requirements. Because all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets. A portion of the portfolio will also be placed in interest bearing accounts which offer same day liquidity for short-term funds.

DIVERSIFICATION:

Invested funds shall be diversified to minimize risk resulting from over-concentration of assets in a specific maturity, specific market sector, or specific instruments.

YIELD:

The City's cash management portfolio shall be designed with the objective of attaining reasonable market rates of return on investments, while remaining within the objective of safety and liquidity, throughout budgetary and economic cycles. The investment program shall seek to augment these returns consistent with risk limitations identified herein and prudent investment principles, also taking into account the risk constraints associated with the protection of capital.

MATURITY:

The investment maturity schedule shall correspond with the City's projected cash flow needs. Market risk shall be minimized by diversification of maturity dates. The City has a "buy and hold" portfolio strategy. Maturity dates are matched with cash flow requirements and investments are purchased with the intent to be held until maturity. However, securities may be sold before they mature should it be in the City's best interest. No City investments shall exceed a maturity of more than four years.

INVESTMENT MANAGEMENT:

All participants in the investment process shall seek to act responsibly as custodians of the public trust. They shall avoid any transactions that might impair public confidence in the City's ability to govern effectively. The system of internal controls will be reviewed annually with the independent auditor of the City. The controls shall be designed to prevent loss of public funds due to fraud, employee error, misrepresentation by third parties, unanticipated market changes, or imprudent actions by employees of the City.

## III. AUTHORIZED INVESTMENTS

Assets of funds of the government of the City of Tomball may be invested in:

A. Obligations of the United States or its agencies and instrumentalities;

B. Direct obligations of the State of Texas or its agencies and instrumentalities;

C. Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;

D. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas or the United States or their respective agencies and instrumentalities;

E. Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent;

F. Certificates of Deposit issued by state or national banks with its main office or a branch in the State of Texas, a savings bank with its main office or a branch in the State of Texas, or a state or federal credit union with its main office or a branch in the State of Texas and are guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor and are secured by the obligations named within this policy under items A through E above.

G. Repurchase agreements which are fully collateralized, have a defined termination date, are secured by obligations of the United States or its agencies and instrumentalities; are purchased and pledged to the City of Tomball; are held in the City of Tomball's name; are deposited with third-party safekeeping of collateral at the time the investment is made; and are purchased through a primary government securities dealer or state or national bank doing business in the State of Texas evidenced by a fully executed Master Repurchase Agreement on file with the City. The repurchase agreement is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations of the United States or its agencies and instrumentalities, at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed.

H. Commercial paper is an authorized investment if the commercial paper:

   a. Has a stated maturity of 270 days or fewer from the date of its issuance; and
   b. Is rated not less than A-1 or P-1 or an equivalent rating by at least:
      i. Two nationally recognized credit rating agencies; or
      ii. One nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by organized and existing under the laws of the United States or any state.

I. An eligible investment pool authorized by the governing body, which must furnish to the City an offering circular or other similar disclosure instrument that contains, at a minimum, the types of investments in which money is allowed to be invested; the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool; the maximum stated maturity date of any investment within the portfolio; the objectives of the pool; the size of the pool; the names of the members of the advisory board of the pool and the dates their terms expire; the custodian bank that will safe-keep the pool's assets; whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation; whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment; the name and address of the independent auditor of the pool; the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.

   To maintain eligibility to receive funds from and invest funds on behalf of the City of Tomball, an investment pool must furnish to the City investment transaction confirmations; and a monthly report that contains, at a minimum, the types and percentage breakdown of securities in which the pool is invested, the current average dollar-weighted maturity based on the stated maturity date of the pool, the current percentage of the pool's portfolio in investments that have stated maturities of more than one year, the book value versus the market value of the pool's portfolio, using amortized cost valuation, the size of the pool, the number of participants in the pool, the custodian bank that is safekeeping the assets of the pool, a listing of daily transaction activity of the entity participating in the pool, the yield and expense ratio of the pool, the portfolio managers of the pool and any changes or addenda to the offering circular.

   Investment pool yield shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the Federal Securities and Exchange Commission.

To be eligible to receive funds from and invest funds on behalf of the City of Tomball, a public funds investment pool created to function as a money market mutual fund must mark its portfolio to market daily, and, to the extent reasonably possible, stabilize at a $1 net asset value.

If the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, portfolio holdings shall be sold as necessary to maintain the ration between 0.995 and 1.005.

A public funds investment pool must have an advisory board composed: equally of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for a public funds investment pool created and managed by a state agency; or of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for other investment pools.

To maintain eligibility to receive funds from and invest funds on behalf of the City of Tomball, an investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service or no lower than investment grade by at least one nationally recognized rating service with a weighted average maturity no greater than 90 days.

Although allowed under State Law, Prime Domestic Bankers' Acceptances, and Money-market mutual funds are not considered suitable investments of the City of Tomball, and the City of Tomball will refrain from making such investments or allowing such instruments to be pledged to the City's deposits or serve as underlying collateral.

## IV. RESPONSIBILITY AND CONTROL

DELEGATION OF AUTHORITY:

Management responsibility for the investment program is hereby delegated to the Finance Director, or in the absence of such, Assistant City Manager, or such other person specifically designated by the City Manager or Assistant City Manager. The Finance Director, or designated person by such, shall be responsible for all transactions, compliance with internal controls, and insuring that all safekeeping, custodial, and collateral duties are in compliance with this investment policy and other applicable laws and regulations.

TRAINING REQUIREMENT:

The Finance Director, and any person designated by the Finance Director, City Manager, and/or Assistant City Manager to be responsible for the investment of City funds shall attend an independent and approved source of investment training session no less often than once every two fiscal years and shall receive not less than 10 hours of instruction relating to investment responsibilities under the state statutes. Any person newly designated to duties relating to the investment program shall be required to attend an independent and approved source of investment training session within 12 months of such designation. Training must include education in investment controls, security risks, strategy risks, market risks, diversification of the investment portfolio, and compliance with the Public Funds Investment Act under the Texas Government Code Chapter 2256.

QUARTERLY REPORTS:

The Finance Director, and the person or persons designated by such, shall submit quarterly an investment report that summarizes the investment portfolio for all funds to the City Council. The report shall describe in detail the investment position of the City on the date of the report; be prepared and signed by all investment officers of the City; contain a summary statement, prepared in compliance with generally accepted accounting principles; provide the beginning market value for the reporting period, the additions and changes to the market value during the period, the ending market value for the period, and fully accrued interest for the reporting period; state the book value and market value of each separately invested asset at the beginning and end of the reporting period by the type of asset and fund type invested; state the maturity date of each separately invested asset that has a maturity date; state the account, fund or pooled group fund in City for which each individual investment was acquired; and state the compliance of the investment portfolio of the City's policy as it relates to the strategy. The reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

CONFLICTS OF INTEREST:

The Finance Director, or any person designated by such to be responsible for investments, shall not be designated as an investment officer for any investing entity other than the City of Tomball. Any person responsible for investments for the City who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. Any person responsible for investments for the City who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the City shall file a statement disclosing that relationship. This statement must be filed with the Texas Ethics Commission and the City of Tomball. A personal business relationship is defined as owning 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization; funds received from the business organization exceed 10 percent of the person's gross income for the previous year; or the acquisition of investments from the business organization during the previous year have a book value of $2,500 or more for the person's personal account. Any person involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Secretary any material financial interest in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial and/or investment positions that could be related to the performance of the City's portfolio. Any person responsible for investments shall subordinate their personal investment transactions to those of this jurisdiction, particularly with regard to the timing of purchases and sales.

## V. COLLATERAL AND SAFEKEEPING

COLLATERAL REQUIRED:

Funds of the City of Tomball shall be secured by collateral, whereby the market value of such collateral shall not be less than the total amount of the sum of the City's deposits, investments and accrued interest less the amount of insurance provided by the United States or an instrumentality of the United States, such as FDIC and FSLIC insurance. All items held for collateral for the City of Tomball shall be qualified investments as stated in items III.A. through III.E. of the City's investment policy.

SECURITY OF COLLATERAL:

All securities owned by thy City or pledged to the City shall be held in safekeeping by the City; in a City approved account in a third party financial institution with a main office in the State of Texas and capital stock and permanent surplus of $5 million or more; the Texas Treasury Safekeeping Trust Company; a federal home loan bank; or with a Federal Reserve Bank. A third party custodian shall be required to issue original safekeeping receipts directly to the City and monthly provide a listing of each specific security, rate description, maturity, CUSIP number, and other information as may be deemed necessary and appropriate by the City. Each safekeeping receipt will be clearly marked that the security is pledged to the City of Tomball. It shall be the sole responsibility of the financial institution to immediately, without notice from the City or cost to the City, replace any nonconforming pledged security.

| SUBJECT | NUMBER: 13 | EFFECTIVE DATE: July 27, 1992 | PAGE 8 OF 8 |
|---|---|---|---|
| **INVESTMENT POLICY** | REVISED: February 20, 2017 | APPROVED BY CITY MANAGER: February 20, 2017 | |
| | SUPERSEDES: September 6, 2016 | APPROVED BY CITY COUNCIL: February 20, 2017 | |

DELIVERY VS. PAYMENT:

Treasury Bills, Notes and Bonds and Government Agencies' securities shall be purchased using the delivery vs. payment method. That is, funds shall not be wired or paid until verification has been made that the correct security was received by the City of Tomball or its designated Trustee. The security shall be held in the name of the City. The Trustee's records shall reflect that the City owns such securities. In the event that the security is held by Trustee, the original copy of all safekeeping receipts shall be delivered to the City Treasurer, or person designated by such.

## VI. AUTHORIZED BROKERS

The City of Tomball shall annually review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the City. Following are authorized brokers for the City of Tomball:

Robert W. Baird & Co. Incorporated
Coastal Securities
Wells Fargo Securities, LLC
Cantor Fitzgerald National Markets Group

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2256. PUBLIC FUNDS INVESTMENT

SUBCHAPTER A. AUTHORIZED INVESTMENTS FOR GOVERNMENTAL ENTITIES

Sec. 2256.001. SHORT TITLE. This chapter may be cited as the Public Funds Investment Act.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.002. DEFINITIONS. In this chapter:

(1) "Bond proceeds" means the proceeds from the sale of bonds, notes, and other obligations issued by an entity, and reserves and funds maintained by an entity for debt service purposes.

(2) "Book value" means the original acquisition cost of an investment plus or minus the accrued amortization or accretion.

(3) "Funds" means public funds in the custody of a state agency or local government that:

(A) are not required by law to be deposited in the state treasury; and

(B) the investing entity has authority to invest.

(4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(5) "Investing entity" and "entity" mean an entity subject to this chapter and described by Section 2256.003.

(6) "Investment pool" means an entity created under this code to invest public funds jointly on behalf of the

entities that participate in the pool and whose investment objectives in order of priority are:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(7) "Local government" means a municipality, a county, a school district, a district or authority created under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, a fresh water supply district, a hospital district, and any political subdivision, authority, public corporation, body politic, or instrumentality of the State of Texas, and any nonprofit corporation acting on behalf of any of those entities.

(8) "Market value" means the current face or par value of an investment multiplied by the net selling price of the security as quoted by a recognized market pricing source quoted on the valuation date.

(9) "Pooled fund group" means an internally created fund of an investing entity in which one or more institutional accounts of the investing entity are invested.

(10) "Qualified representative" means a person who holds a position with a business organization, who is authorized to act on behalf of the business organization, and who is one of the following:

(A) for a business organization doing business that is regulated by or registered with a securities commission, a person who is registered under the rules of the National Association of Securities Dealers;

(B) for a state or federal bank, a savings bank, or a state or federal credit union, a member of the loan committee for the bank or branch of the bank or a person authorized by corporate resolution to act on behalf of and bind the banking institution;

(C) for an investment pool, the person authorized by the elected official or board with authority to administer the activities of the investment pool to sign the written instrument on behalf of the investment pool; or

(D) for an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or, if not subject to registration under that Act, registered with the State Securities Board, a person who is an officer or principal of the investment management firm.

(11) "School district" means a public school district.

(12) "Separately invested asset" means an account or fund of a state agency or local government that is not invested in a pooled fund group.

(13) "State agency" means an office, department, commission, board, or other agency that is part of any branch of state government, an institution of higher education, and any nonprofit corporation acting on behalf of any of those entities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 1, eff. Sept. 1, 1999.

Sec. 2256.003. AUTHORITY TO INVEST FUNDS; ENTITIES SUBJECT TO THIS CHAPTER. (a) Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006:

(1) a local government;

(2) a state agency;

(3) a nonprofit corporation acting on behalf of a local government or a state agency; or

(4) an investment pool acting on behalf of two or more local governments, state agencies, or a combination of those entities.

(b) In the exercise of its powers under Subsection (a), the governing body of an investing entity may contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control. A contract made under authority of this subsection may not be for a term longer than two years. A renewal or extension of the contract must be made by the governing body of the investing entity by order, ordinance, or resolution.

(c) This chapter does not prohibit an investing entity or investment officer from using the entity's employees or the services of a contractor of the entity to aid the investment officer in the execution of the officer's duties under this chapter.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 2, eff. Sept. 1, 1999.

Sec. 2256.004. APPLICABILITY. (a) This subchapter does not apply to:

(1) a public retirement system as defined by Section 802.001;

(2) state funds invested as authorized by Section 404.024;

(3) an institution of higher education having total endowments of at least $95 million in book value on May 1, 1995;

(4) funds invested by the Veterans' Land Board as authorized by Chapter 161, 162, or 164, Natural Resources Code;

(5) registry funds deposited with the county or district clerk under Chapter 117, Local Government Code; or

(6) a deferred compensation plan that qualifies under either Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.), as amended.

(b) This subchapter does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 505, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.21, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1454, Sec. 3, eff. Sept. 1, 1999.

Sec. 2256.005. INVESTMENT POLICIES; INVESTMENT STRATEGIES; INVESTMENT OFFICER. (a) The governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control.

(b) The investment policies must:

(1) be written;

(2) primarily emphasize safety of principal and liquidity;

(3) address investment diversification, yield, and maturity and the quality and capability of investment management; and

(4) include:

(A) a list of the types of authorized investments in which the investing entity's funds may be invested;

(B) the maximum allowable stated maturity of any individual investment owned by the entity;

(C) for pooled fund groups, the maximum dollar-weighted average maturity allowed based on the stated maturity date for the portfolio;

(D) methods to monitor the market price of investments acquired with public funds;

(E) a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis; and

(F) procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the provisions of Section 2256.021.

(c) The investment policies may provide that bids for certificates of deposit be solicited:

(1) orally;

(2) in writing;

(3) electronically; or

(4) in any combination of those methods.

(d) As an integral part of an investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under its control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance:

(1) understanding of the suitability of the investment to the financial requirements of the entity;

(2) preservation and safety of principal;

(3) liquidity;

(4) marketability of the investment if the need arises to liquidate the investment before maturity;

(5) diversification of the investment portfolio; and

(6) yield.

(e) The governing body of an investing entity shall review its investment policy and investment strategies not less than annually. The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies.

(f) Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. If the governing body of an investing entity has contracted with another investing entity to invest its funds, the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of this chapter. Authority granted to a person to invest an entity's funds is effective until rescinded by the investing entity, until the expiration of the officer's term or the termination of the person's employment by the investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. In the administration of the duties of an investment officer, the person designated as investment officer shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs, but the governing body of the investing entity retains ultimate responsibility as fiduciaries of the assets of the entity. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

(g) Subsection (f) does not apply to a state agency, local government, or investment pool for which an officer of the entity is assigned by law the function of investing its funds.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 685, Sec. 1

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be an investment officer for the commission under Subsection (f) if the officer or employee is an investment officer designated under Subsection (f) for another local government.

Text of subsec. (h) as amended by Acts 1997, 75th Leg., ch. 1421, Sec. 3

(h) An officer or employee of a commission created under Chapter 391, Local Government Code, is ineligible to be designated as an investment officer under Subsection (f) for any investing entity other than for that commission.

(i) An investment officer of an entity who has a personal business relationship with a business organization offering to engage in an investment transaction with the entity shall file a statement disclosing that personal business interest. An investment officer who is related within the second degree by affinity or consanguinity, as determined under Chapter 573, to an individual seeking to sell an investment to the investment officer's entity shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the governing body of the entity. For purposes of this subsection, an investment officer has a personal business relationship with a business organization if:

(1) the investment officer owns 10 percent or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization;

(2) funds received by the investment officer from the business organization exceed 10 percent of the investment officer's gross income for the previous year; or

(3) the investment officer has acquired from the business organization during the previous year investments with a book value of $2,500 or more for the personal account of the investment officer.

(j) The governing body of an investing entity may specify in its investment policy that any investment authorized by this chapter is not suitable.

(k) A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction with an investing entity or to an investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio. For purposes of this subsection, a business organization includes investment pools and an investment management firm under contract with an investing entity to invest or manage the entity's investment portfolio. Nothing in this subsection relieves the investing entity of the responsibility for monitoring the investments made by the investing entity to determine that they are in compliance with the investment policy. The qualified representative of the business organization offering to engage in an investment transaction with an investing entity shall execute a written instrument in a form acceptable to the investing entity and the business organization substantially to the effect that the business organization has:

(1) received and reviewed the investment policy of the entity; and

(2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the entity and the organization that are not authorized by the entity's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the entity's entire portfolio or requires an interpretation of subjective investment standards.

(l) The investment officer of an entity may not acquire or otherwise obtain any authorized investment described in the investment policy of the investing entity from a person who has not delivered to the entity the instrument required by Subsection (k).

(m) An investing entity other than a state agency, in conjunction with its annual financial audit, shall perform a compliance audit of management controls on investments and adherence to the entity's established investment policies.

(n) Except as provided by Subsection (o), at least once every two years a state agency shall arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies. The compliance audit shall be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Not later than January 1 of each even-numbered year a state agency shall report the results of the most recent audit performed under this subsection to the state auditor. Subject to a risk assessment and to the legislative audit committee's approval of including a review by the state auditor in the audit plan under Section 321.013, the state auditor may review information provided under this section. If review by the state auditor is approved by the legislative audit committee, the state auditor may, based on its review, require a state agency to also report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. A report under this subsection shall be prepared in a manner the state auditor prescribes.

(o) The audit requirements of Subsection (n) do not apply to assets of a state agency that are invested by the comptroller under Section 404.024.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 685, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 785, Sec. 41, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 1, eff. June 17, 2011.

Sec. 2256.006. STANDARD OF CARE. (a) Investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived. Investment of funds shall be governed by the following investment objectives, in order of priority:

(1) preservation and safety of principal;

(2) liquidity; and

(3) yield.

(b) In determining whether an investment officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

(1) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

(2) whether the investment decision was consistent with the written investment policy of the entity.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.007. INVESTMENT TRAINING; STATE AGENCY BOARD MEMBERS AND OFFICERS. (a) Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties.

(b) The Texas Higher Education Coordinating Board shall provide the training under this section.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) An investment officer shall attend a training session not less than once each state fiscal biennium and may receive training from any independent source approved by the governing body of the state agency. The investment officer shall prepare a report on this subchapter and deliver the report to the governing body of the state agency not later than the 180th day after the last day of each regular session of the legislature.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 73, Sec. 1, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 1421, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 2, eff. June 17, 2011.

Sec. 2256.008. INVESTMENT TRAINING; LOCAL GOVERNMENTS. (a) Except as provided by Subsections (b) and (e), the treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officer of a local government shall:

(1) attend at least one training session from an independent source approved by the governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government and containing at least 10 hours of instruction relating to the treasurer's or officer's responsibilities under this subchapter within 12 months after taking office or assuming duties; and

(2) except as provided by Subsections (b) and (e), attend an investment training session not less than once in a two-year period that begins on the first day of that local government's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than 10 hours of instruction relating to investment responsibilities under this subchapter from an independent source approved by the

governing body of the local government or a designated investment committee advising the investment officer as provided for in the investment policy of the local government.

(b) An investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, that has contracted with an investment management firm under Section 2256.003(b) and has fewer than five full-time employees or an investing entity that has contracted with another investing entity to invest the entity's funds may satisfy the training requirement provided by Subsection (a)(2) by having an officer of the governing body attend four hours of appropriate instruction in a two-year period that begins on the first day of that local government's fiscal year and consists of the two consecutive fiscal years after that date. The treasurer or chief financial officer of an investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, and that has fewer than five full-time employees is not required to attend training required by this section unless the person is also the investment officer of the entity.

(c) Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.

(d) Not later than December 31 each year, each individual, association, business, organization, governmental entity, or other person that provides training under this section shall report to the comptroller a list of the governmental entities for which the person provided required training under this section during that calendar year. An individual's reporting requirements under this subsection are satisfied by a report of the individual's employer or the sponsoring or organizing entity of a training program or seminar.

(e) This section does not apply to a district governed by Chapter 36 or 49, Water Code.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 69, Sec. 4, eff. May 14, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 3, eff. June 17, 2011.

Sec. 2256.009. AUTHORIZED INVESTMENTS: OBLIGATIONS OF, OR GUARANTEED BY GOVERNMENTAL ENTITIES. (a) Except as provided by Subsection (b), the following are authorized investments under this subchapter:

(1) obligations, including letters of credit, of the United States or its agencies and instrumentalities;

(2) direct obligations of this state or its agencies and instrumentalities;

(3) collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;

(4) other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, this state or the United States or their respective agencies and instrumentalities, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States;

(5) obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent; and

(6) bonds issued, assumed, or guaranteed by the State of Israel.

(b) The following are not authorized investments under this section:

(1) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1454, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 558, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 4, eff. June 17, 2011.

Sec. 2256.010. AUTHORIZED INVESTMENTS: CERTIFICATES OF DEPOSIT AND SHARE CERTIFICATES. (a) A certificate of deposit or share certificate is an authorized investment under this subchapter if the certificate is issued by a depository institution that has its main office or a branch office in this state and is:

(1) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;

(2) secured by obligations that are described by Section 2256.009(a), including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates, but excluding those mortgage backed securities of the nature described by Section 2256.009(b); or

(3) secured in any other manner and amount provided by law for deposits of the investing entity.

(b) In addition to the authority to invest funds in certificates of deposit under Subsection (a), an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this subchapter:

(1) the funds are invested by an investing entity through:

(A) a broker that has its main office or a branch office in this state and is selected from a list adopted by the investing entity as required by Section 2256.025; or

(B) a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;

(2) the broker or the depository institution selected by the investing entity under Subdivision (1) arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;

(3) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; and

(4) the investing entity appoints the depository institution selected by the investing entity under Subdivision (1), an entity described by Section 2257.041(d), or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3) as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity.

Amended by Acts 1995, 74th Leg., ch. 32, Sec. 1, eff. April 28, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 128 (H.B. 256), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 5, eff. June 17, 2011.

Sec. 2256.011. AUTHORIZED INVESTMENTS: REPURCHASE AGREEMENTS. (a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

(1) has a defined termination date;

(2) is secured by a combination of cash and obligations described by Section 2256.009(a)(1); and

(3) requires the securities being purchased by the entity or cash held by the entity to be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and

(4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state.

(b) In this section, "repurchase agreement" means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1), at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.

(c) Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered.

(d) Money received by an entity under the terms of a reverse security repurchase agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 6, eff. June 17, 2011.

Sec. 2256.0115. AUTHORIZED INVESTMENTS: SECURITIES LENDING PROGRAM. (a) A securities lending program is an authorized investment under this subchapter if it meets the conditions provided by this section.

(b) To qualify as an authorized investment under this subchapter:

(1) the value of securities loaned under the program must be not less than 100 percent collateralized, including accrued income;

(2) a loan made under the program must allow for termination at any time;

(3) a loan made under the program must be secured by:

(A) pledged securities described by Section 2256.009;

(B) pledged irrevocable letters of credit issued by a bank that is:

(i) organized and existing under the laws of the United States or any other state; and

(ii) continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or

(C) cash invested in accordance with Section:

(i) 2256.009;

(ii) 2256.013;

(iii) 2256.014; or

(iv) 2256.016;

(4) the terms of a loan made under the program must require that the securities being held as collateral be:

(A) pledged to the investing entity;

(B) held in the investing entity's name; and

(C) deposited at the time the investment is made with the entity or with a third party selected by or approved by the investing entity;

(5) a loan made under the program must be placed through:

(A) a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003; or

(B) a financial institution doing business in this state; and

(6) an agreement to lend securities that is executed under this section must have a term of one year or less.

Added by Acts 2003, 78th Leg., ch. 1227, Sec. 1, eff. Sept. 1, 2003.

Sec. 2256.012. AUTHORIZED INVESTMENTS: BANKER'S ACCEPTANCES. A bankers' acceptance is an authorized investment under this subchapter if the bankers' acceptance:

(1) has a stated maturity of 270 days or fewer from the date of its issuance;

(2) will be, in accordance with its terms, liquidated in full at maturity;

(3) is eligible for collateral for borrowing from a Federal Reserve Bank; and

(4) is accepted by a bank organized and existing under the laws of the United States or any state, if the short-term obligations of the bank, or of a bank holding company of which the bank is the largest subsidiary, are rated not less than A-1 or P-1 or an equivalent rating by at least one nationally recognized credit rating agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.013. AUTHORIZED INVESTMENTS: COMMERCIAL PAPER. Commercial paper is an authorized investment under this subchapter if the commercial paper:

(1) has a stated maturity of 270 days or fewer from the date of its issuance; and

(2) is rated not less than A-1 or P-1 or an equivalent rating by at least:

(A) two nationally recognized credit rating agencies; or

(B) one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.014. AUTHORIZED INVESTMENTS: MUTUAL FUNDS. (a) A no-load money market mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with and regulated by the Securities and Exchange Commission;

(2) provides the investing entity with a prospectus and other information required by the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) or the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(3) has a dollar-weighted average stated maturity of 90 days or fewer; and

(4) includes in its investment objectives the maintenance of a stable net asset value of $1 for each share.

(b) In addition to a no-load money market mutual fund permitted as an authorized investment in Subsection (a), a no-load mutual fund is an authorized investment under this subchapter if the mutual fund:

(1) is registered with the Securities and Exchange Commission;

(2) has an average weighted maturity of less than two years;

(3) is invested exclusively in obligations approved by this subchapter;

(4) is continuously rated as to investment quality by at least one nationally recognized investment rating firm of not less than AAA or its equivalent; and

(5) conforms to the requirements set forth in Sections 2256.016(b) and (c) relating to the eligibility of investment pools to receive and invest funds of investing entities.

(c) An entity is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds described in Subsection (b);

(2) invest any portion of bond proceeds, reserves and funds held for debt service, in mutual funds described in Subsection (b); or

(3) invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund described in Subsection (a) or (b) in an amount that exceeds 10 percent of the total assets of the mutual fund.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 8, eff. Sept. 1, 1999.

Sec. 2256.015. AUTHORIZED INVESTMENTS: GUARANTEED INVESTMENT CONTRACTS. (a) A guaranteed investment contract is an authorized investment for bond proceeds under this subchapter if the guaranteed investment contract:

(1) has a defined termination date;

(2) is secured by obligations described by Section 2256.009(a)(1), excluding those obligations described by Section 2256.009(b), in an amount at least equal to the amount of bond proceeds invested under the contract; and

(3) is pledged to the entity and deposited with the entity or with a third party selected and approved by the entity.

(b) Bond proceeds, other than bond proceeds representing reserves and funds maintained for debt service purposes, may not be invested under this subchapter in a guaranteed investment contract with a term of longer than five years from the date of issuance of the bonds.

(c) To be eligible as an authorized investment:

(1) the governing body of the entity must specifically authorize guaranteed investment contracts as an eligible investment in the order, ordinance, or resolution authorizing the issuance of bonds;

(2) the entity must receive bids from at least three separate providers with no material financial interest in the bonds from which proceeds were received;

(3) the entity must purchase the highest yielding guaranteed investment contract for which a qualifying bid is received;

(4) the price of the guaranteed investment contract must take into account the reasonably expected drawdown schedule for the bond proceeds to be invested; and

(5) the provider must certify the administrative costs reasonably expected to be paid to third parties in connection with the guaranteed investment contract.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1454, Sec. 9, 10, eff. Sept. 1, 1999.

Sec. 2256.016. AUTHORIZED INVESTMENTS: INVESTMENT POOLS. (a) An entity may invest its funds and funds under its control through an eligible investment pool if the governing body of the entity by rule, order, ordinance, or resolution, as appropriate, authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by this subchapter. An investment pool may invest its funds in money market mutual funds to the extent permitted by and consistent with this subchapter and the investment policies and objectives adopted by the investment pool.

(b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:

(1) the types of investments in which money is allowed to be invested;

(2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;

(3) the maximum stated maturity date any investment security within the portfolio has;

(4) the objectives of the pool;

(5) the size of the pool;

(6) the names of the members of the advisory board of the pool and the dates their terms expire;

(7) the custodian bank that will safekeep the pool's assets;

(8) whether the intent of the pool is to maintain a net asset value of one dollar and the risk of market price fluctuation;

(9) whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment;

(10) the name and address of the independent auditor of the pool;

(11) the requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool; and

(12) the performance history of the pool, including yield, average dollar-weighted maturities, and expense ratios.

(c) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity:

(1) investment transaction confirmations; and

(2) a monthly report that contains, at a minimum, the following information:

(A) the types and percentage breakdown of securities in which the pool is invested;

(B) the current average dollar-weighted maturity, based on the stated maturity date, of the pool;

(C) the current percentage of the pool's portfolio in investments that have stated maturities of more than one year;

(D) the book value versus the market value of the pool's portfolio, using amortized cost valuation;

(E) the size of the pool;

(F) the number of participants in the pool;

(G) the custodian bank that is safekeeping the assets of the pool;

(H) a listing of daily transaction activity of the entity participating in the pool;

(I) the yield and expense ratio of the pool, including a statement regarding how yield is calculated;

(J) the portfolio managers of the pool; and

(K) any changes or addenda to the offering circular.

(d) An entity by contract may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

(e) In this section, "yield" shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the federal Securities and Exchange Commission.

(f) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool created to function as a money market mutual fund must mark its portfolio to market daily, and, to the extent reasonably possible, stabilize at a $1 net asset value. If the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, portfolio holdings shall be sold as necessary to maintain the ratio between 0.995 and 1.005. In addition to the requirements of its investment policy and any other forms of reporting, a public funds investment pool created to function as a money market mutual fund shall report yield to its investors in accordance with regulations of the federal Securities and Exchange Commission applicable to reporting by money market funds.

(g) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, a public funds investment pool must have an advisory board composed:

(1) equally of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for a public funds investment pool created under Chapter 791 and managed by a state agency; or

(2) of participants in the pool and other persons who do not have a business relationship with the pool and are qualified to advise the pool, for other investment pools.

(h) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

(i) If the investment pool operates an Internet website, the information in a disclosure instrument or report described in Subsections (b), (c)(2), and (f) must be posted on the website.

(j) To maintain eligibility to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must make available to the entity an annual audited financial statement of the investment pool in which the entity has funds invested.

(k) If an investment pool offers fee breakpoints based on fund balances invested, the investment pool in advertising investment rates must include either all levels of return based on the breakpoints provided or state the lowest possible level of return based on the smallest level of funds invested.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1421, Sec. 9, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 7, eff. June 17, 2011.

Sec. 2256.017. EXISTING INVESTMENTS. An entity is not required to liquidate investments that were authorized investments at the time of purchase.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.46(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1,

1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 10, eff. Sept. 1, 1997.

Sec. 2256.019. RATING OF CERTAIN INVESTMENT POOLS. A public funds investment pool must be continuously rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 8, eff. June 17, 2011.

Sec. 2256.020. AUTHORIZED INVESTMENTS: INSTITUTIONS OF HIGHER EDUCATION. In addition to the authorized investments permitted by this subchapter, an institution of higher education may purchase, sell, and invest its funds and funds under its control in the following:

(1) cash management and fixed income funds sponsored by organizations exempt from federal income taxation under Section 501(f), Internal Revenue Code of 1986 (26 U.S.C. Section 501(f));

(2) negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency; and

(3) corporate bonds, debentures, or similar debt obligations rated by a nationally recognized investment rating firm in one of the two highest long-term rating categories, without regard to gradations within those categories.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.0201. AUTHORIZED INVESTMENTS; MUNICIPAL UTILITY. (a) A municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission. If there is a conflict between the municipal charter of the municipality and this chapter, this chapter prevails.

(b) A payment by a municipally owned electric or gas utility under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense, and the utility may credit any amounts it receives under the contract or agreement against fuel expenses.

(c) The governing body of a municipally owned electric or gas utility or the body vested with power to manage and operate the municipally owned electric or gas utility may set policy regarding hedging transactions.

(d) In this section, "hedging" means the buying and selling of fuel oil, natural gas, coal, nuclear fuel, and electric energy futures or options or similar contracts on those commodities and related transportation costs as a protection against loss due to price fluctuation.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 48, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 7 (S.B. 495), Sec. 1, eff. April 13, 2007.

Sec. 2256.0202. AUTHORIZED INVESTMENTS: MUNICIPAL FUNDS FROM MANAGEMENT AND DEVELOPMENT OF MINERAL RIGHTS. (a) In addition to other investments authorized under this subchapter, a municipality may invest funds received by the municipality from a lease or contract for the management and development of land owned by the municipality and leased for oil, gas, or other mineral development in any investment authorized to be made by a trustee under Subtitle B, Title 9, Property Code (Texas Trust Code).

(b) Funds invested by a municipality under this section shall be segregated and accounted for separately from other funds of the municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 1371 (S.B. 894), Sec. 1, eff. September 1, 2009.

Sec. 2256.0203. AUTHORIZED INVESTMENTS: PORTS AND NAVIGATION DISTRICTS. (a) In this section, "district" means a navigation district organized under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) In addition to the authorized investments permitted by this subchapter, a port or district may purchase, sell, and invest its funds and funds under its control in negotiable certificates of deposit issued by a bank that has a certificate of deposit rating of at least 1 or the equivalent by a nationally recognized credit rating agency or that is associated with a holding company having a commercial paper rating of at least A-1, P-1, or the equivalent by a nationally recognized credit rating agency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 804 (H.B. 2346), Sec. 1, eff. September 1, 2011.

Sec. 2256.0204. AUTHORIZED INVESTMENTS: INDEPENDENT SCHOOL DISTRICTS. (a) In this section, "corporate bond" means a senior secured debt obligation issued by a domestic business entity and rated not lower than "AA-" or the equivalent by a nationally recognized investment rating firm. The term does not include a debt obligation that:

(1) on conversion, would result in the holder becoming a stockholder or shareholder in the entity, or any affiliate or subsidiary of the entity, that issued the debt obligation; or

(2) is an unsecured debt obligation.

(b) This section applies only to an independent school district that qualifies as an issuer as defined by Section 1371.001.

(c) In addition to authorized investments permitted by this subchapter, an independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds that, at the time of purchase, are rated by a nationally recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

(d) An independent school district subject to this section is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds, reserves, and other funds held for the payment of debt service, in corporate bonds; or

(2) invest more than 25 percent of the funds invested in corporate bonds in any one domestic business entity, including subsidiaries and affiliates of the entity.

(e) An independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds if the governing body of the district:

(1) amends its investment policy to authorize corporate bonds as an eligible investment;

(2) adopts procedures to provide for:

(A) monitoring rating changes in corporate bonds acquired with public funds; and

(B) liquidating the investment in corporate bonds; and

(3) identifies the funds eligible to be invested in corporate bonds.

(f) The investment officer of an independent school district, acting on behalf of the district, shall sell corporate bonds in which the district has invested its funds not later than the seventh day after the date a nationally recognized investment rating firm:

(1) issues a release that places the corporate bonds or the domestic business entity that issued the corporate bonds on negative credit watch or the equivalent, if the corporate bonds are rated "AA-" or the equivalent at the time the release is issued; or

(2) changes the rating on the corporate bonds to a rating lower than "AA-" or the equivalent.

(g) Corporate bonds are not an eligible investment for a public funds investment pool.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1347 (S.B. 1543), Sec. 1, eff. June 17, 2011.

Sec. 2256.0205. AUTHORIZED INVESTMENTS; DECOMMISSIONING TRUST. (a) In this section:

(1) "Decommissioning trust" means a trust created to provide the Nuclear Regulatory Commission assurance that funds will be available for decommissioning purposes as required under 10 C.F.R. Part 50 or other similar regulation.

(2) "Funds" includes any money held in a decommissioning trust regardless of whether the money is considered to be public funds under this subchapter.

(b) In addition to other investments authorized under this subchapter, a municipality that owns a municipal electric utility that is engaged in the distribution and sale of electric energy or natural gas to the public may invest funds held in a decommissioning trust in any investment authorized by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 121 (S.B. 1464), Sec. 1, eff. September 1, 2005.

Sec. 2256.021. EFFECT OF LOSS OF REQUIRED RATING. An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not have the minimum rating. An entity shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.022. EXPANSION OF INVESTMENT AUTHORITY. Expansion of investment authority granted by this chapter shall require a risk assessment by the state auditor or performed at the direction of the state auditor, subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 42, eff. Sept. 1, 2003.

Sec. 2256.023. INTERNAL MANAGEMENT REPORTS. (a) Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.

(b) The report must:

(1) describe in detail the investment position of the entity on the date of the report;

(2) be prepared jointly by all investment officers of the entity;

(3) be signed by each investment officer of the entity;

(4) contain a summary statement of each pooled fund group that states the:

(A) beginning market value for the reporting period;

(B) ending market value for the period; and

(C) fully accrued interest for the reporting period;

(5) state the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;

(6) state the maturity date of each separately invested asset that has a maturity date;

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

(8) state the compliance of the investment portfolio of the state agency or local government as it relates to:

(A) the investment strategy expressed in the agency's or local government's investment policy; and

(B) relevant provisions of this chapter.

(c) The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period.

(d) If an entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers under this section shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1421, Sec. 12, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1004 (H.B. 2226), Sec. 9, eff. June 17, 2011.

Sec. 2256.024. SUBCHAPTER CUMULATIVE. (a) The authority granted by this subchapter is in addition to that granted by other law. Except as provided by Subsection (b), this subchapter does not:

(1) prohibit an investment specifically authorized by other law; or

(2) authorize an investment specifically prohibited by other law.

(b) Except with respect to those investing entities described in Subsection (c), a security described in Section 2256.009(b) is not an authorized investment for a state agency, a local government, or another investing entity, notwithstanding any other provision of this chapter or other law to the contrary.

(c) Mortgage pass-through certificates and individual mortgage loans that may constitute an investment described in Section 2256.009(b) are authorized investments with respect to the housing bond programs operated by:

(1) the Texas Department of Housing and Community Affairs or a nonprofit corporation created to act on its behalf;

(2) an entity created under Chapter 392, Local Government Code; or

(3) an entity created under Chapter 394, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.025. SELECTION OF AUTHORIZED BROKERS. The governing body of an entity subject to this subchapter or the designated investment committee of the entity shall, at least annually, review, revise, and adopt a list of qualified brokers that are authorized to engage in investment transactions with the entity.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

Sec. 2256.026. STATUTORY COMPLIANCE. All investments made by entities must comply with this subchapter and all federal, state, and local statutes, rules, or regulations.

Added by Acts 1997, 75th Leg., ch. 1421, Sec. 13, eff. Sept. 1, 1997.

SUBCHAPTER B. MISCELLANEOUS PROVISIONS

Sec. 2256.051. ELECTRONIC FUNDS TRANSFER. Any local government may use electronic means to transfer or invest all funds collected or controlled by the local government.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.052. PRIVATE AUDITOR. Notwithstanding any other law, a state agency shall employ a private auditor if authorized by the legislative audit committee either on the committee's initiative or on request of the governing body of the agency.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995.

Sec. 2256.053. PAYMENT FOR SECURITIES PURCHASED BY STATE. The comptroller or the disbursing officer of an agency that has the power to invest assets directly may pay for authorized securities purchased from or through a member in good standing of the National Association of Securities Dealers or from or through a national or state bank on receiving an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid for the securities is just, due, and unpaid. A purchase of securities may not be made at a price that exceeds the existing market value of the securities.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.67, eff. Sept. 1, 1997.

Sec. 2256.054. DELIVERY OF SECURITIES PURCHASED BY STATE. A security purchased under this chapter may be delivered to the comptroller, a bank, or the board or agency investing its funds. The delivery shall be made under normal and recognized practices in the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.68, eff. Sept. 1, 1997.

Sec. 2256.055. DEPOSIT OF SECURITIES PURCHASED BY STATE. At the direction of the comptroller or the agency, a security purchased under this chapter may be deposited in trust with a bank or federal reserve bank or branch designated by the comptroller, whether in or outside the state. The deposit shall be held in the entity's name as evidenced by a trust receipt of the bank with which the securities are deposited.

Amended by Acts 1995, 74th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 8.69, eff. Sept. 1, 1997.

# RESOLUTION NO. 2017-05

**A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, ADOPTING THE CITY OF TOMBALL'S INVESTMENT POLICY, AS SET OUT IN CITY OF TOMBALL ADMINISTRATIVE POLICY NO. 13, ENTITLED "INVESTMENT POLICY".**

* * * * * * * * * *

**WHEREAS,** Texas Government Code, Section 2256.005(a), states that "the governing body of an investing entity shall adopt by rule, order, ordinance, or resolution, as appropriate, a written investment policy regarding the investment of its funds and funds under its control"; and

**WHEREAS,** the governing body of an investing entity shall review its investment policy and investment strategies not less than annually, adopting a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies;

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

**Section 1.** The City Council has reviewed the investment policy and now desires to reaffirm and re-adopt said investment policy, as set forth in City of Tomball Administrative Policy No. 13, entitled "Investment Policy", a copy of which is attached hereto and made a part hereof as Exhibit "A".

**Section 2.** All resolutions or parts of resolutions inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 3**. In the event any clause phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**PASSED, APPROVED, AND RESOLVED** this the 20th day of February, 2017.

GRETCHEN FAGAN, Mayor
City of Tomball

ATTEST:

DORIS SPEER, City Secretary
City of Tomball

Regular City Council
Agenda Item
Data Sheet

Meeting Date: September 18, 2017

**Topic:**

Adopt, on First Reading, Ordinance No. 2017-30, an Ordinance Amending Article VI, Erosion and Sediment Control, of Chapter 18, Environment, of the Code of Ordinances of the City of Tomball, to Add Provisions to Support the City's Compliance with Permitting Requirements for Stormwater System; Allowing an Application for a Site Development Permit as an Alternative to an Erosion and Sediment Control Plan; Adopting Penalties in Accordance with Chapter 54 of the Texas Local Government Code; Adopting a New Article VIII, Illicit Discharge Program, of Chapter 18, Environment, Providing Definitions, Regulation and Enforcement of Illicit Discharges Into the City's Stormwater System; Adopting a New Article IX, Post-Construction Runoff Control Program, to Chapter 18, Environment, Establishing Definitions, Regulations, and Enforcement Regarding Discharge of Pollutants in the City's Stormwater Runoff from New Development and Significant Redevelopment; Adopting a New Article X, Pet Waste Management, to Chapter 18, Environment, to Establish Definitions, Regulations and Enforcement Regarding Discharge of Bacteria in Stormwater Runoff from Pet Waste; Providing a Penalty in an Amount Not to Exceed $2,000.00 for any Violation of any Provision of this Ordinance; Repealing All Ordinances or Parts of Ordinances Inconsistent or in Conflict Herewith; Providing for Publication; and Providing for Severability.

**Background:**

For compliance with the City of Tomball Storm Water Management Program, as mandated by the Texas Commission on Environmental Quality (TCEQ), it is necessary to amend City of Tomball Codes to prohibit the discharge of pollutants into the waters of the United States. Ordinance 2017-30 provides the City of Tomball the ability to assess penalties for discharge violations and establishes a Illicit Discharge Program, Post-Construction Runoff Control Program and Pet Waste Management Program.

The Illicit Discharge Program's purpose is to reduce the discharge of pollutants from illicit discharges to the maximum extent possible. The Program provides authorized employees of the City the ability to enter public or private property to enforce illicit discharges, identifies allowable non-stormwater discharges and specifies maximum penalties for stormwater discharge violations. The Post-Construction Runoff Control Program's purpose is to reduce the discharge of pollutants into stormwater runoff from new development and significant redevelopment. The Program specifies permitting requirements for stormwater quality and enforcement provisions. Lastly, the Pet Waste Management Program establishes provisions to reduce the discharge of bacteria in stormwater runoff from pet waste to the maximum extent practicable.

**Origination:**

Community Development Department

**Recommendation:**

Approval

**Party(ies) responsible for placing this item on agenda:**

Craig T. Meyers, Community Development Director

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|

| | | |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Ordinance No. 2017-30

**ORDINANCE NO. 2017-30**

**AN ORDINANCE AMENDING ARTICLE VI, EROSION AND SEDIMENT CONTROL, OF CHAPTER 18, ENVIRONMENT, OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TO ADD PROVISIONS TO SUPPORT THE CITY'S COMPLIANCE WITH PERMITTING REQUIREMENTS FOR STORMWATER SYSTEM; ALLOWING AN APPLICATION FOR A SITE DEVELOPMENT PERMIT AS AN ALTERATIVE TO AN EROSION AND SEDIMENT CONTROL PLAN; ADOPTING PENALTIES IN ACCORDANCE WITH CHAPTER 54 OF THE TEXAS LOCAL GOVERNMENT CODE; ADOPTING A NEW ARTICLE VIII, ILLICIT DISCHARGE PROGRAM, OF CHAPTER 18, ENVIRONMENT, PROVIDING DEFINITIONS, REGULATION AND ENFORCEMENT OF ILLICIT DISCHARGES INTO THE CITY'S STORMWATER SYSTEM; ADOPTING A NEW ARTICLE IX, POST-CONSTRUCTION RUNOFF CONTROL PROGRAM, TO CHAPTER 18, ENVIRONMENT, ESTABLISHING DEFINITIONS, REGULATIONS, AND ENFORCEMENT REGARDING DISCHARGE OF POLLUTANTS IN THE CITY'S STORMWATER RUNOFF FROM NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT; ADOPTING A NEW ARTICLE X, PET WASTE MANAGEMENT, TO CHAPTER 18, ENVIRONMENT, TO ESTABLISH DEFINITIONS, REGULATIONS AND ENFORCEMENT REGARDING DISCHARGE OF BACTERIA IN STORMWATER RUNOFF FROM PET WASTE; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED $2,000.00 FOR ANY VIOLATION OF ANY PROVISION OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING FOR SEVERABILITY.**

* * * * * * * * * *

**WHEREAS**, the City of Tomball has a received the Texas Pollutant Discharge Elimination System Permit No. TXR040000 for small Municipal Separate Storm Sewer Systems (the "Permit");

**WHEREAS,** the City Council of the City of Tomball desires to amend its regulations regarding stormwater runoff to support its compliance with the Permit; and

**WHEREAS,** the City Council finds it to be in the best interest of the health, safety and welfare of its citizens to make the amendments and adopt the regulations contained in this ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The facts and matters set forth in the preamble to this ordinance are hereby found to be true and correct.

**Section 2.** Article VI, Erosion and Sediment Control, of Chapter 18, Environment, of the Code of Ordinances of the City of Tomball, Texas is hereby amended to add the language underscored below and delete the language struck through below:

"ARTICLE VI. - EROSION AND SEDIMENT CONTROL

Sec. 18-254. - Purpose.

The purpose of this article is to reduce erosion during the construction process by implementing and enforcing erosion and sediment control management guidelines. This article supports the City's compliance with requirements of the Texas Pollutant Discharge Elimination System Permit No. TXR040000 for small Municipal Separate Storm Sewer Systems. The provisions of this article are cumulative and in addition to other regulations or rules of the city that may be applicable to the development of property.

Sec. 18-255. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Clearing* means any activity which removes the vegetative surface cover.

*Drainageway* means any channel that conveys stormwater runoff throughout the site.

*Erosion and sediment control plan* means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used controlling sediment and erosion on a development site including, before, during and after construction.

*Erosion control* means measures that prevent erosion.

*Grading* means excavation or fill of material, including the resulting conditions thereof.

*Perimeter* means the area of a lot or tract of land that is 30 feet wide and parallel to and adjacent to the property lines of the lot or tract of land.

*Perimeter control* means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

*Phasing* means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

*Sediment control* means measures that prevent eroded sediment from leaving the site.

*Site* means a parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

*Site development permit* means a permit issued by the city for which the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

*Stabilization* means the use of practices that prevent exposed soil from eroding.

*Start of construction* means the first land disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

*Watercourse* means any natural or artificial body of surface water, including, but not limited to, bayous, channels, creeks, lakes, ponds, rivers, sloughs and streams defined by a bed and banks.

*Waterway* means a channel that directs stormwater runoff to a watercourse or to the public storm drain.

Sec. 18-256. - Permit required.

(a) No person shall be granted a site development permit for land disturbing activity that would require the uncovering of 5,000 or more square feet without the approval of an erosion and sediment control plan by the city engineer.

(b) No site development permit is required, however, for the following activities:

> (1) Any emergency activity that is immediately necessary for the protection of life, property or natural resources.

(2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.

(3) Any activities on a lot less than one acre in area and used for single-family or two-family residential purposes only.

(c) Each application shall bear the names, addresses and contact numbers of the owners and developers of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee.

(d) Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the erosion and sediment control plan.

(e) The applicant shall file with city a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the city engineer to cover all costs of improvements, landscaping, and maintenance of improvements for such period as specified by the city, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

(f) As an alternative to an erosion and sediment control plan described in this section, the City will accept applications for site development permit from all small and large construction activities discharging to the small MS4 who have developed and implemented a stormwater pollution prevention plan (SWP3) in accordance with the TPDES Construction General Permit No. TXR150000.

Sec. 18-257. - Review and approval.

(a) The city engineer will review each application for a site development permit to determine its conformance with the provisions of this article. Within 30 days after receiving an application, the city engineer shall, in writing:

(1) Approve the permit application;

(2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or

(3) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.

(b) Failure of the city engineer to act on original or revised applications within 30 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the city engineer. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the city engineer.

(c) Any permit issued under this article shall expire six months following its issuance; provided, however, that the city engineer may extend a permit to complete work substantially completed under that permit.

Sec. 18-258. - Erosion and sediment control plan.

(a) The erosion and sediment control plan shall include:

(1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this Code.

(2) The map shall be at a scale no smaller than one inch equals 100 feet.

(3) The map of the perimeter of the trees to remain, including a tree survey showing the location, diameter, and name of all trees with eight-inch caliper or more measured three feet from the ground.

(4) A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.

(5) All erosion and sediment control measures necessary to meet the objectives of this article throughout all phases of construction and permanently, after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.

(6) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.

(7) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.

(8) Identification of the representative for site activities.

(b) Modifications to the plan.

(1) Major amendments of the erosion and sediment control plan shall be submitted to the city engineer and shall be processed and approved, or disapproved, in the same manner as the original plans.

(2) Field modifications of a minor nature may be authorized by the city engineer by written authorization to the permittee.

Sec. 18-259. - Design requirements.

(a) *Generally.* Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the city engineer.

(b) *Clearing and grading.*

(1) Clearing and grading of natural resources, such as forests, wetlands and floodplains, shall not be permitted, except when in compliance all other chapters of this Code. These standards are cumulative of other federal, state, and local jurisdictional requirements.

(2) Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, shall be used to the satisfaction of city engineer.

(3) Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the city engineer.

(4) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

(5) Cut and fill slopes shall be no greater than 2:1, except as approved by the city engineer to meet other community or environmental objectives.

(c) *Erosion control.*

(1) Soil must be stabilized within five days of clearing or inactivity in construction.

(2) If vegetative erosion control methods, such as seeding, have not become established within two weeks, the city engineer may require that the site be reseeded, or that a nonvegetative option be employed.

(3) On steep slopes or in drainageways, special techniques that meet the design criteria outlined in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, shall be used to ensure stabilization.

(4) Soil stockpiles must be stabilized or covered at the end of each work-day.

(5) At the close of the construction season, the entire site must be stabilized, using a heavy mulch layer, or another method that does not require germination to control erosion.

(6) Techniques shall be employed to prevent the blowing of dust or sediment from the site.

(7) Techniques that divert upland runoff past disturbed slopes shall be employed.

(d) *Sediment controls.*

(1) Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, and perimeter controls.

(2) Where possible, settling basins shall be designed in a manner that allows adaptation to provide long-term stormwater management.

(3) Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.

(e) *Waterways and watercourses.*

(1) When a wet watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided.

(2) When in-channel work is conducted, the channel shall be stabilized before, during and after work.

(3) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition.

(4) Stabilization adequate to prevent erosion shall be provided at the outlets of all pipes and paved channels.

(f) *Construction site access.*

(1) A temporary access road shall be provided at all sites.

(2) Other measures may be required at the discretion of the city engineer in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

Sec. 18-260. - Inspection.

(a) The city engineer or his designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the erosion and sediment control plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the city engineer shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the city engineer at least two working days before the following:

(1) Start of construction;

(2) Erosion and sediment control measures are in place and stabilized;

(3) Site clearing has been completed;

(4) Rough grading has been completed;

(5) Final grading has been completed;

(6) Close of the construction season; and

(7) Final landscaping .

(b) The permittee or his agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved erosion and sediment control plans. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for additional control measures. All inspections shall be documented in written form and submitted to the city engineer at the time interval specified in the approved permit.

(c) The city engineer or his designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under subsection (b) of this section.

Sec. 18-261. - Enforcement.

(a) *Stop work order; revocation of permit.*

(1) The city engineer may issue a stop work order for any clearing or tree removal activity being conducted without a permit required by this article.

(2) In the event that any person holding a site development permit pursuant to this article violates the terms of the permit, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the city engineer may suspend or revoke the site development permit.

(b) *Violation and penalties.*

(1) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this article.

(2) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, without a permit for such clearing of land or removal of trees required by this article.

(3) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, in violation of the terms of a permit issued under this article.

(4) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor.

(5) Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code."

Secs. 18-262—18-285. - Reserved.

**Section 3.** The Code of Ordinances is further amended by adding a new Article VIII, Illicit Discharge Program, to Chapter 18, Environment, said Article VIII to read as follows:

"ARTICLE VIII –ILLICIT DISCHARGE PROGRAM

Sec. 18-287. Purpose.

The purpose of this article is to reduce the discharge of pollutants from illicit discharges into and from the City's municipal separate storm sewer system to the maximum extent practicable and to support the City's compliance with requirements of the Texas Pollutant Discharge Elimination System Permit No. TXR040000.

Sec. 18-288. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Best Management Practices (BMPs)* shall mean the schedules of activities, prohibitions of practices, maintenance procedures, structural controls, non-structural controls, local regulations, and other management practices to prevent or reduce the discharge of pollutants. They also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

*Household hazardous waste* shall mean waste from materials utilized for residential or housekeeping purposes containing regulated substances which either singularly or by its interaction with other wastes or by its accumulation in the municipal separate storm sewer system becomes injurious or potentially injurious to human, plant, or animal life, or property. For purposes of this chapter household hazardous wastes include, but are not limited to, paint, paint thinners, paint solvents, bleaches, drain cleaners, landscaping chemicals, pesticides, herbicides, and automotive fluids.

*Illicit Discharge* shall mean any discharge to a municipal separate storm sewer that is not composed entirely of storm water except runoff of landscape watering, discharges pursuant to a National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System permit (other than the National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System permit for discharges from the municipal separate storm sewer), allowable non-stormwater discharges specified elsewhere in this Article, and discharges resulting from fire-fighting activities.

*Municipal Separate Storm Sewer System (MS4)* shall mean the system of conveyances, including but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, creeks, streams, tributaries, man-made channels, or storm drains, which: (1) Provide collection or conveyance of stormwater, rain water, flood water, or other surface water; and (2) Are located on public property; and (3) Are not designed and intended to be part of the collection system of a sanitary sewer system utilized by a publicly owned treatment works as defined in Title 40 C.F.R. 122.2.

*Outfall* shall mean a location where an MS4 discharges to waters of the U.S. and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S. For the purpose of this permit, sheet flow leaving a linear transportation system without channelization is not considered an outfall. Point sources such as curb cuts; traffic or right-or-way barriers with drainage slots that drain into open culverts, open swales or an adjacent property, or otherwise not actually discharging into waters of the U.S. are not considered an outfall.

*Person* shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or the legal representatives, agents, or assigns thereof.

*Pollutant* shall mean for the purpose of this ordinance, biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from an MS4. (Definition from 40 CFR § 122.32(e)(3)).

*Responsible Party* shall mean any person or legal entity, individual or corporate, including an owner, operator, contractor, or subcontractor, any or all of whom may be engaged in, consent to, or actually perform a construction project or construction activity.

*Storm Water Management Program* shall mean the state required plan that defines the City's schedule of BMPs to be implemented to reduce the discharge of pollutants in storm water runoff from the City's MS4 to the maximum extent practicable.

*TCEQ* shall mean the Texas Commission on Environmental Quality.

*Texas Pollutant Discharge Elimination System (TPDES)* shall mean a program to issue authorizations to discharge pollutants into waters of the state if certain conditions are met.

Sec. 18-289. Administrator and enforcement.

(a) Administrator. The administrator of this Article shall be the City Manager, or their designee.

(b) Enforcement. This Article shall be enforced by the City Manager, or their designee.

Sec. 18-290. Prohibited discharges into the MS4.

(a) It shall be a violation of this Article for any person to deposit, throw, drain, discharge, cause or allow to be deposited, thrown, drained or discharged, or otherwise cause to be injected into the municipal separate storm sewer system, or any storm sewer manhole, catch basin, private drain, ditch, street, gutter, creek, stream, tributary, or any other drainage device which connects with or drains into the municipal separate storm sewer system, anything not listed in Sec. 18-293.

Sec. 18-291. Reserved.

Sec. 18-292. Right of entry.

(a) Power to enter property draining to the municipal separate storm sewer system.

(1) Duly authorized employees of the City bearing proper credentials and identification are entitled to enter any public or private property discharging stormwater runoff to the City's municipal separate storm sewer system at any reasonable time for the purpose of enforcing this chapter.

(2) Anyone acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security and fire protection.

(3) Duly authorized employees of the City bearing proper credentials and identification are entitled to inspect stormwater discharges, discharge or pollutant sources, and activities generating any pollutant discharges in stormwater runoff.

Sec. 18-293. Allowable non-stormwater discharges.

The following non-stormwater discharges are authorized under this provision:

(a) Water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);

(b) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;

(c) Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;

(d) Diverted stream flows;

(e) Rising ground waters and springs;

(f) Uncontaminated ground water infiltration;

(g) Uncontaminated pumped ground water;

(h) Foundation and footing drains;

(i) Air conditioning condensation;

(j) Water from crawl space pumps;

(k) Individual residential vehicle washing;

(l) Flows from wetlands and riparian habitats;

(m) Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;

(n) Street wash water excluding street sweeper waste water;

(o) Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);

(p) Other allowable non-stormwater discharges listed in 40 CPR § 122.26(d)(2)(iv)(B)(1);

(q) Non-stormwater discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;

(r) Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and

(s) Other similar occasional incidental non-stormwater discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

Sec. 18-294. Penalty.

Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code.

Sec. 18-295. Conflict and Severability.

(a) No provision of this Section is intended to, nor shall any part or portion hereof be construed, so as to conflict with the Texas Water Code.

(b) If any provision of this Section or the application thereof to any person or circumstance shall be held to be void or invalid for any reason, the remainder of this chapter and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this chapter would have been enacted without such invalid provision."

**Section 4.** The Code of Ordinances is further amended by adding a new Article IX, Post-Construction Runoff Control Program, to Chapter 18, Environment, said new Article IX to read as follows:

"ARTICLE IX. – POST-CONSTRUCTION RUNOFF CONTROL PROGRAM

Sec. 18-296. Purpose.

The purpose of this article is to satisfy conditions imposed by the City's Texas Pollutant Discharge Elimination System Permit (TXR040000) and Stormwater Management Program which require the City to develop and implement a Post-Construction Stormwater Management Program to reduce the discharge of pollutants in stormwater runoff from new development and significant redevelopment to the maximum extent practicable, in order to protect public health, safety and welfare.

Sec. 18-297. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Certificate of Completion* shall mean a form used by the owner or operator of a permitted site to self-certify that the site or facility has been constructed in accordance with the site's Stormwater Quality Permit and SWQMP.

*Development* shall mean any human-caused change to improved or unimproved real estate including, but not limited to, buildings, process equipment, structures, filling, dredging, mining, grading, paving, excavation, drilling operations, or storage of equipment or materials, and any activity that requires a subdivision plat or that is part of a subdivision plat approved by a county or municipality.

*Engineer's As-Built Certification* shall mean a form used by a professional engineer retained by the owner or operator of a permitted site to certify that a site with structural controls has been constructed in accordance with the site's construction plans, Stormwater Quality Permit, and SWQMP.

*Inspection, Operations, and Maintenance Plan* shall mean a document which describes the activities (and the frequency of their occurrence) that must be conducted by the owner or operator of a New Development site or a Significant Redevelopment site to keep site stormwater BMPs functioning as planned, designed, and implemented.

*New Development* shall mean development after January 1, 2018 of an undeveloped parcel of land one (1) acre or larger without regard to the amount of land that will actually be disturbed, except for: (1) development on an existing undeveloped and undivided parcel of one acre or more of one single-family dwelling unit and one or more accessory structures; however, if the use of the property excluded under the foregoing exception at any time changes to a commercial use, including further subdividing of the property, the owner of the property shall comply with all applicable requirements of these regulations; (2) development of a single-family residential subdivision if: (a) each lot in the subdivision will have no more than 20% impervious cover; (b) no on-site detention for water quantity purposes is required by the City of Tomball, Harris County, the Harris County Drainage District, or by any other special district; and (c) each lot in the subdivision will front on and will take direct access from an existing public road; (3) projects constructed within waters of the United States and not associated with subdivisions, roads, or other commercial development; and (4) development that results in no impervious surface on the land disturbed.

*Non-Structural Controls* shall mean a maintenance, educational, or operational practice designed to prevent or reduce the potential for pollutants to be discharged in stormwater runoff.

*Permit for Stormwater Quality* shall mean a document issued to a particular development site, by the City, indicating that the drainage system; Stormwater Quality Management Plan; Inspection, Operations, and Maintenance Plan; and stormwater quality controls presented in the application have been designed to meet or exceed the provisions of the City's Design Criteria and appear to reduce the discharge of pollutants to the maximum extent practicable.

*Pollutant* shall mean any substance introduced into the environment that adversely affects a resource. Pollutant includes, but is not limited to, soil, soil material, sediment, human waste, other wastes, and debris generated at construction sites.

*Significant Redevelopment* shall mean an increase in the total amount of impervious surface on a previously developed one-acre or larger parcel so that the total resulting impervious surface is one acre or larger. Only additions of impervious surface after January 1, 2018 shall be totaled and counted toward the one-acre threshold.

*Significantly Amended* shall mean a change to a site's engineering design plans pertaining to site activities, final drainage system elements, the site's Stormwater Quality Management Plan, or landscaping that is likely to change the volume of, or pollutant levels in, site runoff to the MS4.

*Stormwater Quality Management Plan (SWQMP)* shall mean a plan prepared by an engineer licensed in the State of Texas that defines the permanent stormwater quality BMPs to be used at a development or significant redevelopment site to reduce the discharge of pollutants in stormwater runoff to the maximum extent practicable. The plan also describes the operations and maintenance activities required to keep the BMPs functioning properly.

*TCEQ* shall mean the Texas Commission on Environmental Quality.

*Texas Pollutant Discharge Elimination System (TPDES)* shall mean a program to issue authorizations to discharge pollutants into waters of the state if certain conditions are met.

Sec. 18-298. Administrator and enforcement.

(a) Administrator. The administrator of this Article shall be the City Manager, or their designee.

(b) Enforcement. This Article shall be enforced by the City Manager, or their designee.

Sec. 18-299. Permit required for stormwater quality.

(a) All new development or significant redevelopment within the City must obtain a *Permit* issued by the City. Nonstructural or structural best management practices (BMPs) or both, shall be required in accordance with this Article, and the latest edition of the City's "Permanent Stormwater Quality Design Criteria Manual."

(b) Application for Permit.

(1) Unless previously approved by the City, an application along with the required plans, documentation, and fee for a Permit shall be submitted in accordance with this Article.

(2) The owner/developer shall submit a Permit application prior to the commencement of construction activities. The application packet shall include:

a. A completed application form;
b. Construction plans for the finished facility or project;
c. Stormwater Quality Management Plan (SWQMP) showing structural and nonstructural BMPs;
d. An *Inspections, Operations, and Maintenance Plan*.

(3) If structural BMPs are used, the owner/developer shall submit Engineer's As-Built Certificate within sixty (60) days of completion of construction activities. If structural BMPs are not used, the owner/developer shall submit a Certificate of Completion within sixty (60) days of completion of construction activities.

(c) Duration. Development activity under the Permit must begin within one hundred eighty (180) days from the date of issuance. Extensions to the period of validity of the Permit prior to the start of development activities must be requested by the permittee in writing to the City.

(d) Amendment required. Approved plans shall not be significantly amended without authorization of the City.

(e) Suspension or revocation. The Permit may be suspended or revoked by the City because of incorrect information supplied or for any violation of the provisions of these Rules.

(f) Exemptions. With the approval of the City, the following activities may be exempted from the provisions of this Article:

(1) Any project that has received an initial construction plan review from the City before the effective date of this Article, provided the project is substantially underway one (1) year from the effective date of this Article.

(2) Any linear projects such as underground pipelines, utilities, or drainage where the resulting impervious surface is limited to less than three thousand six hundred (3,600) square feet. Plans and drawings showing the total resultant impervious surface must be submitted to the City to obtain this exemption. Future extensions or changes to the impervious surface shall be counted toward the three thousand six hundred (3,600) square feet threshold.

(3) Any new development or redevelopment project that has or will have permit coverage under the Texas Pollutant Discharge Elimination System Industrial Stormwater Permit issued by the Texas Commission on Environmental Quality (TCEQ). In lieu of the Stormwater Quality Approval, the owner/developer/operator shall submit one (1) of the following:

a. A copy of the application for an individual permit from the TCEQ or the U.S. Environmental Protection Agency (EPA) for Stormwater Discharges Associated with Industrial activity at the facility;

b. A copy of the permit issued by the TCEQ or EPA for Stormwater Associated Industrial Activity at the facility;

c. A copy of the Notice of Intent (NOI) for coverage under a general permit for Stormwater Discharges Associated with Industrial Activity issued by the TCEQ, or the No Exposure Certification (NEC) for Stormwater Discharges Associated with Industrial Activity;

d. A statement of commitment to file an application for an individual permit from the TCEQ for Stormwater Discharges Associated with Industrial Activity at the facility; or

e. A statement of commitment to file an NOI for coverage under a general permit for Stormwater Discharges Associated with Industrial Activity issued by the TCEQ.

(4) Any new development or redevelopment project that drains to a regional detention facility operated by an entity holding a small MS4 permit authorization.

(g) Standards and Evaluation Criteria. The standards for evaluating the applications for Permits will be published by the City from time to time and may be found in the City's "Permanent Stormwater Quality Design Criteria Manual." Design guidelines for nonstructural and structural controls will be published by the City from time to time. Permits will be generally be issued if proposed BMPs and the defined operations and maintenance activities are consistent with City guidance and will result in the reduction in the discharge of pollutants in stormwater runoff to the maximum extent practicable.

(h) Enforcement. The City retains the authority to inspect sites with Permits upon reasonable notice. If sites are found to not be operating in accordance with their Permit or SWQMP or to be violating the provisions of these regulations, the site owner/operator may be held responsible for correcting site deficiencies. Should the site owner/operator fail to cure the deficiencies within a reasonable time period (as determined by the City), the City may, at its sole option, perform the necessary work and invoice the site owner or operator, as applicable, for the full amount of the work performed.

Secs. 18-300 – 18-301. Reserved.

Sec. 18-302. Right of entry.

(a) Power to enter property draining to the municipal separate storm sewer system.

1. Duly authorized employees of the City bearing proper credentials and identification are entitled to enter any public or private property discharging stormwater runoff to the City's municipal separate storm sewer system at any reasonable time for the purpose of enforcing this chapter.

2. Anyone acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security and fire protection.

3. Duly authorized employees of the City bearing proper credentials and identification are entitled to inspect stormwater discharges, pollutant sources, activities generating any pollutant discharges in stormwater runoff, or stormwater quality controls.

Sec. 18-303. Penalty.

Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code.

Sec. 18-304. Conflict and Severability.

(a) No provision of this Section is intended to, nor shall any part or portion hereof be construed, so as to conflict with the Texas Water Code.

(b) If any provision of this Section or the application thereof to any person or circumstance shall be held to be void or invalid for any reason, the remainder of this chapter and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this chapter would have been enacted without such invalid provision."

**Section 5.** The Code of Ordinances is further amended by adding a new Article X, Pet Waste Management, to Chapter 18, Environment, said new Article X to read as follows:

"ARTICLE X. - PET WASTE MANAGEMENT

Sec. 18-305. Purpose

The purpose of this article is to satisfy conditions imposed by the City's Texas Pollutant Discharge Elimination System Permit (TXR040000) and Stormwater Management Program which require the City to develop and implement a Pet Waste Management Program, to reduce the discharge of bacteria in stormwater runoff from pet waste to the maximum extent practicable, in order to protect public health, safety and welfare.

Sec. 18-306. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Pet Owner* shall mean any person who possesses, maintains, houses, harbors, or has full time or part time custody of any pet. This definition includes persons who provide caregiving services to pets owned by others.

*Pet* shall mean a domesticated animal kept for amusement or companionship.

*Pet solid waste* shall mean waste matter expelled from the bowels of a pet including feces or excrement.

Sec. 18-307. Removal required.

Pet owners and caregivers are required to immediately remove solid pet waste from any public or private property not owned or possessed by that person. Pet waste shall be properly disposed of by placement in a designated waste receptacle or other sealed container and discarded in a garbage or trash receptacle which is regularly emptied, or by placement into a domestic sewage system. Disposal of any pet waste or associated material into a storm drain or stormwater management system is prohibited.

Sec. 18-308. Penalty.

Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code."

**Section 6.** **Penalty**. Any person who intentionally, knowingly, recklessly or with criminal negligence violates any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $2,000.00. Each violation occurrence shall constitute a separate offense.

**Section 7.** **Repealer**. All ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 8.** **Severability**. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 9.** This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF SEPTEMBER 2017.

| | |
|---|---|
| COUNCILMAN FORD | ________ |
| COUNCILMAN STOLL | ________ |
| COUNCILMAN DEGGES | ________ |
| COUNCILMAN TOWNSEND | ________ |
| COUNCILMAN KLEIN QUINN | ________ |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF OCTOBER 2017.

| | |
|---|---|
| COUNCILMAN FORD | ________ |
| COUNCILMAN STOLL | ________ |
| COUNCILMAN DEGGES | ________ |
| COUNCILMAN TOWNSEND | ________ |
| COUNCILMAN KLEIN QUINN | ________ |

______________________________
Gretchen Fagan, Mayor

ATTEST:

______________________________
Doris Speer, City Secretary

# Regular City Council Agenda Item Data Sheet

Meeting Date: September 18, 2017

**Topic:**
Adopt, on First Reading, Ordinance No. 2017-31, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Deleting the Word "Burglar" from Section 16-59, False Alarm Notification, of Division 2, Permits/Registration Accounts and Registration, of Article II, Emergency Alarm Systems, of Chapter 16, Emergency Services; Providing a Repealer, and Providing for Severability

**Background:**
In 2010, the City of Tomball adopted Ordinance No. 2010-06, § 2(26.21). This particular section of the Ordinance relates to the number of false alarm notifications that any system may transmit and the fees that will be imposed beyond three false notifications in a twelve-month period.

The original intent of this Ordinance was to reduce the number of both fire and police responses to false alarms throughout the city. In a recent review of the ordinance, it was noted to state, "If an alarm system transmits more than three false burglar alarms or fire alarm notifications within a 12-month period, the permittee/registration account holder shall pay a service fee for the fourth and each subsequent false burglar alarm notification."

City staff recommends that the word "burglar" be removed from the last sentence. Failure to remove the word "burglar" allows for only false burglar alarms to be billable.

**Origination:**
Fire Prevention

**Recommendation:**
Staff recommends approval

**Party(ies) responsible for placing this item on agenda:**
Sykora

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Ordinance No. 2017-31

**ORDINANCE NO. 2017-31**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS BY DELETING THE WORD "BURGLAR" FROM SECTION 16-59, FALSE ALARM NOTIFICATION, OF DIVISION 2, PERMITS/REGISTRATION ACCOUNTS AND REGISTRATION, OF ARTICLE II, EMERGENCY ALARM SYSTEMS, OF CHAPTER 16, EMERGENCY SERVICES; PROVIDING A REPEALER, AND PROVIDING FOR SEVERABILITY.**

* * * * * * * * * *

**WHEREAS**, the City Council of the City of Tomball, Texas finds it to be in the best interest of the health, safety and welfare of its citizens to apply the service fees for false alarms to all false alarms, not just burglar alarms; and

**WHEREAS**, the City Council desires to adopt the amendments contained herein; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

**Section 1.** The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

**Section 2.** The Code of Ordinances of the City of Tomball, Texas is hereby amended by deleting from Section 16--59, False Alarm Notification, of Division 2, Permits/Registration Accounts and Registration, of Article II, Emergency Alarm Systems, of Chapter 16, Emergency Services, the language underscored below:

"**Sec. 16-59. - False alarm notification.**

(a) If an alarm system transmits more than three false burglar alarms or fire alarm notifications within a 12-month period, the permittee/registration account holder shall pay a service fee for the fourth and each subsequent false ~~burglar~~ alarm notification.

(1) Residential alarms.

a. For each response for the first through the third—No fee.

b. For each response after the third through the fifth—$25.00.

c. For each response after the fifth through the eighth—$50.00.

d. For each response after the eighth—$100.00.

(2) Commercial alarms.

a. For each response for the first through the third—No fee.

b. For each response after the third through the fifth—$50.00.

c. For each response after the fifth through the eighth—$75.00.

d. For each response after the eighth—$100.00.

(b) If an alarm system transmits more than two false panic alarm notifications within a 12-month period, the permittee/registration account holder shall pay the maximum service fee permitted by state law, but not more than $100.00, for the third and each subsequent false panic alarm notification.

(c) A tenant holding an individual alarm permit/registration account shall pay a false alarm notification fee related to a transmission from the alarm system in the tenant's unit.

(d) The permittee/registration account holder holding the master alarm permit/registration account shall pay a false alarm notification fee related to a transmission from an unoccupied unit or a unit for which a tenant has not obtained an individual alarm permit/registration account.

(e) The city manager may investigate and waive payment of a service fee assessed under this section."

**Section 3.** All ordinances in conflict or inconsistent with this ordinance are, to the extent of such conflict or inconsistency, repealed.

**Section 4.** **Severability**. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 5.** This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF SEPTEMBER 2017.

COUNCILMAN FORD ________
COUNCILMAN STOLL ________
COUNCILMAN DEGGES ________
COUNCILMAN TOWNSEND ________
COUNCILMAN KLEIN QUINN ________

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF OCTOBER 2017.

COUNCILMAN FORD ________
COUNCILMAN STOLL ________
COUNCILMAN DEGGES ________
COUNCILMAN TOWNSEND ________
COUNCILMAN KLEIN QUINN ________

________________________
Gretchen Fagan, Mayor

ATTEST:

________________________
Doris Speer, City Secretary

Regular City Council
Agenda Item
Data Sheet

Meeting Date: September 18, 2017

**Topic:**
Adopt, on First Reading, Ordinance No. 2017-32, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas, by Deleting the Wording "Possibility of Imprisonment for Violation of the International Fire Code" from Section 20-28 (c), Amendments to the 2012 International Fire Code, of Article II, Fire Code, of Chapter 20 Fire Prevention and Protection; Providing a Repealer, and Providing for Severability

**Background:**
In 2014 the City of Tomball adopted Ordinance No. 2014-11, § 1(34-71). The section in question, Section 20-28 (C) relates to the penalties for violations of the 2012 International Fire Code. During a recent review of the ordinance, it was found that our City courts could not hear the cases that the Fire Marshal's office would bring to them; rather the cases would need to be heard in a county court due to the possible imposition of imprisonment of up to 20 days.

By not removing the verbiage pertaining to imprisonment we are taking these violations out of the City's hands and placing them and the revenues into that of the county. It is the opinion of the Fire Marshal's office that these penalties should be handled locally, as well as the fines imposed.

**Origination:**
Fire Marshal

**Recommendation:**
Staff recommends approval

**Party(ies) responsible for placing this item on agenda:**
Joe Sykora

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Ordinance No. 2017-32

# ORDINANCE NO. 2017-32

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY DELETING THE POSSIBILITY OF IMPRISONMENT FOR VIOLATION OF THE INTERNATIONAL FIRE CODE FROM SECTION 20-28 (C), AMENDMENTS TO THE 2012 INTERNATIONAL FIRE CODE, OF ARTICLE II, FIRE CODE, OF CHAPTER 20 FIRE PREVENTION AND PROTECTION; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED $2,000.00 PER DAY FOR VIOLATION OF ANY PROVISION HEREOF, WITH EACH DAY CONSTITUTING A SEPARATE OFFENSE; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY, AND MAKING OTHER FINDINGS RELATED THERETO.**

* * * * * * * * * *

**WHEREAS**, the penalty provisions of the local amendments to the International Fire Code, 2012 Edition, provide for a possible punishment of imprisonment for violations thereof;

**WHEREAS,** the possibility of an imprisonment punishment for violations of the International Fire Code removes the prosecution of such violations from the City of Tomball City Court; and

**WHEREAS,** the City Council of the City of Tomball, Texas finds it to be in the best interest of the health, safety and welfare of its citizens to allow violations of the International Fire Code to be prosecuted in Tomball Municipal Court; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**<u>Section 1</u>.** The facts and matters set forth in the preamble to this ordinance are hereby found to be true and correct.

**<u>Section 2</u>.** The Code of Ordinances of the City of Tomball Texas are hereby amended by deleting from Section 20-28 (c), Amendments to the 2012 International Fire Code, of Article II, Fire Code, of Chapter 20 Fire Prevention and Protection, the language struckthrough below:

“(c) Section 109.3 of said code is hereby amended to provide as follows:

*109.3 Violation penalties.* Any person, firm, corporation, or other entity who violates a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a misdemeanor punishable by a fine of not more than two thousand dollars ($2,000.00)~~ or by imprisonment not exceeding twenty (20) days or both such fine and imprisonment~~. Each day that a violation continues shall constitute a separate offense.”

**Section 3.** All ordinances in conflict or inconsistent with this ordinance are, to the extent of such conflict or inconsistency, repealed.

**Section 4.** **Severability**. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 5.** This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF SEPTEMBER 2017.

COUNCILMAN FORD ________
COUNCILMAN STOLL ________
COUNCILMAN DEGGES ________
COUNCILMAN TOWNSEND ________
COUNCILMAN KLEIN QUINN ________

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF OCTOBER 2017.

| | |
|---|---|
| COUNCILMAN FORD | ________ |
| COUNCILMAN STOLL | ________ |
| COUNCILMAN DEGGES | ________ |
| COUNCILMAN TOWNSEND | ________ |
| COUNCILMAN KLEIN QUINN | ________ |

_________________________________
Gretchen Fagan, Mayor

ATTEST:

_________________________________
Doris Speer, City Secretary

# Regular City Council
# Agenda Item
# Data Sheet

Meeting Date: September 18, 2017

**Topic:**

Adopt, on First Reading, Ordinance No. 2017-34, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Adding a Penalty Provision to Article VI, Right of Way Management, and Article VII, Telecommunications and Wireless Facilities, of Chapter 38, Streets, Sidewalks and Other Public Places, Providing for Severability, Making Other Findings

**Background:**

Ordinance 2017-34 amends Chapter 38 and Ordinance 2017-29 which was recently adopted to regulate wireless facilities installed within City rights-of-way by adding a penalty clause for violations.

**Origination:**

Community Development Department

**Recommendation:**

Approval

**Party(ies) responsible for placing this item on agenda:**

Craig T. Meyers, Community Development Director

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Ordinance No. 2017-34

**ORDINANCE NO. 2017-34**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS BY ADDING A PENALTY PROVISION TO ARTICLE VI, RIGHT OF WAY MANAGEMENT, AND ARTICLE VII, TELECOMMUNICATIONS AND WIRELESS FACILITIES, OF CHAPTER 38, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, PROVIDING FOR SEVERABILITY, MAKING OTHER FINDINGS.**

* * * * * * * * * *

**WHEREAS**, the City Council of the City of Tomball, Texas adopted Ordinance 2017-29 establishing regulations governing the use of its rights-of-way and regulating the placement of wireless facilities therein;

**WHEREAS**, the City Council desires to amend Ordinance 2017-29 to add penalty provisions for violation of the provisions of the ordinance; and

**WHEREAS**, the City Council finds it to be in the best interest of the health, safety and welfare of its citizens to add such penalty provisions as set forth in this ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

**Section 2.** The Code of Ordinances of the City of Tomball, Texas is hereby amended by adding a new Section 38-167, Penalty, to Article VI, Right-of-Way Management, of Chapter 38, Streets, Sidewalks and Other Public Places, the new Section 38-167 to read as follows:

"**Section 38-167. Penalty**.

> Any person, corporation, or entity who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in

an amount not to exceed $2,000.00. Each day in which any violation occurs, or each occurrence of any violation, shall constitute a separate offense."

**<u>Section 3</u>.** The Code of Ordinances is further amended by adding a new Section 38-208, Penalty, to Article VII, Telecommunications and Wireless Facilities, of Chapter 38, Streets, Sidewalks, and Other Public Places, the new Section 38-208 to read as follows:

"**Section 38-208. Penalty**.

Any person, corporation, or entity who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $2,000.00. Each day in which any violation occurs, or each occurrence of any violation, shall constitute a separate offense."

**<u>Section 4</u>.** **<u>Severability</u>**. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**<u>Section 5</u>.** This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF SEPTEMBER 2017.

| | |
|---|---|
| COUNCILMAN FORD | ________ |
| COUNCILMAN STOLL | ________ |
| COUNCILMAN DEGGES | ________ |
| COUNCILMAN TOWNSEND | ________ |
| COUNCILMAN KLEIN QUINN | ________ |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF OCTOBER 2017.

| | |
|---|---|
| COUNCILMAN FORD | ________ |
| COUNCILMAN STOLL | ________ |
| COUNCILMAN DEGGES | ________ |
| COUNCILMAN TOWNSEND | ________ |
| COUNCILMAN KLEIN QUINN | ________ |

________________________________
Gretchen Fagan, Mayor

ATTEST:

________________________________
Doris Speer, City Secretary

# Regular City Council
# Agenda Item
# Data Sheet

Meeting Date: September 18, 2017

**Topic:**

Award Contract for E&P Project Number 2017-10002 Critical Needs Improvements for the North and South Wastewater Treatment Plants to JTR Constructors, Inc. in the Amount of $4,368,250 and approve Change Order No. 1 decreasing the contract amount to $3,612,103.

**Background:**

In order to obtain the most favorable pricing, sealed bids were solicited for the completion of the critical needs improvements for both the North and South Wastewater Treatment Plants as determined by Freese and Nichols during the Critical Needs Assessment completed in 2016. Bid packets were available electronically from Civcast.com; a total of seven bids were received. The responsive low bidder was determined to be JTR Constructors, Inc. in the amount of $4,368,250.00. The bid amount received exceeds the budget allocated for the fiscal year, therefore a change order has been completed to remove portions of the improvements from the South plant as well as alternate bid items, lowering the contract amount to $3,612,103.00. Staff recommends awarding the contract to JTR Constructors Inc. in the amount of $4,368,250 and approving Change Order 1 in the amount of -$756,147.00 for a contract amount of $3,612,103.00. Change order No. 1 also reduces the construction contract time to 360 days.

**Origination:**

Public Works Department

**Recommendation:**

Staff recommends approving the change order and awarding a contract to JTR Constructors, Inc in the amount of $3,612,103.00 to complete the critical needs improvements.

**Funding:**

Yes

Account Number:400-614-6409

**Party(ies) responsible for placing this item on agenda:**

Meagan Mageo, Project Coordinator

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Bid Tabulation
Engineer Recommendation
Change Order 1

# City of Tomball

## Critical Needs Improvements for the North and South WWTPs Project

## Project No. 2017-10002

## Bid No. 2017-07

Bid Date: **June 29, 2017**

Bid Time: **10:00 AM**

Bid Location: **501 James Street, Tomball, Texas 77375**

No. of Bids Received: **7**

**Final Bid Tabulation**

| S. No. | Contractor | Base Unit Price | Extra Unit Price | Alternates | Total Bid Price |
|---|---|---|---|---|---|
| ***1*** | ***JTR Constructors, Inc.*** | ***$4,103,000*** | ***$71,250*** | ***$194,000*** | ***$4,368,250*** |
| 2 | Industrial TX Corp. | $4,275,000 | $68,000 | $142,000 | $4,485,000 |
| 3 | R.P. Constructors, Inc. | $4,229,075 | $68,000 | $206,000 | $4,503,075 |
| 4 | T & C Construction, Ltd. | $4,200,075 | $68,650 | $245,000 | $4,513,725 |
| 5 | C4 Partners LLC | $4,365,201 | $68,000 | $252,623 | $4,685,824 |
| 6 | R & B Group, Inc. | $4,462,000 | $68,000 | $214,000 | $4,744,000 |
| 7 | Allco | $4,504,075* | $79,335 | $206,000 | $4,789,410* |

* Math error was corrected in the bid provided.

Apparent Low Bidder: **JTR Constructors, Inc.**

FREESE AND NICHOLS
Innovative approaches
Practical results
Outstanding service
11200 Broadway Street, Suite 2320 • Pearland, Texas 77584 • 832-456-4700 • FAX 832-456-4701 www.freese.com

July 10, 2017

David Esquivel, P.E.
Director of Public Works
City of Tomball
501 James St.
Tomball, TX 77375

RE: Critical Needs Improvements for the North and South WWTPs Project
Project No. 2017-10002
Bid No. 2017-07
Bid Tabulation and Recommendation of Award of Contract

Dear Mr. Esquivel:

On June 29, 2017, a total of seven (7) bids were received by the City Tomball for the above referenced project. Bids were reviewed and checked for mathematical accuracy. The bidders and the bid amounts are as follow:

| S. No. | Contractor | Base Unit Price | Extra Unit Price | Alternates | Total Bid Price |
|---|---|---|---|---|---|
| ***1*** | ***JTR Constructors, Inc.*** | ***$4,103,000*** | ***$71,250*** | ***$194,000*** | ***$4,368,250*** |
| 2 | Industrial TX Corp. | $4,275,000 | $68,000 | $142,000 | $4,485,000 |
| 3 | R.P. Constructors, Inc. | $4,229,075 | $68,000 | $206,000 | $4,503,075 |
| 4 | T & C Construction, Ltd. | $4,200,075 | $68,650 | $245,000 | $4,513,725 |
| 5 | C4 Partners LLC | $4,365,201 | $68,000 | $252,623 | $4,685,824 |
| 6 | R & B Group, Inc. | $4,462,000 | $68,000 | $214,000 | $4,744,000 |
| 7 | Allco | $4,504,075* | $79,335 | $206,000 | $4,789,410* |

There was one minor mathematical error found in the base bid amount for Allco that has been corrected in the table above. Based upon bids submitted, the apparent low bidder is **JTR Constructors, Inc.** Freese and Nichols, Inc. has reviewed the low bid for completeness and accuracy. We recommend that City of Tomball award the Contract for the referenced project to **JTR Constructors, Inc.** for a bid amount of **$4,368,250**, including the base, extra, and alternate bid items.

We appreciate the opportunity to be of service to the City in this phase of the project and look forward to the successful construction of the project. Please call me at 832-456-4709 or email me at Murali.Erat@freese.com if you have any question or need additional information.

Sincerely,

Murali Erat, P.E.
Project Manager
Freese and Nichols, Inc.

Document 00941

CHANGE ORDER / C.O. No. 1

PROJECT: Critical Needs Improvements for the North & South WWTP's
CONTRACT No.: ______________ PROJECT No.: 2017-10002

TO: JTR Constructors, Inc
Contractor and Address for Written Notice: 18484 Clay Road, Houston, Texas 77084

REFERENCE RFIs/RFPs: ______________

1.01 DESCRIPTION OF CHANGES

| | | CONTRACT CHANGE AMOUNT | CONTRACT CHANGE TIME |
|---|---|---|---|
| **ITEM 1 SCOPE:** | South WWTP shall include only the main power feed switchgear break replacement and non-potable water system improvements. All other improvements will be removed from the scope of work. There will be no changes to the scope of work at the North WWTP. Alternate bid items shall be removed from the scope of work, extra unit price items shall remain in the scope. | -$756,147.00 | -90 Days |
| JUSTIFICATION: | Contractors original bid price exceeds the budget allocated for the project for the fiscal year | | |
| | **TOTALS:** | **-$756,147.00** | **360 Days** |

1.02 ACCEPTANCE BY CONTRACTOR

Contractor agrees to perform change(s) included in this Change Order for the price and time indicated. The prices for changes include all costs associated with this Change Order.

Contractor Signature and Title ______________ Date ______________

1.03 ACCEPTANCE BY THE CITY

| | | | |
|---|---|---|---|
| Project Manager | Date | [*Director – Required for COs to Council*] | Date |
| City Manager/ Asst. City Manager | Date | [*Mayor – Required for COs to Council*] | Date |
| [*Intermediate Authority, if needed*] | Date | City Engineer | Date |

END OF DOCUMENT

cc: David Esquivel, PE, Public Works Director
Meagan Mageo, Project Coordinator
John Escamilla, Utilities Superintendent
Murali Erat, PE, Design Consultant

**EXECUTIVE SUMMARY**

C.O. No. ______ Contract No.: _____________ Proj. No.: 2017-10002

| 1.01 | CONTRACT PRICE SUMMARY | DOLLAR AMOUNT | PERCENT |
|---|---|---|---|
| A. | Original Contract Price | $4,368,250.00 | 100.00% |
| B. | Previous Change Orders | $0.00 | 0.00% |
| C. | This Change Order | ($756,147.00) | -17.31% |
| D. | Contract Price | $3,612,103.00 | 82.69% |

Date of Commencement of the Work: Monday, October 2, 2017

| 1.02 | CONTRACT TIME SUMMARY | DURATION | COMPLETION DATE |
|---|---|---|---|
| A. | Original Contract Time | 450 Days | Tuesday, December 25, 2018 |
| B. | Previous Change Orders | 0 Days | Tuesday, December 25, 2018 |
| C. | This Change Order | -90 Days | |
| D. | Contract Time | 360 Days | Wednesday, September 26, 2018 |

1.03 TOTAL VALUE OF INCREASES OUTSIDE OF GENERAL SCOPE OF WORK

A. Including this Change Order, the following table is provided to track conditions related to Paragraph 7.1.2.3 of Document 00700 - General Conditions.

| CHANGE ORDER No. | AMOUNT ADDED | PERCENT OF ORIGINAL CONTRACT PRICE |
|---|---|---|
| [1] | -$756,147.00 | 17.3% |
| TOTALS | -$756,147.00 | 17.3% |

END OF SUMMARY

### INSTRUCTIONS

**PURPOSE:** Change Orders are used to affect Modifications to the Contract. Prior to final payment, previously approved Work Change Directives can be combined into a summary Change Order to reconcile project cost accounting. When signed and dated by Contractor and City Engineer, document becomes an approved Change Order.

**APPLICATION:** This form is applicable to agreed on Modifications to the Contract including, but not limited to the following:

- ☐ Additions or reductions (including deletions) of existing bid item quantities.
- ☐ Increases or decreases in construction Contract Time.
- ☐ Change in methods, material, etc., not covered by existing bid item quantities.
- ☐ New work not covered by existing bid item quantities.
- ☐ Price or schedule consideration for conditions not indicated by the Contract.

**INSTRUCTIONS:** Project Manager or Design Consultant prepares this form. The Executive Summary is for use by the City in analyzing the Change Order but is not a part of the Change Order. This form has two MS Excel tables imbedded in the MS Word document (Paragraphs 1.01 and 1.02 in the Executive Summary). Double click on any cell in these tables to make entries in spreadsheet mode. Click anywhere outside the spreadsheet to return to wordprocessing mode. Other tables in the Change Order and Executive Summary are MS Word tables, not imbedded Excel spreadsheets. Red colored text and numerals represent input fields. Black text and numerals are in cells with formulas or fixed text. Do not make entries in these cells. Following instructions correspond to blanks requiring input and paragraph numbers on form. Paragraph 1.02 of the Change Order form is completed by Contractor. All other items are completed by the City or Design Consultant. Paragraph 1.03 of the Change Order form is completed by administrative and approving authorities. Contractor shall provide all backup material to justify the costs of items enumerated in Paragraph 1.01 of the Change Order form.

CHANGE ORDER FORM:

1. Insert Change Order number and Contract number for the Project at the top of each page, following page one, if the Change Order must be longer than one page.

2. Insert Project name exactly as stated in the Agreement.

3. Insert Project number and other identifying numbers (e.g. CIP, Proj. No., AIP, File No.) for the Project.

4. Insert name of Contractor performing the Work and Contractor's address for notices. Address should be as shown in the Agreement unless changed by proper notice.

5. Insert applicable references to related RFIs and RFPs.

6. Paragraph 1.01: Insert brief descriptions of the changes, including reference to applicable Work Change Directives. Give justification to support change, cost of making change, and adjustment in Contract Time warranted by change. If more than one item is included, number each item. Extend the table to additional pages if necessary. Formulas are imbedded for totals but check the math when extending the table length.

7. Paragraph 1.02: Project Manager signs and dates and has other administrative authorities or representatives sign and date where indicated. Project Manager will substitute actual titles of these persons where red bracketed instructions are shown. Mayor's and Contracting Department Director's signature (and date) are only needed when the Change Order must go to City Council for funding prior to approval. City Engineer for Contracting Department (should be the same person designated in the Agreement) will only sign and date Paragraph 1.03 when funds are approved and in place for payment of additional work. City Engineer's signature and date signify approval of Change Order and is the only authorized approval authority of the City according to Document 00700 – General Conditions.

8. Insert appropriate list of "copy to" persons and file. Delete brackets and instructions. Change color of remaining text to black.

EXECUTIVE SUMMARY:

1. Paragraph 1.01: Insert (A) Original Contract Price, (B) cost of previous Change Orders and (C) cost of this Change Order in the price summary block. Other amounts and percentages in block are calculated by formula. Cost of this Change Order is calculated at the bottom of the table in Paragraph 1.01 of the Change Order form, when all items have been filled in BUT it does not automatically change the amount in Paragraph 1.01 C.

2. Paragraph 1.02: Insert Date of Commencement of Work (from Notice to Proceed), (A) original Contract Time, (B) additional days added from previous Change Orders and (C) days required for this Change Order in the time summary block. Other days and dates in block are calculated by formula. Days for this Change Order are calculated at the bottom of the table in Paragraph 1.01 of the Change Order form, when all items have been filled in BUT it does not automatically change the amount in Paragraph 1.02 C.

3. Paragraph 1.03 A: Project Manager will provide information from all previous Change Orders for this table (i.e. number, amount and percentage of Original Contract Price) so that it can be determined if Council Action is necessary. *NOTE: The conditions of Paragraph 7.1.2.3 of Document 00700 - General Conditions may make Council Action necessary even if funding is already available and even if the 5% contingency threshold has not yet been reached.*

# Regular City Council
# Agenda Item
# Data Sheet

Meeting Date: September 18, 2017

**Topic:**

Approve Request by Dana Kelly, Owner of the Empty Glass, for Approval to Stage the 4th Annual Texas Wine Festival at the Depot, to be Held on Saturday, October 7, 2017

**Background:**

Dana Kelly, owner of the Empty Glass, is asking for approval to stage the 4th annual Texas Wine Festival at the Depot on Saturday, October 7.

The festival involves tastings from a number of wineries across the state, as well as merchandise vendors and live entertainment throughout the afternoon.

The applicant is not requesting in-kind services from the City and will be paying for costs associated with the event, such as road closures around the depot, trash pick-up, off-duty police officers and more.

Applicant has submitted the required application.

**Origination:**

Mike Baxter

**Recommendation:**

Approve

**Party(ies) responsible for placing this item on agenda:**

Mike Baxter

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |

**ATTACHMENTS:**

Festival Application

# SPECIAL EVENT APPLICATION

*CITY OF TOMBALL, TEXAS | 401 Market Street | Tomball, Texas 77375 | 281-351-5484*

An application to stage an event within the City of Tomball shall be filed with the Community Events Coordinator at least 180 days prior to the event. This application is not to be construed as authorizing or agreeing to any event until formally approved by Tomball City Council.

Date: 9/12/17 Is this event Co-City sponsored? Yes ___ No ✓

---

Request for permission to use a public venue for the following type of event (please check one):

Festival ___ Community Event ___ Arts & Crafts Event ___ Music Event ___ Other (specify) ___

1. Event title: 4th annual Wine festival
2. Sponsoring entity: ___
3. Is this organization based in Tomball: Yes ___ No –
4. Is this organization *non-profit* ___ or *for-profit* ___ *Attach 501 (c ) (3) tax exemption if applicable
5. Contact: Dana Kelly Phone: 713 301 5930
6. Contact address: 104 market Street
7. Contact email: seeyou@theemptyglass.com
8. Event date: October 7, 2017
9. Event times: Start 1 Finish 7 Set-up ___ Breakdown ___
10. Is this event for charity? Yes ✓ No ___
11. If yes, what charity? Boots for troops Tax ID ___
12. If yes, what percentage of net proceeds will be donated to the charity? 10%
13. On-site contact: Dana Kelly Mobile Phone: 713 301 5930
14. Estimated number of attendees: 300
15. Detailed site map in attached: Yes ___ No ✓
16. Is this event open to the public: Yes ✓ No ___
17. Admission fee: $ 35 – 75 Free ___
18. Time at which event staff will begin to arrive: 11:00 am
19. The applicant will defend and hold harmless the City of Tomball from all claims, demands, actions or causes of action, of whatsoever nature or character, arising out of or by reason of the conduct of the activity authorized by such application including attorney fees and expenses.
    Initial DK
20. The applicant will provide proof of general liability insurance for the event naming the City of Tomball as additional insured.
    Initial DK
21. Name of insurance carrier: farmers
22. Organization has secured date with the Public Works Dept. and has paid deposit. yes

Signature: Dana Kelly

**FOR OFFICIAL USE -** Fee required: Yes ___ No ___ Amount Due: $___

# Regular City Council
# Agenda Item
# Data Sheet

Meeting Date: September 18, 2017

**Topic:**

Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.071 - Consultation with the City Attorney regarding a matter that the Attorney's duty requires to be discussed in closed session.

**Background:**

**Origination:**

City Manager

**Recommendation:**

N/A

**Party(ies) responsible for placing this item on agenda:**

City Secretary

**ACTION TAKEN**

| Approval | Readings Passed | Other |
|---|---|---|
| ☐ Yes ☐ No | ☐ 1st ☐ 2nd | |