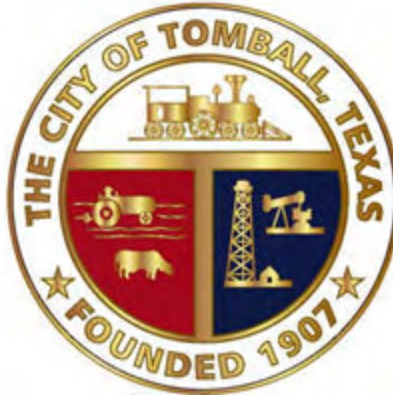


**NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, DECEMBER 6, 2010

7:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 6, 2010 at 7:00 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 Larry Trendell, Youth Minister, ChristBridge Fellowship Church

3.0 Pledges to U.S. and Texas Flags

- Led by Members of the Tomball High School Student Council

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 Presentations:

- Proclamation proclaiming Monday, December 6, 2010 as **“We Believe – Tomball High School Cougar Football Team Day”**
- Certificate of Achievement for Excellence in Financial Reporting to the Finance Department, awarded by the Government Finance Officers Association to the City of Tomball for its Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2009

6.0 Reports and Announcements

- December 11, 2010 – **2nd Saturday at the Depot – 5:00 p.m. – Unveiling of the Beckendorf Statue (Farmer)**
- December 11-12, 2010 – **German Christmas Market**
- December 13, 2010 - Special Joint City Council and Planning and Zoning Commission Meeting - 6:00 p.m., City Hall
- December 23-24, 2010 – **Christmas Holidays** – City offices will be closed
- December 31, 2010 – **New Year’s Day Holiday** – City offices will be closed
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - George Shackelford – Update on Proposed 2011 MS 150 Bike Ride for the Multiple Sclerosis Association

7.0 Approve the Minutes of the November 15, 2010 Regular City Council Meeting

8.0 Old Business:

- 8.1 Adopt, on Second Reading, Ordinance No. 2010-24, an Ordinance Amending Chapter 42, "Heath and Sanitation", of the Code of Ordinances of the City of Tomball, Texas, by Adding a New Article VI. "Prohibited Smoking Paraphernalia and Smoking Products", Providing for Severability; Establishing a Penalty up to \$200 per Offense; and Providing an Effective Date.
- 8.2 Adopt, on Second Reading, Ordinance No. 2010-25, an Ordinance Amending Chapter 78, Traffic and Vehicles, of the Code of Ordinances of the City Council of the City of Tomball, Texas, by Adding a New Section 78-73, “Use of Certain Wireless Communication Devices While Driving Prohibited”; Regulating the Use of Wireless Communication Devices while Operating Motor Vehicles; Providing a Penalty in an Amount Not to Exceed \$200 for Each Violation Hereof; and Providing for Severability; and Making Other Provisions and Findings Related Thereto

9.0 New Business:

- 9.1 Appoint Members to the Tourism Advisory Committee
- 9.2 Approve Request from Tomball Rotary Club to Allow the Sale of Beer in Juergens Park during the Tomball Rotary Fish Fry, to be held on April

29, 2011

- 9.3 Presentation by Dan Dompier of the Brandt Exploration Property Development Plan at Huffsmith-Kohrville Road and Proposed Medical Complex Drive
- 9.4 Approve Renewal of the Interlocal Agreement for Fire Protection Services between the City of Tomball and Harris County Emergency Services District No. 15
- 9.5 Approve Renewal of Consulting Services Agreement with Waypoint Business Solutions, LLC, for Turn-key Outsourcing of Information Technology Services for the City of Tomball
- 9.6 Discussion and Possible Action regarding Chapter 54, Peddlers and Solicitors, of the Code of Ordinances of the City of Tomball, Texas
- 9.7 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):

Section 551.071 Consultation with Attorney regarding the following matters:

- A. Possible civil action to enforce ordinance regarding construction of building and use of land at 30702 State Highway 249;
- B. Pending litigation including: Kallus v. City, G. Singh Enterprises v. City, Kurcharski v. City, and Cloud v. City; and
- C. Status of land acquisition for lift station from P. Hildreth.

10.0 Adjournment

CERTIFICATION

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 3rd day of December 2010 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

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: December 6, 2010

Topic:

- Proclamation proclaiming Monday, December 6, 2010 as “**We Believe – Tomball High School Cougar Football Team Day**”
- Certificate of Achievement for Excellence in Financial Reporting to the Finance Department, awarded by the Government Finance Officers Association to the City of Tomball for its Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2009

Background:

Origination:

Tomball High School Football Department, Finance Department

Recommendation:

N/A

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Proclamation - “We Believe – Tomball High School Cougar Football Team Day”
Certificate of Achievement for Excellence in Financial Reporting

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** the 2010 football season will be remembered as the year that “We Believed” in our **Tomball High School Cougar Football Team**, who won the title of **5A Football Division II Area Champs**, the highest Tomball has ever advanced in the 5A State playoffs since 1988, when the **Tomball Cougars** were classified 4A; and
- WHEREAS,** the **THS Cougar** football team experienced its first playoff trip since 2003 and first winning record since 2003, tying for 2nd place in regular season District 13-5A and representing the District as the Division II Champions in the playoffs; and
- WHEREAS,** the members of the **Tomball High School Cougar** football team gave their all in every game, expressing the heart and character of Tomball; and
- WHEREAS,** **Tomball Independent School District** and the **City of Tomball** wish to honor the role that the **Tomball High School Cougars** will continue to play in student and community life in Tomball, inspiring fellow students, leading through sportsmanship, their spirit of competition, and their community involvement to help others under the guidance and leadership of responsible parents, coaches and teachers; and
- WHEREAS,** **Tomball Independent School District** and the **City of Tomball** wish to congratulate the members of the **Tomball High School Cougar Football Team**, along with the managers, coaches, trainers, officials, parents, referees, and countless others who have worked together to make this the best football season since 2003;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Monday, December 6, 2010 as:

“WE BELIEVE” – “TOMBALL HIGH SCHOOL COUGAR FOOTBALL DAY”



In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST:

DATE:

[Signature]

December 1, 2010

Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Tomball
Texas

For its Comprehensive Annual
Financial Report
for the Fiscal Year Ended
September 30, 2009

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.



A stylized, handwritten signature in black ink, likely belonging to the President of the GFOA.

President

A handwritten signature in black ink that reads 'Jeffrey R. Emer'.

Executive Director

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 6, 2010

Topic:

- December 11, 2010 – **2nd Saturday at the Depot – 5:00 p.m. – Unveiling of the Beckendorf Statue (Farmer)**
- December 11-12, 2010 – **German Christmas Market**
- December 13, 2010 - Special Joint City Council and Planning and Zoning Commission Meeting - 6:00 p.m., City Hall
- December 23-24, 2010 – **Christmas Holidays** – City offices will be closed
- December 31, 2010 – **New Year's Day Holiday** – City offices will be closed
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - George Shackelford – Update on Proposed 2011 MS 150 Bike Ride for the Multiple Sclerosis Association

Background:

Origination:

Various

Recommendation:

N/A

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Invitation to Beckendorf Statue Unveiling
2nd Saturday at the Depot
German Christmas Market

A nighttime photograph of Tomball Depot Plaza. The scene is illuminated by warm streetlights and building lights. In the foreground, a large, brightly lit Christmas tree stands in the center. To the left, a historic brick building with a gabled roof and dormers is visible. To the right, a large, light-colored building with a prominent clock tower and a dome is the focal point. The plaza is paved and appears to be a public square. The text is overlaid on the upper right portion of the image.

*The Mayor & City Council
and the City of Tomball
would be honored to have you join us for
the unveiling of our
Beckendorf Statue*

*Saturday,
December 11, 2010
at 5:00 p.m.*

*Tomball Depot Plaza, 201 South Elm Street
Christmas Tree Lighting to follow!*

2nd SATURDAY AT THE DEPOT DECEMBER 11 & GERMAN CHRISTMAS MARKET DECEMBER 11—12

Santa and Mrs. Claus inside the Depot
2:30 PM to 5 PM

Beckendorf Statue Unveiling,
Tree Lighting Ceremony, & Fireworks
5 PM

Movie:
Polar Express
6 PM

Hay Ride at the Gazebo
Rides From 6 PM to 8:30 PM

Museum Candle Light Tour
6 PM to 9 PM

Gazebo Headliners:

T.I.S.D. Children's Choir	12 Noon
Tomball Elementary Cougar Cub Choir	1 PM
RHUMC Bell Choir	2 PM
Salem Lutheran Middle School Choir	3 PM
Pilgrim Hill Missionary Baptist Church Choir	4 PM

HISTORIC TOMBALL DEPOT PLAZA

201 South Elm ~ One block south of Main Street

Open from 10:00 AM to 10:00 PM

Movie begins at 6:00 PM!

Family entertainment for all ages

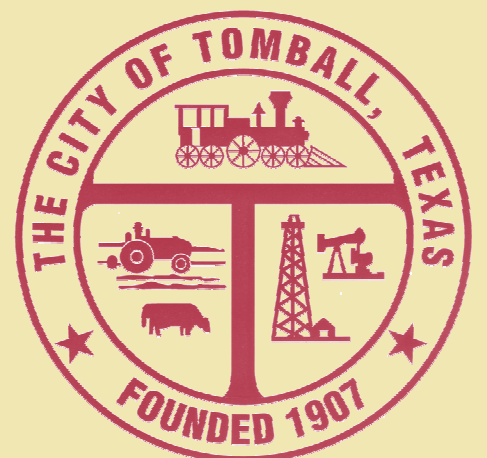
Bring your lawn chairs

Concessions available

No Glass Containers!

For information on future events,
come visit the 2nd Saturday Booth
located on the Depot Plaza!

For more information, please call
Rosalie Dillon at 281-610-2595



3rd Annual

German Christmas Market

Weihnachtsmarkt Texas Style

Second Saturday at the Depot

December 11, 2010

10 am – 9 pm

Sunday, Dec. 12th

10 am – 6 pm

Near the Historical Train Depot Plaza

201 South Elm Street

Tomball, Texas



Free Admission — No Parking Fees

Live Music • Arts & Crafts • Food • Bier • Movie • Santa
Kinderfest (kid's area) • Fireworks • Hay Ride
Carnival & Much More



Santa & Chris Rybak



Sponsored by:

City of Tomball, Tomball Sister City Organization, and Tomball German Heritage Festival
www.tomballsistercity.org



Regular City Council Agenda Item Data Sheet

Meeting Date: December 6, 2010

Topic:

Approve the Minutes of the November 15, 2010 Regular City Council Meeting

Background:**Origination:**

City Secretary

Recommendation:

N/A

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Minutes - November 15, 2010 Council Meeting

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



MONDAY, NOVEMBER 15, 2010

7:00 P.M.

1.0 Call to Order

The meeting was called to order by Mayor Gretchen Fagan. Other members present were:

Councilman Quinn
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Kliwer
City Secretary – Doris Speer
City Attorney – Scott Bounds
Finance Director – Glenn Windsor
Fire Chief – Randy Parr
Police Chief – Robert Hauck
Director of Public Works – David Kauffman
Assistant to City Manager – Shawn Cox
Director of Engineering and Planning – Mark McClure

Draft

2.0 The invocation was led by Pastor Shawn O'Hearn, Saddle Creek Church

3.0 Pledges to the U. S. and Texas flags were led by Samuel Freeman and Robert Tirso, Members of the THS Student Council.

4.0 The following public comments were received.

Vince O'Donnell
1322 Dove Trails, 77375

- Requested that Council consider changes to Chapter 54 of the Code of Ordinances, "Peddlers and Solicitors" to keep solicitors out of residential subdivisions.

Dan Adkisson
500 Inwood, 77375

- Requested Council support for the Tomball Art League Juried Art Shows, to be held at the Tomball Community Center

5.0 Presentations:

- Mayor Fagan presented a Proclamation to the coach and members of the Lady Crusaders, proclaiming Monday, November 15, 2010 as ***“Concordia Lutheran Lady Crusaders 2010 TAPPS Class 4A State Championship Day”***.

6.0 Reports and Announcements:

- November 16, 2010 – **Mayor’s Coffee** – 5:30 p.m.-7:00 p.m., Main Street Crossing
- November 20, 2010 - **Special Walk Tomball** in the **Holiday Parade** behind the *Walk Tomball! It’s a Wonderful Life* banner – 10:00 a.m.
- November 25-26, 2010 – **Thanksgiving Holiday – City offices will be closed**
- December 11, 2010 – **2nd Saturday at the Depot – 5:00 p.m.**
- December 11-12, 2010 – **German Christmas Market** – Depot Plaza, from 10:00 a.m. to 10:00 p.m.
- December 11, 2010 – **Unveiling of the Farmer Statue and Lighting of the Christmas Tree** – Depot Plaza, 5:00 p.m.
- **Walk Tomball!** (Every Saturday at **9:00 a.m.** at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - David Kauffman provided an update regarding the planned school zone lighting upgrade; Harris County has provided a Letter of Understanding regarding the County’s continued maintenance of the county roads and Tomball’s maintenance of the flashing lights. Councilman Townsend volunteered his assistance in maintaining the flashing lights.
 - Randy Parr introduced the new Assistant Fire Chief, John Fontenot.
 - Councilman Stoll congratulated the Tomball Cougars for their recent win in the championship playoffs.
 - Councilman Townsend requested that an item be placed on the next agenda to discuss Chapter 54, Peddlers and Solicitors.

7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the minutes of the November 1, 2010 Regular City Council Meeting.

Motion carried unanimously.

8.0 New Business

- 8.1 Glenn Windsor presented an overview of the proposed Grant to The Regional Arts Council. Motion was made by Councilman Quinn, second by Councilman Brown, to approve the Grant Application Request by The Regional Arts Council (TRAC) for Hotel Occupancy Funds in the amount of \$10,500, to be used in the Production of "The Nutcracker Ballet," to be held December 3-6, 2010 at the Tomball High School Auditorium.

Motion carried unanimously.

- 8.2 Doris Speer presented an overview of the proposed Request. Motion was made by Councilman Townsend, second by Councilman Dodson, to approve the Request by Tomball Art League (TAL) for City Sponsorship through In-Kind Services, Including Waiver of Rental Fee and Portion of Personnel Fees for the Use of the Community Center, Tables, Chairs, and Personnel to Open and Close the Building for the TAL Juried Spring and Fall Art Shows, from 2:00 p.m. to 4:00 on Friday, March 11, 2011 and Friday, October 7, 2011 for pre-registration of artwork and from 7:30 a.m. to 5:00 p.m., on Saturday, March 12, 2011 and Saturday, October 8, 2011 for the Juried Art Shows.

Motion carried unanimously.

- 8.3 Glenn Windsor presented an overview of the proposed Bank Depository Services Contract. Motion was made by Councilman Townsend, second by Councilman Brown, to award the Contract for Bank Depository Services to Wells Fargo Bank, N.A., effective January 1, 2011.

Motion carried unanimously.

- 8.4 Rob Hauck presented an overview of the proposed Ordinance banning K-2 and similar products. Motion was made by Councilman Dodson, second by Councilman Townsend, to read Ordinance No. 2010-24 by caption only on first reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2010-24, an Ordinance Amending Chapter 42, "Heath and Sanitation", of the Code of Ordinances of the City of Tomball, Texas, by Adding a New Article VI. "Prohibited Smoking Paraphernalia and Smoking Products", Providing for Severability; Establishing a Penalty up to \$200 per Offense; and Providing an Effective Date. Vote was as follows:

Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>

Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>

Motion carried unanimously.

- 8.5 Rob Hauck presented an overview of the proposed Ordinance to ban texting while driving. Motion was made by Councilman Townsend, second by Councilman Dodson, to read Ordinance No. 2010-25 by caption only on first reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2010-25, an Ordinance Amending Chapter 78, Traffic and Vehicles, of the Code of Ordinances of the City Council of the City of Tomball, Texas, by Adding a New Section 78-73, "Use of Certain Wireless Communication Devices While Driving Prohibited"; Regulating the Use of Wireless Communication Devices while Operating Motor Vehicles; Providing a Penalty in an Amount Not to Exceed \$200 for Each Violation Hereof; and Providing for Severability; and Making Other Provisions and Findings Related Thereto. Vote was as follows:

Councilman Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>

Motion carried unanimously.

- 8.6 Doris Speer presented an overview of the proposed Ordinance regarding the use of City-owned facilities for filming. Motion was made by Councilman Stoll, second by Councilman Brown, to read Ordinance No. 2010-26 by caption only on first reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2010-26, an Ordinance of the City of Tomball, Texas, adding Chapter 15, "Filming," to the Code of Ordinances of the City of Tomball, to Require a Permit for Commercial Filming in the City of Tomball, to Establish Policies, Procedures and Regulations as they relate to Filming; Providing a Penalty in an Amount of Not More Than \$500 for Violation of any Provision Hereof; Providing for Savings and Severability; Providing for Publication; and Making other Provisions and Findings related Thereto.

Motion was made by Councilman Townsend, second by Councilman Stoll, to table consideration of Ordinance No. 2010-26 until the requested research and suggested changes have been prepared for Council's consideration.

Motion to table carried unanimously.

9.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 6th day of December 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: December 6, 2010

Data Sheet

Topic:

Adopt, on Second Reading, Ordinance No. 2010-24, an Ordinance Amending Chapter 42, "Heath and Sanitation", of the Code of Ordinances of the City of Tomball, Texas, by Adding a New Article VI. "Prohibited Smoking Paraphernalia and Smoking Products", Providing for Severability; Establishing a Penalty up to \$200 per Offense; and Providing an Effective Date.

Background:

In July 2010, the Tomball Police Department began receiving intelligence reports from within the law enforcement community regarding the use of synthetic cannabinoid products (referred to by a variety of commercial names such as K-2, and Salvia) that when smoked created similar effects to those experienced when smoking marijuana. These products have been identified in Department of Justice reports, but as of yet have not been designated as controlled substances by the Federal or State government.

Upon being made aware of the introduction of the aforementioned products, information was provided to Tomball Police Officers, who within a few months, began coming in contact with young adults in possession of these products. Additionally, we are aware of local businesses selling these products within our community, and there is no enforcement remedy available at this time.

To mitigate this emerging situation immediately and effectively, it is necessary to enact this City Ordinance, which will provide members of the Tomball Police Department with an enforcement remedy that will target both users and distributors of these products.

On November 15, 2010, Council adopted Ordinance No. 2010-24 on First Reading.

Origination:

Robert S. Hauck, Chief of Police

Recommendation:

Adopt Ordinance No. 2010-24 on second reading.

Funding:

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

Robert S. Hauck, Chief of Police

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2010-24

ORDINANCE NO. 2010-24

AN ORDINANCE AMENDING CHAPTER 42, "HEALTH AND SANITATION", OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW ARTICLE VI. "PROHIBITED SMOKING PARAPHERNALIA AND SMOKING PRODUCTS", PROVIDING FOR SEVERABILITY; ESTABLISHING A PENALTY UP TO \$200 PER OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

* * * * *

WHEREAS, on May 18, 2010, the National Drug Intelligence Center of the United States Department of Justice issued EWS Report 000006 describing substance abuse and harmful side effects related to the use of synthetic cannabinoid products; and

WHEREAS, the federal government and the State of Texas have not designated synthetic cannabinoids, salvia divinorum, or related chemicals as controlled substances; and

WHEREAS, the City Council finds that the use of these products is a danger to the public health, safety and welfare because of the adverse side effects on a person from their use; now, therefore

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

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. Chapter 42, "Health and Sanitation", of the Code of Ordinances of the City of Tomball, Texas, is amended by adding a new Article VI, "Prohibited smoking paraphernalia and smoking products" that shall read as follows:

"Article VI. Prohibited smoking paraphernalia and smoking products.

Sec. 42-140. Definitions.

Illegal smoking paraphernalia means any equipment, material, object, or product that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including: a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen,

permanent screen, hashish head, or punctured metal bowl; a water pipe; a carburetion tube or device; a smoking or carburetion mask; a chamber pipe; a carburetor pipe; an electric pipe; an air-driven pipe; a chillum; a bong; or an ice pipe or chiller.

Illegal smoking product means any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, that includes any one or more of the following substances or chemicals:

- (1) salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts or similar structural analogs;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or dexamabinol) or similar structural analogs;
- (4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018) or similar structural analogs;
- (5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073) or similar structural analogs; or
- (6) 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl) (also known as JWH-081) or similar structural analogs.

Illegal smoking products include the products marketed under the following commercial names: Blaze, Dascents, Diablo, Fire N' Ice, Genie, K-2, K-2 Summit, K-2 Sex, KO Knock-Out 2, Mojo, Pandora Potpourri, Pep Spice, Sage, Salvia Divinorum, Sense, Silver, Skunk, Solar Flare, Spice, Spice Cannabinoid, Spice Diamond, Spice Gold, Spicy Green, Yucatan Fire, and Zohai.

Sec. 42-141. Offenses.

A person commits an offense if the person:

- (1) uses, possesses, purchases, barter, gives, delivers, publicly displays, sells, or offers for sale any illegal smoking product; or

(2) uses or possess any illegal smoking paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an illegal smoking product.

Sec. 42-142. Affirmative Defenses.

It shall be an affirmative defense for a person charged with an offense under Sec. 42-141 that:

(1) the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act;

(2) the sale or possession of salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose; or

(3) the use or possession was by an employee or agent of a governmental entity who is acting in the course and scope of the employee's or agent's duties and whose use or possession is in compliance with the applicable procedures established by the governmental entity for the use or possession of the product."

Section 3. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

Section 5. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. 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 6. This Ordinance shall take effect immediately 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 15TH DAY OF NOVEMBER 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

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 _____ DAY OF _____ 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 6, 2010

Topic:

Adopt, on Second Reading, Ordinance No. 2010-25, an Ordinance Amending Chapter 78, Traffic and Vehicles, of the Code of Ordinances of the City Council of the City of Tomball, Texas, by Adding a New Section 78-73, "Use of Certain Wireless Communication Devices While Driving Prohibited"; Regulating the Use of Wireless Communication Devices while Operating Motor Vehicles; Providing a Penalty in an Amount Not to Exceed \$200 for Each Violation Hereof; and Providing for Severability; and Making Other Provisions and Findings Related Thereto

Background:

During a recent City Council meeting, Councilman Townsend raised the issue of motorist distraction being directly related to the use of certain wireless devices (e.g. texting, emailing, etc.) while operating a motor vehicle. Although framed as a discussion point, there was an underlying question – "If we discourage Tomball motorists from self-initiated distractions while driving, wouldn't our streets be safer"? The answer is a simple and resounding "yes"!

As the professional law enforcement service providers for the citizenry, members of the Tomball Police Department have a responsibility to take thoughtful and practical steps to make our community safer. To that end, we have reviewed not only the technical studies available but also relied on our collective professional experience in making the decision to recommend that the reasonable enforcement measures outlined in this ordinance are made available to us as an enforcement option.

It is our hope that continued education related to traffic safety, coupled with the existence of these enforcement options will encourage widespread self-compliance by those who travel our city streets. We have seen noticeable behavior changes since the enactment of similar laws limited to school zones, and it is time to take a proactive and widespread approach to traffic safety by approving this City Ordinance.

On November 15, 2010, Council adopted Ordinance No. 2010-25 on first reading.

Origination:

Robert S. Hauck, Chief of Police

Recommendation:

Adopt Ordinance No. 2010-25 on second reading.

Funding:

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

Robert S. Hauck, Chief of Police

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2010-25

ORDINANCE NO. 2010-25

AN ORDINANCE AMENDING CHAPTER 78, TRAFFIC AND VEHICLES, OF THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW SECTION 78-73, USE OF CERTAIN WIRELESS COMMUNICATION DEVICES WHILE DRIVING PROHIBITED; REGULATING THE USE OF WIRELESS COMMUNICATION DEVICES WHILE OPERATING MOTOR VEHICLES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$200 FOR EACH VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * * *

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

Section 1. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding a new Section 78-73, Use of Certain Wireless Communication Devices While Driving Prohibited, to Article III, Operation of Vehicle Generally, to Chapter 78, Traffic and Vehicles, to provide as follows:

“ARTICLE III. OPERATION OF VEHICLE GENERALLY

* * * * *

Sec. 78-73. Use of Certain Wireless Communication Devices While Driving Prohibited.

(a) **Definitions.** For the purposes of this section:

- (1) Electronic message means a self-contained piece of digital communication that is designed or intended to be transmitted to or from a wireless communication device. An electronic message includes, but is not limited to, a text-based communication, such as electronic mail, a text message, or an instant message, or a command or request to access an internet site, or other data that uses a commonly recognized electronic communication protocol.
- (2) Wireless communication device means a device that uses a commercial mobile service, as defined by 47 U.S.C. § 332.

- (b) **Offense.** A person commits an offense if the person drives or operates a motor vehicle in the City while using a wireless communication device to view, send or compose an electronic message.
- (c) **Affirmative defenses.** It is an affirmative defense to prosecution of conduct prohibited by subsection (b) if:
 - (1) The person is using the wireless communication device strictly to engage in a telephone conversation, including dialing or deactivating a phone call;
 - (2) The person is an authorized government vehicle and is using the wireless communication device to respond to an emergency while acting in an official capacity;
 - (3) The person is using the wireless communication device while stopped or standing at a position parallel to and as close as possible to the right-hand edge or curb of a roadway where parking, standing or stopping in a nonemergency situation is not otherwise prohibited; or
 - (4) The person is using the wireless communication device to:
 - a. Operate only a global positioning or navigation system that is affixed to the vehicle;
 - b. Obtain emergency assistance to report a traffic accident, medical emergency, serious traffic hazard, fire or other hazardous response service;
 - c. Prevent a crime about to be committed;
 - d. Communicate with the reasonable belief that a person's life, safety, or property is in immediate danger; or
 - e. Operate only a device that is permanently installed inside the vehicle or that is solely in a voice-activated or other hands-free mode.
- (d) **Conflicting regulations.** To the extent that any clause, phrase, provision, sentence or part of this section conflicts with Texas Transportation Code §545.424, regarding the use of wireless communication devices while operating a motor vehicle by minors; or Texas Transportation Code § 545.425, regarding the use of wireless communication devices in school crossing zones, this section does not apply.”

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

Section 3. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. 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 immediately 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 15TH DAY OF NOVEMBER 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

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 _____ DAY OF _____ 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 6, 2010

Topic:

Appoint Members to the Tourism Advisory Committee

Background:

The newly created Tourism Advisory Committee (TAC) consists of nine (9) positions. According to the City's ordinance, city residents will be appointed to Positions 1, 2, and 3, city business owners or employees will be appointed to Positions 4, 5, and 6, and members of the hotel industry will be appointed to Positions 7, 8, and 9. The appointments in each category will be for 1-, 2-, and 3-year terms in order to create staggered expiration dates.

Attached you will find the applications of individuals interested in serving on the Tourism Advisory Committee, along with recommendations regarding appointments:

Representing Tomball Residents:

Ken Shuman - Position 1 (1-year term, expiring December 2011)

Mary Harvey - Position 2 (2-year term, expiring December 2012)

Jeffie Cappadonna - Position 3 (3-year term, expiring December 2013)

Representing Businesses Located within Tomball:

Holly Cook - Position 4 (1-year term, expiring December 2011)

Beverly Leday - Position 5 (2-year term, expiring December 2012)

Rodney Hutson, M.D. - Position 6 (3-year term, expiring December 2013)

Representing Hotel or Motel Located within Tomball:

Kevin Lala, America's Best Value Inn of Tomball - Position 7 (1-year term, expiring December 2011)

Lamar Barr, Hampton Inn/OM Hospitality - Position 8 (2-year term, expiring December 2012)

Ronald Tocci, LaQuinta Inn and Suites - Position 9 (3-year term, expiring December 2013)

Additional Applications

Prakash Patel, owner of Denny's and Executive Inn, resident.

Recommendations to the staggered terms in each category are based on years of residency or the number of years the business has been established/operating in the City. As each of the 1- and 2-year terms expire and reappointments are made, the appointments will be for three years. Mary Harvey has stated her willingness to resign from the Planning and Zoning Commission if appointed to the Tourism Advisory Committee.

Origination:

City Council

Recommendation:

N/A

Funding:

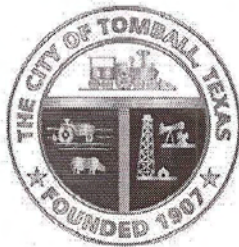
Party(ies) responsible for placing this item on agenda:

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ken Shuman Application - Resident
Mary Harvey Application - Resident
Jeffie Cappadona Application - Resident
Holly Cook Application - Business
Beverly Leday Application - Business
Rodney Hutson Application - Business
Kevin Lala Application - Hotel Industry
Lamar Barr Application - Hotel Industry
Ronald Tocci Application - Hotel Industry
Prakash Patel Application - Resident/Business/Hotel



CITY OF TOMBALL

2010 APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be available to the public. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2010 applications expire on December 31, 2012; a new application will be required in 2013.

Please Type or Print Clearly:

Date: 11-17-10

Name: Ken Shuman

Phone: 713-569-1934

Address: 611 Clayton St.

(Home)

Phone: 713-569-1934

Email: kwshuman@gmail.com

(Work)

I have lived in Tomball 4 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒
☐
☐

a Tomball Resident, residing within the city limits of Tomball
an Employee, Owner, Officer or Director of a business, other than
a hotel or motel, with offices within the city limits of Tomball
an Employee, Owner, or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: Pastor - Wellspring Church
Adjunct Professor at the Houston Graduate School of Theology.

Professional and/or Community Activities: I serve on the board of
Matryoska Haus a global ministry organization.

Additional Pertinent Information/References: I have served on numerous
committees and boards for Union Baptist Association.
I am also a past Moderator of Union Baptist Association.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.

Ken Shuman

Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256



11/22/10 DO

CITY OF TOMBALL

2010 APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

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Please Type or Print Clearly:

Date: 11-9-10

Name: MARY HARVEY

Phone: 713 582 5139

Address: 201 MARKET

(Home)
Phone: 281 351 8903
(Work)

Email: GRANNYSKORNER.TOMBALL@HOTMAIL.COM

I have lived in Tomball 15 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒ Owner

a Tomball Resident, residing within the city limits of Tomball
an Employee, Owner, Officer or Director of a business, other than
a hotel or motel, with offices within the city limits of Tomball
an Employee, Owner, or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: OWN Grannys Korner - Present Location - 11 yrs
@ 201 MARKET
prior location on Commerce @ N. WALNUT
4 yrs

I am the largest shop in the Town Square Area
have been very successful with my
marketing.

Professional and/or Community Activities: ^{Created} President of Tomball Business Assoc.,
Tomball Area Chamber, Rotary,
ESD Board EMS Board, P+Z Board,
Chair Tomball Night, have chaired Chamber Holiday
Parade, was on City Council, Citizen of Year 2008
Additional Pertinent Information/References:
City Council Pos 4, Managed Holiday Inn for 1 yr.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

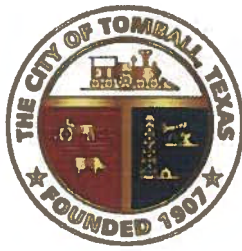
I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.


Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256

If Chosen for this, I will resign from
P+Z.
Thank you in Advance for your
Consideration



CITY OF TOMBALL

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Please Type ^{or} Print Clearly:

Date: 11-14-10

Name: Jeffie K. Cappadonna

Phone: 281-351-8949
(Home)

Address: 12727 Zion Rd

Phone: 713-681-0627
(Work)

Email: jk.cappadonna@att.net

713-906-7335 cell

I have lived in Tomball 26 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒
☐
☐

a Tomball Resident, residing within the city limits of Tomball
an Employee, Owner, Officer or Director of a business, other than
a hotel or motel, with offices within the city limits of Tomball
an Employee, Owner, or Officer of a hotel or motel located in the
city limits of Tomball

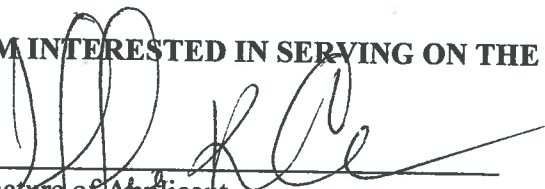
Occupation: I have raised 4 children in Tomball Schools, as a stay
at home mom my husband has become wheelchair bound so I
currently assist him @ work - we have owned Mid-West Electric Co
in Houston since 1974.

Professional and/or Community Activities: TPD - "VIPS" - Tomball Regional Hospital Volunteer
M.D. Anderson's Children's Nat Project Volunteer - Too many school
jobs too list over the years -

Additional Pertinent Information/References: Loyed - Love Tomball!

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.


Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256





CITY OF TOMBALL

**2010 APPLICATION
FOR THE
TOURISM ADVISORY COMMITTEE**

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Please Type of Print Clearly:

Date: November 2, 2010

Name: Holly O. Cook

Phone: 832-859-8628

Address: 990 Village Sq Dr R-100 Tomball TX 77375

Phone: 713-948-9304 (Home)

Email: hcook@texascitizensbank.com

Phone: 713-948-9304 (Work)

I have lived in Tomball 8 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☐
☒
☐

a Tomball Resident, residing within the city limits of Tomball
an Owner, Officer or Director of a business, other than a hotel of
motel, with offices within the city limits of Tomball
an Employee or Officer of a hotel or motel located in the city
limits of Tomball

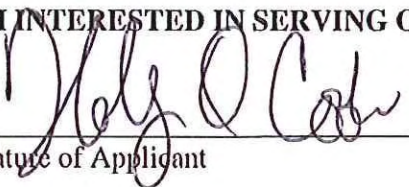
Occupation: Vice President, Banking Center Manager Texas Citizens Bank

Professional and/or Community Activities: Ambassador for the Tomball Chamber, Volunteer for Titans Youth Football, Facilitator and Advisory Member for Network Tomball, Chairman of the 2011 Chairman's Ball (Tomball Chamber), Volunteer Tomball Museum Center

Additional Pertinent Information/References: I have been very active in the Chamber for many years, and look forward to working to be more involved in the City of Tomball. I can provide a list of references if needed.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant

Please return this application to:

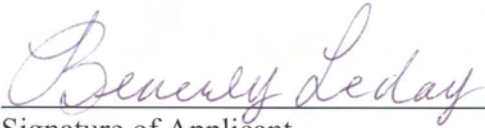
City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256

Professional and/or Community Activities: See attached.

Additional Pertinent Information/References: See attached.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256

Beverly Leday

(281) 435-8583

503 Garrett Drive, Magnolia, TX 77354
bleday@consolidated.net



Objective

To become an educator and give back to my community

Education/Degrees

January 2010 - Current

Lone Star College Montgomery /Tomball, Tomball, TX

May 1988 - Diploma

New Waverly High School, New Waverly, TX

Experience

11-2009- Current | Community Coordinator
HEB

- Event Coordinator
- Build strong relationships between HEB Tomball and the local community, including other businesses
- Oversees monetary donations and necessary resources for the Tomball community as requested by the organization
- Manages and coordinate weekly events for Tomball Children's Literacy Center
- Work closely with local Chamber of Commerce, city and schools to provide great support to the Tomball community

07-1999- 11-2009 | Human Resources Support/ Coordinator
HEB

- Coordinated regional community events –HEB Houston/United Way campaign.
- Coordinated regional health & wellness programs for H-E-B Houston.
- Monitored company payroll, compensation and benefits
- Planned and arranged monthly human resource manager meetings, schedules and planning with the executive leadership teams

Skills

- Leadership
- Organizational
- People
- Communication

References

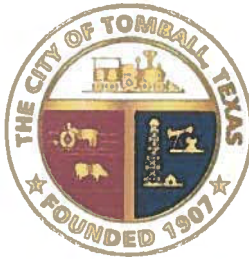
Tom Smith, Unit Director
HEB Tomball
(281) 255-2250

Adrienn Parsons, Financial Analyst
HEB
(281) 364-5283

Andrea Sharayha, Sr. HR Manager
Houston Firefighters Retirement Association
(713) 826-7050

Annette O'Neal, Assistant Superintendent (Retired) & Friend
New Waverly Independent School District
(936) 344-6093





CITY OF TOMBALL

2010 APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

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Please Type or Print Clearly:

Date: 11/16/10

Name: Rodney K. Hutson MD

Phone: 281-356-4305
(Home)

Address: 9431 Rosiz Ln Suite 100
Magnolia, TX 77354

Phone: 281-356-4305
(Work)

Email: RKHUTSON@SBCglobal.net

I have lived in Tomball years.

I am ☒ am not a U.S. Citizen

I am applying as (please check all that apply):

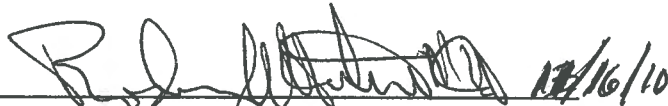
- ☐ a Tomball Resident, residing within the city limits of Tomball
- ☒ an Employee, Owner, Officer or Director of a business, other than a hotel or motel, with offices within the city limits of Tomball
- ☐ an Employee, Owner, or Officer of a hotel or motel located in the city limits of Tomball

Occupation: Ophthalmologist (Retired)
Developer/Builder (Active)

Professional and/or Community Activities: CEO/President Hutson Enterprises LLC
Board of Director Downtown Tomball Association, Member Comprehensive
Plan Advisory Committee, City of Tomball, Advisory Committee Livable Centers
Project, Member Tomball Chamber of Commerce
Additional Pertinent Information/References: Business/Property Owner City of
Tomball For 38 years —

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

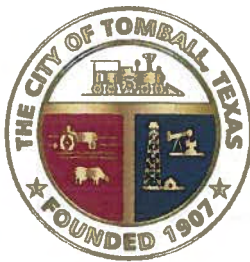
I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.

 12/16/10

Signature of Applicant

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dspeer@ci.tomball.tx.us
fax: 281-351-6256



CITY OF TOMBALL

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Please Type or Print Clearly:

Date: 11/7/10

Name: KEVIN LALA

Phone: 214-454-1030
(Home)

Address: 14110 TOMBALL PKWY

Phone: _____
(Work)

Email: KEVIN1171@HOTMAIL.COM

I have lived in Tomball ___ years.

I am ☒ am not ___ a U.S. Citizen

I am applying as (please check all that apply):

- ☐ a Tomball Resident, residing within the city limits of Tomball
- ☐ an Employee, Owner, Officer or Director of a business, other than a hotel or motel, with offices within the city limits of Tomball
- ☒ an Employee, Owner, or Officer of a hotel or motel located in the city limits of Tomball

Occupation: PRESIDENT of AMERICAS BEST VALUE INN of
TOMBALL. NEW PROJECT.

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

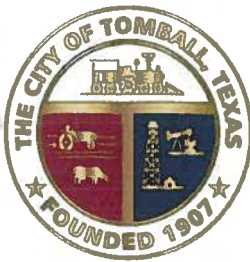
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Signature of Applicant

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City Secretary
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Tomball, TX 77375
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CITY OF TOMBALL

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Please Type or Print Clearly:

Date: 11/5/10

Name: LAMAR BARN

Phone: 404 993 5768

Address: 14100 Medical Complex Dr

Phone: 832 421 7255 (Home)

Email: lamar.barn@om-hospitality.com

(Work)

I have lived in Tomball 0 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

- ☐ a Tomball Resident, residing within the city limits of Tomball
- ☐ an Employee, Owner, Officer or Director of a business, other than
- ☒ a hotel or motel, with offices within the city limits of Tomball
- ☐ an Employee, Owner, or Officer of a hotel or motel located in the
- ☐ city limits of Tomball

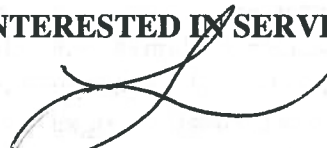
Occupation: Vice President of OM Hospitality

Professional and/or Community Activities: Chamber Member, Advisory Board
Hilton Hotels, Member Houston Hotel Motel Association

Additional Pertinent Information/References: _____

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

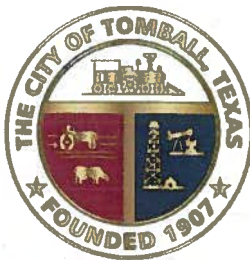
I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256



CITY OF TOMBALL

2010 APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be available to the public. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2010 applications expire on December 31, 2012; a new application will be required in 2013.

Please Type or Print Clearly:

Name: RONALD JOSEPH Toci

Date: 11/4/2010

Address: 27004 DECKER PRAIRIE ROSEHILL

Phone: (832) 752 3336

(Home)

Phone: (281) 516 0400

(Work)

Email: lq0606am@LaQuinta.com

I have lived in Tomball 0 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):



a Tomball Resident, residing within the city limits of Tomball
an Employee, Owner, Officer or Director of a business, other than
a hotel or motel, with offices within the city limits of Tomball
an Employee, Owner, or Officer of a hotel or motel located in the
city limits of Tomball

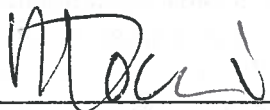
Occupation: General Manager LaQuinta Inns and Suites

Professional and/or Community Activities: General Manager La Quinta
Tomball, TX.

Additional Pertinent Information/References: Jacob Koh (281) 516-0400
owner

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.


Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256



CITY OF TOMBALL

2010 APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be available to the public. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2010 applications expire on December 31, 2012; a new application will be required in 2013.

Please Type or Print Clearly:

Date: 11. 8. 2010.

Name: Prakash Patel

Phone: 281. 252. 9075
(Home)

Address: 603. W. MAIN STREET TOMBALL, TX 77375

Phone: 281. 797. 5378
(Work)

Email: Prakash1970@MSN.COM

I have lived in Tomball 30 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒
☐
☐
☐

a Tomball Resident, residing within the city limits of Tomball
an Employee, Owner, Officer or Director of a business, other than
a hotel or motel, with offices within the city limits of Tomball
an Employee, Owner, or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: RESTAURANT OWNER DENNY'S - TOMBALL.

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 6, 2010

Topic:

Approve Request from Tomball Rotary Club to Allow the Sale of Beer in Juergens Park during the Tomball Rotary Fish Fry, to be held on April 29, 2011

Background:

The Tomball Rotary Association is requesting Council approval to sell beer at the Annual Fish Fry, to be held on April 29, 2011, from 4:00 p.m. to 10:00 p.m., in Juergens Park.

Tomball Rotary will adhere to all city ordinances and will provide the required Certificate of Liability Insurance, naming the City of Tomball as an additional insured on the General Liability Policy containing liquor liability coverage.

The Tomball Police Department will be on hand to promote a safe community event, but will not provide security for alcohol sales; the Tomball Rotary Club will be required to hire its own security for alcohol sales. Council may wish to restrict the sale of beer to a specific area within Juergens Park, such as the covered portion of the pavilion area, similar to the tented area established by the Tomball Sister City Organization for the Biergarten at the German Christmas Market.

Origination:

Craig Bogner, Club Sources Director, Tomball Rotary

Recommendation:

N/A

Funding:

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

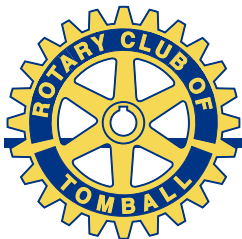
George Shackelford, City Manager

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Tomball Rotary Request Letter

TABC Requirements for Temporary Permits



Rotary Club of Tomball

P.O. Box 594, Tomball, Texas 77377-0594, USA

Mr. George T. Shackelford
City Manager
City of Tomball
Tomball, TX

Re: Rotary Club of Tomball
Annual Fish Fry
April 29, 2011

Dear George:

The Tomball Rotary would like permission to get on the agenda Dec. 6, 2010 to sell beer at our Annual Fish Fry which we plan to hold on April 29, 2011. The event will begin at 4:00 p.m. and will end at approximately 10:00 p.m.

It goes without saying that the Rotary Club of Tomball will adhere to all city ordinances and all necessary insurance requested. Additionally, we welcome any input you can give us regarding requirements for law enforcement for our event.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Bogner", is written over a light blue rectangular background.

Craig Bogner
Tomball Rotary
Club Sources Director



NON-PROFIT ORGANIZATION BEER AND WINE TEMPORARY PERMIT

PLEASE READ AND FOLLOW ALL INSTRUCTIONS. IF YOU HAVE ANY QUESTIONS CONCERNING THIS PROCEDURE OR THE CORRECT FEE. PLEASE CALL OUR OFFICE AT 713-426-7900

FEE SCHEDULE (AS OF 10/01/05) \$201.00

Fees are subject to change in September of each year

In effort to provide quick and courteous service to everyone, it is imperative that all applications and required forms are in hand and complete when presented for issuance. Please understand that you may be asked to leave your application (after it has been properly checked) and return for your permit at a later date. Therefore, we request that you allow sufficient time to obtain the permit for your scheduled event.

- *Political party or association supporting a candidate for public office or a proposed amendment.*
- *Organization formed for specific charitable or civic purpose.*
- *Fraternal organization in existence for over 5 years with regular membership.*
- *Religious organization.*

A non-profit organization can file for a Temporary Beer and Wine Permit using their non-profit status. A temporary cannot be issued to a private residence. An officer of that non-profit organization must sign all applications.

To qualify, you must bring a copy of your 501(c) form, which is sent from the Internal Revenue Service and a copy of the Articles of Organization stating the purpose of the organization.

1. Applicant must present two (2) temporary application forms completed and notarized. (Original signatures on both).
2. Answer Questions No: 4, 7, 8, 9, 10, 11 and 12. Designate one individual to fill out and sign the applications. (Question #4, check the box for temporary permit).
3. The property owner must sign the **provided permission form** authorizing the sale of alcoholic beverages on their property. This form must state exact location, date and time. **(FAXED PROPERTY OWNER AUTHORIZATION LETTERS WILL NOT BE ACCEPTED).**
4. The law enforcement approval by the appropriate police department/sheriff's office must be obtained on the **provided permission form. (FAXED POLICE NOTIFICATION FORMS WILL NOT BE ACCEPTED).**
5. Applicant must submit a cashier's check, certified check, or money order payable to TABC in the ***exact amount*** of the proper fee. **(SEE ABOVE FEE SCHEDULE).**

PLEASE NOTE: A Beer and Wine Non-Profit Temporary are valid for 1 to 3 consecutive days only.

Applications will be accepted Monday through Thursday from 8:00 a.m. to 4:00 p.m.

Applications will not be accepted after 11:00 a.m. Friday.

A temporary can only be issued for an unlicensed location.

CATHOLIC CHURCHES: Please submit a copy of your listing from the Official Church Directory.

NOTE: (The Pastor or Priests signatures must be on the application for religious organizations).

If the event is to be held in an open area, diagrams must be submitted showing exact location of booth that will be covered by the temporary. **(EXAMPLE: City or County parks, school or school or church grounds and fairgrounds).** If the applicant intends to have more than one booth, application forms must be completed for each booth with their location clearly marked on diagram. Proper fee must be submitted per booth. **No temporary will be issued without a legible diagram.**

IF ANY DISTRIBUTOR IS INVOLVED WITH THE FUNCTION, PLEASE DISCUSS THE EVENT WITH AN AGENT OR AUDITOR CONCERNING SIGN RESTRICTIONS, ETC.

**TEMPORARY LICENSES
CHAPTERS 72 AND 27
TEMPORARY BEER OR WINE & BEER LICENSE (BII)
SPECIAL THREE-DAY WINE AND BEER PERMIT (SB)
SPECIAL WINE AND BEER PERMIT - FOUR DAY FOR NON-PROFIT HISTORIC
PRESERVATION (HP)**

1-620 (2/2009)

**A VIOLATION OF THE FOLLOWING CAN RESULT IN CRIMINAL ACTION IN THE FORM OF ARREST,
JAIL, AND/OR A FINE, AS WELL AS THE SUSPENSION OR CANCELLATION OF THE LICENSE OR
PERMIT.**

1. The permittee/licensee is authorized to sell beer, ale, malt liquor and wine up to 14% or 17% alcohol by volume to the consumer for consumption on or off the premises. The percentage of alcohol by volume allowed is determined by the local option election held covering the area where the temporary function is held. Please consult with agency personnel before purchasing wine for the function. Neither you nor any of your employees (paid or volunteer) may possess or consume any alcoholic beverage you are not authorized to sell.
2. Beer may only be purchased from a beer distributor and must be paid for on or before delivery. You cannot purchase or acquire beer from another retailer.

Malt liquor, ale, and wine must be purchased from a wholesaler.

No unused alcoholic beverages may be returned to the distributor or wholesaler.
3. Alcoholic beverages may be sold during the following hours:

7:00 A.M. to 12:00 Midnight, Monday through Saturday
12:00 Midnight to 1:00 A.M., - Sunday
12:00 Noon to 12:00 Midnight, Sunday (Alcoholic beverages may be sold beginning at 10:00 A.M. on Sunday, if the alcoholic beverages are served during the service of food to the customer or if the licensed premises are at a festival, fair, concert, or sports venue).

If you are in an area that is legal for extended hours, you may continue to sell or serve those alcoholic beverages that you are authorized to sell for on-premise consumption until 2:00 A.M.
4. No one under 21 years of age may purchase or be given alcoholic beverages by you or your employees. No one under 21 years of age may consume alcoholic beverages on your premises unless they are in the visible presence of their adult parent(s), legal age spouse, or court appointed guardian. The only defense stated in the Texas Alcoholic Beverage Code against a charge of selling an alcoholic beverage to a minor, making an alcoholic beverage available to a minor, or allowing a minor to illegally possess or consume an alcoholic beverage is if the minor presents an apparently valid Texas Driver's License or identification card issued by the Texas Department of Public Safety containing a physical description consistent with his appearance.
5. You may not sell, serve, or deliver an alcoholic beverage to an intoxicated person. Your permit/license can be suspended or cancelled for the sale, service or delivery of an alcoholic beverage to an intoxicated person.

6. At the first sign of an argument or trouble between any of your customers, you should ask them to leave the premises. If necessary, call the police. If a breach of the peace (a fight or disturbance) occurs on your premises you may notify the local T.A.B.C. office the next working day of any breach of the peace that occurs on the license premises.
7. Any authorized representative of the Texas Alcoholic Beverage Commission or any other peace officer has the right and authority to enter your premise and make an inspection of your entire premises for violation of the Texas Alcoholic Beverage Code/Rules.
8. Your temporary permit/license must be displayed in a conspicuous place at all times.
9. The privileges granted by this temporary are limited to the dates and location described in your application.
10. Separate free toilets for male and female customers must be properly identified, and must be provided at the licensed location.
11. The issuance of a temporary license may require pre-approval by local law enforcement authorities along with city and county governmental entities. Control issues related to an out door venue or festival will need to be addressed with the local TABC District Office or Outpost.

PROVIDE APPROPRIATE SIGNS FOR THE EVENT



*Approval Form for Temporary License/Permits (If diagram is required, please complete back of form).

LANDLORD'S APPROVAL

Date/Time _____

Description of Event _____

Address, City & County _____

Property Owners Name _____

As landlord of above mentioned property, I hereby grant permission to sell/serve alcoholic beverages for the above event.

Landlords Signature _____

Approvals from Law Enforcement Officials.

Police Department/Harris County Sheriff's Department.

Approved Yes _____ No _____

Signature and Date _____

Printed Name/Title/Telephone Number _____

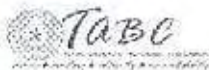
If Houston Police Department, see Vice Division at 1200 Travis, 4th Floor, Houston, Telephone 713-308-8600. If location is in Harris County please contact Harris County Sheriff's Office at 601 Lockwood, Houston, Telephone 713-967-5770. We suggest you call ahead to either office to confirm someone being available.



DIAGRAM

APPROVED BY: _____

DATE: _____



APPLICATION FOR DAILY TEMPORARY MIXED BEVERAGE PERMIT, DAILY
TEMPORARY PRIVATE CLUB, TEMPORARY LICENSE OR
CHARITABLE AUCTION PERMIT

Temporary Number
FORM L-04.5 (12/2007)

A Daily Temporary Mixed Beverage or Private Club Permit can only be issued for one day.
Each additional day requires a separate application.

DAILY TEMPORARY MIXED BEVERAGE OR PRIVATE CLUB PERMIT

1. ☐ TB - DAILY TEMPORARY
MIXED BEVERAGE PERMIT

☐ Applicant does not hold a Mixed Beverage
Permit, then complete sections a, b, and c →
☐ Applicant currently holds:

MB/RM

LB ☐

OWNER

TRADE
NAME

a. If the applicant is applying for a Daily Temporary Mixed Beverage Permit and
does not currently hold a Mixed Beverage Permit, complete this section.
Applicant is a:

- ☐ political party or association supporting a candidate for public office or a
proposed amendment
☐ organization formed for specific charitable or civic purpose
☐ fraternal organization in existence over 5 years with regular membership
☐ religious organization

b. Organization Name: _____

Federal Employer's ID # (FEIN): _____

c. State the number of Daily Temporary Mixed Beverage Permits the applicant has
held beginning January 1 of the current year. The commission shall not issue
more than **ten** temporary mixed beverage permits in each calendar year to a
person who does not hold a mixed beverage permit. _____

2. ☐ TN - DAILY TEMPORARY
PRIVATE CLUB PERMIT

N _____

NE _____

NB _____

NL ☐

TRADE
NAME

a. If the applicant is applying for a Daily Temporary Private Club Permit, indicate the
type of organization sponsoring the event indicated in question 10.

- ☐ political party or association supporting a candidate for public office or a
proposed amendment
☐ organization formed for specific charitable or civic purpose
☐ fraternal organization in existence over 5 years with regular membership
☐ religious organization

b. Organization Name: _____

Federal Employer's ID # (FEIN): _____

c. State the number of Daily Temporary Private Club Permits issued to the above
organization beginning January 1 of the current year. The commission may not
issue more than **two** daily temporary private club permits in each calendar year
for events sponsored by the same party, association, or organization. _____

A Temporary License may be issued for a period of not more than four days. Each four-day period requires a separate application.
A Special Three-Day Wine and Beer Temporary License is a three-day license. Each three-day period requires a separate application.
A Temporary Charitable Auction Permit is a five-day permit.

TEMPORARY LICENSE

3. ☐ BH: TEMPORARY BEER OR WINE AND BEER RETAILER'S PERMIT, four-day permit.
CURRENTLY HOLDS:

MB/RM _____

BG _____

BE _____

LB/BL ☐

TRADE NAME _____

OWNER _____

4. ☐ SB: SPECIAL THREE-DAY WINE AND BEER PERMIT

☐ Nonprofit Charitable Organization ☐ Civic Organization ☐ Religious Organization

Name of applicant's organization: _____

Applicant's Federal Employer's Identification #: _____

5. ☐ HP: SPECIAL WINE AND BEER PERMIT, four-day permit. May only be issued to a nonprofit historic preservation organization that has
been in existence for at least 30 years.

Name of nonprofit historic preservation organization: _____

Date organization was established: ____/____/____

Applicant's Federal Employer's Identification #: _____

6. ☐ CA: TEMPORARY CHARITABLE AUCTION PERMIT, five-day permit, only **ONE** allowed per calendar year.

Name of nonprofit organization: _____

Applicant's Federal Employer's Identification #: _____

I.R.S. Form 501(c)(3) Exemption **must be attached** to this application.

Inventory list of alcoholic beverages to be auctioned **must be attached** to this application.

ALL APPLICANTS

7. Application is hereby made for the period ____/____/____ to ____/____/____ both dates included.

8. Time(s) of function: _____

9. Location address - fully describe location: _____

City _____

County _____

10. Describe fully the picnic, celebration or similar event for which the license is requested: _____

11. Is this privilege to be exercised in an area where the sale of mixed beverages, beer/wine is legal? _____

11. ☐ YES ☐ NO ☐

COMPLETE REVERSE SIDE



Contact Name: _____ Area Code + Phone Number: (____) _____

Contact Name: _____ Area Code + Phone Number: (____) _____

WARNING: Section 101.69 of the Texas Alcoholic Beverage Code states: "... a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the Commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years."

PRINT

NAME: _____

SIGN

HERE: _____

SIGNATURE OF APPLICANT

TITLE

Before me, the undersigned authority, on this _____ day of _____, 20____, the person whose name is signed to the foregoing application personally appeared and, duly sworn by me, states under oath that he or she has read the said application and that all the facts therein set forth are true and correct.

SIGN

HERE: _____

NOTARY PUBLIC

(SEAL)

INSTRUCTIONS

1. This application must be filed directly with the local office of the Texas Alcoholic Beverage Commission in the area where the event is being held.
2. Daily Temporary Mixed Beverage Permit or Daily Temporary Private Club Permit (TB or TN): Complete the application and make two copies. Your receipt is your permit. Post it in plain view at the location stated in number 9.
3. Temporary Licenses (BH, SB, HP, CA): Complete the application and make a copy. For a Temporary License associated with a Mixed Beverage Permit, complete the application and make two copies. In numbers 3 through 6, indicate the class of permit or license required and complete the appropriate section. All questions regarding the particular temporary license you are applying for **must** be answered. Your receipt is your license. Post it in plain view at the location stated in number 9.
4. All applicants must complete numbers 7 through 11. Sign and have your application notarized.
5. See chart below for fees and surcharges that must be paid with a cashier's check, money order, or firm check from corporate permittee payable to the Comptroller of Public Accounts. We will not accept personal checks.

CLASS OF PERMIT OR LICENSE	FEES	*SURCHARGE	TOTAL DUE	*SURCHARGE SUBJECT TO ANNUAL CHANGE
Daily Temporary Mixed Beverage Permit (TB)	\$50	\$171	\$221	
Daily Temporary Private Club Permit (TN)	\$50	\$192	\$242	
Temporary Beer License or Wine and Beer License (4 day) (BH)	\$30	\$171	\$201	
Temporary License - Special 3 Day Wine and Beer Permit (SB)	\$30	\$171	\$201	
Temporary License - Special Wine and Beer Permit (4 day) (HP)	\$30	\$171	\$201	
Temporary License - Charitable Auction Permit (5 day) (CA)	\$25	\$171	\$196	

INSTRUCTIONS FOR ACCOUNTING AND REPORTING OF MIXED BEVERAGE TAXES

(FOR A DAILY TEMPORARY PERMIT ISSUED TO A PRIMARY MIXED BEVERAGE OR PRIVATE CLUB PERMIT)

1. Alcoholic beverages sold or served must be purchased separately from those sold or served under the primary Mixed Beverage Permit or Private Club Registration Permit.
2. After the Daily Temporary Mixed Beverage Permit or Daily Temporary Private Club Permit expires, an inventory of the remaining alcohol must be prepared. A copy of this inventory shall be retained by the mixed beverage or private club permit holders and a copy shall be forwarded to the local office of the Comptroller of Public Accounts. After this inventory is completed, the unused alcoholic beverages must be transferred to and used by the primary mixed beverage or private club permittee.
3. For information on reporting the mixed beverage taxes generated under the Daily Temporary Mixed Beverage Permit or Daily Temporary Private Club Permit and inventory of remaining alcoholic beverages, please contact the local office of the Comptroller of Public Accounts.
4. All laws pertaining to a Private Club Registration Permit or Private Club Exemption Certificate Permit are applicable to a Daily Temporary Private Club Permit.



APPLICATION FOR DAILY TEMPORARY MIXED BEVERAGE PERMIT, DAILY
TEMPORARY PRIVATE CLUB, TEMPORARY LICENSE OR
CHARITABLE AUCTION PERMIT

Temporary Number
FORM L-04.5 (12/2007)

A Daily Temporary Mixed Beverage or Private Club Permit can only be issued for one day.
Each additional day requires a separate application.

DAILY TEMPORARY MIXED BEVERAGE OR PRIVATE CLUB PERMIT

1. ☐ TB - DAILY TEMPORARY
MIXED BEVERAGE PERMIT

- ☐ Applicant does not hold a Mixed Beverage Permit, then complete sections a, b, and c →
☐ Applicant currently holds:

MB/RM

LB ☐

OWNER

TRADE
NAME

a. If the applicant is applying for a Daily Temporary Mixed Beverage Permit and does not currently hold a Mixed Beverage Permit, complete this section. Applicant is a:

- ☐ political party or association supporting a candidate for public office or a proposed amendment
☐ organization formed for specific charitable or civic purpose
☐ fraternal organization in existence over 5 years with regular membership
☐ religious organization

b. Organization Name

Federal Employer's ID # (FEIN):

c. State the number of Daily Temporary Mixed Beverage Permits the applicant has held beginning January 1 of the current year. The commission shall not issue more than ten temporary mixed beverage permits in each calendar year to a person who does not hold a mixed beverage permit.

2. ☐ TN - DAILY TEMPORARY
PRIVATE CLUB PERMIT

N

NE

NB

NL ☐

TRADE
NAME

a. If the applicant is applying for a Daily Temporary Private Club Permit, indicate the type of organization sponsoring the event indicated in question 10.

- ☐ political party or association supporting a candidate for public office or a proposed amendment
☐ organization formed for specific charitable or civic purpose
☐ fraternal organization in existence over 5 years with regular membership
☐ religious organization

b. Organization Name

Federal Employer's ID # (FEIN):

c. State the number of Daily Temporary Private Club Permits issued to the above organization beginning January 1 of the current year. The commission may not issue more than two daily temporary private club permits in each calendar year for events sponsored by the same party, association, or organization.

A Temporary License may be issued for a period of not more than four days. Each four-day period requires a separate application.
A Special Three-Day Wine and Beer Temporary License is a three-day license. Each three-day period requires a separate application.
A Temporary Charitable Auction Permit is a five-day permit.

TEMPORARY LICENSE

3. ☐ BH: TEMPORARY BEER OR WINE AND BEER RETAILER'S PERMIT, four-day permit.
CURRENTLY HOLDS:

MB/RM

BG

BE

LB/BL ☐

TRADE NAME

OWNER

4. ☐ SB: SPECIAL THREE-DAY WINE AND BEER PERMIT

- ☐ Nonprofit Charitable Organization ☐ Civic Organization ☐ Religious Organization

Name of applicant's organization:

Applicant's Federal Employer's Identification #:

5. ☐ HP: SPECIAL WINE AND BEER PERMIT, four-day permit. May only be issued to a nonprofit historic preservation organization that has been in existence for at least 30 years.

Name of nonprofit historic preservation organization:

Date organization was established

Applicant's Federal Employer's Identification #:

6. ☐ CA: TEMPORARY CHARITABLE AUCTION PERMIT, five-day permit, only ONE allowed per calendar year.

Name of nonprofit organization:

Applicant's Federal Employer's Identification #:

I R S Form 501(c)(3) Exemption must be attached to this application.

Inventory list of alcoholic beverages to be auctioned must be attached to this application.

ALL APPLICANTS

7. Application is hereby made for the period / / to / / both dates included.

8. Time(s) of function:

9. Location address - fully describe location:

City

County

10. Describe fully the picnic, celebration or similar event for which the license is requested:

11. Is this privilege to be exercised in an area where the sale of mixed beverages, beer/wine is legal?

11. ☐ YES ☐ NO

COMPLETE REVERSE SIDE

Contact Name: _____ Area Code + Phone Number: (____) _____

Contact Name: _____ Area Code + Phone Number: (____) _____

WARNING: Section 101.69 of the Texas Alcoholic Beverage Code states: "... a person who makes a false statement or false representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the Commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years."

PRINT

NAME: _____

SIGN

HERE: _____

SIGNATURE OF APPLICANT

TITLE

Before me, the undersigned authority, on this _____ day of _____, 20____, the person whose name is signed to the foregoing application personally appeared and, duly sworn by me, states under oath that he or she has read the said application and that all the facts therein set forth are true and correct.

SIGN

HERE: ► _____

NOTARY PUBLIC

(SEAL)

INSTRUCTIONS

1. This application must be filed directly with the local office of the Texas Alcoholic Beverage Commission in the area where the event is being held.
2. Daily Temporary Mixed Beverage Permit or Daily Temporary Private Club Permit (TB or TN): Complete the application and make two copies. Your receipt is your permit. Post it in plain view at the location stated in number 9.
3. Temporary Licenses (BH, SB, HP, CA): Complete the application and make a copy. For a Temporary License associated with a Mixed Beverage Permit, complete the application and make two copies. In numbers 3 through 6, indicate the class of permit or license required and complete the appropriate section. All questions regarding the particular temporary license you are applying for **must** be answered. Your receipt is your license. Post it in plain view at the location stated in number 9.
4. All applicants must complete numbers 7 through 11. Sign and have your application notarized.
5. See chart below for fees and surcharges that must be paid with a cashier's check, money order, or firm check from corporate permittee payable to the Comptroller of Public Accounts. We will not accept personal checks.

CLASS OF PERMIT OR LICENSE	FEES	*SURCHARGE	TOTAL DUE	*SURCHARGE SUBJECT TO ANNUAL CHANGE
Daily Temporary Mixed Beverage Permit (TB)	\$50	\$171	\$221	
Daily Temporary Private Club Permit (TN)	\$50	\$192	\$242	
Temporary Beer License or Wine and Beer License (4 day) (BH)	\$30	\$171	\$201	
Temporary License - Special 3 Day Wine and Beer Permit (SB)	\$30	\$171	\$201	
Temporary License - Special Wine and Beer Permit (4 day) (HP)	\$30	\$171	\$201	
Temporary License - Charitable Auction Permit (5 day) (CA)	\$25	\$171	\$196	

INSTRUCTIONS FOR ACCOUNTING AND REPORTING OF MIXED BEVERAGE TAXES (FOR A DAILY TEMPORARY PERMIT ISSUED TO A PRIMARY MIXED BEVERAGE OR PRIVATE CLUB PERMIT)

1. Alcoholic beverages sold or served must be purchased separately from those sold or served under the primary Mixed Beverage Permit or Private Club Registration Permit.
2. After the Daily Temporary Mixed Beverage Permit or Daily Temporary Private Club Permit expires, an inventory of the remaining alcohol must be prepared. A copy of this inventory shall be retained by the mixed beverage or private club permit holders and a copy shall be forwarded to the local office of the Comptroller of Public Accounts. After this inventory is completed, the unused alcoholic beverages must be transferred to and used by the primary mixed beverage or private club permittee.
3. For information on reporting the mixed beverage taxes generated under the Daily Temporary Mixed Beverage Permit or Daily Temporary Private Club Permit and inventory of remaining alcoholic beverages, please contact the local office of the Comptroller of Public Accounts.
4. All laws pertaining to a Private Club Registration Permit or Private Club Exemption Certificate Permit are applicable to a Daily Temporary Private Club Permit.

Regular City Council

Agenda Item

Meeting Date: December 6, 2010

Data Sheet

Topic:

Presentation by Dan Dompier of the Brandt Exploration Property Development Plan at Huffsmith-Kohrville Road and Proposed Medical Complex Drive

Background:

Brandt Exploration has entered into discussions with the Tomball Economic Development Corporation and City staff regarding a proposed conveyance of right-of-way for Medical Complex Drive through property owned by Brandt Exploration for the eventual extension of Medical Complex toward Mahaffey Road.

In December 2006, the City Council annexed a 4.998-acre tract and an 8.1479-acre tract owned by Brandt Exploration. At the time the properties were annexed, the planned use was for commercial development and Brandt Exploration has requested a Vested Rights Determination for the two tracts.

Brandt Exploration wishes to develop its current property, plus possible additional acreage (to be annexed), and is willing to convey right-of-way to the City by Deed of Trust to facilitate the City's planned extension of Medical Complex Drive toward Mahaffey Road.

Mr. Dompier wishes to present the proposed development plan and provide information to Council regarding possible solutions for detention to the east of Brandt property.

Origination:

Dan Dompier, DK Solutions, representing Brandt Exploration

Recommendation:

N/A

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Brandt Exploration Development Plan



**City Council Meeting
December 6, 2010
7:00 pm**

COUNTRY ROAD SQUARE
TOMBALL, TEXAS

COUNTRY ROAD SQUARE TOMBALL, TEXAS

Brandt Exploration, L.L.C.
Property Development Plan

**Brandt Exploration Property Development Plan
At
Huffsmith-Kohrville Road and Proposed Medical
Complex Drive**

Presenter

Dan Dompier

DK Interest Commercial Real Estate

(281) 744-2347 Work

ddompier@dkinterests.net

1029 Hwy 6 N

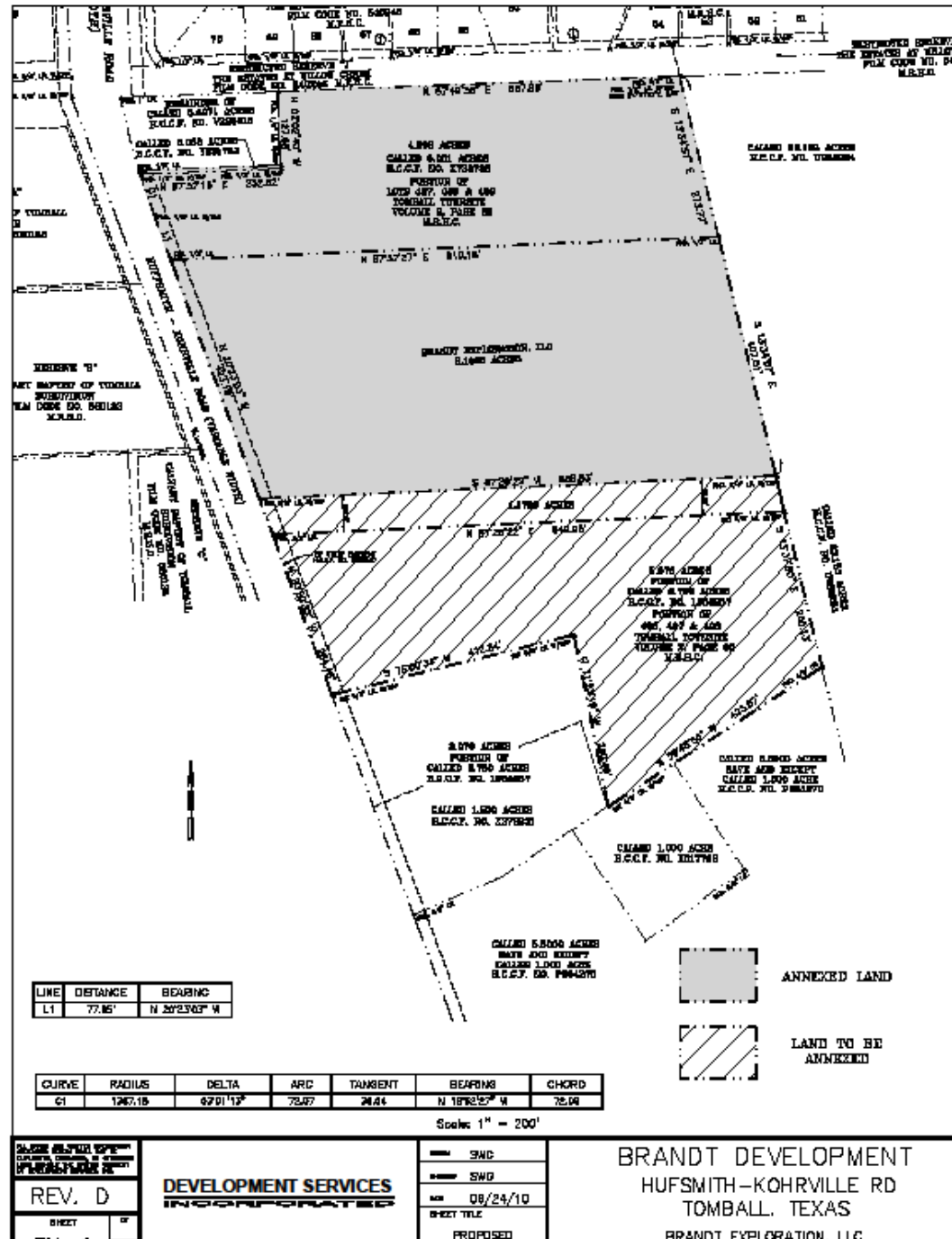
Suite 650-244

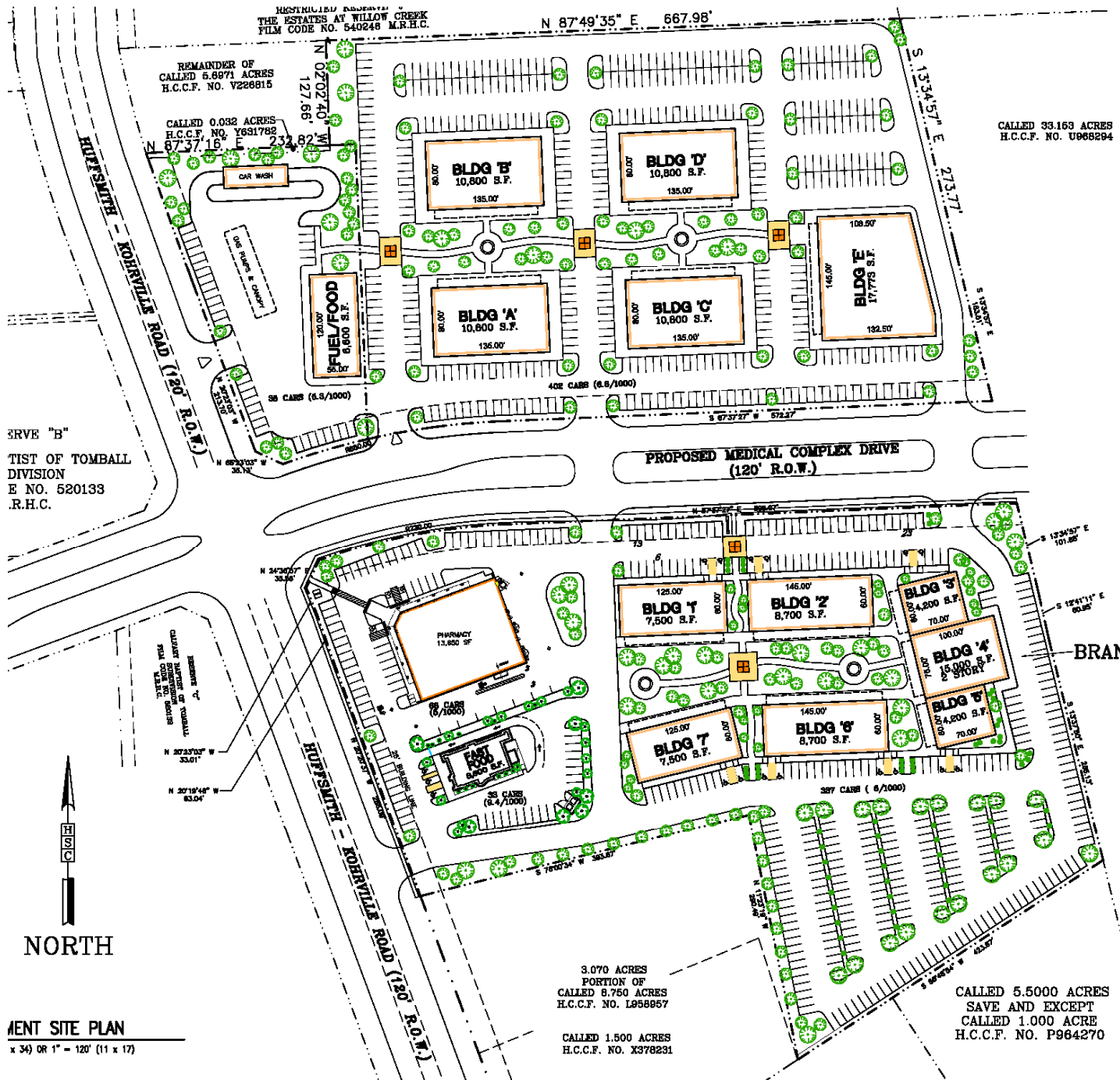
Houston, Tx 77079

18142 South Park View Drive

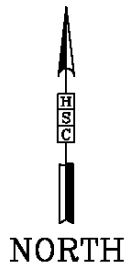
Houston, TX 77084

<http://www.dkinterests.net>





SRVE "B"
 TIST OF TOMBALL
 DIVISION
 E NO. 520133
 R.H.C.



MENT SITE PLAN
 x 3/4" OR 1" = 120' (11 x 17)

CALLED 33.163 ACRES
 H.C.C.F. NO. U968294

BRANDT EXPLORATION, LLC
 8.7482 ACRES

CALLED 33.153 ACRES
 H.C.C.F. NO. U968294

3.070 ACRES
 PORTION OF
 CALLED 8.750 ACRES
 H.C.C.F. NO. L958857

CALLED 1.500 ACRES
 H.C.C.F. NO. X378231

CALLED 5.5000 ACRES
 SAVE AND EXCEPT
 CALLED 1.000 ACRE
 H.C.C.F. NO. P964270

DEVELOPMENT SERVICES, INC.

TEXAS REGISTRATION #00223

800 Texas & County Lines State 200 Houston, Texas 77058 (713) 867-0011

PROPOSED DEVELOPMENT
 HUFSMITH - KOHRVILLE SQUARE
 TOMBALL, TEXAS
 BRANDT EXPLORATION, LLC
 10330-A LAKE ROAD SPRING, TEXAS

NO.	ISSUE	DATE

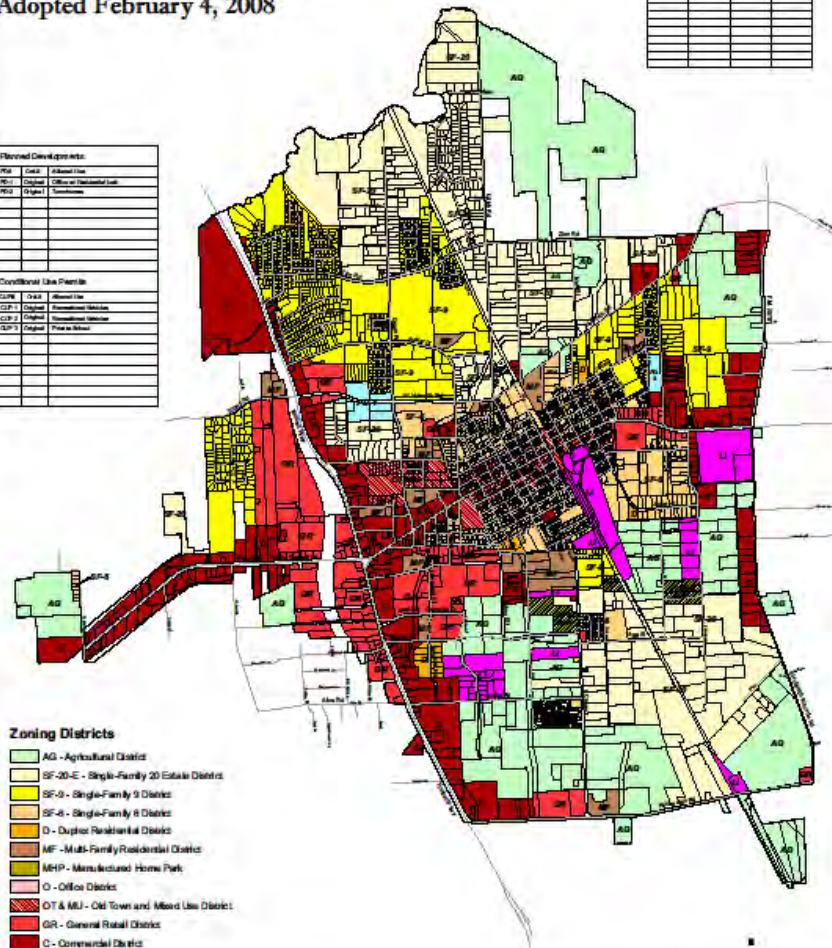
DESIGN	SWG
DRAWN	SWG
DATE	11/15/10
SHEET TITLE	CONCEPTUAL SITE PLAN
ALL DESIGN AND WHITE LINE INFORMATION IS FOR INFORMATION ONLY. NO CONSTRUCTION SHALL BE BASED ON THIS INFORMATION. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REGULATIONS. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REGULATIONS. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND REGULATIONS.	

SHEET
 SP-1

City of Tomball, Texas
Zoning Map
 Adopted February 4, 2008

Date of Adoption: 2/4/2008			
By: _____			
City Secretary: _____			
Resolution	Effective Date	Repealed Date	Repealed By

Planned Development:	
PD	Office
PD	Office or Residential
PD	Office
Conditional Use Permit:	
CUP	Office
CUP	Office
CUP	Office
CUP	Office



- Zoning Districts**
- AG - Agricultural District
 - SF-20-E - Single-Family 20 Estate District
 - SF-9 - Single-Family 9 District
 - SF-4 - Single-Family 4 District
 - D - Duplex Residential District
 - MF - Multi-Family Residential District
 - MHP - Manufactured Home Park
 - O - Office District
 - OT & MU - Old Town and Mixed Use District
 - GR - General Retail District
 - C - Commercial District
 - U - Light Industrial District
 - PD - Planned Development
 - CUP - Conditional Use Permit



COMMERCIAL DEVELOPMENT

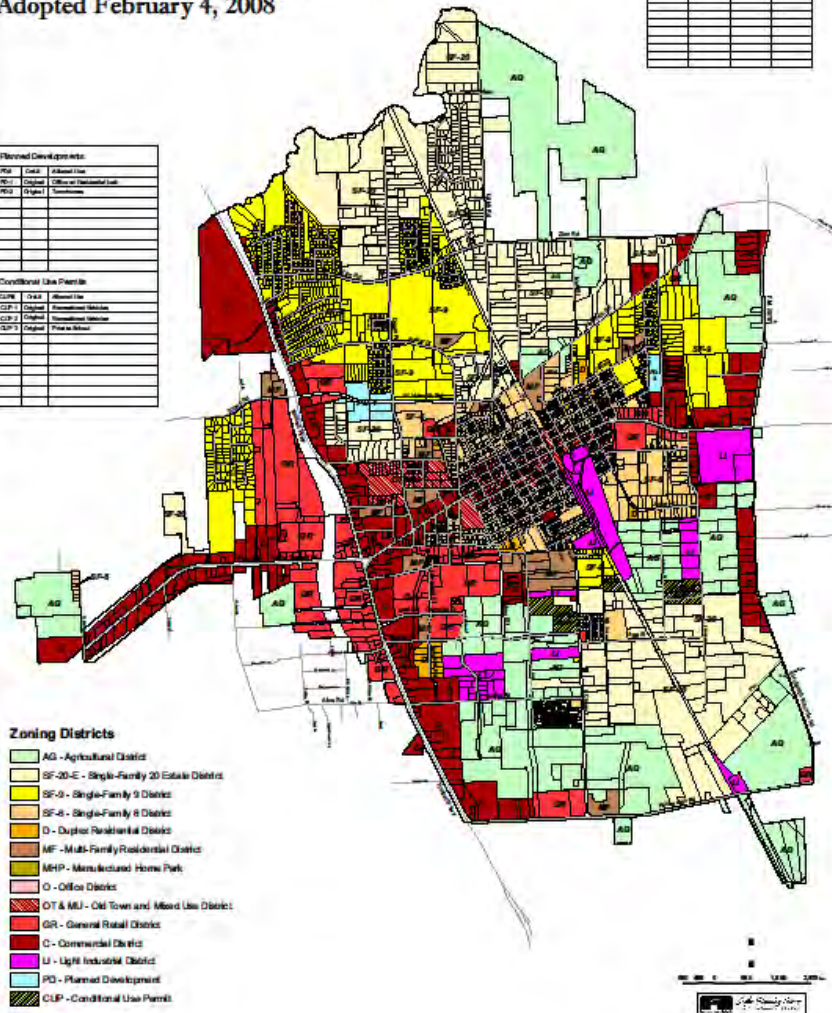
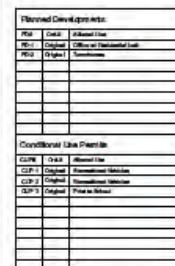
- 2007 – City Development Review Committee
Harris County Flood Control
Joint Development with TTC Development for Detention
Cooperative effort for conveyance of Right-of-Way for
Medical Complex Drive fails. Project on Hold
- 2008 - Joint Development with City of Tomball for Drainage
Development on Hold for City Master Planning effort
Cobb-Fendley Engineering Report for Medical Complex
Drive Expansion
- 2009 - Cobb-Fendley Engineering Report for Medical Complex
Drive Expansion
Additional Property Acquisition
- 2010 - Additional Property Acquisition
Joint Development with TTC Development of Right-of-Way
Meetings with City Engineering
Meetings with City Manager, City Engineering, Planning, Secretary

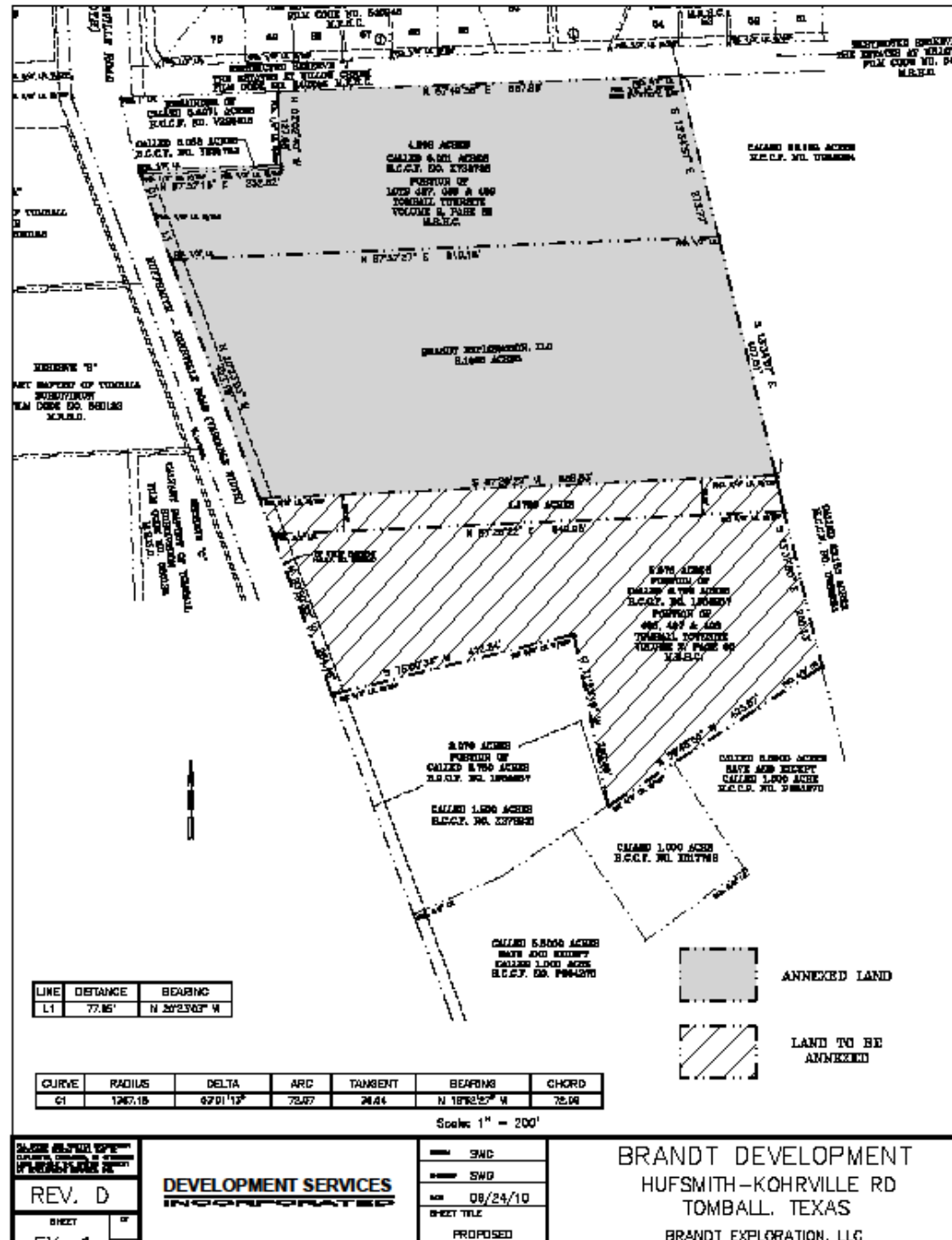
VESTED RIGHTS DETERMINATION

The Developer has petitioned The City of Tomball to grant Vested Rights according to its Zoning Ordinance, as provided for in Section 48.2

The Developer has and continues to meet the progress criteria of this statute.

It is the position of the Developer that the project is a work in progress with the City of Tomball both to secure the vision of the Development but also to secure the Right-of-Way for the Extension of Medical Complex Drive.

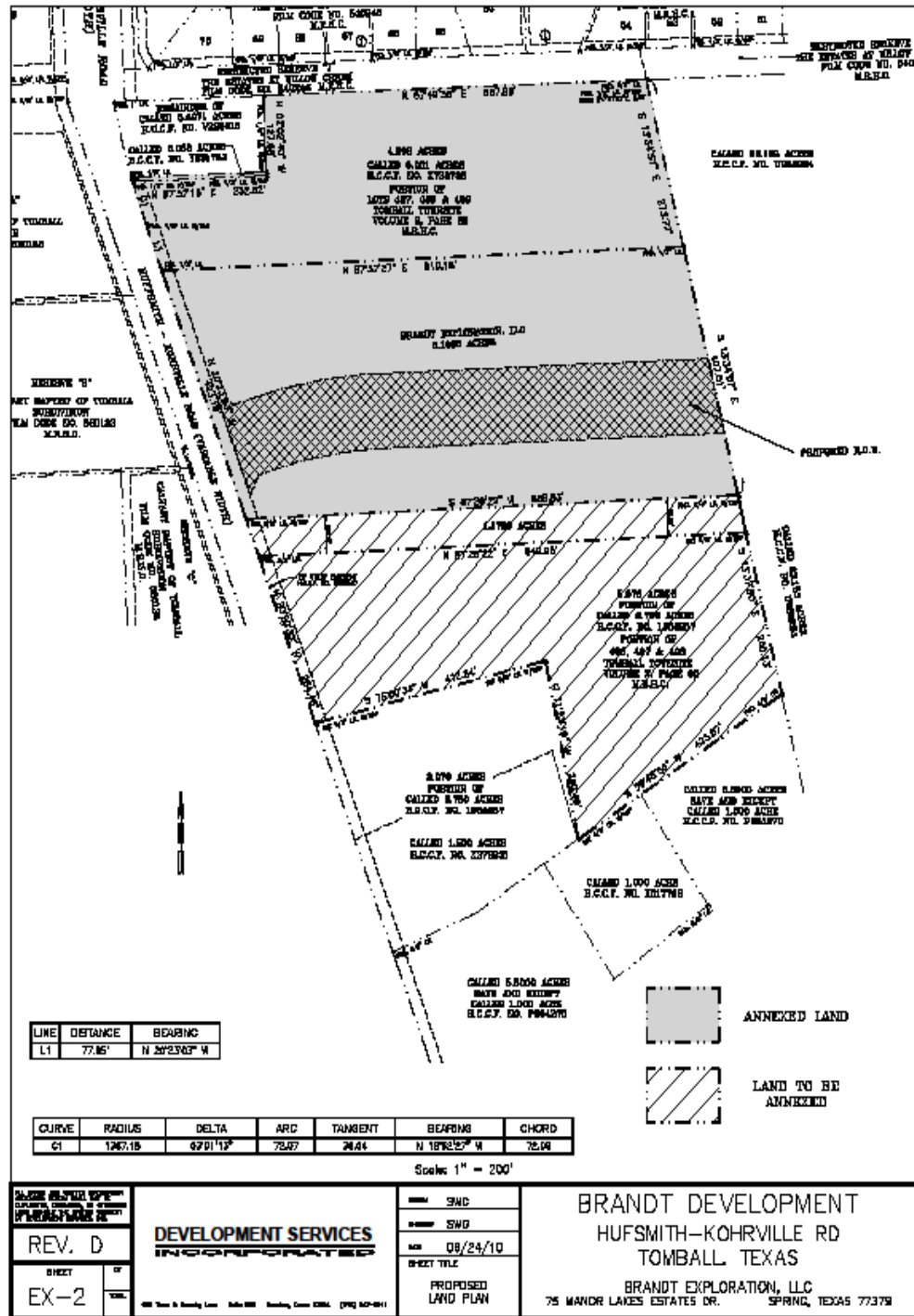
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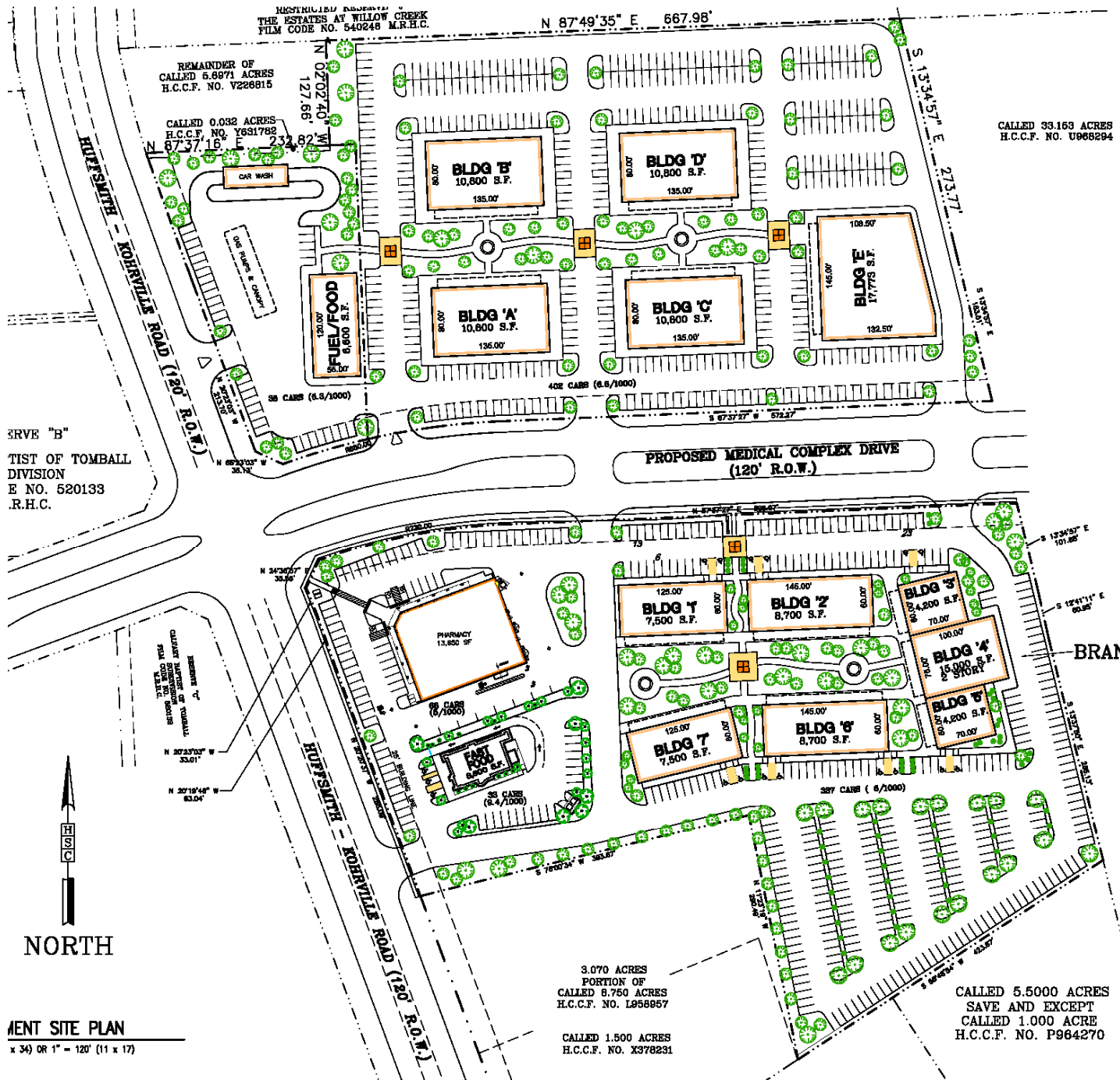


Medical Complex Drive

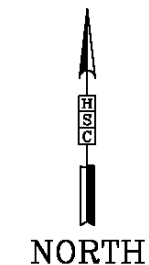
ALIGNMENT – It is essential that the City set the alignment for Medical Complex Drive. The Developer is in the position to convey property by Grant and by Deed of Trust that will bring the R.O.W. to Mahaffey Road where the City can extend through to F.M. 2920

WHEN - This needs to be confirmed in 2011 so that both the City of Tomball and the Developer can take advantage of a down market to shore up the Development and the R.O.W. for when the Market turns. We estimate that to be 5 years near the end of 2015. Labor and Material pricing will be at an advantage to the City and the Developer during this time.





SRVE "B"
TIST OF TOMBALL
DIVISION
E NO. 520133
R.H.C.



MENT SITE PLAN
x 3/4" OR 1" = 120' (11 x 17)

CALLED 33.163 ACRES
H.C.C.F. NO. U968294

BRANDT EXPLORATION, LLC
8.7482 ACRES

CALLED 33.153 ACRES
H.C.C.F. NO. U968294

3.070 ACRES
PORTION OF
CALLED 8.750 ACRES
H.C.C.F. NO. L958857

CALLED 1.500 ACRES
H.C.C.F. NO. X378231

CALLED 5.5000 ACRES
SAVE AND EXCEPT
CALLED 1.000 ACRE
H.C.C.F. NO. P964270

DEVELOPMENT SERVICES, INC.

TEXAS REGISTRATION #00223

800 Texas & County Lines State 200 Houston, Texas 77058 (713) 967-0011

PROPOSED DEVELOPMENT
HUFSMITH - KOHRVILLE SQUARE
TOMBALL, TEXAS
BRANDT EXPLORATION, LLC
10330-A LAKE ROAD SPRING, TEXAS

NO.	ISSUE	DATE

DESIGN	SWG
DRAWN	SWG
DATE	11/15/10
SHEET TITLE	CONCEPTUAL SITE PLAN
ALL DESIGN AND WHITE INFORMATION SHOWN ON THIS SHEET IS THE PROPERTY OF DEVELOPMENT SERVICES, INC.	

SHEET
SP-1

DETENTION

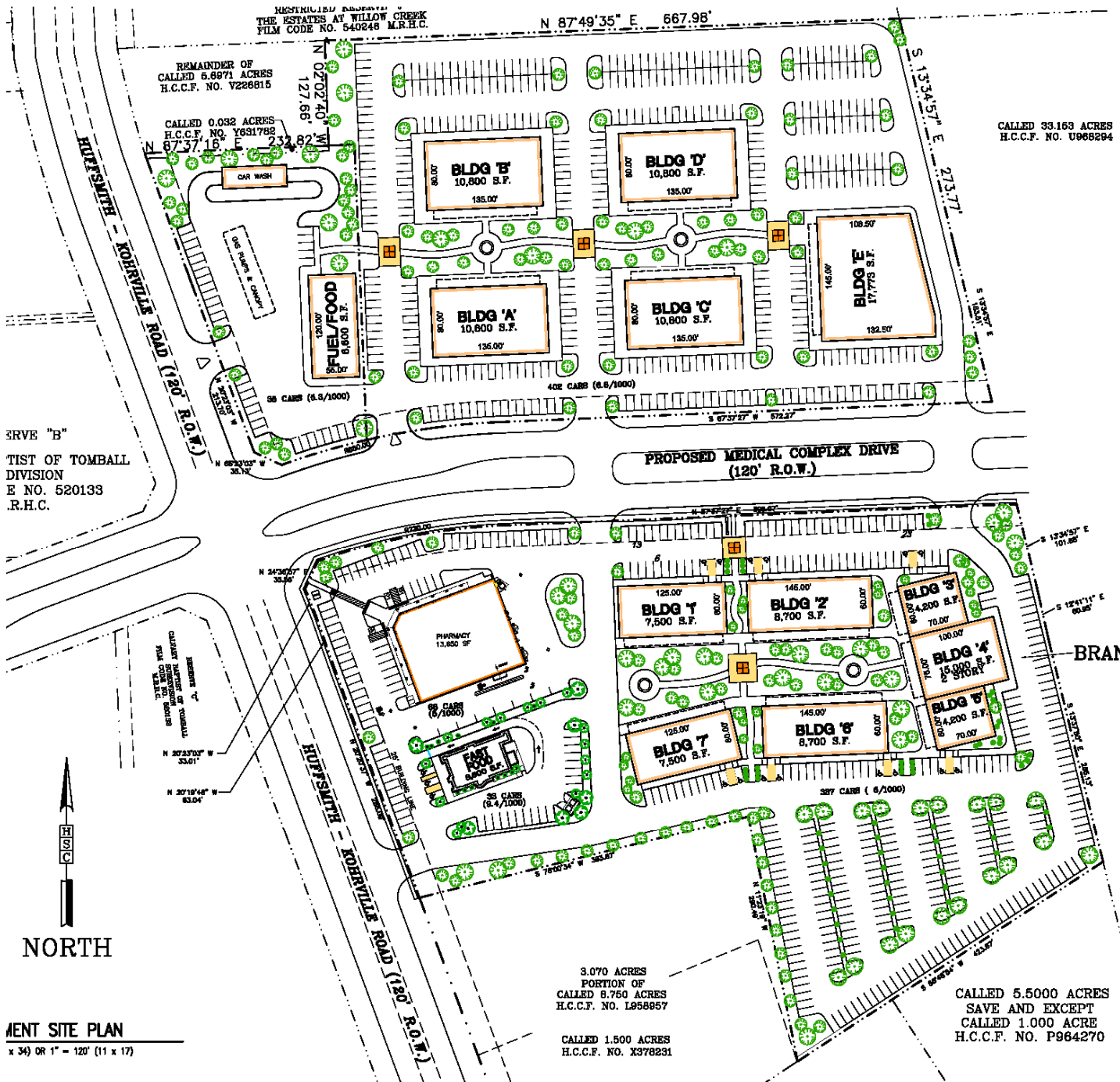
TCC Development Land (38 acres more or less) is designated as Detention Pond “C” on the Cobb-Fendley Plan. The R.O.W. generally disrupts all pre-planned development of TCC Development for its future Lot Build-Out.

As presented in the Cobb-Fendley Plan, the City will purchase the TCC Development Land not only for the R.O.W., but also for future detention and Brandt Property Detention.

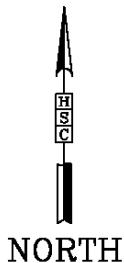
In exchange, The City of Tomball will receive 2.4 acres conveyed by Brandt to The City of Tomball by Deed. The City of Tomball will acquire R.O.W. through to Mahaffey Road with Detention under Deed of Trust Note (at fee).

The City of Tomball will be in position to secure the east end of the Medical Complex Drive Extension advancing its thorofare plan by 2015.





SRVE "B"
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E NO. 520133
R.H.C.



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DEVELOPMENT SERVICES, INC.
TEXAS REGISTRATION #00223

PROPOSED DEVELOPMENT
HUFFSMITH - KOHRVILLE SQUARE
TOMBALL, TEXAS
BRANDT EXPLORATION, LLC
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SHEET
SP-1



Office / Retail Concept



Stand Alone Office



Open Areas Between Shops



Restaurants



Shops

Regular City Council

Agenda Item

Meeting Date: December 6, 2010

Data Sheet

Topic:

Approve Renewal of the Interlocal Agreement for Fire Protection Services between the City of Tomball and Harris County Emergency Services District No. 15

Background:

Five years ago, the City of Tomball entered into an agreement with the newly formed Harris County Emergency Services District #15. Under the agreement, the City of Tomball Fire Department provides fire protection and other emergency services to the approximately 24 square miles within ESD #15's jurisdiction. ESD #15 compensates the City in an amount that is determined on an annual basis, but approximates 50% of the ad valorem taxes collected by the District.

This arrangement has been a significant improvement from the prior agreement with Harris County that resulted in compensation that was capped at \$7,000 per year. For the current year, the compensation amount is \$45,000. However, as the economy recovers, it is anticipated that this amount will increase significantly as residential and commercial construction within the Jurisdiction's boundaries increases.

Origination:

Fire Department

Recommendation:

Staff recommends approval of the agreement

Funding:

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

Randy Parr, Fire Chief

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Proposed Interlocal Agreement for Renewal

**INTERLOCAL AGREEMENT FOR
FIRE PROTECTION, FIRE SUPPRESSION,
AND RESCUE SERVICES**

Whereas, the HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15 and the CITY OF TOMBALL have previously entered into an interlocal agreement for fire protection, fire suppression and rescue services that expires December 31, 2010; and

Whereas, the parties desire to extend their cooperative relationship;

Now, therefore,

This **INTERLOCAL AGREEMENT FOR FIRE PROTECTION, FIRE SUPPRESSION AND RESCUE SERVICES** (herein "Agreement") is entered into effective the 1st day of 2011, by and between **HARRIS COUNTY EMERGENCY SERVICES DISTRICT ESD NO. 15** ("District"), a political subdivision of the State of Texas, organized and operating pursuant to the provisions of Section 48-e, Article III of the Texas Constitution and Chapter 775 of the Health and Safety Code and **THE CITY OF TOMBALL, TEXAS** for TEN AND NO/100 (\$10.00) DOLLARS, the mutual covenants and agreements herein contained, and other good and valuable consideration. Accordingly, **DISTRICT** and **CITY OF TOMBALL** agree to the following:

I. PARTIES

HARRIS COUNTY ESD NO. 15 is a political subdivision of the State of Texas, organized and operating in portions of Harris County, Texas under Chapter 775 of the Texas Health & Safety Code. **THE CITY OF TOMBALL, TEXAS** is a home-rule municipal body politic of the State of Texas. Both the **DISTRICT** and the **CITY OF TOMBALL** enter into this Agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The purpose of the Agreement is for CITY OF TOMBALL to perform certain government functions and services for DISTRICT. Such government functions and services are limited to fire protection and suppression services to protect life and property from fire and conserve natural and human resources, and to provide rescue services (all collectively referred to herein as "emergency services") to persons and commercial interests located within the geographic boundaries of a portion of the DISTRICT (herein the "Service Area", as described and set forth in Exhibit "A", attached hereto and incorporated by reference).

CITY OF TOMBALL acknowledges and represents that it is familiar with the Service Area and agrees to provide the emergency services in accordance with this Agreement. The parties, CITY OF TOMBALL and DISTRICT, agree and acknowledge that CITY OF TOMBALL shall in its sole discretion determine the manner in which to perform and deliver said emergency services, including the selection of the service provider. The parties, CITY OF TOMBALL and DISTRICT, both agree and acknowledge that CITY OF TOMBALL intends to select and assign the responsibility of providing such emergency services to the Service Area to its municipal fire department, Tomball Fire Department, a department of the CITY OF TOMBALL.

II. TERM; EARLY TERMINATION

The term of this Agreement will be for a period beginning January 1, 2011, and ending December 31, 2015. Either party may terminate this Agreement upon six months written notice to the other party, along with a copy of same to the Tomball Fire Department. This Agreement shall continue from year to year during said five year term unless otherwise terminated in accordance with this Agreement. The continuation from year to year hereunder is subject, however, to the mutual agreement by the governing bodies of the DISTRICT and CITY OF TOMBALL each such year of the amount of compensation to be paid by the DISTRICT to the CITY OF TOMBALL as provided in this Agreement. This agreement on the amount of funding must be reached by November 1 of each year or the Agreement will terminate on December 31 of that year. Under no circumstances has the DISTRICT agreed to appropriate tax funds to the CITY OF TOMBALL beyond one year at a time.

The term of this Agreement may be extended only upon the mutually signed agreement of both parties upon such terms and conditions as agreed to at that time.

III. TERMS OF COMPENSATION

- a) During the original term of this Agreement, the Compensation to be paid by DISTRICT to CITY OF TOMBALL for the services to be provided by CITY OF TOMBALL hereunder shall be as follows: DISTRICT to pay to CITY OF TOMBALL \$45,000 for

calendar year 2011. Compensation for subsequent years will be determined by mutual agreement between the DISTRICT and CITY OF TOMBALL in each separate year as provided in Article II of this Agreement and supported by independent resolutions of the governing bodies of the DISTRICT and CITY OF TOMBALL.

- b) In the event DISTRICT shall choose to terminate the Agreement during the term, the compensation paid to the date of termination shall be non refundable. In the event CITY OF TOMBALL terminates this Agreement during the term, the compensation paid or due and payable shall be refundable to DISTRICT based on a pro rata basis (to wit, the percentage of the term completed as of the termination date).
- c) The CITY OF TOMBALL has the sole discretion to determine how these funds are expended.

IV. LIMITATIONS ON REPRESENTATIONS AND WARRANTIES

CITY OF TOMBALL agrees to use its best efforts in carrying out its duties under this Agreement, and represents that the quality of the fire protection and suppression services provided will be equal to or better than the services that had been provided in the Service Area as of January 1, 2011. Neither CITY OF TOMBALL nor Tomball Fire Department (including its members) may waive or limit any grounds or basis of immunity or limitation of liability as a political subdivision or as a volunteer or emergency organization (as the case may be), including, but not limited to, Texas Civil Practice & Remedies Code, Subchapter B. Tort Liability of Governmental Units, Section 101.001, et seq.

V. DUTIES AND RESPONSIBILITIES OF THE CITY OF TOMBALL AND THE DEPARTMENT

a) CITY OF TOMBALL agrees to provide the emergency services to the Service Area, as provided and subject to the limitations and provisions contained herein. However, DISTRICT acknowledges that it recognizes that CITY OF TOMBALL is a municipality with similar statutory obligations to its own corporate area and that the Tomball Fire Department likewise provides similar emergency services to CITY OF TOMBALL. DISTRICT further acknowledges that it recognizes that the providing of necessary fire protection and suppression and other

emergency services to DISTRICT shall not be exclusive, but shall be rendered in the context of the CITY OF TOMBALL'S and Tomball Fire Department's fire and emergency response protocols [without limitations regarding the type of fire fighting apparatus or fire fighting personnel (paid or volunteer) which can respond to calls outside the city limits], including CITY OF TOMBALL'S and Tomball Fire Department's use and reliance from time to time on mutual aid agreements that it has or will have with other fire departments.

b) CITY OF TOMBALL shall provide the necessary manpower and equipment for the providing of the emergency services to the Service Area in accordance with this Agreement, and has or shall enter into and maintain reciprocal mutual aid agreements with surrounding fire departments.

c) The Mayor of the CITY OF TOMBALL or his designee shall be the liaison with DISTRICT.

d) Notwithstanding anything in this Agreement which may be construed to the contrary, this interlocal agreement shall not operate as a merger, consolidation or annexation of one political subdivision by another.

e) It is not the intention of the parties hereto to create a partnership or association. The duties and liabilities of CITY OF TOMBALL and DISTRICT are intended to be separate and not joint or collective. Nothing contained in this Agreement and in any agreement made pursuant hereto shall ever be construed to create a partnership or association or impose a partnership duty, obligation or liability with respect to anyone or more of the parties hereto.

f) CITY OF TOMBALL shall name DISTRICT as an additional insured under its liability insurance policies during the original and any extended term of this Agreement.

g) CITY OF TOMBALL, by and through its Fire Chief, shall furnish DISTRICT on or about the 15th day of each month, a copy of the monthly reports listing the total number of runs made by Tomball Fire Department within the Service Area for the prior month.

VI. DISPATCH COOPERATION

DISTRICT and CITY OF TOMBALL both agree to cooperate in presenting any letters or Resolutions to the 911 Network and the CITY OF TOMBALL'S local dispatchers.

VII. AUTOMATIC AMENDMENT

This Agreement shall be automatically amended to conform to any laws or city ordinances that are applicable to CITY OF TOMBALL or DISTRICT. Should any of the provisions of this Agreement be in such conflict, the contrary provision of this Agreement shall be amended to conform to said law or ordinance.

VIII. AMENDMENT BY MUTUAL AGREEMENT

This Agreement may be amended only by the mutually signed and written agreement of the parties.

IX. ASSIGNABILITY

This Agreement shall not be assigned by either party regarding delivery of necessary fire protection and suppression or other emergency services by CITY OF TOMBALL.

X. MISCELLANEOUS

If any term or provision of this Agreement shall be held invalid or unenforceable, then the remainder of the Agreement, other than the invalid unenforceable part, shall not be affected thereby and each other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. This Agreement embodies the whole agreement of the parties and supersedes all previous communications, representations or agreements between the parties with respect to the matters contained herein.

XI. NOTICES

All notices hereunder shall be in writing and delivered or sent Certified Mail, Return Receipt Requested to the parties at their addresses below. Notices sent to the DISTRICT shall be copied to DISTRICT's counsel, Coveler & Katz, P.C. at 820 Gessner, Suite 1710, Houston, Texas 77024. Notices to the CITY OF TOMBALL shall be copied to the City Manager, City of Tomball, 401 Market Street, Tomball, Texas 77375.

XII. VENUE AND CONTROLLING LAW

The validity and interpretation of this Agreement shall be governed by the laws of the State of Texas. This Agreement is fully performable and enforceable in Harris County, Texas wherein exclusive venue hereunder shall lie.

XIII. NO THIRD PARTY BENEFICIARIES

The provisions and conditions of this Agreement are solely for the benefit of the DISTRICT and CITY OF TOMBALL, and any lawful successor of them only, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

This Agreement is signed the _____ day of _____, _____

CITY OF TOMBALL, TEXAS

By: _____
Print Name: Gretchen Fagan_____
Title: MAYOR_____

Address for Notice:
401 Market
Tomball, Texas 77375

Acknowledged
TOMBALL FIRE DEPARTMENT

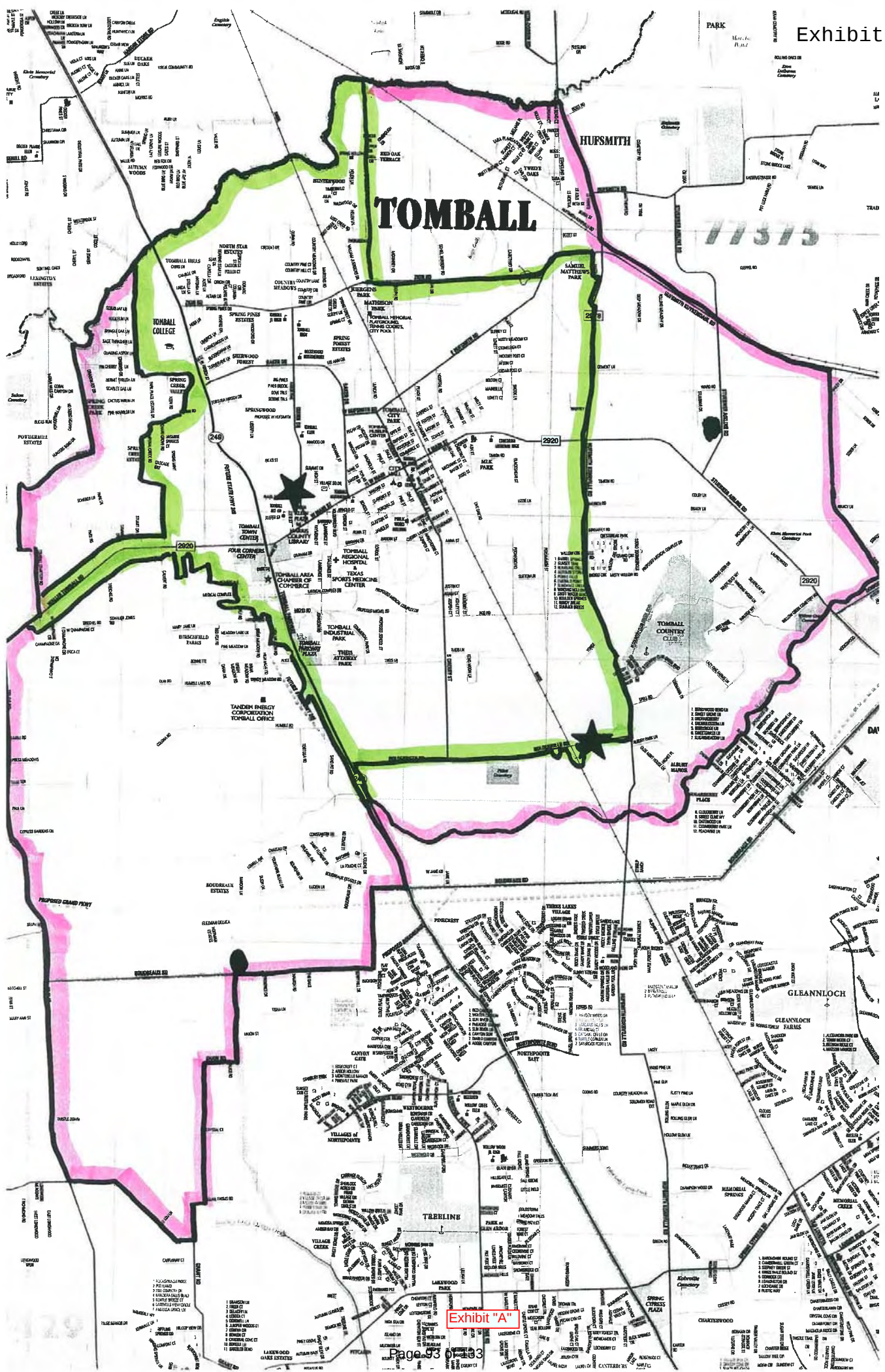
By: _____
Print Name: **Randall F. Parr**
Title: **Fire Chief**

Address for Notice:
1200 Rudel
Tomball, Texas 77375

HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15

By: _____
Print Name: _____
Title: _____

Address for Notice:
P.O. Box 1709
Tomball, Texas 77377-1709



Regular City Council

Agenda Item

Meeting Date: December 6, 2010

Data Sheet

Topic:

Approve Renewal of Consulting Services Agreement with Waypoint Business Solutions, LLC, for Turn-key Outsourcing of Information Technology Services for the City of Tomball

Background:

Waypoint Business Solutions LLC has provided outsourced information technology (IT) services to the City since 1998. The scope of services in the service agreement continues to include server operations, maintenance and administration; local and wide area network operations, maintenance and administration; remote communications maintenance and administration; storage operations and maintenance including data backup and recovery; maintenance and administration of peripherals and other devices; and documentation, budgeting, process management and reporting.

In 2008, Council approved the contract with Waypoint which insured that Waypoint personnel will be available to address the City's needs Monday through Friday, from 7:30 AM to 5 PM, with emergency after-hours support available. The contract was for \$9,050 per month, or \$108,600 annually.

The proposed contract is for \$9,412 per month or \$112,944 annually. This rate was discussed before the budgeting process and funding was included in the current FY 2011 budget.

Origination:

City Manager's Office

Recommendation:

Funding: Yes

Account Number: 100-117-6304

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

Shawn Cox, Assistant to the City Manager

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Proposed Waypoint Contract

Original Waypoint Contract



TURN KEY IT OUTSOURCING PROJECT

Addendum to original project proposal and service contract executed 10/01/2009

DATE: 10/01/2010

PRICING: 10/01/2010

MINIMUM 1 YEAR COMMITMENT

Description	Monthly	Yearly
Infrastructure and Helpdesk Operations	\$9,412	\$112,944

**Any services required outside of this scope would require a separate project engagement proposal*

BILLING INFORMATION

Clients Billing Information	Remit To
City of Tomball	Waypoint Business Solutions L.L.C.
401 W. Market St.	10555 Cossey Rd
Houston, Texas 77375	Houston, Texas 77070
Attention: Accounts Receivable	Attention: Accounts Payable



AUTHORIZATION SIGNATURE

CLIENT'S APPROVAL

An acceptance of this order, or furnishing of any services called for hereunder, shall be an acceptance of the terms and conditions of the above-referenced project proposal and contract.

Client or Company reserves the right to cancel this agreement within the first sixty (60) days, with written notice.

Signature

Name

Title

Date

TURN KEY IT OUTSOURCING PROJECT

FOR THE CITY OF TOMBALL

BY



LETTER FROM THE PRESIDENT

To Jan Belcher, City Manager

Thank you so much for the opportunity to win your trust as a partner. Eleven years ago when Waypoint was first conceived, the partners wanted more out of the work they were doing. We wanted to go home each night with a sense of satisfaction and accomplishment that what we did each day impacted a person and an organization in a positive manner and bettered those around us.

We knew that technology was a tool that if wielded properly could empower our clients and our friends, further in their endeavors. We also realized that if not managed properly, technology would cause nothing but frustration, aggravation, and ultimately create obstacles. This was nowhere more present than with companies and organizations which had set high goals for themselves and were aggressively seeking to accomplish those goals.

We modeled ourselves to match our clients who are rapidly growing, immersed in transition, and expecting the teams that supported them to not only keep up, but look to their future and charge the horizon. Throughout our history, we have kept true to our belief that business drives technology and not the other way around. We take pride in our clients that have allowed us to be a part of their plans, their campaigns, and their successes.

We stand ready to go where you want to go and to do what it takes to get there and back again.

Sincerely,

Waypoint Business Solutions, LP
Paul Neyman
President

CHAPTER 1: EXECUTIVE SUMMARY & WAYPOINT QUALIFICATIONS

EXECUTIVE SUMMARY

Waypoint is pleased to present the City of Tomball a proposal for a fully outsourced Information Technology solution, which will comprise the management of infrastructure assets and the implementation of a helpdesk in order to meet the IT needs of the company. Based on our extensive experience providing technology consulting services to clients across a wide spectrum of industries and locales, Waypoint understands the importance of a broad set of technical capabilities to the continued success of your IT organization.

Challenges

Based on our prior experience and extensive knowledge of the City of Tomball's systems, we believe the following will be key challenges in the implementation of an Information Technology Outsourcing Provider:

- Selection of an IT outsourcing provider who understands and is responsive to the City of Tomball unique business requirements, one who will regard the City of Tomball as a "partner" rather than just a "customer"
- Selection of a flexible, pro-active and adaptive partner to ensure a sustained delivery of high service levels.
- Provision of all desired services in a cost-effective manner.

Why Select Waypoint

As shown in this proposal, Waypoint personnel have the experience and expertise necessary to fully manage, monitor and support all server assets, network devices, and peripherals components in scope, regardless of technical complexity or physical location. In addition, Waypoint personnel possess the technical knowledge and customer service skills to provide the City of Tomball end users with a productive and positive experience when a support need arises.

Perhaps more importantly, Waypoint will be there for you through the challenges ahead. We understand the need to maintain focus and priority on the City of Tomball in the months and years ahead. With Waypoint, you will not be just another customer. Your dedicated account team will be comprised of our best people, with the singular intention of making your IT operations, and all aspects of the organization it touches, operate smoothly, efficiently, and cost effectively.

OUR ABILITY TO EXECUTE

Waypoint's sole focus is tailored solutions for the organization in the midmarket posed for growth and transition. We operate in the chaos that comes from the speed at which organizations morph as they accomplish their corporate goals. Our secret comes from remaining a boutique-style firm offering solutions that are tailored to our clients' specific needs.

We often see our larger brethren attempt to mimic their solutions in the midmarket but often collapse under their own size and bureaucracy because they have long forgotten the need to be nimble and quickly build a company in a competitive marketplace.

Throughout this proposal our programs seek to partner with the City of Tomball and work together to scale our services to meet your needs. We believe this makes us the best fit out of any other service provider regardless of size or breath.

REFERENCES & IMPLEMENTATION HISTORY

IT Turn Key outsourcing is relatively a new concept for the mid market. Many enterprise organizations have outsourced for a number of years as their size has always cost justified the resources - making the choice logical. The declining costs of telecommunications, the commoditizing of hardware and the approach of software as a service makes the same type of outsourced services feasible to the mid market.

Our offering in the outsourced model culminates from the needs of our clients. Holding true to our vision, we are adjusting our delivery to meet those needs. Our program draws from our experience in the consulting arena where we have complimented our clients' IT staff or have acted as their entire staff providing services around their IT infrastructure. We have a long history of assisting our clients to maintain operations, develop new solutions, and manage projects. From those experiences, we have developed our formal outsourcing program.

NEWFIELD EXPLORATION

Newfield Exploration Company is an independent crude oil and natural gas exploration and production company headquartered in Houston, Texas. Domestic areas of operation include the Anadarko and Arkoma Basins of the Mid-Continent, the Rocky Mountains, onshore U.S. Gulf Coast and the Gulf of Mexico. International areas of operation include offshore Malaysia and China, and the U.K. North Sea.

Waypoint has worked with Newfield Exploration since the late 90's when they were a 100 person organization. Waypoint has maintained their local and wide area networks over the course of those years as they have grown into a 1,000 person organization with a \$20MM IT budget. We have been intimately involved with not only managing their network, but we have assisted in a number of special projects such as:

- NAS Storage
- Opening the London, Rio, Kuala Lumpur, Beijing, and Shedok offices.
- EEX Acquisition
- P2 Oracle Energy Implementation
- Field Operations Handheld Device Implementation
- Offshore Satellite Network Implementation

- Management Audit for Sarbanes/Oxley
- HIPAA Compliance
- Enterprise Content Management Implementation

We manage the remote connectivity, the firewalls, the switching equipment, the telecommunications, and the phone system. We are part of the internal IT coordination team where we meet on a weekly basis with all the functional area coordinators to ensure the smooth management of the entire IT process.

HERCULES OFFSHORE

Hercules Offshore, Inc. and subsidiaries provide shallow-water drilling and liftboat services to the oil and natural gas exploration and production industry in the U.S. Gulf of Mexico and internationally. Its liftboats provide a range of offshore support services, including platform maintenance, platform construction, well intervention, and decommissioning services.

Waypoint has worked with Hercules for the past two years. We first engaged with them just before hurricane Katrina and, through proper planning, averted major IT losses to ensure continuous operations. We have also provided on-site support to their facility in Nigeria to implement both data and voice services. Waypoint managed their IT infrastructure up until last month and now is assisting with the on-boarding of the IT staff and resources provided through the TODCO merger. Unlike Newfield, Waypoint was charged with the design, deployment, and ongoing management of the entire IT infrastructure and continues as an expert resource to the merged organization.

GSE LINING

GSE is a leading manufacturer and marketer of geosynthetic lining products and services with a worldwide presence in the following markets: agriculture, aquaculture, canals, civil, golf courses, mining, power, sportsfields, stormwater retention, waste containment, wastewater, and other industrial applications. GSE is headquartered in Houston, Texas, and has manufacturing and sales offices in Canada, Chile, Germany, United Kingdom, Thailand, and Egypt.

Waypoint has worked with GSE Lining for the past two years and has provided them support on the local and wide area networks as well as support for their Microsoft infrastructure. GSE has a central Citrix farm to provide application to their international offices. Waypoint has been engaged for a domain role-up in which we will be on location for their offices in the United Kingdom, Egypt, Germany, and Thailand.

JENKINS AND KAMIN

Jenkins and Kamin is the third largest privately held family practice law firm in the state of Texas. Waypoint has had held a relationship with them since late 90s and is engaged as their full IT services provider. In this capacity, Waypoint is responsible for all of their technology needs, including local and wide area networking support, servers support, and desktop support. Waypoint also provides Jenkins and Kamin with a remote offsite backup solution for their critical systems.

PARTNERSHIPS

Waypoint has selected key strategic formal partnerships with companies that remain industry leaders in order to fulfill our clients' technology needs.

MICROSOFT

Waypoint maintains a very close relationship with Microsoft. Waypoint has not only achieved Microsoft Gold Certified status but also is part of the Microsoft Managed Partners program. The Managed Partner designation is only for a select few partners in each geographic region. As a result Waypoint receives select partner readiness training, access to technical specialists, pre-sales support, critical down server support, and nomination for early adoption programs.

The Waypoint/Microsoft relationship provides Waypoint a unique value proposition for its clients that only a handful of certified partners can offer.

EMC

Waypoint recently joined the EMC Velocity partner program. Although early in the program, Waypoint has gained access to training, engineering support, pre-sales labs support, and insight into technical service programs specifically designed to serve the needs of our clients.

Strategically, EMC provides solutions in the Information Lifecycle Management (ILM) process such as storage, backup and recovery, archiving, disaster recover/business continuity, and security. Through the partnership, Waypoint solutions incorporate world class technology used by the leaders in our industry.

CISCO

Waypoint is a CISCO partner and its engineers maintain CISCO certifications for their switching, routing, and firewall products sets. Waypoints long history in LAN/WAN design, deployment, and management gives us a decade of experience working with CISCO and their products.

STAFF

Waypoint has personnel dedicated to keeping up to with the latest technology and systems. This means that our clients will have resources available to them, with backgrounds in a wide variety of technologies and with a deep understanding of those technologies. Waypoint's staff has over 100 years of accumulated experience in Information Technology management, support, and deployment.

EXPERIENCE AND EXPERTISE IN SYSTEM DEVELOPMENT LIFECYCLE

Our standards based are rooted in the basics of the system development lifecycle, a methodology in which all Waypoint engineers and analysts are rigorously trained and experienced. Execution of the Compass involves adherence to and successful planning of the following key project elements:

- BUDGETING

- DEADLINE MANAGEMENT
- DELIVERABLES
- STAFF
- TRAINING
- RISK MANAGEMENT
- CHANGE MANAGEMENT
- PROJECT MANAGEMENT
- RESPONSIBILITY AND ACCOUNTABILITY

KNOWLEDGE AND EXPERIENCE WITH MODERN AND EMERGING TECHNOLOGIES

Waypoint is comprised of consultants and project managers who are also technologists. As such, our people are up-to-date with many contemporary and emerging technologies and are financially compensated for staying current. Waypoint engineers possess certifications in a variety of products, including: Microsoft (MCSE, ISA, MOM), Neverfail, EMC, Citrix, Cisco and Watchguard among others.

CHAPTER 2: PROPOSED TURN KEY IT OUTSOURCING SOLUTION

OVERVIEW: INFRASTRUCTURE OPERATIONS AND HELPDESK SUPPORT

For purposes of this proposal, Waypoint will consider the outsourced IT solution as comprising two separate work streams, Infrastructure Operations and Help Desk Operations. These streams will be executed simultaneously during the ongoing delivery phases of the engagement.

Management responsibility for these work streams will lie with Waypoint's project management resources.

For the purposes of this proposal, the use of "the City of Tomball" or "the city" will include all departments with the exception of the Police Department. Waypoint will only be providing ongoing server support for the police department. Waypoint restricts access to server systems in order to maintain stability. Non-Waypoint personnel will be delegated limited access as appropriate.

INFRASTRUCTURE OPERATIONS

OVERVIEW

As the City of Tomball's outsourced IT solutions provider, Waypoint will assume responsibility for all tasks associated with the management and maintenance of the city's existing IT infrastructure components.

The infrastructure operations scope of services will include:

- Server operations, maintenance and administration
- LAN and WAN operations, maintenance and administration
- Remote communications maintenance and administration
- Storage operations and maintenance (includes data backup and recovery)

- Peripherals, other device maintenance and administration
- Documentation, budgeting, process management and reporting

Hours of operation:

- Waypoint personnel will execute the daily, weekly, monthly and scheduled tasks within office hours **Monday through Friday, 7:30AM – 5PM (US Central)**.
- Through the use of monitoring solutions, alerts or other types of system failure notifications will be received and acted upon to resolve the issue during normal business hours **Monday through Friday, 7:30AM – 5PM (US Central)**. If necessary, the issue will be escalated to a Level 2 Waypoint engineer in order to resolve. At this point, a support ticket will be created and the issue is owned to resolution.
- City of Tomball holidays are not included in the scope of this agreement and will be billed separately per rates outlined in the attached schedule "A".

HELPDESK OPERATIONS

OVERVIEW

Waypoint proposes to provide the City of Tomball with a help desk solution in order to meet the information technology support needs of its end users. This help desk will serve as the single point of contact for all end users of IT services, and will also serve as the communication point for all service requests. The first level of service will primarily include hardware and software support on users' personal computers, local and remote connectivity, network infrastructure issues, and printer / fax support. Additionally, the helpdesk is also responsible for user setups and decommissioning, PC and laptop system deployments, hardware upgrades, installation and same version updates of existing software, and security changes. Large scale rollouts of new systems or software will require a project outside the scope of this agreement.

Waypoint support personnel will be fully responsible for all reported issues in the scope of this agreement. In the event that a second or third level support provider must be engaged (e.g., Dell to replace a hardware failure), the Waypoint support analyst will be responsible for managing the escalation of the issue and tracking it to resolution. Waypoint help desk personnel will own the task, resulting in a central point of contact and driving customer satisfaction.

- A single telephone number will be provided for call routing. Based on call volume, users may be required to leave a message.
- Electronic issue reporting (i.e., website, email) solution will be provided for issue routing.

The helpdesk operations scope of services will include:

- Generation of support tickets
- Help in the prioritization of support tickets
- Provide status and alerts on tickets
- System hardware, system software, and application software
- Supported catalog hardware and software

- Network infrastructure hardware and software
- Responsible for routing and tracking issues to third-party vendors

Hours of operation:

- Waypoint will provide help desk operations within office hours **Monday through Friday, 7:30AM – 5PM (US Central)**.
- City of Tomball holidays are not included in the scope of this agreement and will be billed separately per rates outlined in the attached schedule "A".

SERVICE LEVELS – MOVES/ ADDS/ CHANGES

Waypoint and the City of Tomball agree to the following service levels in providing moves, adds, or changes to users or systems.

Type	Description	Response
Adds	New User	Adding a new user is a pre-planned event and has a 1 business day turnaround from the time of request.
	New PC	Adding a new PC is a pre-planned event. The normal City of Tomball requisition process, as outlined by the purchasing department, must be met. Additionally, the set up of a New PC will be scheduled for 2 business days after arrival of all computer components.
Changes	User	Changes to users will be submitted as a support incident as defined below and will be assigned a priority.
	PC	Changes to PCs will be submitted as a support incident as defined below and will be assigned a priority.
Moves	PC	Move of a PC is a pre-planned event and will need to be scheduled 2 business days prior.

SERVICE LEVELS – SUPPORT INCIDENTS

Waypoint and the City of Tomball agree to the following service levels in providing support on issues with existing system. Every support call will be worked to conclusion as quickly as possible through onsite or offsite support, but each call will be assigned a priority that will be determined by user making the request and the support person receiving the call. Waypoint provides no guarantees to the overall time to resolution for tickets.

Type	Description	Response
Standard Priority	An issue or problem with an existing system or application has arisen, that does not substantially hinder the user from performing their normal job tasks.	Acknowledgment of request within 30 minutes, with information of position in support queue and estimated time to start working on issue. Based on position in queue and length of existing issues, the time to begin working on the issue may vary.
Medium Priority	An issue or problem with an existing system or application has arisen, that hinders the user from performing only a portion of their normal job tasks.	Acknowledgment of request within 30 minutes, with information of position in support queue and estimated time to start working on issue. Based on position in queue and priority, start of work on this issue will be within 2 hours.
High Priority	An issue or problem with an existing system or application has arisen, that substantially hinders the user from performing their normal job tasks.	Acknowledgment and beginning of support within 30 minutes of initial request.

****With the exception of High priority items, timeframes are based off business hours. Any issues where the initial report was received at or within 30 minutes of the end of day will be considered received next business day. Additionally, Standard and Medium priority issues would be worked only during business hours.***

CHAPTER 3: PROPOSED COSTS

WAYPOINT SERVICES PRICING INFORMATION

Pricing for services have been bundled and billed as a fixed cost. This fix cost represents the overall maintenance and support of the general existing systems the city currently owns and operates. Any large scale deployments of new systems or applications would fall outside of this agreement and would be a separate project with a separate agreement. Examples of large scale projects would include, but is not limited to:

- Multiple server (i.e. 3 or more) deployments
- Deployment of new versions of system wide applications (i.e. MS office, Incode, Visionair)
- Deployment of new storage area networks.

Items also not included in the pricing scope:

- Acquisition or procurement of standard commercial, off-the-shelf, Tier 3 software, Tier 4 software or any other non the City of Tomball-owned software
- Software implementation consulting or integration costs incurred during new software implementation

Waypoint will only be providing ongoing server support for the police department. Waypoint restricts access to server systems in order to maintain stability. Non-Waypoint personnel will be delegated limited access as appropriate.

PRICING – MINIMUM 1YEAR COMMITMENT

Description	Monthly	Yearly
Infrastructure and Helpdesk Operations	\$9,050	\$108,600

**Any services required outside of this scope would require a separate project engagement proposal*

Term for service is from October 1, 2008 through September 30th, 2009.

BILLING INFORMATION

Clients Billing Information	Remit To
City of Tomball	Waypoint Business Solutions L.L.C.
401 W. Market St.	10555 Cossey Rd
Tomball, Texas 77375	Houston, Texas 77070
Attention: Accounts Receivable	Attention: Accounts Payable

AUTHORIZATION SIGNATURE

CLIENT'S APPROVAL OF THIS SCOPE OF WORK, TERMS AND ACTION PLAN:

An acceptance of this order, or furnishing of any services called for hereunder, shall be an acceptance of the terms and conditions of the face and back here of as the only terms and conditions applying to the purchase of said services.

This service agreement is an addendum to Waypoints Business Solutions service agreement with the City of Tomball dated June 1st, 1998 and is agreed to by both parties.

Client or Company reserves the right to cancel this agreement within the first sixty (60) days, with written notice.

Signature

Name

Title

Date

Regular City Council

Agenda Item

Meeting Date: December 6, 2010

Data Sheet

Topic:

Discussion and Possible Action regarding Chapter 54, Peddlers and Solicitors, of the Code of Ordinances of the City of Tomball, Texas

Background:

City Council requested that an item be placed on the December 6, 2010 agenda to allow discussion and possible action regarding amendments to Tomball's Code of Ordinances, Chapter 54, Peddlers and Solicitors.

Introduction

The City of Tomball, under its general powers, regulates the activities of peddlers, solicitors, and transient merchants by requiring either a license or registration to operate within the City's jurisdiction; however, this authority is not absolute. The City's regulations must be 'reasonable' and must not violate any state or federal constitutional constraints. To withstand challenge, a city's regulations must differentiate between the persons and practices involved and the constitutional rights that may be affected (freedom of speech and/or religion, a solicitor's Commerce Clause protections under the U. S. Constitution, and the homeowner's privacy and property rights). In Attorney General Opinion No. JC-0145 (1999), "a city may not, broadly speaking, unreasonably discriminate against persons, infringe on personal fundamental rights, or interfere with interstate commerce when regulating street vending" (opinion attached). Scott Bounds has provided additional information regarding door-to-door solicitation and "Green River" ordinances (email attached).

Current Requirements under Chapter 54

Tomball's current ordinance may be considered an acceptable, modified form of a "Green River" ordinance, in that it requires solicitors to leave the premises if requested to do so and prohibits solicitors from entering any private property with a posted sign stating "No Peddlers Allowed" or "No Solicitations Allowed". The individual property owner or tenant is prohibiting the solicitation instead of the city, invoking his/her individual personal right to privacy. Tomball's ordinance also prohibits any peddler from engaging in the business of peddling within the City between the hours of 9:00 p.m. and 8:00 a.m. the following morning, except by specific appointment with or an invitation from the prospective customer.

Tomball's ordinance states that it is unlawful to engage in business as a peddler within the City without first obtaining a permit to do so unless such person is lawfully engaged in interstate commerce. Interstate vendors/peddlers shall obtain a license prior to engaging in business within Tomball by registering with the City Secretary and providing information under oath to the City Secretary. Because states are prohibited from interfering with interstate commerce, local governments cannot collect license fees from solicitors who take orders in one state for goods to be delivered in the future from another state; a municipality may require all solicitors, including interstate vendors/peddlers, to register with the city before engaging in their business activities. The solicitor involved in the complaint received by Council on November 15, 2010 was involved in interstate commerce and had received an Interstate Peddler's Permit from the City Secretary's office.

Issuance of Permits

The City Secretary's office does not issue "blanket" permits to interstate vendors; each individual working for an interstate company must complete an application and provide the required identification and interstate proof (Sample Interstate Permits attached). In 2010, the City Secretary's office began adding a photo of each individual to his/her permit, to aid citizens in verifying a peddler's identity and authorization to go door-to-door.

Prior to issuance of a regular vendors permit, the applications and documentation are forwarded to the Engineering and Planning department and/or the Fire Marshal's office, depending on the type of sales and the location proposed, to ensure that the vendor meets zoning and safety requirements (Sample Vendors Permit

attached). Special Events Vendors permits are issued for one day only and may also require approval by Engineering and Planning or the Fire Marshal before issuance (Sample Special Events Permit attached). These permits also include a photo of the licensed individual on his/her permit.

Summary

In general, municipalities may seek to control the 'nuisance' aspects of a particular type of business but may not outlaw the activity completely. A city's regulations should seek to protect residents' privacy rights in their homes and on their property and to protect residents from fraud and other crimes, without impacting other individuals' (solicitors/peddlers) constitutional rights. Tomball's ordinance appears to balance the rights of its citizens against the rights of individuals involved in door-to-door solicitations by restricting hours of solicitation, prohibiting solicitors from entering posted properties, and requiring solicitors to obtain, carry, and produce their permit and to leave private property upon request.

Origination:

City Council request.

Recommendation:

N/A

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

- Chapter 54. Peddlers & Solicitors
- Attorney General Opinion No. JC-0145(1999) - John Cornyn
- Scott Bounds_Information regarding Door-to-Door Solicitation
- Sample Interstate Permits
- Sample Vendors Permit
- Sample Special Events Permit
- Peddlers and Solicitors Quick Facts

Chapter 54

PEDDLERS AND SOLICITORS*

* **Cross References:** Offenses and miscellaneous provisions, ch. 50.

Article I. In General

Sec. 54-1. Definitions.
Sec. 54-2. Exceptions to chapter.
Sec. 54-3. Refusing to leave.
Sec. 54-4. Use of public places.
Sec. 54-5. Entrance to premises restricted.
Sec. 54-6. Hours of operation.
Sec. 54-7. Soliciting at intersections.
Sec. 54-8. Misrepresentation.
Secs. 54-9--54-30. Reserved.

Article II. Permit

Sec. 54-31. Required.
Sec. 54-32. Application.
Sec. 54-33. Driver's license.
Sec. 54-34. False information.
Sec. 54-35. Fingerprints, photographs.
Sec. 54-36. Bond required.
Sec. 54-37. Fee.
Sec. 54-38. Service of process.
Sec. 54-39. Issuance.
Sec. 54-40. Limitation.
Sec. 54-41. Contents of permit.
Sec. 54-42. Display.
Sec. 54-43. Duration.
Sec. 54-44. Revocation.
Sec. 54-45. Special event permit.

ARTICLE I.

IN GENERAL

Sec. 54-1. Definitions.

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

Peddler means any person, whether a resident of this city or not, traveling from house to house, or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and also means and includes any person transacting a temporary business within the city at an established place of business. The word "peddler" includes the terms "solicitor," "transient or itinerant merchant or vendor," or "transient or itinerant photographer."

(Code 1978, § 17-1)

Cross References: Definitions generally, § 1-2.

Sec. 54-2. Exceptions to chapter.

The provisions of this chapter shall not apply to the following:

- (1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.
- (2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.
- (3) Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor.
- (4) Solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity within this city.

(Code 1978, § 17-2)

Sec. 54-3. Refusing to leave.

Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of criminal trespass and may be punished as provided in V.T.C.A., Penal Code § 30.05.

(Code 1978, § 17-3)

Sec. 54-4. Use of public places.

It shall be unlawful for any peddler to sell or solicit or take orders for or offer to sell or take orders for or display any goods, wares, merchandise, photographs, newspapers or magazines on any public square, park, street, road, highway or alley within the city without having first obtained a special events permit as provided in section 54-45.

(Code 1978, § 17-4)

Sec. 54-5. Entrance to premises restricted.

It shall be unlawful for any peddler to enter upon any private premises when the same are posted with a sign stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

(Code 1978, § 17-5)

Sec. 54-6. Hours of operation.

It shall be unlawful for any peddler to engage in the business of peddling within the city between the hours of 9:00 p.m. and 8:00 a.m. the following morning, except by specific appointment with or invitation from the prospective customer.

(Code 1978, § 17-6)

Sec. 54-7. Soliciting at intersections.

(a) *Prohibition.* It shall be unlawful for any person to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.

(b) *Exceptions.* If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds or to advertise, or to distribute any item at such intersections, shall first make an application for permission to do so by making the application at the city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place, not to exceed 48 consecutive hours. If the solicitation is to be done by a person under the age of 18 no such permit shall be issued unless such person shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation and any such permit shall be good for one such solicitation period only and any further solicitation shall require an additional permit. Such permit should be signed by the police chief.
(Code 1978, § 17-7)

Sec. 54-8. Misrepresentation.

It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.
(Code 1978, § 17-8)

Secs. 54-9--54-30. Reserved.

ARTICLE II.

PERMIT*

* **Cross References:** Businesses generally, ch. 18.

Sec. 54-31. Required.

It shall be unlawful to engage in business as a peddler within this city without first obtaining a permit to do so unless such person is lawfully engaged in interstate commerce, in which case, such peddler shall obtain a license prior to engaging in business as a peddler within this city and such license shall be obtained by registering with the city secretary and providing information under oath to the city secretary. Prior to the issuance of the license to the peddler engaged in interstate commerce, the city secretary shall obtain all of the following information and any other information deemed pertinent and necessary by the city secretary. The information to be obtained shall be as follows:

- (1) Date of registration;

- (2) Name of registrant;
 - (3) Driver's license number;
 - (4) Date of birth;
 - (5) Social security number;
 - (6) Home address;
 - (7) Local address (if any);
 - (8) Name of the person represented, or through which orders to be solicited are cleared;
 - (9) Nature of items or services to be sold or solicited;
 - (10) Will payment or deposit be received in advance of final delivery;
 - (11) Has registrant ever been convicted of a felony of any nature or any other crime of moral turpitude in this state or any other state; if so, give place, date, and crime of which convicted; and
 - (12) Facts showing explicitly that the registrant is engaged in interstate commerce.
- (Code 1978, § 17-20)

Sec. 54-32. Application.

The application for a permit required by the provisions of this article shall state or contain the following:

- (1) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed therefor, if previously convicted; and the place of conviction.
- (2) A written certificate of a practicing physician in the county, dated not more than five days prior to the date of filing the application, certifying that the physician has examined the applicant and has found him to be free of infectious, contagious or communicable diseases.
- (3) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.
- (4) The period of time the applicant wishes to engage in business within this city.
- (5) The local and permanent address of the applicant.
- (6) The local and permanent address and the name of the person, if any, that the applicant represents.

(7) The kind of goods, wares, merchandise or services in which the applicant wishes to engage in such business within the city.

(8) The last five cities or towns wherein the applicant has worked before coming to this city.

(9) Such other relevant information as may be required for the investigation of the applicant.

(Code 1978, § 17-21)

Sec. 54-33. Driver's license.

At the time of filing his application for a permit or a license required by this article, the applicant shall present his driver's license, if he has one, to the city secretary.

(Code 1978, § 17-22)

Sec. 54-34. False information.

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit or a license required by this article.

(Code 1978, § 17-23)

Sec. 54-35. Fingerprints, photographs.

At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting and photographing by the chief of police.

(Code 1978, § 17-24)

Sec. 54-36. Bond required.

The application for a permit required by the provisions of this article shall be accompanied by a bond in the penal sum of \$1,000.00 signed by the applicant and signed, as surety, by some surety company authorized to do business in this state, conditioned for the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery, and which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

(Code 1978, § 17-25)

Sec. 54-37. Fee.

Before any permit shall be issued under the provisions of this article, the applicant therefor shall pay a fee, based upon the duration he desires to engage in business in the city, as follows:

(1) Per day \$ 5.00

(2) Per week 10.00

(3) Per month 25.00

(4) Per three months 50.00

(5) Per six months 75.00

(6) Per 12 months 100.00

(Code 1978, § 17-26)

Sec. 54-38. Service of process.

Before any permit shall be issued under this article, there shall also be filed with the city secretary an instrument in writing, signed by the applicant under oath, nominating and appointing the city secretary his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the city secretary.

(Code 1978, § 17-27)

Sec. 54-39. Issuance.

No permit or license shall be issued under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this chapter.

(Code 1978, § 17-28)

Sec. 54-40. Limitation.

No peddler's permit or license shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit or license whether acting for himself or as an agent or representative of another.

(Code 1978, § 17-29)

Sec. 54-41. Contents of permit.

Each permit or license issued under the provisions of this article shall be signed by the city secretary; shall be dated as of the date of its issuance; and shall state the duration or term of such permit or license on the face thereof. Any permit or license not dated and signed as herein provided, or which was issued in violation of this section, shall be void.

(Code 1978, § 17-30)

Sec. 54-42. Display.

Every peddler having a permit or license issued under the provisions of this article and doing business within the city shall display his permit or license upon the request of any person and failure to do so shall be deemed a misdemeanor.

(Code 1978, § 17-31)

Sec. 54-43. Duration.

Every permit or license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or license be issued for a period of time in excess of 12 months.

(Code 1978, § 17-32)

Sec. 54-44. Revocation.

Any permit or license issued under the provisions of this article may be revoked for the violation by the permittee or licensee of any applicable provision of this Code, state law or city ordinance. Upon such revocation, such permit or license shall immediately be surrendered to the city secretary and failure to do so shall be a misdemeanor.

(Code 1978, § 17-33)

Sec. 54-45. Special event permit.

(a) Special event means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city.

(b) Notwithstanding other provisions of this Code, the city secretary may issue a special event permit to enable the holder to sell or distribute services or goods on public property during special events.

(c) A special event permit shall be issued for one day only. Events lasting more than one day shall require a separate permit for each day. An applicant or his agent shall be issued no more than five special event permits during any 12-month period. The time and location for which the permit is in effect shall be transcribed on the permit.

(d) An applicant for a special event permit shall file with the city secretary a written application upon a form provided for that purpose.

(e) An applicant for, or the holder of, a special event permit shall pay as a fee for the permit, which fee shall be used as rental for the use of public property, the sum of \$25.00 per day.

(f) After inspection or investigation, the city secretary shall approve or deny an application for a special event permit. If such application is approved, the city secretary shall issue a special event permit which shall state on its face the name of the person to whom it is granted and the expiration date. The city secretary shall designate on such permit the location or locations in which the special event permit holder is allowed to do business.

(g) The holder of a special event permit who fails to comply with the ordinances of the city or who violates any applicable laws, ordinances, or regulations of the city shall have the special event permit immediately revoked and such holder shall immediately return such special event permit to the city secretary.

(h) Except for the permitting requirements, the applicant for a special event permit and/or the holder

of a special event permit shall comply with all of the sections of this chapter.
(Code 1978, § 17-34)



Office of the Attorney General - State of Texas
John Cornyn

November 16, 1999

The Honorable Bob Turner Chair, Committee on Public Safety Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910	Opinion No. JC-0145 Re: Authority of a municipality to regulate or prohibit street vendors (RQ-0070-JC)
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Dear Representative Turner:

On behalf of the City of Camp Wood, you request an opinion from this office with respect to a city's authority to regulate or prohibit street vendors. You inform us that the city desires a ruling on the legality of a city ordinance on vendor permits, and you specifically ask us the following questions:

Is it legal for a city to pass a city ordinance that restricts street vendors from selling in a city without a permit? If not, what restrictions can they impose?

May a city pass a city ordinance that requires a vendor to construct a permanent building with restrooms and parking?

May a city impose the above restrictions on a street vendor if he or she is state licensed and has a state tax number?

May a city pass a city ordinance that restricts a vendor from selling on private property?

Letter from Honorable Bob Turner, Chair, Committee on Public Safety, Texas House of Representatives, to Elizabeth Robinson, Office of the Attorney General (May 20, 1999) (on file with Opinion Committee) [hereinafter "Request Letter"]. You state: "Basically, I would like an opinion . . . as to what a city can do in regards to vendors on public and private property." *Id.* We limit our discussion and answers in this opinion to the general law relating to itinerant vendor regulation insofar as a Type A general-law city is concerned, keeping in mind the issues with which your questions apparently are concerned. We cannot in the opinion process determine the legality of any city ordinance regulating street vending or of any particular restriction on street vending.

Municipal Authority

The scope of a city's authority in general is determined by its organization as a

home-rule city or a general-law city. Unlike a home-rule city that possesses all powers not denied to it by statutes or the constitution so long as the city has incorporated those powers in its home-rule charter, a general-law city possesses only those powers expressly given to it by statutes or those necessarily implied therefrom. *See* Tex. Att'y Gen. Op. No. [JM-169](#) (1984) at 1-2; Tex. Att'y Gen. LO-90-14, at 1. The City of Camp Wood, we understand, is a Type A general-law city.⁽¹⁾

A Type A city has the general authority to prohibit or regulate the sale of all or certain merchandise on all or certain parts of its city streets and sidewalks by ordinance based on its statutory authority to pass ordinances or police regulations, control streets and public places, and prohibit or regulate hawkers and peddlers. Section 51.001(1) of the Local Government Code, applicable to all cities, authorizes a city to adopt an ordinance, rule, or police regulation that is for good government, peace, or order of the municipality or for the trade and commerce of the municipality. *See* Tex. Loc. Gov't Code Ann. § 51.001(1) (Vernon 1999). Section 215.028 of the Local Government Code specifically authorizes a Type A city to designate and regulate market places, *see id.* § 215.028, and section 215.031 authorizes such a city to license, suppress, prevent, or otherwise regulate hawkers, peddlers, and pawnbrokers, *see id.* § 215.031. Further, section 311.002 of the Transportation Code gives all general-law cities exclusive control over their streets and alleys. *See* Tex. Transp. Code Ann. § 311.002 (Vernon 1999).

A Type A city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets and other public places by itinerant vendors. Under its statutory powers to pass ordinances and police regulations for good government, control streets and public grounds, and to control and regulate market places and hawkers and peddlers, in *Ex parte Hogg*, 156 S.W. 931 (Tex. Crim. App. 1913), the Court of Criminal Appeals held that the City of Weatherford could pass an ordinance prohibiting peddlers from selling articles in all or a portion of the city's public streets and squares. *See Hogg*, 156 S.W. at 932-33. Significantly, the court emphasized that the ordinance did not prohibit persons from following the occupation of peddling, but simply denied them the right to follow that occupation in the public streets and squares of the city. *See id.* at 933. Furthermore, the court said the ordinance did not discriminate against peddlers, but merely classified peddlers in a different category than other merchants, "which is perfectly proper and legitimate." *Id.* A long line of Texas cases have followed *Hogg*. *See, e.g., Ex parte Killam*, 162 S.W.2d 426 (Tex. Crim. App. 1942); *City of Waco v. O'Neal*, 33 S.W.2d 205 (Tex. Civ. App.-Waco 1930, writ ref'd) (upholding City of Waco's ordinance prohibiting barter and sale of farm products based on city's statutory and special charter powers to control its city streets and other public property) (and cases cited therein); *see also* Annotation, *Authorization, Prohibition, or Regulation by Municipality of the Sale of Merchandise on Streets or Highways, or Their Use for Such Purpose* 14 A.L.R. 3d 896, 908-09 (1967) (discussing Texas cases).

You ask whether a Type A city may pass an ordinance that (1) requires a

vendor to construct a permanent building with restrooms and parking and (2) that restricts a vendor from selling on private property. *See* Request Letter, *supra*, at 1. First, we conclude that a city may not require street vendors to construct permanent buildings with restrooms and parking facilities because that would be, in our opinion, tantamount to prohibiting the occupation of street vending. Second, to the extent you ask whether a city may generally restrict the sale of goods on private property, we conclude in the negative given that a city's authority to regulate itinerant vendors extends to city streets and other public places, excluding, by definition, private property.

We note that because of the particular items sold or the particular area involved, a city under its zoning authority might be able to require that the items be sold in a permanent structure or restrict sales from private property. *See, e.g.*, Tex. Loc. Gov't Code Ann. §§ 211.003(a)(5) (Vernon 1999) (city may regulate location and use of buildings, other structures, and land for business, industrial, residential, or other purposes); 211.005 (governing body may divide city into districts and regulate construction and use of buildings, other structures, or land). A city might also be able to restrict sales from private property under its authority to abate nuisances. *See id.* § 217.002 (Type A city's authority to abate nuisance). We do not, however, understand you to ask about particular sales or regulating in particular areas.

Licensing Authority

You also ask whether a Type A general-law city may pass an ordinance that restricts street vendors from selling in a city without a permit.⁽²⁾ We conclude in the affirmative.

A Type A city has the authority to require vendors to obtain a license as a condition to selling merchandise on its city streets. It is expressly authorized to license, tax, suppress, prevent, or otherwise regulate hawkers and peddlers. *Id.* § 215.031(1), (2). *But see Houston Credit Sales Co. v. City of Trinity*, 269 S.W.2d 579, 581 (Tex. Civ. App.-Waco 1954, writ ref'd n.r.e.) (questioning whether "hawkers and peddlers" includes itinerant vendors, specifically door-to-door salesmen of household goods). The city's governing body may direct the manner of issuing a license and set the fees to be paid for the licenses, but the license may not be for more than a year. *See* Tex. Loc. Gov't Code Ann. § 215.033 (Vernon 1999); *see also* Tex. Tax Code Ann. § 302.101(b) (Vernon 1992) (license required by Type A city may not extend to more than one establishment or apply to more than one occupation, business, or calling).

Although you do not ask, we understand that the City of Camp Wood is concerned about the amount it may charge for a vendor permit.⁽³⁾ A city may charge an amount reasonably necessary to cover its administrative and regulatory costs or reasonably related to its legitimate licensing objective. *See* Tex. Loc. Gov't Code Ann. § 215.033 (Vernon 1999); *Houston v. Harris County Outdoor Adver. Ass'n*, 879 S.W.2d 322, 326-27 (Tex. App.-Houston [14th Dist.] 1994, writ denied); *Houston Credit Sales*, 269 S.W.2d at 581.

A Type A general-law city may charge a reasonable license fee for the primary

purpose of regulation. *See Harris County Outdoor Adver.*, 879 S.W.2d at 326 (if primary purpose of exaction is regulation, then it is a license fee). A reasonable license fee "*cannot be excessive nor more than reasonably necessary to cover the cost of granting the license and of exercising proper police regulation, or it must bear some reasonable relationship to the legitimate object of the licensing ordinance.*" *Id.* at 326-27 (emphasis in original); *see also Johnson v. City of Austin*, 674 S.W.2d 894, 897 (Tex. App.-Austin 1984, no writ) ("A 'license' has the purpose of regulation under the police power.").

The authority under section 215.031 to suppress or prevent hawkers and peddlers does not allow a city to charge fees that are so excessive as to preclude an itinerant vendor from engaging in that occupation, although what is excessive depends on the particular facts and circumstances. For instance, in *Houston Credit Sales*, the court concluded that an annual "licensing" vendor fee of \$1200, irrespective of whether characterized as a tax or license fee, was so large and excessive as to render the ordinance imposing it invalid. "[S]uch oppressive exaction by a town of less than 2,500 population," the court said, "is manifestly prohibitive and confiscatory in its application to the business of appellants." *Houston Credit Sales*, 269 S.W.2d at 581. The trial court had found that the vendor -- a door-to-door salesperson of household goods -- collected approximately \$22 per week in the city. The court rejected the city's argument that because the city had the statutory power, under the predecessor provision to section 215.031, to prohibit the activity of peddling and hawking, it had the power to do anything less than that in the way of regulation. *See id.*

Notwithstanding the section 215.031 authority to license, *tax*, suppress, prevent, or otherwise regulate hawkers and peddlers, a city is not authorized to levy an occupation tax on street vendors, given that the state does not levy such tax. *See* Tex. Const. art. VIII, § 1(f) (implicitly prohibiting city from levying occupation tax where no such tax is levied by state); *Ex parte Stevenson*, 169 S.W.2d 175 (Tex. Crim. App. 1943) (invalidating city ordinance levying city occupation tax given 1931 repeal of state occupation tax on foot peddlers). In contrast to license fees, an occupation tax is designed primarily to raise revenues. *See Harris County Outdoor Adver.*, 879 S.W.2d at 326 (if primary purpose of exaction to raise revenue, then it is occupation tax).

Going on Private Property

You next ask whether a Type A general-law city may pass an ordinance that restricts a vendor from selling on private property. To the extent your question concerns vendors going to private residences to sell goods, we conclude that a city may regulate but not prohibit such activity.

Again, notwithstanding the broad statutory authority to "license, tax, suppress, prevent, or otherwise regulate hawkers and peddlers" discussed above, a city may *regulate* but not *prohibit* the going in and on private property by persons to sell merchandise. *See Ex parte Luehr*, 266 S.W.2d 375 (Tex. Crim. App. 1954); *Ex parte Faulkner*, 158 S.W.2d 525 (Tex. Crim. App. 1942); *Houston Credit Sales*, 269 S.W.2d 579. In other words, a city may impose conditions,

selectively restrict, or prohibit certain solicitations based on considerations related to the city's regulatory objective; it cannot simply prohibit all such solicitations regardless of such considerations. *See Faulkner*, 158 S.W.2d at 527.

In *Faulkner*, the court, while acknowledging a city's power to prohibit hawkers and peddlers, and solicitors on its city streets and other public places, invalidated as going beyond that authority an ordinance prohibiting any uninvited person from going in and upon private residences to solicit the sale of goods or sell any goods as a nuisance. *See id.* at 526-27. The court questioned that a city could justifiably determine that all goods presented or sold in this manner should not be so sold or are always a nuisance. Although the court did not expressly delineate what it meant by "regulation" and "prohibition," its statement regarding a city's appropriate authority is telling:

It is sufficient that the municipality be given the power to establish an available agency with facilities for looking into the merits of all goods to be sold and the responsibility and methods of the parties selling them, and, therefore, be able to say whether or not they should be permitted to operate within the bounds of such municipality.

Id. at 527; *see also Luehr*, 266 S.W.2d at 377 (city without authority to prohibit solicitors going in and on private residences without regard to goods sold and responsibility and method of parties). The *Faulkner* court concluded that although the legislature has delegated to a municipality the authority to regulate, "we are . . . unable to find that our legislature has, or may, delegate to the municipality the right to prohibit solicitors from going in and upon private property for the purpose of selling their wares." *Faulkner*, 158 S.W.2d at 527. The *Faulkner* court did not discuss the predecessor to section 215.031 of the Local Government Code. But the court in *Houston Credit Sales*, following *Faulkner*, specifically stated that a city could regulate but not prohibit the going in and upon private residences notwithstanding the statutory authority to "license, tax and regulate or suppress and prevent hawkers, peddlers." *Houston Credit Sales*, 269 S.W.2d at 581.

State Law Preemption

Lastly, you ask whether a Type A general-law city may impose restrictions on a street vendor if he or she is state licensed and has a state tax number. We conclude that it depends on the authorizing or licensing state statute.

A city may not adopt an ordinance regulating a business activity that is in conflict with a state statute. *See Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993) (city ordinance that attempts to regulate subject matter preempted by state statute is unenforceable to extent it conflicts with statute); *Utter v. State*, 571 S.W.2d 934, 936 (Tex. Crim. App. [Panel Op.] 1978) (generally discussing cases dealing with city's authority to regulate and license buses, taxis, taxi drivers, or ambulances also regulated or licensed by state). Thus, when a state statute provides that a person holding an operator's, commercial operator's, or chauffeur's license from the state shall not

be required to obtain any other license to operate a motor vehicle, a city may not license those drivers. *See Reed v. City of Waco*, 223 S.W.2d 247 (Tex. Civ. App.-Waco 1949, writ ref'd); *City of Corpus Christi v. Gilley*, 458 S.W.2d 124 (Tex. Civ. App.-Corpus Christi 1970, writ ref'd n.r.e.).

No statute specifically authorizes or licenses "street vending." But, if the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. *See Combined Am. Ins. Co. v. City of Hillsboro*, 421 S.W.2d 488 (Tex. Civ. App.-Waco 1967, writ ref'd n.r.e.). For instance, in *Combined American Insurance*, the court held invalid an ordinance as it related to insurance sales by a state licensed insurance company and its state licensed salesmen prohibiting any person from going house-to-house or from place-to-place in the city to sell goods unless the person had obtained a license from the city and paid the required license fees. *See Combined Am. Ins.*, 421 S.W.2d at 491. The court stated that the insurance company had complied with the relevant state insurance licensing laws, had been issued a certificate of authority from the State Board of Insurance evidencing such compliance, and that the company was accordingly "authorized to transact the business of life, health and accident insurance in the State of Texas, and that the City of Hillsboro . . . [is] without authority to interfere with it in the soliciting of its business." *Id.*

Although you do not specify, the City of Camp Wood is apparently concerned that it may be precluded from licensing street vendors who have a sales tax permit from the state.⁽⁴⁾ A person engaged in the business of making sales of taxable items subject to the sales and use tax under chapter 151 of the Tax Code must obtain a permit from the Comptroller of Public Accounts for each place of business in the state. *See* Tex. Tax Code Ann. §§ 151.008 (Vernon 1992) (defining "Seller" and "Retailer"); 151.201 (issuance of sales tax permits); 151.202 (application for permit). This permit simply allows the seller to collect the sales tax on the items sold, which is required to be remitted to the Comptroller. *See, e.g., id.* §§ 151.052 (collection by seller of tax as part of sale price), 151.251 (applicant for permit must file adequate security for taxes due); *id.* § 151.401 (Vernon Supp. 1999) (taxes imposed payable to Comptroller).

The sales tax permit provisions do not license or authorize street vending and, therefore, cannot present a conflict with a city ordinance regulating by permit such activity. *See Utter*, 571 S.W.2d at 936 (city's power to regulate by requiring permit for operation of wrecker not limited since no conflicting statute found); *see also City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990) ("[T]he mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted. When there is no conflict between a state law and a city ordinance, the ordinance is not void.").

In short, if the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from regulating that activity by requiring a permit as a condition of engaging in it within the city. Issuance of a sales tax permit to a vendor, however, is not such

state authorization or license as to preclude a city from requiring the vendor to obtain a permit in order to sell in the city.

Constitutional Limits

In addition to the parameters discussed above, a city's authority to adopt an ordinance regulating street vending is subject to state and federal constitutional constraints. We limit our discussion to those most commonly addressed by the courts in this context.

An ordinance regulating street vending must comport with the equal protection provisions of the state (article I, section 3) and federal (Equal Protection Clause of the Fourteenth Amendment) constitutions. It may, consistently with these provisions, reasonably classify persons according to their business and apply different rules to different classes -- as long as persons in the same class are treated the same -- to further legitimate purposes of the city. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *Hixon v. State*, 523 S.W.2d 711 (Tex. Crim. App. 1975); *Rucker v. State*, 342 S.W.2d 325 (Tex. Crim. App. 1961); *Houston Chronicle Publ'g Co. v. City of Houston*, 620 S.W.2d 833, 838 (Tex. App.-Houston [14th Dist.] 1981, no writ). For example, in *City of New Orleans v. Dukes*, the United States Supreme Court upheld a City of New Orleans ordinance prohibiting all vendors from selling food from pushcarts in the French Quarter, except those that had "continuously operated the same business . . . for eight or more years prior to January 1, 1972," *Dukes*, 427 U.S. at 298, stating: "The city's classification rationally furthers the purpose which . . . the city had identified as its objective in enacting the provision, that is, as a means 'to preserve the appearance and custom valued by the Quarter's residents and attractive to tourists.'" *Id.* at 304 (citation omitted). Allowing the continued operation of some vendors, the Court continued, was not an arbitrary or irrational method of achieving the city's purpose because the city could rationally choose to initially eliminate only recent vendors rather than all vendors; reasonably determine that newer businesses were less likely to have built up substantial reliance on continued operation; and that the vendors excepted under the grandfather clause who had operated for over twenty years had themselves become part of the distinctive part of the charm of the French Quarter. *Id.* at 305; *see also Hixon*, 523 S.W.2d 711 (upholding city ordinance prohibiting sale of all merchandise on city streets except flowers and ice cream).

But an ordinance regulating street vending may not, as a general matter, impinge on fundamental personal rights or classify persons based on inherently suspect distinction such as race, religion, or alienage. *See Dukes*, 427 U.S. at 303. A different test is applied by the courts under the equal protection analysis when a regulatory ordinance's classification affects fundamental rights such as the rights of free speech and free press. If such rights are affected, the classification becomes suspect, and the city must show that the classification is necessary to promote a compelling interest. *See Houston Chronicle Publ'g Co.*, 620 S.W.2d at 838 (citing *Dunn v. Blumstein*, 405 U.S. 330 (1972)). For example, in *Houston Chronicle Publishing Co.* the court struck down an ordinance that prohibited the sale of newspapers to any occupant of a motor

vehicle on a city street or other public place, but allowed such sales of frozen desserts and flowers. The court observed that the three classes of street vendors established by the ordinance -- those selling flowers, those selling frozen desserts, and those selling newspapers -- were similarly situated as sellers of merchandise on the city's streets and sidewalks. *See Houston Chronicle Publ'g Co.*, 620 S.W.2d at 838. The reasons offered by the city, the court concluded, for the differential treatment of newspaper vendors were insufficient to justify the selective exclusion of newspaper vendors from the city streets: "While traffic control and vendor safety are compelling interests, access to the street cannot be denied on those bases to those who would there exercise fundamental rights, yet allowed to those involved in purely commercial endeavors." *Id.*

Further, a regulatory ordinance affecting fundamental rights such as those of free speech or free press may violate the First Amendment of the United States or article I, section 8 of the Texas Constitution, as well as the due process clause of the Fourteenth Amendment of the United States or article I, section 19 of the Texas Constitution. If a regulation impinges on First and Fourteenth Amendment rights, the city must show the validity of its asserted interest *and* the absence of less intrusive alternatives to achieving that interest. *See id.* at 836-37. For instance, the court in *Houston Chronicle Publishing Co.* also invalidated the City of Houston ordinance prohibiting newspaper sales to motor vehicle occupants as violating those rights, stating: "The . . . ordinance is unreasonably restrictive. While the ends are permissible [preventing traffic hazard and congestion], [in] the means of achieving those ends the ordinance sweep[s] too broadly, unnecessarily invading appellant's protected freedom." *Id.* at 837.

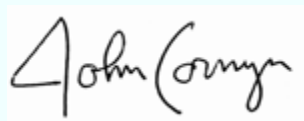
Lastly, an ordinance regulating street vending may not interfere with interstate commerce. A regulatory ordinance violates the Commerce Clause of the federal constitution (article I, section 8) if it (1) affirmatively discriminates against out-of-state merchants, or (2) regulates evenhandedly but incidentally burdens interstate commerce and the burden is clearly excessive in relation to the local benefits. *See Hispanic Taco Vendors v. City of Pasco*, 994 F.2d 676, 678-79 (9th Cir. 1993). In *Hispanic Taco Vendors v. City of Pasco*, the court upheld a city ordinance that imposed licensing fees on street vendors, made the licenses nontransferable, banned sales from vacant lots, and imposed setback requirements against the contention, among others, that it imposed unreasonable burdens on interstate commerce. *See id.* at 677. The court determined the burden on interstate commerce -- decreased sales of out-of-state products to the vendors' state assuming the vendors went out of business -- to be slight and not clearly excessive in relation to the benefits to the city in adopting the ordinance, *i.e.*, "reduction in urban blight, the potential development of vacant lots with permanent structures, and a heightened ability to police the vendors' operations." *Id.* at 679.

In short, a city may not, broadly speaking, unreasonably discriminate against persons, infringe on personal fundamental rights, or interfere with interstate commerce when regulating street vending.

S U M M A R Y

A Type A general-law city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets, sidewalks, and other public places. It may also require by ordinance that a vendor obtain a permit as a condition to selling merchandise in the city and charge a reasonable fee. The city may regulate but not prohibit street vendors from going on private residences to sell their goods. If the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. Issuance of a sales tax permit to a vendor, however, is not such state authorization or license as to preclude the city from requiring a city permit. An ordinance regulating street vending may not, broadly speaking, unreasonably discriminate against persons subject to the ordinance, infringe on personal fundamental rights, or interfere with interstate commerce.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

CLARK KENT ERVIN
Deputy Attorney General - General Counsel

ELIZABETH ROBINSON
Chair, Opinion Committee

James E. Tourtelott
Assistant Attorney General - Opinion Committee

Footnotes

1. Telephone Conversation with Honorable Jim Blakeney, Mayor, City of Camp Wood (Aug. 22, 1999). A Type A general-law municipality is one that has incorporated as a Type A under subchapter A of chapter 6 of the Local Government Code, has changed to a Type A under subchapter B of chapter 6, or operated under chapters 1 through 10 of title 28 of the Revised Civil Statutes

immediately preceding September 1, 1987. *See* Tex. Loc. Gov't Code Ann. § 5.001 (Vernon 1999).

2. The terms "license" and "permit" are essentially the same, although legally "license" ordinarily refers to the privilege of conducting a continuing activity while "permit" ordinarily refers to an activity of limited duration on whose completion the privilege expires. *See Johnson v. City of Austin*, 674 S.W.2d 894, 897 (Tex. App.-Austin 1984, no writ).

3. Telephone Conversation with Honorable Jim Blakeney, Mayor, City of Camp Wood (Aug. 22, 1999).

4. *See supra* note 3.

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From: Scott Bounds [mailto:SBounds@OlsonOlson.com]
Sent: Monday, November 15, 2010 7:12 PM
To: George Shackelford
Cc: Scott Bounds
Subject: Door to door solicitation.

Municipal ordinances which prohibit solicitors, peddlers, and itinerant merchants from calling on private residences for the purpose of peddling or soliciting without the request or the invitation of the occupant are sometimes referred to as "Green River" ordinances (from the case of *Town of Green River, Wyoming v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933)). "Green River" ordinances entirely prohibit and declare the practice of uninvited house-to-house canvassing to be a nuisance and misdemeanor punishable by fine and imprisonment (Rhyne, *The Law of Local Government Operations*, pp 495-496). Such ordinances have been upheld in the past by the United States Supreme Court. These types of ordinances have been ruled unconstitutional when they prohibit religious or noncommercial door-to-door solicitation. The U.S. Supreme Court on June 17, 2002 by a vote of 8-1, invalidated a Stratton, Ohio ordinance that required canvassers to register and obtain a permit from the mayor's office before going door-to-door promoting any cause (*Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*). The Court held that the ordinance violated the First Amendment as it applied to religious proselytizing, anonymous political speech, and the distribution of handbills. See MRSC Web Page, [U.S. Supreme Court Says No Permit Required to Solicit for Religious Reasons](#).

Other decisions include *Breard v. Alexandria*, 341 U.S. 622, 95 L.Ed 1233, 71 S.Ct. 920 (1951). The Breard decision was decided at a time when "commercial speech" was thought to be outside the protection of the First Amendment. More recent Supreme Court Decisions question the analysis of the Breard case and suggest that a complete ban on door-to-door solicitation would be found unconstitutional today. See also McQuillin, *Municipal Corporations*, Â§24.378 (3rd Ed.).

Even though the 1951 United States Supreme Court decision has not been expressly overruled, more recent cases suggest that a total prohibition of door-to-door solicitation would be unconstitutional and unenforceable. In *Project 80's Inc. v. City of Pocatello*, 942 F.2d 635 (9th Cir. 1991), a city ordinance prohibiting door-to-door solicitation unless the homeowner places a "solicitors welcome" sign on the house was ruled an unconstitutional infringement of free commercial speech. The court concluded that the ordinance did not provide the least restrictive alternative available to accomplish the legitimate governmental interests of protecting residential privacy and preventing crime. The Federal Court decision invalidating the Cities of Pocatello and Idaho Falls' ordinances was the second time the Court had invalidated the ordinances. The 1991 decision was the result of a remand order by the United States Supreme Court of the earlier 1988 decision in *Project 80's Inc. v. City of Pocatello*, 876 F.2d 711 (9th Cir. 1991), vacated and remanded, *City of Idaho Falls v. Project 80's Inc.*, 493 U.S. 1013, 110 S.Ct. 709, 107 L.Ed.2d 730 (1990). Similar decisions have been reached by the Ohio Court of Appeals in *City of Tiffin v. Boor*, 109 Ohio App. 3d 337, 672 NE2d 200 (Ohio Ap. 1996), the Oregon Supreme Court in *City of Hillsboro v. Purcell*, 306 Or 547, 761 P.2d 510 (Ore., 1988) and an Illinois Federal District Court in *Green v. Village of Schaumburg*, 676 F.Supp. 870 (ND Ill., 1988).

CITY OF TOMBALL

This is to certify that:



MICHAEL WILLIAMS DBA T&B SALES, INC.

IS

GRANTED AN INTERSTATE PEDDLER'S PERMIT

FROM 11/11/2010 - 12/11/2010

DATE 11/11/2010 BY Doni Spew

CITY OF TOMBALL

This is to certify that:



WILLIAM EDWARD DBA T&B SALES, INC.

IS

GRANTED AN INTERSTATE PEDDLER'S PERMIT

FROM 11/11/2010 - 12/11/2010

DATE 11/11/2010 BY Doni Spew

CITY OF TOMBALL

This is to certify that:



SHARICE DORSEY DBA T&B SALES, INC.

IS

GRANTED AN INTERSTATE PEDDLER'S PERMIT

FROM 11/11/2010 - 12/11/2010

DATE 11/11/2010 BY Doni Spew

CITY OF TOMBALL

This is to certify that:



QUANNITRA KISER GILMORE DBA T&B SALES INC.

IS

GRANTD AN INTERSTATE PEDDLER'S PERMIT

FROM 11/11/2010 - 12/11/2010

DATE 11/11/2010 BY Doni Spew

Interstate Vendors Must Furnish:

Proof that the Company is Interstate
 Completed Application for each vendor
 Driver's License (clerk will make copy)

No "umbrella" permits are issued for a company; each individual who will be going door-to-door is required to register with the City and to carry and present his/her Interstate Peddler's Permit upon demand.

No fee is charged for Interstate Vendors.

NOTE: Stationary Vendors must submit a site plan and receive approval from the Engineering and Planning Department regarding zoning requirements before permit will be issued. Food vendors must receive approval from the Fire Marshal's office regarding their equipment.

CITY OF TOMBALL

This is to certify that:



Rosa Corona, dba Los Hermanitos Rocha

IS
hereby given a Vendor's Permit for
July 30, 2010 through July 29, 2011

DATE 7/30/10 BY Don Spain

Vendors Must Furnish:

- Completed Application
- Dr.'s Certification Regarding Health
- \$1,000 Surety Bond, Naming City of Tomball as Certificate Holder
- Copy of Lease/Letter (from property owner)
- Fingerprint Card
- Required Fee
- Driver's License (clerk will make copy)

Note:

Food vendors **MUST** furnish proof of **HARRIS COUNTY MEDALLION** prior to issuance of Vendor's Permit by City of Tomball.

Vendors using electrical, gas propane, or other energy sources **MUST** receive approval from the Fire Marshal's office prior to issuance of Vendor's Permit by City of Tomball.

Vendors using temporary structures **MUST** receive approval from Fire Marshal's office prior to issuance of Vendor's Permit by City of Tomball.

CITY OF TOMBALL

This is to certify that:



AMY MARIE BIEVER, DBA DRASTIC GRAPHICS

HEREBY GRANTED A SPECIAL ^{IS} EVENTS PERMIT FOR
JULY 4, 2010

DATE 7/2/2010 BY Don: Speer

Special Event Permits Require:

- Completed Application
- Payment of \$25 per Day
- Driver's License (clerk will make copy)

Special event permit is for **1 day only**; events for more than 1 day require a permit for each day. No more than 5 special event permits during any 12-month period for any 1 applicant. Fee for special event is \$25.00 per day.

NOTE:

- Food Vendors - Copy of Harris County Medallion
- Copy of Lease/Letter from Property Owner (if setting up on private property)

NOTE: Stationary Vendors must submit a site plan and receive approval from the Engineering and Planning Department regarding zoning requirements before permit will be issued. Food vendors must receive approval from the Fire Marshal's office regarding their equipment.

Peddlers and Solicitors Licenses

Requirements for a Peddlers/Solicitors License in the City of Tomball

A completed Application and appropriate proofs/attachments, as required.

Who is a peddler?

“*Peddler* means any person, whether a resident of this city or not, traveling from house to house, or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, **other than agricultural products produced or processed in this state****; and also means and includes any person transacting a temporary business within the city at an established place of business.” (Code of Ordinances, Sec. 54.1)

****If a person has the intent of selling agricultural products (fruits, vegetables, plants, etc.) that were produced or processed in the state, they are exempt.**

Exceptions:

1. Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.
2. Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.
3. Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor.
4. **Solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity within this city.**

Soliciting at Intersections

“It shall be unlawful for any person to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.”

Exception:

“If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds or to advertise, or to distribute any item at such intersections, shall first make an application for permission to do so by making the application at city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place, not to exceed 48 consecutive hours. If the solicitation is to be done by a person under the age of 18 no such permit shall be issued unless such persons shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation and any such permit shall be good for one such solicitation period only and any further solicitation shall require an additional permit. Such permit should be signed by the police chief.”

Interstate Commerce

If a person is lawfully engaged in interstate commerce, the peddler shall obtain a license prior to engaging in business as a peddler through the city secretary by registering and providing information under oath to the city secretary. The information obtained shall be a **completed peddlers application and a copy of their driver’s license as well as facts showing explicitly that the registrant is engaged in interstate commerce.**

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 6, 2010

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):

Section 551.071 Consultation with Attorney regarding the following matters:

- A. Possible civil action to enforce ordinance regarding construction of building and use of land at 30702 State Highway 249;
- B. Pending litigation including: Kallus v. City, G. Singh Enterprises v. City, Kurcharski v. City, and Cloud v. City; and
- C. Status of land acquisition for lift station from P. Hildreth.

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	