

CITY OF KYLE



Notice of Regular City Council Meeting

KYLE CITY HALL
100 W. Center Street

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 7:00 PM on 2/7/2012, at Kyle City Hall, 100 West Center Street, Kyle, Texas for the purpose of discussing the following agenda.

Posted this 2nd day of February, 2012 prior to 7:00 p.m.

I. Call Meeting To Order

II. Approval of Minutes

1. City Council Workshop - January 16, 2012 ~ *Amelia Sanchez, City Secretary*

 [Attachments](#)

2. City Council Regular Meeting - January 17, 2012 ~ *Amelia Sanchez, City Secretary*

 [Attachments](#)

III. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak must sign in before the meeting begins at the Kyle City Hall. Speakers may be provided with an opportunity to speak during this time period, and they must observe the three-minute time limit.

IV. Presentation

3. Recognition of Employee of the Month for the Month of January ~ *Lanny Lambert, City Manager*

- *Raquel Garcia, Grants Administrator*

 [Attachments](#)

4. Report on the United States Conference of Mayors 80th Winter Meeting including Exhibits, Events, and Sessions held on January 18-20, 2011 in Washington, DC ~ *Lucy Johnson, Mayor*

 [Attachments](#)

V. Proclamations

5. Proclamation of the City of Kyle, Texas Proclaiming the Month of February as "Black History Month" in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

 [Attachments](#)

6. Proclamation of the City of Kyle, Texas Proclaiming February 7th, 2012 as "City of Kyle, Storm Response Team Appreciation Day" in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

 [Attachments](#)

VI. Consent Agenda

7. Plum Creek Phase 1 Section 11A - Lot 3A Resubdivision of Lots 3 and 4, Section 11A Replat
5.144 acres; 1 Lot
Location: Lots 3 and 4 of the Plum Creek Phase 1 Section 11A
Applicant: Mountain Plum, Ltd.
Agent: Lawrence Hanrahan, P.E., Hanrahan and Pritchard Engineering, Inc.
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 to approve the plat.

 [Attachments](#)

8. Consider a request by SCC Kyle Partners, LTD. for a 30 day postponement for a request for a landscape variance and conditional use permit at 5754 Kyle Parkway ~ *Sofia Nelson, Director of Planning*

 [Attachments](#)

9. Authorize award and execution of Purchase Order to B.S. Cartage, INC., dba JV ENVIRONMENTAL SERVICES, of Austin, Texas, in an amount not to exceed \$5,070.00 to purchase for 1,000 20" mulch erosion control socks for installation along Plum Creek within Steeplechase Park in fulfillment of Task 6.3 of the Section 319(h) NPS Water Pollution Management Program Grant ~ *Raquel Garcia, Grants Administrator*

 [Attachments](#)

10. Approval and Authorization of the City Manager to Execute a contract for EMS Services between City of Kyle and San Marcos Hays County EMS, per the 2011 Bid for EMS Services; Providing for the continuation of EMS services through 2014 with the following monthly payments of: Twenty Two Thousand Eight Hundred Twenty Three Dollars and Eighty Three Cents (\$22,823.83) per month for Emergency Services provided to the City's residents pursuant to this Agreement from January 2012 to September 2012, Twenty Six Thousand Five Hundred Five Dollars and Thirty Three cents (\$26,505.33) October 2012 to September 2013, and Twenty Thousand Nine Hundred Ten Dollars and Seventeen Cents (\$20,910.17) October 2013 to September 2014 ~ *James Earp, Assistant City Manager*

 [Attachments](#)

VII. Consider and Possible Action

11. Presentation and acceptance of City of Kyle's Audit Report for the Fiscal Year Ended September 30, 2011 ~ *Dan Shaner, CPA, Partner, Atchley & Associates, Certified Public Accountants*

 [Attachments](#)

12. Authorize award and execution of a contract with LINEBARGER GOGGAN BLAIR & SAMPSON, LLP of Austin, Texas to provide collection services for City of Kyle's Municipal court fines and fees ~ *Perwez Moheet, CPA, Director of Finance*

 [Attachments](#)

13. Authorize award and execution of a Purchase Order to SOUTHERN COMPUTER WAREHOUSE of Marietta, Georgia, (3rd low bidder) in an amount not to exceed \$58,625.71 to purchase sixty (60) desktop computers, twenty five (25) laptop computers, and related equipment and software for the Kyle Public Library ~ *Mark Shellard, Director of Information Technology*

 [Attachments](#)

14. Authorize award and execution of a 12-month service contract with IDS dba TEXAS TANK SERVICES of Tyler, Texas, to provide annual inspection services for the City's elevated and ground water storage tanks in compliance with TCEQ requirements in an amount not to exceed \$3,906.00 with two 12-month extension options in an amount not to exceed \$3,906.00 per extension option, for a total contract amount not to exceed \$11,718.00 ~ *Harper Wilder, Director of Public Works*

 [Attachments](#)

15. A RESOLUTION ORDERING A GENERAL MUNICIPAL ELECTION TO BE HELD JOINTLY WITH HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT ON MAY 12,2012, FOR THE PURPOSE OF ELECTING TWO CITY COUNCILMEMBERS, AND A SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, INCLUDING MIXED BEVERAGES, BY THE QUALIFIED VOTERS OF THE CITY OF KYLE; ESTABLISHING PAY RATES FOR ELECTION WORKERS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR EARLY VOTING; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

 [Attachments](#)

16. (*First Reading*) AN ORDINANCE ESTABLISHING REGULATIONS FOR THE ISSUANCE OF CITATIONS STEMMING FROM ALLEGED CRIMINAL VIOLATIONS OF ORDINANCE; PROVIDING FOR NOTICE REQUIREMENTS FOR ABATEMENT OF NUISANCES; PROVIDING FOR RULES, STANDARDS, PROCEDURES, AND CRIMINAL PENALTIES; SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

 [Attachments](#)

17. A RESOLUTION OF THE CITY COUNCIL, CITY OF KYLE, TEXAS, AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION FOR A CRIMINAL JUSTICE PROGRAM GRANT; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF KYLE, TEXAS IN ALL MATTERS RELATED TO THE APPLICATION; TO WORK WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION TO COMPLY WITH GRANT REQUIREMENTS OF THE CRIMINAL JUSTICE PROGRAM GRANT ~ *Raquel Garcia, Grants Administrator*

 [Attachments](#)

18. A RESOLUTION OF THE CITY COUNCIL, CITY OF KYLE, TEXAS, AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION FOR A VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF KYLE, TEXAS IN ALL MATTERS RELATED TO THE APPLICATION; TO PROVIDE MATCHING FUNDS; TO WORK WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION TO COMPLY WITH GRANT REQUIREMENTS OF THE VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT ~ *Raquel Garcia, Grants Administrator*

 [Attachments](#)

19. (*First Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF SPEED CONTROL SIGNS FOR THE ZONING OF TRAFFIC AND RATE OF SPEED THEREIN, ON FM 1626 (KYLE PARKWAY) IN THE CITY LIMITS OF THE CITY OF KYLE; AFFIRMING THE DEFINITION OF SPEEDING AND FIXING A PENALTY THEREFOR; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; DECLARING AN EMERGENCY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF ~ *Steven D. Widacki, P.E., City Engineer*

 [Attachments](#)

20. Consideration and Possible Action regarding the First Amended and Restated Interlocal Agreement between Hays County and the City of Kyle regarding FM 150 ~ *Lanny Lambert, City Manager*

 [Attachments](#)

VIII. Planning and Zoning

Site Development Plan

21. Walgreens - Plum Creek (SD-11-014)
1.767 acres; 14,820 square foot building
Located at the corner of FM 2770 and FM 150
Applicant: Nomoland Company, LP
Agent: Travis J. Bousquet, P.E.
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 to approve the Site Plan.

- *Public Hearing*

 [Attachments](#)

Conditional Use Permit/Conditional Use Overlay District

22. Consider a request by NRP Restaurants (Applebee's) for a Conditional Use Permit to construct a 4,893 square foot building located within the Interstate Highway 35 Corridor District.
1.113 acres; 4,893 square foot building
Located at 5363 Kyle Center Drive
Applicant: NRP Restaurants
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 to approved the Conditional Use Permit.

- *Public Hearing*

 [Attachments](#)

23. Consider a request by ACG Texas, LP (IHOP) for a Conditional Use Permit to construct a 4,676 square foot building located within the Interstate Highway 35 Corridor District.
0.850 acres; 4,676 square foot building
Located at 5401 Kyle Center Drive
Applicant: ACG Texas, LP
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 to approve the Conditional Use Permit.

- *Public Hearing*

 [Attachments](#)

Comprehensive Master Plan

24. (*First Reading*) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE TRANSPORTATION MASTER PLAN COMPONENT OF THE COMPREHENSIVE MASTER PLAN TO IDENTIFY BEBEE ROAD AS A MINOR ARTERIAL; PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 and the Long Range Planning Committee voted 7-0 to approve the update to the Transportation Master Plan to include Bebee Road as a Minor Arterial

Road and establish Bebee Road as a moderate priority level roadway in the Comprehensive Master Plan. The Mobility Committee voted 6-0 to update the Transportation Master Plan to identify Bebee Road as a minor arterial roadway.

- *Public Hearing*

 [Attachments](#)

Other

25. (*Public Hearing and First Reading*) AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLAN UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE) OF THE CITY OF KYLE, TEXAS FOR THE PURPOSE OF AMENDING THE FOLLOWING SECTIONS: ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 5 “R-3” MULTIFAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS (3)(d) MAXIMUM HEIGHT: TO AMEND THE MAXIMUM HEIGHT FROM 40 FEET TO 60 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO A R-2 DEVELOPMENT; ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 6- “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS (5)(d) MAXIMUM HEIGHT: TO AMEND THE MAXIMUM HEIGHT FROM 35 FEET TO 50 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO R-2 DEVELOPMENT; ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 8 “MXD” MIXED USE DEVELOPMENT (D) SITE DEVELOPMENT REGULATIONS (6)(d): TO AMEND THE MAXIMUM HEIGHT FROM 3 ½ STORIES OR 50 FEET TO 5 STORIES OR 65 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO R-2 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

- *Public Hearing*

 [Attachments](#)

26. (*Second Reading*) AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING OF ‘R-3-3’ APARTMENT RESIDENTIAL 3 TO APPROXIMATELY 9.90 ACRES; AND ‘R-1-T’ RESIDENTIAL TOWNHOME TO APPROXIMATELY 5.45 ACRES ON PROPERTY LOCATED ON THE SOUTHSIDE OF BEBEE ROAD, JUST WEST OF DACY LANE IN HAYS COUNTY, TEXAS. (DACY LANE, LLC. Z-11-012); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

The Planning and Zoning Commission voted 6-0 to recommend approve of the applicant’s request to assign original zoning of “RS” Retail Service Districtto

approximately 8.42, and voted 6 - 0 to recommend denial of R-3-3 Apartment Residential 3 to approximately 9.90 acres and R-1-T Residential Townhome to approximately 5.45 acres.

 [Attachments](#)

IX. City Managers Report

27. Update on Various Capital Improvement Projects, Road Projects, Building Program, and/or General Operational Activities ~ *Lanny Lambert, City Manager*

- Discussion of Installation of Emergency Panic Buttons at City Hall

 [Attachments](#)

X. ADJOURN

At any time during the Regular City Council Meeting, the City Council may adjourn into an Executive Session, as needed, on any item listed on the agenda for which state law authorizes Executive Session to be held

*Per Texas Attorney General Opinion No. JC-0169; Open Meeting & Agenda Requirements, Dated January 24, 2000: The permissible responses to a general member communication at the meeting are limited by 551.042, as follows: "SEC.551.042. Inquiry Made at Meeting. (a) If, at a meeting of a government body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by the subchapter, the notice provisions of this subchapter, do not apply to:(1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry. (b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.



CITY OF KYLE, TEXAS

City Council Workshop - January 16, 2012

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation: City Council Workshop - January 16, 2012 ~ *Amelia Sanchez, City Secretary*

Other Information: This item is for formal approval of the minutes from the January 16th Workshop of the City Council, a copy of which is included with the meeting packet.

Budget Information: N/A

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[City Council Workshop Minutes - January 16, 2012](#)

Cover Memo

Item # 1

CITY OF KYLE**CITY COUNCIL WORKSHOP**

The governing body of the City of Kyle, Texas held a workshop meeting at 6:00 PM on January 16, 2012, at Kyle City Hall, 100 West Center, Kyle, Texas for the purpose of discussing the following agenda with the following persons present:

Mayor Lucy Johnson
Mayor Pro Tem Wilson
Council Member Hervol
Council Member Selbera
City Manager Lanny Lambert
Assistant City Manager James Earp
Jerry Hendrix, Director of Communications
Perwez Moheet, Finance Director
Sandra Duran, HR Director
Mario Perez, Building Official
Diana Blank, Director of Economic Development
Kerry Urbanowicz, Director of Parks and Recreation
Steven Widacki, City Engineer
Connie Brooks, Library Director
Sofia Nelson, Director of Planning and Zoning
Harper Wilder, Director of Public Works
Mark Shellard, IT Director
Jeff Barnett, Police Chief

CALL MEETING TO ORDER

Mayor Johnson called the workshop meeting to order at 6:03 pm.

ROLL CALL:

Mayor Johnson called for roll call. Present were Mayor Johnson, Council Member Hervol, Selbera, and Mayor Pro Tem Wilson.

Mayor Johnson moved to excuse Council Member Huebner's absence due to illness. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

Council Members Pickett and Sanchez were absent.

CONSIDER AND POSSIBLE ACTION

CONSIDERATION AND GENERAL DISCUSSION OF ANY AND ALL ISSUES RELATING TO THE DISCUSSION OF GOALS FOR CITY COUNCIL FOR 2012; AND RELATED MATTERS

CITY COUNCIL WORKSHOP
 January 16, 2012– Page 2
 Kyle City Hall

Mayor Johnson stated that the goal of this workshop was to discuss and start to formulate goals for 2012 general policy matters as well as the fiscal year 2012 – 2013 budget.

City Council's Budget Policy Directives

Council reviewed and discussed the City Council's Budget Policy Directives that were developed for Fiscal Year 2011 – 2012 resulting from the City Council's Public Hearing and Workshop held on March 7, 2011 and adopted by the City Council on April 5, 2011.

1. Property Tax Rate
2. Utility Rates:
3. Transfer from Utility Fund
4. Priority for Funding
5. New Positions
6. Flex-Net System
7. New Police Station
8. Cost of Living Adjustment (COLA)

Discussed City Council's Budget Policy Directives for Fiscal Year 2012-13

The following Budget Policy Directives were discussed for 2012 - 2013

1. Utility Rates

- a. Minimize increase for water and sewer rates.
- b. Reduce transfer to the General Fund.

2. Property Tax Rate

- a. Council will consider increase in Maintenance & Operations (M&O) rate component from the FY 2011-12 level to pay for needed City services and for increased operating costs for existing City services.
- b. The Interest & Sinking (I&S) rate component can increase to adjust for the increased debt service due in FY 2013.
- c. Council will consider increasing Property Tax rates to offset the reduction in the amount of the General Fund transfer reduction.

3. Bond Election

CITY COUNCIL WORKSHOP

January 16, 2012– Page 3

Kyle City Hall

a. City Manager will develop and present a plan for City Council consideration for a City bond election in November 2012 to include the following:

- i. Public involvement in the development of the plan
- ii. Input by the City's Mobility Committee
- iii. Identification and prioritization of roadway projects
- iv. Review of roadway cost estimates
- v. Identification of other high priority capital projects
- vi. Property tax impact

4. Compensation & Benefits for City Employees

- a. City Council wants to take care of its employees and improve employee morale.
- b. Consideration of a cost of living adjustment for all City employees.
- c. Maintain all benefits at the current levels.
- d. No changes to any employee benefit plans including life, medical, health, and retirement (TMRS).

5. New Positions

- a. City Council will consider proposal for new positions from the City Manager rather than individual Department Directors.
- b. City Manager's proposal for new positions should be based on goals and priorities for City services as established by the City Council and funding availability.

Departmental Goals

CITY SECRETARY

Records Management

City Elections & Joint Elections

CHIEF OF POLICE

Crime and Victimization

Traffic Safety

Operational Effectiveness

Customer Service

Facilities

Technology

DIRECTOR OF ECONOMIC DEVELOPMENT

Revitalization

Marketing & Branding

Research & Development

Recruitment

Employment Opportunity

Population

Staff Development

CITY COUNCIL WORKSHOP

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Kyle City Hall

DIRECTOR OF KYLE PUBLIC LIBRARY

Programs and Services

Facilities, Furnishings and New Facility

Collection Development

Technology

Personnel

Outreach, Marketing and Communication

DIRECTOR OF HUMAN RESOURCES

Customer Service

Recruitment

Training

Development

Safety & Wellness

Employee Recognition & Retention

Policies & Procedures

Communication

Compensation

HR Operations

Concerns & Challenges

DIRECTOR OF COMMUNICATIONS

Media Relations

Internet

The Kyle Monthly

Kyle E-Newsletter

Advertising

Mail Campaigns

City Council Meetings

Internal Communication

DIRECTOR OF FINANCE

Customer Service

Department Operations

City Operations

BUILDING OFFICIAL

Daily Department Operations

Technology

Personnel

Communication

CITY COUNCIL WORKSHOP
 January 16, 2012– Page 5
 Kyle City Hall

DIRECTOR OF PLANNING

City's Existing Policies & Procedures
 Development Code and Comprehensive Plan
 Code Update Process
 Upcoming Calendar Year

DIRECTOR OF INFORMATION TECHNOLOGY

Network and Infrastructure
 Wireless Technology
 Resources

DIRECTOR OF PARKS AND RECREATION

Administration
 Parks and Ground Maintenance Division
 Recreation, Programs and Special Events Division
 Building and Facilities Maintenance Division

DIRECTOR OF PUBLIC WORKS

FY 11-12
 Currently Completed
 Ongoing
 Water
 Water Supply
 Wastewater
 Streets

CITY ENGINEER

Assessment of Prospective Capital Improvement Projects
 Hire Consultant WW Improvement Projects
 WW Capacity allocations and sizing of Southside WW
 Implement Design Standards for City of Kyle
 Evaluate FM 2770/150 Sidewalk Project
 Obtain Auto CAD or Micro Station license and design modules,
 software and computer hardware
 Certified Floodplain Manager Certification
 Advance City's Transportation goals
 Work with Planning Department
 Develop model City's water supply and distribution system
 Develop model wastewater collection system
 Establish relationships with development community

CITY COUNCIL WORKSHOP
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Kyle City Hall

Discussion only. No action taken.

ADJOURN

Council Member Selbera moves to adjourn. Mayor Pro Tem seconds the motion. All votes aye. Motion carried.

The Workshop Meeting adjourned at 9:53 p.m.

Mayor Lucy Johnson

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

City Council Regular Meeting - January 17, 2012

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation: City Council Regular Meeting - January 17, 2012 ~ *Amelia Sanchez, City Secretary*

Other Information: This item is for formal approval of the minutes from the January 17th Regular Meeting of the City Council, a copy of which is included with the meeting packet.

Budget Information: N/A

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[City Council Regular Meeting Minutes - January 17, 2012](#)

Cover Memo

Item # 2

REGULAR CITY COUNCIL MEETING

The City Council of the City of Kyle, Texas met in Regular Session on January 17, 2012 at 7:00 pm at Kyle City Hall, with the following persons present:

Mayor Pro Tem David Wilson
Council Member Diane Hervol
Council Member Jaime Sanchez
Council Member Becky Selbera
Lanny Lambert, City Manager
James Earp, Asst. City Manager
Jerry Hendrix, Communications
Perwez Moheet, Director of Finance
Mario Perez, Building Official
Kerry Urbanowicz, Parks Director
Sofia Nelson, Director of Planning
Steven Widacki, City Engineer
Harper Wilder, Director of Public Works
Sally Kochoris, IT Staff
Frank Garza, City Attorney
Chief Barnett, Police Chief

CALL MEETING TO ORDER

Mayor Pro Tem Wilson called the meeting to order at 7:00 pm.

ROLL CALL

Mayor Pro Tem Wilson called for roll call. Present were Mayor Pro Tem Wilson, Council Members Hervol, Sanchez, Selbera, and Pickett. Council Member Huebner was absent.

Mayor Pro Tem Wilson states that Mayor Johnson is in Washington at a Mayor's conference. Council Member Sanchez moves to excuse Council Member Huebner's absence due to illness. Council Member Selbera seconds the motion. All votes aye. Motion carried.

APPROVAL OF MINUTES

CITY COUNCIL REGULAR MEETING – January 3, 2012 ~ *AMELIA SANCHEZ, CITY SECRETARY*

CITY COUNCIL SPECIAL MEETING – January 9, 2012 ~ *AMELIA SANCHEZ, CITY SECRETARY*

CITY COUNCIL REGULAR MEETING

January 17, 2011 – Page 2

Kyle City Hall

Council Member Sanchez moves to approve the minutes of the January 3, 2012 Regular City Council Meeting. Council Member Hervol seconds the motion. All votes aye. Motion carried.

Council Member Hervol moves to approve the minutes of the January 9, 2012 City Council Special Meeting. Council Member Sanchez seconds the motion. All votes aye. Motion carried.

CITIZEN COMMENT PERIOD WITH CITY COUNCIL

THE CITY COUNCIL WELCOMES COMMENTS FROM CITIZENS EARLY IN THE AGENDA OF REGULAR MEETINGS. THOSE WISHING TO SPEAK MUST SIGN IN BEFORE THE MEETING BEGINS AT THE KYLE CITY HALL. SPEAKERS MAY BE PROVIDED WITH AN OPPORTUNITY TO SPEAK DURING THIS TIME PERIOD, AND THEY MUST OBSERVE THE THREE-MINUTE TIME LIMIT

Mayor Pro Tem Wilson opened the citizens comment period at 7:05 pm and called for comments on items not on the agenda or posted for public hearing. With no one wishing to speak Mayor Pro Tem Wilson closed citizen's comments at 7:05 pm.

PRESENTATION

PRESENTATION OF THE PARKS AND RECREATION DEPARTMENT 2011 ANNUAL REPORT TO INCLUDE NUMBER OF ATTENDEES AT RECREATIONAL PROGRAMS AND SPECIAL EVENTS, FACILITY USES, ECONOMIC IMPACT, AND OTHER RELATED MATTERS ~ *KERRY URBANOWICZ, DIRECTOR OF PARKS AND RECREATION*

Kyle Parks and Recreation Director provided a brief presentation of the 2011 Annual Report to Include Number of Attendees at Recreational Programs and Special Events, Facility Uses, Economic Impact.

CONSENT AGENDA

DACY VILLAGE (PP-11-002)

OWNER: DACY LANE, LLC / JONATHAN CHENG

23.77 ACRES; 43 LOTS

LOCATED ON THE SOUTHSIDE OF BEBEE ROAD, JUST WEST OF DACY LANE

AGENT: HUGO ELIZONDO, JR., P.E. / CUATRO CONSULTANTS

~ *SOFIA NELSON, DIRECTOR OF PLANNING*

CITY COUNCIL REGULAR MEETING
 January 17, 2011 – Page 3
 Kyle City Hall

PLANNING AND ZONING COMMISSION VOTED 6-0 TO STATUTORILY DISAPPROVE TO MEET 30 DAY STATUTORY REQUIREMENTS.

STATUTORY DISAPPROVAL (NOTE: IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS OF THE TEXAS LOCAL GOVERNMENT CODE REFLECTED IN

SECTIONS 12.03.001, 12.05.004, 12.06.004 THE FOLLOWING APPLICATIONS ARE RECOMMENDED FOR STATUTORY DISAPPROVAL IN ORDER TO ALLOW THE CITY TO PROCESS THE APPLICATION. THESE APPLICATIONS WILL CONTINUE THROUGH THE REVIEW PROCESS WITHOUT BIAS AND WILL BE PLACED ON THE AGENDA IN A TIMELY MANNER ONCE THE REVIEW PROCESS IS COMPLETE. STATUTORY DISAPPROVAL IN ORDER TO MEET STATUTORY REQUIREMENTS UNDER THESE SECTIONS SHALL NOT BIAS FUTURE CONSIDERATION OF THIS APPLICATION BY THE PLANNING AND ZONING COMMISSION AND CITY COUNCIL)

AUTHORIZE EXECUTION OF CONTRACT OPTION FOR YEAR 2 (2012) WITH PYRO ENGINEERING, INC., OF FARMINGDALE, NEW YORK, IN AN AMOUNT NOT TO EXCEED \$15,000.00 TO PROVIDE FIREWORKS SHOW FOR THE CITY'S 2012 INDEPENDENCE DAY CELEBRATIONS ~ *KERRY URBANOWICZ, DIRECTOR OF PARKS AND RECREATION*

(Second Reading) AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE) OF THE CITY OF KYLE, TEXAS FOR THE PURPOSE OF AMENDING THE FOLLOWING SECTIONS: ARTICLE 1/SECTION 4- DEFINITIONS OF TERMS AND USES WITHIN THE PLUM CREEK PUD DISTRICT: TO AMEND THE DEFINITION OF CORNER LOT, ADD A DEFINITION FOR COURTYARD, AMEND THE DEFINITION FOR SETBACK LINE, AMEND THE DEFINITION OF YARD, FRONT, AMEND THE DEFINITION OF YARD, SIDE; ARTICLE 2-PLANNED UNIT DEVELOPMENT ZONING DISTRICT PART A/SECTION 4 (7)(E)- MXD SITE PLAN REVIEW PROCESS: EXEMPTED R-1 AND R-2 USES FROM SUBMITTING A SITE PLAN TO THE PLANNING AND ZONING COMMISSION AND CITY COUNCIL ; ARTICLE 2- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS PART C/SECTION 4: R-2 RESIDENTIAL PUD DISTRICT- ADDED COURTYARDS AS A PERMITTED USE TO THE R-2 DISTRICT; ARTICLE 2-PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS PART C/SECTION 4 (f) MINIMUM SETBACKS (i)FRONT YARD-AMENDED THE MINIMUM FRONT YARD SETBACK FROM 15 FEET TO 8 FEET; ARTICLE 2- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS PART C/SECTION 4 (f) MINIMUM SETBACKS (iii) REAR YARD-AMENDED THE MINIMUM REAR YARD SETBACK FROM 10

CITY COUNCIL REGULAR MEETING

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FEET TO 5 FEET; ARTICLE 2- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS PART C/SECTION 4(6): ADDED A SECTION ESTABLISHING SITE DEVELOPMENT REGULATIONS FOR COURTYARD RESIDENTIAL DEVELOPMENT; ARTICLE 2- PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS PART C/SECTION 5- R-3 MULTI-FAMILY RESIDENTIAL PUD DISTRICT/ (B) PERMITTED USES-AMENDED TO ALLOW SINGLE FAMILY RESIDENTIAL USES AS DESCRIBED IN ARTICLE 2, PART C, SECTION 3 TO BE PERMITTED; AN ORDINANCE AMENDING ORDINANCE NO. 308/CHAPTER 41 SUBDIVISION EXHIBIT A/SCHEDULE A/TWO-WAY ALLEY [RESIDENTIAL/COMMERCIAL]: TO AMEND THE REQUIRED ROW WIDTH FROM 25 FEET TO 20 FEET; AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 AND 308 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

Council Member Hervol asks that Item 5 and 6 be pulled from Consent Agenda.

Council Member Hervol moves to approve Item #5 Authorize Execution of Contract Option for Year 2 (2012) with PYRO ENGINEERING, INC., of Farmingdale, New York, in an amount Not to Exceed \$15,000.00 to provide fireworks show for the City's 2012 Independence Day celebrations. Council Member Selbera seconds the motion. All votes aye. Motion carried.

Council Member Selbera moves to approve Item # 6 (*Second Reading*) An Ordinance Amending Ordinance No. 311 (Plum Creek Planned Unit Development Overlay District Zoning Ordinance) of the City of Kyle, Texas for the Purpose of Amending the following Sections: Article 1/Section 4-Definitions of Terms and Uses within the Plum Creek PUD District: to Amend the Definition of Corner Lot, add a Definition for Courtyard, Amend the Definition for Setback Line, Amend the Definition of Yard, Front, Amend the Definition of Yard, Side; Article 2-Planned Unit Development Zoning District Part A/Section 4 (7)(e)- MXD Site Plan Review Process: Exempted R-1 and R-2 Uses from submitting a Site Plan to the Planning and Zoning Commission and City Council ; Article 2- PUD Districts: Regulations and Performance Standards Part C/Section 4: R-2 Residential PUD District- added Courtyards as a Permitted use to the R-2 District; Article 2-PUD Districts: Regulations and Performance Standards Part C/Section 4 (f) Minimum Setbacks (i)Front Yard-Amended the Minimum Front Yard Setback from 15 feet to 8 feet; Article 2- PUD Districts: Regulations and Performance Standards Part C/Section 4 (f) Minimum Setbacks (iii) Rear Yard-Amended the Minimum Rear Yard Setback from 10 feet to 5 feet; article 2- PUD Districts: Regulations and Performance Standards Part C/Section 4(6): added a Section establishing Site Development Regulations for Courtyard

CITY COUNCIL REGULAR MEETING

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Residential Development; Article 2- PUD Districts: Regulations and Performance Standards Part C/Section 5- R-3 Multi-Family Residential PUD District/ (b) Permitted Uses-Amended to allow Single Family Residential Uses as described in Article 2, Part C, and Section 3 to be Permitted; an Ordinance Amending Ordinance No. 308 / Chapter 41 Subdivision Exhibit A/Schedule a/Two-Way Alley [Residential/Commercial]: to Amend the required row width from 25 feet to 20 feet; Authorizing the City Secretary to Amend the Ordinance 311 and 308 of the City of Kyle so as to Reflect this Change; Providing for Publication Date; Providing for Severability; and Determining that the Meeting at which this Ordinance was Passed was Open to the Public as Required by Law. Mayor Pro Tem Wilson seconds the motion. Council Member Hervol states that the site review process for Courtyard could be utilized as a tool in the event the City wants to create an Ordinance in the future and would like to see that revision. Council Member Sanchez asks Council Member Selbera if she would consider amending her motion to include Council Member Hervol's statement. Council Member Selbera declines. All votes aye. Motion carried.

CONSENT AGENDA

DACY VILLAGE (PP-11-002)

OWNER: DACY LANE, LLC / JONATHAN CHENG

23.77 ACRES; 43 LOTS

LOCATED ON THE SOUTHSIDE OF BEBEE ROAD, JUST WEST OF DACY LANE

AGENT: HUGO ELIZONDO, JR., P.E. / CUATRO CONSULTANTS

~ SOFIA NELSON, DIRECTOR OF PLANNING

PLANNING AND ZONING COMMISSION VOTED 6-0 TO STATUTORILY DISAPPROVE TO MEET 30 DAY STATUTORY REQUIREMENTS.

STATUTORY DISAPPROVAL (NOTE: IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS OF THE TEXAS LOCAL GOVERNMENT CODE REFLECTED IN SECTIONS 12.03.001, 12.05.004, 12.06.004 THE FOLLOWING APPLICATIONS ARE RECOMMENDED FOR STATUTORY DISAPPROVAL IN ORDER TO ALLOW THE CITY TO PROCESS THE APPLICATION. THESE APPLICATIONS WILL CONTINUE THROUGH THE REVIEW PROCESS WITHOUT BIAS AND WILL BE PLACED ON THE AGENDA IN A TIMELY MANNER ONCE THE REVIEW PROCESS IS COMPLETE. STATUTORY DISAPPROVAL IN ORDER TO MEET STATUTORY REQUIREMENTS UNDER THESE SECTIONS SHALL NOT BIAS FUTURE CONSIDERATION OF THIS APPLICATION BY THE PLANNING AND ZONING COMMISSION AND CITY COUNCIL

CITY COUNCIL REGULAR MEETING

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Council Member Pickett moves to approve Consent Agenda # 4 Dacy Village (PP-11-002) Owner: Dacy Lane, LLC / Jonathan Cheng; 23.77 acres; 43 Lots
 Located on the Southside of Bebee Road, just west of Dacy Lane. Council Member Hervol seconds the motion. All votes aye. Motion carried.

CONSIDER AND POSSIBLE ACTION

(First Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING ORDINANCE NO. 673 ADOPTED ON SEPTEMBER 13, 2011 TO INCREASE TOTAL APPROPRIATIONS BY \$23,700.00 FOR THE CITY'S GENERAL FUND FOR THE CONSTRUCTION OF SIDEWALK AND PARKING LOT IMPROVEMENTS FOR THE BARTON WORD BUILDING AS PART OF THE CITY'S DOWNTOWN STREETScape IMPROVEMENTS PROJECT ~ *Perwez Moheet, CPA, Director of Finance*

Council Member Pickett moves to approve and Ordinance of the City of Kyle, Texas, Amending Ordinance No. 673 Adopted on September 13, 2011 to increase total appropriations by \$23,700.00 for the City's General Fund for the construction of Sidewalk and Parking Lot Improvements for the Barton Word Building as part of the City's Downtown Streetscape Improvements Project. Council Member Hervol seconds the motion. All votes aye. Motion carried.

AUTHORIZE AWARD AND EXECUTION OF PURCHASE ORDER TO G&P CONTRACTORS, INC., OF NIEDERWALD, TEXAS, IN AN AMOUNT NOT TO EXCEED \$17,500.00 TO ESTABLISH ELEVATION GRADES AND PERFORM SITE CONCRETE WORK FOR THE BARTON WORD BUILDING AS PART OF THE DOWNTOWN STREETScape IMPROVEMENTS PROJECT. RELATED AGENDA ITEM NO. 9 ~ HARPER WILDER, DIRECTOR OF PUBLIC WORKS

Council Member Selbera move to approve to Authorize award and execution of Purchase Order to G&P CONTRACTORS, INC., of Niederwald, Texas, in an amount not to exceed \$17,500.00 to establish elevation grades and perform site concrete work for the Barton Word Building as part of the downtown streetscape improvements project. Mayor Pro Tem Wilson seconds the motion. All votes aye. Motion carried.

AUTHORIZE AWARD AND EXECUTION OF PURCHASE ORDER TO TORRES PAVING, OF MARTINDALE, TEXAS, IN AN AMOUNT NOT TO EXCEED \$6,200.00 TO PLACE BASE ON 353 SQ. YDS., BLADE, WATER, AND ROLL BASE, AND PAVE 200 SQ. YDS., FOR THE BARTON WORD BUILDING SITE AS PART OF THE DOWNTOWN STREETScape IMPROVEMENTS PROJECT. RELATED AGENDA ITEM NO. 8 ~ HARPER WILDER, DIRECTOR OF PUBLIC WORK

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Council Member Selbera moves to approve and Authorize award and execution of Purchase Order to TORRES PAVING, of Martindale, Texas, in an amount not to exceed \$6,200.00 to place base on 353 Sq. Yds., blade, water, and roll base, and pave 200 Sq. Yds., for the Barton Word Building site as part of the downtown streetscape improvements project. Council Member Hervol seconds the motion. All votes aye. Motion carried.

AUTHORIZE AWARD AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH LNV, INC./STATESIDE R.O.W. SERVICES IN AN AMOUNT NOT TO EXCEED \$173,540 TO PERFORM THE ATTENDANT SERVICES TO ACQUIRE THE EASEMENTS NEEDED FOR THE “K-11-12-1” KYLE SOUTHSIDE SEWER AND RELATED PROJECTS, INCLUSIVE OF THE BLANCO BASIN AND ELLIOTT BRANCH WASTEWATER INTERCEPTOR PROJECTS ~ *STEVEN WIDACKI, P.E., CITY ENGINEER*

Council Member Hervol moves to approve and Authorize Award and Execution of a Professional Services Agreement with LNV, INC./STATESIDE R.O.W. SERVICES in an amount Not to Exceed \$173,540 to perform the attendant services to acquire the easements needed for the “K-11-12-1” Kyle Southside Sewer and Related Projects, inclusive of the Blanco Basin and Elliott Branch Wastewater Interceptor Projects. Council Member Selbera seconds the motion. All votes aye. Motion carried.

A RESOLUTION OF THE CITY OF KYLE, TEXAS, EXPRESSING ITS INTENT TO SUPPORT A GRANT APPLICATION FROM THE BUREAU OF RECLAMATION BY DIRECTING THE CITY MANAGER TO INCLUDE MATCHING FUNDS IN THE PROPOSED BUDGET FOR FY 2012-2013; AUTHORIZING THE CITY MANAGER TO REPRESENT THE CITY OF KYLE IN ITS APPLICATION FOR A GRANT FROM THE BUREAU OF RECLAMATION FOR DEVELOPMENT OF A WATER CONSERVATION PROGRAM UNDER THE WaterSMART Program; TO ENTER INTO AN AGREEMENT WITH THE BUREAU OF RECLAMATION IF AWARDED; TO WORK WITH THE BUREAU TO MEET ESTABLISHED DEADLINES FOR ENTERING INTO A COOPERATIVE AGREEMENT ~ *Raquel Garcia, Grants Administrator*

Council Member Pickett moved to Approve a Resolution of the City of Kyle, Texas, Expressing its intent to Support a Grant Application from the Bureau of Reclamation by Directing the City Manager to include matching funds in the Proposed Budget for FY 2012-2013, Authorizing the City Manager to represent the City of Kyle in its Application for a Grant from the Bureau of Reclamation for Development of a Water Conservation Program under the WaterSMART Program, to enter into an Agreement with the Bureau of Reclamation if Awarded; to work with the Bureau to meet established deadlines for

entering into a Cooperative Agreement. Council Member Hervol seconds the motion. All votes aye. Motion carried.

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Mayor Pro Tem Wilson states that Item 12 is an Executive Session Item and suggests moving to the Planning and Zoning Item #13.

CONDITIONAL USE PERMIT/CONDITIONAL USE OVERLAY DISTRICT

CONSIDER A REQUEST BY KYLE CHAPMAN MOTORS FOR A CONDITIONAL USE PERMIT TO AN EXISTING 4,000 SQUARE FOOT BUILDING LOCATED WITHIN THE INTERSTATE HIGHWAY 35 CORRIDOR DISTRICT.

2.202 ACRES; 4,000 SQUARE FOOT BUILDING; LOCATED AT 18300 SOUTH IH-35; APPLICANT: CAVALIER LAMAR HOLDINGS, LP; AGENT: DAVID DAVIS

~SOFIA NELSON, DIRECTOR OF PLANNING

PLANNING AND ZONING COMMISSION VOTED 6-1 TO APPROVE THE CONDITIONAL USE PERMIT.

- PUBLIC HEARING

Mayor Pro Tem Wilson opens the Public Hearing at 8:32 pm to hear comments on a request by Kyle Chapman Motors for a Conditional Use Permit to an existing 4,000 square foot building located within the Interstate Highway 35 Corridor District. With no one wishing to speak Mayor Pro Tem Wilson closes the Public Hearing at 8:32 pm.

Council Member Selbera moves to approve a request by Kyle Chapman Motors for a Conditional Use Permit to an existing 4,000 square foot building located within the Interstate Highway 35 Corridor District.; 2.202 acres; 4,000 square foot building; Located at 18300 South IH-35; Applicant: Cavalier Lamar Holdings, LP; Agent: David Davis. Council Member Pickett seconds the motion. Mayor Pro Tem Wilson, Council Members Hervol, Selbera, and Pickett vote aye. Council Member Sanchez votes nay. Motion carried 4-1.

CITY MANAGERS REPORT

UPDATE ON VARIOUS CAPITAL IMPROVEMENT PROJECTS, ROAD PROJECTS, BUILDING PROGRAM, AND/OR GENERAL OPERATIONAL ACTIVITIES ~ *LANNY LAMBERT, CITY MANAGER*

- DISCUSSION ON EMERGENCY MANAGEMENT TRAINING FOR CITY MANAGER AND CITY COUNCIL

CITY COUNCIL REGULAR MEETING

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- DISCUSSION OF KYLE'S PARTICIPATION IN A PROPOSED KYLE/SAN MARCOS REGIONAL TRANSIT DISTRICT
- DISCUSSION OF HAYS COUNTY'S LETTER OF INTENT TO VACATE CITY BUILDING

City Manager Lanny Lambert advises Council that the City has been notified by the Barton Springs Conservation District that Kyle violated their pumpage permit for November. He states there were several reasons such as losing GBRA water supply, a 12" water main break, a lightening strike that damaged 2 motors at the 1626 station and the water supply from San Marcos couldn't get it to work. He stated that they are imposing a \$500.00 penalty and sending this to the Board of Directors. He informed Council that he had received the proposed 150 agreement from Hays County and will hand it out tonight and it will be on the next Council agenda for their consideration. He states that Assistant City Manager James Earp and Grants Administrator Raquel Garcia are working on Emergency Management Training for the City Manager and City Council. He states that the City has receive formal notification from Hays County that they will vacate the City building next door by April and that James Earp and Chief Barnett are chairing a committee to solicit bids for plans and specifications for the preparation of the building for use by the Kyle Police Department. He informed Council that the City had received a request to participate in the Kyle/San Marcos Regional Transit District from the City of San Marcos and from Texas State. Mr. Lambert also stated that the Ethics Commission had a meeting last week and took no action on an issue that came before them; however they recommended City staff, Directors, and Council take Ethics training and that the City Attorney would be scheduling that.

EXECUTIVE SESSION

CONVENE INTO EXECUTIVE SESSION PURSUANT TO SECTION 551.072, TEX. GOV'T CODE, TO DISCUSS THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY

CONVENE INTO EXECUTIVE SESSION PURSUANT TO SECTION 551.071, TEX. GOV'T CODE AND SECTION 1.05, TEX. DISCIPLINARY RULES OF PROFESSIONAL CONDUCT TO CONSULT WITH LEGAL COUNSEL REGARDING LEGAL ISSUES RELATED TO THE MEET AND CONFER AGREEMENT, NEGOTIATIONS AND PROCESS

Mayor Pro Tem Wilson moves to Convene into Executive Session at 8:58 pm pursuant to Section 551.072, Tex. Gov't Code, to discuss the purchase, exchange, lease or value of real property and Convene into Executive Session pursuant to Section 551.071, Tex. Gov't Code and Section 1.05, Tex. Disciplinary Rules of Professional Conduct to consult with legal counsel regarding legal issues related to the Meet and Confer Agreement,

negotiations and process. Council Member Selbera seconds the motion. All votes aye. Motion carried.

CITY COUNCIL REGULAR MEETING

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Kyle City Hall

RECONVENE INTO OPEN SESSION TO TAKE ACTION AS DEEMED APPROPRIATE IN THE CITY COUNCIL'S DISCRETION REGARDING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY

RECONVENE INTO OPEN SESSION TO TAKE ACTION AS DEEMED APPROPRIATE IN THE CITY COUNCIL'S DISCRETION REGARDING THE MEET AND CONFER AGREEMENT, NEGOTIATIONS AND PROCESS

Mayor Pro Tem Wilson moves Reconvene into Open Session at 9:25 pm to take action as deemed appropriate in the City Council's discretion regarding the purchase, exchange, lease or value of real property and Reconvene into Open Session to take action as deemed appropriate in the City Council's discretion regarding the Meet and Confer Agreement, negotiations and process.

Mayor Pro Tem Wilson states that no action was taken during Executive Session.

Mayor Pro Tem Wilson directs staff to proceed with the settlement for the 150 Right of Way.

CONSIDERATION AND POSSIBLE ACTION AS MAY BE APPROPRIATE IN REGARDS TO RATIFYING THE PROPOSED AMENDMENTS TO THE CITY OF KYLE AND KYLE POLICE ASSOCIATION MEET AND CONFER AGREEMENT AND DIRECTING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ~ *JAMES EARP, ASSISTANT CITY MANAGER*

Mayor Pro Tem Wilson moves to Ratifying the Proposed Amendments to the City of Kyle and Kyle Police Association Meet and Confer Agreement. Council Member Hervol seconds the motion. All votes aye. Motion carried.

ADJOURN

With no further business to discuss Council Member Hervol moves to adjourn. Council Member Pickett seconds the motion. All votes aye. Motion carried.

The City Council meeting adjourned at 9:27 pm.

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Kyle City Hall

Lucy Johnson, Mayor

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Employee of the Month January

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Recognition of Employee of the Month for the Month of January ~ *Lanny Lambert, City Manager*

- *Raquel Garcia, Grants Administrator*

Other Information:

Budget Information:

N/A

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[Raquel Garcia](#)



Item # 3



CITY OF KYLE, TEXAS

US Conference of Mayors

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Report on the United States Conference of Mayors 80th Winter Meeting including Exhibits, Events, and Sessions held on January 18-20, 2011 in Washington, DC ~
Lucy Johnson, Mayor

Other Information:

Budget Information:

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CITY OF KYLE, TEXAS

Black History Month

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation: Proclamation of the City of Kyle, Texas Proclaiming the Month of February as "Black History Month" in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

Other Information: This item has been placed on the agenda at the request of Councilmember Bryant.

Budget Information: N/A

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[Black History Month Proclamation](#)

CITY OF KYLE



City Council Proclamation

WHEREAS, The City of Kyle takes pride in its African-American heritage, which represents the full spectrum of history from enslaved people of the Antebellum period to the courageous Freedmen who settled in the area; and from the early merchants of Kyle to those who have served in public careers; and

WHEREAS, The City of Kyle encourages the preservation of our African-American history and applauds the efforts of groups such as the Hays County Historical Commission, as well as individuals such as Ollie Giles and Winton Porterfield, in preserving Kyle's African-American Cemetery; and

WHEREAS, The City of Kyle commemorates today the founding of the Sledge Chapel Baptist Church in 1886 by Reverend Dilwortham as the only surviving African American Church in Kyle with a long and significant history; and

WHEREAS, The City of Kyle appreciates the many significant contributions made to the city by civic-minded individuals such as Mattie Broadfoot, the first African-American Councilwoman, James Adkins, the first African-American Mayor, and Esther Hicks, the first African-American Planning and Zoning Commissioner and a dedicated member of the Lions Club; and

WHEREAS, In the words of Reverend Martin Luther King Jr., "Everybody can be great, because everybody can serve." Reverend King traveled over six million miles and spoke over twenty-five hundred times, appearing wherever there was injustice, protest, and a need to take action; and

WHEREAS, The NAACP, the nation's oldest civil rights organization, has changed America's history despite the threat of violence and intimidation. For more than ninety five years, the NAACP built a grass-roots membership and persevered on the collective courage of thousands of people of all races, nationalities and faiths united on one premise—that all men and women are created equal; and

WHEREAS, the 2012 theme for Black History Month is "Black Women in American: Culture and History" and honors African American women and the myriad of roles they played in the shaping of our nation. The theme, chosen by the Association for the Study of African American Life and History urges all Americans to study and reflect on the value of their contribution to the nation; and

NOW, THEREFORE I, Lucy Johnson, Mayor of Kyle, do hereby proclaim that the month of February should be celebrated as

"Black History Month"

in appreciation of the many achievements of Kyle's African-American community and in celebration of the 2012 national theme commemorating "Black Women in American: Culture and History", and commemorating African American women and the many important contributions they have made to our community and our nation.

SIGNED AND ENTERED THIS 7TH DAY OF FEBRUARY, 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

Russ Huebner, Council District 6



CITY OF KYLE, TEXAS

Storm Response Team Appreciation Proclamation

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation:

Proclamation of the City of Kyle, Texas Proclaiming February 7th, 2012 as "City of Kyle, Storm Response Team Appreciation Day" in the City of Kyle, Texas ~ *Lucy Johnson, Mayor*

Other Information:

Budget Information:

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 [Storm Response Team Appreciation Proclamation](#)

CITY OF KYLE



City Council Proclamation

WHEREAS, The City of Kyle experienced an extreme rainfall event on the early morning of Wednesday, January 25th, 2012, delivering over 6 inches of rain to most parts of the city, and;

Attachment number 1 \nPage 1

WHEREAS, The majority of this rain fell over a three-hour period and required city crews to be activated to respond to raising water that could have threatened lives and property of our citizens, and;

WHEREAS, City Crews were called out beginning at approximately 2 a.m. to address roadways that had become impassable due to the heavy rain, and;

WHEREAS, The rapid, focused and highly effect response by the City's Public Works crews, Kyle Police Department and the Kyle Fire Department prevented potential loss of life and property by managing the rising water when possible, and by blocking access to low water crossings before motorist could inadvertently drive into it; and;

WHEREAS, Public Works Crews worked through the early morning hours in extremely adverse conditions to secure the integrity of the City's water and wastewater systems, saving the city thousands of dollars in repairs and keeping Kyle's citizens safe from rising water; and;

WHEREAS, The work of these crews prevented any emergency rescues to occur in the City of Kyle and also allowed the Kyle Police Department and Kyle Fire Department to assist in rescues in other parts of Hays County and the surrounding area; and

WHEREAS, Parks and Recreation crews assisted with removal of storm debris from public streets, rights of ways, drainage areas, and parks to ensure the safety of our citizens and reduce inconveniences caused by the storm to our residents;

NOW, THEREFORE I, Lucy Johnson, Mayor of Kyle, do hereby proclaim *February 7th, 2012* as

“City of Kyle, Storm Response Team Appreciation Day”

in Kyle and call on all residents to thank these City crews, and their families who were without their loved ones during this highly stressful time, for their work and dedication in serving our City.

SIGNED AND ENTERED THIS 7TH DAY OF FEBRUARY, 2012

Lucy Johnson, Mayor

Diane Hervol, Council District 1

David Wilson, Mayor Pro Tem

Becky Selbera, Council District 2

Brad Pickett, Council District 3

Jaime Sanchez, Council District 5

**Russ Huebner, Council District 6
Item # 6**



CITY OF KYLE, TEXAS

Plum Creek Phase 1 Section 11A - Lot 3A

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation: Plum Creek Phase 1 Section 11A - Lot 3A Resubdivision of Lots 3 and 4, Section 11A Replat
5.144 acres; 1 Lot
Location: Lots 3 and 4 of the Plum Creek Phase 1 Section 11A
Applicant: Mountain Plum, Ltd.
Agent: Lawrence Hanrahan, P.E., Hanrahan and Pritchard Engineering, Inc.
~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 to approve the plat.

Other Information: Please see attachments

Budget Information: N/A

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[Plat](#)

[City Council Memo](#)

Cover Memo

Item # 7

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Director of Planning

DATE: January 27, 2012

SUBJECT: Plum Creek Phase 1 Section 11A – Lot 3A
(FP-11-007)

BACKGROUND

Site Information and Proposal

The subject property is approximately 5.144 acres and fronts on both Kyle Parkway and Cromwell Drive. The proposed subdivision combines two lots, previously platted as lots 3 and 4, into one single lot. Lot 3A will be developed into a commercial/retail use consistent with the Mixed Use zoning requirements outlined in the Plum Creek PUD.

Utilities

Water and wastewater services will be provided by the City of Kyle.

Access

Access to the lot will be taken from the west off of Cromwell and from the north at the terminus of Ratcliffe (a private drive that runs perpendicular to Dorman Lane).

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission recommended approval of the plat.

PUBLIC COMMENT

Nobody spoke and no written comments were submitted.

STAFF RECOMMENDATION:

Staff is recommending approval of the request for the following reasons:

- The plat is consistent with all zoning requirements for the property.
- The proposed provision and configuration of roads, water, wastewater, drainage and easements and rights-of-way are adequate to serve the subdivision.

PLUM CREEK PHASE I, SECTION 11A – LOT 3A A RESUBDIVISION OF LOTS 3 & 4, SECTION 11A REPLAT

STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS, THAT WE, PLUM CREEK DEVELOPMENT PARTNERS, LTD., A LIMITED PARTNERSHIP ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF TEXAS, WITH ITS HOME ADDRESS AT 200 CONGRESS AVENUE, SUITE 9A, AUSTIN, TEXAS 78701, BEING THE OWNER OF 5.144 ACRES OF LAND IN THE JESSE DAY SURVEY, A-159, HAYS COUNTY, TEXAS, BEING ALL OF LOTS 3 & 4, PLUM CREEK, PHASE I, SECTION 11A REPLAT, A SUBDIVISION ACCORDING TO THE PLAT OF RECORD IN PLAT CABINET 15, PAGES 80-81, PLAT RECORDS OF HAYS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN 15,740 ACRE TRACT OF LAND OF RECORD IN VOLUME 3543, PAGE 196, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID 5.144 ACRES, AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS THE PLUM CREEK PHASE I, SECTION 11A – LOT 3A, A RESUBDIVISION OF LOTS 3 & 4, SECTION 11A REPLAT SUBDIVISION TO THE CITY OF KYLE, TEXAS, AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL PUBLIC RIGHTS OF WAY, WATER COURSES, DRAINS, EASEMENTS (EXCLUDING LANDSCAPE EASEMENTS), PARKS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED. WHEREOF THE SAID PLUM CREEK DEVELOPMENT PARTNERS, LTD., OWNER, HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, BGI PLUM CREEK DEVELOPERS, LTD., THEREUNTO DULY AUTHORIZED. GENERAL PARTNER HAS CAUSED THESE PRESENTS TO BE EXECUTED BY ITS GENERAL PARTNER, BENCHMARK LAND DEVELOPMENT, INC.

PLUM CREEK DEVELOPMENT PARTNERS, LTD.,
A TEXAS LIMITED PARTNERSHIP

BY: BGI PLUM CREEK DEVELOPERS, LTD.,
A TEXAS LIMITED PARTNERSHIP, GENERAL PARTNER

BY: BENCHMARK LAND DEVELOPMENT, INC.,
A TEXAS CORPORATION, GENERAL PARTNER

BY: _____
DAVID C. MAHN, VICE PRESIDENT

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED, DAVID C. MAHN, VICE PRESIDENT OF BENCHMARK LAND DEVELOPMENT, INC., KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN STATED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS

_____ DAY OF _____, 2011.

NOTARY PUBLIC, STATE OF TEXAS

MY COMMISSION EXPIRES: _____

(PRINTED NAME OF NOTARY)

STATE OF TEXAS §
COUNTY OF HAYS §

KNOW ALL MEN BY THESE PRESENTS:

THAT, LINDA FRITSCH, CLERK OF HAYS COUNTY COURT DOES HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING AND THE CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORDS IN MY

OFFICE ON THE _____ DAY OF _____, 2011, A.D., IN THE PLAT RECORDS OF SAID

COUNTY AND STATE IN PLAT CABINET _____, PAGE(S) _____ WITNESS MY HAND AND SEAL OF OFFICE

OF COUNTY CLERK OF SAID COUNTY ON THIS THE _____ DAY OF _____, 2011, A.D.

FILED FOR RECORD AT _____ O'CLOCK _____M. THIS THE _____ DAY OF _____, 2011, A.D.

BY: _____
LINDA FRITSCH
COUNTY CLERK
HAYS COUNTY, TEXAS

I, THE UNDERSIGNED CHAIRPERSON OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KYLE HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION REGULATIONS OF THE CITY AS TO WHICH THE COMMISSION'S APPROVAL IS REQUIRED.

BY: _____
CHAIRPERSON

THIS PLAT (PLUM CREEK PHASE I, SECTION 11A – LOT 3A, A RESUBDIVISION OF LOTS 3 & 4, SECTION 11A REPLAT) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COMMISSION.

DATED THIS _____ DAY OF _____, 2011.

Attachment number 2 in Page 1 of 2

BY: _____
ATTEST:

SECRETARY

THIS PLAT (PLUM CREEK PHASE I, SECTION 11A – LOT 3A, A RESUBDIVISION OF LOTS 3 & 4, SECTION 11A REPLAT) HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AND IS HEREBY APPROVED BY THE COUNCIL.

DATED THIS _____ DAY OF _____, 2011.

BY: _____
ATTEST:

SECRETARY

STATE OF TEXAS §
COUNTY OF TRAVIS §

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

FOR REVIEW ONLY

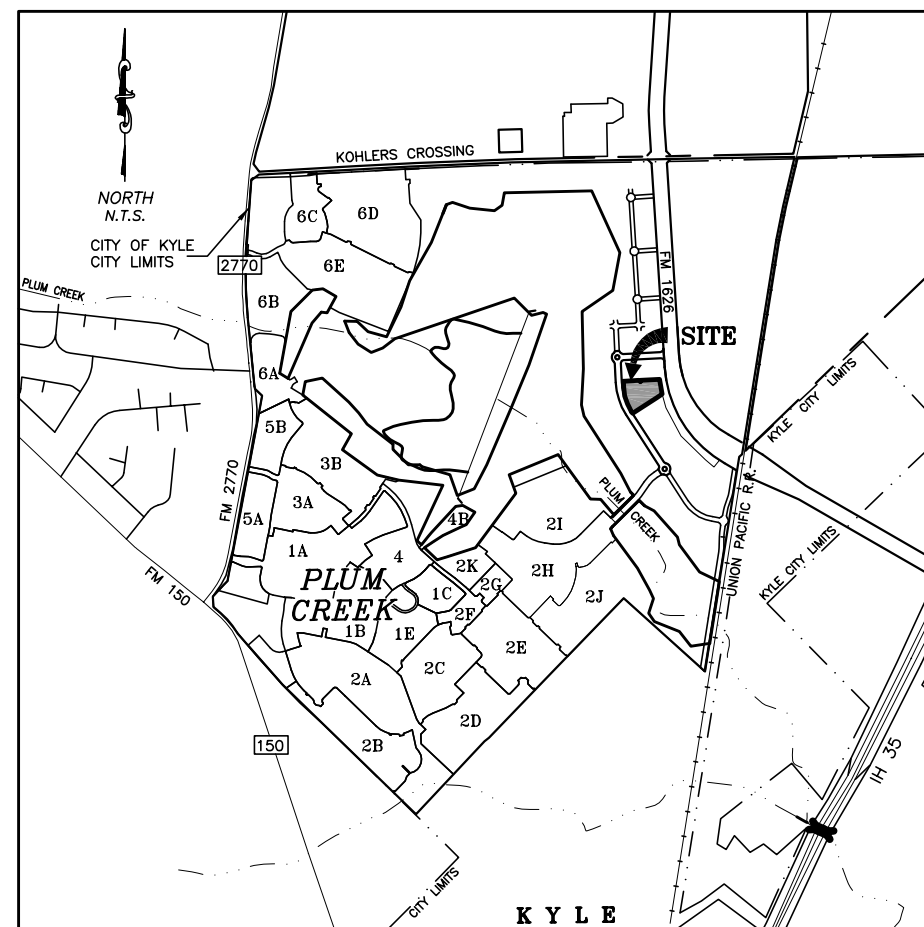
BY: _____
LAWRENCE M. HANRAHAN, P.E.
REGISTERED PROFESSIONAL ENGINEER
NO. 58474 – STATE OF TEXAS
HANRAHAN-PRITCHARD ENGINEERING, INC.
8333 CROSS PARK DRIVE
AUSTIN, TEXAS 78754
512-459-4734

STATE OF TEXAS §
COUNTY OF TRAVIS §

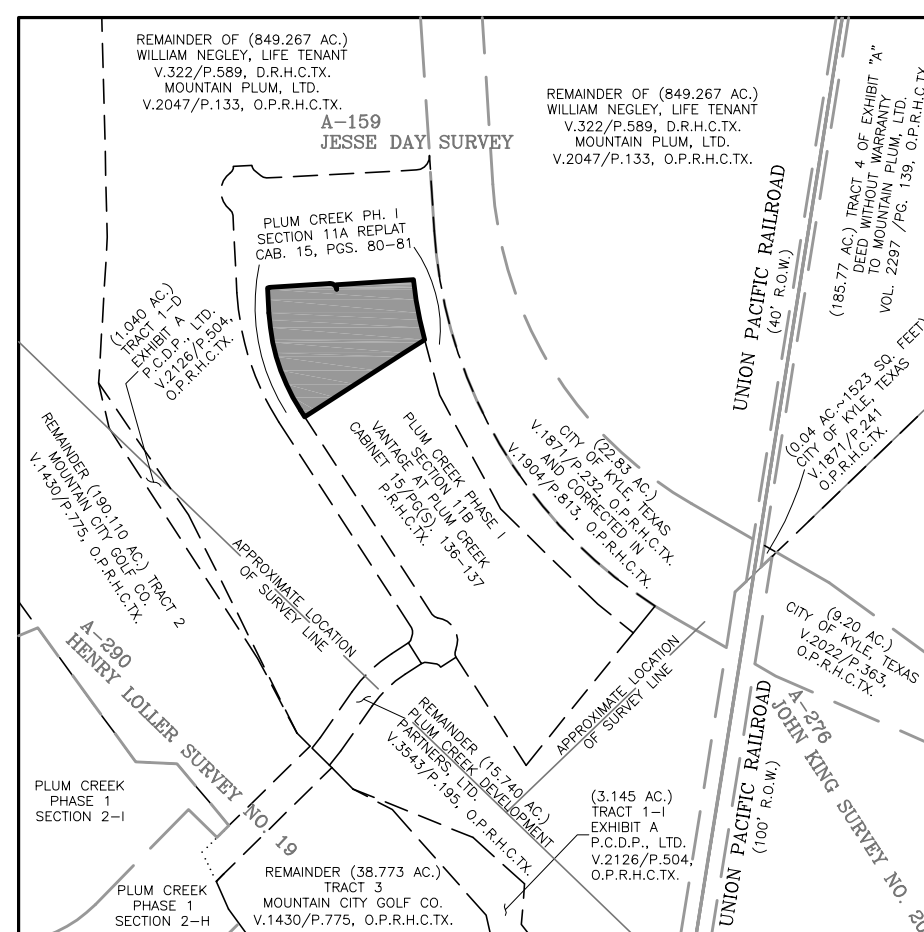
I, JOHN D. BARNARD, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER MY DIRECTION AND SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

FOR REVIEW ONLY

BY: _____
JOHN D. BARNARD
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 5749 – STATE OF TEXAS
LOOMIS PARTNERS
3101 BEE CAVES RD., SUITE 100
AUSTIN, TEXAS 78746
512-327-1180



VICINITY MAP
NTS



SITE MAP
SCALE: 1" = 500'

NOTES:

1. TOTAL ACREAGE: 5.144 ACRES.
2. TOTAL NUMBER OF LOTS: 1
3. PLAT COMPLETELY CONFORMS WITH PLUM CREEK P.U.D. MASTER PLAN & CITY OF KYLE ORDINANCE 308 AND 311.
4. SIDEWALKS SHALL BE INSTALLED ON BOTH SIDES OF ALL STREETS, INCLUDING CROMWELL DRIVE. THOSE SIDEWALKS NOT ABUTTING A RESIDENTIAL OR COMMERCIAL LOT SHALL BE INSTALLED WHEN THE STREETS IN THE SUBDIVISION ARE CONSTRUCTED. WHERE THERE ARE DOUBLE FRONTAGE LOTS, SIDEWALKS ON THE STREET TO WHICH ACCESS IS PROHIBITED ARE ALSO REQUIRED TO BE INSTALLED WHEN THE STREETS IN THE SUBDIVISION ARE CONSTRUCTED.
5. NO OBJECT INCLUDING BUILDING, ACCESSORY BUILDING, FENCING OR LANDSCAPING WHICH WOULD INTERFERE WITH CONVEYANCE OF STORM WATER SHALL BE PLACED OR ERECTED WITHIN DRAINAGE EASEMENTS.
6. OFFSITE WATER AND WASTEWATER LINES MUST BE CONSTRUCTED AND ACCEPTED BY CITY OF KYLE PRIOR TO OCCUPANCY OF ANY BUILDING(S) ON THIS PROPERTY.
7. ALL UTILITIES WITHIN THIS SUBDIVISION SHALL BE UNDERGROUND.
8. ALL OPEN SPACES, PRIVATE RIGHTS OF WAY (RATCLIFFE), DRAINAGE EASEMENTS AND LANDSCAPE EASEMENT AREAS SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION AND IT SHALL BE THE HOMEOWNERS ASSOCIATION'S RESPONSIBILITY FOR KEEPING AREAS NEATLY CUT AND FREE OF DEBRIS AND ALL TREE/BRUSH REGROWTH.
9. LOT 3A REQUIRES APPROVAL OF SITE DEVELOPMENT PLAN FROM THE CITY OF KYLE AND PLUM CREEK DEVELOPMENT PARTNERS, LTD. PRIOR TO BEGINNING ANY CONSTRUCTION ACTIVITY.
10. LOT 3A SHALL NOT HAVE ACCESS TO F.M. 1626.
11. PRIOR TO CONSTRUCTION OF ANY IMPROVEMENTS ON LOT 3A IN THIS SUBDIVISION, SITE DEVELOPMENT AND BUILDING PERMITS WILL BE OBTAINED FROM THE CITY OF KYLE.
12. PARKING WITHIN PRIVATE STREET (RATCLIFFE) RIGHT OF WAY ALONG THE FRONTAGE OF LOT 3A IS PROHIBITED.

FLOOD NOTE:

NO PORTION OF THIS SUBDIVISION (PLUM CREEK PHASE I, SECTION 11A – LOT 3A, A RESUBDIVISION OF LOTS 3 & 4, SECTION 11A REPLAT) IS CONTAINED IN THE 100 YEAR FLOOD ZONE, PER FLOOD INSURANCE RATE MAP FOR HAYS COUNTY TEXAS (CITY OF KYLE: 481108), COMMUNITY-PANEL NUMBER 48209C 0290F, EFFECTIVE DATE: SEPTEMBER 2, 2005.

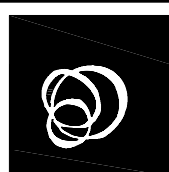
PUBLIC UTILITY INFORMATION:

THIS SUBDIVISION IS SERVICED BY THE FOLLOWING UTILITIES:

WATER: CITY OF KYLE 101 BURLESON KYLE, TEXAS 78640	ELECTRIC: PEDERNALES ELECTRIC COOP 1810 FM 150 WEST KYLE, TEXAS 78640	PHONE: VERIZON 6601 F.M. 3237 WIMBERLEY, TEXAS 78738
WASTEWATER: CITY OF KYLE 101 BURLESON KYLE, TEXAS 78640	GAS: CENTERPOINT ENERGY 326 CHEATHAM STREET SAN MARCOS, TEXAS 78666	

SHEET 1 OF 2

FILE: H:\SURVEY\PLUM_CRK_PH1\SECTION-11A_SEC-11A\ZPLAT\11A-LOT3A_RESUB-LOTS3-4\PLUM-11A_LOT3A_RESUB-LOTS3-4_PLAT.DWG			
DATE: 12-14-2011	DRAWN BY: G.T.	CREW: CAF, MK	
SCALE: N/A	CHECKED BY: J.D.B.	FB #:	
JOB #: 080410	DRAWING #: 11A_LOT3A_RESUB	PLAN #: 1089-B	
NO.	REVISION	BY	DATE



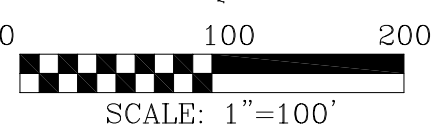
LOOMIS

PARTNERS

■ENGINEERING ■LAND SURVEYING ■ENVIRONMENTAL CONSULTING ■
 3101 Bee Cave Road, Suite 100 ■Austin, Texas 78746
 [TEL] 512.327.1180 ■[FAX] 512.327.4062 ■www.loomis-partners.com
 Item # 7

FINAL PLAT
PLUM CREEK PHASE I,
SECTION 11A – LOT 3A
A RESUBDIVISION OF LOTS 3 & 4,
SECTION 11A REPLAT
HAYS COUNTY, TEXAS

PLUM CREEK PHASE I, SECTION 11A - LOT 3A A RESUBDIVISION OF LOTS 3 & 4, SECTION 11A REPLAT



DECEMBER, 2011
HAYS COUNTY, TEXAS

REMAINDER OF (849.267 AC.)
WILLIAM NEGLEY, LIFE TENANT
V.322/P.589, D.R.H.C.TX.
MOUNTAIN PLUM, LTD.
V.2047/P.133, O.P.R.H.C.TX.

A-159
JESSE DAY SURVEY

CURVE TABLE					
CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	1569.89'	1469.90'	53°38'47"	S 30°29'19" E	1416.79'
C2	1569.89'	66.07'	02°24'41"	S 04°52'16" E	66.07'
C3	1569.89'	240.20'	08°45'59"	S 10°27'36" E	239.96'
C4	1569.89'	1163.63'	42°28'07"	S 36°04'39" E	1137.18'
C5	780.00'	406.33'	29°50'51"	N 17°55'06" W	401.75'
C6	780.00'	222.77'	16°21'50"	N 24°39'36" W	222.02'
C7	780.00'	30.51'	02°14'28"	N 15°21'27" W	30.51'
C8	780.00'	153.05'	11°14'33"	N 08°36'57" W	152.81'
C9	24.50'	9.47'	22°08'38"	N 75°15'45" E	9.41'
C10	24.50'	38.48'	90°00'00"	S 48°39'55" E	34.65'
C11	25.00'	21.58'	49°27'30"	S 57°34'17" E	20.92'
C12	75.00'	138.88'	106°06'01"	S 29°15'12" E	119.87'
C13	25.00'	24.71'	56°38'01"	S 04°31'23" E	23.72'
C14	25.00'	24.71'	56°37'56"	N 61°09'22" W	23.72'
C15	75.00'	21.06'	16°05'27"	N 81°25'37" W	20.99'
C16	25.00'	21.58'	49°27'30"	S 81°53'21" W	20.92'
C17	25.00'	21.58'	49°27'30"	N 32°25'51" E	20.92'
C18	75.00'	11.67'	08°54'53"	N 12°09'32" E	11.66'
C19	25.00'	21.58'	49°27'30"	N 08°06'46" W	20.92'
C20	860.00'	448.01'	29°50'51"	N 17°55'06" W	442.96'
C21	25.00'	21.58'	49°27'30"	N 27°43'25" W	20.92'
C22	75.00'	138.87'	106°05'29"	N 00°35'34" E	119.87'
C23	25.00'	24.71'	56°37'59"	N 25°19'19" E	23.72'
C24	25.00'	24.71'	56°37'59"	S 31°18'39" E	23.72'
C25	75.00'	21.06'	16°05'29"	S 51°34'54" E	20.99'
C26	25.00'	21.58'	49°27'30"	S 68°15'55" E	20.92'
C27	45.00'	71.21'	90°40'18"	N 41°40'11" E	64.01'
C28	45.00'	70.16'	89°19'42"	N 48°19'49" W	63.27'
C29	24.50'	15.80'	36°57'30"	S 14°48'50" W	15.53'
C30	24.50'	15.23'	35°36'59"	N 21°28'25" W	14.99'
C31	25.00'	21.58'	49°27'30"	S 62°16'35" W	20.92'
C32	75.00'	11.67'	08°55'00"	S 42°00'20" W	11.66'
C33	25.00'	21.58'	49°27'30"	S 21°44'05" W	20.92'
C34	1569.89'	76.66'	02°47'52"	S 58°42'39" E	76.65'
C35	465.00'	181.05'	22°18'30"	S 46°00'21" E	179.91'

- BEARING BASIS NOTES:**
- BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.
 - DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS; TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
 - THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999907.

- BENCHMARK LIST: - DATUM - NAVD88**
- LAI BM100801-01:
SQUARE CUT SET ON THE NORTHWEST CORNER OF A CONCRETE HEADWALL, ALONG THE EAST R.O.W. OF F.M. 1626, APPROXIMATELY 350 FEET NORTH OF THE INTERSECTION WITH DORMAN LANE.
LOCATION OF BENCHMARK BEARS N 14°03'30" E, A DISTANCE OF 605 FEET FROM THE NORTHEAST CORNER OF LOT 3A.
ELEVATION = 742.71 FEET
- LAI BM100801-02:
SQUARE CUT SET ON THE NORTHWEST CORNER OF A CONCRETE CULVERT HEADWALL, ALONG THE WEST R.O.W. OF F.M. 1626, AT SOUTH SIDE OF THE INTERSECTION WITH DORMAN LANE.
ELEVATION = 741.70 FEET

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 32°50'31" W	31.88'
L2	N 03°39'55" W	18.50'
L3	S 57°09'41" W	60.00'
L4	N 32°50'24" W	80.00'
L5	S 57°09'36" W	63.81'
L6	N 12°09'30" E	10.61'
L7	S 56°13'13" E	9.36'
L8	N 50°38'25" W	10.26'

- LEGEND**
- 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LOOMIS" SET
 - 1/2" IRON ROD W/ PLASTIC CAP STAMPED "LAI" PREVIOUSLY SET
 - △ CALCULATED POINT
 - BENCHMARK
 - () RECORD INFORMATION
 - B.S.L. BUILDING SETBACK LINE
 - P.U.E. PUBLIC UTILITY EASEMENT
 - L.E. LANDSCAPE EASEMENT
 - D.E. DRAINAGE EASEMENT
 - R.O.W. RIGHT OF WAY
 - D.R.H.C.TX. DEED RECORDS OF HAYS COUNTY, TEXAS
 - P.R.H.C.TX. PLAT RECORDS OF HAYS COUNTY, TEXAS
 - O.P.R.H.C.TX. OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
 - R.P. RADIUS POINT
 - W.W.E. WASTEWATER EASEMENT

SHEET 2 OF 2

FILE: H:\SURVEY\PLUM_CRK_PH1\SECTION-11\SEC-11A\ZPLAT\11A-LOT3A_RESUB-LOTS3-4\PLUM-11A_LOT3A_RESUB-LOTS3-4_PLAT.DWG			
DATE: 12-14-2011	DRAWN BY: G.T.	CREW: CAF, MK	
SCALE: 1"=100'	CHECKED BY: J.D.B.	FB #:	
JOB #: 080410	DRAWING #: 11A_LOT3A_RESUB	PLAN #: 1089-B	
NO.	REVISION	BY	DATE



ENGINEERING ■ LAND SURVEYING ■ ENVIRONMENTAL CONSULTING ■

3101 Bee Cave Road, Suite 100 ■ Austin, Texas 78746

[TEL] 512.327.1180 ■ [FAX] 512.327.4062 ■ www.loomis-partners.com

FINAL PLAT
PLUM CREEK PHASE I,
SECTION 11A - LOT 3A
A RESUBDIVISION OF LOTS 3 & 4,
SECTION 11A REPLAT
HAYS COUNTY, TEXAS

PLAN NO. 1089-B



CITY OF KYLE, TEXAS

Walmart Landscape Variance Request and Conditional Use Permit Postponement

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation: Consider a request by SCC Kyle Partners, LTD. for a 30 day postponement for a request for a landscape variance and conditional use permit at 5754 Kyle Parkway ~
Sofia Nelson, Director of Planning

Other Information: Please see the attached staff report.

Budget Information: N/A

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Variance Request Letter](#)
 - [City Council memo](#)
 - [landscape plan](#)
 - [landscape berm plan](#)
 - [30 day postponement request](#)
 - [City Council Memo - CUP](#)
 - [Color Rendering](#)
 - [Elevations](#)
 - [Postponement Letter 1 25 12](#)
-

January 25, 2012

Hi Sofia,

I'd like to request another 30 day postponement of the Conditional Use Permit and the Landscape Variance City Council Hearing for the Walmart Project.

Please give me a call if you have any questions or concerns.

Thanks,
Rob

Robert J. Smith, P.E.
Doucet & Associates, Inc.
7401 B Highway 71 West, Suite 160
Austin, TX 78735
T: [512.583.2656](tel:512.583.2656) F: [512.583.2601](tel:512.583.2601)
E: rob.smith@doucet-austin.com

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click a file in this PDF Package to view it.**

Item # 8

Doucet & Associates, Inc.
Consulting Engineers

7401 B Highway 71 West
Suite 160 • Austin, TX 78735
p 512.583.2600
f 512.583.2601

CITY OF KYLE

NOV 22 2011

PLANNING DEPARTMENT

November 22, 2011

City of Kyle
Planning Department
100 W. Center Street
Kyle, TX 78640

RE: Walmart #4130-00
Kyle, TX
Conditional Use Permit Submission

To City of Kyle Planning Staff:

Transmitted herewith for review, is the Conditional Use Permit Submission for the above referenced project.

The following materials have been enclosed, per requirements set forth in the Conditional Use Permit Application:

1. Completed Application
2. A computer printout from the Appraisal District listing adjacent property owners.
3. A check made payable to the City of Kyle for \$410.65.
4. The ALTA Survey showing the area proposed for change and RS Zoning for the property and all adjacent properties.
5. The Site Plan (two paper copies and one digital file)
6. Colored Elevation Drawings (two paper copies and one digital file) and the landscape plan.
7. Copy of Deed.

As discussed in the predevelopment meeting, the landscape plan submitted with this application has been prepared to alternatively comply with the City of Kyle code requirement in Section 53-992. All aspects of the landscaping will comply with City of Kyle code except Section 53-992 which requires that "no parking space be more than 50 ft away from the trunk of a tree."



The parking lot has been planned to incorporate 3 large landscape islands running the length of the parking lot ranging in width from 19' to 31' instead of multiple small islands as required by code. These large islands are designed to provide a greater amount of pervious cover than required by code and the trees and landscaping will receive more rainwater resulting in healthier trees and less irrigation and in turn conserve water.

This proposed alternative compliance to the City of Kyle code will promote healthy, sustainable trees and landscaping, water conservation, and grow a mature tree canopy more quickly offering greater aesthetics to the City of Kyle and a reduction in the thermal impact in the parking areas.

Should you have any questions regarding this application or the Landscaping plan, please do not hesitate to contact me.

Sincerely,



Robert J. Smith, P.E.



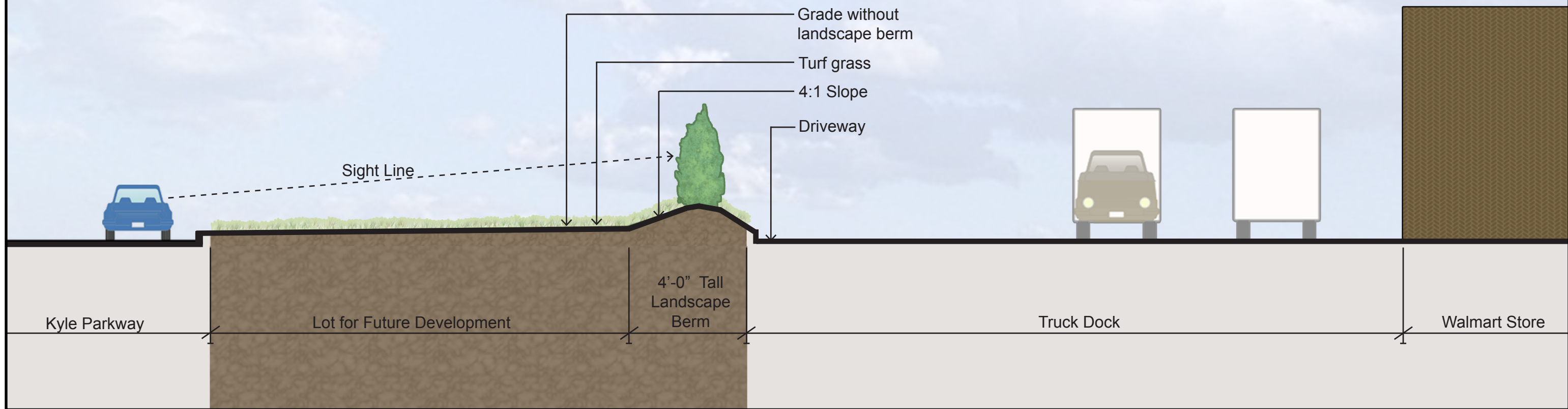
NOTES:

- NATIVE GRASS AND WILDFLOWER AREA TO BE IRRIGATED TEMPORARILY FOR ESTABLISHMENT.
- MAINTAINED TURF AREA TO BE LOW WATER USE SPECIES.

Notes:

Row of Arizona Cypress planted on earth berm as a vertical screen for truck dock.

**Arizona Cypress will be approximately 12' wide and 20' tall in 5-10 years.*



LANDSCAPE SCREEN BERM
WAL-MART KYLE

Item # 8

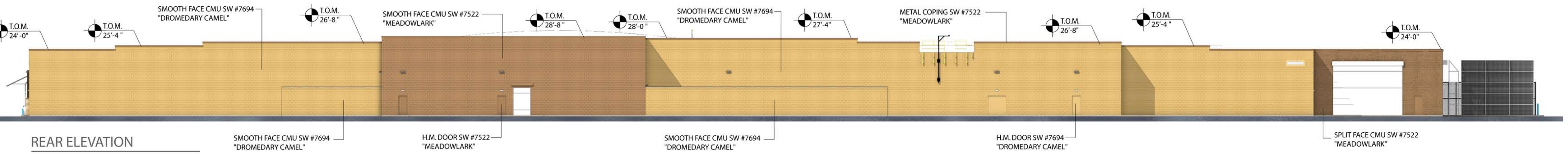
DECEMBER 22, 2011
 KYLE, TEXAS





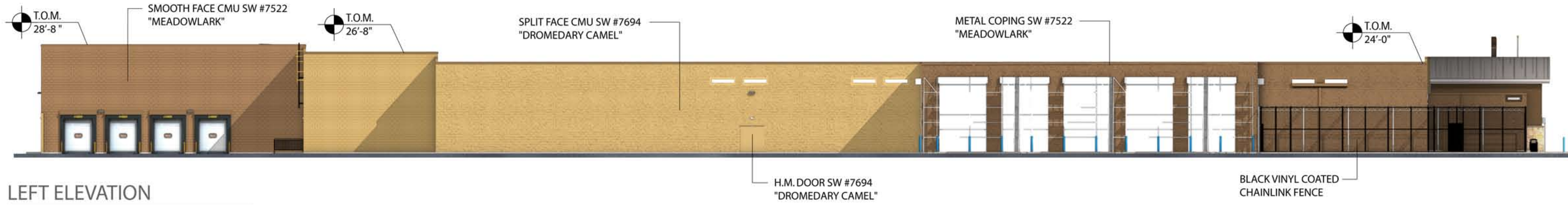


FRONT ELEVATION

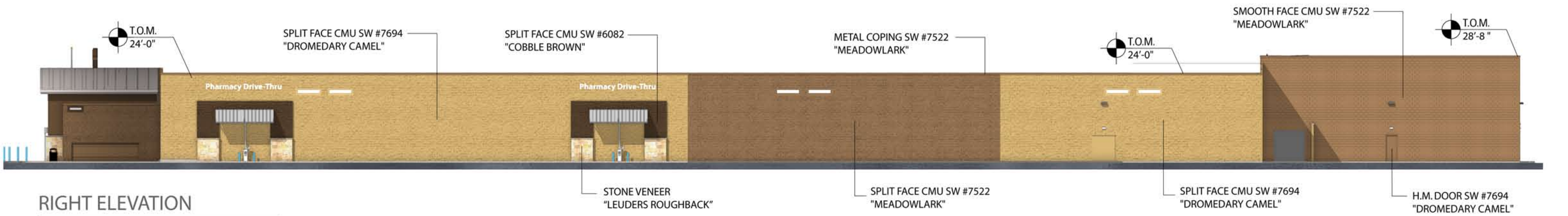


REAR ELEVATION

Attachment number 7 in Page 1 of 1



LEFT ELEVATION



RIGHT ELEVATION

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: December 16, 2011

SUBJECT: **CONDITIONAL USE OVERLAY**
Walmart- Village at Kyle

Background

Request:

The applicant is requesting approval of a Conditional Use permit for the exterior construction of the proposed Walmart within the I-35 Overlay District. The property is zoned Retail Services "RS" and as a result the use of property as a retail store is permitted by right.

Location:

The subject property is located at the intersection of N. IH-35 frontage road and Kyle Parkway, within the Village at Kyle Shopping Center.

Overlay District

The Interstate Highway 35 corridor conditional use overlay district extends from the northernmost city limit boundary at I-35 to the southernmost city limit boundary at I-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of I-35.

a) The purpose of the of the overlay district is to maintain a high character and quality of community development, to promote compatible uses and standards, to preserve and enhance property values, to promote economic growth, to provide for orderly development, to provide for proper movement of traffic, and to secure the general safety of citizens by regulating the exterior architectural characteristics of structures

(b)The conditional use overlay districts will assist the community to recognize and preserve the distinctive architectural character of this community, which has been greatly influenced by the architecture of an earlier period in this community's history. This purpose shall be served by the regulation of exterior design, use of materials, the finish grade line, ingress and egress, and landscaping and orientation of all structures hereinafter altered, constructed, reconstructed, reacted, enlarged, remodeled, removed, or demolished in the conditional use overlay district.

Proposal

The proposed Walmart is approximately 150,898 square feet in size and is proposed to sit on a 17.87 acre lot. The store will face the IH-35 frontage road with the seasonal garden area and truck loading area facing Kyle Parkway. The front of the building has been designed to include neutral colors such as brown and beige and materials such as split face CMU, EFIS, and limestone store veneer. The front of the store will include two entrances to break-up the façade of the building. The façade of the store facing Kyle Parkway is primarily split face CMU with a load area, 5 white metal roll-up doors, and a black fencing around the garden area.

COMPREHENSIVE MASTER PLAN GUIDANCE

The Comprehensive Master Plan identifies the site to be located within the Super Regional Node. The Comprehensive Master characterizes the Super Regional Node as follows:

- Should contain large-scale, institutional, commercial, and retail land uses, with the Seton Medical Center as the key distinguishing feature.
- The aggregation of commercial square footage in this Node should create a significant commercial destination that will be visible to regional travelers along the I-35 corridor.
- The purpose of the Super Regional Node is to capture employment opportunities and create a commercial destination within Kyle.

STAFF RECOMMENDATION

Staff has reviewed the request and is recommending approval of the proposed building renderings.

PLANNING AND ZONING COMMISSION RECOMMENDATION

On December 13th the Planning and Zoning Commission held a public hearing and recommended to the City Council approval of the Conditional Use Permit with a vote of 4-2 (Commissioner Fernandez- absent/ Commissioner DiLeo and Commissioner Kay voted against).

Public Notice

Newspaper notice of the Planning and Zoning Commission public hearing was published on November 23rd and December 14th for the City Council public hearing. No mail notice was required.

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: December 16, 2011

SUBJECT: LANDSCAPE VARIANCE
Walmart- Village at Kyle

Background

Location:

The subject property is located at the intersection of N. IH-35 frontage road and Kyle Parkway, within the Village at Kyle Shopping Center.

Proposal

The proposed Walmart is approximately 150,898 square feet in size and is proposed to sit on a 17.87 acre lot. The applicant is requesting a landscape variance to allow for an alternative landscaping plan that would allow the clustering of the required parking lot trees within 3 large landscape islands (the code states each parking space shall be more no more than 50' from a tree). The proposed landscape islands will run the length of the parking lot and would be approximately 20-25 feet wide. The applicant is **not** requesting a variance to the number of trees to be planted but is requesting a variance to the location of the trees within the parking lot.

STAFF ANALYSIS AND RECOMMENDATION

The City of Kyle Code identifies the purpose of the landscape requirements is to support the orderly, safe, attractive and healthful development of land located within the community, and to promote the general welfare of the community by preserving and enhancing ecological, environmental and aesthetic qualities, through established requirements for the installation and maintenance of landscaping elements and other means of site improvements in developed properties.

STAFF RECOMMENDATION

Staff has reviewed the request and is recommending approval of the request for the following reasons:

- The landscape proposal to cluster the parking lot trees within larger landscaping islands within the parking lot appears to meet the intent of the landscape ordinance to promote an attractive and ecologically sensitive site.

- Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- The request for a variance is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship

PLANNING AND ZONING COMMISSION

On December 13th the Planning and Zoning Commission held a public hearing and recommended to the City Council approval of the Conditional Use Permit with a vote of 4-2 (Commissioner Fernandez- absent/ Commissioner DiLeo and Commissioner Kay voted against).



CITY OF KYLE, TEXAS

Authorize Award & Execution of a Purchase Order to B.S. Cartage, Inc., dba JV Environmental Services for Mulch Sock

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation:

Authorize award and execution of Purchase Order to B.S. Cartage, INC., dba JV ENVIRONMENTAL SERVICES, of Austin, Texas, in an amount not to exceed \$5,070.00 to purchase for 1,000 20" mulch erosion control socks for installation along Plum Creek within Steeplechase Park in fulfillment of Task 6.3 of the Section 319(h) NPS Water Pollution Management Program Grant ~ *Raquel Garcia, Grants Administrator*

Other Information:

Copy of the three bids obtained by the Public Works Department are attached to provide additional details.

Budget Information:

A Fiscal Note is attached.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[Bids Received for Mulch Socks](#)

[Fiscal Note - JV Environmental Svcs for Mulch Socks 2-7-2012](#)



Used this quote for PC

JV Environmental Services
Helping your business GROW!

JV Environmental Svcs. 3600 F.M. 973 North Austin, TX 78725 Tel: 512.927.1977 info@jvdir.com

QUOTE

DATE: _____ EXPIRES ON: _____

City Of Kyle
520 E. Ranch Road 150
Kyle, TX 78640

Project: Unknown
Location: 1700 Lehman Road
Kyle, TX 78640

Phone: (512) 262-3024 ex.4004
Fax: (512) 262-3403

Est. Start: TBA

Dear Mr. Christian,

Thank you for your quote request. Please review the information below and contact us should you have any questions or if we need to refine numbers.

Product / Service		Delivered
12" Mulch Sock	PER LF	\$2.42
QTY= 500 LF	500 LF	\$1,210.00

Product / Service		Delivered
20" Mulch Sock	PER LF	\$5.07
QTY= 500 LF	500 LF	\$2,535.00

** can install for 8.70 per LF*

Product / Service		Delivered
1" x 2" x 24" Wooden Stakes	EA	\$0.30
QTY= 500 PC	300	\$90.00

Product / Service		Delivered
3/8" x 48" Rebar Stakes	EA	\$1.40
QTY= 500 PC	300	\$420.00

Terms & Conditions

Please take note that proofing of this quote is your responsibility; while we take every precaution to check for mistakes, there are some things that can be overlooked or information that can be confused. Due to job details that only the contractors, engineers or architects may be aware of J.V. Environmental Services will not be responsible, after the return of quotes with your signature, for any errors, emissions, etc., overlooked by the customer. In many cases our products can be returned- however if you order a special mix or product that we do not carry on site then the customer will be responsible for the purchase of that product. If an incorrect product is delivered due to customer error, then the customer will be responsible for all delivery fees.

This is your chance to catch any errors in the event that we did not. Please make sure to carefully check your materials, labor/install fees (if requested), measurements and your order to make sure we have the correct size, materials and quantities. We appreciate your business and in order to keep your costs down and to insure that you receive your products on time we ask that you carefully read your quote, initial it and return it as soon as possible. We must have the quote initiated prior to filling your order. Please call (512) 927-1977 or email info@jvdir.com with any questions or concerns.

Thank you for the opportunity to earn your business. If you wish to discuss the items in this quote please call us directly.

Quotes are subject to the terms and conditions listed above. Quotes MUST be signed and returned prior to the commencement of the project.

Quotes are to be signed and returned via fax or email to:
Email: info@jvdir.com or Fax: (512) 927-1014

BY: _____ (Signature) _____ (Date)

(Print Name)

(Title)

Item # 9



C-3 Environmental Specialties, LP
 132 Nell Deane Blvd
 Schertz, Texas 78154

**SBE/HUB/DBE/MBE
 CERTIFIED**

Proposal

Proposal Date: 11/18/2011

Proposal #: 183

Project:

Location: Kyle

210-653-7801 (phone)
 210-650-3306 (fax)
 nathan@c3environmental.com

Plans: Qntys

Item # 9

Qty	UOM	Description	Rate	Total
500.00	EA	Delivery	250.00	250.00
	LF	12" Mulch Erosion Control Logs	6.75	3,375.00
		OR		
500.00	LF	20" Mulch Erosion Control Logs	9.75	4,875.00
500.00	EA	2' #4 Re-bar	0.98	490.00
		Notes: Cost of material only. A two week lead time will be needed to order this material. sales tax	8.25%	0.00

Total \$8,990.00

- Quantities are subject to change based on field measurements
- Location of underground utilities shall be identified to C-3 prior to installation
- Payment terms: Net 30
- Pricing held for 45 days from date of proposal
- General contractor or owner will supply water and meter
- Terms and conditions of this agreement are subject to AIA standards and should be included if converted to a contract
- Prices for all items listed above are for Install only and excludes maintenance, watering, clearing and removal
- Background check fees are not apart of bid and will be additional if required once awarded.
- Rock trenching ADD \$850.00 a day and safety caps ADD .30 LF

Thank you for the opportunity to quote.

Respectfully submitted,

Nathaniel Urias

ACCEPTANCE SIGNATURE _____

COMPANY NAME _____

DATE _____

11/18/11

City of Kyle Mail - mulch filled wattles quote from WhiteCap



Warren Christian <wchristian@cityofkyle.com>

mulch filled wattles quote from WhiteCap

1 message

Dewitt, James [HDS - WC] <JimDeWitt2@whitecap.net>
To: wchristian@cityofkyle.com
Cc: "McMahan, Cole B [HDS]" <ColeMcMahan@whitecap.net>

Fri, Nov 18, 2011 at 1:29 PM

Warren,

Thanks for the opportunity to quote you on the following products.

500' - 12" x 25' Mulch filled wattles @ \$5.65/ft (allow up to 2 weeks for delivery)
or
500' - 18" x 25' Mulch filled wattles @ \$7.99/ft (allow up to 2 weeks for delivery)

CHEAPER OPTION

12" x 10' Aspen filled wattles @ \$21.35ea (allow 1-2 days for delivery)
20" x 10' Aspen filled wattles @ \$37.35ea (allow 1-2 days for delivery)

#4 x 24" rebar @ \$0.786ea

Thanks

JIM DEWITT
ACCOUNT MANAGER
HD SUPPLY/WHITECAP
AUSTIN, TEXAS STORE # 713
MOBILE PH: 512-845-6400
E-FAX: 877-844-4953
E-MAIL: jamesdewitt@whitecap.net

6820

Item # 9

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 7, 2012
 CONTACT CITY DEPARTMENT: Public Works
 CONTACT CITY STAFF: Harper Wilder, Director

SUBJECT: Authorize award and execution of a Purchase Order to B.S. CARTAGE, INC., DBA JV ENVIRONMENTAL SERVICES of Austin, Texas in an amount not to exceed \$5,070.00 to purchase 1,000 20" mulch erosion control socks for the Spring Branch Retrofit Project.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to B.S. Cartage, Inc., dba JV Environmental Services will require expenditure of funds from the TCEQ Grant managed by the Public Works Department.

1. City Department::	Public Works
2. Project Name:	Spring Branch Retrofit Project
3. Budget/Accounting Code(s):	410-710-53146
4. Funding Source:	Grant Funds
5. Current Appropriation:	\$ 5,100.00
6. Unencumbered Balance:	\$ 5,100.00
7. Amount of This Action:	<u>\$(5,070.00)</u>
8. Remaining Balance:	<u>\$ 30.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this purchase in the amount of \$5,070.00 is provided from the TCEQ grant award managed by the Public Works Department.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A



CITY OF KYLE, TEXAS

EMS Contract

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Approval and Authorization of the City Manager to Execute a contract for EMS Services between City of Kyle and San Marcos Hays County EMS, per the 2011 Bid for EMS Services; Providing for the continuation of EMS services through 2014 with the following monthly payments of: Twenty Two Thousand Eight Hundred Twenty Three Dollars and Eighty Three Cents (\$22,823.83) per month for Emergency Services provided to the City's residents pursuant to this Agreement from January 2012 to September 2012, Twenty Six Thousand Five Hundred Five Dollars and Thirty Three cents (\$26,505.33) October 2012 to September 2013, and Twenty Thousand Nine Hundred Ten Dollars and Seventeen Cents (\$20,910.17) October 2013 to September 2014 ~ *James Earp, Assistant City Manager*

Other Information:

Budget Information:

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[DOCS1-214774-v1-Kyle EMS Agreement](#)

[Fiscal Note - Contract with San Marcos EMS](#)

**CITY OF KYLE
100 W CENTER ST
P. O. BOX 40
KYLE, TX 78640-0040**

EMERGENCY SERVICE AGREEMENT

RECITALS

1. WHEREAS, the City of Kyle (“the City”), is a Texas municipal corporation seeking to contract for emergency medical service to the incorporated areas and areas comprising the ETJ of the City.
2. WHEREAS, the SAN MARCOS-HAYS COUNTY EMS, INC. (“ SMHC EMS ”), is a non-profit corporation, organized under the laws of the State of Texas, is authorized to do business in Texas, and exists for the purposes of providing emergency medical care and ambulance service.

THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

**I.
PURPOSE OF THE AGREEMENT**

The purpose of this Agreement (“Agreement”) is to state the terms and conditions under which SMHC EMS will furnish emergency medical care and ambulance services to the City in the region determined by the map or plat at Exhibit “A”, attached hereto and incorporated by reference into this Agreement, and as may become reasonable and necessary under Section III of this Agreement. It is understood by the parties hereto that SMHC EMS may have entered into certain reciprocal contracts with other Central Texas emergency medical service organizations and providers to provide mutual assistance outside of their respective boundaries under certain extraordinary conditions. Nothing herein shall abrogate the terms of those contracts.

**II.
SERVICES PROVIDED**

SMHC EMS shall furnish to the City emergency medical care and ambulance services as follows and pursuant to the terms and conditions set forth below:

- A. To provide emergency medical care services (hereinafter referred to as “services”) to persons located within the boundaries of the City as depicted on the map attached hereto as Exhibit “A”.
- B. To provide such services continuously, twenty four (24) hours per day, seven (7) days per week, fifty-two (52) weeks per year.

- C. To provide personnel trained and certified by the Texas Department of State Health Services(DSHS), in accordance with State law and DSHS regulations as they exist or as they may be amended, to perform the services required under this Agreement. SMHC EMS shall make available to the City on reasonable request documentation reflecting that all personnel providing medical care services possess current licenses and/or certifications with DSHS for the provision of emergency medical services.
- D. SMHC EMS, in performing the services under this Agreement, shall provide all equipment, supplies and vehicles necessary to provide for such services. Two ambulances licensed at the MICU level by DSHS will be stationed within the City.. At a minimum, such services shall consist of at least two fully-staffed and equipped vehicles and crews ready for deployment at all times during the term of this Agreement, and SMHC EMS agrees to retain such personnel and alternate vehicles sufficient to comply with this obligation. SMHC EMS shall provide or arrange for reasonable housing for the ambulances and/or ambulance personnel while such personnel are on duty. SMHC EMS shall notify the City of the locations where EMS equipment and/or personnel are stationed. The City and SMHC EMS agree that SMHC EMS shall station a crew at the City of Kyle Fire/EMS building located at 150 Bunton Lane and a crew in the Miller-Whitaker Fire Station locted at 105 Moore Avenue. In connection with SMHC EMS's use of the City's facility, SMHC EMS agrees to procure liability and property and casualty insurance in amounts reasonably necessary to cover any losses arising from SMHC EMS's use of said facility, including all equipment located at said facility belonging to SMHC EMS.
- E. SMHC EMS shall provide, in the performance of services: (1) Licensed and/or certified drivers trained in emergency vehicle operation, (2) communications personnel capable of performing the operations required to fulfill the purpose of this Agreement, and (3) necessary communications equipment not provided by the City. SMHC EMS shall provide such other equipment as is necessary to operate and provide emergency medical services to the City's's residents utilizing at least two fully staffed and equipped vehicles, including medical supplies, staff facilities, uniforms, and such other related materials and equipment. The City shall provide for SMHC EMS's use, the Fire/EMS station located at 150 Bunton Lane during the term of this Agreement.
- F. SMHC EMS agrees to perform or have performed adequate periodic maintenance and/or repairs to vehicles and equipment used in rendering the services provided under this Agreement to insure safe and proper operation of said vehicles and equipment. Such periodic maintenance shall be documented by the person(s) performing the maintenance, which shall include preventative maintenance as is reasonable and/or as suggested by the manufacturer of such vehicles and equipment.
- G. SMHC EMS will have the sole responsibility of paying the salaries and all other expenses relating to each of its employees, including insurance coverage as specified in Section XII of this Agreement. SMHC EMS shall be solely responsible for deducting and withholding such amounts from its employees' paychecks as is necessary to comply with

all state and federal laws and regulations. The parties agree that in no event shall the City be responsible for any fines; penalties or other money claims or damages resulting from SMHC EMS's employment practices. SMHC EMS shall also provide Workers' Compensation insurance coverage for its employees meeting the statutory limits prescribed by the laws of the State of Texas or such other suitable equivalent coverage that is acceptable to the City and satisfies any applicable rules of the applicable regulatory agencies having jurisdiction over such matters. SMHC EMS shall not discriminate in its hiring practices, and shall comply with all applicable provisions of federal, state and local laws and regulations that prohibit discrimination.

- H. SMHC EMS shall provide such community education to the residents of the City as is reasonable to advise such residents of the emergency services and other health services provided by SMHC EMS. Such community education shall be provided under the direction and control of SMHC EMS's personnel.
- I. SMHC EMS shall not contract with other entities to provide emergency services to areas outside the City in a manner that diminishes the level of EMS services to the City's residents. The City understands and agrees that SMHC EMS will be providing EMS services to other areas outside the City and the City will not object to such services so long as such services do not compromise or detrimentally affect the quality of the emergency medical services provided to the City's residents.

III. COOPERATION WITH OTHER PROVIDERS

SMHC EMS agrees that it shall provide mutual assistance, as that term is ordinarily defined in emergency medical services trade practice, to adjoining EMS systems, as reasonable and necessary. Any such agreements shall be in written form and shall state the respective parties' obligations, rights, duties and liabilities. SMHC EMS shall make available to the City all mutual aid/mutual assistance agreements with third parties to the City for its review and inspection upon reasonable advance notice. SMHC EMS shall advise the City in writing should it enter into additional mutual aid/mutual assistance agreements subsequent to the commencement date of this Agreement. Any standby and/or special events coverage provided by SMHC EMS and requested by third parties shall be paid for by the third-party requestor and not from funds provided by the City.

IV. EMPLOYEES OF SMHC EMS

It is agreed and understood by the parties hereto that any services performed by SMHC EMS shall be performed under the terms of this Agreement and for such purposes SMHC EMS is and shall be an independent contractor. For purposes of this Agreement, all personnel utilized by SMHC EMS in performing the services set forth in this Agreement will be considered to be employees of SMHC EMS and will at all times be subject to the direct and

sole supervision and control of SMHC EMS. Under no circumstance shall either party to this Agreement be deemed an employee of the other, nor shall either party act as an agent for the other party. Any and all joint venture or partnership status is hereby expressly denied and the parties expressly state that they have not formed either expressly or implied a joint venture or partnership, it being understood this Agreement constitutes an arms-length contractual relationship between the parties, and nothing more. SMHC EMS shall be solely and completely responsible for the provision of emergency medical services to the City's residents and shall exercise its sole discretion in the selection and manner of employment of all persons providing emergency medical services, (including SMHC EMS's Medical Director) pursuant to this Agreement. Current employees and officers of the City shall not be eligible to serve as officers or employees of SMHC EMS.

V.
**COMPLIANCE WITH ALL APPLICABLE
STATUTES, ORDINANCES AND REGULATIONS**

SMHC EMS hereby represents and warrants that at all times during the term of this Agreement (including any renewal terms) it will remain in compliance with the applicable provisions of Chapter 773, Texas Health and Safety Code as amended or as may be amended in the future, and all such other state and federal laws, codes, regulations, rules and ordinances that may be applicable to the services contemplated herein. Should SMHC EMS be notified and/or determine that it is in violation of any such statutory provision, regulation, rule or ordinance by an official agency or political subdivision having jurisdiction over such matters, SMHC EMS shall advise the City of such alleged violation and thereafter SMHC EMS shall immediately take such actions necessary to correct or cure such alleged violation(s). In no event shall such violation continue for a period exceeding thirty (30) days. SMHC EMS agrees that it shall be solely responsible for monitoring compliance with state and federal laws, rules and regulations pertaining to the delivery of emergency medical services. SMHC EMS shall report to the City any remedial measures undertaken to cure any such violations of law. Should SMHC EMS be unable or refuse to take action necessary to comply with any provision of any applicable state or federal law, rule or regulation, or to cure any alleged violation within thirty (30) days of notice, then in such event the City, at its sole option, may terminate this Agreement effective on the date the City gives written notice to SMHC EMS of such termination. SMHC EMS further represents that it is duly organized and validly existing in good standing under the laws of the State of Texas, is duly authorized and licensed and/or certified by the Texas Department of State Health Services to provide emergency services, and has the power and authority to transact the business and perform the services contemplated by this Agreement within the territory comprising the City.

VI.
TERM

The term of this Agreement shall commence on January 31, 2012, and shall continue in full force and effect through **September 30, 2014**, such date being the end of EMS's current fiscal year. The Agreement shall be renewed and extended by the City at its sole option for an additional period of one (1) year unless earlier terminated by written notice from either party in accordance

with the terms of this Agreement or by the failure of the City to budget and make available appropriations sufficient to fund its obligations as referenced herein. Notwithstanding the foregoing, in the absence of such termination, and if the parties fail to enter a renewal of this Agreement or a new Agreement on or before September 30, 2014, the parties hereby agree that this Agreement will continue on a month-to-month basis at a cost of \$20,910.17 (so long as the City has made available sufficient appropriations therefore) to avoid a lapse of emergency service in the City, until such time as the parties either renew or terminate this Agreement. During any month-to-month continuation of this Agreement following the expiration of the term, the parties shall honor and abide by the provisions and conditions of this Agreement.

VII. TERMINATION OF AGREEMENT

- A. Except as provided in section V., during the term of this Agreement including any renewal terms either party to this Agreement shall be entitled to terminate this Agreement with or without cause by giving the non-terminating party ninety (90) days written notice of its intention to do so. In such an event, the obligations of the parties pursuant to terms of this Agreement shall terminate on the 90th day after the non-terminating party receives such written notice. Should the term of this Agreement be extended on a month-to-month basis following the expiration of any annual term as contemplated in section VI above, either party to this Agreement shall be entitled to terminate this Agreement upon thirty (30) days written notice during such month-to-month extension.

- B. If this Agreement is terminated by the City, or SMHC EMS terminates its services or dissolves or otherwise ceases to provide EMS services, SMHC EMS agrees at least fifteen (15) days prior to such termination to prepare and deliver to the City an itemized inventory of equipment and facilities, belonging to the City. Furthermore, SMHC EMS shall provide reasonable cooperation to representatives of the City and/or to third-party emergency services vendors who have contracted with the City to take over the provision of emergency services to residents of the City. It is the intention of the City and SMHC EMS that they will collectively work to assure continuous delivery of emergency services during any transition period prior to the termination of this Agreement.

- C. In the event SMHC EMS terminates the provision of emergency services or dissolves as a business entity, SMHC EMS shall provide the City with a financial accounting of SMHC EMS's financial condition, including income statement and balance sheet, accounts payable and receivable, so as to fairly reflect its financial condition on the date of termination.

VIII. EMS RATES

During the term of this Agreement and any renewal term(s) SMHC EMS shall charge rates for EMS services to residents of the City according to a rate schedule established by SMHC EMS.

Such rates shall not be greater than One Hundred Fifty Percent (150%) of the average of the rates charged by other EMS providers in Hays County and the Counties adjacent thereto for like or similar services.

IX. COMPENSATION

- A. For the services, herein, agreed be performed by SMHC EMS during each month during the initial term of this Agreement, the City shall pay SMHC EMS the sum of Twenty Two Thousand Eight Hundred Twenty Three Dollars and Eighty Three Cents (\$ 22,823.83) per month for emergency services provided to the City's residents pursuant to this Agreement from **January 2012 to September 2012, Twenty Six Thousand Five Hundred Five Dollars and Thirty Three cents (\$26,505.33) October 2012 to September 2013, and Twenty Thousand Nine Hundred Ten Dollars and Seventeen Cents (\$20,910.17) October 2013 to September 2014.** The monthly payment shall represent the City's sole financial obligation to SMHC EMS in exchange for services, unless the City's governing body votes to approve additional compensation to SMHC EMS.
- B. Said disbursements shall be made by the City after SMHC EMS provides the City with a monthly invoice and reports outlining calls and billing to the service area.
- C. The City shall be obligated to pay such funds to SMHC EMS from budgeted and available revenues during the then current fiscal year; it being intended that nothing in this Agreement shall be construed to constitute an illegal debt of the City.
- D. The City, at its sole discretion, may make monthly payments to SMHC EMS for more than the designated amount per month from budgeted and available revenues, should the governing board of the City determine that exigent circumstances exist which warrant the payment of additional sums for the services rendered by SMHC EMS.

X. BUDGET

- A. On or before May 31st of the year next following the commencement date of this Agreement, SMHC EMS shall submit an annual budget to the City for its consideration. SMHC EMS shall develop an official budget to provide for reasonable and necessary EMS services within the boundaries shown by Exhibit "A", specifically excluding any expenditures proposed pursuant to any reciprocal contracts with other EMS agencies mentioned in Section I above. Such budget shall also set itemized anticipated revenues and expenditures from all sources. The City, in reviewing such annual proposed budget, shall determine whether the proposed annual expenditures are reasonable and necessary expenditures for the performance of services warranting a renewal of this Agreement, and shall communicate any concerns regarding such budget to SMHC EMS in writing.

XI. REPORTS

- A. SMHC EMS shall submit to the City a monthly report showing its financial condition and the monthly expenditures for the preceding month. The financial report shall be certified by SMHC EMS's chief financial officer and shall affirm all expenditures were made in compliance with the annual budget.
- B. SMHC EMS shall also submit to the City a monthly report on activities of SMHC EMS showing the nature of emergency services provided by SMHC EMS during the preceding month in furtherance of this Agreement. Such reports shall, as a minimum contain the following information:
1. Number of calls per ambulance unit
 2. Number of patient transports
 3. Number of patient contacts without transport
 4. Response times
 5. Minutes from all meetings of SMHC EMS's Board of Directors (Official following approval
 6. Copies of any amendments to SMHC EMS's Articles of Incorporation, amendments to its By-Laws (or enabling legislation for public proposers) and amendments to all policies regarding the provision of emergency services.

SMHC EMS shall keep current and shall make available to the City for its inspection upon reasonable advance notice, its organizational documents including, if applicable, its Articles of Incorporation, bylaws, policies and procedures, corporate minutes and financial books and records. Nothing herein, however, shall require SMHC EMS to produce confidential medical records or other records protected from disclosure by law.

- C. SMHC EMS agrees to provide the City an audit prepared by a Certified Public Accountant, the City of San Marcos and/or Hays County showing the financial position of SMHC EMS for every fiscal year in which this Agreement is in effect, including all renewals. The Audit shall be presented to the City within sixty (60) days following receipt and approval by SMHC EMS's Board, but in no event later than three months following receipt by SMHC EMS's Board whether approved or not.

XII. INDEMNITY

The City shall not be liable or responsible for and shall be saved and TO THE EXTENT ALLOWED BY LAW, held harmless by SMHC EMS and SMHC EMS agrees to indemnify the City, its boardmembers, officers, agents and employees, whether sued in their official or individual capacities, from and against any and all claims, losses, damages, causes of action, suits, and liabilities of every kind, including all expenses of litigation, court costs and

attorneys fees, for injury to or death of any person, or for damages to any property, arising out of or in connection with the services performed under this Agreement. Such indemnity shall apply where the claims, losses, damages, causes of action arise in whole or in part from the negligence, intentional acts or willful and wanton acts of SMHC EMS or its board members, employees, agents, and representatives. This indemnity shall survive and extend beyond the termination of this Agreement.

XIII. INSURANCE

- A. SMHC EMS shall purchase Workers' Compensation insurance with benefits afforded under the laws of the state per Article II Section G and a general liability insurance policy that names SMHC EMS as named insured, so as to provide SMHC EMS and its board members and employees with general liability insurance coverage against claims and damages for injury or death of any person or persons and for damage to or loss of property arising out of or attributable directly or indirectly to the operations or performance of emergency services pursuant to this Agreement. Said insurance coverage shall be in the minimum amount of Two Million Dollars (\$2,000,000.00), issued by an insurance company authorized to do business in Texas, and shall include a clause in such policy to the effect that the policy shall not be cancelled or reduced, restricted or limited until at least ten (10) days after the City and each named insured under the policy has received written notice thereof. SMHC EMS shall provide the City with notice of any changes, reductions and or cancellations of such coverage within ten (10) days of its receipt of any notices from its insurers. SMHC EMS shall not cause said insurance to be cancelled nor permit said insurance to lapse during the term or any extended term or renewal of this Agreement. If SMHC EMS fails to maintain the aforementioned insurance, or fails to secure and maintain the required endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of SMHS EMS to maintain said insurance.
- B. In addition to the above referenced general liability policy, SMHC EMS shall purchase a policy covering vehicular liability and collision for all ambulances operated by SMHC EMS, to perform services under this Agreement, a policy providing property casualty coverage of accidental injury to volunteers of SMHC EMS, and a policy covering errors and omissions and excess errors and omissions committed by the employees, officers, agents or lawful volunteers of SMHC EMS. All such policies may be purchased separately or in combination at the discretion of SMHC EMS. All future policies shall be comparable in coverage and monetary limits to the coverage in effect at the time this Agreement takes effect.
- C. SMHC EMS shall furnish the City with copies of all policies of insurance secured in compliance with this Article XII.

XIV.
Dispute Resolution Process

- A. Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following procedures (“Dispute Resolution Process”).
- B. The aggrieved party shall notify the responding party of the dispute, by way of a meeting or a writing which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding party shall attend said meeting or respond to the writing as soon as is practicable but in no event later than five (5) business days.
- C. After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution of the problem(s), the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to affect an agreed resolution of the disputed issue(s).
- D. If the Parties reach an accord at any stage of the meeting, they shall reduce their agreement to a writing, which, with the approval of their respective governing boards, shall constitute an amendment to this Agreement with respect to the subject matter of the dispute. The terms and conditions of such amendment shall not supersede the terms and conditions of this Agreement with respect to any matters other than the subject matter submitted to the Dispute Resolution Process.
- E. If the Parties are unable to reach a resolution of the dispute within a reasonable time following the meeting contemplated by section C above, either party may pursue such legal and equitable remedies as are available to them under Texas law.

XV.
MISCELLANEOUS

- A. **ASSIGNMENT.** This Agreement may not be assigned by any party unless the non-assigning party consents in writing to such assignment.
- B. **PARTIES BOUND.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in office, administrators, legal representatives, and assigns where permitted by this Agreement.
- C. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceable shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- D. **ENFORCEABILITY.** Neither the execution and delivery of this Agreement, nor the consummation of any of the services and transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene or materially conflict with any provisions of law, statute or regulation to which SMHC EMS is subject to or any judgment, license order or permit applicable to SMHC EMS, or any indenture, loan agreement, mortgage, deed of trust, or other agreement or instrument to which SMHC EMS is a part or by which SMHC EMS may be bound.
- E. **FULL DISCLOSURE.** There is not material fact that SMHC EMS has not disclosed to the City which could have a material adverse effect on SMHC EMS's ability to perform its obligations and duties under this Agreement.
- F. **COSTS OF ENFORCEMENT.** If either the City or SMHC EMS institutes any proceeding against the other to enforce its rights pursuant to this Agreement, the reasonable costs incurred by the prevailing party, including, but not limited to, reasonable attorney's fees, expenses, consultant and expert fees, or other costs incurred shall be paid by the non-prevailing party. The extent to which attorneys' fees and/or costs are "reasonable" shall be determined by the Court or adjudicating body.
- G. **NOTICE OF LITIGATION.** Each party shall notify the other within five (5) business days of either party first becoming aware of the filing of any litigation by or against such party or of any threatened or pending litigation, claim or other material adversarial action involving such party, which in any way, directly or indirectly, arises under or relates to this Agreement or the performance of either party's obligations hereunder. For purposes of this section, litigation shall mean a legal action brought before a court of competent jurisdiction and/or any administrative agency or regulatory authority with jurisdiction over the parties or the services to be provided hereunder.
- H. **ENTIRETY.** This Agreement, together with the Attachments appended hereto, constitute the entire agreement between the parties and supersede all prior agreements and understandings, if any, relating to the subject matter of this Agreement. This Agreement may be amended or supplemented only by an instrument in writing, approved by the parties' respective governing boards and signed by an authorized representative.
- I. **NOTICES.** Any and all notices and demands by any party hereto to the other party, required or desired to be given hereunder, shall be in writing and shall be validly given or made if delivered personally to an authorized representative of the other party, or if sent by overnight delivery service or certified U.S. Mail, return receipt requested.
- J. **No Third Party Beneficiary.** The Parties are entering into this Agreement solely for the benefit of their own corporate entities and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto.

- K. **LIMITATIONS OF LIABILITY.** Nothing in this Agreement adds to or changes the liability limits and immunities available to governmental entities provided by the Texas Tort Claims Act or other applicable law.
- L. **Incorporation of Provisions Required by Law.** Each provision and clause required by law to be inserted into this Agreement shall be deemed to be included herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, the Agreement shall be mutually amended to make such proper insertion, on application by either Party

**XVI.
VENUE AND CHOICE OF LAW**

The obligations and undertakings of each of the parties to this Agreement shall be performable in Hays County, Texas, and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

**XVII.
ENTIRETY OF AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement is of no force or effect. Any representations or modifications concerning this Agreement shall be of no force or effect unless they are set forth in writing, approved by the parties' respective governing boards and signed by the parties' authorized representatives.

This Agreement shall be effective on January 31, 2012, regardless of when executed by the persons signing below.

San Marcos-Hays County EMS, Inc.

By: _____
Commissioner Debbie Ingalsbe
President, Board of Directors

Date: _____

CITY OF KYLE, TEXAS

By: _____
Lucy Johnson
Mayor, City of Kyle

Date: _____

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION:	February 7, 2012
CONTACT CITY DEPARTMENT:	Office of the City Manager
CONTACT CITY STAFF:	James R. Earp, CPM Assistant City Manager

SUBJECT: Approval and authorization of the City Manager to execute a contract for EMS Services between City of Kyle and San Marcos Hays County EMS, per the 2011 bid for EMS services; providing for the continuation of EMS services through 2014 with the following monthly payments of: Twenty Two Thousand Eight Hundred Twenty Three Dollars and Eighty Three Cents (\$ 22,823.83) per month for emergency services provided to the City's residents pursuant to this Agreement from January 2012 to September 2012, Twenty Six Thousand Five Hundred Five Dollars and Thirty Three cents (\$26,505.33) October 2012 to September 2013, and Twenty Thousand Nine Hundred Ten Dollars and Seventeen Cents (\$20,910.17) October 2013 to September 2014.

CURRENT YEAR FISCAL IMPACT:

This contract with San Marcos Hays County EMS for the first 9-month contract period during FY 2011-12 will require expenditure of budgeted funds from the General Fund. Budget details are as follows:

1. City Department::	Office of the City Manager
2. Project Name:	Emergency Medical Services
3. Budget/Accounting Code(s):	110-156-55312
4. Funding Source:	General Fund
5. Current Appropriation:	\$ 273,900.00
6. Unencumbered Balance:	\$ 205,428.51
7. Amount of This Action:	<u>\$(205,414.47)</u>
8. Remaining Balance:	<u>\$ 14.04</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this service contract in the amount of \$205,414.47 for the 9-month contract period in FY 2011-12 will be provided from funds included in the approved budget for the City's General Fund for emergency medical services.

The funding amounts required for expenditures in subsequent fiscal years will be budgeted in the City's future budgets for the General Fund.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A



CITY OF KYLE, TEXAS

Presentation of City's Audit Report for FY 2010-11

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation: Presentation and acceptance of City of Kyle's Audit Report for the Fiscal Year Ended September 30, 2011 ~ *Dan Shaner, CPA, Partner, Atchley & Associates, Certified Public Accountants*

Other Information: Article VIII, Section 8.13, of the City Charter requires that at the close of each fiscal year, an independent audit shall be made of all accounts of the City by a certified public accountant experienced in auditing cities. The audit shall be completed on or before March 30th of each year.

Upon acceptance of the audit, summary thereof shall be published immediately in a newspaper of general circulation in the City and copies of the audit report shall be placed on file in the City Secretary's as a public record.

Budget Information: A Fiscal Note is not required.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Audited Financial Statements](#)
- [Auditor's Letter](#)
- [Management Letter](#)

CITY OF KYLE, TEXAS
ANNUAL FINANCIAL REPORT
FOR THE YEAR ENDED
September 30, 2011

**CITY OF KYLE, TEXAS
ANNUAL FINANCIAL REPORT
FOR THE YEAR ENDED SEPTEMBER 30, 2011**

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INTRODUCTORY
SECTION



CITY OF KYLE

100 W. Center Street
(512) 262-1010

P.O. Box 40
FAX (512) 262-3800

Kyle, Texas 78640

January 27, 2012

The Honorable Mayor and Members of the City Council
City of Kyle, Texas

This letter transmits the annual financial report of the City of Kyle, Texas (the City) for the year ended September 30, 2011. The financial statements are presented in conformity with accounting principles generally accepted in the United States of America (GAAP) as set forth by the Governmental Accounting Standards Board (GASB) and have been audited by independent auditors in accordance with auditing standards generally accepted in the United States. The purpose of this report is to provide the City Council, management, staff, the public and other interested parties with detailed information reflecting the City's financial condition.

Management Responsibility for Financial Information

This report consists of management's representations concerning the finances of the City and consequently, management assumes full responsibility for the completeness and reliability of all of the information presented in this report, including all disclosures. To provide a reasonable basis for making these representations, the City's staff in the Financial Services Department has established an internal control framework that is designed both to protect the government's assets from loss, theft, or misuse and to compile sufficiently reliable information for the preparation of the City's financial statements in conformity with GAAP. Because the cost of internal controls should not outweigh their benefits, the City's framework of internal controls has been designed to provide reasonable rather than absolute assurance that the financial statements will be free from material misstatement. As management, we assert that, to the best of our knowledge and belief, this financial report is complete and reliable in all material respects.

Financial Statement Presentation

The Annual Financial Report is divided into five sections. The **Introductory Section** includes the transmittal letter, an organizational chart and a list of elected and appointed officials. The **Financial Section** includes the independent auditor's opinion, management's discussion and analysis (MD&A), basic financial statements, and notes to financial statements. Management's discussion and analysis follows the independent auditors' report and provides a narrative introduction, overview and analysis of the basic financial statements. MD&A complements this letter and should be read in conjunction with it. The **Required Supplementary Information Section** includes any required supplementary information. The **Combining Schedules Section** includes the combining fund statements. The **Compliance Section** includes a report on internal control over financial reporting, a schedule of findings and responses and a schedule of prior audit findings.

Reporting Scope

This report includes all of the City's funds. The City provides almost all of the services typically provided by cities in Texas including police protection; construction, rehabilitation and maintenance of streets, drains and other infrastructure; recreational sites and activities and cultural events; and a municipal library. In addition to general governmental activities the City provides water, wastewater, sanitation and storm drainage services which are included in the reporting entity.

Independent Audit

The City's financial statements have been audited by Atchley & Associates, L.L.P., a licensed certified public accounting firm. The goal of the independent audit is to provide reasonable assurance that the financial statements of the City for the fiscal year ended September 30, 2011, are free of material misstatement. The independent audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; assessing the accounting principles used and significant estimates made by management; and evaluating the overall financial statement presentation. The independent auditor concluded, based upon the audit, that the City's financial statements for the fiscal year ended September 30, 2011, are fairly presented in conformity with GAAP. The independent auditor's report is presented as the first component of the financial section of this report.

Accounting System and Budgetary Control

In developing and evaluating the City's accounting system, consideration is given to the adequacy of internal controls. These controls are designed to provide reasonable assurance regarding:

1. the safeguarding of assets against loss from unauthorized use or disposition; and
2. the reliability of financial records for preparing financial statements and maintaining accountability of assets.

The concept of reasonable assurance recognizes that:

1. the cost of control should not exceed the benefits likely to be derived; and
2. evaluation of costs and benefits requires estimates and judgment by management.

All internal control evaluations occur within the above framework. We believe that the City's internal accounting controls adequately safeguard assets and provide reasonable assurance of proper recording of financial transactions. Initiatives have been made however to attempt to improve upon the financial applications by switching to newer more modern software packages.

Cash Management Policies and Practices

Cash temporarily idle during the year was invested in interest bearing checking accounts, investment pools, and agency instruments. During FY 09-10, the City for the first time began to invest in United States Government backed securities. Due to the fact that investment pool rates fell dramatically between early 2008 until now, investment income was significantly lower during the reporting period compared to past years.

Risk Management

The City is a member of the Texas Municipal League's Intergovernmental Risk Pool. The Pool was created for the purpose of providing coverage against risks, which are inherent in operating a municipal

government. The City pays annual premiums to the Pool for liability, property and worker's compensation coverage. A local insurance broker underwrites surety bonds for selected city officials and staff.

Pension and Other Post Employment Benefits

The City provides a defined benefit pension plan through TMRS for all of its permanent employees. Each year, an independent actuary engaged by the pension plan calculates the amount of the annual contribution that the City must make to the pension plan to ensure that the plan will be able to fully meet its obligations to retired employees on a timely basis. As a matter of policy, the City fully funds each year's annual required contribution to the pension plan as determined by the actuary. The City has succeeded, in funding 75.8% of the present value of the projected benefits earned by employees as of the Actuarial Valuation Date of December 31, 2010. The remaining unfunded amount of \$1,806,383 is being systematically funded over 22 years as part of the annual required contribution calculated by the actuary.

Prior to October 1, 2007, the City's policy relating to payment of medical benefits for its retirees was on a pay as you go basis. Beginning with the reporting period ending September 30, 2008, cities such as Kyle are required to account for the contingent liability created by future costs of premiums. In a move to significantly reduce the financial impact, the City Council adopted a greatly reduced program. Under the new policy only a total of 18 current employees are eligible for future benefits at the former level, if they reach 25 years of continuous service with the City. All other current employees hired by April 1, 2009 would be eligible for payment of a fixed rate beginning at \$300 per month which is approximately 50% of the current rate for retirees. Anyone hired after April 1, 2009 would not be eligible for any post retirement medical benefits.

After careful analysis of potential future beneficiaries of this policy and making certain conservative assumptions concerning anticipated increases in rates, numbers of new retirees added each year, mortality rates, etc., the present value of future annual costs were determined. An amount sufficient to cover this amount is placed in a reserve fund each year. Inasmuch as the City has only one retiree drawing benefits at this time and the pool of current employees that may receive benefits in the future has been severely limited, we are confident that the current methodology employed to determine the annual reserve requirement to satisfy this contingent liability are sufficient.


Additional information on the City's pension plan benefits and other post employment benefits can be found in the notes to the financial statements on pages 50 through 54.

Acknowledgements

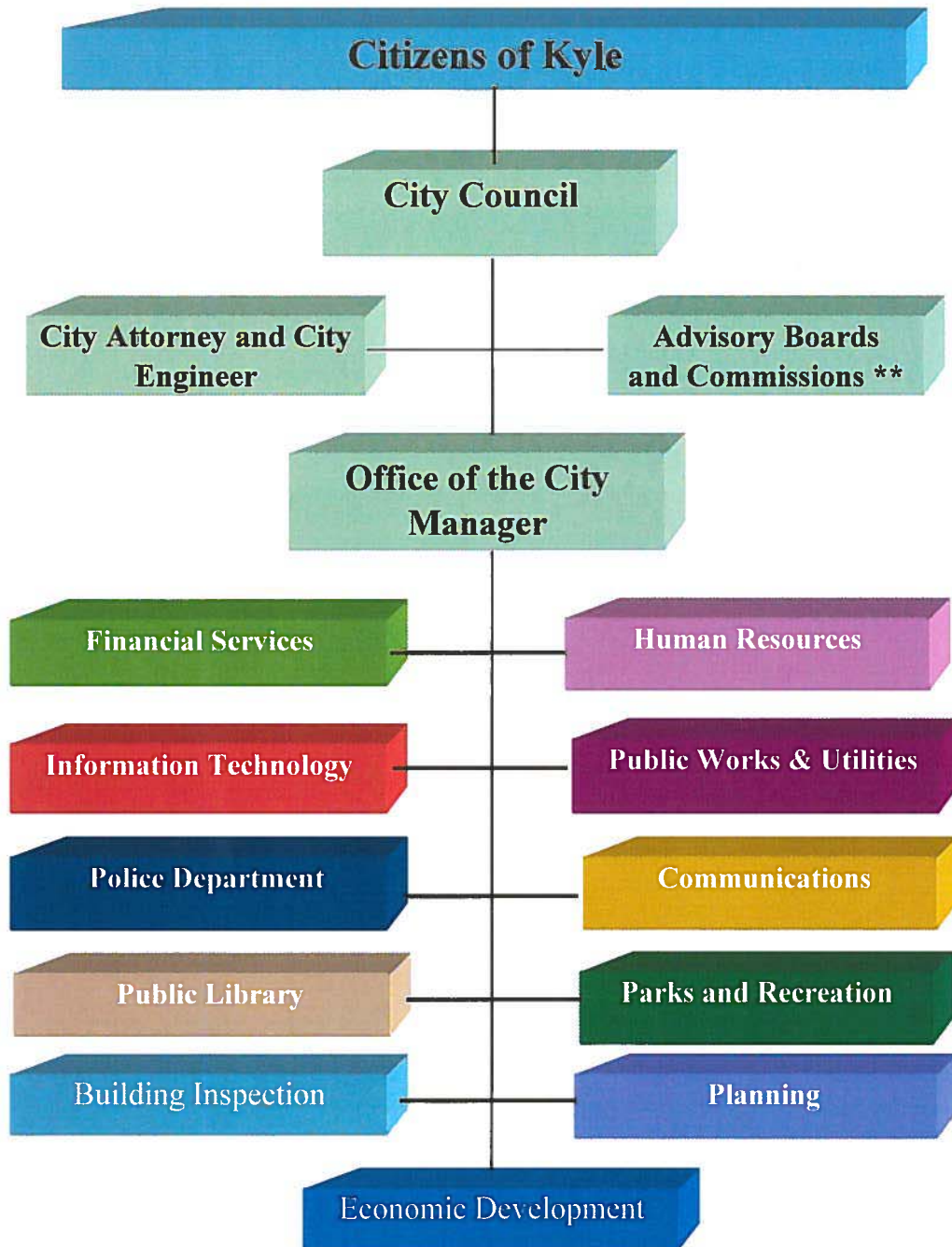
Preparation of this report would not have been possible without the contributions of the entire staff of the Financial Services Department. We would like to express our appreciation to all members of the department who assisted and contributed to the preparation of this report. We appreciate the guidance, policy directives, and the support provided by the Mayor and City Council in the management of the City's finances.

Respectfully submitted,


Lanny S. Lambert
City Manager


Perwez A. Moheet, CPA
Director of Finance

City of Kyle - Organizational Chart



** List of Advisory Boards and Commissions

Planning and Zoning Commission
 Charter Review Commission
 Civil Service Commission
 Board of Adjustments
 Economic Development Committee
 Community Relations Committee
 Parks and Recreation Committee

Public Works & Service Committee
 Strategic Planning and Finance Committee
 Safety and Emergency Services Committee
 Ethics Committee
 Mobility Committee
 Community Library Board Members



Elected Officials and Administrative Staff January 1, 2012

City Council

Lucy Johnson	Mayor
David Wilson	Mayor Pro-Tem
Diane Hervol	District 1
Becky Selbera	District 2
Bradley Pickett	District 3
Jamie Sanchez	District 5
Russ Huebner	District 6

City Staff:

Lanny S. Lambert.....	City Manager
James R. Earp, CPM.....	Assistant City Manager
Mario Perez.....	Building Official
Davidson & Troilo.....	City Attorney
Steven Widacki.....	City Engineer
Amelia Sanchez.....	City Secretary
Jerry Hendrix.....	Director of Communications
Diana Blank.....	Director of Economic Development
Perwez A. Moheet, CPA.....	Director of Financial Services
Sandra Duran.....	Director of Human Resources
Mark Shellard.....	Director of Information Technology
Sundra Spears.....	Municipal Court Judge
Kerry Urbanowicz.....	Director of Parks and Recreation
Sofia Nelson.....	Director of Planning
Jeff Barnett.....	Chief of Police
Connie Brooks.....	Library Director
Harper Wilder.....	Director of Public Works

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FINANCIAL
SECTION



Independent Auditors' Report

Honorable Mayor and Members of the City Council
City of Kyle, Texas

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Kyle, Texas (the City) as of and for the year ended September 30, 2011, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City's administrators. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Kyle, Texas as of September 30, 2011, and the respective changes in financial position and cash flows, where applicable, thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated January 27, 2012 on our consideration of the City's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Item # 11

Management's discussion and analysis and the budgetary comparison for the general fund on pages 3 through 16 and 57 are not a required part of the basic financial statements but are supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the City of Kyle, Texas' basic financial statements. The introductory section and combining statements are presented for purposes of additional analysis and are not a required part of the basic financial statements. The combining statements have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory section has not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on it.

Atchley & Associates, LLP

Austin, Texas
January 27, 2012

City of Kyle, Texas
MD&A September 30, 2011

**City of Kyle, Texas
Management's Discussion and Analysis
of Financial Condition and Results of Operation**

As management of the City of Kyle (the City), we offer readers of the City's financial statements this narrative overview and analysis of the financial activities of the City for the Fiscal Year ended September 30, 2011. Readers are encouraged to consider the information presented here in conjunction with additional information that has been furnished in the letter of transmittal, which can be found on pages i-v of this report.

FINANCIAL HIGHLIGHTS

Government-wide

- On September 30, 2011, the total assets of the City exceeded total liabilities at the close of the Fiscal Year by \$90,014,581 (net assets). Of this amount, \$8,020,598 (unrestricted net assets) may be used to meet the government's obligations to its citizens and creditors within each of the City's designated funds.
- As compared to the previous Fiscal Year, the City's total net assets increased overall by a total of \$355,302 or 0.4% from the previous year. Current and Other Assets increased by a net amount of approximately \$1.93 million and capital assets increased by approximately \$2.15 million for a total increase of \$4.08 million. Total liabilities increased by \$3.7 million. The change in net assets of \$355,302 from the prior Fiscal Year is calculated by subtracting the change in total liabilities (\$3.7 million) from the change in total assets (\$4.08 million)

Fund Based

- At the close of Fiscal Year 2010-11, the City's governmental funds reported combined ending fund balances of \$11,720,325, which represents an increase of \$2,106,469 in comparison with the prior year.
- At the end of Fiscal Year 2010-11, the fund balance for the General Fund was \$2,987,923 or 25.5% of total governmental fund balance. The increase in the General Fund balance represents an increase of approximately 6.2% from the prior year total governmental fund balance.
- For Fiscal Year 2010-11, the City's Utility Fund had operating income of \$360,915. Since the Utility Fund had an operating loss of \$464,484 in Fiscal Year 2009-10, this is an increase of \$825,399 from the prior year.

City of Kyle, Texas
MD&A September 30, 2011

OVERVIEW OF THE FINANCIAL STATEMENTS

The discussion and analysis are intended to serve as an introduction to the City's basic financial statements. The City's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the financial statements. This report also contains other supplementary information in addition to the basic financial statements.

Government-wide Financial Statements

The *government-wide financial statements* are designed to provide readers with a broad overview of the City's finances, in a manner similar to a private-sector business.

The *statement of net assets* presents information on all of the City's assets and liabilities, with the difference between the two reported as *net assets*. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the City is improving.

The *statement of activities* presents information showing how the government's net assets changed during the most recent fiscal year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related *cash flows*. Thus, revenue and expenses are reported in this statement including items that will only result in cash flows in future fiscal periods (e.g., uncollected taxes and earned but unused vacation leave).

Both of the government-wide financial statements distinguish functions of the City that are principally supported by taxes and intergovernmental revenue (*governmental activities*) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (*business-type activities*). The governmental activities of the City include general government, public safety, public works and culture and recreation. The business-type activities of the City include the water/wastewater system.

The government-wide financial statements can be found on pages 17 through 19 of this report.

Fund Financial Statements

The fund financial statements are intended to provide information about the City's most significant funds. They represent the more familiar types of reporting for those users of governmental financial statements. The City, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the City can be divided into three categories: governmental funds, proprietary funds and fiduciary funds.

City of Kyle, Texas
MD&A September 30, 2011

Governmental funds - are used to account for essentially the same functions reported as *governmental activities* in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on *near-term inflows and outflows of available resources*, as well as on *balances of resources* available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare information presented for *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenue, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds* and *governmental activities*.

The City maintains six major governmental funds and eight non-major individual governmental funds. Information is presented separately in the governmental fund balance sheet and in the governmental fund statement of revenue, expenditures, and changes in fund balances for each major fund.

Data from each of the major governmental funds is presented separately in these statements. A budgetary comparison schedule has been provided for the General Fund to demonstrate compliance with the annual appropriated budget and is presented as required supplementary information beginning on page 57. Individual fund data for each of the non-major governmental funds is provided in the form of combining statements elsewhere in this report.

Proprietary funds - The City maintains one type of proprietary fund. *Enterprise funds* are used to report the same functions presented as *business-type activities* in the government-wide financial statements. The City uses one enterprise fund to account for its water/wastewater operations. Proprietary funds provide the same type of information as the government-wide financial statements, only in more detail. The proprietary fund financial statements provide separate information for the utility system which is considered to be a major fund of the City. The basic proprietary fund financial statements can be found on pages 27 through 30 of this report.

Fiduciary Funds - The City created a fiduciary fund in Fiscal Year 2007-08. The purpose of a *fiduciary fund* is to report assets that are held in a trust or agency capacity; these funds cannot be used to support governmental activities. The City uses an Other Post Employment Benefit Trust Fund to account for and report resources that are required to be held in trust for members of the city-paid retiree health insurance benefit plan. The basic fiduciary fund financial statement can be found on page 31 of this report.

City of Kyle, Texas
MD&A September 30, 2011

Notes to the Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements can be found on pages 33 through 55 of this report.

Other Information

In addition to the basic financial statements and accompanying notes, this report also presents combining fund statements and schedules that further support the information in the financial statements.

Combining statements for non-major governmental funds are presented immediately following the required supplementary information. Combining financial statements and schedules can be found on pages 58 through 61 of this report.

GOVERNMENT-WIDE FINANCIAL ANALYSIS

Statement of Net Assets

As noted earlier, net assets may serve over time as a useful indicator of the government's financial position. In the case of the City, for the period ending September 30, 2011, assets exceeded liabilities by \$90,014,581.

The largest portion of the City's net assets (74.7%) reflects its investment in capital assets (e.g., land, buildings, machinery, and equipment); less depreciation and any related debt used to acquire those assets that is still outstanding. The City uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Although the City's investment in its capital assets is reported net of depreciation and related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

Another portion of the City's net assets equaling \$13,880,823 (15.4%) represents sources that are subject to designation to be used for Capital Improvements. A small portion of the City's Net Assets are restricted for Special Revenue Purposes in the amount of \$785,330 (0.9%) and for Debt Service in the amount of \$85,794 (0.1%). The remaining balance of unrestricted net assets representing 8.9% of the total may be used to meet ongoing financial obligations of the City.

City of Kyle, Texas
MD&A September 30, 2011

The following Table reflects a condensed Statement of Net Assets:

City of Kyle's Net Assets						
	Governmental activities		Business-type activities		Totals	
	2011	2010	2011	2010	2011	2010
Current & other assets	\$27,448,952	\$24,446,565	\$9,460,780	\$10,531,949	\$36,909,732	\$34,978,514
Capital assets	<u>80,700,875</u>	<u>78,430,260</u>	<u>50,584,987</u>	<u>50,710,149</u>	<u>131,285,862</u>	<u>129,140,409</u>
Total assets	<u>\$108,149,827</u>	<u>102,876,825</u>	<u>\$60,045,767</u>	<u>\$61,242,098</u>	<u>\$168,195,594</u>	<u>\$164,118,923</u>
Liabilities	\$3,561,128	\$2,742,918	\$1,043,864	\$630,128	\$4,604,992	\$3,373,046
Non-current liabilities	<u>70,316,554</u>	<u>67,538,368</u>	<u>3,259,467</u>	<u>3,548,230</u>	<u>73,576,021</u>	<u>71,086,598</u>
Total liabilities	<u>\$73,877,682</u>	<u>\$70,281,286</u>	<u>\$4,303,331</u>	<u>\$4,178,358</u>	<u>\$78,181,013</u>	<u>\$74,459,644</u>
Net assets:						
Invested in capital assets, net of related debt	\$19,916,516	\$22,165,260	\$47,325,520	\$47,161,919	\$67,242,036	69,327,179
Restricted/Designated	8,732,402	7,675,097	6,019,545	4,392,111	14,751,947	12,067,208
Unrestricted	<u>5,623,227</u>	<u>2,755,182</u>	<u>2,397,371</u>	<u>5,509,710</u>	<u>8,020,598</u>	<u>8,264,892</u>
Total Net Assets	<u>\$34,272,145</u>	<u>\$32,595,539</u>	<u>\$55,742,436</u>	<u>\$57,063,740</u>	<u>\$90,014,581</u>	<u>\$89,659,279</u>

Below are some highlights taken from the above chart:

- Governmental Activity Highlights:
 - Current and Other Assets increased by 12.3% due mainly to increases in Cash and Cash Equivalents and Receivables.
 - Capital Assets increased by 2.9% due to the addition of new assets. Contributed capital was higher than the previous year by approximately \$396,185.
 - Liabilities increased by 5.1% due to the issuance of the 2010 Certificate of Obligations totaling \$4.29 million less paydown of existing debt.
- Business-type Activity Highlights:
 - Current and Other Assets decreased by 10.2% mainly due to a decrease in Cash and Cash Equivalents and a slight decrease in Capital Assets.
 - Capital Assets decreased by 0.25% due to depreciation on the assets being greater than the amount of new assets added.
 - Liabilities increased by 3.0% mainly due to an increase in Accounts Payable.

City of Kyle, Texas
MD&A September 30, 2011

Statement of Activities

The statement of activities shows how the City's net assets changed during the Fiscal Year 2010-11. There was an overall increase of \$355,302 during Fiscal Year 2010-11. Provided below is a chart showing changes in net assets.

City of Kyle's Changes in Net Assets – Statement of Activities

	Governmental activities		Business-type activities		Total	
	2011	2010	2011	2010	2011	2010
Revenue:						
Program revenue:						
Charges for services	\$3,028,555	\$2,664,236	\$7,208,355	\$6,092,391	\$10,236,910	\$8,756,627
Operating grants and contributions	44,987	73,623	-	-	44,987	73,623
Capital grants and contributions	3,264,029	1,225,852	1,504,003	1,117,699	4,768,032	2,343,551
General revenue:						
Property taxes	6,198,567	6,020,859	-	-	6,198,567	6,020,859
Sales tax	3,160,944	2,426,043	-	-	3,160,944	2,426,043
Franchise tax	764,347	701,786	-	-	764,347	701,786
Other taxes	132,580	95,351	-	-	132,580	95,351
Grants and contributions not restricted	26,901	-	-	-	26,901	-
Investment earnings	87,766	258,120	36,957	72,358	124,723	330,478
Miscellaneous	182,388	261,351	19,708	11,054	202,096	272,405
Total Revenue	\$16,891,064	\$13,727,221	\$8,769,023	\$7,293,502	\$25,660,087	\$21,020,723
Expenses:						
General government	\$3,904,284	\$4,394,186	-	-	\$3,904,284	\$4,394,186
Public safety	3,982,409	3,551,788	-	-	3,982,409	3,551,788
Public works	4,820,597	4,571,021	-	-	4,820,597	4,571,021
Transportation	-	14,556	-	-	-	14,556
Culture/Recreation	1,711,714	1,613,611	-	-	1,711,714	1,613,611
Interest on long term debt	2,735,822	2,900,787	-	-	2,735,822	2,900,787
Other Debt Service Expenses	163,138	150,630	-	-	163,138	150,630
Water/Wastewater	-	-	\$7,986,821	\$7,709,085	7,986,821	7,709,085
Total Expenses	\$17,317,964	\$17,196,579	\$7,986,821	\$7,709,085	\$25,304,785	\$24,905,664
Changes in net assets before transfers	(\$426,900)	(\$3,469,358)	\$782,202	(\$415,583)	\$355,302	(\$3,884,941)
Transfers	1,653,506	634,323	(1,653,506)	(634,323)	-	-
Change in net assets	1,226,606	(2,835,035)	(871,304)	(1,049,906)	355,302	(3,884,941)
Net assets - beginning	32,595,539	35,532,492	57,063,740	58,113,646	89,659,279	93,646,138
Prior period adjustment	450,000	(101,918)	(450,000)	-	-	(101,918)
Net assets - ending	<u>\$34,272,145</u>	<u>\$32,595,539</u>	<u>\$55,742,436</u>	<u>\$57,063,740</u>	<u>\$90,014,581</u>	<u>\$89,659,279</u>

City of Kyle, Texas
MD&A September 30, 2011

Governmental Activities – Government-wide Statements

Governmental activities increased the City's net assets by \$1,676,606. Key elements of this change in net assets are explained as follows:

Program Revenue. Total program revenue, which are charges for services, operating grants/contributions and capital grants/contributions increased by approximately \$2.4 million from the prior year due mainly to increases in charges for services (\$364 thousand), receipt of a parks grant from Hays County (\$1.2 million), receipt of grant reimbursement from TX Parks & Wildlife (\$315 thousand), and a larger amount of contributed capital than last fiscal year (\$396 thousand).

General Revenue. Property taxes, sales tax and franchise fees increased by \$177,708 (2.95%), \$734,901 (30.29%), and \$62,561 (8.91%) respectively over the prior Fiscal Year. The large increase in sales tax is due to the addition of new businesses within Kyle plus there was a one-time accounting adjustment in Fiscal Year 2009-10 which resulted in a lower than normal yearly total. Investment earnings decreased by \$170,354 (66%) over the previous year due to the use of cash and investments to pay for day to day operations and lower interest rates that have resulted from the declining economy.

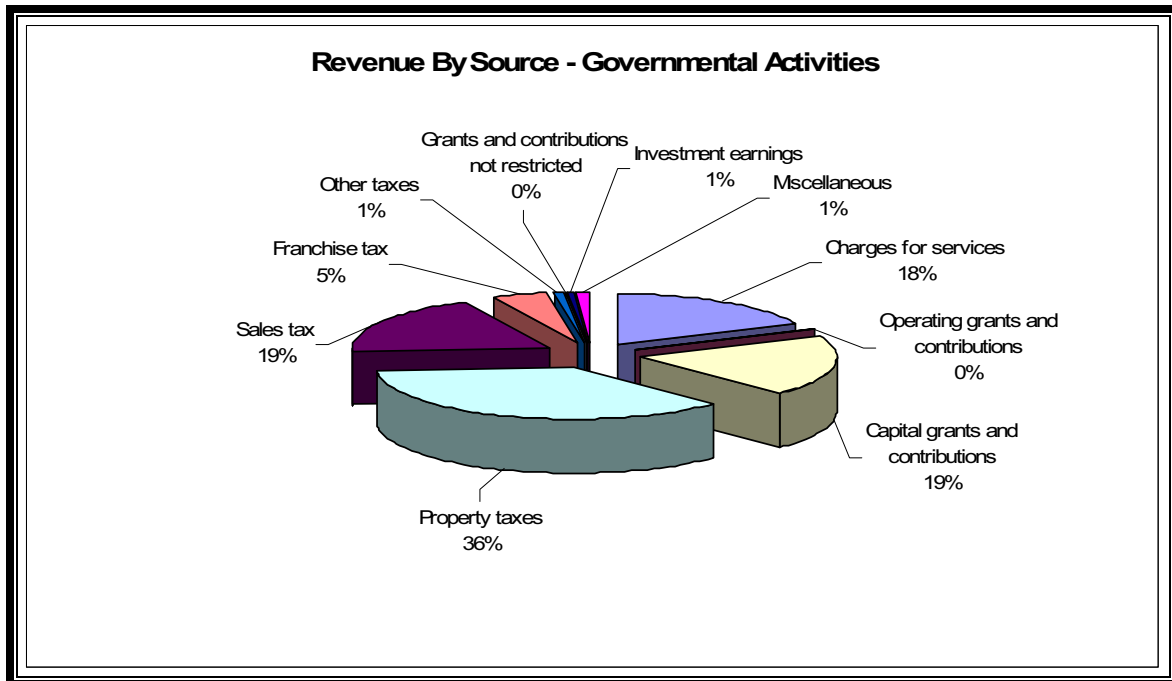
Expenses. Governmental expenses showed an overall increase of \$121,385 or 0.71% compared to the prior year. Following are the main reasons for the increase in expenditures:

- General Government decreased by 11.15%. This decrease is the result of conservative spending by departments and the salary allocation of some employees between General Government and Water and Wastewater. The decrease is offset by increases in other functions. For Fiscal Year 2010-11 Transportation expenses were included with General Government.
- Public Safety increased 12.12%. This increase is the result of EMS upgrades, new authorized positions and the Meet & Confer negotiations that were approved for the City's civil service officers.
- Public Works increased by 5.46%. This increase is the result of the negotiated contract with Texas Disposal Services to provide enhanced solid waste services to Kyle residents and businesses.
- Culture and Recreation increased 6.08% and Bond Interest decreased 5.69%.
- Other Debt Service Expense, which includes fiscal agent fees and issuance costs, increased 8.30%. The increase is due to the issuance of the 2010 Certificates of Obligations, which were issued to pay for construction of the new library, and the 2011 GO Refunding.
- Water & Wastewater increased 3.60%. This increase is due to the higher cost to provide service and the salary allocation of select General Government employees.

Budget Variances. No function had **actual** expenses that exceeded **budgeted** expenses.

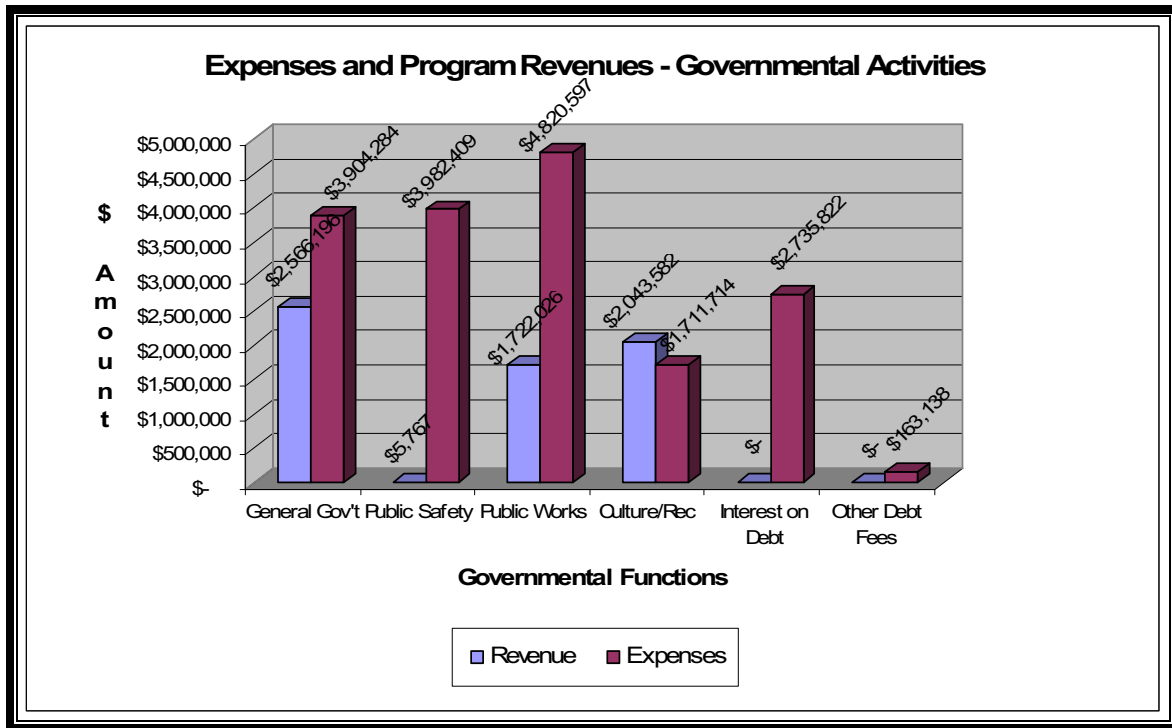
City of Kyle, Texas
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The following two charts illustrate a breakdown of **general governmental activity** revenue by source and a comparison of expenses and program revenue by function.



- As shown on the above chart, the majority of revenue for governmental activities comes from property taxes (36%), sales tax (19%), and charges for services (18%). Capital grants and contributions is a higher percentage (19%) than normal due to receipt of a \$1.2 million parks grant from Hays County and receipt of \$315 thousand in reimbursement from the Texas Parks & Wildlife grant.
- Charges for services include revenue sources such as fees for building inspections, plan review, recreational program fees, trash collection charges, etc.
- Revenue from property taxes increased by 2.95% between 2010 and 2011. This increase was a reflection of an increase in the net taxable assessed value of property from \$1,340,124,250 in 2010 to \$1,393,434,337 in 2011. The property tax rate for 2011 was \$0.425399 per \$100 of assessed valuation which is a decrease of \$0.008601 from the previous year.
- Sales taxes which represented 19% of total revenue for governmental activities also increased significantly over the prior year.

City of Kyle, Texas
MD&A September 30, 2011



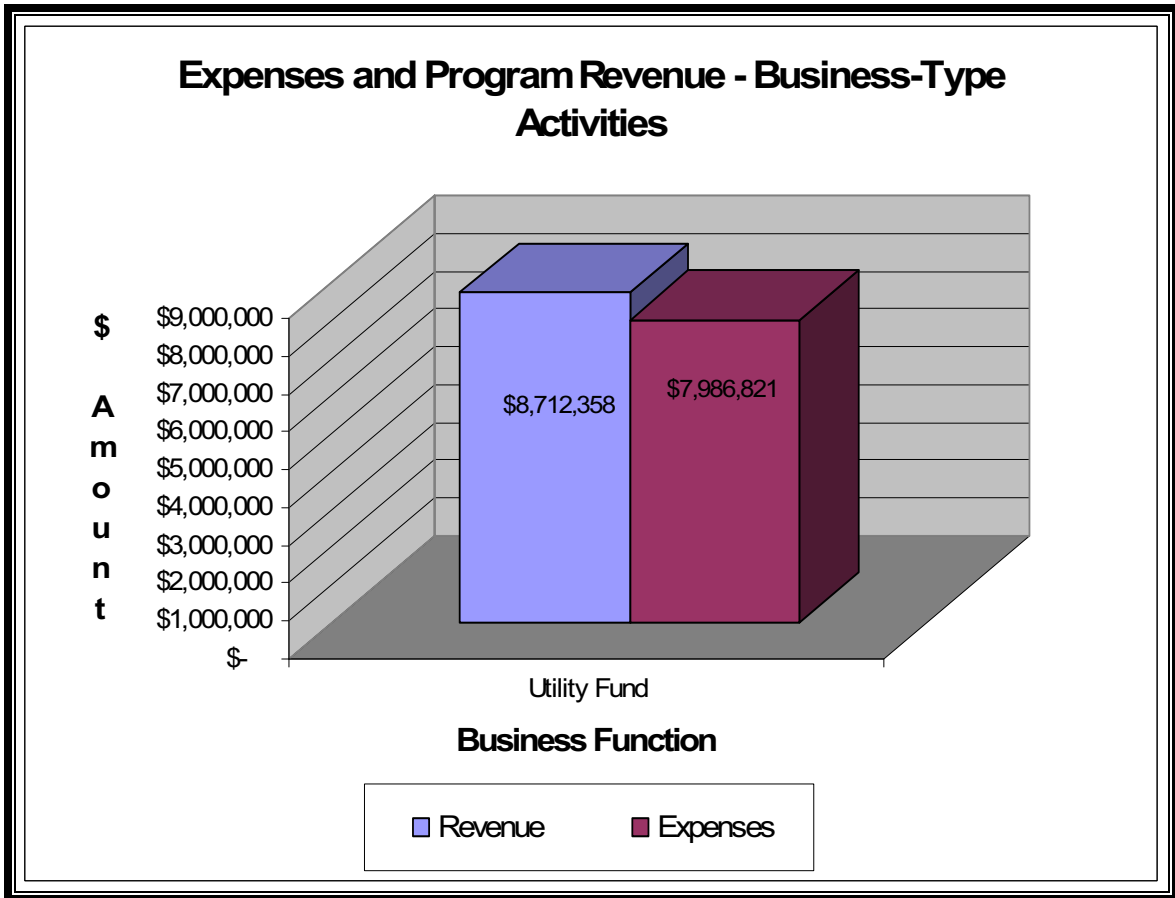
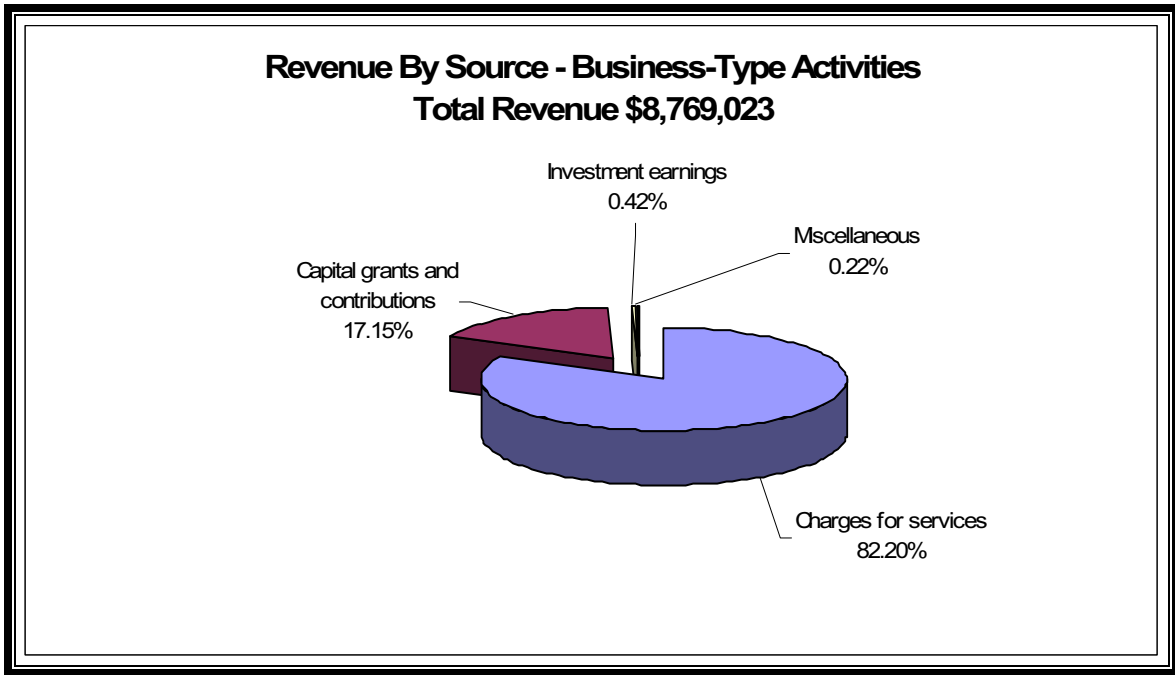
- Based on the chart above Public Works is the largest expense function (27.8%) surpassing General Government which includes all administrative offices as well as Community Development and non-departmental expenses, closely followed by Public Safety (23.0%), General Government (22.5%), and Culture/Recreation (9.9%).
- Interest on Debt and Other Debt Fees do not have a source of program revenue. The balance of funding for all of the above activities comes from property, sales and other taxes, investment income and transfers from other funds.

Business-type activities

Business-type activities decreased the City's net assets by \$1,321,304 in Fiscal Year 2010-11. This was the result of \$8,769,023 in revenue, \$7,986,821 in expenses, \$1,653,506 in transfers out and a negative \$450,000 prior period adjustment.

The two charts on the following page provide similar information as shown previously, only for business-type activities instead of governmental activities.

City of Kyle, Texas
 MD&A September 30, 2011



City of Kyle, Texas
MD&A September 30, 2011

“Charges for services” revenue for business-type activities (Utilities) had a significant increase from the prior year.

General Revenue. Revenue from charges for services increased 18.3% from the prior year due to new customers plus an increase in the rates charged. Contributions for capital grants increased by 34.6% compared to the previous year due to an increase in contributed capital from developers. Investment earnings decreased by 48.9% due to the use of cash and investments to pay for operating and capital activities and the continuing low interest rates.

Expenses. Business-type expenses showed an overall increase of about 3.6% to \$7,986,821. This increase was mainly due to operation and maintenance costs.

FINANCIAL ANALYSIS OF THE CITY’S FUNDS

As noted earlier, the City uses fund accounting to ensure and demonstrate compliance with financial reporting standards and requirements.

Governmental Funds – Individual Fund Statements

The focus of the City’s governmental funds is to provide information on near-term inflows, outflows and the balance of fiscal resources. Such information is useful in assessing the City’s financing requirements. In particular, unreserved fund balance may serve as a useful measure of government’s net resources available at the end of the fiscal year.

As of September 30, 2011, the City’s governmental funds reported combined ending fund balances of \$11,720,325. Of this amount \$8,732,402 is restricted and the remaining \$2,987,923 is unassigned fund balance.

General Fund – The General Fund is the primary operating fund of the City. On September 30, 2011, the unreserved fund balance totaled \$2,987,923. The unreserved General Fund Balance increased by \$592,022 between 2010 and 2011 due to a sizable increase in sales tax and the receipt of grant funds. Property tax, franchise tax, and other revenue also increased during the year. The property tax base increased \$53,309,087, due to the addition of new residences and new businesses. The current year tax collection rate was 99% of the levy.

Overall, General Fund expenditures increased approximately 1.5% between 2010 and 2011. General government functions, which serves as a roll-up for non-specific activities, increased by approximately 2.0% over the prior year. Public Safety increased 9.8%, Public Works increased by 1.4% and Culture/Recreation increased by 4.8%. The increases were mainly due to increased personnel expenses and operational costs. A total of 10.5 new positions were added: 4.5 in Public Safety, and 6 Clerical/Laborer positions.

City of Kyle, Texas
MD&A September 30, 2011

Proprietary Funds – The City’s proprietary funds provide the same type of information found in the government-wide financial statements, but in more detail.

Operating revenue for the Utility Fund showed an increase of about 18.4% from the prior year. The continuing drought conditions have had a positive impact on water sales. The volume of rain received and the volume of water sold have an inverse relationship. When there is less rainfall, the volume of water sold normally increases for irrigation use during the summer months.

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital assets

The City of Kyle’s investment in capital assets for its governmental and business type activities as of September 30, 2011, amounts to \$131,285,862 (net of accumulated depreciation). This investment in capital assets includes land, buildings and system improvements, machinery and equipment, park facilities, roads, highways and bridges. The total increase in the City of Kyle’s investment in capital assets for the Fiscal Year ended September 30, 2011 was \$2,145,453 or 1.66%. Additional information on the City’s capital assets can be found on pages 43 and 44.

The following chart summarizes the City of Kyle’s Capital Assets:

CITY OF KYLE’S CAPITAL ASSETS AT YEAR-END						
(net of depreciation)						
	Governmental Activities		Business-type activities		Total	
	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>
Land	\$3,068,758	\$3,022,518	\$467,400	\$467,400	\$3,536,158	\$3,489,918
Easement	-	-	224,535	224,535	224,535	224,535
Buildings	10,793,871	10,793,871	5,420,371	5,420,371	16,214,242	16,214,242
Improvements Other Than Buildings	2,288,090	1,429,418	57,041,700	54,338,577	59,329,790	55,767,995
Machinery and Equipment	2,351,736	2,265,636	1,407,680	1,397,646	3,759,416	3,663,282
Infrastructure	75,658,521	74,071,984	-	-	75,658,521	74,071,984
Construction in Progress	5,416,259	2,474,641	680,685	1,610,636	6,096,944	4,085,277
Less: Accumulated Depreciation	<u>(18,876,360)</u>	<u>(15,627,808)</u>	<u>(14,657,384)</u>	<u>(12,749,016)</u>	<u>(33,533,744)</u>	<u>(28,376,824)</u>
Total	<u>\$80,700,875</u>	<u>\$78,430,260</u>	<u>\$50,584,987</u>	<u>\$50,710,149</u>	<u>\$131,285,862</u>	<u>\$129,140,409</u>

City of Kyle, Texas
MD&A September 30, 2011

Major capital asset events occurring during the fiscal year included the following:

- The Public Works projects that were completed this year included a 16” Plum Creek water line and general water and wastewater system improvements.
- Construction of a new public library was nearly completed and is expected to be in operation by early 2012.
- Park improvements totaled approximately \$870,000 for the year.

Long-term Debt

At the end of the Fiscal Year, the City had total debt outstanding of \$73,576,021. The increase of approximately \$2.5 million in additional debt was due mainly to the issuance on the \$4.29 million 2010 Certificates of Obligation less the principal payment for all other debt outstanding.

The City has no special assessment debt for which the government is liable in the event of default by the property owners subject to the assessment.

The chart shown below summarizes the status of the City’s outstanding debt without interest as of September 30, 2011, with a comparison of outstanding debt from the prior year.

Outstanding Debt						
	Governmental activities		Business-type activities		Total	
	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>
Debt Obligations	\$39,945,000	\$40,975,000	\$ -	\$ -	\$39,945,000	\$40,975,000
Premium on Bond	160,425	98,068	-	-	160,425	98,068
Refunding Bonds	18,430,000	15,290,000	-	-	18,430,000	15,290,000
Lease Purchase Vehicles	138,329	-	-	-	138,329	-
State Infrastructure Loan	11,000,000	11,000,000	-	-	11,000,000	11,000,000
Deferred Interest Payable	642,800	175,300	-	-	642,800	175,300
Capital Lease	-	-	3,259,467	3,548,230	,259,467	3,548,230
Total	<u>\$70,316,554</u>	<u>\$67,538,368</u>	<u>\$3,259,467</u>	<u>\$3,548,230</u>	<u>\$73,576,021</u>	<u>\$71,086,598</u>

The City of Kyle and its Water/Wastewater Utility continues to have a bond rating of “A+” from Standard & Poor’s for bond debt.

City of Kyle, Texas
MD&A September 30, 2011

ECONOMIC FACTORS AND NEXT YEAR'S BUDGETS AND RATES

Although the focus of this annual report is the economic condition of the City, as of September 30, 2011, there are always state and local issues that require some consideration because of their future economic impact on the City. These factors always play a role in preparation of the budget for next Fiscal Year.

Preparation of the 2011-12 budget was done considering only a modest increase in revenue over the previous year. Retail developments continue to expand which has a positive increase on sales tax.

The 2011-12 operating budget for the City provided for an additional 3.5 full-time positions bringing the total authorized full time equivalent positions to 156.5. Please see below for a breakdown of the new full time positions:

- 1 in Management
- 2 in Public Safety
- 0.5 Clerical/Labor Positions

Revenue for local government purposes is mostly a function of established rates, fees or charges applied to specific items such as real or personal property owned (property tax), goods purchased (sales tax), types of services provided (inspections), penalties for unlawful conduct (fines), quantities of goods sold (water sales), etc. For the Adopted 2010-11 Fiscal Year Budget, there was a slight increase in some rates, fees or charges for the City and an increase of \$0.069101 from the existing ad valorem property tax rate. This increase brought the property tax rate to \$0.4845 per \$100 assessed valuation.

Requests for Information

This financial report is designed to provide a general overview of the City of Kyle's finances for all those with an interest in the government's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the City of Kyle Director of Finance, P.O. Box 40, 100 W. Center St., Kyle, Texas 78640.

BASIC FINANCIAL
STATEMENTS

CITY OF KYLE, TEXAS
STATEMENT OF NET ASSETS
SEPTEMBER 30, 2011

EXHIBIT A-1

	Primary Government		
	Governmental Activities	Business Type Activities	Total
ASSETS			
Cash and Cash Equivalents	\$ 12,978,731	\$ 2,465,649	\$ 15,444,380
Receivables (net of allowance for uncollectibles)	2,047,197	910,044	2,957,241
Prepaid Items	2,127	-	2,127
Deferred Charges	11,209,801	-	11,209,801
Capitalized Debt Issuance Costs	1,211,096	-	1,211,096
Restricted Assets:			
Restricted Cash	-	6,085,087	6,085,087
Capital Assets:			
Capital Assets, net	80,700,875	50,584,987	131,285,862
Total Assets	<u>108,149,827</u>	<u>60,045,767</u>	<u>168,195,594</u>
LIABILITIES			
Accounts Payable	3,511,731	581,862	4,093,593
Due to Other Funds	31,080	5,649	36,729
Customer Deposits	(434)	456,353	455,919
Accrued Interest Payable	18,751	-	18,751
Noncurrent Liabilities			
Due Within One Year	2,674,379	306,572	2,980,951
Due in More Than One Year	67,642,175	2,952,895	70,595,070
Total Liabilities	<u>73,877,682</u>	<u>4,303,331</u>	<u>78,181,013</u>
NET ASSETS			
Invested in Capital Assets, Net of Related Debt	19,916,516	47,325,520	67,242,036
Restricted for:			
Restricted for Capital Improvements	7,861,278	6,019,545	13,880,823
Restricted for Special Revenue Purposes	785,330	-	785,330
Restricted for Debt Service	85,794	-	85,794
Unrestricted Net Assets	5,623,227	2,397,371	8,020,598
Total Net Assets	<u>\$ 34,272,145</u>	<u>\$ 55,742,436</u>	<u>\$ 90,014,581</u>

The notes to the Financial Statements are an integral part of this statement.

Item # 11

CITY OF KYLE, TEXAS
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED SEPTEMBER 30, 2011

	Program Revenues			
	Expenses	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions
Primary Government:				
GOVERNMENTAL ACTIVITIES:				
General Government	\$ 3,904,284	\$ 2,533,733	\$ -	\$ 32,463
Public Safety	3,982,409	-	5,767	-
Public Works	4,820,597	-	-	1,722,026
Culture and Recreation	1,711,714	494,822	39,220	1,509,540
Bond Interest	2,735,822	-	-	-
Fiscal Agent's Fees	30,508	-	-	-
Issurance Costs	132,630	-	-	-
Total Governmental Activities:	17,317,964	3,028,555	44,987	3,264,029
BUSINESS-TYPE ACTIVITIES:				
Water & Wastewater Fund	7,986,821	7,208,355	-	1,504,003
Total Business-Type Activities:	7,986,821	7,208,355	-	1,504,003
TOTAL PRIMARY GOVERNMENT:	\$ 25,304,785	\$ 10,236,910	\$ 44,987	\$ 4,768,032

General Revenues:

Taxes:

Property Taxes, Levied for General Purposes

Property Taxes, Levied for Debt Service

Sales Taxes

Franchise Taxes

Other Taxes

Grants and Contributions Not Restricted

Miscellaneous Revenue

Investment Earnings

Transfers In (Out)

Total General Revenues and Transfers

Change in Net Assets

Net Assets--Beginning

Prior Period Adjustment

Net Assets--Ending

EXHIBIT B-1

Net (Expense) Revenue and Changes in Net Assets		
Primary Government		
Governmental Activities	Business-type Activities	Total
\$ (1,338,088)	\$ -	\$ (1,338,088)
(3,976,642)	-	(3,976,642)
(3,098,571)	-	(3,098,571)
331,868	-	331,868
(2,735,822)	-	(2,735,822)
(30,508)	-	(30,508)
(132,630)	-	(132,630)
<u>(10,980,393)</u>	<u>-</u>	<u>(10,980,393)</u>
-	725,537	725,537
-	725,537	725,537
<u>(10,980,393)</u>	<u>725,537</u>	<u>(10,254,856)</u>
3,052,967	-	3,052,967
3,145,600	-	3,145,600
3,160,944	-	3,160,944
764,347	-	764,347
132,580	-	132,580
26,901	-	26,901
182,388	19,708	202,096
87,766	36,957	124,723
1,653,506	(1,653,506)	-
<u>12,206,999</u>	<u>(1,596,841)</u>	<u>10,610,158</u>
1,226,606	(871,304)	355,302
32,595,539	57,063,740	89,659,279
450,000	(450,000)	-
<u>\$ 34,272,145</u>	<u>\$ 55,742,436</u>	<u>\$ 90,014,581</u>

CITY OF KYLE, TEXAS
BALANCE SHEET
GOVERNMENTAL FUNDS
SEPTEMBER 30, 2011

	General Fund	General Government Grants	Debt Service
ASSETS			
Cash and Cash Equivalents	\$ 2,706,068	\$ 335,475	\$ 85,794
Receivables (Net)	1,699,709	-	-
Developer Receivable	349,786	-	-
Prepaid Items	2,127	-	-
Total Assets	<u>\$ 4,757,690</u>	<u>\$ 335,475</u>	<u>\$ 85,794</u>
LIABILITIES AND FUND BALANCES			
Liabilities:			
Accounts Payable	\$ 456,304	\$ 5,692	\$ -
Developer Funds Held	516,758	-	-
Compensated Absences Payable	722,006	-	-
Retainage Payable	92,064	-	-
Due to Other Funds	(16,931)	-	-
Customer Deposits	(434)	-	-
Total Liabilities	<u>1,769,767</u>	<u>5,692</u>	<u>-</u>
Fund Balances:			
Restricted Fund Balance:			
Other Restricted Fund Balance	-	329,783	85,794
Unassigned Fund Balance	2,987,923	-	-
Total Fund Balances	<u>2,987,923</u>	<u>329,783</u>	<u>85,794</u>
Total Liabilities and Fund Balances	<u>\$ 4,757,690</u>	<u>\$ 335,475</u>	<u>\$ 85,794</u>

The notes to the Financial Statements are an integral part of this statement.

EXHIBIT C-1

Road Improvement Fund	2008 CO Bond Fund	2010 CO Bond Fund	Other Funds	Total Governmental Funds
\$ 2,109,415	\$ 5,183,234	\$ 1,016,154	\$ 1,542,591	\$ 12,978,731
-	-	-	(2,298)	1,697,411
-	-	-	-	349,786
-	-	-	-	2,127
<u>\$ 2,109,415</u>	<u>\$ 5,183,234</u>	<u>\$ 1,016,154</u>	<u>\$ 1,540,293</u>	<u>\$ 15,028,055</u>
\$ 4,610	\$ (4,611)	\$ 222,875	\$ 97,936	\$ 782,806
1,211,461	-	-	-	1,728,219
-	-	-	-	722,006
-	-	-	-	92,064
-	-	-	-	(16,931)
-	-	-	-	(434)
<u>1,216,071</u>	<u>(4,611)</u>	<u>222,875</u>	<u>\$ 97,936</u>	<u>3,307,730</u>
893,344	5,187,845	793,279	1,442,357	8,732,402
-	-	-	-	2,987,923
<u>893,344</u>	<u>5,187,845</u>	<u>793,279</u>	<u>\$ 1,442,357</u>	<u>11,720,325</u>
<u>\$ 2,109,415</u>	<u>\$ 5,183,234</u>	<u>\$ 1,016,154</u>	<u>\$ 1,540,293</u>	<u>\$ 15,028,055</u>

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CITY OF KYLE, TEXAS
 RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET TO THE
 STATEMENT OF NET ASSETS
 SEPTEMBER 30, 2011

Total Fund Balances - Governmental Funds	\$	11,720,325
Capital assets used in governmental activities are not financial resources and therefore are not reported in governmental funds. At the beginning of the year, the cost of these assets was \$94,058,068 and the accumulated depreciation was \$15,627,808. In addition, long-term liabilities, including bonds payable, are not due and payable in the current period, and, therefore are not reported as liabilities in the funds. The net effect of including the beginning balances for capital assets (net of depreciation) and long-term debt in the governmental activities is to increase (decrease) net assets.		23,168,318
Current year capital outlays and long-term debt principal payments are expenditures in the fund financial statements, but they should be shown as increases in capital assets and reductions in long-term debt in the government-wide financial statements. The net effect of including the 2011 capital outlays and debt principal payments is to increase (decrease) net assets.		7,975,663
The 2011 depreciation expense increases accumulated depreciation. The net effect of the current year's depreciation is to decrease net assets.		(3,308,873)
Various other reclassifications and eliminations are necessary to convert from the modified accrual basis of accounting to accrual basis of accounting. These include recognizing deferred revenue as revenue, eliminating interfund transactions, reclassifying the proceeds of bond sales as an increase in bonds payable, and recognizing the liabilities associated with maturing long-term debt and interest. The net effect of these reclassifications and recognitions is to increase (decrease) net assets.		(5,283,288)
Net Assets of Governmental Activities	<u>\$</u>	<u>34,272,145</u>

CITY OF KYLE, TEXAS
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
GOVERNMENTAL FUNDS
FOR THE YEAR ENDED SEPTEMBER 30, 2011

	General Fund	General Government Grants	Debt Service
REVENUES:			
Taxes:			
Property Taxes	\$ 3,052,967	\$ -	\$ 3,145,600
Sales Taxes	3,160,944	-	-
Franchise Tax	764,347	-	-
Other Taxes	-	-	-
Licenses and Permits	433,095	-	-
Intergovernmental Revenue and Grants	37,064	1,625,161	-
Charges for Services	1,857,735	-	-
Fines	485,730	-	-
Investment Earnings	3,342	-	22,407
Rents and Royalties	103,230	-	-
Contributions & Donations from Private Sources	26,900	-	-
Other Revenue	79,025	-	-
Total Revenues	<u>10,004,379</u>	<u>1,625,161</u>	<u>3,168,007</u>
EXPENDITURES:			
Current:			
General Government	3,359,655	60,137	-
Public Safety	3,713,316	-	-
Public Works	2,309,052	-	-
Culture and Recreation	1,398,521	-	-
Debt Service:			
Bond Principal	-	-	2,390,000
Bond Interest	-	-	2,275,777
Fiscal Agent's Fees	-	-	1,990
Capital Outlay:			
Capital Outlay	103,562	729,159	-
Total Expenditures	<u>10,884,106</u>	<u>789,296</u>	<u>4,667,767</u>
Excess (Deficiency) of Revenues Over (Under) Expenditures	<u>(879,727)</u>	<u>835,865</u>	<u>(1,499,760)</u>
OTHER FINANCING SOURCES (USES):			
Capital-related Debt Issued (Regular Bonds)	-	-	-
Transfers In	1,732,349	2,400	1,373,801
Transfers Out (Use)	(565,885)	(43,700)	-
Total Other Financing Sources (Uses)	<u>1,166,464</u>	<u>(41,300)</u>	<u>1,373,801</u>
Net Change in Fund Balances	286,737	794,565	(125,959)
Fund Balance - October 1 (Beginning)	2,137,701	(464,782)	211,753
Prior Period Adjustment	563,485	-	-
Fund Balance - September 30 (Ending)	<u>\$ 2,987,923</u>	<u>\$ 329,783</u>	<u>\$ 85,794</u>

The notes to the Financial Statements are an integral part of this statement.

EXHIBIT C-3

Road Improvement Fund	2008 CO Bond Fund	2010 CO Bond Fund	Other Funds	Total Governmental Funds
\$ -	\$ -	\$ -	\$ -	6,198,567
-	-	-	-	3,160,944
-	-	-	-	764,347
-	-	-	132,580	132,580
-	-	-	-	433,095
-	-	-	5,924	1,668,149
-	-	-	222,986	2,080,721
-	-	-	29,009	514,739
24,065	33,358	3,928	666	87,766
-	-	-	-	103,230
-	-	-	-	26,900
-	33	-	100	79,158
24,065	33,391	3,928	391,265	15,250,196
-	435	62,756	56	3,483,039
-	-	-	33,856	3,747,172
-	-	-	-	2,309,052
-	-	-	131,391	1,529,912
-	-	-	-	2,390,000
-	-	-	-	2,275,777
-	-	-	-	1,990
-	12,574	3,097,855	420,626	4,363,776
-	13,009	3,160,611	585,929	20,100,718
24,065	20,382	(3,156,683)	(194,664)	(4,850,522)
-	-	4,290,000	-	4,290,000
-	-	-	-	3,108,550
-	(694,010)	(54,740)	(96,709)	(1,455,044)
-	(694,010)	4,235,260	(96,709)	5,943,506
24,065	(673,628)	1,078,577	(291,373)	1,092,984
419,279	5,861,473	(285,298)	1,733,730	9,613,856
450,000	-	-	-	1,013,485
\$ 893,344	\$ 5,187,845	\$ 793,279	\$ 1,442,357	\$ 11,720,325

CITY OF KYLE, TEXAS
 RECONCILIATION OF THE GOVERNMENTAL FUNDS STATEMENT OF REVENUES, EXPENDITURES,
 AND CHANGES IN FUND BALANCES TO THE STATEMENT OF ACTIVITIES
 FOR THE YEAR ENDED SEPTEMBER 30, 2011

Total Net Change in Fund Balances - Governmental Funds	\$	1,092,984
Current year capital outlays and long-term debt principal payments are expenditures in the fund financial statements, but they should be shown as increases in capital assets and reductions in long-term debt in the government-wide financial statements. The net effect of removing the 2011 capital outlays and debt principal payments is to increase (decrease) net assets.		7,975,663
Depreciation is not recognized as an expense in governmental funds since it does not require the use of current financial resources. The net effect of the current year's depreciation is to decrease net assets.		(3,308,873)
Various other reclassifications and eliminations are necessary to convert from the modified accrual basis of accounting to accrual basis of accounting. These include recognizing deferred revenue as revenue, adjusting current year revenue to show the revenue earned from the current year's tax levy, eliminating interfund transactions, reclassifying the proceeds of bond sales, and recognizing the liabilities associated with maturing long-term debt and interest. The net effect of these reclassifications and recognitions is to increase (decrease) net assets.		(4,533,168)
Change in Net Assets of Governmental Activities	\$	1,226,606

EXHIBIT D-1

CITY OF KYLE, TEXAS
STATEMENT OF NET ASSETS
PROPRIETARY FUNDS
SEPTEMBER 30, 2011

	Business Type Activities
	Water & Wastewater Fund
ASSETS	
Current Assets:	
Cash and Cash Equivalents	\$ 2,465,649
Restricted Assets - Current:	
Restricted Cash	6,085,087
Accounts Receivable-Net of Uncollectible Allowance	910,044
Total Current Assets	<u>9,460,780</u>
Noncurrent Assets:	
Capital Assets:	
Capital Assets-Net of Accumulated Depreciation	50,584,987
Total Noncurrent Assets	<u>50,584,987</u>
Total Assets	<u>60,045,767</u>
LIABILITIES	
Current Liabilities:	
Accounts Payable	463,710
Wages and Salaries Payable	5,763
Compensated Absences Payable	112,389
Due to Other Funds	5,649
Customer Deposits	456,353
Capital Leases Payable - Current	306,572
Total Current Liabilities	<u>1,350,436</u>
NonCurrent Liabilities:	
Capital Leases Payable - Noncurrent	2,952,895
Total Noncurrent Liabilities	<u>2,952,895</u>
Total Liabilities	<u>4,303,331</u>
NET ASSETS	
Investments in Capital Assets, Net of Debt	47,325,520
Restricted for Capital Improvements	6,019,545
Unrestricted Net Assets	2,397,371
Total Net Assets	<u>\$ 55,742,436</u>

The notes to the Financial Statements are an integral part of this statement.

CITY OF KYLE, TEXAS
STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN FUND NET ASSETS
PROPRIETARY FUNDS
FOR THE YEAR ENDED SEPTEMBER 30, 2011

EXHIBIT D-2

	Business Type Activities <u>Water & Wastewater Fund</u>
OPERATING REVENUES:	
Charges for Water Services	\$ 4,839,978
Charges for Wastewater Services	2,368,377
Other Revenue	19,708
Total Operating Revenues	<u>7,228,063</u>
OPERATING EXPENSES:	
Personnel Services - Salaries and Wages	
Water Costs	591,939
Wastewater Costs	264,356
Administrative Costs	844,034
Total Personnel Services - Salaries and Wages	<u>1,700,329</u>
Purchased Professional & Technical Services	
Water Costs	1,627,745
Wastewater Costs	810,389
Administrative Costs	67,045
Total Purchased Professional & Technical Services	<u>2,505,179</u>
Other Operating Expenses	
Water Costs	471,274
Wastewater Costs	94,939
Administrative Costs	187,059
Total Other Operating Expenses	<u>753,272</u>
Depreciation	<u>1,908,368</u>
Total Operating Expenses	<u>6,867,148</u>
Operating Income	<u>360,915</u>
NON-OPERATING REVENUES (EXPENSES):	
Investment Earnings	36,957
Interest Expense - Non-Operating	(1,119,673)
Total Non-operating Revenue (Expenses)	<u>(1,082,716)</u>
Income (Loss) Before Contributions & Transfers	(721,801)
Capital Contributions	1,504,003
Non-Operating Transfer In	991,644
Transfers Out	(2,645,150)
Change in Net Assets	(871,304)
Total Net Assets - October 1 (Beginning)	57,063,740
Prior Period Adjustment	(450,000)
Total Net Assets - September 30 (Ending)	<u>\$ 55,742,436</u>

The notes to the Financial Statements are an integral part of this statement.

Item # 11

CITY OF KYLE
STATEMENT OF CASH FLOWS
PROPRIETARY FUND
FOR THE YEAR ENDED SEPTEMBER 30, 2011

	Business Type Activities <u>Water & Wastewater Fund</u>
CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from customers	\$ 6,999,724
Payments to suppliers	(2,860,628)
Payments to employees	<u>(1,684,664)</u>
Net cash provided (used) by operating activities	2,454,432
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES	
Purchases of capital assets	(1,783,206)
Capital contributed by others	1,504,003
Operating transfers (net), including prior period adjustments	(2,103,506)
Interest payments on outstanding debt	(1,119,673)
Principal payments on outstanding debt	<u>(288,763)</u>
Net cash provided (used) by capital and related financing activities	(3,791,145)
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest and investment revenue received	36,957
Net purchases of investments	<u>-</u>
Net cash provided (used) by investing activities	<u>36,957</u>
Net increase in cash and cash equivalents	(1,299,756)
Cash and cash equivalents - beginning of year	<u>9,850,492</u>
Cash and cash equivalents - end of year	<u><u>\$ 8,550,736</u></u>

The notes to the Financial Statements are an integral part of this statement

EXHIBIT D-3

CITY OF KYLE
STATEMENT OF CASH FLOWS - Continued
PROPRIETARY FUND
FOR THE YEAR ENDED SEPTEMBER 30, 2011

	Business Type Activities Water & Wastewater Fund
Reconciliation of operating income (loss) to net cash provided (used) by operating activities	
Operating income (loss)	\$ 360,915
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation	1,908,368
Changes in assets and liabilities	
Accounts receivable	(228,587)
Accounts payable	397,822
Wages and salaries payable	15,666
Customer deposits	248
Net cash provided (used) by operating activities	<u>\$ 2,454,432</u>

The notes to the Financial Statements are an integral part of this statement.

CITY OF KYLE, TEXAS
STATEMENT OF FIDUCIARY NET ASSETS
FIDUCIARY FUNDS
SEPTEMBER 30, 2011

	Agency Fund
ASSETS	
Cash and Cash Equivalents	\$ 287,047
Total Assets	<u>\$ 287,047</u>
LIABILITIES	
Reserved for OPEB Payments	\$ 287,047
Total Liabilities	<u>\$ 287,047</u>

The accompanying notes are an integral part of this statement.

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CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The City of Kyle, Texas (the City) adopted a City Charter in October 2000. As a home rule form of government, the City Council determines policy. The City Manager is the Chief Administrator of the City and is appointed by the City Council. The City provides the following services: Public Safety, Street Maintenance, Refuse Collection, Recreation Programs, Municipal Court, Community Development, Public Improvements, Water and Wastewater Services and General Administrative Services.

A. Reporting Entity

The Mayor and Council are elected by the public and they have the authority to make decisions, appoint administrators and managers, and significantly influence operations. They also have the primary accountability for fiscal matters. Therefore, the City is a financial reporting entity as defined by the Governmental Accounting Standards Board ("GASB") in its Statement No. 14, "The Financial Reporting Entity." The accompanying financial statements comply with the provisions of GASB Statement No. 14. There are no component units which satisfy requirements for blending within the City's financial statements or for discrete presentation.

B. Government-wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net assets and the statement of activities) report information on all of the nonfiduciary activities of the primary government. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenue, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates how other entities that participate in programs the City operates have shared in the payment of the direct costs. The "charges for services" column includes payments made by parties that purchase, use, or directly benefit from goods or services provided by a given function or segment of the City. The "grants and contributions" columns include amounts paid by organizations outside the city to help meet the operational or capital requirements of a given function. If a revenue is not a program revenue, it is a general revenue used to support all of the City's functions. Taxes are always general revenues. Direct expenses are those that are clearly identifiable with a specific function or segment.

Interfund activities between governmental funds and between governmental funds and proprietary funds appear as due to/due froms on the Governmental Fund Balance Sheet and Proprietary Fund Statement of Net Assets and as other resources and other uses on the governmental fund Statement of Revenues, Expenditures and Changes in Fund Balance and on the Proprietary Fund Statement of Revenues, Expenses and Changes in Fund Net Assets. All interfund transactions between governmental funds are eliminated on the government-wide statements. Interfund activities between governmental funds and enterprise funds remain on the government-wide statements and appear on the government-wide Statement of Net Assets as internal balances and on the Statement of Activities as interfund transfers. Interfund activities between governmental and fiduciary funds and between proprietary funds and fiduciary funds remain as due to/due froms on the government-wide Statement of Net Assets.

The fund financial statements provide reports on the financial condition and results of operations for three fund categories - governmental, proprietary, and fiduciary. Since the resources in the fiduciary funds cannot be used for City operations, they are not included in the government-wide statements. The City considers some governmental and enterprise funds major and reports their financial condition and results of operations in a separate column.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues result from providing goods and services in connection with a proprietary fund's principal ongoing operations; they usually come from exchange or exchange-like transactions. All other revenues are non-operating. Operating expenses can be tied specifically to the production of the goods and services, such as materials and labor and direct overhead. Other expenses are non-operating.

C. Measurement Focus, Basis of Accounting and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenue in the year for which they are collected. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. With this measurement focus, only current assets, current liabilities and fund balances are included on the balance sheet. Operating statements of these funds present net increases and decreases in current assets (i.e. revenues and other financing sources and expenditures and other financing uses).

The modified accrual basis of accounting recognizes revenues as soon as they are both measurable and available. Revenues are considered to be available by the City when they are received and thus available to pay liabilities of the current period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Revenues from local sources consist primarily of property taxes and sales taxes. Property tax revenues and revenues received from the State are recognized under the "susceptible to accrual" concept, that is, when they are both measurable and available. The City considers them "available" when received. Miscellaneous revenues are recorded as revenue when received in cash because they are generally not measurable until actually received. Investment earnings are recorded as earned, since they are both measurable and available.

The Proprietary Funds and Fiduciary Funds are accounted for on a flow of economic resources measurement focus and utilize the accrual basis of accounting. This basis of accounting recognizes revenues in the accounting period in which they are earned and become measurable and expenses in the accounting period in which they are incurred and become measurable. The City applies all GASB pronouncements as well as the Financial Accounting Standards Board pronouncements issued on or before November 30, 1989, unless these pronouncements conflict or contradict GASB pronouncements. With this measurement focus, all assets and all liabilities associated with the operation of these funds are included on the fund Statement of Net Assets. The fund equity is segregated into invested in capital assets net of related debt, restricted for capital improvements, and unrestricted net assets.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

D. Fund Accounting

The City reports the following major governmental funds:

The General Fund - is the general operating fund of the City. It is used to account for all financial resources except those required to be accounted for in another fund.

The Debt Service Fund - is used to account for debt service on bonded obligations of the city.

The 2008 Certificate of Obligation Fund - is used to account for purchase and renovation of public facilities, IT improvements, and infrastructure that are funded by issuance of 2008 Certificates of Obligation.

The 2010 Certificate of Obligation Refunding Bond Fund - is used to account for purchase and renovation of public facilities, IT improvements, and infrastructure that are funded by issuance of 2010 Certificates of Obligation.

The General Government Grants Fund - is used to account for purchases that are funded by the receipt of governmental grants.

The Road Improvement Fund - is used to account for road and infrastructure improvements financed by bonds and expenditures from these resources.

The City reports the following major proprietary fund:

The Water and Wastewater Fund - is used to account for the activities necessary for the provision of water and wastewater services.

In addition, the City reports the following fund types:

Governmental Funds:

Special Revenue Funds - are used to account for funds restricted to, or designated for, special purposes by the city or a grantor.

Agency Funds - are used to account for resources held for others in a custodial capacity. The City's agency fund is the Retiree Health Insurance Fund.

E. Assets, Liabilities and Net Assets or Equity

Cash and Cash Equivalents

For purpose of presenting the proprietary fund cash flow statement, cash and cash equivalents include cash demand and time deposits and investments with a maturity date within three months of the date acquired by the City.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

E. Assets, Liabilities and Net Assets or Equity (Continued)

Investments

State statutes authorize the City to invest in (1) obligations of the United States or its agencies and instrumentalities; (2) direct obligations of the State of Texas or its agencies; (3) other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States; (4) obligations of states, agencies, counties, cities, and other political subdivisions of any state having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than "A" or its equivalent; (5) certificates of deposit issued by state and national banks domiciled in this state that are (a) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor or, (b) secured by obligations that are described by (1); (4); or, (6) fully collateralized direct repurchase agreements having a defined termination date, secured by obligations described by (1), pledged with a third-party selected or approved by the City, and placed through a primary government securities dealer. Investments maturing within one year of date of purchase are stated at cost or amortized cost, all other investments are stated at fair value, which is based on quoted market prices.

Short-term Interfund Receivables/Payables

During the course of operations, numerous transactions occur between individual funds for goods provided or services rendered. These receivables and payables are classified as "due from other funds" or "due to other funds" on the balance sheet.

Restricted Assets

Certain assets of the Enterprise Fund are classified as restricted assets because their use is restricted for capital improvements.

Capital Assets

Capital assets, which include property, plant, equipment and infrastructure assets (e.g. roads, bridges, sidewalks and similar items) are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. The City defines capital assets as assets with an initial, individual cost of more than \$5,000 (amount not rounded) and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets' lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Property, plant and equipment is depreciated using the straight-line method over the following estimated useful lives:

<u>Assets</u>	<u>Years</u>
Buildings and improvements	25 to 40
Waterworks and sanitation systems	10 to 50
Infrastructure	20 to 33
Machinery and equipment	5 to 10

Compensated Absences

The City permits employees to accumulate earned but unused vacation pay benefits. Certain employees have carried forward unused sick leave benefits. Unused sick leave shall be not paid upon termination of employment, except as specifically provided as follows:

1. An employee that terminates employment for any reason other than death, or being granted a retirement or disability allowance by the Texas Municipal Retirement System (TMRS) or the Social Security Administration (SSA), shall not be paid for unused sick leave;
2. An employee having at least 10 years of service with the City who is granted a retirement or a disability allowance by TMRS or SSA, or who dies, is entitled to a partial payment for up to 480 hours of unused sick leave accrued to such employee. The partial payment to the employee or the employee's beneficiary shall be as follows: (A) an amount equal to thirty percent (30%) of the value of such accrued, unused sick leave will be paid for 10 years of service; and (B) the amount to be paid for such unused sick leave shall increase by 2% for each year of service as an employee of the City, if any, in excess of 10 years.
3. An employee covered under the agreement between the City of Kyle and the Kyle Police Association may be paid for their unused sick leave, in accordance with the agreement.

No liability is reported for unpaid accumulated sick leave for the remaining employees. Vacation pay and certain sick leave benefits are accrued when incurred in the applicable governmental activities, business-type activities, or proprietary fund type statement of net assets. A liability for these amounts is reported in governmental funds only if they have matured, for example, as a result of employee resignations and retirements.

Long-term Obligations

In the government-wide financial statements and proprietary fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund type statement of net assets. Bond premiums and discounts, as well as issuance costs, are deferred and amortized over the life of the bonds using the straight-line method, which approximates the effective interest method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are reported as deferred charges and amortized over the term of the related debt.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as issuance costs during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts are reported as other financing uses. Issuance costs, even if withheld from the actual net proceeds received, are reported as expenditures.

Fund Equity

In the year ended September 30, 2011, the City has implemented GASB Statement No. 54, "Fund Balance Reporting and Governmental Fund Type Definitions". The City classifies governmental fund balances in the governmental fund financial statements as follows:

Non-spendable - includes fund balance amounts that cannot be spent either because it is not in spendable form or because of legal or contractual constraints.

Restricted - includes fund balance amounts that are constrained for specific purposes which are externally imposed by providers, such as creditors or amounts constrained due to constitutional provisions or enabling legislation.

Committed - includes fund balance amounts that are constrained for specific purposes that are internally imposed by the government through formal action of the highest level of decision making authority and does not lapse at year-end.

Assigned - includes fund balance amounts that are intended to be used for specific purposes that are neither considered restricted or committed. Fund Balance may be assigned by the City Council.

Unassigned - includes positive fund balances within the General Fund which has not been classified within the above mentioned categories and negative fund balances in other governmental funds.

At September 30, 2011, the City does not have any non-spendable, committed, or assigned fund balances.

The City requires restricted/committed amounts to be spent first when both restricted and unrestricted fund balance is available unless there are legal documents/contracts that prohibit doing this, such as a grant agreement requiring dollar for dollar spending. Additionally, the Government would first use committed then assigned and lastly unassigned amounts of unrestricted fund balance when expenditures are made.

The City does not have a formal minimum fund balance policy.

Net Assets

Net assets represent the difference between assets and liabilities. Net assets invested in capital assets, net of related debt consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition, construction or improvements of those assets, and adding back unspent proceeds. Net assets are reported as restricted when there are limitations imposed on their use either through the enabling legislations adopted by the City or through external restrictions imposed by creditors, grantors or laws or regulations of other governmental units.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual amounts could differ from those estimates.

II. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS

Explanation of Certain Differences Between the Governmental Fund Balance Sheet and the Government Statement of Net Assets

Exhibit C-2 provides the reconciliation between the fund balance for total governmental funds on the governmental fund balance sheet and the net assets for governmental activities as reported in the government-wide statement of net assets. One element of that reconciliation explains that capital assets are not financial resources and are therefore not reported in governmental funds. In addition, long-term liabilities, including bonds payable and compensated absences, are not due and payable in the current period and are not reported as liabilities in the funds. The details of capital assets and long-term debt at the beginning of the year were as follows:

	<u>Historic Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Value Beginning of Year</u>	<u>Change in Net Assets</u>
Escrow Account for Debt Payment			<u>\$ 11,000,000</u>	\$ 11,000,000
Capitalized Debt Issuance Costs			<u>\$ 1,276,426</u>	\$ 1,276,426
<u>Capital Assets - Beginning of Year</u>				
Non-Depreciable Assets	\$ 5,497,159	\$ -	\$ 5,497,159	
Depreciable Assets	<u>88,560,909</u>	<u>15,627,808</u>	<u>72,933,101</u>	
Change in Net Assets	<u>\$ 94,058,068</u>	<u>\$15,627,808</u>	<u>\$ 78,430,260</u>	78,430,260
<u>Long-term Debt- Beginning of Year</u>				
Bonds Payable			\$ 56,363,068	
SIB Loan Payable			<u>11,175,300</u>	
Change in Net Assets			<u>\$ 67,538,368</u>	<u>(67,538,368)</u>
Net Adjustment to Net Assets				<u>\$ 23,168,318</u>

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

II. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS (Cont'd)

Explanation of Certain Differences Between the Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund Balances and the Government-wide Statement of Activities

Exhibit C-4 provides a reconciliation between the net changes in fund balance as shown on the governmental fund statement of revenues, expenditures, and changes in fund balances and the changes in net assets of governmental activities as reported on the government-wide statement of activities. One element of that reconciliation explains that current year capital outlays and debt principal payments are expenditures in the fund financial statements, but should be shown as increases in capital assets and decreases in long-term debt in the government-wide statements. This adjustment affects both the net asset balance and the change in net assets. The details of this adjustment are as follows:

	Amount	Adjustment to	
		Change in Net Assets	Net Assets
<u>Current Year Capital Outlay Amount</u>			
Depreciable Assets	\$ 5,536,831		
Non-Depreciable Assets	46,240		
Total Capital Outlay	<u>\$ 5,583,071</u>	\$ 5,583,071	\$ 5,583,071
<u>Debt Principal Payments</u>			
Bond Principal	\$ 2,390,000		
Loan Principal	2,592		
Total Principal Payments	<u>\$ 2,392,592</u>	2,392,592	2,392,592
Total Adjustment to Net Assets		<u>\$ 7,975,663</u>	<u>\$ 7,975,663</u>

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

II. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS (Cont'd)

Another element of the reconciliation on Exhibit C-4 is described as various other reclassifications and eliminations necessary to convert from the modified accrual basis of accounting to accrual basis of accounting. This adjustment is the result of several items. The details for this element are as follows:

	Amount	Adjustment to	
		Change in Net Assets	Net Assets
Reclassify Proceeds of 2010 CO Bond			
New Bond Issue	\$ 4,290,000	\$ (4,290,000)	\$ (4,290,000)
Additional Bond Issuance Costs	40,955	(40,955)	(40,955)
Reclassify Proceeds of 2011 GO Refunding Bond			
New Bond Issue	3,390,000	-	(3,390,000)
Refunding Payment on 2002 Bond	3,180,000	-	3,180,000
Net Offering Premium	28,857	-	(28,857)
Transfer of funds related to bond issuance	161,790	-	161,790
Accrue Interest on 2010 SIB Loan	467,500	-	(467,500)
Accrued Interest Payable on new bonds	18,751	-	(18,751)
Compensated Absences Payable	186,636	-	(186,636)
Capital lease of police vehicles	140,921	(140,921)	(140,921)
Total lease payments made related to police vehicles	3,583	3,583	(3,853)
Principal portion of lease payments for police vehicles	991	(991)	-
Record Amortization of Bond Issuance Costs	65,330	(65,330)	(65,330)
Record Amortization of Bond Premium	7,455	7,455	7,455
Misc other adjustments		(6,009)	270
		<u>\$ (4,533,168)</u>	<u>\$ (5,283,288)</u>

III. STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

Budgetary Data

The Council adopts an "appropriated budget" for the General Fund. The City is required to present the adopted and final amended budgeted revenues and expenditures for this fund. The City compares the final amended budget to actual revenues and expenditures. The General Fund Budget report appears in Exhibit G-1.

The following procedures are followed in establishing the budgetary data reflected in the general-purpose financial statements:

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

III. STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY (Continued)

Budgetary Data (Continued)

1. Sixty days prior to October 1st, the City prepares a budget for the next succeeding fiscal year beginning October 1. The operating budget includes proposed expenditures and the means of financing them.
2. A meeting of the City Council is then called for the purpose of adopting the proposed budget. At least ten days public notice of the meeting must be given.
3. Prior to the third Tuesday of September, the budget is legally enacted through passage of a resolution by the Council. Once a budget is approved, it can only be amended at the function and fund level by approval of a majority of the members of the Council. Amendments are presented to the Council at its regular meetings. Each amendment must have Council approval. As required by law, such amendments are made before the fact, are reflected in the official minutes of the Council, and are not made after fiscal year end. Because the City has a policy of careful budgetary control, several amendments were necessary during the year.
4. Each budget is controlled by the budget coordinator at the revenue and expenditure function/object level. Budgeted amounts are as amended by the Council. All budget appropriations lapse at year end. Amounts encumbered prior to year end will lapse 3 months after year end.

IV. DETAILED NOTES ON ALL FUNDS

A. Deposits and Investments

As of September 30, 2011, the City had the following investments:

<u>Investment Type</u>	<u>Fair Value</u>	<u>Weighted Average Maturity</u>
TexPool	\$ 9,528,726	NA
TexStar	9,386,151	NA
Federal National Mortgage	67,806	04/01/13
Federal Home Loan Mortgage	<u>1,647,763</u>	04/11/15
Total Investments	20,630,446	
Cash in Bank	899,021	
Total Cash and Cash Equivalents	<u><u>\$ 21,529,467</u></u>	

The City's investment pools are 2a7-like pools. A 2a7-like pool is one which is not registered with the Securities and Exchange Commission (SEC) as an investment company, but nevertheless has a policy that it will, and does, operate in a manner consistent with the SEC's Rule 2a7 of the Investment Company Act of 1940.

Interest Rate Risk In accordance with its investment policy, the City manages its exposure to declines in fair market values by limiting the weighted average maturity of its investment portfolio to a maximum of 180 days.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

A. Deposits and Investments (Continued)

Custodial Credit Risk In the case of deposits, this is the risk that in the event of a bank failure, the City's deposits may not be returned to it. State statutes require that all deposits in financial institutions be fully collateralized by U. S. Government obligations or its agencies and instrumentalities or direct obligations of Texas or its agencies and instrumentalities that have a fair value of not less than the principal amount of deposits. As of September 30, 2011, any deposit balance exceeding the \$250,000 covered by FDIC insurance was collateralized with securities held by the pledging financial institution in the City's name.

Credit Risk It is the City's policy to limit its investments to investment types with an investment quality rating not less than A or its equivalent by a nationally recognized statistical rating organization. The City's investment pools were rated AA+ by Standard & Poor's Investors Service and government securities were rated AAA by Standard & Poor's Investors Service.

B. Receivables

Receivables as of year-end for the government's individual major funds and nonmajor funds in the aggregate, including the applicable allowances for uncollectible accounts, are as follows:

	Governmental Funds		Enterprise Fund	Total
	General	Other	Water and Wastewater	
Receivables:				
Accounts:				
Customers	\$ 544,439	\$ -	\$ 949,496	\$ 1,493,935
Court Warrants Receivable	2,448,460	-	-	2,448,460
Developers	349,786	-	-	349,786
Other	12,975	-	-	12,975
Gross Receivables	3,355,660	-	949,496	4,305,156
Less: Allowance for Uncollectibles	(1,308,463)	-	(39,452)	(1,347,915)
Net Total Receivables	<u>\$ 2,047,197</u>	<u>\$ -</u>	<u>\$ 910,044</u>	<u>\$ 2,957,241</u>

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

C. Property Taxes

Property taxes are levied on October 1 on assessed values as of January 1 for all real and personal property located in the City. Taxes are due in January of the following year and become delinquent on February 1. On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed.

The appraisal of property within the City is the responsibility of the Hays County Appraisal District. The Appraisal District is required under the Property Tax Code to assess all property within the appraisal district on the basis of 100 percent of its appraised value and is prohibited from applying any assessment ratios. The value of property within the appraisal district must be reviewed at least every five years. The City may challenge appraised values established by the Appraisal District through various appeals and, if necessary, legal action. Under this legislation, the City continues to set tax rates on property within the city limits. However, if the effective tax rate, excluding tax rates for bonds and other contractual obligations and adjusted for new improvements, exceeds the rate for the previous year by more than 8 percent, qualified voters of the City may petition for an election to determine whether to limit the tax rate to no more than 8 percent above the tax rate of the previous year.

D. Capital Assets

Capital asset activity for the year ended September 30, 2011, was as follows:

<u>Governmental Activities:</u>	<u>Balance</u> <u>10/1/2010</u>	<u>Additions</u>	<u>Disposals/ Transfers</u>	<u>Balance</u> <u>9/30/2011</u>
Capital assets not being depreciated:				
Land	\$ 3,022,518	\$ 46,240	\$ -	\$ 3,068,758
Construction in progress	2,474,641	3,543,972	(602,354)	5,416,259
Total capital assets not being depreciated	<u>5,497,159</u>	<u>3,590,212</u>	<u>(602,354)</u>	<u>8,485,017</u>
Capital assets being depreciated:				
Buildings	10,793,871	-	-	10,793,871
Improvements other than buildings	1,429,418	819,803	38,869	2,288,090
Infrastructure	74,071,984	1,586,537	-	75,658,521
Machinery and equipment	2,265,636	146,421	(60,321)	2,351,736
Total capital assets being depreciated	<u>88,560,909</u>	<u>2,552,761</u>	<u>(21,452)</u>	<u>91,092,218</u>
Accumulated depreciation:				
Buildings	(847,102)	(296,813)	-	(1,143,915)
Improvements other than buildings	(482,663)	(216,586)	-	(699,249)
Infrastructure	(13,412,989)	(2,441,979)	-	(15,854,968)
Machinery and equipment	(885,054)	(353,495)	60,321	(1,178,228)
Total accumulated depreciation	<u>(15,627,808)</u>	<u>(3,308,873)</u>	<u>60,321</u>	<u>(18,876,360)</u>
Total capital assets being depreciated (net)	<u>72,933,101</u>	<u>(756,112)</u>	<u>38,869</u>	<u>72,215,858</u>
Governmental activities capital assets (net)	<u>\$ 78,430,260</u>	<u>\$ 2,834,100</u>	<u>\$ (563,485)</u>	<u>\$ 80,700,875</u>

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

D. Capital Assets (Continued)

<u>Business Type Activities:</u>	<u>Balance</u> 10/1/2010	<u>Additions</u>	<u>Disposals/ Transfers</u>	<u>Balance</u> 9/30/2011
Capital assets not being depreciated:				
Land	\$ 691,935	\$ -	\$ -	\$ 691,935
Construction in progress	1,610,636	87,201	(1,017,152)	680,685
Total capital assets not being depreciated	<u>2,302,571</u>	<u>87,201</u>	<u>(1,017,152)</u>	<u>1,372,620</u>
Capital assets being depreciated:				
Buildings	5,420,371	-	-	5,420,371
Improvements other than buildings	54,338,577	1,122,486	1,580,637	57,041,700
Machinery and equipment	1,397,646	10,034	-	1,407,680
Total capital assets being depreciated	<u>61,156,594</u>	<u>1,132,520</u>	<u>1,580,637</u>	<u>63,869,751</u>
Accumulated depreciation:				
Buildings	(1,200,770)	(161,697)	-	(1,362,467)
Improvements other than buildings	(10,884,033)	(1,598,400)	-	(12,482,433)
Machinery and equipment	(664,213)	(148,271)	-	(812,484)
Total accumulated depreciation	<u>(12,749,016)</u>	<u>(1,908,368)</u>	<u>-</u>	<u>(14,657,384)</u>
Total capital assets being depreciated (net)	<u>48,407,578</u>	<u>(775,848)</u>	<u>1,580,637</u>	<u>49,212,367</u>
Business type activities capital assets (net)	<u>\$ 50,710,149</u>	<u>\$ (688,647)</u>	<u>\$ 563,485</u>	<u>\$ 50,584,987</u>

Depreciation expense was charged to functions/programs of the government as follows:

Governmental Activities:

General government	\$ 380,289
Public safety	235,237
Public works	2,511,545
Culture and recreation	181,802

Total depreciation expense - governmental activities \$ 3,308,873

Business Type activities:

Water and Wastewater	<u>\$ 1,908,368</u>
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Total depreciation expense - business type activities \$ 1,908,368

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

E. Interfund Receivables, Payables and Transfers

The composition of interfund balances as of September 30, 2011, is as follows:

<u>Receivable Fund</u>	<u>Payable Fund</u>	<u>Amount</u>
Various	General Fund	\$ 31,080
General Fund	Water and wastewater	5,649
		<u>\$ 36,729</u>

Balances resulted from the time lag between the dates that 1) interfund goods and services are provided or reimbursable expenses occur, and 2) transactions are recorded in the accounting system, and 3) payments between funds are made.

Interfund transfers during the year ended September 30, 2011, are as follows:

<u>Transfers in</u>	<u>Transfers out</u>	<u>Amount</u>
General Fund	Water and wastewater	\$ 1,732,349
Debt service	Water and wastewater	912,801
Debt service	2008 CO Bond Fund	425,000
Debt service	Nonmajor governmental	36,000
Road Improvements	Water and wastewater	450,000
General Gov't Grants	General Fund	2,400
Water and Wastewater	General Fund	563,485
Water and Wastewater	2008 CO Bond Fund	269,010
Water and Wastewater	2010 CO Bond Fund	54,740
Water and Wastewater	General Gov't Grants	43,700
Water and Wastewater	Nonmajor governmental	60,709
		<u>\$ 4,550,194</u>

Transfers are used to 1) move revenues from the fund that statute or budget requires to collect them to the fund that statute or budget requires to expend them, 2) move receipts restricted to debt service from the funds collecting the receipts to the Debt Service Fund as debt service payments become due, and 3) use unrestricted revenues collected in the General Fund to finance various programs accounted for in other funds in accordance with budgetary authorizations.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

F. Long-term Debt

Changes in Long-term Liabilities

Long-term liability activity for the year ended September 30, 2011, was as follows:

	Balance 10/1/2010	Additions	Reduction	Balance 9/30/2011	Due Within One Year
<u>Governmental Activities:</u>					
Bonded Indebtedness	\$ 40,975,000	\$ 4,290,000	\$ 5,320,000	\$ 39,945,000	\$ 2,210,000
Premium on Bond Issuance	98,068	69,812	7,455	160,425	-
Refunding Bonds	15,290,000	3,390,000	250,000	18,430,000	420,000
Lease Purchase Vehicles	-	140,921	2,592	138,329	44,379
2010 State Infrastructure					
Loan	11,000,000	-	-	11,000,000	-
Deferred Interest Payable	175,300	467,500	-	642,800	-
Total Governmental Activities	<u>\$ 67,538,368</u>	<u>\$ 8,358,233</u>	<u>\$ 5,580,047</u>	<u>\$ 70,316,554</u>	<u>\$ 2,674,379</u>
	Balance 10/1/2010	Additions	Reduction	Balance 9/30/2011	Due Within One Year
<u>Business Type Activities:</u>					
Capital Lease Obligation	<u>\$ 3,548,230</u>	<u>\$ -</u>	<u>\$ 288,763</u>	<u>\$ 3,259,467</u>	<u>\$ 306,572</u>
Total Business Type Activities	<u>\$ 3,548,230</u>	<u>\$ -</u>	<u>\$ 288,763</u>	<u>\$ 3,259,467</u>	<u>\$ 306,572</u>

Bonded Indebtedness

The City issues certificates of obligation and tax notes to provide funds for the acquisition and construction of major capital facilities and equipment and to refund previous issues. Bonded indebtedness of the City is as follows:

Governmental Activities:

\$5,135,000 Combination Tax and Revenue Certificates of Obligation - Series 2002, principal due annually in series through 2020, interest due semi-annually at 3.00% to 4.75%.	\$ 445,000
\$2,340,000 Combination Tax and Revenue Certificates of Obligation - Series 2003, principal due annually in series through 2013, interest due semi-annually at 3.680%.	590,000
\$9,910,000 Combination Tax and Revenue Certificates of Obligation - Series 2007, principal due annually in series through 2027, interest due semi-annually at 4.00%.	9,055,000
\$22,800,000 Combination Tax and Revenue Certificates of Obligation - Series 2008, principal due annually in series through 2033, interest due semi-annually at 3.50% to 5.00%.	21,430,000
	Item # 11

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

F. Long-term Debt (Continued)

Bonded Indebtedness (Continued)

\$5,600,000 Tax Notes - Series 2009 principal due annually in series through 2016, interest due semi-annually at 2.50% to 3.50%.	4,135,000
\$15,315,000 General Obligation Refunding Bonds - Series 2009, principal due annually in series through 2025, interest due semi-annually at 2.00% to 4.125%.	15,040,000
\$4,290,000 Combination Tax and Revenue Certificates of Obligation - Series 2010, principal due annually in series through 2030, interest due semi-annually at 3.00% to 4.10%.	4,290,000
\$3,390,000 General Obligation Refunding Bonds - Series 2011, principal due annually in series through 2024, interest due semi-annually at 2.25% to 3.40%.	3,390,000
	\$ 58,375,000

State Infrastructure Bank Loan

In March 2009, the City entered into an agreement with the State of Texas, acting by and through the Texas Department of Transportation to construct, maintain, or finance various highway improvement projects in and near Kyle. On May 11, 2010, funds from this State Infrastructure Bank Loan were transferred to a TxDOT Austin District account. Construction of the highway projects began in 2011. A state infrastructure bank loan in the amount of \$11,000,000 is due in annual principal and interest installments of \$1,044,397 beginning May 11, 2014 through May 11, 2030 at an interest rate of 4.25%. Interest on the loans for the first three years will be added to the principal and paid off over the 17 year payout period.

Capital Lease Obligation

On February 15, 1999, the City entered into an agreement with AquaSource Services and Technologies, Inc. to finance, design, construct, operate, maintain and manage a new wastewater collection and treatment facility. The City would bear the cost of right-of-way acquisitions for the transmission lines and 50 percent of the costs to secure the necessary permits from the TNRCC. AquaSource's compensation consists of a monthly fee ranging from \$20,758 to \$56,150. This fee will be determined by multiplying the number of 1,000 gallon units of wastewater effluent treated during the calendar month by the applicable costs per 1,000 gallons. At the end of 23 years of payments, the facilities will become the property of the City without any additional payments. The City will recoup its costs through user charges. The City is treating the agreement as a capital lease and has imputed interest of 6%. The City had previously reported this obligation as a note payable. During 2008, the obligation was reclassified as a capital lease obligation to more accurately reflect the nature of the transaction.

During the year ended September 30, 2011, the City entered into a lease-purchase contract with Acme Auto Leasing, LLC for the lease of three police department vehicles. The lease includes a bargain purchase option at the end of the 36 month lease. Total monthly payments for the three vehicles will be \$4,698.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

F. Long-term Debt (Continued)

Defeasance of Bonds

In prior years, the City defeased certain certificates of obligation bonds by placing the proceeds of new bonds in an irrevocable trust to provide for all future debt service payments on the old bonds. Accordingly, the trust account assets and liabilities for the defeased bonds are not included in the City's financial statements. As of September 30, 2011, the City has \$3,180,000, related to the 2002 Series Bonds, which is considered defeased and still outstanding.

Debt Service Requirements

Annual debt service requirements to maturity for certificates of obligation and tax notes are as follows:

Fiscal Year Ending September 30,	Principal	Interest	Total
2012	\$ 2,630,000	\$ 2,579,128	\$ 5,209,128
2013	3,045,000	2,354,274	5,399,274
2014	3,040,000	2,115,139	5,155,139
2015	3,265,000	2,013,074	5,278,074
2016	3,505,000	1,894,490	5,399,490
2017-2021	15,180,000	7,780,788	22,960,788
2022-2026	17,125,000	4,547,155	21,672,155
2027-2031	8,165,000	1,591,893	9,756,893
Thereafter	2,420,000	183,000	2,603,000
	<u>\$ 58,375,000</u>	<u>\$25,058,941</u>	<u>\$ 83,433,941</u>

Annual debt service requirements to maturity for the 2011 State Infrastructure Bank Loan are as follows:

Fiscal Year Ending September 30,	Principal	Interest	Total
2012	\$ (487,369)	\$ 487,369	\$ -
2013	(508,082)	508,082	-
2014	514,722	529,675	1,044,397
2015	536,597	507,800	1,044,397
2016	559,403	484,994	1,044,397
2017-2021	3,174,497	2,047,488	5,221,985
2022-2026	3,908,908	1,313,077	5,221,985
Thereafter	3,301,324	408,766	3,710,090
	<u>\$ 11,000,000</u>	<u>\$ 6,287,251</u>	<u>\$ 17,287,251</u>

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

IV. DETAILED NOTES ON ALL FUNDS (Continued)

F. Long-term Debt (Continued)

Annual debt service requirements to maturity for capital leases are as follows:

Fiscal Year Ending September 30,	Principal	Interest	Total
2012	\$ 350,951	\$ 199,225	\$ 550,176
2013	374,565	175,611	550,176
2014	390,421	150,359	540,780
2015	335,896	127,698	463,594
2016	353,712	107,136	460,848
2017-2021	1,592,251	196,587	1,788,838
	<u>\$ 3,397,796</u>	<u>\$ 956,616</u>	<u>\$ 4,354,412</u>

G. Contingent Arbitrage Liabilities

The City has invested a portion of revenue bond proceeds as a reserve for the retirement of the bonds. Any excess of interest revenue earned on invested proceeds over interest paid on the bonds must be rebated to the federal government every five years.

V. OTHER INFORMATION

A. Risk Management

The City is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; employee health benefits; and other claims of various natures. The City participates in the Texas Municipal League Intergovernmental Risk Pool. As an insured, the City is not obligated to reimburse the pool for losses. The City has not had any significant reductions in insurance coverage, nor have insurance settlements for the last three fiscal years exceeded insurance coverage. Any losses reported, but unsettled or incurred and not reported, are believed to be insignificant to the City's financial statements.

B. Commitments and Contingencies

The City is a defendant in lawsuits occurring in the normal course of business. Although the outcome of these matters is not presently determinable, in the opinion of the City's attorney, their resolution will not have a material adverse effect on the financial condition of the City. Amounts received or receivable from grantor agencies are subject to audit and adjustment by such agencies. Any disallowed claims, including amounts already collected may constitute a liability of the applicable funds. The amount, if any, of expenditures which may be disallowed by the grantor cannot be determined at this time although the City expects such amounts, if any, to be immaterial.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

V. OTHER INFORMATION (Continued)

C. Benefit Plans

1. Retirement Plan

Plan Description

The City provides pension benefits for all of its full-time employees through a nontraditional, joint contributory, hybrid defined benefit plan in the statewide Texas Municipal Retirement System (TMRS), an agent multiple-employer public employee retirement system. The plan provisions that have been adopted by the City are within the options available in the governing state statutes of TMRS.

TMRS issues a publicly available comprehensive annual financial report that includes financial statements and required supplementary information (RSI) for TMRS; the report also provides detailed explanations of the contributions, benefits and actuarial methods and assumptions used by TMRS. This report may be obtained by writing to TMRS, P. O. Box 149153, Austin, TX 78714-9153 or by calling 800-924-8677; in addition, the report is available on TMRS website at www.TMRS.com.

Benefits depend upon the sum of the employee's contributions to the plan, with interest, and the City-financed monetary credits, with interest. At the date the plan began, the City granted monetary credits for service rendered before the plan began of a theoretical amount equal to two times what would have been contributed by the employee, with interest, prior to establishment of the plan. Monetary credits for service since the plan began are a percent (100%) of the employee's accumulated contributions. In addition, the City can grant as often as annually another type of monetary credit referred to as an updated service credit which is a theoretical amount which, when added to the employee's accumulated contributions and the monetary credits for service since the plan began, would be the total monetary credits and employee contributions accumulated with interest if the current employee contribution rate and City matching percent had always been in existence and if the employee's salary had always been the average of his salary in the last three years that are one year before the effective date. At retirement, the benefit is calculated as if the sum of the employee's accumulated contributions with interest and the employer-financed monetary credits with interest were used to purchase an annuity.

Contributions

Under the state law governing TMRS, the actuary annually determines the City contribution rate. This rate consists of the normal cost contribution rate and the prior service contribution rate, both of which are calculated to be a level percent of payroll from year to year. The normal cost contribution rate finances the currently accruing monetary credits due to the City matching percent, which are the obligation of the City as of an employee's retirement date, not at the time the employee's contributions are made. The normal cost contribution rate is the actuarially determined percent of payroll necessary to satisfy the obligation of the City to each employee at the time his/her retirement becomes effective. The prior service contribution rate amortizes the unfunded (overfunded) actuarial liability (asset) over the remainder of the plan's 25-year amortization period. Both the employees and the City make contributions monthly. Since the City needs to know its contribution rate in advance to budget for it, there is a one-year delay between the actuarial valuation that is the basis for the rate and the calendar year when the rate goes into effect (i.e. December 31, 2008, valuation is effective for rates beginning January 2009).

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

V. OTHER INFORMATION (Continued)

C. Benefit Plans (Continued)

1. Retirement Plan (Continued)

Assumptions and Schedule of Actuarial Liabilities and Funding Progress

A. Plan Provisions	<u>2011</u>	<u>2010</u>	<u>2009</u>
Total # of Participating Entities	842	837	833
Employee Deposit Rate	7.00%	7.00%	7.00%
Matching ratio (City to employee)	2 to 1	2 to 1	2 to 1
Years required for vesting	10	10	10
Service Retirement eligibility (Expressed as age/years of service)	60/10,0/20	60/10,0/20	60/10,0/20
Updated service credit	100% Repeating Transfers	100% Repeating Transfers	100% Repeating Transfers
Annually repeating (Y/N)	Y	Y	Y
Annuity increases to retirees	70%	70%	70%
Annually repeating (Y/N)	Y	Y	Y

B. Funding Policy

Cities are required to contribute at an actuarially determined rate; these rates are provided to the City on an annual basis, following the completion of the actuarial valuation. Note that there is a time delay in the valuation and when the rate becomes effective - for example, the January 1, 2009 contribution rate is based on the 12/31/2008 valuation results; if a change in plan provisions is elected by the City, this rate can change. The actuary determines contribution rates on a calendar-year basis; the City discloses the annual pension costs (which equal the required contributions) based on the calculated rate(s) for the City's fiscal year.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

V. OTHER INFORMATION (Continued)

C. Benefit Plans (Continued)

1. Retirement Plan (Continued)

Assumptions and Schedule of Actuarial Liabilities and Funding Progress (Continued)

C. Actuarial Information

	2011	2010	2009
Actuarial Cost Method	Projected Unit Credit	Projected Unit Credit	Projected Unit Credit
Amortization Method	Level Percent of Payroll	Level Percent of Payroll	Level Percent of Payroll
Remaining Amortization	22 Years	23 Years	24 Years
Asset Valuation Method	Closed Period 10-yr Smoothed Market	Closed Period 10-yr Smoothed Market	Closed Period Amortized Cost
Investment Rate of Return	7.0%	7.5%	7.5%
Projected Salary Increases	Varies by Age and Service	Varies by Age and Service	Varies by Age and Service
Includes Inflation at Cost of Living Adjustments	3.00%	3.00%	3.00%
Specific City Assumptions	2.1% (3.0% CPI)	2.1% (3.0% CPI)	2.1% (3.0% CPI)
Payroll Growth Assumption	3.00%	3.00%	3.00%
Withdrawal Rates for Male/Female	Mid/Low	Mid/Low	Mid/Low

D. Schedule of Funding Information

	2011	2010	2009
Actuarial Valuation Date			
Actuarial Valuation of Assets	\$ 5,664,341	\$ 3,976,613	\$ 3,052,636
Actuarial Valuation of Liabilities	7,470,724	5,888,223	4,587,558
Percentage Funded	75.8%	67.5%	66.5%
Unfunded (Overfunded) Actuarial			
Accrued Liability (UAAL)	\$ 1,806,383	\$ 1,911,610	\$ 1,534,922
Annual Covered Payroll	5,801,502	5,415,229	4,375,040
UAAL as a Percentage of Covered Payroll	31.1%	35.3%	35.1%

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

V. OTHER INFORMATION (Continued)

C. Benefit Plans (Continued)

1. Retirement Plan (Continued)

Assumptions and Schedule of Actuarial Liabilities and Funding Progress (Continued)

	<u>2011</u>	<u>2010</u>	<u>2009</u>
Net Pension Obligation (NPO)			
at the Beginning of the Period	\$ -	\$ -	\$ -
Annual Pension Cost:			
Annual Required Contribution (ARC)	482,584	478,717	464,867
Contribution Made	<u>482,584</u>	<u>478,717</u>	<u>464,867</u>
NPO at the End of Period	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

2. Supplemental Death Benefits Fund

Plan Description

The City participates in the cost sharing multiple-employer defined benefit group-term life insurance plan operated by the Texas Municipal Retirement System (TMRS) known as the SDBF. The City elected to provide group-term life insurance coverage to both current and retired employees. The death benefit for active employees provides a lump-sum payment approximately equal to the employee's annual salary (calculated based on the employee's actual earnings, for the 12-month period preceding the month of death). Retired employees are insured for \$7,500; this coverage is an "other postemployment benefit," or OPEB.

The City contributes to the SDBF at a contractually required rate as determined by an annual actuarial valuation. The rate is equal to the cost of providing one-year term life insurance. The funding policy for the SDBF program is to assure that adequate resources are available to meet all death benefit payments for the upcoming year; the intent is not to prefund retiree term life insurance during employees' entire careers. The City's contributions to the SDBF for the years ended September 30, 2011, 2010, and 2009 were \$6,665, \$6,154, and \$5,938, respectively, which equaled the required contributions each year.

TMRS issues a publicly available Comprehensive Annual Financial Report (CAFR) that includes financial and supplementary information for the SDBF. That report may be obtained from the TMRS website at www.TMRS.com.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

V. OTHER INFORMATION (Continued)

C. Benefit Plans (Continued)

3. Post Retirement Health Insurance Plan

Plan Description

The City maintains a single-employer defined benefit health insurance plan for retirees through the Texas Municipal League Intergovernmental Employee Benefits Pool (TML). The City elected to provide health insurance coverage to certain retired employees. Former full time employees who have retired after 25 years of service and all full time employees who have completed 5 years or more of continuous service by April 1, 2009, and who complete a total of 25 years or more of continuous service are entitled to the same group health insurance coverage provided to active employees. This coverage is completely paid by the City. Employees who have completed less than 5 years of continuous service as of April 1, 2009, and who complete 25 years or more of continuous service are entitled to the same group health insurance coverage provided to active employees. The City will pay \$300 (adjusted annually based on the CPI) toward this coverage. The employee is responsible for the balance. Any employee hired after April 1, 2009, is not entitled to group health insurance coverage after retirement. This plan is an "other postemployment benefit," or OPEB.

The City contributes to the plan at a actuarially determined rate. The rate is equal to the cost of providing health insurance coverage under the terms indicated in the preceding paragraph. The funding policy for the plan is to assure that adequate resources are available to meet all health insurance payments for the upcoming year; the intent is not to prefund retiree health insurance during employees' entire careers. The City's contribution to the plan for the year ended September 30, 2011, was \$91,455 which equaled the required contribution for that year.

The City accounts for the liability associated with the plan and the assets accumulated to pay benefits under the accrual basis of accounting in the Retiree Health Insurance Fund.

CITY OF KYLE, TEXAS
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2011

V. OTHER INFORMATION (Continued)

D. Prior Period Adjustment

In the current year, the City discovered certain prior year errors which required adjustments to fund and net assets opening balances as follows:

General Government Activities

Adjustments for construction in progress transferred from General Fund to Enterprise Fund - items were expended as capital outlay in prior year in the general fund, but transferred to the enterprise fund in the current year and capitalized	\$ 563,485
Adjustments to correctly account for an investment transfer between two funds	<u>450,000</u>
Net increase to beginning net assets balances	<u><u>\$ 1,013,485</u></u>

Business-Type Activities

Adjustments to correctly account for an investment transfer between two funds	<u>\$ (450,000)</u>
Net decrease to beginning net assets balances	<u><u>\$ (450,000)</u></u>

In addition, the presentation was changed in the current year to more properly align fund purposes. This resulted in certain funds being included in the General Fund which were shown as special revenue funds in the prior year and other funds being shown separately as special revenue funds that had been included in the General Fund in the prior year. See the table below for detail of changes.

Fund Balance - September 30 (Ending) - per prior year audited financial statements	
General Fund	\$ 2,395,901
Plus: funds previously presented separately, now included in General Fund	
Transport Fund	(151,315)
Less: funds previously included in General Fund, now presented separately	
Police Special Revenue	(6,783)
Court Special Revenue	<u>(100,102)</u>
Fund Balance - October 1 (Beginning)	<u><u>\$ 2,137,701</u></u>

REQUIRED SUPPLEMENTARY
INFORMATION

EXHIBIT G-1

CITY OF KYLE, TEXAS
SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL - GENERAL FUND
FOR THE YEAR ENDED SEPTEMBER 30, 2011

	Budgeted Amounts		Actual Amounts (GAAP BASIS)	Variance With Final Budget Positive or (Negative)
	Original	Final		
REVENUES:				
Taxes:				
Property Taxes	\$ 2,959,939	\$ 2,959,939	\$ 3,052,967	\$ 93,028
Sales Taxes	2,992,678	2,992,678	3,160,944	168,266
Franchise Tax	729,044	729,044	764,347	35,303
Licenses and Permits	477,664	477,664	433,095	(44,569)
Intergovernmental Revenue and Grants	36,564	36,564	37,064	500
Charges for Services	1,896,359	1,922,394	1,857,735	(64,659)
Fines	415,639	415,639	485,730	70,091
Investment Earnings	21,970	21,970	3,342	(18,628)
Rents and Royalties	53,496	53,496	103,230	49,734
Contributions & Donations from Private Sources	41,600	41,600	26,900	(14,700)
Other Revenue	63,081	65,081	79,025	13,944
Total Revenues	9,688,034	9,716,069	10,004,379	288,310
EXPENDITURES:				
Current:				
General Government	3,268,562	3,842,663	3,359,655	483,008
Public Safety	3,890,369	3,948,948	3,713,316	235,632
Public Works	2,474,745	2,527,062	2,309,052	218,010
Culture and Recreation	1,605,243	1,666,345	1,398,521	267,824
Libraries	700	700	-	700
Capital Outlay:				
Capital Outlay	180,774	165,905	103,562	62,343
Total Expenditures	11,420,393	12,151,623	10,884,106	1,267,517
Excess (Deficiency) of Revenues Over (Under) Expenditures	(1,732,359)	(2,435,554)	(879,727)	1,555,827
OTHER FINANCING SOURCES (USES):				
Transfers In	2,086,984	2,548,837	1,732,349	(816,488)
Transfers Out (Use)	(816,486)	(816,486)	(565,885)	250,601
Total Other Financing Sources (Uses)	1,270,498	1,732,351	1,166,464	(565,887)
Net Change	(461,861)	(703,203)	286,737	989,940
Fund Balance - October 1 (Beginning)	2,137,701	2,137,701	2,137,701	-
Prior Period Adjustment	-	-	563,485	563,485
Fund Balance - September 30 (Ending)	\$ 1,675,840	\$ 1,434,498	\$ 2,987,923	\$ 1,553,425

CITY OF KYLE, TEXAS
COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
SEPTEMBER 30, 2011

	Police Seizure Fund	Hotel Occupancy Tax	Police Special Revenue	Court Special Revenue
ASSETS				
Cash and Cash Equivalents	\$ 21,922	\$ 150,005	\$ 10,391	\$ 95,255
Receivables (Net)	-	-	-	-
Total Assets	<u>\$ 21,922</u>	<u>\$ 150,005</u>	<u>\$ 10,391</u>	<u>\$ 95,255</u>
LIABILITIES AND FUND BALANCES				
Liabilities:				
Accounts Payable	\$ -	\$ 64,072	\$ -	\$ -
Total Liabilities	<u>-</u>	<u>64,072</u>	<u>-</u>	<u>-</u>
Fund Balances:				
Restricted Fund Balance:				
Other Restricted Fund Balance	21,922	85,933	10,391	95,255
Total Fund Balances	<u>21,922</u>	<u>85,933</u>	<u>10,391</u>	<u>95,255</u>
Total Liabilities and Fund Balances	<u>\$ 21,922</u>	<u>\$ 150,005</u>	<u>\$ 10,391</u>	<u>\$ 95,255</u>

The notes to the Financial Statements are an integral part of this statement.

EXHIBIT H-1

Library Programs	CIP Park Development Fund	Total Nonmajor Special Revenue Funds	2009 Tax Notes Fund	Total Nonmajor Governmental Funds
\$ 161,906	\$ 80,140	\$ 519,619	\$ 1,022,972	\$ 1,542,591
-	-	-	(2,298)	(2,298)
<u>\$ 161,906</u>	<u>\$ 80,140</u>	<u>\$ 519,619</u>	<u>\$ 1,020,674</u>	<u>\$ 1,540,293</u>
\$ -	\$ -	\$ 64,072	\$ 33,864	\$ 97,936
-	-	64,072	33,864	97,936
161,906	80,140	455,547	986,810	1,442,357
161,906	80,140	455,547	986,810	1,442,357
<u>\$ 161,906</u>	<u>\$ 80,140</u>	<u>\$ 519,619</u>	<u>\$ 1,020,674</u>	<u>\$ 1,540,293</u>

CITY OF KYLE, TEXAS
 COMBINING STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN
 FUND BALANCES - NONMAJOR GOVERNMENTAL FUNDS
 FOR THE YEAR ENDED SEPTEMBER 30, 2011

	Police Seizure Fund	Hotel Occupancy Tax	Police Special Revenue	Court Special Revenue
REVENUES:				
Taxes:				
Other Taxes	\$ -	\$ 132,580	\$ -	\$ -
Intergovernmental Revenue and Grants	2,303	-	3,508	-
Charges for Services	-	-	-	-
Fines	-	-	-	29,009
Investment Earnings	-	185	-	-
Other Revenue	-	-	100	-
Total Revenues	<u>2,303</u>	<u>132,765</u>	<u>3,608</u>	<u>29,009</u>
EXPENDITURES:				
Current:				
General Government	-	-	-	-
Public Safety	-	-	-	33,856
Culture and Recreation	-	131,391	-	-
Capital Outlay:				
Capital Outlay	-	-	-	-
Total Expenditures	<u>-</u>	<u>131,391</u>	<u>-</u>	<u>33,856</u>
Excess (Deficiency) of Revenues Over (Under) Expenditures	<u>2,303</u>	<u>1,374</u>	<u>3,608</u>	<u>(4,847)</u>
OTHER FINANCING SOURCES (USES):				
Transfers Out (Use)	-	(36,000)	-	-
Total Other Financing Sources (Uses)	<u>-</u>	<u>(36,000)</u>	<u>-</u>	<u>-</u>
Net Change in Fund Balance	2,303	(34,626)	3,608	(4,847)
Fund Balance - October 1 (Beginning)	<u>19,619</u>	<u>120,559</u>	<u>6,783</u>	<u>100,102</u>
Fund Balance - September 30 (Ending)	<u>\$ 21,922</u>	<u>\$ 85,933</u>	<u>\$ 10,391</u>	<u>\$ 95,255</u>

The notes to the Financial Statements are an integral part of this statement.

EXHIBIT H-2

Library Programs	CIP Park Development Fund	Total Nonmajor Special Revenue Funds	2009 Tax Notes Fund	Total Nonmajor Governmental Funds
\$ -	\$ -	\$ 132,580	\$ -	\$ 132,580
113	-	5,924	-	5,924
-	222,986	222,986	-	222,986
-	-	29,009	-	29,009
170	-	355	311	666
-	-	100	-	100
<u>283</u>	<u>222,986</u>	<u>390,954</u>	<u>311</u>	<u>391,265</u>
-	-	-	56	56
-	-	33,856	-	33,856
-	-	131,391	-	131,391
-	-	-	420,626	420,626
-	-	165,247	420,682	585,929
<u>283</u>	<u>222,986</u>	<u>225,707</u>	<u>(420,371)</u>	<u>(194,664)</u>
-	-	(36,000)	(60,709)	(96,709)
-	-	(36,000)	(60,709)	(96,709)
283	222,986	189,707	(481,080)	(291,373)
<u>161,623</u>	<u>(142,846)</u>	<u>265,840</u>	<u>1,467,890</u>	<u>1,733,730</u>
<u>\$ 161,906</u>	<u>\$ 80,140</u>	<u>\$ 455,547</u>	<u>\$ 986,810</u>	<u>\$ 1,442,357</u>

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COMPLIANCE
SECTION



**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH
*GOVERNMENT AUDITING STANDARDS***

Independent Auditors' Report

Honorable Mayor and Members of the City Council
City of Kyle, Texas

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Kyle, Texas (the City) as of and for the year ended September 30, 2011, which collectively comprise the City's basic financial statements and have issued our report thereon dated January 27, 2012.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the City's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements but not for the purpose of expressing an opinion on the effectiveness of the City's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the City's internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as described in the accompanying schedule of findings and responses, we identified a certain deficiency in internal control over financial reporting that we consider to be a significant deficiency.

Item # 11

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiency described as Finding 11-01 on the schedule of findings and responses to be a significant deficiency.

COMPLIANCE AND OTHER MATTERS

As part of obtaining reasonable assurance about whether the City's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

The City's response to the findings identified in our audit are described in the accompanying schedule of findings and responses. We did not audit the City's response and, accordingly we express no opinion on it.

This report is intended solely for the information and use of management, others within the City and the City Council, and is not intended to be used and should not be used by anyone other than these specified parties.

Atchley & Associates, LLP

Austin, Texas
January 27, 2012

CITY OF KYLE, TEXAS
SCHEDULE OF FINDINGS AND RESPONSES
FOR THE YEAR ENDED SEPTEMBER 30, 2011

11-01 Bank Reconciliations

Criteria: Monthly bank reconciliations assist in detecting errors in a timely manner and aid in providing management accurate cash position balances to make prudent financial decisions.

Condition: Although City personnel have continued to make progress related to the reconciliation process, such reconciliations were not completely reconciled to the general ledger amounts and some discrepancies were not corrected in the general ledger. There was a similar finding in the prior year.

Cause: City accounting personnel indicate that difficulties still were incurred because of the transition to a new accounting software and delays in getting needed information led to not completing the reconciliations.

Effect: If bank reconciliations are not completed regularly, material errors effecting cash may be overlooked and not be detected or corrected in a timely manner. The average bank reconciliation was completed 70 days after the month-end.

Recommendation: We recommend that bank reconciliations be performed monthly and discrepancies be investigated and corrected in a timely manner.

Management's Response:

Below are the main factors that contributed to bank reconciliations not being done in a timely manner and as a result delays were experienced in identifying discrepancies. These factors are listed and explained as follows:

- Software Changes – Currently Utility Billing, Municipal Court, and Building all utilize a different software package from the accounting software. While the departments' overall function was increased significantly compared to the software formerly used, they were no longer integrated with the financial accounting software. Information on daily deposits were developed with the new software but had to be manually recorded in the accounting software. Interfaces have been completed for Utility Billing and Municipal Court to make the recording of this information quicker, easier, and more precise. An interface is being developed for the Building Department. The manual process does require considerably more time than an automated process.
- In addition, while we understand and appreciate the significance of bank reconciliations completed within a timely manner, the limited financial staff availability had to be redirected for budget development. Soon after budget development was completed, staff was redirected to complete bank reconciliations.
- Going forward, bank reconciliations have been assigned to a specific employee with deadlines given for completion each month.

CITY OF KYLE, TEXAS
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS
FOR THE YEAR ENDED SEPTEMBER 30, 2011

10-01 Expenditures in Excess of Budget Appropriations

During our audit of the City's financial statements for the year ended September 30, 2010, we noted that expenditures exceeded budget appropriations in the amount of \$69,411.

We recommended that the City closely monitor its compliance with budget appropriations and avoid over expending these appropriations.

Status: Expenditures did not exceeded budget appropriations in the General Fund for the year ended September 30, 2011.

10-02 Bank Reconciliations

Monthly bank reconciliations assist in detecting errors in a timely manner and aid in providing management accurate cash position balances to make prudent financial decisions. Bank reconciliations were not performed timely and some discrepancies were not corrected in the general ledger.

We recommended that bank reconciliations be performed timely and discrepancies be investigated and corrected in a timely manner.

Status: For the year ended September 30, 2011, bank reconciliations were not being prepared timely, with the average bank reconciliation being completed 70 days after the month-end. See Finding 11-01.



To the City of Kyle
 City of Kyle, Texas
 100 Center Street
 Kyle, Texas 78640

We have audited the financial statements of the City of Kyle, Texas (the City) for the year ended September 30, 2011, and have issued our report thereon dated January 27, 2012. This report summarizes certain matters required by professional standards to be communicated to you in your oversight responsibility for the City's financial reporting process.

Our Responsibility under U.S. Generally Accepted Auditing Standards

As stated in our engagement letter dated August 30, 2011, our responsibility, as described by professional standards, is to express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

- Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free of material misstatement.
- As part of our audit, we considered the internal control of the City of Kyle. Such considerations were solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.
- Our audit of the financial statements for the year ended September 30, 2011 was performed in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* issued by the Comptroller General of the United States.
- In accordance with *Government Auditing Standards*, we have performed tests of controls over internal control over financial reporting and tests of compliance with certain provisions of laws, regulations, contracts, and grant agreements that contribute to the evidence supporting our opinion on the financial statements. However, they do not provide a basis for opining on the entity's internal control over financial reporting or on compliance and other matters.
- We are responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures specifically to identify such matters.

Accounting Practices

Adoption of, or Change in, Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by the City are described in Section I to the financial statements. As described in Section I to the financial statements, the City adopted Governmental Accounting Standards Board Statement No. 54, "Fund Balance Reporting and Governmental Fund Type Definitions" during the year ended September 30, 2011.

Item # 11

Significant or Unusual Transactions

We did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Alternative Treatments Discussed with Management

We did not discuss with management any alternative treatments within generally accepted accounting principles for accounting policies and practices related to material items during the current audit period.

Management's Judgments and Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

- Management's estimate of the allowance for uncollectible receivables is based on past experience with collections of taxes and other fees.
- Management's estimate of depreciation is based on predetermined useful lives and methods approved by the City Council.

We evaluated the key factors and assumptions used to develop the foregoing estimates in determining that it is reasonable in relation to the financial statements taken as a whole.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. There were several audit adjustments made to the original trial balance presented to us to begin our audit. Of the adjustments that were recorded, Appendix A contains a description of the adjustments that could, in our judgment, either individually or in aggregate, have a significant effect on the City's financial reporting process.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated January 27, 2012. Copies of the representations are attached.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to the City’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Significant Issues Discussed with Management

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the City’s auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This report is intended solely for the information and use of the City Council and management and is not intended to be and should not be used by anyone other than these specified parties. It will be our pleasure to respond to any questions you have regarding this report. We appreciate the opportunity to continue to be of service to the City of Kyle, Texas.

Atchley & Associates, LLP

Austin, Texas
January 27, 2012



CITY OF KYLE

100 W. Center • P.O. Box 40 • Kyle, Texas 78640 • (512) 262-1010 • FAX (512) 262-3800

January 27, 2012

Atchley & Associates, LLP
6850 Austin Center Blvd., Ste 180
Austin, TX 78731

In connection with your audit of the financial statements of the governmental activities and the business-type activities (the financial statements) of the City of Kyle, Texas (the City) as of and for the year ended September 30, 2011. We confirm that we are responsible for the fair presentation in the financial statements of financial position, results of operations, and cash flows in conformity with accounting principles generally accepted in the United States of America.

We confirm to the best of our knowledge and belief the following representations made to you during your audit.

1. The financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America.
2. We have identified for you all of our funds, governmental functions, and identifiable business-type activities.
3. We have properly classified all funds and activities.
4. We have properly determined and reported the major governmental and enterprise funds based on the required quantitative criteria.
5. We are responsible for compliance with laws and regulations applicable to the City including adopting, approving, and amending budgets.
6. We have made available to you:
 - a. All financial records and related data of all funds and activities, including those of all special funds, programs, departments, projects, activities, etc., in existence at any time during the period covered by your audit.
 - b. All minutes of the meetings of the governing board and committees of board members or summaries of actions of recent meetings for which minutes have not yet been prepared.
7. We have no knowledge of fraud or suspected fraud affecting the entity involving:
 - a. Management or employees who have significant roles in the internal control.
 - b. Others where the fraud could have a material effect on the financial statements.
8. We acknowledge our responsibility for the design and implementation of programs and controls to provide reasonable assurance that fraud is prevented and detected.
9. We have no knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, analysts, regulators, short sellers, or others.

10. We have informed you of all significant deficiencies, including material weaknesses, in the design or operation of internal controls that could adversely affect the entity's ability to record, process, summarize, and report financial data.
11. There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
12. We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities. In that regard:
 - a. The City has no significant amounts of idle property and equipment or permanent excess plant capacity.
 - b. The City has no plans or intentions to discontinue the operations of any of its governmental divisions or business-type activities.
13. The following have been properly recorded and/or disclosed in the financial statements:
 - a. All liens, security agreements or encumbrances on assets and all other pledges of assets.
 - b. The fair value of investments.
 - c. Amounts of contractual obligations for construction and purchase of real property or equipment not included in the liabilities or encumbrances recorded on the books.
 - d. All leases and material amounts of rental obligations under long-term leases.
 - e. All significant estimates and material concentrations known to management which are required to be disclosed in accordance with the FASB Accounting Standards Codification 275, *Risks and Uncertainties*. Significant estimates are estimates at the balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets for which events could occur which would significantly disrupt normal finances within the next year.
14. We are responsible for making the accounting estimates included in the financial statements.

Those estimates reflect our judgment based on our knowledge and experience about past and current events and our assumptions about conditions we expect to exist and courses of action we expect to take. In that regard, adequate provisions have been made.

 - a. To reduce receivables to their estimated net collectable amounts.
 - b. For pension obligations, post-retirement benefits other than pensions, and deferred compensation agreements attributable to employee services rendered through September 30, 2011.
15. There are no:
 - a. Material transactions that have not been properly recorded in the accounting records underlying the financial statements.
 - b. Related-party relationships, transactions, and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing agreements, and guarantees, all of which have been recorded in accordance with the economic substance of the transactions.
 - c. Violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency. In that regard, we specifically represent that we have not been designated as, or alleged to be, a "potentially responsible party" by the Federal Environmental Protection Agency or any equivalent state agencies in connection with any environmental contamination.

- d. Other material liabilities or gain or loss contingencies that are required to be accrued or disclosed by FASB Accounting Standards Codification 450, *Contingencies* and/or GASB Statement No. 10.
 - e. Agreements to repurchase assets previously sold.
 - f. Guarantees, whether written or oral, under which the Government is contingently liable.
 - g. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances.
 - h. Line of credit or similar arrangements.
 - i. Liabilities which are subordinated in any way to any other actual or possible liabilities of the City.
16. The City of Kyle is currently involved in ongoing litigation against Aqua Utilities Inc. However, given the early stage of this litigation, an unfavorable outcome is neither probable nor remote, and the range of possible loss cannot be determined.
 17. We have no direct or indirect, legal or moral, obligation for any debt of any organization, public or private that is not disclosed in the financial statement.
 18. We have satisfactory title to all owned assets.
 19. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance. Net asset components (invested in capital assets net of related debt, restricted, and unrestricted) and fund balance reserves and designations are properly classified and, if applicable, approved.
 20. Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
 21. Revenues are appropriately classified in the statement of activities within program revenues and general revenues.
 22. Capital assets, including infrastructure assets, are properly capitalized, reported, and depreciated.
 23. Required supplementary information is properly measured and presented.
 24. We are responsible for and have reviewed and approved the proposed adjustments to the trial balances identified during the audit, which are included in the summarized schedule of posted adjustments and will post all adjustments accordingly. These adjustments are attached as Appendix A. We have reviewed, approved, and are responsible for overseeing the preparation and completion of the basic financial statements and related notes.

In connection with your audit, conducted in accordance with Governmental Auditing Standards, we confirm:

25. We are responsible for:
 - a. Compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to the City.
 - b. Establishing and maintaining effective internal control over financial reporting.
26. We have identified and disclosed to you:
 - a. All laws, regulations, and provisions of contracts and grant agreements that have a direct and material effect on the determinations of financial statement amounts or other financial data significant to audit objectives.

- b. Violations (and possible violations) of laws, regulations, and provisions of contracts and grant agreements whose effects should be considered for disclosure in the auditor repository or noncompliance.

27. We have a process to track the status of audit findings and recommendations.
28. We have identified for you previous financial audits, attestation engagements, performance audits, or other studies related to the objectives of the audit being undertaken and the corrective action taken to address significant findings and recommendations.
29. We have provided you with our views on your reported findings, conclusions, and recommendations, as well as our planned corrective actions for the report.

No events or transactions other than those disclosed in the financial statements have occurred subsequent to the balance sheet date that would require adjustment to, or disclosure in, the financial statements.

During the course of your audit, you may have accumulated records containing data which should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.

City of Kyle, Texas



Lanny Lambert, City Manager



Perwez Moheef, Director of Finance



Wendy Bates, Finance Officer

Appendix A

City of Kyle

Year End: September 30, 2011

Trial balance

Date: 10/1/2010 To 9/30/2011

Number	Date	Name	Account No	Reference	Annotation	Debit	Credit	Recurrence
1	9/30/2011	Investments - VSR	110-000-11090 110	1080			3,579.00	
1	9/30/2011	Gains on Investments	110-441-42419 110	1080		3,579.00		
1	9/30/2011	Investments - VSR	182-000-11090 CPF01	1080			919.00	
1	9/30/2011	Gain on Investments	182-441-42419 CPF01	1080		919.00		
1	9/30/2011	Investments - VSR	184-000-11090 CPF02	1080			27,213.00	
1	9/30/2011	Gains on Investments	184-441-42419 CPF02	1080		27,213.00		
1	9/30/2011	Investments - VSR	185-000-11090 CPF03	1080			1,395.00	
1	9/30/2011	Gains on Investments	185-441-42419 CPF03	1080		1,395.00		
1	9/30/2011	Investments - VSR	342-000-11090 ENT06	1080			24,112.00	
1	9/30/2011	Gains on Investments	342-441-42419 ENT06	1080			24,112.00	
		To adjust VSR for realized gains/losses						
2	9/30/2011	Investments - VSR	110-000-11090 110	1080			9,281.00	
2	9/30/2011	Gains on Investments	110-441-42419 110	1080		9,281.00		
2	9/30/2011	Investments - VSR	182-000-11090 CPF01	1080			27,841.00	
2	9/30/2011	Gain on Investments	182-441-42419 CPF01	1080		27,841.00		
2	9/30/2011	Investments - VSR	184-000-11090 CPF02	1080			11,914.00	
2	9/30/2011	Gains on Investments	184-441-42419 CPF02	1080		11,914.00		
2	9/30/2011	Investments - VSR	185-000-11090 CPF03	1080			560.00	
2	9/30/2011	Gains on Investments	185-441-42419 CPF03	1080		560.00		
2	9/30/2011	Investments - VSR	342-000-11090 ENT06	1080			59,097.00	
2	9/30/2011	Gains on Investments	342-441-42419 ENT06	1080		59,097.00		
		To adjust VSR for unrealized gains/losses						
3	9/30/2011	Accrual - Vacation Leave	110-000-22303 110	6010			87,254.00	
3	9/30/2011	Vacation Leave	110-110-51121 110	6010		10,539.00		
3	9/30/2011	Vacation Leave	110-113-51121 110	6010		161.00		
3	9/30/2011	Vacation Leave	110-115-51121 110	6010		103.00		
3	9/30/2011	Vacation Leave	110-121-51121 110	6010		1,517.00		
3	9/30/2011	Vacation Leave	110-125-51121 110	6010		795.00		
3	9/30/2011	Vacation Leave	110-130-51121 110	6010		2,618.00		
3	9/30/2011	Vacation Leave	110-133-51121 110	6010		3,297.00		
3	9/30/2011	Vacation Leave	110-134-51121 110	6010		1,281.00		
3	9/30/2011	Vacation Leave	110-141-51121 110	6010		5,352.00		
3	9/30/2011	Vacation Leave	110-151-51121 110	6010		67,127.00		
3	9/30/2011	Vacation Leave	110-155-51121 110	6010		5,177.00		
3	9/30/2011	Vacation Leave	110-161-51121 110	6010			10,713.00	
3	9/30/2011	Accrual - Vacation Leave	121-000-22303 121	6010			6,838.00	
3	9/30/2011	Vacation Leave	121-210-51121 121	6010		3,140.00		
3	9/30/2011	Vacation Leave	121-221-51121 121	6010		4,186.00		
3	9/30/2011	Vacation Leave	121-230-51121 121	6010			488.00	
3	9/30/2011	Accrual - Vacation Leave	125-000-22303 125	6010		710.00		
3	9/30/2011	Vacation Leave	125-241-51121 125	6010			710.00	
3	9/30/2011	Accrual - Vacation Leave	310-000-22303 ENT01	6010		843.00		
3	9/30/2011	Vacation Leave	310-825-51121 ENT01	6010			843.00	
		To adjust vacation accrual to proper year-end balance						
4	9/30/2011	Aquasorce Note Payable - Current	310-000-22540 ENT01	5005			306,572.00	
4	9/30/2011	Note Payable - AquaSource	310-000-22640 ENT01	5005		288,763.00		
4	9/30/2011	Note Payable - AquaSource	310-000-22640 ENT01	5005		306,572.00		
4	9/30/2011	Transfer In	310-462-42621 ENT01	5005			288,763.00	
4	9/30/2011	Transfers Out	342-534-58114 ENT06	5005		288,763.00		
4	9/30/2011	Debt on Sewer Treatment Plant	342-534-59136 ENT06	5005			288,763.00	
		To reclass principal payments on LTD and reclass current portion of LTD						
5	9/30/2011	A/P Pending	310-000-22020 ENT01	5505		42,996.00		
5	9/30/2011	Aqua Tex O&M Mgmt	310-825-55521 ENT01	5505			42,996.00	
5	9/30/2011	A/P Pending	342-000-22020 ENT06	5505		41,150.00		
5	9/30/2011	Debt on Sewer Treatment Plant	342-534-59136 ENT06	5505			41,150.00	
		To correct payables and expense to reflect 12 months of Aqua Texas payments						

Item # 11

City of Kyle

Year End: September 30, 2011

Trial balance

Date: 10/1/2010 To 9/30/2011

Number	Date	Name	Account No	Reference	Annotation	Debit	Credit	Recurrence
7	9/30/2011	BB Cash - FY 10 Audit Diff.	110-000-11025 110	7902			42,415.00	
7	9/30/2011	Fund Balance	110-000-33010 110	7902		42,415.00		
To rebook PY AJE #11, book with a debit to a cash account by client. Booked as a reduction to Net Assets by A&A								
8	9/30/2011	Due To Fund 310	110-000-22523 110	7902		5,667.00		
8	9/30/2011	Fund Balance	110-000-33010 110	7902			5,667.00	
8	9/30/2011	General Office Supplies	110-100-52111 110	7902			10.00	
8	9/30/2011	Due From Fund 110	310-000-11501 ENT01	7902			5,667.00	
8	9/30/2011	Fund Balance	310-000-33010 ENT01	7902		5,667.00		
To roll forward fund balances								
9	9/30/2011	Transfers in	182-490-3430 CPF01	7910			450,000.00	
9	9/30/2011	Prior period adjustment	182-PPA-33011 CPF01	7910		450,000.00		
9	9/30/2011	Transfers Out	342-534-58114 ENT06	7910		450,000.00		
9	9/30/2011	Prior period adjustment	342-PPA-33011 ENT06	7910			450,000.00	
To book entry between funds - booked by client								
10	9/30/2011	Other Equipment	110-133-57125 110	4005			2,400.00	
10	9/30/2011	Communication Equipment	110-151-52212 110	4005		4,195.00		
10	9/30/2011	Communication Equip Repair	110-151-54173 110	4005		1,015.00		
10	9/30/2011	Communication Equipment	110-151-57112 110	4005			5,210.00	
10	9/30/2011	Interfund Transfers Out	110-190-58114 110	4005		2,400.00		
10	9/30/2011	Claims and Reimbursement	184-445-42451 CPF02	4005			33.00	
10	9/30/2011	Capital Improv - Construction	184-652-57222 CPF02	4005		33.00		
10	9/30/2011	Water Storage/Distribution Rep	310-820-55346 ENT01	4005		5,215.00		
10	9/30/2011	Water Wells & Pumps	310-820-57215 ENT01	4005			5,215.00	
10	9/30/2011	WL Const Costs-Center to Well3	331-844-57211 ENT03	4005				
10	9/30/2011	Transfer In	410-710-42612 SRF05	4005			2,400.00	
10	9/30/2011	Other Equipment	410-710-57125 SRF05	4005			3,599.00	
10	9/30/2011	Other Equipment	410-720-57125 SRF05	4005		5,999.00		
PBC entry: To reclass expenses from fixed asset expense accounts								
11	9/30/2011	A/R - Court Warrants	110-000-11226 110	1530		928,464.00		
11	9/30/2011	Allow - Uncollectible Court AR	110-000-11251 110	1530			928,464.00	
To adjust A/R for court warrants per summary of outstanding warrants								
12	9/30/2011	Interfund Transfers Out	184-190-58114 CPF02	4005		269,010.00		
12	9/30/2011	WW Lines-Tenorio Ph 1A	184-656-57211 CPF02	4005			242,641.00	
12	9/30/2011	Engineering Svc-Capital Outlay	184-656-57313 CPF02	4005			4,223.00	
12	9/30/2011	Sewer Lines-RR @ Thiele&Front	184-662-57211 CPF02	4005			6,018.00	
12	9/30/2011	Engineering Svc-Capital Outlay	184-665-57313 CPF02	4005			16,128.00	
12	9/30/2011	Transfer Out	185-668-58114 CPF03	4005		60,709.00		
12	9/30/2011	Computer Hardware - SCADA	185-669-57114 CPF03	4005			55,045.00	
12	9/30/2011	Elevated/Ground Storage Water	185-669-57214 CPF03	4005			5,664.00	
12	9/30/2011	Waterline/WWLine Construction	187-677-57211 CPF04	4005			54,740.00	
12	9/30/2011	Transfer Out	187-677-58114 CPF04	4005		54,740.00		
12	9/30/2011	Construction In Progress - Wat	310-000-11712 ENT01	4005		69,368.00		
12	9/30/2011	Construction In Progress - WW	310-000-11713 ENT01	4005		17,832.00		
12	9/30/2011	Improv Other Than Bldgs-Water	310-000-11742 ENT01	4005		69,059.00		
12	9/30/2011	Elevated/Ground Storage Tanks	310-000-11745 ENT01	4005		8,278.00		
12	9/30/2011	Machinery & Equipment - Wastew	310-000-11753 ENT01	4005		10,034.00		
12	9/30/2011	Line Extensions - Water	310-000-11764 ENT01	4005		219,075.00		
12	9/30/2011	Line Extensions - Water	310-000-11764 ENT01	4005		54,937.00		
12	9/30/2011	Line Extensions - Water	310-000-11764 ENT01	4005		252,882.00		
12	9/30/2011	Line Extensions - Wastewater	310-000-11765 ENT01	4005		518,254.00		
12	9/30/2011	Contributed Capital	310-451-42501 ENT01	4005			737,329.00	
12	9/30/2011	Transfer In	310-462-42621 ENT01	4005			447,823.00	
12	9/30/2011	Office Furniture (>\$5K)	310-820-57111 ENT01	4005			8,350.00	
12	9/30/2011	Other Equipment	310-820-57125 ENT01	4005			716.00	
12	9/30/2011	Water Wells & Pumps	310-820-57215 ENT01	4005			4,250.00	
12	9/30/2011	Capital Improv - Construction	310-820-57222 ENT01	4005			11,237.00	

Item # 11

City of Kyle

Year End: September 30, 2011

Trial balance

Date: 10/1/2010 To 9/30/2011

Number	Date	Name	Account No	Reference	Annotation	Debit	Credit	Recurrence	
12	9/30/2011	Heavy Equipment	310-825-57124 ENT01	4005			10,034.00		
12	9/30/2011	Land Acquisition	331-842-57221 ENT03	4005			1,380.00		
12	9/30/2011	Engineering Svc-Capital Outlay	331-842-57313 ENT03	4005			6,762.00		
12	9/30/2011	Transfer Out	331-842-58114 ENT03	4005		17,960.00			
12	9/30/2011	Land Acquisition	331-843-57221 ENT03	4005			260.00		
12	9/30/2011	Water Wells	331-850-57215 ENT03	4005			8,278.00		
12	9/30/2011	Engineering Svc-Capital Outlay	331-863-57313 ENT03	4005			1,280.00		
12	9/30/2011	Transfers Out	342-534-58114 ENT06	4005		1,704.00			
12	9/30/2011	Engineering Svc-Capital Outlay	342-887-57313 ENT06	4005			846.00		
12	9/30/2011	Legal Svcs-Capital Outlay	342-889-57311 ENT06	4005			147.00		
12	9/30/2011	Engineering Svc-Capital Outlay	342-889-57313 ENT06	4005			711.00		
12	9/30/2011	Construction-Capital Outlay	410-710-57222 SRF05	4005			43,700.00		
12	9/30/2011	Transfers Out	410-710-58114 SRF05	4005		43,700.00			
		To reclassify expenses as FA and to record contributed capital							
13	9/30/2011	Construction In Progress - Wat	310-000-11712 ENT01	4005			1,017,152.00		
13	9/30/2011	Construction In Progress - Wat	310-000-11712 ENT01	4005		550,582.00			
13	9/30/2011	Construction In Progress - WW	310-000-11713 ENT01	4005			550,582.00		
13	9/30/2011	Line Extensions - Water	310-000-11764 ENT01	4005		1,017,152.00			
		To reclassify WIP to match PBC detail and to record transfers from WIP to FA							
14	9/30/2011	DEPRECIATION	580-6010 ENT01	4005		1,908,368.00			
14	9/30/2011	AD - Buildings	310-000-11781 ENT01	4005			161,697.00		
14	9/30/2011	AD - Improv Other Than Bldg	310-000-11782 ENT01	4005			1,598,400.00		
14	9/30/2011	AD - Mach & Equip	310-000-11792 ENT01	4005			148,271.00		
		To record depreciation for the year							
15	9/30/2011	Interfund Transfers Out	110-190-58114 110	4005		563,485.00			
15	9/30/2011	Prior Period Adjustments	110-PPA-33011 110	4005			563,485.00		
15	9/30/2011	Improv Other Than Bldgs-Water	310-000-11742 ENT01	4005		383,429.00			
15	9/30/2011	Line Extensions - Wastewater	310-000-11765 ENT01	4005		180,056.00			
15	9/30/2011	Transfer In	310-462-42621 ENT01	4005			563,485.00		
		To move GF finished WIP to EF							
16	9/30/2011	Claim on Cash - Pooled	110-000-11020 110	6008			57,435.00		
16	9/30/2011	Reserve Expense For OPEB	110-110-58900 110	6008		57,435.00			
16	9/30/2011	Claim on Cash - Pooled	310-000-11020 ENT01	6008			21,697.00		
16	9/30/2011	Reserve Expense For OPEB	310-810-58900 ENT01	6008		21,697.00			
16	9/30/2011	Claim on Cash - Pooled	810-000-11020 AF01	6008		79,132.00			
16	9/30/2011	OPEB Health Insur. Liability	810-000-23001 AF01	6008			79,132.00		
		To record OPEB accrual for the year.							
17	9/30/2011	Motor Vehicles	110-151-57123 110				3,583.00		
17	9/30/2011	Motor Vehicles - Principal	110-151-57124 110			2,592.00			
17	9/30/2011	Motor Vehicles - Interest	110-151-57125 110			991.00			
		To reclass principal and interest expense for police vehicles							
18	9/30/2011	Claim on Cash - Pooled	110-000-11020 110				408,244.00		
18	9/30/2011	Claim on Cash - Pooled	110-000-11020 110			866,174.00			
18	9/30/2011	Interfund Transfers Out	110-190-58114 110			408,244.00			
18	9/30/2011	Transfer - Utility Operating	110-462-42621 110				866,174.00		
18	9/30/2011	Claim on Cash - Pooled	121-000-11020 121			230,927.00			
18	9/30/2011	Transfer - General Fund	121-461-42613 121				230,927.00		
18	9/30/2011	Claim on Cash - Pooled	125-000-11020 125			177,317.00			
18	9/30/2011	Transfer - General Fund	125-461-42613 125				177,317.00		
18	9/30/2011	Claim on Cash - Pooled	135-000-11020 SRF02				18,000.00		
18	9/30/2011	Transfer Out - Debt Service	135-450-58119 SRF02			18,000.00			
18	9/30/2011	Claim on Cash - Pooled	151-000-11020 DSF01			456,401.00			
18	9/30/2011	Claim on Cash - Pooled	151-000-11020 DSF01			18,000.00			

Item # 11

City of Kyle

Year End: September 30, 2011

Trial balance

Date: 10/1/2010 To 9/30/2011

Number	Date	Name	Account No	Reference Annotation	Debit	Credit	Recurrence
18	9/30/2011	Transfer - Utility Operating	151-462-42621 DSF01			456,401.00	
18	9/30/2011	Transfer - Hotel Tax	151-462-42624 DSF01			18,000.00	
18	9/30/2011	Claim on Cash - Pooled	310-000-11020 ENT01			866,174.00	
18	9/30/2011	Claim on Cash - Pooled	310-000-11020 ENT01			456,401.00	
18	9/30/2011	Interfund Transfers Out	310-820-58114 ENT01		433,087.00		
18	9/30/2011	Transfer Out - Debt Service	310-820-58119 ENT01		389,173.00		
18	9/30/2011	Transfer Out - GF	310-825-58115 ENT01		433,087.00		
18	9/30/2011	Transfer Out - Debt Service	310-825-58119 ENT01		67,228.00		
		PBC - To book interfund transfers not previously booked					
19	9/30/2011	Claim on Cash - Pooled	110-000-11020 110		51,804.00		
19	9/30/2011	A/P Pending	110-000-22020 110			51,804.00	
19	9/30/2011	Claim on Cash - Pooled	121-000-11020 121		1,704.00		
19	9/30/2011	A/P Pending	121-000-22020 121			1,704.00	
19	9/30/2011	Claim on Cash - Pooled	125-000-11020 125		670.00		
19	9/30/2011	A/P Pending	125-000-22020 125			670.00	
19	9/30/2011	Claim on Cash - Pooled	184-000-11020 CPF02		157.00		
19	9/30/2011	A/P Pending	184-000-22020 CPF02			157.00	
19	9/30/2011	Claim on Cash - Pooled	185-000-11020 CPF03		1,800.00		
19	9/30/2011	A/P Pending	185-000-22020 CPF03			1,800.00	
19	9/30/2011	Claim on Cash - Pooled	187-000-11020 CPF04		314.00		
19	9/30/2011	A/P Pending	187-000-22020 CPF04			314.00	
19	9/30/2011	Claim on Cash - Pooled	310-000-11020 ENT01		2,471.00		
19	9/30/2011	A/P Pending	310-000-22020 ENT01			2,471.00	
19	9/30/2011	Claim on Cash - Pooled	410-000-11020 SRF05		42.00		
19	9/30/2011	A/P Pending	410-000-22020 SRF05			42.00	
19	9/30/2011	Claim on Cash - Pooled	999-000-11020 999		58,962.00		
19	9/30/2011	Due From Fund 110	999-000-11501 999			51,804.00	
19	9/30/2011	Due From Fund 121	999-000-11502 999			1,704.00	
19	9/30/2011	Due From Fund 125	999-000-11503 999			670.00	
19	9/30/2011	Due From Fund 184	999-000-11519 999			157.00	
19	9/30/2011	Due From Fund 185	999-000-11520 999			1,800.00	
19	9/30/2011	Due From Fund 187	999-000-11522 999			314.00	
19	9/30/2011	Due From Fund 310	999-000-11523 999			2,471.00	
19	9/30/2011	Due From Fund 410	999-000-11528 999			42.00	
		PBC - To book adjustment to A/P to correctly state accounts					
					13,190,094.00	13,190,094.00	
Net Income (Loss)			217,064.00				



To the City Council
City of Kyle, Texas
100 West Center Street
Kyle, TX 78640

In planning and performing our audit of the financial statements of City of Kyle, Texas (the City) as of and for the year ended September 30, 2011, in accordance with auditing standards generally accepted in the United States of America, we considered the City's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as discussed below, we identified a deficiency in internal control that we consider to be a significant deficiency.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected on a timely basis. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the following control deficiency to be a significant deficiency:

Bank Reconciliations

Monthly bank reconciliations assist in detecting errors in a timely manner and aid in providing management accurate cash position balances to make prudent financial decisions. Bank reconciliations were not performed timely and some discrepancies were not corrected in the general ledger. If bank reconciliations are not completed regularly, material errors effecting cash may be overlooked and not be detected or corrected in a timely manner. The average bank reconciliation was completed 70 days after the month-end.

Recommendation:

We recommend that bank reconciliations be performed monthly and discrepancies be investigated and corrected in a timely manner.

Item # 11

Management Response:

Below are the main factors that contributed to bank reconciliations not being done in a timely manner and as a result delays were experienced in identifying discrepancies. These factors are listed and explained as follows:

- Software Changes – Currently Utility Billing, Municipal Court, and Building all utilize a different software package from the accounting software. While the departments’ overall function was increased significantly compared to the software formerly used, they were no longer integrated with the financial accounting software. Information on daily deposits were developed with the new software but had to be manually recorded in the accounting software. Interfaces have been completed for Utility Billing and Municipal Court to make the recording of this information quicker, easier, and more precise. An interface is being developed for the Building Department. The manual process does require considerably more time than an automated process.
- In addition, while we understand and appreciate the significance of bank reconciliations completed within a timely manner, the limited financial staff availability had to be redirected for budget development. Soon after budget development was completed, staff was redirected to complete bank reconciliations.
- Going forward, bank reconciliations have been assigned to a specific employee with deadlines given for completion each month.

Other Control Deficiencies

Following are descriptions of other identified control deficiencies that we determined did not constitute significant deficiencies or material weaknesses.

CURRENT YEAR COMMENTS AND SUGGESTIONS

IT and Computer Security Controls

The City currently makes use of two server rooms - one locked, one unlocked. The locked server room is only accessible to the IT Director and an assistant. The open server room is available to all City personnel. While the unlocked server room is located behind a key card access door, the public is allowed past the key card door.

Recommendation:

With the amount, type, and sensitivity of information stored on the City’s servers, we recommend moving all server activity to a protected location with physical security. Further, we recommend forced periodic password changes for all personnel using City IT systems and software.

PRIOR YEAR COMMENTS AND SUGGESTIONS

These are our comments and recommendations from the prior year and the status of such, as noted during the audit for the year ended September 30, 2011.

Accounts Receivable – Court Warrants

The balance of outstanding court receivables and the related allowance for uncollectible amounts reflected on the current year trial balance continue to grow and represent a large dollar amount. During the current year, an audit adjustment was made to increase the balances outstanding.

Recommendation:

The City needs to assign adequate and knowledgeable staff to review and maintain these account balances and allocate appropriate resources to pursue collection of warrant amounts due in a timely manner. The balance of the allowance for uncollectible amounts needs to be reviewed periodically and adjusted to reflect the City's best estimate of uncollectible warrants.

Status:

Per discussion with City personnel, the process of reviewing all of the warrants is still ongoing, with previously unconverted warrants being discovered during the fiscal year. It is our understanding that personnel have been added to help out with the warrant process.

Accounting / Finance Department Staffing

The requirements of properly recording and reconciling the volume of the City's financial transactions are increasing as the City experiences steady growth. The complexities and volume of vendor contracts and agreements, vendor invoices, and other financial transactions make it more difficult to properly and completely record such activities in the general ledger. This growth in activities has also put greater demands on department personnel to timely and properly perform account analyses and reconciliations, and to review the underlying contractual terms which affect the City's accounting information. During our examination we noted certain account reconciliations and analyses were not completed timely during the year due to limited staffing but were done after the fiscal year end in preparation for the annual audit.

Recommendation:

City Council and management should review staffing requirements, job responsibilities, and reporting needs for the accounting / finance department to ascertain whether there are enough staff to produce reliable, timely and necessary information. This will provide management and the Council accurate and timely information to enable them to better manage the City's business.

Status:

As stated above, it is our understanding that personnel have been added to help address the staffing needs of the Finance department, which should help with account reconciliations and financial analyses.

Developer Costs and Deposits

The City's growth has increased the amount of activity associated with development in both residential and commercial areas. During our examination we noted that approval of and reconciliation of the fees and costs associated with development did not occur on a timely basis.

Recommendation:

City management should review its policy associated with developer fees, allowable developer costs, approvals, and reconciliation of balances. This will improve controls over the revenues and receivables in these areas and help ensure the City is charging and collecting all appropriate fees from developers or others.

Status:

It is our understanding that the City has continued to address collection of outstanding balances.

This communication is intended solely for the information and use of management, the City Council, and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

Atchley & Associates, LLP

Austin, Texas
January 27, 2012



CITY OF KYLE, TEXAS

Contract Award for Court Collection Services

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation:

Authorize award and execution of a contract with LINEBARGER GOGGAN BLAIR & SAMPSON, LLP of Austin, Texas to provide collection services for City of Kyle's Municipal court fines and fees ~ *Perwez Moheet, CPA, Director of Finance*

Other Information:

On October 31, 2011, proposals were received in response to the City of Kyle's Request for Proposals (RFP No. 2011-01-PM) issued for Municipal Court Collection Services.

A solicitation notice for the RFP was published in the Hays Free Press and was posted on the City's website. A total of seven (7) proposals were submitted in response to the City's RFP which closed on October 31, 2011.

The following firms submitted a proposal (alphabetical order):

1. American Municipal Services
2. Credit Service Company, Inc.
3. Linebarger, Goggan, Blair, & Sampson, LLP
4. McCreary, Veselka, Bragg, & Allen, P.C.
5. MSB Government Services (Gila LLC)
6. Perdue, Brandon, Fielder, Collins, & Mott, LLP
7. SC Services & Associates (Pioneer Credit Recovery, Inc.)

A proposal review committee comprised of City staff was formed to independently review, evaluate, and score each proposal using the five review criteria established and included in the RFP. The scores from each of the review committee member was then combined and averaged to determine the combined score for each proposal.

Based on the proposal review committee's review, evaluation, and scoring of each proposal received by the City of Kyle, the committee recommends for the City Council authorize the City Manager to enter into an agreement with Linebarger, Goggan, Blair, & Sampson, LLP, of Austin, Texas, to provide collection services for the Municipal Court.

The recommended firm will not charge the City of Kyle for any collection services. The firm will be paid on a contingency basis for any amount collected and received by the City of Kyle for cases dated after June 18, 2003 and none for cases prior to that date.

The Texas Code of Criminal Procedure, Article 103.0031 allows County and Municipal Courts to assess a collection fee on all accounts 60 days past due that are referred to a collection firm. This fee is passed on to defendants and allows for a flat 30 percent fee to be added to outsourced collection efforts effective June 18, 2003.

The following documents are attached to provide detailed information regarding this solicitation:

1. Request for Proposal (RFP No. 2011-01-PM)

Cover Memo

Item # 12




2. Proposal Evaluation Score Tabulation
3. Draft Agreement (Subject to change, pending City Attorney's review)

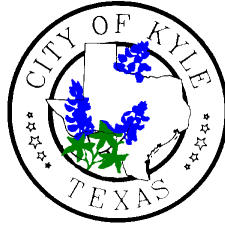
Budget Information:

A Fiscal Note is not required because the City of Kyle will not be charged for collection services performed by the recommended firm. The fees paid to the firm will be on a contingency basis and will be paid for by the defendants through a 30 percent add-on collection fee.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

-  [Request for Proposal \(RFP\)](#)
 -  [Evaluation Score Tabulation](#)
 -  [Draft Agreement](#)
-



CITY OF KYLE, TEXAS

REQUEST FOR PROPOSALS (RFP)

RFP 2011-01-PM

MUNICIPAL COURT COLLECTION SERVICES

PROPOSAL DUE DATE:
OCTOBER 31, 2011 AT 2:00 P.M. (CST)

ISSUED BY:

City of Kyle, Texas
Financial Services Department



VENDOR ACKNOWLEDGEMENT FORM
MUNICIPAL COURT COLLECTION SERVICES
(RFP 2011-01-PM)

The undersigned hereby certifies that she/she understands the Request for Proposal, has read the document in its entirety and that the prices contained in this Proposal have been carefully reviewed and are submitted as correct. Vendor further certifies and agrees to furnish any or all products/services upon which prices are extended at the price offered, and upon conditions contained in the Request for Proposal.

The following information must be filled out in its entirety for the proposal to be considered.

Company Name: _____

Federal Tax Identification Number: _____

Address of Principal Place of Business: _____

Phone/Fax of Principal Place of Business: _____
Phone Fax

Phone Fax Address, Phone and Fax of Majority Owner Principal Place of Business: _____

Phone Fax

Name of Authorized Representative: _____
Printed Name
Signature Date

E-Mail Address of Representative: _____

PLEASE INCLUDE THIS COMPLETED PAGE AS THE FIRST PAGE OF YOUR SUBMITTAL.



REQUEST FOR PROPOSAL CHECKLIST
MUNICIPAL COURT COLLECTION SERVICES
(RFP 2011-01-PM)

Please ensure that you complete and return the following documents and information to the City of Kyle, Financial Services Department at the address shown in Section B of the Request for Proposal before the deadline. Late submittals will not be accepted.

1. _____ One (1) ORIGINAL copy and four (4) COPIES of the Proposal packaged in a sealed container/envelope clearly marked with the RFP number, title, due date/time, and company name and address on the outside of the container.
2. _____ Vendor Acknowledgement Form. This document MUST be completed in blue or black ink or typewritten. Signatures must be original, in blue or black ink, and by hand.
3. _____ Insurance Requirement Affidavit (Appendix A) or provide a copy of your current Certificate of Insurance.
4. _____ Complete responses requested in RFP under Section K, Response Format and Preparation Instructions.
5. _____ Provide financial reports as outlined in Section L, Right of the City to Request Further Documentation.
6. _____ Provide five (5) references.

FAILURE TO PROVIDE ANY OF THE ABOVE MAY RESULT IN YOUR PROPOSAL BEING DEEMED NON-RESPONSIVE.

PLEASE INCLUDE THIS COMPLETED PAGE AS THE SECOND PAGE OF YOUR SUBMITTAL.



REQUEST FOR PROPOSAL CHECKLIST
MUNICIPAL COURT COLLECTION SERVICES
(RFP 2011-01-PM)

A. INTENT

The City of Kyle, Texas, hereinafter referred to as “the City”, is soliciting proposals for Municipal Court collection services. It is the City’s desire to contract with one company to collect fees for Class C Misdemeanor violations, those that are past due and/or in warrant status.

The Offeror submitting the successful proposal must clearly demonstrate its ability to provide immediate and consistent efforts in collections and provide a timely return of the dollars collected.

B. PROPOSAL SUBMISSION PROCESS, DUE DATE, AND REQUIRED DOCUMENTS:

One (1) original and four (4) copies of the response, including all required forms and applicable supporting documentation, are required. The original must be clearly marked “ORIGINAL” and the copies must be clearly marked “COPY”.

Proposals are due no later than October 31, 2011 at 2:00 p.m., Central Standard Time. The responses must be bound and sealed when submitted. The response material must be addressed and delivered to:

Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle

Physical Address
100 West Center Street
Kyle, Texas 78640

Mailing Address
P.O. Box 40
Kyle, Texas 78640

The outside of the sealed envelope or container must state:

RFP #2011-01-PM - MUNICIPAL COURT COLLECTION SERVICES



Responses received later than the above date and time will be rejected and returned unopened. Timely proposals will be opened on the date specified in the RFP and will be kept secret during the process of negotiations. All proposals that have been submitted shall be open to public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals marked "confidential" by the proper responding party.

C. CLARIFICATION OF REQUIREMENTS

All requests for additional information or clarification concerning this Request for Proposals must be submitted, in writing, no later than 2:00 p.m. on October 14, 2011 and shall be emailed to Mr. Perwez Moheet, CPA, Director, Financial Services Department at pmoheet@cityofkyle.com.

It is the intent and purpose of the City that this RFP permits competitive proposals. It is the Offeror's responsibility to advise the Director, Financial Services Department, City of Kyle, if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source.

D. CONTRACT TERM

The initial contract shall be for a two (2) year period commencing on December 1, 2011. The City shall have the option to extend the term of the contract for three (3) additional one-year periods. Thereafter, this agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless either party gives prior notice of termination.

E. CANCELLATION

The successful Offeror will be awarded a contract on an exclusive basis. The City has the option to terminate the contract during the first six (6) months of the contract if the successful Offeror does not perform the contract to the City's satisfaction. Thereafter, either party may terminate the contract by giving the other party thirty (30) days prior written notice. Upon termination, the successful Offeror shall have an additional thirty (30) days to collect the then outstanding billings. The successful Offeror may not assign the contract to any other party without the prior written consent of the City.

The City of Kyle is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis; accordingly, the City reserves the right to terminate, without liability to the City, any contract (or renewal option) for which funding is not available.

F. QUALIFICATIONS OF OFFEROR

By submitting a proposal, the Offeror certifies that they are duly qualified, capable, and otherwise bondable business entity that is not in receivership or contemplates same,



nor has filed for bankruptcy. The Offeror must not be indebted to the City and shall not owe any back taxes to the City. The Offeror warrants that they are familiar with all laws, regulations, and customs applicable to the type of business required herein.

The contract will be awarded by the City to a responsible Offeror only. In order to qualify as responsible, an Offeror must meet the following qualifications as they relate to this request for proposals.

- Have adequate technical and financial resources for performance.
- Have the necessary experience, organization, and technical skill in the field of municipal court collection service accounts.
- Have a satisfactory record of performance in municipal collection programs.
- Have a minimum of five (5) years of collection experience in the municipal court service industry for similar or larger size municipalities such as the City of Kyle, Texas.
- Must be able to provide collection and financial reports on a monthly basis.

G. EXCEPTIONS

Any exceptions to the requirements stated herein must be stated, in writing, in the Offeror's response. Explanation must be made for each item for which exception is taken, giving in detail the extent of the exception, and the reason for which it is taken, in order for consideration to be given to the proposal.

H. SELECTION AND AWARD PROCESS

1. Responses to this RFP will be reviewed by an evaluation committee, which may include senior management representatives, a financial officer, and/or an independent consultant. A short list of firms will be identified and may be interviewed by the evaluation committee.
2. Selection shall be based on the evaluation factors published in this RFP. After the evaluation committee makes its initial selection, it shall proceed to negotiate a contract at a fair and reasonable price.
3. If the City is unable to negotiate a satisfactory contract with the most highly qualified person or firm, the City shall formally end negotiations with that person or firm and begin negotiations with the second most highly qualified person or firm.
4. Negotiations shall be undertaken in this sequence until a contract is made. The evaluation committee may allow proposal revisions after submission in order to obtain the best final proposal. Following the interviews and negotiations, the evaluation committee will recommend a contractor to the Kyle City Council. The City Council will make the final selection of the contractor based on the evaluation committee's recommendation and whether the qualified Offeror's proposal is determined to be the most advantageous to the City, considering the evaluation factors set forth in this RFP.



5. No individual City employee or any City Department has the authority to legally and/or financially commit the City to any contract or agreement for goods or services.

I. COLLECTION SERVICES

1. Background

The Municipal Court is responsible for the adjudication of Class C Misdemeanor violations (within the incorporated city limits) provided by State Law and City Ordinances. The City of Kyle Municipal Court processes approximately 6,050 cases annually. Of these cases, approximately 42% will have arrest warrants issued. The average warrant fine is \$407. Of the persons with an outstanding City of Kyle warrant, approximately 35% are Kyle residents, 64% reside outside Kyle city limits but within the State and 1% reside out of State.

2. Nature of Services Required

- a. The Court will provide files electronically to the successful Contractor (hereinafter referred to in this section as "Contractor") of those persons having outstanding City of Kyle Municipal Court cases. This information can include, but is not limited to the following:
 - i. Person's name, personal identifiers and driver license number, last known residential address, last known telephone number, citation number, alleged offense committed, offense date, amount of fine, amount paid (if any), amount due, and if applicable, date of warrant and amount of warrant fine.
 - ii. City will provide current file layouts. Electronic transfer of data must include the Contractor having a PC that enables the City of Kyle to E-mail an attachment or upload on the Internet via secure FTP. The Contractor must be able to receive and return files back and forth between City and Contractor.
 - iii. It will be the Contractor's responsibility to assure compatibility of City's data files and transmittal medium to the Contractor's computer system. The Contractor shall bear all costs, if necessary, for data conversion to make the City's computer system compatible with that of the Contractor's and any incidental costs related to the data transfer.
- b. Historically, the City sends various outstanding misdemeanors and warrants to the Contractor for collection services on a regular basis (i.e. daily, weekly, and/or monthly). These cases and warrants consist of the following types:
 - i. Active Alias Warrants -These are warrants in which no judgment has been entered assessing any sums due from the defendant in the case,



- but the defendant is subject to immediate arrest to answer for the pending criminal charge.
- ii. Active Capias Pro Fine Warrants -These are warrants in which a judgment has been entered assessing a sum owed by the defendant in order to discharge the defendant from liability and the defendant is subject to immediate arrest.
 - iii. Outstanding Cases -These cases are outstanding Class C Misdemeanors for traffic, non-traffic, and parking violations that occurred in the incorporated city limits, including City Ordinance violations. These are cases that may or may not have appeared before the Court and may or may not have judgment entered against them. Therefore, the defendant is not subject to immediate arrest.
- c. The City will supply the Contractor with two separate listings. They shall be known as the History File and the Collect and Warrant File.
- i. The History File shall be provided one time only. This file will contain the entire backlog of active warrants previously worked by the City's existing collection agency. The approximate number of outstanding cases for past collection is 6,596.
 - ii. The Collect and Warrant File shall be issued on a regular or as needed basis and shall contain those cases that are Outstanding Cases as well as Active Warrants that were processed by the Kyle Police Department. This file will contain unresolved cases not issued for warrant and the most recent past dues processed for warrant. The approximate number of new warrants and collect cases each month is approximately 6,788.
- d. Contractor agrees to perform the following:
- i. Contractor will become familiar with the legal distinctions of each type of case and warrant submitted for collection effort and will develop a series of contacts with the defendant that do not violate the defendant's statutory and constitutional rights.
 - ii. Contractor will attempt to contact the defendant named in any case or warrant submitted for collection service at least eight (8) times in a 180-day period through a rotating telephone and letter cycle. Voice/telephone contact attempts shall be limited to between the hours of 8:00 A.M. and 9:00 P.M., Monday through Saturday. No Sunday contacts will be attempted.
 - iii. Contractor will submit written scripts for telephone contacts and written communications for approval by the City for each type of case and warrant submitted to Contractor for collection services. The Contractor shall pay all costs related to the telephone contact and written communications.



- iv. Contractor will instruct all defendants to forward monies directly to the Kyle Municipal Court. Should the Contractor receive a payment from a defendant, the Contractor shall forward payment directly to the City in the form of the original negotiable instrument received.
 - v. Contractor shall use due diligence, reasonable and ethical methods, and employ lawful means to effect collection on the City's outstanding cases including adherence to all Federal and state laws governing collections.
 - vi. Contractor will guarantee that every defendant will be dealt with in a professional and courteous manner.
 - vii. The City may recall for collection efforts and Contractor will not be entitled to any fee for any money collected after any case has been recalled.
 - viii. Contractor will return information on cases submitted for collection services including all information developed by the Contractor regarding the defendant or his whereabouts, as requested by the City.
 - ix. Contractor will guarantee that a full-time customer service representative will be assigned to the City of Kyle and available to address day-to-day issues.
- e. Additional written and/or telephone contacts may be made at the choice of the Contractor within the hours stipulated in d.ii. above.
 - f. Contractor shall work with City to conduct Warrant Round-Up or Amnesty Programs as requested, requiring Contractor to send out additional notices and providing the City with an updated address list of defendants within the Kyle area.
 - g. All information supplied by the City to the Contractor shall be kept confidential and not disclosed to parties other than the Contractor's employees on a need-to-know basis for the purpose of contract performance and to the defendant. Contractor shall not disclose social security number, driver's license number or any other information deemed confidential by the City to anyone other than the defendant. City will notify Contractor of information deemed confidential, as appropriate.
 - h. Both the City and the Contractor will jointly review the appropriate cases for which payment is due to the Contractor on a monthly basis.
 - i. The Contractor will be paid a collection fee in accordance with Article 103.0031 of the Texas Code of Criminal Procedure, as amended.
 - ii. Contractor will not be entitled to reimbursement for expenses incurred under the Contract.
 - iii. The City shall not be liable under the contract for any services which are unsatisfactory or which the City has not approved.



J. EVALUATION FACTORS

1. Completeness

Each response will be reviewed before the selection process for completeness and adherence to format. A response will be considered complete if all requested sections are included in the proper order.

2. Formal Evaluation

a. Evaluation Process

The City will appoint a selection committee to formally evaluate each response. The evaluation process will objectively grade the responses on their merit and responsiveness. Responses will be evaluated based on the material and substantiating evidence presented in the response, and not on the basis of what could be inferred. The evaluation process will include verification of references, verification of project team resumes, confirmation of financial stability, and may also request additional information as determined by the City in its sole discretion.

b. Scoring Format

Each section of the RFP response will be considered a separate selection criterion and will be scored individually. All scores will be summed to give the grand total score. The maximum possible grand total score for the RFP response is 100 points.

c. Point Values: Total 100 Points

I. Offeror Qualifications:	25 Total Points
II. Collection Procedures	20 Total Points
III. Collection Staffing & Systems:	20 Total Points
IV. Monthly Activity Reports:	15 Total Points
V. Cost/Fee Charged to City:	20 Total Points

3. Oral Interview

After the formal evaluations, the City may decide on oral interviews to address specific issues with selected Offerors.

4. Final Selection/Notification

Final selection will be made in accordance with Chapter 252, Texas Local Government Code. The evaluation of the RFP responses and the oral interview (if conducted) will be considered. The Offeror with the highest overall evaluation score shall be recommended to City Council's consideration. The selected contractor or firm will be notified by the City upon selection of the proposal by the City Council.



K. RESPONSE FORMAT AND PREPARATION INSTRUCTIONS

Offerors shall use the prescribed format outlined in this RFP to clearly describe their proposal.

Offerors shall provide one (1) original and four (4) copies of the response. Each response will be reviewed to determine if it is complete before evaluation. The City reserves the right to eliminate from further consideration any response that is deemed to be unresponsive to this RFP. The intent of the City is that all responses follow the same format in order to evaluate each response fairly. Proposals will be evaluated based on the material and substantiating evidence presented in the proposal, and not on the basis of what could be inferred.

In order to simplify the review process and obtain the maximum degree of comparison, proposals are to be outlined in the manner described below. Be specific about the Offeror's collection expertise in the sections that follow. Failure to provide a response, answer questions and/or provide documentation, as requested, will result in loss of points in that section. Begin each section and subsection described herein on a separate page. Number the pages in each section consecutively. Each page shall have the name of the Offeror indicated clearly at the upper right corner.

A. Offeror Qualifications (25 Points)

- a) Experience in the area of court collections as it applies to the collection of outstanding Class C Misdemeanor cases and warrants. Specifically list public sector court clients that the Offeror has represented in the past five (5) years and include what type of collections was carried out for them. Separate clients by a) Texas Municipal Courts and b) Texas County Courts.
- b) Experience in Texas courts (minimum of 10 with at least 3 of those courts having similar volume to Kyle). List references from current and previous clients in Texas courts. Preferably Municipal Courts. NOTE: All references requested in this proposal shall include the name of client, name of contact person, physical address, telephone and fax numbers, and the email address of the contact person.
- c) Experience in receiving/transmitting data electronically.
- d) Experience and stability of key staff. State the location of the office, as well as, the number of professional staff employed at that office that will have primary responsibility for the service.
- e) Experience and performance results in conducting an Amnesty and/or Warrant Round-Up Program(s).

**B. Collection Procedures (20 Points)**

- a) Provide a summary of collection activities and techniques proposed to collect the City of Kyle's outstanding cases and warrants.
- b) Provide detailed explanation of collection methodology including timetable of your work plan and expected rate of recovery.
- c) Describe the methodology for handling customer questions/problems.
- d) Describe the methodology for handling non-English speaking customers.
- e) Provide examples of correspondence that will be used for collecting delinquent fines.
- f) Describe the adequacy of your telephone resources. Provide examples of telephone scripts that will be used for collecting delinquent fines.
- g) Describe the methodology for conducting Amnesty and/or Warrant Round-Up Programs.

C. Collection Staffing & Systems (20 Points)

- a) Identify and describe the qualification and length of service of the lead staff that will be assigned to coordinate and resolve all business matters between the City of Kyle, Texas and the Offeror.
- b) Identify and describe the qualification and length of service of the lead staff that will be assigned to oversee and manage the collection activities for the City of Kyle, Texas.
- c) Describe the qualification and number of collection staff that will be assigned to the collection activities for the City of Kyle, Texas.
- d) Describe experience working and interfacing with client's using L.T. Systems software for municipal court operations.
- e) Provide a brief description of the computer system used and its update capabilities. Describe the adequacy of your data processing resources.
- f) Describe the methodology and procedure for data transfers. Identify the form and frequency of electronic data transfers both to and from your company.
- g) Describe the type of access that will be made available to the City for on-line inquiry.
- h) Describe the ability to maintain records of placements, collections, recovery and producing reports, and billing of for an unlimited number of clients and debtors, and describe back-up capabilities.
- i) Describe the record retention capabilities.



D. Monthly Activity Reports (15 Points)

It is agreed that the successful Offeror shall maintain and make available for inspection, audit and/or reproduction by authorized representatives of the City or any external auditor representing the City, the books, documents, and other relevant information pertaining to the collections carried out for the City and the expenses of this contract.

The Offeror should acknowledge the need for a cooperative effort and open communication between the successful Offeror and the City. The successful Offeror will be required to provide monthly collection activity reports to the City of Kyle, Texas

Please provide the following:

- a) Examples of reports used to document collection results.
- b) Examples of monthly reports that will be provided to the City.
- c) Frequency of reporting and the content of data transmitted to the City.
- d) Flexibility in meeting the City's reporting needs.

E. Cost/Fee Charged to the City (20 Points)

The Offeror's proposal must clearly explain the cost/fee structure and how the City of Kyle, Texas will be invoiced for collection services. The proposal must include at a minimum the following:

- a) Cost/fee/rate for collection services that will be provided to the City of Kyle.
- b) Explain clearly how the cost/fee/rate will be applied per transaction.
- c) Explain clearly how the invoice will be calculated.
- d) Frequency of billing (invoice) submitted to the City of Kyle
- e) Number of days allowed for payment.
- f) Explain if any late charges or interest would be applicable and how it will be calculated.
- g) Provide an example of the invoice/bill that will be used to bill the City.

L. RIGHT OF THE CITY TO REQUEST FURTHER DOCUMENTATION

The City reserves the right to request additional documentation that it deems appropriate and necessary for the review and award process during both the initial proposal review process and the negotiation/award/appointment phase.

Financial statements are being requested to determine the eligibility of a bidder to receive a contract. Financial statements shall be composed of a balance sheet, income statement, and appropriate supporting schedules, such as note disclosures or cash flows, as of the end of the company's most recent fiscal year. Financial statements are to be audited, reviewed, or compiled by an independent Certified Public Accountant. Pro-forma financial statements will not be accepted by the City.



All financial statements are considered confidential information, are reviewed by a member of the City of Kyle's Financial Services Department, and will be returned to the proposer upon request.

M. RIGHT OF THE CITY TO CANCEL REQUEST FOR PROPOSALS, ELECT NOT TO AWARD, REJECT PROPOSALS, AND WAIVE INFORMALITIES OR IRREGULARITIES

The City expressly reserves the right to cancel this RFP at any time, to elect not to award any or all of the contracts cited in this RFP, to reject any or all proposals, to waive any informality or irregularity in any proposal received, and to be the sole judge of the merits of the respective proposals received.

N. EQUAL OPPORTUNITY IN CITY BUSINESS CONTRACTING

Race, religion, sex, color, ethnicity, and national origin will not be used as criteria in the City's business contracting practices. Every effort will be made to ensure that all persons regardless of race, religion, sex, color, ethnicity and national origin have equal access to contracts and other business opportunities with the City.

O. EXAMINATION OF DOCUMENTS AND REQUIREMENTS

Each Offeror shall carefully examine all RFP documents and thoroughly familiarize itself with all requirements prior to submitting a proposal to ensure that the proposal meets the intent of this RFP.

Before submitting a proposal, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the Offeror from obligation to comply, in every detail, with all provisions and requirements of the Request for Proposal.

P. PROPOSAL COPIES

OFFEROR'S MUST SUBMIT THE ORIGINAL AND FOUR (4) COPIES OF THE SEALED PROPOSAL PRIOR TO THE DUE DATE/TIME DEADLINE AT THE FOLLOWING ADDRESS:

Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
P.O. Box 40
Kyle, Texas 78640



FAILURE TO SUBMIT THE ADDITIONAL COPIES MAY RESULT IN THE PROPOSAL BEING DECLARED NON-RESPONSIVE. The original must be clearly marked "ORIGINAL" and the copies must be clearly marked "COPY".

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all electronic media, reports, charts, and other documentation submitted by Offerors shall become the property of the City of Kyle, Texas when received.

Q. PROPOSAL PREPARATION COSTS

Issuance of this RFP does not commit the City of Kyle, Texas, in any way, to pay any costs incurred in the preparation and submission of a proposal. The issuance of this RFP does not obligate the City of Kyle, Texas to enter into contract for any services or equipment. All costs related to the preparation and submission of a proposal shall be paid by the Offeror.

R. TRADE SECRETS, CONFIDENTIAL INFORMATION AND THE TEXAS PUBLIC INFORMATION ACT

If you consider any portion of your proposal to be privileged or confidential by statute or judicial decision, including trade secrets and commercial or financial information, clearly identify those portions.

Proposals will be opened in a manner that avoids disclosure of the contents to competing Offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for inspection.

The City of Kyle, Texas will honor your notations of trade secrets and confidential information and decline to release such information initially, but please note that the final determination of whether a particular portion of your proposal is in fact a trade secret or commercial or financial information that may be withheld from public inspection will be made by the Texas Attorney General or a court of competent jurisdiction. In the event a public information request is received for a portion of your proposal that you have marked as being confidential information, you will be notified of such request and you will be required to justify your legal position in writing to the Texas Attorney General pursuant to Section 552.305 of the Government Code. In the event that it is determined by opinion or order of the Texas Attorney General or a court of competent jurisdiction that such information is in fact not privileged and confidential under Section 552.110 of the Government Code and Section 252.049 of the Local Government Code, then such information will be made available to the requester.

Marking your entire proposal CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.



S. CONFLICT OF INTEREST

The Offeror shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City of Kyle, Texas.

By signing and submitting the Proposal, the Offeror certifies and represents to the City the Offeror has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantage, information, recipient's decision, opinion, recommendation, vote or any other exercise of discretion concerning this Request for Proposal.

T. ANTI-LOBBYING PROVISION

During the period between proposal submission date and the contract award, Offerors, including their agents and representatives, shall not directly discuss or promote their proposal with any member of the Kyle City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

This provision is not meant to preclude Offerors from discussing other matters with City Council members or City Staff. This policy is intended to create a level playing field for all potential Offerors, assure that contract decisions are made in public, and to protect the integrity of the RFP process. Violation of this provision may result in rejection of the Offeror's proposal.

U. AUTHORIZATION TO BIND SUBMITTER OF PROPOSAL

Proposals must show vendor name and address of Offeror. The original proposal must be manually signed by an officer of the company having the authority to bind the submitter to its provisions. Person signing proposal must show title or **AUTHORITY TO BIND THEIR FIRM IN A CONTRACT**. Failure to manually sign proposal will disqualify the proposal from being accepted by the City of Kyle, Texas.



ABOUT THIS DOCUMENT

This document is a Request for Proposal. It differs from an Invitation to Bid in that the City of Kyle, Texas is seeking a solution, as described in the General Information Section B, not a bid/quotation meeting firm specifications for the lowest price. As such, the lowest price proposed will not guarantee an award recommendation. Sealed proposals will be evaluated based upon criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability, may be overriding factors, and price may not be determinative in the issuance of a contract or award.

The proposal evaluation criteria should be viewed as standards that measure how well an Offeror's approach meets the desired requirements and needs of the City of Kyle, Texas. Those criteria that will be used and considered in evaluation for award are set forth in this document. The City will thoroughly review all proposals received. The City will also utilize its best judgment when determining whether to schedule a pre-proposal conference (before proposals are accepted), or meetings with Offerors (after receipt of all proposals).

A Purchase Order/Contract will be awarded to a qualified Offeror submitting the best proposal. The City reserves the right to select, and subsequently recommend for an award, the proposed service which best meets its required needs, quality levels, and budget constraints.

The final selection and award of a contract can only be authorized by the City Council of the City of Kyle, Texas.



APPENDIX A

CITY OF KYLE CONTRACTOR INSURANCE REQUIREMENTS

Contractors providing goods, materials and services for the City of Kyle, Texas shall, during the term of the contract with the City or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City, its officers, agents and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.
2. Provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance.
3. Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

Certificate of insurance: A certificate of insurance evidencing the required insurance shall be submitted by the successful Offeror prior to contract execution. If the contract is renewed or extended by the City a certificate of insurance shall also be provided to the City prior to the date the contract is renewed or extended. All coverage amounts listed shall be in United States dollars.

Type of Contract

Type and Amount of Insurance

Professional Services

General Liability insurance for Personal Injury (including death) and Property Damage with a minimum of \$1 million per occurrence and \$2 million aggregate, including Advertising Injury, Products Coverage.

Professional Liability Insurance with a minimum of \$1 million per occurrence and \$2 million aggregate.

Workers Compensation insurance as required by state law.

**Notices**

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All copies of the Certificates of Insurance shall reference the project name or RFP number for which the insurance is being supplied.

All notices shall be given to the City at the following address:

Mr. Perwez A. Moheet, CPA
Director of Finance
City of Kyle
P.O. Box 40
Kyle, Texas 78640

Contract for Fines and Fees Collection Services

STATE OF TEXAS

COUNTY OF HAYS

THIS CONTRACT (hereinafter "AGREEMENT") is made and entered into by and between City of Kyle, acting herein by and through its governing body, hereinafter styled "CLIENT", and Linebarger Goggan Blair & Sampson, LLP, hereinafter styled "FIRM".

Article I

Nature of Relationship and Authority for Contract

1.01 The parties hereto acknowledge that this AGREEMENT creates an attorney-client relationship between CLIENT and FIRM.

1.02 The CLIENT hereby employs the FIRM to provide the services hereinafter described for compensation hereinafter provided.

1.03 This AGREEMENT is entered into pursuant to and as authorized by Subsection (a) of ART. 103.0031, Texas Code of Criminal Procedure.

Article 2

Scope of Services

2.01 CLIENT agrees to employ and does hereby employ FIRM to provide specific legal services provided herein and enforce the collection of delinquent court fees and fines that are subject to this AGREEMENT, pursuant to the terms and conditions described herein. Such legal services shall include but not be limited to recommendations and legal advice to CLIENT to take legal enforcement action; representing CLIENT in any dispute or legal challenge over authority to collect such court fees and fines; defending CLIENT in litigation or challenges of its collection authority; and representing CLIENT in collection interests in bankruptcy matters as determined by FIRM and CLIENT. This AGREEMENT supersedes all prior oral and written agreements between the parties regarding court fees and fines, and can only be amended if done so in writing and signed by all parties. Furthermore, this contract cannot be transferred or assigned by either party without the written consent of all parties.

2.02 The CLIENT may from time-to-time specify in writing additional actions that should be taken by the FIRM in connection with the collection of the fines and fees that are subject to this AGREEMENT. CLIENT further constitutes and appoints the FIRM as CLIENT's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue collection of the CLIENT's claims.

2.03 Fines and fees that are subject to this AGREEMENT are those that are more than sixty (60) days past due as of the effective date hereof and those that become more than sixty (60) days past due during the term hereof. As used in this section, "more than 60 days past due" has that meaning assigned by Subsection (f) of Art. 103.0031, Texas Code of Criminal Procedure [as amended by Senate Bill 782, 78th Legislature (2003), effective June 18, 2003]. The meaning assigned to the phrase "more than 60 days past due" shall, for the term and purposes of this AGREEMENT, survive any future amendments to, or repeal of, Article 103.0031, Texas Code of Criminal Procedure, or any parts thereof.

2.04 The CLIENT agrees to provide to the FIRM data regarding any fines and fees that are subject to this AGREEMENT. The data shall be provided by electronic medium and the FIRM shall insure compatibility with CLIENT'S data files and the FIRM shall bear the costs of any necessary data conversion. The CLIENT and the FIRM may from time-to-time agree in writing to modify this format. The CLIENT shall provide the data to the FIRM not less frequently than bi-monthly.

2.05 The FIRM, in all communications seeking the collection of fines and fees, shall direct all payments directly to the CLIENT at an address designated by the CLIENT. If any fines and fees are paid to the FIRM, said payments shall be expeditiously turned over to the CLIENT.

Article 3 *Compensation*

3.01 The CLIENT agrees to pay the FIRM as compensation for the services required hereunder:

(a) zero (0%) percent of all the fines and fees subject to the terms of this AGREEMENT as set forth in Section 2.03 above that are collected by the CLIENT during the term of this AGREEMENT and that were incurred under Art. 103.0031(a)(2), Texas Code of Criminal Procedure, as a result of the commission of a criminal or civil offense committed before June 18, 2003,

(b) thirty (30%) percent of the total amount of all other fines and fees [exclusive of any collection fee assessed by the CLIENT pursuant to Subsection (b) of Article 103.0031, Texas Code of Criminal Procedure] subject to the terms of this AGREEMENT as set forth in Section 2.03 above that are collected by the CLIENT during the term of this AGREEMENT; and,

(c) thirty (30%) percent of the total amount collected pursuant to writs of execution filed and served by FIRM on behalf of CLIENT in those cases designated by CLIENT with an original unpaid assessment of not less than two thousand five hundred dollars and no cents (\$2,500.00) all pursuant to section 45.047 of the Texas Code of Criminal Procedure.

All compensation shall become the property of the FIRM at the time payment of the fines and fees is made to the CLIENT.

3.02 The CLIENT shall pay the FIRM by the twentieth day of each month all compensation earned by the FIRM for the previous month as provided in this Article 3. The CLIENT shall provide an accounting showing all collections for the previous month with the remittance.

Article 4

Intellectual Property Rights

4.01 The CLIENT recognizes and acknowledges that the FIRM owns all right, title and interest in certain proprietary software that the FIRM may utilize in conjunction with performing the services provided in this AGREEMENT. The CLIENT agrees and hereby grants to the FIRM the right to use and incorporate any information provided by the CLIENT ("CLIENT Information") to update the databases in this proprietary software, and, notwithstanding that CLIENT Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the CLIENT shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the CLIENT shall be entitled to obtain a copy of such data that directly relates to the CLIENT's accounts at any time.

4.02 The FIRM agrees that it will not share or disclose any specific confidential CLIENT Information with any other company, individual, organization or agency, without the prior written consent of the CLIENT, except as may be required by law or where such information is otherwise publicly available. It is agreed that the FIRM shall have the right to use CLIENT Information for internal analysis, improving the proprietary software and database, and generating aggregate data and statistics that may inherently contain CLIENT Information. These aggregate statistics are owned solely by the FIRM and will generally be used internally, but may be shared with the FIRM's affiliates, partners or other third parties for purposes of improving the FIRM's software and services.

Article 5

Costs

5.01 The FIRM and CLIENT recognize that certain costs may be incurred in the process of providing any additional services contemplated in Section 2.02 above or in providing any special litigation services. The CLIENT agrees that all such costs shall be billed to the CLIENT, but that the FIRM will either (i) advance such costs on behalf of the CLIENT or, (ii) when possible, arrange with the vendor or agency providing the service that the costs of services will not be paid unless and until such costs are recovered by the CLIENT from the debtor.

5.02 The CLIENT acknowledges that the FIRM may provide such services with its own employees or with other entities or individuals who may be affiliated with the FIRM, but the FIRM agrees that any charges for such services will be reasonable and consistent with what the same services would cost if obtained from a third party.

5.03 The CLIENT agrees that upon the recovery of such costs, the CLIENT will (i) pay the FIRM for any such costs that have been advanced by the FIRM or performed by the FIRM and (ii) pay any third party agency or vendor owed for performing such services.

Article 6

Term and Termination

6.01 This AGREEMENT shall be effective the ___ day of _____, 2012 (the "Effective Date") and shall expire on the _____ day of _____ 2014 (the "Expiration Date") unless extended as hereinafter provided.

6.02 Unless prior to sixty (60) days before the Expiration Date, the CLIENT or the FIRM notifies the other in writing that it does not wish to continue this AGREEMENT beyond its initial term, the CLIENT shall have the option to extend the term of the contract for three (3) additional one-year periods without the necessity of any further action by either party. Thereafter, this agreement shall automatically renew for successive periods of one (1) year each under the terms and conditions stated herein, unless either party gives prior notice of termination.

6.03 If, at any time during the initial term of this AGREEMENT or any extension hereof, the CLIENT determines that the FIRM's performance under this AGREEMENT is unsatisfactory, the CLIENT shall notify the FIRM in writing of the CLIENT's determination. The notice from the CLIENT shall specify the particular deficiencies that the CLIENT has observed in the FIRM's performance. The FIRM shall have sixty (60) days from the date of the notice to cure any such deficiencies. If, at the conclusion of that sixty (60) day remedial period, the CLIENT remains unsatisfied with the FIRM's performance, the CLIENT may terminate this AGREEMENT effective upon the expiration of thirty (30) days following the date of written notice to the FIRM of such termination ("Termination Date").

6.04 Whether this AGREEMENT expires or is terminated, the FIRM shall be entitled to continue to collect any items and to pursue collection of any claims that were referred to and placed with the FIRM by the CLIENT prior to the Termination Date or Expiration Date for an additional ninety (90) days following termination or expiration. The CLIENT agrees that the FIRM shall be compensated as provided by Article 3 for any such item or pending matters during the ninety (90) day period.

6.05 The CLIENT agrees that the FIRM shall be reimbursed for any costs advanced and shall be paid for any services performed pursuant to Article 5 when such costs are recovered by or on behalf of the CLIENT, regardless of the date recovered. It is expressly agreed that neither the expiration nor the termination of this AGREEMENT constitutes a waiver by the FIRM of its entitlement to be reimbursed for such costs and to be paid for such services. It is further expressly agreed that the expiration of any ninety (90) day period under Section 6.04 does not constitute any such waiver by the FIRM.

Article 7
Miscellaneous

7.01 Subcontracting. The FIRM may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the FIRM will retain supervisory control and responsibility for any services provided by such co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

7.02 Integration. This AGREEMENT contains the entire AGREEMENT between the parties hereto and may only be modified in a written amendment, executed by both parties.

7.03 Representation of Other Governmental Entities. The CLIENT acknowledges and consents to the representation by the FIRM of other governmental entities that may be seeking the payment of fines and fees or other claims from the same person(s) as the CLIENT.

7.04 Notices. For purposes of sending any notice under the terms of this contract, all notices from CLIENT shall be sent to FIRM by certified United States mail, or delivered by hand or by courier, and addressed as follows:

Linebarger Goggan Blair & Sampson, LLP
Attention: Director of Client Services
P.O. Box 17428
Austin, Texas 78760-7428

All notices from the FIRM to the CLIENT shall be sent to CLIENT by certified United States mail, or delivered by hand or by courier, and addressed as follows:

City of Kyle
100 west Center Street
P.O. Box 40
Kyle, Texas 78640

EXECUTED ON the ____ day of _____, 2012.

City of Kyle

By: _____
Lucy Johnson, Mayor

Linebarger Goggan Blair & Sampson, LLP

By: _____
F. Duane Force, Partner
For the FIRM



CITY OF KYLE, TEXAS

Authorize Award & Execution of a Purchase Order to Souther Computer Warehouse for Library Computers

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation:

Authorize award and execution of a Purchase Order to SOUTHERN COMPUTER WAREHOUSE of Marietta, Georgia, (3rd low bidder) in an amount not to exceed \$58,625.71 to purchase sixty (60) desktop computers, twenty five (25) laptop computers, and related equipment and software for the Kyle Public Library ~ *Mark Shellard, Director of Information Technology*

Other Information:

On December 7, 2011, the City of Kyle issued an Invitation to Bid (IFB) No. 2011-03-PM to solicit bids from interested computer dealers and companies to purchase:

1. Sixty (60) desktop computers
2. Sixty (60) monitors
3. Twenty five (25) laptops
4. Seventy nine (79) copies of Microsoft Office Professional Plus
5. Six (6) copies of Microsoft Office Mac Standard
6. One (1) wheeled cart for recharging laptops

A solicitation notice for the IFB was published in the Hays Free Press and was posted on the City's website. A total of eleven (11) bids were submitted in response to the City's IFB which closed on December 30, 2011. Three of the firms did not bid on all items specified in the IFB.

The bids submitted in response to the City's IFB are as follows:

- | | |
|--------------------------|-------------|
| 1. YNS Technologies: | \$50,861.00 |
| 2. CDW Government: | \$57,879.44 |
| 3. Southern Computer: | \$58,625.71 |
| 4. Gov Connection: | \$59,849.34 |
| 5. AES Technology: | \$62,557.19 |
| 6. Portable Warehouse: | \$65,340.00 |
| 7. Ikon Office Solution: | \$84,786.85 |
| 8. A Computer Werks: | \$93,082.97 |
| 9. Blue Computer: | N/C |
| 10. Grace Global: | N/C |
| 11. Howard Technology: | N/C |

The existing computers at the Kyle Public Library are all out of warranty and are failing quickly and therefore must be replaced. This Purchase order not only replaces the ailing public access computers but also the staff computers that are also no longer under warranty and failing.

With the purchase of new computers will be the purchase of Microsoft Office for each of the work stations. The benefits from the purchase of these computers and software are substantial to the Kyle Public Library. These include:

- Up to date computer hardware.
- 3 year Warranty on all computer hardware.

Cover Memo

Item # 13

- Most current version of Microsoft Office.
- Offer public access to both Windows or Apple computers.
- Laptops for teaching computer classes.

The following documents are attached to provide detailed information regarding this solicitation:

1. Invitation for Bid No. 2011-03-PM
2. Bid Tabulation
3. Fiscal Note

Budget Information:

A Fiscal Note is attached.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Invitation for Bid No.2011-03-PM](#)
 - [Bid Tabulation](#)
 - [Fiscal Note - Southern Computer Warehouse](#)
-



CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2011-03-PM

Solicitation For: Purchase of Computers, Laptops, Related Computer Equipment, and Software.

Solicitation Number: IFB 2011-03-PM

Date Issued: December 7, 2011

Description: The City of Kyle, Texas is soliciting bids to purchase the following computer equipment and related peripherals for the new Kyle Public Library:

1. Sixty (60) desktop computers,
2. Sixty (60) monitors,
3. Twenty five (25) laptops,
4. Seventy nine (79) copies of Microsoft Office Professional Plus
5. Six (6) copies of Microsoft Office Mac Standard
6. One (1) Wheeled Cart

Bid Submission Deadline: Must Be Received By: December 30, 2011 by 2:00 p.m.

Bid Submission: By Email Send to: pmoheet@cityofkyle.com
 By Mail Send to: Mr. Perwez A. Moheet, CPA
 Director of Finance
 City of Kyle
 100 W. Center Street
 Kyle, Texas 78640

Bid Opening Date: January 3, 2012 at 9:00 a.m.
 Finance Conference Room, Kyle City Hall
 100 W. Center Street
 Kyle, Texas 78640

Specifications and Other Bid Requirements: To view the specifications for this solicitation and other bid requirements, please go to <http://www.cityofkyle.com/rfps>

Bid Contact: Andy Alejandro, email: talejandro@cityofkyle.com

Technical Contact: Mark Shellard, email: mshellard@cityofkyle.com

CITY OF KYLE, TEXAS
INVITATION FOR BID (IFB) NO: 2011-03-PM

SPECIFICATIONS AND GENERAL BID REQUIREMENTS

SCOPE:

The City of Kyle, Texas is soliciting bids to purchase the following computer equipment and related peripherals for the new Kyle Public Library. The City is soliciting vendors to provide itemized bids for the following items:

1. Sixty (60) desktop computers,
2. Sixty (60) monitors,
3. Twenty five (25) laptops,
4. Seventy nine (79) copies of Microsoft Office Professional Plus
5. Six (6) copies of Microsoft Office Mac Standard
6. One (1) Wheeled Cart

GENERAL CONDITIONS:

All computer equipment shall be manufacturer's latest model and shall have been manufactured in the current year. All components shall be installed new, unused, and equipment is to be serviced in accordance with manufacturer's recommended pre-delivery checklist and shall be ready for operation upon delivery. Equipment offered below the listed specifications will be considered unacceptable.

WARRANTY

Warranty and parts dealer and manufacturer must provide the maximum standard manufacturer's warranty on all components parts and services included. All components, parts, and service are required to provide as a minimum three year unlimited warranty.

DELIVERY

Delivery of all computers, related computer equipment, and software is to be made at the Kyle Public Library or at a location acceptable to and agreed upon by the City's Director of Information Technology.

SPECIFICATIONS

1. Desktop Computers: Fifty four (54), with 2 GHz processor or better, 2 GB ram or Better, 100 gb HDD or better, gigabit Ethernet, must have 4USB ports, Windows 7 Professional, and must include a 3-year warranty.
2. iMac Computers: Six (6) Apple iMac computers with core i5 2.5 GHz

processor or better, 4GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.

3. Laptops: Twenty five (25) laptops with 15 inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.
4. Monitors: Forty four (44) monitors with 19 inch widescreen, LCD Ten (10) monitors with 21 inch widescreen, LCD
5. Computer Cart: One (1) wheeled cart capable of holding 30 laptops and keeping them charged.
6. Software: Seventy nine (79) copies of Microsoft Office Professional Plus with academic pricing.

Six (6) copies of Microsoft Office for Mac Standard with Academic pricing.

BID RESPONSE FORMAT:

All response to this Invitation for Bids (IFB) must be on the vendor or firm's letterhead and must include the following minimum information. Incomplete bids submitted will be considered unacceptable and will be rejected.

1. Responder company's name.
2. Physical and mailing address
3. Contact person's name, title, telephone number, and email address.
4. For each of the six (6) bid items, provide:
 - i. Detailed description of the item to include manufacturer or brand name, specifications meeting or exceeding bid requirements, quantity, unit price, extended price, and warranty.
 - ii. Freight or shipping costs.
 - iii. Installation and or set up costs.
 - iv. Delivery date.

CONTACT INFORMATION:

For City's bid requirements and purchasing related information, please contact Andy Alejandro at: talejandro@cityofkyle.com

For technical information related to the computers and specifications, please contact Mark Shellard at: mshellard@cityofkyle.com and please copy Andy Alejandro at talejandro@cityofkyle.com

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				A Computer Werks. Inc.	
City, State				Buda, Texas	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 847.73	\$ 45,777.42
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ 1,471.95	\$ 8,831.70
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 749.59	\$ 18,739.75
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 146.31	\$ 6,437.64
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 191.40	\$ 1,914.00
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ 2,143.93	\$ 2,143.93
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 109.83	\$ 8,676.57
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 93.66	\$ 561.96
	Other: Installation/Shipping				
	Total Bid:				\$ 93,082.97

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				AES Technology, LLC	
City, State:				San Marcos, Texas	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 473.93	\$ 25,592.22
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$1,406.83	\$ 8,440.98
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 593.50	\$ 14,837.50
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 74.18	\$ 3,263.92
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 127.48	\$ 1,274.80
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$1,426.79	\$ 1,426.79
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 68.08	\$ 5,378.32
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 52.32	\$ 313.92
	Other: Installation/Shipping				\$ 2,028.74
	Total Bid:				\$ 62,557.19

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				Blue Computer Solutions	
City, State				Kyle, Texas	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 999.00	\$ 59,940.00
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ -	\$ -
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 549.00	\$ 13,725.00
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ -	\$ -
	Monitors with 21-inch widescreen, LCD	10	Each	\$ -	\$ -
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ -	\$ -
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 349.00	\$ 27,571.00
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 199.00	\$ 1,194.00
	Other: Installation/Shipping				
	Total Bid:				\$ 102,430.00

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				CDW Government	
City, State:				Vernon Hills, Illinois	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 477.22	\$ 25,769.88
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$1,305.41	\$ 7,832.46
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 500.19	\$ 12,504.75
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 97.98	\$ 4,311.12
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 134.12	\$ 1,341.20
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$1,829.23	\$ 1,829.23
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 50.48	\$ 3,987.92
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 50.48	\$ 302.88
	Other: Installation/Shipping				
Total Bid:					\$ 57,879.44

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				Gov Connection, Inc.	
City, State				Rockdale, Maryland	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 389.33	\$ 21,023.82
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$1,223.79	\$ 7,342.74
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 698.96	\$ 17,474.00
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 106.84	\$ 4,700.96
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 139.43	\$ 1,394.30
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$1,960.36	\$ 1,960.36
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 65.40	\$ 5,166.60
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 50.26	\$ 301.56
	Other: Installation/Shipping				\$ 485.00
	Total Bid:				\$ 59,849.34

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name: Grace Global Corporation					
City, State: Salt Lake City, Utah					
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 506.81	\$ 27,367.74
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ -	\$ -
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ -	\$ -
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 110.21	\$ 4,849.24
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 141.40	\$ 1,414.00
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ -	\$ -
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 64.64	\$ 5,106.56
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 49.49	\$ 296.94
	Other: Installation/Shipping				
Total Bid:					\$ 39,034.48

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				Howard Tech. Solutions	
City, State				Laurel, Mississippi	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 519.00	\$ 28,026.00
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ -	\$ -
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 905.00	\$ 22,625.00
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 87.00	\$ 3,828.00
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 134.00	\$ 1,340.00
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ 1,981.00	\$ 1,981.00
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ -	\$ -
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ -	\$ -
	Other: Installation/Shipping				
	Total Bid:				\$ 57,800.00

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				Ikon Office Solution, Inc.	
City, State				Austin, Texas	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 575.40	\$ 31,071.60
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ 1,578.95	\$ 9,473.70
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 793.65	\$ 19,841.25
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 102.00	\$ 4,488.00
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 163.75	\$ 1,637.50
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ 1,901.00	\$ 1,901.00
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 78.00	\$ 6,162.00
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 60.30	\$ 361.80
	Other: Installation/Shipping				\$ 9,850.00
	Total Bid:				\$ 84,786.85

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				Portable Warehouse Corp.	
City, State				Anaheim, California	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 451.00	\$ 24,354.00
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$1,199.00	\$ 7,194.00
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 689.00	\$ 17,225.00
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 144.00	\$ 6,336.00
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 189.00	\$ 1,890.00
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$2,100.00	\$ 2,100.00
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 79.00	\$ 6,241.00
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ -	\$ -
	Other: Installation/Shipping				\$ -
	Total Bid:				\$ 65,340.00

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name:				Southern Comp. Warehse	
City, State				Marietta, Georgia	
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 460.55	\$ 24,869.70
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ 1,215.98	\$ 7,295.88
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 572.89	\$ 14,322.25
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 93.78	\$ 4,126.32
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 126.80	\$ 1,268.00
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ 1,404.63	\$ 1,404.63
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 63.85	\$ 5,044.15
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 49.13	\$ 294.78
	Other: Installation/Shipping				\$ -
Total Bid:					\$ 58,625.71

City of Kyle, Texas					
Bid Tabulation - Computers for the New Library					
IFB Number: IFB 2011-03-PM					
IFB Issue Date: 12-7-2011					
IFB Closing Date: 12-30-2011 at 2:00 p.m.					
Bid Opening Date: 11-3-2012 at 9:00 a.m.					
Department: Information Technology					
Vendor Name: YNS Technologies					
City, State: Brooklyn, NY					
HUB/MBE/WBE:					
Item No.	Item Description	Quantity	Unit	Unit Price	Total Price
1.	Desktop computers with 2 GHz processor or better, 2 GB ram or better, gigabit Ethernet, must have 4 USB ports, Windows 7 Professional, and must include a 3-year warranty.	54	Each	\$ 328.00	\$ 17,712.00
2.	Apple iMac computers with 15 2.5 GHz processor or better, 4 GB ram or better, 250 gb HDD or better, gigabit Ethernet, 21" monitor or better, and must include a 3-year warranty.	6	Each	\$ 1,316.00	\$ 7,896.00
3.	Laptops with 15-inch screen or better, 2 GHz processor or better, 2 GB ram or better, 100 gb HDD or better, 802.11 b/g/n, Windows 7 Professional, and must include a 3-year warranty.	25	Each	\$ 528.00	\$ 13,200.00
4.	Monitors with 19-inch widescreen, LCD	44	Each	\$ 88.00	\$ 3,872.00
	Monitors with 21-inch widescreen, LCD	10	Each	\$ 128.00	\$ 1,280.00
5.	Wheeled computer cart capable of holding 30 laptops and keeping them charged.	1	Each	\$ 1,448.00	\$ 1,448.00
6.	Microsoft Office Professional Plus with academic pricing.	79	Each	\$ 65.00	\$ 5,135.00
7.	Microsoft Office for Mac Standard with academic pricing.	6	Each	\$ 53.00	\$ 318.00
	Other: Installation/Shipping				\$ -
Total Bid:					\$ 50,861.00

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 7, 2012
 CONTACT CITY DEPARTMENT: Public Library
 CONTACT CITY STAFF: Connie Brooks, Director

SUBJECT: Authorize award and execution of a Purchase Order to SOUTHERN COMPUTER WAREHOUSE of Marietta, Georgia, in an amount not to exceed \$58,625.71 to purchase sixty (60) desktop computers, fourteen (14) laptop computers, and related equipment and software for the Kyle Public Library.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to Southern Computer Warehouse will require expenditure of funds from the accumulated Library Donation Fund for the new Kyle Public library.

1. City Department::	Public Library
2. Project Name:	Furniture, Fixtures, and Equipment (FF&E)
3. Budget/Accounting Code(s):	138-677-57111
4. Funding Source:	Library Donations
5. Current Appropriation:	\$ 161,905.90 (Donations)
6. Unencumbered Balance:	\$ 76,372.68
7. Amount of This Action:	<u>\$(58,625.71)</u>
8. Remaining Balance:	<u>\$ 17,746.97</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this purchase in the amount of \$58,625.71 is provided from accumulated donations for the new Kyle Public Library.

ADDITIONAL INFORMATION/COUNCIL ACTION:

The City Council's approval of this item will also authorize staff to apply \$58,625.71 from the Library Donation Fund for this Purchase Order.



CITY OF KYLE, TEXAS

Authorize Award & Execution of a Service Contract with IDS dba Texas Tank Services for Annual Inspections

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation:

Authorize award and execution of a 12-month service contract with IDS dba TEXAS TANK SERVICES of Tyler, Texas, to provide annual inspection services for the City's elevated and ground water storage tanks in compliance with TCEQ requirements in an amount not to exceed \$3,906.00 with two 12-month extension options in an amount not to exceed \$3,906.00 per extension option, for a total contract amount not to exceed \$11,718.00 ~ *Harper Wilder, Director of Public Works*

Other Information:

The contract will require IDS dba Texas Tank Services to perform annual inspections of the following types of water storage tanks in full compliance with TCEQ Rules and Regulations:

- Seven (7) Ground Water Storage Tanks
- Six (6) Elevated Water Storage Tanks
- One (1) Standpipe Water Storage Tank

IDS dba Texas Tank Services will provide:

- A 3-man professional dive team.
- Full "live" interactive in-service inspections.
- Narrated DVD of inspections.
- TCEQ checklist.
- TCEQ certifications with a computer generated analytical report with TCEQ Rules and Regulations including any deficiencies highlighted.
- Recommendations for improvements.

The Public Works Department obtained bids from the following three inspection firms:

- | | |
|-----------------------------------|-------------|
| 1. IDS dba Texas Tank Services: | \$3,906.00 |
| 2. Ron Perrin Water Technologies: | \$5,085.00 |
| 3. Dunham Engineering, Inc.: | \$10,000.00 |

A copy of the detailed bid information obtained from each of the three inspection firms listed above is attached.

Budget Information:

A Fiscal Note is attached.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[Bids Obtained for Tank Inspection Services](#)

[Fiscal Note - Texas Tank Services for Inspections 2-7-2012](#)

Cover Memo

Item # 14



PURCHASE REQUISITION FORM

VENDOR:

Texas Tank Services
 Office Manager
 4614 D.C. Drive Suite 2B
 Tyler, TX 75701

REQUESTING DEPT:

Public Works
 Jason Biemer
 Utility Coordinator
 512-262-3024 X 4012
 512-749-6916

BILL TO:

City of Kyle
 Public Works Department
 520 E. FM 150
 Kyle, TX 78640

VENDOR NO.	VENDOR PHONE NUMBER	TERMS	DATE	REQUIRED DELIVERY DATE	Item # 14
	903-526-4371		01/23/2012	4/23/2012	

SHIPPING INSTRUCTIONS

ITEM	QTY	DESCRIPTION OF GOODS/SERVICES	BUDGET AVAIL?	ACCOUNT CODES	UNIT PRICE	AMOUNT
	14.00	Peformance of annual manditory water storage tank inspections as required by TCEQ	YES	310-820-55328	279.00	3,906.00
	0.00				0.00	0.00
	0.00				0.00	0.00

SUBTOTAL: 3,906.00
 TAX: Not Applicable N/A
 SHIPPING: 0.00

TOTAL: 3,906.00



 AUTHORIZED SIGNATURE

IMPORTANT: PLEASE CHECK THAT THE BUDGET IS AVAILABLE TO MAKE THIS PURCHASE



IDS dba/Texas Tank Services

4614 D.C. Drive Suite 2B
Tyler, TX 75701

Phone: 903.526.4371 Fax: 903.526.0335
Email: kelli@texastankservices.com

TAX ID: 27-3700644

City of Kyle
Jason Bieber
PO Box 40
Kyle, TX 78640

Estimate

Date	Estimate #
1/18/2012	1430

This pricing is our best estimate based on the information provided. Any changes in quantity, size or scope of work will change the final price.

Estimates are good for 90 days.

<i>Note: If in agreement with estimate, please sign below, fax to 903.526.0335 and you will be contacted regarding schedule options.</i>	P.O. No.	Rep	Area Code	item # 14
		KAM	512	

Qty	Commercial Diving Services	Rate	Total
	Includes: Professional three man dive team with full "live" interactive (you in the trailer viewing and communicating with the diver) in-service inspection, narrated DVD, TCEQ checklist, TCEQ certifications with a computer generated analyst report with TCEQ Rules and Regulations (w/ any deficiencies highlighted) and Texas Tank Services recommendations - all mailed to you within weeks of your inspections!	0.00	0.00
	You will also have the opportunity to lock in these rates for the next three years!! UPON RECEIVING YOUR QUOTES FROM VARIOUS VENDORS, PLEASE CONFIRM THE COMPANY WILL BE PROVIDING A FULL THREE MAN 'CERTIFIED COMMERCIAL DIVE TEAM' FOR YOUR INSPECTIONS (COMPARABLE TO THIS QUOTE) - NOT ROV, DROP VIDEO or SCUBA CERTIFICATIONS include: HUB, SPRAT Rope Access and NACE CIP Level I	0.00	0.00
		0.00	0.00

*Thanks!
Kelli*

Thank you for the opportunity to submit a proposal. We are looking forward to working with you.			Total	\$3,906.00
Phone #	Fax #	E-mail	Web Site	
903-526-4371	903-526-0335	kelli@texastankservices.com	www.texastankservices.com	

Signature *Jason W. Bieber*



IDS dba/Texas Tank Services

4614 D.C. Drive Suite 2B
Tyler, TX 75701

Phone: 903.526.4371 Fax: 903.526.0335
Email: kelli@texas tankservices.com

TAX ID: 27-3700644

City of Kyle
Jason Bieber
PO Box 40
Kyle, TX 78640

Estimate

Date	Estimate #
1/18/2012	1430

This pricing is our best estimate based on the information provided. Any changes in quantity, size or scope of work will change the final price. Estimates are good for 90 days.

Note: If in agreement with estimate, please sign below, fax to 903.526.0335 and you will be contacted regarding schedule options.

P.O. No.	Rep	Area Code
	KAM	512

Item # 14

Qty	Commercial Diving Services	Rate	Total
2	Annual TCEQ Inspection-Ground-Yarrington has two GST's. The small tank is rated at 250K and the large tank is rated at 489K.	279.00	558.00
1	Annual TCEQ Inspection-Ground-Lehman station has 1 GST, and it is rated at 500K.	279.00	279.00
1	Annual TCEQ Inspection-Elevated-Post Oak EST is rated at 750K and is located between Yarrington and Lehman GST's.	279.00	279.00
1	Annual TCEQ Inspection-Elevated-Dacy EST is rated at 300K and is located west of Lehman, in the north part of town.	279.00	279.00
1	The above four stations makeup all the tanks I have east of the interstate.		
1	Annual TCEQ Inspection-Ground-Next, on the northwest sides of town we have 1626 GST, which is rated at 500K.	279.00	279.00
1	Annual TCEQ Inspection-Elevated-Moving west we have Well 4 EST, which is rated at 500K.	279.00	279.00
1	Annual TCEQ Inspection-Elevated-From there we move south to Plum Creek EST which is rated at 200K	279.00	279.00
1	Annual TCEQ Inspection-Elevated then we move to the Well 3 Site, which has 3 tanks on site. The first is an Elevated tank rated at 150K.	279.00	279.00
1	Annual TCEQ Inspection-Standpipe 4IK	279.00	279.00
1	Annual TCEQ Inspection-Ground- 482K	279.00	279.00
2	Annual TCEQ Inspection-Ground-Next we move east to Rebel Rd. Station which has two GST's both rated at 150K.	279.00	558.00
1	Annual TCEQ Inspection-Elevated-From there, we move south to Roland EST which is rated at 300K and is at the southwestern most limit of the city.	279.00	279.00

Thank you for the opportunity to submit a proposal. We are looking forward to working with you.

Total See Pg 2

Phone #	Fax #	E-mail	Web Site
903-526-4371	903-526-0335	kelli@texas tankservices.com	www.texas tankservices.com

Signature *Jason W. Bieber*

Ron Perrin
Water Technologies

PO Box 101614
Fort Worth, Texas 76185

Phone 1-888-481-1768
FAX (817) 246-1740

Email: tankinspections@aol.com
Wednesday, January 18, 2012

Proposal For: City of Kyle
Attn: Jason Biemer
Cell:
Address: 520 E. Ranch Rd. E FM 150 Kyle, TX 78640

Fax: 512-262-3403
E-Mail: jbiemer@cityofkyle.com
Phone: 512-262-3024

Item # 14

THIS PROPOSAL IS FOR REMOTE UNDERWATER CAMERA INSPECTION OF POTABLE WATER STORAGE FACILITIES.

All TCEQ/AWWA Inspection points for annual inspection are covered in our comprehensive written report. Ron Perrin is a member of NFPA and NACE.

Included in the below listed price:

- Above and Underwater inspection of listed facilities,**
- Underwater narrated DVD video photography, with remote camera.**
- Interior and exterior photos of corrosion,**
- One Million Dollars of Liability Insurance Coverage.**
- Detailed Written report with photos**
- All Travel Charges**

Inspections are performed while the facility remains full of water with no disruption in Service.

1. 7) Ground Water Storage Tanks	\$299.00 ea.	\$2,093.00
2. 6) Elevated Water Storage Tanks	\$399.00 ea.	\$2,394.00
3. 1) Standpipe Water Storage Tank		\$598.00
Total Cost: \$5,085.00		

Prices are for facilities with ladders and normal access.

Lock in this price with a Three Year Contract _____ TO _____
Thank You,

Approved by _____
Date _____
P.O. # _____

Sylvia Harmon

References are available if needed. For more Information go to: www.ronperrin.com



DUNHAM ENGINEERING, INC.

www.DunhamEngineering.com

Texas Registration Number: F- 002253

13141 Hill Rd., College Station, TX 77845

Phone: (979) 690-6555 Fax: (979) 690-7034

January 16, 2012

City of Kyle, Texas
Attn: Jason Biemer, Utility Coordinator
via jbiemer@cityofkyle.com

Ref.: TCEQ Water Tank Inspections for 2012

Per your request this date, we are pleased to provide our proposal to inspect your six (6) elevated water tanks and eight (8) ground water tanks. We propose to provide the following services:

* Inspect structures per:

- AWWA D101 - Inspection & Repair of Steel Water Tanks.
- TCEQ Ch 290 - Rules & Regulations for Public Water Systems
- Applicable OSHA standards.

* Provide TCEQ Inspection Form and maintain on five (5) years as required by TCEQ.

* Provide written report of inspection with pictures of interior and exterior surfaces.

- Cost to provide above services is \$1,000 per elevated tank & \$500 per ground tank for total fee not to exceed \$10,000.
- We are available to perform the inspections within 30 days from acceptance of this proposal.
- Please note that the tanks do not need to be completely drained for the inspections. We recommend lowering water level in each tank in order to view interior ceiling and upper portion of tank. This is where majority of corrosion damage will occur.
- We will make a recommendation as to which tanks need to be cleaned out and provide a budget estimate to perform the clean-outs.

We look forward to working with you on this project.

Sincerely,

Jimmy D. Dunham, P.E.

Item # 14

City of Kyle, Texas
FISCAL NOTE

DATE OF COUNCIL CONSIDERATION: February 7, 2012
 CONTACT CITY DEPARTMENT: Public Works
 CONTACT CITY STAFF: Harper Wilder, Director

SUBJECT: Authorize award and execution of a 12-month service contract with IDS dba TEXAS TANK SERVICES of Tyler, Texas, to provide annual inspection services for the City's elevated and ground water storage tanks in compliance with TCEQ requirements in an amount not to exceed \$3,906.00 with two 12-month extension options in an amount not to exceed \$3,906.00 per extension option, for a total contract amount not to exceed \$11,718.00.

CURRENT YEAR FISCAL IMPACT:

This Purchase Order to IDS dba Texas Tank Services for the first 12-month inspection services contract will require expenditure of funds from the Utility Fund by the Public Works Department. If the two 12-month renewal options are exercised by the City then adequate funding in the future annual budgets of the Public works Department would have to be secured by the Director of the Public Works Department.

1. City Department::	Public Works
2. Project Name:	Water Storage Tank Inspections
3. Budget/Accounting Code(s):	310-820-55328
4. Funding Source:	Utility Fund
5. Current Appropriation:	\$40,000.00
6. Unencumbered Balance:	\$ 6,225.00
7. Amount of This Action:	<u>\$ (3,906.00)</u>
8. Remaining Balance:	<u>\$ 2,319.00</u>

FUNDING SOURCE OF THIS ACTION:

The funding source for this service contract in the amount of \$3,906.00 is provided from the water portion of the Utility Fund managed by the Public Works Department. Funding from future budgets will be required for the two 12-month extension options if the City elects to exercise the options.

ADDITIONAL INFORMATION/COUNCIL ACTION:

N/A



CITY OF KYLE, TEXAS

May 12, 2012 Election

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

A RESOLUTION ORDERING A GENERAL MUNICIPAL ELECTION TO BE HELD JOINTLY WITH HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT ON MAY 12,2012, FOR THE PURPOSE OF ELECTING TWO CITY COUNCILMEMBERS, AND A SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, INCLUDING MIXED BEVERAGES, BY THE QUALIFIED VOTERS OF THE CITY OF KYLE; ESTABLISHING PAY RATES FOR ELECTION WORKERS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR EARLY VOTING; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

Other Information:

Budget Information:

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Kyle Election Resolution](#)
- [Contract Kyle General Election 2012](#)
- [City of Kyle Estimate May 2012](#)
- [Joint Election Agreement with Hays CISD and City of Kyle](#)
- [DOCS1-215303-v1-Joint Agreement Between Hays and Kyle for Election](#)

RESOLUTION NO.

A RESOLUTION ORDERING A GENERAL MUNICIPAL ELECTION TO BE HELD JOINTLY WITH HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT ON MAY 12, 2012, FOR THE PURPOSE OF ELECTING TWO CITY COUNCILMEMBER'S, AND A SPECIAL LOCAL OPTION ELECTION TO LEGALIZE THE SALE OF ALCOHOLIC BEVERAGES, INCLUDING MIXED BEVERAGES, BY THE QUALIFIED VOTERS OF THE CITY OF KYLE; ESTABLISHING PAY RATES FOR ELECTION WORKERS; PROVIDING FOR NOTICE OF SAID ELECTION; PROVIDING FOR EARLY VOTING; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the laws of the State of Texas, specifically Section 22.003 of the Texas Local Government Code, provide that a General Election shall be held annually for the election of City Officers, and

WHEREAS, Senate Bill 100 (82nd Texas Legislature) changed the state's election calendar preventing the Hays County Election Administrator from guaranteeing the availability of sufficient leased voting equipment in May of even number years, thereby requiring Hays Consolidated Independent School District ["HCISD," herein] and City of Kyle to purchase their own equipment to continue to conduct May elections; and

WHEREAS, the registered voters of the City of Kyle submitted a petition having the minimum number of required signatures to the City Secretary to hold a local option election to determine whether or not to permit the legal sale of alcoholic beverages, including mixed beverages within the city limits of Kyle; and

WHEREAS, the City Council is required to order the local option election to be held on the issue set out in the petition in accordance with Chapter 501 of the Texas Election Code; and

WHEREAS, the City Secretary has certified that the number of valid signatures found on the petition are sufficient for submission to the City Council to order the Local Option Election; and

WHEREAS, the laws of the State of Texas further provides the Election Code of the State of Texas is applicable to said election, and in order to comply with said Code, a resolution and order should be passed ordering said elections and establishing the procedure to be followed in said elections, and designating the voting place for said elections.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS:

Section 1. That a General Election is hereby ordered to be held on the uniform election date of Saturday, May 12, 2012, which is at least sixty-two (62) or more days from the date of the

adoption of this order as required by Section 3.005(a) of the Texas Election Code of the State of Texas. The purpose of the election is to elect the following City Officers:

Council Member, Place Five
Council Member, Place Six

Section 2. In accordance with Section 5.02 of the City Charter, a majority vote is required to be elected. In case of any candidate failing to receive a majority vote, a runoff election shall be conducted in accordance with Chapter 2, Subchapter B, Sections 2.021-2.028 of the Texas Election Code.

Section 3. That all independent candidates for the above mentioned offices file their application to become a candidate with the City Secretary, Kyle City Hall, 100 W. Center Street, Kyle, Texas, no earlier than 9:00 a.m. on February 4, 2012 and not later than 5:00 p.m., Monday, March 5, 2012; and that all of said applications shall contain all of the information prescribed by the Secretary of State.

Section 4. That all office holders and candidates file with the City Secretary all appropriate notices and statements required by Title 15 of the Election Code of the State of Texas pertaining to Political Funds Reporting and disclosure.

Section 5. That the order in which the names of the candidates are to be printed on the ballot shall be determined by a drawing to be conducted by the City Secretary at 10:00 a.m., on March 6, 2012 at Kyle City Hall as provided by Section 52.094 of the State Election Code.

Section 6. In response to the legally required petitions for a Local Option Election to legalize the sale of alcoholic beverages, including mixed beverages, a special election shall be held in and throughout the City on Saturday, May 12, 2012. The ballot shall be prepared to permit voting by all qualified voters for or against the legal sale of all alcoholic beverages, including mixed beverages. The official ballot for the Local Option election shall be in substantial conformity to the following:

PROPOSITION

Shall the City of Kyle, permit the legal sale of all alcoholic beverages including mixed beverages.

_____ FOR _____ AGAINST

Section 7. That the election will be held jointly with Hays Consolidated Independent School District, the election for City Council of the City of Kyle shall be held in the following polling places:

**Kyle City Hall
100 W. Center Street
Kyle, Texas 78640**

**Hays CISD Performing Arts Center
979 Kohler's Crossing
Kyle, Texas 78640**

**Chapa Middle School
3311 Dacy Lane
Kyle, Texas 78640**

Section 8 The polls for said election shall be open from 7:00 a.m. to 7:00 p.m.

Section 9. Early voting shall be conducted in two locations in conjunction with HCISD and optical scan ballots shall be used for early voting by mail. Early voting by personal appearance for the election shall commence on April 30, 2012, at 7:00 a.m. and end at 5:00 p.m. on May 8, 2012. Early voting by personal appearance shall be conducted during the regular business hours each weekday from 8:00 a.m. until 5:00 p.m., except for Monday, April 30, and May 7, 2012 from 7:00 pm to 7:00 pm, and Saturday, May 5, 2012 from 10:00 am to 2:00 pm. Regular business hours are hereby designated as 7:00 a.m. until 7:00 p.m..

Section 10. The early voting election polling places of said City election shall be as follows:

City Early Voting Polling Places

**Kyle City Hall
100 W. Center Street
Kyle, Texas 78640**

**HCISD Central Office
21003 Interstate 35
Kyle, Texas 78640**

Section 11. That all applications for ballot by mail must be applied for no earlier than March 13, 2012 and application must be received no later than the close of business on Friday, May 4, 2012.

Section 12. The City Secretary is hereby authorized and instructed to procure and furnish all necessary election supplies to conduct said election. The Council appoints the City Secretary as the Custodian of Records (“Custodian”) and agent to the Council to perform the duties related to the conduct and maintenance of records of the Election as required under the Texas Election Code during the period ending not earlier than the sixtieth (60th) day after the Election.

Section 13. The Office of the City Secretary shall perform all duties normally performed in general elections with respect to early voting, giving notice of the election and preparing the official ballots. Pursuant to Section 87.004 of the State Election Code, the Council appoints the City Secretary presiding judge of the early voting ballot board to count and return early voting ballots in accordance with the Texas Election Code.

Section 14. In addition, the presiding judge and alternate judge appointed for each precinct herein for the City of Kyle, conducting the General Municipal Election on Election Day, shall be authorized to appoint a sufficient number of clerks as they may deem necessary to assist them in said election, provided, however, that the number of clerks appointed by said presiding judge for each polling place shall not be less than two, including the alternate judge also serving as a clerk.

Section 15. The election judge serving on Election Day shall be compensated at the rate of \$10.00 per hour; and clerks serving on Election Day shall be compensated at the rate of \$10.00 per hour. No judge or clerk shall be paid for more than one hour of work before the polls open and no period of time subsequent to hours after voting is concluded by all voters and the sufficient materials related are delivered to the appropriate custodian of records for the City of Kyle.

Section 16. Direct recording electronic voting machines shall be used for voting at the foregoing election polling places and direct recording electronic voting machines shall be used for counting the ballots at said election..

Section 17. Notice of the Election, stating in substance the contents of this Order, shall be published one time in the English and Spanish languages, in a newspaper published within the City's territory at least 10 days and no more than 30 days before the Election and as otherwise may be required by the Texas Election Code. Notice of the Election shall also be posted on the bulletin board used by the City to post notices of the City's meetings no later than the 21st day before the Election, or if the 21st day before the Election falls on a weekend or holiday, on the first business day thereafter. The Mayor shall issue all necessary orders and writs for this election.

Section 18. The same Election Day Ballot Board is hereby designated to canvass the early votes cast by mail and by personal appearance.

Section 19. The following slate of officials and other designated persons are hereby authorized to be present at the City Hall to observe the election counting process:

- a. The Mayor and members of the City Council of the City of Kyle;
- b. Candidates for Mayor and City Council of the City of Kyle;
- c. The Kyle City Secretary or her designated representative.

Section 20. The Council Chambers located in the City Hall Building is hereby established as the Central Counting Station to receive and tabulate votes and ballots cast in said election.

Section 21. The following persons are hereby authorized and approved as persons employed and designated to handle the ballots, operate the tabulating equipment, count the ballots, and be present in the Central Counting Station:

- a. Central Counting Station Presiding Judge
- b. Central Counting Station Manager / City Secretary
- c. Central Counting Station Presiding Election Clerks

Section 22. All resident qualified voters of the City of Kyle shall be permitted to vote for Councilmember's Place #5 and the Local Option Election in the May 12, 2012 election. All residents qualified voters living in District 6 shall be permitted to vote for Councilmember Place #6, in said election. In addition, the election materials as outlined in Section 272.005, Texas

Election Code, shall be printed in both English and Spanish for use at the polling places and for early voting for said election.

Section 23. That the returns of said election be made in accordance with the State Election Code and shall be canvassed by the City Council at a City Council Meeting to be called between May 15-23, 2013.

Section 24. The Mayor is authorized to sign an Order of Election and a Notice of Regular Municipal Election prescribed by the State of Texas on behalf of the City Council. The Notice of Regular Municipal Election shall be published in accordance with the provisions of the Texas Election Code.

Section 25. Should any part, section, subsection, paragraph, sentence, clause or phrase contained in this resolution be held to be unconstitutional or of no force and effect, such holding shall not affect the validity of the remaining portion of this resolution, but in all respects said remaining portion shall be and remain in full force and effect.

Section 26. That this resolution shall be effective immediately upon adoption.

PASSED AND APPROVED this ____ day of February, 2012.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary

**STATE OF TEXAS }
 } **CONTRACT FOR ELECTION SERVICES**
 COUNTY OF HAYS}
KNOW ALL PERSONS BY THESE PRESENTS:**

THIS CONTRACT, made this ___ day of _____, 2012, by and between the City of Kyle (the “**CITY**”), a political subdivision located in Hays County, Texas, and the Hays County Elections Officer, (the “**OFFICER**”). The City and the Officer are sometimes hereinafter collectively referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Officer and the City, both of which are situated in Hays County, Texas, are authorized to execute this Contract pursuant to the provisions of the Texas Election Code, Chapter 31, Subchapter D, for the conduct and supervision of the City of Kyle General Election, to be held on May 12, 2012 (the “election”); and

WHEREAS, the City and the Officer have determined that it is in the public interest of the inhabitants of the City that the following contract be made and entered into for the purpose of having the Officer furnish to the City certain election services and equipment needed for the City’s election.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereby contract, covenant and agree as follows:

Article 1. OFFICER’S DUTIES AND SERVICES. The Officer agrees to undertake certain responsibilities and perform the following services for the City in connection with the election in accordance with applicable state law:

1. Prepare lists of persons to recommend for appointment as presiding election judges and alternate judges; recruit, appoint, and train the judges and clerks; and arrange for the use of polling places.
2. Procure and distribute election supplies, including preparation, printing and distribution of ballots.
3. Assemble and edit lists of eligible registered voters to be used in conducting the election, in conformity with the City’s boundaries, single member districts, as appropriate, and election precincts established for the election.
4. Prepare, and distribute election equipment, transport equipment to and from the polling places, and issue election supplies to the precinct judges.
5. Supervise the conduct of early voting and supply personnel to serve as deputy early voting clerks.
6. Assist in providing general overall supervision of the Election and provide advisory services in connection with the decisions to be made and actions to be taken by officers of the City who are responsible for holding the election.
7. Tabulate the ballots and provide the City the results of the election.

8. Perform other incidental related services as may be necessary to effectuate the election.
9. Remit to the City a detailed listing of expenses incurred to conduct the election for payment within the time period set forth in Article 4 (Cost of Services).
10. Perform a criminal background check on all employees, including temporary workers who are engaged in pre-election programming, testing and preparing of the voting system equipment for Early Voting and Election Day for the CITY, and determine there are no findings that would prevent the employees from performing their assigned duties.

NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT THE DISCRETION OF THE OFFICER IN THE EXECUTION OF HER DUTIES. IT IS FOR THE OFFICER, IN THE EXERCISE OF REASONABLE DISCRETION, TO DETERMINE HOW THE EFFORTS OF HER OFFICE SHOULD BE ALLOCATED THROUGHOUT THE COUNTY.

Article 2. CITY'S DUTIES AND SERVICES. The City agrees to perform the following duties:

1. Prepare and adopt all orders and resolutions necessary to conduct the election.
2. Prepare and publish all required election notices.
3. Deliver to the Officer as soon as possible, but not later than legally required before the election, the ballot language including the list of candidates, or any measures that are to be printed on the ballot with the exact form, wording and spelling that is to be used.
4. Provide the services necessary to translate any election documents for the City's election into Spanish.
5. Pay any additional costs incurred by the Officer if a recount for said election is required, or the election is contested in any manner.
6. Provide technical assistance requested by the Officer.

Article 3. ADMINISTRATION. The Officer will be responsible for administering this Agreement and coordinating with the City to assure the election is held in compliance with the Texas Election Code and providing supervisory control and command over all agents, officers, and other personnel performing services pursuant to this Agreement. The contact person and representative for the Elections Office is the Officer, or her designee, and the contact person and representative for the City is Amelia Sanchez.

Article 4. COST OF SERVICES. The City shall reimburse the Officer for all expenses incurred for the City election conducted by the Officer, including a runoff election that may be required, and, in addition, the City shall pay an administrative fee of **10%** of the total cost of that election, as billed to the City by the Officer. An itemized list of estimated election expenses is attached as Exhibit A and incorporated by reference for all purposes. In the event the services

are provided for a joint election, the cost shall be equally prorated between the participating entities. A runoff election shall be treated as a separate election. Within 20 days of the completion of the election, the Officer shall submit a statement to the City listing all of the expenses and the administrative fee. The City shall pay the total amount within 45 days of the election.

Article 5. CANCELLATION OF ELECTION. If the City cancels the election pursuant to Section 2.053, Texas Election Code, the Officer shall only be entitled to receive the actual expenses incurred before the date of cancellation in connection with the election and a cancellation fee of \$50.00. The Officer shall submit an invoice for such expenses (properly supported with an itemized list of expenses) as soon as reasonably possible after the cancellation and the City shall make payment therefore in a manner similar to that set forth in Article 4 above. The Officer agrees to use reasonable diligence not to incur major costs in connection with election preparations until it is known that the election will be held, unless the City authorizes such major costs in writing.

Article 6. LIABILITY. The City shall be responsible for any actual expenses for repairs for any damage that occurs to the DRE machines by the City to the extent that any such repairs are not covered under the vendor's warranty. The City shall not be liable for any damage to a DRE machine that is caused by a third party outside of the control of the City.

Article 7. GENERAL CONDITIONS. The following general conditions shall apply:

1. Nothing contained in this contract shall authorize or permit a change in the office with whom or the place at which any document or record relating to the election is to be filed, or place at which any function of the canvass of the election returns is to be performed, or the officer to serve as custodian of voted ballots or other election records.
2. The Officer may assign deputies to perform any of the contracted services.
3. The Officer may contract with third persons for election services and supplies.
4. This contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hays County, Texas.
5. In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
6. No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereof.

Article 8. MISCELLANEOUS. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defenses available at law or in equity to the County, the City or the Officer, or to create any legal rights or claim on behalf of any third party. Neither the County, the City, nor the Officer waive any defenses whatsoever, including, but not limited to, governmental immunity.

Article 9. NOTICE. Any notice provided for under this Agreement shall be forwarded to the following addresses:

Hays County
Elections Administrator
401-C Broadway St.
San Marcos, TX 78666

Lucy Johnson
Mayor
P.O. Box 40
Kyle, TX 78620

SIGNED AND AGREED UPON THIS THE ____ DAY OF _____, 2012.

Hays County Elections Administrator

City of Kyle

JOYCE A. COWAN

LUCY JOHNSON

THE COUNTY OF HAYS

Elections/Voter Registration
712 S. Stagecoach Trail, Suite 1045
San Marcos, TX 78666-7751



Phone: (512) 393-7310

www.co.hays.tx.us

Joyce A. Cowan
Elections Administrator/Voter Registrar

ESTIMATED COST FOR ELECTION EXPENSES

City of Kyle General Election, May 12, 2012

Based on 3 election day poll and 1 ev site

	Estimate
1. Electronic voting system programming and testing	
A. General	\$ 375.00
2. Rental of voting equipment (Election Day & Early Voting)	
A. General	
a. Number of DREs/eSlate systems	
X rental rate of <u>\$100.00</u> =	\$ n/a
b. Number of DAUs/Disable Access Units	
X rental rate of <u>\$100.00</u> =	\$ n/a
c. Number of JBCs/ Judges Booth Comptroller	
X rental rate of <u>\$100.00</u> =	\$ n/a
3. Election kits and other election supplies	
A. General	\$ 152.00
4. Precinct election judges and clerks	
A. Election Day <u>9</u> X <u>130.00</u> =	\$ 1,170.00
number of election judges and clerks	hourly rate (max. \$10.00)
B. Early Voting <u>2</u> X <u>760.00 (8 days)</u> =	\$ 1,520.00
number of early voting clerks	hourly rate (max. \$10.00)
5. Election judges/clerk's fee for pickup & delivery of supplies	
A. Election Day <u>3</u> X <u>25.00</u> =	\$ 75.00
number of workers	fee (max. \$25.00)
6. Early Voting Ballot Board Personnel (§ 81.121*)	
A. General <u>3</u> X <u>10.00</u> =	\$ 30.00
number of workers	hourly rate (\$10.00)
7. Central Counting Station Personnel (§ 81.121*)	
A. General <u>1</u> X <u>25.00</u>	\$ 25.00
number of workers	hourly rate (\$10.00)
a .Manager and technical support personnel	\$ 50.00
8. Miscellaneous election costs	
A. General	\$ 350.00
<u>sample ballots, processing payroll, postage, telephone, travel, additional supplies, Training of poll workers</u>	
9. County Election Services Contract Administrative Fee (§81.132)	
A. General	\$ 374.70
10. Total Cost of General	\$ 4,121.70

**AGREEMENT BY
THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT
AND THE CITY OF KYLE
TO HOLD A JOINT ELECTION IN CERTAIN VOTING
PRECINCTS
ON MAY 12, 2012**

WHEREAS, the Hays Consolidated Independent School District (“Hays CISD”) will hold a general election on May 12, 2012, for certain members of the Board of Trustees.

WHEREAS, the City of Kyle (“CITY”) will hold a general election for City Council positions within the boundaries of the CITY on May 12, 2012; and,

WHEREAS, Texas Election Code, Chapter 271 authorizes political subdivisions of the State of Texas to hold elections jointly in voting precincts if it will be of benefit to the citizens and voters thereof to be served by common polling places and elections are ordered by the authorities of two or more political subdivisions to be held on the same day in all or part of the same territory; and,

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments to contract with one another and with agencies of the state for various governmental functions including those in which the contracting parties are mutually interested.

NOW, THEREFORE, Pursuant to Chapter 31 of the Texas Election Code, Chapter 791 of the Texas Government Code and Sections 271.002 and 271.003 of the Texas Election Code, the Joint Election Agreement set forth below is entered into by and between the entities acting by and through their respective governing bodies, agree as follows:

1. Hays CISD and the CITY will share polling places during the election on May 12, 2012.
2. Hays CISD and the CITY will appoint the same election officials to preside over the election precinct in which a common election is held.
3. Hays CISD and the CITY will use a HAVA compliant voting system (DREs) in each election precinct in which a common election is held.
4. The expenses of the joint election will be divided equally between the entities having a common election. Expenses will be determined and divided based on each precinct. By way of example, where the entities hold a common election in a precinct, the expenses will be apportioned on-half each. Each entity will jointly bear all expenses for equipment and supplies utilized in its election and will abide by the equipment purchasing and sharing agreement in which both Hays CISD and the CITY have previously entered. In the event either entity cancels its election in accordance with Section 2.053 of the

Election Code, that entity will be responsible only for expenses incurred prior to cancellation.

- 5. It is agreed that both entities will contract with Hays County Elections Administrator to provide all election services needed for these elections and both entities will first use equipment owned by the entities. Any additional equipment needed will be leased from the county or another vendor and the expenses divided proportionally between Hays CISD and the CITY.
- 6. Early voting for Hays CISD and the CITY shall be conducted jointly per the election services contract with Hays County Elections Administrator in accordance with Title 7 of the Texas Election Code.
- 7. Hays CISD and CITY shall each be responsible for obtaining preclearance of their respective elections pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1977, et seq., to the extent this agreement constitutes a change to their voting laws or procedures. In the event either party is denied preclearance, this Agreement shall be of no force or effect.

DATED this the ___ day of _____, 2012.

CITY OF KYLE

BY: _____

ATTEST: _____

DATED this the ___ day of _____, 2012.

HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT

BY: _____

ATTEST: _____

**AGREEMENT BY
THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT
AND THE CITY OF KYLE
TO HOLD A JOINT ELECTION IN CERTAIN VOTING
PRECINCTS
ON MAY 12, 2012**

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WHEREAS, the City of Kyle (“CITY”) will hold a general election for City Council positions within the boundaries of the CITY on May 12, 2012; and,

WHEREAS, Texas Election Code, Chapter 271 authorizes political subdivisions of the State of Texas to hold elections jointly in voting precincts if it will be of benefit to the citizens and voters thereof to be served by common polling places and elections are ordered by the authorities of two or more political subdivisions to be held on the same day in all or part of the same territory; and,

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments to contract with one another and with agencies of the state for various governmental functions including those in which the contracting parties are mutually interested.

NOW, THEREFORE, Pursuant to Chapter 31 of the Texas Election Code, Chapter 791 of the Texas Government Code and Sections 271.002 and 271.003 of the Texas Election Code, the Joint Election Agreement set forth below is entered into by and between the entities acting by and through their respective governing bodies, agree as follows:

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7. Hays CISD and CITY shall each be responsible for obtaining preclearance of their respective elections pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1977, et seq., to the extent this agreement constitutes a change to their voting laws or procedures. In the event either party is denied preclearance, this Agreement shall be of no force or effect.
8. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed and supersedes all prior agreements, including prior election services contracts relating to each Entity' s May 12, 2012 election. Any prior agreements, promises, negotiations, or representations not expressly contained in this Agreement are of no force and effect. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing as provided herein.
9. Amendment/Modification. Except as otherwise provided, this Agreement may not be amended, modified, or changed in any respect whatsoever, except by a further Agreement in writing, duly executed by the parties hereto. No official, representative, agent, or employee of any Participating Entity has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the governing body of the respective Participating Entity.
10. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties hereto had signed the same document. All of such counterparts shall be construed together and shall constitute one and the same Agreement.

DATED this the ___ day of _____, 2012.

CITY OF KYLE

BY: _____

ATTEST: _____

DATED this the ___ day of _____, 2012.

HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT

BY: _____

ATTEST: _____



CITY OF KYLE, TEXAS

Issuance of Citations

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE ESTABLISHING REGULATIONS FOR THE ISSUANCE OF CITATIONS STEMMING FROM ALLEGED CRIMINAL VIOLATIONS OF ORDINANCE; PROVIDING FOR NOTICE REQUIREMENTS FOR ABATEMENT OF NUISANCES; PROVIDING FOR RULES, STANDARDS, PROCEDURES, AND CRIMINAL PENALTIES; SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE ~ *Frank Garza, City Attorney*

Other Information:

Budget Information:

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Issuance of Citations](#)

ORDINANCE NO.

AN ORDINANCE ESTABLISHING REGULATIONS FOR THE ISSUANCE OF CITATIONS STEMMING FROM ALLEGED CRIMINAL VIOLATIONS OF ORDINANCE; PROVIDING FOR NOTICE REQUIREMENTS FOR ABATEMENT OF NUISANCES; PROVIDING FOR RULES, STANDARDS, PROCEDURES, AND CRIMINAL PENALTIES; SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Kyle is a Home Rule Municipality; and

WHEREAS, it is the belief of the City Council that it is in the best interest of the City of Kyle in order to fully secure the health, safety and welfare of its citizens additional authority be granted to certain city officials the authority to issue citations for alleged criminal violations of the City's Code of Ordinances.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE

SECTION 1. The following provisions shall be added to the City's Code of Ordinances;

(a) Definitions.

Citation means an ordinance violation notice and notice to appear before the city municipal court, as provided for in this section.

City means the City of Kyle, a home-rule municipality located in Hayes County, Texas.

Person means any individual, association, firm, corporation, governmental agency, political subdivision, or legal entity of any kind.

(b) Administration.

(1) Relation to related laws. A citation issued pursuant to this section does not relate to authority of a peace officer to issue a citation pursuant to V.T.C.A, Code of Criminal Procedure art. 14.06(d) or V.T.C.A., Transportation Code § 543.003.

(2) Authority to issue citations. Pursuant to this section, and the scope of their assigned duties, a citation may be issued of the following individuals so designated by the city council:

- a. Code enforcement officer(s);
- b. Animal control officer(s);
- c. Building inspector(s); and
- d. Any certified peace officer licensed by the State of Texas and employed by the City's Police Department.

(3) Form and content of citation. A citation issued under this section must be in a form approved by the municipal court clerk that includes the following information:

- a. The name, address, date of birth, and/or driver's license number, physical description, and telephone number of the person cited;
- b. The offense for which the person is charged;
- c. The date and location of the offense;
- d. A deadline to contact the municipal court;
- e. A statement requiring the person receiving the citation to appear at municipal court on or before the deadline indicated on the citation;
- f. A statement of the person's promise to respond to the citation, pursuant to V.T.C.A., Code of Criminal Procedure art. 27.14, by the deadline indicated on the citation, including a place for the person cited to provide the person's signature; and
- g. The signature of the person issuing the citation.

(4) *Pleading subsequent to issuance of citation.* All pleas arising from the issuance of a citation under this section shall be made pursuant to V.T.C.A., Code of Criminal Procedure art. 27.14.

(c) *Related offenses and penalty.*

(1) *Ordinance violation of promise to appear.* A person issued a citation, as authorized by this section, commits an offense if the person fails to appear or enter a plea pursuant to subsection (b)(4) on or before the deadline to appear indicated on the citation as authorized by V.T.C.A., Penal Code art. 38.10.

(2) *Interference or obstruction of issuance.* A person commits an offense if the person interferes with or obstructs the issuance of a citation under this section

(3) *Providing false of fictitious name.* A person commits an offense if the person gives a false or fictitious name, address, or other information to an individual authorized to issue a citation under this section

(4) *Penalty.* Each violation under this section is a misdemeanor offense punishable upon conviction by a fine not to exceed \$2,000.00 per offense. Each day shall constitute a separate offense.

SECTION 2. NOTICE TO OWNER TO ABATE

Whenever the existence of nuisance as provided in the City's Code of Ordinances, on any lot or parcel of real estate situated within the corporate limits of the city, shall come to the attention of the City, it shall be the duty of said Code Enforcement Officer, Animal Control Officer, Building Inspector or Kyle Police Officer to prepare a written notice, identifying such property, to be sent to the person, firm or corporation owning or having possession or control of such lot or parcel of real estate, requiring the abatement, within a specified time, of such nuisance. Nuisance abatement shall include but is not limited to removing debris, weeds, brush, rubbish, decaying vegetable matter, removing junked vehicle, removing non conforming building or structure, construction to bring into compliance a building or structure so that it conforms with the building or zoning codes, removing other objectionable, unsightly or unsanitary matter of whatever nature, as the case may be, or by filling in, draining, leveling or otherwise regulating such lot or parcel of real estate, so as to prevent stagnant water standing therein, within ten days from the

date of service of such notice.

SECTION 3. SERVICE OF NOTICE

Such notice as described in Section 2 shall be served by the Code Enforcement Officer, Animal Control Officer, Building Inspector or Kyle Police Officer, by delivering such notice to the person, firm or corporation, or by leaving such notice at his place of residence or business if within the corporate limits of the city, and if a firm or corporation, by service upon any officer, agent or representative authorized by law to accept citation. If the person, firm or corporation to be served with such notice shall reside outside the limits of the city, the posting of a letter addressed to such person, firm or corporation at their post office address, if known, shall be sufficient service of such notice. The Code Enforcement Officer, Animal Control Officer, Building Inspector or Kyle Police Officer serving such notice shall make due return thereof on a copy of such notice, showing date and manner of service.

SECTION 4. ENFORCEMENT OF NOTICE

In the event of failure, neglect or refusal by the owner of any such lot or parcel of real estate to cause such nuisance to be removed or abated in the manner and within the time hereto provided, the Code Enforcement Officer, Animal Control Officer, Building Inspector or Kyle Police Officer shall file a complaint in the Municipal Court of the City of Kyle. For matters that are not Zoning violations, the City Manager, if found to be more expedient, shall file a written report with the City Council, showing due service of the notice herein provided, upon the owner of such property, and describing such property. The City Council, if they are of the opinion that such nuisance is being maintained or continued, shall at once authorize, direct and empower the City Manager without further notice to the owner of such lot or parcel of real estate, to proceed at once to abate such nuisance by grubbing and removing such weeds, brush, debris, rubbish and any other objectionable, unsightly or unsanitary matter of whatever nature, as the case may be, or by filling in, draining, leveling or otherwise regulating such lot or parcel of real estate, so as to prevent stagnant water standing therein, and charge the necessary cost and expense of procuring such work and improvements to the owner of the property.

SECTION 5. SEVERABILITY

If any provision, section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be severable for that purpose.

SECTION 6. EFFECTIVE DATE

This ordinance shall take effect immediately upon its passage, approval and publication according to law.

PASSED AND APPROVED this the ____ day of February 2012.

PASSED AND APPROVED on second and final reading this the ____ day of February 2012.

CITY OF KYLE, TEXAS

Mayor Lucy Johnson
City Kyle

ATTEST:

Amelia Sanchez
City Secretary



CITY OF KYLE, TEXAS

Criminal Justice Program Grant

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

A RESOLUTION OF THE CITY COUNCIL, CITY OF KYLE, TEXAS, AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION FOR A CRIMINAL JUSTICE PROGRAM GRANT; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF KYLE, TEXAS IN ALL MATTERS RELATED TO THE APPLICATION; TO WORK WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION TO COMPLY WITH GRANT REQUIREMENTS OF THE CRIMINAL JUSTICE PROGRAM GRANT ~ *Raquel Garcia, Grants Administrator*

Other Information:

Criminal Justice Grant will fund one full time Mental Health Officer for one year beginning in September 2012 and ending on August 31, 2013, including fringe benefits, equipment and supplies needed to fulfill position duties.

Budget Information:

This grant has no match requirement from the applicant.

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 [Mental Health Officer Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL, CITY OF KYLE, TEXAS, AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION FOR A CRIMINAL JUSTICE PROGRAM GRANT; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF KYLE, TEXAS IN ALL MATTERS RELATED TO THE APPLICATION; TO WORK WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION TO COMPLY WITH GRANT REQUIREMENTS OF THE CRIMINAL JUSTICE PROGRAM GRANT

Whereas, the Capital Area of Governments is directed by the Office of the Governor to administer requests for grant applications on behalf of the Criminal Justice Division for Criminal Justice activities and,

Whereas, The Kyle City Council finds it in the best interest of the citizens of Kyle that a Mental Health Officer be an important resource and,

Whereas, The City of Kyle agrees that in the event of loss or misuse of the Criminal Justice Division funds, the Kyle City Council assures that the funds will be returned to the Criminal Justice Division in full and,

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

1. The City Manager is hereby authorized on behalf of the City to execute such applications as are necessary to be made to the Governor's Office Criminal Justice Division to apply for funding under the Criminal Justice Grant Program;
2. If the project is funded, the City Of Kyle will: comply with the grant requirements of the Criminal Justice Division; agree the grant funds and any grant-funded equipment or facilities will be used only for the purposes for which they are intended under the grant; and, activities will comply with and support the criminal justice planning of the City Of Kyle, Texas.
3. This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City Of Kyle.

PASSED AND APPROVED THIS 7TH day of February 2012.

CITY OF KYLE, TEXAS

By: _____
Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Meeting Date: 2/7/2012

Date time: 7:00 PM

Violent Crimes Against Women Grant

Subject/Recommendation:

A RESOLUTION OF THE CITY COUNCIL, CITY OF KYLE, TEXAS, AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION FOR A VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF KYLE, TEXAS IN ALL MATTERS RELATED TO THE APPLICATION; TO PROVIDE MATCHING FUNDS; TO WORK WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION TO COMPLY WITH GRANT REQUIREMENTS OF THE VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT ~ *Raquel Garcia, Grants Administrator*

Other Information:

The Violent Crimes Against Women Criminal Justice and Training Project Grant will fund one full time Victim's Coordinator position for one year beginning in September 2012 and ending on August 31, 2013, including fringe benefits, equipment and supplies needed to fulfill position duties.

Budget Information:

This grant requires a 35% match through cash and/or in-kind contributions. The City intends to use existing resources to provide the 35% match.

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[Victims Coordinator](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL, CITY OF KYLE, TEXAS, AUTHORIZING THE FILING OF A GRANT APPLICATION WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION FOR A VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF KYLE, TEXAS IN ALL MATTERS RELATED TO THE APPLICATION; TO PROVIDE MATCHING FUNDS; TO WORK WITH THE OFFICE OF THE GOVERNOR, CRIMINAL JUSTICE DIVISION TO COMPLY WITH GRANT REQUIREMENTS OF THE VIOLENT CRIMES AGAINST WOMEN CRIMINAL JUSTICE AND TRAINING PROJECTS GRANT

Whereas, the Capital Area of Governments is directed by the Office of the Governor to administer requests for grant applications on behalf of the Criminal Justice Division and,

Whereas, The City Of Kyle understands that a 35% cash and/or in-kind cost share is a requirement of the Violent Crimes Against Women Criminal Justice and Training Project Grant and.

Whereas, The Kyle City Council finds it in the best interest of the citizens of Kyle that a Victims Coordinator be an important resource and,

Whereas, The City of Kyle agrees that in the event of loss or misuse of the Criminal Justice Division funds, the Kyle City Council assures that the funds will be returned to the Criminal Justice Division in full and,

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

1. The City Manager is hereby authorized on behalf of the City to execute such applications as are necessary to be made to the Governor's Office Criminal Justice Division to apply for funding under the Violent Crimes Against Women Criminal Justice and Training Projects Grant;
2. The City Of Kyle agrees to provide matching funds through a cash and/or in-kind match in the amount of 35% of total project costs as required by the Violent Crimes Against Women Criminal Justice and Training Projects grant application;
3. If the project is funded, the City Of Kyle will: comply with the grant requirements of the Criminal Justice Division; agree the grant funds and any grant-funded equipment or facilities will be used only for the purposes for which they are intended under the grant; and, activities will comply with and support the criminal justice planning of the City Of Kyle, Texas.
4. This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City Of Kyle.

PASSED AND APPROVED THIS 7TH day of February 2012.

CITY OF KYLE, TEXAS

By: _____
Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary



CITY OF KYLE, TEXAS

Rate of Speed on FM 1626

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF SPEED CONTROL SIGNS FOR THE ZONING OF TRAFFIC AND RATE OF SPEED THEREIN, ON FM 1626 (KYLE PARKWAY) IN THE CITY LIMITS OF THE CITY OF KYLE; AFFIRMING THE DEFINITION OF SPEEDING AND FIXING A PENALTY THEREFOR; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; DECLARING AN EMERGENCY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF ~ *Steven D. Widacki, P.E., City Engineer*

Other Information:

Budget Information:

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- [FM 1626 Speed Limit Ordinance](#)
 - [Council RCA FM 1626 Speed Limit](#)
 - [FM 1626 Speed Zone, Email](#)
 - [Speed Zone Strip Map, FM 1626](#)
-

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF SPEED CONTROL SIGNS FOR THE ZONING OF TRAFFIC AND RATE OF SPEED THEREIN, ON FM 1626 (KYLE PARKWAY) IN THE CITY LIMITS OF THE CITY OF KYLE; AFFIRMING THE DEFINITION OF SPEEDING AND FIXING A PENALTY THEREFOR; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; DECLARING AN EMERGENCY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF.

Whereas, the regulation of traffic, motor vehicles and conveyances upon all public streets, roadways, and right-of-ways constituting a speed zone within the city limits is essential and necessary to protect and preserve the public safety of the City of Kyle, Texas (the "City"), and;

Whereas, after review, inquiry of the public through citizen participation at a public hearing, the City Council has found the speed control signs hereinafter set forth and listed in this ordinance are reasonable and necessary for the public safety and are supported by sound and accepted public safety and traffic engineering criteria as hereby determined upon the basis of an Engineering and Traffic investigation that the prima facie maximum speed limit on those portions of FM 1626 (Kyle Parkway) routed in the City of Kyle, is hereby stated, which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the prima facie maximum speed limit so declared to wit.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Ratification and Confirmation. The installation, placement, erection and enforcement of the traffic and speed control signs are hereby confirmed and ratified by the City Council as follows:

- a) *For Eastbound Traffic on FM 1626 (Kyle Parkway)*, beginning at the west City Limit of the City of Kyle at milepoint 0.355 to milepoint 2.017 (200 feet north of Cromwell Drive), a distance of approximately 1.662 miles, a prima facie maximum speed limit of **60 MPH** (miles per hour); and from milepoint 2.017 (200 feet north of Cromwell Drive) to milepoint 3.019 (at the IH-35 northbound frontage road), a distance of approximately 1.002 miles, a prima facie maximum speed limit of **55 MPH**.
- b) *For Westbound Traffic on FM 1626 (Kyle Parkway)*, beginning at the IH-35 northbound frontage road at milepoint 3.019 to milepoint 2.017 (200 feet north of Cromwell Drive), a distance of approximately 1.002 miles, a prima facie maximum speed limit of **55 MPH**; and from milepoint 2.017 (200 feet north of Cromwell Drive) to the west City Limit of the City of Kyle at milepoint 0.355, a distance of approximately 1.662 miles, a prima facie maximum speed limit of **60 MPH**.

Speed control signs will be erected in their current locations or in locations determined most suitable by the Texas Department of Transportation, giving notice of the prima facie speed limit in effect at all times unless otherwise changed by another traffic control device duly placed, such as a school speed zone or temporary construction speed zone.

Section 6. Traffic Control Speed Signs. The City Council hereby supports and acknowledges that the traffic speed zone signs hereinafter set forth will be placed, installed, and erected at the locations designated, and that each such sign/device be hereafter enforced by the City. The signs shall indicate the prima facie speed limit in the direction facing the sign.

Section 7. Violation and Penalties. That all of the streets of the City of Kyle, and all portions of any such streets, are hereby declared to be public streets and it shall be unlawful for any person to drive or operate a motor vehicle that enters the speed zone identified in this ordinance without observing the prima facie maximum speed limit which shall remain in effect at all times unless changed by another traffic control device duly placed. Further, it shall be unlawful for any person to tamper with, alter, remove, destroy, cover or hinder the visibility, of any traffic device control device erected by this Ordinance in a manner which is inconsistent with its use as a traffic control device. Any person who violates this Ordinance or part thereof shall be guilty of a misdemeanor, which is named "The Offense of Speeding" and upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00. That the use of the word "Speeding" shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than fixed by City Ordinance for the street and for the zone thereof, that such motor vehicle was so being drive upon, if zoned.

That in prosecutions under this ordinance, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of "Speeding".

Section 8. Repeal of Conflicting Ordinances. All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of the most restrictive ordinance shall govern.

Section 9. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 10. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, LG Code.

Section 11. Effective Date. This Ordinance shall be in full force and effect from and after the date of its final passage and adoption in accordance with the provisions of the Kyle City Charter.

PASSED AND APPROVED on First Reading this ____ day of _____, 2012.

FINALLY PASSED AND APPROVED on this the ____ day of _____, 2012.

ATTEST:

CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

Lucy Johnson, Mayor

Speed Limit on FM 1626 (Kyle Parkway)

Meeting Date: 02/07/2012

Time: 7:00 p.m.

Subject/Recommendation: *(First Reading)* AN ORDINANCE OF THE CITY OF KYLE, TEXAS AUTHORIZING AND DIRECTING THE INSTALLATION AND ERECTION OF SPEED CONTROL SIGNS FOR THE ZONING OF TRAFFIC AND RATE OF SPEED THEREIN, ON FM 1626 (KYLE PARKWAY) IN THE CITY LIMITS OF THE CITY OF KYLE; AFFIRMING THE DEFINITION OF SPEEDING AND FIXING A PENALTY THEREFOR; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; DECLARING AN EMERGENCY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF. ~ *Steven Widacki, PE, City Engineer*

Other Information: TxDOT's Austin District Traffic Engineering Office completed SPEED STUDIES on FM 1626 (Kyle Parkway) within the City of Kyle [on the west side of IH-35] and has received approval from the TxDOT Division office to make adjustments within the existing speed zones. Graphic results of the studies consisting of a "speed zone strip map" were also provided, which also included their recommendations.

Upon passage of the Ordinance and forwarding of signed copy of same for TxDOT files, TxDOT personnel will make the necessary signing changes.

Staff recommends approval of subject ordinance.

Budget Information: N/A



P.O. BOX 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

December 13, 2011

The Honorable Lucy Johnson
Mayor, City of Kyle
100 W. Center Street
Kyle, Texas 78640

Dear Mayor Johnson:

Our Traffic Engineering Office has completed speed studies on FM 1626 within the city of Kyle and has received approval from our Division office to make some adjustments within the existing speed zones. Attached for your review is a copy of the proposed speed zone strip map, which shows the results of these studies as well as our recommendations.

Also attached are two copies of an ordinance which would regulate these speeds within the city limits of Kyle.

When the city council has passed this Ordinance please forward one signed copy to this office for our files and so that we can proceed with making the necessary signing changes.

Your interest in the safety of the traveling public is appreciated. If you should have any further questions concerning this matter please contact me at (512) 832-7286.

Sincerely,



Erin S. Williams, P.E.
Transportation Engineer
Transportation Operations
Austin District

cc: Don E. Nyland, P.E., South Travis Area Office
Joe Sustaita, San Marcos Maintenance Supervisor
attachments

AN ORDINANCE OF THE CITY KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN, ON FM 1626 IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; WITH A SAVING CLAUSE REPEALING CONFLICTING LAWS AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF KYLE:

SECTION I

It is hereby determined upon the basis of an Engineering and Traffic investigation that the prima facie maximum speed limit on those portions of FM 1626 routed in the city of Kyle, is hereby stated, which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the prima facie maximum speed limit so declared towit.

Speed Zone

FOR EASTBOUND TRAFFIC

Beginning at the west city limit of Kyle at milepoint 0.355 to milepoint 2.017 (200 ft north of Cromwell Drive), a distance of 1.662 miles, a prima facie maximum speed limit of 60 miles per hour.

From milepoint 2.017 (200 ft north of Cromwell Drive) to milepoint 3.019 (at the IH 35 northbound frontage road), a distance of 1.002 miles, a prima facie maximum speed limit of 55 miles per hour.

FOR WESTBOUND TRAFFIC

Beginning at the IH 35 northbound frontage road at milepoint 3.019 to milepoint 2.017 (200 ft north of Cromwell Drive), a distance of 1.002 miles, a prima facie maximum speed limit of 55 miles per hour.

From milepoint 2.017 (200 ft north of Cromwell Drive) to the west city limit of Kyle at milepoint 0.355, a distance of 1.662 miles, a prima facie maximum speed limit of 60 miles per hour.

SECTION II

That all of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this ordinance shall be guilty of a misdemeanor, which is named " The Offense of Speeding " and that the said offense is punishable by a fine in any sum not to exceed Two Hundred dollars (\$200.00). That the use of the word " Speeding " shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than fixed by City Ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.

That in prosecutions under this ordinance, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of " Speeding ".

SECTION III

That should any section or any portion of any section hereof be decreed to be void, the invalidity of such section or such portion thereof shall not affect the validity of the remaining portions of this ordinance; and that each section and each portion thereof not decreed to be invalid shall remain valid and enforceable.

That all ordinances and parts of ordinances that are in conflict with this ordinance are hereby repealed.

That the fact that prompt action should be taken in the regulation of traffic, on the streets of this city, in the manner provided for in this ordinance creates an emergency requiring that the rules that provide that an ordinance shall be read at three separate meetings of the city council before final passage, be suspended; and that the said rules are hereby suspended, and this ordinance is here and now passed, and that it is ordered that it take effect from and after its passage and publication.

Passed and approved this the _____ day of _____, _____

Mayor, City of Kyle

Attest:

City Secretary

AN ORDINANCE OF THE CITY KYLE, TEXAS, ZONING FOR TRAFFIC AND RATE OF SPEED THEREIN, ON FM 1626 IN THE CITY LIMITS OF THE CITY OF KYLE; DEFINING SPEEDING AND FIXING A PENALTY THEREFORE; DECLARING WHAT MAY BE A SUFFICIENT COMPLAINT IN PROSECUTIONS HEREUNDER; WITH A SAVING CLAUSE REPEALING CONFLICTING LAWS AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF KYLE:

SECTION I

It is hereby determined upon the basis of an Engineering and Traffic investigation that the prima facie maximum speed limit on those portions of FM 1626 routed in the city of Kyle, is hereby stated, which prima facie maximum speed limit shall be effective at all times and signs will be erected giving notice of the prima facie maximum speed limit so declared towit.

Speed Zone

FOR EASTBOUND TRAFFIC

Beginning at the west city limit of Kyle at milepoint 0.355 to milepoint 2.017 (200 ft north of Cromwell Drive), a distance of 1.662 miles, a prima facie maximum speed limit of 60 miles per hour.

From milepoint 2.017 (200 ft north of Cromwell Drive) to milepoint 3.019 (at the IH 35 northbound frontage road), a distance of 1.002 miles, a prima facie maximum speed limit of 55 miles per hour.

FOR WESTBOUND TRAFFIC

Beginning at the IH 35 northbound frontage road at milepoint 3.019 to milepoint 2.017 (200 ft north of Cromwell Drive), a distance of 1.002 miles, a prima facie maximum speed limit of 55 miles per hour.

From milepoint 2.017 (200 ft north of Cromwell Drive) to the west city limit of Kyle at milepoint 0.355, a distance of 1.662 miles, a prima facie maximum speed limit of 60 miles per hour.

SECTION II

That all of the streets of this city, and all portions of any such streets, are hereby declared to be public streets and that the driving or operating of any motor vehicle on or along any portion of any street of this city at a rate of speed that is greater than the maximum rate of speed for said portion of said street, as fixed by this ordinance shall be guilty of a misdemeanor, which is named " The Offense of Speeding " and that the said offense is punishable by a fine in any sum not to exceed Two Hundred dollars (\$200.00). That the use of the word " Speeding " shall be sufficient to designate the said offense, and shall mean that a motor vehicle has been driven upon a public street at a greater rate of speed than fixed by City Ordinance for the street and for the zone thereof, that such motor vehicle was so being driven upon, if zoned.

That in prosecutions under this ordinance, for the offense of speeding, the complaint, if in other respects sufficient in form, shall as to the portion thereof seeking to acknowledge the offense, be sufficient if it in substance alleges that the defendant did while driving a motor vehicle in said city commit the offense of " Speeding ".

SECTION III

That should any section or any portion of any section hereof be decreed to be void, the invalidity of such section or such portion thereof shall not affect the validity of the remaining portions of this ordinance; and that each section and each portion thereof not decreed to be invalid shall remain valid and enforceable.

That all ordinances and parts of ordinances that are in conflict with this ordinance are hereby repealed.

That the fact that prompt action should be taken in the regulation of traffic, on the streets of this city, in the manner provided for in this ordinance creates an emergency requiring that the rules that provide that an ordinance shall be read at three separate meetings of the city council before final passage, be suspended; and that the said rules are hereby suspended, and this ordinance is here and now passed, and that it is ordered that it take effect from and after its passage and publication.

Passed and approved this the _____ day of _____, _____

Mayor, City of Kyle

Attest:

City Secretary

DEVELOPMENT

RES. SIGHT DISTANCE

BALL BANK OR ADVISORY SPEED

CURVES OVER 2°

GRADES OVER 3%

SURFACE WIDTH AND TYPE

R.O.W. AND RDBD. WIDTH

ACCIDENTS

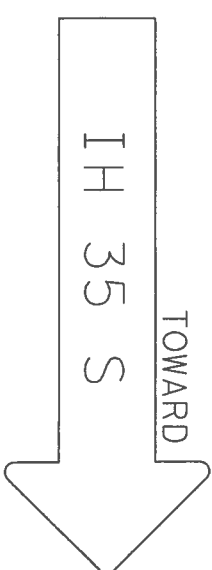
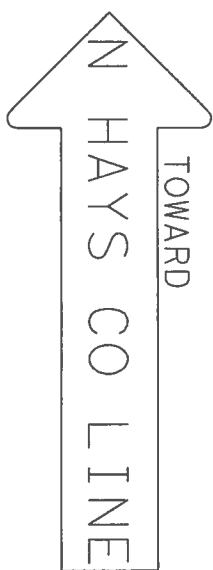
ZONE LENGTHS MILE

ZONE SPEEDS MPH

ZONE BY COMMISSION

ZONED BY CITY ORDINANCE
KYLE, INC.

SEE BELOW

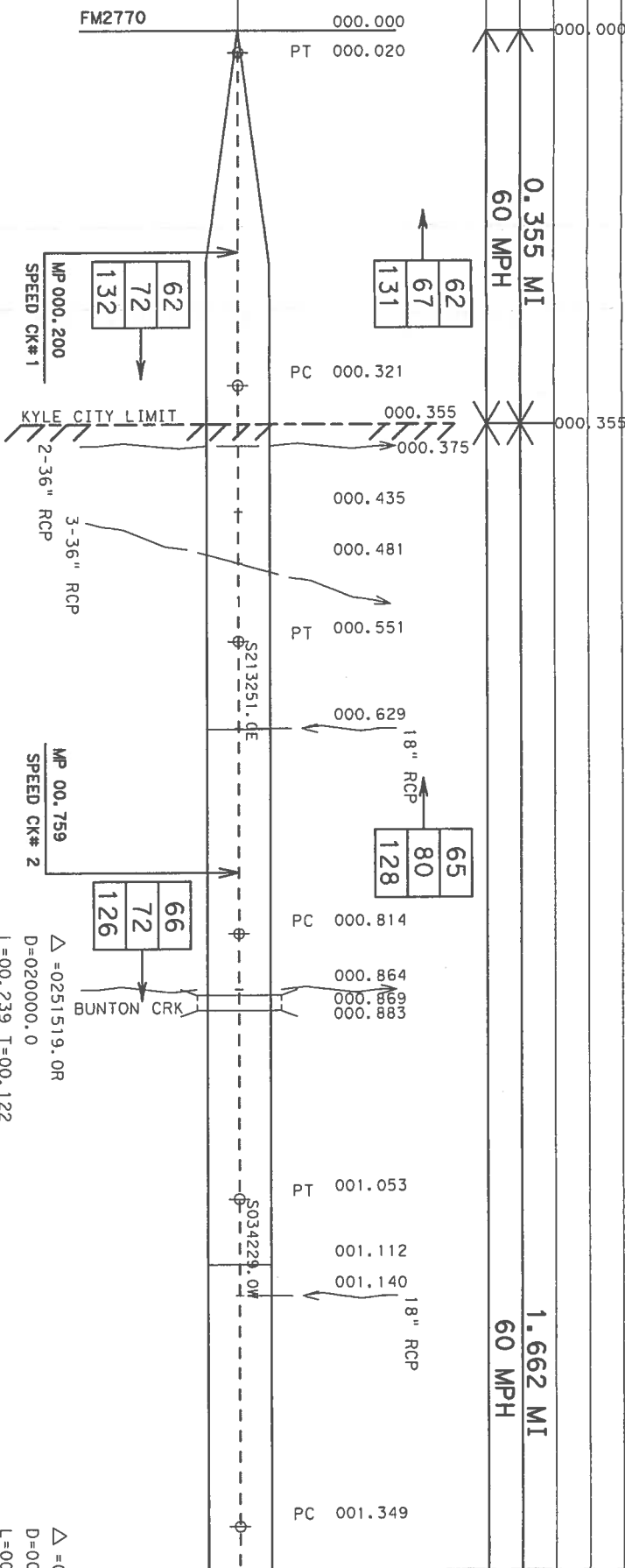


C.L. BEARINGS

FM 1626

CONTROL/SECTION 1539-3

Attachment number 4 \nPage 1 of 2



Δ = 0
D = 00
L = 00

ZONE SPEEDS MPH

ZONE LENGTHS MILE

ACCIDENTS

R.O.W. AND RDBD WIDTH

SURFACE WIDTH AND TYPE

GRADES OVER 3%

CURVES OVER 2°

BALL BANK OR ADVISORY SPEED

RES. SIGHT DISTANCE

0.355 MI

60 MPH

1.662 MI

60 MPH

D=020000.0

D=020000.0

DIST. AUSTIN COUNTY HAYS

HIGHWAY FM 1626 CITY KYLE

DATE OF SURVEY 11/07/2011 SCALE 1" = 800'

LIMITS OF ZONE

SECTION ONE LENGTH 00.355 MILES

SECTION TWO LENGTH 01.662 MILES

SECTION THREE LENGTH 01.002 MILES

STATION	CONT. & SECT.	PROJECT	STATION	CONT. & SECT.	PROJECT	STATION	CONT. & SECT.	PROJECT
BEGINS 00.000	1539-03		BEGINS 00.355	1539-03		BEGINS 02.017	1539-03	
ENDS 00.355	1539-03		ENDS 02.017	1539-03		ENDS 03.019	1539-03	

85 PERCENTILE SPEED
TOP SPEED MEASURED
NUMBER OF CARS CHECKE

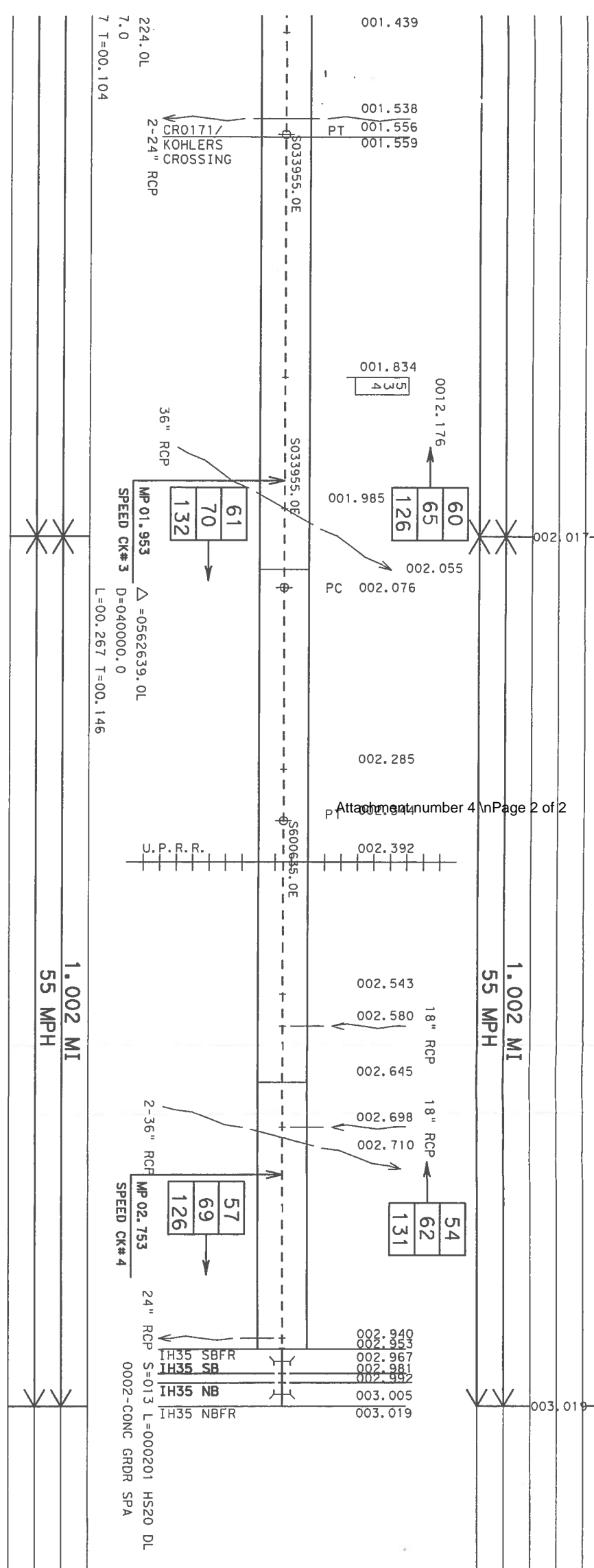
FATAL ACCIDENT

PERSONAL INJURY ACCID

PROPERTY DAMAGE ACCID

INDICATES SECTION ZON
BY COMMISSION MINUTE

ZONED BY CITY ORDINANCE
KYLE, INC.



04027.0
PT
PC
PT
D=040000.0

SPEED ZONE



CITY OF KYLE, TEXAS

FM 150 Agreement

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Consideration and Possible Action regarding the First Amended and Restated Interlocal Agreement between Hays County and the City of Kyle regarding FM 150 ~
Lanny Lambert, City Manager

Other Information:

Budget Information:

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[FM 150 1st Amended and Restated Interlocal Agreement](#)

[FM 150 Backup](#)

**1st AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN
HAYS COUNTY AND CITY OF KYLE
(FM 150)**

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

This ~~1st Amended and Restated~~ Interlocal Agreement (the "~~Amended Agreement~~") is entered into as of this _____ day of _____, 2011, by and between Hays County, a political subdivision of the State of Texas (the "County") and the City of Kyle, a political subdivision of the State of Texas (the "City") (collectively, the "Parties"). ~~The original Interlocal Agreement between the Parties and related to this matter, which was executed on or about August 18, 2009, is hereby replaced and restated by this Amended Agreement.~~

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RECITALS

WHEREAS, V.T.C.A., Government Code, Chapter 791, cited as the Texas Interlocal Cooperation Act, provides that any one or more local governments may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

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Item # 20

WHEREAS, the County has entered into a Pass-Through Financing Agreement (with the Texas Department of Transportation ("TxDOT")) to construct a southbound frontage road between FM 1626 (Kyle Parkway) and RM 150, including the construction of new ramps and a realignment of RM 150 (collectively, the "RM 150 Project"); and

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WHEREAS, the City desires to participate with the County in the funding of the RM 150 Project; and

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~~**NOW THEREFORE**~~, in consideration of the mutual covenants and agreements herein contained, the City and the County agree as follows:

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A.

TERMS AND CONDITIONS

1. Project Description.

1.1 The Project. The RM 150 project consists of the completion ~~improvements on~~ RM 150, ~~east of IH-35 within the project limits depicted in Exhibit "A"~~. Additionally, RM 150 will be realigned to allow the frontage roads between FM 1626 and Yarrington Road to be converted from two-way to one-way operation. The total Project is estimated to be ~~Nine Million, Five-Hundred-Thousand Dollars (\$9,500,000.00 USD)~~ ("Project Costs").

Deleted: of the southbound frontage road between FM 1626 (Kyle Parkway) and
Deleted: including new ramps
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1.2 **Obligation of TxDOT.** TxDOT will be responsible for letting and managing the Project.

2. **Party Obligations.**

2.1 **City Payment.** The City shall be obligated to pay ~~Four Million, Five-Hundred-Thousand~~ Dollars (\$4,500,000) as its share of the Project Costs. This payment shall be due on or before sixty (60) days prior to the TxDOT letting of the Project, ~~or within thirty (30) days of the Effective Date of this Amended Agreement, whichever is later.~~ This payment represents the City's contribution of Three Million Dollars (\$3,000,000.00 USD) toward Project construction costs and One Million, Five-Hundred-Thousand Dollars (\$1,500,000.00 USD) toward Right of Way Acquisition on the Project.

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2.2 **County Payment.** The County shall be responsible for all costs related to the environmental permitting, project design, acquisition of right-of-way, and construction costs for the RM 150 Project (except for the City's obligation to acquire right-of-way for the RM 150 realignment, ~~cited in Section 2.1, above~~).

Deleted: Additionally, the City shall be responsible for all costs related to the acquisition of right-of-way needed for the RM 150 realignment as described above. Except for the acquisition of the right-of-way as stated above, the City shall not be obligated to fund any sums above \$3,000,000.

2.3 **Pro-Rata Reimbursement.** ~~Each Party shall be responsible for an amount that is equal to that Party's pro rata contribution to the Project Costs. The pro rata contribution for the City under this Amended Agreement is 47.37%. The pro rata contribution for the County under this Amended Agreement is 52.63%. If final project costs are less than the Project Costs cited in Section 1.1, above, and the amount a Party has contributed toward total project costs exceeds that Party's pro rata contribution, then that Party shall be reimbursed whatever amount necessary to bring that Party's pro rata contribution back to the percentage cited in this Section.~~

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2.4 **Additional Pro-Rata Contribution.** ~~Each Party shall be responsible for an amount that is equal to that Party's pro rata contribution to the Project Costs. The pro rata contribution for the City under this Amended Agreement is 47.37%. The pro rata contribution for the County under this Amended Agreement is 52.63%. If final project costs are more than the Project Costs cited in Section 1.1, above, then the City shall be obligated to pay 47.37% of final project costs, even though that amount exceeds Four Million, Five-Hundred-Thousand Dollars (\$4,500,000 USD). If, at the time of substantial completion of the Project, it is determined that the City owes additional funding under this Section, then the County shall provide written notification of the amount owed in writing, along with a written accounting of the Project expenditures. The City shall pay the difference to the County within Sixty (60) days of such written notification.~~

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2.5 **Removal of Utilities Improvements.** ~~The Parties agree that, should the primary landowner associated with right-of-way acquisition for this project not agree to a donation or bargain sale of the right-of-way property, then the specified utility and drainage improvements that would otherwise facilitate development of that landowner's property may be removed from project specifications and the Project Costs may be reduced to reflect that change in specifications.~~

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Item # 20

B.

MISCELLANEOUS PROVISIONS

1. **Execution.** This Amended Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.
2. **Governing Law.** This Amended Agreement will be governed by the Constitution and laws of the State of Texas.
3. **Successors and Assigns.** The assignment of this Amended Agreement by either Party is prohibited without the prior written consent of the other Party.
4. **Headings.** The captions and headings appearing in this Amended Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.
5. **Partial Invalidity.** If any of the terms, covenants or conditions of this Amended Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Amended Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.
6. **Waiver.** Any waiver by any party of its rights with respect to a default or requirement under this Amended Agreement will not be deemed a waiver of any subsequent default or other matter.
7. **Amendments.** This Amended Agreement may be amended or modified only by written agreement duly authorized and executed by the duly authorized representatives of the Parties.
8. **Cooperation.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Amended Agreement.
9. **Venue.** All obligations of the Parties are performable in Hays County, Texas and venue for any action arising hereunder will be in Hays County.
10. **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Amended Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Amended Agreement.

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Item # 20

11. **Representations.** Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the termination or expiration of this Amended Agreement.

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12. **Exhibits.** All exhibits attached to this Amended Agreement are hereby incorporated in this Amended Agreement as if the same were set forth in full in the body of this Amended Agreement.

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13. **Entire Amended Agreement.** This Amended Agreement, including any attached exhibits, contains the entire agreement between the Parties with respect to the subject matter and supersedes all previous communications, representations, or Amended Agreements, either verbal or written, between the Parties with respect to such matters.

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14. **Term.** This Amended Agreement shall automatically terminate if a contract for the Project is not awarded within three (3) years after this Amended Agreement is executed by both parties.

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Item # 20

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IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

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HAYS COUNTY

By:

Judge Bert Cobb, M.D.
County Judge

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Date:

CITY OF KYLE, TEXAS

By:

Lanny Lambert
City Manager

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Date:

Item # 20

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Exhibit "A"
Project Depiction

Item # 20

Exhibit "B"

Item # 20



Grace Nino <gracenino@cityofkyle.com>

Fwd: FM 150 - Backup

Frank Garza <FGarza@dtrglaw.com>

Mon, Jan 23, 2012 at 9:27 AM

To: Lanny Lambert <l.lambert@cityofkyle.com>, GRACE NINO <gracenino@cityofkyle.com>, Amelia Sanchez <asanchez@cityofkyle.com>

Lanny:

Since the County can ask for additional funds under the terms of the pro rata contribution, does the City of Kyle want the ability to review and audit the costs? If so, I would recommend the following language:

“City's Right to Audit. City reserves the right to conduct, or to appoint others to conduct, examinations, at City's expense, with twenty-four (24) hour notice, of the books and records maintained for County, and to perform any and all additional audit tests relating to pro rata contribution required to be paid for by the City. “

What do you think? It might upset the County, but it's recommended to make sure County is not requiring City to pay more than its share.

Frank

Davidson Troilo Ream & Garza

Francisco J. Garza

7550 West IH 10, Suite 800

San Antonio, TX 78218

Main [\(210\)349-6484](tel:(210)349-6484)Fax [\(210\) 349-0041](tel:(210)349-0041)Direct [\(210\) 442-2324](tel:(210)442-2324)fgarza@dtrglaw.com

ATTENTION ELECTED OFFICIALS: A "Reply to All" on this e-mail could lead to violations of the Texas Open
Rem # 20

Meetings Act. Please reply only to the sender.

CONFIDENTIAL NOTICE: The information in this e-mail may be confidential and/or privileged. This e-mail is intended to be reviewed by only the individual or individuals named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this e-mail or the information contained herein is prohibited. If you received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your system.

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CITY OF KYLE, TEXAS

Walgreens - Plum Creek

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Walgreens - Plum Creek (SD-11-014)
1.767 acres; 14,820 square foot building
Located at the corner of FM 2770 and FM 150
Applicant: Nomoland Company, LP
Agent: Travis J. Bousquet, P.E.
~ Sofia Nelson, Director of Planning

Planning and Zoning Commission voted 6-0 to approve the Site Plan.

- *Public Hearing*

Other Information:

Please see attachments

Budget Information:

N/A

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[Site Plan](#)

[Landscape Plan](#)

[CC Memo - Site Development](#)

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: January 27, 2012

SUBJECT: Site Development Permit
Walgreens-Plum Creek

Background

Request:

The applicant is requesting approval of a site development permit for the development of a 1.767 acre site. The development of the site is proposed to include a 14,820 square foot Walgreens Pharmacy and approximately 19,240 square feet of landscaping (25% of the site). The property is zoned MXD and located within the Plum Creek PUD overlay district.

Location:

The subject property is located at the southeast corner of FM 2770 and FM 150.

Purpose of Application:

A site development plan provides detailed graphic information indicating property boundaries, easements, land use, streets, utilities, drainage, off-street parking, lighting, signage, landscaping, vehicle and pedestrian circulation, open spaces, and general conformance with the master plan and ordinances of the city.

Planning and Zoning Commission Recommendation

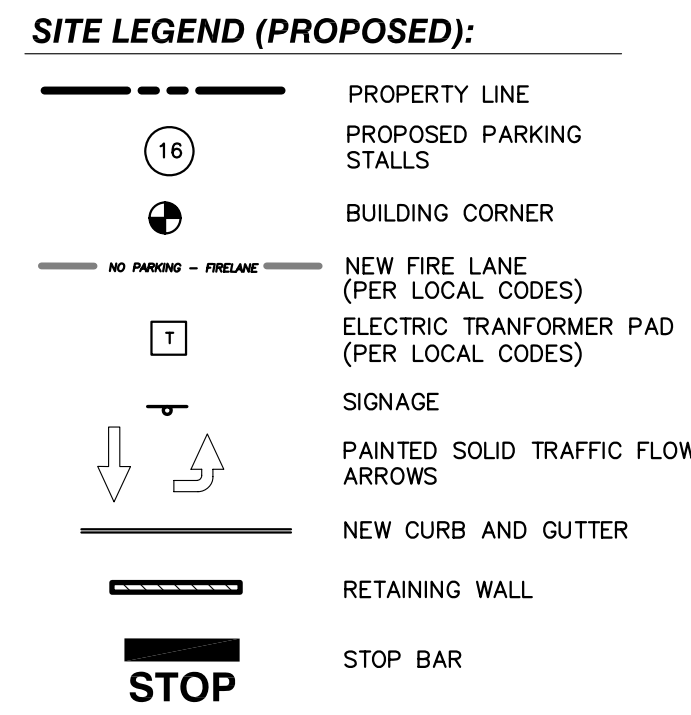
The Planning and Zoning Commission recommended approval of the request conditional on the subdivision plat being recorded for the site.

Staff Analysis and Recommendation:

The subject property is located on the corner of two major roadways identified on the Transportation Master Plan as the northwestern part of the City's Inner Loop. The developed site will include an entrance/ exit on FM 2770 and a restricted right-in-right-out entrance/ exit on FM 150. The site plan also identifies an access point to the adjacent lot to provide for cross access between the two lots. The development of the site will include bicycle parking and a 5' sidewalk around the perimeter of the site for pedestrian access.

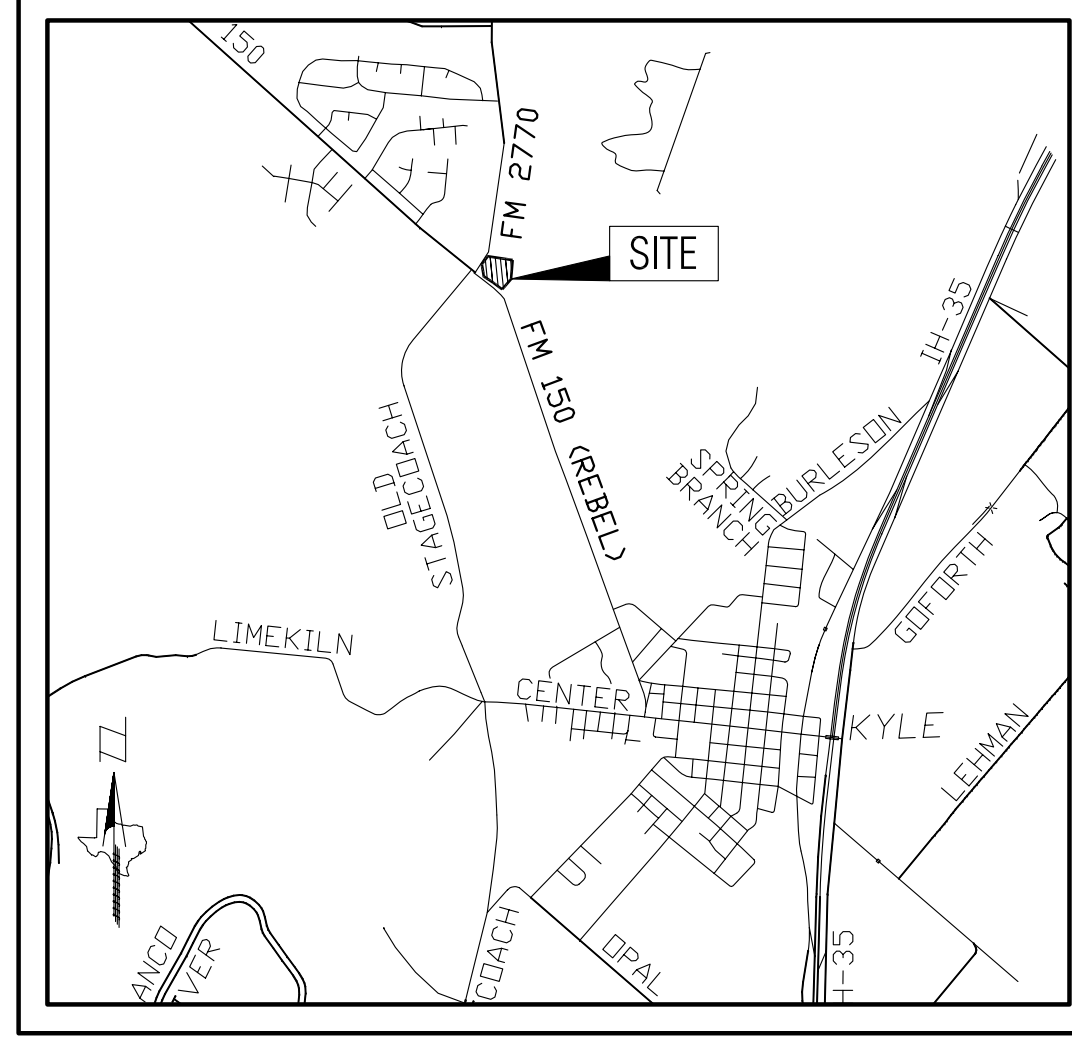
Staff has reviewed the request for adherence to both the Plum Creek PUD site development and zoning requirements and the City of Kyle access and utility requirements and is recommending approval of the request.

SITE DATA	
CURRENT LAND USE	UNDEVELOPED
PROPOSED USE	PHARMACY/RETAIL
ZONING	"C-3" GENERAL COMMERCIAL
TOTAL SITE AREA	76,979 S.F. (1.767 ACRES)
GROSS BLDG. AREA	14,820 S.F.
LOT COV./IMPERVIOUS	75% / 57,739 S.F.
FLOOR AREA RATIO	0.19:1
MAX. BUILDING HEIGHT	1 STORY / 39'-6"
TOTAL LANDSCAPE AREA	19,240 S.F. / 25%



CITY OF KYLE SITE NOTES:

- LIGHTING OF PARKING AREAS AND DRIVEWAYS IS REQUIRED TO BE DIRECTED AWAY FROM ABUTTING LOTS AND PUBLIC USE STREETS TO ELIMINATE OBJECTIONABLE GLARE.
- ALL PARKING STRIPING TO BE 4" SOLID WHITE.
- A SIGN PERMIT SHALL BE OBTAINED FOR ALL SIGNS PROPOSED ON THE SITE.



VICINITY MAP

- SITE GENERAL NOTES:**
- DIMENSIONS SHOWN ARE TO THE FACE OF CURB, UNLESS OTHERWISE INDICATED.
 - USE 3' RADII, UNLESS SHOWN OTHERWISE.
 - THE INFORMATION PERTAINING TO EXISTING CONDITIONS WAS TAKEN FROM A SURVEY PROVIDED BY: CHAPARRAL PROFESSIONAL LAND SURVEYING, INC.
 - THE LOCATION OF ALL EXISTING UTILITIES WERE OBTAINED FROM AVAILABLE INFORMATION. THE CONTRACTOR SHALL VERIFY EXACT LOCATION AND DEPTH OF UTILITY PRIOR TO BEGINNING CONSTRUCTION. CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES.
 - ALL ACCESSIBLE PARKING SPACES AND TRAVEL ROUTES SHALL BE CONSTRUCTED IN ACCORDANCE WITH A.D.A. AND/OR STATE REQUIREMENTS (I.E. PROJECTS IN TEXAS SHALL BE APPROVED BY A T.A.S. SPECIALIST).
 - ANY DISCREPANCIES IN THIS PLAN AND ACTUAL FIELD CONDITIONS SHALL BE REPORTED TO THE OWNER AND ENGINEER PRIOR TO THE START OF CONSTRUCTION.
 - PRIOR TO STARTING CONSTRUCTION, THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE TO VERIFY THAT ALL REQUIRED PERMITS AND APPROVALS HAVE BEEN OBTAINED. NO CONSTRUCTION SHALL BEGIN UNTIL ALL PERMITS HAVE BEEN RECEIVED.
 - CONTRACTOR SHALL MAINTAIN THE SITE IN A MANNER SO THAT WORKMEN AND PUBLIC SHALL BE PROTECTED FROM INJURY, AND ADJOINING PROPERTY PROTECTED FROM DAMAGE. CONTRACTOR SHALL REPAIR ANY DAMAGE DONE TO PRIVATE OR PUBLIC PROPERTY.
 - ACCESS TO UTILITIES, FIRE HYDRANTS, ETC. SHALL REMAIN UNDISTURBED AT ALL TIMES, UNLESS COORDINATED OTHERWISE.
 - THE GENERAL CONTRACTOR SHALL REMOVE ALL TRASH AND DEBRIS FROM THE SITE UPON COMPLETION OF THE PROJECT.
 - ALL SUBGRADE PREPARATION, PAVING, AND UTILITY TRENCHING MUST BE IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE SOILS INVESTIGATION. IF THERE IS A CONFLICT BETWEEN THE SOILS REPORT AND THE PLANS, THE MORE PROHIBITIVE OF THE TWO SHALL TAKE PRECEDENCE.
 - CONTRACTOR TO ENSURE COMPLIANCE WITH ANY AND ALL LAND DISTURBANCE NOTIFICATION REQUIREMENTS, AND THAT ALL REQUIRED EROSION CONTROL MEASURES ARE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE STATE, LOCAL, OR FEDERAL REQUIREMENTS.
 - FOR WORK IN, OR ADJACENT TO, HIGHWAY RIGHT OF WAYS, CONTRACTOR SHALL ENSURE APPROPRIATE PERMITS ARE OBTAINED PRIOR TO CONSTRUCTION. CONTRACTOR TO ERECT AND MAINTAIN TRAFFIC CONTROL SIGNS AND DEVICES IN CONFORMANCE WITH THE TEXAS MANUAL ON TRAFFIC CONTROL DEVICES, LATEST EDITION, ALONG WITH THE REQUIREMENTS OF THE LOCAL TxDOT AREA OFFICE.
 - LOCATION AND SIZE OF EXISTING AND PROPOSED EASEMENTS ARE SHOWN ON THE SITE PLAN.

SITE NOTES AND DETAILS:

NOTE NUMBER	DESCRIPTION	COORESPONDING DETAIL NUMBER (SEE DETAIL SHEETS)
1	TIE IN NEW CURB TO MATCH EXISTING CURB	N/A
2	TRANSITION CURB FROM 6" TO 0" OVER 2' HORIZONTALLY	N/A
3	NEW CONCRETE CURB AND GUTTER	2A
4	NEW CONCRETE PAVING - SEE PAVING PLAN FOR DETAILS	C-4.0
5	NEW HEAVY DUTY CONCRETE PAVING-SEE PAVING PLAN	C-4.0
8	PROPOSED AREA LIGHT - SEE ARCH. PLANS	N/A
10	THICKENED EDGE OF PAVEMENT	1G
11	4" WIDE PAINTED STRIPING @ 2' O.C. AND 45'	N/A
12	LANDSCAPE AREA - SEE LANDSCAPE PLAN L-1.0	N/A
13	2-4" WIDE PAINTED WHITE TRAFFIC STRIPE (SEE LENGTH THIS SHEET)	N/A
15	ACCESSIBLE PARKING SPACE (TYP)	PER ADA
16	TRAFFIC FLOW ARROWS (TYP)	4D
17	FIRE LANE-SEE PAVING PLAN	4A
18	SIDEWALK (SEE WIDTH THIS SHEET)	7A
19	BARRIER FREE RAMP - SEE DETAIL SHEETS	7C
20	WHEEL-STOPS	8A
21	2" WIDE CURB OPENING	N/A
22	CONCRETE BOLLARD	N/A
23	PAINTED STOP BAR	4C
25	TRAFFIC CONTROL SIGN	6C
27	PROPOSED TRANSFORMER PAD - SEE UTILITY PLAN C-6.0	N/A
31	CURB INLET - SEE GRADING PLAN C-5.0	N/A
32	GRATE INLET - SEE GRADING PLAN C-5.0	N/A

OWNERS:
 ADDRESS: 1234 PUBLIC WAY
 AUSTIN, TX
 512.555.1212
 512.555.1212 FAX

ACREAGE: 1.767 TOTAL IMPERVIOUS COVER: 58,974 S.F.

LEGAL DESCRIPTION: LOT 1, PLUM CREEK ADDITION - PHASE 1
 ADDRESS: SE CORNER OF
 R.M. 2770 & F.M. 150
 KYLE, TEXAS

DATE: 10-19-11

PERSON PREPARING PLAN: TRAVIS J. BOUSQUET, PE
 COMPANY: THE BOUSQUET GROUP, INC.
 109 S. OAKLAND STREET
 DENTON, TX 76201
 972.207.8077
 travis@tbsolutions.com

ENGINEER: SAME AS ABOVE - THE BOUSQUET GROUP, INC.

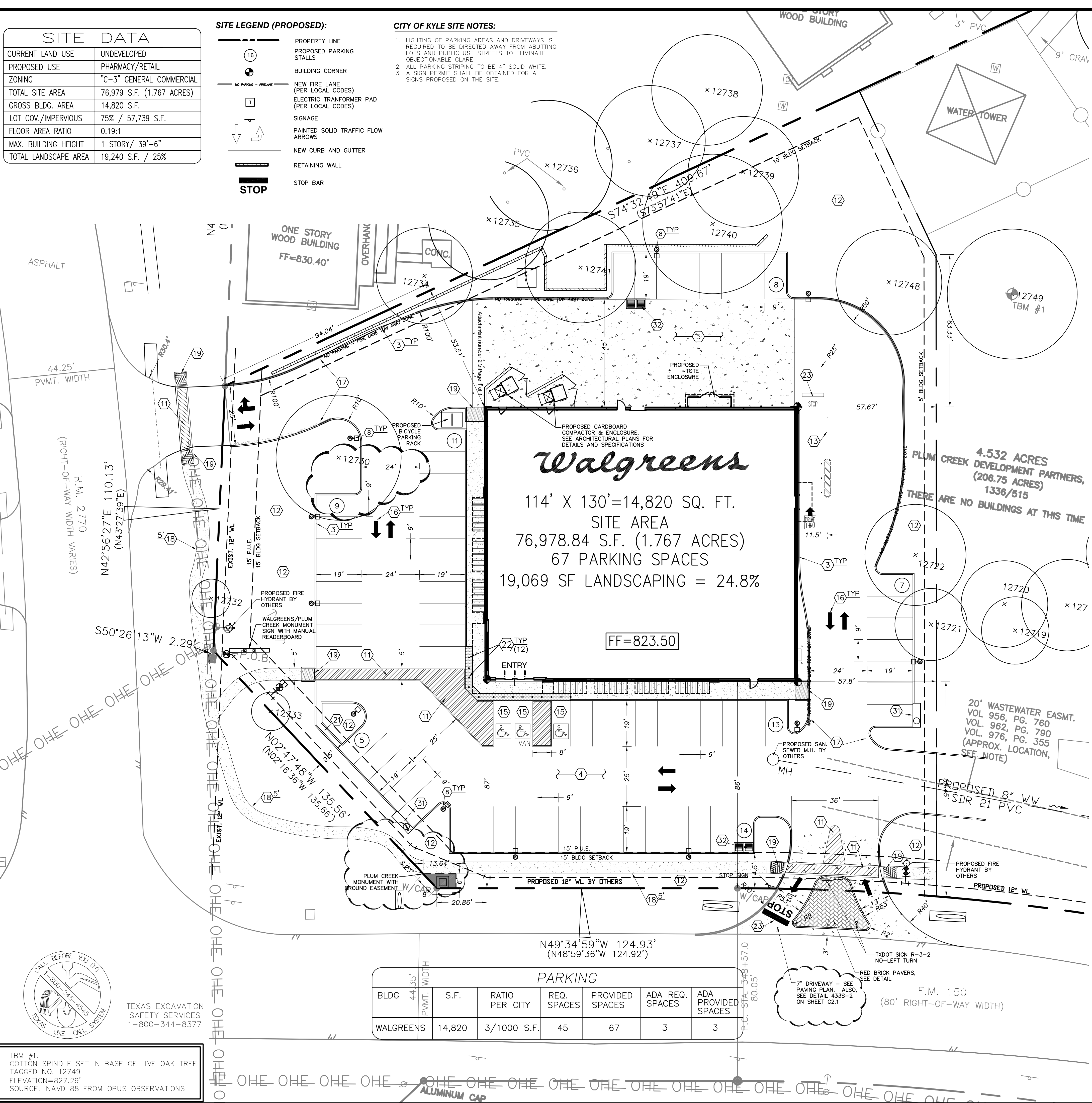
Engineer Information:
The Bousquet Group, Inc.
 PO Box 545
 Argyle, TX. 76226
 972.207.8077
 940.387.0830 fax

Texas Firm No. F-8942

Professional of Record:

 TRAVIS J. BOUSQUET
 86084
 12/16/11

PROPOSED WALGREENS PHARMACY
R.M.2770 & F.M. 150
KYLE, TEXAS



PARKING

BLDG	P.V.M.T. WIDTH	S.F.	RATIO PER CITY	REQ. SPACES	PROVIDED SPACES	ADA REQ. SPACES	ADA PROVIDED SPACES
WALGREENS	44.35'	14,820	3/1000 S.F.	45	67	3	3

CALL BEFORE YOU DIG
 1-800-245-4545
 TEXAS ONE CALL SYSTEM

TEXAS EXCAVATION SAFETY SERVICES
 1-800-344-8377

TBM #1:
 COTTON SPINDLE SET IN BASE OF LIVE OAK TREE
 TAGGED NO. 12749
 ELEVATION=827.29'
 SOURCE: NAVD 88 FROM OPUS OBSERVATIONS

Revisions:

#	Date Issued:	Description:
1	12-16-11	Revised per City and Bid comments

Sheet Title:
HORIZONTAL CONTROL PLAN

Date: December 16, 2011

Project Number: 11012.0

Drawn By: TJB

Scale: 1"=20'

Sheet Number:
C-2.0

PLANT LIST

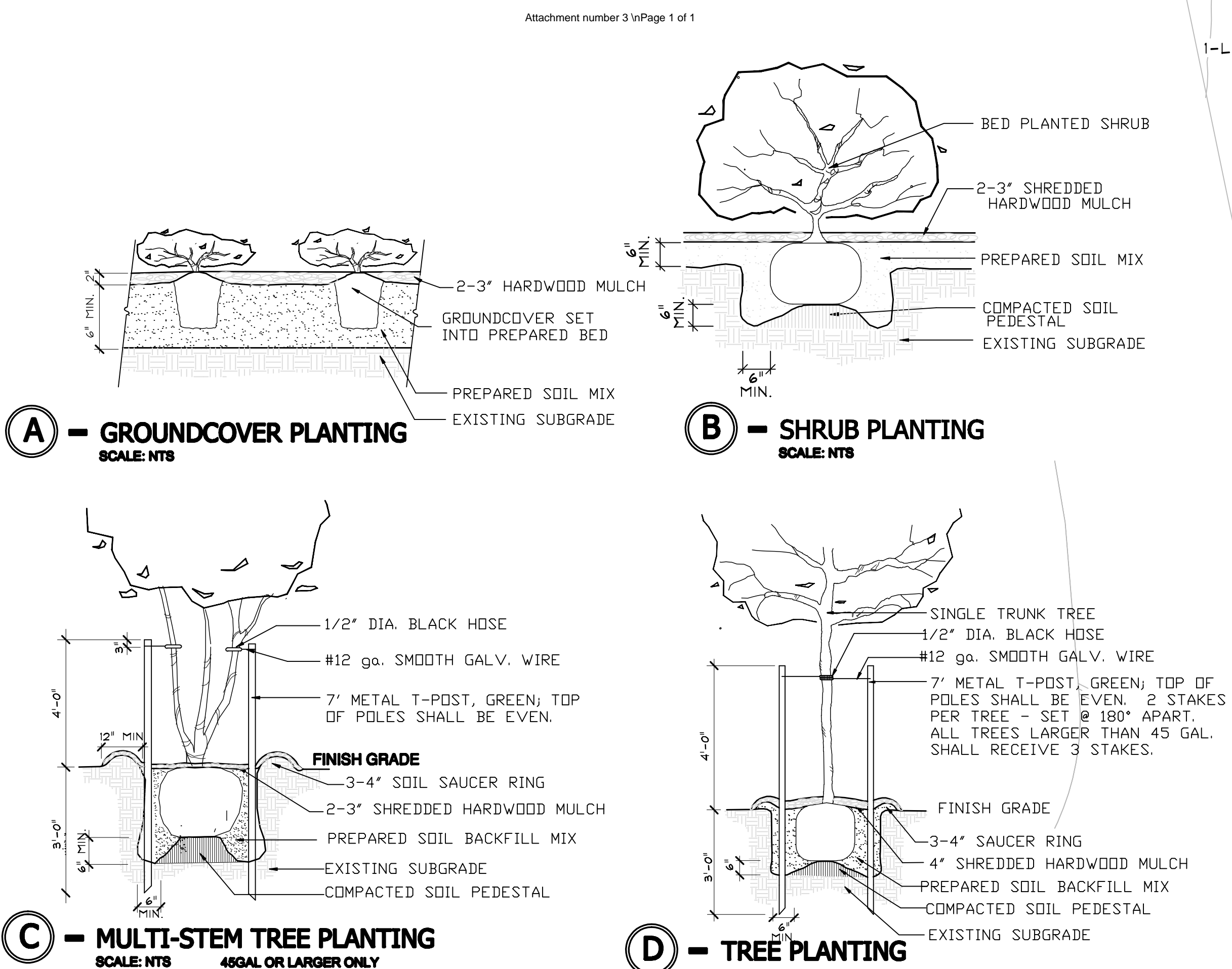
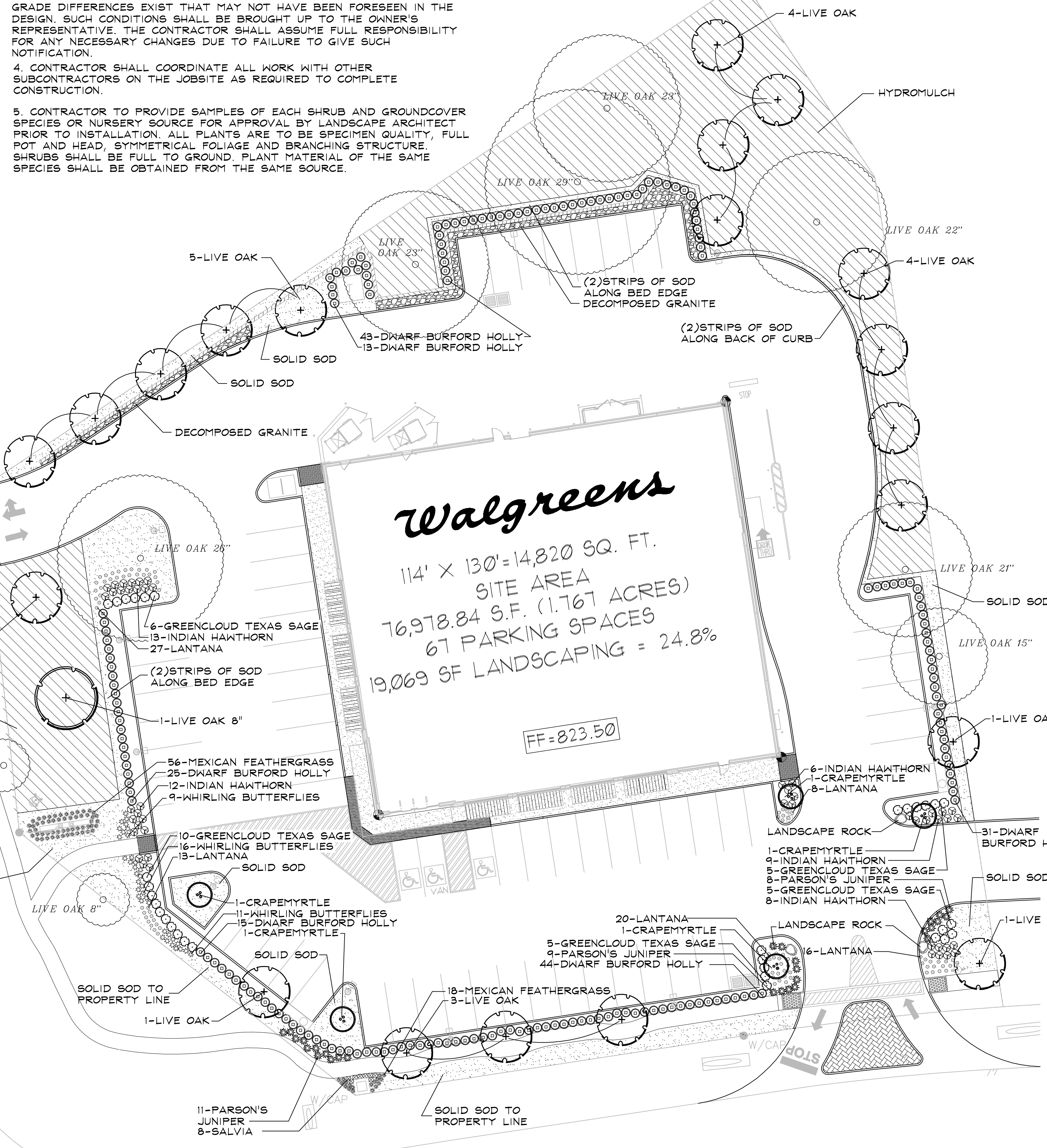
Symbol	Quantity	Plant Name	Scientific Name	Size/Spec	Notes
+	1	LIVE OAK	Quercus virginiana	8-10" cal.	8-10" cal. 16-17' HT, 8-10' SPRD. TREE CAN BE B#B, MACHINE MOVED, OR CONTAINER.
+	20	LIVE OAK	Quercus virginiana	100gal	12'-14' HT, 6-8' SPRD, 4" CAL., SPECIMEN QUALITY
+	5	CRAPEMYRTLE	Lagerstroemia indica 'Sioux'	45gal	10'-12' HT, 6-8' SPRD, 4" CAL., MULTI-TRUNK, 3 CANE MIN. TOTAL CAL. INCHES TO BE 3" OR MORE
⊙	32	GREENCLOUD TEXAS SAGE	Leucophyllum frutescens 'Greencloud'	3gal	24-30" HT., 18"-20" SPRD., FULL POT, WELL ROOTED,
⊙	176	DWARF BURFORD HOLLY	Ilex cornuta 'Dwarf Burfordii'	3gal	24-30" HT., 18"-20" SPRD., FULL POT, WELL ROOTED,
⊙	48	INDIAN HAWTHORN	Raphiolepis indica 'Clara'	5gal	18"-20" HT., 15-18" SPRD. FULL POT, WELL ROOTED
⊙	28	PARSON'S JUNIPER	Juniperus chinensis 'Parsoni'	3gal	10"-12" HT., 15-18" SPRD. FULL POT, WELL ROOTED
⊙	16	GREENMOUND JUNIPER	Juniperus procumbens 'Greenmound'	3gal	6"-8" HT., 12-18" SPRD. FULL POT, WELL ROOTED
○	84	LANTANA	Lantana camara 'New Gold'	1gal	6"-8" HT., 12-15" SPRD. FULL POT, WELL ROOTED
*	74	MEXICAN FEATHERGRASS	Nassella tenuissima	1gal	12-18" HT., 12-15" SPRD. FULL POT, WELL ROOTED
*	36	WHIRLING BUTTERFLIES	Gaura lindheimeri 'Crimson Butterflies'	1gal	12-18" HT., 12-15" SPRD. FULL POT, WELL ROOTED
*	8	SALVIA	Salvia greggii 'Raspberry'	1gal	12-18" HT., 12-15" SPRD. FULL POT, WELL ROOTED
		BERMUDA 'TEX TURF'	cynodon dactylon 'Tex Turf'		All solid sod shall be Bermuda 'TEX TURF' per Plum Creek requirements
		BERMUDA 'NUMEX SAHARA'	cynodon dactylon 'Numex Sahara'		All seed shall be Bermuda 'Numex Sahara' per Plum Creek requirements

DECOMPOSED GRANITE AREAS TO BE CONSTRUCTED WITH FILTER FABRIC AND STEEL EDGING, TYP.

NOTES:

- CONTRACTOR SHALL APPLY FOR AND PROCURE ALL REQUIRED PERMITS PRIOR TO COMMENCING WORK.
- CONTRACTOR SHALL LOCATE ALL UNDERGROUND UTILITIES PRIOR TO COMMENCING WORK. CONTACT ALL UTILITY COMPANIES MINIMUM 48 HOURS PRIOR TO ANY WORK. CONTRACTOR SHALL BE RESPONSIBLE FOR BECOMING FAMILIAR WITH ALL UNDERGROUND UTILITIES, PIPES, STRUCTURES, ETC. CONTRACTOR SHALL TAKE SOLE RESPONSIBILITY FOR ANY COST INCURRED DUE TO DAMAGE OF THESE UTILITIES.
- CONTRACTOR SHALL NOT WILLFULLY PROCEED WITH CONSTRUCTION AS DESIGNED WHEN IT IS OBVIOUS THAT UNKNOWN OBSTRUCTIONS AND/OR GRADE DIFFERENCES EXIST THAT MAY NOT HAVE BEEN FORESEEN IN THE DESIGN. SUCH CONDITIONS SHALL BE BROUGHT UP TO THE OWNER'S REPRESENTATIVE. THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ANY NECESSARY CHANGES DUE TO FAILURE TO GIVE SUCH NOTIFICATION.
- CONTRACTOR SHALL COORDINATE ALL WORK WITH OTHER SUBCONTRACTORS ON THE JOBSITE AS REQUIRED TO COMPLETE CONSTRUCTION.
- CONTRACTOR TO PROVIDE SAMPLES OF EACH SHRUB AND GROUND COVER SPECIES OR NURSERY SOURCE FOR APPROVAL BY LANDSCAPE ARCHITECT PRIOR TO INSTALLATION. ALL PLANTS ARE TO BE SPECIMEN QUALITY, FULL POT AND HEAD, SYMMETRICAL FOLIAGE AND BRANCHING STRUCTURE. SHRUBS SHALL BE FULL TO GROUND. PLANT MATERIAL OF THE SAME SPECIES SHALL BE OBTAINED FROM THE SAME SOURCE.

6. THE DEVELOPER AND SUBSEQUENT OWNERS OF THE LANDSCAPED PROPERTY, OR THE MANAGER OR AGENT OF THE OWNER, SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL LANDSCAPE AREAS. SAID AREAS SHALL BE MAINTAINED SO AS TO PRESENT A HEALTHY, NEAT AND ORDERLY APPEARANCE AT ALL TIMES AND SHALL BE KEPT FREE OF REFUSE AND DEBRIS. ALL PLANTED AREAS SHALL BE PROVIDED WITH A READILY AVAILABLE WATER SUPPLY AND WATERED AS NECESSARY TO ENSURE CONTINUOUS HEALTHY GROWTH AND DEVELOPMENT. MAINTENANCE SHALL INCLUDE THE REPLACEMENT OF ALL DEAD PLANT MATERIAL IF THAT MATERIAL WAS USED TO MEET THE REQUIREMENTS OF THE SUBDIVISION REGULATIONS.



Attachment number 3 in Page 1 of 1

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REGISTERED LANDSCAPE ARCHITECT
 STATE OF TEXAS
 1-10-12

CMB ARCHITECTURE
 LANDSCAPE ARCHITECTURE
 18135 FM 562
 Newmarket, TX 77668
 832-426-1209

SCC DEVELOPMENT COMPANY
 301 Congress Avenue, Suite 301
 Austin, Texas 78701
 (615) 929-9947

NO.	DATE	BY	DESCRIPTION	REVISIONS

STORE NUMBER #
WALGREENS STORE
 (NEC) F.M. 2770 @ F.M. 150
 KYLE, TEXAS

CADD PLOT:
 DRAWN BY:
 DATE: 1-10-12
 REVIEWED BY:

SEE SHEET L-4 FOR TREE DISPOSITION PLAN



CITY OF KYLE, TEXAS

Applebee's CUP

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Consider a request by NRP Restaurants (Applebee's) for a Conditional Use Permit to construct a 4,893 square foot building located within the Interstate Highway 35 Corridor District.

1.113 acres; 4,893 square foot building

Located at 5363 Kyle Center Drive

Applicant: NRP Restaurants

~ Sofia Nelson, Director of Planning

Planning and Zoning Commission voted 6-0 to approved the Conditional Use Permit.

- *Public Hearing*

Other Information:

Please see attachments

Budget Information:

N/A

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[City Council Memo](#)

[Color Rendering / Elevations](#)

[site development](#)

[landscape plan](#)

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: January 27, 2012

SUBJECT: CONDITIONAL USE OVERLAY
Applebee's

Background

Request:

The applicant is requesting approval of a Conditional Use permit for the construction of an Applebee's restaurant within the I-35 Overlay District. The proposed building includes the following materials including: red brick veneer, limestone veneer, and EIFs.

Location:

The subject property is located along the southbound access road of I-35, approximately 900 feet south of the intersection of Kyle Pkwy and I-35.

Overlay District

The Interstate Highway 35 corridor conditional use overlay district extends from the northernmost city limit boundary at I-35 to the southernmost city limit boundary at I-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of I-35.

a) The purpose of the of the overlay district is to maintain a high character and quality of community development, to promote compatible uses and standards, to preserve and enhance property values, to promote economic growth, to provide for orderly development, to provide for proper movement of traffic, and to secure the general safety of citizens by regulating the exterior architectural characteristics of structures

(b)The conditional use overlay districts will assist the community to recognize and preserve the distinctive architectural character of this community, which has been greatly influenced by the architecture of an earlier period in this community's history. This purpose shall be served by the regulation of exterior design, use of materials, the finish grade line, ingress and egress, and landscaping and orientation of all structures hereinafter altered, constructed, reconstructed, reacted, enlarged, remodeled, removed, or demolished in the conditional use overlay district.

Proposal

The proposed Applebee's is approximately 4,893 square feet in size and is proposed to sit on a 1.113 acre lot. The restaurant will face IH-35 and the rear of the building will be oriented towards Kyle Center Drive. The front and side elevations of the building have been designed to include a primary building material of red brick and limestone veneer, as seen throughout the remainder of the surrounding commercial subdivision, along with red canvas canopies over the windows. .

STAFF ANALYSIS

COMPREHENSIVE MASTER PLAN GUIDENCE

The Comprehensive Master Plan identifies the site to be located within the Super Regional Node. The Comprehensive Master characterizes the Super Regional Node as follows:

- Should contain large-scale, institutional, commercial, and retail land uses, with the Seton Medical Center as the key distinguishing feature.
- The aggregation of commercial square footage in this Node should create a significant commercial destination that will be visible to regional travelers along the I-35 corridor.
- The purpose of the Super Regional Node is to capture employment opportunities and create a commercial destination within Kyle.

KYLE MARKETPLACE SUBDIVISION DEVELOPMENT STANDARDS AND GUIDANCE

The Kyle Marketplace subdivision identifies the following general design standards for buildings constructed:

- Projects shall be consistent with the design concepts and architectural materials used in the construction of the Kyle City Hall.
- Red brick shall be used throughout the development as a design elements on building facades facing a public street
- The buildings constructed shall have a minimum of 90% masonry walls. Masonry shall be defined as follows:
 - Brick
 - Natural Stone
 - Concrete Masonry Units
 - Stucco/Plaster/Synthetic Stucco to be used in detail applications only
 - Concrete exposed, sandblasted or texture and painted.

PLANNING AND ZONING RECOMMENDATION

- The Commission voted to approve the conditional use permit

PUBLIC COMMENTS

- Nobody spoke during the public comment portion of the public hearing. No written comments were received.

STAFF RECOMMENDATION














As indicated above the subject property is located in the IH-35 overlay district, a district that not only functions as a gateway into the City of Kyle but also a regional commercial node for both the residents of Kyle and the surrounding communities. As a result of its location the original developers of the subdivision and the City of Kyle outlined development standards for this subdivision that would create a cohesive development within the subdivision as well as set a standard for development along the I-35 corridor.

Staff is recommended approval of the request for the following reasons:

- The proposed site and exterior construction of the building exceed the requirements of the City of Kyle Code and create a cohesive look throughout the subdivision.
- The proposed development follows the intent of the super regional node of creating a large-scale, institutional, commercial, and retail land use area.



Front Elevation

-  **STONE** - ST-1 SISTERDALE CREAM "OLD GERMAN"
-  **THIN BRICK** -BR-1-"MEDIUM RED" (TO MATCH DEVELOPMENT STANDARDS)
- EIFS**
 -  EIFS-1 NOMADIC DESERT
 -  EIFS-2 APPLEBEE'S COLONIAL RED
 -  EIFS-3 ARMAGNAC
 -  EIFS-4 BAGUETTE
- EXTERIOR PAINT**
 -  EP-1 NOMADIC DESERT
 -  EP-2 APPLEBEE'S COLONIAL RED
 -  EP-3 URBAN BRONZE
 -  EP-4 ARMAGNAC
 -  EP-5 BAGUETTE
 -  EP-6 GREEN (TO MATCH SIGNAGE)
- STANDING METAL SEAM ROOF**
 -  R-1 COLONIAL RED

Item # 22

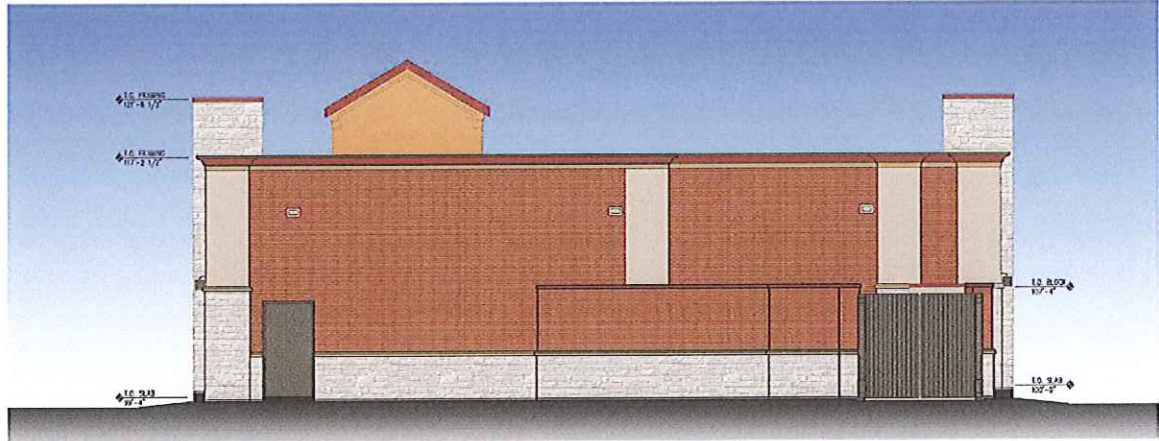


Left Elevation







Applebee's
Kyle, Texas





Rear Elevation

- 
STONE - ST-1 SISTERDALE CREAM "OLD GERMAN"
- 
THIN BRICK -BR-1-"MEDIUM RED" (TO MATCH DEVELOPMENT STANDARDS)
- EFS**
 -  EFS-1 NOMADIC DESERT
 -  EFS-2 APPLEBEE'S COLONIAL RED
 -  EFS-3 ARMAGNAC
 -  EFS-4 BAGUETTE
- EXTERIOR PAINT**
 -  EP-1 NOMADIC DESERT
 -  EP-2 APPLEBEE'S COLONIAL RED
 -  EP-3 URBAN BRONZE
 -  EP-4 ARMAGNAC
 -  EP-5 BAGUETTE
 -  EP-6 GREEN (TO MATCH SIGNAGE)
- 
STANDING METAL SEAM ROOF
R-1 COLONIAL RED



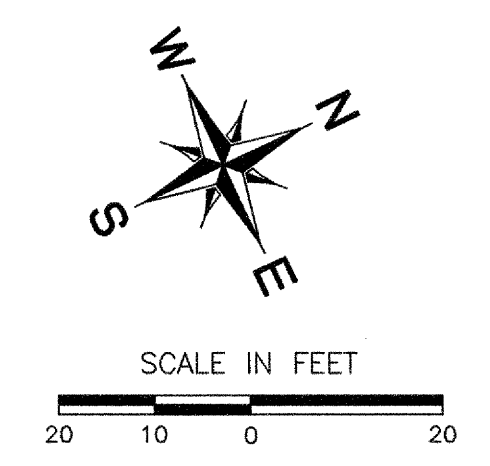
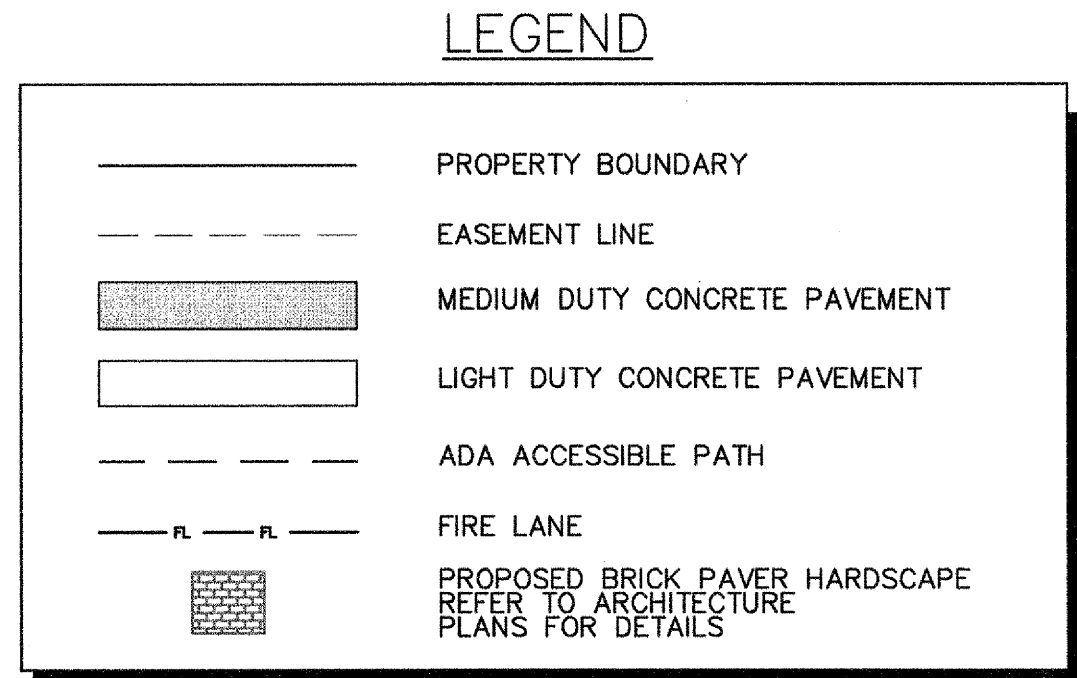
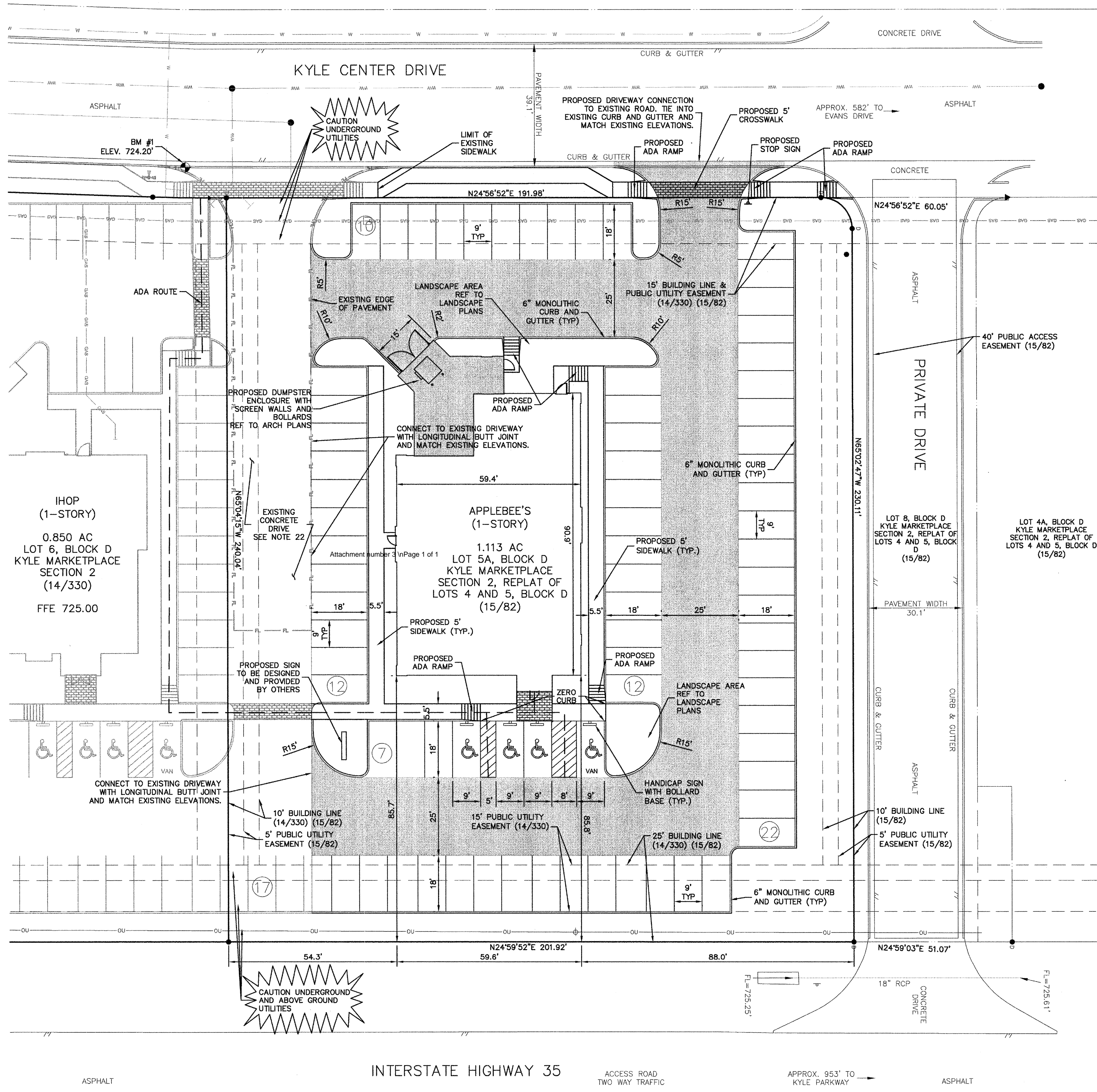
Right Elevation



Applebee's
 Kyle, Texas



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SITE DATA

LOT 5A, BLOCK D	
Zoning	R/S
Gross Site Area (ac)	1.113
Total Building Square Footage	4,893
Existing Impervious Cover (sf)	6,238
Total Impervious Cover (sf)	38,473
Impervious Cover (%)	79.4%
Maximum Allowable Impervious Cover (%)	85.0%
Brick Paver Area (sf)	235 (APPROX. 12% OF TOTAL SIDEWALK AREA)
PROPOSED BUILDING INFORMATION	
Total Building Square Footage (gross floor area)	4,676 SF
Number of Stories	1
Finished Floor Elevation	725.00
Proposed Floor to Area Ratio	0.10
Maximum Floor to Area Ratio	1.8
TOTAL SITE PARKING	
Surface Parking Proposed	
Standard (9'x18')	74
Handicap Accessible (3 Total Required)	
Standard	3
Van (1 Required)	1
Existing Parking from Lot 6, Block D Construction	2
Total	80

- ### GENERAL NOTES:
- CONTRACTOR TO HAVE STAKING VERIFIED BY OWNER PRIOR TO PROCEEDING WITH CONSTRUCTION.
 - EVERY HANDICAP ACCESSIBLE PARKING SPACE MUST BE MARKED BY A SIGN, CENTERED 5 FEET ABOVE THE PARKING SURFACE, AT THE HEAD OF THE PARKING SPACE. THE SIGN MUST INCLUDE THE INTERNATIONAL SYMBOL OF ACCESSIBILITY AND STATE "RESERVED", OR EQUIVALENT LANGUAGE. SUCH SIGNS MUST NOT BE OBTAINED BY A VEHICLE PARKED IN THE SPACE. UBC, 3107 (C); ANSI A117.1-1996-4.6.2.
 - ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
 - ALL FIRE DEPARTMENT ACCESS DRIVES/ROADS TO HAVE A MINIMUM 13.6' VERTICAL CLEARANCE.
 - ALL RADI TO BE 3' UNLESS OTHERWISE NOTED.
 - ALL PARKING SPACES ARE 9'0" WIDE x 18'0" DEEP.
 - ALL CONCRETE SIDEWALKS TO BE ADA ACCESSIBLE.
 - ALL PARKING SPACES SHALL HAVE MINIMUM 7'-0" VERTICAL CLEARANCE.
 - WARNING SIGNS ARE REQUIRED TO BE PLACED UNDER THE OVERHEAD ELECTRIC LINES TO MAKE ALL PERSONNEL AWARE OF THE ELECTRIC HAZARD.
 - REFERENCE ARCHITECTURAL/STRUCTURAL PLANS FOR FINAL DIMENSIONS OF BUILDINGS.
 - HANDICAP SIGNS WITH BOLLARD BASE ON ALL PARKING SPOTS TERMINATING INTO RIBBON CURB.
 - SLOPES ON ACCESSIBLE ROUTES MAY NOT EXCEED 1:20 UNLESS DESIGNED AS A RAMP.
 - THE MAXIMUM SLOPE OF A RAMP IN NEW CONSTRUCTION IS 1:12. THE MAXIMUM RISE FOR ANY RAMP RUN IS 30 IN.
 - ACCESSIBLE ROUTES MUST HAVE A CROSS-SLOPE NO GREATER THAN 1:50.
 - ESTABLISH FIRE ZONES AS SHOWN ON SITE BY PAINTING CURB RED. STENCIL THE WORDS "FIRE ZONE/TOW-AWAY ZONE" IN WHITE LETTERS 4 INCHES HIGH AT 35-FOOT INTERVALS ALONG THE CURB. ALSO, SIGNS SHALL BE POSTED AT BOTH ENDS OF A FIRE ZONE. ALTERNATE MARKING OF THE FIRE LANES MAY BE APPROVED BY THE FIRE CHIEF, PROVIDED THE FIRE LANES ARE CLEARLY IDENTIFIED AT BOTH ENDS AND AT INTERVALS NOT TO EXCEED 35 FEET.
 - PAINTING STRIP TO BE YELLOW.
 - SCREENING OF GROUND MOUNTED AND ROOF MOUNTED EQUIPMENT SHALL BE PROVIDED AS SHOWN ON THE ARCHITECTURAL PLANS.
 - CONTRACTOR TO PAINT EXPOSED BACK OF CURB CONTRASTING COLOR. CONTRACTOR TO COORDINATE WITH OWNER FOR CONTRASTING COLOR SELECTION OR MATCH DEVELOPMENT SPECIFIED PAVEMENT COLOR.
 - CONTRACTOR TO COORDINATE WITH IHOP'S CONTRACTOR AND CIVIL PLAN SET REGARDING OVERLAPPING PROPOSED IMPROVEMENTS. SOME PROPOSED IMPROVEMENTS MAY NOT BE REQUIRED IF THE PROJECTS ARE BUILT CONCURRENTLY DURING CONSTRUCTION. CONTRACTOR TO PROVIDE ANY COORDINATION RECOMMENDATIONS TO THE ENGINEER FOR APPROVAL PRIOR TO IMPLEMENTATION.
 - SOME FEATURES DEPICTED AS EXISTING ARE CURRENTLY UNDER CONSTRUCTION AND NOT YET COMPLETED. SAID FEATURES ARE SHOWN PER THE IMPROVEMENT PLANS FOR IHOP BY KIMLEY-HORN AND ASSOCIATES, INC. DATED DECEMBER 9, 2011. ALL EXISTING FEATURES SHALL BE FIELD VERIFIED PRIOR TO COMMENCING CONSTRUCTION. CONTRACTOR SHALL NOTIFY ENGINEER IF DISCREPANCIES ARE ENCOUNTERED.
 - CONTRACTOR TO PROVIDE IRRIGATION SLEEVES PRIOR TO THE INSTALLATION OF PAVEMENT.
 - CONTRACTOR IS RESPONSIBLE FOR RESTRIPIING FIRE LANE AND PAVEMENT MARKINGS DAMAGED DURING CONSTRUCTION.

WARNING: CONTRACTOR IS TO VERIFY PRESENCE AND EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

LINE TABLE						
No.	BEARING	LENGTH	(RECORD)			
L1	N24°56'52"E	5.45'	(N24°56'07"E 5.45')			

CURVE TABLE						
NO.	DELTA	RADIUS	TAN	ARC	CHORD	BEARING (RECORD CHORD)
C1	2°05'54"	500.00'	9.16'	18.31'	18.31'	N25°57'23"E (N25°58'52"E 18.25')
C2	90°31'12"	10.00'	10.09'	15.80'	14.21'	N70°00'46"E (N69°55'07"E 14.14')



Scale: AS SHOWN

Designed by: LLC

Drawn by: SUS

Checked by: SNW

Date: DECEMBER 2011

Project No. 064455402

Kimley-Horn and Associates, Inc.

10415 Mercede Circle, Building 1, Suite 300
Austin, Texas 78759
Tel. No. (512) 418-1771
Fax No. (512) 418-1781

APP.

Revisions

No.

Date

APPLEBEE'S
KYLE MARKETPLACE
5363 KYLE CENTER DRIVE
KYLE, TX 78640

PROJECT SITE PLAN

Plot No. 12/9/2011 12:30pm
Plot Date: 12/9/2011 12:30pm
Plot Time: 12/9/2011 12:30pm
Plot User: stephen.mcm

10/17/08
SAM N. WALKER
LICENSED PROFESSIONAL ENGINEER
101708
12/9/11

SHEET
05
OF 17

APP.

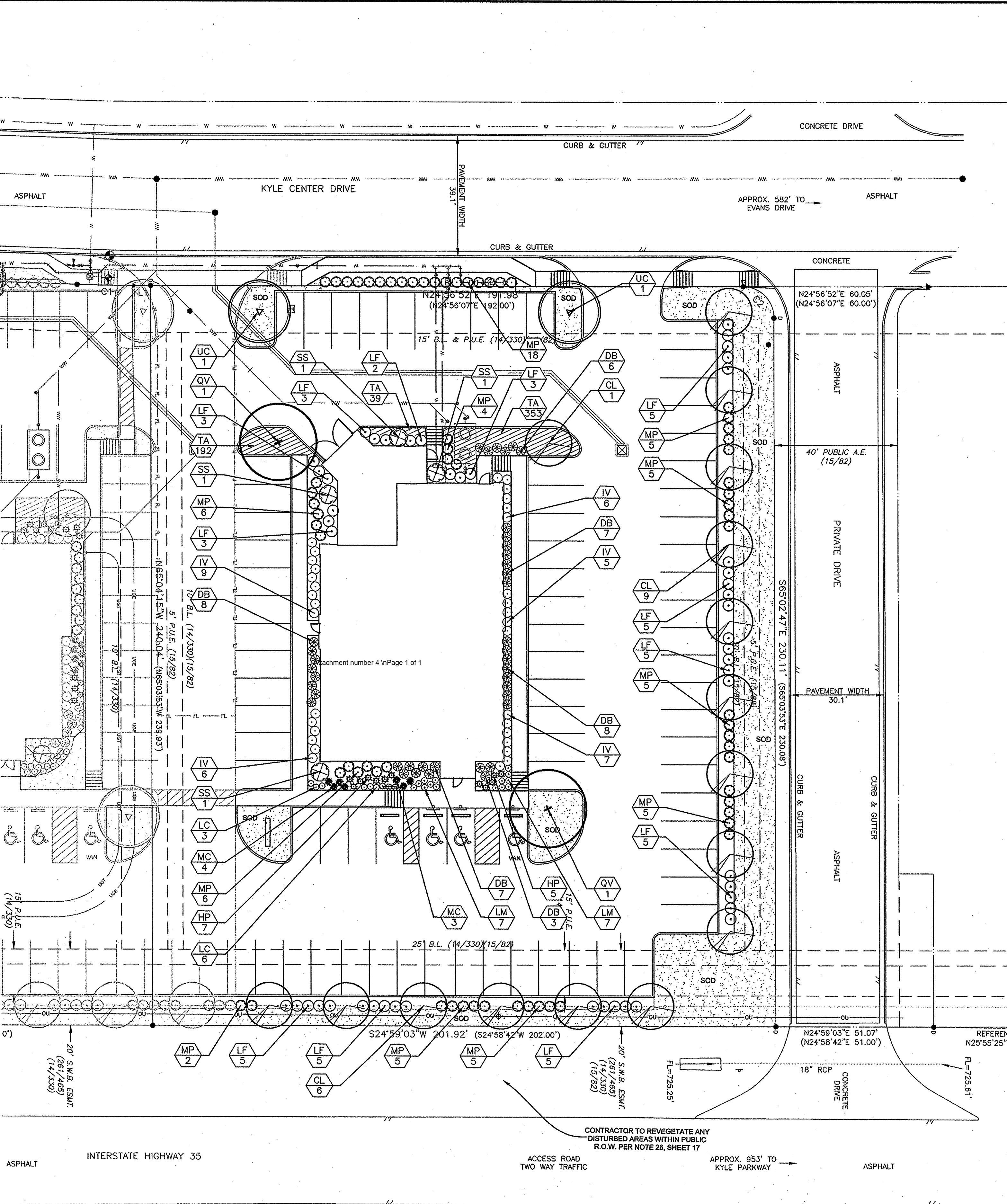
Revisions

No.

Date

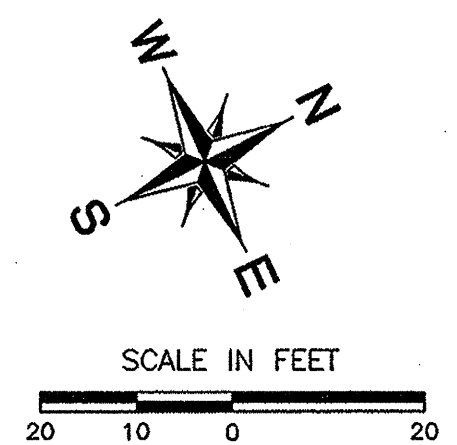
Item # 22

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LANDSCAPE TABULATIONS

PROJECT DESCRIPTION:	NEW CONSTRUCTION OF AN APPLEBEE'S RESTAURANT		
LEGAL DESCRIPTION:	LOT 5A, BLOCK D, KYLE CROSSING		
ADDRESS:	5363 KYLE CENTER DR. KYLE, TEXAS 78640		
SITE AREA:	48482 S.F.	1.113 AC.	
	REQUIRED	PROVIDED	
TOTAL LANDSCAPE AREA	7272 SF	9987 SF	TOTAL LANDSCAPE AREA REQUIRED= 15% OF SITE AREA (48,482 X .15= 7,272)
TOTAL PARKING		78	
STREET TREES	-	15	
PARKING LOT TREES	YES	YES	ONE TREE WITHIN 50' EACH SPACE
TOTAL TREES	24	24	TWO TREES PER 600 SF OF REQUIRED LANDSCAPE AREA (7272 SF / 600 = 12)
TOTAL SHRUBS	36	187	FOUR SHRUBS PER 600 SF OF REQUIRED LANDSCAPE AREA (7272 SF / 600 = 12)
PLACEMENT-TOTAL LANDSCAPE	3636 SF	5203 SF	50% TOTAL LANDSCAPE AREA PROVIDED IN FRONTAGE
PLACEMENT- PLANT MATERIAL	12 TREES 18 SHRUBS	12 TREES 65 SHRUBS	50% TOTAL LANDSCAPE PLANT MATERIAL REQUIRED PROVIDED IN FRONTAGE
SCREEN SHRUBS R.O.W.	YES	83	



PLANTING SCHEDULE

COUNT	SYMBOL	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	CITY RATING
TREES					
2	QV	Quercus virginiana	Live Oak	4" Cal. min., 12' min. ht., straight, single trunk	2
2	UC	Ulmus crassifolia	Cedar Elm	4" Cal. min., 12' min. ht., straight, single trunk	1
16	CL	Chilopsis linearis	Desert Willow	Multi-trunk, 8' min. ht., matching, full branching	1
4	SS	Sophora secundiflora	Texas Mountain Laurel	Multi-trunk, 6' min. ht., matching, full branching	1
SHRUBS					
66	MP	Myrica pusilla	Dwarf Waxmyrtle	5 gal. min., 24" ht. at planting, matching, full branching, 42" O.C.	2
49	LF	Leucophyllum frutescens	Texas Sage	5 gal. min., 24" ht. at planting, matching, full branching 42" O.C.	1
39	DB	Dietes bicolor	Bicolor Iris	5 gal. min., 24" ht. x 18" sprd., matching, full 36" O.C.	2
33	IV	Ilex vomitoria 'Nana'	Dwarf Yaupon Holly	5 gal. min., 24" ht. x 18" sprd. matching, full branching 36" O.C.	1
12	HP	Hesperaloe parviflora	Red Yucca	3 gal. min. container, 24" ht. x 18" sprd. 30" O.C.	1
7	MC	Muhlenbergia capillaris	Gulf Muhly	1 gal. min. container, 18" ht. x 12" sprd. 30" O.C.	1
9	LC	Lantana camara 'New Gold'	New Gold Lantana	1 gal. min., 12" min. at planting, full and matching 24" O.C.	1
14	LM	Lantana montevidensis	Purple Lantana	1 gal. min., 12" min. at planting, full and matching 24" O.C.	2
PERENNIALS / GROUNDCOVERS / MISC.					
584	TA	Trachelospermum asiaticum	Asian Jasmine	4" containers, well rooted, full at planting 12" O.C.	2
668 SQ. YD.	SOD	Cynodon dactylon	Bermuda Grass Sod	Tight, sand rolled joints, finished sod to be free of weeds. Note: quantity does not include sod for reestablishment along frontage.	1
As Required	SEED	Cynodon dactylon	Bermuda Grass Seed	Contractor to apply seed to limits of disturbed area. Hydroseed.	1

WARNING: CONTRACTOR IS TO VERIFY PRESENCE AND EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.



No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
 10415 Mercado Circle, Building 1, Suite 300
 Austin, Texas 78759
 Tel. No. (512) 448-1771
 Fax No. (512) 448-1791
 TEXAS REGISTRATION # 928

APPLEBEE'S
KYLE CROSSING
5363 KYLE CENTER DRIVE
KYLE, TX 78640

LANDSCAPE PLAN

Scale: AS SHOWN
 Designed by: JAF
 Drawn by: RAS
 Checked by: JAF
 Date: DECEMBER 2011
 Project No. 064455402

SHEET
16
 OF 17



CITY OF KYLE, TEXAS

IHOP CUP

Meeting Date: 2/7/2012
Date time: 7:00 PM

Subject/Recommendation:

Consider a request by ACG Texas, LP (IHOP) for a Conditional Use Permit to construct a 4,676 square foot building located within the Interstate Highway 35 Corridor District.

0.850 acres; 4,676 square foot building

Located at 5401 Kyle Center Drive

Applicant: ACG Texas, LP

~ Sofia Nelson, Director of Planning

Planning and Zoning Commission voted 6-0 to approve the Conditional Use Permit.

- *Public Hearing*

Other Information:

Please see attachments

Budget Information:

N/A

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[City Council Memo](#)

[Color Rendering / Elevations](#)

[Site Plan](#)

[Landscape Plan](#)

[Landscape Plan](#)

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: January 27, 2012

SUBJECT: CONDITIONAL USE OVERLAY
IHOP-Restaurant

Background

Request:

The applicant is requesting approval of a Conditional Use permit for the construction of an IHOP restaurant within the I-35 Overlay District. The proposed building includes the following materials including: red brick veneer, cream color stone veneer, orange colored metal panel, and EIFs.

Location:

The subject property is located along the southbound access road of I-35, approximately 900 feet south of the intersection of Kyle Pkwy and I-35.

Overlay District

The Interstate Highway 35 corridor conditional use overlay district extends from the northernmost city limit boundary at I-35 to the southernmost city limit boundary at I-35, and includes all real property within 1,500 feet of the outer most edge of the highway right-of-way of I-35.

a) The purpose of the of the overlay district is to maintain a high character and quality of community development, to promote compatible uses and standards, to preserve and enhance property values, to promote economic growth, to provide for orderly development, to provide for proper movement of traffic, and to secure the general safety of citizens by regulating the exterior architectural characteristics of structures

(b)The conditional use overlay districts will assist the community to recognize and preserve the distinctive architectural character of this community, which has been greatly influenced by the architecture of an earlier period in this community's history. This purpose shall be served by the regulation of exterior design, use of materials, the finish grade line, ingress and egress, and landscaping and orientation of all structures hereinafter altered, constructed, reconstructed, reacted, enlarged, remodeled, removed, or demolished in the conditional use overlay district.

Proposal

The proposed IHOP is approximately 4,676 square feet in size and is proposed to sit on a 0.850 acre lot. The restaurant will face IH-35 and the rear of the building will be oriented towards Kyle Center Drive. The front and left side elevations of the building have been designed to include a primary building material of red brick and cream stone veneer, along with blue metal canopies over the windows. The right side of the building, side facing towards the proposed Applebee's restaurant primarily consists of cream stone veneer, red brick, and an accent cornice of cream colored EIFs. The rear of the building, the side facing Kyle Center Drive, has been designed to contain two accent pillars consisting of cream colored stone veneer with the primary building material being red brick veneer.

STAFF ANALYSIS

COMPREHENSIVE MASTER PLAN GUIDANCE

The Comprehensive Master Plan identifies the site to be located within the Super Regional Node. The Comprehensive Master characterizes the Super Regional Node as follows:

- Should contain large-scale, institutional, commercial, and retail land uses, with the Seton Medical Center as the key distinguishing feature.
- The aggregation of commercial square footage in this Node should create a significant commercial destination that will be visible to regional travelers along the I-35 corridor.
- The purpose of the Super Regional Node is to capture employment opportunities and create a commercial destination within Kyle.

KYLE MARKETPLACE SUBDIVISION DEVELOPMENT STANDARDS AND GUIDANCE

The Kyle Marketplace subdivision identifies the following general design standards for buildings constructed:

- Projects shall be consistent with the design concepts and architectural materials used in the construction of the Kyle City Hall.
- Red brick shall be used throughout the development as a design elements on building facades facing a public street
- The buildings constructed shall have a minimum of 90% masonry walls. Masonry shall be defined as follows:
 - Brick
 - Natural Stone
 - Concrete Masonry Units
 - Stucco/Plaster/Synthetic Stucco to be used in detail applications only
 - Concrete exposed, sandblasted or texture and painted.

PLANNING AND ZONING RECOMMENDATION

The Commission voted to approve the conditional use permit with the condition that the copper penny metal finish is changed to a dull finish and is not shiny because of the possibility it could create a distraction to drivers.

PUBLIC COMMENTS

Nobody spoke during the public comment portion of the public hearing. No written comments were received.

STAFF RECOMMENDATION











As indicated above the subject property is located in the IH-35 overlay district, a district that not only functions as a gateway into the City of Kyle but also a regional commercial node for both the residents of Kyle and the surrounding communities. As a result of its location the original developers of the subdivision and the City of Kyle outlined development standards for this subdivision that would create a cohesive development within the subdivision as well as set a standard for development along the I-35 corridor.

Staff is recommended approval of the request for the following reasons:

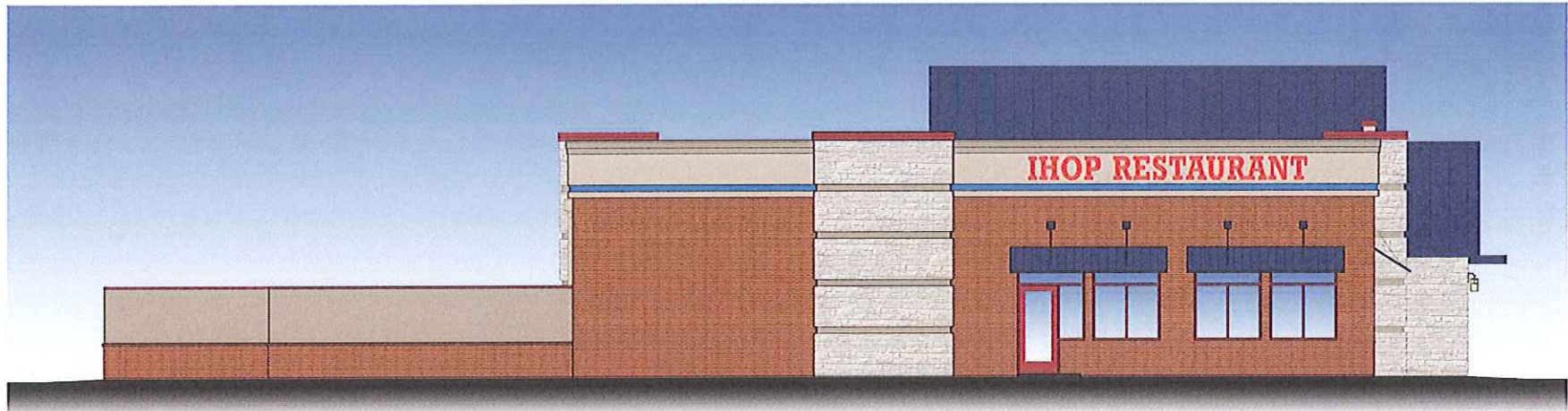
- The proposed site and exterior construction of the building exceed the requirements of the City of Kyle Code and create a cohesive look throughout the subdivision.
- The proposed development follows the intent of the super regional node of creating a large-scale, institutional, commercial, and retail land use area.

11/23



-  STONE - ST-1 SISTERDALE CREAM "OLD GERMAN"
-  THIN BRICK -BR-3- "MEDIUM RED" (TO MATCH DEVELOPMENT STANDARDS)
- EIFS**
-  EFS-1 PHANTOM BLUE
-  EFS-2 OBELISK (MED. TAN)
-  EFS-3 BRUSHWOOD (DARK TAN)
-  EFS-4 SHIPS AT SEA
-  EFS-5 CLASSIC LIBERTY RED
- METAL PANEL**
-  ACM-1 COPPER PENNY
- STANDING METAL SEAM ROOF**
-  R-1 AWARD BLUE
- METAL REVEAL**
-  MT-1 MATCH BRUSHWOOD

Front Elevation



Left Elevation













IHOP Restaruant
Kyle, Texas





Rear Elevation

-  STONE - ST-1 SISTERON
CREAM "OLD GERMAN" #
-  THIN BRICK -BR-3-"MEDIUM RED"
(TO MATCH DEVELOPEMENT
STANDARDS)
- EIFS**
-  EFS-1 PHANTOM BLUE
-  EFS-2 OBELISK (MED. TAN)
-  EFS-3 BRUSHWOOD (DARK TAN)
-  EFS-4 SHIPS AT SEA
-  EFS-5 CLASSIC LIBERTY RED
- METAL PANEL**
-  ACM-1 COPPER PENNY
- STANDING METAL SEAM ROOF**
-  R-1 AWARD BLUE
- METAL REVEAL**
-  MT-1 MATCH BRUSHWOOD



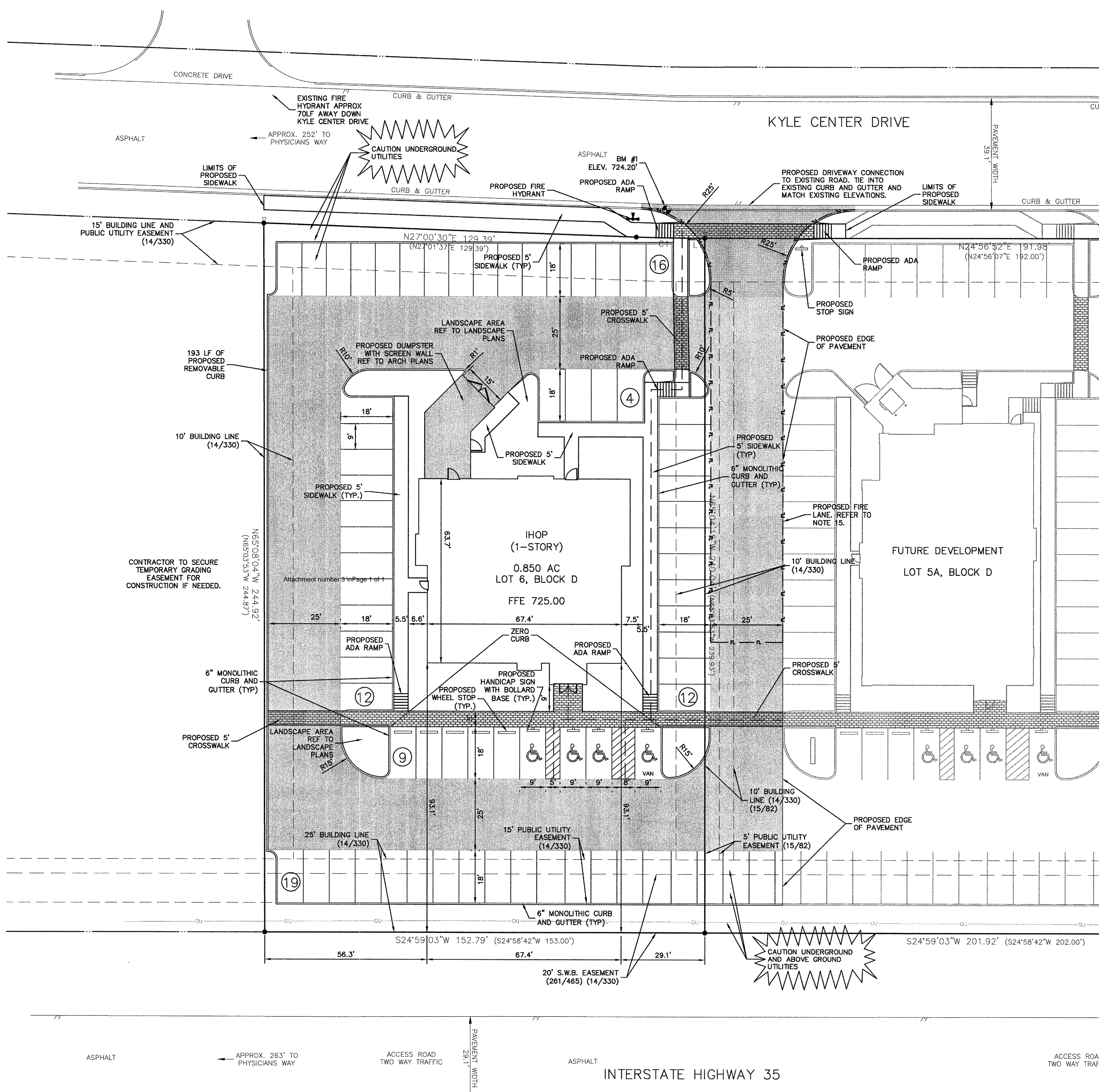
Right Elevation



IHOP Restaruant
Kyle, Texas

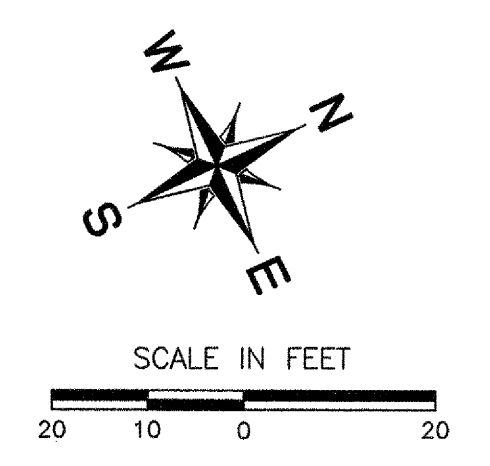


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LEGEND

- PROPERTY BOUNDARY
- EASEMENT LINE
- HEAVY DUTY CONCRETE PAVEMENT
- LIGHT DUTY CONCRETE PAVEMENT
- ADA ACCESSIBLE PATH
- FIRE LANE
- PROPOSED BRICK "MEDIUM RED" MODULAR, BY ACME BRICK/YANKEE HILL



SITE DATA

	LOT 5A, BLOCK D	LOT 6, BLOCK D
Zoning	R/S	R/S
Gross Site Area (ac)	1.113	0.850
Total Building Square Footage	0.00	4,676
Existing Impervious Cover (sf)	0.0	0.0%
Proposed Impervious Cover (sf)	6,238	30,685
Proposed Impervious Cover (%)	12.9%	82.8%
Maximum Allowable Impervious Cover (%)	85.0%	85.0%

PROPOSED BUILDING INFORMATION

Total Building Square Footage (gross floor area)	4,676 SF
Number of Stories	1
Finished Floor Elevation	725.00
Proposed Floor to Area Ratio	0.13
Maximum Floor to Area Ratio	1.8

TOTAL SITE PARKING

Surface Parking Proposed	Count
Standard (9'x18')	66
Handicap Accessible (3 Total Required)	
Standard	3
Van (1 Required)	1
Total Parking for Lot 6 Block D	70
Parking for Lot 5A, Block D Future Development	2

GENERAL NOTES:

- CONTRACTOR TO HAVE STAKING VERIFIED BY OWNER PRIOR TO PROCEEDING WITH CONSTRUCTION.
- EVERY HANDICAP ACCESSIBLE PARKING SPACE MUST BE MARKED BY A SIGN, CENTERED 5 FEET ABOVE THE PARKING SURFACE, AT THE HEAD OF THE PARKING SPACE. THE SIGN MUST INCLUDE THE INTERNATIONAL SYMBOL OF ACCESSIBILITY AND STATE "RESERVED", OR EQUIVALENT LANGUAGE. SUCH SIGNS MUST NOT BE OBTAINED BY A VEHICLE PARKED IN THE SPACE. UBC, 3107 (C), ANSI A117.1-1986-4.6.2.
- ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
- ALL FIRE DEPARTMENT ACCESS DRIVES/ROADS TO HAVE A MINIMUM 13.6' VERTICAL CLEARANCE.
- ALL RADII TO BE 3' UNLESS OTHERWISE NOTED.
- ALL PARKING SPACES ARE 9.0' WIDE x 18.0' DEEP.
- ALL CONCRETE SIDEWALKS TO BE ADA ACCESSIBLE.
- ALL PARKING SPACES SHALL HAVE MINIMUM 7'-0" VERTICAL CLEARANCE.
- WARNING SIGNS ARE REQUIRED TO BE PLACED UNDER THE OVERHEAD ELECTRIC LINES TO MAKE ALL PERSONNEL AWARE OF THE ELECTRIC HAZARD.
- REFERENCE ARCHITECTURAL/STRUCTURAL PLANS FOR FINAL DIMENSIONS OF BUILDINGS.
- HANDICAP SIGNS WITH BOLLARD BASE ON ALL PARKING SPOTS TERMINATING INTO RIBBON CURB.
- SLOPES ON ACCESSIBLE ROUTES MAY NOT EXCEED 1:20 UNLESS DESIGNED AS A RAMP.
- THE MAXIMUM SLOPE OF A RAMP IN NEW CONSTRUCTION IS 1:12. THE MAXIMUM RISE FOR ANY CURB RAMP RUN IS 6 IN.
- ACCESSIBLE ROUTES MUST HAVE A CROSS-SLOPE NO GREATER THAN 1:50.
- ESTABLISH FIRE ZONES AS SHOWN ON SITE BY PAINTING TOP OF CURB AND FACE OF CURB RED. STENCIL THE WORDS "FIRE LANE/NO PARKING/TOW-AWAY ZONE" IN WHITE LETTERS 4 INCHES HIGH AT 35-FOOT INTERVALS ALONG THE FACE OF CURB. ALSO, SIGNS SHALL BE POSTED AT BOTH ENDS OF A FIRE ZONE. FIRE LANE STRIPING IS NOT ALLOWED ON FLAT PAVEMENT, LAY DOWN CURB, ETC.
- PAINTING STRIPE TO BE YELLOW.
- SCREENING OF GROUND MOUNTED AND ROOF MOUNTED EQUIPMENT SHALL BE PROVIDED AS SHOWN ON THE ARCHITECTURAL PLANS.
- CONTRACTOR TO PAINT EXPOSED BACK OF CURB CONTRASTING COLOR. CONTRACTOR TO COORDINATE WITH OWNER FOR CONTRASTING COLOR SELECTION OR MATCH DEVELOPMENT SPECIFIED PAVER COLOR.
- CONTRACTOR TO COORDINATE WITH APPLEBEE'S CONTRACTOR AND CIVIL PLAN SET REGARDING OVERLAPPING PROPOSED IMPROVEMENTS. SOME PROPOSED IMPROVEMENTS MAY NOT BE REQUIRED IF THE PROJECTS ARE BUILT CONCURRENTLY DURING CONSTRUCTION. CONTRACTOR TO PROVIDE ANY COORDINATION RECOMMENDATIONS TO THE ENGINEER FOR APPROVAL PRIOR TO IMPLEMENTATION.
- CONTRACTOR TO PROVIDE IRRIGATION SLEEVES PRIOR TO THE INSTALLATION OF PAVEMENT.
- 10% OF SIDEWALK AREA AROUND THE BUILDING WILL BE CONSTRUCTED WITH RED BRICK. BRICK TO BE "MEDIUM RED," MODULAR, BY ACME BRICK/YANKEE HILL. ALL INTERIOR SIDEWALKS ARE 5' IN WIDTH.

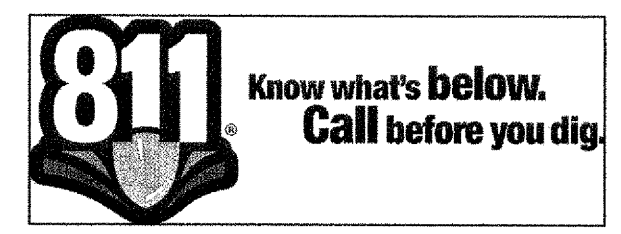
WARNING: CONTRACTOR IS TO VERIFY PRESENCE AND EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.

LINE TABLE

No.	BEARING	LENGTH	(RECORD)
L1	N24°56'52"E	5.45'	(N24°56'07"E 5.45')

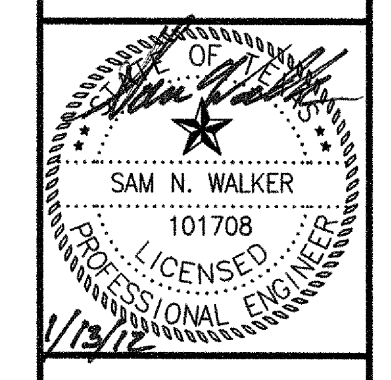
CURVE TABLE

NO.	DELTA	RADIUS	TAN	ARC	CHORD	BEARING	(RECORD CHORD)
C1	2°05'54"	500.00'	9.16'	18.31'	18.31'	N25°57'23"E	(N25°58'52"E 18.25')
C2	90°31'12"	10.00'	10.09'	15.80'	14.21'	N70°00'46"E	(N69°55'07"E 14.14')



App. _____
Revisions _____
No. _____ Date _____

Kimley-Horn and Associates, Inc.
10415 Morado Circle, Building 1, Suite 300
Austin, Texas 78759
Tel. No. (512) 418-1771
Fax No. (512) 418-1791
TEXAS REGISTRATION # 928



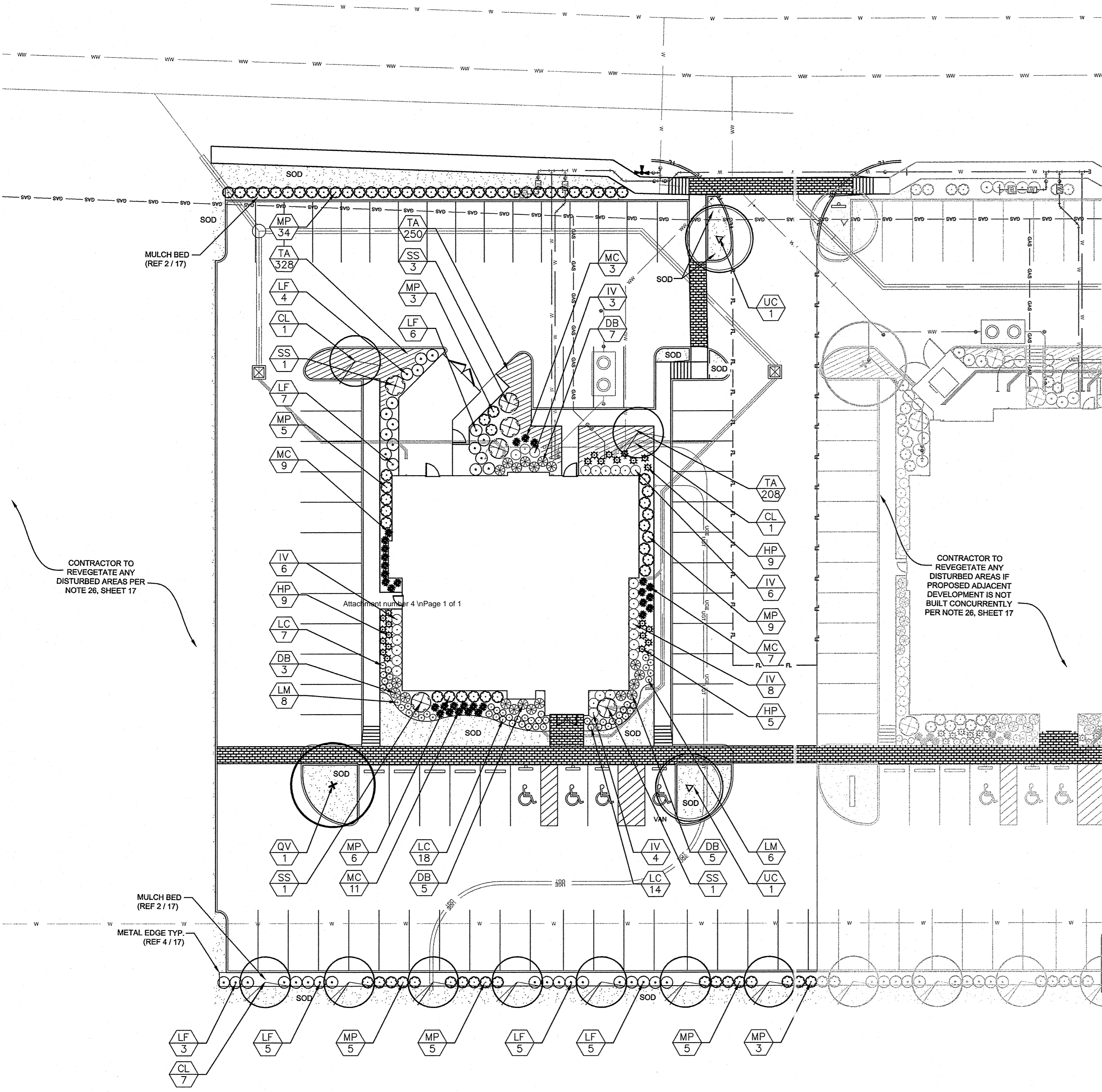
IHOP #3030
KYLE MARKETPLACE
5401 KYLE CENTER DRIVE
KYLE, TX 78640

PROJECT SITE PLAN

Scale:	AS SHOWN
Designed by:	LLC
Drawn by:	SJS
Checked by:	SNW
Date:	DECEMBER 2011
Project No.:	064455401

SHEET
05
OF 17

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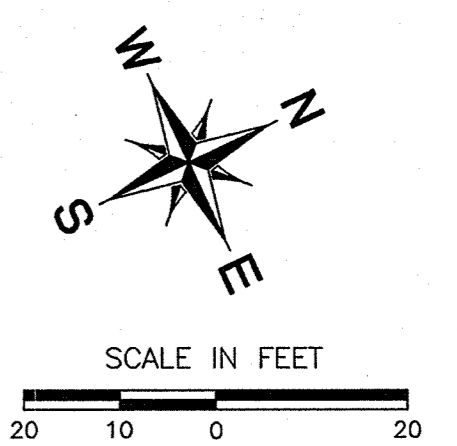


CONTRACTOR TO REVEGETATE ANY DISTURBED AREAS PER NOTE 26, SHEET 17

CONTRACTOR TO REVEGETATE ANY DISTURBED AREAS IF PROPOSED ADJACENT DEVELOPMENT IS NOT BUILT CONCURRENTLY PER NOTE 26, SHEET 17

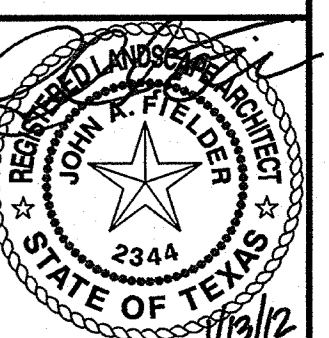
LANDSCAPE TABULATIONS

PROJECT DESCRIPTION:	NEW CONSTRUCTION OF AN IHOP RESTAURANT		
LEGAL DESCRIPTION:	LOT 6, BLOCK D, KYLE CROSSING		
ADDRESS:	5401 KYLE CENTER DR. KYLE, TEXAS 78640		
SITE AREA:	37026 S.F.	.85 AC.	
	REQUIRED	PROVIDED	
TOTAL LANDSCAPE AREA	5,554 SF	6,388 SF	TOTAL LANDSCAPE AREA REQUIRED= 15% OF SITE AREA (37,026 X .15= 5,554)
TOTAL PARKING		70	
STREET TREES	-	7	
PARKING LOT TREES	YES	YES	ONE TREE WITHIN 50' EACH SPACE
TOTAL TREES	18	18	TWO TREES PER 600 SF OF REQUIRED LANDSCAPE AREA (5,554 SF / 600 = 9)
TOTAL SHRUBS	36	158	FOUR SHRUBS PER 600 SF OF REQUIRED LANDSCAPE AREA (5,554 SF / 600 = 9)
PLACEMENT- TOTAL LANDSCAPE	2777 SF	3,872 SF	50% TOTAL LANDSCAPE AREA PROVIDED IN FRONTAGE
PLACEMENT- PLANT MATERIAL	18 SHRUBS 9 TREES	70 SHRUBS 11 TREES	50% TOTAL LANDSCAPE PLANT MATERIAL REQUIRED PROVIDED IN FRONTAGE
SCREEN SHRUBS R.O.W.	YES	70	



No.	Date	Revisions	App.

Kimley-Horn and Associates, Inc.
 10415 Mercado Circle, Building 1, Suite 300
 Austin, Texas 78759
 Tel. No. (512) 418-1771
 Fax No. (512) 418-1791
 TEXAS REGISTRATION # 928

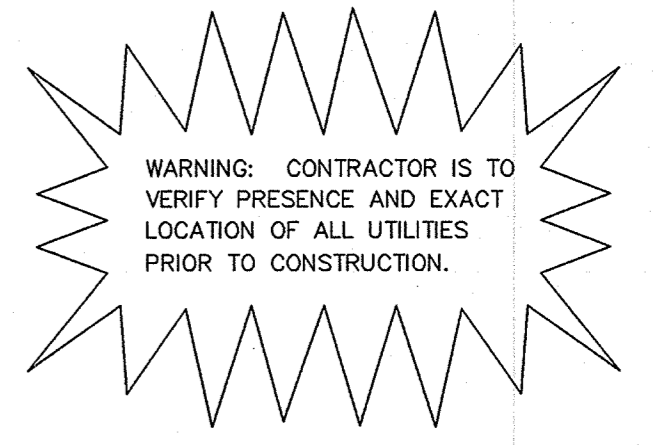


PLANTING SCHEDULE

COUNT	SYMBOL	BOTANICAL NAME	COMMON NAME	SPECIFICATIONS	CITY RATING
TREES					
1	QV	Quercus virginiana	Live Oak	4" Cal. min., 12' min. ht., straight, single trunk	2
2	UC	Ulmus crassifolia	Cedar Elm	4" Cal. min., 12' min. ht., straight, single trunk	1
9	CL	Chilopsis linearis	Desert Willow	Multi-trunk, 8' min. ht., matching, full branching	1
6	SS	Sophora secundiflora	Texas Mountain Laurel	Multi-trunk, 6' min. ht., matching, full branching	1
SHRUBS					
75	MP	Myrica pusilla	Dwarf Waxmyrtle	5 gal. min., 24" ht. at planting, matching, full branching, 42" O.C.	2
35	LF	Leucophyllum frutescens	Texas Sage	5 gal. min., 24" ht. at planting, matching, full branching, 42" O.C.	1
20	DB	Dietes bicolor	Bicolor Iris	5 gal. min., 24" ht. x 18" sprd., matching, full 36" O.C.	2
27	IV	Ilex vomitoria 'Nana'	Dwarf Yaupon Holly	5 gal. min., 24" ht. x 18" sprd. matching, full branching 36" O.C.	1
23	HP	Hesperaloe parviflora	Red Yucca	3 gal. min. container, 24" ht. x 18" sprd. 30" O.C.	1
30	MC	Muhlenbergia capillaris	Gulf Muhly	1 gal. min. container, 18" ht. x 12" sprd. 30" O.C.	1
39	LC	Lantana camara 'New Gold'	New Gold Lantana	1 gal. min., 12" min. at planting, full and matching 24" O.C.	1
14	LM	Lantana montevidensis	Purple Lantana	1 gal. min., 12" min. at planting, full and matching 24" O.C.	2
PERENNIALS / GROUNDCOVERS / MISC.					
786	TA	Trachelospermum asiaticum	Asian Jasmine	4" containers, well rooted, full at planting 12" O.C.	2
367 SQ. YD.	SOD	Cynodon dactylon	Bermuda Grass Sod	Tight, sand rolled joints, finished sod to be free of weeds. Note: quantity does not include sod for reestablishment along frontage.	1
As Required	SEED	Cynodon dactylon	Bermuda Grass Seed	Contractor to apply seed to limits of disturbed area. Hydroseed.	1

IHOP
 KYLE CROSSING
 5401 KYLE CENTER DRIVE
 KYLE, TX 78640

LANDSCAPE PLAN



Scale: AS SHOWN
 Designed by: JAF
 Drawn by: RAS
 Checked by: JAF
 Date: JANUARY 2012
 Project No. 064455401

SHEET
 16
 OF 17

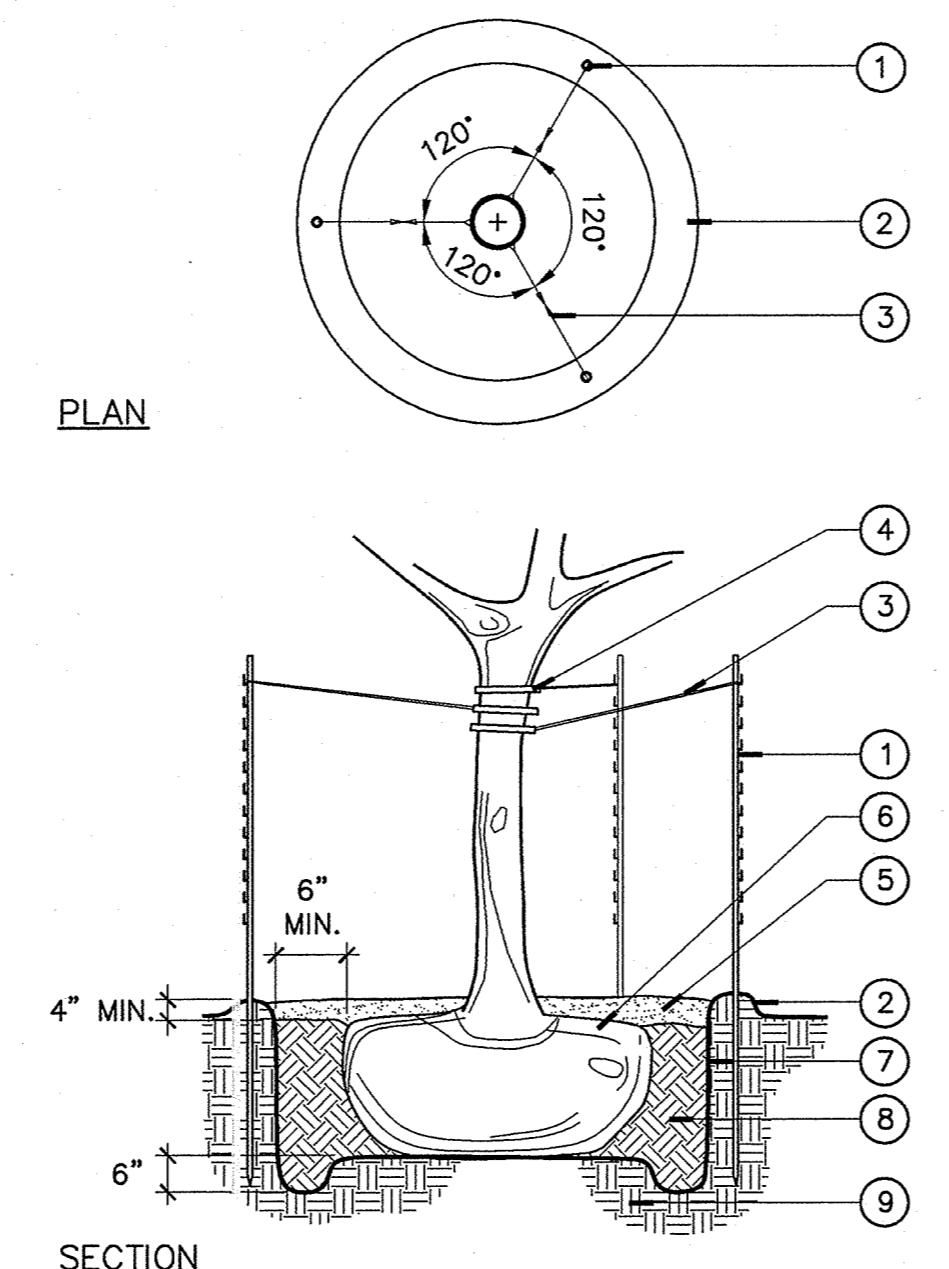
FILE: K:\Landscape\Projects\IHOP\IHOP_Landscaping.dwg PLOT DATE: 1/13/2012 11:55am PLOTTED BY: jpm/raider LAYOUT: L11_Plan IMAGE: B1Em_Hor_Sm.dwg XREFS: \\hp02234\sharepoint\IHOP\IHOP_Landscaping.dwg

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LANDSCAPE NOTES

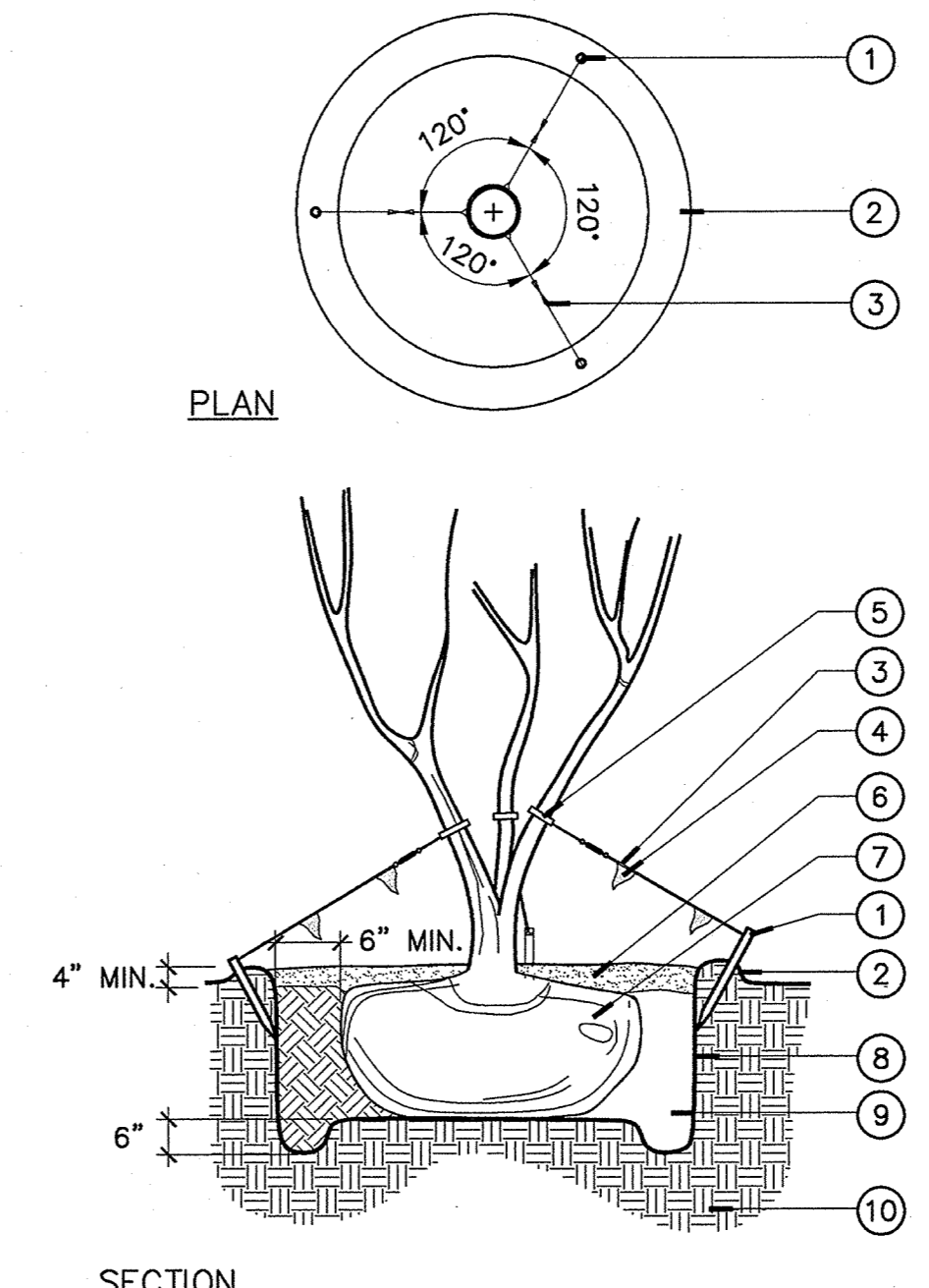
- Plant material shall comply with all sizing and grading standards of the latest edition of 'American Standard for Nursery Stock.'
- Contractor shall stake out tree locations and bed configuration for approval by owner prior to installation.
- It is the responsibility of the contractor to advise the owner's representative of any condition found on site which prohibits installation as shown on these plans.
- In the event of a discrepancy between drawings and plant schedule, the drawings shall prevail.
- Locate all utilities prior to digging. Contractor shall be responsible for all damage incurred by his/her work.
- No substitutions shall be made without written authorization from the project Landscape Architect or the Owner.
- Commercial Soil Mix: All planting beds shall be excavated to six (6") inches below finished grade by Landscape Contractor, and all debris, stone, rubbish, weeds, and topsoil shall be removed from the site. The subgrade shall then be tilled to a depth of six (6") inches and the planting bed shall be backfilled with soil compost mix as available from Living Earth Resources, Inc., Dallas, Texas, or approved equal. Upon replacement of topsoil with mix and after watering in, the bed should be at the specified level.
- Existing soil shall be reasonably free of stones, lumps of clay, roots and other foreign matter. Acidity to be between 5.0 and 7.0 pH.
- If rocks are encountered, remove to a depth of 4" and add 4" of friable fertile topsoil to all sodded areas. Grade according to Engineer's grading plan.
- Lawn areas shall have 4" minimum friable topsoil and be treated with fertilizer applied at a rate of 20 pounds per 1,000 square feet.
- All plant beds shall be top dressed with a minimum 2" of shredded hardwood mulch.
- Provide beveled edge between all plant beds and lawn areas unless indicated differently on plans.
- Tree planting pits shall be backfilled with top soil, and cleared of all rocks, lumps of clay and other foreign material. Place 1" of compost and 3" of mulch on top of root ball.
- Methods of tree staking indicated on the drawings are for suggestion only. The landscape contractor shall use whatever method he/she deems fit, however, he/she will be held liable for any damage caused to trees due to improper staking methods (including absence of staking), and will be responsible for adjusting and/ or replanting trees which are not held upright during the warranty period.
- Trees shall be planted at least 3 feet from any utility line, curb, walk or fire hydrant, and outside all utility easements.
- Trees overhanging walks and parking areas shall have a clear trunk height of 7 feet from finish surface grade.
- Trees overhanging public street pavement, drive aisles and fire lanes shall have a minimum clear trunk height of 14 feet from finish surface of street pavement.
- Trees planted on slopes shall be placed in planting pits of adequate depth such that the soil stain at the base of the trunk matches that of the average grade or slope.
- A visibility triangle must be provided at all intersections. All landscaping within visibility triangles and parking lot islands, must be maintained so that lower tree limbs are a minimum of 7' from the ground and that shrubs and ground cover are a maximum of 24" high.
- No shrubs shall be permitted within areas less than three (3) feet in width. All such areas shall be grass or other permanent fixed material such as paving.
- During the warranty period The owner, tenant, and/or their agent (if any) shall be jointly responsible for the maintenance of all landscaping. All required landscaping shall be maintained in a neat and orderly manner at all times. The work shall include - but not be limited to - mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to the maintenance of landscaping. All plant materials shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Plant material that is damaged, destroyed, removed, or showing more than 40% defoliation, shall be replaced with plant material of similar size and variety within thirty (30) days.
- Contractor shall warranty plant material to remain alive and healthy for a period of one year after the final acceptance. Warranty shall not include damage for loss of plant material due to natural causes, acts of vandalism or negligence on the part of the owner.
- Landscape areas shall be kept free of trash, litter and weeds.
- All signage and fencing shall be contingent upon building inspection department approval.
- An automatic irrigation system shall be provided to maintain all landscape areas. Overspray on streets and walks is prohibited. A permit from the building inspection department is required for each irrigation system.
- The contractor shall revegetate all disturbed areas within public R.O.W., on adjacent properties, and the proposed adjacent development with a full stand of grass within sixty (60) days of substantial completion. contractor will be required for providing all topsoil, sod/seed, fertilizer and water necessary to establish a full stand of permanent warm season grass. Refer to notes and specifications (this sheet) for topsoil and fertilizer requirements.

1 TREE PLANTING
N.T.S.



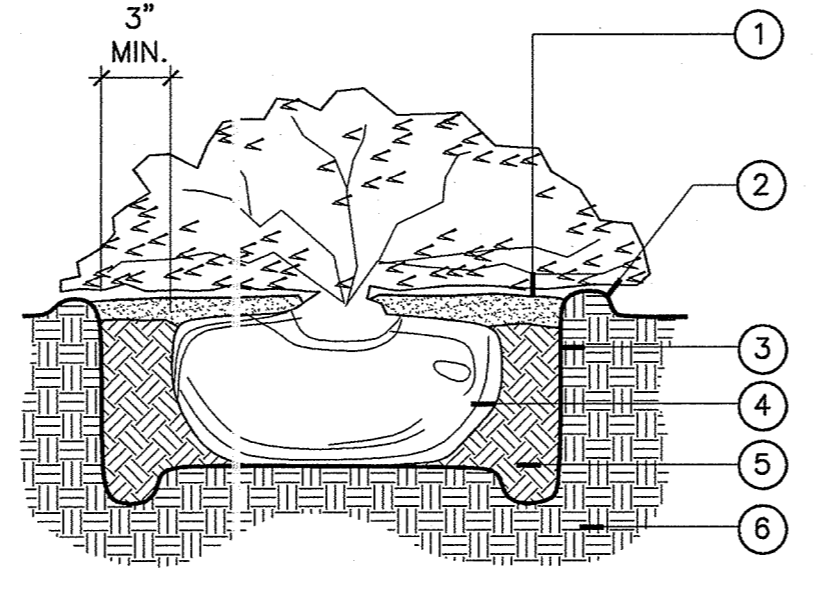
- 2"x2"x8' METAL FENCE 'T' POST, 3 PER TREE, EQUALLY SPACED, MATERIAL PER NOTES AND/OR SPECIFICATIONS.
- 4" EARTH SAUCER
- GALVANIZED GUY WIRE; ADD TURNBUCKLES AS NECESSARY TO STABILIZE TREE.
- RUBBER CHAFING GUARDS
- 1" COMPOST AND 4" MULCH
- ROOT BALL: REMOVE BURLAP, BURLAP TIES, AND WIRE BASKET FROM TOP 1/3 OF ROOTBALL. REMOVE ALL NYLON STRINGS, PLASTIC LINERS, AND OTHER SYNTHETIC MATERIALS FROM THE ENTIRE ROOTBALL.
- PLANTING PIT EXCAVATED 12" LARGER (MIN.) THAN WIDTH OF ROOTBALL. PIT DEPTH AS NEEDED TO SET ROOTBALL COLLAR AT PROPOSED FINISHED GRADE. PLACE ROOTBALL ON SOLID SOIL AND NOT LOOSE BACKFILL.
- PIT BACKFILL SOIL PER SPECIFICATIONS
- UNDISTURBED EARTH

4 MULTI-TRUNK TREE PLANTING
N.T.S.



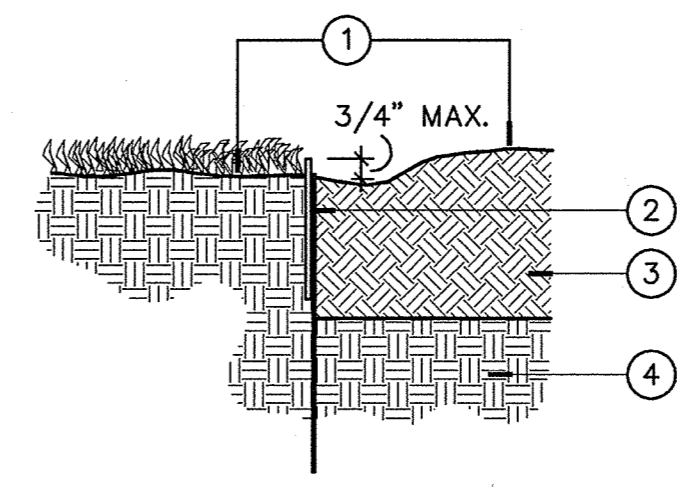
- 2"x2"x24" WOOD STAKE, 3 PER TREE, MATERIAL PER NOTES AND/OR SPECIFICATIONS
- 4" EARTH SAUCER
- GALVANIZED GUY WIRE; ADD TURNBUCKLES AS NECESSARY TO STABILIZE TREE.
- WARNING FLAGS
- RUBBER CHAFING GUARDS
- 1" COMPOST AND 4" MULCH
- ROOT BALL: REMOVE BURLAP, BURLAP TIES, AND WIRE BASKET FROM TOP 1/3 OF ROOTBALL. REMOVE ALL NYLON STRINGS, PLASTIC LINERS, AND OTHER SYNTHETIC MATERIALS FROM THE ENTIRE ROOTBALL.
- PLANTING PIT EXCAVATED 12" LARGER (MIN.) THAN WIDTH OF ROOTBALL. PIT DEPTH AS NEEDED TO SET ROOTBALL COLLAR AT PROPOSED FINISHED GRADE. PLACE ROOTBALL ON SOLID SOIL AND NOT LOOSE BACKFILL.
- PIT BACKFILL SOIL PER SPECIFICATIONS
- UNDISTURBED EARTH

2 SHRUB PLANTING
N.T.S.



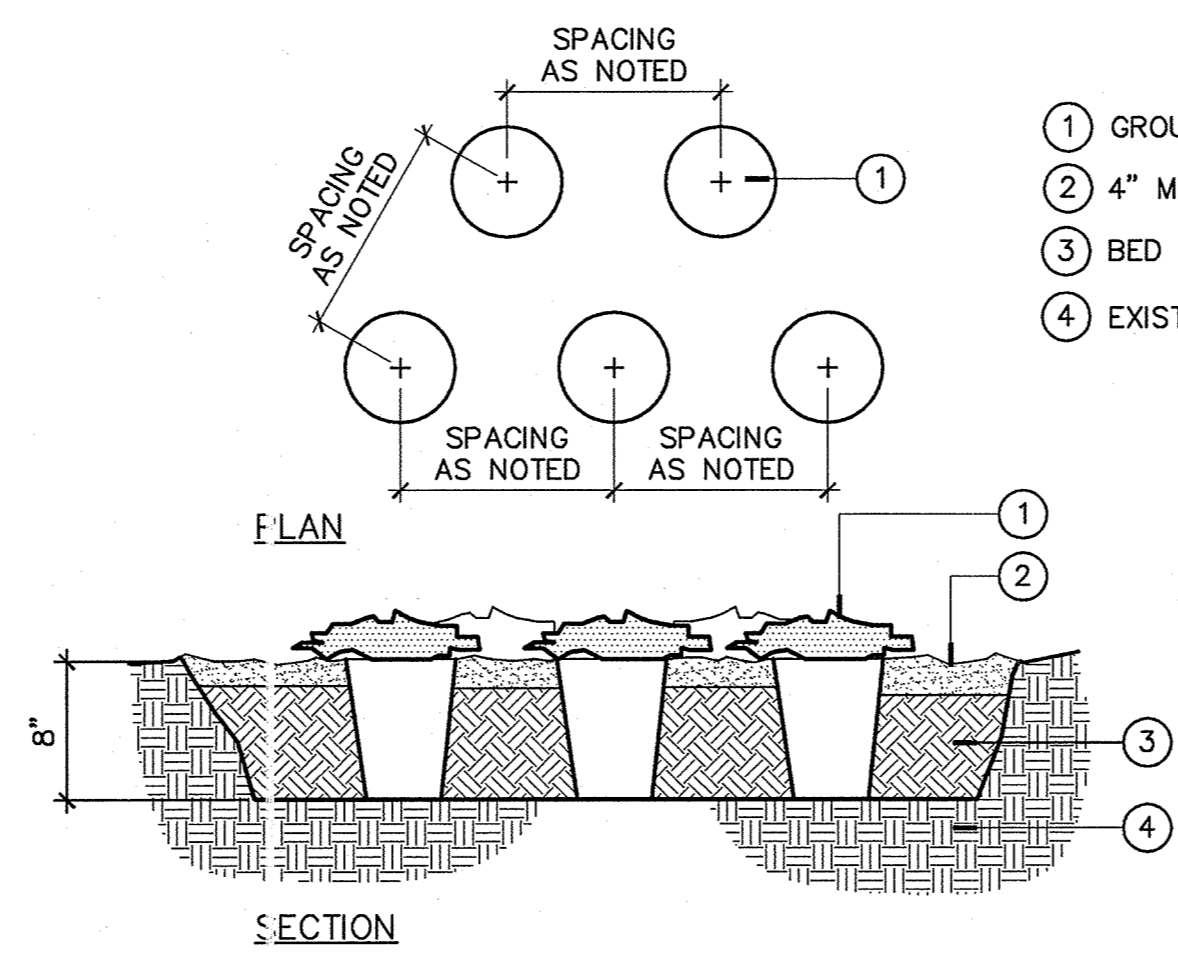
- 4" MULCH PER SPECIFICATIONS
- 3" HIGH EARTH SAUCER
- PLANTING PIT: EXCAVATE 6" LARGER (MIN.) THAN WIDTH OF ROOTBALL, W/ PIT DEPTH AS NEEDED TO SET ROOTBALL @ PROPOSED FINISHED GRADE. PLACE ROOTBALL ON SOLID SOIL AND NOT LOOSE BACKFILL. SCARIFY SIDES OF PIT. PROVIDE CONTINUOUS PIT FOR MASSED BED PLANTINGS.
- ROOT BALL: REMOVE FROM CONTAINER. GENTLY SCARIFY GIRDERED ROOTS AS NEEDED. REMOVE ALL TAGS & TWINE.
- PIT BACKFILL W/ PREPARED SOIL BED MIX PER SPECIFICATIONS. PROVIDE CONTINUOUS SOIL BED MIX IN MASS PLANTINGS.
- UNDISTURBED EARTH

5 METAL EDGING
N.T.S.



- DIFFERENT PLANTING TREATMENTS.
- METAL EDGING
- BED SOIL, 12" MINIMUM DEPTH. REF: NOTES AND/OR SPECS FOR MIX. & DEPTH.
- NATIVE SOIL

3 GROUNDCOVER PLANTING
N.T.S.



- GROUNDCOVER
- 4" MULCH PER SPECIFICATIONS
- BED SOIL PER SPECIFICATIONS
- EXISTING SUBGRADE

WARNING: CONTRACTOR IS TO VERIFY PRESENCE AND EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION.



App.	Revisions	Date	No.	Date	No.
<p>Kimley-Horn and Associates, Inc. Tel. No. (512) 418-1771 Austin, Texas 78759 Fax No. (512) 418-1791</p> <p>10415 Marado Circle, Building 1, Suite 300 Austin, Texas 78759 TEXAS REGISTRATION # 928</p>					
<p>IHOP KYLE CROSSING KYLE CENTER DRIVE KYLE, TX 78640</p>					
<p>LANDSCAPE DETAILS</p>					
<p>Scale: AS SHOWN Designed by: JAF Drawn by: RAS Checked by: JAF Date: JANUARY 2012 Project No. 064455401</p>					
<p>SHEET 17 OF 17</p>					



CITY OF KYLE, TEXAS

Transportation Master Plan

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

(First Reading) AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE TRANSPORTATION MASTER PLAN COMPONENT OF THE COMPREHENSIVE MASTER PLAN TO IDENTIFY BEBEE ROAD AS A MINOR ARTERIAL; PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELATED MATTERS ~ *Sofia Nelson, Director of Planning*

Planning and Zoning Commission voted 6-0 and the Long Range Planning Committee voted 7-0 to approve the update to the Transportation Master Plan to include Bebee Road as a Minor Arterial Road and establish Bebee Road as a moderate priority level roadway in the Comprehensive Master Plan. The Mobility Committee voted 6-0 to update the Transportation Master Plan to identify Bebee Road as a minor arterial roadway.

- *Public Hearing*

Other Information:

Please see attachments

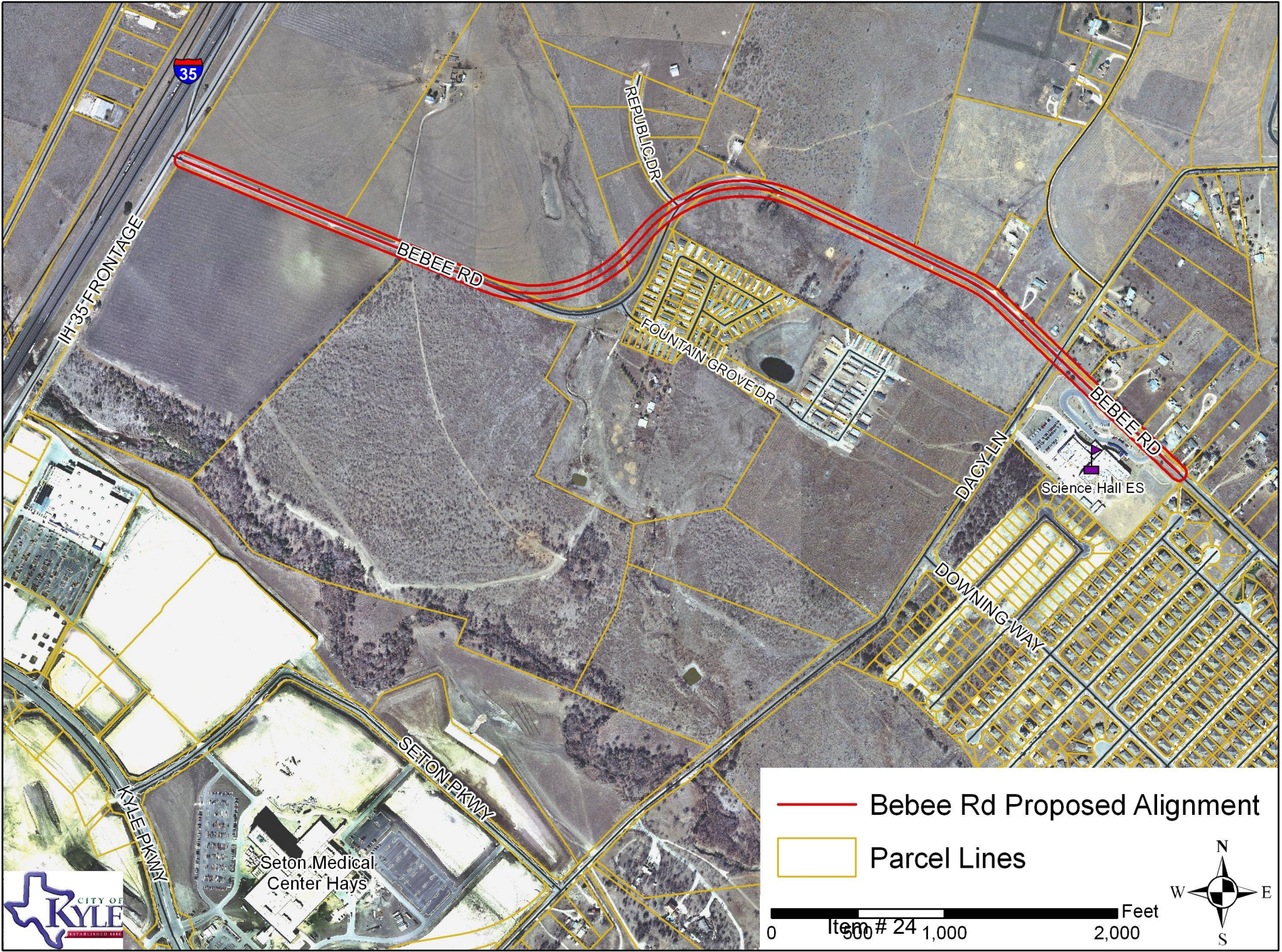
Budget Information:

N/A

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

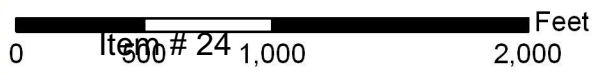
- [Beebe Road](#)
- [Transportation Plan 2010](#)
- [Staff Memo](#)
- [ordinance](#)



Seton Medical Center Hays

— Beebe Rd Proposed Alignment






— Parcel Lines



City of Kyle Transportation Plan 2010 Comprehensive Plan






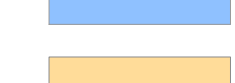









Legend

Roadway Type Planned

-  Core Linkage Connection
-  Inner Loop Connection
-  Parkway Loop Connection
-  Regional Connector
-  Rural Approachway Connection

Dashed Lines: Proposed Pavement
Solid Lines: Existing Pavement

Land Use Districts

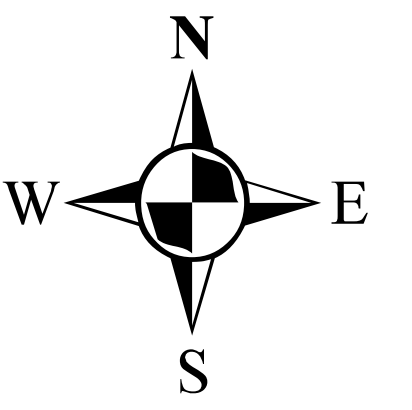
-  Core Area Transition Community
-  Employment Community
-  Farm Landscape
-  Heritage Community
-  Historic Core Area Transition
-  Mid-Town Community
-  New Settlement Community
-  New Town Community
-  Old Town Community
-  Ranch Landscape
-  Riparian Landscape
-  Sensitive/Sustainable Development
-  Super Regional Node
-  Regional Node
-  Local Node

 Kyle City Limits

 Railroad

 Streets

 Parcel Lines



Map created February 22, 2011



Attachment number 2 vPage 1 of 1



CITY COUNCIL AGENDA
February 7, 2012

Item/Subject: AN ORDINANCE AMENDING THE COMPREHENSIVE MASTER PLAN TO INCLUDE BEBEE ROAD AS A MINOR ARTERIAL ON THE TRANSPORTATION MASTER PLAN.

(Public Hearing and First Reading of Ordinance)

Initiating Dept: Planning

Request:

Amend the Transportation Master Plan to include Bebee Road as a minor arterial.

Planning & Zoning Commission Recommendation to the City Council:

The Planning and Zoning Commission voted 6-0 to recommend Bebee Road be added into the Transportation Master Plan as a minor arterial roadway and identify Bebee Road as a moderate priority roadway in the Comprehensive Master Plan. The Planning and Zoning Commission expressed a strong concern that the classification of the road as a minor arterial be extended from I-35 to Hwy 21.

In Favor: Chairman Cale Baese, Vice-Chair Samantha Bellows, Commissioner Jenny DiLeo, Commissioner Cicely Kay, and Commissioner Pat Fernandez. Commissioner Mike Fulton (absent)

Planning & Zoning Commission Public Hearing:

The Planning and Zoning Commission held a public hearing on January 10th and January 24th.

During the public hearing, a property owner whose property fronts on Bebee Road spoke regarding the need to add Bebee Road to the Transportation Master Plan. Staff has spoken with 3 property owners along Bebee Road who expressed concern regarding the realignment of the roadway.

Long Range Planning Committee:

The Long Range Planning Committee voted to update the Transportation Master Plan to classify Bebee Road, from I-35 to Hwy 21, as a minor arterial roadway. The Committee also voted to establish Bebee Road as a moderate priority roadway in the Comprehensive Master Plan.

Mobility Committee:

The Mobility Committee voted to update the Transportation Master Plan to classify Bebee Road, from I-35 to Dacy Lane as a minor arterial roadway.

Background:

- 2005- Transportation Master Plan was approved by City Council identifying Bebee Road as a “thoroughfare” and identifying a realignment for the roadway.
- 2010- The Comprehensive Master Plan was approved by the City Council. The Transportation Master Plan was a component of the Comprehensive Master Plan. Bebee Road was not identified on the Transportation Master Plan.
- November of 2011- In the process of reviewing a zoning case on Bebee Road staff discovered that Bebee Road was not included in the Transportation Master Plan.
- January 5, 2012- Mobility Committee recommended approval of the update to the Transportation Master Plan.
- January 10, 2012- Planning and Zoning Commission held a public hearing.
- January 12, 2012- Long Range Planning Committee recommended approval of the update of the Transportation Master Plan.
- January 24, 2012- Planning and Zoning Commission held a public hearing and recommended approval of the update to the Transportation Master Plan.

Planning Analysis and Recommendation:

The Transportation Master Plan is a key component of the Comprehensive Master Plan. The roadway system envisioned in the Transportation Plan Update is largely based on the creation of two loop roads and a series of street extensions within Kyle. The two loop roads are designated the Inner Loop and the Parkway Loop, improvements to regional roadways and local connectors necessary to support the loop roads form the hub and spoke system have also been identified in the Transportation Master Plan.

Bebee Road functions as a major east-west regional roadway, that will support the overall loop system, and is located within the New Town Future Land Use district. The New Town district is characterized as an area that will contain a mixture of uses including single and multi-family development along with retail and commercial uses. Staff is recommending approval of the update of the Transportation Master Plan to identify Bebee Road as a minor arterial roadway for the following reason:

- In order to support the level of development envisioned for the future land use district a plan for Bebee Road needs to be established so that adequate roadway plans are established prior to the proposal of new development.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE TRANSPORTATION MASTER PLAN COMPONENT OF THE COMPREHENSIVE MASTER PLAN TO IDENTIFY BEBEE ROAD AS A MINOR ARTERIAL; PROVIDING FOR THE AMENDMENT OF THE PLAN; PROVIDING FOR RELEATED MATTERS

WHEREAS, it is necessary and reasonable for the City of Kyle, Texas, a Texas home rule municipality, (herein the “City”) to provide for, modify and amend a Comprehensive Plan for the City in accordance with Chapters 211 and 213 of the Texas Local Government Code and the City Charter;

WHEREAS, the City in anticipation of growth and expansion desires to plan for the orderly and efficient growth of the City;

WHEREAS, the City desires to facilitate the lessening of congestion in the streets; the securing of its citizens and visitors from fire, panic and other dangers; the promotion of the general health and welfare; the provision of adequate light and air, the prevention of the overcrowding of property and undue concentration of populations; and the adequate provision of transportation, water, sewers, schools, parks and other public requirements;

WHEREAS, the Planning and Zoning Commission, after conducting public hearings, recommended amendment of the Comprehensive Plan; and,

WHEREAS, after review, inquiry and the opportunity for the public to given testimony and present written evidence at public hearings and after review by the Planning and Zoning Commission, the City Council has found the amendment of the Comprehensive Plan hereinafter set forth and listed in this ordinance is reasonable and necessary for the public health, safety, morals and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Comprehensive Plan. Having held a public hearing and after receiving a recommendation from the Planning and Zoning Commission, the City Council hereby amends the Transportation Master Plan component of the Comprehensive Master Plan to identify Bebee Road as a minor arterial. The Comprehensive Plan shall be kept in the office of the City Secretary and shall be available for public inspection during normal office hours. sThe City may amend the Comprehensive Plan in the discretion of the City Council to plan for the changing plans of the City.

Section 3. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. Effective Date. This Ordinance shall be in force and effect from and after its passage on the date shown below.

Section 5. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code.*

PASSED AND APPROVED on this ____ day of _____, 2012.

ATTEST:

**THE CITY OF KYLE,
TEXAS**

Amelia Sanchez, City Secretary

Lucy Johnson, Mayor



CITY OF KYLE, TEXAS

Plum Creek

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

(Public Hearing and First Reading) AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLAN UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE) OF THE CITY OF KYLE, TEXAS FOR THE PURPOSE OF AMENDING THE FOLLOWING SECTIONS: ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 5 “R-3” MULTIFAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS (3)(d) MAXIMUM HEIGHT: TO AMEND THE MAXIMUM HEIGHT FROM 40 FEET TO 60 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO A R-2 DEVELOPMENT; ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 6- “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS (5)(d) MAXIMUM HEIGHT: TO AMEND THE MAXIMUM HEIGHT FROM 35 FEET TO 50 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO R-2 DEVELOPMENT; ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 8 “MXD” MIXED USE DEVELOPMENT (D) SITE DEVELOPMENT REGULATIONS (6) (d): TO AMEND THE MAXIMUM HEIGHT FROM 3 ½ STORIES OR 50 FEET TO 5 STORIES OR 65 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO R-2 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

- *Public Hearing*

Other Information:

Please see attachments.

Budget Information:

N/A

Cover Memo

Item # 25

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Attachments / click to download

- [Plum Creek Height Amendments](#)
 - [Exhibit](#)
 - [ordinance](#)
 - [Exhibit A- proposed revisions](#)
 - [Staff Memo](#)
-

MEMORANDUM

TO: City Council

FROM: Sofia Nelson, Planning Director

DATE: January 31, 2012

SUBJECT: Plum Creek Ordinance Revisions- Maximum Height in R-3, MXD, and NC zoning districts

Request

Hold a public hearing and consider possible action regarding ordinance revisions to Chapter 311 Zoning Ordinances within the Plum Creek Planned Unit Development District.

R-3 Multi-family Residential (pg 29 of the ordinance)

- Proposing to modify the maximum height from 40 feet to 60 feet.
- Establish a 25 foot compatibility setback when a R-3 use is adjacent to an R-2 development. A maximum height within the compatibility setback would be 40 feet.

Neighborhood Commercial "NC" (pgs. 31-32 of the ordinance)

- Proposing to modify the maximum height from 35 feet from 50 feet.
- Establish a 25 foot compatibility setback when a NC use is adjacent to an R-2 development. A maximum height within the compatibility setback would be 35 feet.

Mixed Use Development "MXD" (pg 36 of the ordinance)

- Proposing to modify the maximum height from 3 ½ stories or 50 feet to 5 stories or 65 feet.
- Establish a 25 foot compatibility setback when adjacent to R-2 development which limits maximum building height to 3 ½ stories or 50 feet.

Planning and Zoning Commission Recommendation

The Planning and Zoning Commission held a public hearing on November 29th and unanimously recommended approval of the height amendments on January 24th. The Planning and Zoning Commission's approval of the height amendments was conditional on the addition of the word "minimum" when establishing a 25 foot compatibility setback.

Public Notice

Nobody spoke in opposition to the request during the P&Z public hearing portion of the request. No mail notice was required. No written comments were submitted.

Staff Analysis

Staff has worked with representatives of Plum Creek in establishing height standards that meet the needs of the development, provide predictability to the residents of the community, and carry out the intent of each of the zoning districts. In reviewing the proposed increase in height staff analyzed the current site development standards for each of the zoning districts (i.e. setbacks, lot coverage, and residential compatibility standards) and worked with the applicant to establish a minimum residential compatibility buffer that would require a development to transition in height when adjacent to a R-2 development,. The proposed compatibility buffer would reduce and possibly eliminate the “canyon effect” often created when a 4- 5 story building is adjacent to a one or two story residential structure.

Staff has reviewed the code and the intent of the zoning districts established in the PUD overlay district and is recommending approval of the request for the following reasons:

- The revisions appear to carry out the intent of the zoning districts and the Plum Creek development as a whole, while still providing protection to any single-family residences that may be adjacent to the multi-family, mixed use, or neighborhood commercial development.
- The Plum Creek PUD establishes a requirement for all R-3, NC, and MXD developments to submit a site development plan to the City Council and Planning and Zoning Commission. This will allow the location, height, and intended use of existing and proposed land uses to be analyzed and monitored for compatibility with current and future land uses.

R-3 Multi-family

The purpose of the R-3 district is to allow for a variety of housing types including multi-family dwellings, up to 36 units per acre. This district requires site plan approval by both the Planning and Zoning Commission and City Council.

NC- Neighborhood Commercial

The purpose of the NC district is to provide for the location of offices and small businesses serving neighborhood community needs. This district requires site plan approval by both the Planning and Zoning Commission and City Council.

MXD- Mixed Use

The purpose of the MXD district is to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents. This district requires site plan approval by both the Planning and Zoning Commission and City Council.

ORDINANCE NO. _____

(Public Hearing/ First Reading). AN ORDINANCE AMENDING ORDINANCE NO. 311 (PLUM CREEK PLAN UNIT DEVELOPMENT OVERLAY DISTRICT ZONING ORDINANCE) OF THE CITY OF KYLE, TEXAS FOR THE PURPOSE OF AMENDING THE FOLLOWING SECTIONS: ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 5 “R-3” MULTIFAMILY RESIDENTIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS (3)(d) MAXIMUM HEIGHT: TO AMEND THE MAXIMUM HEIGHT FROM 40 FEET TO 60 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO A R-2 DEVELOPMENT; ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 6- “NC” NEIGHBORHOOD COMMERCIAL PUD DISTRICT (C) SITE DEVELOPMENT REGULATIONS (5)(d) MAXIMUM HEIGHT: TO AMEND THE MAXIMUM HEIGHT FROM 35 FEET TO 50 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO R-2 DEVELOPMENT; ARTICLE 2 PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS- PART C/ SECTION 8 “MXD” MIXED USE DEVELOPMENT (D) SITE DEVELOPMENT REGULATIONS (6)(d): TO AMEND THE MAXIMUM HEIGHT FROM 3 ½ STORIES OR 50 FEET TO 5 STORIES OR 65 FEET AND ESTABLISHING A 25 FOOT COMPATIBILITY SETBACK WHEN ADJACENT TO R-2 DEVELOPMENT. AUTHORIZING THE CITY SECRETARY TO AMEND THE ORDINANCE 311 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

SECTION 1. Ordinance 311 is amended as set forth in Exhibit A. Added text is indicated by underlining. Deleted text is indicated by strikethroughs. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate and consistent with the existing numbering and formatting of the existing ordinance.

SECTION 2. That the City Secretary is hereby authorized and directed to update the City of Kyle code to reflect the changes made in Exhibit A and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this

Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the ___ day of _____, 2012, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the _____ day of _____, 2012, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this _____ day of _____, 2012.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary

EXHIBIT A. PLUM CREEK PLANNED UNIT DEVELOPMENT*

* Note: Ordinance 311- Proposed addition of courtyard use, clarifications and building height adjustments.

***Editor's note:** Printed herein is the Plum Creek Planned Unit Development Ordinance, as adopted by the city council on July 22, 1997. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

Item # 25

ORDINANCE NO. 311

An ordinance of the City of Kyle, Texas, establishing a planned unit development zoning district; declaring intent and public purpose; providing definitions; approving the Plum Creek Planned Unit Development; providing zoning and use districts; providing regulations, standards and procedures; providing for amendment and variances; providing for administration and enforcement; providing for fees; repealing conflicting ordinances; providing severability, effective date and open meeting clauses; and providing for related matters.
Be it ordained by the city council of the City of Kyle, Texas, that:

ARTICLE I. GENERAL TERMS, PROVISIONS, AND DEFINITIONS

Sec. 1. Authority.

This ordinance is adopted under the authority of the Constitution and laws of the State of Texas, including particularly V.T.C.A., Local Government Code chs. 43 and 211.

Sec. 2. Title.

This ordinance shall be known, and may be cited, as the Plum Creek Planned Unit Development ("PUD") Zoning Ordinance of the City of Kyle ("City").

Sec. 3. General purpose and intent.

(A) *Purpose.* This ordinance is adopted to promote the health, safety, and the general welfare of the city, the owners and future residents of the Plum Creek planned unit development project ("Plum Creek PUD") to protect, preserve, improve, and provide for public the health, safety and general welfare of the present and future citizens of the city and to establish a framework of zoning guidelines and criteria which support the development of the Plum Creek PUD. The Plum Creek PUD is intended to allow mixed development which incorporates compatible residential, commercial, and/or industrial uses within the Plum Creek PUD boundaries. The Plum Creek PUD cannot be implemented under the standard Kyle zoning categories methodology and requires greater design flexibility for a successful development. The requirements established for

Code of Ordinances City of Kyle, Texas
Part II – Code of Ordinances
Chapter 53 Zoning
Exhibit A

PUD districts herein shall not supersede or amend the city's present zoning requirements pursuant to Ordinance No. 92 as they apply to the city's jurisdiction outside of the proposed Plum Creek PUD. The Plum Creek PUD shall be a master planned development which utilizes a mix of uses and standards approved by the city council. The application of this ordinance should result in development superior to that which would occur using conventional zoning and subdivision regulations, and will promote the following purposes:

- (1) To ensure the safe, orderly, and healthful development and expansion of the city, in accordance with and pursuant to the master plan for [the] Plum Creek PUD;
- (2) To conserve, develop, protect, and utilize natural resources, as appropriate and consistent with the public interest and to enhance the preservation of the natural environment;
- (3) To prevent the overcrowding of land and avoid undue concentration of population or land uses, and thereby encourage high quality development and innovative design;
- (4) To protect and preserve places and areas of historical and cultural importance and significance to the community;
- (5) To lessen congestion in the streets and provide convenient, safe, and efficient circulation of vehicular and pedestrian traffic;
- (6) To facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, emergency and recreational facilities, and other public requirements;
- (7) To promote economic development through an efficient and practical means by which development will ensure the protection of the Edwards Aquifer and the city's drinking water supply; and
- (8) To allow for the flexible planning and development of mixed uses throughout the Plum Creek PUD boundaries which promote compatible and different levels of residential, commercial and/or industrial uses.

(B) *Intent.* The requirements of the Plum Creek Planned Unit Development Zoning Ordinance ("Plum Creek PUD zoning ordinance") [chapter 53, exhibit A] are intended and shall apply to the property described as phase I of the Plum Creek PUD. The Plum Creek PUD is further comprised of phase I-A, phase I-B, and phase I-C, as reflected in the Plum Creek Phase I PUD master plan to the "Agreement Between the City of Kyle, Plum Creek Development Partners, Ltd., and William Negley, Trustee, For Development and Annexation of Phase I of the Plum Creek Property," which master plan is attached to this zoning ordinance as exhibit "A." Through the adoption of this ordinance, the city council of the City of Kyle is providing for the implementation of the site development regulations for the Plum Creek PUD and expresses its intent that this zoning ordinance shall be construed in a manner to give effect to the Plum Creek PUD master plan.

Sec. 4. Definitions of terms and uses within the Plum Creek PUD districts.

For purposes of this Plum Creek PUD zoning ordinance, the use definitions contained herein are established as the use definitions for the Plum Creek PUD as follows:

Accessory building [means] a building which is incidental to and customarily associated with a specific principal use or principal building on the same site.

Accessory dwelling unit [means] a secondary dwelling unit built on a legal lot in addition to a principal dwelling unit or primary residence.

Accessory use structure, or dwelling [means] an accessory use or structure is one customarily a part thereof, which is clearly secondary to a permitted use and which does not change the

Item # 25

Code of Ordinances City of Kyle, Texas
Part II – Code of Ordinances
Chapter 53 Zoning
Exhibit A

character thereof, including, but not limited to independent living quarters equipped for garages, bathhouses, greenhouses, or tool sheds.

Administrative and business offices [means] the use of a building or a portion of a building for the provision of executive, management, or administrative services. Typical uses may include administrative offices and services including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering, photocopy and reproduction, and business offices of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with administrative office services.

Alley [means] a minor public or private right-of-way, either two-way or one-way, located through the interior of blocks and providing vehicular and service access to the side or rear of properties.

Antique shop [means] a business which sells items whose value is greater than the original purchase price because of age or intrinsic value.

Apartment building [means] a building or portion thereof used or intended to be used as a home for three or more families or households living independently of each other and equipped for preparation of food.

Apartment hotel [means] a building used or intended to be used as a home of 12 or more families, who are permanent residents, living independently of each other, in which building shall be located on the first floor living units for transient guests, and/or retail sales and service.

Apartment [means] an apartment is a room or group of rooms used as a dwelling for one family unit which does its cooking therein.

Art studio and gallery [means] a use involving the production of works of art, including photographic studios, and the incidental sale to consumers of those works produced on site.

Art studio or gallery [means] a building where objects of art are created or displayed for the public enrichment or where said art objects are displayed for sale, including the teaching of painting and/or sculpting.

Assisted/retirement living [means] a use providing 24 hour supervision and assisted living for more than 15 residents not requiring regular medical attention. This classification includes personal care homes for the physically impaired, and persons 60 years of age or older.

Attendant building [means] a building used to house the manager or attendant of a public or private parking lot.

Automobile repair shop [means] any premises and structures used primarily for the servicing and/or repair of motor vehicles, including paint and body work, engine rebuilding and minor maintenance activities.

Bed and breakfast services [means] an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for overnight guests on a paying basis.

Bed and breakfast [means] an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for overnight guests on a paying basis.

Board of adjustment [means] the city's zoning board of adjustment.

Boarding house [means] a building, built and/or used for residential purposes, where meals for five or more persons are served for compensation.

Buffer [means] an area within a property or site, generally adjacent to and parallel with the property line, either consisting of existing natural vegetation or created by the use of trees,

Item # 25

Code of Ordinances City of Kyle, Texas
Part II – Code of Ordinances
Chapter 53 Zoning
Exhibit A

shrubs, berms and/or fences, and designed to limit views and sound from the site to adjacent properties and vice versa.

Building area [means] the building area of the lot is the gross area covered by the structure when placed on the lot.

Building line [means] a line parallel or approximately parallel to the street line and beyond which buildings may not be erected.

Building official [means] the designated building official for the city.

Building ordinance [means] the building codes and related ordinances of the city providing standards, requirements and regulations for site development and the construction and erection of buildings and structures within the city, including, but not limited to, the electrical code, plumbing code, building code, and minimum housing code, adopted by the city council from time to time.

Building plot [means] the land, lot, lots or tract of land upon which a building or buildings are located, or upon which they are to be constructed, including yards and bounded by the property line.

Building [means] a building is any structure built for the support, shelter, or enclosure of persons, chattels or movable property of any kind and which is affixed to the land.

Build-to-line [means] a line parallel to the street right-of-way which dictates the minimum and maximum front yard setback from a street or public right-of-way, to be followed by buildings or structures fronting thereon. The build-to-line does not apply to building projections or recesses.

Cafe, restaurant, or cafeteria [means] a commercial eating establishment where snacks or meals are vended for consumption indoors or on the premises.

Carport [means] a structure with one or more sides, covered with a roof and constructed specifically for the storage of one or more motor vehicles.

Child care or child development facilities [means] any children's home, orphanage, institution, private home, residence or other place, whether public, parochial or private, operated for profit or not, which keeps, cares for, has custody of or is attended by four or more children under 16 years of age at any one time, who are not members of the immediate family of any natural person operating any such place, during any part or all of the 24 hours in a day. Also, any institution, home or other place, whether public, parochial or private, conducted for profit or not, which keeps, cares for, has custody of or is attended by any number of children, under 16 years of age, who are not members of the immediate family of any natural person operating such a place, who are mentally or physically handicapped, under medical or social supervision, and not within a hospital, 24 hours a day.

Clinic [means] a public or private station for the examination and treatment of out-patients by an individual or group of doctors, dentists, opticians, veterinarians, or other similar medical professionals.

Cold storage plant [means] a commercial establishment where food or other commodities are stored either in lockers, rented or leased, or in vaults in bulk for distribution to the home or other commercial businesses. No slaughtering of animals or fowl is allowed on the premises.

Commercial amusement [means] any enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the gates for the activity. Commercial amusements include zoos, carnivals, expositions, miniature golf courses, driving ranges, arcades, fairs, exhibitions, athletic contests, rodeos, tent shows,

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ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, traveling shows, bowling alleys, pool parlors, and similar enterprises.

Commission [means] the city's planning and zoning commission.

Common property [means] a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites in a planned unit development.

Communication services [means] an establishment engaged in providing broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms, and photocopy and reproduction mechanisms.

Community recreation centers [means] a recreational facility, including both indoor and outdoor facilities, for use by residents and guests of a particular residential community development and/or a planned unit development.

Conditional use [means] an additional use which may be permitted in a district, subject to meeting certain conditions or procedures established by the city council.

Convalescent home [means] any structure used or occupied by three or more persons recovering from illness or being provided geriatric care for compensation.

Corner lot [means] a lot abutting upon two or more streets at their intersections; or lot abutting a crosswalk way.

Corporate campus [means] a planned industrial, research and development and/or office use in a campus-like setting.

Courtyard [means] an arrangement of single family attached and/or detached residential units in which the front of units (except for the end groups of units) generally face each other with one or two sidewalks between them that are more or less perpendicular to a public or private street.

Cultural services [means] a library, museum, or similar registered nonprofit organizational use displaying, preserving, and exhibiting objects of community and cultural interest in one or more of the arts and sciences.

Day care services [means] a facility, or use of a building or portion thereof, for daytime care for children, providing for the supervision and instructional development of preschool children, including nursery schools, preschools, and day care centers for children.

District [means] a zoned section or sections of the city for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Dormitory [means] any structure specifically designed to house student tenants associated with a university, college or school.

Drive-in eating establishment [means] any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises or taken away for consumption at other places.

Dwelling [means] a dwelling is any building or portion thereof which is designed or used exclusively for residential purposes.

Exterior side yard [means] a yard which faces and is parallel to a side street.

Family [means] a family is any number of related persons living as a single housekeeping unit.

Filling, retail service station [means] an establishment where gasoline, oil and grease, or automobile accessories are sold, supplied, or dispensed to the motor vehicle trade or where motor vehicles receive limited repair, are equipped for use, or where electric storage batteries are

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charged and cared for, or a place where any two or more such activities are carried on or conducted as the principal use of the establishment.

Financial services [means] services provided by an establishment primarily engaged in financial and banking activities. Typical uses may include banks, savings and loan institutions, stock and bond brokers, loan and lending activities, and similar services.

Flood plain, intermediate [means] that land which lies within a stream channel or adjacent to a stream channel within which flooding frequently occurs, the elevation above sea level of which shall be as established by the city and made of record. It is land which is required to be kept open and non-urbanized in order to maintain upstream floodplain characteristics and insure continued adequate drainage of adjacent land.

Flood plain, standard [means] that land which includes the intermediate flood plain and that land which lies immediately outside of and adjacent to the intermediate flood plain in which flooding only occasionally occurs, the elevation above sea level of which shall be as established by the city and made of record.

Floor area ratio (FAR) [means] the maximum square footage of total floor area permitted for each square foot of land area.

Food sales [means] an establishment primarily engaged in the retail sale of food or household products for home consumption. Typical uses include grocery stores, delicatessens, meat markets, retail bakeries, and candy shops.

Fraternity, sorority or group student housing [means] a building occupied by and maintained exclusively for students affiliated with an academic or vocational institution.

Garage, commercial [means] a commercial garage is any premises and structure used for housing more than five motor vehicles or where any vehicles are repaired for operation or kept for remuneration, hire or sale, and where a retail service station may be maintained as a secondary use.

Home occupation [means] a home occupation is a commercial use customarily carried on in the home by members of the occupant family without structural alterations in the principal building or any of its rooms, without the installation of machinery or additional equipment other than that customary to normal household operations, without the employment of additional persons, and which does not cause the generation of other than normal noise, pedestrian and vehicular traffic. It is an accessory to a residential use subject to the following limitations: (a) the home occupation shall be conducted entirely within a dwelling unit which is the bona fide residence of the practitioner(s) or within an accessory building (not to include a carport); (b) the residential character of the lot and dwelling shall be maintained; the exterior of the dwelling shall not be structurally altered; and no additional buildings shall be added on the property to accommodate the home occupation; (c) the occupation shall not produce external noise, vibration, smoke, odor, fumes, electrical interference or waste run-off outside the dwelling unit or on the property surrounding the dwelling unit; and (d) no vehicle used in connection with the home occupation which requires a commercial driver's license to operate shall be parked on any street adjacent to the property.

Hospital services [means] a facility providing medical, psychiatric, or surgical services for sick or injured persons primarily on an in-patient basis and including ancillary facilities for out-patient and emergency treatment, diagnostics services, training, administration, research, and services to patients, employees or visitors.

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Hospital, sanitarium, nursing home, hospice [means] a building or portion thereof used or designated for the housing or treatment of the sick, aged, mentally ill, injured, convalescent or infirm persons; provided that this definition shall not include rooms in any residential dwelling, hotel or apartment hotel not ordinarily intended to be occupied by said persons.

Hotel [means] a building used or intended to be used as living quarters for transient guests, but not excluding permanent guests, and may include a cafe, drugstore, clothes, pressing shop, barbershop or other service facilities for guests for compensation.

Kindergarten [means] any school, private or parochial, operated for profit or not, attended by four or more children at any one time during part of a 24 hour day, which provides a program of instruction for children below the first grade level in which constructive endeavors, object lessons and helpful games are prominent features of the curriculum.

Laundry services [means] an establishment engaged in providing laundering, dry cleaning, or dyeing services. Typical uses shall include bulk laundry and cleaning pants, and linen supply services.

Light manufacturing [means] an establishment engaged in the manufacture of finished products or parts, including packaging of such products, and incidental storage, sales and distribution of such products, but excluding uses that are not traditionally classified as light industrial or manufacturing. Uses defined as traditional light industrial and manufacturing are set forth in article II, part C, section 10 herein.

Lot lines [means] the lines bounding a lot as defined herein.

Lot [means] a parcel of land described and recorded as a lot in the records of Hays County, Texas; or, in the event any other parcel of land is used for one or more buildings, each such parcel of land shall become a separate lot for the purpose of this ordinance, and the boundaries of each such lot shall contain sufficient area to include the buildings and the open spaces required under this ordinance.

Manufactured home [means] a complete living unit manufactured at a location away from the lot on which it will be located as defined in art. 5221f Tex. Rev. Civ. Stat. [V.T.C.A., Occupations Code § 1201.001 et seq.].

Motel [means] a building or group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers, including groups designated as auto cabins, motor courts, motels and similar designations.

Multi-family residential [means] the use of a site for three or more dwelling units, within one or more buildings, including condominium residential.

Multiple building complex [means] more than one principal building on a building plot.

Neighborhood automobile service station [means] an establishment primarily engaged in automotive-related service. The following are permitted automotive-related services within such definition; automobile washing, automotive repair services, service stations, the sale of fuel, lubricants (including oil change facilities), parts and accessories, or any incidental minor repair services to motor vehicles.

Non-conforming use [means] any building or land lawfully occupied by a use at the time of passage of this ordinance or amendment thereto which does not conform after the passage of this ordinance or amendment thereto with the use regulations of the PUD district in which it is situated.

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Occupant car ratio (OCR) [means] the minimum number of parking spaces without parking time limits required for each living unit.

Parking lot [means] a parking area to accommodate the vehicles which utilize or are located in any PUD district, except the "R-1" residential PUD district and "R-2" residential PUD district unless approved by the city council.

Parking space [means] an area used or designed to be used for motor vehicle parking, containing not less than 160 square feet, exclusive of the driveways connecting said space with a street or alley. Said parking space and connecting driveway shall be durably surfaced and so arranged to permit satisfactory ingress and egress of an automobile. Compact parking spaces shall be 128 square feet, exclusive of the driveways connecting said space with the street or alley.

Pasturage [means] land used primarily for the grazing of animal stock.

Permit issuing authority [means] the building official or other city officer, employee or agent designated by lawful authority to issue the applicable permit.

Permitted use [means] a use specifically allowed in one or more of the various districts without the necessity of obtaining a conditional use permit.

Personal and community services [means] an establishment primarily engaged in the provision of frequently or recurrently needed services of a personal nature. Typical uses include beauty and barbershops, seamstress, tailor, shoe repair shops, and dry cleaning pick-up station services.

Personal service shop [means] an establishment for the purpose of supplying limited personal services such as, but not limited to, barber, shoe, boot, or beauty shops.

Personal services [means] an establishment engaged in providing services of a personal nature. Typical uses shall include beauty and barbershops, tailor, and shoe repair services.

Pharmacy [means] a use where medicines are compounded or dispensed.

Planned unit development [means] a zoning district which permits development of larger tracts of land under single or multiple ownership which master planned area requires specific approval by the city council for a development that may not fit standard area and use zoning categories. It is a development of land under unified control, planned and developed as a whole in a single development operation or a programmed phasing of developments, including streets, utilities, lots or building sites, structures, open spaces and other improvements. This district may permit mixed uses of land (e.g., industrial, commercial, residential) within a single or multiple subdivisions as part of or pursuant to a master plan which seeks to minimize adverse impacts when development occurs to protect the environment and nearby neighborhoods.

Planned unit development district or PUD district [means] a zoning designation for an area within the PUD which must comply with the site development criteria for said PUD district.

Postal facilities [means] postal services, including post office, bulk mail processing, or sorting centers operated by the United States Postal Service or a private postal service.

Product assembly services [means] an establishment engaged in the on-site assembly of products.

Product development services [means] development and testing of products related to research services.

Professional office [means] a use providing professional or consulting services in the fields of law, architecture, design, engineering, accounting, and similar professions.

Property owners association [means] an incorporated, non-profit organization operating under recorded land agreements through which (a) each lot and/or homeowner in a planned unit

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development or PUD district is automatically a member, (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining common property, and (c) the charge, if unpaid, becomes a lien against the property.

Religious assembly [means] a use (located in a permanent or temporary building) providing regular organized religious worship and religious education incidental thereto.

Research services [means] establishments engaged in research of an industrial or scientific nature. Typical uses include electronics research laboratories, and development and testing of computer software packages.

Restaurant (general) [means] an establishment engaged in the preparation and retail sale of food and beverages for on-premises consumption, including the on-premise sale, service, and consumption of alcoholic beverages as an accessory and secondary use. Typical uses include diners, dinner-houses, but not a drive-in or fast-food restaurant.

Retail food store [means] a retail establishment selling meats, fruits, vegetables, bakery products, dairy products, light hardware and other similar items which are purchased for use and/or consumption off the premises (may be a drive-in or supermarket type).

Retail sales [means] the sale or rental of commonly used goods and merchandise for personal or household use. Typical uses may include department stores, furniture stores, or establishments providing the following products or services; home furnishings and appliances, household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, or specialty items; apparel, jewelry, fabrics, and like items; cameras or photography services; household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies and framing, arts and antiques, paint, interior decorating services, or office supplies; bicycles, wallpaper, carpeting and floor-covering, or automotive parts and accessories (excluding service and installation).

Rooming or boarding house [means] a group of rooms provided for compensation either in a converted single-family home or in a structure specifically designed for such purposes. Both rooms and meals are provided for compensation for more than five persons. No cooking facilities are provided in individual living units.

Safety services [means] facilities to conduct public safety and emergency services, including police and fire protection services and emergency medical and ambulance services.

Setback line [means] a line which marks the setback distance from the property line, and measured from the lot line to the face of the foundation that establishes the minimum required front, side or rear yard space of a building plot.

Shopping center [means] a composite arrangement of shops and stores which provides a variety of goods and services to the general public, when developed as an integral unit.

Signs [means] any device or surface on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected or in any manner outlined or attached and used for advertising purposes.

Single-family attached residential [means] two or more dwelling units constructed on separate legal lots with a common or abutting wall located on the property line. This includes single-family dwelling units with detached garages where only the garages have a common or abutting wall located on the property line.

Single-family detached residential [means] the use of a site for only one dwelling unit.

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Site plan [means] a plan showing the use of the land, to include locations of buildings, drives, sidewalks, parking facilities and other structures to be constructed.

Square foot dimensions [means] the square footage computed from the outside dimensions of the dwelling, excluding attached garages, attics, basements, open or screened porches.

Storage and distribution [means] an establishment offering wholesaling, storage, and warehousing services in enclosed structures.

Storage garage [means] a storage garage is any premises and structure used exclusively for the storage of more than five automobiles.

Street [means] a public or private thoroughfare which affords the principal means of access to abutting property.

Structural alterations [means] any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls.

Structure principal [means] the principal structure which fulfills the purpose for which the building plot is intended.

Structure [means] anything constructed, the use of which requires a permanent location on the ground or attachment to something having a permanent location on the ground.

Total car ratio (TCR) [means] the minimum number of parking spaces required for each living unit.

Townhouse residential [means] the use of a series of sites for two or more dwelling units, constructed with common or abutting walls and each located on a separate ground parcel within the total development site, together with common area serving all dwelling units within the townhouse group.

Transportation services [means] a facility for loading, unloading, and interchange of passengers and baggage, between modes of transportation, including bus terminals, railroad stations and public transit facilities utilizing park and ride stations.

Variance [means] a legal modification of the district yard, lot width and yard depth, signs, street parking and loading regulations provisions such as yard, lot width and yard depth, signs, set back and street parking and loading regulations granted due to particular conditions existing within a single piece of property.

Variety store [means] a retail commercial establishment which supplies a variety of household goods, toys, limited light hardware items, candy, some clothing and other general merchandise.

Veterinary services [means] an establishment offering veterinary services and hospitals for animals. Typical uses include pet clinics, and veterinary hospitals for livestock and large animals.

Video rental store [means] an establishment engaged in the sale or rental of motion pictures or games.

Warehouse [means] an establishment engaged in the storage of merchandise or commodities in an enclosed structure.

Yard, front [means] a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street easement line and the main building or any projections thereof other than the projections of the usual steps, balconies or bays, or unair-conditioned porch. On corner lots, the front yard shall be considered as parallel to the street upon which the yard has its least dimension. For the purpose of determining Minimum Setbacks on corner Lots and alleys, the lot lines shall be deemed to terminate with straight lines, not arcs.

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Yard, rear [means] a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than the projections of steps, balconies or bays, or unair-conditioned porches, accessory dwellings or detached garages.

Yard, side [means] a yard between the main building and the side line of the lot, and extending from the required front yard to the required rear yard, and being the minimum horizontal distance between a side lot line and the side of any building on the lot. Driveways and sidewalks may be constructed within the side yard. Roofs may extend up to eighteen (18) inches into the side yard. A room, bay window or fire place may project two (2) feet into the side yard setback.

Yard [means] an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Zero-lot-line lot [means] a single-family lot that has a side wall along or near one of the lot lines so that a usable yard of a minimum of 7 1/2 feet from the side lot line to the building line is created on the other side of the lot.

Any definition not expressly prescribed herein shall, until such time as defined by ordinance, be construed in accordance with customary usage in municipal planning and engineering practices. (Ord. No. 311-3, § 2, 4-19-2008)

ARTICLE II. PLANNED UNIT DEVELOPMENT ZONING DISTRICT
PART A

Sec. 1. Plum Creek planned unit development district general provisions.

(A) *Purpose and objectives.* The purpose and intent of the Plum Creek planned unit development district ("Plum Creek PUD") is to provide a flexible, alternative procedure to encourage imaginative and innovative designs for the unified development of property in the city consistent with accepted urban planning, with overall mixed-use regulations as set forth below and in accordance with the city's comprehensive plan. A planned unit development or "PUD" is a planned unit development district. The Plum Creek PUD rules are designed: (i) to allow development which is harmonious with nearby areas; (ii) to enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance; (iii) to provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs; (iv) to encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods; (v) to facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment; (vi) to provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and (vii) to require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development. Toward these ends, rezoning of and development under this district will be permitted only in accordance with the city's comprehensive plan and the Plum Creek PUD master plan, set forth as "exhibit A" attached hereto, prepared and approved in accordance with the provisions of this ordinance.

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(B) *Mixed use development.* The Plum Creek PUD district shall include and allow for compatible mixed uses such as compatible residential, commercial and/or industrial, within a project within the boundaries of a mixed use district, in order to provide the flexibility required for a well-designed and innovative development that will conserve, develop, protect and utilize to their best use the natural resources of the area in a manner that ensures the safe, orderly and healthy development and expansion of the city. In order to promote such development, the PUD may be comprised of a combination of the following PUD districts: (a) residential, (b) neighborhood commercial, (c) commercial, (d) mixed-use development, (e) employment, (f) light industrial, and (g) open space. The outer boundary of the Plum Creek PUD zoning district and the varied PUD districts shall be shown on a map designated as the "Plum Creek PUD official zoning map." Said district map which will include a descriptive legend and percentage of the area for each PUD district which will comprise the Plum Creek PUD, and all notations, references, and other information shown thereon, shall be adopted by ordinance.

(C) *Flexible planning.* When considering a PUD, the unique nature of each proposal for a PUD may require, under proper circumstances, the departure from the strict enforcement of certain present codes and ordinances, e.g., without limitation, the width and surfacing of streets and highways, lot size, parking standards, set backs, alleyways for public utilities, signage requirements, curbs, gutters, sidewalks and street lights, public parks and playgrounds, drainage, school sites, storm drainage, water supply and distribution, sanitary sewers, sewage collection and treatment, single use districts, etc. Final approval of a PUD by the city council shall constitute authority and approval for such flexible planning to the extent that the PUD, as approved, departs from existing codes and ordinances.

Sec. 2. Zoning application for Plum Creek PUD development.

(A) Submittal, review and approval of application for Plum Creek PUD zoning.

(1) Application for zoning. The owner or applicant shall submit an application for establishing the Plum Creek PUD which shall consist of the following:

- (a) A development agreement for the Plum Creek PUD approved by the city Council;
- (b) A capital improvements plan for the Plum Creek PUD approved by the city council for the Plum Creek PUD, if appropriate;
- (c) A master plan for the Plum Creek PUD approved by the city council for the Plum Creek PUD;
- (d) A legal description of all the property within the boundaries of the property identified as the Plum Creek PUD;
- (e) Topographical information showing the contour lines within the PUD; and
- (f) Vicinity sketches or maps of the PUD which reflect the locations of infrastructure and other requested information not included in items (a) through (e) herein.

(2) The application for zoning of the Plum Creek PUD may not be approved until the city council has approved the development agreement, capital improvements plan, if appropriate, and master plan for the Plum Creek PUD.

(3) Procedures. The application for a PUD shall be submitted to the city secretary who shall file the same with the chairman of the planning and zoning commission. The city council and the commission shall conduct a joint public hearing to consider such application. Notice of the public hearing before the planning commission and city council shall be given in the manner the notice is required to be given under state law. The decision of the planning commission on an

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application for a PUD shall be forwarded to the city council as a recommendation to grant, with or without conditions, or to deny. The city council's approval of the Plum Creek PUD shall designate and define the boundaries of the PUD and include such conditions as the city council finds are necessary to secure and protect the public health, safety, and general welfare of the PUD and the city.

(4) Approval of a Plum Creek PUD master plan by the city council shall be deemed an expression of approval of the general layout submitted on the Plum Creek PUD master plan as a guide to the installation of major streets, and to the proposed location and categories of land uses (e.g., residential, commercial, industrial).

(B) Criteria for review of PUD zoning application.

(1) Names and address of the developer, record owner, engineer and/or land planner.

(2) Proposed name of the PUD which shall not have the same spelling as or be pronounced similar to the name of any other PUD or subdivision located within the city or within five miles of the city.

(3) Names of the owners of contiguous parcels of land.

(4) Description, by field notes, of the proposed PUD.

(5) Approximate location of proposed land use boundary lines, indicated by heavy lines, and the approximate acreage of the land uses (if such information is available).

(6) Existing sites as follows:

(a) The location, names and description of any and all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the PUD, or intersecting, or contiguous with its boundaries or forming such boundaries.

(b) The location, description and names of existing or recorded residential lots, parks, public areas, permanent structures and other sites within or contiguous with the PUD.

(c) The approximate location, and description, and flow line of existing watercourses and drainage structures within the PUD.

(d) Regulatory flood elevations and boundaries of floodprone areas, including flood ways, if known, within or contiguous with the PUD.

(e) The approximate location of proposed major streets, parks, other public areas, reservations, easements or other rights-of-way, and other sites within the PUD (to the extent such information is available).

(f) A general plan for sewage disposal within the PUD (to the extent such information is available).

(g) Date of preparation, scale of plan and north arrow, for the PUD.

(h) Topographical information for the PUD shall include contour lines on a basis of 20 vertical feet in terrain with a slope of two percent or more.

(i) Location of city limits lines, the outer border of the city's extraterritorial jurisdiction and the PUD boundaries.

(j) Vicinity sketches or maps of the PUD at a scale of not more than 600 feet to an inch which shall show approximate location of proposed major streets, the ultimate destination of water main and possible storm sewer, and sanitary sewer systems.

(k) Any applicable fee established by city ordinance.

(l) The capital improvements plan which demonstrates projected dwelling intensity for uses within the PUD.

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(m) Identify intended uses of land within the Plum Creek PUD boundary, in accordance with the PUD districts described herein. Exact building locations, and heights need not be shown on the land use plan for the Plum Creek PUD so long as all areas within which buildings may be constructed or maintained are specifically within required setback lines and height limitations. Provided, however, that the development of each such district shall require the approval of a subdivision plat and an MXD PUD district shall also require the submittal, review and approval, by the city council of a specific site plan for the MXD PUD district setting forth the specific uses of the tracts within the district, in accordance with the process set forth herein in article II, part A, section 4(D).

(n) Within the Plum Creek PUD, the applicable site development regulations for each PUD district shall be described in the appropriate PUD district subsection in this ordinance.

(o) The Plum Creek PUD master plan shall identify the boundaries and location of each PUD district.

Sec. 3. Application process for amendment to the Plum Creek PUD master plan.

The following information shall be submitted by the applicant for an amendment to the Plum Creek PUD master plan or for a change in use within the Plum Creek PUD.

(A) Name and address of the owner and applicant.

(B) Address and legal description of the property.

(C) If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner of the property.

(D) Proposed amendment for development. The proposed changes to the Plum Creek PUD master plan for the Plum Creek PUD amendment shall consist of (i) a proposed land use map for the area to be amended, and (ii) any requested waivers from requirements of city ordinances applicable to development.

(E) The amendment to the Plum Creek PUD master plan showing the following information:

(1) The date, scale, north point, title, name of owner, and name of person preparing the amendment application for the Plum Creek PUD master plan.

(2) The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks, watercourses, and location and size of existing 100-year floodplains.

(3) The location, height, and intended use of existing and proposed land uses on the site, and the approximate location of existing buildings on abutting sites within 50 feet.

(4) The number of existing and proposed on-street and off-street parking and loading spaces, and a calculation of applicable minimum requirements.

(5) Areas with an average slope greater than 15 percent.

(6) The relationship of the site and the proposed use to surrounding uses, including pedestrian and vehicular circulation, current use of nearby parcels, and any proposed off-site improvements to be made.

(F) Any applicable fee established by the city council in Ordinance No. 293, as amended.

(G) The dwelling intensity and lot sizes of any residential areas being amended; and the lot sizes and locations of commercial and industrial uses within the amended Plum Creek PUD master plan, which may be mixed uses or a combination of uses if and as permitted within the regulations for such district.

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- (H) Areas proposed to be used for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.
- (I) A copy of all agreements, provisions or covenants which govern the use, maintenance and continued protection of the amended Plum Creek PUD and any of its common open space.
- (J) A representation of the general use character of land adjacent to the amended Plum Creek PUD and within 200 feet.
- (K) Identify intended uses of land within the boundary of the amended Plum Creek PUD to a depth of 100 horizontal feet.
- (L) An analysis of traffic patterns, street areas, drainage, utilities, and maintenance of public spaces. Exact building locations need not be shown on the amended Plum Creek PUD master plan so long as all areas within which buildings may be constructed or maintained are specifically within required building setback lines.
- (M) Development designed and intended to be constructed in phases or stages shall be identified by the applicant by plans that clearly identify the particular phases or stages of the proposed development. The applicant shall include the proposed dates for the amended phased development.
- (N) If the amendment includes area or land previously subdivided, then in such event the proposed use of each lot shall be shown on such plat.

Sec. 4. Additional development and amendment guidelines for Plum Creek PUD.

(A) *General development requirements.* The following requirements of this subsection apply to development of any use within the Plum Creek PUD district.

(1) Environmental features: The natural topography, soils, environmental features, waterways and vegetation should be conserved and used where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities. To enhance the living and working environment, buffer zones, greenbelt parks and open space areas should be provided within each phase of the Plum Creek PUD where practical.

(2) Street facilities: All streets shall provide free movement for safety and efficient use within the development. Local streets shall provide access within the PUD in a manner that discourages through traffic and provides for convenient accessibility to parking areas serving each use. Collector streets shall be designed and located so that future urban development will not require conversion of the collector street to an arterial street.

(3) Non-vehicular facilities: Bicycle, vehicular and pedestrian passageways shall be provided where appropriate. A system of walkways and bicycle paths connecting buildings, common open spaces, recreation areas, community facilities, and parking areas should be provided and appropriately lighted for night use, where practical.

(4) The uses of churches; facilities owned and operated by the federal government, the state and political subdivisions thereof; schools and educational institutions; fire stations; public utilities; athletic fields, sports facilities, playgrounds, recreational center and swimming pools; home occupations; and greenbelt, certain open space, and recreational areas shall be allowable uses in each PUD district. An appropriate site should contain adequate space for required off-street parking and buffering.

(B) *General regulations.* Within the Plum Creek PUD, the applicable regulations for each PUD district shall be described in the corresponding PUD district list of uses and site development

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regulations. A PUD district list of uses may also include any other lawful land use as determined by the city council.

(C) *Substantial amendment to Plum Creek PUD.* A substantial amendment to the Plum Creek PUD master plan shall be effective only if approved by the planning commission and the city council. An application for a substantial amendment to the adopted Plum Creek PUD master plan shall be made to the planning commission and the city council for consideration. For purposes of this subsection, the following are substantial amendments to the adopted Plum Creek PUD master plan:

- (1) Adding land area to, or otherwise including more land, in the Plum Creek PUD;
- (2) Including a more intense land use not previously permitted in the Plum Creek PUD, or including a more intense use permitted in the Plum Creek PUD in an area for which such use is not shown on the Plum Creek PUD master plan;
- (3) Amending any site development regulation established by the adopted Plum Creek PUD master plan;
- (4) Altering a land use adjacent to a platted single-family residential tract to a more intense land use than was previously approved;
- (5) Amending any condition of approval of or approved variance to the Plum Creek PUD;
- (6) Increasing the land use intensity within any phase of the Plum Creek PUD without a corresponding and equivalent decrease in some other portion of the Plum Creek PUD; or
- (7) Providing for an incompatible use to abut any other planned use, except as set forth on any zoning map or plat applicable to the Plum Creek PUD and approved by the city council.

If the city engineer determines a proposed amendment to the adopted Plum Creek PUD master plan is not a substantial amendment, the city engineer may approve the amendment within 30 days of its submittal without planning commission or city council action; provided that a subdivision plat for such area has been approved by the commission and city council and such proposed amendment is not inconsistent with the approved master plan, or such approved plat or plats and is a "plat amendment" pursuant to section 9(c) of the Plum Creek PUD subdivision ordinance. An application to amend the adopted Plum Creek PUD master plan pursuant to this subsection shall include all applicable requirements established by article II, part C.

(D) *Administrative site plan review process.* The applicant shall submit a proposed site plan for the proposed development of any property within and in compliance with the requirements of any PUD district, except the MXD PUD district, to the city engineer for his review and approval.

- (1) The proposed site plan shall show the proposed development of the property on tracing paper or tracing lined paper, 24 [inches] by 36 inches in size, or suitable equal approved by the city engineer.
- (2) The site plan shall include the following information:
 - (a) Date, scale, north point, title, name of person preparing the plan;
 - (b) Location of existing boundary lines and dimensions of the tract;
 - (c) Center line of existing watercourses, drainage features, and location and size of existing and proposed streets, roads, and alleys;
 - (d) Location and size, to the nearest one-half foot, of all proposed buildings and land improvements; and
 - (e) Clear designation of area to be reserved for off-street parking, the location and size of points of ingress and egress, and the ratio of parking space to floor space.

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- (3) In reviewing the proposal site plan, the city engineer shall consider the following factors:
- (a) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;
 - (b) Safety from fire hazard and measures for fire control;
 - (c) Protection of adjacent property from flood or water damage;
 - (d) Noise-producing elements, glare of vehicular and stationary lights, and effect of such lights on the established character of the neighborhood;
 - (e) Location, lighting, types of signs, relation of signs to traffic control, and adverse effect on adjacent properties;
 - (f) Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhoods;
 - (g) Adequacy of parking, as determined by requirements of this ordinance for off-street parking facilities in the use district in which the site is located, location of ingress and egress points for parking and off-street loading spaces, and protection of the public health by surfacing of all parking areas to control dust;
 - (h) Compliance with permitted uses in the PUD district, the proposed uses and their compatibility with, and similarity to, the uses permitted in the PUD district in which the site is located; and
 - (i) Such other measures as will secure and protect the public health, safety, morals and general welfare.

The city engineer shall approve the proposed site plan within 30 days of submittal if it complies with this ordinance, all PUD district requirements and the subdivision plat approved by the commission and city council. The applicant may appeal the decision of the city engineer to the planning commission within ten days of his determination. The planning commission shall review and consider the applicant's appeal within 30 days of the filing of the appeal. The applicant may, within ten days of the commission's determination, appeal the commission's decision to the city council. The city council shall review and consider the applicant's appeal within 30 days of the filing of the appeal.

(E) *MXD site plan review process.* The applicant shall submit a proposed site plan for an MXD PUD district to the planning commission and to the city council for their review and approval. Except for R1 and R2 Development within a MXD use district which shall be submitted and reviewed administratively. The proposed site plan shall show the following information:

- (1) The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks and watercourses.
- (2) The location, height, and intended use of existing and proposed land uses and the ratios thereof on the site, and the approximate location of existing buildings on abutting sites within 50 feet.
- (3) The number of proposed off-street and on-street parking and loading spaces, and a calculation of applicable minimum requirements for parking and loading spaces.
- (4) The relationship of the site and the proposed use to surrounding areas including pedestrian and vehicular circulation.
- (5) The dwelling intensity of any residential areas, and the lot sizes and locations of any other uses within the MXD PUD district.
- (6) A representation of the general use and character of land adjacent to the MXD PUD district within 200 feet.

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- (7) Areas proposed to be used, conveyed, dedicated or reserved for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.
- (8) A copy of all agreements, provisions or covenants which govern the use, maintenance and continued protection of the MXD PUD district and any of its common open space.
- (9) Identify intended uses of all land within the MXD PUD district.
- (10) A general description of the proposed development within the MXD PUD district and an analysis of traffic patterns, street areas, drainages, utilities, and maintenance of public spaces. Exact building locations need not be shown on the site plan so long as all areas within which buildings may be constructed or maintained are specifically within required building setback lines.

The planning commission and the city council shall review the proposed site plan and approve it if it complies with all the site development regulations set forth in this ordinance for an MXD PUD district.

ARTICLE II. ZONING DISTRICTS AND BOUNDARIES
PART B

Sec. 1. Establishment of districts and boundaries.

(A) The following PUD districts are established for use, directly or by reference, within the Plum Creek PUD, as appropriate. The City of Kyle, Texas hereby establishes the following PUD districts for the purpose of regulating and restricting the height and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and which shall be known as:

- (1) "OS" open space PUD district
- (2) "R-1" residential PUD district
- (3) "R-2" residential PUD district
- (4) "R-3" multi-family residential PUD district
- (5) "NC" neighborhood commercial PUD district
- (6) "C" commercial PUD district
- (7) "MXD" mixed use development PUD district
- (8) "EMP" employment PUD district
- (9) "LI" light industrial PUD district

(B) The boundaries of any PUD districts described above, if established within the boundaries of the Plum Creek PUD shall be shown on a map designated as the Plum Creek PUD official zoning map, of the City of Kyle, Texas.

(1) Said district map and all notations, references, and other information shown thereon shall be adopted by ordinance. Said map shall, on its face, be identified and verified in the following manner: It shall bear the title "Plum Creek PUD Official Zoning Map, City of Kyle, Texas;" it shall bear the date of passage of the Plum Creek PUD zoning ordinance adopting same; it shall bear the names of the city council and all members of the zoning commission; and it shall be attested by the signatures of the mayor and the city secretary. The original of said map, properly attested, shall be kept on file in the office of the city secretary, and a replica thereof shall be produced upon paper in such reduced scale as will permit such replica copy being attached to the ordinance immediately following transcription of the ordinance establishing such district.

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(2) Approved zoning changes shall be entered on the Plum Creek PUD official zoning map by the city secretary and each change shall be identified on the map with the date and number of the ordinance making the change.

(3) No change of any nature shall be made on the Plum Creek PUD official zoning map, or matter shown thereon, except in conformity with the procedures set forth in this ordinance. Any unauthorized change by any person or persons shall be considered a violation of this ordinance and punishable under Ordinance No. 301.

(4) This ordinance, which shall be located in the office of the city secretary, shall be the final authority as to the current zoning status of land, buildings and other structures in the Plum Creek PUD of the city. The Plum Creek PUD zoning ordinance and Plum Creek PUD official zoning map shall be available to the public at all hours when the city office is open to the public.

(5) Replacement of Plum Creek PUD official zoning map. In the event that the Plum Creek PUD official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and/or number of changes and additions, the city council may, by resolution, adopt a new Plum Creek PUD official zoning map, which shall supersede the prior official Plum Creek PUD zoning map. The new official Plum Creek PUD zoning map may correct drafting or other omissions in the prior official Plum Creek PUD zoning map, but no such corrections shall have the effect of amending the original Plum Creek PUD official zoning map or any subsequent amendment thereof. The new Plum Creek PUD official zoning map shall be identified by the city secretary, and shall bear the seal of the city and date under the following words:

"This is to certify that this official Plum Creek PUD zoning map supersedes and replaces the Plum Creek PUD official zoning map adopted (date of adoption of map being replaced) as part of ordinance of the city."

(6) The following shall be appended at the end of the official map:

ADOPTED BY THE CITY COUNCIL of the City of Kyle, Texas by Ordinance No.

_____ passed finally and approved on _____ 19[20]_____.

City Secretary Mayor

(C) The districts and district boundaries shown on the Plum Creek PUD official zoning map may only be amended in the manner provided by Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.], and such process shall be applicable to all MXD districts.

Sec. 2. Interpretation of district boundaries.

(A) Where uncertainty exists with respect to the boundaries of any of the aforesaid PUD districts as shown on the Plum Creek PUD official zoning map, the following rules shall apply in the determination of the boundaries of any district:

(1) Whenever any street, alley, or other public way is lawfully vacated by the city council of the city, the PUD district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacated area and thereafter all land included in said vacated area shall be subject to all applicable regulations of the extended PUD districts.

(2) Where PUD district boundaries are indicated as approximately following the centerlines of streets or highways, street lines or highway right-of-way lines shall be construed to extend to said boundaries.

(3) Where PUD district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

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- (4) Boundaries indicated as approximately following city limits shall be construed as following such city limits lines as they existed on the date such map boundaries were adopted.
- (5) Boundaries indicated as following shorelines shall be construed to follow such shorelines. Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed as following such centerlines as existed as of the date of the map approval.
- (6) Boundaries indicated as following railroad lines shall be construed to be midway between the rails of the main line.
- (7) Where PUD district boundaries are so indicated that they are approximately parallel to the centerlines or street lines of streets, or the centerlines of right-of-way lines of highways, such PUD district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Plum Creek PUD official zoning map. If no distance is given, such dimension shall be determined by the use of the scale on said Plum Creek PUD zoning map.
- (8) On property where the above methods cannot be applied, the PUD district boundary lines on the Plum Creek PUD zoning map shall be determined by use of the scale appearing on the map.
- (9) Where the streets or alleys on the ground differ from the streets or alleys as shown on the Plum Creek PUD district map, the streets or alleys on the ground shall control.
- (10) Where physical or cultural features existing on the ground are at variance with those shown on the Plum Creek PUD official zoning map, or in other circumstances not covered by (1) through (9) above, the board of adjustment shall interpret the PUD district boundaries.

Sec. 3. Compliance with the regulations.

Except as hereinafter specifically provided or otherwise authorized in this ordinance:

- (A) Any use of the land not specifically authorized by the terms of this ordinance is prohibited, unless otherwise approved by the city council.
- (B) No building shall be erected, converted, enlarged, reconstructed, moved into, structurally altered, or used, except for a use permitted in the PUD district in which such building is located and as set forth on the approved site plan if applicable, unless otherwise approved by the city council.
- (C) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered to exceed the height limit herein established for the PUD district in which such building is located, or is proposed to be located.
- (D) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered except in conformity with the site development and performance standards of the PUD district in which such building is located, or is proposed to be located, unless otherwise approved by the city council in a PUD district.
- (E) The minimum yards, parking spaces and open spaces, including lot areas required by this ordinance for each and every building existing at the time of passage of this ordinance, or for any building hereafter erected, shall not be encroached upon or considered as part of the yard or parking space or open space required for any other building, nor shall any lot area be reduced below the requirements of this ordinance for the district in which such lot is located, unless otherwise approved by the city council.
- (F) Every building hereafter erected or structurally altered shall be on a lot as herein defined, and in no case shall there be more than one main building on one lot except as otherwise provided in this ordinance.

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(G) No person shall erect, excavate, construct, or proceed or continue with the erection or construction of any building or structure or add to, enlarge, move, improve, alter, repair, convert, or demolish any building or structure or cause the same to be done in any area of the city except as permitted by city ordinance or approved by the city council.

(H) No building or structure shall be erected, installed or moved on to or used which was previously built, erected or installed at a different location, except as permitted by ordinances of this city.

(I) The uses of churches; facilities owned and operated by the federal government, the state and political subdivisions thereof; schools and educational institutions; fire stations; public utilities; athletic fields, sports facilities, playgrounds, recreational center and swimming pools; greenbelt, certain open space and recreational areas; and parking lots associated with all of these uses shall be allowable uses in each PUD district set forth in this ordinance. An appropriate site should contain adequate space for required off-street parking and buffering.

ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS
PART C

Sec. 1. PUD district regulations and performance standards.

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

- (a) Churches;
- (b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;
- (c) Schools and educational institutions;
- (d) Fire stations;
- (e) Public utilities;
- (f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;
- (g) Greenbelt and recreational areas; and
- (h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

Sec. 2. "OS" open space PUD district.

(A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density, expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

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(B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:

- (1) Cemeteries (with conditional use permit issued by the city council);
- (2) Conservation areas;
- (3) Golf courses;
- (4) Outdoor recreational and athletic facilities;
- (5) Outdoor swimming pools;
- (6) Parks, playgrounds and playfields;
- (7) Wildlife sanctuaries;
- (8) Outdoor performance stages and amphitheaters;
- (9) Streams, lakes, impounded waterways, or their drainageways; and
- (10) Wetlands.

(C) *[Secondary uses.]* The following uses shall be permitted as secondary uses in this "OS" open space PUD district:

- (1) Club houses and community centers.
- (2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:
 - (a) Retail sales and services operated as part of a golf course, recreational or athletic facility.
 - (b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.
 - (c) Food and beverage sales, including alcoholic beverages.
 - (d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.
 - (e) Caretaker residence.
 - (f) Maintenance buildings required to house equipment and material to maintain the site.
- (D) *Site development regulations.* Use regulations in the "OS" open space PUD district.
 - (1) Maximum height of buildings: 35 feet.
 - (2) Density - maximum floor area shall not exceed 0.1.
 - (3) Lot size - minimum lot area for any building: 3,500 square feet.
 - (4) Lot width - minimum lot width: 35 feet.
 - (5) Front yard - minimum required building setback: 15 feet.
 - (6) Side yard - minimum required building setback: 10 feet.
 - (7) Rear yard - minimum required building setback: 10 feet.
 - (8) Garages shall either be attached or detached and accessible from a public or private street or alley.

Sec. 3. "R-1" residential PUD district.

(A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.

(B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:

- (1) The following uses that are permitted uses in the "OS" open space PUD district:
 - (a) Wetlands;

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- (b) Conservation areas;
- (c) Golf courses;
- (d) Outdoor recreational and athletic facilities;
- (e) Outdoor swimming pools;
- (f) Parks, playgrounds and playfields;
- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Single family dwellings for residential use.
- (3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
- (4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
- (5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
- (6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:
 - (a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.
 - (b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.
- (7) Residential accessory dwelling units, subject to the following site development requirements:
 - (a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:
 - (i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.
 - (ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.
 - (iii) No more than one accessory dwelling unit per lot is allowed.
 - (iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.

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- (v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.
- (vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:
- (A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.
- (B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.
- (C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.
- (D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.
- (E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.
- (F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.
- (C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:
- (1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.
- (2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.
- (3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.
- (4) *Maximum height.* No building shall exceed 35 feet in height.
- (5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
- (6) *Minimum setbacks.*
- (a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.

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- (b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.
- (c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.
- (d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.
- (7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

SCHEDULE A

TABLE INSET:

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE

SCHEDULE B

TABLE INSET:

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

Sec. 4. "R-2" residential PUD district.

(A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential and courtyard uses permitted under residential standards.

(B) *Permitted uses.*

(1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:

(a) The following uses that are permitted uses in the "OS" open space PUD district:

- (i) Wetlands;
- (ii) Conservation areas;
- (iii) Golf courses;
- (iv) Outdoor recreational and athletic facilities;

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- (v) Outdoor swimming pools;
 - (vi) Parks, playgrounds and playfields;
 - (vii) Wildlife sanctuaries;
 - (viii) Streams, lakes, impounded waterways, or their drainageways; and
 - (b) Any uses permitted in "R-1" residential PUD district.
 - (c) Duplexes.
 - (d) Medium density single-family detached residential.
 - (e) Single family attached residential.
 - (g) Courtyard(2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.
 - (C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:
 - (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
 - (3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:
 - (a) Alternative No. 1:
 - (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.
 - (ii) Minimum lot width: 50 feet along the front property line.
 - (iii) Maximum dwelling units per lot: Two dwelling units.
 - (iv) Maximum height. No building shall exceed 35 feet.
 - (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
 - (b) Alternative No. 2:
 - (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.
 - (ii) Minimum lot width: 60 feet along the front property line.
 - (iii) Maximum dwelling units per lot: Two dwelling units.
 - (iv) Maximum height. No building shall exceed 35 feet.
 - (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
- Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).
- (c) Minimum setbacks:
 - (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

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(ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:

(i) Garages shall be either attached or detached and accessible from a public or private street, or alley.

(ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit. Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.

(4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:

(a) Minimum lot size: 3,600 square feet.

(b) Minimum lot width: 35 feet. (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.

(d) Maximum height. No building shall exceed 35 feet.

(e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.

(f) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than 8 feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.

(ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than five (5) feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(g) Garages shall be either attached or detached and accessible from a public or private street, or alley.

(5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.

(a) Minimum lot size: 2,500 square feet.

(b) Minimum lot width: 25 feet.

(c) Maximum dwelling units per lot: No more than one dwelling unit per lot.

(d) Maximum height: 35 feet.

(e) Minimum setbacks:

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- (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.
- (ii) Side yard. No setback required.
- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (f) Garages or carports shall either be attached or detached and accessible from a public or private street or alley.
- (6) The site development regulations set forth below shall be exclusively applicable to Courtyard Residential.
 - a. Minimum Lot size: 2,000 sq. ft.
 - b. Minimum Lot Width: None
 - c. Maximum dwelling units per lot: One (1) principle dwelling unit and (1) accessory dwelling unit.
 - d. Maximum Height: 35'
 - e. Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.
 - f. Minimum Setbacks:
 - i. Front yard: there shall be a front yard setback having the depth of not less than 4' from the courtyard walk to the front line of the building.
 - ii. Side yard: there shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than 8' from the property at public or private streets to the side line pf the building.
 - iii. Rear yard: there shall be no rear yard setback required
 - g. Garages and Carports: may either be attached or detached and accessible from private street or alley.
 - h. Each Courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).
 - i. I, Each Courtyard shall have a gathering place with a minimum of 4 chairs or 2 benches.
 - j. j. The Courtyard sidewalk(s) shall be the following minimum width for at least 70% of the length:
 - k. i. Single sidewalk: 5'
 - l. ii Double sidewalk: 4'-6"
 - m. Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of 5' and a minimum length of 7'.
 - n. Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24'
 - o. Minimum separation of dwelling units at street: 16'
 - p. Minimum separation of dwelling units at rear of courtyard: 10'

Sec. 5. "R-3" multi-family residential PUD district.

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(A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.

(B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

- (a) Wetlands;
- (b) Conservation areas;
- (c) Golf courses;
- (d) Outdoor recreational and athletic facilities;
- (e) Outdoor swimming pools;
- (f) Parks, playgrounds and playfields;
- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses.

(a) Single family dwelling for residential use, as described in Article II, Part C, Section 3 of this ordinance.

(b) Residential accessory dwelling units.

(c) Apartment buildings.

(d) Convalescent and hospice homes, assisted living, and retirement housing.

(e) Condominiums.

(C) *Site development regulations.*

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.

(3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.

(a) Minimum lot size: 6,000 square feet.

(b) Minimum lot width: 50 feet.

(c) Maximum dwelling units per lot: 36 units per acre.

(d) Maximum height: ~~40~~ 60 feet. A twenty-five (25) foot compatibility setback shall be required adjacent to and R-2 development within the R-3 use which limits maximum building height to forty (40) feet.

(e) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

(ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.

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- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (f) Garages shall either be attached or detached and accessible from a public or private street, or alley.
- (4) The site development regulations set forth below shall be exclusively applicable to condominium residential.
 - (a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

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Sec. 6. "NC" neighborhood commercial PUD district.

(A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.

(B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
 - (a) Wetlands;
 - (b) Conservation areas;
 - (c) Golf courses;
 - (d) Outdoor recreational and athletic facilities;
 - (e) Outdoor swimming pools;
 - (f) Parks, playgrounds and playfields;
 - (g) Wildlife sanctuaries;
 - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in "R-1" residential PUD district, except the following:
 - (a) Single family dwelling for residential use.
 - (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (5) Grocery stores or specialty food store.
- (6) Barber and/or beauty shop.
- (7) Daycare services and child development centers.
- (8) Clothes cleaning agency.

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- (9) Laundromat.
- (10) Video rental store.
- (11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.
- (12) Pharmacy.
- (13) Electronic service center providing photocopying, faxing, and computer service.
- (14) Computer or communications network access.
- (15) Mail box rental and package shipping/receiving store.
- (16) Accessory buildings customarily appurtenant to a permitted use.
- (17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.
- (18) Neighborhood automobile service stations.
- (19) Bed and breakfast establishment, subject to the following requirements:
 - (a) A maximum of four guest bedrooms shall be provided.
 - (b) Paying guests shall not stay more than seven consecutive days.
 - (c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.
 - (d) Only one sign is permitted, and it shall be non-illuminated, no greater than two square feet, and affixed flush with the wall of the dwelling.
 - (e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.
 - (f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.
- (20) Rooming and boarding houses.
 - (C) *Site development regulations.*
 - (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
 - (3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
 - (4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
 - (5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.
 - (a) Minimum lot size: 5,000 square feet.
 - (b) Minimum lot width: 50 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed ~~35~~ 50 feet in height. A twenty-five (25) foot compatibility setback shall be required

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adjacent to and R-2 development within the neighborhood commercial (NC) use which limits maximum building height to thirty-five (35) feet.

(e) Minimum setbacks:

(i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.

(ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.

(iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.

(D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.

(E) *Additional site development requirements.*

(1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.

(2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.

(3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.

(4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.

(5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.

(6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.

(7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

Sec. 7. "C" commercial PUD district.

(A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.

(B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

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- (a) Wetlands;
 - (b) Conservation areas;
 - (c) Golf courses;
 - (d) Outdoor recreational and athletic facilities;
 - (e) Outdoor swimming pools;
 - (f) Parks, playgrounds and playfields;
 - (g) Wildlife sanctuaries;
 - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) The following uses that are uses permitted in the "R-1" residential PUD district:
- (a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
 - (b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
 - (c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
- (3) Antique shops.
 - (4) Art gallery.
 - (5) Auction sales.
 - (6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.
 - (7) Bakeries.
 - (8) Banks and savings and loan institutions.
 - (9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.
 - (10) Billiard and pool rooms.
 - (11) Books or stationery stores.
 - (12) Bowling alleys.
 - (13) Business, music, dance or commercial schools.
 - (14) Cafes, cafeterias, and restaurants.
 - (15) Camera shops and photographic supplies.
 - (16) Carpet and rug cleaners.
 - (17) Catering establishments.
 - (18) Cleaning and dry cleaning establishments.
 - (19) Clinics.
 - (20) Clothing stores.
 - (21) Craft and hobby shop, but without outside garage.
 - (22) Dance halls.
 - (23) Department, furniture, and home appliance stores.
 - (24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.
 - (25) Dry cleaners.
 - (26) Electrical appliance shops and repairs.
 - (27) Employment agencies.
 - (28) Florist shop, nursery, or greenhouses.

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- (29) Furniture, appliance stores, (sales and service).
- (30) Gasoline service stations.
- (31) Grocery stores.
- (32) Hardware, paint, and wallpaper stores.
- (33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.
- (34) Hotels.
- (35) Household and office furniture, furnishings, and appliance stores.
- (36) Ice cream or ice sales.
- (37) Laundries, laundrettes and Laundromats.
- (38) Jewelry and optical goods stores.
- (39) Meat markets.
- (40) Mortuaries.
- (41) Nursery or horticulture businesses.
- (42) Painting and decorating shops.
- (43) Pet shops or animal hospitals when conducted wholly within the enclosed building.
- (44) Photographers, or artists' studios.
- (45) Plumbing, heating, and roofing supply and workshops.
- (46) Printing shops.
- (47) Offices.
- (48) Radio and television stations (no towers).
- (49) Radio, television or electronic sales and service.
- (50) Recreation establishments.
- (51) Restaurants.
- (52) Retail stores and services.
- (53) Shoe sales and repair shops.
- (54) Sporting goods, novelty, or toy shops.
- (55) Tailor and dressmaking shops.
- (56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.
- (57) Telegraph and telephone service stations.
- (58) Temporary building incidental only to construction of a permitted use.
- (59) Theater, indoor.
- (60) Tire shop (no vulcanizing or retreading).
- (61) Variety stores.
- (C) *Site development regulations.*
 - (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.
 - (a) Minimum lot size: 4,000 square feet.
 - (b) Minimum lot width: 35 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3 1/2 stories or 50 feet.
 - (e) Minimum setbacks.

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- (i) Front yard: none.
- (ii) Side yard: none.
- (iii) Rear yard: none.
- (f) Maximum floor area ratio: 1.5 FAR of the lot area.

Sec. 8. "MXD" mixed use development PUD district.

(A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:

- (1) Provide a variety of employment opportunities and housing types;
- (2) Foster pedestrian and other non-motor vehicle activity;
- (3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and
- (4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

(B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
 - (a) Wetlands;
 - (b) Conservation areas;
 - (c) Golf courses;
 - (d) Outdoor recreational and athletic facilities;
 - (e) Outdoor swimming pools;
 - (f) Parks, playgrounds and playfields;
 - (g) Wildlife sanctuaries;
 - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:
 - (a) Single family dwelling for residential use.
 - (b) Residential accessory dwelling units.
 - (3) Any use permitted in the "R-3" multi-family residential PUD district.
 - (4) Any use permitted in the "NC" neighborhood commercial areas.
 - (5) Any use permitted in the "C" commercial PUD district.

(C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:

- (1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.
- (2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.

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- (3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.
- (4) Hotel or similar lodging facilities.
- (5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.
- (6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.
- (7) Offices.
- (8) Restaurants, delicatessens, cafes, and similar food service establishments.
- (9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.

(D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements.

- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
- (3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
- (4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.
- (5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (6) The following site development regulations shall be applicable to nonresidential development within the MXD area:
 - (a) Minimum lot size: 4,000 square feet.
 - (b) Minimum lot width: 35 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed ~~3-1/2 stories~~ 5 stories or ~~50~~ 65 feet. A twenty-five (25) foot compatibility setback shall be required adjacent to and R-2 development within the commercial use which limits maximum building height to 3 ½ stories or fifty (50) feet.
 - (e) Minimum setbacks:
 - (i) Front yard: none.
 - (ii) Side yard: none.
 - (iii) Rear yard: none.
 - (f) Maximum floor area ratio: 1.5 FAR of the lot area.

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(7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.

(8) Additional site development requirements.

(a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.

(b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.

(c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:

(i) Include street trees and parking area trees which are in scale with the development.

(ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.

(d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.

(e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.

(f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(Ord. No. 490, § 2, 2-20-2007)

Sec. 9. "EMP" employment PUD district

(A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.

(B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(21) Drapery and bedding manufacturers;

(22) Expressing, baggage, and transfer delivery services;

(23) Farm implement sales or repair;

(24) Food processing and dehydrating operations;

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- (25) Frozen food lockers;
 - (26) Furniture manufacturers and upholsterers;
 - (27) Garages;
 - (28) Ice cream and ice manufacturers and sales;
 - (29) Instrument and electronic component manufacturing;
 - (30) Lumber and building sales and storage;
 - (31) Machine shops;
 - (32) Machine and metal products shops;
 - (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
 - (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;
 - (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
 - (36) Rail-served industries consistent with uses indicated above;
 - (37) Sheet metal fabrication shop;
 - (38) Sign shops;
 - (39) Stone, marble, and granite grinding and cutting operations;
 - (40) Storage and warehouses;
 - (41) Storage of household goods;
 - (42) Taxi service stations;
 - (43) Temporary building incidental only to construction of a permitted use;
 - (44) Tire shops (retreading only);
 - (45) Tool and die shops;
 - (46) Warehouses; and
 - (47) Welding shops.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
 - (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
 - (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
 - (a) Minimum lot size: 5,750 square feet.
 - (b) Minimum lot width: 50 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
 - (e) Minimum setbacks.
 - (i) Front yard: none.
 - (ii) Side yard: none.
 - (iii) Rear yard: none.
 - (f) Maximum floor area ratio: 1.5 FAR of the lot area.

Sec. 10. - "LI" Light industrial PUD district

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(A) Purpose. This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.

(B) Permitted uses. The following uses shall be permitted uses in the "LI" light industrial PUD district:

- (1) Any use permitted in the "EMP" employment PUD district;
- (2) Agricultural implement sales and services;
- (3) Air conditioning and heating sales and services;
- (4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;
- (5) Artificial limb manufacturers;
- (6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;
- (7) Beverage bottling and distributing stations;
- (8) Blacksmith shops;
- (9) Book binding shops;
- (10) Box manufacturers;
- (11) Broom manufacturers;
- (12) Bus lines shops and garages;
- (13) Car wash;
- (14) Canvas goods fabrication;
- (15) Crating express storage;
- (16) Computer and computer parts manufacturers;
- (17) Hatcheries;
- (18) Clothing and dress manufacturers;
- (19) Craft and hobby shop with outside garage;
- (20) Creameries;
- (21) Drapery and bedding manufacturers;
- (22) Expressing, baggage, and transfer delivery services;
- (23) Farm implement sales or repair;
- (24) Food processing and dehydrating operations;
- (25) Frozen food lockers;
- (26) Furniture manufacturers and upholsterers;
- (27) Garages;
- (28) Ice cream and ice manufacturers and sales;
- (29) Instrument and electronic component manufacturing;
- (30) Lumber and building sales and storage;
- (31) Machine shops;
- (32) Machine and metal products shops;
- (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
- (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;

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- (35)Public utility substations and distributing centers, regulations centers, and underground holder stations;
- (36)Rail-served industries consistent with uses indicated above;
- (37)Sheet metal fabrication shop;
- (38)Sign shops;
- (39)Stone, marble, and granite grinding and cutting operations;
- (40)Storage and warehouses;
- (41)Storage of household goods;
- (42)Taxi service stations;
- (43)Temporary building incidental only to construction of a permitted use;
- (44)Tire shops (retreading only);
- (45)Tool and die shops;
- (46)Warehouses; and
- (47)Welding shops.

(C) *Site development regulations.*

- (1)Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2)Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (3)Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
- (4)The following regulations shall be applicable to the "LI" light industrial PUD district:
 - (a)Minimum lot size: 5,750 square feet.
 - (b)Minimum lot width: 50 feet.
 - (c)Minimum lot depth: 100 feet.
 - (d)Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
 - (e)Minimum setbacks.
 - (i)Front yard: none.
 - (ii) Side yard: none.
 - (iii) Rear yard: none.
 - (f) Maximum floor area ratio: 1.5 FAR of the lot area.

ARTICLE II. ADDITIONAL USE REGULATIONS
PART D

Sec. 1. Additional use, height and area regulations and exceptions applicable to PUD districts unless otherwise approved by the city council.

(A) *Accessory buildings.* No accessory building shall be constructed upon a lot until the construction of the main use building has been actually commenced. No accessory building shall be used unless the main use building on the lot is also being used.

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- (B) *Permits.* No building shall be erected, enlarged, moved onto a tract of land, structurally altered, or maintained unless and until there has been issued therefor a building permit in compliance with the applicable building ordinance of the city.
- (C) *Visibility at intersections in all districts.* On a corner lot in any PUD district, no improvements shall be erected, placed, planted, or allowed to grow in such a manner as to impair or obstruct the view, from any of the intersecting streets, of such intersection within a triangle defined by the property lines and a line joining two points located 20 feet back from the property lines intersection; except that fences, walls, and hedges may be permitted provided that such fences, walls and/or hedges do not impair vision from two feet to seven feet above the curblineline elevation.
- (D) *Minimum building plot.* No building plot shall have less stringent standards or dimensions than those prescribed for the respective PUD district in which such lot is located.
- (E) *Erection of more than one principle structure on a lot.* More than one structure housing a permitted principal use may be erected on a single lot or building lot only as specifically permitted by this ordinance, and yard and other requirements of this ordinance must be met for each structure as set forth for the PUD district in which such lot is located and the applicable site development regulations.
- (F) *Exceptions to height regulations.* The height limitations set forth in the ordinance do not apply to spires, belfries, cupolas, water tanks, ventilators, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.
- (G) *Structures to have access.* Unless otherwise approved by the city council, every building hereafter erected or moved shall be on a lot or building plot with direct access on a public street or alley, or with access to an approved private street. All structures shall be so located on lots or building plots as to provide safe and convenient access for servicing, fire protection, and the required on-site parking.
- (H) *Required yards.* Yards as required in this ordinance are open spaces on the lot or building plot on which a building is situated and which are open and unobstructed to the sky by any structure except as herein provided in this subsection 1(H). Notwithstanding any other provision of this ordinance: (i) normal yard structures may be located in a yard, including, for example, fences or walls, gateways, sidewalks, driveways, patios, flower beds, planters, water hydrants and irrigation structures, eaves, cornices, window sills, bay windows, architectural details, utility meters and structures, electrical boxes, heating and cooling equipment, flagpoles, lighting structures, swing sets and other play equipment, fountains, swimming pools, mail boxes, signs, moveable structures and similar items, and (ii) where specifically permitted by this ordinance on the rear half of the lot, accessory dwelling buildings, garage space and storage space may be located in the rear yard; provided that no building or structure shall be located within the area of any lot between a property line of such lot and the respective rear yard or side yard set back line.
- (I) *Rear yard required.* A yard which extends across the rear of the lot or building plot between the side property lines and having a minimum depth measured from the rear property line as specified for the district in which the building plot is located, is required unless otherwise prescribed in the appropriate PUD district.
- (J) *Side yard required.* A yard located on a lot or building plot which extends from the required rear yard to the required front yard having minimum width measured from the side property line as specified for the district in which the building plot is located, is required unless otherwise prescribed in the appropriate PUD district.

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(K) *Major recreational equipment.* For the purpose of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No such equipment shall be used for living, home occupation, or household purposes when parked or stored on a residential lot, or in any location not approved for such use.

(L) *Screening fences required.* Where there is a common side or rear lot line or lot lines between business, commercial or industrial land and developed residential areas, the owner of said business, commercial or industrial land shall construct a fence to screen residential lots from adverse influences as part of the normal construction of buildings dedicated to said nonresidential usage. Where there is a common side or rear lot line or lot lines between multifamily land and developed single-family residential land, the owner of the apartment land shall erect a fence that will properly screen adjacent residential land from adverse influences such as noise, vehicular lights, trespass, and other adverse influence as part of the normal construction of the apartment project. Such screening fences may be made of any material compatible with the surrounding area, but shall form a solid continuous screen between the residential and nonresidential land uses. In the case of rear lot lines such screening fence shall be continued from one side lot line along the rear lot line to the other side lot line. In the case of side lot lines such screening fence shall be continued from the rear lot line along the side lot line to the front setback line but no farther than a point 15 feet from the street right-of-way line. Each screen fence shall be maintained in good condition by the owner of said business, commercial or industrial project, for as long a time period as may be needed to protect adjacent residential land uses during the construction of said business, commercial, industrial or multifamily area. In the event that a permanent screen fence is erected, it shall be maintained by the property owner who constructs the fence.

(M) *Commercial use areas.* Site plans of all commercial and mixed use complexes and site plans of other large scale projects which would cause a considerable impact on the city's facilities shall be reviewed and approved by the city technical staff prior to the issuance of a building permit by the director of public works. Such review under this subsection shall be restricted to the review of such projects for compliance with this ordinance and the Plum Creek PUD subdivision ordinance and the impact of such projects on: the neighboring land and environment, the adequacy of the water and sewer facilities installed or to be installed to serve the site, flood control and drainage, traffic generation, proposed circulation patterns and implications to safety in the project area and the resultant impact of generation and circulation upon adjacent such traffic street systems. The building official or the developer of the project may refer the site plans to the city council prior to the issuance of a building permit for final resolution. No building permit application showing compliance with the applicable ordinances and regulations will be delayed more than 30 days pending resolution of such building permit request unless the building permit, when and if issued, shall require construction according to the approved site plan, construction plans and specifications.

(N) *Environmental regulations.* The following regulations are to control contamination of air, water, or the environment, and to safeguard the health, safety and welfare of the people.

(1) No machine, process or procedure shall be employed on any property within the Plum Creek planned unit development which result in, or if:

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- (a) Emission of smoke, dust, noxious, toxic or lethal gases are detectable beyond the perimeter of the property; materials are stored or accumulated in such a way that such materials may be carried by rainwater in natural drainage channels beyond the limits of the property; or materials which have discernible amounts of noxious, toxic, radioactive, oil or grease, wood or cellulose fibers, hair, feathers or plastic, or that have a pH factor above ten or below five, are stored on the property in a manner not authorized by law or to pose a nuisance or hazard to neighboring property or the public;
- (b) Vibration is discernible beyond the property line; or
- (c) Noise above the ambient noise level is discernible beyond the property line.
- (2) Drainage into the sanitary sewerage system shall conform to the city's requirements.
- (3) No stormwater drain, roof drain, or outside area drain shall empty into a sanitary sewer.
- (4) Flood plain. No dwelling, commercial or industrial building shall be permitted in the "intermediate flood plain" channel, as determined by the city. Buildings in the area between the delineated "intermediate flood plain" and the "standard flood plain" will be permitted only after such land is built up to an elevation of one foot above the "standard flood plain" elevation, and such land as so built up, when verified by the city engineer, will change the "standard flood plain" delineation accordingly.
- (O) *Temporary building and equipment.* Temporary buildings and equipment for uses incidental to construction work on premises are allowed in any zone but shall be removed upon the completion or abandonment of construction work.
- (P) *Sewage disposal systems.* Sewage disposal systems shall be in accordance with all applicable state, county and city codes and regulations.

Sec. 2. Parking regulations applicable to PUD districts unless otherwise approved by the city council.

- (A) *Parking and storage of certain vehicles.* Automotive vehicles or trailers not bearing current license plates and state motor vehicle inspection stickers, excluding racing cars, antique cars, and cars belonging to members of armed forces who are on active duty, shall be parked or stored on any residential area only in completely enclosed buildings. No vehicle, trailer or major recreational equipment shall be parked or stored on any lot except that it shall be enclosed in a building or parked on a driveway or a concrete, paved or stone pad installed for such purpose and subject to the requirements herein.
- (B) *Parking regulations.* Where any structure is erected, reconstructed or converted for any of the business or commercial uses permitted in this ordinance, designated on-street and off-street parking spaces shall be provided in a number not less than as provided in schedule C set forth hereinafter.
- (C) *[Non-residential handicap parking.]* Non-residential handicap parking requirements are a minimum of one space for under 50 parking spaces, then one additional space for over 50 parking spaces up to 100 spaces, and then one space per 100 spaces up to 500. Over 500 it is one percent of total parking spaces. Dimensional requirements are 12-foot width and 18-foot depth per handicap space.
- (D) *Handicapped parking.* The number, location, and design of handicapped parking spaces shall be as required by the building ordinance.

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(E) *Commercial use parking.* The motor vehicle parking areas shall be located and designed to facilitate safe and convenient pedestrian and bicycle movement to and from public sidewalks, streets, or transit stops. Ways to achieve this standard may include, but are not limited to:

- (1) Location and orientation of buildings closer to the street to minimize pedestrian and bicycle travel through a parking area;
- (2) Providing one or more raised walkways through the parking areas;
- (3) Providing one or more raised walkways protected by landscaping and parking bumpers, with area across vehicle aisles delineated by non-asphaltic material in a different color or texture than the parking areas;
- (4) Connecting on-site pedestrian walkways and bikeways to other existing pedestrian and bicycle circulation systems that serve adjacent commercial uses or residential areas.

(F) *Maximum parking.* The maximum number of parking spaces for a commercial use area shall not exceed 150 percent of the required parking.

(G) *Reduction in required parking.* The total number of required motor vehicle parking spaces for a nonresidential use may be reduced by five percent for each of the activities listed below provided by the owners or operators, up to a maximum ten percent reduction in the total number of motor vehicle spaces.

- (1) Participate in an area wide carpool/vanpool ride matching program for employees; designating at least ten percent of the employee motor vehicle parking spaces as carpool/vanpool parking and placing such spaces closer to the building than other employee parking;
- (2) Providing showers and lockers for employees who commute by bicycle;
- (3) Providing covered, secured bicycle parking racks or facilities;
- (4) Providing a transit facility that is approved by the local transit authority, and related amenities. Related amenities include, but are not limited to, a public plaza, pedestrian sitting areas, and additional landscaping.

(H) *Development and maintenance standards for off-street and on-street parking areas.* Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

- (1) An off-street parking area for more than five vehicles shall be effectively screened by a sight-obscuring fence, hedge or planting, on each side which adjoins a residential use or property situated in a residential area or the premises of any school or like institution.
- (2) Except for parking to serve residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents.
- (3) Access aisles shall be of sufficient width for vehicular turning and maneuvering.

(I) *[Off-street and on-street parking.]* Off-street and on-street parking for all uses not within the categories above shall be adequate to meet the anticipated needs and shall be determined by the city council using standards outlined for special exception and with a view towards providing adequate parking and carrying out the general scheme of the parking requirements herein set out.

(J) *[Special exception.]* The city council may grant a special exception to allow two or more uses to share parking spaces upon a showing that the particular uses in question will require parking at different times. Any spaces the council allows to be shared count toward the number of spaces each use must provide.

TABLE INSET:

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Schedule C	
Use	Number of Parking Spaces
Residential dwelling designed and used as single-family and two family residences and up	Two spaces for one bedroom and one-half for each additional bedroom
Efficiency	One space for each efficiency
Multifamily dwelling	1.5 spaces for one bedroom and 0.5 for each additional bedroom
Warehouses, manufacturing plants and other similar commercial establishments not catering to the general public	One space per 1,000 feet of gross floor area
Hotels, motels and similar transient accommodations	One space per bedroom and 1 space for each two employees, 1.1 spaces per bedroom, whichever is greater
Rest homes, hospitals, nursing homes, convalescent homes, sanitariums and similar uses	One space for each two employees, and 1 space for each four patients beds
Bars, cafes, restaurants, taverns, night clubs and similar uses	One spaces for every four seats provided for customers services, 1 space for each 100 feet of gross floor area whichever is greater
Banks, offices, financial lending institutions, gasoline stations, personal service shops, retail establishments, shopping centers and similar uses catering to the general public	Three and a half spaces for each 1,000 feet of gross floor area

(Ord. No. 541, § 1, 3-6-2008)

Sec. 3. Conditional use permits.

Any use not specifically enumerated in this ordinance may be allowed in any PUD district by conditional use permit under the following procedures:

(A) *Application.* Application for a conditional use permit shall be filed with the city secretary and shall be accompanied by:

(1) A site plan showing the intended development of the property for which such conditional use permit is being requested;

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(2) Payment of a fee equal to that as may be required for rezoning of the subject property under regulations then current; and

(3) A detailed written description of the proposed use, which written description shall include all relevant factors, including, but not limited to, utility requirements, projected employment, and nature of the proposed activity and products.

(B) *Public hearing before planning and zoning commission.*

(1) Within a reasonable time from such filing, the planning and zoning commission shall, after giving written notice in the same manner required for a planning and zoning commission hearing under section 211.006 through section 211.007, Local Government Code [V.T.C.A., Local Government Code §§ 211.006--211.007], hold a public hearing and forward a recommendation to the city council as to whether the conditional use permit should be granted or denied; and

(2) The planning and zoning commission, at its hearing on a conditional use permit, shall consider the application, the accompanying site plan and the written description, and may recommend approval or denial of the request, or recommend approval with such conditions as it may deem necessary to secure and protect the public health, safety, morals, and general welfare.

(C) *Public hearing before city council.* Upon receipt of a recommendation from the planning and zoning commission regarding a conditional use permit application, the city council shall, after giving written notice in the same manner required for a city council hearing for a zoning change under sections 211.006 and 211.007, Local Government Code, [V.T.C.A., Local Government Code §§ 211.006 and 211.007] hold a public hearing and grant or deny the application for such conditional use permit, or it may grant said special conditional use permit subject to such conditions as it may deem necessary to secure and protect the public health, safety, morals, and general welfare and to be compatible with, and/or similar to, the uses permitted in the PUD district in which the site is located.

(D) *Site plan.* The site plan accompanying the application for a conditional use permit shall show the proposed development of the property on tracing paper or tracing lined paper, 24 [inches] by 36 inches in size. The site plan shall give the following information:

- (1) Date, scale, north point, title, name of person preparing the plan;
- (2) Location of existing boundary lines and dimensions of the tract;
- (3) Center line of existing watercourses, drainage features, and location and size of existing and proposed streets, roads, and alleys;
- (4) Location and size, to the nearest one-half foot, of all proposed buildings and land improvements; and

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(5) Clear designation of area to be improved for off-street parking, the location and size of points of ingress and egress, and the ratio of parking space to floor space.

(E) *Factors to be considered.* In considering an application for conditional use permit, the planning and zoning commission and the city council, shall take the following factors into account:

(1) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;

(2) Safety from fire hazard and measures for fire control;

(3) Protection of adjacent property from flood or water damage;

(4) Noise-producing elements, glare of vehicular and stationary lights, and effect of such lights on the established character of the neighborhood;

(5) Location, lighting, types of signs, relation of signs to traffic control, and adverse effect on adjacent properties;

(6) Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhoods;

(7) Adequacy of parking, as determined by requirements of this ordinance for off-street parking facilities in the use district in which the site is located, location of ingress and egress points for parking and off-street loading spaces, and protection of the public health by surfacing of all parking areas to control dust;

(8) Compatibility with, and similarity to, the uses permitted in the PUD district in which the site is located;

(9) The adequacy and availability of utility services for such proposed use; and

(10) Such other measures as will secure and protect the public health, safety, morals and general welfare.

(D) A PUD district shall comply with all statutory requirements and such other requirements as may be reasonably determined by the city council.

Sec. 4. Non-conforming uses.

(A) *Use non-conforming on adoption of this ordinance.* The lawful use of land or buildings existing upon the effective date of this ordinance, although such use does not conform to the provisions hereof, shall be deemed a nonconforming use. Only nonconforming uses in existence

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on the effective date of this ordinance shall be subject to the terms and provisions of this subsection A.

(1) Such uses may be extended throughout such portions of the building as are arranged or designed for such use, provided no structural alterations, except those required by law or ordinance, are made therein. A nonconforming use of a building may be changed to a more restricted and limiting nonconforming use; provided such change is properly documented with the city. If such nonconforming use of building is voluntarily removed, the future use of such premises shall be in conformity with the provisions of this ordinance.

(2) In the event a nonconforming use of any building or premises is discontinued for a period of 270 days, the use of the same shall thereafter conform to the provisions of the district in which it is located. It shall not be construed to be a discontinuance of the nonconforming use if such use is discontinued for the purpose of making repairs or alterations to the building, or for offering the property for sale or lease, even if the premises are not so used for a period of longer than 270 days.

(3) A nonconforming use if changed to a conforming use or a more restricted nonconforming use, may not thereafter be changed back to a less restricted use than to which it was changed.

(4) The board of adjustment may issue a special use exception to extend the time when a nonconforming use may be allowed to continue, and may also allow it to be re-built, expanded or altered, upon a showing that the exception is necessary to allow a reasonable return on the investment in the affected property.

(B) *No new non-conforming use.* No building or structure shall be constructed or installed, and no use of property shall begin, within the Plum Creek planned unit development after the effective date of this ordinance, except that such building, structure and use shall be in conformity with this ordinance.

(C) *Uses becoming non-conforming on amendment.* If, by reason of amendment to this ordinance, the use of any property or building that began after the date of and in compliance with this ordinance, is hereafter transferred to a more restricted district by a change in the district boundaries, or the regulations and restrictions in any district are made more restrictive, the following provisions of this ordinance relating to the nonconforming use of buildings or premises shall apply to such building or premises first occupied or used after the effective date of this ordinance:

(1) Repairs and alterations may be made to such nonconforming building, provided that no structural alterations or extensions shall be made except those required by law or ordinance, unless the building is to be changed to a conforming use.

(2) Such nonconforming use shall not be extended or rebuilt in case of obsolescence or total destruction by fire or other cause. (i) In the case of partial destruction by fire or other causes not exceeding 50 percent of its value, the building permit authority shall issue a permit for

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reconstruction. (ii) If destruction is greater than 50 percent of its value, a building permit may be issued only to reconstruct the building for a use as a conforming use.

(3) In the event a nonconforming use of any building or premises is discontinued for a period of 270 days, the use of the same shall thereafter conform to the provisions of the district in which it is located. It shall not be construed to be a discontinuance of the nonconforming use if such use is discontinued for the purpose of making repairs pursuant to (C)(2)(i) herein.

ARTICLE III. ENFORCEMENT AND ADMINISTRATION

Sec. 1. Enforcement and administration--Administrative official.

(A) Except as otherwise provided in this ordinance or as approved by the city council, the permit issuing authority designated in the building ordinance shall administer and enforce this ordinance, including the receiving of applications, the inspection of premises and the issuing of building permits and no permit or certificate of occupancy shall be issued by him except where the provisions of this ordinance have been complied with.

(B) The permit authority or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

(C) Whenever any construction work is being done contrary to the provisions of this ordinance or the building ordinance, the permit authority shall serve notice in writing upon the owner or the contractor doing or causing such work to be done, or the agent of either, ordering such person to show cause why the work should not be ordered stopped. Any such person served with notice shall, within five days after service, show cause to the building inspector why such stop work order should not issue, and if such person shall fail to show good cause, then the building inspector may order the work stopped by notice in writing served upon such person, or agent, and any such person and all persons in privity with him shall forthwith stop and cause to be stopped such work until authorized by the building inspector to proceed with such work. Any stop work order shall be posted upon the work being done in violation of this ordinance. Provided, however, that the hearing provided for by this subsection may be dispensed with when, in the opinion of the building inspector, the work being done contrary to the provisions of this ordinance could cause imminent peril to life or property.

(D) Whenever any building or portion thereof is being used or occupied contrary to the provisions of this ordinance, the permit authority shall serve notice in writing upon any person using or causing such use or occupancy, or the agent of any such person, ordering such person to show cause why such use or occupancy should not be ordered discontinued. Any such person served with notice shall proceed within five days to show cause to the permit authority, why such order should not issue and if such person shall fail to show good cause, then the permit authority may order such use or occupancy discontinued by notice in writing served upon such person, or

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agent and such person shall vacate or cause to be vacated such building or portion thereof within ten days after receipt of such notice or make the building or portion thereof comply with the requirements of this ordinance. Any discontinuance order shall be posted upon the building or portion thereof being used or occupied in violation of this ordinance. Provided however, that the hearing provided for by this subsection may be dispensed with when, in the opinion of the permit authority, the use or occupancy which is contrary to the provisions of this ordinance could cause imminent peril to life or property.

(E) Preserving rights in pending litigation and violations under existing ordinances. By the passage of this ordinance, no presently illegal use shall be deemed to have been legalized. Uses not permitted by this ordinance shall be nonconforming uses when so recognized, or illegal uses, as the case may be. It is further the intent and declared purpose of this ordinance that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, shall be discharged or affected by the adoption of this ordinance, but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending be proceeded with in all respects as if such prior ordinance has not been repealed.

(F) This ordinance shall not be applicable to any area of the City of Kyle that is not located within the Plum Creek Planned Unit Development.

(G) Completion of authorized buildings. Nothing in these regulations nor in any amendments hereto which change district boundaries shall require any change in the plans, construction or designated use of a building which shall be completed in its entirety within two years from the date of the passage of this ordinance, provided such building was authorized by building permit issued before the passage of this ordinance, and construction of such building shall be started within 90 days of the passage of this ordinance.

Sec. 2. Certificate of occupancy.

(A) No land shall be occupied or used and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the permit authority stating that the building or proposed use thereof complies with the provisions of this ordinance.

(B) No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the building inspector.

(C) Application for a certificate of occupancy shall be made with the application for a building permit or may be directly applied for where no building permit is necessary and shall be issued or refused in writing within ten days after the permit authority has been notified in writing that the building or premises is ready for occupancy. The permit authority shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

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(D) No permit for excavation for, or the erection or alteration of, or repairs to, any building shall be issued until an application has been made for a building permit.

(E) No permanent water, electrical or gas utility connections shall be made to the lot or tract, or any building or structure until and after a building permit has been issued by the building inspector.

Sec. 3. Procedure for changing zoning classification of a particular parcel.

(A) A request to change the zoning classification of a particular parcel of land may be initiated by the owner of such parcel, the planning and zoning commission or the city council.

(B) Application by property owner. A property owner may file an application with the city secretary requesting the city council to consider changing the zoning classification of his or her property. Such application shall be accompanied by a fee set by the city council and shall contain the following information:

(1) Legal description and address of the parcel affected;

(2) Present zoning classification of the parcel and of all contiguous parcels around it;

(3) Present use of the parcel and of all contiguous parcels around it;

(4) Type and location of any structures on applicant's parcel and on adjoining land;

(5) A traffic impact analysis shall be submitted where development is proposed which would generate 1,000 or more trips per day. Submission shall occur simultaneously with the applications for zoning, special use permits or building permit site plan approval; and any other relevant information requested by the planning and zoning commission. The planning and zoning commission shall review each application for a zoning change and prepare a brief report on whether the requested change conforms to the classification specified in the land use map of the Plum Creek PUD and the comprehensive plan of the city for such parcel. Where an application for a zoning change is made by the owner, the owner shall provide appropriate evidence of any significant and unanticipated changes that have occurred in the area affected which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the Plum Creek PUD master plan. If the requested change does not conform to the Plum Creek PUD master plan, the commission's report may indicate whether any significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the land use map was adopted which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the Plum Creek PUD master plan. The report shall also indicate whether the requested zoning classification is the most appropriate classification for the area affected.

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(C) Resolution from planning and zoning commission. The planning and zoning commission, by resolution directed to the city council, may request a change in the zoning classification of particular parcels of land in order that such parcels will conform to the classification specified on the land use map of the comprehensive plan of the city. No site plan shall be necessary for such a zoning classification application.

(D) The city council, by motion, may initiate a proposal to change the zoning classification of particular parcels of land in order that such parcels will conform to the classification specified on the land use map of the comprehensive plan of the city. Such action by the city council will be initiated by requesting the recommendation of the planning and zoning commission. No site plan shall be necessary for such a zoning classification application.

Sec. 4. Issuance of permits and suspending of plans pending approval of site plan.

No application for site plan approval shall be accepted for filing nor be processed, and no building, site clearance, or grading permit shall be issued for any work other than in connection with a single-family residential use, on land which is being considered for a change in zoning classification on the request of the owner. Except when waived by the city council, no such approval or permit shall be issued during any period, not to exceed 60 days in duration, for any land for which a zoning change is being considered at the request of the city council or the commission. The 60 day period shall begin on the date the city secretary submits the proposed zoning change to the planning and zoning commission for a report and recommendation.

Sec. 5. Joint hearing on multiple applications.

Applications for permits, change of zoning classification, site plan and subdivision approvals which involve the same development and contiguous land may be considered together, before either the planning and zoning commission, the city council, or both, at a single hearing, rather than at a separate hearing for each related application. The mayor of the city, with city council approval or ratification, shall make the determination of whether to have a joint hearing.

Sec. 6. Use permits.

(A) *Purpose.* A use permit is a document authorizing the existence of a nonconforming use, a conditional use, or a variance as these terms are herein defined. The issuance of a use permit may be prerequisite to the issuance of a building permit or certificate of occupancy but shall not alleviate the requirement of such. A use permit may have a specified time limitation attached and may impose conditions other than those which are specifically set forth in this ordinance.

(B) *Approval--Responsibility.*

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(1) The building official shall issue use permits for all nonconforming uses in existence at the time of enactment of this ordinance and the building official may rescind a use permit for a nonconforming use upon cessation of the use of the building or land as set out in article II.D.4.

(2) The commission shall have the responsibility for the consideration of use permits for conditional uses.

(3) The board of adjustment may issue use permits for variances and may direct the issuance or revocation of nonconforming use permits on appeal, from a decision of the building official, as otherwise authorized by law.

(4) The commission may impose additional reasonable restrictions or conditions to carry out the spirit and intent of this ordinance and to mitigate adverse effects of the proposed use. These requirements may include, but are not limited to, increased open space, loading and parking requirements, suitable landscaping and additional improvements such as fencing, curbing and sidewalks.

(C) *Issue procedure.*

(1) *Non-conforming uses.* With respect to nonconforming uses in any district at the time of enactment of this ordinance, it shall be the duty of the building official to investigate and document the existing use, the size and type of structure or land use, and to issue a use permit in accordance with the conditions of this ordinance. No application or filing fee is required; provided that nonconforming uses shall not be presumed and a subsequently claimed nonconforming use which is not known to the building official on the effective date of this ordinance, or for which no written request for a use permit is made by the landowner within 60 days after the effective date of this ordinance, will be conclusively deemed not to have existed on the effective date of this ordinance.

(2) *Conditional use.* A conditional use permit may be applied for and issued after an application has been filed, notices given and the holding of public hearings as set forth in article II.D.3.

(D) *Procedure for application for a use permit.*

(1) Applications for use permits shall be made on a form provided by the building official accompanied by all required fees filed with the building official. Such application must be accompanied by a site plan showing the proposed use of the land and buildings and must show the surrounding land uses in such detail as necessary to clarify the claims made in the application. The building official shall forward such information regarding conditional use permit applications to the commission with his recommendation. No such conditional use permit shall be final until approved by the city council after public hearing.

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(2) Applications for conditional use permits shall be considered and acted upon, approved or denied, in compliance with this ordinance and Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.].

(3) Applications for a use permit documenting a legally existing nonconforming use shall be made on a prescribed form, accompanied by all required fees, filed with the building official.

(4) Applications for a variance use permit, or appeal of the grant or denial of a use permit by the building official (acting under [D](3) above) shall be addressed to the board of adjustment and made on the required form, accompanied by all required fees. Such applications shall be filed with the building official and the notices shall be given and the procedures followed as otherwise prescribed by law.

(E) *Appeal.* Any person or persons, jointly or severally aggrieved by a decision of the building official, commission, or the board of adjustment with respect to any matter that is not a variance or special exception to this ordinance and subject to the board's sole jurisdiction pursuant to § 211.008 et. seq., Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.008 et seq.], may present to the city council a petition, duly verified, setting forth that such decision is unjust, in whole or in part, specifying the ground of injustice. Such petition shall be presented to the city council within ten days after the final decision of the commission, and not thereafter.

(F) *Recording.* One copy of an approved use permit shall be delivered to the owner of the property, one copy shall be filed in the office of the building official.

(G) *Development.* Following the issuance of a use permit the building official shall make inspections to determine that, if the development is undertaken, such development is completed in compliance with said permit. However, if a use permit has not been used within six months after the date granted, the permit is automatically canceled which fact shall be noted over the signature of the building official on the file copies of the permit and the owner shall be so notified in writing.

Sec. 7. Sign regulations.

(A) *General.* All signs shall conform to the requirement of the building code and this section 7 unless otherwise approved by the Plum Creek Architectural Review Committee (PCARC). Proof of PCARC approval is required with application for city permit. For detailed information on the classifications shown in quotation marks, refer to the building code.

(B) *Existing signs.* All existing signs in use within the Plum Creek PUD on the effective date of the ordinance from which this section derives shall carry the "identification of signs" as required in the building code and are approved.

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(C) *Temporary signs.* A temporary sign pertaining to lease, rental or sale of premises or structure located thereon is permitted in all districts when located on such premises or structure. Such signs shall not be lighted, and shall not exceed 64 square feet in area. No permit is required.

(D) *Plum Creek monument/development signs.* "Ground signs," announcing or describing the Plum Creek Development, may be lighted. A sign with the proper name of a legally recorded subdivision may be permanently erected and does not require a city permit.

(E) Signs having flashing or moving parts, or "spectacular signs" are not permitted.

(F) *Special district sign requirements.*

(1) *Residential PUD districts.* A person having a legal home occupation may display a nameplate on the face of the building or porch. The nameplate may contain only the name and the occupation of the resident. It shall be attached directly to the building or porch and shall not be illuminated in any way. No permit is required.

(2) *Neighborhood commercial PUD districts.* Signs when attached to buildings shall advertise only services or products which are offered within the building to which the sign is attached, and such signs shall not extend above the roofline of such buildings or more than one foot from the face of the building. No flashing or moving signs are permitted and no "spectacular signs" are permitted. No detached signs or billboards are permitted. See building code for permit requirements.

(3) *Other PUD districts.* No sign shall have flashing lights or moving parts if within 50 feet of a public street. "Spectacular signs" are not permitted. No sign or any part thereof shall be located within five feet of any public easement without approval by PCARC or city council. No more than one attached sign per user shall be allowed on any one building lot.

(4) *PUD districts.* Temporary signs, not to exceed 120 square feet, are permitted in a PUD district.

(5) *[Deed restrictions.]* Any and all signs which are allowed or prohibited shall be agreed to between the PUD developer and the city, and said requirements shall be included as deed restrictions within each subdivision.

(G) *Billboards.* No billboards or signs shall be erected advertising products or services not available on the site.

(H) *Street number.* A street address number, as designated by the building official, is required for all residences and establishments it must be readable from the street and may be on the building or in the yard and include the name of the occupant. No permit is required.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

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Sec. 7-1. - Purpose and goals.

(A) The purpose of this section is to provide uniform sign standards that perform the following:

- (1) Promote a positive image of the city and uniform signage program within the Plum Creek PUD boundaries;
- (2) Protect an important aspect of the economic base;
- (3) Reduce the confusion and hazards that result from excessive and prolific use of sign displays;
- (4) Ensure that no hazard is created due to collapse wind, fire, collision, decay or abandonment, that no obstruction is created to fire fighting and police surveillance, and no traffic hazard is created by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs;
- (5) Promote efficient transfer of information in sign message by providing that businesses and services may identify themselves: customers and other persons may locate a business or service, and persons exposed to signs are not overwhelmed by the number of messages presented, and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purpose; and
- (6) Protect the public welfare and enhance the appearance and economic value of the landscape by providing signs that do not interfere with scenic views; do not create a nuisance to persons using the public rights-of-way; do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height, or movement; are not detrimental to land or property value; and contribute to the special character of particular areas or districts within the city, helping the observer to understand the city and orient oneself within it.
- (7) Signage should be compatible with the proposed architectural style and be scaled appropriately. Signage height and size should consider sight distance from adjacent streets and visibility within the community. The design and location of signage must be approved by the PCARC or assigns.

(B) By recognizing this purpose this section shall serve to strengthen the economic stability of business, cultural, and residential areas in the city; recognizing that visual clutter leads to decline in the community's appearance, in property values, and in the effectiveness of the signs.

(C) The goals of this section are to preserve the integrity of our community, promote pride in our neighborhoods promote safe egress/ingress on public roadways, and encourage the effectiveness of signs.

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(D) In the event of conflicts, actual or perceived in the terms or requirements of this section, the PCARC or assigns shall issue final determination.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-2. - First Amendment rights.

This section shall not be construed, applied, interpreted, nor enforced in a manner to violate the First Amendment rights of any person, and the building official shall seek the advice and recommendation of the city attorney prior to taking any action to enforce any provision of this ordinance with respect to any noncommercial sign or speech by any person.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-3. - Enforcement.

(A) *Authority.* The building official and the code enforcement officer is hereby authorized and directed to enforce all the provisions of this chapter. For such purposes the building official has the powers of a code enforcement officer.

(B) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition which violates the provisions of this chapter, the building official may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this chapter. If such building or premises is occupied, the building official shall first present proper credentials and request entry; and if such building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-4. - Definitions.

As used in this chapter, all words shall have the common meaning of such word and the following terms shall have the meaning indicated below unless context clearly indicates otherwise:

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Actively being built. The project or subdivision has continuous construction efforts underway to complete the project.

Activities and events sign. An enclosed, marquee-type sign to provide public buildings, churches (limited to places of worship only), and neighborhood associations, herein referred to as "the entity(ies)" the opportunity to post notices of meetings, activities, and other notices of interest to the entity or group it serves. The purpose of this sign is to facilitate communication within the community served by the public buildings and the churches, and within the larger neighborhoods of 50 homes or more represented by their neighborhood association.

Arcade signs. Is a panel erected parallel to a building façade and within the opening of an arcade. Arcade signs must be supported their entire length by metal brackets, grillage or supports. An arcade sign may be non-illuminated or internally illuminated. An arcade sign may include neon tubing when forming a border for the subject matter or when forming letters, logos, or pictorial designs. The bottom edge of an arcade sign must be at least nine feet above the finished grade. The location of an arcade sign must be centered on the arcade entrance. The signage panel must be made of wood, sign foam, made to look like wood or metal. The support for the sign must be decorative and made of metal. Sign lighting must be affixed to the building or to the sign and must be shielded to prevent the light from shining directly into traffic, upper floor windows and pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow either with a halo illumination effect or glow through their front faces. The use of neon is permitted. Exposed raceways, conduits and transformers are prohibited. The height of the arcade sign cannot exceed four feet.

Awning Sign. A sign that is applied to, attached to or painted on an awning, which is intended for protection of weather or as a decorative embellishment. Awnings project from a wall or roof of a structure and are located over a door or window. Awnings must be professionally constructed and cannot be made of vinyl. All internal support structures must be made of metal. Awnings are allowed to project over a sidewalk to a maximum of eight feet and must have a minimum clearance of nine feet. Awnings may have lettering and graphics on the front or side vertical panels only except that awnings located over the primary entrance of a building may have one store logo or the store name applied within a 16 square foot area on the sloped portion of the awning. Awnings may be lighted from above with lighting affixed to the building. All lighting must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes, in no case can the supporting structure of an awning sign extend into or over the street curb. Awnings must end a minimum of three feet from the curb edge. In instances where an awning encroaches into areas where street lights, trees or other obstacles in the streetscape conflict, the awning must be reduced in size (overhang) so as to eliminate the conflict. Awning support structures must be designed to meet local wind loads. Portions of the awning can be internally illuminated, provided that the entire awning can be internally illuminated. Awnings that do not include lettering or graphics are not considered signs.

Banner. A sign made of fabric or any nonrigid material.

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Bay windows. A sign erected parallel to the façade of any building to which it is attached and supported throughout its entire length at its base by the top edge of a bay window. A bay window sign may have no-illuminated or internally illuminated lettering and graphics. Neon is permitted. Lettering and graphics may be raised up on pins to prevent the graphics from being obscured by the window trip from the sidewalk. Signage lettering and graphics must be made of wood, sign foam that simulates wood or metal. Faces of internally illuminated graphics may be made of acrylic, lexan or similar material. Signage lighting must be affixed to the building or to the sign and must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow through the front faces. Exposed raceways, conduits and transformers are prohibited. The length of the bay window sign cannot exceed the width of the bay window. The height of the sign cannot exceed four feet and the depth of the sign cannot exceed 12 inches.

Berm (monument) sign. A sign where the frame of the sign face is set at grade with the ground as a monument or in an earthen berm. There is no clearance between the ground and the sign face.

Billboard. A sign advertising products not made, sold, used or served on the premises displaying such sign, or a sign having a height greater than 12 feet and a surface area greater than four hundred square feet.

Building identification. Identifies commercial buildings at a scale appropriate to both vehicular and pedestrian traffic; in any case, the size of a building identification sign shall only contain the building name and street address. The street address may be applied to a canopy, awning or directly to a building. The building identification sign must be constructed as a single-sided, no-illuminated painted metal sign attached directly to the building. The color of the sign must be compatible to the building and must be approved by PCARC. This sign may be indirectly lot. Each building is allowed one building identification sign per face of building.

Building official. Any officer or employee, or person, designated by the city manager to perform the duties set forth in this ordinance to be performed by the building official.

"Burma Shave" signs. A sign intended to provide information and direction to potential home buyers within a recorded subdivision in which new homes are actively being built.

Canopy. A sign that is applied to, attached to or painted on an architectural canopy. The canopy must be intended for protection from the weather or used as an architectural embellishment and project from a wall over a door window. Canopies may be made out of wood, metal or glass, but all support structures must be made of metal. Canopies are allowed to project over a sidewalk to a maximum of six feet and must have a minimum clearance of nine feet. Canopies may have side panels, and may have a panel enclosing the underside of the canopy. Canopies may have lettering and graphics on or above the front or side vertical panels. Canopies may be lighted from above with lighting affixed to the building. All lighting must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front faces. The use of neon is permitted. No exposed raceways, conduits or

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transformers are permitted. In no case can the supporting structure of a canopy extend into or over the street curb. Canopies must end a minimum of three feet from the curb edge. In instances where canopies encroach into areas where street lights, trees or other obstacles in the streetscape conflict, the canopy must be reduced in size (overhang) so as to eliminate the conflict. Canopy support structures must be designed to meet local wind loads. Canopies that do not include lettering or graphics are not considered signs.

Changeable electronic variable message sign. A sign which permits alteration of the sign's message or images by electronic means. This includes a sign using light-emitting diodes (LEDs) or other means of digital display to resent a message or images.

Clearance (of a sign). The smallest vertical distance between the grade of the adjacent street curb and the lowest point of any sign, including framework and embellishments, but excluding sign supports.

Commercial. Locations where the principle use of the property is not classified as residential or multifamily.

Construction trade sign. A sign that identifies the architect, engineer, financial institution, builder, or other building trades contractor involved in a construction project at the site where the sign is located.

Curbline. An imaginary line drawn along the outermost part of back of the curb and gutter on either side of a public street, or, if there is no curb and gutter, along the outermost portion of the paved roadway, or if there is no paved roadway, along the edge of the traveled portion of the roadway.

Directional signs, traffic. An on-premises sign giving directions, instructions, or facility information and which may contain the name or logo of an establishment and no advertising copy, e.g., parking or exit and entrance signs.

Electrical sign. A sign containing electrical wiring, connections, or fixtures, or utilizing electric current, but not including a sign illuminated by an exterior light source.

Electronic message sign. A sign that includes provisions for programmable electronic message changes.

Façade. All building wall elevations, including any vertical extension of the building wall (parapet), but not including any part of the building roof.

Face or surface. The surface of the sign upon, against, or through which the message is displayed or illustrated on the sign. Flashing signs are not permitted.

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Flashing. To light intermittently. To change colors intermittently in order to achieve a flashing, fluttering, scrolling, undulating, or rolling affect (i.e. LED displays). Scrolling of text in a single color is not considered to be flashing.

Freestanding sign. A sign that is not attached to a building but is permanently attached to the ground.

Frontage. A boundary line separating the public right-of-way from the lot.

Future development signs (temporary construction, real estate, or development sign). A freestanding or wall sign advertising the construction, remodeling, development, sale, or lease of a building or the land on which the sign is located.

Government sign. A sign installed, maintained, or used:

- (1) By a city, county, state or the federal government, required or specifically authorized for the public purpose pursuant to regulations promulgated by the state or federal government;
- (2) By the City of Kyle.

Gross surface area. The entire area within a single continuous perimeter enclosing the extreme limits of each sign. A sign having two surfaces shall be considered a single sign if both the surfaces are located back to back. In the event two or more signs share a single structure, i.e., directory signs, or signs on v-shaped structures, each sign or panel shall be considered separately for square footage purposes, provided that the combined area of such signs cannot exceed the total square footage allowed on a single sign.

Height (of a sign). The vertical distance between the finished grade before the sign or grade of the adjacent street curb, whichever is greater, measured to the highest point of the sign.

Human sign. A sign held by or attached to a human for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity. A person dressed in a costume for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity shall constitute a human sign. Human signs do not include T-shirts, hats, or other similar clothing.

Incidental sign. A small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises (e.g. a credit card sign or a sign indicating hours of business).

Inflatable sign. Any balloon or other device which is inflated by air or other gas and displayed outdoors. Inflatable structures primarily designed for recreational use shall not be considered to be a sign as, for example: slides, swimming pools or space walks.

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Information signs. Includes bulletin boards, changeable copy directories, or signs relating solely to publicly owned institutions (city, county, state, school district) intended for use by the institution on which the sign is located.

Intersection. A place where two roads meet or form a junction. For purposes of this ordinance, sign setback distance is measured from the intersections of the curblines of two streets.

Kiosk sign or kiosk. A free-standing sign structure located in or adjacent to public right-of-way authorized by written agreement approved by the city council that features a City of Kyle identification panel at the top of each structure, and displays directional information to new homes, independent school district facilities, and municipal or community events or facilities.

Lamppost banners. A fabric banner applied to lampposts with standard banner arms. The lamppost banners must be made of canvas, vinyl or other suitable banner fabric. Lamppost banners must be double-sided with similar imagery on both faces. Lamppost banners must include pictorial elements. The maximum size for lamppost banners is two feet, six inches wide by five feet tall. No more than two lamppost banners may be erected on a single lamppost. The minimum clearance from the pavement to the lower banner arm is nine feet and the lamppost banner and banner arm cannot extend over the street pavement. Lamppost Banners are limited to holiday messages, community events or festivals. No retail advertising shall be permitted on lamppost banners.

Marquee. A permanent roof-like structure or awning or rigid materials attached from, supported by, and extending from the façade of a building, including a false "mansard roof."

Memorial signs or tablets. Includes freestanding historical markers in accordance with state historical standards, and/or cornerstones with names and dates of construction of a building when cut into a building surface or inlaid upon it to become part of the building.

Menu boards. Freestanding or wall signs used for the purpose of informing patrons of food, which may be purchased on the premises.

Model homes sign. A temporary real estate sign placed in front of a group of model homes that is removed from the premises upon sale of the last model.

Monument sign: Are define by details located in section 7-16

Multifamily. Locations that contain three or more attached units designed for residential use including town homes and condominiums.

Multitenant center sign. A sign advertising two or more retail, wholesale, business, industrial, or professional uses (not necessarily under single ownership) utilizing common facilities including off-street parking, access, or landscaping.

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Multitenant center identification sign. The portion of the sign that identifies the general name of the center or development as a whole. The sign shall include only the name and address of the development.

Nameplates. Nonelectrical, on-premises signs that communicate only the name of the occupant of the address of the premises.

Nonconforming sign. A sign that was lawfully installed at its current location prior to the adoption or amendment of the ordinance from which this section derives, but that does not comply with the present requirements of this section.

Off-premises sign. A sign referring to goods products or services provided at a location other than that which the sign occupies.

On-premises sign. A sign identifying or advertising the business, person, activity, goods, products, or services located on the site where the sign is installed, or that directs persons to a location on that site.

Office tenant identification sign. Each building that houses offices is allowed one primary tenant identification sign. The office tenant identification sign identifies the commercial tenants at the entrance to the building. Office tenant signs are encouraged to be attached to the face of the building. Where the sign is freestanding, it must be located parallel and as close as possible to the building façade, and provide a minimum four-foot clear area on the sidewalk to prevent obstruction of pedestrian circulation. The office tenant identification sign is a single-sided, internally illuminated or nonilluminated painted metal sign with changeable panels. The address of the building may also be included in the face of this sign. The maximum size for the office tenant identification sign is 64 feet.

Parapet. The extension of a false front or wall above a roofline.

Point-of-sale sign. A sign advertising a retail item accompanying its display (e.g., an advertisement on a product dispenser).

Political sign. A sign advertising a political candidate or party for elective office or that advertises primarily a political message.

Portable signs. Signs not permanently attached to the ground or other permanent structure, or a sign designed to be transported by wheels including, but not limited to signs which are mounted on skids, trailers, wheels; signs converted to A- or A-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising.

Primary beneficiary. Any person who benefits from the installation, placement, construction, or alteration of a sign, including the owner or tenant of the property upon which the sign is located and the owner or operator of the business, product, service, or activity that is the subject of the sign.

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Primary tenant. The primary tenant sign is a wall sign used to identify the primary tenant in a multistory building. The size of the sign is appropriate to be visible from vehicular or pedestrian traffic. The maximum size for each primary tenant sign is 200 square feet and may not be placed on a wall below the third story. Each building may be allowed one primary tenant sign.

Private traffic-control signs. Small traffic directional signs indicating interior circulation of parking areas on site, warn of obstacles or overhead clearance, or designate permissible parking.

Project directory sign. Project directory signs contain a map of listing of key destinations within the mixed use districts of Plum Creek. The project directory sign is scaled to pedestrian use. A project directory sign may be single or double-sided and may be internally illuminated. The maximum size for a project directory sign is 12 square feet. Project directory signs may be placed on the sidewalk provided a four foot clear area is provided for pedestrians. No retail advertising is allowed on project directory signs.

Projecting signs. A sign used to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached.

Pylon signs. Freestanding signs that are supported by a structure extending from and permanently attached to the ground by a foundation or footing, with a clearance between the ground and the sign face. Pylon signs are not considered monument signs.

Real estate signs. Temporary signs advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Rear of building signs. Rear of building signs are signs that do not face a public street and are used to identify tenants in a building. One rear of building sign per tenant is allowed on the rear face of the building if there is a public entrance to the building from the rear of the building. Rear of building signs, may be wall signs or window signs and may be made of the same materials that are permitted for these signs. Rear of building signs cannot exceed 24 square feet in area. Rear of building signs can only identify tenants who are actually in the building to which the sign is attached.

Residential. Locations where the principal use of the property is for one and two-family dwelling units.

Roof sign. Any sign installed over or on the roof of a building.

Sandwich board signs. A sign constructed in such a manner as to form an "A" or tent-like shape. The sign can be hinged or not hinged at the top and each angular face help at an appropriate distance by a supporting member. Sandwich board signs are the only portable signs allowed in Plum Creek. Sandwich board signs may be placed on the sidewalk in front of a retail or restaurant premises during business hours only. Sandwich board signs must be located at least three feet from the curb of any adjacent street. Should a sandwich board sign be placed on or

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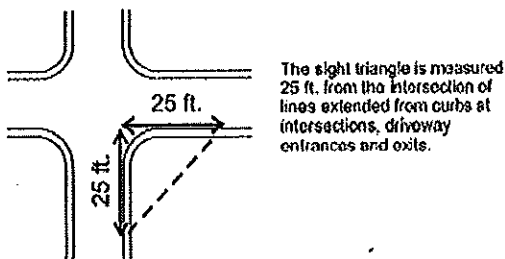
adjacent to a sidewalk, an unobstructed pedestrian clearance of at least four feet from the curb of any adjacent to the sign. A maximum of one sandwich board sign may be placed per business or tenant within storefront limits of the business the sign advertises. Sandwich board signs cannot be closer than 20 feet to another sandwich board sign. Dry-erase boards are prohibited on sandwich board signs. The maximum size of a sandwich board sign is 12 square feet per side. The maximum height of a sandwich board sign is four feet.

Sign. Any surface, display, design, light device, painting, drawing, message, plaque, poster, billboard or other device visible from the public right-of-way on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected, outlined or attached in any manner whatsoever that are intended or used to advertise, inform, or attract the attention of persons both on and not on that premises, excluding those lights and landscape features which display words or symbols as holiday decorations. The term "sign" also includes the supporting structure of the sign.

Sign area. Includes all lettering, wording, logos, design, symbols, framing, roofing, and cabinets, or modules, calculated according to the provisions established in this section.

Sign panel. An individual sign placard displaying directional information on a sign kiosk.

Sight triangle. The area of vehicle visibility at all street intersections, which shall be clear of all obstructions that may present a hazard to traffic. The visual triangle for a street shall be described as a 45-degree triangle where the right angle sides measure at the very minimum 25 feet. The visibility triangle shall be measured from a point at which the projected curb lines intersect.



Small blade signs. A sign is attached to and projects out from a building face or wall more than 12 inches and are generally set at a right angle to the building. Small blade signs may project over the sidewalk, but must be set back at least three feet from the back of curb and have at least nine feet of clearance from grade. Support structures for small blade signs must be decorative in nature and made of metal. Supports must be engineered to support local wind loads. The sign panel, lettering and graphics can be made of wood, synthetic wood or metal. A small blade sign's background panel may be internally illuminated or made of acrylic, Plexiglas or similar plastic sheeting. Individual letters or graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front face. The use of neon is permitted. Exposed conduits, raceways or transformers are prohibited. Indirect lighting must be attached to the

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building or sign and be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. The size of a small blade sign cannot exceed 12 square feet in area. The support structure is not included when calculating area. Small blade signs must be double sided and depth of the sign cannot exceed eight inches. Only one face of the sign will be used to calculate size.

Subdivision. For purposes of this section, the subdivision in its entirety, not a phase, section, village, unit, or product line.

Subdivision development entrance signs. Defined as:

- (1) Primary entrance signs;
- (2) Secondary entrance signs; and
- (3) Tertiary entrance signs;

and are used to define various entries of the subdivision.

Temporary Banner. Signs advertising "Going Out of Business" events are prohibited. Temporary banner signs must be professionally constructed and may not be attached directly to windows with tape or adhesive.

Temporary sign. Any sign that is used temporarily and is not permanently mounted (i.e. on stakes or posts), and is constructed of cardboard, foam board, cloth, canvas, fabric, plywood, or similar lightweight material. A portable sign is not a temporary sign.

Temporary wall signs. An on-premises wall sign of a nonpermanent nature advertising a special event, sale, product, or service.

Valet parking identification A series of signs used to identify a valet parking station. Each station is allowed three components: 1) valet station with umbrella or awning; 2) a sandwich board sign; and 3) cones. Valet parking identification or valet parking operations shall not occur in the public right-of-way, except that a sandwich board sign complying with the limitations set forth for signage, maximum signage allowances; sandwich board signs of these development standards may be allowed in the sidewalk, provided that at least four feet of clearance is maintained for pedestrians.

Vertical projecting signs. A sign that is attached to and projecting out from a building face or wall more than 12 inches, generally set at a right angle to the building. A vertical projecting sign may overhang the sidewalk but must be located a minimum of three feet from the back of curb. At least nine feet of clearance must be provided between the bottom of the sign and the sidewalk. Vertical projecting signs can extend above a tenant's lease space with approval of the owner of the building. The support structure from which the projecting sign panel is suspended must be decorative in nature and made of wood, synthetic wood or metal. Signage lighting must be

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affixed to the building or to the sign and be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. A vertical projecting sign's background panel may be internally illuminated and made out of acrylic, Plexiglas or similar sheeting. Individual letters or graphics may be internally illuminated and glow with either a halo-illumination effect, or glow through their front face. The use of neon is permitted. Exposed raceways, conduits and transformers are prohibited. The height of a vertical projecting sign cannot exceed 75 percent of the overall wall length of the wall on which it is erected or a maximum of 25 feet, whichever is less. Vertical projecting signs must be double-sided. The depth of the sign panel may not exceed 15 inches, including the depth of the applied letters or graphics. The size of a vertical projecting sign cannot exceed 150 square feet in area. Only one face of the sign will be used to calculate size, graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front face. The use of neon is permitted. Exposed conduits, raceways or transformers are prohibited.

Wall sign. A sign attached to the façade of a building or a canopy. Wall signs include signs on or affixed to walls, windows, awnings, or other parts of the exterior of a building or canopy.

Window or door surface signs. Signs installed on or in a window or door.

Window signs. A sign that is visible from a public street or sidewalk and that is posted, attached, painted or affixed in or on a window, or a sign that is located within three feet of a window. Window signs must be located on the inside of the window. The area of the window sign cannot exceed 25 percent of the square footage of the window in which the sign is located. Only one window sign is allowed per window. Window signs may be located on the upper floors of a building. Hours of operation, not to exceed two square feet per window, shall not be counted in the square footage allowance of a window sign. When the address of the business is displayed as a window sign, the address shall not be counted in the square footage allowance.

Work of art. Sculpture, fountain, or similar object, and containing no reference to or image of a business or its logo, is not considered as a sign.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-5. - Applicability.

(A) All land within the city and its extraterritorial jurisdiction (ETJ) is subject to compliance with this section.

(B) The sections, provisions, and regulations set forth in this section 7 shall apply to the control, use, installation, regulation, licensing and permitting of signs within the Plum Creek PUD.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

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Sec. 7-6. - Permit required.

(A) *Permit required.* It shall be unlawful for any person to erect, construct, enlarge, move or convert any sign within the Plum Creek PUD without first obtaining a PCARC approval and a city sign permit and paying a permit fee unless specifically provided otherwise in this chapter. A change of business requires a new sign permit.

(B) *Compliance required.* No person may install a sign or structurally alter an existing sign except in conformity with this ordinance and other applicable federal, state, and local regulations, including, but not limited to, the building code, electrical code, and other applicable ordinances of the city. In the event of a conflict between this chapter and other laws, the most restrictive standards applies.

(C) *Permit not required.* Permits shall not be required for the following signs, provided, however, that such signs shall otherwise comply with all applicable sections of this chapter.

(1) On-site real estate "for sale" signs, or for a model home sign and future development signs that is approved by the PCARC.

(2) Political signs located on private property with the consent of the property owner that do not exceed 36 square feet in area, are not more than eight feet in height are not illuminated, and do not have any moving elements.

(3) Government signs, including traffic signs, private traffic-control signs, regulation address numerals, and memorial signs.

(4) Construction trade signs.

(5) Garage sale signs.

(6) No sign permit is required for a change of copy on any sign, or for the repainting, cleaning and other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign or sign structure is not modified.

(D) *Primary beneficiary.* The primary beneficiary of any sign installed, moved, structurally altered, structurally repaired, maintained, or used in violation of this section shall be deemed responsible for the violation of this section.

(E) *Building official authority.* The building official shall enforce and implement the terms of this chapter, including without limitation:

(1) Issuing permits and collecting the fees required by this chapter;

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- (2) Conducting appropriate inspections to insure compliance with this chapter;
- (3) Instituting legal proceedings, including suits for injunctive relief when necessary, to insure compliance with this chapter; and
- (4) Investigating complaints of alleged violations of this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-7. - Application for permit.

(A) An application for a sign permit must be accompanied by the permit fee and shall include such information as is necessary to assure compliance with all appropriate laws and regulations of the city, including:

- (1) The name and address of the owner of the sign.
- (2) The name and address of the owner, and if different from the owner, the person in possession of the premises where the sign is located or to be located.
- (3) Clear and legible drawings with description definitely showing location of the sign which is the subject of the permit and all existing signs whose construction requires permits, when such signs are on the same premises.
- (4) Scale drawings showing the site plan location, dimensions, construction supports, sizes, foundation, electrical wiring, and components, materials of the sign and method of attachment and character of structure members to which attachment is to be made. The design, quality, materials and loading shall conform to the requirements of the building code. Projection, wall and temporary signs not over six square feet in area, constructed of metal or other noncombustible material, attached securely to a building or structure and not projecting more than 18 inches beyond the building wall, structure, building line or property line, shall not require an engineer certification as to its soundness. Wind pressure and dead loads shall be shown where deemed appropriate, and the building official may require structural drawings designed and sealed by a civil engineer registered by the State of Texas when it cannot otherwise be determined that the sign will be structurally sound if building official, engineering data certified by a licensed structural engineer shall be supplied on any submitted plans.
- (5) Any electrical permit required and issued for said sign if required.
- (6) For free-standing signs, documentation demonstrating that the applicant holds general liability insurance in the amount of one million dollars. No license or permit for the installation, erection and maintenance of a freestanding sign shall be issued to any person, firm or corporation

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until such person, firm or corporation has filed with the building official a certificate of insurance verifying general liability insurance in the amount of \$1,000,000.

(7) A surety bond in the sum of \$5,000.00 for the installation and erection of the sign payable to the city and providing for the indemnification of the city and any and all damages or liability which may accrue against the city for a period of one year after installation, erection, demolition, repair, removal, or defects in or collapse of any sign.

(8) The permit fee.

(9) Written PCARC approval.

(B) Fees for sign permits shall be as specified in appendix A, and calculations of the square footage shall include decorative trim and borders, but exclude supports, except when otherwise specified in this chapter.

(C) Expiration of sign permits:

(1) A sign permit shall expire and become void unless a request for final inspection of the sign is made no later than 180 days after the date the permit is issued.

(2) A single extension 90-day extension of the permit may be granted by the building official if requested before the expiration of the permit. Final inspection must be requested before the end of the extension period or the permit becomes void.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-8. - Calculation of sign area.

(A) *Sign area measurement.* Sign area for all sign types is measured as follows:

(1) Sign copy mounted, affixed, or painted on a background panel or area distinctively painted, textured, or constructed as a background for the sign copy, is measured as that area contained within the sum of the smallest rectangle(s) that will enclose both the sign copy and the background.

(2) Sign copy mounted as individual letters or graphics against a wall, fascia, mansard, or parapet of a building or surface of another structure that has not been painted, textured, or otherwise altered to provide a distinctive background for the sign copy, is measured as a sum of the smallest rectangle(s) that will enclose each word and each graphic in the total sign.

(3) Sign copy mounted, affixed, or painted on an illuminated surface or illuminated element of a building or structure, is measured as the entire illuminated surface or illuminated element

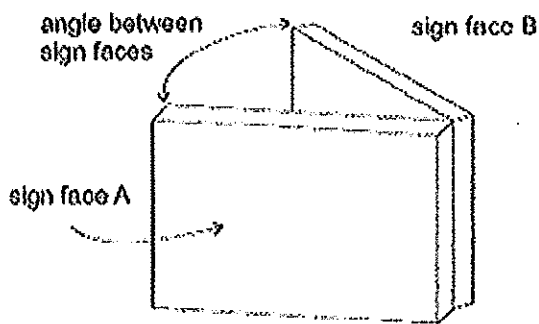
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which contains sign copy. Such elements may include, but are not limited to lit canopy fascia signs, cabinet signs, and/or interior lit awnings. Support structures and frames of a freestanding sign shall count toward the sign area.

(4) Multiface signs are measured as follows:

a. *Two-face signs.* If the interior angle between the two sign faces is 30 degrees or less, the sign area is of one sign face only. If the angle between the two sign faces is greater than 30 degrees, the sign area is the sum of the areas of the two sign faces.

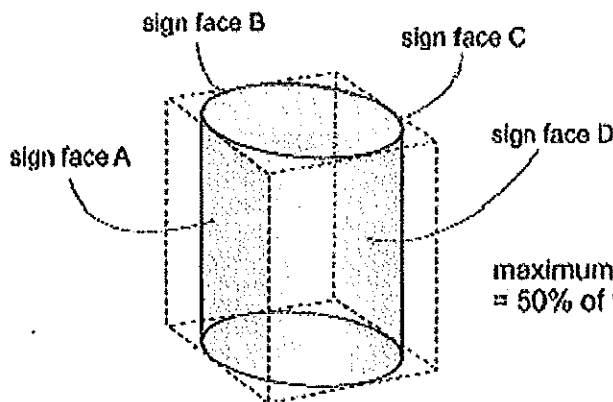


If angle between sign faces $\leq 30^\circ$
 sign area = larger of area A or area B

If angle between sign faces $> 30^\circ$
 sign area = area A + area B

b. *Three or four face signs.* The sign area is 50 percent of the sum of the areas of all sign faces.

(5) Spherical, free-form, sculptural, or other nonplanar sign area is 50 percent of the sum of the areas using only the four vertical sides of the smallest four-sided polyhedron that will encompass the sign structure. Signs with greater than four faces are prohibited.



maximum sign area
 = 50% of total of areas A+B+C+D

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(6) Freestanding sign area is the entire advertising area of a sign, including framing, trim or molding and the supporting frame for monument signs and including the air space between the supporting structures for freestanding signs.

(B) *Sign height measurement.* Sign height is measured as follows:

(1) *Freestanding signs.* The height of a freestanding sign shall be computed as the distance from the base of the sign at finished grade to the top of the highest attached component of the sign. The height of any monument sign base or other structure erected to support or adorn the sign is measured as part of the sign height. If a sign is located on a mound, berm, or other raised area for the sole purpose of increasing the height of the sign, the height of the mound, berm, or other raised area shall be included in the height of the sign.

(2) *Building mounted signs.* The height of wall, fascia, mansard, parapet or other building mounted signs is the vertical distance measured from the base of the wall on which the sign is located to the top of the sign or sign structure.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-9. - Prohibited signs.

The following signs are prohibited from installation, construction, repair, alteration, location or relocation within the city, except as otherwise permitted in this section.

(1) Signs with flashing lights, revolving beacon lights, fluttering, undulating, swinging, or otherwise moving parts. For purposes of this section, an electronically controlled changeable-copy sign is not considered a flashing sign unless it directly falls under the definition of 'flashing' as defined in this section.

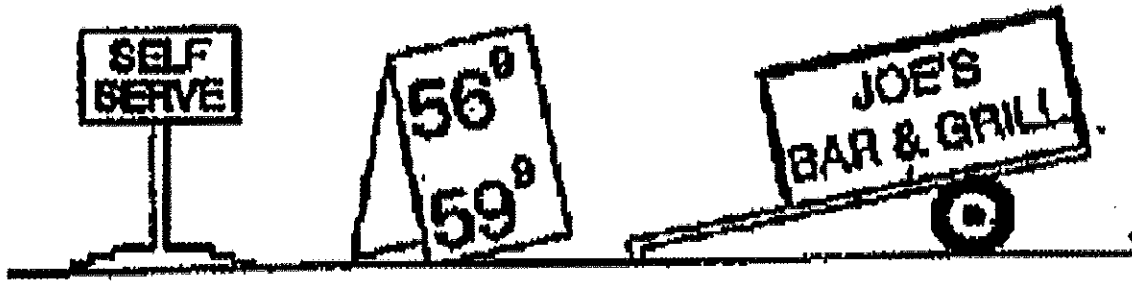
(2) Billboards.

(3) Off-premises signs, except for kiosks and any other sign specifically authorized in this ordinance that are compliant with this section.

(4) Portable signs.

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- (5) Temporary signs except as specified in section 29-20
- (6) Signs placed on a vehicle or trailer that is parked or located for the primary purpose of displaying a sign shall be permitted.
- (7) Roof signs.
- (8) Signs painted on fences or roofs.
- (9) Pylon signs, except as specifically provided for section 29-17
- (10) Inflatable signs larger than eight feet in any dimension.
- (11) Light emitting diode (LED) displays or signs, with the limited exception of LED message boards and static LED fuel price signs that comply with section 29-16 and section 29-17. Such signs, where authorized, shall fully comply with the requirements of this chapter. Electronic message signs are allowed only as part of the monument sign and can have a display size no larger than 12 inches by 72 inches. Messages shall be programmed to remain static for a period of not less than 60 seconds. Messages shall not be programmed to flash.
- (12) Changeable electronic variable message signs except as specifically provided in this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-10. - Signs exempt from these regulations.

The following types of signs shall be exempt from the permitting provisions of this section. However, regulations regarding sign location in a public right-of-way or public access easement shall apply. It is further specifically provided that the building official may, based upon the size, materials used in construction and other relevant factors, require the owner of any sign to show evidence of structural soundness and compliance with the safety requirements of this section.

- (1) Any sign erected by or under the authority of the city on property owned by the city.

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- (2) Street identification signs, public notices, and warning signs installed by any city, county, state or federal agency.
- (3) Historical markers placed by a city, county, state or national historical preservation organization.
- (4) Official vehicle inspection station signs, holiday lights and decorations, or works of art.
- (5) Signs located on-premises or inside a building and which are not displayed so as to be legible from a public street, including, but not limited to, such signs as credit card decals, hours of operation signs, emergency contact information, and barber poles.
- (6) On-site traffic control signs on commercial properties, such as stop, yield, and similar traffic control signs containing no commercial message.
- (7) "No parking" or "towing" signs authorized by city ordinance.
- (8) "No dumping allowed" signs posted to deter illegal dumping not exceeding four square feet.
- (9) Underground utility warning signs not exceeding one square foot in size and similar safety signs.
- (10) Signs on railway property, which references the operation of such railway.
- (11) Security warning, neighborhood watch or crime watch signs under two square feet.
- (12) Flags, emblems and insignia of any governmental body, including the official flag of a nation or of a state is not a sign subject to this chapter. Notwithstanding the preceding sentence, a national or state flag shall not be installed, maintained, or used in a manner that would make that flag a hazardous sign if it were a commercial flag.
- (13) Corporate flags displayed on a freestanding pole, which do not exceed 35 feet in height. The flag shall not exceed 32 square feet in area. The flagpole shall be setback a minimum of 20 feet from the front property line and eight feet from the side property line.
- (14) Hand held signs or signs, symbols or displays on persons or animals, except for signs that qualify as human signs.
- (15) Signs located on mail boxes, newspaper vending machines and curbside residential newspaper holders which identify the owner and address of the premises or the name of the newspaper sold or subscribed to; provided that such devices are not placed so as to interfere with the safe movement of pedestrians or vehicular traffic.

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(16) Signs located on outdoor machines, devices, or equipment which display the trademark, trade name, manufacturer, cost of operating or service instructions or similar information, but do not advertise the business where located. This exemption includes, but is not limited to signs on coin-operated vending machines, fuel dispensing pumps, telephone facilities, automatic teller machines, automatic vacuum cleaners, amusement rides and similar machines, devices or equipment.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-11. - Sign categories.

For purposes of this section, property within the city's sign ordinance jurisdiction is classified into a sign category. Those properties within the city's limits are classified based upon their zoning district classification. Those properties located within the ETJ shall be classified into a sign category by the building official based upon the existing or proposed use and the zoning district most closely associated with that use. Classification into a sign category is for the purposes of signage only and does not establish vested use rights towards the assignment of zoning should the property be annexed into the city limits. In overlapping areas, the most restrictive sign regulations will apply.

(1) Single-family residential sign category includes any residential site in an agricultural (A), manufactured housing (M-1, M-2, M-3), or any single-family (SF, R-1A) townhouse (R-1-T) zoning districts or equivalent land use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(2) Multifamily residential sign category includes any site in a multifamily (R-2, R-1-C, R-3-1, R-3-2, R-3-3) zoning districts or equivalent use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(3) Commercial sign category includes any site in retail services (RS), warehouse (W), construction manufacturing (CM), entertainment (E), and transportation utilities (TU) zoning districts or equivalent use in the ETJ and the permitted nonresidential uses identified in the city's residential and multifamily zoning districts.

(4) Central business district sign category includes any site that is located within the boundaries of the central business district (CBD) zoning district.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-12. - General provisions.

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- (A) *Uniform signs in multi-tenant/multi-business developments.* Wall signs displayed by two or more businesses using common parking facilities shall be uniform in construction (i.e. cabinets, channel letters, plaques) and lighting (i.e. direct, indirect).
- (B) *Street address.* All freestanding signs, either berm or monument signs, shall include the street address. The street address shall not be included in the calculation of the sign area, except in such case that the street address is also the name of the center, business, or development, or in such case that the street address exceeds six square feet in size.
- (C) *Setback.* A minimum setback of at least five feet from any property line is required for all signs. A sign installed in compliance with this ordinance is not required to meet building setback requirements established in a separate city ordinance; however, no sign or sign support, other than a wall sign, may be installed less than 12 feet from the public right-of-way unless it is:
- (1) Less 30 inches in height above street pavement grade;
 - (2) Has a clearance of more than nine feet above pavement grade, provided that the sign shall have a clearance of more than 12 feet when located over a driveway;
 - (3) Does not extend into or over the public right-of-way unless specifically authorized under this chapter.
- (D) *Visibility.* Signs shall not be constructed or installed in a manner that would interfere with visibility, create a traffic hazard, or be confused with any traffic control sign or signal.
- (E) *Structural integrity.* Any sign as defined in this section, shall be designed and constructed to withstand wind pressures and receive dead loads as required in the building code adopted by the city. Any sign, other than a wall sign, shall be designed, installed, and maintained so that it will withstand a horizontal pressure of 30 pounds per square foot of exposed surface.
- (F) *Maximum height.* No sign shall exceed the maximum height provided for in this chapter. In determining the maximum height of a sign, no sign shall be located on a mound where the surrounding grade has been altered by more than 18 inches for purposes of artificially increasing the overall height of a sign above that allowed by the height regulations in this chapter.
- (G) *Historic district.* Signs on premises within a historic district designated by the city shall be subject to the issuance of a certificate of appropriateness by the state or local historic preservation commission.
- (H) *Public utility facilities.* New signs and signs being structurally altered shall maintain clearance from public utility facilities, shall not substantially interfere with drainage, and shall not be located in a utility or drainage easement. The minimum clearance from electrical lines shall be as follows: for service lines, except those serving a sign, five feet horizontal and six feet vertical clearance; for distribution lines, 7½ feet horizontal and eight feet vertical clearance.

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(I) *Parking, driveways, sidewalks.* Only signs required in the interest of public safety may occupy a required off street parking or loading space or obstruct any driveway or sidewalk, except as specifically authorized herein.

(J) *Public property.*

(1) No sign shall be located on or project over public property or a street right-of-way except governmental signs and temporary banner signs that comply with the approval by the city council of a license agreement. No portion of a freestanding sign shall be permitted to extend into the public right-of-way.

(2) No person shall, either directly or indirectly, cause or authorize a sign to be installed, used, or maintained on any utility pole, traffic signal pole, traffic signal controller box, tree, public bench, street light, or any other structure located on or over any public property or public right-of-way, located within the city's planning jurisdiction, except as authorized by this section.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-13. - Illumination.

(A) *Lighting.* Sign lighting shall be installed to protect the driver of a vehicle from dangerous glare and to maintain visual clearance of all official traffic signs, signals and devices.

(B) *Glare.* Signs shall be designed, located, shielded, and directed to prevent the casting of glare or direct light from artificial illumination, upon adjacent public right-of-way and surrounding property.

(C) *Bare bulb illumination.* Bare bulb illumination is prohibited within 150 feet of any premises containing a residential use, and in other cases is limited to 25-watt bulbs at night and 33-watt bulbs during daylight hours.

(D) *Brightness limitations.* The lighting intensity of a sign, whether resulting from internal illumination or external illumination, shall not exceed 75 foot candles when measured with a standard light meter perpendicular to the face of the sign from a distance equal to the most narrow dimension of the sign.

(E) *Electrical permit.* All signs in which electrical wiring and connections are to be used shall be subject to the applicable provisions of the city's electrical codes.

(F) *Central business sign category.* In the central business sign category, neon or phosphorescent lighting shall not exceed ten percent of the total signage allowed and may only be located in a window.

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(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-14. - Sign regulations relating to single-family residential sign category.

(A) *General.* No sign other than a temporary event directional sign (such as a garage sale sign, event sign, or a real estate sign) or a political sign that comply with subsection 29-6(c)(2) shall be erected on property used for single family or duplex dwellings.

(B) *Burma shave signs.*

(1) Not more than eight on-site subdivision burma shave signs may be permitted for each recorded subdivision not to exceed six per entry into the primary entrance of the subdivision.

(2) A burma shave sign shall not exceed 16 square feet of total sign area on one side and both sides of the sign may contain signage. The sign shall not exceed six feet in height and be located out of the right-of-way in a manner that does not obstruct the visibility of vehicle ingress/egress from surrounding streets and/or properties. For burma shave signs along roads bearing speed limits of 40 MPH or more or having setback at or greater than 25-foot setback, signs shall not exceed 64 square feet.

(C) *Model home signs.* Model home signs are limited to a 32 square foot sign face, a height of eight feet, and to one sign for each cluster of model homes. A nameplate sign that identifies the individual product name is exempt under this subsection if it does not exceed three square feet in sign area. Signs shall be placed by permit only, and no fee shall be required.

(D) *Subdivision development entrance sign.* A subdivision development entrance sign is a sign authorized for each major project entry into a legal recorded, multi-lot, multi-sectioned, master-planned subdivision, and contains only the name of the subdivision with no other information. Subdivision entrance signs must be berm or monument signs constructed of stone, brick or other maintenance free material. The design and construction must be compatible with surrounding development. Signage may appear on both sides of the entrance roadway within the recorded or master-planned subdivision and will be soldered as one sign. Lighting shall be ground lights or lights attached to the top of the sign focused downward directly on the sign.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-15. - Sign regulations relating to multifamily residential sign category.

(A) Signs in multifamily locations shall be limited to signs allowed in this section and in all applicable restrictions of this section as well as other requirements of this Code, and any other applicable law.

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(B) Except as provided in this subsection, a single freestanding sign is permitted only as berm or monument signs on the same lot as the development to identify the development and its entrance. Signs must be constructed of stone, brick or other maintenance free material.

(1) Lighting shall be ground lights or lights attached to the bottom of the sign focused upward directly on the sign.

(2) The maximum size of the sign shall be 0.09 square feet per linear foot of frontage, up to a maximum size of 24 square feet. A minimum size of 12 square feet is allowed for a berm sign.

(3) The maximum height of the sign shall be eight feet.

(4) In the event the development has a second entrance from a public street, a second entrance sign may be constructed, at one-half the size of the one main entry sign.

(C) Wall signs are permitted at a size to be calculated as one-half square foot per linear foot of frontage, not to exceed a total of 35 square feet.

(D) Window or door surface signs are allowed. The total sign area of all window and door signs shall be included in calculating the maximum wall sign area authorized at a particular location.

(E) No LED displays, signs, or message boards are permitted in the multifamily residential sign category.

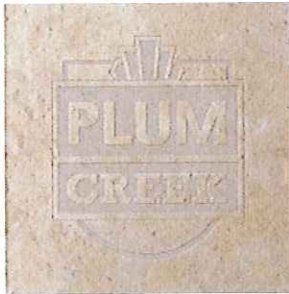
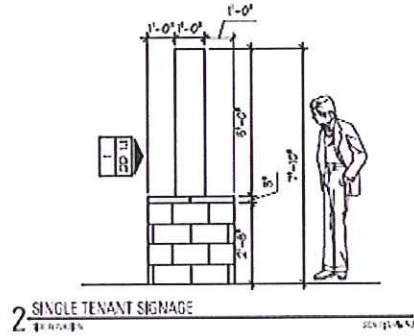
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Sec. 7-16. - Attached sign regulations.

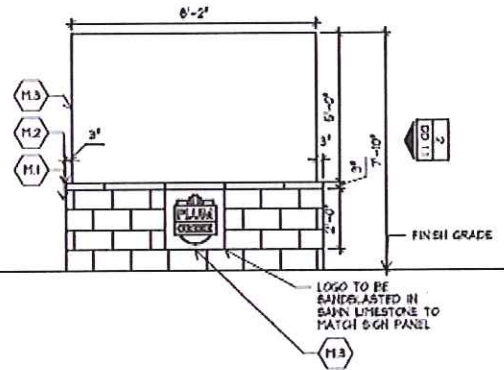
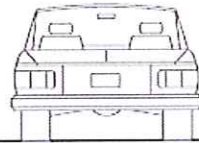
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MATERIALS SCHEDULE					
MADONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	DESCRIPTION AMOUNT NUMBER	COLOR	FINISH	CONTACT	REMARKS
(C)	LPESTONE VENEER USE N' MORTAR JOINTS	CREAM	SAVEN ALL SIDES	COMPANY: A.J. BRALER STONE, INC. PHONE: (800) 746-5792	* 1" THICK 6"X12" 18" LENGTH 7/8" JEWEL CONTRACTOR TO PROVIDE POCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. * 6/8" JEWEL COLOR FOR APPROVAL PRIOR TO POCK UP.
(C)	LPESTONE CAP	CREAM	SAVEN ALL SIDES	COMPANY: A.J. BRALER STONE, INC. PHONE: (800) 746-5792	* CONTRACTOR TO PROVIDE POCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL.
(C)	LPESTONE SIGN PANEL/LPESTONE LOGO PANEL	CREAM	SAVEN ALL SIDES	COMPANY: A.J. BRALER STONE, INC. PHONE: (800) 746-5792	* ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.



Example of Sandblasted Sign



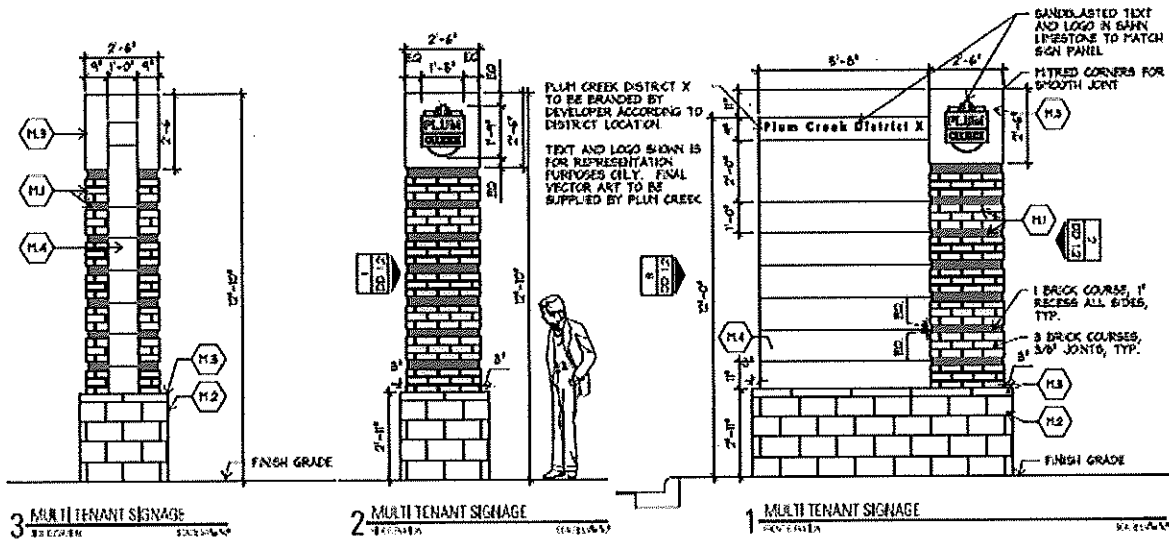
1 SINGLE TENANT SIGNAGE
12/11/11 4:57

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MATERIALS SCHEDULE					
MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	DESCRIPTION (INCL. NUMBER)	COLOR	FINISH	CONTACT	REMARKS
⊙	FACE BRICK PINE BLOOM CITY BRICK PRODUCTS INC./LANDING - SPRINGFIELD SIDE BUILDERS SPECIAL	MATCH EXISTING PLUM CREEK MASONRY	MATCH EXISTING PLUM CREEK MASONRY	COMPANY: BLESS-BULLER BRICK CO. PHONE: (702) 306-3058	- CONTRACTOR TO PROVIDE PROOF UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO PICK UP.

⊙	LIPSTONE VENEER USE IN MORTAR JOINTS	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-6790	- IF THICK SIZE USE LENGTH X 7/8" WITH CONTRACTOR TO PROVIDE PROOF UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT MORTAR COLOR FOR APPROVAL PRIOR TO PICK UP.
⊙	LIPSTONE SIGN PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-6790	- CONTRACTOR TO PROVIDE SAMPLE FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL.
⊙	LIPSTONE SIGN FACE/RESISTIVE LOGO PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-6790	- ALL ALTERNATE SIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.

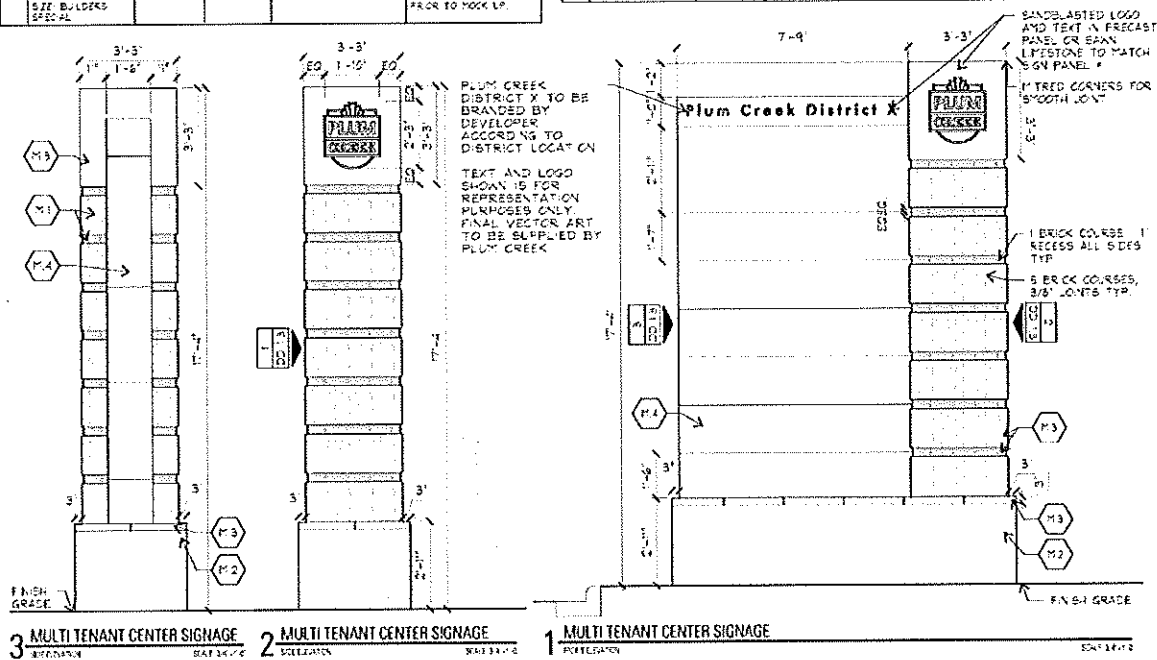


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MATERIALS SCHEDULE					
MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	DESCRIPTION / MODEL NUMBER	COLOR	FINISH	CONTACT	REMARKS
⊙	FACE BRICK	MATCH EXISTING	"MATCH EXISTING"	COMPANY: ELSA-PUTLER BRICK CO. PHONE: (817) 293-3314	- CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT PORTER COLOR FOR APPROVAL PRIOR TO MOCK UP.

⊙	LIMESTONE VENEER USE 2" MORTAR JOINTS	CREAM	SPAN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (855) 741-5792	- 3" THICK, 6-25 CM LENGTH X 7 1/2" HIGH. - CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT PORTER COLOR FOR APPROVAL PRIOR TO MOCK UP.
⊙	LIMESTONE SIGN PANELS/LIMESTONE LOGO PANEL	CREAM	SPAN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (855) 741-5792	- ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.



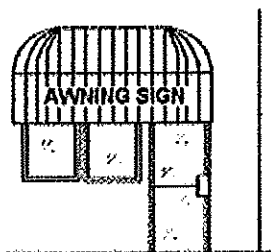
Item # 25

(A) *Awning signs.* The purpose of an awning sign is to provide an advertising message on the face of an awning. Awning signs shall only be allowed within commercial districts, industrial districts, the central business district.

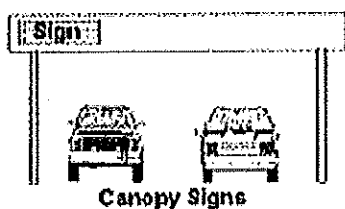
(1) An awning may extend across the entire width of a building or tenant space. An awning may extend above the apparent roof line of the building, provided the awning extends across 75 percent of the entire width of the building façade to which it is attached. An awning shall not exceed six feet in height.

(2) The sign area on an awning shall not exceed 20 percent of the area of the awning and shall extend for no more than 50 percent of the length of the awning. A permit shall be required for an awning sign. Awning signs may be illuminated.

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(B) *Canopy signs.* A canopy sign shall be no greater in size than 20 percent of the face of the canopy of which it is a part or to which it is attached and shall not extend beyond the face of the canopy either vertically or horizontally. An illuminated strip may be incorporated into the canopy. Canopy signs shall only be allowed within commercial districts, industrial districts, and the central business district.



(C) *Projecting signs.* The purpose of a projecting sign is to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached. Projecting signs shall be allowed within commercial districts, industrial districts and within the central business district.

(1) *Number of signs:* One projecting sign shall be allowed for each single tenant building or for each tenant in a multi-occupancy structure. However, no tenant storefront shall have a projecting sign in combination with a wall sign on the same building elevation.

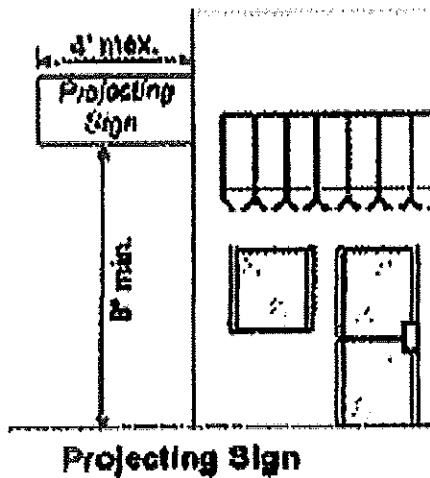
(2) *Maximum area:* A projecting sign shall not exceed 20 square feet. The plane of the message area shall not exceed 18 inches from the plane of the message area on the opposite side of the sign.

(3) *Horizontal projection:* A projecting sign shall not project more than four feet from any wall facing and shall not be closer than two feet from a curb line. A projecting sign shall not extend above the apparent roof line of the building.

(4) *Clearance:* Every projecting sign shall be a minimum of eight feet above the grade over a walking area or 14 feet over a vehicular maneuvering area. Projection signs shall not project over any property line or right-of-way line unless with an approved license agreement.

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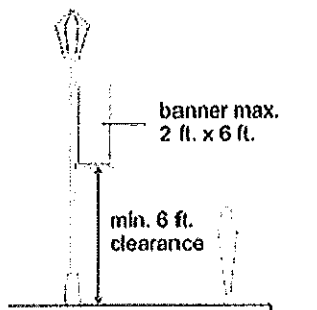
- (5) A projecting sign may be illuminated.



(D) *Light mounted banner signs.* Light mounted banner signs shall only be permitted in the central business district for the advertising of permitted community events, seasonal and historic themes, or other such civic purposes; on collector level and higher classification within a residential subdivision; within master planned commercial subdivision. Such banners are limited to subdivision identification, or seasonal decorations and works of art by local artists. Such banners must be approved by the appropriate electric utility company in addition to receiving a permit from the city manager's office. No permit shall be approved for a period exceeding 30 calendar days. Light mounted banner signs shall comply with the following regulations:

- (1) Banners shall be limited to not more than one banner on any light pole.
- (2) Banners shall be limited to no more than two feet by six feet in exterior dimension and 12 square feet in area per banner.
- (3) A minimum height of six feet as measured from adjacent grade to the bottom of the banner shall apply.
- (4) Banners shall be maintained in good repair. Should they become excessively faded, tattered or torn, they shall be replaced or removed.
- (5) Banners shall not be illuminated, except for indirect lighting associated with the main lamp of the light pole to which it is mounted.

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(Ord. No. 653, § 3(Attach.), 4-19-2011)

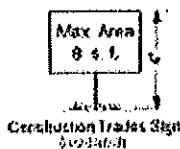
Sec. 7-17. - Temporary sign regulations.

(A) *Construction trades signs.* The purpose of a construction trades sign is to denote the architect, engineer, financial institution or building trades contractor involved in a construction project. Construction trades signs shall be categorized as either commercial or residential.

(1) The maximum area, height, spacing and setbacks of a construction trades sign for commercial locations shall not exceed 64 square feet and shall not exceed ten feet in height.



(2) The maximum area, height, spacing and setbacks of a construction trades sign for residential locations shall not exceed eight square feet and shall not exceed four feet in height.



(3) Construction trades signs shall not be erected until a building permit has been submitted for building construction and shall be removed up on completion of the construction project or occupancy of the structure, whichever is applicable.

(4) No permit or fee shall be required for a construction trades sign.

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- (5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (6) A construction trade sign shall not be illuminated.
- (b) *Future development signs.* Future development signs shall be regulated as either commercial or residential.
- (1) The maximum area, height, spacing and setbacks of a future development sign shall not exceed 64 square feet and shall not exceed ten feet in height.
- (2) A permit shall be required for a future development sign.
- (3) A future development sign shall not be illuminated.
- (4) A future development sign shall be removed when the project is 90 percent complete or within three years from start of construction, whichever is less. For the purpose of this provision, a subdivision shall be deemed 90 percent complete when 90 percent of the lots within the subdivision are sold.
- (5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (6) One sign shall be permitted per lot; except that one sign per major access to the development shall be authorized if a lot is used together with one or more contiguous lots for a single use or a unified development (for example, a shopping center).



- (C) *Garage sale signs.* The purpose of a garage sale sign is to announce the sale of household possessions.
- (1) Garage sale signs shall not exceed four square feet. Signs shall be allowed for a maximum of 72 consecutive hours no more than two times per calendar year.
- (2) Single-family residential on-premises: One garage sale sign per street frontage shall be allowed, but only on the premises where the garage sale is being conducted and where there is an existing residential use.

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(3) Neighborhood-wide garage sales: Two garage sale signs per subdivision entrance shall be allowed for a neighborhood-wide garage sale sponsored by a homeowner's association (HOA). The garage sale sign may be off premises from where the actual garage sale is conducted, but the sign shall be located on property, including a street right-of-way, that is within the limits of the homeowner's association. The HOA must be registered with the city.

(4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Signs shall not be placed anywhere in the center median of a public or private street.

(5) No permit or fee shall be required for any garage sale sign.

(D) *Real estate signs (commercial, including subfamily).* The purpose of a commercial real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

(1) A commercial real estate sign shall not be illuminated.

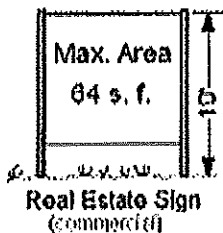
(2) The maximum area and height of a commercial real estate sign shall not exceed 64 square feet and shall not exceed ten feet in height.

(3) Commercial real estate signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.

(4) No more than one sign per 300 linear feet of street frontage may be placed on such property.

(5) Signs shall be placed at least twenty-five feet from an intersection and a minimum of ten feet from the curbline.

(6) No permit or permit fee shall be required for a commercial real estate sign.



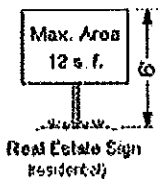
(E) *Real estate signs (residential).* The purpose of a residential real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

(1) A residential real estate sign shall not be illuminated.

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- (2) The maximum area and height of a residential real estate sign shall not exceed 12 square feet and shall not exceed six feet in height.
- (3) All signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.
- (4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (5) No permit or permit fee shall be required for a residential real estate sign.

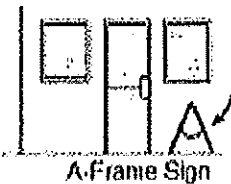


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(F) *A-frame signs.* The purpose of an A-frame sign is to provide temporary advertising during business hours of a commercial occupancy.

- (1) Maximum height and area shall conform to the following table:

Maximum Height and Areas of A-Frame Signs		
	Max. Area	Max. Height
Located on a sidewalk	8 s.f.	4 feet
Located in a yard	24 s.f.	8 feet



- (2) Time duration: Only displayed during business hours.
- (3) Placement: Only allowed on private property, but may be located on a public sidewalk, provided a width of four feet shall remain free from intrusion.
- (G) *Miscellaneous temporary sign regulations.*

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- (1) Temporary signs advertising the opening or relocation of a business shall only be permitted for a maximum period of 30 days before and 60 days after such opening or relocation. Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (2) Except as specifically provided otherwise in this chapter, banners shall not exceed 32 square feet, must be attached and parallel to a wall of the structure, and shall only be permitted for a period not to exceed 30 calendar days and with a period of not less than 30 days between displays.
- (3) Human signs shall be allowed on private property and the untraveled public rights of way provided that no human sign, as defined by this section, shall be displayed within five feet of a vehicular traffic lane.
- (4) Except as specifically provided otherwise herein, temporary signs shall not exceed four square feet in size and shall be allowed for a maximum of 14 calendar days per event. Temporary signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Temporary signs shall not be placed anywhere in the center median of a public or private street.
- (5) Open house signs do not require a permit, shall not exceed four square feet, and shall be allowed for a maximum of four hours the day of the open house. Open house signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Open house signs shall not be placed anywhere in the center median of a public or private street.
- (6) Use of temporary decorations as signs, otherwise referred to as decorative festoons, meaning tinsel, strings of ribbon, small commercial flags, or streamers may be used as temporary enhancement of signage in a commercial sign category, providing these devices have no glare, no moving parts, are maintained, and comply with all codes and policy guidelines governing their safe use. No lettering is permitted on these items. Temporary decorations may be used for a period not to exceed 30 calendar days with a period not less than 30 days between displays.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-18. - Flagpoles and commercial flags.

One flagpole is allowed per development at a maximum height of 50 feet. Commercial flags are allowed in multifamily and/or commercial developments. No text or logo is permitted on such flags as such would constitute a sign. The national or state flag and the flagpoles for the express purpose of displaying the national or state flag are exempt from this section.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

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Sec. 7-19. - Advertising searchlight.

- (A) For purposes of this section, an "advertising searchlight" means a searchlight used to direct beams of light upward for advertising purposes.
- (B) Use of an advertising searchlight at any location is authorized upon issuance of a permit by the building official.
- (C) The permit shall be effective for a maximum period of five days per calendar year to any business or group.
- (D) An advertising searchlight shall not be operated between the hours of 1:00 a.m. and 6:00 p.m.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-20. - Kiosk signs.

- (A) Kiosk signs are intended to provide a uniform, coordinated method of providing homebuilders and developers a means of utilizing directional signs, while minimizing the negative impacts of weekend homebuilder's signs on the appearance of the city. Kiosk signs are also intended to provide service to the public on the directions to municipal facilities and parks, community events, and school district facilities.
- (B) The city council may, by duly executed license agreement, grant the exclusive right to design, erect and maintain kiosk signs within the city limits and extraterritorial jurisdiction of Kyle.
- (C) Kiosk signs shall be designed and constructed in accordance to the specifications contained in the aforementioned license agreement.
- (D) Prior to erecting any kiosk sign, the licensee shall submit a sign location map to the building official for approval.
- (E) Kiosk sign installation shall include break-away design features as required for traffic signs in the street right-of-way.
- (F) Advertisement of price information shall be prohibited on kiosk signs.
- (G) No additional or extraneous signs, pennants, flags or other devices for visual attention or other appurtenances shall be attached to kiosk signs.

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- (H) Kiosk signs shall not be illuminated.
- (I) Individual sign panels on kiosks shall have a uniform design and color.
- (J) Kiosk signs shall not interfere with the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of motorists, pedestrians or traffic control signs; shall not be installed in the immediate vicinity of street intersections; and shall comply with the visibility triangle requirements contained in the Subdivision Regulations or other visibility easements provided by code or subdivision plat.
- (K) Kiosk sign may be located on private property, or other state-maintained roadways, provided written permission is obtained from the property owner.
- (L) Kiosk sign panels shall be available to all developers and homebuilders operating within the city on a first-come, first-served basis. Developers and homebuilders operating November 18, 2008 within the city limits shall have first priority to lease sign panels in the event extra panel space is available, residential developments, located outside the city limits may also lease panels.
- (M) In accordance to the specifications contained in the aforementioned license agreement, a percentage of the kiosk sign panels shall be reserved for the city to use as directional signage to municipal or community facilities or locations or community events.
- (N) No kiosk sign shall be placed, located, or installed on city-owned property or public right-of-way without a license agreement duly approved by the city council.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-21. - Other sign regulations.

(A) *Activities and events sign.* An activities and events sign is a changeable copy directory allowed solely to public buildings, church buildings (places of worship only), and neighborhood associations, intended for use only by the entity where the sign is located. A maximum of one information sign shall be allowed for each neighborhood group, church, or public development complex, and it is not considered a freestanding sign in this section. Activities and events signs shall comply with the following criteria:

- (1) The sign shall be constructed of a non-oxidizing metal (e.g. aluminum, stainless steel) cabinet set on a pole or on the ground as a monument, with a clear, acrylic panel inset and a locking door. The door of the sign shall remain locked except while the message is being posted.
- (2) The maximum size of the cabinet shall be 12 square feet, and maximum height shall be five feet above grade.

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(3) Only changeable letters shall be used and letters shall be no larger than four inches and no less than two inches in height.

(4) Such sign may have direct lighting that is placed inside the cabinet (portrait lighting); however, no backlighting or external direct lighting is permitted.

(5) Such sign shall be located at or near the entrance of the public building or church; for a neighborhood sign, such sign shall be located within the subdivision at a commonly traveled location, for example, near the neighborhood park or amenity center, the main mail station, or the main entrance to the neighborhood. Such a sign shall not be required to meet building setback requirements or setback requirements established in section 29-12 provided that it does not obscure the travel path or visibility of drivers, bicyclists, or pedestrians, as determined by the planning department. Such sign shall be located on property maintained by the neighborhood association or with a written agreement between the property owner and the neighborhood association. Such sign shall not be placed closer than 150 feet from the intersection of a collector street and a major or minor arterial street, as defined in the city roadway plan. Such signs shall be maintained by the neighborhood association in a "like-new" condition at all times.

(B) *Government sign.* Government sign(s) are permitted in all categories, subject to all laws and regulations that apply.

(C) *Memorial sign.* Memorial sign(s) may be installed in accordance with state historical standards, or as building cornerstones not to exceed eight square feet.

(D) *Private traffic-control signs.* Private traffic control signs are not allowed for single-family residential or duplex uses, but are otherwise permitted. Signs shall not exceed four square feet in size, and may contain directions and the name or logo of the same site user.

(E) *Window signs.* Window signs may be placed so as not to obscure more than 25 percent of the visible window area. Where multiple windows exist, fronting on the single elevation, the 75 percent visibility shall be maintained for the total window area on said elevation.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-22. - Nonconforming signs.

(A) By the passage of the ordinance from which this section derives and its amendments, no presently illegal sign shall be deemed to have been legalized unless such sign complies with all current standards under the terms of this ordinance and all other ordinances of the city. Any sign which does not conform to all provisions of this section but which existed on the effective date of this section and was lawfully constructed or installed shall be considered as a nonconforming sign. All nonconforming signs shall be permitted in the same manner as any other legally existing sign or proposed sign, provided that no sign that was constructed or installed in violation

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of any state or local law, or that was originally constructed or installed without a permit that was then required at such time, shall be or qualify as a nonconforming sign.

(B) A nonconforming sign shall be allowed to be continued and maintained at its existing location subject to the limitations of this section.

(C) No nonconforming sign may be enlarged or altered in a way which would increase its nonconformity; provided that the sign face may be changed in compliance with this chapter.

(D) A nonconforming sign shall be removed immediately if any of the following applies:

(1) The nonconforming sign is abandoned as defined in this subsection. Whenever any nonconforming sign no longer advertises a bona fide business or a business which has moved away or closed, a product sold, or service rendered, such sign shall be removed within 60 days. If the nonconforming sign is a wall sign, the wall sign shall be removed or painted over with a color that resembles or matches the rest of the wall of the building if the owner of, or person responsible for the sign, or if the tenant closing a business, fails to remove the abandoned sign or paint over the wall sign, the owner of the premises shall be held responsible and the work shall be done within 30 days following written notice to do so by the building official.

(2) The building official or his/her designee determines the sign to be obsolete or substandard under any applicable ordinances of the city to the extent that the sign becomes a hazard or dangerous.

(3) A nonconforming sign, or a substantial part of it is destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(E) Reconstruction, repair, or replacement of a nonconforming sign shall be completed no later than 90 days following the date of the damage. For purposes of this subsection, a sign, or a substantial part of a sign, is considered destroyed if the cost of repairing the sign is more than 50 percent of the cost of installing a new sign of the same type at the same location.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-23. - Hazardous signs.

Except as otherwise provided by aw or this chapter, no person may install, maintain, or use a sign that:

(1) Obstructs a fire escape, required exit, window, or door used as a means of escape.

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- (2) Interferes with a ventilation opening, except that a sign may cover a transom window if otherwise in compliance with the building code and fire code.
- (3) Substantially obstructs the lighting of public right-of-way or other public property, or interferes with a public utility or traffic control device.
- (4) Contains or utilizes a supporting device placed on public right-of-way or other public area within the city limits and the extraterritorial jurisdiction of the city, unless the use of the public rights of way or other public area has been approved by the city and a right-of-way joint use agreement has been filed.
- (5) Is illuminated in such a way as to create a hazard to pedestrian, bicycle, or vehicular traffic.
- (6) Creates a traffic hazard for pedestrians, bicyclists, or motorists, by restricting visibility at a curb cut or adjoining public street.
- (7) Has less than nine feet of clearance above street pavement grade or has less than 12 feet of clearance above a driveway, and/or is located outside the public right-of-way and within the visibility triangle at an intersection that results in impaired sight distance of users of the intersection.
- (8) Violates a requirement of the electrical code.
- (9) Is determined by the building inspector to be dangerous.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-24. - Abatement of sign violations and removal of unsafe signs.

(A) Any sign that is structurally unsafe or that constitutes a hazard to the health, safety, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster damage, abandonment or other cause is hereby declared to be a public nuisance and shall be abated by demolition or removal.

(B) Should the building official or the code enforcement officer determine that any sign is not properly maintained, is unsafe or insecure or has otherwise been constructed, erected or maintained in violation of the provisions of this section, he shall take action as follows.

(1) Except as provided in the following paragraphs (2) and (3), the building official shall give the sign or property owner written notice to repair, remove or obtain a permit for such sign as applicable within ten days after such notice. If the sign or property owner fails to remove, repair, or obtain a permit for such sign so as to comply with all applicable standards and

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regulations, the building official shall cause the sign to be either removed or repaired and such cost shall be charged to and paid by the property owner if such demolition or repair expenses are not paid by the property owner within 30 days of such billing, then such expenses shall constitute a valid lien against the property. Such notice shall also provide the sign or property owner an opportunity to bring the sign into compliance or to request a hearing before the sign control board to determine whether the sign should be repaired or removed. Such appeal must be filed in writing with the city secretary within ten days of the notice. After consideration of all facts, the sign control board shall rule upon the appeal.

(2) The building official may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

(3) Any sign located in public right-of-way may be immediately removed by the building official without notice to the owner.

(C) In addition to the above, the building official or the code enforcement officer may issue citations without giving prior notice of violation or pursue any other administrative or legal remedy in order to abate any sign which is in violation of this chapter or any other law.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-25. - Repairs and maintenance.

All signs in the city and its ETJ shall be properly maintained in good and safe structural condition, shall be painted on all exterior parts, unless coated or made of rust resistant material, and shall be maintained in good condition and appearance at all times. Any owner or primary beneficiary falling to maintain, repair, or remove any such sign after due notices has been given shall upon conviction be guilty of a misdemeanor. The building official shall have the authority to order the painting, repair, or removal of a sign and accompanying landscaping which do not comply with this ordinance or the building codes or that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-26. - Appeals; exceptions to sign regulations.

(A) *Board of adjustment is established as sign control board; composition.* The board of adjustment is hereby established to serve in a dual capacity as the sign control board ("SCB").

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(B) *Powers; duties of the SCB.* The city council authorizes the board of adjustment in its capacity as the SCB to sit as a board of appeals and to exercise the powers set forth in this chapter.

(C) *Appeals.* Appeals to the SCB may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the building official. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the building official and with the SCB a notice of appeal specifying the grounds thereof. The building official shall forthwith transmit to the SCB all the papers constituting the record upon which the action appealed from was taken.

(D) *Appeal stays proceeding.* An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the SCB after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the SCB or by a court of record on application or notice to the building official and on due cause shown.

(E) *Hearing.* The SCB shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent.

(F) *SCB powers.*

(1) The SCB shall have the following powers:

a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the building official in the enforcement of this section.

b. To hear and decide special exceptions to the terms of this section upon which the SCB is required to pass.

c. To authorize, upon appeal in specific cases, such exception from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this section will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the SCB may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building official from whose action the appeal is taken.

(G) *Limitations on the authority of the SCB.*

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(1) The SCB may not grant an exception authorizing a sign where it is not otherwise allowed by this charter.

(2) The SCB shall have no power to grant an amendment to the sign ordinance. In the event that a request for an amendment is pending before the city council, the board shall neither hear nor grant any exceptions with respect to the subject property until final disposition of the sign ordinance amendment.

(3) The SCB shall not grant a request for any exception to any parcel of property or portion thereof upon which a zoning application, site plan, preliminary plan, or final plat, where required, has not been finally acted upon.

(H) *Exceptions.*

(1) The SCB may grant an exception from a requirement of the sign ordinance, if it makes written findings that:

a. The requirement does not allow for a reasonable use of the property;

b. The hardship for which the exception is requested is owing to a special condition inherent in the property itself, such as restricted area, shape, topography or physical features;

c. The special condition is unique to this property and is not generally characteristic of other parcels of land in the area; and

d. The development under the exception does not:

1. Alter the character of the area adjacent to the property;

2. Impair the use of adjacent property that is developed in compliance with the city requirements; or

3. Impair the purposes of the regulations of the sign ordinance.

(2) An exception may not be granted to relieve a self-created or personal hardship, nor for financial reasons only.

(3) The applicant bears the burden of proof in establishing the facts justifying an exception.

(I) *Vote required.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building officials, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in this chapter.

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(J) *Time limitation on order permitting erection of sign.* No order of the SCB permitting the erection or alteration of a sign shall be valid for a period longer than six months, unless a sign permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

(K) *Appeals from action of the SCB.* Any person or persons, jointly or severally, aggrieved by any decision of the SCB, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to the city secretary, on behalf of the city council, a petition, duly verified, appealing the decision of the SCB. Such petition shall be presented to the city secretary within ten days after the meeting date of the decision by the SCB.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-27. - Penalty.

(A) Any individual, association, corporation or legal entity violating any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by the assessment of a fine not exceeding \$2,000.00 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) The primary beneficiary of any sign installed in violation of this section shall be presumed to have authorized or caused, either directly or indirectly, the installation, use, or maintenance of the sign in violation of this section.

(C) Whenever any construction, installation, alteration, or repair of a sign is being done contrary to the provisions of this section, another controlling ordinance or statute governing the sign, the building official may order the work stopped by notice verbally or in writing served on any persons engaged in the doing or causing such work to be done and the city shall post a stop work order on the property adjacent to the posted building permit, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work. If no permit has been issued, all work shall stop until a permit has been properly issued and all errors corrected to the satisfaction of the building official. The building official or code enforcement authority may also issue a work correction order, which shall be served upon any persons who are working on a certain aspect of the sign.

(D) The city and/or the city manager shall enforce this section by appropriate administrative action including but not limited to, the rejection of plans, maps, plats and specifications not found to be in compliance with this section and good engineering practices, and the issuance of stop work orders.

(E) Upon the request of the city council, the city attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this ordinance, or to obtain declaratory judgment, and to seek and recover court costs and attorney

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fees, and/or recover damages in an amount sufficient for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 8. Board of adjustment.

(A) *Creation of the board of adjustment.* The city council shall provide for the appointment of a board of adjustment and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirements of the State of Texas. The board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Plum Creek PUD zoning ordinance consistent with state law and in harmony with its general purpose and intent and in accordance with general and specific rules herein contained.

(B) *Powers and duties.* The board of adjustment shall have the following powers:

(1) To hear and decide appeals from certain decisions of the building official where it is alleged there is error in any order, requirement, decision, interpretation, or determination made by the building official in the enforcement of this ordinance;

(2) To interpret the intent of the Plum Creek PUD official zoning map where uncertainty exists because of the physical features on the ground varying from those on the official zoning map and none of the rules set forth in this ordinance apply.

(3) To authorize, upon appeal variances of the yard, lot width, lot depth, signs, minimum setback, off-street parking or off-street loading regulations from the terms of this ordinance, if not contrary to the public interest, where owing to unique and special conditions of the land not normally found in a PUD district a strict enforcement of the provisions of the ordinance by the building official would result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

(C) *Organization of the board.* The board of adjustment shall be established and appointed as provided in Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.] and the ordinances of the city.

(D) *Appeals.*

(1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, commission or committee of the city affected by any decision of the building official made pursuant to this ordinance. Such appeal shall be made within 30 days by filing with the building official and with the board of adjustment a notice of appeal specifying the grounds

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thereof. The building official shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

(2) An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the board of adjustment after the notice of appeal shall have been filed with him that by the reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(3) The board of adjustment shall hear the appeal within 30 days or such extension as requested by the applicant, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(E) *Revision of appealed decisions.* In exercising the above mentioned powers such board may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the power of the building official from whom the appeal is taken.

(F) *Votes necessary.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official, to decide in favor of the applicant on any variation in this ordinance.

(G) *Appeals from the board of adjustment.* Any person or persons or any taxpayer or any officer, department, board, commission or committee of the city, jointly or severally, aggrieved by any decision of the board of adjustment, may present to a court of record a petition, verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board.

Sec. 9. Planning and zoning commission.

(A) *Creation of the planning and zoning commission.* The city council shall provide for the appointment of a planning and zoning commission and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirements of the State of Texas.

(B) *Responsibilities.* It shall be the responsibility of the planning and zoning commission to hear all applications for zoning changes and changes in the Plum Creek PUD zoning ordinance, as prescribed by law and this ordinance, and to recommend action to the city council. The commission has no authority to approve variances from the requirements of this ordinance.

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(C) *Organization of the commission.* The organization, membership and qualifications of the planning and zoning commission shall be as otherwise provided in the ordinances of the city.

(D) *Rules and regulations.* The commission shall develop and adopt rules in accordance with the provisions of state law and the ordinances of the city. Meetings of the commission shall be held at the call of the chairman and at such other times as the commission may determine. Except as authorized by Chapt. 551, Tex. Gov't. Code [V.T.C.A., Government Code § 551.001 et seq.], on the advice of the city attorney, all meetings of the commission will be open to the public. The commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the city secretary and except as authorized pursuant to Chapter. 552, Tex. Loc. Gov't. Code [V.T.C.A., Government Code § 552.001 et seq.], shall be available as a public record.

(E) *Plum Creek PUD public hearing.* The planning and zoning commission shall conduct a joint public hearing with the city council to consider the original zoning application for approval of the Plum Creek PUD. Notice of the public hearing shall be given in the manner in which the notice is required to be given under state law. The decision of the planning commission on such original zoning application for the Plum Creek PUD shall be made to the city council as a recommendation to grant, with or without conditions, or to deny.

(F) *Report and recommendation from the planning and zoning commission.*

(1) No amendment to this ordinance or to the Plum Creek PUD master plan or to the zoning designation of any area within the Plum Creek PUD shall be enacted by the city council without first receiving a report and recommendation from the planning and zoning commission.

(2) The planning and zoning commission shall hold a public hearing on all proposed zoning classification changes to the Plum Creek PUD or the Plum Creek PUD master plan and proposed general amendments to this ordinance.

(3) Written notice to property owners. When the public hearing is to consider a proposed zoning classification change to the Plum Creek PUD or master plan, written notice of such hearing shall be given to the owners of all real property located within 200 feet of the property on which the change in classification is proposed. Notice shall be given before the tenth day before the date set for the hearing before the commission either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the address shown on the last approved city tax roll.

(4) The planning and zoning commission may recommend enactment of a proposed general amendment to this ordinance or a change of zoning classification to the Plum Creek PUD or master plan if it finds that such amendment or change is in the public interest and conforms to the comprehensive plan of the City of Kyle.

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(5) A change of zoning classification proposed by the owner of the parcel affected may be recommended for enactment, even though such proposed change does not conform to the Plum Creek PUD master plan, provided that the planning and zoning commission finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the land use map was adopted which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the said plan and, provided further, that the planning and zoning commission finds that the requested zoning classification is in the most appropriate classification for the area affected.

Sec. 10. Review and action of the city council.

(A) Hearing. The city council shall hold a public hearing on all proposed Plum Creek PUD or master plan zoning classification changes and general amendments to this ordinance before acting thereon.

(B) Notice.

(1) The city council shall not act upon an amendment of this ordinance or the zoning of any land included within the Plum Creek planned unit development prior to receiving the recommendation of the planning and zoning commission made after notice and public hearings as provided in section 9 [of this article].

(2) Before the city council shall consider a proposed zoning classification change to the Plum Creek PUD or master plan or a proposed general amendment to this ordinance, notice shall be published in an official newspaper or in a newspaper of general circulation in [the City of] Kyle before the 15th day before the date of the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered.

(C) The city council may enact a proposed general amendment or change of zoning classification by ordinance if it finds that such amendment or change is in the public interest and conforms to the comprehensive plan of the City of Kyle.

(D) A change of zoning classification proposed by the owner of a parcel affected may be enacted, even though such proposed change does not conform to the Plum Creek PUD master plan, provided the city council finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the Plum Creek PUD master plan was adopted, which changed conditions make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the said plan, and provided further, that the city council finds that the requested zoning classification is the most appropriate classification for the area affected.

(E) If a written protest is submitted against a proposed change of zoning classification signed by all the owners of 20 percent or more either of the area of the lots or land included in such proposed change, or of the lots of land immediately adjoining the same and/or extending 200 feet

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therefrom, such proposed change of zoning classification shall not become effective except by the favorable vote of three-fourths of all the members of the city council, including the mayor. If the planning and zoning commission submits a negative report not recommending a general amendment to the zoning ordinance or a proposed change of a Plum Creek PUD zoning classification, such amendment or proposed change shall not be effective except by the favorable vote of three-fourths of the members of the city council, including the mayor.

(F) The city council may approve a site plan at such time as the zoning or zoning change is granted. All representations, whether oral or written, made by the applicant or his or her agent(s) on behalf of the zoning or zoning change becomes a condition(s) upon which the zoning change is granted. It shall be unlawful for the applicant to vary from any such representations unless the applicant first obtains the approval of the city council, except building lines may be moved ten feet with the written approval of the city administrator. The site plan shall be null and void unless the new owner certifies in writing that he will comply with the approved site plan and permit requirements; and such site improvements as constructed complies with such approved site plan.

(G) The city may initiate re-zoning procedures if the project is abandoned, vacated, sold or otherwise disposed of except:

- (1) As provided elsewhere in city ordinances; or
- (2) Unless the new owner agrees to develop the project in accordance with the original approved site plan.

Sec. 11. Fees.

The applicant for any permit set forth in this ordinance shall pay the fees indicated for such permit as set forth in the fee schedule ordinance (Ordinance No. 293) promulgated by the city council, as amended.

Sec. 12. Amendments to ordinance.

(A) *Statement of intent.* For the purpose of establishing and maintaining sound, stable and desirable development within the territorial limits of the city, this ordinance may be amended from time to time to correct errors in the ordinance, or because of changed or changing conditions in a particular area or in the city generally, or to rezone an area, extend the boundary of an existing zoning district or to change the regulations and restrictions thereof, all in accordance with the city's comprehensive plan.

(B) *Amendment limitation.* Subject to the limitations of the foregoing statement of intent, or amendment to this ordinance may be initiated by:

- (1) The city council on its own motion;

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(2) The planning and zoning commission; or

(3) Written request made by the owner(s) of land within the Plum Creek PUD.

(C) *Responsibility for change.* The city council has sole responsibility for changes in the Plum Creek PUD official zoning map and changes in the Plum Creek PUD zoning ordinance.

(D) *Referral of amendment petition to commission.* The council, upon receipt of an application to amend the ordinance, which has been examined and approved as to form by the city secretary, shall refer the request to the same planning and zoning commission for study, hearing, and report. The council may not enact the proposed amendment until the commission makes its report to the city council.

(E) *Action by the commission.* The commission shall cause a study to be made, give public notice, hold a public hearing and recommend to the city council such action as the commission deems proper.

(F) *Action by the council.* The city council shall give public notice and hold a public hearing before taking final action on a request to amend this ordinance, or on any proposed amendment initiated by the commission or the city council.

(G) *Public hearing and notice.* Notice shall be given and hearings held in the same manner as provided in article III, section 9 of this ordinance for planning commission hearings and article III, section 10 of this ordinance for city council hearings for zoning changes.

(H) *Protest to proposed amendments.* A written protest duly signed by the owners of 20 percent or more of the area of lots or of the lots or land immediately adjoining the same and extending 200 feet therefrom shall not become effective except by the favorable vote of three-fourths of all members of the council.

(I) *Comprehensive review of ordinance.* The commission shall from time to time, at intervals of not more than three years, examine the provisions of this ordinance and the location of the Plum Creek PUD zoning district boundary lines and shall submit a report to the city council recommending changes and amendments if any, which are deemed desirable in the interest of the public health, safety and general welfare.

Sec. 13. Interpretation, purpose and conflict.

The requirements established by the provisions of this ordinance shall be the minimum standards and requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare, it being intended to lessen congestion of streets, to secure safety from fire, panic and other dangers; to provide adequate light and air, to prevent overcrowding of land, to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water and sewage, schools, parks, and other public requirements. It is not

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intended by this ordinance to interfere with or abrogate or annul any ordinance, rules, regulations, or permits previously adopted or issued and not in conflict with any of the provisions of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises and likewise not in conflict with this ordinance.

Sec. 14. Repeal of conflicting ordinances or orders.

Ordinances and all orders, ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

Sec. 15. Severability clause.

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Sec. 16. Effective date.

This ordinance shall be effective on the date of adoption by the city council as shown herein below.

Sec. 17. Open meetings.

That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act. Chap. 551, Loc. Gov't Code [V.T.C.A., Government Code § 551.001 et seq.].

Approved and adopted this the 22nd day of July, 1997.

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EXHIBIT A. PLUM CREEK PLANNED UNIT DEVELOPMENT*

* Note: Ordinance 311- Proposed addition of courtyard use, clarifications and building height adjustments.

***Editor's note:** Printed herein is the Plum Creek Planned Unit Development Ordinance, as adopted by the city council on July 22, 1997. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

ORDINANCE NO. 311

An ordinance of the City of Kyle, Texas, establishing a planned unit development zoning district; declaring intent and public purpose; providing definitions; approving the Plum Creek Planned Unit Development; providing zoning and use districts; providing regulations, standards and procedures; providing for amendment and variances; providing for administration and enforcement; providing for fees; repealing conflicting ordinances; providing severability, effective date and open meeting clauses; and providing for related matters.
Be it ordained by the city council of the City of Kyle, Texas, that:

ARTICLE I. GENERAL TERMS, PROVISIONS, AND DEFINITIONS

Sec. 1. Authority.

This ordinance is adopted under the authority of the Constitution and laws of the State of Texas, including particularly V.T.C.A., Local Government Code chs. 43 and 211.

Sec. 2. Title.

This ordinance shall be known, and may be cited, as the Plum Creek Planned Unit Development ("PUD") Zoning Ordinance of the City of Kyle ("City").

Sec. 3. General purpose and intent.

(A) *Purpose.* This ordinance is adopted to promote the health, safety, and the general welfare of the city, the owners and future residents of the Plum Creek planned unit development project ("Plum Creek PUD") to protect, preserve, improve, and provide for public the health, safety and general welfare of the present and future citizens of the city and to establish a framework of zoning guidelines and criteria which support the development of the Plum Creek PUD. The Plum Creek PUD is intended to allow mixed development which incorporates compatible residential, commercial, and/or industrial uses within the Plum Creek PUD boundaries. The Plum Creek PUD cannot be implemented under the standard Kyle zoning categories methodology and requires greater design flexibility for a successful development. The requirements established for

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PUD districts herein shall not supersede or amend the city's present zoning requirements pursuant to Ordinance No. 92 as they apply to the city's jurisdiction outside of the proposed Plum Creek PUD. The Plum Creek PUD shall be a master planned development which utilizes a mix of uses and standards approved by the city council. The application of this ordinance should result in development superior to that which would occur using conventional zoning and subdivision regulations, and will promote the following purposes:

- (1) To ensure the safe, orderly, and healthful development and expansion of the city, in accordance with and pursuant to the master plan for [the] Plum Creek PUD;
- (2) To conserve, develop, protect, and utilize natural resources, as appropriate and consistent with the public interest and to enhance the preservation of the natural environment;
- (3) To prevent the overcrowding of land and avoid undue concentration of population or land uses, and thereby encourage high quality development and innovative design;
- (4) To protect and preserve places and areas of historical and cultural importance and significance to the community;
- (5) To lessen congestion in the streets and provide convenient, safe, and efficient circulation of vehicular and pedestrian traffic;
- (6) To facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, emergency and recreational facilities, and other public requirements;
- (7) To promote economic development through an efficient and practical means by which development will ensure the protection of the Edwards Aquifer and the city's drinking water supply; and
- (8) To allow for the flexible planning and development of mixed uses throughout the Plum Creek PUD boundaries which promote compatible and different levels of residential, commercial and/or industrial uses.

(B) *Intent.* The requirements of the Plum Creek Planned Unit Development Zoning Ordinance ("Plum Creek PUD zoning ordinance") [chapter 53, exhibit A] are intended and shall apply to the property described as phase I of the Plum Creek PUD. The Plum Creek PUD is further comprised of phase I-A, phase I-B, and phase I-C, as reflected in the Plum Creek Phase I PUD master plan to the "Agreement Between the City of Kyle, Plum Creek Development Partners, Ltd., and William Negley, Trustee, For Development and Annexation of Phase I of the Plum Creek Property," which master plan is attached to this zoning ordinance as exhibit "A." Through the adoption of this ordinance, the city council of the City of Kyle is providing for the implementation of the site development regulations for the Plum Creek PUD and expresses its intent that this zoning ordinance shall be construed in a manner to give effect to the Plum Creek PUD master plan.

Sec. 4. Definitions of terms and uses within the Plum Creek PUD districts.
For purposes of this Plum Creek PUD zoning ordinance, the use definitions contained herein are established as the use definitions for the Plum Creek PUD as follows:

Accessory building [means] a building which is incidental to and customarily associated with a specific principal use or principal building on the same site.

Accessory dwelling unit [means] a secondary dwelling unit built on a legal lot in addition to a principal dwelling unit or primary residence.

Accessory use structure, or dwelling [means] an accessory use or structure is one customarily a part thereof, which is clearly secondary to a permitted use and which does not change the

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character thereof, including, but not limited to independent living quarters equipped for garages, bathhouses, greenhouses, or tool sheds.

Administrative and business offices [means] the use of a building or a portion of a building for the provision of executive, management, or administrative services. Typical uses may include administrative offices and services including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering, photocopy and reproduction, and business offices of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with administrative office services.

Alley [means] a minor public or private right-of-way, either two-way or one-way, located through the interior of blocks and providing vehicular and service access to the side or rear of properties.

Antique shop [means] a business which sells items whose value is greater than the original purchase price because of age or intrinsic value.

Apartment building [means] a building or portion thereof used or intended to be used as a home for three or more families or households living independently of each other and equipped for preparation of food.

Apartment hotel [means] a building used or intended to be used as a home of 12 or more families, who are permanent residents, living independently of each other, in which building shall be located on the first floor living units for transient guests, and/or retail sales and service.

Apartment [means] an apartment is a room or group of rooms used as a dwelling for one family unit which does its cooking therein.

Art studio and gallery [means] a use involving the production of works of art, including photographic studios, and the incidental sale to consumers of those works produced on site.

Art studio or gallery [means] a building where objects of art are created or displayed for the public enrichment or where said art objects are displayed for sale, including the teaching of painting and/or sculpting.

Assisted/retirement living [means] a use providing 24 hour supervision and assisted living for more than 15 residents not requiring regular medical attention. This classification includes personal care homes for the physically impaired, and persons 60 years of age or older.

Attendant building [means] a building used to house the manager or attendant of a public or private parking lot.

Automobile repair shop [means] any premises and structures used primarily for the servicing and/or repair of motor vehicles, including paint and body work, engine rebuilding and minor maintenance activities.

Bed and breakfast services [means] an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for overnight guests on a paying basis.

Bed and breakfast [means] an establishment engaged in providing rooms or groups of rooms in a dwelling unit for temporary lodging for overnight guests on a paying basis.

Board of adjustment [means] the city's zoning board of adjustment.

Boarding house [means] a building, built and/or used for residential purposes, where meals for five or more persons are served for compensation.

Buffer [means] an area within a property or site, generally adjacent to and parallel with the property line, either consisting of existing natural vegetation or created by the use of trees,

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shrubs, berms and/or fences, and designed to limit views and sound from the site to adjacent properties and vice versa.

Building area [means] the building area of the lot is the gross area covered by the structure when placed on the lot.

Building line [means] a line parallel or approximately parallel to the street line and beyond which buildings may not be erected.

Building official [means] the designated building official for the city.

Building ordinance [means] the building codes and related ordinances of the city providing standards, requirements and regulations for site development and the construction and erection of buildings and structures within the city, including, but not limited to, the electrical code, plumbing code, building code, and minimum housing code, adopted by the city council from time to time.

Building plot [means] the land, lot, lots or tract of land upon which a building or buildings are located, or upon which they are to be constructed, including yards and bounded by the property line.

Building [means] a building is any structure built for the support, shelter, or enclosure of persons, chattels or movable property of any kind and which is affixed to the land.

Build-to-line [means] a line parallel to the street right-of-way which dictates the minimum and maximum front yard setback from a street or public right-of-way, to be followed by buildings or structures fronting thereon. The build-to-line does not apply to building projections or recesses.

Cafe, restaurant, or cafeteria [means] a commercial eating establishment where snacks or meals are vended for consumption indoors or on the premises.

Carport [means] a structure with one or more sides, covered with a roof and constructed specifically for the storage of one or more motor vehicles.

Child care or child development facilities [means] any children's home, orphanage, institution, private home, residence or other place, whether public, parochial or private, operated for profit or not, which keeps, cares for, has custody of or is attended by four or more children under 16 years of age at any one time, who are not members of the immediate family of any natural person operating any such place, during any part or all of the 24 hours in a day. Also, any institution, home or other place, whether public, parochial or private, conducted for profit or not, which keeps, cares for, has custody of or is attended by any number of children, under 16 years of age, who are not members of the immediate family of any natural person operating such a place, who are mentally or physically handicapped, under medical or social supervision, and not within a hospital, 24 hours a day.

Clinic [means] a public or private station for the examination and treatment of out-patients by an individual or group of doctors, dentists, opticians, veterinarians, or other similar medical professionals.

Cold storage plant [means] a commercial establishment where food or other commodities are stored either in lockers, rented or leased, or in vaults in bulk for distribution to the home or other commercial businesses. No slaughtering of animals or fowl is allowed on the premises.

Commercial amusement [means] any enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the gates for the activity. Commercial amusements include zoos, carnivals, expositions, miniature golf courses, driving ranges, arcades, fairs, exhibitions, athletic contests, rodeos, tent shows,

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ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, traveling shows, bowling alleys, pool parlors, and similar enterprises.

Commission [means] the city's planning and zoning commission.

Common property [means] a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites in a planned unit development.

Communication services [means] an establishment engaged in providing broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms, and photocopy and reproduction mechanisms.

Community recreation centers [means] a recreational facility, including both indoor and outdoor facilities, for use by residents and guests of a particular residential community development and/or a planned unit development.

Conditional use [means] an additional use which may be permitted in a district, subject to meeting certain conditions or procedures established by the city council.

Convalescent home [means] any structure used or occupied by three or more persons recovering from illness or being provided geriatric care for compensation.

Corner lot [means] a lot abutting upon two or more streets at their intersections; or lot abutting a crosswalk way.

Corporate campus [means] a planned industrial, research and development and/or office use in a campus-like setting.

Courtyard [means] an arrangement of single family attached and/or detached residential units in which the front of units (except for the end groups of units) generally face each other with one or two sidewalks between them that are more or less perpendicular to a public or private street.

Cultural services [means] a library, museum, or similar registered nonprofit organizational use displaying, preserving, and exhibiting objects of community and cultural interest in one or more of the arts and sciences.

Day care services [means] a facility, or use of a building or portion thereof, for daytime care for children, providing for the supervision and instructional development of preschool children, including nursery schools, preschools, and day care centers for children.

District [means] a zoned section or sections of the city for which regulations governing the use of buildings and premises, the height of buildings, the size of yards, and the intensity of use are uniform.

Dormitory [means] any structure specifically designed to house student tenants associated with a university, college or school.

Drive-in eating establishment [means] any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises or taken away for consumption at other places.

Dwelling [means] a dwelling is any building or portion thereof which is designed or used exclusively for residential purposes.

Exterior side yard [means] a yard which faces and is parallel to a side street.

Family [means] a family is any number of related persons living as a single housekeeping unit.

Filling, retail service station [means] an establishment where gasoline, oil and grease, or automobile accessories are sold, supplied, or dispensed to the motor vehicle trade or where motor vehicles receive limited repair, are equipped for use, or where electric storage batteries are

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charged and cared for, or a place where any two or more such activities are carried on or conducted as the principal use of the establishment.

Financial services [means] services provided by an establishment primarily engaged in financial and banking activities. Typical uses may include banks, savings and loan institutions, stock and bond brokers, loan and lending activities, and similar services.

Flood plain, intermediate [means] that land which lies within a stream channel or adjacent to a stream channel within which flooding frequently occurs, the elevation above sea level of which shall be as established by the city and made of record. It is land which is required to be kept open and non-urbanized in order to maintain upstream floodplain characteristics and insure continued adequate drainage of adjacent land.

Flood plain, standard [means] that land which includes the intermediate flood plain and that land which lies immediately outside of and adjacent to the intermediate flood plain in which flooding only occasionally occurs, the elevation above sea level of which shall be as established by the city and made of record.

Floor area ratio (FAR) [means] the maximum square footage of total floor area permitted for each square foot of land area.

Food sales [means] an establishment primarily engaged in the retail sale of food or household products for home consumption. Typical uses include grocery stores, delicatessens, meat markets, retail bakeries, and candy shops.

Fraternity, sorority or group student housing [means] a building occupied by and maintained exclusively for students affiliated with an academic or vocational institution.

Garage, commercial [means] a commercial garage is any premises and structure used for housing more than five motor vehicles or where any vehicles are repaired for operation or kept for remuneration, hire or sale, and where a retail service station may be maintained as a secondary use.

Home occupation [means] a home occupation is a commercial use customarily carried on in the home by members of the occupant family without structural alterations in the principal building or any of its rooms, without the installation of machinery or additional equipment other than that customary to normal household operations, without the employment of additional persons, and which does not cause the generation of other than normal noise, pedestrian and vehicular traffic. It is an accessory to a residential use subject to the following limitations: (a) the home occupation shall be conducted entirely within a dwelling unit which is the bona fide residence of the practitioner(s) or within an accessory building (not to include a carport); (b) the residential character of the lot and dwelling shall be maintained; the exterior of the dwelling shall not be structurally altered; and no additional buildings shall be added on the property to accommodate the home occupation; (c) the occupation shall not produce external noise, vibration, smoke, odor, fumes, electrical interference or waste run-off outside the dwelling unit or on the property surrounding the dwelling unit; and (d) no vehicle used in connection with the home occupation which requires a commercial driver's license to operate shall be parked on any street adjacent to the property.

Hospital services [means] a facility providing medical, psychiatric, or surgical services for sick or injured persons primarily on an in-patient basis and including ancillary facilities for out-patient and emergency treatment, diagnostics services, training, administration, research, and services to patients, employees or visitors.

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Hospital, sanitarium, nursing home, hospice [means] a building or portion thereof used or designated for the housing or treatment of the sick, aged, mentally ill, injured, convalescent or infirm persons; provided that this definition shall not include rooms in any residential dwelling, hotel or apartment hotel not ordinarily intended to be occupied by said persons.

Hotel [means] a building used or intended to be used as living quarters for transient guests, but not excluding permanent guests, and may include a cafe, drugstore, clothes, pressing shop, barbershop or other service facilities for guests for compensation.

Kindergarten [means] any school, private or parochial, operated for profit or not, attended by four or more children at any one time during part of a 24 hour day, which provides a program of instruction for children below the first grade level in which constructive endeavors, object lessons and helpful games are prominent features of the curriculum.

Laundry services [means] an establishment engaged in providing laundering, dry cleaning, or dyeing services. Typical uses shall include bulk laundry and cleaning pants, and linen supply services.

Light manufacturing [means] an establishment engaged in the manufacture of finished products or parts, including packaging of such products, and incidental storage, sales and distribution of such products, but excluding uses that are not traditionally classified as light industrial or manufacturing. Uses defined as traditional light industrial and manufacturing are set forth in article II, part C, section 10 herein.

Lot lines [means] the lines bounding a lot as defined herein.

Lot [means] a parcel of land described and recorded as a lot in the records of Hays County, Texas; or, in the event any other parcel of land is used for one or more buildings, each such parcel of land shall become a separate lot for the purpose of this ordinance, and the boundaries of each such lot shall contain sufficient area to include the buildings and the open spaces required under this ordinance.

Manufactured home [means] a complete living unit manufactured at a location away from the lot on which it will be located as defined in art. 5221f Tex. Rev. Civ. Stat. [V.T.C.A., Occupations Code § 1201.001 et seq.].

Motel [means] a building or group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers, including groups designated as auto cabins, motor courts, motels and similar designations.

Multi-family residential [means] the use of a site for three or more dwelling units, within one or more buildings, including condominium residential.

Multiple building complex [means] more than one principal building on a building plot.

Neighborhood automobile service station [means] an establishment primarily engaged in automotive-related service. The following are permitted automotive-related services within such definition; automobile washing, automotive repair services, service stations, the sale of fuel, lubricants (including oil change facilities), parts and accessories, or any incidental minor repair services to motor vehicles.

Non-conforming use [means] any building or land lawfully occupied by a use at the time of passage of this ordinance or amendment thereto which does not conform after the passage of this ordinance or amendment thereto with the use regulations of the PUD district in which it is situated.

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Occupant car ratio (OCR) [means] the minimum number of parking spaces without parking time limits required for each living unit.

Parking lot [means] a parking area to accommodate the vehicles which utilize or are located in any PUD district, except the "R-1" residential PUD district and "R-2" residential PUD district unless approved by the city council.

Parking space [means] an area used or designed to be used for motor vehicle parking, containing not less than 160 square feet, exclusive of the driveways connecting said space with a street or alley. Said parking space and connecting driveway shall be durably surfaced and so arranged to permit satisfactory ingress and egress of an automobile. Compact parking spaces shall be 128 square feet, exclusive of the driveways connecting said space with the street or alley.

Pasturage [means] land used primarily for the grazing of animal stock.

Permit issuing authority [means] the building official or other city officer, employee or agent designated by lawful authority to issue the applicable permit.

Permitted use [means] a use specifically allowed in one or more of the various districts without the necessity of obtaining a conditional use permit.

Personal and community services [means] an establishment primarily engaged in the provision of frequently or recurrently needed services of a personal nature. Typical uses include beauty and barbershops, seamstress, tailor, shoe repair shops, and dry cleaning pick-up station services.

Personal service shop [means] an establishment for the purpose of supplying limited personal services such as, but not limited to, barber, shoe, boot, or beauty shops.

Personal services [means] an establishment engaged in providing services of a personal nature. Typical uses shall include beauty and barbershops, tailor, and shoe repair services.

Pharmacy [means] a use where medicines are compounded or dispensed.

Planned unit development [means] a zoning district which permits development of larger tracts of land under single or multiple ownership which master planned area requires specific approval by the city council for a development that may not fit standard area and use zoning categories. It is a development of land under unified control, planned and developed as a whole in a single development operation or a programmed phasing of developments, including streets, utilities, lots or building sites, structures, open spaces and other improvements. This district may permit mixed uses of land (e.g., industrial, commercial, residential) within a single or multiple subdivisions as part of or pursuant to a master plan which seeks to minimize adverse impacts when development occurs to protect the environment and nearby neighborhoods.

Planned unit development district or PUD district [means] a zoning designation for an area within the PUD which must comply with the site development criteria for said PUD district.

Postal facilities [means] postal services, including post office, bulk mail processing, or sorting centers operated by the United States Postal Service or a private postal service.

Product assembly services [means] an establishment engaged in the on-site assembly of products.

Product development services [means] development and testing of products related to research services.

Professional office [means] a use providing professional or consulting services in the fields of law, architecture, design, engineering, accounting, and similar professions.

Property owners association [means] an incorporated, non-profit organization operating under recorded land agreements through which (a) each lot and/or homeowner in a planned unit

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development or PUD district is automatically a member, (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining common property, and (c) the charge, if unpaid, becomes a lien against the property.

Religious assembly [means] a use (located in a permanent or temporary building) providing regular organized religious worship and religious education incidental thereto.

Research services [means] establishments engaged in research of an industrial or scientific nature. Typical uses include electronics research laboratories, and development and testing of computer software packages.

Restaurant (general) [means] an establishment engaged in the preparation and retail sale of food and beverages for on-premises consumption, including the on-premise sale, service, and consumption of alcoholic beverages as an accessory and secondary use. Typical uses include diners, dinner-houses, but not a drive-in or fast-food restaurant.

Retail food store [means] a retail establishment selling meats, fruits, vegetables, bakery products, dairy products, light hardware and other similar items which are purchased for use and/or consumption off the premises (may be a drive-in or supermarket type).

Retail sales [means] the sale or rental of commonly used goods and merchandise for personal or household use. Typical uses may include department stores, furniture stores, or establishments providing the following products or services; home furnishings and appliances, household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, or specialty items; apparel, jewelry, fabrics, and like items; cameras or photography services; household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies and framing, arts and antiques, paint, interior decorating services, or office supplies; bicycles, wallpaper, carpeting and floor-covering, or automotive parts and accessories (excluding service and installation).

Rooming or boarding house [means] a group of rooms provided for compensation either in a converted single-family home or in a structure specifically designed for such purposes. Both rooms and meals are provided for compensation for more than five persons. No cooking facilities are provided in individual living units.

Safety services [means] facilities to conduct public safety and emergency services, including police and fire protection services and emergency medical and ambulance services.

Setback line [means] a line which marks the setback distance from the property line, and measured from the lot line to the face of the foundation that establishes the minimum required front, side or rear yard space of a building plot.

Shopping center [means] a composite arrangement of shops and stores which provides a variety of goods and services to the general public, when developed as an integral unit.

Signs [means] any device or surface on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected or in any manner outlined or attached and used for advertising purposes.

Single-family attached residential [means] two or more dwelling units constructed on separate legal lots with a common or abutting wall located on the property line. This includes single-family dwelling units with detached garages where only the garages have a common or abutting wall located on the property line.

Single-family detached residential [means] the use of a site for only one dwelling unit.

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Site plan [means] a plan showing the use of the land, to include locations of buildings, drives, sidewalks, parking facilities and other structures to be constructed.

Square foot dimensions [means] the square footage computed from the outside dimensions of the dwelling, excluding attached garages, attics, basements, open or screened porches.

Storage and distribution [means] an establishment offering wholesaling, storage, and warehousing services in enclosed structures.

Storage garage [means] a storage garage is any premises and structure used exclusively for the storage of more than five automobiles.

Street [means] a public or private thoroughfare which affords the principal means of access to abutting property.

Structural alterations [means] any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls.

Structure principal [means] the principal structure which fulfills the purpose for which the building plot is intended.

Structure [means] anything constructed, the use of which requires a permanent location on the ground or attachment to something having a permanent location on the ground.

Total car ratio (TCR) [means] the minimum number of parking spaces required for each living unit.

Townhouse residential [means] the use of a series of sites for two or more dwelling units, constructed with common or abutting walls and each located on a separate ground parcel within the total development site, together with common area serving all dwelling units within the townhouse group.

Transportation services [means] a facility for loading, unloading, and interchange of passengers and baggage, between modes of transportation, including bus terminals, railroad stations and public transit facilities utilizing park and ride stations.

Variance [means] a legal modification of the district yard, lot width and yard depth, signs, street parking and loading regulations provisions such as yard, lot width and yard depth, signs, set back and street parking and loading regulations granted due to particular conditions existing within a single piece of property.

Variety store [means] a retail commercial establishment which supplies a variety of household goods, toys, limited light hardware items, candy, some clothing and other general merchandise.

Veterinary services [means] an establishment offering veterinary services and hospitals for animals. Typical uses include pet clinics, and veterinary hospitals for livestock and large animals.

Video rental store [means] an establishment engaged in the sale or rental of motion pictures or games.

Warehouse [means] an establishment engaged in the storage of merchandise or commodities in an enclosed structure.

Yard, front [means] a yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street easement line and the main building or any projections thereof other than the projections of the usual steps, balconies or bays, or unair-conditioned porch. On corner lots, the front yard shall be considered as parallel to the street upon which the yard has its least dimension. For the purpose of determining Minimum Setbacks on corner Lots and alleys, the lot lines shall be deemed to terminate with straight lines, not arcs.

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Yard, rear [means] a yard extending across the rear of a lot and being the required minimum horizontal distance between the rear lot line and the rear of the main building or any projections thereof other than the projections of steps, balconies or bays, or unair-conditioned porches, accessory dwellings or detached garages.

Yard, side [means] a yard between the main building and the side line of the lot, and extending from the required front yard to the required rear yard, and being the minimum horizontal distance between a side lot line and the side of any building on the lot. Driveways and sidewalks may be constructed within the side yard. Roofs may extend up to eighteen (18) inches into the side yard. A room, bay window or fire place may project two (2) feet into the side yard setback.

Yard [means] an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Zero-lot-line lot [means] a single-family lot that has a side wall along or near one of the lot lines so that a usable yard of a minimum of 7 1/2 feet from the side lot line to the building line is created on the other side of the lot.

Any definition not expressly prescribed herein shall, until such time as defined by ordinance, be construed in accordance with customary usage in municipal planning and engineering practices. (Ord. No. 311-3, § 2, 4-19-2008)

ARTICLE II. PLANNED UNIT DEVELOPMENT ZONING DISTRICT
PART A

Sec. 1. Plum Creek planned unit development district general provisions.

(A) *Purpose and objectives.* The purpose and intent of the Plum Creek planned unit development district ("Plum Creek PUD") is to provide a flexible, alternative procedure to encourage imaginative and innovative designs for the unified development of property in the city consistent with accepted urban planning, with overall mixed-use regulations as set forth below and in accordance with the city's comprehensive plan. A planned unit development or "PUD" is a planned unit development district. The Plum Creek PUD rules are designed: (i) to allow development which is harmonious with nearby areas; (ii) to enhance and preserve areas which are unique or have outstanding scenic, environmental, cultural or historic significance; (iii) to provide an alternative for more efficient use of land, resulting in smaller utility networks, safer streets, more open space, and lower construction and maintenance costs; (iv) to encourage harmonious and coordinated development, considering natural features, community facilities, circulation patterns and surrounding properties and neighborhoods; (v) to facilitate the analysis of the effect of development upon the tax base, the local economy, population, public facilities and the environment; (vi) to provide and result in an enhanced residential and/or work environment for those persons living and/or working within the district; and (vii) to require the application of professional planning and design techniques to achieve overall coordinated mixed-use developments and avoid the negative effects of piecemeal, segregated, or unplanned development. Toward these ends, rezoning of and development under this district will be permitted only in accordance with the city's comprehensive plan and the Plum Creek PUD master plan, set forth as "exhibit A" attached hereto, prepared and approved in accordance with the provisions of this ordinance.

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(B) *Mixed use development.* The Plum Creek PUD district shall include and allow for compatible mixed uses such as compatible residential, commercial and/or industrial, within a project within the boundaries of a mixed use district, in order to provide the flexibility required for a well-designed and innovative development that will conserve, develop, protect and utilize to their best use the natural resources of the area in a manner that ensures the safe, orderly and healthy development and expansion of the city. In order to promote such development, the PUD may be comprised of a combination of the following PUD districts: (a) residential, (b) neighborhood commercial, (c) commercial, (d) mixed-use development, (e) employment, (f) light industrial, and (g) open space. The outer boundary of the Plum Creek PUD zoning district and the varied PUD districts shall be shown on a map designated as the "Plum Creek PUD official zoning map." Said district map which will include a descriptive legend and percentage of the area for each PUD district which will comprise the Plum Creek PUD, and all notations, references, and other information shown thereon, shall be adopted by ordinance.

(C) *Flexible planning.* When considering a PUD, the unique nature of each proposal for a PUD may require, under proper circumstances, the departure from the strict enforcement of certain present codes and ordinances, e.g., without limitation, the width and surfacing of streets and highways, lot size, parking standards, set backs, alleyways for public utilities, signage requirements, curbs, gutters, sidewalks and street lights, public parks and playgrounds, drainage, school sites, storm drainage, water supply and distribution, sanitary sewers, sewage collection and treatment, single use districts, etc. Final approval of a PUD by the city council shall constitute authority and approval for such flexible planning to the extent that the PUD, as approved, departs from existing codes and ordinances.

Sec. 2. Zoning application for Plum Creek PUD development.

(A) Submittal, review and approval of application for Plum Creek PUD zoning.

(1) Application for zoning. The owner or applicant shall submit an application for establishing the Plum Creek PUD which shall consist of the following:

(a) A development agreement for the Plum Creek PUD approved by the city Council;

(b) A capital improvements plan for the Plum Creek PUD approved by the city council for the Plum Creek PUD, if appropriate;

(c) A master plan for the Plum Creek PUD approved by the city council for the Plum Creek PUD;

(d) A legal description of all the property within the boundaries of the property identified as the Plum Creek PUD;

(e) Topographical information showing the contour lines within the PUD; and

(f) Vicinity sketches or maps of the PUD which reflect the locations of infrastructure and other requested information not included in items (a) through (e) herein.

(2) The application for zoning of the Plum Creek PUD may not be approved until the city council has approved the development agreement, capital improvements plan, if appropriate, and master plan for the Plum Creek PUD.

(3) Procedures. The application for a PUD shall be submitted to the city secretary who shall file the same with the chairman of the planning and zoning commission. The city council and the commission shall conduct a joint public hearing to consider such application. Notice of the public hearing before the planning commission and city council shall be given in the manner the notice is required to be given under state law. The decision of the planning commission on an

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application for a PUD shall be forwarded to the city council as a recommendation to grant, with or without conditions, or to deny. The city council's approval of the Plum Creek PUD shall designate and define the boundaries of the PUD and include such conditions as the city council finds are necessary to secure and protect the public health, safety, and general welfare of the PUD and the city.

(4) Approval of a Plum Creek PUD master plan by the city council shall be deemed an expression of approval of the general layout submitted on the Plum Creek PUD master plan as a guide to the installation of major streets, and to the proposed location and categories of land uses (e.g., residential, commercial, industrial).

(B) Criteria for review of PUD zoning application.

(1) Names and address of the developer, record owner, engineer and/or land planner.

(2) Proposed name of the PUD which shall not have the same spelling as or be pronounced similar to the name of any other PUD or subdivision located within the city or within five miles of the city.

(3) Names of the owners of contiguous parcels of land.

(4) Description, by field notes, of the proposed PUD.

(5) Approximate location of proposed land use boundary lines, indicated by heavy lines, and the approximate acreage of the land uses (if such information is available).

(6) Existing sites as follows:

(a) The location, names and description of any and all existing or recorded streets, alleys, reservations, easements or other public rights-of-way within the PUD, or intersecting, or contiguous with its boundaries or forming such boundaries.

(b) The location, description and names of existing or recorded residential lots, parks, public areas, permanent structures and other sites within or contiguous with the PUD.

(c) The approximate location, and description, and flow line of existing watercourses and drainage structures within the PUD.

(d) Regulatory flood elevations and boundaries of floodprone areas, including flood ways, if known, within or contiguous with the PUD.

(e) The approximate location of proposed major streets, parks, other public areas, reservations, easements or other rights-of-way, and other sites within the PUD (to the extent such information is available).

(f) A general plan for sewage disposal within the PUD (to the extent such information is available).

(g) Date of preparation, scale of plan and north arrow, for the PUD.

(h) Topographical information for the PUD shall include contour lines on a basis of 20 vertical feet in terrain with a slope of two percent or more.

(i) Location of city limits lines, the outer border of the city's extraterritorial jurisdiction and the PUD boundaries.

(j) Vicinity sketches or maps of the PUD at a scale of not more than 600 feet to an inch which shall show approximate location of proposed major streets, the ultimate destination of water main and possible storm sewer, and sanitary sewer systems.

(k) Any applicable fee established by city ordinance.

(l) The capital improvements plan which demonstrates projected dwelling intensity for uses within the PUD.

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(m) Identify intended uses of land within the Plum Creek PUD boundary, in accordance with the PUD districts described herein. Exact building locations, and heights need not be shown on the land use plan for the Plum Creek PUD so long as all areas within which buildings may be constructed or maintained are specifically within required setback lines and height limitations. Provided, however, that the development of each such district shall require the approval of a subdivision plat and an MXD PUD district shall also require the submittal, review and approval, by the city council of a specific site plan for the MXD PUD district setting forth the specific uses of the tracts within the district, in accordance with the process set forth herein in article II, part A, section 4(D).

(n) Within the Plum Creek PUD, the applicable site development regulations for each PUD district shall be described in the appropriate PUD district subsection in this ordinance.

(o) The Plum Creek PUD master plan shall identify the boundaries and location of each PUD district.

Sec. 3. Application process for amendment to the Plum Creek PUD master plan.

The following information shall be submitted by the applicant for an amendment to the Plum Creek PUD master plan or for a change in use within the Plum Creek PUD.

(A) Name and address of the owner and applicant.

(B) Address and legal description of the property.

(C) If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner of the property.

(D) Proposed amendment for development. The proposed changes to the Plum Creek PUD master plan for the Plum Creek PUD amendment shall consist of (i) a proposed land use map for the area to be amended, and (ii) any requested waivers from requirements of city ordinances applicable to development.

(E) The amendment to the Plum Creek PUD master plan showing the following information:

(1) The date, scale, north point, title, name of owner, and name of person preparing the amendment application for the Plum Creek PUD master plan.

(2) The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks, watercourses, and location and size of existing 100-year floodplains.

(3) The location, height, and intended use of existing and proposed land uses on the site, and the approximate location of existing buildings on abutting sites within 50 feet.

(4) The number of existing and proposed on-street and off-street parking and loading spaces, and a calculation of applicable minimum requirements.

(5) Areas with an average slope greater than 15 percent.

(6) The relationship of the site and the proposed use to surrounding uses, including pedestrian and vehicular circulation, current use of nearby parcels, and any proposed off-site improvements to be made.

(F) Any applicable fee established by the city council in Ordinance No. 293, as amended.

(G) The dwelling intensity and lot sizes of any residential areas being amended; and the lot sizes and locations of commercial and industrial uses within the amended Plum Creek PUD master plan, which may be mixed uses or a combination of uses if and as permitted within the regulations for such district.

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- (H) Areas proposed to be used for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.
- (I) A copy of all agreements, provisions or covenants which govern the use, maintenance and continued protection of the amended Plum Creek PUD and any of its common open space.
- (J) A representation of the general use character of land adjacent to the amended Plum Creek PUD and within 200 feet.
- (K) Identify intended uses of land within the boundary of the amended Plum Creek PUD to a depth of 100 horizontal feet.
- (L) An analysis of traffic patterns, street areas, drainage, utilities, and maintenance of public spaces. Exact building locations need not be shown on the amended Plum Creek PUD master plan so long as all areas within which buildings may be constructed or maintained are specifically within required building setback lines.
- (M) Development designed and intended to be constructed in phases or stages shall be identified by the applicant by plans that clearly identify the particular phases or stages of the proposed development. The applicant shall include the proposed dates for the amended phased development.
- (N) If the amendment includes area or land previously subdivided, then in such event the proposed use of each lot shall be shown on such plat.

Sec. 4. Additional development and amendment guidelines for Plum Creek PUD.

(A) *General development requirements.* The following requirements of this subsection apply to development of any use within the Plum Creek PUD district.

- (1) Environmental features: The natural topography, soils, environmental features, waterways and vegetation should be conserved and used where possible, through careful location and design of circulation ways, buildings and other structures, parking areas, recreation areas, open space, utilities and drainage facilities. To enhance the living and working environment, buffer zones, greenbelt parks and open space areas should be provided within each phase of the Plum Creek PUD where practical.
- (2) Street facilities: All streets shall provide free movement for safety and efficient use within the development. Local streets shall provide access within the PUD in a manner that discourages through traffic and provides for convenient accessibility to parking areas serving each use. Collector streets shall be designed and located so that future urban development will not require conversion of the collector street to an arterial street.
- (3) Non-vehicular facilities: Bicycle, vehicular and pedestrian passageways shall be provided where appropriate. A system of walkways and bicycle paths connecting buildings, common open spaces, recreation areas, community facilities, and parking areas should be provided and appropriately lighted for night use, where practical.
- (4) The uses of churches; facilities owned and operated by the federal government, the state and political subdivisions thereof; schools and educational institutions; fire stations; public utilities; athletic fields, sports facilities, playgrounds, recreational center and swimming pools; home occupations; and greenbelt, certain open space, and recreational areas shall be allowable uses in each PUD district. An appropriate site should contain adequate space for required off-street parking and buffering.

(B) *General regulations.* Within the Plum Creek PUD, the applicable regulations for each PUD district shall be described in the corresponding PUD district list of uses and site development

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regulations. A PUD district list of uses may also include any other lawful land use as determined by the city council.

(C) *Substantial amendment to Plum Creek PUD.* A substantial amendment to the Plum Creek PUD master plan shall be effective only if approved by the planning commission and the city council. An application for a substantial amendment to the adopted Plum Creek PUD master plan shall be made to the planning commission and the city council for consideration. For purposes of this subsection, the following are substantial amendments to the adopted Plum Creek PUD master plan:

- (1) Adding land area to, or otherwise including more land, in the Plum Creek PUD;
- (2) Including a more intense land use not previously permitted in the Plum Creek PUD, or including a more intense use permitted in the Plum Creek PUD in an area for which such use is not shown on the Plum Creek PUD master plan;
- (3) Amending any site development regulation established by the adopted Plum Creek PUD master plan;
- (4) Altering a land use adjacent to a platted single-family residential tract to a more intense land use than was previously approved;
- (5) Amending any condition of approval of or approved variance to the Plum Creek PUD;
- (6) Increasing the land use intensity within any phase of the Plum Creek PUD without a corresponding and equivalent decrease in some other portion of the Plum Creek PUD; or
- (7) Providing for an incompatible use to abut any other planned use, except as set forth on any zoning map or plat applicable to the Plum Creek PUD and approved by the city council.

If the city engineer determines a proposed amendment to the adopted Plum Creek PUD master plan is not a substantial amendment, the city engineer may approve the amendment within 30 days of its submittal without planning commission or city council action; provided that a subdivision plat for such area has been approved by the commission and city council and such proposed amendment is not inconsistent with the approved master plan, or such approved plat or plats and is a "plat amendment" pursuant to section 9(c) of the Plum Creek PUD subdivision ordinance. An application to amend the adopted Plum Creek PUD master plan pursuant to this subsection shall include all applicable requirements established by article II, part C.

(D) *Administrative site plan review process.* The applicant shall submit a proposed site plan for the proposed development of any property within and in compliance with the requirements of any PUD district, except the MXD PUD district, to the city engineer for his review and approval.

- (1) The proposed site plan shall show the proposed development of the property on tracing paper or tracing lined paper, 24 [inches] by 36 inches in size, or suitable equal approved by the city engineer.
- (2) The site plan shall include the following information:
 - (a) Date, scale, north point, title, name of person preparing the plan;
 - (b) Location of existing boundary lines and dimensions of the tract;
 - (c) Center line of existing watercourses, drainage features, and location and size of existing and proposed streets, roads, and alleys;
 - (d) Location and size, to the nearest one-half foot, of all proposed buildings and land improvements; and
 - (e) Clear designation of area to be reserved for off-street parking, the location and size of points of ingress and egress, and the ratio of parking space to floor space.

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- (3) In reviewing the proposal site plan, the city engineer shall consider the following factors:
- (a) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;
 - (b) Safety from fire hazard and measures for fire control;
 - (c) Protection of adjacent property from flood or water damage;
 - (d) Noise-producing elements, glare of vehicular and stationary lights, and effect of such lights on the established character of the neighborhood;
 - (e) Location, lighting, types of signs, relation of signs to traffic control, and adverse effect on adjacent properties;
 - (f) Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhoods;
 - (g) Adequacy of parking, as determined by requirements of this ordinance for off-street parking facilities in the use district in which the site is located, location of ingress and egress points for parking and off-street loading spaces, and protection of the public health by surfacing of all parking areas to control dust;
 - (h) Compliance with permitted uses in the PUD district, the proposed uses and their compatibility with, and similarity to, the uses permitted in the PUD district in which the site is located; and
 - (i) Such other measures as will secure and protect the public health, safety, morals and general welfare.

The city engineer shall approve the proposed site plan within 30 days of submittal if it complies with this ordinance, all PUD district requirements and the subdivision plat approved by the commission and city council. The applicant may appeal the decision of the city engineer to the planning commission within ten days of his determination. The planning commission shall review and consider the applicant's appeal within 30 days of the filing of the appeal. The applicant may, within ten days of the commission's determination, appeal the commission's decision to the city council. The city council shall review and consider the applicant's appeal within 30 days of the filing of the appeal.

(E) *MXD site plan review process.* The applicant shall submit a proposed site plan for an MXD PUD district to the planning commission and to the city council for their review and approval. Except for R1 and R2 Development within a MXD use district which shall be submitted and reviewed administratively. The proposed site plan shall show the following information:

- (1) The location and dimensions of boundary lines, with distances and bearings, easements, and required yards and setbacks and watercourses.
- (2) The location, height, and intended use of existing and proposed land uses and the ratios thereof on the site, and the approximate location of existing buildings on abutting sites within 50 feet.
- (3) The number of proposed off-street and on-street parking and loading spaces, and a calculation of applicable minimum requirements for parking and loading spaces.
- (4) The relationship of the site and the proposed use to surrounding areas including pedestrian and vehicular circulation.
- (5) The dwelling intensity of any residential areas, and the lot sizes and locations of any other uses within the MXD PUD district.
- (6) A representation of the general use and character of land adjacent to the MXD PUD district within 200 feet.

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- (7) Areas proposed to be used, conveyed, dedicated or reserved for parks, parkways, playgrounds, school sites, public buildings and similar public and semipublic uses.
- (8) A copy of all agreements, provisions or covenants which govern the use, maintenance and continued protection of the MXD PUD district and any of its common open space.
- (9) Identify intended uses of all land within the MXD PUD district.
- (10) A general description of the proposed development within the MXD PUD district and an analysis of traffic patterns, street areas, drainages, utilities, and maintenance of public spaces. Exact building locations need not be shown on the site plan so long as all areas within which buildings may be constructed or maintained are specifically within required building setback lines.
- The planning commission and the city council shall review the proposed site plan and approve it if it complies with all the site development regulations set forth in this ordinance for an MXD PUD district.

ARTICLE II. ZONING DISTRICTS AND BOUNDARIES
PART B

Sec. 1. Establishment of districts and boundaries.

(A) The following PUD districts are established for use, directly or by reference, within the Plum Creek PUD, as appropriate. The City of Kyle, Texas hereby establishes the following PUD districts for the purpose of regulating and restricting the height and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and which shall be known as:

- (1) "OS" open space PUD district
- (2) "R-1" residential PUD district
- (3) "R-2" residential PUD district
- (4) "R-3" multi-family residential PUD district
- (5) "NC" neighborhood commercial PUD district
- (6) "C" commercial PUD district
- (7) "MXD" mixed use development PUD district
- (8) "EMP" employment PUD district
- (9) "LI" light industrial PUD district

(B) The boundaries of any PUD districts described above, if established within the boundaries of the Plum Creek PUD shall be shown on a map designated as the Plum Creek PUD official zoning map, of the City of Kyle, Texas.

(1) Said district map and all notations, references, and other information shown thereon shall be adopted by ordinance. Said map shall, on its face, be identified and verified in the following manner: It shall bear the title "Plum Creek PUD Official Zoning Map, City of Kyle, Texas;" it shall bear the date of passage of the Plum Creek PUD zoning ordinance adopting same; it shall bear the names of the city council and all members of the zoning commission; and it shall be attested by the signatures of the mayor and the city secretary. The original of said map, properly attested, shall be kept on file in the office of the city secretary, and a replica thereof shall be produced upon paper in such reduced scale as will permit such replica copy being attached to the ordinance immediately following transcription of the ordinance establishing such district.

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(2) Approved zoning changes shall be entered on the Plum Creek PUD official zoning map by the city secretary and each change shall be identified on the map with the date and number of the ordinance making the change.

(3) No change of any nature shall be made on the Plum Creek PUD official zoning map, or matter shown thereon, except in conformity with the procedures set forth in this ordinance. Any unauthorized change by any person or persons shall be considered a violation of this ordinance and punishable under Ordinance No. 301.

(4) This ordinance, which shall be located in the office of the city secretary, shall be the final authority as to the current zoning status of land, buildings and other structures in the Plum Creek PUD of the city. The Plum Creek PUD zoning ordinance and Plum Creek PUD official zoning map shall be available to the public at all hours when the city office is open to the public.

(5) Replacement of Plum Creek PUD official zoning map. In the event that the Plum Creek PUD official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and/or number of changes and additions, the city council may, by resolution, adopt a new Plum Creek PUD official zoning map, which shall supersede the prior official Plum Creek PUD zoning map. The new official Plum Creek PUD zoning map may correct drafting or other omissions in the prior official Plum Creek PUD zoning map, but no such corrections shall have the effect of amending the original Plum Creek PUD official zoning map or any subsequent amendment thereof. The new Plum Creek PUD official zoning map shall be identified by the city secretary, and shall bear the seal of the city and date under the following words:

"This is to certify that this official Plum Creek PUD zoning map supersedes and replaces the Plum Creek PUD official zoning map adopted (date of adoption of map being replaced) as part of ordinance of the city."

(6) The following shall be appended at the end of the official map:

ADOPTED BY THE CITY COUNCIL of the City of Kyle, Texas by Ordinance No.

_____ passed finally and approved on _____ 19[20]_____.

City Secretary Mayor

(C) The districts and district boundaries shown on the Plum Creek PUD official zoning map may only be amended in the manner provided by Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.], and such process shall be applicable to all MXD districts.

Sec. 2. Interpretation of district boundaries.

(A) Where uncertainty exists with respect to the boundaries of any of the aforesaid PUD districts as shown on the Plum Creek PUD official zoning map, the following rules shall apply in the determination of the boundaries of any district:

(1) Whenever any street, alley, or other public way is lawfully vacated by the city council of the city, the PUD district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacated area and thereafter all land included in said vacated area shall be subject to all applicable regulations of the extended PUD districts.

(2) Where PUD district boundaries are indicated as approximately following the centerlines of streets or highways, street lines or highway right-of-way lines shall be construed to extend to said boundaries.

(3) Where PUD district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

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- (4) Boundaries indicated as approximately following city limits shall be construed as following such city limits lines as they existed on the date such map boundaries were adopted.
- (5) Boundaries indicated as following shorelines shall be construed to follow such shorelines. Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed as following such centerlines as existed as of the date of the map approval.
- (6) Boundaries indicated as following railroad lines shall be construed to be midway between the rails of the main line.
- (7) Where PUD district boundaries are so indicated that they are approximately parallel to the centerlines or street lines of streets, or the centerlines of right-of-way lines of highways, such PUD district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Plum Creek PUD official zoning map. If no distance is given, such dimension shall be determined by the use of the scale on said Plum Creek PUD zoning map.
- (8) On property where the above methods cannot be applied, the PUD district boundary lines on the Plum Creek PUD zoning map shall be determined by use of the scale appearing on the map.
- (9) Where the streets or alleys on the ground differ from the streets or alleys as shown on the Plum Creek PUD district map, the streets or alleys on the ground shall control.
- (10) Where physical or cultural features existing on the ground are at variance with those shown on the Plum Creek PUD official zoning map, or in other circumstances not covered by (1) through (9) above, the board of adjustment shall interpret the PUD district boundaries.

Sec. 3. Compliance with the regulations.

Except as hereinafter specifically provided or otherwise authorized in this ordinance:

- (A) Any use of the land not specifically authorized by the terms of this ordinance is prohibited, unless otherwise approved by the city council.
- (B) No building shall be erected, converted, enlarged, reconstructed, moved into, structurally altered, or used, except for a use permitted in the PUD district in which such building is located and as set forth on the approved site plan if applicable, unless otherwise approved by the city council.
- (C) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered to exceed the height limit herein established for the PUD district in which such building is located, or is proposed to be located.
- (D) No building shall be erected, converted, enlarged, reconstructed, moved or structurally altered except in conformity with the site development and performance standards of the PUD district in which such building is located, or is proposed to be located, unless otherwise approved by the city council in a PUD district.
- (E) The minimum yards, parking spaces and open spaces, including lot areas required by this ordinance for each and every building existing at the time of passage of this ordinance, or for any building hereafter erected, shall not be encroached upon or considered as part of the yard or parking space or open space required for any other building, nor shall any lot area be reduced below the requirements of this ordinance for the district in which such lot is located, unless otherwise approved by the city council.
- (F) Every building hereafter erected or structurally altered shall be on a lot as herein defined, and in no case shall there be more than one main building on one lot except as otherwise provided in this ordinance.

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(G) No person shall erect, excavate, construct, or proceed or continue with the erection or construction of any building or structure or add to, enlarge, move, improve, alter, repair, convert, or demolish any building or structure or cause the same to be done in any area of the city except as permitted by city ordinance or approved by the city council.

(H) No building or structure shall be erected, installed or moved on to or used which was previously built, erected or installed at a different location, except as permitted by ordinances of this city.

(I) The uses of churches; facilities owned and operated by the federal government, the state and political subdivisions thereof; schools and educational institutions; fire stations; public utilities; athletic fields, sports facilities, playgrounds, recreational center and swimming pools; greenbelt, certain open space and recreational areas; and parking lots associated with all of these uses shall be allowable uses in each PUD district set forth in this ordinance. An appropriate site should contain adequate space for required off-street parking and buffering.

ARTICLE II. PUD DISTRICTS: REGULATIONS AND PERFORMANCE STANDARDS
PART C

Sec. 1. PUD district regulations and performance standards.

The PUD district regulations and performance standards set forth herein shall apply within the boundaries of the Plum Creek PUD; provided, however, that the following uses shall be permitted in all PUD districts:

- (a) Churches;
- (b) Facilities owned and operated by the federal government, the state and political subdivisions thereof;
- (c) Schools and educational institutions;
- (d) Fire stations;
- (e) Public utilities;
- (f) Athletic fields, sports facilities, playgrounds, recreational center and swimming pools;
- (g) Greenbelt and recreational areas; and
- (h) Parking lots associated with the PUD district uses, provided that parking lots in the "R-1" and "R-2" residential PUD districts are subject to city council approval.

Sec. 2. "OS" open space PUD district.

(A) *Purpose.* An open space PUD district is a tract of land provided as a general benefit for the community. Common open space may be usable for recreational purposes or may provide visual, aesthetic and environmental amenities. The uses authorized for the common open space should be appropriate to the scale and character of the surrounding development considering its size, density, expected population, topography, and the number and type of dwellings to be provided. Common open space should be improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. Any buildings, structures and improvements to be located in the common open space must be appropriate to the uses which are intended and, therefore, must conserve and enhance the amenities of the common open space having regard to its topography and the intended function of the common open space, and must be secondary to open space component.

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(B) *Permitted uses.* The following uses shall be permitted uses in "OS" open space PUD district:

- (1) Cemeteries (with conditional use permit issued by the city council);
- (2) Conservation areas;
- (3) Golf courses;
- (4) Outdoor recreational and athletic facilities;
- (5) Outdoor swimming pools;
- (6) Parks, playgrounds and playfields;
- (7) Wildlife sanctuaries;
- (8) Outdoor performance stages and amphitheaters;
- (9) Streams, lakes, impounded waterways, or their drainageways; and
- (10) Wetlands.

(C) [*Secondary uses.*] The following uses shall be permitted as secondary uses in this "OS" open space PUD district:

- (1) Club houses and community centers.
- (2) Retail-oriented uses which are clearly secondary and customarily or necessarily incidental to the permitted use, including but not necessarily limited to the following:
 - (a) Retail sales and services operated as part of a golf course, recreational or athletic facility.
 - (b) Retail sales and services sponsored by service clubs, non-profit societies or organizations and concessions contracted with the city, property owners association or other community-related organization.
 - (c) Food and beverage sales, including alcoholic beverages.
 - (d) Restaurants including alcoholic beverage sales which are operated as part of or in conjunction with a golf course, club house, or other community related facility.
 - (e) Caretaker residence.
 - (f) Maintenance buildings required to house equipment and material to maintain the site.
- (D) *Site development regulations.* Use regulations in the "OS" open space PUD district.
 - (1) Maximum height of buildings: 35 feet.
 - (2) Density - maximum floor area shall not exceed 0.1.
 - (3) Lot size - minimum lot area for any building: 3,500 square feet.
 - (4) Lot width - minimum lot width: 35 feet.
 - (5) Front yard - minimum required building setback: 15 feet.
 - (6) Side yard - minimum required building setback: 10 feet.
 - (7) Rear yard - minimum required building setback: 10 feet.
 - (8) Garages shall either be attached or detached and accessible from a public or private street or alley.

Sec. 3. "R-1" residential PUD district.

(A) *Purpose.* This district is an area for low density single-family residential use, with a minimum lot size of 6,000 square feet. This district is appropriate for single-family neighborhoods.

(B) *Permitted uses.* The following uses shall be permitted in the "R-1" residential PUD district:

- (1) The following uses that are permitted uses in the "OS" open space PUD district:
 - (a) Wetlands;

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- (b) Conservation areas;
- (c) Golf courses;
- (d) Outdoor recreational and athletic facilities;
- (e) Outdoor swimming pools;
- (f) Parks, playgrounds and playfields;
- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Single family dwellings for residential use.
- (3) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
- (4) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
- (5) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
- (6) Accessory buildings, which shall be located only in rear yards, and accessory uses customarily incident to the use set out in subsection (B)(2) above and located on the same lot therewith, not involving the conduct of a retail business. The term accessory use shall also include:
 - (a) A home occupation such as the office of a physician, surgeon, dentist, accountant or bookkeeper, dressmaker, beauty shop, or artist, provided that such uses are located in the dwelling used by such a person as his or her private residence and no outside employees are present on the premises.
 - (b) An unilluminated "For Sale" or "For Rent" sign not more than four square feet in area may be permitted as an accessory use; provided however, that churches may display signs, symbols, and emblems similar in kind and nature as is customary and normal for such churches, and provided further, that during construction of a building, one unilluminated sign advertising contractors and/or architects on such premises shall be permitted, provided that such sign shall not be more than four square feet in area and shall be set back of the established or customary building line, and such sign shall be removed immediately upon completion of the building.
- (7) Residential accessory dwelling units, subject to the following site development requirements:
 - (a) A lot intended for use for a single-family detached dwelling unit may contain both a principal dwelling unit and an accessory dwelling unit under the following restrictions and conditions:
 - (i) Maximum floor area of an accessory dwelling unit shall be 1,000 square feet in size.
 - (ii) Maximum height of an accessory dwelling unit shall be two stories or 25 feet; provided, however, that an accessory dwelling unit shall not be constructed to a height greater than the principal residence.
 - (iii) No more than one accessory dwelling unit per lot is allowed.
 - (iv) Parking for an accessory dwelling unit shall not be less than one parking space per accessory dwelling unit.

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- (v) The LUE requirement (whether a whole LUE or any fraction thereof) for an accessory dwelling unit shall be counted toward the maximum number of LUEs available to be issued in the Plum Creek PUD, and in the subdivision within which the lot is platted.
- (vi) In addition to compliance with all applicable city codes and regulations including, but not limited to, those dealing with building, plumbing, electrical, fire, safety, health and sanitation, property maintenance and rental housing licensing, the construction, occupancy and use of an accessory dwelling unit shall be controlled by the following restrictions:
- (A) At least one of the dwelling units on a lot containing an accessory dwelling unit shall be occupied by an owner of the lot.
- (B) Maximum occupancy of an accessory dwelling unit shall be in accordance with the table identified as schedule B as set forth herein below.
- (C) An accessory dwelling unit must be constructed concurrently with but not before a principal residence.
- (D) A separate water and sewer tap shall be obtained for each accessory dwelling unit. The cost of each such separate tap for accessory units shall be the same cost as a water or sewer tap for the primary single-family dwelling unit. Impact fees for both water and wastewater shall be paid and LUEs issued for each such accessory unit as required by ordinance. Not less than one-half of a water LUE and one-half of a wastewater LUE shall be required for each accessory unit; and the number, or fraction thereof, of an LUE required shall be as provided in schedule A. LUEs shall be counted and credited as they are allocated, whether in whole numbers or in fractions thereof.
- (E) Each lot eligible for a residential accessory dwelling unit shall be identified on the subdivision plat and to the commission and city council during the subdivision approval process, and each such residential accessory dwelling unit shall be identified on the site development plan submitted by the owner.
- (F) The subdivider/developer of a single-family residential subdivision that includes lots for which an accessory dwelling unit is permitted, shall clearly identify all such lots in restrictive covenants filed of record in the real property records of Hays County, Texas.
- (C) *Site development regulations.* The following regulations shall be the requirements for buildings within the "R-1" residential PUD district:
- (1) *Minimum lot size, lot area.* No building shall be constructed on any lot of less than 6,000 square feet.
- (2) *Minimum lot width.* The lot shall have a minimum of 50 feet of width along the front property line, except when a lot is on a cul-de-sac, where it may be a minimum width of 30 feet along the front property line.
- (3) *Maximum dwelling units per lot.* One principal dwelling unit and one accessory dwelling unit.
- (4) *Maximum height.* No building shall exceed 35 feet in height.
- (5) *Area.* No building or structure, nor any enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
- (6) *Minimum setbacks.*
- (a) *Front yard.* There shall be a front yard having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, covered terrace, balcony or bay.

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(b) *Side yard.* A yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.

(c) *[Between dwellings.]* The minimum distance between dwellings on adjoining lots shall be ten feet.

(d) *Rear yard.* There shall be a rear yard setback of not less than 25 feet from the rear most wall of the principal dwelling unit to the back property line. There shall be a rear yard setback of not less than five feet from the rear most wall of any accessory building and garage to the back property line.

(7) *[Garages.]* Garages shall either be attached or detached and accessible from a public or private street, or alley.

SCHEDULE A

TABLE INSET:

Unit Size	LUE Count
0 to 699 square feet	Minimum 0.50 LUE
700 to 849 square feet	0.50/LUE
850 to 1,000 square feet	0.75/LUE

SCHEDULE B

TABLE INSET:

Unit Size	Maximum Number Of Occupants
0 to 699 square feet	2
700 to 849 square feet	3
850 to 1,000 square feet	4

Sec. 4. "R-2" residential PUD district.

(A) *Purpose.* This district is intended as an area for medium density, single-family residential use. In appropriate locations, this district shall accommodate single-family detached, duplex, and single-family attached residential and courtyard uses permitted under residential standards.

(B) *Permitted uses.*

(1) The following uses shall [be] permitted uses in the "R-2" residential PUD district:

(a) The following uses that are permitted uses in the "OS" open space PUD district:

- (i) Wetlands;
- (ii) Conservation areas;
- (iii) Golf courses;
- (iv) Outdoor recreational and athletic facilities;

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- (v) Outdoor swimming pools;
 - (vi) Parks, playgrounds and playfields;
 - (vii) Wildlife sanctuaries;
 - (viii) Streams, lakes, impounded waterways, or their drainageways; and
 - (b) Any uses permitted in "R-1" residential PUD district.
 - (c) Duplexes.
 - (d) Medium density single-family detached residential.
 - (e) Single family attached residential.
 - (g) Courtyard(2) No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses set forth in this section.
 - (C) *Site development regulations.* The following regulations shall be the site development regulations for development within the "R-2" residential PUD district:
 - (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
 - (3) The following alternative site development regulations shall be exclusively applicable to duplexes within the "R-2" residential PUD district:
 - (a) Alternative No. 1:
 - (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 6,000 square feet.
 - (ii) Minimum lot width: 50 feet along the front property line.
 - (iii) Maximum dwelling units per lot: Two dwelling units.
 - (iv) Maximum height. No building shall exceed 35 feet.
 - (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
 - or,
 - (b) Alternative No. 2:
 - (i) Minimum lot size. Duplexes shall not be constructed on any lot with less than 7,200 square feet.
 - (ii) Minimum lot width: 60 feet along the front property line.
 - (iii) Maximum dwelling units per lot: Two dwelling units.
 - (iv) Maximum height. No building shall exceed 35 feet.
 - (v) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the lot and yard areas designated herein are provided and maintained in connection with such building, structure or enlargement.
- Provided, however, that alternative No. 1 may be utilized only if open space is provided within the "R-2" development so as to result in the same level of density that would result from the application of alternative No. 2 criteria in this subsection 4.(C)(3).
- (c) Minimum setbacks:
 - (i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

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- (ii) Side yard. There shall be a side yard between the main building and side line of the lot, and extending from the required front yard to the required rear yard, which shall be sized based on the following formula: the side yard setback shall be no less than five feet in width and no more than 7.5 feet in width, with the width of the side yard being equal to ten percent of the width of the entire lot.
- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (d) Garages shall be permitted in the "R-2" development pursuant to the following requirements:
- (i) Garages shall be either attached or detached and accessible from a public or private street, or alley.
- (ii) A minimum of two parking spaces is required for each unit. The driveway may be included in the counting of the required minimum as one of the two spaces required for each unit. Provided, however, that these requirements do not apply to any "R-1" development located within a primarily "R-2" development area.
- (4) The following site development regulations shall be exclusively applicable to medium density single-family detached residential within the "R-2" residential PUD district:
- (a) Minimum lot size: 3,600 square feet.
- (b) Minimum lot width: 35 feet. (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
- (d) Maximum height. No building shall exceed 35 feet.
- (e) Area. No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargement.
- (f) Minimum setbacks:
- (i) Front yard. There shall be a front yard setback having a depth of not less than 8 feet from the property line to the front line of the building, including a covered porch, covered terrace, balconies, or bays.
- (ii) Side yard. There shall be a side yard of not less than five feet from the walls of the building or accessory building to the side property line.
- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than five (5) feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (g) Garages shall be either attached or detached and accessible from a public or private street, or alley.
- (5) The site development regulations set forth below shall be exclusively applicable to single-family attached residential.
- (a) Minimum lot size: 2,500 square feet.
- (b) Minimum lot width: 25 feet.
- (c) Maximum dwelling units per lot: No more than one dwelling unit per lot.
- (d) Maximum height: 35 feet.
- (e) Minimum setbacks:

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(i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

(ii) Side yard. No setback required.

(iii) Rear yard. There shall be a rear yard setback having a depth of not less than 25 feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.

(f) Garages or carports shall either be attached or detached and accessible from a public or private street or alley.

(6) The site development regulations set forth below shall be exclusively applicable to Courtyard Residential.

a. Minimum Lot size: 2,000 sq. ft.

b. Minimum Lot Width: None

c. Maximum dwelling units per lot: One (1) principle dwelling unit and (1) accessory dwelling unit.

d. Maximum Height: 35'

e. Area: No building or structure, nor enlargement of any building or structure, shall hereafter be erected or maintained unless the following lot and yard areas are provided and maintained in connection with such building, structure or enlargements.

f. Minimum Setbacks:

i. Front yard: there shall be a front yard setback having the depth of not less than 4' from the courtyard walk to the front line of the building.

ii. Side yard: there shall be no side yard set back required. Except that there shall be a side yard ser back having a depth of not less than 8' from the property at public or private streets to the side line pf the building.

iii. Rear yard: there shall be no rear yard setback required

g. Garages and Carports: may either be attached or detached and accessible from private street or alley.

h. Each Courtyard shall have a "gateway" (examples: trellis, fencing, and/or landscaping).

i. I, Each Courtyard shall have a gathering place with a minimum of 4 chairs or 2 benches.

j. j. The Courtyard sidewalk(s) shall be the following minimum width for at least 70% of the length:

k. i. Single sidewalk: 5'

l. ii Double sidewalk: 4'-6"

m. Each dwelling unit shall have a front porch or front patio having an area with a minimum depth of 5' and a minimum length of 7'.

n. Minimum separation between interior dwelling units from back side of porch or garden patio to back side of porch or garden patio: 24'

o. Minimum separation of dwelling units at street: 16'

p. Minimum separation of dwelling units at rear of courtyard: 10'

Sec. 5. "R-3" multi-family residential PUD district.

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(A) *Purpose.* This district is intended as an area for medium density single-family, duplex, and condominium uses. In appropriate locations, this district shall accommodate a variety of housing types, primarily multiple family dwellings and shall be designed to provide the widest range of housing types, as well as highest density in the community. Mobile homes and manufactured homes are excluded from this district.

(B) *Permitted uses.* The following uses shall be permitted in the "R-3" multi-family residential PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

- (a) Wetlands;
- (b) Conservation areas;
- (c) Golf courses;
- (d) Outdoor recreational and athletic facilities;
- (e) Outdoor swimming pools;
- (f) Parks, playgrounds and playfields;
- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and

(2) Any use permitted in "R-2" residential PUD district, excluding the following "R-1" uses.

(a) Single family dwelling for residential use, as described in Article II, Part C, Section 3 of this ordinance.

(b) Residential accessory dwelling units.

(c) Apartment buildings.

(d) Convalescent and hospice homes, assisted living, and retirement housing.

(e) Condominiums.

(C) *Site development regulations.*

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.

(3) The following site development regulations shall be exclusively applicable to apartment buildings, convalescent and hospice homes, assisted living, and retirement housing, and condominiums.

(a) Minimum lot size: 6,000 square feet.

(b) Minimum lot width: 50 feet.

(c) Maximum dwelling units per lot: 36 units per acre.

(d) Maximum height: 40.60 feet. A twenty-five (25) foot minimum compatibility setback shall be required adjacent to a R-2 development within the R-3 site which limits maximum building height to forty (40) feet.

(e) Minimum setbacks:

(i) Front yard. There shall be a front yard setback having a depth of not less than 15 feet from the property line to the front line of the building, not including a covered porch, or covered terrace, balcony, or bay.

(ii) Side yard. There shall be a side yard setback of not less than 15 feet from the walls of the building or accessory building to the side property line.

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- (iii) Rear yard. There shall be a rear yard setback having a depth of not less than ten feet from the rear most wall of the dwelling unit to the back property line and five feet from the rear most wall of the garage to the back of the property line.
- (f) Garages shall either be attached or detached and accessible from a public or private street, or alley.
- (4) The site development regulations set forth below shall be exclusively applicable to condominium residential.
- (a) A note shall be included on the preliminary and final plat stating that no certificate of occupancy may be issued for the proposed residential condominium project until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums. The building official shall not issue a certificate of occupancy until the owner or owners of the property have complied with chapter 82 of the Property Code of the State of Texas [V.T.C.A., Property Code § 82.001 et seq.] or any other statutes enacted by the state concerning condominiums.

Sec. 6. "NC" neighborhood commercial PUD district.

(A) *Purpose.* This area is intended to provide for the location of offices and small businesses serving neighborhood community needs, which may be located within or adjacent to a residential district of the PUD for the convenience of nearby residents. The businesses shall be conducive to and fit into the residential pattern of development, and not create land use, architectural or traffic conflicts. The following standards for the neighborhood commercial district are intended to preserve the residential atmosphere and be consistent with the Plum Creek PUD master plan.

(B) *Permitted uses.* The following uses shall be permitted in "NC" neighborhood commercial district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
- (a) Wetlands;
 - (b) Conservation areas;
 - (c) Golf courses;
 - (d) Outdoor recreational and athletic facilities;
 - (e) Outdoor swimming pools;
 - (f) Parks, playgrounds and playfields;
 - (g) Wildlife sanctuaries;
 - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in "R-1" residential PUD district, except the following:
- (a) Single family dwelling for residential use.
 - (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-2" residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (4) Any use permitted in the "R-3" multi-family residential PUD district, except the "R-1" uses listed in subsection (B)(2) above.
- (5) Grocery stores or specialty food store.
 - (6) Barber and/or beauty shop.
 - (7) Daycare services and child development centers.
 - (8) Clothes cleaning agency.

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- (9) Laundromat.
- (10) Video rental store.
- (11) Coffee shop, cafe or, delicatessen not exceeding 2,500 square feet of gross floor area.
- (12) Pharmacy.
- (13) Electronic service center providing photocopying, faxing, and computer service.
- (14) Computer or communications network access.
- (15) Mail box rental and package shipping/receiving store.
- (16) Accessory buildings customarily appurtenant to a permitted use.
- (17) Dwelling units that are located above or behind a permitted commercial use and secondary to that commercial use.
- (18) Neighborhood automobile service stations.
- (19) Bed and breakfast establishment, subject to the following requirements:
 - (a) A maximum of four guest bedrooms shall be provided.
 - (b) Paying guests shall not stay more than seven consecutive days.
 - (c) Only overnight guests may be served meals at the establishment, except that luncheons and receptions may be held for attendees of organized social functions and tours.
 - (d) Only one sign is permitted, and it shall be non-illuminated, no greater than two square feet, and affixed flush with the wall of the dwelling.
 - (e) Each bed and breakfast establishment shall provide a minimum of two off-street parking spaces, plus one additional parking space for each guest room. This requirement may be waived when the owner can show that adequate off-street parking is available at an adjacent commercial site under common ownership or lease. Any parking area located adjacent to a residential zoned property shall provide a privacy fence at least six feet in height and buffer between the parking area and the adjacent residential property.
 - (f) The bed and breakfast establishment shall comply with all licensing requirements of the county health department for storage, preparation, and serving of food and beverages.
- (20) Rooming and boarding houses.
 - (C) *Site development regulations.*
 - (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) Development of any use permitted in the "R-1" residential PUD district shall conform with the site development regulations established in the "R-1" residential PUD district.
 - (3) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.
 - (4) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.
 - (5) The following site development regulations shall be applicable to the "NC" neighborhood commercial district.
 - (a) Minimum lot size: 5,000 square feet.
 - (b) Minimum lot width: 50 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 35 50 feet in height. A twenty-five (25) minimum foot compatibility setback shall be

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required adjacent to a R-2 development within the neighborhood commercial (NC) site which limits maximum building height to thirty-five (35) feet.

(e) Minimum setbacks:

(i) Front yard. The building setback for the front yard shall be the same as adjacent residential area, but not less than 15 feet.

(ii) Side yard. Five feet, except when a side lot line is abutting a residential lot and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet, when the building abuts a residential lot.

(iii) Rear yard. Ten feet, except when a rear lot line is abutting a residential lot and then the rear yard shall be a minimum of 15 feet.

(D) *Off-street parking and loading.* Off-street parking and loading space shall be provided as required in article II, part D, section 2 herein, except that if nine or more spaces are required, up to two designated parking spaces on the street may be counted toward the required spaces.

(E) *Additional site development requirements.*

(1) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.

(2) In any "NC" neighborhood commercial PUD district directly across the street or alley from residential district, the parking and loading area shall be set back at least ten feet from the street or alley right-of-way and said set back area shall be appropriately landscaped to be consistent with the character of adjoining and adjacent residential property. Such landscaping shall be maintained regularly by the property owner.

(3) The front of buildings should be sited at the front yard build-to line (consistent with the adjacent residential areas) with a pedestrian walkway connecting the sidewalk and an entrance to the building. The building and any eaves, overhangs, or awnings shall not interfere with the required clear vision area at corners or driveways.

(4) Buildings within the neighborhood commercial area should have external architectural features such as roofline, exterior materials, window size and location, doors, porches, and entrances that are similar to the predominant residential pattern in the area.

(5) Landscaped areas shall be planted with live ground cover, shrubs, lawn, flowers and trees that are typical adjacent residential areas.

(6) Lighting fixtures shall be designed to direct light down onto the site and away from residential property. No pole light shall exceed 12 feet in height.

(7) Operating hours for neighborhood commercial uses shall be limited to the period from 6:00 a.m. to 10:00 p.m.

Sec. 7. "C" commercial PUD district.

(A) *Purpose.* This area is intended to provide for the location of offices and commercial uses serving neighborhood and community needs. No building or land shall be used and no building hereafter shall be erected, maintained, or structurally altered, except for one or more of the uses hereinafter enumerated. The "C" commercial PUD district is designed for commercial, wholesale, retail and office classification.

(B) *Permitted uses.* The following uses shall be permitted in the "C" commercial PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

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- (a) Wetlands;
- (b) Conservation areas;
- (c) Golf courses;
- (d) Outdoor recreational and athletic facilities;
- (e) Outdoor swimming pools;
- (f) Parks, playgrounds and playfields;
- (g) Wildlife sanctuaries;
- (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) The following uses that are uses permitted in the "R-1" residential PUD district:
 - (a) Public or private parks, playgrounds, or recreation buildings, municipal buildings, non-profit libraries or museums, police or fire stations.
 - (b) Temporary building(s) used as a sales office for the development of a new subdivision or for construction purposes may be established and operated within the subdivision on a construction site for a period not exceeding two years; provided that extensions of time may be granted by the building official on application duly made for special exception.
 - (c) Public buildings for water supply reservoir, filter bed, surface or below surface tank, artesian well, pumping plant, water tower, or for other city owned or sanctioned public utilities.
- (3) Antique shops.
- (4) Art gallery.
- (5) Auction sales.
- (6) Automobile repair shops without outside garages, with work conducted wholly within the enclosed building.
- (7) Bakeries.
- (8) Banks and savings and loan institutions.
- (9) Barber shops, beauty shops, and any other personal service shops business, music, dance schools.
- (10) Billiard and pool rooms.
- (11) Books or stationery stores.
- (12) Bowling alleys.
- (13) Business, music, dance or commercial schools.
- (14) Cafes, cafeterias, and restaurants.
- (15) Camera shops and photographic supplies.
- (16) Carpet and rug cleaners.
- (17) Catering establishments.
- (18) Cleaning and dry cleaning establishments.
- (19) Clinics.
- (20) Clothing stores.
- (21) Craft and hobby shop, but without outside garage.
- (22) Dance halls.
- (23) Department, furniture, and home appliance stores.
- (24) Drug stores, soda fountains, soft drink stands, candy, and tobacco shops.
- (25) Dry cleaners.
- (26) Electrical appliance shops and repairs.
- (27) Employment agencies.
- (28) Florist shop, nursery, or greenhouses.

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- (29) Furniture, appliance stores, (sales and service).
- (30) Gasoline service stations.
- (31) Grocery stores.
- (32) Hardware, paint, and wallpaper stores.
- (33) Hospitals, sanitariums, nursing homes, hospices, or convalescent homes.
- (34) Hotels.
- (35) Household and office furniture, furnishings, and appliance stores.
- (36) Ice cream or ice sales.
- (37) Laundries, laundrettes and Laundromats.
- (38) Jewelry and optical goods stores.
- (39) Meat markets.
- (40) Mortuaries.
- (41) Nursery or horticulture businesses.
- (42) Painting and decorating shops.
- (43) Pet shops or animal hospitals when conducted wholly within the enclosed building.
- (44) Photographers, or artists' studios.
- (45) Plumbing, heating, and roofing supply and workshops.
- (46) Printing shops.
- (47) Offices.
- (48) Radio and television stations (no towers).
- (49) Radio, television or electronic sales and service.
- (50) Recreation establishments.
- (51) Restaurants.
- (52) Retail stores and services.
- (53) Shoe sales and repair shops.
- (54) Sporting goods, novelty, or toy shops.
- (55) Tailor and dressmaking shops.
- (56) Taverns or retail sale of alcoholic liquors, subject to the regulations of other adopted ordinances of the city.
- (57) Telegraph and telephone service stations.
- (58) Temporary building incidental only to construction of a permitted use.
- (59) Theater, indoor.
- (60) Tire shop (no vulcanizing or retreading).
- (61) Variety stores.
- (C) *Site development regulations.*
 - (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) The following site development regulations shall be exclusively applicable to the "C" neighborhood commercial PUD district.
 - (a) Minimum lot size: 4,000 square feet.
 - (b) Minimum lot width: 35 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 3 1/2 stories or 50 feet.
 - (e) Minimum setbacks.

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- (i) Front yard: none.
- (ii) Side yard: none.
- (iii) Rear yard: none.
- (f) Maximum floor area ratio: 1.5 FAR of the lot area.

Sec. 8. "MXD" mixed use development PUD district.

(A) *Purpose.* This area is intended to provide locations for a relatively wide range of small businesses and services which complement the residential development pattern as a convenience to residents in the PUD. Mixed use development areas of this type are intended to be located and developed in a manner consistent with the Plum Creek PUD master plan and a site development plan. It is intended to allow for a mix of uses that:

- (1) Provide a variety of employment opportunities and housing types;
- (2) Foster pedestrian and other non-motor vehicle activity;
- (3) Ensure functionally coordinated, aesthetically pleasing and cohesive site planning and design; and
- (4) Ensure compatibility of uses within mixed use developments with other uses within such development and with the surrounding area and minimize off-site impacts associated with the development.

A site development plan shall be reviewed and approved by the planning commission and the city council prior to the actual development and construction in an MXD PUD district.

(B) *Permitted uses.* Uses permitted in the "R-1" residential PUD district are specifically prohibited and the following uses are permitted in the mixed use development district:

- (1) The following uses that are uses permitted in the "OS" open space PUD district:
 - (a) Wetlands;
 - (b) Conservation areas;
 - (c) Golf courses;
 - (d) Outdoor recreational and athletic facilities;
 - (e) Outdoor swimming pools;
 - (f) Parks, playgrounds and playfields;
 - (g) Wildlife sanctuaries;
 - (h) Streams, lakes, impounded waterways, or their drainageways; and
- (2) Any use permitted in the "R-2" residential PUD district, except the following "R-1" residential PUD district uses:

- (a) Single family dwelling for residential use.
- (b) Residential accessory dwelling units.
- (3) Any use permitted in the "R-3" multi-family residential PUD district.
- (4) Any use permitted in the "NC" neighborhood commercial areas.
- (5) Any use permitted in the "C" commercial PUD district.

(C) *Additional permitted uses.* In addition to uses permitted in (B) above, the following uses are specifically allowed:

- (1) Branch banks and other financial institutions designed to serve the area businesses and adjacent neighborhoods.
- (2) Business support service including copying, blueprinting, film developing and processing, photo reproduction, accounting, computer services, building and grounds maintenance, security services, and temporary help.

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- (3) Studio for manufacturing of pottery items, metal sculpture, and other artistic products.
- (4) Hotel or similar lodging facilities.
- (5) Conference center and meeting facilities when associated with a motel, hotel or similar lodging facility.

(6) Commercial recreational facilities such as indoor theaters and athletic clubs, but excluding intensive outdoor facilities such as go-cart tracks, bumper cars and boats, BMX courses, and target ranges.

(7) Offices.

(8) Restaurants, delicatessens, cafes, and similar food service establishments.

(9) Dwelling units that are located above or behind a permitted commercial or neighborhood commercial use and secondary to that commercial use.

(D) *Site development regulations.* Because of the mixed-use character of this district, the commission's review of site development plans and amendments to the Plum Creek PUD master plan, and recommendation to the city council are required. The city council's approval of site development plans and amendments to the Plum Creek PUD master plan are required prior to construction for each development submitted. The plan, pursuant to the applicable requirements of this ordinance must ensure that each development satisfies parking and compatibility requirements.

(1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.

(2) Development of any use permitted in the "R-2" residential PUD district shall conform with the site development regulations established in the "R-2" residential PUD district.

(3) Development of any use permitted in the "R-3" multi-family residential PUD district shall conform with the site development regulations established in the "R-3" multi-family residential PUD district.

(4) Development of any use permitted in the "NC" neighborhood commercial PUD district shall conform with the site development regulations established in the "NC" neighborhood commercial PUD district.

(5) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.

(6) The following site development regulations shall be applicable to nonresidential development within the MXD area:

(a) Minimum lot size: 4,000 square feet.

(b) Minimum lot width: 35 feet.

(c) Minimum lot depth: 100 feet.

(d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed ~~3 1/2~~ 5 stories or ~~50~~ 65 feet. A twenty-five (25) foot minimum compatibility setback shall be required adjacent to a R-2 development within the commercial site which limits maximum building height to 3 1/2 stories or fifty (50) feet.

(e) Minimum setbacks:

(i) Front yard: none.

(ii) Side yard: none.

(iii) Rear yard: none.

(f) Maximum floor area ratio: 1.5 FAR of the lot area.

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(7) Site development standards for residential development. Residential development within the MXD area shall conform to the applicable site development standards established for the "R-2" residential PUD district, "R-3" multi-family residential PUD district and "NC" neighborhood commercial PUD district as set forth in this ordinance.

(8) Additional site development requirements.

(a) Lighting: Parking lot lights, security lights, and other lights on a mixed-use site shall be designed to direct light down onto the site and away from adjacent residential property.

(b) Air emissions: There shall be no emission of odorous, toxic, noxious matter, or dust in such quantities from operations as to be readily detectable along or outside the MXD area so as to produce a public nuisance or hazard.

(c) Landscaping and open space. The design and development of landscaping and open space within the MXD area shall:

(i) Include street trees and parking area trees which are in scale with the development.

(ii) Provide a cohesive open space and pedestrian network within the development, with appropriate connections to surrounding properties and uses.

(d) Include open spaces and plazas which are in scale with the development and invite activity appropriate to adjoining uses.

(e) Refuse collection and recycling areas for business shall be enclosed with a fence, wall or structure high enough to screen all collection bins.

(f) Outside mechanical equipment, industrial or commercial heating, ventilation air conditioning, or other mechanical equipment on rooftops or ground, shall be screened with a material and design that is visually compatible with the building.

(Ord. No. 490, § 2, 2-20-2007)

Sec. 9. "EMP" employment PUD district

(A) *Purpose.* This area is intended to provide a place to locate commercial businesses, services, and industries compatible with adjacent residential areas for the convenience of nearby residents and the greater community at large. The use of an EMP area within a proposed mixed use development is intended to be compatible with the residential pattern of the development and not create unreasonable traffic or land use conflicts.

(B) *Permitted uses.* The following uses shall be permitted in an "EMP" employment PUD district:

(1) The following uses that are uses permitted in the "OS" open space PUD district:

(a) Wetlands;

(b) Conservation areas;

(c) Golf courses;

(d) Outdoor recreational and athletic facilities;

(e) Outdoor swimming pools;

(f) Parks, playgrounds and playfields;

(g) Wildlife sanctuaries;

(h) Streams, lakes, impounded waterways, or their drainageways; and

(21) Drapery and bedding manufacturers;

(22) Expressing, baggage, and transfer delivery services;

(23) Farm implement sales or repair;

(24) Food processing and dehydrating operations;

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- (25) Frozen food lockers;
 - (26) Furniture manufacturers and upholsterers;
 - (27) Garages;
 - (28) Ice cream and ice manufacturers and sales;
 - (29) Instrument and electronic component manufacturing;
 - (30) Lumber and building sales and storage;
 - (31) Machine shops;
 - (32) Machine and metal products shops;
 - (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
 - (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;
 - (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
 - (36) Rail-served industries consistent with uses indicated above;
 - (37) Sheet metal fabrication shop;
 - (38) Sign shops;
 - (39) Stone, marble, and granite grinding and cutting operations;
 - (40) Storage and warehouses;
 - (41) Storage of household goods;
 - (42) Taxi service stations;
 - (43) Temporary building incidental only to construction of a permitted use;
 - (44) Tire shops (retreading only);
 - (45) Tool and die shops;
 - (46) Warehouses; and
 - (47) Welding shops.
- (C) *Site development regulations.*
- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
 - (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
 - (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
 - (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
 - (a) Minimum lot size: 5,750 square feet.
 - (b) Minimum lot width: 50 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
 - (e) Minimum setbacks.
 - (i) Front yard: none.
 - (ii) Side yard: none.
 - (iii) Rear yard: none.
 - (f) Maximum floor area ratio: 1.5 FAR of the lot area.

Sec. 10. - "LI" Light industrial PUD district

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(A) Purpose. This district is designed to provide locations for outlets offering goods and services to a targeted segment of the general public as well as industrial users. The uses included primarily serve other commercial and industrial enterprises. No building or land shall be used, and no building hereafter shall be erected, maintained, or structurally altered, except for one (1) or more of the uses hereinafter enumerated. The "LI" light industrial PUD district is designated for selected sales, manufacturing and industrial classifications.

(B) Permitted uses. The following uses shall be permitted uses in the "LI" light industrial PUD district:

- (1) Any use permitted in the "EMP" employment PUD district;
- (2) Agricultural implement sales and services;
- (3) Air conditioning and heating sales and services;
- (4) Automobile repair shops without outside garages and when conducted wholly within the enclosed building;
- (5) Artificial limb manufacturers;
- (6) Battery and tire service stations without outside garages and when conducted wholly within the enclosed building;
- (7) Beverage bottling and distributing stations;
- (8) Blacksmith shops;
- (9) Book binding shops;
- (10) Box manufacturers;
- (11) Broom manufacturers;
- (12) Bus lines shops and garages;
- (13) Car wash;
- (14) Canvas goods fabrication;
- (15) Crating express storage;
- (16) Computer and computer parts manufacturers;
- (17) Hatcheries;
- (18) Clothing and dress manufacturers;
- (19) Craft and hobby shop with outside garage;
- (20) Creameries;
- (21) Drapery and bedding manufacturers;
- (22) Expressing, baggage, and transfer delivery services;
- (23) Farm implement sales or repair;
- (24) Food processing and dehydrating operations;
- (25) Frozen food lockers;
- (26) Furniture manufacturers and upholsterers;
- (27) Garages;
- (28) Ice cream and ice manufacturers and sales;
- (29) Instrument and electronic component manufacturing;
- (30) Lumber and building sales and storage;
- (31) Machine shops;
- (32) Machine and metal products shops;
- (33) Pet shops or animal hospitals when conducted other than only in enclosed buildings;
- (34) Printing, publishing, and issuing of newspapers, periodicals, books and other reading matter;

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- (35) Public utility substations and distributing centers, regulations centers, and underground holder stations;
- (36) Rail-served industries consistent with uses indicated above;
- (37) Sheet metal fabrication shop;
- (38) Sign shops;
- (39) Stone, marble, and granite grinding and cutting operations;
- (40) Storage and warehouses;
- (41) Storage of household goods;
- (42) Taxi service stations;
- (43) Temporary building incidental only to construction of a permitted use;
- (44) Tire shops (retreading only);
- (45) Tool and die shops;
- (46) Warehouses; and
- (47) Welding shops.

(C) *Site development regulations.*

- (1) Development of any use permitted in the "OS" open space PUD district shall conform with the site development regulations established in the "OS" open space PUD district.
- (2) Development of any use permitted in the "C" commercial PUD district shall conform with the site development regulations established in the "C" commercial PUD district.
- (3) Development of any use permitted in the "EMP" employment PUD district shall conform with the site development regulations established in the "EMP" employment PUD district.
- (4) The following regulations shall be applicable to the "LI" light industrial PUD district:
 - (a) Minimum lot size: 5,750 square feet.
 - (b) Minimum lot width: 50 feet.
 - (c) Minimum lot depth: 100 feet.
 - (d) Maximum height: No building or structure shall be erected, enlarged or structurally altered to exceed 60 feet.
 - (e) Minimum setbacks.
 - (i) Front yard: none.
 - (ii) Side yard: none.
 - (iii) Rear yard: none.
 - (f) Maximum floor area ratio: 1.5 FAR of the lot area.

ARTICLE II. ADDITIONAL USE REGULATIONS
PART D

Sec. 1. Additional use, height and area regulations and exceptions applicable to PUD districts unless otherwise approved by the city council.

(A) *Accessory buildings.* No accessory building shall be constructed upon a lot until the construction of the main use building has been actually commenced. No accessory building shall be used unless the main use building on the lot is also being used.

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- (B) *Permits.* No building shall be erected, enlarged, moved onto a tract of land, structurally altered, or maintained unless and until there has been issued therefor a building permit in compliance with the applicable building ordinance of the city.
- (C) *Visibility at intersections in all districts.* On a corner lot in any PUD district, no improvements shall be erected, placed, planted, or allowed to grow in such a manner as to impair or obstruct the view, from any of the intersecting streets, of such intersection within a triangle defined by the property lines and a line joining two points located 20 feet back from the property lines intersection; except that fences, walls, and hedges may be permitted provided that such fences, walls and/or hedges do not impair vision from two feet to seven feet above the curbline elevation.
- (D) *Minimum building plot.* No building plot shall have less stringent standards or dimensions than those prescribed for the respective PUD district in which such lot is located.
- (E) *Erection of more than one principle structure on a lot.* More than one structure housing a permitted principal use may be erected on a single lot or building lot only as specifically permitted by this ordinance, and yard and other requirements of this ordinance must be met for each structure as set forth for the PUD district in which such lot is located and the applicable site development regulations.
- (F) *Exceptions to height regulations.* The height limitations set forth in the ordinance do not apply to spires, belfries, cupolas, water tanks, ventilators, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.
- (G) *Structures to have access.* Unless otherwise approved by the city council, every building hereafter erected or moved shall be on a lot or building plot with direct access on a public street or alley, or with access to an approved private street. All structures shall be so located on lots or building plots as to provide safe and convenient access for servicing, fire protection, and the required on-site parking.
- (H) *Required yards.* Yards as required in this ordinance are open spaces on the lot or building plot on which a building is situated and which are open and unobstructed to the sky by any structure except as herein provided in this subsection 1(H). Notwithstanding any other provision of this ordinance: (i) normal yard structures may be located in a yard, including, for example, fences or walls, gateways, sidewalks, driveways, patios, flower beds, planters, water hydrants and irrigation structures, eaves, cornices, window sills, bay windows, architectural details, utility meters and structures, electrical boxes, heating and cooling equipment, flagpoles, lighting structures, swing sets and other play equipment, fountains, swimming pools, mail boxes, signs, moveable structures and similar items, and (ii) where specifically permitted by this ordinance on the rear half of the lot, accessory dwelling buildings, garage space and storage space may be located in the rear yard; provided that no building or structure shall be located within the area of any lot between a property line of such lot and the respective rear yard or side yard set back line.
- (I) *Rear yard required.* A yard which extends across the rear of the lot or building plot between the side property lines and having a minimum depth measured from the rear property line as specified for the district in which the building plot is located, is required unless otherwise prescribed in the appropriate PUD district.
- (J) *Side yard required.* A yard located on a lot or building plot which extends from the required rear yard to the required front yard having minimum width measured from the side property line as specified for the district in which the building plot is located, is required unless otherwise prescribed in the appropriate PUD district.

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(K) *Major recreational equipment.* For the purpose of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches designed to be mounted on automotive vehicles, motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No such equipment shall be used for living, home occupation, or household purposes when parked or stored on a residential lot, or in any location not approved for such use.

(L) *Screening fences required.* Where there is a common side or rear lot line or lot lines between business, commercial or industrial land and developed residential areas, the owner of said business, commercial or industrial land shall construct a fence to screen residential lots from adverse influences as part of the normal construction of buildings dedicated to said nonresidential usage. Where there is a common side or rear lot line or lot lines between multifamily land and developed single-family residential land, the owner of the apartment land shall erect a fence that will properly screen adjacent residential land from adverse influences such as noise, vehicular lights, trespass, and other adverse influence as part of the normal construction of the apartment project. Such screening fences may be made of any material compatible with the surrounding area, but shall form a solid continuous screen between the residential and nonresidential land uses. In the case of rear lot lines such screening fence shall be continued from one side lot line along the rear lot line to the other side lot line. In the case of side lot lines such screening fence shall be continued from the rear lot line along the side lot line to the front setback line but no farther than a point 15 feet from the street right-of-way line. Each screen fence shall be maintained in good condition by the owner of said business, commercial or industrial project, for as long a time period as may be needed to protect adjacent residential land uses during the construction of said business, commercial, industrial or multifamily area. In the event that a permanent screen fence is erected, it shall be maintained by the property owner who constructs the fence.

(M) *Commercial use areas.* Site plans of all commercial and mixed use complexes and site plans of other large scale projects which would cause a considerable impact on the city's facilities shall be reviewed and approved by the city technical staff prior to the issuance of a building permit by the director of public works. Such review under this subsection shall be restricted to the review of such projects for compliance with this ordinance and the Plum Creek PUD subdivision ordinance and the impact of such projects on: the neighboring land and environment, the adequacy of the water and sewer facilities installed or to be installed to serve the site, flood control and drainage, traffic generation, proposed circulation patterns and implications to safety in the project area and the resultant impact of generation and circulation upon adjacent such traffic street systems. The building official or the developer of the project may refer the site plans to the city council prior to the issuance of a building permit for final resolution. No building permit application showing compliance with the applicable ordinances and regulations will be delayed more than 30 days pending resolution of such building permit request unless the building permit, when and if issued, shall require construction according to the approved site plan, construction plans and specifications.

(N) *Environmental regulations.* The following regulations are to control contamination of air, water, or the environment, and to safeguard the health, safety and welfare of the people.

(1) No machine, process or procedure shall be employed on any property within the Plum Creek planned unit development which result in, or if:

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- (a) Emission of smoke, dust, noxious, toxic or lethal gases are detectable beyond the perimeter of the property; materials are stored or accumulated in such a way that such materials may be carried by rainwater in natural drainage channels beyond the limits of the property; or materials which have discernible amounts of noxious, toxic, radioactive, oil or grease, wood or cellulose fibers, hair, feathers or plastic, or that have a pH factor above ten or below five, are stored on the property in a manner not authorized by law or to pose a nuisance or hazard to neighboring property or the public;
- (b) Vibration is discernible beyond the property line; or
- (c) Noise above the ambient noise level is discernible beyond the property line.
- (2) Drainage into the sanitary sewerage system shall conform to the city's requirements.
- (3) No stormwater drain, roof drain, or outside area drain shall empty into a sanitary sewer.
- (4) Flood plain. No dwelling, commercial or industrial building shall be permitted in the "intermediate flood plain" channel, as determined by the city. Buildings in the area between the delineated "intermediate flood plain" and the "standard flood plain" will be permitted only after such land is built up to an elevation of one foot above the "standard flood plain" elevation, and such land as so built up, when verified by the city engineer, will change the "standard flood plain" delineation accordingly.
- (O) *Temporary building and equipment.* Temporary buildings and equipment for uses incidental to construction work on premises are allowed in any zone but shall be removed upon the completion or abandonment of construction work.
- (P) *Sewage disposal systems.* Sewage disposal systems shall be in accordance with all applicable state, county and city codes and regulations.

Sec. 2. Parking regulations applicable to PUD districts unless otherwise approved by the city council.

- (A) *Parking and storage of certain vehicles.* Automotive vehicles or trailers not bearing current license plates and state motor vehicle inspection stickers, excluding racing cars, antique cars, and cars belonging to members of armed forces who are on active duty, shall be parked or stored on any residential area only in completely enclosed buildings. No vehicle, trailer or major recreational equipment shall be parked or stored on any lot except that it shall be enclosed in a building or parked on a driveway or a concrete, paved or stone pad installed for such purpose and subject to the requirements herein.
- (B) *Parking regulations.* Where any structure is erected, reconstructed or converted for any of the business or commercial uses permitted in this ordinance, designated on-street and off-street parking spaces shall be provided in a number not less than as provided in schedule C set forth hereinafter.
- (C) *[Non-residential handicap parking.]* Non-residential handicap parking requirements are a minimum of one space for under 50 parking spaces, then one additional space for over 50 parking spaces up to 100 spaces, and then one space per 100 spaces up to 500. Over 500 it is one percent of total parking spaces. Dimensional requirements are 12-foot width and 18-foot depth per handicap space.
- (D) *Handicapped parking.* The number, location, and design of handicapped parking spaces shall be as required by the building ordinance.

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(E) *Commercial use parking.* The motor vehicle parking areas shall be located and designed to facilitate safe and convenient pedestrian and bicycle movement to and from public sidewalks, streets, or transit stops. Ways to achieve this standard may include, but are not limited to:

- (1) Location and orientation of buildings closer to the street to minimize pedestrian and bicycle travel through a parking area;
- (2) Providing one or more raised walkways through the parking areas;
- (3) Providing one or more raised walkways protected by landscaping and parking bumpers, with area across vehicle aisles delineated by non-asphaltic material in a different color or texture than the parking areas;
- (4) Connecting on-site pedestrian walkways and bikeways to other existing pedestrian and bicycle circulation systems that serve adjacent commercial uses or residential areas.

(F) *Maximum parking.* The maximum number of parking spaces for a commercial use area shall not exceed 150 percent of the required parking.

(G) *Reduction in required parking.* The total number of required motor vehicle parking spaces for a nonresidential use may be reduced by five percent for each of the activities listed below provided by the owners or operators, up to a maximum ten percent reduction in the total number of motor vehicle spaces.

- (1) Participate in an area wide carpool/vanpool ride matching program for employees; designating at least ten percent of the employee motor vehicle parking spaces as carpool/vanpool parking and placing such spaces closer to the building than other employee parking;
- (2) Providing showers and lockers for employees who commute by bicycle;
- (3) Providing covered, secured bicycle parking racks or facilities;
- (4) Providing a transit facility that is approved by the local transit authority, and related amenities. Related amenities include, but are not limited to, a public plaza, pedestrian sitting areas, and additional landscaping.

(H) *Development and maintenance standards for off-street and on-street parking areas.* Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:

- (1) An off-street parking area for more than five vehicles shall be effectively screened by a sight-obscuring fence, hedge or planting, on each side which adjoins a residential use or property situated in a residential area or the premises of any school or like institution.
- (2) Except for parking to serve residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents.

(3) Access aisles shall be of sufficient width for vehicular turning and maneuvering.

(I) *[Off-street and on-street parking.]* Off-street and on-street parking for all uses not within the categories above shall be adequate to meet the anticipated needs and shall be determined by the city council using standards outlined for special exception and with a view towards providing adequate parking and carrying out the general scheme of the parking requirements herein set out.

(J) *[Special exception.]* The city council may grant a special exception to allow two or more uses to share parking spaces upon a showing that the particular uses in question will require parking at different times. Any spaces the council allows to be shared count toward the number of spaces each use must provide.

TABLE INSET:

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Schedule C	
Use	Number of Parking Spaces
Residential dwelling designed and used as single-family and two family residences and up	Two spaces for one bedroom and one-half for each additional bedroom
Efficiency	One space for each efficiency
Multifamily dwelling	1.5 spaces for one bedroom and 0.5 for each additional bedroom
Warehouses, manufacturing plants and other similar commercial establishments not catering to the general public	One space per 1,000 feet of gross floor area
Hotels, motels and similar transient accommodations	One space per bedroom and 1 space for each two employees, 1.1 spaces per bedroom, whichever is greater
Rest homes, hospitals, nursing homes, convalescent homes, sanitariums and similar uses	One space for each two employees, and 1 space for each four patients beds
Bars, cafes, restaurants, taverns, night clubs and similar uses	One spaces for every four seats provided for customers services, 1 space for each 100 feet of gross floor area whichever is greater
Banks, offices, financial lending institutions, gasoline stations, personal service shops, retail establishments, shopping centers and similar uses catering to the general public	Three and a half spaces for each 1,000 feet of gross floor area

(Ord. No. 541, § 1, 3-6-2008)

Sec. 3. Conditional use permits.

Any use not specifically enumerated in this ordinance may be allowed in any PUD district by conditional use permit under the following procedures:

(A) *Application.* Application for a conditional use permit shall be filed with the city secretary and shall be accompanied by:

(1) A site plan showing the intended development of the property for which such conditional use permit is being requested;

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(2) Payment of a fee equal to that as may be required for rezoning of the subject property under regulations then current; and

(3) A detailed written description of the proposed use, which written description shall include all relevant factors, including, but not limited to, utility requirements, projected employment, and nature of the proposed activity and products.

(B) *Public hearing before planning and zoning commission.*

(1) Within a reasonable time from such filing, the planning and zoning commission shall, after giving written notice in the same manner required for a planning and zoning commission hearing under section 211.006 through section 211.007, Local Government Code [V.T.C.A., Local Government Code §§ 211.006--211.007], hold a public hearing and forward a recommendation to the city council as to whether the conditional use permit should be granted or denied; and

(2) The planning and zoning commission, at its hearing on a conditional use permit, shall consider the application, the accompanying site plan and the written description, and may recommend approval or denial of the request, or recommend approval with such conditions as it may deem necessary to secure and protect the public health, safety, morals, and general welfare.

(C) *Public hearing before city council.* Upon receipt of a recommendation from the planning and zoning commission regarding a conditional use permit application, the city council shall, after giving written notice in the same manner required for a city council hearing for a zoning change under sections 211.006 and 211.007, Local Government Code, [V.T.C.A., Local Government Code §§ 211.006 and 211.007] hold a public hearing and grant or deny the application for such conditional use permit, or it may grant said special conditional use permit subject to such conditions as it may deem necessary to secure and protect the public health, safety, morals, and general welfare and to be compatible with, and/or similar to, the uses permitted in the PUD district in which the site is located.

(D) *Site plan.* The site plan accompanying the application for a conditional use permit shall show the proposed development of the property on tracing paper or tracing lined paper, 24 [inches] by 36 inches in size. The site plan shall give the following information:

(1) Date, scale, north point, title, name of person preparing the plan;

(2) Location of existing boundary lines and dimensions of the tract;

(3) Center line of existing watercourses, drainage features, and location and size of existing and proposed streets, roads, and alleys;

(4) Location and size, to the nearest one-half foot, of all proposed buildings and land improvements; and

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(5) Clear designation of area to be improved for off-street parking, the location and size of points of ingress and egress, and the ratio of parking space to floor space.

(E) *Factors to be considered.* In considering an application for conditional use permit, the planning and zoning commission and the city council, shall take the following factors into account:

- (1) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;
 - (2) Safety from fire hazard and measures for fire control;
 - (3) Protection of adjacent property from flood or water damage;
 - (4) Noise-producing elements, glare of vehicular and stationary lights, and effect of such lights on the established character of the neighborhood;
 - (5) Location, lighting, types of signs, relation of signs to traffic control, and adverse effect on adjacent properties;
 - (6) Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhoods;
 - (7) Adequacy of parking, as determined by requirements of this ordinance for off-street parking facilities in the use district in which the site is located, location of ingress and egress points for parking and off-street loading spaces, and protection of the public health by surfacing of all parking areas to control dust;
 - (8) Compatibility with, and similarity to, the uses permitted in the PUD district in which the site is located;
 - (9) The adequacy and availability of utility services for such proposed use; and
 - (10) Such other measures as will secure and protect the public health, safety, morals and general welfare.
- (D) A PUD district shall comply with all statutory requirements and such other requirements as may be reasonably determined by the city council.

Sec. 4. Non-conforming uses.

(A) *Use non-conforming on adoption of this ordinance.* The lawful use of land or buildings existing upon the effective date of this ordinance, although such use does not conform to the provisions hereof, shall be deemed a nonconforming use. Only nonconforming uses in existence

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on the effective date of this ordinance shall be subject to the terms and provisions of this subsection A.

(1) Such uses may be extended throughout such portions of the building as are arranged or designed for such use, provided no structural alterations, except those required by law or ordinance, are made therein. A nonconforming use of a building may be changed to a more restricted and limiting nonconforming use; provided such change is properly documented with the city. If such nonconforming use of building is voluntarily removed, the future use of such premises shall be in conformity with the provisions of this ordinance.

(2) In the event a nonconforming use of any building or premises is discontinued for a period of 270 days, the use of the same shall thereafter conform to the provisions of the district in which it is located. It shall not be construed to be a discontinuance of the nonconforming use if such use is discontinued for the purpose of making repairs or alterations to the building, or for offering the property for sale or lease, even if the premises are not so used for a period of longer than 270 days.

(3) A nonconforming use if changed to a conforming use or a more restricted nonconforming use, may not thereafter be changed back to a less restricted use than to which it was changed.

(4) The board of adjustment may issue a special use exception to extend the time when a nonconforming use may be allowed to continue, and may also allow it to be re-built, expanded or altered, upon a showing that the exception is necessary to allow a reasonable return on the investment in the affected property.

(B) *No new non-conforming use.* No building or structure shall be constructed or installed, and no use of property shall begin, within the Plum Creek planned unit development after the effective date of this ordinance, except that such building, structure and use shall be in conformity with this ordinance.

(C) *Uses becoming non-conforming on amendment.* If, by reason of amendment to this ordinance, the use of any property or building that began after the date of and in compliance with this ordinance, is hereafter transferred to a more restricted district by a change in the district boundaries, or the regulations and restrictions in any district are made more restrictive, the following provisions of this ordinance relating to the nonconforming use of buildings or premises shall apply to such building or premises first occupied or used after the effective date of this ordinance:

(1) Repairs and alterations may be made to such nonconforming building, provided that no structural alterations or extensions shall be made except those required by law or ordinance, unless the building is to be changed to a conforming use.

(2) Such nonconforming use shall not be extended or rebuilt in case of obsolescence or total destruction by fire or other cause. (i) In the case of partial destruction by fire or other causes not exceeding 50 percent of its value, the building permit authority shall issue a permit for

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reconstruction. (ii) If destruction is greater than 50 percent of its value, a building permit may be issued only to reconstruct the building for a use as a conforming use.

(3) In the event a nonconforming use of any building or premises is discontinued for a period of 270 days, the use of the same shall thereafter conform to the provisions of the district in which it is located. It shall not be construed to be a discontinuance of the nonconforming use if such use is discontinued for the purpose of making repairs pursuant to (C)(2)(i) herein.

ARTICLE III. ENFORCEMENT AND ADMINISTRATION

Sec. 1. Enforcement and administration--Administrative official.

(A) Except as otherwise provided in this ordinance or as approved by the city council, the permit issuing authority designated in the building ordinance shall administer and enforce this ordinance, including the receiving of applications, the inspection of premises and the issuing of building permits and no permit or certificate of occupancy shall be issued by him except where the provisions of this ordinance have been complied with.

(B) The permit authority or any duly authorized person shall have the right to enter upon any premises at any reasonable time for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

(C) Whenever any construction work is being done contrary to the provisions of this ordinance or the building ordinance, the permit authority shall serve notice in writing upon the owner or the contractor doing or causing such work to be done, or the agent of either, ordering such person to show cause why the work should not be ordered stopped. Any such person served with notice shall, within five days after service, show cause to the building inspector why such stop work order should not issue, and if such person shall fail to show good cause, then the building inspector may order the work stopped by notice in writing served upon such person, or agent, and any such person and all persons in privity with him shall forthwith stop and cause to be stopped such work until authorized by the building inspector to proceed with such work. Any stop work order shall be posted upon the work being done in violation of this ordinance. Provided, however, that the hearing provided for by this subsection may be dispensed with when, in the opinion of the building inspector, the work being done contrary to the provisions of this ordinance could cause imminent peril to life or property.

(D) Whenever any building or portion thereof is being used or occupied contrary to the provisions of this ordinance, the permit authority shall serve notice in writing upon any person using or causing such use or occupancy, or the agent of any such person, ordering such person to show cause why such use or occupancy should not be ordered discontinued. Any such person served with notice shall proceed within five days to show cause to the permit authority, why such order should not issue and if such person shall fail to show good cause, then the permit authority may order such use or occupancy discontinued by notice in writing served upon such person, or

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agent and such person shall vacate or cause to be vacated such building or portion thereof within ten days after receipt of such notice or make the building or portion thereof comply with the requirements of this ordinance. Any discontinuance order shall be posted upon the building or portion thereof being used or occupied in violation of this ordinance. Provided however, that the hearing provided for by this subsection may be dispensed with when, in the opinion of the permit authority, the use or occupancy which is contrary to the provisions of this ordinance could cause imminent peril to life or property.

(E) Preserving rights in pending litigation and violations under existing ordinances. By the passage of this ordinance, no presently illegal use shall be deemed to have been legalized. Uses not permitted by this ordinance shall be nonconforming uses when so recognized, or illegal uses, as the case may be. It is further the intent and declared purpose of this ordinance that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, shall be discharged or affected by the adoption of this ordinance, but prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted or causes presently pending be proceeded with in all respects as if such prior ordinance has not been repealed.

(F) This ordinance shall not be applicable to any area of the City of Kyle that is not located within the Plum Creek Planned Unit Development.

(G) Completion of authorized buildings. Nothing in these regulations nor in any amendments hereto which change district boundaries shall require any change in the plans, construction or designated use of a building which shall be completed in its entirety within two years from the date of the passage of this ordinance, provided such building was authorized by building permit issued before the passage of this ordinance, and construction of such building shall be started within 90 days of the passage of this ordinance.

Sec. 2. Certificate of occupancy.

(A) No land shall be occupied or used and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the permit authority stating that the building or proposed use thereof complies with the provisions of this ordinance.

(B) No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the building inspector.

(C) Application for a certificate of occupancy shall be made with the application for a building permit or may be directly applied for where no building permit is necessary and shall be issued or refused in writing within ten days after the permit authority has been notified in writing that the building or premises is ready for occupancy. The permit authority shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

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(D) No permit for excavation for, or the erection or alteration of, or repairs to, any building shall be issued until an application has been made for a building permit.

(E) No permanent water, electrical or gas utility connections shall be made to the lot or tract, or any building or structure until and after a building permit has been issued by the building inspector.

Sec. 3. Procedure for changing zoning classification of a particular parcel.

(A) A request to change the zoning classification of a particular parcel of land may be initiated by the owner of such parcel, the planning and zoning commission or the city council.

(B) Application by property owner. A property owner may file an application with the city secretary requesting the city council to consider changing the zoning classification of his or her property. Such application shall be accompanied by a fee set by the city council and shall contain the following information:

- (1) Legal description and address of the parcel affected;
- (2) Present zoning classification of the parcel and of all contiguous parcels around it;
- (3) Present use of the parcel and of all contiguous parcels around it;
- (4) Type and location of any structures on applicant's parcel and on adjoining land;
- (5) A traffic impact analysis shall be submitted where development is proposed which would generate 1,000 or more trips per day. Submission shall occur simultaneously with the applications for zoning, special use permits or building permit site plan approval; and any other relevant information requested by the planning and zoning commission. The planning and zoning commission shall review each application for a zoning change and prepare a brief report on whether the requested change conforms to the classification specified in the land use map of the Plum Creek PUD and the comprehensive plan of the city for such parcel. Where an application for a zoning change is made by the owner, the owner shall provide appropriate evidence of any significant and unanticipated changes that have occurred in the area affected which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the Plum Creek PUD master plan. If the requested change does not conform to the Plum Creek PUD master plan, the commission's report may indicate whether any significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the land use map was adopted which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the Plum Creek PUD master plan. The report shall also indicate whether the requested zoning classification is the most appropriate classification for the area affected.

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(C) Resolution from planning and zoning commission. The planning and zoning commission, by resolution directed to the city council, may request a change in the zoning classification of particular parcels of land in order that such parcels will conform to the classification specified on the land use map of the comprehensive plan of the city. No site plan shall be necessary for such a zoning classification application.

(D) The city council, by motion, may initiate a proposal to change the zoning classification of particular parcels of land in order that such parcels will conform to the classification specified on the land use map of the comprehensive plan of the city. Such action by the city council will be initiated by requesting the recommendation of the planning and zoning commission. No site plan shall be necessary for such a zoning classification application.

Sec. 4. Issuance of permits and suspending of plans pending approval of site plan.

No application for site plan approval shall be accepted for filing nor be processed, and no building, site clearance, or grading permit shall be issued for any work other than in connection with a single-family residential use, on land which is being considered for a change in zoning classification on the request of the owner. Except when waived by the city council, no such approval or permit shall be issued during any period, not to exceed 60 days in duration, for any land for which a zoning change is being considered at the request of the city council or the commission. The 60 day period shall begin on the date the city secretary submits the proposed zoning change to the planning and zoning commission for a report and recommendation.

Sec. 5. Joint hearing on multiple applications.

Applications for permits, change of zoning classification, site plan and subdivision approvals which involve the same development and contiguous land may be considered together, before either the planning and zoning commission, the city council, or both, at a single hearing, rather than at a separate hearing for each related application. The mayor of the city, with city council approval or ratification, shall make the determination of whether to have a joint hearing.

Sec. 6. Use permits.

(A) *Purpose.* A use permit is a document authorizing the existence of a nonconforming use, a conditional use, or a variance as these terms are herein defined. The issuance of a use permit may be prerequisite to the issuance of a building permit or certificate of occupancy but shall not alleviate the requirement of such. A use permit may have a specified time limitation attached and may impose conditions other than those which are specifically set forth in this ordinance.

(B) *Approval--Responsibility.*

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(1) The building official shall issue use permits for all nonconforming uses in existence at the time of enactment of this ordinance and the building official may rescind a use permit for a nonconforming use upon cessation of the use of the building or land as set out in article II.D.4.

(2) The commission shall have the responsibility for the consideration of use permits for conditional uses.

(3) The board of adjustment may issue use permits for variances and may direct the issuance or revocation of nonconforming use permits on appeal, from a decision of the building official, as otherwise authorized by law.

(4) The commission may impose additional reasonable restrictions or conditions to carry out the spirit and intent of this ordinance and to mitigate adverse effects of the proposed use. These requirements may include, but are not limited to, increased open space, loading and parking requirements, suitable landscaping and additional improvements such as fencing, curbing and sidewalks.

(C) *Issue procedure.*

(1) *Non-conforming uses.* With respect to nonconforming uses in any district at the time of enactment of this ordinance, it shall be the duty of the building official to investigate and document the existing use, the size and type of structure or land use, and to issue a use permit in accordance with the conditions of this ordinance. No application or filing fee is required; provided that nonconforming uses shall not be presumed and a subsequently claimed nonconforming use which is not known to the building official on the effective date of this ordinance, or for which no written request for a use permit is made by the landowner within 60 days after the effective date of this ordinance, will be conclusively deemed not to have existed on the effective date of this ordinance.

(2) *Conditional use.* A conditional use permit may be applied for and issued after an application has been filed, notices given and the holding of public hearings as set forth in article II.D.3.

(D) *Procedure for application for a use permit.*

(1) Applications for use permits shall be made on a form provided by the building official accompanied by all required fees filed with the building official. Such application must be accompanied by a site plan showing the proposed use of the land and buildings and must show the surrounding land uses in such detail as necessary to clarify the claims made in the application. The building official shall forward such information regarding conditional use permit applications to the commission with his recommendation. No such conditional use permit shall be final until approved by the city council after public hearing.

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(2) Applications for conditional use permits shall be considered and acted upon, approved or denied, in compliance with this ordinance and Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.].

(3) Applications for a use permit documenting a legally existing nonconforming use shall be made on a prescribed form, accompanied by all required fees, filed with the building official.

(4) Applications for a variance use permit, or appeal of the grant or denial of a use permit by the building official (acting under [D](3) above) shall be addressed to the board of adjustment and made on the required form, accompanied by all required fees. Such applications shall be filed with the building official and the notices shall be given and the procedures followed as otherwise prescribed by law.

(E) *Appeal.* Any person or persons, jointly or severally aggrieved by a decision of the building official, commission, or the board of adjustment with respect to any matter that is not a variance or special exception to this ordinance and subject to the board's sole jurisdiction pursuant to § 211.008 et. seq., Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.008 et seq.], may present to the city council a petition, duly verified, setting forth that such decision is unjust, in whole or in part, specifying the ground of injustice. Such petition shall be presented to the city council within ten days after the final decision of the commission, and not thereafter.

(F) *Recording.* One copy of an approved use permit shall be delivered to the owner of the property, one copy shall be filed in the office of the building official.

(G) *Development.* Following the issuance of a use permit the building official shall make inspections to determine that, if the development is undertaken, such development is completed in compliance with said permit. However, if a use permit has not been used within six months after the date granted, the permit is automatically canceled which fact shall be noted over the signature of the building official on the file copies of the permit and the owner shall be so notified in writing.

Sec. 7. Sign regulations.

(A) *General.* All signs shall conform to the requirement of the building code and this section 7 unless otherwise approved by the Plum Creek Architectural Review Committee (PCARC). Proof of PCARC approval is required with application for city permit. For detailed information on the classifications shown in quotation marks, refer to the building code.

(B) *Existing signs.* All existing signs in use within the Plum Creek PUD on the effective date of the ordinance from which this section derives shall carry the "identification of signs" as required in the building code and are approved.

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(C) *Temporary signs.* A temporary sign pertaining to lease, rental or sale of premises or structure located thereon is permitted in all districts when located on such premises or structure. Such signs shall not be lighted, and shall not exceed 64 square feet in area. No permit is required.

(D) *Plum Creek monument/development signs.* "Ground signs," announcing or describing the Plum Creek Development, may be lighted. A sign with the proper name of a legally recorded subdivision may be permanently erected and does not require a city permit.

(E) Signs having flashing or moving parts, or "spectacular signs" are not permitted.

(F) *Special district sign requirements.*

(1) *Residential PUD districts.* A person having a legal home occupation may display a nameplate on the face of the building or porch. The nameplate may contain only the name and the occupation of the resident. It shall be attached directly to the building or porch and shall not be illuminated in any way. No permit is required.

(2) *Neighborhood commercial PUD districts.* Signs when attached to buildings shall advertise only services or products which are offered within the building to which the sign is attached, and such signs shall not extend above the roofline of such buildings or more than one foot from the face of the building. No flashing or moving signs are permitted and no "spectacular signs" are permitted. No detached signs or billboards are permitted. See building code for permit requirements.

(3) *Other PUD districts.* No sign shall have flashing lights or moving parts if within 50 feet of a public street. "Spectacular signs" are not permitted. No sign or any part thereof shall be located within five feet of any public easement without approval by PCARC or city council. No more than one attached sign per user shall be allowed on any one building lot.

(4) *PUD districts.* Temporary signs, not to exceed 120 square feet, are permitted in a PUD district.

(5) *[Deed restrictions.]* Any and all signs which are allowed or prohibited shall be agreed to between the PUD developer and the city, and said requirements shall be included as deed restrictions within each subdivision.

(G) *Billboards.* No billboards or signs shall be erected advertising products or services not available on the site.

(H) *Street number.* A street address number, as designated by the building official, is required for all residences and establishments it must be readable from the street and may be on the building or in the yard and include the name of the occupant. No permit is required.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

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Sec. 7-1. - Purpose and goals.

- (A) The purpose of this section is to provide uniform sign standards that perform the following:
- (1) Promote a positive image of the city and uniform signage program within the Plum Creek PUD boundaries;
 - (2) Protect an important aspect of the economic base;
 - (3) Reduce the confusion and hazards that result from excessive and prolific use of sign displays;
 - (4) Ensure that no hazard is created due to collapse wind, fire, collision, decay or abandonment, that no obstruction is created to fire fighting and police surveillance, and no traffic hazard is created by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs;
 - (5) Promote efficient transfer of information in sign message by providing that businesses and services may identify themselves: customers and other persons may locate a business or service, and persons exposed to signs are not overwhelmed by the number of messages presented, and are able to exercise freedom of choice to observe or ignore said messages, according to the observer's purpose; and
 - (6) Protect the public welfare and enhance the appearance and economic value of the landscape by providing signs that do not interfere with scenic views; do not create a nuisance to persons using the public rights-of-way; do not constitute a nuisance to occupancy of adjacent and contiguous property by their brightness, size, height, or movement; are not detrimental to land or property value; and contribute to the special character of particular areas or districts within the city, helping the observer to understand the city and orient oneself within it.
 - (7) Signage should be compatible with the proposed architectural style and be scaled appropriately. Signage height and size should consider sight distance from adjacent streets and visibility within the community. The design and location of signage must be approved by the PCARC or assigns.
- (B) By recognizing this purpose this section shall serve to strengthen the economic stability of business, cultural, and residential areas in the city; recognizing that visual clutter leads to decline in the community's appearance, in property values, and in the effectiveness of the signs.
- (C) The goals of this section are to preserve the integrity of our community, promote pride in our neighborhoods promote safe egress/ingress on public roadways, and encourage the effectiveness of signs.

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(D) In the event of conflicts, actual or perceived in the terms or requirements of this section, the PCARC or assigns shall issue final determination.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-2. - First Amendment rights.

This section shall not be construed, applied, interpreted, nor enforced in a manner to violate the First Amendment rights of any person, and the building official shall seek the advice and recommendation of the city attorney prior to taking any action to enforce any provision of this ordinance with respect to any noncommercial sign or speech by any person.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-3. - Enforcement.

(A) *Authority.* The building official and the code enforcement officer is hereby authorized and directed to enforce all the provisions of this chapter. For such purposes the building official has the powers of a code enforcement officer.

(B) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition which violates the provisions of this chapter, the building official may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this chapter. If such building or premises is occupied, the building official shall first present proper credentials and request entry; and if such building or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building official shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-4. - Definitions.

As used in this chapter, all words shall have the common meaning of such word and the following terms shall have the meaning indicated below unless context clearly indicates otherwise:

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Actively being built. The project or subdivision has continuous construction efforts underway to complete the project.

Activities and events sign. An enclosed, marquee-type sign to provide public buildings, churches (limited to places of worship only), and neighborhood associations, herein referred to as "the entity(ies)" the opportunity to post notices of meetings, activities, and other notices of interest to the entity or group it serves. The purpose of this sign is to facilitate communication within the community served by the public buildings and the churches, and within the larger neighborhoods of 50 homes or more represented by their neighborhood association.

Arcade signs. Is a panel erected parallel to a building façade and within the opening of an arcade. Arcade signs must be supported their entire length by metal brackets, grillage or supports. An arcade sign may be non-illuminated or internally illuminated. An arcade sign may include neon tubing when forming a border for the subject matter or when forming letters, logos, or pictorial designs. The bottom edge of an arcade sign must be at least nine feet above the finished grade. The location of an arcade sign must be centered on the arcade entrance. The signage panel must be made of wood, sign foam, made to look like wood or metal. The support for the sign must be decorative and made of metal. Sign lighting must be affixed to the building or to the sign and must be shielded to prevent the light from shining directly into traffic, upper floor windows and pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow either with a halo illumination effect or glow through their front faces. The use of neon is permitted. Exposed raceways, conduits and transformers are prohibited. The height of the arcade sign cannot exceed four feet.

Awning Sign. A sign that is applied to, attached to or painted on an awning, which is intended for protection of weather or as a decorative embellishment. Awnings project from a wall or roof of a structure and are located over a door or window. Awnings must be professionally constructed and cannot be made of vinyl. All internal support structures must be made of metal. Awnings are allowed to project over a sidewalk to a maximum of eight feet and must have a minimum clearance of nine feet. Awnings may have lettering and graphics on the front or side vertical panels only except that awnings located over the primary entrance of a building may have one store logo or the store name applied within a 16 square foot area on the sloped portion of the awning. Awnings may be lighted from above with lighting affixed to the building. All lighting must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes, in no case can the supporting structure of an awning sign extend into or over the street curb. Awnings must end a minimum of three feet from the curb edge. In instances where an awning encroaches into areas where street lights, trees or other obstacles in the streetscape conflict, the awning must be reduced in size (overhang) so as to eliminate the conflict. Awning support structures must be designed to meet local wind loads. Portions of the awning can be internally illuminated, provided that the entire awning can be internally illuminated. Awnings that do not include lettering or graphics are not considered signs.

Banner. A sign made of fabric or any nonrigid material.

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Bay windows. A sign erected parallel to the façade of any building to which it is attached and supported throughout its entire length at its base by the top edge of a bay window. A bay window sign may have no-illuminated or internally illuminated lettering and graphics. Neon is permitted. Lettering and graphics may be raised up on pins to prevent the graphics from being obscured by the window trip from the sidewalk. Signage lettering and graphics must be made of wood, sign foam that simulates wood or metal. Faces of internally illuminated graphics may be made of acrylic, lexan or similar material. Signage lighting must be affixed to the building or to the sign and must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow through the front faces. Exposed raceways, conduits and transformers are prohibited. The length of the bay window sign cannot exceed the width of the bay window. The height of the sign cannot exceed four feet and the depth of the sign cannot exceed 12 inches.

Berm (monument) sign. A sign where the frame of the sign face is set at grade with the ground as a monument or in an earthen berm. There is no clearance between the ground and the sign face.

Billboard. A sign advertising products not made, sold, used or served on the premises displaying such sign, or a sign having a height greater than 12 feet and a surface area greater than four hundred square feet.

Building identification. Identifies commercial buildings at a scale appropriate to both vehicular and pedestrian traffic; in any case, the size of a building identification sign shall only contain the building name and street address. The street address may be applied to a canopy, awning or directly to a building. The building identification sign must be constructed as a single-sided, no-illuminated painted metal sign attached directly to the building. The color of the sign must be compatible to the building and must be approved by PCARC. This sign may be indirectly lot. Each building is allowed one building identification sign per face of building.

Building official. Any officer or employee, or person, designated by the city manager to perform the duties set forth in this ordinance to be performed by the building official.

"Burma Shave" signs. A sign intended to provide information and direction to potential home buyers within a recorded subdivision in which new homes are actively being built.

Canopy. A sign that is applied to, attached to or painted on an architectural canopy. The canopy must be intended for protection from the weather or used as an architectural embellishment and project from a wall over a door window. Canopies may be made out of wood, metal or glass, but all support structures must be made of metal. Canopies are allowed to project over a sidewalk to a maximum of six feet and must have a minimum clearance of nine feet. Canopies may have side panels, and may have a panel enclosing the underside of the canopy. Canopies may have lettering and graphics on or above the front or side vertical panels. Canopies may be lighted from above with lighting affixed to the building. All lighting must be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. Individual letters or graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front faces. The use of neon is permitted. No exposed raceways, conduits or

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transformers are permitted. In no case can the supporting structure of a canopy extend into or over the street curb. Canopies must end a minimum of three feet from the curb edge. In instances where canopies encroach into areas where street lights, trees or other obstacles in the streetscape conflict, the canopy must be reduced in size (overhang) so as to eliminate the conflict. Canopy support structures must be designed to meet local wind loads. Canopies that do not include lettering or graphics are not considered signs.

Changeable electronic variable message sign. A sign which permits alteration of the sign's message or images by electronic means. This includes a sign using light-emitting diodes (LEDs) or other means of digital display to present a message or images.

Clearance (of a sign). The smallest vertical distance between the grade of the adjacent street curb and the lowest point of any sign, including framework and embellishments, but excluding sign supports.

Commercial. Locations where the principle use of the property is not classified as residential or multifamily.

Construction trade sign. A sign that identifies the architect, engineer, financial institution, builder, or other building trades contractor involved in a construction project at the site where the sign is located.

Curbline. An imaginary line drawn along the outermost part of back of the curb and gutter on either side of a public street, or, if there is no curb and gutter, along the outermost portion of the paved roadway, or if there is no paved roadway, along the edge of the traveled portion of the roadway.

Directional signs, traffic. An on-premises sign giving directions, instructions, or facility information and which may contain the name or logo of an establishment and no advertising copy, e.g., parking or exit and entrance signs.

Electrical sign. A sign containing electrical wiring, connections, or fixtures, or utilizing electric current, but not including a sign illuminated by an exterior light source.

Electronic message sign. A sign that includes provisions for programmable electronic message changes.

Façade. All building wall elevations, including any vertical extension of the building wall (parapet), but not including any part of the building roof.

Face or surface. The surface of the sign upon, against, or through which the message is displayed or illustrated on the sign. Flashing signs are not permitted.

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Flashing. To light intermittently. To change colors intermittently in order to achieve a flashing, fluttering, scrolling, undulating, or rolling affect (i.e. LED displays). Scrolling of text in a single color is not considered to be flashing.

Freestanding sign. A sign that is not attached to a building but is permanently attached to the ground.

Frontage. A boundary line separating the public right-of-way from the lot.

Future development signs (temporary construction, real estate, or development sign). A freestanding or wall sign advertising the construction, remodeling, development, sale, or lease of a building or the land on which the sign is located.

Government sign. A sign installed, maintained, or used:

- (1) By a city, county, state or the federal government, required or specifically authorized for the public purpose pursuant to regulations promulgated by the state or federal government;
- (2) By the City of Kyle.

Gross surface area. The entire area within a single continuous perimeter enclosing the extreme limits of each sign. A sign having two surfaces shall be considered a single sign if both the surfaces are located back to back. In the event two or more signs share a single structure, i.e., directory signs, or signs on v-shaped structures, each sign or panel shall be considered separately for square footage purposes, provided that the combined area of such signs cannot exceed the total square footage allowed on a single sign.

Height (of a sign). The vertical distance between the finished grade before the sign or grade of the adjacent street curb, whichever is greater, measured to the highest point of the sign.

Human sign. A sign held by or attached to a human for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity. A person dressed in a costume for the purpose of advertising or providing information about a business, commodity, service, product, or other commercial activity shall constitute a human sign. Human signs do not include T-shirts, hats, or other similar clothing.

Incidental sign. A small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises (e.g. a credit card sign or a sign indicating hours of business).

Inflatable sign. Any balloon or other device which is inflated by air or other gas and displayed outdoors. Inflatable structures primarily designed for recreational use shall not be considered to be a sign as, for example: slides, swimming pools or space walks.

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Information signs. Includes bulletin boards, changeable copy directories, or signs relating solely to publicly owned institutions (city, county, state, school district) intended for use by the institution on which the sign is located.

Intersection. A place where two roads meet or form a junction. For purposes of this ordinance, sign setback distance is measured from the intersections of the curblines of two streets.

Kiosk sign or kiosk. A free-standing sign structure located in or adjacent to public right-of-way authorized by written agreement approved by the city council that features a City of Kyle identification panel at the top of each structure, and displays directional information to new homes, independent school district facilities, and municipal or community events or facilities.

Lamppost banners. A fabric banner applied to lampposts with standard banner arms. The lamppost banners must be made of canvas, vinyl or other suitable banner fabric. Lamppost banners must be double-sided with similar imagery on both faces. Lamppost banners must include pictorial elements. The maximum size for lamppost banners is two feet, six inches wide by five feet tall. No more than two lamppost banners may be erected on a single lamppost. The minimum clearance from the pavement to the lower banner arm is nine feet and the lamppost banner and banner arm cannot extend over the street pavement. Lamppost Banners are limited to holiday messages, community events or festivals. No retail advertising shall be permitted on lamppost banners.

Marquee. A permanent roof-like structure or awning or rigid materials attached from, supported by, and extending from the façade of a building, including a false "mansard roof."

Memorial signs or tablets. Includes freestanding historical markers in accordance with state historical standards, and/or cornerstones with names and dates of construction of a building when cut into a building surface or inlaid upon it to become part of the building.

Menu boards. Freestanding or wall signs used for the purpose of informing patrons of food, which may be purchased on the premises.

Model homes sign. A temporary real estate sign placed in front of a group of model homes that is removed from the premises upon sale of the last model.

Monument sign: Are define by details located in section 7-16

Multifamily. Locations that contain three or more attached units designed for residential use including town homes and condominiums.

Multitenant center sign. A sign advertising two or more retail, wholesale, business, industrial, or professional uses (not necessarily under single ownership) utilizing common facilities including off-street parking, access, or landscaping.

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Multitenant center identification sign. The portion of the sign that identifies the general name of the center or development as a whole. The sign shall include only the name and address of the development.

Nameplates. Nonelectrical, on-premises signs that communicate only the name of the occupant of the address of the premises.

Nonconforming sign. A sign that was lawfully installed at its current location prior to the adoption or amendment of the ordinance from which this section derives, but that does not comply with the present requirements of this section.

Off-premises sign. A sign referring to goods products or services provided at a location other than that which the sign occupies.

On-premises sign. A sign identifying or advertising the business, person, activity, goods, products, or services located on the site where the sign is installed, or that directs persons to a location on that site.

Office tenant identification sign. Each building that houses offices is allowed one primary tenant identification sign. The office tenant identification sign identifies the commercial tenants at the entrance to the building. Office tenant signs are encouraged to be attached to the face of the building. Where the sign is freestanding, it must be located parallel and as close as possible to the building façade, and provide a minimum four-foot clear area on the sidewalk to prevent obstruction of pedestrian circulation. The office tenant identification sign is a single-sided, internally illuminated or nonilluminated painted metal sign with changeable panels. The address of the building may also be included in the face of this sign. The maximum size for the office tenant identification sign is 64 feet.

Parapet. The extension of a false front or wall above a roofline.

Point-of-sale sign. A sign advertising a retail item accompanying its display (e.g., an advertisement on a product dispenser).

Political sign. A sign advertising a political candidate or party for elective office or that advertises primarily a political message.

Portable signs. Signs not permanently attached to the ground or other permanent structure, or a sign designed to be transported by wheels including, but not limited to signs which are mounted on skids, trailers, wheels; signs converted to A- or A-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising.

Primary beneficiary. Any person who benefits from the installation, placement, construction, or alteration of a sign, including the owner or tenant of the property upon which the sign is located and the owner or operator of the business, product, service, or activity that is the subject of the sign.

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Primary tenant. The primary tenant sign is a wall sign used to identify the primary tenant in a multistory building. The size of the sign is appropriate to be visible from vehicular or pedestrian traffic. The maximum size for each primary tenant sign is 200 square feet and may not be placed on a wall below the third story. Each building may be allowed one primary tenant sign.

Private traffic-control signs. Small traffic directional signs indicating interior circulation of parking areas on site, warn of obstacles or overhead clearance, or designate permissible parking.

Project directory sign. Project directory signs contain a map of listing of key destinations within the mixed use districts of Plum Creek. The project directory sign is scaled to pedestrian use. A project directory sign may be single or double-sided and may be internally illuminated. The maximum size for a project directory sign is 12 square feet. Project directory signs may be placed on the sidewalk provided a four foot clear area is provided for pedestrians. No retail advertising is allowed on project directory signs.

Projecting signs. A sign used to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached.

Pylon signs. Freestanding signs that are supported by a structure extending from and permanently attached to the ground by a foundation or footing, with a clearance between the ground and the sign face. Pylon signs are not considered monument signs.

Real estate signs. Temporary signs advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Rear of building signs. Rear of building signs are signs that do not face a public street and are used to identify tenants in a building. One rear of building sign per tenant is allowed on the rear face of the building if there is a public entrance to the building from the rear of the building. Rear of building signs, may be wall signs or window signs and may be made of the same materials that are permitted for these signs. Rear of building signs cannot exceed 24 square feet in area. Rear of building signs can only identify tenants who are actually in the building to which the sign is attached.

Residential. Locations where the principal use of the property is for one and two-family dwelling units.

Roof sign. Any sign installed over or on the roof of a building.

Sandwich board signs. A sign constructed in such a manner as to form an "A" or tent-like shape. The sign can be hinged or not hinged at the top and each angular face help at an appropriate distance by a supporting member. Sandwich board signs are the only portable signs allowed in Plum Creek. Sandwich board signs may be placed on the sidewalk in front of a retail or restaurant premises during business hours only. Sandwich board signs must be located at least three feet from the curb of any adjacent street. Should a sandwich board sign be placed on or

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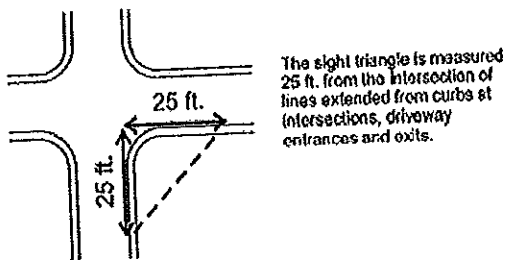
adjacent to a sidewalk, an unobstructed pedestrian clearance of at least four feet from the curb of any adjacent to the sign. A maximum of one sandwich board sign may be placed per business or tenant within storefront limits of the business the sign advertises. Sandwich board signs cannot be closer than 20 feet to another sandwich board sign. Dry-erase boards are prohibited on sandwich board signs. The maximum size of a sandwich board sign is 12 square feet per side. The maximum height of a sandwich board sign is four feet.

Sign. Any surface, display, design, light device, painting, drawing, message, plaque, poster, billboard or other device visible from the public right-of-way on which letters, illustrations, designs, figures, or symbols are painted, printed, stamped, raised, projected, outlined or attached in any manner whatsoever that are intended or used to advertise, inform, or attract the attention of persons both on and not on that premises, excluding those lights and landscape features which display words or symbols as holiday decorations. The term "sign" also includes the supporting structure of the sign.

Sign area. Includes all lettering, wording, logos, design, symbols, framing, roofing, and cabinets, or modules, calculated according to the provisions established in this section.

Sign panel. An individual sign placard displaying directional information on a sign kiosk.

Sight triangle. The area of vehicle visibility at all street intersections, which shall be clear of all obstructions that may present a hazard to traffic. The visual triangle for a street shall be described as a 45-degree triangle where the right angle sides measure at the very minimum 25 feet. The visibility triangle shall be measured from a point at which the projected curb lines intersect.



Small blade signs. A sign is attached to and projects out from a building face or wall more than 12 inches and are generally set at a right angle to the building. Small blade signs may project over the sidewalk, but must be set back at least three feet from the back of curb and have at least nine feet of clearance from grade. Support structures for small blade signs must be decorative in nature and made of metal. Supports must be engineered to support local wind loads. The sign panel, lettering and graphics can be made of wood, synthetic wood or metal. A small blade sign's background panel may be internally illuminated or made of acrylic, Plexiglas or similar plastic sheeting. Individual letters or graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front face. The use of neon is permitted. Exposed conduits, raceways or transformers are prohibited. Indirect lighting must be attached to the

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building or sign and be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. The size of a small blade sign cannot exceed 12 square feet in area. The support structure is not included when calculating area. Small blade signs must be double sided and depth of the sign cannot exceed eight inches. Only one face of the sign will be used to calculate size.

Subdivision. For purposes of this section, the subdivision in its entirety, not a phase, section, village, unit, or product line.

Subdivision development entrance signs. Defined as:

- (1) Primary entrance signs;
- (2) Secondary entrance signs; and
- (3) Tertiary entrance signs;

and are used to define various entries of the subdivision.

Temporary Banner. Signs advertising "Going Out of Business" events are prohibited. Temporary banner signs must be professionally constructed and may not be attached directly to windows with tape or adhesive.

Temporary sign. Any sign that is used temporarily and is not permanently mounted (i.e. on stakes or posts), and is constructed of cardboard, foam board, cloth, canvas, fabric, plywood, or similar lightweight material. A portable sign is not a temporary sign.

Temporary wall signs. An on-premises wall sign of a nonpermanent nature advertising a special event, sale, product, or service.

Valet parking identification A series of signs used to identify a valet parking station. Each station is allowed three components: 1) valet station with umbrella or awning; 2) a sandwich board sign; and 3) cones. Valet parking identification or valet parking operations shall not occur in the public right-of-way, except that a sandwich board sign complying with the limitations set forth for signage, maximum signage allowances; sandwich board signs of these development standards may be allowed in the sidewalk, provided that at least four feet of clearance is maintained for pedestrians.

Vertical projecting signs. A sign that is attached to and projecting out from a building face or wall more than 12 inches, generally set at a right angle to the building. A vertical projecting sign may overhang the sidewalk but must be located a minimum of three feet from the back of curb. At least nine feet of clearance must be provided between the bottom of the sign and the sidewalk. Vertical projecting signs can extend above a tenant's lease space with approval of the owner of the building. The support structure from which the projecting sign panel is suspended must be decorative in nature and made of wood, synthetic wood or metal. Signage lighting must be

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affixed to the building or to the sign and be shielded to prevent the light from shining directly into traffic, upper floor windows or pedestrian's eyes. A vertical projecting sign's background panel may be internally illuminated and made out of acrylic, Plexiglas or similar sheeting. Individual letters or graphics may be internally illuminated and glow with either a halo-illumination effect, or glow through their front face. The use of neon is permitted. Exposed raceways, conduits and transformers are prohibited. The height of a vertical projecting sign cannot exceed 75 percent of the overall wall length of the wall on which it is erected or a maximum of 25 feet, whichever is less. Vertical projecting signs must be double-sided. The depth of the sign panel may not exceed 15 inches, including the depth of the applied letters or graphics. The size of a vertical projecting sign cannot exceed 150 square feet in area. Only one face of the sign will be used to calculate size, graphics may be internally illuminated and glow either with a halo-illumination effect or glow through their front face. The use of neon is permitted. Exposed conduits, raceways or transformers are prohibited.

Wall sign. A sign attached to the façade of a building or a canopy. Wall signs include signs on or affixed to walls, windows, awnings, or other parts of the exterior of a building or canopy.

Window or door surface signs. Signs installed on or in a window or door.

Window signs. A sign that is visible from a public street or sidewalk and that is posted, attached, painted or affixed in or on a window, or a sign that is located within three feet of a window. Window signs must be located on the inside of the window. The area of the window sign cannot exceed 25 percent of the square footage of the window in which the sign is located. Only one window sign is allowed per window. Window signs may be located on the upper floors of a building. Hours of operation, not to exceed two square feet per window, shall not be counted in the square footage allowance of a window sign. When the address of the business is displayed as a window sign, the address shall not be counted in the square footage allowance.

Work of art. Sculpture, fountain, or similar object, and containing no reference to or image of a business or its logo, is not considered as a sign.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-5. - Applicability.

(A) All land within the city and its extraterritorial jurisdiction (ETJ) is subject to compliance with this section.

(B) The sections, provisions, and regulations set forth in this section 7 shall apply to the control, use, installation, regulation, licensing and permitting of signs within the Plum Creek PUD.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

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Sec. 7-6. - Permit required.

- (A) *Permit required.* It shall be unlawful for any person to erect, construct, enlarge, move or convert any sign within the Plum Creek PUD without first obtaining a PCARC approval and a city sign permit and paying a permit fee unless specifically provided otherwise in this chapter. A change of business requires a new sign permit.
- (B) *Compliance required.* No person may install a sign or structurally alter an existing sign except in conformity with this ordinance and other applicable federal, state, and local regulations, including, but not limited to, the building code, electrical code, and other applicable ordinances of the city. In the event of a conflict between this chapter and other laws, the most restrictive standards applies.
- (C) *Permit not required.* Permits shall not be required for the following signs, provided, however, that such signs shall otherwise comply with all applicable sections of this chapter.
- (1) On-site real estate "for sale" signs, or for a model home sign and future development signs that is approved by the PCARC.
 - (2) Political signs located on private property with the consent of the property owner that do not exceed 36 square feet in area, are not more than eight feet in height are not illuminated, and do not have any moving elements.
 - (3) Government signs, including traffic signs, private traffic-control signs, regulation address numerals, and memorial signs.
 - (4) Construction trade signs.
 - (5) Garage sale signs.
 - (6) No sign permit is required for a change of copy on any sign, or for the repainting, cleaning and other normal maintenance or repair of a sign or sign structure for which a permit has previously been issued, so long as the sign or sign structure is not modified.
- (D) *Primary beneficiary.* The primary beneficiary of any sign installed, moved, structurally altered, structurally repaired, maintained, or used in violation of this section shall be deemed responsible for the violation of this section.
- (E) *Building official authority.* The building official shall enforce and implement the terms of this chapter, including without limitation:
- (1) Issuing permits and collecting the fees required by this chapter;

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- (2) Conducting appropriate inspections to insure compliance with this chapter;
- (3) Instituting legal proceedings, including suits for injunctive relief when necessary, to insure compliance with this chapter; and
- (4) Investigating complaints of alleged violations of this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-7. - Application for permit.

(A) An application for a sign permit must be accompanied by the permit fee and shall include such information as is necessary to assure compliance with all appropriate laws and regulations of the city, including:

- (1) The name and address of the owner of the sign.
- (2) The name and address of the owner, and if different from the owner, the person in possession of the premises where the sign is located or to be located.
- (3) Clear and legible drawings with description definitely showing location of the sign which is the subject of the permit and all existing signs whose construction requires permits, when such signs are on the same premises.
- (4) Scale drawings showing the site plan location, dimensions, construction supports, sizes, foundation, electrical wiring, and components, materials of the sign and method of attachment and character of structure members to which attachment is to be made. The design, quality, materials and loading shall conform to the requirements of the building code. Projection, wall and temporary signs not over six square feet in area, constructed of metal or other noncombustible material, attached securely to a building or structure and not projecting more than 18 inches beyond the building wall, structure, building line or property line, shall not require an engineer certification as to its soundness. Wind pressure and dead loads shall be shown where deemed appropriate, and the building official may require structural drawings designed and sealed by a civil engineer registered by the State of Texas when it cannot otherwise be determined that the sign will be structurally sound if building official, engineering data certified by a licensed structural engineer shall be supplied on any submitted plans.
- (5) Any electrical permit required and issued for said sign if required.
- (6) For free-standing signs, documentation demonstrating that the applicant holds general liability insurance in the amount of one million dollars. No license or permit for the installation, erection and maintenance of a freestanding sign shall be issued to any person, firm or corporation

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until such person, firm or corporation has filed with the building official a certificate of insurance verifying general liability insurance in the amount of \$1,000,000.

(7) A surety bond in the sum of \$5,000.00 for the installation and erection of the sign payable to the city and providing for the indemnification of the city and any and all damages or liability which may accrue against the city for a period of one year after installation, erection, demolition, repair, removal, or defects in or collapse of any sign.

(8) The permit fee.

(9) Written PCARC approval.

(B) Fees for sign permits shall be as specified in appendix A, and calculations of the square footage shall include decorative trim and borders, but exclude supports, except when otherwise specified in this chapter.

(C) Expiration of sign permits:

(1) A sign permit shall expire and become void unless a request for final inspection of the sign is made no later than 180 days after the date the permit is issued.

(2) A single extension 90-day extension of the permit may be granted by the building official if requested before the expiration of the permit. Final inspection must be requested before the end of the extension period or the permit becomes void.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-8. - Calculation of sign area.

(A) *Sign area measurement.* Sign area for all sign types is measured as follows:

(1) Sign copy mounted, affixed, or painted on a background panel or area distinctively painted, textured, or constructed as a background for the sign copy, is measured as that area contained within the sum of the smallest rectangle(s) that will enclose both the sign copy and the background.

(2) Sign copy mounted as individual letters or graphics against a wall, fascia, mansard, or parapet of a building or surface of another structure that has not been painted, textured, or otherwise altered to provide a distinctive background for the sign copy, is measured as a sum of the smallest rectangle(s) that will enclose each word and each graphic in the total sign.

(3) Sign copy mounted, affixed, or painted on an illuminated surface or illuminated element of a building or structure, is measured as the entire illuminated surface or illuminated element

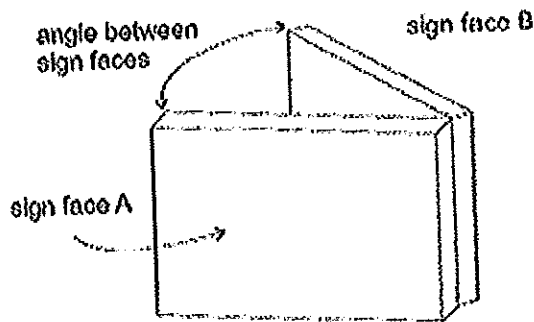
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which contains sign copy. Such elements may include, but are not limited to lit canopy fascia signs, cabinet signs, and/or interior lit awnings. Support structures and frames of a freestanding sign shall count toward the sign area.

(4) Multiface signs are measured as follows:

- a. *Two-face signs.* If the interior angle between the two sign faces is 30 degrees or less, the sign area is of one sign face only. If the angle between the two sign faces is greater than 30 degrees, the sign area is the sum of the areas of the two sign faces.

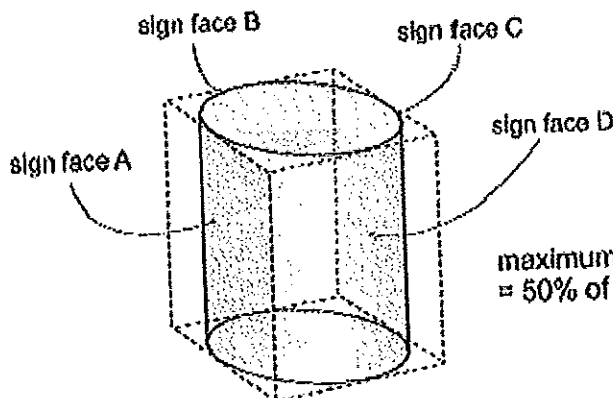


If angle between sign faces $\leq 30^\circ$
 sign area = larger of area A or area B

If angle between sign faces $> 30^\circ$
 sign area = area A + area B

- b. *Three or four face signs.* The sign area is 50 percent of the sum of the areas of all sign faces.

(5) Spherical, free-form, sculptural, or other nonplanar sign area is 50 percent of the sum of the areas using only the four vertical sides of the smallest four-sided polyhedron that will encompass the sign structure. Signs with greater than four faces are prohibited.



maximum sign area
 = 50% of total of areas A+B+C+D

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(6) Freestanding sign area is the entire advertising area of a sign, including framing, trim or molding and the supporting frame for monument signs and including the air space between the supporting structures for freestanding signs.

(B) *Sign height measurement.* Sign height is measured as follows:

(1) *Freestanding signs.* The height of a freestanding sign shall be computed as the distance from the base of the sign at finished grade to the top of the highest attached component of the sign. The height of any monument sign base or other structure erected to support or adorn the sign is measured as part of the sign height. If a sign is located on a mound, berm, or other raised area for the sole purpose of increasing the height of the sign, the height of the mound, berm, or other raised area shall be included in the height of the sign.

(2) *Building mounted signs.* The height of wall, fascia, mansard, parapet or other building mounted signs is the vertical distance measured from the base of the wall on which the sign is located to the top of the sign or sign structure.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-9. - Prohibited signs.

The following signs are prohibited from installation, construction, repair, alteration, location or relocation within the city, except as otherwise permitted in this section.

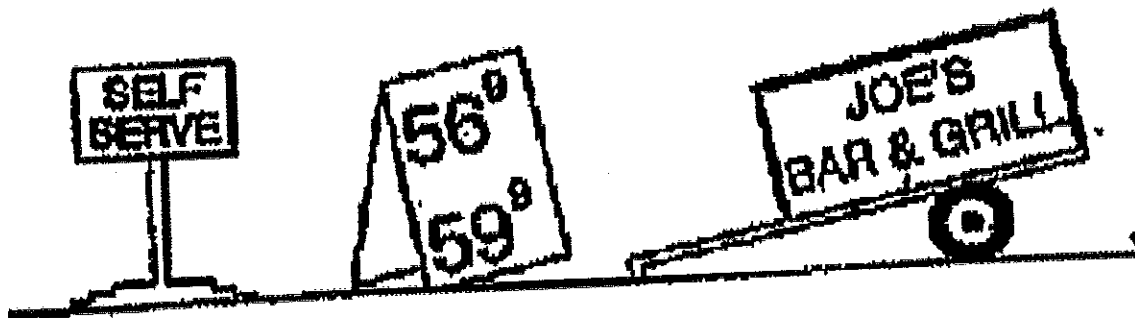
(1) Signs with flashing lights, revolving beacon lights, fluttering, undulating, swinging, or otherwise moving parts. For purposes of this section, an electronically controlled changeable-copy sign is not considered a flashing sign unless it directly falls under the definition of 'flashing' as defined in this section.

(2) Billboards.

(3) Off-premises signs, except for kiosks and any other sign specifically authorized in this ordinance that are compliant with this section.

(4) Portable signs.

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- (5) Temporary signs except as specified in section 29-20
- (6) Signs placed on a vehicle or trailer that is parked or located for the primary purpose of displaying a sign shall be permitted.
- (7) Roof signs.
- (8) Signs painted on fences or roofs.
- (9) Pylon signs, except as specifically provided for section 29-17
- (10) Inflatable signs larger than eight feet in any dimension.
- (11) Light emitting diode (LED) displays or signs, with the limited exception of LED message boards and static LED fuel price signs that comply with section 29-16 and section 29-17. Such signs, where authorized, shall fully comply with the requirements of this chapter. Electronic message signs are allowed only as part of the monument sign and can have a display size no larger than 12 inches by 72 inches. Messages shall be programmed to remain static for a period of not less than 60 seconds. Messages shall not be programmed to flash.
- (12) Changeable electronic variable message signs except as specifically provided in this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-10. - Signs exempt from these regulations.

The following types of signs shall be exempt from the permitting provisions of this section. However, regulations regarding sign location in a public right-of-way or public access easement shall apply. It is further specifically provided that the building official may, based upon the size, materials used in construction and other relevant factors, require the owner of any sign to show evidence of structural soundness and compliance with the safety requirements of this section.

- (1) Any sign erected by or under the authority of the city on property owned by the city.

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- (2) Street identification signs, public notices, and warning signs installed by any city, county, state or federal agency.
- (3) Historical markers placed by a city, county, state or national historical preservation organization.
- (4) Official vehicle inspection station signs, holiday lights and decorations, or works of art.
- (5) Signs located on-premises or inside a building and which are not displayed so as to be legible from a public street, including, but not limited to, such signs as credit card decals, hours of operation signs, emergency contact information, and barber poles.
- (6) On-site traffic control signs on commercial properties, such as stop, yield, and similar traffic control signs containing no commercial message.
- (7) "No parking" or "towing" signs authorized by city ordinance.
- (8) "No dumping allowed" signs posted to deter illegal dumping not exceeding four square feet.
- (9) Underground utility warning signs not exceeding one square foot in size and similar safety signs.
- (10) Signs on railway property, which references the operation of such railway.
- (11) Security warning, neighborhood watch or crime watch signs under two square feet.
- (12) Flags, emblems and insignia of any governmental body, including the official flag of a nation or of a state is not a sign subject to this chapter. Notwithstanding the preceding sentence, a national or state flag shall not be installed, maintained, or used in a manner that would make that flag a hazardous sign if it were a commercial flag.
- (13) Corporate flags displayed on a freestanding pole, which do not exceed 35 feet in height. The flag shall not exceed 32 square feet in area. The flagpole shall be setback a minimum of 20 feet from the front property line and eight feet from the side property line.
- (14) Hand held signs or signs, symbols or displays on persons or animals, except for signs that qualify as human signs.
- (15) Signs located on mail boxes, newspaper vending machines and curbside residential newspaper holders which identify the owner and address of the premises or the name of the newspaper sold or subscribed to; provided that such devices are not placed so as to interfere with the safe movement of pedestrians or vehicular traffic.

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(16) Signs located on outdoor machines, devices, or equipment which display the trademark, trade name, manufacturer, cost of operating or service instructions or similar information, but do not advertise the business where located. This exemption includes, but is not limited to signs on coin-operated vending machines, fuel dispensing pumps, telephone facilities, automatic teller machines, automatic vacuum cleaners, amusement rides and similar machines, devices or equipment.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-11. - Sign categories.

For purposes of this section, property within the city's sign ordinance jurisdiction is classified into a sign category. Those properties within the city's limits are classified based upon their zoning district classification. Those properties located within the ETJ shall be classified into a sign category by the building official based upon the existing or proposed use and the zoning district most closely associated with that use. Classification into a sign category is for the purposes of signage only and does not establish vested use rights towards the assignment of zoning should the property be annexed into the city limits. In overlapping areas, the most restrictive sign regulations will apply.

(1) Single-family residential sign category includes any residential site in an agricultural (A), manufactured housing (M-1, M-2, M-3), or any single-family (SF, R-1A) townhouse (R-1-T) zoning districts or equivalent land use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(2) Multifamily residential sign category includes any site in a multifamily (R-2, R-1-C, R-3-1, R-3-2, R-3-3) zoning districts or equivalent use in the ETJ. Nonresidential uses permitted in the identified residential districts shall be included in the commercial sign category.

(3) Commercial sign category includes any site in retail services (RS), warehouse (W), construction manufacturing (CM), entertainment (E), and transportation utilities (TU) zoning districts or equivalent use in the ETJ and the permitted nonresidential uses identified in the city's residential and multifamily zoning districts.

(4) Central business district sign category includes any site that is located within the boundaries of the central business district (CBD) zoning district.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-12. - General provisions.

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- (A) *Uniform signs in multi-tenant/multi-business developments.* Wall signs displayed by two or more businesses using common parking facilities shall be uniform in construction (i.e. cabinets, channel letters, plaques) and lighting (i.e. direct, indirect).
- (B) *Street address.* All freestanding signs, either berm or monument signs, shall include the street address. The street address shall not be included in the calculation of the sign area, except in such case that the street address is also the name of the center, business, or development, or in such case that the street address exceeds six square feet in size.
- (C) *Setback.* A minimum setback of at least five feet from any property line is required for all signs. A sign installed in compliance with this ordinance is not required to meet building setback requirements established in a separate city ordinance; however, no sign or sign support, other than a wall sign, may be installed less than 12 feet from the public right-of-way unless it is:
- (1) Less 30 inches in height above street pavement grade;
 - (2) Has a clearance of more than nine feet above pavement grade, provided that the sign shall have a clearance of more than 12 feet when located over a driveway;
 - (3) Does not extend into or over the public right-of-way unless specifically authorized under this chapter.
- (D) *Visibility.* Signs shall not be constructed or installed in a manner that would interfere with visibility, create a traffic hazard, or be confused with any traffic control sign or signal.
- (E) *Structural integrity.* Any sign as defined in this section, shall be designed and constructed to withstand wind pressures and receive dead loads as required in the building code adopted by the city. Any sign, other than a wall sign, shall be designed, installed, and maintained so that it will withstand a horizontal pressure of 30 pounds per square foot of exposed surface.
- (F) *Maximum height.* No sign shall exceed the maximum height provided for in this chapter. In determining the maximum height of a sign, no sign shall be located on a mound where the surrounding grade has been altered by more than 18 inches for purposes of artificially increasing the overall height of a sign above that allowed by the height regulations in this chapter.
- (G) *Historic district.* Signs on premises within a historic district designated by the city shall be subject to the issuance of a certificate of appropriateness by the state or local historic preservation commission.
- (H) *Public utility facilities.* New signs and signs being structurally altered shall maintain clearance from public utility facilities, shall not substantially interfere with drainage, and shall not be located in a utility or drainage easement. The minimum clearance from electrical lines shall be as follows: for service lines, except those serving a sign, five feet horizontal and six feet vertical clearance; for distribution lines, 7½ feet horizontal and eight feet vertical clearance.

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(I) *Parking, driveways, sidewalks.* Only signs required in the interest of public safety may occupy a required off street parking or loading space or obstruct any driveway or sidewalk, except as specifically authorized herein.

(J) *Public property.*

(1) No sign shall be located on or project over public property or a street right-of-way except governmental signs and temporary banner signs that comply with the approval by the city council of a license agreement. No portion of a freestanding sign shall be permitted to extend into the public right-of-way.

(2) No person shall, either directly or indirectly, cause or authorize a sign to be installed, used, or maintained on any utility pole, traffic signal pole, traffic signal controller box, tree, public bench, street light, or any other structure located on or over any public property or public right-of-way, located within the city's planning jurisdiction, except as authorized by this section.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-13. - Illumination.

(A) *Lighting.* Sign lighting shall be installed to protect the driver of a vehicle from dangerous glare and to maintain visual clearance of all official traffic signs, signals and devices.

(B) *Glare.* Signs shall be designed, located, shielded, and directed to prevent the casting of glare or direct light from artificial illumination, upon adjacent public right-of-way and surrounding property.

(C) *Bare bulb illumination.* Bare bulb illumination is prohibited within 150 feet of any premises containing a residential use, and in other cases is limited to 25-watt bulbs at night and 33-watt bulbs during daylight hours.

(D) *Brightness limitations.* The lighting intensity of a sign, whether resulting from internal illumination or external illumination, shall not exceed 75 foot candles when measured with a standard light meter perpendicular to the face of the sign from a distance equal to the most narrow dimension of the sign.

(E) *Electrical permit.* All signs in which electrical wiring and connections are to be used shall be subject to the applicable provisions of the city's electrical codes.

(F) *Central business sign category.* In the central business sign category, neon or phosphorescent lighting shall not exceed ten percent of the total signage allowed and may only be located in a window.

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(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-14. - Sign regulations relating to single-family residential sign category.

(A) *General.* No sign other than a temporary event directional sign (such as a garage sale sign, event sign, or a real estate sign) or a political sign that comply with subsection 29-6(c)(2) shall be erected on property used for single family or duplex dwellings.

(B) *Burma shave signs.*

(1) Not more than eight on-site subdivision burma shave signs may be permitted for each recorded subdivision not to exceed six per entry into the primary entrance of the subdivision.

(2) A burma shave sign shall not exceed 16 square feet of total sign area on one side and both sides of the sign may contain signage. The sign shall not exceed six feet in height and be located out of the right-of-way in a manner that does not obstruct the visibility of vehicle ingress/egress from surrounding streets and/or properties. For burma shave signs along roads bearing speed limits of 40 MPH or more or having setback at or greater than 25-foot setback, signs shall not exceed 64 square feet.

(C) *Model home signs.* Model home signs are limited to a 32 square foot sign face, a height of eight feet, and to one sign for each cluster of model homes. A nameplate sign that identifies the individual product name is exempt under this subsection if it does not exceed three square feet in sign area. Signs shall be placed by permit only, and no fee shall be required.

(D) *Subdivision development entrance sign.* A subdivision development entrance sign is a sign authorized for each major project entry into a legal recorded, multi-lot, multi-sectioned, master-planned subdivision, and contains only the name of the subdivision with no other information. Subdivision entrance signs must be berm or monument signs constructed of stone, brick or other maintenance free material. The design and construction must be compatible with surrounding development. Signage may appear on both sides of the entrance roadway within the recorded or master-planned subdivision and will be soldered as one sign. Lighting shall be ground lights or lights attached to the top of the sign focused downward directly on the sign.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-15. - Sign regulations relating to multifamily residential sign category.

(A) Signs in multifamily locations shall be limited to signs allowed in this section and in all applicable restrictions of this section as well as other requirements of this Code, and any other applicable law.

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(B) Except as provided in this subsection, a single freestanding sign is permitted only as berm or monument signs on the same lot as the development to identify the development and its entrance. Signs must be constructed of stone, brick or other maintenance free material.

(1) Lighting shall be ground lights or lights attached to the bottom of the sign focused upward directly on the sign.

(2) The maximum size of the sign shall be 0.09 square feet per linear foot of frontage, up to a maximum size of 24 square feet. A minimum size of 12 square feet is allowed for a berm sign.

(3) The maximum height of the sign shall be eight feet.

(4) In the event the development has a second entrance from a public street, a second entrance sign may be constructed, at one-half the size of the one main entry sign.

(C) Wall signs are permitted at a size to be calculated as one-half square foot per linear foot of frontage, not to exceed a total of 35 square feet.

(D) Window or door surface signs are allowed. The total sign area of all window and door signs shall be included in calculating the maximum wall sign area authorized at a particular location.

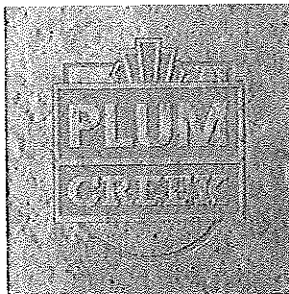
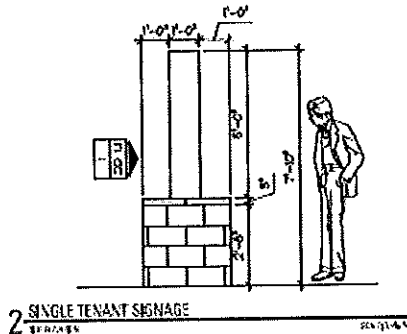
(E) No LED displays, signs, or message boards are permitted in the multifamily residential sign category.

(Ord. No. 653, § 3(Attach.), 4-19-2011) <?xpp rotatepg?>

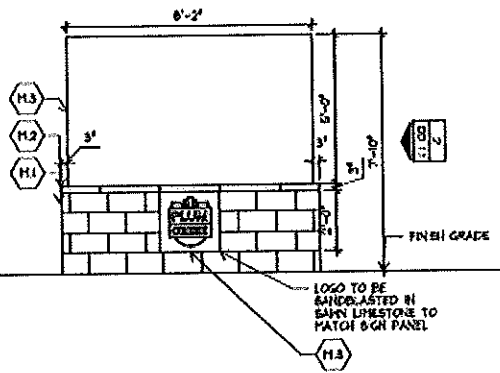
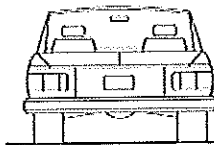
Sec. 7-16. - Attached sign regulations.

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MATERIALS SCHEDULE					
MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	DESCRIPTION (MODEL NUMBER)	COLOR	FINISH	CONTACT	REMARKS
(1)	LPESTONE VENTR USE IN PLINTH & JOIST	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRANER STONE, INC. PHONE: (800) 746-6792	• 1" THICK 622, 182 LENGTH X 3 1/2" WIDTH CONTRACTOR TO PROVIDE HOOK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. • SUBMIT PORTLAR COLOR FOR APPROVAL PRIOR TO HOOK UP.
(2)	LPESTONE CAP	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRANER STONE, INC. PHONE: (800) 746-6792	• CONTRACTOR TO PROVIDE HOOK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL.
(3)	LPESTONE BGR PANEL/LPESTONE LOGO PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRANER STONE, INC. PHONE: (800) 746-6792	• ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.



Example of Sandblasted Sign

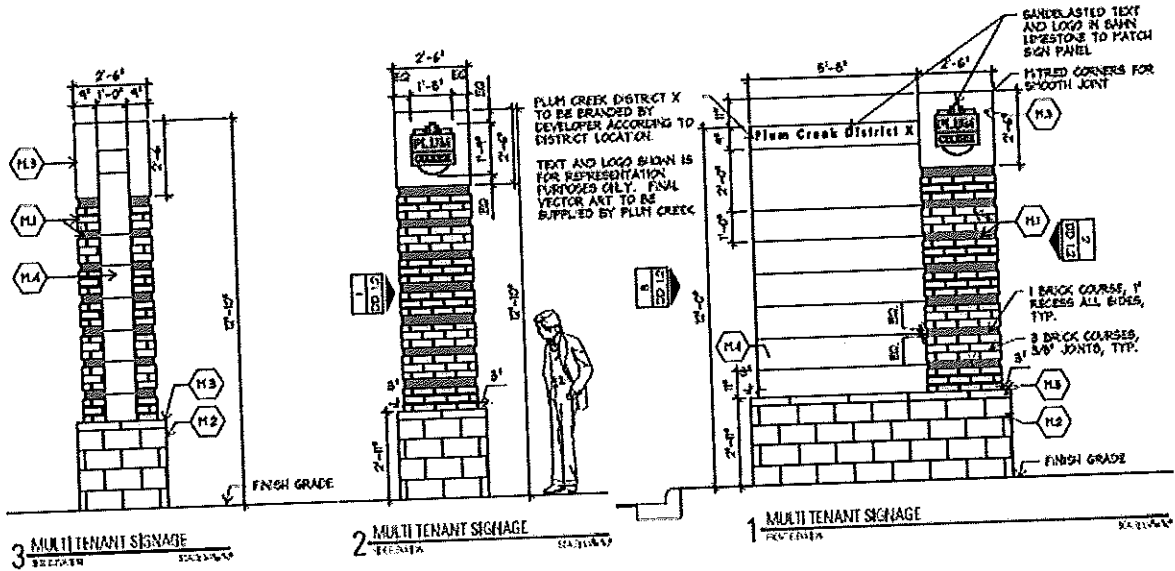


1 SINGLE TENANT SIGNAGE

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MATERIALS SCHEDULE					
MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	DESCRIPTION / MODEL NUMBER	COLOR	FINISH	CONTACT	REMARKS
⊕	FACE BRICK	MATCH EXISTING PLUM CREEK MASONRY	MATCH EXISTING PLUM CREEK MASONRY	COMPANY: ELEGANT-BUTLER BRICK CO. MEMO. (702) 264-3566	- CONTRACTOR TO PROVIDE PROOF UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT PORTLAND COLOR FOR APPROVAL PRIOR TO PICK UP.
⊕	PLUM CREEK CITY BRICK PROJECT, HELIX PROJECTS - STATIONED SIZE, BUILDERS SPECIAL				

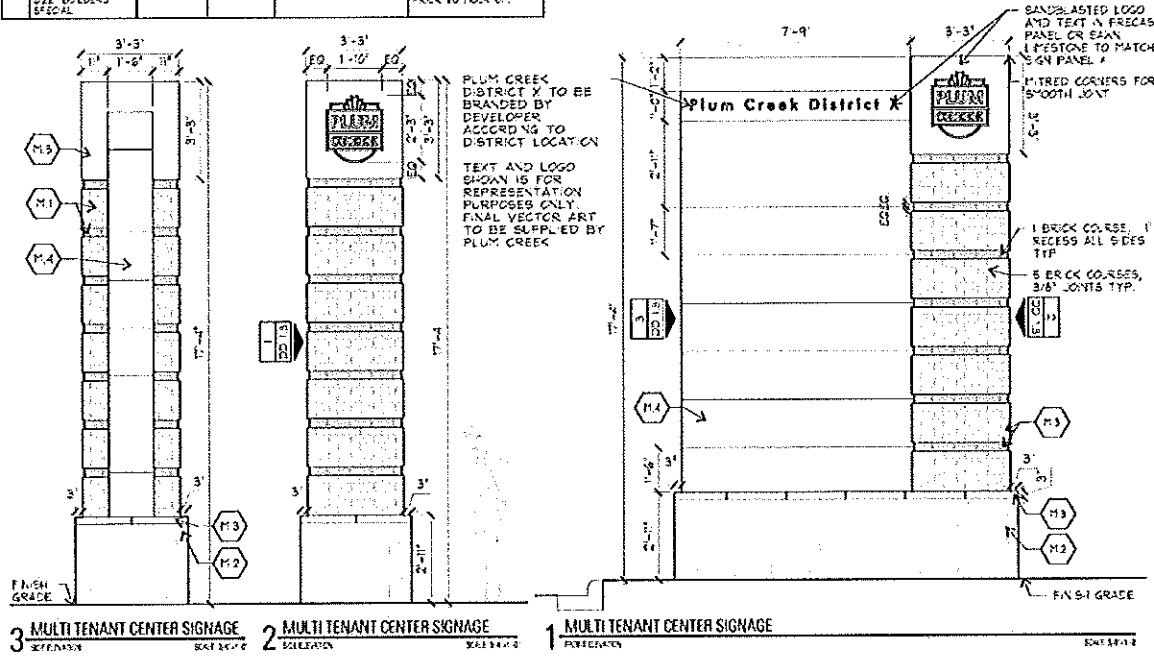
⊕	LIPSTONE VENEER USE 3/4" PORTLAND JOINTS	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-4770	- IF THICK SIZE VENEER LENGTH X 24" IN GTH CONTRACTOR TO PROVIDE PROOF UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. - SUBMIT PORTLAND COLOR FOR APPROVAL PRIOR TO PICK UP.
⊕	LIPSTONE SIGN PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-4770	- CONTRACTOR TO PROVIDE SAMPLES FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL.
⊕	LIPSTONE SIGN PANEL/LIPSTONE LOGO PANEL	CREAM	SAWN ALL SIDES	COMPANY: A.J. BRAUER STONE, INC. PHONE: (800) 746-4770	- ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.



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MASONRY					
CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND MATERIAL SAMPLES TO LANDSCAPE ARCHITECT FOR APPROVAL BY DECLARANT PRIOR TO CONSTRUCTION.					
KEY	DESCRIPTION / MODEL NUMBER	COLOR	FINISH	CONTACT	REMARKS
⊙	FACE BRICK	MATCH EXISTING PLUM CREEK MASONRY	MATCH EXISTING PLUM CREEK MASONRY	COMPANY: ELEGANTER BRICK CO. PHONE: (477) 255-3924	CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT, LANDSCAPE ARCHITECT'S APPROVAL. 1/8" LIGHT PORTER COLOR FOR APPROVAL PRIOR TO MOCK UP.

⊙	LIMESTONE VENEER LESS 1/2" MORTAR JOINTS	CREAM	SEAN A.L. S.DES	COMPANY: A.J. BRAUER STONE, NC PHONE: (800) 746-8790	3" THICK SIZE 12 1/2" LENGTH X 12 1/2" HIGH. CONTRACTOR TO PROVIDE MOCK UP FOR DECLARANT/LANDSCAPE ARCHITECT'S APPROVAL. 1/8" LIGHT PORTER COLOR FOR APPROVAL PRIOR TO MOCK UP.
⊙	LIMESTONE 8"X8" PANELS, LESTONE LOGO PANEL.	CREAM	SEAN A.L. S.DES	COMPANY: A.J. BRAUER STONE, NC PHONE: (800) 746-8790	ALL ALTERNATE DESIGN MATERIAL MAY BE SUBMITTED TO THE DECLARANT FOR THEIR APPROVAL.

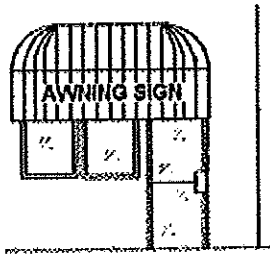


(A) *Awning signs.* The purpose of an awning sign is to provide an advertising message on the face of an awning. Awning signs shall only be allowed within commercial districts, industrial districts, the central business district.

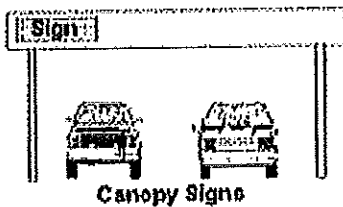
(1) An awning may extend across the entire width of a building or tenant space. An awning may extend above the apparent roof line of the building, provided the awning extends across 75 percent of the entire width of the building façade to which it is attached. An awning shall not exceed six feet in height.

(2) The sign area on an awning shall not exceed 20 percent of the area of the awning and shall extend for no more than 50 percent of the length of the awning. A permit shall be required for an awning sign. Awning signs may be illuminated.

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(B) *Canopy signs.* A canopy sign shall be no greater in size than 20 percent of the face of the canopy of which it is a part or to which it is attached and shall not extend beyond the face of the canopy either vertically or horizontally. An illuminated strip may be incorporated into the canopy. Canopy signs shall only be allowed within commercial districts, industrial districts, and the central business district.



(C) *Projecting signs.* The purpose of a projecting sign is to identify the name of a business, profession, service, product or activity conducted, sold or offered on the premises where the sign is located by providing an advertising message that is perpendicular to the wall of the building to which it is attached. Projecting signs shall be allowed within commercial districts, industrial districts and within the central business district.

(1) *Number of signs:* One projecting sign shall be allowed for each single tenant building or for each tenant in a multi-occupancy structure. However, no tenant storefront shall have a projecting sign in combination with a wall sign on the same building elevation.

(2) *Maximum area:* A projecting sign shall not exceed 20 square feet. The plane of the message area shall not exceed 18 inches from the plane of the message area on the opposite side of the sign.

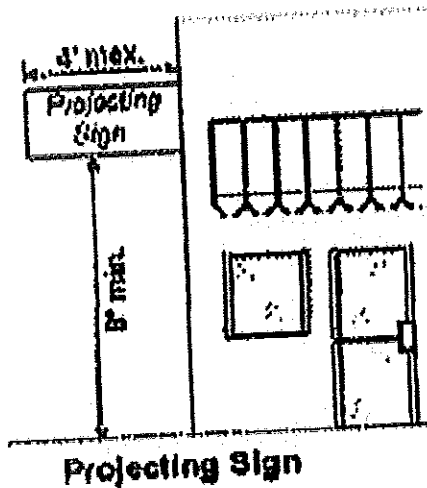
(3) *Horizontal projection:* A projecting sign shall not project more than four feet from any wall facing and shall not be closer than two feet from a curb line. A projecting sign shall not extend above the apparent roof line of the building.

(4) *Clearance:* Every projecting sign shall be a minimum of eight feet above the grade over a walking area or 14 feet over a vehicular maneuvering area. Projection signs shall not project over any property line or right-of-way line unless with an approved license agreement.

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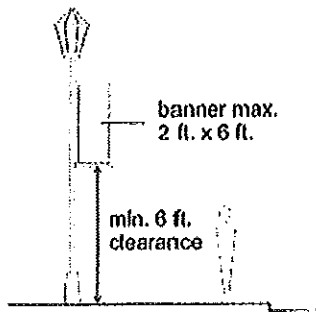
- (5) A projecting sign may be illuminated.



(D) *Light mounted banner signs.* Light mounted banner signs shall only be permitted in the central business district for the advertising of permitted community events, seasonal and historic themes, or other such civic purposes; on collector level and higher classification within a residential subdivision; within master planned commercial subdivision. Such banners are limited to subdivision identification, or seasonal decorations and works of art by local artists. Such banners must be approved by the appropriate electric utility company in addition to receiving a permit from the city manager's office. No permit shall be approved for a period exceeding 30 calendar days. Light mounted banner signs shall comply with the following regulations:

- (1) Banners shall be limited to not more than one banner on any light pole.
- (2) Banners shall be limited to no more than two feet by six feet in exterior dimension and 12 square feet in area per banner.
- (3) A minimum height of six feet as measured from adjacent grade to the bottom of the banner shall apply.
- (4) Banners shall be maintained in good repair. Should they become excessively faded, tattered or torn, they shall be replaced or removed.
- (5) Banners shall not be illuminated, except for indirect lighting associated with the main lamp of the light pole to which it is mounted.

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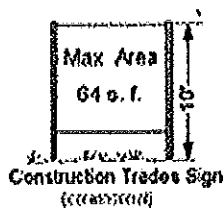


(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-17. - Temporary sign regulations.

(A) *Construction trades signs.* The purpose of a construction trades sign is to denote the architect, engineer, financial institution or building trades contractor involved in a construction project. Construction trades signs shall be categorized as either commercial or residential.

(1) The maximum area, height, spacing and setbacks of a construction trades sign for commercial locations shall not exceed 64 square feet and shall not exceed ten feet in height.



(2) The maximum area, height, spacing and setbacks of a construction trades sign for residential locations shall not exceed eight square feet and shall not exceed four feet in height.



(3) Construction trades signs shall not be erected until a building permit has been submitted for building construction and shall be removed up on completion of the construction project or occupancy of the structure, whichever is applicable.

(4) No permit or fee shall be required for a construction trades sign.

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- (5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (6) A construction trade sign shall not be illuminated.
- (b) *Future development signs.* Future development signs shall be regulated as either commercial or residential.
- (1) The maximum area, height, spacing and setbacks of a future development sign shall not exceed 64 square feet and shall not exceed ten feet in height.
- (2) A permit shall be required for a future development sign.
- (3) A future development sign shall not be illuminated.
- (4) A future development sign shall be removed when the project is 90 percent complete or within three years from start of construction, whichever is less. For the purpose of this provision, a subdivision shall be deemed 90 percent complete when 90 percent of the lots within the subdivision are sold.
- (5) Signs shall not be located in the street right-of-way, shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (6) One sign shall be permitted per lot; except that one sign per major access to the development shall be authorized if a lot is used together with one or more contiguous lots for a single use or a unified development (for example, a shopping center).



- (C) *Garage sale signs.* The purpose of a garage sale sign is to announce the sale of household possessions.
- (1) Garage sale signs shall not exceed four square feet. Signs shall be allowed for a maximum of 72 consecutive hours no more than two times per calendar year.
- (2) Single-family residential on-premises: One garage sale sign per street frontage shall be allowed, but only on the premises where the garage sale is being conducted and where there is an existing residential use.

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(3) Neighborhood-wide garage sales: Two garage sale signs per subdivision entrance shall be allowed for a neighborhood-wide garage sale sponsored by a homeowner's association (HOA). The garage sale sign may be off premises from where the actual garage sale is conducted, but the sign shall be located on property, including a street right-of-way, that is within the limits of the homeowner's association. The HOA must be registered with the city.

(4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Signs shall not be placed anywhere in the center median of a public or private street.

(5) No permit or fee shall be required for any garage sale sign.

(D) *Real estate signs (commercial, including subfamily)*. The purpose of a commercial real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

(1) A commercial real estate sign shall not be illuminated.

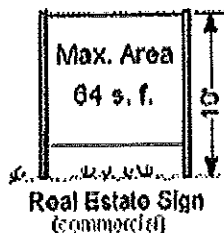
(2) The maximum area and height of a commercial real estate sign shall not exceed 64 square feet and shall not exceed ten feet in height.

(3) Commercial real estate signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.

(4) No more than one sign per 300 linear feet of street frontage may be placed on such property.

(5) Signs shall be placed at least twenty-five feet from an intersection and a minimum of ten feet from the curbline.

(6) No permit or permit fee shall be required for a commercial real estate sign.

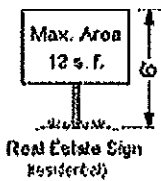


(E) *Real estate signs (residential)*. The purpose of a residential real estate sign is to advertise the sale, rental or lease of the premises on which said sign is located.

(1) A residential real estate sign shall not be illuminated.

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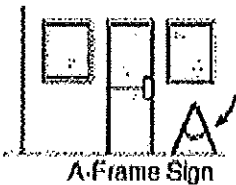
- (2) The maximum area and height of a residential real estate sign shall not exceed 12 square feet and shall not exceed six feet in height.
- (3) All signs shall be removed within seven days following the completion of the sale, rental or lease of the premises.
- (4) Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (5) No permit or permit fee shall be required for a residential real estate sign.



(F) *A-frame signs.* The purpose of an A-frame sign is to provide temporary advertising during business hours of a commercial occupancy.

- (1) Maximum height and area shall conform to the following table:

Maximum Height and Areas of A-Frame Signs		
	Max. Area	Max. Height
Located on a sidewalk	8 s.f.	4 feet
Located in a yard	24 s.f.	8 feet



- (2) Time duration: Only displayed during business hours.
- (3) Placement: Only allowed on private property, but may be located on a public sidewalk, provided a width of four feet shall remain free from intrusion.
- (G) *Miscellaneous temporary sign regulations.*

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- (1) Temporary signs advertising the opening or relocation of a business shall only be permitted for a maximum period of 30 days before and 60 days after such opening or relocation. Signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline.
- (2) Except as specifically provided otherwise in this chapter, banners shall not exceed 32 square feet, must be attached and parallel to a wall of the structure, and shall only be permitted for a period not to exceed 30 calendar days and with a period of not less than 30 days between displays.
- (3) Human signs shall be allowed on private property and the untraveled public rights of way provided that no human sign, as defined by this section, shall be displayed within five feet of a vehicular traffic lane.
- (4) Except as specifically provided otherwise herein, temporary signs shall not exceed four square feet in size and shall be allowed for a maximum of 14 calendar days per event. Temporary signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Temporary signs shall not be placed anywhere in the center median of a public or private street.
- (5) Open house signs do not require a permit, shall not exceed four square feet, and shall be allowed for a maximum of four hours the day of the open house. Open house signs shall be placed at least 25 feet from an intersection and a minimum of ten feet from the curbline. Open house signs shall not be placed anywhere in the center median of a public or private street.
- (6) Use of temporary decorations as signs, otherwise referred to as decorative festoons, meaning tinsel, strings of ribbon, small commercial flags, or streamers may be used as temporary enhancement of signage in a commercial sign category, providing these devices have no glare, no moving parts, are maintained, and comply with all codes and policy guidelines governing their safe use. No lettering is permitted on these items. Temporary decorations may be used for a period not to exceed 30 calendar days with a period not less than 30 days between displays.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-18. - Flagpoles and commercial flags.

One flagpole is allowed per development at a maximum height of 50 feet. Commercial flags are allowed in multifamily and/or commercial developments. No text or logo is permitted on such flags as such would constitute a sign. The national or state flag and the flagpoles for the express purpose of displaying the national or state flag are exempt from this section.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

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Sec. 7-19. - Advertising searchlight.

- (A) For purposes of this section, an "advertising searchlight" means a searchlight used to direct beams of light upward for advertising purposes.
- (B) Use of an advertising searchlight at any location is authorized upon issuance of a permit by the building official.
- (C) The permit shall be effective for a maximum period of five days per calendar year to any business or group.
- (D) An advertising searchlight shall not be operated between the hours of 1:00 a.m. and 6:00 p.m.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-20. - Kiosk signs.

- (A) Kiosk signs are intended to provide a uniform, coordinated method of providing homebuilders and developers a means of utilizing directional signs, while minimizing the negative impacts of weekend homebuilder's signs on the appearance of the city. Kiosk signs are also intended to provide service to the public on the directions to municipal facilities and parks, community events, and school district facilities.
- (B) The city council may, by duly executed license agreement, grant the exclusive right to design, erect and maintain kiosk signs within the city limits and extraterritorial jurisdiction of Kyle.
- (C) Kiosk signs shall be designed and constructed in accordance to the specifications contained in the aforementioned license agreement.
- (D) Prior to erecting any kiosk sign, the licensee shall submit a sign location map to the building official for approval.
- (E) Kiosk sign installation shall include break-away design features as required for traffic signs in the street right-of-way.
- (F) Advertisement of price information shall be prohibited on kiosk signs.
- (G) No additional or extraneous signs, pennants, flags or other devices for visual attention or other appurtenances shall be attached to kiosk signs.

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- (H) Kiosk signs shall not be illuminated.
- (I) Individual sign panels on kiosks shall have a uniform design and color.
- (J) Kiosk signs shall not interfere with the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of motorists, pedestrians or traffic control signs; shall not be installed in the immediate vicinity of street intersections; and shall comply with the visibility triangle requirements contained in the Subdivision Regulations or other visibility easements provided by code or subdivision plat.
- (K) Kiosk sign may be located on private property, or other state-maintained roadways, provided written permission is obtained from the property owner.
- (L) Kiosk sign panels shall be available to all developers and homebuilders operating within the city on a first-come, first-served basis. Developers and homebuilders operating November 18, 2008 within the city limits shall have first priority to lease sign panels in the event extra panel space is available, residential developments, located outside the city limits may also lease panels.
- (M) In accordance to the specifications contained in the aforementioned license agreement, a percentage of the kiosk sign panels shall be reserved for the city to use as directional signage to municipal or community facilities or locations or community events.
- (N) No kiosk sign shall be placed, located, or installed on city-owned property or public right-of-way without a license agreement duly approved by the city council.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-21. - Other sign regulations.

- (A) *Activities and events sign.* An activities and events sign is a changeable copy directory allowed solely to public buildings, church buildings (places of worship only), and neighborhood associations, intended for use only by the entity where the sign is located. A maximum of one information sign shall be allowed for each neighborhood group, church, or public development complex, and it is not considered a freestanding sign in this section. Activities and events signs shall comply with the following criteria:
- (1) The sign shall be constructed of a non-oxidizing metal (e.g. aluminum, stainless steel) cabinet set on a pole or on the ground as a monument, with a clear, acrylic panel inset and a locking door. The door of the sign shall remain locked except while the message is being posted.
- (2) The maximum size of the cabinet shall be 12 square feet, and maximum height shall be five feet above grade.

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(3) Only changeable letters shall be used and letters shall be no larger than four inches and no less than two inches in height.

(4) Such sign may have direct lighting that is placed inside the cabinet (portrait lighting); however, no backlighting or external direct lighting is permitted.

(5) Such sign shall be located at or near the entrance of the public building or church; for a neighborhood sign, such sign shall be located within the subdivision at a commonly traveled location, for example, near the neighborhood park or amenity center, the main mail station, or the main entrance to the neighborhood. Such a sign shall not be required to meet building setback requirements or setback requirements established in section 29-12 provided that it does not obscure the travel path or visibility of drivers, bicyclists, or pedestrians, as determined by the planning department. Such sign shall be located on property maintained by the neighborhood association or with a written agreement between the property owner and the neighborhood association. Such sign shall not be placed closer than 150 feet from the intersection of a collector street and a major or minor arterial street, as defined in the city roadway plan. Such signs shall be maintained by the neighborhood association in a "like-new" condition at all times.

(B) *Government sign.* Government sign(s) are permitted in all categories, subject to all laws and regulations that apply.

(C) *Memorial sign.* Memorial sign(s) may be installed in accordance with state historical standards, or as building cornerstones not to exceed eight square feet.

(D) *Private traffic-control signs.* Private traffic control signs are not allowed for single-family residential or duplex uses, but are otherwise permitted. Signs shall not exceed four square feet in size, and may contain directions and the name or logo of the same site user.

(E) *Window signs.* Window signs may be placed so as not to obscure more than 25 percent of the visible window area. Where multiple windows exist, fronting on the single elevation, the 75 percent visibility shall be maintained for the total window area on said elevation.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-22. - Nonconforming signs.

(A) By the passage of the ordinance from which this section derives and its amendments, no presently illegal sign shall be deemed to have been legalized unless such sign complies with all current standards under the terms of this ordinance and all other ordinances of the city. Any sign which does not conform to all provisions of this section but which existed on the effective date of this section and was lawfully constructed or installed shall be considered as a nonconforming sign. All nonconforming signs shall be permitted in the same manner as any other legally existing sign or proposed sign, provided that no sign that was constructed or installed in violation

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of any state or local law, or that was originally constructed or installed without a permit that was then required at such time, shall be or qualify as a nonconforming sign.

(B) A nonconforming sign shall be allowed to be continued and maintained at its existing location subject to the limitations of this section.

(C) No nonconforming sign may be enlarged or altered in a way which would increase its nonconformity: provided that the sign face may be changed in compliance with this chapter.

(D) A nonconforming sign shall be removed immediately if any of the following applies:

(1) The nonconforming sign is abandoned as defined in this subsection. Whenever any nonconforming sign no longer advertises a bona fide business or a business which has moved away or closed, a product sold, or service rendered, such sign shall be removed within 60 days. If the nonconforming sign is a wall sign, the wall sign shall be removed or painted over with a color that resembles or matches the rest of the wall of the building if the owner of, or person responsible for the sign, or if the tenant closing a business, fails to remove the abandoned sign or paint over the wall sign, the owner of the premises shall be held responsible and the work shall be done within 30 days following written notice to do so by the building official.

(2) The building official or his/her designee determines the sign to be obsolete or substandard under any applicable ordinances of the city to the extent that the sign becomes a hazard or dangerous.

(3) A nonconforming sign, or a substantial part of it is destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(E) Reconstruction, repair, or replacement of a nonconforming sign shall be completed no later than 90 days following the date of the damage. For purposes of this subsection, a sign, or a substantial part of a sign, is considered destroyed if the cost of repairing the sign is more than 50 percent of the cost of installing a new sign of the same type at the same location.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-23. - Hazardous signs.

Except as otherwise provided by aw or this chapter, no person may install, maintain, or use a sign that:

(1) Obstructs a fire escape, required exit, window, or door used as a means of escape.

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- (2) Interferes with a ventilation opening, except that a sign may cover a transom window if otherwise in compliance with the building code and fire code.
- (3) Substantially obstructs the lighting of public right-of-way or other public property, or interferes with a public utility or traffic control device.
- (4) Contains or utilizes a supporting device placed on public right-of-way or other public area within the city limits and the extraterritorial jurisdiction of the city, unless the use of the public rights of way or other public area has been approved by the city and a right-of-way joint use agreement has been filed.
- (5) Is illuminated in such a way as to create a hazard to pedestrian, bicycle, or vehicular traffic.
- (6) Creates a traffic hazard for pedestrians, bicyclists, or motorists, by restricting visibility at a curb cut or adjoining public street.
- (7) Has less than nine feet of clearance above street pavement grade or has less than 12 feet of clearance above a driveway, and/or is located outside the public right-of-way and within the visibility triangle at an intersection that results in impaired sight distance of users of the intersection.
- (8) Violates a requirement of the electrical code.
- (9) Is determined by the building inspector to be dangerous.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-24. - Abatement of sign violations and removal of unsafe signs.

- (A) Any sign that is structurally unsafe or that constitutes a hazard to the health, safety, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster damage, abandonment or other cause is hereby declared to be a public nuisance and shall be abated by demolition or removal.
- (B) Should the building official or the code enforcement officer determine that any sign is not properly maintained, is unsafe or insecure or has otherwise been constructed, erected or maintained in violation of the provisions of this section, he shall take action as follows.
 - (1) Except as provided in the following paragraphs (2) and (3), the building official shall give the sign or property owner written notice to repair, remove or obtain a permit for such sign as applicable within ten days after such notice. If the sign or property owner fails to remove, repair, or obtain a permit for such sign so as to comply with all applicable standards and

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regulations, the building official shall cause the sign to be either removed or repaired and such cost shall be charged to and paid by the property owner if such demolition or repair expenses are not paid by the property owner within 30 days of such billing, then such expenses shall constitute a valid lien against the property. Such notice shall also provide the sign or property owner an opportunity to bring the sign into compliance or to request a hearing before the sign control board to determine whether the sign should be repaired or removed. Such appeal must be filed in writing with the city secretary within ten days of the notice. After consideration of all facts, the sign control board shall rule upon the appeal.

(2) The building official may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

(3) Any sign located in public right-of-way may be immediately removed by the building official without notice to the owner.

(C) In addition to the above, the building official or the code enforcement officer may issue citations without giving prior notice of violation or pursue any other administrative or legal remedy in order to abate any sign which is in violation of this chapter or any other law.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-25. - Repairs and maintenance.

All signs in the city and its ETJ shall be properly maintained in good and safe structural condition, shall be painted on all exterior parts, unless coated or made of rust resistant material, and shall be maintained in good condition and appearance at all times. Any owner or primary beneficiary falling to maintain, repair, or remove any such sign after due notices has been given shall upon conviction be guilty of a misdemeanor. The building official shall have the authority to order the painting, repair, or removal of a sign and accompanying landscaping which do not comply with this ordinance or the building codes or that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-26. - Appeals; exceptions to sign regulations.

(A) *Board of adjustment is established as sign control board; composition.* The board of adjustment is hereby established to serve in a dual capacity as the sign control board ("SCB").

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(B) *Powers; duties of the SCB.* The city council authorizes the board of adjustment in its capacity as the SCB to sit as a board of appeals and to exercise the powers set forth in this chapter.

(C) *Appeals.* Appeals to the SCB may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the building official. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the building official and with the SCB a notice of appeal specifying the grounds thereof. The building official shall forthwith transmit to the SCB all the papers constituting the record upon which the action appealed from was taken.

(D) *Appeal stays proceeding.* An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the SCB after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the SCB or by a court of record on application or notice to the building official and on due cause shown.

(E) *Hearing.* The SCB shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent.

(F) *SCB powers.*

(1) The SCB shall have the following powers:

a. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the building official in the enforcement of this section.

b. To hear and decide special exceptions to the terms of this section upon which the SCB is required to pass.

c. To authorize, upon appeal in specific cases, such exception from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this section will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the SCB may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building official from whose action the appeal is taken.

(G) *Limitations on the authority of the SCB.*

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(1) The SCB may not grant an exception authorizing a sign where it is not otherwise allowed by this charter.

(2) The SCB shall have no power to grant an amendment to the sign ordinance. In the event that a request for an amendment is pending before the city council, the board shall neither hear nor grant any exceptions with respect to the subject property until final disposition of the sign ordinance amendment.

(3) The SCB shall not grant a request for any exception to any parcel of property or portion thereof upon which a zoning application, site plan, preliminary plan, or final plat, where required, has not been finally acted upon.

(H) *Exceptions.*

(1) The SCB may grant an exception from a requirement of the sign ordinance, if it makes written findings that:

a. The requirement does not allow for a reasonable use of the property;

b. The hardship for which the exception is requested is owing to a special condition inherent in the property itself, such as restricted area, shape, topography or physical features;

c. The special condition is unique to this property and is not generally characteristic of other parcels of land in the area; and

d. The development under the exception does not:

1. Alter the character of the area adjacent to the property;

2. Impair the use of adjacent property that is developed in compliance with the city requirements; or

3. Impair the purposes of the regulations of the sign ordinance.

(2) An exception may not be granted to relieve a self-created or personal hardship, nor for financial reasons only.

(3) The applicant bears the burden of proof in establishing the facts justifying an exception.

(I) *Vote required.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building officials, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in this chapter.

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(J) *Time limitation on order permitting erection of sign.* No order of the SCB permitting the erection or alteration of a sign shall be valid for a period longer than six months, unless a sign permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

(K) *Appeals from action of the SCB.* Any person or persons, jointly or severally, aggrieved by any decision of the SCB, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to the city secretary, on behalf of the city council, a petition, duly verified, appealing the decision of the SCB. Such petition shall be presented to the city secretary within ten days after the meeting date of the decision by the SCB.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 7-27. - Penalty.

(A) Any individual, association, corporation or legal entity violating any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by the assessment of a fine not exceeding \$2,000.00 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

(B) The primary beneficiary of any sign installed in violation of this section shall be presumed to have authorized or caused, either directly or indirectly, the installation, use, or maintenance of the sign in violation of this section.

(C) Whenever any construction, installation, alteration, or repair of a sign is being done contrary to the provisions of this section, another controlling ordinance or statute governing the sign, the building official may order the work stopped by notice verbally or in writing served on any persons engaged in the doing or causing such work to be done and the city shall post a stop work order on the property adjacent to the posted building permit, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work. If no permit has been issued, all work shall stop until a permit has been properly issued and all errors corrected to the satisfaction of the building official. The building official or code enforcement authority may also issue a work correction order, which shall be served upon any persons who are working on a certain aspect of the sign.

(D) The city and/or the city manager shall enforce this section by appropriate administrative action including but not limited to, the rejection of plans, maps, plats and specifications not found to be in compliance with this section and good engineering practices, and the issuance of stop work orders.

(E) Upon the request of the city council, the city attorney or other authorized attorney shall file an action in the district courts to enjoin the violation or threatened violation of this ordinance, or to obtain declaratory judgment, and to seek and recover court costs and attorney

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fees, and/or recover damages in an amount sufficient for the city to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the property and established pursuant to this chapter.

(Ord. No. 653, § 3(Attach.), 4-19-2011)

Sec. 8. Board of adjustment.

(A) *Creation of the board of adjustment.* The city council shall provide for the appointment of a board of adjustment and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirements of the State of Texas. The board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Plum Creek PUD zoning ordinance consistent with state law and in harmony with its general purpose and intent and in accordance with general and specific rules herein contained.

(B) *Powers and duties.* The board of adjustment shall have the following powers:

(1) To hear and decide appeals from certain decisions of the building official where it is alleged there is error in any order, requirement, decision, interpretation, or determination made by the building official in the enforcement of this ordinance;

(2) To interpret the intent of the Plum Creek PUD official zoning map where uncertainty exists because of the physical features on the ground varying from those on the official zoning map and none of the rules set forth in this ordinance apply.

(3) To authorize, upon appeal variances of the yard, lot width, lot depth, signs, minimum setback, off-street parking or off-street loading regulations from the terms of this ordinance, if not contrary to the public interest, where owing to unique and special conditions of the land not normally found in a PUD district a strict enforcement of the provisions of the ordinance by the building official would result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

(C) *Organization of the board.* The board of adjustment shall be established and appointed as provided in Chapt. 211, Loc. Gov't. Code [V.T.C.A., Local Government Code § 211.001 et seq.] and the ordinances of the city.

(D) *Appeals.*

(1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, commission or committee of the city affected by any decision of the building official made pursuant to this ordinance. Such appeal shall be made within 30 days by filing with the building official and with the board of adjustment a notice of appeal specifying the grounds

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thereof. The building official shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

(2) An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the board of adjustment after the notice of appeal shall have been filed with him that by the reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(3) The board of adjustment shall hear the appeal within 30 days or such extension as requested by the applicant, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(E) *Revision of appealed decisions.* In exercising the above mentioned powers such board may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the power of the building official from whom the appeal is taken.

(F) *Votes necessary.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of the building official, to decide in favor of the applicant on any variation in this ordinance.

(G) *Appeals from the board of adjustment.* Any person or persons or any taxpayer or any officer, department, board, commission or committee of the city, jointly or severally, aggrieved by any decision of the board of adjustment, may present to a court of record a petition, verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board.

Sec. 9. Planning and zoning commission.

(A) *Creation of the planning and zoning commission.* The city council shall provide for the appointment of a planning and zoning commission and the regulations and restrictions adopted shall be pursuant to the provisions of applicable statutory requirements of the State of Texas.

(B) *Responsibilities.* It shall be the responsibility of the planning and zoning commission to hear all applications for zoning changes and changes in the Plum Creek PUD zoning ordinance, as prescribed by law and this ordinance, and to recommend action to the city council. The commission has no authority to approve variances from the requirements of this ordinance.

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(C) *Organization of the commission.* The organization, membership and qualifications of the planning and zoning commission shall be as otherwise provided in the ordinances of the city.

(D) *Rules and regulations.* The commission shall develop and adopt rules in accordance with the provisions of state law and the ordinances of the city. Meetings of the commission shall be held at the call of the chairman and at such other times as the commission may determine. Except as authorized by Chapt. 551, Tex. Gov't. Code [V.T.C.A., Government Code § 551.001 et seq.], on the advice of the city attorney, all meetings of the commission will be open to the public. The commission shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the city secretary and except as authorized pursuant to Chapter. 552, Tex. Loc. Gov't. Code [V.T.C.A., Government Code § 552.001 et seq.], shall be available as a public record.

(E) *Plum Creek PUD public hearing.* The planning and zoning commission shall conduct a joint public hearing with the city council to consider the original zoning application for approval of the Plum Creek PUD. Notice of the public hearing shall be given in the manner in which the notice is required to be given under state law. The decision of the planning commission on such original zoning application for the Plum Creek PUD shall be made to the city council as a recommendation to grant, with or without conditions, or to deny.

(F) *Report and recommendation from the planning and zoning commission.*

(1) No amendment to this ordinance or to the Plum Creek PUD master plan or to the zoning designation of any area within the Plum Creek PUD shall be enacted by the city council without first receiving a report and recommendation from the planning and zoning commission.

(2) The planning and zoning commission shall hold a public hearing on all proposed zoning classification changes to the Plum Creek PUD or the Plum Creek PUD master plan and proposed general amendments to this ordinance.

(3) Written notice to property owners. When the public hearing is to consider a proposed zoning classification change to the Plum Creek PUD or master plan, written notice of such hearing shall be given to the owners of all real property located within 200 feet of the property on which the change in classification is proposed. Notice shall be given before the tenth day before the date set for the hearing before the commission either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the address shown on the last approved city tax roll.

(4) The planning and zoning commission may recommend enactment of a proposed general amendment to this ordinance or a change of zoning classification to the Plum Creek PUD or master plan if it finds that such amendment or change is in the public interest and conforms to the comprehensive plan of the City of Kyle.

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(5) A change of zoning classification proposed by the owner of the parcel affected may be recommended for enactment, even though such proposed change does not conform to the Plum Creek PUD master plan, provided that the planning and zoning commission finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the land use map was adopted which make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the said plan and, provided further, that the planning and zoning commission finds that the requested zoning classification is in the most appropriate classification for the area affected.

Sec. 10. Review and action of the city council.

(A) Hearing. The city council shall hold a public hearing on all proposed Plum Creek PUD or master plan zoning classification changes and general amendments to this ordinance before acting thereon.

(B) Notice.

(1) The city council shall not act upon an amendment of this ordinance or the zoning of any land included within the Plum Creek planned unit development prior to receiving the recommendation of the planning and zoning commission made after notice and public hearings as provided in section 9 [of this article].

(2) Before the city council shall consider a proposed zoning classification change to the Plum Creek PUD or master plan or a proposed general amendment to this ordinance, notice shall be published in an official newspaper or in a newspaper of general circulation in [the City of] Kyle before the 15th day before the date of the hearing. The notice shall state the time and place of the hearing and contain a description of the matter to be considered.

(C) The city council may enact a proposed general amendment or change of zoning classification by ordinance if it finds that such amendment or change is in the public interest and conforms to the comprehensive plan of the City of Kyle.

(D) A change of zoning classification proposed by the owner of a parcel affected may be enacted, even though such proposed change does not conform to the Plum Creek PUD master plan, provided the city council finds that significant and unanticipated changes have occurred in the area of the affected parcel since the classification on the Plum Creek PUD master plan was adopted, which changed conditions make it unlikely that such parcel can be developed or used for any use permitted under the zoning classification indicated for such parcel in the said plan, and provided further, that the city council finds that the requested zoning classification is the most appropriate classification for the area affected.

(E) If a written protest is submitted against a proposed change of zoning classification signed by all the owners of 20 percent or more either of the area of the lots or land included in such proposed change, or of the lots of land immediately adjoining the same and/or extending 200 feet

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therefrom, such proposed change of zoning classification shall not become effective except by the favorable vote of three-fourths of all the members of the city council, including the mayor. If the planning and zoning commission submits a negative report not recommending a general amendment to the zoning ordinance or a proposed change of a Plum Creek PUD zoning classification, such amendment or proposed change shall not be effective except by the favorable vote of three-fourths of the members of the city council, including the mayor.

(F) The city council may approve a site plan at such time as the zoning or zoning change is granted. All representations, whether oral or written, made by the applicant or his or her agent(s) on behalf of the zoning or zoning change becomes a condition(s) upon which the zoning change is granted. It shall be unlawful for the applicant to vary from any such representations unless the applicant first obtains the approval of the city council, except building lines may be moved ten feet with the written approval of the city administrator. The site plan shall be null and void unless the new owner certifies in writing that he will comply with the approved site plan and permit requirements; and such site improvements as constructed complies with such approved site plan.

(G) The city may initiate re-zoning procedures if the project is abandoned, vacated, sold or otherwise disposed of except:

- (1) As provided elsewhere in city ordinances; or
- (2) Unless the new owner agrees to develop the project in accordance with the original approved site plan.

Sec. 11. Fees.

The applicant for any permit set forth in this ordinance shall pay the fees indicated for such permit as set forth in the fee schedule ordinance (Ordinance No. 293) promulgated by the city council, as amended.

Sec. 12. Amendments to ordinance.

(A) *Statement of intent.* For the purpose of establishing and maintaining sound, stable and desirable development within the territorial limits of the city, this ordinance may be amended from time to time to correct errors in the ordinance, or because of changed or changing conditions in a particular area or in the city generally, or to rezone an area, extend the boundary of an existing zoning district or to change the regulations and restrictions thereof, all in accordance with the city's comprehensive plan.

(B) *Amendment limitation.* Subject to the limitations of the foregoing statement of intent, or amendment to this ordinance may be initiated by:

- (1) The city council on its own motion;

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(2) The planning and zoning commission; or

(3) Written request made by the owner(s) of land within the Plum Creek PUD.

(C) *Responsibility for change.* The city council has sole responsibility for changes in the Plum Creek PUD official zoning map and changes in the Plum Creek PUD zoning ordinance.

(D) *Referral of amendment petition to commission.* The council, upon receipt of an application to amend the ordinance, which has been examined and approved as to form by the city secretary, shall refer the request to the same planning and zoning commission for study, hearing, and report. The council may not enact the proposed amendment until the commission makes its report to the city council.

(E) *Action by the commission.* The commission shall cause a study to be made, give public notice, hold a public hearing and recommend to the city council such action as the commission deems proper.

(F) *Action by the council.* The city council shall give public notice and hold a public hearing before taking final action on a request to amend this ordinance, or on any proposed amendment initiated by the commission or the city council.

(G) *Public hearing and notice.* Notice shall be given and hearings held in the same manner as provided in article III, section 9 of this ordinance for planning commission hearings and article III, section 10 of this ordinance for city council hearings for zoning changes.

(H) *Protest to proposed amendments.* A written protest duly signed by the owners of 20 percent or more of the area of lots or of the lots or land immediately adjoining the same and extending 200 feet therefrom shall not become effective except by the favorable vote of three-fourths of all members of the council.

(I) *Comprehensive review of ordinance.* The commission shall from time to time, at intervals of not more than three years, examine the provisions of this ordinance and the location of the Plum Creek PUD zoning district boundary lines and shall submit a report to the city council recommending changes and amendments if any, which are deemed desirable in the interest of the public health, safety and general welfare.

Sec. 13. Interpretation, purpose and conflict.

The requirements established by the provisions of this ordinance shall be the minimum standards and requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity, and general welfare, it being intended to lessen congestion of streets, to secure safety from fire, panic and other dangers; to provide adequate light and air, to prevent overcrowding of land, to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water and sewage, schools, parks, and other public requirements. It is not

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intended by this ordinance to interfere with or abrogate or annul any ordinance, rules, regulations, or permits previously adopted or issued and not in conflict with any of the provisions of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises and likewise not in conflict with this ordinance.

Sec. 14. Repeal of conflicting ordinances or orders.

Ordinances and all orders, ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

Sec. 15. Severability clause.

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

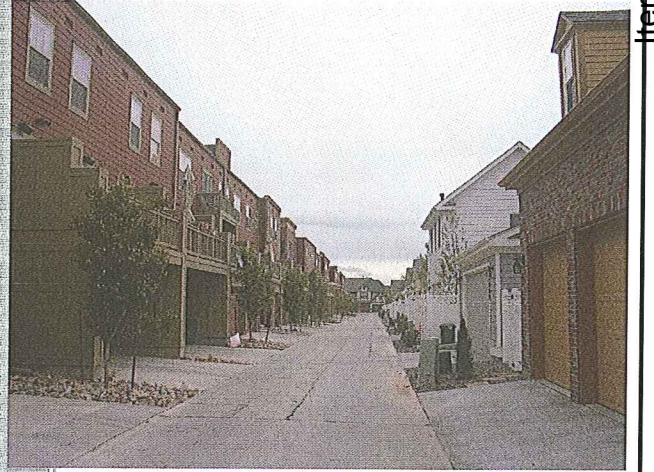
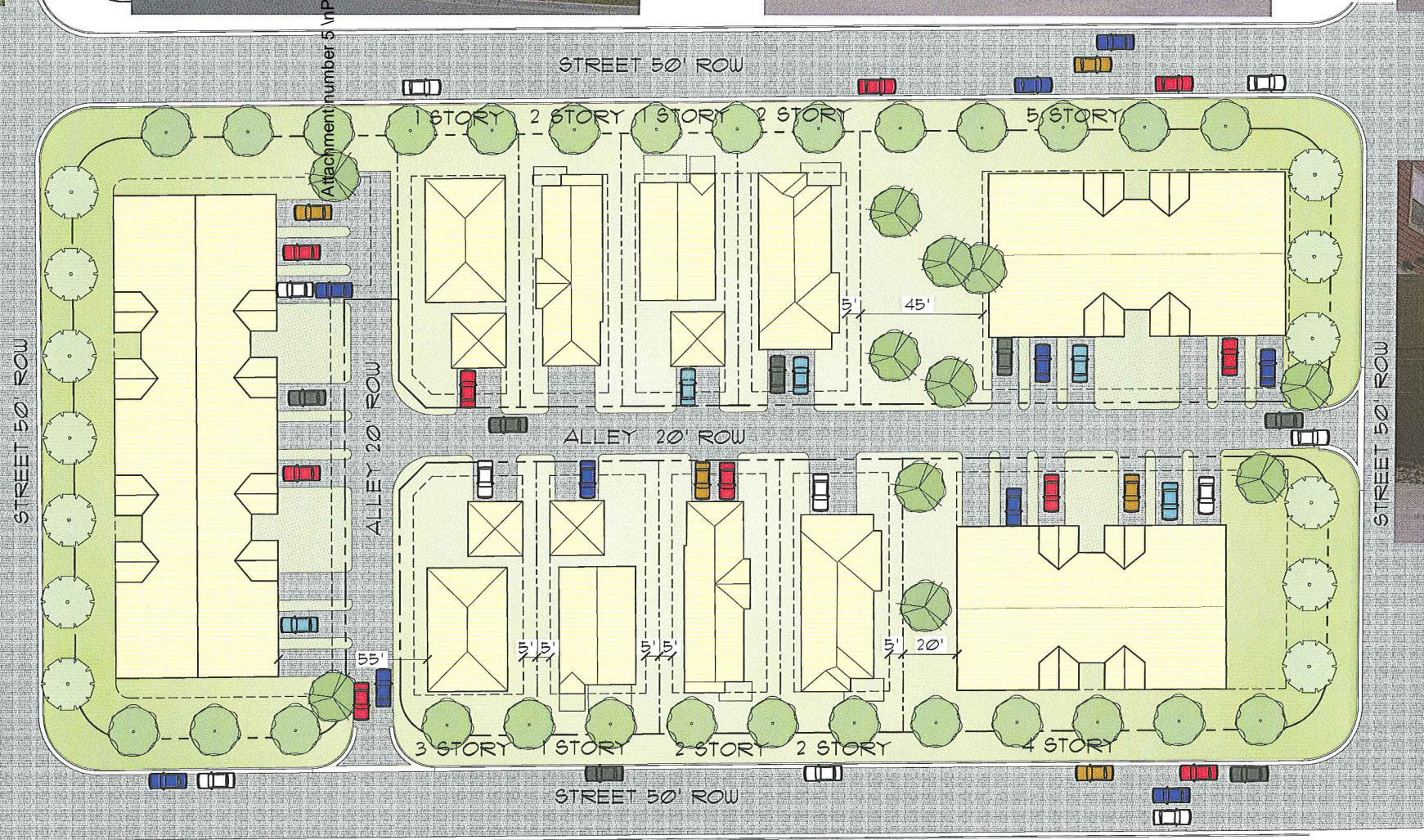
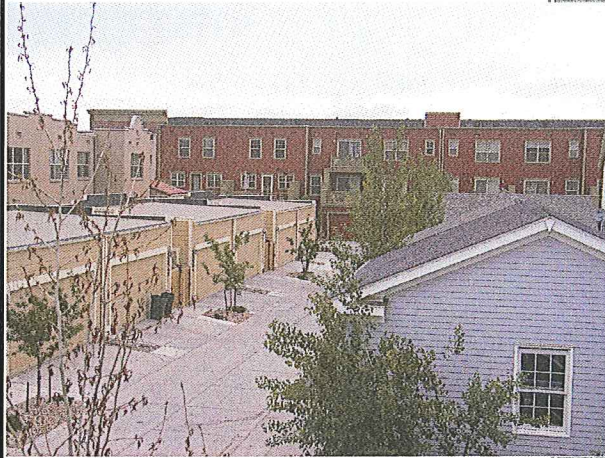
Sec. 16. Effective date.

This ordinance shall be effective on the date of adoption by the city council as shown herein below.

Sec. 17. Open meetings.

That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chap. 551, Loc. Gov't Code [V.T.C.A., Government Code § 551.001 et seq.].

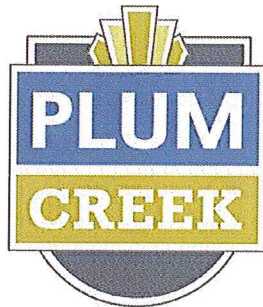
Approved and adopted this the 22nd day of July, 1997.



BUILDING HEIGHT
RELATIONSHIP EXHIBIT



NOTE:
A TWENTY FIVE (25) FOOT COMPATIBILITY SET BACK SHALL BE REQUIRED
ADJACENT TO ANY R-2 DEVELOPMENT WITHIN THE MXD, R-3, NC, AND
COMMERCIAL USES WHICH LIMITS MAXIMUM BUILDING HEIGHT TO FORTY (40)
FEET.





CITY OF KYLE, TEXAS

Meeting Date: 2/7/2012

Date time: 7:00 PM

Dacy Lane, LLC

Subject/Recommendation:

(Second Reading) AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING OF 'R-3-3' APARTMENT RESIDENTIAL 3 TO APPROXIMATELY 9.90 ACRES; AND 'R-1-T' RESIDENTIAL TOWNHOME TO APPROXIMATELY 5.45 ACRES ON PROPERTY LOCATED ON THE SOUTHSIDE OF BEBEE ROAD, JUST WEST OF DACY LANE IN HAYS COUNTY, TEXAS. (DACY LANE, LLC. Z-11-012); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW ~ *Sofia Nelson, Director of Planning*

The Planning and Zoning Commission voted 6-0 to recommend approve of the applicant's request to assign original zoning of "RS" Retail Service District to approximately 8.42, and voted 6 - 0 to recommend denial of R-3-3 Apartment Residential 3 to approximately 9.90 acres and R-1-T Residential Townhome to approximately 5.45 acres.

Other Information:

Please see attachments.

Budget Information:

N/A

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Attachments / click to download

- [Exhibit A](#)
- [Ordinance](#)
- [Exhibit B](#)
- [Staff Memo](#)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 53 (ZONING) OF THE CITY OF KYLE, TEXAS, FOR THE PURPOSE OF ASSIGNING ORIGINAL ZONING OF 'R-3-3' MULTI-FAMILY TO APPROXIMATELY 9.90 ACRES AND 'R-1-T' RESIDENTIAL TOWNHOMES TO APPROXIMATELY 5.45 ACRES; ON PROPERTY LOCATED ON THE SOUTHSIDE OF BEBEE ROAD, JUST WEST OF DACY LANE IN HAYS COUNTY, TEXAS. (DACY LANE, LLC. Z-11-012); AUTHORIZING THE CITY SECRETARY TO AMEND THE ZONING MAP OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

SECTION 1. That the zoning district map of the City of Kyle adopted in Chapter 53 (Zoning) be and the same is hereby amended to assign original zoning of 'R-3-3' Multi-family District to approximately 8.42 acres and 'R-1-T' to approximately 5.45 acres, on property located on the Southside of Bebee Road, just west of Dacy Lane, as set forth in the legal description labeled Exhibit A, and the property location map labeled Exhibit B.

SECTION 2. That the City Secretary is hereby authorized and directed to designate the tract of land zoned herein as such on the zoning district map of the City of Kyle and by proper endorsement indicate the authority for said notation.

SECTION 3. If any provision, section, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance or the application to such other persons or sets of circumstances shall not be affected hereby, it being the intent of the City Council of the City of Kyle in adopting this Ordinance, that no portion hereof or provision contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion or provision.

SECTION 4. This Ordinance shall be published according to law and shall be and remain in full force and effect from and after the date of publication.

SECTION 5. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

READ, CONSIDERED, PASSED AND APPROVED ON FIRST READING by the City Council of Kyle at a regular meeting on the 6th day of December, 2011, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Kyle at a regular meeting on the 7th day of February, 2012, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

APPROVED this 7th day of February, 2012.

Lucy Johnson, Mayor

ATTEST:

Amelia Sanchez, City Secretary

FIELD NOTE DESCRIPTION FOR A 9.90 ACRE TRACT OF LAND (TRACT 1):

BEING A TRACT OR PARCEL OF LAND, CONTAINING 9.90 ACRES, MORE OR LESS, SAID TRACT LYING PARTIALLY WITHIN THE DANIEL DOWNES SURVEY NO. 22, ABSTRACT NO. 151, THE THOMAS G. ALLEN SURVEY, ABSTRACT NO. 26, THE ELISHA PRUETT SURVEY NO. 23, ABSTRACT NO. 376 AND THE AUGUSTUS BRITCHTA SURVEY, ABSRTACT NO. 517, AND BEING OUT OF THAT CERTAIN 23.77 ACRE TRACT OF LAND CONVEYED BY GENERAL WARRANTY DEED WITH VENDOR'S LIEN TO DACY LANE LLC., AS RECORDED IN DOCUMENT NO. 2011-11022936, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNNING at a ½ inch iron found lying in the southeast right-of-way line of Bebee Road also marking the southwest corner of that certain 23.77 acre tract of land conveyed by General Warranty Deed with Vendor's Lien to Dacy Lane LLC., as recorded in Document No. 2011-11022936, of the Deed Records of Hays County, Texas, said point marking the northwest corner of Blue Bonnet Estates Subdivision, and lying on a curve to the right, having an arc distance of 663.76 feet, a radius of 418.37 feet, a delta angle of 90°54'05", and a chord which bears North 69°50'07" East for a distance of 596.30 feet to a ½ inch iron rod found lying on the south right-of-way of Bebee Road, for an angle corner of this tract;

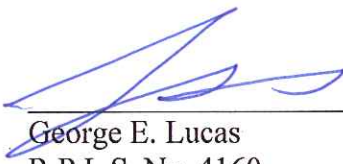
THENCE South 64°44'22" East, along the south right of way of Bebee Road and north line of this tract, a distance of 585.45 feet to a calculated point set marking the northwest corner of this tract;

THENCE departing said Bebee Road right-of-way South 08°15'38" West, a distance of 148.98 feet along the east line of this tract to a calculated point, for an angle corner of this tract;

THENCE South 25°15'38" West, along the east line of this tract a distance of 97.59 feet to a calculated point, for an exterior corner of this tract;

THENCE South 40°15'38" West, along the east line of this tract a distance of 257.72 feet to a calculated point lying on the north line of Thomas Survivor's Trust tract recorded in Volume 3811, Page 391 of the Deed Records the Hays County, Texas, marking the southeast corner of this tract;

THENCE North 61°02'58" West, along the south line of this tract and north line of the Thomas Survivor Trust Tract and Blue Bonnet Estates Subdivision, a distance of 982.91 feet a ½ inch iron rod found, for the southwest corner of this tract and POINT OF BEGINNING, containing 9.90 acres of land, more or less.



George E. Lucas
R.P.L.S. No. 4160
State of Texas
October 13, 2011



FIELD NOTE DESCRIPTION FOR A 5.45 ACRE TRACT OF LAND (TRACT 2):

BEING A TRACT OR PARCEL OF LAND, CONTAINING 5.45 ACRES, MORE OR LESS, SAID TRACT LYING IN PARTIALLY WITHIN THE AUGUSTA BRICHTA SURVEY, ABSTRACT NO. 517 AND ELISHA PRUETT SURVEY, NO. 23, ABSTRACT NO. 376, AND BEING OUT OF THAT CERTAIN 23.77 ACRE TRACT OF LAND CONVEYED BY GENERAL WARRANTY DEED WITH VENDOR'S LIEN TO DACY LANE LLC., AS RECORDED IN DOCUMENT NO. 2011-11022936, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

COMMENCING at a ½ inch iron found lying in the west right-of-way line of Dacy Lane also marking the southeast corner of that certain 23.77 acre tract of land conveyed by General Warranty Deed with Vendor's Lien to Dacy Lane LLC., as recorded in Document No. 2011-11022936, of the Deed Records of Hays County, Texas, said point marking the northeast corner of the Thomas Survivor's Trust tract recorded in Volume 3811, Page 391 of the Deed Records of Hays County, Texas, North 61°02'58" West, along the south line of said 23.77 Acre Tract and north line of said Thomas Survivor's Trust tract, a distance of 767.48 feet, to a calculated point, marking the southeast corner and POINT OF BEGINNING of this tract;

THENCE North 61°02'58" West, along the south line of this tract and north line of said Thomas Survivor's Trust, a distance of 457.14 feet to a calculated point marking the southwest corner of this tract;

THENCE North 40°15'38" East, along the west line of this tract, a distance of 257.72 feet to a calculated point, for an angle corner of this tract;

THENCE North 25°15'38" East, along the West line of this tract, a distance of 97.59 feet to a calculated point, for an angle corner of this tract;

THENCE North 08°15'38" East, along the west line of this tract, a distance of 148.98 feet to a calculated point, lying on the south right-of-way line of Bebee Road and north line of said 23.77 acre Dacy Lane LLC tract, for the northwest corner of this tract;


THENCE South 64°44'22" East, along the north line of this tract and south right-of-way of Bebee Road, a distance of 513.56 feet to a calculated point, for the northeast corner of this tract;

THENCE South 25°15'38" West, along the east line of this tract, a distance 335.06 feet to a calculated point for an angle corner of this tract;

THENCE North 64°44'22" West, along the east line of this tract, for a distance 67.19 feet to a calculated point lying on a curve to the right, for an angle corner of this tract;

THENCE along said curve to the right, an arc distance of 105.64 feet, said curve having a radius of 55.00 feet, a delta angle of $110^{\circ}02'55''$, and a chord which bears South $33^{\circ}43'03''$ West for a distance of 90.13 feet to calculated point, for an angle corner of this tract;

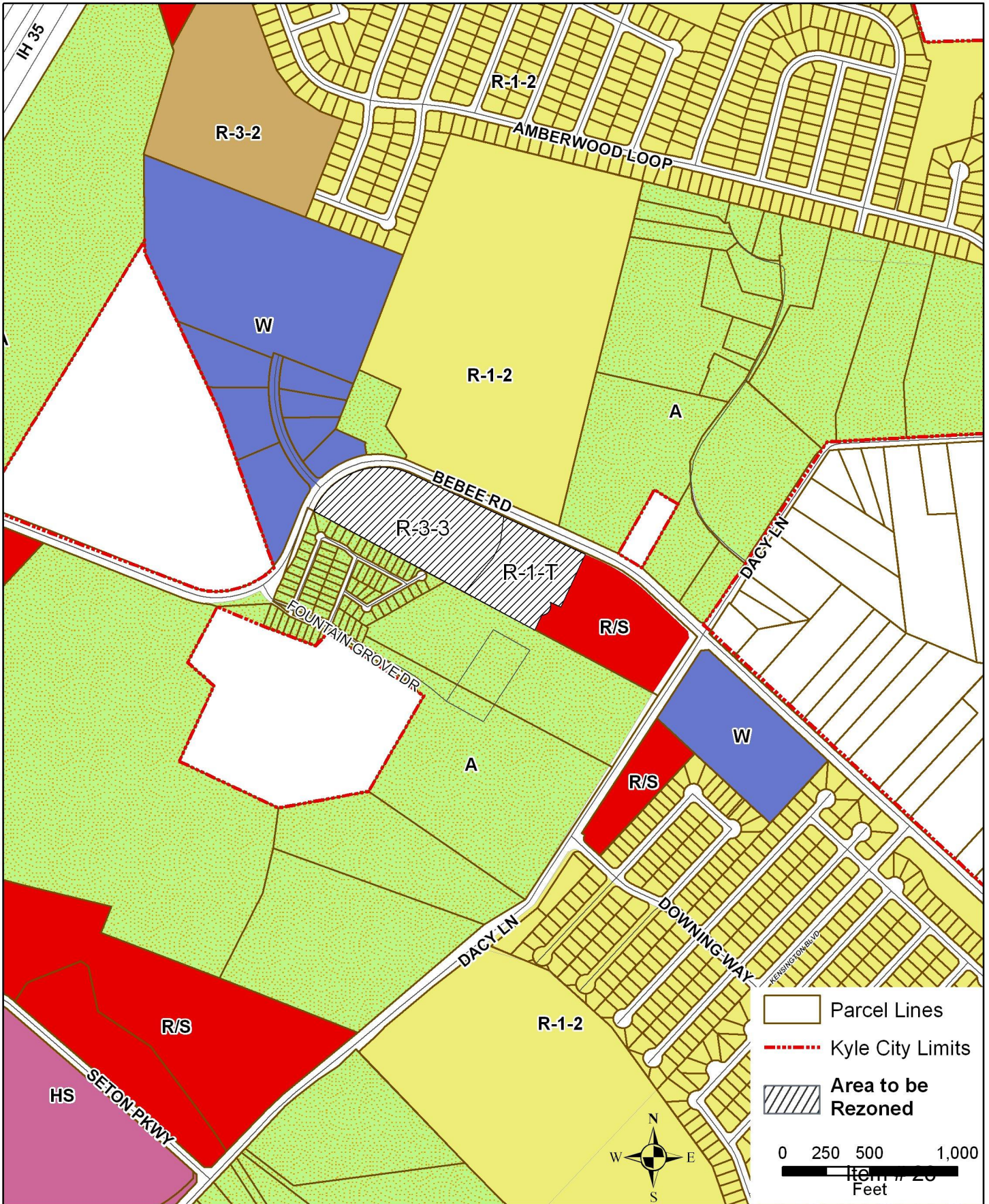
THENCE South $25^{\circ}15'38''$ West, along the east line of this tract, a distance of 93.23 feet to the POINT OF BEGINNING, containing 5.45 acres of land, more or less.



George E. Lucas
R.P.L.S. No. 4160
State of Texas
October 13, 2011



Exhibit B



November 29, 2011	<i>Planning and Zoning Commission</i>
Zoning	Dacy Lane, LLC.
Case Number: Z-11-012	

OWNER/APPLICANT: Dacy Lane, LLC.

AGENT: Hugo Elizondo, Jr., P.E.

LOCATION: Located on the south-side of Bebee Road and just west of Dacy Lane.

COUNTY: Hays County

AREA: 15.35 acres

PROPOSED CITY COUNCIL HEARINGS: December 6, 2011 ~ 1ST Reading
December 20, 2011 ~ 2ND Reading

EXISTING ZONING: Interim "A" Agricultural

All territory hereafter annexed to the City shall be automatically classified as Agricultural District "A", pending subsequent action by the Commission and Council for permanent zoning; provided that upon application, by either the City or the property owner of the land being annexed, for zoning other than Agricultural, notice may be given and hearings held in compliance with *Chapt. 211, Tex. Loc. Gov't. Code*, and, upon annexation, such property may be permanently zoned as determined by the City Council after considering the Commission's recommendation.

In an area temporarily classified as Agricultural District "A", no permits for the construction of a building or use of land other than uses allowed in said District under this Ordinance shall be issued by the City Building Official.

PROPOSED ZONING: R-3-3 (9.90 acres) and R-1-T (5.45 acres)

"R-3-3" Apartments Residential 3

Permits typical apartment development with buildings not exceeding three (3) stories, nor more than 28 units per buildable acre, and with apartments or units having a minimum living area of 500 square feet; provided that not more than twenty five percent (25%) of the units in any such apartment development or project shall have less than 750 square feet of living area.

"R-1-T" Residential Townhouse

Allows attached single-family structures with a minimum of 1,000 square feet of living area and permitted accessory structures. The single-family residences authorized in this zoning district are those generally referred to as townhouses. The permitted density shall not exceed 2,844 square feet. There shall be no more than ten (10) units per buildable acre of land.

November 29, 2011	<i>Planning and Zoning Commission</i>
Zoning	Dacy Lane, LLC.
Case Number: Z-11-012	

PUBLIC INPUT:

Minutes from the 11-29-11 P&Z meeting.

CONSIDER A REQUEST BY DACY LANE, LLC TO ASSIGN ORIGINAL ZONING OF ‘RS’ RETAIL SERVICES DISTRICT TO APPROXIMATELY 8.42 ACRES; ‘R-3-3’ APARTMENT RESIDENTIAL TO APPROXIMATELY 9.90 ACRES; AND ‘R-1-T’ RESIDENTIAL TOWNHOME TO APPROXIMATELY 5.45 ACRES ON PROPERTY LOCATED ON THE SOUTHSIDE OF BEBEE ROAD JUST WEST OF DACY LANE. (Z-11-012)

Sofia Nelson, Director of Planning presented the applicants request and recommended approval of the Retail Services and denial of the R-3-3 and R-1-T due to the following reasons:

- The density permitted and the standards applicable in the proposed zoning designation will not be appropriate under the current infrastructure capabilities.
- The proposed zoning change is inconsistent with the intent of the comprehensive master plan goals to ensure that land use and transportation plans are complementary so as not to overburden Kyle Thoroughfares.

Chairman Baese opened the public hearing at 7:16 p.m. and called for comments for or against the request by Dacy Lane, LLC. to assign original zoning of ‘RS’ Retail Services District to approximately 8.42 acres, ‘R-3-3’ Apartment Residential to approximately 9.90 acres and ‘R-1-T’ Residential Townhome to approximately 5.45 acres on property located on the southside of Bebee Road just west of Dacy Lane. (Z-11-012) Pete Munoz addressed the Commission with his concerns regarding this zoning request. He stated that he is concerned with all the traffic that this project will generate and that the road would need to be widened. He stated that he would like to see a nice retail space there, but thinks they should wait a little longer to develop. Chairman Baese closed the public hearing at 7:19 p.m.

Chairman Baese opened up discussion regarding the zoning request with staff and Hugo Elizondo Engineer and Roy Quintanilla applicant regarding the zoning request.

Vice-Chair Bellows moved to approve the request by Dacy Lane, LLC. to assign original zoning of ‘RS’ Retail Services District to approximately 8.42 acres, and to deny the request to assign original zoning of ‘R-3-3’ Apartment Residential to approximately 9.90 acres and ‘R-1-T’ Residential Townhome to approximately 5.45 acres on property located on the southside of Bebee Road just west of Dacy Lane. (Z-11-012) Commissioner Kay seconds the motion. All votes aye. Motion carried.

STAFF RECOMMENDATION:

The subject property is located at the intersection of Dacy Lane and Bebee Road. The property in its entirety is approximately 23 acres; however the applicant is seeking the following two zoning designations over the tract: R-3-3 (Multi-family Apartments) and R-1-T (Townhomes).

November 29, 2011	<i>Planning and Zoning Commission</i>
Zoning	Dacy Lane, LLC.
Case Number: Z-11-012	

The proposed rezoning site is located within the New Town Future Land Use District which has been identified to harness economic development potential and establish its position as the sustainable center of surrounding growth. This district is identified as an area where form and design are critical to ensuring transitions between neighboring uses.

Surrounding Zoning and Existing Land Use

	Zoning	Land Use
North	R-1-2 (Single Family Residential)	undeveloped
East	Warehouse	Dacy Lane
South	Agriculture	Mobile home subdivision
West	Warehouse	Bebee Road

The property along Bebee Road, between I-35 and Dacy Lane, is very rural in nature and is used agriculturally or remains undeveloped.

Staff has analyzed the request and is recommending approval of the request for the following reasons:

- The proposed change is consistent with the future land use map and the intent of the future land use designation.
- The uses permitted and the standards applicable in the proposed zoning designation will be appropriate in the immediate area.



CITY OF KYLE, TEXAS

City Managers Report

Meeting Date: 2/7/2012

Date time: 7:00 PM

Subject/Recommendation:

Update on Various Capital Improvement Projects, Road Projects, Building Program, and/or General Operational Activities ~ *Lanny Lambert, City Manager*

- Discussion of Installation of Emergency Panic Buttons at City Hall

Other Information:

Budget Information:

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