



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, APRIL 18, 2019 AT 1:00 P.M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN ST.
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Councilmember Goss**
- 3. Special Presentation**
 - **Life Saving Award Presented to Brenham Police Department Corporal Kejan Mehlhorn**
- 4. Special Recognition - Police Department Promotion**
 - **Sierra Newell, Corporal**
- 5. Citizens Comments**

CONSENT AGENDA

6. Statutory Consent Agenda

The Statutory Consent Agenda includes non-controversial and routine items that Council may act on with one single vote. A councilmember may pull any item from the Consent Agenda in order that the Council discuss and act upon it individually as part of the Regular Agenda.

- 6-a. Minutes from the March 21, 2019 Regular City Council Meeting and March 21, 2019 Special City Council Meeting**
Pages 1-13
- 6-b. Ordinance No. O-19-014 on Its Second Reading Amending Chapter 12, Health and Sanitation, of the Code of Ordinances of the City of Brenham, Regarding Use of Tobacco at City-Owned Facilities**
Pages 14-16

WORK SESSION

7. **Discuss and Review the FY2018-19 First Quarter Financial Report** **Pages 17-27**
8. **Discussion and Presentation Related to the Possible Amendment of Chapter 27, Vehicles for Hire, of the Code of Ordinances of the City of Brenham** **Pages 28-35**

REGULAR SESSION

9. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Part II, Division 1, Section 18 to Establish Exterior Construction Materials for Selected Zoning Districts in Brenham, Washington County, Texas (Case No. P-19-001)**
Pages 36-51
10. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 8½, Flood Damage Prevention, of the Code of Ordinances of the City of Brenham**
Pages 52-98
11. **Discuss and Possibly Act Upon a Master Services Agreement Between the City of Brenham and Tempest, Inc. for Customer Relationship Management (CRM) Software for Visit Brenham and Authorize the Mayor to Execute Any Necessary Documentation**
Pages 99-117
12. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Providing for a No Parking Zone on the West Side of Green Street Between College Avenue and W. Third Street**
Pages 118-123
13. **Administrative/Elected Officials Report**

Administrative/Elected Officials Reports: Reports from City Officials or City staff regarding items of community interest, including expression of thanks, congratulations or condolences; information regarding holiday schedules; honorary or salutory recognitions of public officials, public employees or other citizens; reminders about upcoming events organized or sponsored by the City; information regarding social, ceremonial, or community events organized or sponsored by a non-City entity that is scheduled to be attended by City officials or employees; and announcements involving imminent threats to the public health and safety of people in the City that have arisen after the posting of the agenda.

Adjourn

Executive Sessions: The City Council for the City of Brenham reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 – Consultation with Attorney, §551.072 – Real Property, §551.073 – Prospective Gifts, §551.074 - Personnel Matters, §551.076 – Security Devices, §551.086 - Utility Competitive Matters, and §551.087 – Economic Development Negotiation

CERTIFICATION

I certify that a copy of the April 18, 2019 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on April 15, 2019 at **12:50 PM**.

Kacey A. Weiss, TRMC

Deputy City Secretary I

Disability Access Statement: This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.
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I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2019 at _____ AM PM.

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on March 21, 2019 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Andrew Ebel
Councilmember Susan Cantey
Councilmember Danny Goss
Councilmember Keith Herring
Councilmember Albert Wright
Councilmember Clint Kolby

Members absent:

None

Others present:

City Manager James Fisher, City Attorney Cary Bovey, City Secretary – Director of Administrative Services Jeana Bellinger, Deputy City Secretary I Kacey Weiss, Deputy City Secretary II Karen Stack, Comptroller Stacy Hardy, Director of Human Resources Susan Nienstedt, Director of Tourism and Marketing Jennifer Eckermann, Fire Chief Ricky Boeker, Public Works Director Dane Rau, Assistant City Manager of Public Utilities Lowell Ogle, Development Services Director Lori Sanguedolce, Stephanie Doland, Kim Hodde, Dant Lange and Caz Muske

Citizens present:

Samantha Medve, Sally Clinton, Brandon Marth, Anthony Smith, Charlie Pyle, Lynnette Sheffield, Adonna Saunders, Barbara Ross and Paul Ehlert

Media Present:

Arthur Hahn, Brenham Banner Press; and Josh Blaschke, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Attorney Cary Bovey**

3. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

4. Statutory Consent Agenda

- 4-a. Ordinance No. O-19-013 on Its Second Reading Amending the Official Zoning Map of the City of Brenham, to Change the Zoning District of a 2.539 Acre Tract of Land, Part of the John Long Survey, A156, in Brenham, Washington County, Texas from a Mixed Residential Use (R-2) District to a Commercial Research and Technology Use (B-2) District (Case No. P-19-006)**
- 4-b. Approve a Noise Variance for Jesus Christ is the Answer for a Church Gathering to be Held on April 12, 2019 from 7:00 p.m. – 10:00 p.m. at Fireman's Park and Authorize the Mayor to Execute Any Necessary Documentation**
- 4-c. Approve a Noise Variance for Covenant Praise Center Church for an Outreach Event to be Held on April 14, 2019 from 10:00 a.m. – 1:00 p.m. at Fireman's Park and Authorize the Mayor to Execute Any Necessary Documentation**

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve the Statutory Consent Agenda Items 4-a., 4-b. and 4-c. as presented.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

WORK SESSION

5. Discussion and Presentation Related to the Renewal of the Microsoft Enterprise Agreement Between the City of Brenham and Microsoft Corporation

Information Technology Manager Kevin Schmidt presented this item. Schmidt explained that the Microsoft Enterprise Agreement (MEA) is a three-year contract allowing the City to

maintain the usage of Microsoft software and licenses. Schmidt stated that this is the 4th renewal of the original MEA, which was signed in 2007. Schmidt advised that this renewal is unique in that it will shift the City from on-premise Microsoft Office licensing to Office 365 subscriptions.

PUBLIC HEARING

6. Public Hearing to Consider Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham to Amend Part II, Division 1, Section 18 to Establish Exterior Construction Materials for Selected Zoning Districts in Brenham, Washington County, Texas (Case No. P-19-001)

Mayor Tate opened the Public Hearing.

Assistant Director of Development Services Stephanie Doland presented this item. Doland explained that this is the public hearing for a City initiated request to amend the City of Brenham’s Code of Ordinances, Appendix A, Section 18 to establish minimum non-metal façade requirements on residential uses in selected zoning districts. Doland stated that currently the City of Brenham does not regulate exterior construction materials (façade) for properties developed within the City Limits. Doland advised that staff finds that metal façade dwellings, specifically those built with a 100% metal façade, are not compatible adjacent to or within established neighborhoods built primarily of brick, stone, or other non-metallic façades.

Doland stated that on January 28, 2019 City Staff recommended an amendment to the Brenham Planning and Zoning Commission which would prohibit the use of a metal façade on residential uses and accessory structures 120 square feet or greater. Staff received the following feedback from the Commission prior to the item being tabled for consideration:

- complete prohibition of metal may be too restrictive;
- 120 square foot limitation is too restrictive on accessory structures; and
- proposed ordinance may not resolve the issue.

Doland explained that on February 25, 2019 the Planning and Zoning Commission considered the following revised ordinance:

- Require a minimum 75% non-metal façade on exterior wall surfaces facing the right-of-way
- Require a minimum 50% non-metal façade on exterior wall surfaces not facing the right-of-way
- Non-metal façade shall mean brick or brick veneer, stone or stone veneer, stucco, wood, vinyl, or fiber-cement siding or for this section wood or fiber cement like exterior or finish will be considered non-metal façade
- Shall apply to the R-1: Residential Single Family, R-2: Mixed Residential, and B-1: Local Business/Residential Mixed Use District

- Property less than 1 acre in size containing accessory structures 160 square feet or greater in area shall be constructed with at least 50% non-metal façade on each wall or elevation, excluding windows and doors.

Doland advised that during the Public Hearing portion of the meeting on January 28, 2019, two citizens spoke in opposition of the proposed amendment and following the hearing the Commission voted to table the item. During the February 25, 2019 meeting, four citizens spoke in favor and two citizens spoke in opposition of the proposed ordinance. On February 25, 2019, the Planning and Zoning Commission voted unanimously to recommend approval of the ordinance with the following modifications:

- 50% non-metal façade on exterior wall surfaces facing the right-of-way
- 25% non-metal façade on exterior side wall surfaces not facing the right-of-way
- 0% non-metal façade on exterior rear wall surfaces not facing the right-of-way
- No non-metal façade requirements on accessory structures

Councilmember Cantey stated that this could be the beginning of what could be an awful event happening in our town and she is totally against allowing metal façades in Brenham.

Councilmember Herring advised that he is not happy with any of the recommendations and thinks staff needs to look into it further.

Councilmember Kolby noted that he likes the Planning and Zoning Commission's recommendation.

Mayor Pro Tem Ebel stated that he was not in favor of it.

Councilmember Wright advised that he was against it.

Councilmember Goss noted that he is against the Planning and Zoning Commission's recommendation.

Mayor Tate explained that staff needs to look at the percentages and there should be some type of requirement that would include landscaping.

Samantha Medve, owner of the metal homes, addressed Council. Medve explained that residents are looking for affordable homes and metal provides affordable housing options. Medve stated she understands that staff is trying to preserve the look of homes, but feels there is more of a need for affordable housing.

Citizen Lynnette Sheffield stated that she wants to preserve the integrity of the homes and neighborhoods, but reiterated there is a need for affordable housing.

Citizen Sally Clinton, a resident on S. Dixie Street, read a letter to Council. Clinton asked that Council design an ordinance to restrict these types of homes in residential areas.

Citizen Brandon Marth advised Council that he feels it is not ethical for others to give their opinions on what people's homes look like. Marth stated that he is not in favor of percentages and suggested that metal homes be required to add shutters, steeper roof pitches, etc.

Citizen Anthony Smith, a resident at 304 S. Dixie Street, stated that he is disappointed with the look of the homes.

Mayor Tate closed the Public Hearing.

REGULAR SESSION

7. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Part II, Division 1, Section 18 to Establish Exterior Construction Materials for Selected Zoning Districts in Brenham, Washington County, Texas (Case No. P-19-001)

City Manager James Fisher stated that this item would be referred back to the Council sub-committees and assured everyone that it would be on the agenda no later than the second meeting in April.

A motion was made by Councilmember Cantey and seconded by Councilmember Herring to table item 7.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

8. Discuss and Possibly Act Upon a Request for a Noise Variance in Connection with the 2019 Downtown Spring Concert (Cool Nights, Hot Tunes) to be Held from 2:30 p.m. to Midnight on April 13, 2019 and Authorize the Mayor to Execute Any Necessary Documentation

Main Street Manager Caz Muske presented this item. Muske explained that the City of Brenham Main Street program submitted a request for a Noise Variance for the spring concert this year. Muske stated that the date and time included is Saturday, April 13, 2019 from 2:30 p.m. (when sound set-up begins) to Midnight. Muske advised that the concert would have a live band using a sound amplification system.

A motion was made by Councilmember Kolby and seconded by Mayor Pro Tem Ebel to approve a request for a noise variance in connection with the 2019 Downtown Spring Concert (Cool Nights, Hot Tunes) to be held from 2:30 p.m. to Midnight on April, 13, 2019 and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

9. Discuss and Possibly Act Upon Resolution No. R-19-010 Authorizing Execution of an Agreement with TxDOT for the Temporary Closure of State Right-of-Way in Connection with the 2019 Downtown Spring Concert (Cool Nights, Hot Tunes) to be Held on April 13, 2019

Main Street Manager Caz Muske presented this item. Muske explained that Cool Nights, Hot Tunes, is hosted by the City of Brenham and sponsored by local businesses. Muske advised that the concert is April 13, 2019 from 7:00 p.m. – 10:30 p.m. Muske noted that one lane of Alamo Street between Park Street and St. Charles Street would close at 2:30 p.m. for stage setup followed by both lanes of Alamo Street closing between Austin Street and Market Street from 4:30 p.m. to midnight or until the stage is removed.

A motion was made by Councilmember Cantey and seconded by Councilmember Wright to approve Resolution No. R-19-010 authorizing execution of an agreement with TxDOT for the temporary closure of state right-of-way in connection with the 2019 Downtown Spring Concert (Cool Nights, Hot Tunes) to be held on April 13, 2019.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

10. Discuss and Possibly Act Upon a Bid for City of Brenham Project No. 2017-03 Related to the 2017 Schulte Boulevard Storm Damage Repairs and Authorize the Mayor to Execute Any Necessary Documentation

Development Services Director Lori Sanguedolce presented this item. Sanguedolce explained that during the May 2016 flood event, DR-4272 the Schulte Boulevard experienced severe erosion at two culvert crossings. Sanguedolce advised that this project was submitted to FEMA as part of the damage inventory and is considered an eligible project under the disaster declaration DR-4272. Sanguedolce noted that this project is funded at a 75/25 cost share.

A motion was made by Councilmember Wright and seconded by Councilmember Cantey to approve a bid for City of Brenham Project No. 2017-03 to Solid Bridge Construction, LLC, in the amount of \$75,612.50, related to the 2017 Schulte Boulevard Storm Damage Repairs and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

11. Discuss and Possibly Act Upon a Ground-Space Lease Agreement with RIGA Aviation, LLC for Hangar Space at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

Planning Technician Kim Hodde presented this item. Hodde stated that RIGA Aviation, LLC (Rick Doak) would like to construct a new 60x60 hangar at 3405 Aviation Way. Hodde advised that Mr. Doak's total lease space would be 7,200 square feet. Hodde noted that the lease agreement is the City's standard ground-space lease for \$0.08 cents per square foot and the lease rate may increase up to \$0.02 per square foot in a five-year period as the prevailing rates change.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve a Ground-Space Lease Agreement with RIGA Aviation, LLC for hangar space at the Brenham Municipal Airport and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

12. Discuss and Possibly Act Upon the Termination and Release of a Right-of-Way Easement, Dated November 5, 1997 from Blinn College to the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher explained that on January 14, 2019, the City received a request from the Brenham Cemetery Association to release the easement across their property that was granted to the City back in 1997 for the possible future extension of Saeger Street.

Fisher stated that staff met with representatives from Blinn College to discuss how the extension of Saegar Street would affect traffic in and around the College. Fisher noted that after further discussion, it was determined that an extension of Saeger Street would not divert traffic away from the Blinn campus; therefore, it would be beneficial to the College. Fisher advised that staff is recommending the termination and release of this right-of-way.

Fisher stated that the timeframe to complete the expansion is November 2022.

A motion was made by Councilmember Cantey and seconded by Councilmember Kolby to approve the Termination and Release of a Right-of-Way Easement, Dated November 5, 1997 from Blinn College to the City of Brenham and authorize the Mayor to execute any necessary documentation.

Councilmember Goss questioned why staff wants to terminate the easement now when staff is in the process of working on a thoroughfare plan. Goss stated that he thinks Council should wait for the thoroughfare plan to be completed before making any decisions. Assistant Director of Development Services Stephanie Doland stated that the thoroughfare plan is on the same schedule as the comprehensive plan and that is proposed for adoption in the fall of this year.

Paul Ehlert, representing the Brenham Cemetery Association, addressed Council. Ehlert stated that the cemetery association wants to extend the cemetery and needs the property to do so.

A motion was made by Councilmember Goss and seconded by Councilmember Herring to table item 12.

Mayor Tate called for a vote. The motion failed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	No
Councilmember Susan Cantey	No
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	No
Councilmember Clint Kolby	No

Mayor Tate called for a vote on the main motion to approve the Termination and Release of a Right-of-Way Easement, Dated November 5, 1997 from Blinn College to the City of Brenham and authorize the Mayor to execute any necessary documentation.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	No
Councilmember Keith Herring	No
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

13. **Administrative/Elected Officials Report**

City Manager James Fisher reported on the following:

- American Legion's 100th Anniversary Celebration is tonight at 6:30 p.m.
- Spring Clean Up will be today through March 23rd for city residents and April 25th through 27th for county residents
- State of the Community Forum is March 27th from 11:00 a.m. to 1:00 p.m. at the Blinn Student Center
- Employee picnic will be April 9th from 11:00 a.m. to 2:00 p.m. at the All Sports Building
- Cool Nights, Hot Tunes will be April 13th
- Will be considering the Washington County Hazard Mitigation Plan at the April 4th Council meeting

Council adjourned into Executive Session at 2:28 p.m.

EXECUTIVE SESSION

14. Section 551.072 – Texas Government Code – Deliberation Regarding Real Property – Discussion Regarding the Possible Acquisition of Real Property in the Downtown Area

Executive Session adjourned at 2:52 p.m.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Brenham City Council Minutes

A special meeting of the Brenham City Council and Washington County Commissioners Court was held on March 21st beginning at 3:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

City of Brenham City Council Members present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Andrew Ebel
Councilmember Susan Cantey
Councilmember Keith Herring
Councilmember Albert Wright
Councilmember Clint Kolby

Members absent:

Councilmember Danny Goss

Washington County Commissioners Court Members present:

Judge John Durrenberger
Kirk Hanath
Don Koester
Joy Fuchs
Candice Bullock

Members absent:

None

Others present:

City Manager James Fisher, Deputy City Secretary I Kacey Weiss, Deputy City Secretary II Karen Stack, Director of Tourism and Marketing Jennifer Eckermann, Fire Chief Ricky Boeker, Public Works Director Dane Rau, Assistant City Manager of Public Utilities Lowell Ogle, Development Services Director Lori Sanguedolce, Susan Cates, Melinda Gordon and Caz Muske

Citizens present:

Ross McCall, James Brown, Brent Smith, Tom Whitehead, Doug Marino, Allison Kurwitz, Steve Higgins and Chad Bohne

Media Present:

Arthur Hahn, Brenham Banner Press; and Josh Blaschke, KWHI

1. **Call Meeting to Order**
2. **Invocation and Pledges to the US and Texas Flags – Mayor Pro Tem Ebel**

WORK SESSION

3. **Discussion and Presentation of the Texas Department of Transportation (TxDOT) Regarding Future Transportation Needs in Washington County and the City of Brenham, and Associated Issues**

Development Services Director Lori Sanguedolce presented this item. Sanguedolce introduced Doug Marino, Director of Transportation Planning and Development from the Bryan District of TxDOT. Marino introduced Allison Kurwitz, Planning Engineer, and Chad Bohne, Deputy District Engineer. Marino explained that this discussion would address the interchange at U.S. Highway 290 and State Highway 36.

Marino discussed the meeting overview:

- Why are we here? Kickoff the project development – collaborate with local officials
- Project Background – Discuss project constraints, needs and goals
- Concepts Overview – Share preliminary concepts
- Next Steps and Timeline – Project development process
- Open Discussion and Questions – Show expanded view of concepts and gain as much feedback as possible

Kurwitz stated that the main needs of this project are to reduce congestion, improve safety and maintain connectivity. Kurwitz explained that the project goals include adding travel lanes, modernizing design, providing ramp connections to local roads, as well as to minimize the impact to adjacent properties.

Kurwitz explained that three concepts were developed: Concept A: a diverging diamond interchange, Concept B: a southern direct connect and Concept C: a split, northern direct connect.

Kurwitz stated that the diverging diamond interchange is highly efficient in traffic handling, maintains a similar footprint as existing, there is no change to connectivity, includes traffic signals and impacts businesses on U.S. Highway 290.

Kurwitz advised that the southern direct connect provides U.S. Highway 290 direct connection (no exit), has a medium sized right-of-way footprint, impacts businesses on U.S. Highway 290 and impacts landowners. Kurwitz added that the connectivity is maintained, but does change. Marino stated that this concept would be a better approach.

Kurwitz explained that the split, northern connection provides U.S. Highway 290 with a direct connection (exit, no stop), is the largest right-of-way footprint, impacts business on U.S. Highway 290 and impacts landowners. Kurwitz noted that the connectivity is maintained, but does change. Marino said construction and cost would be of the biggest concern with this design.

Marino stated the next steps and timeline include:

- Review feedback
- Continue evaluating and refining concepts
- Develop outreach plan and identify stakeholders
- Determine alternatives
- Hold public meetings
- Select and develop final design
- Tentative start of construction: 2025

Councilmembers asked numerous questions about each concept and leaned toward the southern direct connection. Marino stated that design is the most traditional one and would be beneficial from an economic standpoint, as it would open access points. Marino added that TxDOT would be responsible for a large portion of the compensation to affected landowners.

Kurwitz explained that these concepts would continually be revised based on feedback from the public, as well as several more meetings with stakeholders.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Kacey A. Weiss, TRMC
Deputy City Secretary I

ORDINANCE NO. O-19-014

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING CHAPTER 12, HEALTH AND SANITATION, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALER CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING OF PROPER NOTICE AND MEETINGS.

WHEREAS, pursuant to Texas Local Government Code, Section 51.001, the City of Brenham, Texas (“City”) has the authority to adopt ordinances and regulations that are for good government, peace and order of the City; and

WHEREAS, the City Charter of the City of Brenham authorizes the City to regulate health and sanitation within the City; and

WHEREAS, the City Council finds that the regulation of health and sanitation of the City by the enactment of this Ordinance promotes the health, safety and general welfare of the public; and

NOW, THEREFORE, be it ordained by the City Council of the City of Brenham, Texas that:

SECTION 1.

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2.

The Code of Ordinances, City of Brenham, Texas, Chapter 12, Health and Sanitation, Section 12-57, Definitions, is hereby amended by adding the following definitions to read as follows:

Sec. 12-57. Definitions.

Electronic smoking device means any device containing or delivering nicotine or any other substance that can be used by a person to simulate smoking. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, tank system, or advanced personalized vaporizer (APV), or under any other product name or descriptor.

Smoke or *smoking* means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, hookah or pipe, or any other lighted or heated tobacco or plant product, whether natural or synthetic, in any manner or in any form. *Smoking* also include the use of an electronic smoking device as defined herein, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this article.

Tobacco means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

SECTION 3.

The Code of Ordinances, City of Brenham, Texas, Chapter 12, Health and Sanitation, Section 12-58, Application of article to city-owned facilities, is hereby amended to read as follows:

Sec. 12-58. Application of article to city-owned facilities.

The use of tobacco in any manner, including but not limited to smoking, shall be prohibited in all city-owned facilities; vehicles owned, leased, or operated by the city; and all city parks and associated grounds and facilities including, but not limited to, enclosed and outdoor sports arenas, dugouts, bleachers, playing fields, playgrounds, flower gardens, trails (hiking and biking), walking paths and skate parks.

SECTION 4. **SAVINGS CLAUSE**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5. **SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6.
REPEALER

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 7.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 8.
PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meetings at which this ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED, on its first reading this the 4th day of April, 2019.

PASSED AND APPROVED, on its second reading this the 18th day of April, 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



AGENDA ITEM 7

DATE OF MEETING: April 18, 2019	DATE SUBMITTED: April 15, 2019	
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☐ REGULAR ☒ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Review the FY2018-19 First Quarter Financial Report		
SUMMARY STATEMENT: See attached Financial Performance Report and Financial Statements for General Fund and Five Utility Funds		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) FY2018-19 First Quarter Financial Report from CFO; and (2) Financial Performance Reports for General Fund and Five Utility Funds		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION:		
APPROVALS: James Fisher		



MEMORANDUM

To: Mayor, Council and City Manager

From: Carolyn D. Miller, Assistant City Manager – Chief Financial Officer
Debra D. Gaffey, Strategic Budget Officer

Subject: FY2018-19 First Quarter Financial Report

Date: April 18, 2019

The Finance Division is pleased to provide financial performance reports for the period ending December 31, 2018. The General Fund (excluding sub-funds) and the five major utility funds are presented. All financials include comparisons of first quarter actual results versus first quarter prior year and budget. In addition, first quarter actual results are compared to the original and amended annual budget. Electric and Gas Funds are presented without the impact of wholesale power and gas commodity costs which are recovered by pass-thru revenue.

Actual to Budget Comparison

The General Fund and four of the five utility funds experienced *favorable actual to budget net revenues* for the first quarter. The Water Fund experienced *unfavorable actual to budget net revenues* due to lower consumption driven revenues caused by an unusually rainy, wet winter. We have budgeted and actual net losses in some funds due to the mismatch between revenue recognition and expenditures. Revenues in some utility funds are stronger in the summer (electric and water), while the General Fund expenditures in the first quarter were higher due to liability/casualty insurance renewals and generator replacement at the Airport.

FINANCIAL PERFORMANCE SUMMARY

Fund	For Period Ending December 31, 2018				
	YTD Revenues & Other Sources	YTD Expenditures & Other Uses	Actual Net Revenues (Loss)	Budgeted Net Revenues (Loss)	Actual to Budget Comparison Fav/(Unfav)
General	\$4,233,367	\$4,424,514	(\$191,147)	(\$210,540)	\$19,392
Electric Distribution	\$1,669,143	\$1,708,681	(\$39,537)	(\$52,186)	\$12,649
Gas Distribution	\$376,010	\$372,749	\$3,261	(\$22,619)	\$25,880
Water	\$926,434	\$897,712	\$28,723	\$166,142	(\$137,419)
Wastewater	\$972,876	\$927,811	\$45,065	\$36,481	\$8,584
Sanitation	\$884,079	\$693,441	\$190,637	\$128,697	\$61,939

GENERAL FUND

The General Fund posted actual net first quarter loss of (\$191,147), compared to a budgeted net first quarter loss of (\$210,540). Total revenues and other sources were less than budget projections by (\$78,977). Contributing to this revenue shortfall were:

- Lower than budget projected traffic and court fine revenue of (\$42,580) associated with reduced traffic enforcement due to vacant positions;
- Lower than budget projected utility franchise fee revenue of (\$18,939) due to lower electric and water consumption; and
- Lower than budget projected sales tax revenue of (\$16,755).

There is some rebound potential in franchise fees should weather conditions turn hot and dry. In addition, January's and February's sales tax were strong and if sustained, could help mitigate this budget revenue shortfall. While traffic enforcement has picked up beginning in February, recovery of traffic and court fine revenue lost earlier in the year is unlikely.

First quarter operating expenditures were at 24.4% of budget; and favorable (lower) than budget appropriations by \$98,370.

- Personnel costs were \$103,122 favorable (lower) than budget due to turnover and vacancies;
- Supplies were (\$25,773) unfavorable to budget with (\$14,662) of the overage in fuel costs and smaller overages in IT/computer supplies, office supplies, and janitorial supplies;
- Maintenance expenses were \$67,671 favorable (lower) than budget primarily due to a timing variance in the pool repairs at the Aquatics Center;
- Service expenses were \$28,764 favorable (lower) than budget due to timing variances in city attorney's fees and other service contract payments;
- Non-capital costs were \$34,500 favorable (lower) than budget due to a timing variance for the purchase of downtown bollards which is being partially funded through a LCRA grant;
- Capital costs were (\$28,993) unfavorable to budget due to the prior year carryover of the airport generator replacement which is partially offset by associated RAMP revenues this year; and
- Sundries were over budget by (\$80,922) due to overages in seminars and travel, liability/casualty insurance, (unbudgeted) staff/council retreat and the (unbudgeted) board appreciation reception.

During the first quarter, a budget amendment of \$425,000 was approved for the purchase of police vehicles. The purchase will be recorded as an expenditure in the Equipment Fund, which is a sub-fund to the General Fund, with monies transferred out of excess General Fund reserves for the purchase.

ELECTRIC FUND

The Electric Distribution Fund posted an actual net first quarter loss of (\$39,537) which was \$12,649 favorable to the budgeted net first quarter loss of (\$52,186). Highlights for the first quarter:

- Revenues from charges for services were lower than budget by (\$36,643) due to lower than budget kWh consumption;
- Department operating expenditures were favorable (lower) to budget by \$47,668 with over 40% of the savings coming from gross revenue tax (franchise fees);
- Debt service for the Copper Replacement Project tracked budget; and

- Transfers to the General Fund were slightly ahead of budget due to heavier first quarter spending in General Fund shared service departments.

Key Electric Fund infrastructure projects for the first quarter included:

- ✓ Annual pole change-outs
- ✓ Installation of auto protection devices
- ✓ Improvements to system automation
- ✓ Blinn College Loop Feed
- ✓ Blinn Sports Complex
- ✓ 2315 S. Market St.
- ✓ Silver Sage
- ✓ Jack-In-The-Box
- ✓ Annual service installs and replacements (lines, meters and transformers)

GAS FUND

For the first quarter, the Gas Distribution Fund posted actual net revenues of \$3,261 which was favorable by \$25,880 to a budgeted first quarter net loss of (\$22,619). Highlights for the first quarter:

- Revenues from charges for services were higher than budget by \$32,308 as mcf consumption was higher than budget;
- Department operating expenditures were unfavorable (higher) to budget by (\$10,363) because gross revenue tax (franchise fees) were higher on higher revenues;
- The Gas Fund has no debt service; and
- Transfers to the General Fund and Electric Fund closely tracked budget.

Key Gas Fund infrastructure projects for the first quarter included:

- ✓ Poly valve additions to enhance system reliability and safety
- ✓ 290 West & Sealy replacement
- ✓ Prairie Lea Main Extension
- ✓ Annual service installs and replacements (lines, meters and regulators)

WATER FUND

The Water Fund experienced suppressed revenues due to very wet winter conditions. First quarter actual net revenues of \$28,723 were unfavorable to budget net revenues of \$166,142 by (\$137,419). Highlights for the first quarter:

- Revenues from charges for services were (\$154,019) lower than budget;
- Department operating expenditures were favorable (lower) to budget by \$14,424 with savings of \$11,071 in gross revenue tax (franchise fees);
- Debt service (pro-rated) tracked budget; and
- Transfers-out to the General Fund and the Electric Fund for shared service cost reimbursements were slightly favorable to budget by \$2,056.

Key Water Fund infrastructure projects for the first quarter included:

- ✓ AC/CI water line replacements (contractor)
- ✓ Raw water intake/Gabions (FEMA)
- ✓ Cedar/Sandy/Mary Gene water line replacement

- ✓ Vintage Farms water line
- ✓ Annual new services (lines and meters)

WASTEWATER FUND

First quarter net revenues for the Wastewater Fund were \$45,065 and were \$8,584 favorable to first quarter budget net revenues of \$36,481. Highlights for the first quarter:

- Revenues from charges for services were \$6,413 over budget estimates;
- Operating expenditures were unfavorable to budget by (\$13,845), driven by liability/property insurance expenses which were (\$11,176) unfavorable to budget;
- Debt service (pro-rated) tracked budget; and
- Transfers-out to the General Fund and the Electric Fund for shared service cost reimbursements were slightly favorable to budget by \$1,180.

Key Wastewater Fund infrastructure projects for the first quarter included:

- ✓ Storm Damage Repair at Plant [Hazard Mitigation Grant Program] (HMGP)
- ✓ Munz Lift Station (HMGP)
- ✓ Ralston Creek Lift Station (HMGP)
- ✓ Emergency Generators (HMGP)

SANITATION FUND

The combined operations of the Sanitation Fund posted actual first quarter net revenues of \$190,637, compared to budget net revenues of \$128,697, a favorable variance of \$61,939. Highlights for the first quarter:

- Revenues from charges for services were \$16,989 higher than budget estimates because of better than expected Transfer Station and Collection Station revenues which offset lower Recycling Center revenues;
- Revenues from Residential and Commercial Collection tracked closed to budget projections;
- Operating expenditures were favorable to budget by \$8,773; and
- Transfers-out to the General Fund and the Electric Fund for shared service cost reimbursements tracked close to budget.

CONCLUSION

With the exception of the Water Fund, all funds experienced favorable actual first quarter net revenues relative to budget. Stronger General Fund revenues are needed in the second and third quarters to help offset unforeseen expenditures and create the customary budget surplus/ABNR for next year's capital.

After you have reviewed this quarterly financial performance report, should you have any questions or comments prior to the council meeting, please do not hesitate to contact Lowell Ogle, Debbie Gaffey or me directly.

NOTE: The financial performance reports for the General Fund and five utility funds are attached to this memorandum, and are an integral part of the quarterly financial performance report.

CITY OF BRENHAM
FY19 1ST QUARTER RESULTS (BUDGETARY BASIS)

FUND 101 - GENERAL FUND FINANCIAL STATEMENT

IN \$	YTD		FY19 ACT FAV/(UNFAV) TO			ANNUAL FY19 BUDGET		FY19 YTD ACT AS % OF	
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
REVENUES									
TAXES	2,872,657	2,946,338	2,910,241	37,584	(36,097)	12,270,841	12,270,841	23.7%	23.7%
LICENSES AND PERMITS	33,981	40,495	32,787	(1,194)	(7,707)	152,241	152,241	21.5%	21.5%
INTERGOVERNMENTAL	25,952	51,746	66,247	40,294	14,501	337,176	337,176	19.6%	19.6%
CHARGES FOR SERVICES	83,714	86,632	85,216	1,502	(1,417)	573,308	573,308	14.9%	14.9%
FINES AND FORFEITURES	167,611	155,883	113,303	(54,308)	(42,580)	779,963	779,963	14.5%	14.5%
INVESTMENT INCOME	1,410	8,851	6,909	5,499	(1,941)	81,000	81,000	8.5%	8.5%
PAYMENT FROM COMPONENT UNIT	-	-	-	-	-	166,500	166,500	0.0%	0.0%
CONTRIBUTIONS AND DONATIONS	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS	41,569	25,020	25,346	(16,223)	326	217,266	217,266	11.7%	11.7%
TOTAL REVENUES	3,226,894	3,314,964	3,240,048	13,154	(74,916)	14,578,295	14,578,295	22.2%	22.2%
EXPENDITURES									
CURRENT:									
CULTURE AND RECREATION	650,326	815,563	724,233	(73,906)	91,330	3,449,104	3,417,104	21.0%	21.2%
GENERAL GOVERNMENT	1,518,451	1,625,132	1,629,430	(110,979)	(4,298)	6,198,186	6,198,186	26.3%	26.3%
HEALTH AND WELFARE	109,566	133,703	124,342	(14,776)	9,361	588,089	588,089	21.1%	21.1%
HIGHWAYS AND STREETS	266,076	382,726	318,865	(52,790)	63,861	1,281,645	1,281,645	24.9%	24.9%
PUBLIC SAFETY	1,531,323	1,515,161	1,548,052	(16,729)	(32,891)	6,434,073	6,434,073	24.1%	24.1%
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	-	-	-	-	-	-	-	0.0%	0.0%
PRINCIPAL RETIREMENT	-	-	-	-	-	-	-	0.0%	0.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
CAPITAL OUTLAY	17,670	50,600	79,593	(61,923)	(28,993)	202,700	234,700	39.3%	33.9%
TOTAL EXPENDITURES	4,093,412	4,522,884	4,424,514	(331,103)	98,370	18,153,797	18,153,797	24.4%	24.4%
EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES	(866,517)	(1,207,920)	(1,184,466)	(317,949)	23,454	(3,575,502)	(3,575,502)	33.1%	33.1%
OTHER FINANCING SOURCES (USES)									
TRANSFERS IN	820,611	983,630	986,350	165,739	2,720	3,578,079	3,578,079	27.6%	27.6%
TRANSFERS OUT	-	-	-	-	-	(57,577)	(482,577)	0.0%	0.0%
ISSUANCE OF DEBT	-	-	-	-	-	-	-	0.0%	0.0%
ISSUANCE OF CAPITAL LEASES	-	-	-	-	-	-	-	0.0%	0.0%
PREMIUM ON DEBT ISSUED	-	-	-	-	-	-	-	0.0%	0.0%
INSURANCE PROCEEDS	6,828	13,750	6,969	141	(6,781)	55,000	55,000	12.7%	12.7%
TOTAL OTHER SOURCES/(USES)	827,439	997,380	993,319	165,880	(4,061)	3,575,502	3,150,502	27.8%	31.5%
NET CHANGE IN FUND BALANCE	(39,078)	(210,540)	(191,147)	(152,069)	19,392	-	(425,000)	0.0%	45.0%
FUND BALANCES - BEGINNING	4,519,591	4,480,513	4,480,513	(39,078)	-	4,480,513	4,480,513	100.0%	100.0%
FUND BAL - ENDING	4,480,513	4,269,973	4,289,366	(191,147)	19,392	4,480,513	4,055,513	95.7%	105.8%

GENERAL FUND EXPENDITURES BY CATEGORY

IN \$	YTD		FY19 ACT FAV/(UNFAV) TO			ANNUAL FY19 BUDGET		FY19 YTD ACT AS % OF	
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
PERSONNEL	2,680,504	2,812,452	2,709,330	(28,826)	103,122	12,426,341	12,426,341	21.8%	21.8%
SUPPLIES	220,637	249,188	274,962	(54,324)	(25,773)	999,910	999,910	27.5%	27.5%
MAINTENANCE	163,308	272,075	204,404	(41,096)	67,671	884,020	884,020	23.1%	23.1%
SERVICES	519,932	597,604	568,840	(48,907)	28,764	2,402,047	2,402,047	23.7%	23.7%
NON-CAPITAL	55,651	144,008	109,508	(53,857)	34,500	249,701	217,701	43.9%	50.3%
CAPITAL	17,670	50,600	79,593	(61,923)	(28,993)	202,700	234,700	39.3%	33.9%
SUNDRIES	435,709	396,957	477,878	(42,169)	(80,922)	989,078	989,078	48.3%	48.3%
TOTAL (BUDGET BASIS)	4,093,412	4,522,884	4,424,514	(331,103)	98,370	18,153,797	18,153,797	24.4%	24.4%

CITY OF BRENHAM

FY19 1ST QUARTER RESULTS (BUDGETARY BASIS)

FUND 102 - ELECTRIC DISTRIBUTION FUND FINANCIAL STATEMENT

IN \$	YTD		FY19 ACT FAV/(UNFAV) TO			ANNUAL FY19 BUDGET		FY19 YTD ACT AS % OF	
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	1,481,146	1,530,699	1,494,056	12,910	(36,643)	6,538,385	6,538,385	22.9%	22.9%
TOTAL REVENUES	1,481,146	1,530,699	1,494,056	12,910	(36,643)	6,538,385	6,538,385	22.9%	22.9%
OPERATING EXPENDITURES									
SALARIES	475,434	472,157	462,141	13,293	10,016	2,056,833	2,056,833	22.5%	22.5%
SUPPLIES	36,848	62,392	58,746	(21,897)	3,646	210,579	210,579	27.9%	27.9%
MAINTENANCE	24,907	13,723	17,296	7,611	(3,573)	112,950	112,950	15.3%	15.3%
CONTRACTUAL SERVICES	95,894	111,424	107,807	(11,913)	3,617	480,204	480,204	22.5%	22.5%
CAPITAL OUTLAY (INSTEAD OF DEP)	71,853	54,650	50,919	20,933	3,731	972,000	972,000	5.2%	5.2%
GROSS REVENUE TAX	370,749	374,385	355,085	15,664	19,300	1,616,023	1,616,023	22.0%	22.0%
MISCELLANEOUS	40,682	54,849	43,918	(3,236)	10,931	165,279	165,279	26.6%	26.6%
TOTAL OPERATING EXP	1,116,367	1,143,579	1,095,912	20,455	47,668	5,613,868	5,613,868	19.5%	19.5%
OPERATING INCOME (LOSS)	364,779	387,119	398,144	33,365	11,025	924,517	924,517	43.1%	43.1%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	(17,350)	(16,832)	(16,832)	518	-	(67,328)	(67,328)	25.0%	25.0%
PRINCIPAL RETIREMENT	(17,264)	(18,049)	(18,049)	(785)	-	(72,194)	(72,194)	25.0%	25.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
INTERGOVERNMENTAL	-	-	-	-	-	-	-	0.0%	0.0%
INVESTMENT INCOME	(11,559)	(12,093)	(2,257)	9,302	9,836	153,741	153,741	-1.5%	-1.5%
GAIN ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS, NET	17,741	14,963	14,880	(2,862)	(83)	29,288	29,288	50.8%	50.8%
TOTAL NONOP REV (EXP)	(28,431)	(32,011)	(22,257)	6,174	9,753	43,507	43,507	-51.2%	-51.2%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS									
	336,348	355,109	375,887	39,539	20,778	968,024	968,024	38.8%	38.8%
TRANSFERS IN	158,461	163,376	160,207	1,746	(3,169)	604,065	604,065	26.5%	26.5%
TRANSFERS OUT	(454,266)	(570,671)	(575,631)	(121,365)	(4,960)	(1,993,573)	(1,993,573)	28.9%	28.9%
TOTAL TRANSFERS IN/(OUT)	(295,805)	(407,295)	(415,424)	(119,619)	(8,129)	(1,389,508)	(1,389,508)	29.9%	29.9%
CHANGE IN NET POSITION	40,543	(52,186)	(39,537)	(80,080)	12,649	(421,484)	(421,484)	9.4%	9.4%

CITY OF BRENHAM
FY19 1ST QUARTER RESULTS (BUDGETARY BASIS)

FUND 103 - GAS DISTRIBUTION FUND FINANCIAL STATEMENT

IN \$	YTD			FY19 ACT FAV/(UNFAV) TO		ANNUAL FY19 BUDGET		FY19 YTD ACT AS % OF	
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	336,532	338,994	371,202	34,669	32,208	1,518,363	1,518,363	24.4%	24.4%
TOTAL REVENUES	336,532	338,994	371,202	34,669	32,208	1,518,363	1,518,363	24.4%	24.4%
OPERATING EXPENDITURES									
SALARIES	91,296	94,623	95,284	(3,988)	(661)	408,969	408,969	23.3%	23.3%
SUPPLIES	7,549	28,803	22,050	(14,501)	6,753	67,919	67,919	32.5%	32.5%
MAINTENANCE	1,624	4,494	4,595	(2,971)	(101)	34,052	34,052	13.5%	13.5%
CONTRACTUAL SERVICES	4,874	4,301	3,787	1,087	514	216,380	216,380	1.8%	1.8%
CAPITAL OUTLAY (INSTEAD OF DEP)	12,630	16,547	20,167	(7,537)	(3,620)	182,300	182,300	11.1%	11.1%
GROSS REVENUE TAX	48,500	50,350	61,448	(12,948)	(11,098)	224,926	224,926	27.3%	27.3%
MISCELLANEOUS	5,518	4,226	6,376	(858)	(2,150)	17,397	17,397	36.7%	36.7%
TOTAL OPERATING EXP	171,990	203,344	213,707	(41,717)	(10,363)	1,151,943	1,151,943	18.6%	18.6%
OPERATING INCOME (LOSS)	164,542	135,650	157,495	7,047	(21,845)	366,420	366,420	43.0%	43.0%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	-	-	-	-	-	-	-	0.0%	0.0%
PRINCIPAL RETIREMENT	-	-	-	-	-	-	-	0.0%	0.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
INTERGOVERNMENTAL	-	-	-	-	-	-	-	0.0%	0.0%
INVESTMENT INCOME	1,029	2,100	4,808	3,780	2,708	8,400	8,400	57.2%	57.2%
GAIN ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS, NET	-	-	-	-	-	7,000	7,000	0.0%	0.0%
TOTAL NONOP REV (EXP)	1,029	2,100	4,808	3,780	2,708	15,400	15,400	31.2%	31.2%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS	165,571	137,750	162,303	(3,268)	24,554	381,820	381,820	42.5%	42.5%
TRANSFERS IN	-	-	-	-	-	-	-	0.0%	0.0%
TRANSFERS OUT	(144,495)	(160,368)	(159,042)	(14,547)	1,326	(601,252)	(601,252)	26.5%	26.5%
TOTAL TRANSFERS IN/(OUT)	(144,495)	(160,368)	(159,042)	(14,547)	1,326	(601,252)	(601,252)	26.5%	26.5%
CHANGE IN NET POSITION	21,076	(22,619)	3,261	(17,815)	25,880	(219,432)	(219,432)	-1.5%	-1.5%

CITY OF BRENHAM
FY19 1ST QUARTER RESULTS (BUDGETARY BASIS)

FUND 104 - WATER FUND FINANCIAL STATEMENT

IN \$	YTD		FY19 ACT FAV/(UNFAV) TO			ANNUAL FY19 BUDGET		FY19 YTD ACT AS % OF	
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	1,061,883	1,078,593	924,574	(137,309)	(154,019)	4,383,323	4,383,323	21.1%	21.1%
TOTAL REVENUES	1,061,883	1,078,593	924,574	(137,309)	(154,019)	4,383,323	4,383,323	21.1%	21.1%
OPERATING EXPENDITURES									
COST OF SALES AND SERVICES	77,700	79,975	80,325	(2,625)	(350)	319,900	319,900	25.1%	25.1%
SALARIES	160,015	178,632	177,446	(17,431)	1,185	771,841	771,841	23.0%	23.0%
SUPPLIES	88,698	66,835	78,575	10,123	(11,740)	507,162	507,162	15.5%	15.5%
MAINTENANCE	15,207	29,129	13,586	1,621	15,543	183,250	183,250	7.4%	7.4%
CONTRACTUAL SERVICES	55,544	62,957	56,453	(908)	6,504	658,103	658,103	8.6%	8.6%
CAPITAL OUTLAY (INSTEAD OF DEP)	81,171	43,632	49,329	31,842	(5,697)	1,773,009	1,773,009	2.8%	2.8%
GROSS REVENUE TAX	72,495	73,210	62,139	10,356	11,071	297,966	297,966	20.9%	20.9%
MISCELLANEOUS	8,853	8,664	10,746	(1,892)	(2,082)	26,678	26,678	40.3%	40.3%
TOTAL OPERATING EXPENDITURES	559,683	543,033	528,599	31,084	14,434	4,537,909	4,537,909	11.6%	11.6%
OPERATING INCOME (LOSS)	502,200	535,560	395,975	(106,225)	(139,585)	(154,586)	(154,586)	-256.2%	-256.2%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	(57,213)	(65,499)	(65,499)	(8,286)	-	(266,025)	(266,025)	24.6%	24.6%
PRINCIPAL RETIREMENT	(146,344)	(129,529)	(129,529)	16,815	-	(681,754)	(681,754)	19.0%	19.0%
ISSUANCE COSTS	(13,994)	-	-	13,994	-	(14,000)	(14,000)	0.0%	0.0%
INTERGOVERNMENTAL	5,000	-	-	(5,000)	-	1,207,500	1,207,500	0.0%	0.0%
INVESTMENT INCOME	(89)	1,750	1,860	1,949	110	8,000	8,000	23.2%	23.2%
GAIN ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-	-	-
MISCELLANEOUS, NET	-	-	-	-	-	6,000	6,000	0.0%	0.0%
TOTAL NONOPERATING REV (EXP)	(212,640)	(193,278)	(193,168)	19,473	110	259,721	259,721	-74.4%	-74.4%
INCOME (LOSS) BEFORE CONTRIBUTIONS AND TRANSFERS									
	289,560	342,283	202,808	(86,752)	(139,475)	105,135	105,135	192.9%	192.9%
TRANSFERS IN	-	-	-	-	-	-	-	-	-
TRANSFERS OUT	(162,480)	(176,141)	(174,085)	(11,605)	2,056	(652,948)	(652,948)	26.7%	26.7%
TOTAL TRANSFERS IN/(OUT)	(162,480)	(176,141)	(174,085)	(11,605)	2,056	(652,948)	(652,948)	26.7%	26.7%
CHANGE IN NET POSITION	127,080	166,142	28,723	(98,357)	(137,419)	(547,813)	(547,813)	-5.2%	-5.2%

CITY OF BRENHAM
FY19 1ST QUARTER RESULTS (BUDGETARY BASIS)

FUND 105 - WASTEWATER FUND FINANCIAL STATEMENT

IN \$	1ST QTR YTD			FY19 ACT FAV/(UNFAV) TO		ANNUAL FY19 BUDGET		FY19 ACT AS % OF	
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	1,043,957	942,277	948,690	(95,267)	6,413	3,712,170	3,712,170	25.6%	25.6%
TOTAL REVENUES	1,043,957	942,277	948,690	(95,267)	6,413	3,712,170	3,712,170	25.6%	25.6%
OPERATING EXPENDITURES									
SALARIES	120,839	128,165	128,200	(7,361)	(35)	552,640	552,640	23.2%	23.2%
SUPPLIES	55,223	42,995	44,761	10,463	(1,765)	186,579	186,579	24.0%	24.0%
MAINTENANCE	52,887	46,999	43,553	9,334	3,447	237,100	237,100	18.4%	18.4%
CONTRACTUAL SERVICES	101,522	117,499	118,533	(17,011)	(1,034)	772,324	772,324	15.3%	15.3%
CAPITAL OUTLAY (INSTEAD OF DEP)	5,805	27,227	29,574	(23,768)	(2,347)	2,101,225	2,101,225	1.4%	1.4%
GROSS REVENUE TAX	70,252	63,555	64,048	6,204	(493)	247,952	247,952	25.8%	25.8%
MISCELLANEOUS	25,935	24,975	36,593	(10,658)	(11,617)	33,857	33,857	108.1%	108.1%
TOTAL OPERATING EXPENDITURES	432,463	451,416	465,260	(32,798)	(13,845)	4,131,677	4,131,677	11.3%	11.3%
OPERATING INCOME (LOSS)	611,495	490,861	483,430	(128,065)	(7,432)	(419,507)	(419,507)	-115.2%	-115.2%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES (ACCRUAL)	(42,683)	(37,443)	(37,443)	5,240	-	(149,772)	(149,772)	25.0%	25.0%
PRINCIPAL RETIREMENT (ACCRUAL)	(313,118)	(320,410)	(320,410)	(7,292)	-	(1,281,638)	(1,281,638)	25.0%	25.0%
ISSUANCE COSTS	(18,400)	-	-	18,400	-	-	-	NA	NA
INTERGOVERNMENTAL	-	-	-	-	-	1,692,207	1,692,207	0.0%	0.0%
INVESTMENT INCOME	2,284	4,100	6,936	4,652	2,836	16,400	16,400	42.3%	42.3%
GAIN ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-	NA	NA
MISCELLANEOUS, NET	100	5,250	17,250	17,150	12,000	8,000	8,000	215.6%	215.6%
TOTAL NONOPERATING REV (EXP)	(371,817)	(348,503)	(333,666)	38,151	14,836	285,197	285,197	-117.0%	-117.0%
INCOME (LOSS) BEFORE CONTRIBUTIONS AND TRANSFERS									
	239,677	142,359	149,763	(89,914)	7,405	(134,310)	(134,310)	-111.5%	-111.5%
TRANSFERS IN	-	-	-	-	-	-	-	NA	NA
TRANSFERS OUT	(97,137)	(105,878)	(104,698)	(7,561)	1,180	(392,970)	(392,970)	26.6%	26.6%
TOTAL TRANSFERS IN/(OUT)	(97,137)	(105,878)	(104,698)	(7,561)	1,180	(392,970)	(392,970)	26.6%	26.6%
CHANGE IN NET POSITION	142,540	36,481	45,065	(97,475)	8,584	(527,280)	(527,280)	-8.5%	-8.5%

CITY OF BRENHAM
FY19 1ST QUARTER RESULTS (BUDGETARY BASIS)

FUND 106 - SANITATION FUND FINANCIAL STATEMENT

IN \$	YTD		FY19 ACT FAV/(UNFAV) TO		ANNUAL FY19 BUDGET		FY19 YTD ACT AS % OF		
	FY18 ACT	FY19 BUD	FY19 ACT	FY18ACT	FY19 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	814,066	830,709	847,698	33,631	16,989	3,526,813	3,526,813	24.0%	24.0%
TOTAL REVENUES	814,066	830,709	847,698	33,631	16,989	3,526,813	3,526,813	24.0%	24.0%
OPERATING EXPENDITURES									
SALARIES	160,527	170,653	168,730	(8,203)	1,923	735,978	735,978	22.9%	22.9%
SUPPLIES	38,409	51,693	48,973	(10,565)	2,720	260,550	260,550	18.8%	18.8%
MAINTENANCE	29,566	31,128	28,009	1,557	3,119	137,650	137,650	20.3%	20.3%
CONTRACTUAL SERVICES	255,508	292,037	299,508	(44,000)	(7,471)	1,622,434	1,622,434	18.5%	18.5%
CAPITAL OUTLAY (INSTEAD OF DEP)	11,648	-	-	11,648	-	-	-	0.0%	0.0%
GROSS REVENUE TAX	20,512	21,099	9,408	11,105	11,691	60,764	60,764	15.5%	15.5%
MISCELLANEOUS	21,505	17,503	20,713	793	(3,210)	25,053	25,053	82.7%	82.7%
TOTAL OPERATING EXP	537,675	584,113	575,340	(37,665)	8,773	2,842,429	2,842,429	20.2%	20.2%
OPERATING INCOME (LOSS)	276,391	246,596	272,357	(4,034)	25,761	684,384	684,384	39.8%	39.8%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	-	-	-	-	-	(12,379)	(12,379)	0.0%	0.0%
PRINCIPAL RETIREMENT	-	-	-	-	-	(82,777)	(82,777)	0.0%	0.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
INTERGOVERNMENTAL	-	-	-	-	-	-	-	0.0%	0.0%
INVESTMENT INCOME	1,444	1,050	2,282	837	1,232	8,200	8,200	27.8%	27.8%
GAIN ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS, NET	-	-	34,099	34,099	34,099	2	2	NA	NA
TOTAL NONOP REV (EXP)	1,444	1,050	36,381	34,936	35,331	(86,954)	(86,954)	-41.8%	-41.8%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS									
CONTRIBUTIONS & TRFS	277,836	247,646	308,738	30,902	61,092	597,430	597,430	51.7%	51.7%
TRANSFERS IN	-	-	-	-	-	-	-	0.0%	0.0%
TRANSFERS OUT	(105,694)	(118,948)	(118,101)	(12,407)	847	(445,601)	(445,601)	26.5%	26.5%
TOTAL TRANSFERS IN/(OUT)	(105,694)	(118,948)	(118,101)	(12,407)	847	(445,601)	(445,601)	26.5%	26.5%
CHANGE IN NET POSITION	172,142	128,697	190,637	18,495	61,939	151,829	151,829	125.6%	125.6%



AGENDA ITEM 8

DATE OF MEETING: April 18, 2019	DATE SUBMITTED: April 12, 2019	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Karen Stack	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☐ REGULAR ☒ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discussion and Presentation Related to the Possible Amendment of Chapter 27, Vehicles for Hire, of the Code of Ordinances of the City of Brenham		
SUMMARY STATEMENT: The City's Ordinance related to Vehicles for Hire was last updated in 2010. It has come to staff's attention that since that time, technological advances have rendered portions of the ordinance out-of-date. Specifically, the current ordinance requires every permitted taxicab operating in the City of Brenham to have a taximeter installed. It has been brought to our attention that this technology is dated and that the trend is toward "virtual taximeters," which are GPS-based phone and tablet applications that calculate distance and fares. The trend away from taximeters has made it difficult to find a local technician qualified to properly install the meters. Other portions of the Ordinance that will be discussed during the Work Session will be Division 6 related to maximum taxicab fares, and Division 7 related to vehicle requirements and inspections.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Powerpoint presentation; and (2) Letter in support of virtual taximeters		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: No action – discussion only.		
APPROVALS: James Fisher		



CHAPTER 27 VEHICLES FOR HIRE



Presentation to City Council
April 18, 2019



LYFT/UBER

VS.

TAXICABS

Taximeter

Chapter 27 Definition

“[A] device that mechanically or electronically computes a fare based upon the distance traveled, the time the taxicab is engaged, and any other basis for charges which are specified in the operating authority or rate ordinance pertaining to the holder.”

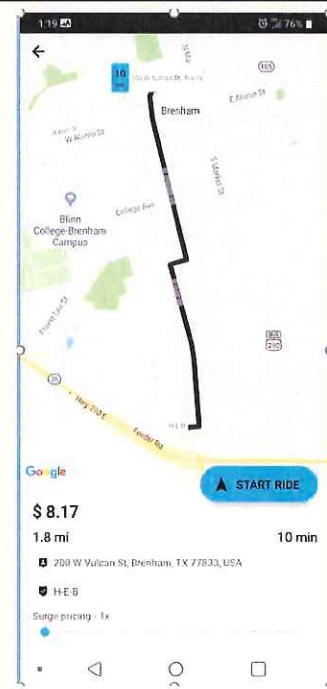
Traditional Taximeter

- Hardwired to vehicle
- Calculates distance by mechanically or electronically counting tire revolutions
- Must be installed and sealed by experienced technician



Virtual Taximeter

- Downloaded onto phone or tablet, not fixed to vehicle
- Uses GPS to calculate distance
- Calculates and displays fare so that it is visible to passenger
- Pro: Estimates fare before trip and shows recommended route
- Con: Cannot be sealed to prevent tampering



Options

1. No action, continue to require traditional meters.
2. Allow both traditional and virtual taximeters.

Staff Recommendation:

Require functioning taximeter (traditional or virtual) that accurately calculates distance and fare. Require meter to be inspected and approved by City when taxi is placed into service. This will allow flexibility as technology evolves.

Maximum Fares



- Drop fee \$3.75
- Three dollars (\$3.00) for the first one-quarter mile
- Sixty cents (\$0.60) for each one-fourth (1/4) mile thereafter
- Thirty dollars (\$30.00) per hour metered time
- One dollar (\$1.00) for each additional passenger going to same location.

Survey of Cities 10 Mile Ride

- | | |
|--|--|
| <ul style="list-style-type: none"> ■ Fare calculated using maximum fare allowed by ordinance: <ul style="list-style-type: none"> - Huntsville: \$13.00 - Houston: \$ 24.56 - Wichita Falls: \$25.25 - San Antonio: \$ 26.00 - Galveston: \$26.40 - San Marcos: \$30.00 - Brenham: \$30.15 | <ul style="list-style-type: none"> ■ Fare calculated using actual fares advertised by sample of taxi companies: <ul style="list-style-type: none"> - Houston: \$24.56 - Bryan/College Station: \$28.32 |
|--|--|

Options

1. No action, leave the maximum fares in place
2. Increase maximum fares
3. Allow for adoption of fares by resolution as needed.
4. Remove fare provision altogether and do not regulate fare.

Staff Recommendation:

Require fare schedule to be filed with and approved by the City, but set no maximum by ordinance. This allows flexibility with fluctuating fuel costs, while still providing stopgap against price gouging.

Staff Recommendations Regarding Vehicle Equipment and Inspections

- Remove requirement of current decal/seal on meter
- Clarify that police officer inspecting vehicle is doing a limited safety inspection, not a full mechanical inspection
- Update language regarding inspection sticker

Questions....



April 2, 2019
Subject: using app(s) for taxi for hire.
To: City of Brenham

My name is Ahmed Fouad, I have been in the taxi for hire business as a manager for executive taxi in San Antonio for 4 years and an independent driver and owner for 14 years.

As in recent times, taxi apps have become available to Taxi Drivers and customers have acclimated to this new technology and apps work exceptionally well, as long as internet (wifi) available.

I hope this helps in having my taxi business permit in the beautiful City of Brenham. Thank you.

Sincerely,
Ahmed Fouad
dba Hill Country Taxi LLC
979-204-6953



AGENDA ITEM 9

DATE OF MEETING: April 18, 2019	DATE SUBMITTED: April 12, 2019															
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Stephanie Doland															
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">MEETING TYPE:</td> <td style="width: 33%; vertical-align: top;">CLASSIFICATION:</td> <td style="width: 33%; vertical-align: top;">ORDINANCE:</td> </tr> <tr> <td>☒ REGULAR</td> <td>☐ PUBLIC HEARING</td> <td>☒ 1ST READING</td> </tr> <tr> <td>☐ SPECIAL</td> <td>☐ CONSENT</td> <td>☐ 2ND READING</td> </tr> <tr> <td>☐ EXECUTIVE SESSION</td> <td>☒ REGULAR</td> <td>☐ RESOLUTION</td> </tr> <tr> <td></td> <td>☐ WORK SESSION</td> <td></td> </tr> </table>		MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	☒ REGULAR	☐ PUBLIC HEARING	☒ 1 ST READING	☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION		☐ WORK SESSION	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:														
☒ REGULAR	☐ PUBLIC HEARING	☒ 1 ST READING														
☐ SPECIAL	☐ CONSENT	☐ 2 ND READING														
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION														
	☐ WORK SESSION															
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Part II, Division 1, Section 18 to Establish Exterior Construction Materials for Selected Zoning Districts in Brenham, Washington County, Texas (Case No. P-19-001)																
SUMMARY STATEMENT: This is a City initiated request to amend the City of Brenham’s Code of Ordinances, Appendix A, Section 18 to establish minimum non-metal façade requirements on residential uses in selected zoning districts. Currently the City of Brenham does not regulate exterior construction materials (façade) for properties developed within the City Limits. Recently, 100% metal façade single-family detached dwellings were constructed on properties along Old Mill Creek Road, east of US Highway 290 West. Staff finds that metal façade dwellings, specifically those built with a 100% metal façade, are not compatible adjacent to or within established neighborhoods built primarily of brick, stone, or other non-metallic façades. On March 21, 2019 City Staff presented a similar amendment to the City Council. During discussion on the item City Council directed staff to conduct additional research on the matter and tabled the item until the April 18, 2019 regularly scheduled Council Meeting. Since that time, City Staff held subcommittee meeting and discussed the use of a metal façade in residential districts. During the subcommittee meeting, the recommendation of the Planning and Zoning Commission (shown below) was discussed and thought to be insufficient to correcting incompatible development in existing residential neighborhoods. The following proposal was discussed: • Metal façades shall not be a permitted use on residential structures in the following districts: - o R-1: Residential District - o R-2: Mixed Residential District - o R-3: Manufactured Home Residential - o B-1: Local Business/Residential Mixed Use District • Metal façade limitations shall not apply to accessory structures • Non-metal shall mean: brick or brick veneer, stone or stone veneer, stucco, wood, vinyl, or fiber-cement siding, and further, for the purposes of this section a wood-like or fiber cement-like exterior or finish shall be considered “non-metal façade.”																

On February 25, 2019 the Planning and Zoning Commission voted unanimously to recommend approval of an ordinance to adopt the following standards: • 50% non-metal façade on exterior wall surfaces facing the right-of-way • 25% non-metal façade on exterior side wall surfaces not facing the right-of-way • 0% non-metal façade on exterior rear wall surfaces not facing the right-of-way • No non-metal façade requirements on accessory structures
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): Chapter three – Housing, of the Brenham Comprehensive Plan recommends that the City establish guidelines to protect established neighborhoods. Staff finds that metal façade dwellings, specifically those built with a 100% metal façade, are not compatible adjacent to or within established neighborhoods built primarily of brick, stone, or other non-metallic façades. It is recommended to amend the zoning ordinance establishing a requirement that residential uses built in Brenham and located in the R-1, R-2, R-3, and B-1 districts be built with a non-metal exterior. Staff recommends approval of the proposed text amendment to prohibit the use of a metal façade on residential structures. A. PROS: • Protecting existing established neighborhoods through design guidelines will ensure the long-term stability and long-term vitality of an area, and thus the quality of life for the community. • Establishing guidelines to preserve neighborhood integrity will help maintain property values and protect community character. B. CONS: • Approval of the proposed amendment may limit the construction of residential structures built in Brenham with metal features or accents.
ALTERNATIVES (In Suggested Order of Staff Preference): 1. Approve the proposed amendment, as recommended by City Staff; 2. Approve the proposed amendment, as recommended by the Planning and Zoning Commission; 3. Approve the proposed amendment with modifications, which may require rescheduling the request for consideration on a future City Council meeting agenda; 4. Deny the proposed text amendment.
ATTACHMENTS: (1) Draft Ordinance as presented on March 21, 2019; (2) Revised Ordinance as Suggested by the Council Subcommittee on its first reading; and (3) Staff Report to the Planning and Zoning Commission
FUNDING SOURCE (Where Applicable): N/A
RECOMMENDED ACTION: Approve an Ordinance on its first reading amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Part II, Division 1, Section 18 to Establish Exterior Construction Materials for Selected Zoning Districts in Brenham, Washington County, Texas (Case No. P-19-001)
APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES PART II, DIVISION 1, BY ADDING SECTION 18, EXTERIOR CONSTRUCTION MATERIALS FOR SELECTED DISTRICTS, TO ESTABLISH METAL FAÇADE LIMITATIONS IN SELECTED DISTRICTS.

WHEREAS, the City of Brenham has requested that Appendix A – “Zoning” of the Code of Ordinances be amended; and

WHEREAS, the Planning & Zoning Commission and the City Council of the City of Brenham, Texas, have published notice and conducted public hearings regarding the request to amend Appendix A – “Zoning” of the Code of Ordinances; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, these amendments were considered by the City of Brenham Planning & Zoning Commission in its final report during its regular meeting February 25, 2019; and

WHEREAS, the City Council deems it appropriate to approve the requested amendments to Appendix A – “Zoning” of the Code of Ordinances; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS THAT APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 1 is hereby amended by adding Section 18, Exterior Construction Materials for Selected Districts to read as follows:

Sec. 18. – Exterior Construction Materials for Selected Districts.

(Sec. 18.01) The requirements of this section shall apply to construction of residential buildings in the following zoning districts:

1. R-1: Residential District
2. R-2: Mixed Residential District
3. B-1: Local Business/Residential Mixed Use District

(Sec. 18.02) To protect the public health, safety, character, and general welfare and to reduce or eliminate potential fire hazards in areas containing a higher density of buildings:

1. Dwellings in any of the zoning districts to which this section applies shall have a minimum seventy-five percent (75%) non-metal façade on all exterior wall surfaces, excluding windows and doors, facing any public right-of-way, and a minimum fifty percent (50%) non-metal façade on all exterior wall surfaces, excluding windows and doors, not facing a public right-of-way.
2. Accessory structures 160 square feet or greater in size and situated on a building lot having an area of less than one (1) acre shall be constructed with at least fifty percent (50%) non-metal façade on all exterior wall surfaces, excluding windows and doors.

(Sec. 18.03) For the purposes of this section “non-metal façade” shall mean brick or brick veneer, stone or stone veneer, stucco, wood, vinyl, or fiber-cement siding, and further, for the purposes of this section a wood-like or fiber cement-like exterior or finish shall be considered “non-metal façade.”

SECTION 2

This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

PASSED and **APPROVED** on its first reading this the ___ day of ____, 2019.

PASSED and **APPROVED** on its second reading this the ___ day of ____, 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING
APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES PART II,
DIVISION 1, BY ADDING SECTION 18, EXTERIOR CONSTRUCTION
MATERIALS FOR SELECTED DISTRICTS, TO ESTABLISH METAL
FAÇADE LIMITATIONS IN SELECTED DISTRICTS.**

WHEREAS, the City of Brenham has requested that Appendix A – “Zoning” of the Code of Ordinances be amended; and

WHEREAS, the Planning & Zoning Commission and the City Council of the City of Brenham, Texas, have published notice and conducted public hearings regarding the request to amend Appendix A – “Zoning” of the Code of Ordinances; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, these amendments were considered by the City of Brenham Planning & Zoning Commission in its final report during its regular meeting February 25, 2019; and

WHEREAS, the City Council deems it appropriate to approve the requested amendments to Appendix A – “Zoning” of the Code of Ordinances; Now Therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM,
TEXAS THAT APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES OF THE
CITY OF BRENHAM, TEXAS BE AMENDED IN THE FOLLOWING MANNER:**

SECTION 1

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 1 is hereby amended by adding Section 18, Exterior Construction Materials for Selected Districts to read as follows:

Sec. 18. – Exterior Construction Materials for Selected Districts.

(Sec. 18.01) The requirements of this section shall apply to construction of residential structures in the following zoning districts:

1. R-1: Residential District
2. R-2: Mixed Residential District
3. R-3: Manufactured Home Residential
4. B-1: Local Business/Residential Mixed Use District

(Sec. 18.02) To protect the public health, safety, character, and general welfare and to reduce or eliminate potential fire hazards in areas containing a higher density of buildings, all exterior wall surfaces, excluding windows and doors, of a dwelling in any of the zoning districts to which this section applies shall be constructed with a non-metal façade. For the purposes of this section “non-metal façade” shall mean brick or brick veneer, stone or stone veneer, stucco, wood, vinyl, or fiber-cement siding, and further, for the purposes of this section a wood-like or fiber cement-like exterior or finish shall be considered “non-metal façade.”

SECTION 2

This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

PASSED and **APPROVED** on its first reading this the __ day of ____, 2019.

PASSED and **APPROVED** on its second reading this the __ day of ____, 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



CASE NUMBER P-19-001
TEXT AMENDMENT – Metal Exterior (Façades) for Residential Uses

REQUEST:

The City of Brenham initiated this request to amend the City of Brenham’s Code of Ordinances, Appendix A – Zoning, Part III, Division 1, Section 18 to prohibit metal exteriors (façades) for residential uses.

BACKGROUND:

The City of Brenham’s zoning ordinance does not regulate exterior construction materials (façade) for properties developed within the City Limits. Therefore, no minimum masonry requirements or exterior façade limitations are applied to either residential, retail, or commercial property within the City of Brenham. Recently, 100% metal façade single-family detached dwellings were constructed on properties along Old Mill Creek Road, east of US Highway 290 West.

The City of Brenham has adopted zoning to foster orderly and healthful development and to protect the health, safety, morals and general welfare of its residents and citizens. Preserving character and ensuring land use compatibility are objectives of the zoning ordinance and adopted Comprehensive Plan.

Staff finds that metal façade dwellings, specifically those built with a 100% metal façade, are not compatible adjacent to or within established neighborhoods built primarily of brick, stone, or other non-metallic façades. It is recommended to amend the zoning ordinance establishing a requirement that residential uses built in Brenham and located in the R-1, R-2, and B-1 districts be built with a limited metallic exterior, and that residential uses built in the R-3 district may be built with a metallic exterior.

PROPOSED AMENDMENT:

- Require a minimum 75% non-metal façade on exterior wall surfaces facing the right-of-way
- Require a minimum 50% non-metal façade on exterior wall surfaces not facing the right-of-way
- Non-metal façade shall mean brick or brick veneer, stone or stone veneer, stucco, wood, vinyl, or fiber-cement siding or for this section wood or fiber cement like exterior or finish will be considered non-metal façade
- Shall apply to the R-1: Residential Single Family, R-2: Mixed Residential, and B-1: Local Business/Residential Mixed Use District
- Property less than 1 acre in size containing accessory structures 160 square feet or greater in area shall be constructed with at least 50% non-metal façade on each wall or elevation, excluding windows and doors.

ANALYSIS:

Chapter three – Housing, of the Brenham Comprehensive Plan recommends that the City establish guidelines to protect established neighborhoods. Within the City of Brenham there are many existing established neighborhoods that could be considered an aging housing stock and should be preserved. Many times areas where older neighborhoods exist begin to see infill or re-development. Design guidelines help to ensure that new homes in existing neighborhoods are appropriate in terms of context, such as building materials, height similarities, window spacing, and size of the home. Protecting existing

established neighborhoods through design guidelines will ensure the long-term stability and long-term vitality of an area, and thus the quality of life for the community.

The Comprehensive Plan suggests that developing guidelines to protect the character of neighborhoods from inappropriate building or renovations should include identifying complimentary elements of existing housing that can be reasonably incorporated into new development. The new housing type with 100% metal exterior do not have complimentary elements to existing housing stock (Exhibit A).

In an effort to preserve the Dixie Subdivision, and all other residential development in Brenham, staff finds that restricting the use of metal exteriors on residential uses is a necessary amendment to the zoning ordinance. As mentioned in the Comprehensive Plan, establishing guidelines to preserve neighborhood integrity will help maintain property values and protect community character.

PUBLIC COMMENTS:

The Notice of Public Hearing was published in the newspaper on January 17, 2019. During the Public Hearing portion of the January 28, 2019 Planning and Zoning Commission meeting two citizens spoke in opposition of the proposed amendment to prohibit metal facades in residential districts, stating that the proposed ordinance was too restrictive. Since the January 28, 2019 meeting staff has received two calls from citizens in favor of an amendment to restrict metal housing in Brenham. Additional written correspondence from citizens is included below (Exhibit B).

STAFF RECOMMENDATION:

Staff recommends **approval** of an ordinance to limit metal exteriors on residential uses in the R-1, R-2 and B-1 zoning districts.

EXHIBITS:

1. Exhibit A – Citizen Compliant
2. Exhibit B – Public Comments

EXHIBIT "A"
Citizen Compliant

Hello Ms. Doland,

I would like to bring to your attention an issue that is happening in a residential neighborhood in Brenham. There are metal buildings being built at a rapid pace. These buildings are changing the aesthetic landscape of the neighborhood, lowering property values and upsetting the community togetherness.

I know you are a very busy as the Assistant Director of Development services for the City of Brenham, however your attention to this matter is greatly appreciated. Brenham will benefit immensely by adopting an ordinance which prohibits metal buildings larger than 120 sq ft in R1 Zoning. I have included links for other cities in Texas that have adopted similar ordinances-

City of Gainesville, TX Zoning Code Amendments - page 9

<http://www.gainesville.tx.us/DocumentCenter/View/981/Zoning-Code-Amendments-2nd-reading-061813?bidId=>

City of Corinth, TX Ordinance No 11-06-16-12 Sec 301.3.1

<https://www.cityofcorinth.com/DocumentCenter/View/777/ORDINANCE-NO-11-06-16-12?bidId=>

City of Fulshear, TX Sec. 1-167[a]. - Exterior Construction Materials

https://library.municode.com/tx/fulshear/codes/code_of_ordinances?nodeId=PTIICOOR_APXAZO_ARTIIIDIRE_DIV1GE_S1-167AEXCOMA

City of League City, TX Sec 125-140.Q. Exterior Construction Requirements

<http://www.leaguecity.com/DocumentCenter/View/734/Zoning-Ordinance?bidId=>

City of Bedford, TX 5.8.A STANDARD MASONRY CONSTRUCTION

<https://bedfordtx.gov/DocumentCenter/View/186/Zoning-Ordinance-PDF>

I have also attached pictures of these metal buildings that have been erected in the past few months in my neighborhood. In addition, I included photos of other homes in my neighborhood. As you will see, the metal buildings greatly reduce the quality aesthetic of the neighborhood.

Your prompt attention to this manner is greatly appreciated. I would like to include this as a proposal for the next city council meeting. There is a 5 acre lot that is pending sale in our neighborhood, I fear the same builder of these metal units is planning to develop on this 5 acre lot. I am confident I can garner support from my neighbors if beneficial. I have also sent this letter to Mayor Tate. Please let me know if I can provide any further information and what I need to do in order to submit this on the city council agenda. Samantha Ullrich and her grandfather are building these metal rental units.

Sincerely,

Susanna Leonard

979-213-8714

seleonard13@gmail.com

201 Meadowbrook Ln

Brenham, TX 77833





EXHIBIT "B"

Public Comments

Good Afternoon Stephanie Doland,

My name is Wes Holt and I'm emailing you today in regards to the recent discussion concerning metal buildings along Old Mill Creek Rd. I am a 11 year home owner in the Meadow Brook subdivision and the consensus among the neighborhood is in agreement with Mrs. Leonard. We (Meadow Brook Subdivision) were recently in a lengthy battle with another out of town developer who requested the City to rezone two platts along Old Mill Creek Rd, who had/has intentions on building an apartment complex. We banded together, formed an official petition and fought the developer's request and to our dismay; the City still voted to change from residential to a mixed commercial property, paving the way for the developer. Fortunately, that hasn't come to pass...yet, but here we are again 2 years later, faced with another attempt to morph our quiet neighborhood into a short-term housing carousel. Needless to say we feel that our neighborhood is constantly under attack by outside profiteers. I'm not against trying to improve the area, but there should be some considerations given to the families who have lived here for decades and have invested in their property.

These buildings are not being built for home ownership, but as rental properties. Therefore, there is no pride in ownership, curb appeal or value added to the neighborhood. In fact, the inverse is more likely. My mother-in-law is a realtor at Hodde and is concerned that this trend in the neighborhood would be detrimental to our property values and resale potential.

Specifically, the 5 acre lot that has been rumored to be the next housing project is of our utmost concern. I understand that the developer in question has denied any knowledge or involvement in that property, but we believe they have set a precedent to achieve the same goal by another party.

I respectfully request the City strongly consider the suggested ordinance to prohibit residential use of metal buildings over 120 square feet in residential zones.

Thank you,

Wes Holt

Meadow Brook Lane Resident
713-253-9253 (cell)

February 20, 2019

Dear Council Members,

I am writing to express my opposition to the metal rental homes built around the cul-de-sacs in the Dixie Subdivision with hopes to prevent more from being built within the city limits.

I have lived in this neighborhood for over 14 years. During this time, I have watched the area deteriorate and at the same time increase in rental homes. It is my opinion that the metal homes are an added deficit to an area primarily made up of older brick/mortar homes. I maintain that the metal homes not only bring more transient residents, because they are rentals, but also a drastic change to the "aesthetics" of the neighborhood – these homes look more like storage sheds or something that belongs in a country setting. Furthermore, the homes offer very little parking for residents which leaves the renters and their guests to use the turn-around as a parking area. (see attached photo)

These cul-de-sacs were added just a couple of years ago, was parking the intended function? There is one cul-de-sac which has three metal homes. What is the owners plan for parking? I would also like to point out that the owner has not attempted to beautify the homes with grass, shrubs or trees.

It is quite possible to surmise that our property values will go down when one adds these metal home rentals built on every cul-de-sac, the growing number of home rentals and the continued zoning violators at 1500 Plymouth (Alan Krueger), 115 Drumm Streets (Walter Schlabach) and the Dixie Motel (as a pay-by-night hotel.) The homes of Krueger and Schlabach have also had numerous drug crime issues over the years.

Sincerely,

Joni Daniel

Hampshire Dr. cul-de-sac



Drumm Street



1500 Plymouth

Stephanie,

Thank you for taking time to speak with me today about the recent Planning and Zoning Commission recommendations related to the ordinance amendment for residential building materials. I was unable to attend the meetings, but before the City Council takes the recommended proposal to a vote, I wanted to express my views on the topic.

Brenham is a charming and quaint city located in a beautiful county. My family and I made the decision to move to Brenham from the Houston area four years ago because we wanted to not just experience the small town charm of Brenham on a weekend, we wanted to be a part of what the city had to offer every day. There is pride in the statement, “I live in Brenham” for so many of us. And that pride is a direct reflection of the landscape, diversity, school district, city leadership and businesses that currently make our town a very unique and special place in Texas.

Through the Banner Press and KWHI, I have kept informed on the discussions/comments about the amendment to a zoning ordinance for residential material. I was shocked to read that after the February 25th meeting, there was agreement to send a proposal to the Council that would lower the percentage of non-metal exterior on a wall facing the right of way from 75% minimum to 50% and 50% to 25% on walls not facing the right of way. Our family lives in Ralston Creek Estates, so while I don’t live on Old Mill Creek Road or on any streets around the area where the buildings are located, I have a concern for what this proposal could mean for other areas of our city as more of these homes will inevitably be built. I understand there is an affordable housing issue within our community (I would argue there is a general housing gap in Brenham), I don’t believe we solve that particular problem by sending a residential building material ordinance amendment to City Council that drastically affects the long-term aesthetics and charm of our town. To me, the two issues are separate and should have separate consideration by our citizens and City leadership. I respectfully disagree with Commissioner Jefferson who stated that “if the city wants to grow, then it needs affordable housing”. The growth of our city is not dependent on affordable housing. The growth of our city is dependent on the right leadership at City and County levels to make sound decisions that carry us into a new phase of our town, inviting industry and commerce to locate here, developing our medical facilities, continuing to have a superior school district and making sure that the citizens have ways to give their input. And, maybe we should really pose the question as to why there is a need for affordable housing and solve that problem first before changing the landscape of our city residential areas with metal buildings.

Our town is at a pivotal time. We are growing at a rapid rate, and we need conviction and careful thought in all of our decisions as a community about how we preserve the charm of our small town that we and so many people in Texas and the country enjoy while still paving the way for the progress that we need to handle the growth.

I am not in favor of the proposed ordinance amendment being presented for approval to City Council. I would like reconsiderations to the ordinance that preserves the integrity of the

community. It would be in the best interest of the city if we excluded any metal exterior to a residential location (that serves as the major structural design). The first question that should be considered by Council is - is this the type of the affordable housing we want in our community? If it is, then I caution that this will not just lead to having more of these structures being built but will also allow for "shipper" container homes to be used as another affordable housing opportunity within our city. Is that really the direction we want to go just as we are on the cusp of our wonderful city expanding? The uniqueness and charm of the small town will be a long forgotten thought if we don't make good decisions today. We'll just be another small town with our metal buildings for affordable housing and nothing else.

Sincerely,

Tracy L. Ross

2205 Ralston Creek Ct.

Brenham, TX 77833

Home: 979-421-8069

Personal Cell: 281-709-5111



AGENDA ITEM 10

DATE OF MEETING: April 18, 2019		DATE SUBMITTED: April 12, 2019	
DEPT. OF ORIGIN: Development Services		SUBMITTED BY: Lori Sanguedolce	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
☒ REGULAR	☐ PUBLIC HEARING	☒ 1ST READING	
☐ SPECIAL	☐ CONSENT	☐ 2ND READING	
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION	
	☐ WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 8½, Flood Damage Prevention, of the Code of Ordinances of the City of Brenham			
SUMMARY STATEMENT: As discussed at the workshop on April 4, 2019 the revised Flood Damage Prevention Ordinance is being presented for consideration. FEMA recently completed a revision to the countywide Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM) for Washington County, Texas and Incorporates Areas. The City of Brenham was not affected by the updated flood hazard information presented in the FIS report and FIRM, but does lie on one or more of the revised map panels. The ordinance is being updated for the following reasons. 1. Updating the Flood Insurance Study and Flood Insurance Rate Map referenced to reflect the new date. 2. Increase the lowest floor elevation for residential and nonresidential construction to be 2 feet above the base flood elevation. 3. Require critical facilities to be elevated 2 feet above the elevation of the 500 year (0.2% chance) flood event or 3 feet above the highest adjacent grade of the building if flood elevation data is not available. Access to critical facilities must be assured under all circumstances. The other revisions to the chapter are to help strengthen and promote the public health, safety, and general welfare to reflect higher standards based on recent flood events. 1. Designate “flood-prone” area not currently included as special flood hazard area (Zone AE) on Brenham’s FIRM by City Council resolution. These areas will be subject to regulations under this chapter as if there were designated as special flood hazard areas. This proposed change will have no impact on premium rates charges to flood insurance policyholders. 2. Mitigation of fill in flood-prone area will be required. The use of fill which displaces floodplain storage volume will require mitigation through creation of an equivalent storage volume. The City Engineer will require a Fill Mitigation Analysis be submitted with the development permit application to demonstrate mitigation of fill.			

3. New private development in the floodway will be prohibited. Given the amount of undeveloped land within the existing regulatory floodway, this proposed change is not expected to have a significant prohibitive impact. Public development may be permitted as necessary.
4. Revises the definition of “substantial improvement” to include “repetitive loss” as the term is defined in the ordinance. This change is required for a flood insurance policyholder to qualify for an Increased Cost of Compliance (ICC) claim under the National Flood Insurance Program (NFIP) insurance policy in a case where a flooded structure has incurred “repetitive loss” but has not been “substantially damaged”, and is noncompliant with the requirements of this Chapter. A single substantial damage event will qualify the compliant repair for ICC funding.
5. Requires a minimum “freeboard” elevation for new structures constructed in the regulatory floodway. Under this revision, the lowest point of a horizontal member of a structure, such as a bridge, located in the regulatory floodway, must be constructed at least 24 inches above the base flood elevation at that point. This provision provides a margin of safety for debris being washed downstream during a flood event to pass beneath a structure rather than being lodged against the structure, potentially damaging the structure and/or impeding the flow of flood waters.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Redline of current Chapter 8½, Flood Damage Prevention, showing recommended changes; (2) Ordinance for first reading; and (3) Floodplain Map

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve an Ordinance on its first reading amending Chapter 8½, Flood Damage Prevention, of the Code of Ordinances of the City of Brenham

APPROVALS: James Fisher

Chapter 8½ - FLOOD DAMAGE PREVENTION

DIVISION 1. - GENERALLY

Sec. 8½-1. - Statutory authorization.

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Brenham, Texas does ordain as follows:

Sec. 8½-2. - Findings of fact.

- (a) The flood hazard areas of the City of Brenham are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains, which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed-or otherwise protected from flood damage.

Sec. 8½-3. - Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains areas of special flood hazard;
- (6) Help maintain a stable tax base by providing for the sound use and development of the flood-prone areas area in such a manner as to minimize future flood-bligh areas; and
- (7) insure Ensure that potential buyers are notified that property is in a flood-prone area.; and
- (8) Ensure that those who occupy the flood-prone area assume responsibility for their actions.

Sec. 8½-4. - Methods of reducing flood losses.

In order to accomplish its purposes, this article Chapter uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and other development which may increase flood damage; and

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or ~~which~~ may increase flood hazards to other lands.

Sec. 8½-5. - Definitions.

~~Unless specifically defined below, The following words or terms and phrases, when used in this Chapter article, shall be interpreted have the meanings ascribed to give them the in this section, except where the context clearly indicates a different meaning they have in common usage and to give this article it's most reasonable application.~~

~~Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.~~

~~Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.~~

~~Appurtenant Accessory structure means a structure which is located on the same parcel of property as the principal structure to be insured and, the use of which is incidental to the use of the principal structure.~~

~~Addition means any alteration to an existing structure that increases its footprint.~~

~~Appeal means a request for a review of the interpretation of any provision of this chapter or a request for a variance.~~

~~Area of future conditions flood hazard means the land area that would be inundated by the one percent annual chance (100-year) flood based on future conditions hydrology.~~

~~Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's on the flood insurance rate map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where; a clearly defined channel does not exist, where; the path of flooding is unpredictable and where indeterminate; and velocity flow may be evident. Such flooding AO is characterized by ponding or as sheet flow, and AH indicates ponding.~~

~~Area of special flood hazard means is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as zone Zone A on the flood hazard boundary map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, zone Zone A usually is refined into zones Zone A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.~~

~~Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.~~

~~Base flood elevation (BFE) is means the elevation shown on the flood insurance rate map (FIRM) and found in the accompanying flood insurance study (FIS) for zones Zone A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year—Also; also called the "base flood."~~

~~Basement means any area of the building having its floor subgrade (below ground level) on all sides.~~

~~Breakaway wall means a wall that is open wood lattice, insect screening or any other suitable building material approved by the city engineer which is not part of the structural support of the building associated structure and which is intended through its design and construction to collapse under specific lateral loading forces, wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the structure or damage to the structural integrity of the structure on which breakaway walls are used.~~

~~Construction site permit means a permit issued to a developer by the city for site work and/or construction of water, sanitary, or natural gas mains.~~

~~Conveyance means the flow of water during the base flood with a velocity that is greater than one foot per second or a depth that is greater than one foot.~~

Commented [LL1]: Is this something that happens in Brenham.

Crawlspace is an enclosed area below the lowest floor of a building or supporting formed when the foundation system walls are used to elevate the lowest floor above the base flood elevation.

Critical facilities includes facilities that materially affect the public health and welfare. Such facilities include, but are not be limited to:

- (1) Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood;
- (2) Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during, and after a flood;
- (3) Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during and after a flood; and
- (4) Structures or facilities that produce, use, treat, store, or dispose of highly volatile, flammable, explosive, toxic, and/or water-reactive materials.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change to improved ~~and/or~~ unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, clearing, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. Fences or fence-type walls located within the floodplain are included within this definition.

Development permit means a permit issued under the provisions of this Chapter for any development of a site located within a flood-prone area. The term "development permit" shall also include a permit for the placement of a recreational vehicle for more than 180 days in Zone AE.

Elevated building means, for insurance purposes, a ~~non-basement~~nonbasement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Elevation certificate means a statement from an engineer or surveyor licensed by the state on the most current FEMA form certifying that the lowest floor of the structure has been elevated at least as high as required by this Chapter.

Existing construction means, for the purposes of determining flood insurance rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. ~~"Existing"~~The term "existing" construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) and is completed before the effective date of the floodplain management regulations adopted by ~~a community~~the city.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Fill means any material that is placed in an area and increases the elevation of that area or displaces water volume.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; ~~and/or~~
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood ~~insurance rate map~~Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study (FIS). See "Flood elevation study."

~~Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of flooding).~~

~~Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.~~

~~Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.~~

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodplain or flood-prone area means any land area, including the special flood hazard area, susceptible to being inundated by water from any source (see Flood~~ing~~).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited, to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term "floodplain management regulations" describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and ~~non-structural~~nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodproofing certificate means a certificate issued by a registered professional engineer licensed in the state which states that he has developed and/or reviewed the structural design, specifications, and plans for the construction of the structure or improvements covered by the certificate and that the design and methods of construction are in accordance with accepted standards of practice for meeting the following requirements:

- (1) The floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood; and
- (2) Together with attendant utility and sanitary facilities, the structures are designed so that below the base flood level the structures are watertight with walls impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Floodway. See "Regulatory floodway."

Functionally dependent use means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent use" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory ~~or of~~ historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, ~~or levees,~~ and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking ~~or of~~ vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable ~~non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations nonelevation design requirements of this article~~Chapter found at section 8 ½-1318.

Manufactured home means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when ~~connected~~attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, the term "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by ~~a~~ communitythe city and includes any subsequent improvements to such structures.

New development means the initial construction of a structure.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by ~~a community~~ the city.

Recreational vehicle means a vehicle which is ~~(i) built~~:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area or special area means the land in the floodplain within the city that is subject to a one-percent annual or greater chance ~~(100-of flooding in any given year)~~ flood-based and is designated on future conditions hydrology.

Special flood hazard area- See "Area of special flood hazard-"the FIRM as Zone AE.

Start of construction ~~for~~ for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348) ~~includes~~ includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement.

- (1) The term "substantial improvement" means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before either:

a. Before "start of construction" of the improvement. This or repair; or

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b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, the term includes structures which have incurred "substantial damage"; improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(2) The term "substantial improvement" includes repetitive loss, as defined in this section; substantial damage, regardless of the actual repair work performed. The term, but does not, however, include either: (1) any

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure"; or

b. Any alteration of a historical structure provided that the alteration will not preclude the structure's continued designation as a historical structure.

Utilities means all building utilities including, but not limited to, electrical, heating, ductwork, ventilating, plumbing, air conditioning equipment, and any other service facilities.

Variance means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section of this articleChapter which permits construction in a manner that would otherwise be prohibited by this chapter. (See Sec. 8 1/2-11 and section 60.6 of the National Flood Insurance Program regulations.)

Violation means the failure of a structure or other development to be fully compliant with the community'scity's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (e)(4), (e)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations this articleChapter is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

State Law reference— Definitions relating to Flood Control and Insurance Act, V.T.C.A., Water Code § 16.313.

Sec. 8½-6. - General provisions.

~~Lands to which this chapter applies.~~

(a) Lands to which this chapter applies. This chapter shall apply to all flood-prone areas of special flood hazard within the jurisdiction of the City of Brenham.

~~Sec. 8½-7. Basis for establishing the flood-prone areas of the special flood hazard.~~

(b) The areas of special flood hazard area identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Washington County, TX and incorporated areas: Texas," dated August 16, 2011 and May 16, 2019, with accompanying flood insurance rate maps, dated August 16, 2011 and May 16, 2019, and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. In addition to the special flood hazard area, the city engineer, with approval of the city council by resolution, may designate by maps certain other areas to be flood-prone based on flood history or other characteristics that indicate a potential for future flooding events.

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~~Sec. 8½-8. Establishment of development permit.~~

~~A floodplain development permit shall be required to ensure conformance with the provisions of this chapter.~~

~~Sec. 8½-9. Compliance.~~

~~(c)~~ No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

~~(d)~~ Penalties for noncompliance. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this ~~article~~ Chapter shall be deemed guilty of a misdemeanor.

~~(e)~~ ~~(c)~~

~~(a)~~ ~~Sec. 8½-10. Abrogation and greater restrictions.~~

~~(e)~~ This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ~~ordinance~~ chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

~~Sec. 8½-11. Interpretation.~~

~~(f)~~ In the interpretation and application of this chapter, all provisions shall be:

- ~~(1)~~ ~~considered~~ Considered as minimum requirements;
- ~~(2)~~ ~~liberally~~ Liberal construed in favor of the ~~governing body~~ city council; and
- ~~(3)~~ ~~deemed~~ Deemed neither to limit nor repeal any other powers granted under state statutes.

~~Sec. 8½-12. Warning and disclaimer of liability.~~

~~(g)~~ The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. ~~On rare occasions greater~~ Larger floods can and will occur ~~and flood on rare occasions.~~ Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the ~~flood-prone areas of special flood hazards~~ or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the ~~community or city~~, any ~~official~~ officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

DIVISION 2. – ADMINISTRATION

~~Sec. 8½-13(38-6), 11-19-2007. Designation of the floodplain administrator.~~

~~The city manager and/or his designated appointee is hereby appointed the floodplain administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance – National Flood Insurance Program Regulations) pertaining to floodplain management.~~

~~Sec. 8½-14. Duties and responsibilities of the floodplain administrator.~~

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~~Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:~~

~~(1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter.~~

~~(2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.~~

~~(3) Review, approve or deny all applications for - Establishment of development permits required by adoption of this chapter permit.~~

~~(4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.~~

~~(5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation.~~

~~(6) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.~~

~~(7) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.~~

~~(8) When base flood elevation data has not been provided in accordance with section 8½-7, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of this chapter.~~

~~(9) When a regulatory floodway has not been designated, the floodplain administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1—30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.~~

~~(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in zones A1—30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one (1) foot, provided that the community first completes all of the provisions required by Section 65.12 of the National Flood Insurance Program regulations(a) Generally. No building permit, development permit, construction site permit or other permit required for a structure or development shall be issued, and no plat shall be approved, unless the applicant demonstrates that the permit or plat meets the applicable requirements of this division, or unless a variance, excepting such structure or development from the provisions of this chapter, is granted under the terms of this division.~~

~~(b) Development permit required. A development permit shall be obtained before construction or development begins within any special flood hazard area established in Sec. 8 ½-6 or within any other flood-prone area designated by the city engineer. The permit shall be for all structures including manufactured homes, and for all development including fill and other activities.~~

~~(C)~~

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Sec. 8½-15. Permit procedures.

- (a) Application for development permit. Application for a floodplain development permit shall be presented to the floodplain administrator made on forms furnished by him/her the Ddepartment of public worksDevelopment Services and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevationelevations of proposed landscape alterationthe area in question, existing and/or proposed structures, including the placementfill, storage of manufactured homesmaterials, drainage facilities, and the location of the foregoing in relation to areas of special flood hazard. Additionally, Specifically, the following information is required:
- (1) (1) The existing topography and the location, dimensions, and elevation of any proposed alterations;
 - (2) Existing and proposed structures;
 - (3) The location of the proposed alterations in relation to special flood hazard areas;
 - (4) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
 - (25) Elevation in relation to mean sea level to which any nonresidential structure shallstructures will be or have been floodproofed;
 - (3) A certificate from(6) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 8½-18(2)in Sec 8 ½-13(b);
 - (4) Description of 7) If the extentsite is adjacent to which anya watercourse or natural drainage channel, the description of how that watercourse will be altered or relocatedimpacted as a result of proposed development;
 - (5) Maintain a record of 8)Base flood elevations from effective FIRM data for all such informationstructures and substantial improvements; and
 - (9) Each sheet in accordancethe plans on which elevations are marked shall include the vertical datum and adjustment, consistent with subsection 8½-14the effective FIRM, along with the FIRM benchmark and site benchmark used for vertical control.
- (d) Elevation certificate. The permit applicant for development of a structure is required to provide the city engineer with a signed FEMA elevation certificate at three stages during the application and construction process:
- (1);) When the permit application is submitted;
 - (b) (2) Prior to forming/pouring the lowest floor of the structure; and
 - (3) Prior to receiving the final inspection (photographs required on final certificate).
- (e) Engineering analyses. Based on the nature of the proposed development, the city engineer may require the permit applicant to submit one or more of the following studies:
- (1) Fill mitigation analysis;
 - (2) Hydraulic impact analysis;
 - (3) Hydrologic impact (overland flow path and ponding) analysis; and/or
 - (4) Any other technical analysis deemed necessary by the city engineer in order to protect the community from the impacts of potential flooding events.

Permit applicants are encouraged to discuss proposed development plans with the city engineer prior to submitting an application in order to determine which analyses may be required to support the application. Technical analyses shall be certified by a professional engineer licensed in the state.

(f) Permit approval or denial. Approval or denial of a ~~floodplain~~ development permit by the ~~floodplain administrator~~ city engineer shall be based on all of the provisions of this chapter and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The danger that materials may be swept onto other lands to the injury of others;
- (4) The compatibility of the proposed use with existing and anticipated development;
- (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable; and
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Sec. 8½-8. - Designation of the floodplain administrator.

The city engineer is hereby appointed floodplain administrator to administer and implement the provisions of this ~~article~~Chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance-National Flood Insurance Program Regulations) pertaining to floodplain management by granting or denying development permit applications in accordance with its provisions.

Sec. 8½-9. - Duties and responsibilities of the floodplain administrator.

Duties and responsibilities of the floodplain administrator shall include, but not be limited to:

(1) Permit review.

- a. Review all development permit applications to determine that the requirements of this ~~article~~Chapter have been satisfied.
- b. Review all development permit applications to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344) from which prior approval is required.
- c. Review all development permit applications to determine if the proposed development is located in the regulatory floodway. If located in the regulatory floodway, assure that the encroachment provisions of Sec. 8 ½ - 15 are met.
- d. Review all development permit applications to ensure that the proposed building site projects, including the placement of manufactured homes, will be reasonably safe from flooding.

(2) Use of other base flood data (in A Zones). When base flood elevation data has not been provided in accordance with Sec. 8 ½-6(b), obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer sections Sec. 8 ½-13, and 8 ½-15, floodways.

(3) Information to be obtained and maintained.

- a. Where base flood elevation data is provided through the flood insurance study, FIRM, or required as in subsection (2) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - b. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (2) of this section:
 - 1. Verify and record the actual elevation (in relation to mean sea level); and
 - 2. Maintain the floodproofing certifications required in [Sec. 8 ½-7\(c\)\(6\)](#).
 - c. Maintain for public inspection all records pertaining to the provisions of this [articleChapter](#).
- (4) Alteration of watercourses.
- a. Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and also the state commission on environmental quality prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (5) FIRM boundaries.
- a. Interpretation. Make interpretations, where needed, as to exact location of the boundaries of the special flood hazard area (i.e., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in [Sec 8 ½-11](#).
 - b. Revision; encroachments. Under the provisions of 44 CFR 65.12 of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE and AH on a community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by said section 65.12.

[Sec. 8½-10. - Plat approval; issuance.](#)

- (a) Any person who is required or elects to obtain a plat shall also comply with the provisions of this [articleChapter](#), if applicable.
- (b) When a person files an application for approval of a plat, the approval of the plat is subject to the approval of a drainage plan for the property that is the subject of the plat application if the property is located in whole or in part in a flood-prone area within the city. The drainage plan shall include the base flood elevation data for the property certified as true and correct on the face of the drainage plan by a registered professional engineer licensed in the state.
- (c) The city engineer shall review the drainage plan and determine whether the development will be reasonably safe from flooding and whether such proposed development is:
 - (1) Consistent with the need to minimize flood damage within the flood-prone area;
 - (2) To be constructed so that all public utility facilities including, but not limited to, sanitary sewer, gas, water and electrical systems are located and constructed so as to minimize flood damage from the base flood;
 - (3) To be constructed so that drainage is provided to reduce exposure of such development to flood hazards; and
 - (4) Would comply with the applicable requirements of division 3 of this [articleChapter](#).

- (d) If the proposed development satisfies the criteria in subsection (c) of this section, the city engineer shall approve the drainage plan and shall so notify the city planning and zoning commission in writing.
- (e) The city planning and zoning commission shall not approve a final plat until the city engineer has approved the drainage plan for that site.

Sec. 8½-11. - Variance procedures.

(a) Appeal board.

- (1) The appeal/appeals board, as established by the community/city council, shall hear and render judgment on/decide appeals and requests for variances from the requirements of this chapter.
- (b2) The appeal/appeals board shall hear and render judgment on an appeal only/decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.
- (c) Any person or persons aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.
- (d)(3) In passing upon such applications, the appeals board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter/article, and:
- a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (4) Upon consideration of the factors of subsection (a)(3) of this section and the purposes of this Chapter/article, the appeals board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter/article.
- (5) The floodplain administrator shall maintain a record/the records of all appeal actions involving an appeal and shall and report any variances to the Federal Emergency Management Agency upon request.
- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.
- (f)(b) Conditions for variances.

- (1) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors items in subsection 8½-15(b)(a)(3)a. thru k. of this section have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.
- (g) ~~Upon consideration of the factors noted above and the intent of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (section 8½-3).~~
- (h)(2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in this section.
- (3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) ~~Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.~~
- (j) ~~Prerequisites for granting variances:~~
- (1)(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (25) Variances shall only be issued upon: ~~(i)~~
- a. A showing of good and sufficient cause; ~~(ii) a~~
- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a;
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (a)(3) of this section, or conflict with existing local laws or ordinances.
- (3) ~~Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.~~
- (k)(6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (b)(1) of this section, and otherwise complies with Sec 8 ½-12(a) and (b) of the general standards.
- (8) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that ~~(i) the:~~
- a. The criteria outlined in subsection 8½-~~11~~16(a) — (j)(b) of this section are met; and ~~(ii) the~~

b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(9) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(c) Appeal of decision. All decisions of the appeals board are final and binding and may not be appealed to the city council. However, any person aggrieved by a decision of the appeals board may present a verified petition that states that the decision of board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented to a court of appropriate jurisdiction within ten calendar days after the date the board's decision is filed in the office of the secretary of the board.

(d) Notice of decision. The secretary shall give notice of the decision and the right of appeal of the decision to each party personally, by mail or by email not later than the third day after the date of the decision.

DIVISION 3. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 8½-~~12~~17. ~~Provisions for flood hazard reduction~~ - General standards.

In ~~all areas of special~~the flood hazards-prone area, the following ~~provisions~~standards are required ~~for all new construction and substantial improvements~~:

(1) Anchoring.

a. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) ~~All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;~~

(3) ~~All new construction or~~ All manufactured homes must likewise be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrostatic and hydrodynamic loads including the effects of buoyancy, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)

(2) Site drainage. Drainage pathways are required around structures to guide floodwaters around such structures.

(3) Construction materials and methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(4)b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. All new construction orand substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5)(4) Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (6)b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the ~~system~~systems and discharge from the systems into floodwaters; and
- (7)c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(5) Standards for subdivisions.

- a. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with the need to minimize flood damage;
- b. All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of this ~~article~~Chapter;
- c. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- d. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood damage; and
- e. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).
- (6) Review of building permits. Where elevation data is not available either through the flood insurance study, FIRM, or from another authoritative source (Sec 8 ½-9(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.
- (7) Mitigation of fill. Fill in the flood-prone area must be mitigated to ensure that the storage volume of such area is not diminished by development. A development permit applicant must submit a fill mitigation analysis demonstrating that the proposed development, if constructed, will not result in a decrease in storage volume within the flood-prone area.

Sec. 8½-~~13~~14. - Specific standards.

~~In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) section 8½-7, (ii) subsection 8½-14(8), or (iii) subsection 8½-14(3), the following provisions are required:~~

- (1)a) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor ~~(including basement)~~, elevated ~~to at least one foot~~ to at least one two (2) foot, 5 feet above the base flood elevation. A registered professional engineer, ~~architect~~, or land surveyor shall submit a ~~certification~~FEMA elevation certificate to the floodplain administrator that verifies that the standard of this subsection ~~as proposed in subsection 8½-15(a)(1), is satisfied.~~

(2b) Nonresidential ~~Construction~~construction.

- (1) New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either ~~have the lowest floor (including basement) elevated to at least one (1) foot above the base flood level or meet the specific standards for residential construction,~~ or, together with attendant utility and sanitary facilities, be designed so that below shall:

- a. Be floodproofed to at least two (2) 1.5 feet above the base flood level so that the structure is watertight with walls substantially impermeable to the passage of water and with;
 - b. Have structural components having the capability capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy -A₁;
 - c. Be certified by a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the that the design and methods of construction are in accordance with accepted standards of practice as outlined in for meeting provisions of this subsection. A record of such certification which includes based on their development and/or review of the specific elevation (in relation to mean sea level) to which such structures are floodproofed structural design, specifications and plans. Such certifications shall be maintained by provided to the floodplain administrator official as set forth in Sec 8 ½-9(3)b.
- (3) (2) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (d) of this section;
- (3) Applicants floodproofing nonresidential buildings are advised that flood insurance premiums may be based on rates that are greater than those established for buildings with the first floor elevated to the same level.
- (c) Critical facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the flood-prone area. Construction of new critical facilities shall be permissible within the flood-prone area if no feasible alternative site is available. Critical facilities constructed within the flood-prone area shall have the lowest floor elevated, or the structure shall be floodproofed to an elevation at least 1.5 two (2) feet above the elevation of the 500-year (0.2 percent probability) flood event or three feet above the highest adjacent grade of the building site if flood elevation data is not available. Additionally, floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access to and from the critical facility must be assured under all circumstances. The city engineer will review and approve all plans for access routes for critical facilities located in the flood-prone area.
- (d) Enclosures. New construction and substantial improvements, with fully Fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer licensed in the state or architect or must meet or exceed the following minimum criteria:
- a. (1) A minimum of two (2) openings on separate walls having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. (2) The bottom of all openings shall be no higher than one (1) foot above grade.
 - c. (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) Manufactured homes.
- a. Require that all manufactured homes to be placed within zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 - b. Require that manufactured homes that are placed or substantially improved within zones A1—30, AH, and AE on the community's FIRM on sites (i) outside (4) Below-grade crawlspaces shall be designed in accordance with FEMA Technical Bulletin 11-01, "Crawlspace

Construction for Buildings Located in Special Flood Hazard Areas," FIA-TB-11, or revisions to this document.

- (5) Below-grade crawlspaces are prohibited at sites where the velocity of floodwaters exceeds five feet per second.
- (6) All building utility systems within the crawlspace shall be elevated above base flood elevation or be designed so that floodwaters cannot enter or accumulate within the system component during flood conditions.
- (7) The interior of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade (LAG) and the height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation must not exceed four feet at any point.
- (8) Below-grade crawlspaces constructed in accordance with the requirements listed in this subsection (d) shall not be considered basements. However, applicants who construct buildings that have below-grade crawlspaces are hereby advised that such buildings may have higher flood insurance premiums than buildings that have crawlspaces with interior elevations at or above the lowest adjacent grade. In addition, the building design must include adequate provision for drainage from the crawlspace following a flooding event.

(e) Manufactured homes.

(1) All manufactured homes to be placed or substantially improved on sites:

- a. Outside of a manufactured home park or subdivision, (ii) in:
- b. In a new manufactured home park or subdivision, (iii) in:
- c. In an expansion to an existing manufactured home park or subdivision, or (iv) in
- d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood,
shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or at two (2) feet above the base flood elevation and be securely anchored to an adequately anchored designed foundation system to resist flotation, collapse, and lateral movement.

c. Require that manufactured (2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with zones A1—30, AH and AE or within the community's FIRM flood-prone area that are not subject to the above manufactured home provisions of paragraph (4) of this section shall be elevated so that either:

- 1a. The lowest floor of the manufactured home is elevated at least one two (2) feet, 5 feet above the base flood elevation; or
- 2b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored designed foundation system to resist flotation, collapse, and lateral movement.

(5f) Recreational vehicles. Require that recreational Recreational vehicles placed on sites within zones A1—30, AH, and AE on the community's FIRM are required to either (i) be:

- (1) Be on the site for fewer than one hundred eighty (180) consecutive days, or (ii) be:
- (2) Be fully licensed and ready for highway use, or (iii) meet the permit requirements of subsection 8½-15(a), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of section 8½-18. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has have no permanently attached additions, or

(3) Meet

~~Sec. 8½-19. Standards for subdivision proposals.~~

- (a) ~~All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with sections 8½-2, 8½-3, and 8½-4 of this chapter.~~
- (b) ~~All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet floodplain development permit requirements of section 8½-8; section 8½-15; and the provisions for flood hazard reduction, sections 8½-17 through 8½-23 of this chapter.~~
- (c) ~~Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to section 8½-7 or subsection 8½-14(8) of this chapter.~~
- (d) ~~All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.~~
- (e) ~~All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage of this section and the elevation and anchoring requirements for manufactured homes.~~

~~Sec. 8½-20. Standards for areas of shallow flooding (AO/AH zones)~~

~~Located within the areas of special flood hazard established in section 8½-7, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:~~

- (1) ~~All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified) plus one (1) foot.~~
- (2) ~~All new construction and substantial improvements of non-residential structures;~~
 - a. ~~Have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified) plus one (1) foot; or~~
- b. ~~Together with attendant utility and sanitary facilities (g) Accessory structures. Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters; shall be anchored to prevent floatation which may result in damage to other structures; and service utilities such as electrical and heating equipment shall be elevated or floodproofed.~~
- (h) ~~Breakaway walls. Breakaway walls must be designed so that below the base specified flood depth in an AO zone, or below the base flood elevation in an AH zone, level they carried downstream they will not cause damage to any other structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.~~
- (3) ~~A. Breakaway walls must have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by city or state codes) may be permitted only if a registered professional engineer or architect shall submit a certification to the~~

floodplain administrator certifies that the standards of this section, as proposed in section 8½-15 are satisfied design meets the following conditions:

- (1) Wall collapse shall result from a water load less than that which would occur during the base flood; and
- (2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

~~Sec. 8½-14(4) Require within zones AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures. - Before regulatory floodway.~~

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the city's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

~~Sec. 8½-2415.—Floodways.~~

Located - Regulatory floodway.

The regulatory floodway is the designated area within areasZone AE of the special flood hazard area established in section 8½-67, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) EncroachmentsProhibit new private development in the regulatory floodway. Improvements to existing structures which do not propose an expansion of the existing footprint of such structures may be permitted if all other requirements of this section are prohibitedfulfilled.
- (2) Concerning public development, prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated certification by a registered professional civil engineer, licensed by the state, is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment wouldencroachments shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge. This requirement may be satisfied by a conditional letter of map revision issued by the Federal Emergency Management Agency.
- (2) If subsection 8½-21(1) above is(3) Require that the bottom of the lowest horizontal member supporting the proposed structure, including bridges, be elevated at least 1824 inches above the base flood elevation.
- (4) If subsections (2) and (3) of this section are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 8½-17 through 8½-23this divisionChapter.

Sec. 8 1/2 -16(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulation, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12, - Standards for shallow flooding areas (AO/AH Zones).

Located within the special flood hazard area established in Sec. 8 ½-6 (b) are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. In these areas, the following provisions apply:

- (1) New construction and substantial improvements of residential structures and manufactured homes within AO/AH Zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, 1.5 feet or more above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- (2) New construction and substantial improvements of nonresidential structures within AO/AH Zones shall either:
 - a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, 1.5 feet or more above the depth number specified on the FIRM (at least two feet, if no depth number is specified); or
 - b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in Sec 8 ½-13 (b)(3).
- (3) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- (4) Recreational vehicles placed on sites within AO/AH Zones on the community's FIRM must either:
 - a. Be on the site for fewer than 180 consecutive days;
 - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Meet the requirements of this section and the elevation and anchoring requirements for manufactured homes.

~~Sec. 8½-22. Severability.~~

~~If any section, clause, sentence, or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this chapter.~~

~~Sec. 8½-23. Penalties for non-compliance.~~

~~No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined for each violation in accordance with chapter 1, section 1-5, Code of Ordinances of the City of Brenham, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent City of Brenham City Council from taking such other lawful action as is necessary to prevent or remedy any violation.~~

Commented [LL2]: Should this be kept

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING THE CODE OF ORDINANCES, BY DELETING ALL OF CHAPTER 8 1/2, FLOOD DAMAGE PREVENTION, THEREOF AND SUBSTITUTING THEREFORE A NEW CHAPTER 8 1/2; PROVIDING RULES AND REGULATIONS DESIGNED TO PREVENT DAMAGE TO PROPERTY AND INJURY TO PERSONS RESULTING FROM FLOODING; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS THAT CHAPTER 8 1/2 , FLOOD DAMAGE PREVENTION, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1.

That Chapter 8 1/2 of the Code of Ordinances of the City of Brenham, is hereby amended by to read as follows:

Chapter 8½ - FLOOD DAMAGE PREVENTION

DIVISION 1. - GENERALLY

Sec. 8½-1. - Statutory authorization.

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Brenham, Texas does ordain as follows:

Sec. 8½-2. - Findings of fact.

- (a) The flood hazard areas of the City of Brenham are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains, which increase flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, or otherwise protected from flood damage.

Sec. 8½-3. - Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (6) Help maintain a stable tax base by providing for the sound use and development of the flood-prone area in such a manner as to minimize future flood blight areas;
- (7) Ensure that potential buyers are notified that property is in a flood-prone area; and
- (8) Ensure that those who occupy the flood-prone area assume responsibility for their actions.

Sec. 8½-4. - Methods of reducing flood losses.

In order to accomplish its purposes, this Chapter uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards to other lands.

Sec. 8½-5. - Definitions.

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

Accessory structure means a structure which is located on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure.

Addition means any alteration to an existing structure that increases its footprint.

Appeal means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

Area of future conditions flood hazard means the land area that would be inundated by the one percent annual chance (100-year) flood based on future conditions hydrology.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on the flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the flood hazard boundary map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the flood insurance rate map (FIRM) and found in the accompanying flood insurance study (FIS) for Zone A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one percent chance of equaling or exceeding that level in any given year; also called the "base flood."

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means open wood lattice, insect screening or any other suitable building material approved by the city engineer which is not part of the structural support of the associated structure and which is intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the structure or damage to the structural integrity of the structure on which breakaway walls are used.

Construction site permit means a permit issued to a developer by the city for site work and/or construction of water, sanitary, or natural gas mains.

Conveyance means the flow of water during the base flood with a velocity that is greater than one foot per second or a depth that is greater than one foot.

Crawlspace is an enclosed area below the lowest floor of a building formed when the foundation walls are used to elevate the lowest floor above the base flood elevation.

Critical facilities includes facilities that materially affect the public health and welfare. Such facilities include, but are not be limited to:

- (1) Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood;

- (2) Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during, and after a flood;
- (3) Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during and after a flood; and
- (4) Structures or facilities that produce, use, treat, store, or dispose of highly volatile, flammable, explosive, toxic, and/or water-reactive materials.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, clearing, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. Fences or fence-type walls located within the floodplain are included within this definition.

Development permit means a permit issued under the provisions of this Chapter for any development of a site located within a flood-prone area. The term "development permit" shall also include a permit for the placement of a recreational vehicle for more than 180 days in Zone AE.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Elevation certificate means a statement from an engineer or surveyor licensed by the state on the most current FEMA form certifying that the lowest floor of the structure has been elevated at least as high as required by this Chapter.

Existing construction means, for the purposes of determining flood insurance rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. The term "existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) and is completed before the effective date of the floodplain management regulations adopted by the city.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Fill means any material that is placed in an area and increases the elevation of that area or displaces water volume.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study (FIS). See Flood elevation study.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodplain or flood-prone area means any land area, including the special flood hazard area, susceptible to being inundated by water from any source (see Flood).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited, to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term "floodplain management regulations" describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodproofing certificate means a certificate issued by a registered professional engineer licensed in the state which states that he has developed and/or reviewed the structural design, specifications, and plans for the construction of the structure or improvements covered by the certificate and that the design and methods of construction are in accordance with accepted standards of practice for meeting the following requirements:

- (1) The floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood; and

- (2) Together with attendant utility and sanitary facilities, the structures are designed so that below the base flood level the structures are watertight with walls impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Floodway. See Regulatory floodway.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent use" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Chapter found at section 8 ½-13.

Manufactured home means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when

attached to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, the term "new construction" means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the city and includes any subsequent improvements to such structures.

New development means the initial construction of a structure.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the city.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area or special area means the land in the floodplain within the city that is subject to a one percent or greater chance of flooding in any given year and is designated on the FIRM as Zone AE.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement.

- (1) The term "substantial improvement" means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:
 - a. Before "start of construction" of the improvement or repair; or
 - b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, the term "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- (2) The term "substantial improvement" includes repetitive loss, as defined in this section; substantial damage, regardless of the actual repair work performed, but does not include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a historical structure provided that the alteration will not preclude the structure's continued designation as a historical structure.

Utilities means all building utilities including, but not limited to, electrical, heating, ductwork, ventilating, plumbing, air conditioning equipment, and any other service facilities.

Variance means a grant of relief from the requirements of this Chapter which permits construction in a manner that would otherwise be prohibited by this chapter. (See Sec. 8 1/2-11 and section 60.6 of the National Flood Insurance Program regulations.)

Violation means the failure of a structure or other development to be fully compliant with the city's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Chapter is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

State Law reference— Definitions relating to Flood Control and Insurance Act, V.T.C.A., Water Code § 16.313.

Sec. 8½-6. - General provisions.

- (a) Lands to which this chapter applies. This chapter shall apply to all flood-prone areas within the jurisdiction of the City of Brenham.
- (b) Basis for establishing flood-prone areas. The special flood hazard area identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study for Washington County, Texas," dated May 16, 2019, with accompanying flood insurance rate maps, dated May 16, 2019, and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. In addition to the special flood hazard area, the city engineer, with approval of the city council by resolution, may designate by maps certain other areas to be flood-prone based on flood history or other characteristics that indicate a potential for future flooding events.
- (c) Compliance. No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.
- (d) Penalties for noncompliance. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Chapter shall be deemed guilty of a misdemeanor.

- (e) Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) Interpretation. In the interpretation and application of this chapter, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the city council; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the flood-prone areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

DIVISION 2. – ADMINISTRATION

Sec. 8½-7 - Establishment of development permit.

- (a) Generally. No building permit, development permit, construction site permit or other permit required for a structure or development shall be issued, and no plat shall be approved, unless the applicant demonstrates that the permit or plat meets the applicable requirements of this division, or unless a variance, excepting such structure or development from the provisions of this chapter, is granted under the terms of this division.
- (b) Development permit required. A development permit shall be obtained before construction or development begins within any special flood hazard area established in Sec. 8 ½-6 or within any other flood-prone area designated by the city engineer. The permit shall be for all structures including manufactured homes, and for all development including fill and other activities.
- (c) Application for development permit. Application for a development permit shall be made on forms furnished by the Department of Development Services and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
 - (1) The existing topography and the location, dimensions, and elevation of any proposed alterations;
 - (2) Existing and proposed structures;
 - (3) The location of the proposed alterations in relation to special flood hazard areas;

- (4) Elevation, in relation to mean sea level of the lowest floor (including basement) of all new and substantially improved structures;
 - (5) Elevation in relation to mean sea level to which any nonresidential structures will be or have been floodproofed;
 - (6) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Sec 8 ½-13(b);
 - (7) If the site is adjacent to a watercourse or drainage channel, the description of how that watercourse will be impacted as a result of proposed development;
 - (8) Base flood elevations from effective FIRM data for all structures and substantial improvements; and
 - (9) Each sheet in the plans on which elevations are marked shall include the vertical datum and adjustment, consistent with the effective FIRM, along with the FIRM benchmark and site benchmark used for vertical control.
- (d) Elevation certificate. The permit applicant for development of a structure is required to provide the city engineer with a signed FEMA elevation certificate at three stages during the application and construction process:
- (1) When the permit application is submitted;
 - (2) Prior to forming/pouring the lowest floor of the structure; and
 - (3) Prior to receiving the final inspection (photographs required on final certificate).
- (e) Engineering analyses. Based on the nature of the proposed development, the city engineer may require the permit applicant to submit one or more of the following studies:
- (1) Fill mitigation analysis;
 - (2) Hydraulic impact analysis;
 - (3) Hydrologic impact (overland flow path and ponding) analysis; and/or
 - (4) Any other technical analysis deemed necessary by the city engineer in order to protect the community from the impacts of potential flooding events.

Permit applicants are encouraged to discuss proposed development plans with the city engineer prior to submitting an application in order to determine which analyses may be required to support the application. Technical analyses shall be certified by a professional engineer licensed in the state.

- (f) Permit approval or denial. Approval or denial of a development permit by the city engineer shall be based on all of the provisions of this chapter and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable; and
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Sec. 8½-8. - Designation of the floodplain administrator.

The city engineer is hereby appointed floodplain administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance-National Flood Insurance Program Regulations) pertaining to floodplain management by granting or denying development permit applications in accordance with its provisions.

Sec. 8½-9. - Duties and responsibilities of the floodplain administrator.

Duties and responsibilities of the floodplain administrator shall include, but not be limited to:

- (1) Permit review.
 - a. Review all development permit applications to determine that the requirements of this Chapter have been satisfied.
 - b. Review all development permit applications to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344) from which prior approval is required.
 - c. Review all development permit applications to determine if the proposed development is located in the regulatory floodway. If located in the regulatory floodway, assure that the encroachment provisions of Sec. 8 ½ - 15 are met.
 - d. Review all development permit applications to ensure that the proposed building site projects, including the placement of manufactured homes, will be reasonably safe from flooding.
- (2) Use of other base flood data (in A Zones). When base flood elevation data has not been provided in accordance with Sec. 8 ½-6(b), obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer sections Sec. 8 ½-13, and 8 ½-15, floodways.
- (3) Information to be obtained and maintained.
 - a. Where base flood elevation data is provided through the flood insurance study, FIRM, or required as in subsection (2) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - b. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (2) of this section:
 1. Verify and record the actual elevation (in relation to mean sea level); and

2. Maintain the floodproofing certifications required in Sec. 8 ½-7(c)(6).
- c. Maintain for public inspection all records pertaining to the provisions of this Chapter.

(4) Alteration of watercourses.

- a. Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and also the state commission on environmental quality prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(5) FIRM boundaries.

- a. Interpretation. Make interpretations, where needed, as to exact location of the boundaries of the special flood hazard area (i.e., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sec 8 ½-11 .
- b. Revision; encroachments. Under the provisions of 44 CFR 65.12 of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE and AH on a community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first completes all of the provisions required by said section 65.12.

Sec. 8½-10. - Plat approval; issuance.

- (a) Any person who is required or elects to obtain a plat shall also comply with the provisions of this Chapter, if applicable.
- (b) When a person files an application for approval of a plat, the approval of the plat is subject to the approval of a drainage plan for the property that is the subject of the plat application if the property is located in whole or in part in a flood-prone area within the city. The drainage plan shall include the base flood elevation data for the property certified as true and correct on the face of the drainage plan by a registered professional engineer licensed in the state.
- (c) The city engineer shall review the drainage plan and determine whether the development will be reasonably safe from flooding and whether such proposed development is:
 - (1) Consistent with the need to minimize flood damage within the flood-prone area;
 - (2) To be constructed so that all public utility facilities including, but not limited to, sanitary sewer, gas, water and electrical systems are located and constructed so as to minimize flood damage from the base flood;
 - (3) To be constructed so that drainage is provided to reduce exposure of such development to flood hazards; and
 - (4) Would comply with the applicable requirements of division 3 of this Chapter.

- (d) If the proposed development satisfies the criteria in subsection (c) of this section, the city engineer shall approve the drainage plan and shall so notify the city planning and zoning commission in writing.
- (e) The city planning and zoning commission shall not approve a final plat until the city engineer has approved the drainage plan for that site.

Sec. 8½-11. - Variance procedures.

(a) Appeal board.

- (1) The appeals board, as established by the city council, shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The appeals board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.
- (3) In passing upon such applications, the appeals board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (4) Upon consideration of the factors of subsection (a)(3) of this section and the purposes of this Chapter, the appeals board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
- (5) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(b) Conditions for variances.

- (1) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with

existing structures constructed below the base flood level, providing items in subsection (a)(3)a. thru k. of this section have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.

- (2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in this section.
- (3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (a)(3) of this section, or conflict with existing local laws or ordinances.
- (6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (b)(1) of this section, and otherwise complies with Sec 8 ½-12(a) and (b) of the general standards.
- (8) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - a. The criteria outlined in subsection 8½-11(b) are met; and
 - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (9) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (c) Appeal of decision. All decisions of the appeals board are final and binding and may not be appealed to the city council. However, any person aggrieved by a decision of the appeals board may present a verified petition that states that the decision of board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented to a court of

appropriate jurisdiction within ten calendar days after the date the board's decision is filed in the office of the secretary of the board.

- (d) Notice of decision. The secretary shall give notice of the decision and the right of appeal of the decision to each party personally, by mail or by email not later than the third day after the date of the decision.

DIVISION 3. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 8½-12. - General standards.

In the flood-prone area, the following standards are required:

(1) Anchoring.

- a. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
- b. All manufactured homes must likewise be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrostatic and hydrodynamic loads including the effects of buoyancy, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques.)

(2) Site drainage. Drainage pathways are required around structures to guide floodwaters around such structures.

(3) Construction materials and methods.

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(5) Standards for subdivisions.

- a. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with the need to minimize flood damage;
- b. All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of this Chapter;
- c. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- d. All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood damage; and
- e. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

(6) Review of building permits. Where elevation data is not available either through the flood insurance study, FIRM, or from another authoritative source (Sec 8 ½-9(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

(7) Mitigation of fill. Fill in the flood-prone area must be mitigated to ensure that the storage volume of such area is not diminished by development. A development permit applicant must submit a fill mitigation analysis demonstrating that the proposed development, if constructed, will not result in a decrease in storage volume within the flood-prone area.

Sec. 8½-13. - Specific standards.

(a) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least two (2) feet above the base flood elevation. A registered professional engineer or land surveyor shall submit a FEMA elevation certificate to the floodplain administrator that verifies that the standard of this subsection is satisfied.

(b) Nonresidential construction.

(1) New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either meet the specific standards for residential construction, or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed to at least two (2) feet above the base flood level so that the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for

meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Sec 8 ½-9(3)b.;

- (2) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (d) of this section;
- (3) Applicants floodproofing nonresidential buildings are advised that flood insurance premiums may be based on rates that are greater than those established for buildings with the first floor elevated to the same level.
- (c) Critical facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the flood-prone area. Construction of new critical facilities shall be permissible within the flood-prone area if no feasible alternative site is available. Critical facilities constructed within the flood-prone area shall have the lowest floor elevated, or the structure shall be floodproofed to an elevation at least two (2) feet above the elevation of the 500-year (0.2 percent probability) flood event or three feet above the highest adjacent grade of the building site if flood elevation data is not available. Additionally, floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access to and from the critical facility must be assured under all circumstances. The city engineer will review and approve all plans for access routes for critical facilities located in the flood-prone area.
- (d) Enclosures. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a professional engineer licensed in the state or must meet or exceed the following minimum criteria:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than one foot above grade.
 - (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (4) Below-grade crawlspaces shall be designed in accordance with FEMA Technical Bulletin 11-01, "Crawlspace Construction for Buildings Located in Special Flood Hazard Areas," FIA-TB-11, or revisions to this document.
 - (5) Below-grade crawlspaces are prohibited at sites where the velocity of floodwaters exceeds five feet per second.
 - (6) All building utility systems within the crawlspace shall be elevated above base flood elevation or be designed so that floodwaters cannot enter or accumulate within the system component during flood conditions.
 - (7) The interior of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade (LAG) and the height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation must not exceed four feet at any point.
 - (8) Below-grade crawlspaces constructed in accordance with the requirements listed in this subsection (d) shall not be considered basements. However, applicants who construct

buildings that have below-grade crawlspaces are hereby advised that such buildings may have higher flood insurance premiums than buildings that have crawlspaces with interior elevations at or above the lowest adjacent grade. In addition, the building design must include adequate provision for drainage from the crawlspace following a flooding event.

(e) Manufactured homes.

(1) All manufactured homes to be placed or substantially improved on sites:

- a. Outside of a manufactured home park or subdivision;
- b. In a new manufactured home park or subdivision;
- c. In an expansion to an existing manufactured home park or subdivision; or
- d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at two (2) feet above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within the flood-prone area that are not subject to the above manufactured home provisions shall be elevated so that either:

- a. The lowest floor of the manufactured home is elevated at two 2 feet above the base flood elevation; or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

(f) Recreational vehicles. Recreational vehicles placed on sites are required to either:

- (1) Be on the site for fewer than one hundred eighty (180) consecutive days;
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
- (3) Meet the requirements of subsection (e) of this section and the elevation and anchoring requirements for manufactured homes.

(g) Accessory structures. Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters; shall be anchored to prevent flotation which may result in damage to other structures; and service utilities such as electrical and heating equipment shall be elevated or floodproofed.

(h) Breakaway walls. Breakaway walls must be designed so that if carried downstream they will not cause damage to any other structure. Breakaway walls must have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by

design or when so required by city or state codes) may be permitted only if a registered professional engineer certifies that the proposed design meets the following conditions:

- (1) Wall collapse shall result from a water load less than that which would occur during the base flood; and
- (2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

Sec. 8 ½-14. - Before regulatory floodway.

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the city's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Sec. 8 ½-15. - Regulatory floodway.

The regulatory floodway is the designated area within Zone AE of the special flood hazard area established in section 8 ½-6. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Prohibit new private development in the regulatory floodway. Improvements to existing structures which do not propose an expansion of the existing footprint of such structures may be permitted if all other requirements of this section are fulfilled.
- (2) Concerning public development, prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer, licensed by the state, is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. This requirement may be satisfied by a conditional letter of map revision issued by the Federal Emergency Management Agency.
- (3) Require that the bottom of the lowest horizontal member supporting the proposed structure, including bridges, be elevated at least 24 inches above the base flood elevation.
- (4) If subsections (2) and (3) of this section are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Chapter.

Sec. 8 1/2 -16. - Standards for shallow flooding areas (AO/AH Zones).

Located within the special flood hazard area established in Sec. 8 ½-6 (b) are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. In these areas, the following provisions apply:

- (1) New construction and substantial improvements of residential structures and manufactured homes within AO/AH Zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, 1.5 feet or more above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- (2) New construction and substantial improvements of nonresidential structures within AO/AH Zones shall either:
 - a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, 1.5 feet or more above the depth number specified on the FIRM (at least two feet, if no depth number is specified); or
 - b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in Sec 8 ½-13 (b)(3).
- (3) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- (4) Recreational vehicles placed on sites within AO/AH Zones on the community's FIRM must either:
 - a. Be on the site for fewer than 180 consecutive days;
 - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Meet the requirements of this section and the elevation and anchoring requirements for manufactured homes.

SECTION 2

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

SECTION 3

It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Brenham. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or

held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Brenham, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 4

Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Brenham, Texas, and, upon conviction, shall be punished by a fine not to exceed two thousand (\$2,000.00) dollars for each offense.

SECTION 5.

This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

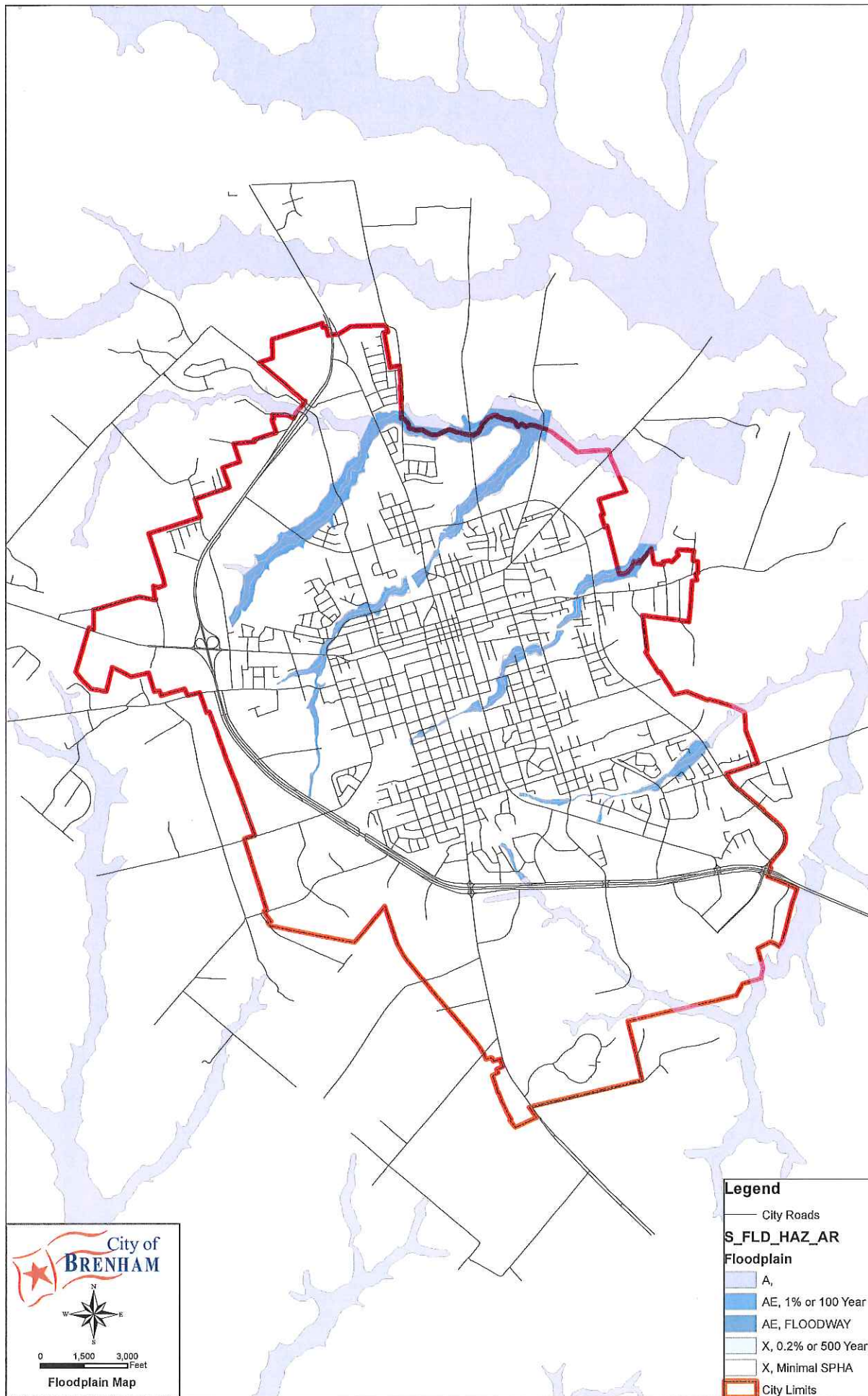
PASSED and **APPROVED** on its first reading this the ___ day of ____, 2019.

PASSED and **APPROVED** on its second reading this the ___ day of ____, 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary





AGENDA ITEM 11

DATE OF MEETING: April 18, 2019	DATE SUBMITTED: April 11, 2019
DEPT. OF ORIGIN: Tourism & Marketing	SUBMITTED BY: Kevin Boggus
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☐ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Master Services Agreement Between the City of Brenham and Tempest, Inc. for Customer Relationship Management (CRM) Software for Visit Brenham and Authorize the Mayor to Execute Any Necessary Documentation	
SUMMARY STATEMENT: Tempest iDSS Cyclone is an online database that Visit Brenham – the official Destination Marketing Organization (DMO) for Brenham and Washington County – will use to manage and track Tourism Partner information. This software, which will be purchased with HOT funds, will integrate into the VisitBrenhamTexas.com website, and also allow partners to update their own records, such as business hours, events and tour times. The price of the contract is \$21,000 over three years. - Year 1 - \$9,000 - Year 2 - \$6,000 - Year 3 - \$6,000 We ask that you approve this 3-year contract with Tempest.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): . A. PROS: Using this software will provide the Visitor Center staff with a database to collect and share information with Tourism partners. B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Schedule A: Statement of Work; and (2) Master Services Agreement	
FUNDING SOURCE (Where Applicable): Visit Brenham Hotel Occupancy Tax Funds.	

RECOMMENDED ACTION: Approve a Master Services Agreement between the City of Brenham and Tempest, Inc., in the amount of \$21,000 for three years, for Customer Relationship Management (CRM) Software for Visit Brenham and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

Schedule A: Statement of Work

iDSS CYCLONE | CRM SOFTWARE | DESTINATION MANAGEMENT

CITY OF BRENHAM

CRM REPRESENTATIVE

Derek Mogar

Director of Business Development

derek.mogar@tempest.im

(520) 231-5294

©Copyright 2019 Tempest—all rights reserved. If there are any concerns, questions, or issues regarding Confidential Information, please contact Tempest directly.

BACKGROUND

This Statement of Work is dated **April 1st, 2019** ("Effective Date") and by and between Client and iDSS Global LLC pursuant to the Master Services Agreement effective **April 1st, 2019**. The parties agree that this Statement of Work, along with the Master Services Agreement and other Statements of Work incorporated by reference therein, form a binding agreement between the parties relating to all services to be provided by iDSS Global LLC to Client.

The Master Services Agreement shall control in the event of any inconsistencies between this Statement of Work and the Master Services Agreement.

DEFINITIONS

The following capitalized terms used in this Statement of Work and its exhibits shall have the following meanings:

- a. "Client Support" means iDSS Global LLC acknowledgement and response to telephone calls and emails from client asking questions about System or requesting help in using the system.
- b. "Fees" means the fees for the license to use the System and for the Services as set forth in the Fee Schedule.
- c. "GO LIVE Date" means the point when the System has been configured and enabled and is ready for the Client to use.
- d. "Standard Reports" means the standard reports generated by the System for use by Client.
- e. "System" means, as a collective, those certain web-based systems identified by Client in Scope of Services.
- f. "Users" means anyone logging into and using the System.
- g. "Email Credit" means one email credit is equal to one email sent to one email recipient from iDSS Cyclone through the iDSS Cyclone Email Campaigns Feature.
- h. "iDSS Legacy Version" means iDSS Version 8 or other prior versions.
- i. "iDSS Cyclone" or "iDSS" means iDSS Version 9.

FEE SCHEDULE

Fee Schedule	Cost
iDSS CYCLONE ACTIVATION - ONE TIME COST	\$3,000.00
SETUP - database server, configuration of client database	Included
DATA MIGRATION - existing client data	Included
TRAINING - digital training	Included
iDSS CYCLONE CORE LICENSE - ANNUAL SUBSCRIPTION	\$6,000.00
iDSS CYCLONE - 3 YEAR CONTRACT:	\$21,000.00
YEAR 1 GRAND TOTAL:	\$9,000.00
YEAR 2 GRAND TOTAL:	\$6,000.00
YEAR 3 GRAND TOTAL:	\$6,000.00
OPTIONAL SERVICES & FEATURES:	
PROFESSIONAL SERVICES - custom development, consultation, data cleansing	\$150/HOUR
CUSTOM REPORT DEVELOPMENT	\$150/HOUR
VENUE & MEETING SPACE MANAGEMENT FEATURE - annual subscription	\$6,000.00
E-PROPOSAL BUILDER - annual subscription	\$6,000.00
HOUSING	BASED ON VOLUME
EVENT REGISTRATIONS	BASED ON VOLUME
EMAIL CAMPAIGN - 50,000 EMAIL CREDITS	\$450.00

ACTIVATION FEE

- a. **Fee Description.** This is a one-time only, non refundable activation fee for the right to use the Destination Management System ("DMS"), licenses for staff members, configuring DMS in preparation for Client use, securing database access and information storage.
- b. **Payment Terms.** **\$1,500.00** (first half of Activation Fee) will be paid as a down payment upon executing this agreement. The remaining **\$1,500.00** (last half of Activation Fee) and **\$6,000.00** (Annual Subscription) will be billed when the client goes live on iDSS. The Annual Subscription will be billed each anniversary moving forward for the terms described in the Master Services Agreement.
- c. **Data Migration.** iDSS will migrate data to DMS from other sources, provided that the Client has identified in writing, to the satisfaction of iDSS, the data source or sources to be accessed and the specific data the Client wishes to migrate to DMS and iDSS has determined if migration of the data is feasible.
- d. **Onsite Training.** At the Client's request, iDSS will provide training to the Client's staff at the Client's business location, covering the features, use and other information regarding DMS. For onsite training the client will be billed the cost of travel ("Travel Expenses"). Limitation on Training - Each training session is limited to 10 staff members per trainer.
- e. **Travel Expenses.** The Client agrees to pay all documented travel expenses per the Master Service Agreement, Section 2.1.

Annual Subscription Fee

- a. **DMS Subscription.** Through payment of this fee, the Client has the right to continued use of DMS and features defined in the scope of services during Agreement term period. This fee includes regular upgrades and client support. The Subscription fee is locked in for the Initial Term period with the exception of adding/removing users or adding/removing optional features. iDSS shall send an invoice for Annual Subscription Fee for the first year following the GO LIVE date. Subsequent Annual Subscription Fees will be billed in advance of the Go Live anniversary for each year.

Optional Features and Services

- a. **Consulting Services.** iDSS offers best practice consulting to assist Client in streamlining processes. iDSS offers this service at the standard billable hourly rate outlined in the fee schedule. This service can be performed on-site with a minimum of 4 hours and the Client agrees to pay all documented travel expenses per the Master Service Agreement, Section 2.1. This service can also be performed remotely, billable by the hour with a minimum of 1 hour.

- b. **Online and Telephone Training.** iDSS offers additional training beyond what is covered in the scope of services. iDSS offers this additional training at the standard billable hourly rate outlined in the fee schedule. Additional training can be performed on-site with a minimum of 4 hours and the Client agrees to pay all documented travel expenses per the Master Service Agreement, Section 2.1. Additional training can also be performed remotely, billable by the hour with a minimum of 1 hour.
- c. **Custom Reports.** iDSS offers a wide variety of standard reports included in DMS, including occasional new reports for all clients. iDSS may also prepare customized reports if Client requests at their expense. iDSS will begin development of the report upon receiving a signed request or email from Client, describing the specifications, and approving the estimated fees.
- d. **Data Updates.** iDSS will perform updates to a Client's database to update information contained in fields in the database. iDSS will perform data updates upon receiving a signed request or email from Subscriber, describing the specifications, and approving the estimated fees.
- e. **Custom Development.** Certain features of DMS may be customized to a Client's specifications, if Client requests at their expense. If the requested feature is a possible customization, iDSS will begin customizing the feature upon receiving a signed request or email from Subscriber, describing the specifications, and approving the estimated fees.
- f. **Email Credits.** iDSS has an email campaign feature that allows users to design and distribute email campaigns. Email Credits can be purchased in blocks of 50,000 at the rate outlined in the fee schedule. Email overage charge of .0125 per email credit will be assessed if insufficient email credits are available at the time of email campaign delivery. Licensing of this feature requires agreement to Schedule B: Anti Spam Policy

SCOPE OF SERVICES

Scope of Services	
ONBOARDING, MIGRATION & TRAINING	
SETUP - database server, configuration of client database	INCLUDED
DATA MIGRATION - existing client data	INCLUDED
TRAINING -professional training	INCLUDED
iDSS CYCLONE CORE LICENSE	
a. UNLIMITED CLIENT SUPPORT	INCLUDED
b. ONGOING TRAINING	INCLUDED
c. 288+ STANDARD REPORTS + REPORT BUILDER	INCLUDED
d. PREMIUM RACKSPACE HOSTING & SECURITY	INCLUDED
e. MEMBERSHIP/PARTNERSHIP MANAGEMENT	INCLUDED
f. DUES, INVOICING & ONLINE PAYMENTS	INCLUDED
g. BRANDED MEMBER/PARTNER EXTRANET	INCLUDED
h. TASK/TRACE MANAGEMENT	INCLUDED
i. MEETINGS & CONVENTION SALES MANAGEMENT	INCLUDED
j. GROUP TOUR, TRAVEL TRADE & SPORTS MANAGEMENT	INCLUDED
k. OUTLOOK EMAIL INTEGRATION	INCLUDED
l. LEADS DISTRIBUTION FEATURE	INCLUDED

m.	SERVICE LEADS DISTRIBUTION	INCLUDED
n.	FAM & ITINERARY MANAGEMENT FEATURE	INCLUDED
o.	MINT & ECONOMIC IMPACT INTEGRATION	INCLUDED
p.	VISIT INQUIRIES & REFERRALS FEATURE	INCLUDED
q.	INVENTORY MANAGEMENT	INCLUDED
r.	IN KIND & EXPENSE TRACKING	INCLUDED
s.	ACCOUNTING IMPORT/EXPORT FEATURE	INCLUDED
t.	PROJECT COLLABORATION TOOL	INCLUDED
u.	MEDIA & ADVERTISING TRACKING FEATURE	INCLUDED
v.	EVENT TRACKING & MANAGEMENT FEATURE	INCLUDED
w.	SURVEYS & FORM BUILDER	INCLUDED
x.	LOCAL EVENTS CALENDAR + API'S FOR WEBSITE	INCLUDED
y.	LISTINGS & SPECIAL OFFERS + API'S FOR WEBSITE	INCLUDED
z.	WEBSITE FORMS & RFP COLLECTION + API'S FOR WEBSITE	INCLUDED
aa.	EMAIL DISTRIBUTION LIST MANAGEMENT	INCLUDED
bb.	CUSTOMIZABLE HOMEPAGE DASHBOARDS	INCLUDED
cc.	CUSTOMIZABLE PAGE LAYOUTS FOR ACCOUNTS, CONTACTS & LEADS	INCLUDED
dd.	GOOGLE & PARTNER ANALYTICS TRACKING	INCLUDED
ee.	ADMIN CONSOLE + UNLIMITED ROLES	INCLUDED
ff.	CLIENT PORTAL, SUPPORT HUB, TRAINING MANUALS, WEBINARS, USER FORUMS	INCLUDED

Schedule B: Anti-Spam Policy

ANTI SPAM POLICY

Tempest requires all clients to certify their compliance with the following Anti-Spam policy as well as the opt-in status of email distribution lists.

Your use of iDSS Cyclone must comply with all applicable Laws. This includes laws applicable to you and also laws applicable to Tempest and the recipient of each Email. Examples of applicable laws include laws relating to spam or unsolicited commercial email (UCE), privacy, security, obscenity, defamation, intellectual property, pornography, terrorism, homeland security, gambling, child protection, and other applicable laws. It is your responsibility to know and understand the laws applicable to your use of the Services and the Emails you generate and send through the Services.

Your use of iDSS Cyclone must follow all applicable guidelines established by iDSS Global LLC. The guidelines below are examples of practices that may violate this Policy when generating or sending Emails through the iDSS Email Campaigns:

- Using non-permission based Email lists (i.e., lists in which each recipient has not explicitly granted permission to receive Emails from you by affirmatively opting-in to receive those Emails).
- Using purchased or rented Email lists.
- Sending Emails to non-specific addresses (e.g., webmaster@domain.com or info@domain.com).
- Sending Emails that result in an unacceptable number of spam or UCE complaints (even if the Emails themselves are not actually spam or UCE).
- Failing to include a working "unsubscribe" link in each Email that allows the recipient to remove themselves from your mailing list.
- Failing to comply with any request from a recipient to be removed from your mailing list within 10 days of receipt of the request.
- Failing to include in each Email a link to the then-current Privacy Policy applicable to that Email.
- Disguising the origin or subject matter of any Email or falsifying or manipulating the originating email address, subject line, headers, or transmission path information for any Email.
- Failing to include in each Email your valid physical mailing address or a link to that information.
- Including "junk mail," "chain letters," "pyramid schemes," incentives (e.g., coupons, discounts, awards, or other incentives) or other material in any Email that encourages a recipient to forward the Email to another recipient.

LET'S GET STARTED

This document outlines a scope of features and functionality (including the deliverables from both the Client and Agency) to be completed by Tempest.

Please sign in the appropriate location below, and return the signed proposal to us by fax or mail.

City of Brenham
200 W. Vulcan Street
Brenham, TX 77833

iDSS Global, LLC.
30 S. 15th St. Suite 800
Philadelphia, PA 19102

Printed Name

Printed Name

Title / Position

Title / Position

Signature

Signature

Date

Date

MASTER SERVICES AGREEMENT

This Master Services Agreement (this "Agreement") is dated **April 1st, 2019** (the "Effective Date") and by and between the following parties:

Tempest, Inc., for itself and on behalf of all of its subsidiaries and controlled affiliates (each a member of "Tempest"). Each member of the Tempest shall be bound by the terms of this Agreement. (collectively "Tempest");

and **City of Brenham** ("Client"), with offices at **200 W. Vulcan Street Brenham, TX 77833**.

This Agreement shall not become effective and Tempest shall not commence services to the Client until this Agreement is fully executed and returned to Tempest at the address set forth above.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the undersigned parties hereby agree to be bound for good and valuable consideration as follows:

1. Engagement. Client hereby engages Tempest and Tempest hereby accepts such engagement, to perform certain Website Design & Development Services, CRM, Web Hosting, Advertising, Digital Marketing Services or other services as described in the Statement of Work ("Statement of Work" or "SOW") attached as Schedule A.
 - 1.1. From time to time while this Agreement remains in effect, Tempest and Client may mutually agree upon services to be performed by Tempest set forth in one or more additional Statement of Work, which will be incorporated by reference into this Agreement.
 - 1.2. Any Statement of Work that references this Agreement shall be subject to and governed by this Agreement, and the terms of this Agreement shall supersede any contrary terms in an SOW unless the SOW refers to and overrides specifically the contrary term in this Agreement.
 - 1.3. The Client is responsible for providing Tempest with the necessary items and information specified in any Statement of Work and Tempest is not liable for any delays due to Client's failure to provide such items or information to Tempest on a timely basis. The Client acknowledges that such a failure may result in increased fees and schedule extensions by Tempest.
2. Service Fees. The fees for services provided under this Agreement shall be specified in a Fee Schedule to be included in each Statement of Work.

- 2.1. Expenses. Client shall pay, or promptly reimburse Tempest for, any out-of-pocket travel and travel-related expenses not specified in the Agreement and incurred by Tempest in connection with the performance of the Services. Client shall pay to Tempest all undisputed fees within thirty (30) days of the date of the applicable Tempest invoice, in accordance with Chapter 2251, Texas Government Code.
- 2.2. Tempest shall reserve the right to suspend performance of all Services if the Client fails to pay an invoice within [thirty (30)] days of the date of said invoice, in accordance with Chapter 2251, Texas Government Code.
- 2.3. In the event of a dispute as to an invoice, the Client shall nevertheless pay the undisputed portion of such invoice.
- 2.4. Tempest expressly reserves the right to change the rates charged hereunder for the Services during any Renewal Term as defined in Section 3.2, provided that Tempest notifies Client of any such proposed rate increase not less than ninety (90) days prior to the commencement of any Renewal Term.

3. Term, Automatic Renewal.

- 3.1. Initial Term. The initial term of this Agreement shall be for a period of three (3) years commencing on the Effective Date (the "Initial Term").
- 3.2. Automatic Renewal. Unless it is stated otherwise in the Statement Work, this Agreement shall automatically renew for the same duration as the Initial Term upon the expiration of the Initial Term (each a "Renewal Term"), unless this Agreement is terminated under Section 10 below.
- 3.3. Notice of Non-Renewal. This Agreement shall automatically renew under Section 3.2 unless either party gives written notice of its intention to terminate and not renew this Agreement no later than ninety (90) days prior to the expiration of the Initial Term or any subsequent Renewal Term.

4. Confidentiality. Each party agrees that during the course of this Agreement, information that is identified as confidential or proprietary may be disclosed to the other party, including, but not limited to software, technical processes and formulas, source codes, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, and marketing data ("Confidential Information").

- 4.1. Confidential Information shall not include information that the receiving party can demonstrate (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party, (b) was known to the receiving party as of the time of its disclosure, (c) is independently developed by individuals of the receiving party without access to the Confidential Information, (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party, or (e) is subject to disclosure in accordance with Texas Public Information Act or other applicable law. Except as provided for in this Agreement, each party shall not make any disclosure of the Confidential Information to anyone other than its employees who have a need to know in order to perform that party's obligations under this Agreement. Each party shall notify its employees of their confidentiality obligations with respect to the Confidential Information and shall require its employees to comply with these obligations. The confidentiality obligations of each party and its employees shall survive the expiration or termination of this Agreement.
- 4.2. Each of the Parties shall use at least those precautions to protect such information and other property that it uses to protect its own information and other property, in no event less than those precautions generally required by industry standards.
- 4.3. Client shall not use any of the Confidential Information of Tempest or any Tempest Materials (as defined below in Section 5.2) to compete with Tempest or in any way that would diminish the value or the rights of Tempest in such information or materials.

5. Proprietary Rights.

- 5.1. Proprietary Rights of Client. Client Content shall remain the sole and exclusive property of Client, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights. Nothing in this Agreement shall be construed to grant Tempest any ownership right in the Client Content.
- 5.2. Proprietary Rights of Tempest. Subject to Client's ownership interest in Client Content set forth in Section 5.1, all trade secrets, know-how, methodologies, processes and materials, including, but not limited to, any computer software (in object code and source code form), script, programming code, data, information or HTML script developed or provided by Tempest or its suppliers outside of this Agreement, for general use by all of Tempest's clients and without reference to or inclusion of any Client Content shall be referred to as the "Tempest Materials".
- 5.2.1. For clarity, the Tempest Materials shall not include any materials or other work product developed by Tempest specifically for Client's site, including original

elements of audiovisual displays created hereunder specifically for Client, which shall be deemed to be part of Client Content.

5.2.2. The Tempest Materials shall remain the sole and exclusive property of Tempest or its suppliers, including without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto. To the extent, if any, that ownership of the Tempest Materials does not automatically vest in Tempest by virtue of this Agreement or otherwise, Client hereby transfers and assigns to Tempest all rights, title and interest which Client may have in and to the Tempest Materials.

5.2.3. Client acknowledges and agrees that Tempest is in the business of designing and marketing websites, and that Tempest shall have the right to provide to third parties services which are the same or similar to the Services so long as no such third party services reference or incorporate any Client Content, and to use or otherwise exploit any Tempest Materials in providing such services.

6. License.

6.1. Grant of License by Client. Client hereby grants to Tempest a non-exclusive, worldwide, royalty free license for the Term to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display, and otherwise use Client Content only as necessary to render the Services to Client under this Agreement. Tempest cannot use the Client Content for any other purpose, including selling, copying or transferring any portions to third parties, or providing website development or hosting services for others. Client hereby reserves for itself all rights in and to the Client Content not expressly granted to Tempest in this Section 6.1. In no event shall Tempest use any trademarks or service marks of Client without Client's prior written consent.

6.2. Grant of License by Tempest. Tempest hereby grants to Client a perpetual, worldwide, non-exclusive, royalty free, unrestricted, non-transferable license to make use of Tempest Materials that are incorporated in any website developed for the Client by Tempest (the "Website") and that are required or useful for the operation of the Website. Client cannot use the Tempest Materials for any other purpose, including selling, copying or transferring any portions to third parties, or providing website development or hosting services for others. Tempest hereby reserves for itself all rights in and to the Tempest Materials not expressly granted to Client in the immediately foregoing sentence. In no event shall Client use any trademarks or service marks of Tempest without Tempest's prior written consent.

6.2.1. No Sub-License by Client or Tempest. Neither Client nor Tempest has the authority to and shall not grant any sub-license of Tempest Materials or Client Content.

6.2.1.1. Notwithstanding the foregoing, Client shall have the right to enter into assignments or sub-licenses or its rights with respect to the Tempest Materials in connection with a sale of all or a part of the business which includes the use the Website, subject to the written approval of Tempest which shall not be unreasonably withheld.

7. Warranties.

7.1. Tempest Warranties. Tempest warrants: (i) that Tempest has the right and authority to enter into and perform its obligations under this Agreement; (ii) that Tempest shall perform the Services in a professional and workmanlike manner; and (iii) that to its knowledge the Tempest Materials do not infringe or violate any right of any third party.

7.2. Client Warranties. Client warrants that: (a) it has all authorization(s) necessary for hypertext links to third party websites; and (b) that to its knowledge the materials provided to Tempest, including, without limitation, Client Content, descriptive claims, warranties, guarantees, nature of business, are true and accurate; and (c) that to its knowledge the Client Content does not infringe or violate any right of any third party. Client shall provide all necessary Client Content, including database files, reports and other materials for implementation of the Client Project.

8. Warranty Disclaimer and Limitation of Liability. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7, TEMPEST MAKES NO WARRANTIES HEREUNDER, AND TEMPEST EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AGAINST INFRINGEMENT (EXCEPT WITH RESPECT TO TEMPEST MATERIALS).

8.1. THE TOTAL LIABILITY OF TEMPEST HEREUNDER FOR ANY SERVICES NOT PROPERLY PERFORMED (INCLUDING ANY LIABILITY FOR NEGLIGENCE) SHALL BE LIMITED, AT THE ELECTION OF CLIENT, TO (a) PERFORMING THOSE SERVICES CORRECTLY, OR (b) TO THE AMOUNTS PAID TO TEMPEST FOR THE SERVICES THAT WERE IMPROPERLY PERFORMED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF TEMPEST TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO TEMPEST BY CLIENT UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS

9. Miscellaneous.

- 9.1. Entire Agreement. This Agreement, the attached Exhibits and any SOW's constitute the entire agreement between Client and Tempest with respect to the subject matter hereof and there are no representations, understandings or agreements which are not fully expressed in this Agreement. No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by the party against which such amendment, change, waiver, or discharge is sought to be enforced.
- 9.2. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Texas and, subject to Section 11.3 below, the State and Federal courts located in that State shall have the exclusive jurisdiction to resolve any disputes between the parties arising under this Agreement. Exclusive venue for any dispute, claim, lawsuit or other legal proceeding shall lie in Washington County, Texas in the State and Federal courts having jurisdiction in said Washington County, Texas.
- 9.3. Force Majeure. Neither party shall be liable for delays or failure in performance hereunder caused by acts of God, war, strike, riot, labor dispute, work stoppage, fire, judicial or governmental action, or any other cause, whether similar or dissimilar, beyond reasonable control of that party.
- 9.4. Waiver. The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.
- 9.5. Severability. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.
- 9.6. Survival. All provisions of this Agreement relating to Client and Tempest warranties, confidentiality, non-disclosure, proprietary rights, and limitation of liability, payment obligations shall survive the termination or expiration of this Agreement.

9.7. Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

10. Termination.

10.1. Termination by either party upon Breach. Tempest or Client has the right for immediate termination of this Agreement and the Services upon breach of the Agreement, including its Exhibits if such breach is not cured within 30 days of written notice of such breach.

10.2. Termination by Tempest. Notwithstanding the previous Section 10.1, Tempest may terminate this Agreement and all Services immediately without notice if Client fails to pay Fees when due and owing or Tempest determines that Client is failing to comply with the rules and regulations as described in Section 7 above or is not in compliance with any of the material terms contained in this Agreement.

10.3. Termination For Non-Appropriation Of Funds: Client may terminate all or a portion of this Agreement due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Tempest.

LET'S GET STARTED

This document outlines the project scope of work (including the deliverables from both the Client and the Agency) to be completed by Tempest.

Please sign in the appropriate location below, and return the signed proposal to us by fax or mail.

City of Brenham
200 W. Vulcan Street
Brenham, TX 77833

Tempest
30 S. 15th St. Suite 800
Philadelphia, PA 19102

Printed Name

Printed Name

Title / Position

Title / Position

Signature

Signature

Date

Date



AGENDA ITEM 12

DATE OF MEETING: April 18, 2019	DATE SUBMITTED: April 11, 2019
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Dane Rau
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☒ 1ST READING ☐ 2ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Providing for a No Parking Zone on the West Side of Green Street Between College Avenue and W. Third Street	
SUMMARY: Upon the request of Blinn College, staff would like Council to consider approving an ordinance on its first reading establishing a “No Parking” zone on the west side of Green St. between College Ave. and W. Third St. As the request indicates, Green St. currently allows parallel parking on both sides of Green St. in this area. Due to the large number of deliveries to Blinn College and large commercial trucks as well as Blinn employees entering and exiting the Administration Bldg., this provides an unsafe area for pedestrians and vehicular traffic. By allowing parking on the east side only, it will make it safer and less congested for pedestrians, Blinn College staff, and vehicular movement in this particular area. City of Brenham staff does not have an issue with establishing a “No Parking” zone along Green St. for the reasons cited in this memo and Blinn’s request letter.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Will open up this portion of Green St. for many users. Safer environment and also will be approved by ordinance to make enforceable. B. CONS: None.	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Ordinance; (2) Map; and (3) Request Letter from Blinn College	
FUNDING SOURCE (Where Applicable):	

RECOMMENDED ACTION: Approve an Ordinance on its first reading providing for a No Parking Zone on the West Side of Green Street between College Avenue and W. Third Street

APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR A NO-PARKING ZONE ALONG THE WEST SIDE OF GREEN STREET BETWEEN COLLEGE AVENUE AND W. THIRD STREET; AND PROVIDING FOR PENALTY FOR VIOLATION THEREOF.

WHEREAS, it is necessary to provide for no-parking zones within the City of Brenham, to prevent accidents, collisions and damages, and to promote the flow of traffic along and into such street, and to regulate the same:

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Brenham, Texas:

SECTION I.

That every person, firm, corporation, or other entity shall be prohibited from parking any motor vehicle, trailer, or other vehicle, upon the designated street or portions thereof, when signs are erected giving notice thereof:

- a. On the west side of Green Street between College Avenue and W. Third Street

SECTION II.

The terms “park” and “parking” shall mean the standing or stopping of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading passengers or property.

SECTION III.

In any case when a person, firm, corporation or other entity shall have been charged with a violation of this Ordinance, proof that said motor vehicle, trailer, or other vehicle was, at the date of the offense alleged, owned by the person, firm, corporation or entity charged with the offense, shall constitute prima facie evidence that said motor vehicle, trailer, or other vehicle was stopped, left standing or parked at the place charged by said owner.

SECTION IV.

The provisions of this Ordinance shall not apply to any authorized emergency vehicle or City of Brenham motor vehicle, trailer, or other vehicle.

SECTION V.

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION VI.

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION VII.

That any person, firm, corporation or other entity violating this Ordinance shall be fined a sum of not less than \$1.00 and not more than \$500.00, plus applicable court costs.

SECTION VIII.

This Ordinance shall take full force and effect from and after its passage and approval.

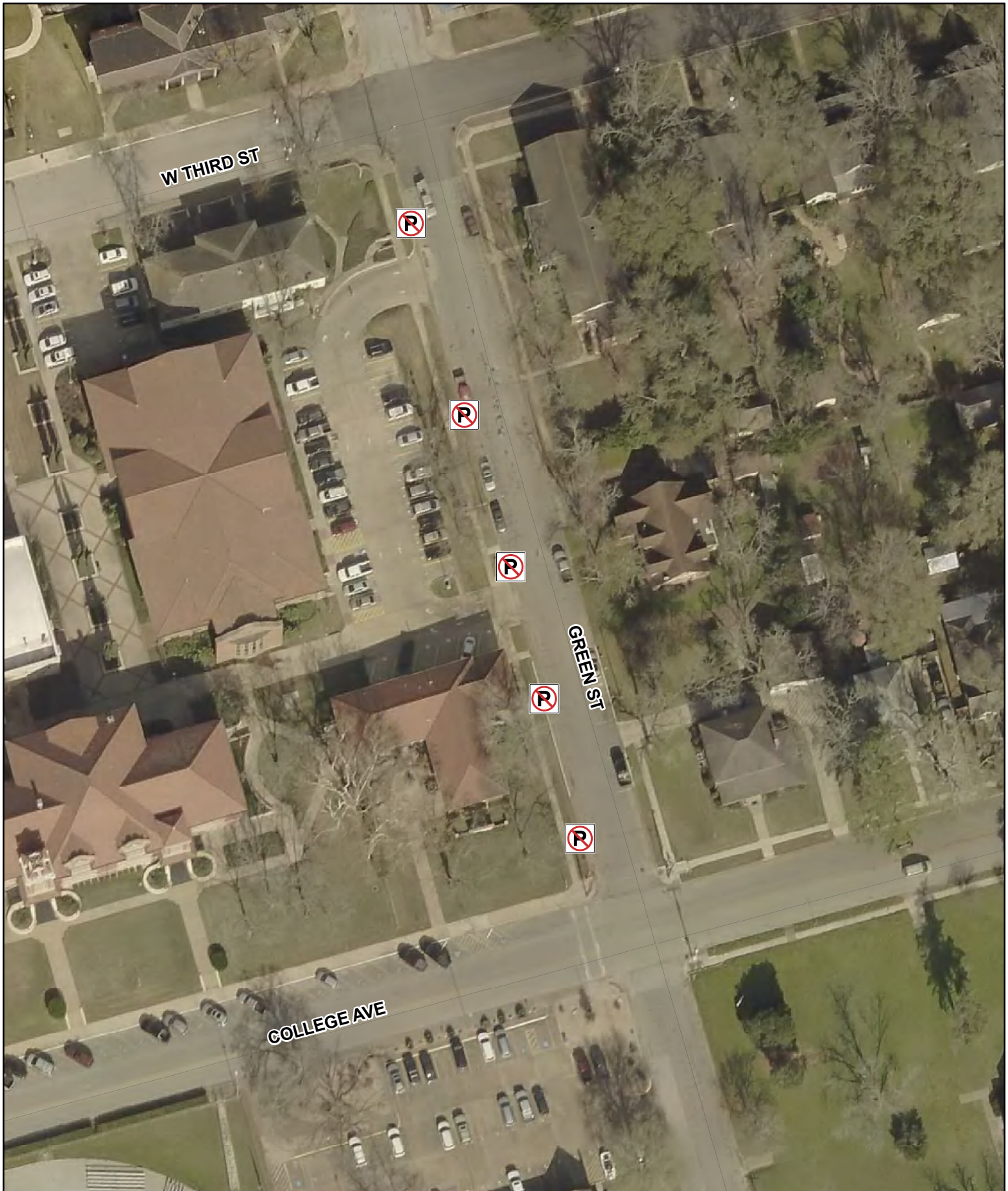
PASSED and APPROVED on its first reading this the ____ day of _____, 2019.

PASSED and APPROVED on its second reading this the ____ day of _____, 2019.

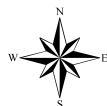
Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



1 inch = 70 feet





March 29, 2019

Mr. James Fisher
City of Brenham
200 W. Vulcan Street
Brenham, TX 77833

Dear Mr. Fisher,

Blinn College District would like to respectfully request that the City of Brenham consider creating a no parking zone with appropriate coloring on the curb and appropriate signage on the west side of Green Street from College Avenue to W. 3rd Street. This is the side closest to the College's Administration Building. Reasons cited are congestion with employee and student vehicle and foot traffic, as well as the volume of large truck traffic to Brenham Wholesale. If the option to park there was eliminated, it would dramatically increase visibility and lessen congestion.

Thank you for considering the College's request. If you require further information, don't hesitate to let me know. You'll find my contact information in the signature block below.

Best regards,

John A. Turner, Ed.D.
Assistant Vice Chancellor for Student Services
& Executive Dean of the Brenham Campus
902 College Avenue
Brenham, TX 77833
979-803-4316
john.turner@blinn.edu