



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY JULY 21, 2011 AT 1:00 P. M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN
BRENHAM, TEXAS**

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

REGULAR AGENDA

- 4. Discuss and Possibly Act Upon Ordinance No. O-11-008 on its Second Reading Amending Chapter 8½, Flood Damage Prevention, of the City of Brenham’s Code of Ordinances**
- 5. Discuss and Possibly Act Upon a Recommendation for an Appointment to the Brenham Housing Authority**
- 6. Discuss and Possibly Act Upon Adjustments to the Proposed Redistricting Plan(s)**
- 7. Discuss and Possibly Act Upon an Ordinance on its First Reading Adopting a Final Redistricting Plan and Authorizing Legal Counsel to Seek Voting Rights Act – Section 5 Preclearance of the Adopted Plan**
- 8. Discuss and Possibly Act Upon an Audit Engagement Letter from Seidel, Schroeder & Company to Perform an Audit for the Fiscal Year Ending September 30, 2011 and Authorize the Mayor to Execute any Necessary Documentation**
- 9. Discuss and Possibly Act Upon Bid No. 11-014 for the Purchase of Refuse Bags for the Sanitation Department and Authorize the Mayor to Execute any Necessary Documentation**

10. **Discuss and Possibly Act Upon an Ordinance on its First Reading Reducing the Speed Limit from 65 mph to 60 mph for Traffic Moving in both Directions on the Portion of U.S. Highway 290 Beginning at its Intersection with State Highway 36 and Extending Southward 0.341 Miles**
11. **Discuss and Possibly Act Upon an Ordinance on its First Reading Reducing the Speed Limit from 70 mph to 60 mph for Traffic Moving in both Directions on the Portion of State Highway 36 from the City Limit Southward 0.505 Miles to the Intersection with U.S. Highway 290**
12. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Closure of the Railroad Crossing on Vulcan Street at its Intersection with BNSF Railway between North Austin Parkway and North Austin Street**

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.

13. Administrative/Elected Officials Report

EXECUTIVE SESSION

(Note: The City Council will convene in Room 2A, 2nd Floor of City Hall, for Executive Session)

14. **Texas Government Code 551.071 – Consultation with City Attorney Regarding Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham’s Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

(Note: The City Council will reconvene in the City Council Chambers, 2nd Floor of City Hall, for the Regular Session)

RE-OPEN REGULAR SESSION

15. **Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham’s Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

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 Negotiations.

CERTIFICATION

I certify that a copy of the July 21, 2011 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 July 18, 2011 at _____ Am Pm.

Tammy Cook, Deputy City Secretary

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.

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 _____, 2011 at _____ Am Pm.

Signature

Title



AGENDA FORM

DATE OF MEETING: July 21, 2011	DATE SUBMITTED: July 14, 2011	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Allen Jacobs	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Ordinance No. O-11-008 on its Second Reading Amending Chapter 8½, Flood Damage Prevention, of the City of Brenham’s Code of Ordinances		
SUMMARY STATEMENT: Each time FEMA (Federal Emergency Management Agency) provides a community with new or revised flood hazard data, the community must amend its existing regulations to reference the new flood map and flood study.		
Participating communities enables property owners within that community to participate in the National Flood Insurance Program (NFIP). This Amended Ordinance consists of revisions that the NFIP requires as part of this update. The wording of this Amended Ordinance has been coordinated with our regional NFIP Specialist of the Houston Regional Office, of the Texas Water Development Board.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS: The City of Brenham is in compliance with the NFIP and our community property owners are able to purchase NFIP flood insurance policies. Federal disaster assistance is available for repair of insurable buildings located in identified flood hazard damage caused by a flood.		
B. CONS: None; however, in the event that a community does not adopt the appropriate floodplain management regulations property owners and communities will be sanctioned from all NFIP benefits.		
ALTERNATIVES (In Suggested Order of Staff Preference): None		
ATTACHMENTS: (1) Ordinance No. O-11-008 (Red-Lined Version)		
FUNDING SOURCE (Where Applicable): No additional funding is required.		
RECOMMENDED ACTION: Approve Ordinance No. O-11-008 on its second reading amending Chapter 8½, Flood Damage Prevention, of the City of Brenham’s Code of Ordinances		
APPROVALS: Terry Roberts		

Sec. 8½-2. Findings of fact.

- (1) 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, all of which adversely affect the public health, safety and general welfare.
- (2) 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 ordinance 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;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

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

In order to accomplish its purposes, this ordinance 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 flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 8½-5. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its 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 structure means a structure which is 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

Area of future conditions flood hazard means the land area that would be inundated by the 1-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 Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 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.

Area of special flood hazard is the land in the floodplain within a community subject to a 1 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 Zones 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 1 percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) is the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% 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 a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

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 man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

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

Existing construction means for the purposes of determining 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 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) is completed before the effective date of the floodplain management regulations adopted by a community.

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).

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.
- (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*

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.

Floodproofing means any combination of structural and non-structural 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.

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 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 man-made 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 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.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected 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 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, "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 community and includes any subsequent improvements to such structures.

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.

Recreational vehicle means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) 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.

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

Special flood hazard area - see *Area of Special Flood Hazard*

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 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 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 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) 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."

Variance means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see 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'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), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations 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.

Sec. 8½-6. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of the City of Brenham.

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

The areas of special flood hazard 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" dated August 16, 2011, with accompanying Flood Insurance Rate Maps dated August 16, 2011, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

Sec. 8½-8. Establishment of development permit.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

Sec. 8½-9. Compliance.

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

Sec. 8½-10. Abrogation and greater restrictions.

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

Sec. 8½-11. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

Sec. 8½-12. Warning and disclaimer or liability.

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

Sec. 8½-13. Designation of the floodplain administrator.

The ~~Building Official~~ City Manager and/or his designated appointee is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance 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.

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 ordinance.
- (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 development permits required by adoption of this ordinance.

- (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 8 ½-7, 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 ~~Article 5~~this ordinance.
- (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 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 1 foot, provided that the community first completes all of the provisions required by Section 65.12 of the National Flood Insurance Program regulations.

Sec. 8½-15. Permit procedures.

- (1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
 - (a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 8 ½ -18(2);
 - (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
 - (e) Maintain a record of all such information in accordance with Section 8 ½ -14(1);
- (2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
 - (a) The danger to life and property due to flooding or erosion damage;
 - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (c) The danger that materials may be swept onto other lands to the injury of others;
 - (d) The compatibility of the proposed use with existing and anticipated development;
 - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (f) 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;

- (g) 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;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Sec. 8½-16. Variance procedures.

- (1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
- (2) The Appeal Board shall hear and render judgment on an appeal only 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 ordinance.
- (3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) 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 ordinance.
- (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section ~~C (2) of this Article~~ 8 ½ - 15(2) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (7) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Section 8 ½ - 3).
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (9) 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.
- (10) Prerequisites for granting variances:
- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) 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, or conflict with existing local laws or ordinances.
 - (c) 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.
- (11) 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 criteria outlined in Section 8 ½ -16(1)-(910) are met, and (ii) 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.

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

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) 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 substantial improvements shall be constructed with materials resistant to flood damage;

- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 8½-18. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 8 ½ -7, (ii) Section 8 ½ -14(8), or (iii) Section 8 ½ -14 (3), the following provisions are required:

- (1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to at least one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section ~~8 ½ -15 (1) a.~~ 8 ½ - 15(1)(a), is satisfied.
- (2) **Nonresidential Construction** - 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 foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the 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 and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) **Enclosures** - new construction and substantial improvements, with 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 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 or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all openings shall be no higher than 1 foot above grade.
- (c) 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 of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

- (i) The lowest floor of the manufactured home is at least one foot above the base flood elevation, or
- (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 8 ½-15 (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of section 8 ½ -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 no permanently attached additions.

Sec. 8½-19. Standards for subdivision proposals.

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 8 ½ -2, 8 ½ -3, and 8 ½ -4 of this ordinance.
- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Section 8 ½ -8; Section 8 ½ -15; and the provisions for flood hazard reduction, Ssections 8 ½ -17 thru 8 ½ - 23 of this ordinance.
- (3) 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 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 8 ½ -7 or Section 8 ½ -14 (8) of this ordinance.
- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) 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 Sconstructed to minimize or eliminate flood damage.

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

Located within the areas of special flood hazard established in Section 8 ½ -7, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 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 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 2 feet if no depth number is specified) plus one foot.
- (2) All new construction and substantial improvements of **non-residential** structures;
 - (a) have the lowest floor (including basement) elevated to at least one 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 2 feet if no depth number is specified) plus one foot, or
 - (b) together with attendant utility and sanitary facilities 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 the 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 registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 8 ½ -15 are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

Sec. 8½-21. Floodways.

Floodways - located within areas of special flood hazard established in Section 8 ½ -7, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in

accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- (2) If Section 8 ½ -21 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 8 ½ -17 thru 8 ½ -23.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, 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.

Sec. 8½-22. Severability.

If any section, clause, sentence, or phrase of this Ordinance 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 Ordinance.

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 ~~court order ordinance~~ and other applicable regulations. Violation of the provisions of this ~~court order ordinance~~ 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 ~~court order ordinance~~ or fails to comply with any of its requirements shall upon conviction thereof be fined ~~not more than \$500~~ 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.

~~**Sec. 8½-24. Certification of adoption.**~~

SECTION 2.
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 3.
REPEALER

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

SECTION 4.
EFFECTIVE DATE

This Ordinance shall become effective as -noted and upon ~~adoption and~~ publication as required by law. The effective date of this Ordinance shall be August 16, 2011.

SECTION 5.
PROPER NOTICE AND MEETINGS

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 at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

ATTEST:

Jeana Bellinger, TRMC, City Secretary

Milton Y. Tate, Jr.
Mayor

ORDINANCE NO. O-11-008

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 8½ OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF FLOOD HAZARDS WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, the National Flood Insurance Program (NFIP) was established with the passage of the National Flood Insurance Act of 1968;

WHEREAS, the NFIP is a Federal Program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce flood damage;

WHEREAS, over 20,000 communities participate in the program; and

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

SECTION 1.

Chapter 8½ of the Code of Ordinances, City of Brenham, Texas is hereby amended to read as follows:

FLOOD DAMAGE PREVENTION

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.

- (1) 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, all of which adversely affect the public health, safety and general welfare.
- (2) 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 ordinance 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;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

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

In order to accomplish its purposes, this ordinance 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 flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 8½-5. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its 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 structure means a structure which is 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

Area of future conditions flood hazard means the land area that would be inundated by the 1-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 Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 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.

Area of special flood hazard is the land in the floodplain within a community subject to a 1 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 Zones 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 1 percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) is the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% 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 a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

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 man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

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

Existing construction means for the purposes of determining 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 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) is completed before the effective date of the floodplain management regulations adopted by a community.

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).

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.
- (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*

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.

Floodproofing means any combination of structural and non-structural 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.

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 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 man-made 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 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.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected 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 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, "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 community and includes any subsequent improvements to such structures.

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.

Recreational vehicle means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) 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.

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

Special flood hazard area - see *Area of Special Flood Hazard*

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 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 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 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) 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."

Variance means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see 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'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), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations 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.

Sec. 8½-6. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of the City of Brenham.

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

The areas of special flood hazard 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" dated August 16, 2011, with accompanying Flood Insurance Rate Maps dated August 16, 2011, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

Sec. 8½-8. Establishment of development permit.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

Sec. 8½-9. Compliance.

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

Sec. 8½-10. Abrogation and greater restrictions.

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

Sec. 8½-11. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

Sec. 8½-12. Warning and disclaimer or liability.

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

Sec. 8½-13. 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 ordinance 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.

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 ordinance.
- (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 development permits required by adoption of this ordinance.

- (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 8 ½-7, 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 ordinance.
- (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 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 1 foot, provided that the community first completes all of the provisions required by Section 65.12 of the National Flood Insurance Program regulations.

Sec. 8½-15. Permit procedures.

- (1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
 - (a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 8 ½ -18(2);
 - (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
 - (e) Maintain a record of all such information in accordance with Section 8 ½ -14(1);
- (2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
 - (a) The danger to life and property due to flooding or erosion damage;
 - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (c) The danger that materials may be swept onto other lands to the injury of others;
 - (d) The compatibility of the proposed use with existing and anticipated development;
 - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (f) 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;

- (g) 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;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

Sec. 8½-16. Variance procedures.

- (1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
- (2) The Appeal Board shall hear and render judgment on an appeal only 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 ordinance.
- (3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) 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 ordinance.
- (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section 8 ½ - 15(2) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (7) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Section 8 ½ - 3).
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (9) 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.
- (10) Prerequisites for granting variances:
- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) 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, or conflict with existing local laws or ordinances.
 - (c) 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.
- (11) 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 criteria outlined in Section 8 ½ -16(1)-(10) are met, and (ii) 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.

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

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) 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 substantial improvements shall be constructed with materials resistant to flood damage;

- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 8½-18. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 8 ½ -7, (ii) Section 8 ½ -14(8), or (iii) Section 8 ½ -14 (3), the following provisions are required:

- (1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to at least one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 8 ½ - 15(1)(a), is satisfied.
- (2) **Nonresidential Construction** - 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 foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the 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 and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) **Enclosures** - new construction and substantial improvements, with 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 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 or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all openings shall be no higher than 1 foot above grade.
- (c) 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 of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

- (i) The lowest floor of the manufactured home is at least one foot above the base flood elevation, or
 - (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (5) **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 8 ½-15 (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of section 8 ½ -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 no permanently attached additions.

Sec. 8½-19. Standards for subdivision proposals.

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 8 ½ -2, 8 ½ -3, and 8 ½ -4 of this ordinance.
- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Section 8 ½ -8; Section 8 ½ -15; and the provisions for flood hazard reduction, Sections 8 ½ -17 thru 8 ½ - 23 of this ordinance.
- (3) 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 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 8 ½ -7 or Section 8 ½ -14 (8) of this ordinance.
- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) 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.

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

Located within the areas of special flood hazard established in Section 8 ½ -7, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 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 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 2 feet if no depth number is specified) plus one foot.
- (2) All new construction and substantial improvements of **non-residential** structures;
 - (a) have the lowest floor (including basement) elevated to at least one 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 2 feet if no depth number is specified) plus one foot, or
 - (b) together with attendant utility and sanitary facilities 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 the 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 registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 8 ½ -15 are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

Sec. 8½-21. Floodways.

Floodways - located within areas of special flood hazard established in Section 8 ½ -7, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in

accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- (2) If Section 8 ½ -21 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 8 ½ -17 thru 8 ½ -23.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, 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.

Sec. 8½-22. Severability.

If any section, clause, sentence, or phrase of this Ordinance 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 Ordinance.

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 ordinance and other applicable regulations. Violation of the provisions of this ordinance 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 ordinance 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.

SECTION 2.
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 3.
REPEALER

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

SECTION 4.
EFFECTIVE DATE

This Ordinance shall become effective as noted and upon publication as required by law. The effective date of this Ordinance shall be August 16, 2011.

SECTION 5.
PROPER NOTICE AND MEETINGS

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 at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, City Secretary



AGENDA FORM

DATE OF MEETING: July 21, 2011	DATE SUBMITTED: July 13, 2011	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Tammy Cook	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Recommendation for an Appointment to the Brenham Housing Authority		
<p>SUMMARY STATEMENT: Bill Decker, Executive Director of the Brenham Housing Authority (BHA), submitted a letter to our offices last week regarding the resignation of Resident Commissioner Victor Tisdell. In an effort to fill this vacancy, the Brenham Housing Authority reviewed current residents and recommends the appointment of Wanda Cooley as Resident Commissioner to fulfill the remaining term of Mr. Tisdell.</p> <p>At this time we ask that you appoint Ms. Cooley as resident commissioner to the Brenham Housing Authority.</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: (1) Brenham Housing Authority Letter from Bill Decker		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve the appointment of Ms. Wanda Cooley as Resident Commissioner to the Brenham Housing Authority		
APPROVALS: Terry Roberts		



Brenham Housing Authority

P.O. Box 623
Brenham, Texas 77834-0623

June 29, 2011

City of Brenham, Texas
P.O. Box 1059
Brenham, TX 77834

Dear Mayor Tate,

Victor Tisdell, Resident Commissioner of Brenham Housing Authority, has submitted his resignation effective March 29, 2011.

The Brenham Housing Authority has reviewed current residents of the Brenham Housing Authority and is pleased to recommend Wanda Cooley for appointment as resident commissioner, to complete the remaining term of Victor Tisdell, for the Brenham Housing Authority. Mr. Tisdell's term ends in December 2011.

Ms. Cooley has been a resident of the Brenham Housing Authority since 2008. She is providing full time care for her granddaughter due to her granddaughter's physical condition. Ms. Cooley has in-home assistance in caring for her granddaughter that will allow her to attend scheduled meetings.

I have met with Ms. Cooley and have talked with her about the role, duties, and responsibilities of a Commissioner of the Brenham Housing Authority. Ms. Cooley is willing to serve as a commissioner and will be available to attend scheduled board meetings and required commissioner training.

Ms. Cooley's mailing address is:

Wanda Cooley
1920 Northview Circle Dr
Brenham, TX 77833

Phone: 979/251-7497

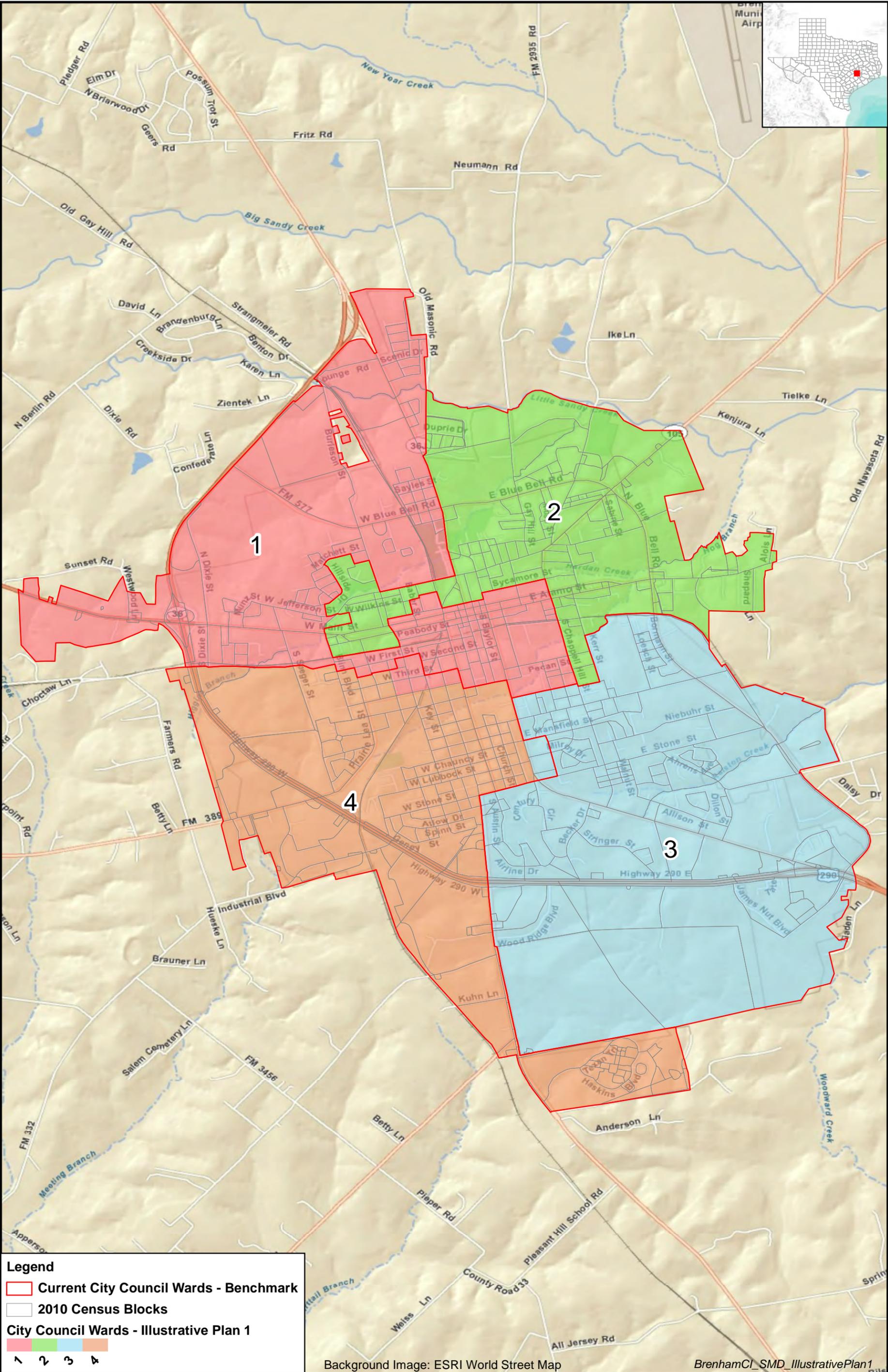
Sincerely,

Bill Decker
Executive Director



AGENDA FORM

DATE OF MEETING: July 21, 2011	DATE SUBMITTED: July 18, 2011	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Adjustments to the Proposed Redistricting Plan(s)		
SUMMARY STATEMENT: An Illustrative Plan was adopted by Council on June 16 th and presented for public comments on July 7 th . There were no citizen comments heard during the Public Hearing. This item allows for the Council to make any last minute changes to the Illustrative Plan before adopting it as the Final Plan. The first reading of an ordinance adopting the Illustrative Plan as the Final Plan is the next item on this meeting's agenda.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Illustrative Plan 1 as approved by Council on June 16, 2011.		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve the Illustrative Plan adopted by Council on June 16, 2011 as the Final Redistricting Plan, to be adopted by ordinance.		
APPROVALS: Terry Roberts		



Legend

- Current City Council Wards - Benchmark
- 2010 Census Blocks

City Council Wards - Illustrative Plan 1

- 1
- 2
- 3
- 4

Background Image: ESRI World Street Map

BrenhamCI_SMD_IllustrativePlan1

0 0.35 0.7 1.4 Miles

Coordinate System: GCS North American 1983;
Datum: North American 1983; Created:6/17/2011

City of Brenham City Council Wards Illustrative Plan 1

© 2011 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2010 Tiger/line files, U.S. Census Bureau





AGENDA FORM

DATE OF MEETING: July 21, 2011	DATE SUBMITTED: July 18, 2011	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on its First Reading Adopting a Final Redistricting Plan and Authorizing Legal Counsel to Seek Voting Rights Act – Section 5 Preclearance of the Adopted Plan		
SUMMARY STATEMENT: An Illustrative Plan was adopted by Council on June 16 th and presented for public comments on July 7 th . There were no citizen comments heard during the Public Hearing. Therefore the Illustrative Plan is being presented, by ordinance, to Council for adoption as the Final Redistricting Plan.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Ordinance to adopt final Redistricting Plan; (2) City of Brenham Illustrative Plan 1 Demographic Tables; and (3) Illustrative Plan 1		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an Ordinance on its first reading adopting a final redistricting plan and authorizing legal counsel to seek Voting Rights Act – Section 5 Preclearance of the adopted plan		
APPROVALS: Terry Roberts		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, APPROVING THE REDISTRICTING OF THE CITY'S COUNCIL WARDS AND ESTABLISHING NEW WARD BOUNDARY LINES BASED ON 2010 CENSUS DATA FOR BRENHAM CITY COUNCIL ELECTIONS; DIRECTING THE CITY'S REDISTRICTING CONSULTANT TO SUBMIT THE ADOPTED PLAN FOR PRECLEARANCE UNDER SECTION 5 OF THE FEDERAL VOTING RIGHTS ACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the results of the 2010 Federal Census have been considered and indicate that the City of Brenham's council wards are sufficiently out of population balance to require redistricting in order to comply with the "one-person, one-vote" (equal population) principle established by the U.S. Constitution; and

WHEREAS, the City of Brenham ("City") engaged the law firm of Bickerstaff Heath Delgado Acosta LLP to act as the City's redistricting consultant, including advising and assisting the City Council in preparation of a new redistricting plan in compliance with applicable requirements of state and federal law; and

WHEREAS, on April 21, 2011, the City Council adopted redistricting criteria to assist the City and the public in developing redistricting plans which comply with applicable federal and state laws, and the adopted redistricting criteria were applied in the development of the City's new redistricting plan; and

WHEREAS, on April 21, 2011, the City Council also adopted redistricting guidelines regarding the submission of comments and proposed plans by the public, to ensure the ability of the City to timely receive and adequately consider them; and

WHEREAS, during the redistricting process the City provided notice to the public of its proposed discussions and development of a redistricting plan through meeting agendas posted in compliance with the Texas Open Meetings Act including posting on the City's website; notices on the City's website including notices of the public hearing; and publication of newspaper notices regarding public hearings; and

WHEREAS, the City Council considered the proposed redistricting plan at a City Council meeting on June 16, 2011, and at a public hearing held on July 7, 2011, and has considered reports from the City's redistricting consultant, and various proposed plans regarding the appropriate reconfiguration of the City's council wards; and

WHEREAS, the City Council finds that the attached council ward redistricting plan is in the best interest of the citizens of the City, complies with the adopted redistricting criteria, and is believed to comply with all state and federal requirements, including requirements for preclearance under Section 5 of the federal Voting Rights Act;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS:

A. That the existing council ward boundary lines for the City of Brenham are hereby amended, and the new districting plan depicted on the map attached hereto as **Exhibit A**, denominated Illustrative Plan 1, defining new wards, as such new wards are further described in the tables attached hereto as **Exhibit B** reporting populations and demographic statistics for each such new ward, is hereby adopted and designated to define the City's four (4) council wards from and after the Effective Date; that **Exhibits A and B** are incorporated by reference in and made a part of this ORDINANCE, and shall be kept on file in the City Secretary's Office; and, further, that the City's redistricting consultant is hereby authorized and directed to submit the adopted plan to the United States Department of Justice for preclearance under the Section 5 of the Voting Rights Act.

B. That this ORDINANCE shall take and be given effect immediately upon preclearance of the adopted plan under Section 5 of the Voting Rights Act; and that thereafter all Brenham City Council elections shall be held under and in accordance with the new ward districting plan here adopted by the City Council and precleared by the Department of Justice, until such time as a subsequent lawfully-enacted districting plan shall be adopted to replace this plan and has been precleared under Section 5 or its successor statute, as applicable.

PASSED AND APPROVED on its first reading this the ____ day of _____, 2011.

PASSED AND APPROVED on its second reading this ____ day of _____, 2011.

CITY OF BRENHAM, TEXAS

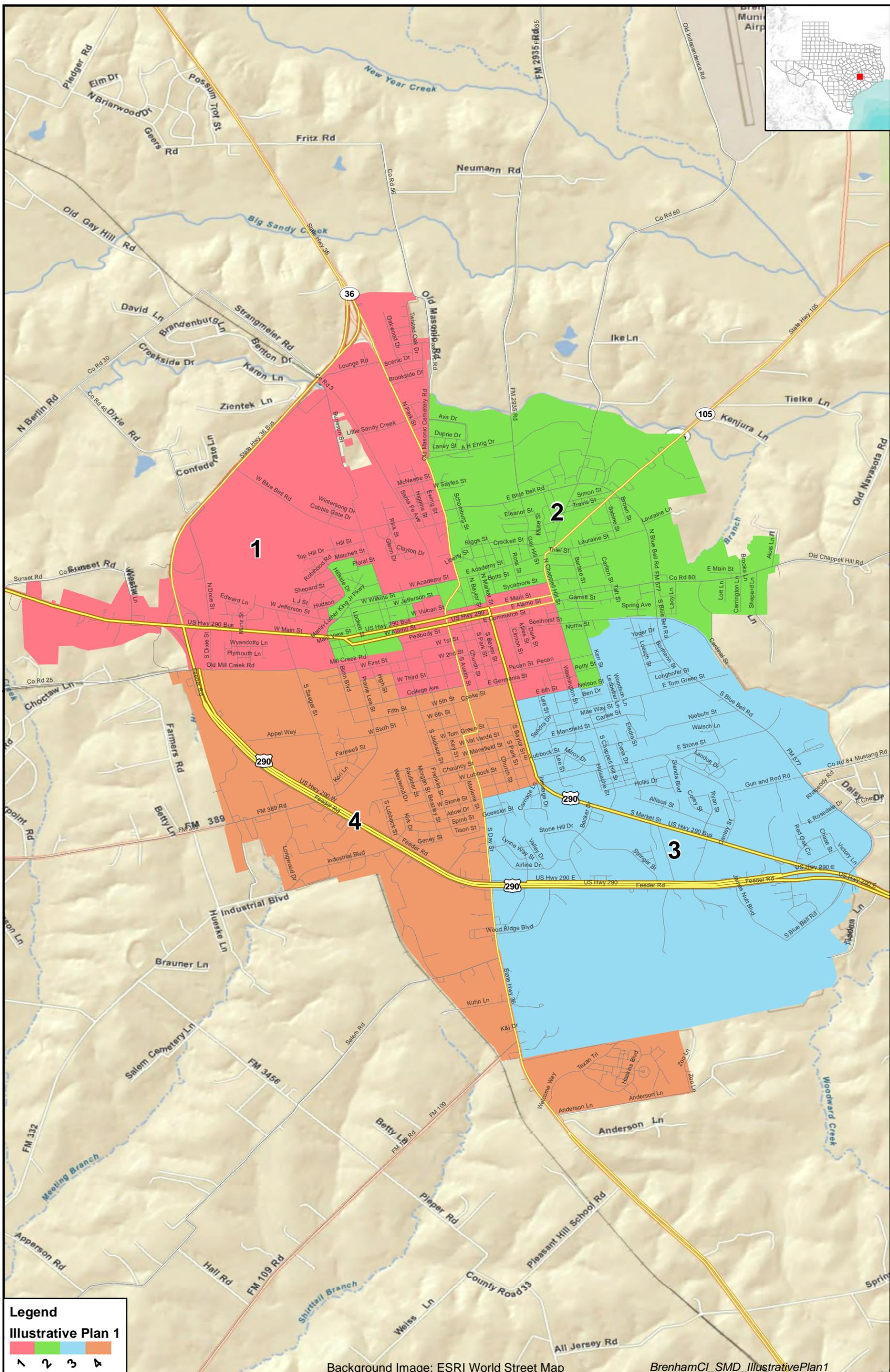
Hon. Milton Y. Tate, Jr.
MAYOR

ATTEST:

Hon. Jeana Bellinger
CITY SECRETARY

APPROVED AS TO FORM:

Cary Bovey
CITY ATTORNEY



Legend

Illustrative Plan 1

1 2 3 4

0 0.35 0.7 1.4 Miles

Coordinate System: GCS North American 1983;
Datum: North American 1983; Created: 7/21/2011

Background Image: ESRI World Street Map

BrenhamCI_SMD_IllustrativePlan1

City of Brenham City Council Wards Illustrative Plan 1

© 2011 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2010 Tiger/line files, U.S. Census Bureau



City of Brenham

Illustrative Plan 1

2010 Census Total and Voting Age Population

District	Persons	Deviation	Hispanic % of Total Population	Non-Hispanic Anglo % of Total Population	Non-Hispanic Black % of Total Population	Non-Hispanic Asian % of Total Population	Non-Hispanic Other % of Total Population
1	3,906	-0.59%	17.00%	59.88%	17.82%	3.71%	1.59%
2	3,893	-0.92%	19.50%	31.54%	47.34%	0.54%	1.08%
3	4,028	2.52%	8.44%	78.13%	10.55%	1.66%	1.22%
4	3,889	-1.02%	16.30%	63.56%	17.79%	1.13%	1.21%
Totals	15,716		15.25%	58.45%	23.26%	1.76%	1.27%

Ideal Size = 15,716 / 4 = 3,929 per district.

Total Maximum Deviation = 2.52% - (-1.02%) = 3.54%

Some percentages may be subject to rounding error.

District	Total VAP*		Hispanic % of Total VAP	Non-Hispanic Anglo % of Total VAP	Non-Hispanic Black % of Total VAP	Non-Hispanic Asian % of Total VAP	Non-Hispanic Other % of Total VAP
1	2,897		13.81%	65.48%	15.84%	3.69%	1.17%
2	2,896		16.92%	35.43%	46.48%	0.55%	0.62%
3	3,193		6.30%	83.06%	8.08%	1.63%	0.94%
4	3,250		13.26%	66.00%	18.37%	1.20%	1.17%
Totals	12,236		12.44%	63.09%	21.74%	1.75%	0.98%

*Voting Age Population

Some percentages may be subject to rounding error.

City of Brenham

Illustrative Plan 1

2010 Census Total and Voting Age Population

District	Persons	Ideal Size	Deviation	Hispanic	% of Total Hispanic Population	Anglo	% of Total Anglo Population	Black	% of Total Black Population	American Indian	% of Total American Indian Population	Asian	% of Total Asian Population	Hawaiian-Pacific Islander	% of Total Hawaiian-Pacific Islander Population	Other	% of Total Other Population	Two or More	% of Total Two or More Population
1	3,906	3,929	-0.59%	664	17.00%	2,339	59.88%	696	17.82%	9	0.23%	145	3.71%	0	0.00%	8	0.20%	45	1.15%
2	3,893	3,929	-0.92%	759	19.50%	1,228	31.54%	1,843	47.34%	5	0.13%	21	0.54%	0	0.00%	3	0.08%	34	0.87%
3	4,028	3,929	2.52%	340	8.44%	3,147	78.13%	425	10.55%	7	0.17%	67	1.66%	5	0.12%	7	0.17%	30	0.74%
4	3,889	3,929	-1.02%	634	16.30%	2,472	63.56%	692	17.79%	6	0.15%	44	1.13%	1	0.03%	3	0.08%	37	0.95%
Totals	15,716			2,397	15.25%	9,186	58.45%	3,656	23.26%	27	0.17%	277	1.76%	6	0.04%	21	0.13%	146	0.93%

Ideal Size = 15,716 / 4 = 3,929 per district.

Some percentages may be subject to rounding error.

District	Total VAP*	Hispanic VAP	% of Total Hispanic VAP	Anglo VAP	% of Total Anglo VAP	Black VAP	% of Total Black VAP	American Indian VAP	% of Total American Indian VAP	Asian VAP	% of Total Asian VAP	Hawaiian-Pacific Islander VAP	% of Total Hawaiian-Pacific Islander VAP	Other VAP	% of Total Other VAP	Two or More VAP	% of Total Two or More VAP
1	2,897	400	13.81%	1,897	65.48%	459	15.84%	8	0.28%	107	3.69%	0	0.00%	4	0.14%	22	0.76%
2	2,896	490	16.92%	1,026	35.43%	1,346	46.48%	2	0.07%	16	0.55%	0	0.00%	1	0.03%	15	0.52%
3	3,193	201	6.30%	2,652	83.06%	258	8.08%	5	0.16%	52	1.63%	4	0.13%	3	0.09%	18	0.56%
4	3,250	431	13.26%	2,145	66.00%	597	18.37%	6	0.18%	39	1.20%	1	0.03%	1	0.03%	30	0.92%
Totals	12,236	1,522	12.44%	7,720	63.09%	2,660	21.74%	21	0.17%	214	1.75%	5	0.04%	9	0.07%	85	0.69%

*Voting Age Population

Some percentages may be subject to rounding error.



AGENDA FORM

DATE OF MEETING: July 21, 2011		DATE SUBMITTED: July 15, 2011	
DEPT. OF ORIGIN: Finance		SUBMITTED BY: Carolyn D. Miller	
MEETING TYPE:		CLASSIFICATION:	
<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> PUBLIC HEARING	
<input type="checkbox"/> SPECIAL		<input type="checkbox"/> CONSENT	
<input type="checkbox"/> EXECUTIVE SESSION		<input checked="" type="checkbox"/> REGULAR	
		<input type="checkbox"/> WORK SESSION	
ORDINANCE:			
<input type="checkbox"/> 1 ST READING			
<input type="checkbox"/> 2 ND READING			
<input type="checkbox"/> RESOLUTION			
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon An Audit Engagement Letter from Seidel, Schroeder & Company to Perform An Audit for Fiscal Year Ending September 30, 2011 and Authorize the Mayor to Execute any Necessary Documentation.			
SUMMARY STATEMENT: Attached is the proposed audit engagement letter from Seidel, Schroeder & Company (SSC) for the fiscal year ending September 30, 2011, with the audit fee range of \$41,000 to \$43,000. In comparing this fee with prior years, the following information is provided:			
<u>Fiscal Year Ending</u>	<u>Audit Fee</u>	<u>\$ Increase</u>	<u>% Increase</u>
09/30/2008	\$ 39,000		
09/30/2009	39,500	\$ 500	1.3%
09/30/2010	39,500	-	-
09/30/2011	41,000 to 43,000	3,500	8.86%
In analyzing the results of prior year audits, SSC commented that while the City has added bond issues, significant federal funding through grants and in general continues to grow, the audit fees charged to the City have not covered their audit fees at standard rates. The Hwy 290 project and new GASB Statement No. 54 Fund Balance Reporting will require additional work in the current year. Due to these issues, SSC has reflected an increase in audit engagement fees.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS:			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1) Transmittal Letter from Michele Kwiatkowski; (2) Audit Engagement Letter from Seidel, Schroeder and Company; and (3) Required Pre-Audit Communications Letter			

FUNDING SOURCE (Where Applicable): Finance Department Budget - Audits & Consultants Account

RECOMMENDED ACTION: Approve the Audit Engagement Letter from Seidel, Schroeder & Company for the fiscal year ending September 30, 2011.

APPROVALS: Carolyn D. Miller



SEIDEL, SCHROEDER & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS

June 27, 2011

Ms. Carolyn Miller
City of Brenham, Texas
P.O. Box 1059
Brenham, Texas 77834

Dear Carolyn:

Enclosed you will find the audit engagement letter for the City of Brenham, Texas for the year ending September 30, 2011.

We have analyzed the results of the audit noting that our fees at standard rates to perform the audit over the past three years have been in the range of \$47,000 to \$50,000 annually, while we billed only \$39,000 to \$39,500. In that time, the City has added bond issues, significant federal funding through grants, and in general continues to grow and have new issues, which have increased the amount of work required. The Highway 290 project will also require additional work in the current year. Furthermore, our personnel costs continue to increase due to the employment market for accounting professionals.

Due to these issues, we have reflected an increase in fees in the enclosed letter. While it is not pleasant to increase our fees, we can not compromise our commitment to audit quality. Please call me if you would like to discuss the engagement letter, if not, please have Council approve and Mayor Tate sign one copy and return it to me. The second copy is for your records.

I have also included our most recent peer review and a letter with required pre-audit communications addressed to the members of Council. Please forward a copy of this letter to all of the Council members.

Very truly yours,

SEIDEL, SCHROEDER & COMPANY

By: Michele Kohring Kwiatkowski
Michele Kohring Kwiatkowski, CPA
Audit Partner



SEIDEL, SCHROEDER & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS

June 27, 2011 .

To The City Council of the
City of Brenham, Texas

We are pleased to confirm our understanding of the services we are to provide for the City of Brenham, Texas for the year ended September 30, 2011. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the City's basic financial statements, as of and for the year ended September 30, 2011. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Brenham's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City of Brenham's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principals and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Schedules of funding progress
3. Analysis and budgetary comparison information – General Fund

Supplementary information other than RSI also accompanies the City of Brenham's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

1. Combining and individual nonmajor financial statements
2. Analysis and budgetary comparison information – Governmental Funds and Blended Component Unit
3. Schedules within the reports for management

The following additional information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will not provide an opinion or any assurance:

1. Introductory section
2. Statistical data

Audit Objectives

The objective of our audit is the expression of an opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America, and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the basic financial statements taken as a whole. Our audit will be conducted in accordance audit standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of the accounting records and other procedures we consider necessary to enable us to express such an opinion. If our opinion on the financial statements is other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Governmental Auditing Standards*. The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties. If during our audit we become aware that the City is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Governmental Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audit, we will assist with preparation of your financial statements and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met. You are also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles.

Management is responsible for making all financial records and related information available to us, and for ensuring that management and financial information is reliable and properly recorded. Management's responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud, or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud or illegal acts affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants for taking timely and appropriate steps to remedy any fraud, illegal acts, violations of contracts or grant agreements, or abuse that we may report. You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any

document that contains and indicates that we have reported on the supplementary information. You also agree to present the supplementary information with the audited financial statements.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of

our audit, we will also require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Brenham's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Audit Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any invoices selected by us for testing.

The audit documentation for this engagement is the property of Seidel, Schroeder and Company, and constitutes confidential information. However, pursuant to authority given by law or regulation we may be requested to make certain workpapers available to a cognizant, grantor agency, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such requests. If requested, access to such workpapers will be provided under the supervision of Seidel, Schroeder and Company personnel. Furthermore, upon request, we may provide copies of selected workpapers to the aforementioned parties. These

City of Brenham, Texas

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parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release or for any additional period requested by the grantor agency. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We will require that all schedules and reports to be provided by management are complete and available to us on prior to the beginning of fieldwork.

We expect to begin our audit planning process on during October, 2011, audit fieldwork beginning in November, 2011 and to issue our reports no later than March 1, 2012. Michele Kohring Kwiatkowski is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fees for these services will be based on the actual time spent at our standard hourly rates, plus travel and other out-of-pocket costs; except that we agree that our total audit fee will range from \$41,000 to \$43,000. The above fee is based on your staff preparing the financial statements, notes, other supplementary information, and anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Government Auditing Standards requires that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of contract. Our 2008 peer review report accompanies this letter.

We appreciate the opportunity to be of service to the City of Brenham, Texas and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

SEIDEL, SCHROEDER & COMPANY

By: 
Michele Kohring Kwiatkowski, CPA

RESPONSE:

This letter correctly sets forth the understanding of the City of Brenham, Texas.

By: _____

Title: _____

Date: _____



June 12, 2008

To the Partners of
Seidel, Schroeder & Company
and the Center for Public Company Audit Firms Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Seidel, Schroeder & Company (the firm) applicable to non-SEC issuers in effect for the year ended December 31, 2007. The firm has informed us that it did not audit SEC issuers for the year ended December 31, 2007. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of complying with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (the AICPA). The design of the system, and compliance with it, are the responsibilities of the firm. Our responsibility is to express an opinion on the design of the system, and the firm's compliance with that system based on our review.

Our review was conducted in accordance with standards established by the Peer Review Committee of the Center for Public Company Audit Firms and included procedures to plan and perform the review that are summarized in the attached description of the peer review process. Our review would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it since it was based on selective tests. Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice applicable to the non-SEC issuers of Seidel, Schroeder & Company in effect for the year ended December 31, 2007, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA, and was complied with during the year then ended to provide the firm with reasonable assurance of complying with applicable professional standards.

Heinold - Banwart, Ltd.

**Attachment to the Peer Review Report of
Seidel, Schroeder & Company
Description of the Peer Review Process**

Overview

Firms enrolled in the AICPA Center for Public Company Audit Firms (the Center) Peer Review Program have their system of quality control periodically reviewed by independent peers. These reviews are system and compliance oriented with the objectives of evaluating whether:

The reviewed firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers has been designed to meet the requirements of the Quality Control Standards established by the AICPA.

The reviewed firm's quality control policies and procedures applicable to non-SEC issuers were being complied with to provide the firm with reasonable assurance of complying with professional standards.

A peer review is based on selective tests and directed at assessing whether the design of and compliance with the firm's system of quality control for its accounting and auditing practice applicable to non-SEC issuers provides the firm with reasonable, not absolute, assurance of complying with professional standards. Consequently, a peer review on the firm's system of quality control is not intended to, and does not, provide assurance with respect to any individual engagement conducted by the firm or that none of the financial statements audited by the firm should be restated.

The Center's Peer Review Committee (PRC) establishes and maintains peer review standards. At regular meetings and through report evaluation task forces, the PRC considers each peer review, evaluates the reviewer's competence and performance, and examines every report, letter of comments, and accompanying response from the reviewed firm that states its corrective action plan before the peer review is finalized. The Center's staff plays a key role in overseeing the performance of peer reviews working closely with the peer review teams and the PRC.

Once the PRC accepts the peer review reports, letters of comments, and reviewed firms' responses, these documents are maintained in a file available to the public. In some situations, the public file also includes a signed undertaking by the firm agreeing to specific follow-up action requested by the PRC.

Firms that perform audits or play a substantial role in the audit of one or more SEC issuers, as defined by the Public Company Accounting Oversight Board (PCAOB) are required to be registered with and have their accounting and auditing practice applicable to SEC issuers inspected by the PCAOB. The firm did not audit SEC issuers for the year ended December 31, 2007.

Planning the Review for the Firm's Accounting and Auditing Practice Applicable to non-SEC issuers

To plan the review of Seidel, Schroeder & Company, we obtained an understanding of (1) the nature and extent of the firm's accounting and auditing practice, and (2) the design of the firm's system of quality control sufficient to assess the inherent and control risks implicit in its practice. Inherent risks were assessed by obtaining an understanding of the firm's practice, such as the industries of its clients and other factors of complexity in serving those clients, and the organization of the firm's personnel into practice units. Control risks were assessed by obtaining an understanding of the design of the firm's system of quality control, including its audit methodology, and monitoring procedures. Assessing control risk is the process of evaluating the effectiveness of the reviewed firm's quality control system in preventing the performance of engagements that do not comply with professional standards.

Performing the Review for the Firm's Accounting and Auditing Practice Applicable to non-SEC issuers

Based on our assessment of the combined level of inherent and control risks, we identified practice units and selected engagements within those units to test for compliance with the firm's system of quality control. The engagements selected for review included an engagement performed under the Government Auditing Standards, and audits of Employee Benefit Plans. The engagements selected for review represented a cross-section of the firm's accounting and auditing practice with emphasis on higher-risk engagements. The engagement reviews included examining working paper files and reports and interviewing engagement personnel.

The scope of the peer review also included examining selected administrative and personnel files to determine compliance with the firm's policies and procedures for the elements of quality control pertaining to independence, integrity, and objectivity; personnel management; and acceptance and continuance of clients and engagements. Prior to concluding the review, we reassessed the adequacy of scope and conducted an exit conference with firm management to discuss our findings and recommendations.



SEIDEL, SCHROEDER & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS

To the Members of Council
City of Brenham

We are engaged to audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Brenham for the year ending September 30, 2011. Professional standards require that we provide you with the following information related to our audit. We would also appreciate the opportunity to meet with you to discuss this information further since a two-way dialogue can provide valuable information for the audit process.

Our Responsibility under U.S. Generally Accepted Auditing Standards

As stated in our engagement letter dated June 27, 2011, our responsibility, as described by professional standards, is to express opinions about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Planned Scope and Timing of the Audit

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested.

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Material misstatements may result from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. We will communicate our significant findings at the conclusion of the audit.

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We expect to begin our audit planning process on during October, 2011, audit fieldwork beginning in November, 2011, and to issue our reports no later than March 1, 2012.

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

Very truly yours,

A handwritten signature in blue ink that reads "Seidel, Schroeder & Company". The signature is written in a cursive style with a long, sweeping underline.

Seidel, Schroeder & Company



AGENDA FORM

DATE OF MEETING: 7/21/11		DATE SUBMITTED: 7/15/11	
DEPT. OF ORIGIN: Public Utilities		SUBMITTED BY: Dane Rau	
MEETING TYPE:		CLASSIFICATION:	
<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> PUBLIC HEARING	
<input type="checkbox"/> SPECIAL		<input type="checkbox"/> CONSENT	
<input type="checkbox"/> EXECUTIVE SESSION		<input checked="" type="checkbox"/> REGULAR	
		<input type="checkbox"/> WORK SESSION	
ORDINANCE:			
<input type="checkbox"/> 1ST READING			
<input type="checkbox"/> 2ND READING			
<input type="checkbox"/> RESOLUTION			
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Bid No. 11-014 for the Purchase of Refuse Bags for the Sanitation Department and Authorize the Mayor to Execute any Necessary Documentation.			
SUMMARY STATEMENT: On July 12, 2011 the Purchasing Dept. opened bids for the purchase of 12,500 refuse bags. The bids were as follows:			
Bidder	Tie Type	No. Rolls	Amount
Ecoplast LLC	\$9.95/roll	12,500	\$124,375.00
Pollock Paper and Packaging	\$6.90/roll	12,500	\$86,250.00
Central Poly, Inc.	\$6.49/roll	12,500	\$81,125.00
As seen above, Central Poly was the low bid submitted and meets all bid specifications. Bids were mailed out to four vendors with three bids received. Central Poly did receive the bid last year at \$6.90/roll and we have had very good luck with their bags in the past. We have requested for the 2011-2012 budget year \$85,000 for the purchase of refuse bags. These bags will be an inventory item and will not be dispensed until they are released from inventory. Due to sales at two locations, we moved the purchase of these bags up earlier than previous years so that we would not run out prior to our next pass out.			
Staff is recommending that Council approve the bid from Central Poly, Inc. for the purchase of 12,500 rolls.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS: Meets specifications, very reliable, durable bags and under budgeted amount. Lower costs than 2010.			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			

ATTACHMENTS: (1) Bid Information Sheet; and (2) Bid Tabulation Sheet

FUNDING SOURCE (Where Applicable): 106-5-142-219.00

RECOMMENDED ACTION: Approve Bid No. 11-014 and award the purchase of 12,500 rolls of refuse bags to Central Poly, Inc. in the amount of \$81,250.

APPROVALS: Lowell Ogle, Jr.



Bid Information Sheet

July 12, 2011

Refuse Bags

Bid No. 11-014

Bid Opening: July 12, 2011

Inventory Account: 101-1-510.00

Number of bidders requesting bid packet: 4

Number of completed bids returned to Purchasing: 3



Refuse Bags
Bid No. 11-014

<u>Bidder</u>	<u>Price Per Roll</u>	<u>Total \$ Amount</u>
Ecoplast LLC Brooklyn, NY	\$ 9.95	\$124,375.00
Pollock Paper & Packaging Houston, TX	\$ 6.90	\$ 86,250.00
Central Poly, Inc. Linden, NJ	\$ 6.49	\$ 81,125.00

FY2010/11

Central Poly was awarded the bid. We purchased 10,000 rolls at a cost of \$6.90 per roll.



AGENDA FORM

DATE OF MEETING: July 21, 2011	DATE SUBMITTED: July 14, 2011	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Doug Baker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on its First Reading Reducing the Speed Limit from 65 mph to 60 mph for Traffic Moving in both Directions on the Portion of U.S. Highway 290 Beginning at its Intersection with State Highway 36 and Extending Southward 0.341 Miles		
SUMMARY STATEMENT: TxDot requests your adoption of this ordinance, which lowers the speed limit from 65 mph to 60 mph on the portion of US 290 as described above and as shown on the attached map. This speed limit change is in conjunction with a lowering of the speed limit from 70 mph to 60 mph on SH 36 from the city limit to Big Sandy Creek north of the intersection of SH 36 and Business 36, all of which is outside the city limits.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Ordinance; and (2) Speed Zone Map		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Approve an ordinance on its first reading reducing the speed limit from 65 mph to 60 mph for traffic moving in both directions on the portion of U.S. Highway 290 beginning at its intersection with State Highway 36 and extending southward 0.341 Miles		
APPROVALS: Terry Roberts		

ORDINANCE NO. _____

AN ORDINANCE RELATING TO SPEED ZONES WHICH SPECIFICALLY DESIGNATES ADDITIONAL AREAS IN THE CITY OF BRENHAM IN WHICH RATES OF SPEED OF THIRTY (30) MILES PER HOUR OR MORE ARE AUTHORIZED; RESCINDING ALL PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND DECLARING THAT ATTENDANT FACTS NECESSITATE IMMEDIATE ACTION

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS:

SECTION 1. That any and all ordinances or parts of ordinances relating to speed zones on US 290 in the City of Brenham are hereby rescinded, and the following are additional specifically designated areas in which a rate of speed of thirty (30) miles per hour or more is authorized.

- A) U.S. 290, for traffic moving an easterly direction for 0.341 miles from the intersection with SH 36, the speed limit shall be sixty (60) miles per hour.
- B) U.S. 290, for traffic moving in a westerly direction for 0.341 miles to the intersection with SH 36, the speed limit shall be sixty (60) miles per hour.

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary

SECTION 2. WHEREAS, the preservation of the general welfare of the public necessitates immediate action, this Ordinance shall be effective from and after the date of its passage as provided by the Charter of the City of Brenham.

Passed: _____, 2011.

Mayor, City of Brenham

APPROVED AS TO FORM:

City Attorney, City of Brenham

ATTEST:

City Secretary, City of Brenham

THE STATE OF TEXAS X

COUNTY OF WASHINGTON X

I, _____ City Secretary of the City of Brenham, County of Washington, State of Texas, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance passed and approved by the _____ of said City on the _____ day of _____, 2011, and is now in file in my office and notice is hereby given of the passage of the same in the manner and for the length of time as required by the Charter of the City of Brenham.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2011.

City Secretary, City of Brenham

RURAL

M.P. 15.436
M.P. 15.730
OLD BRENHAM CITY LIMIT LINE

0.341
60 MPH

Reduce Speed From 65 MPH To 60 MPH

THIS SECTION PREVIOUSLY
SPEED ZONED UNDER
COMMISSION MINUTE ORDER
NO. 108507, 4/26/2001

66
75
145

C.S. 0186-06 SH 36

To Somerville

To Houston

P.T.

US 290

64
70
131

Reduce Speed From 65 MPH To 60 MPH

60 MPH
0.341

2009

300' - 76'

2-26' X 2" (MIN) ACP ON 38' X 20" FLEX BASE,
CURB INSIDE, 10' TWO CST SHOULDER OUTSIDE, 12' ACP MEDIAN, 4 LANES
3° ~ 0.197

RURAL

42
62
125

85 PERCENTILE SPEED
TOP SPEED MEASURED
NUMBER OF CARS CHECKED.

SPEED ZONE

FATAL ACCIDENT

NO.	DATE
S	DATE
D BY	DATE
D BY	DATE
FUNCTION	DATE



AGENDA FORM

DATE OF MEETING: July 21, 2011		DATE SUBMITTED: July 14, 2011	
DEPT. OF ORIGIN: Public Works		SUBMITTED BY: Doug Baker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1 ST READING	
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING	
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION	
<input type="checkbox"/> WORK SESSION			
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on its First Reading Reducing the Speed Limit from 70 mph to 60 mph for Traffic Moving in both Directions on the Portion of State Highway 36 from the City Limit Southward 0.505 Miles to the Intersection with U.S. Highway 290			
SUMMARY STATEMENT: TxDot requests your adoption of this ordinance, which lowers the speed limit from 70 mph to 60 mph on the portion of SH 36 as described above and as shown on the attached map. This speed limit change is in conjunction with a lowering of the speed limit from 70 mph to 60 mph on SH 36 from the city limit described above to Big Sandy Creek north of the intersection of SH 36 and Business 36, all of which is outside the city limits.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS:			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1) Ordinance; and (2) Speed Zone Map			
FUNDING SOURCE (Where Applicable):			
RECOMMENDED ACTION: Approve an ordinance on its first reading reducing the speed limit from 70 mph to 60 mph for traffic moving in both directions on the portion of State Highway 36 from the city limit southward 0.505 miles to the intersection with U.S. Highway 290			
APPROVALS: Terry Roberts			

ORDINANCE NO. _____

AN ORDINANCE RELATING TO SPEED ZONES WHICH SPECIFICALLY DESIGNATES ADDITIONAL AREAS IN THE CITY OF BRENHAM IN WHICH RATES OF SPEED OF THIRTY (30) MILES PER HOUR OR MORE ARE AUTHORIZED; RESCINDING ALL PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND DECLARING THAT ATTENDANT FACTS NECESSITATE IMMEDIATE ACTION

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS:

SECTION 1. That any and all ordinances or parts of ordinances relating to speed zones on SH 36 in the City of Brenham are hereby rescinded, and the following are additional specifically designated areas in which a rate of speed of thirty (30) miles per hour or more is authorized.

- A) SH 36, for traffic moving in a southerly direction for 0.505 miles from the Brenham northern city limit to the intersection with U.S. 290, the speed limit shall be sixty (60) miles per hour.

- B) SH 36, for traffic moving in a southerly direction for 0.505 miles from the intersection with U.S. 290 to the Brenham northern city limit, the speed limit shall be sixty (60) miles per hour.

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary

SECTION 2. WHEREAS, the preservation of the general welfare of the public necessitates immediate action, this Ordinance shall be effective from and after the date of its passage as provided by the Charter of the City of Brenham.

Passed: _____, 2011.

Mayor, City of Brenham

APPROVED AS TO FORM:

City Attorney, City of Brenham

ATTEST:

City Secretary, City of Brenham

THE STATE OF TEXAS X

COUNTY OF WASHINGTON X

I, _____ City Secretary of the City of Brenham, County of Washington, State of Texas, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance passed and approved by the _____ of said City on the _____ day of _____, 2011, and is now in file in my office and notice is hereby given of the passage of the same in the manner and for the length of time as required by the Charter of the City of Brenham.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2011.

City Secretary, City of Brenham

RURAL

OLD BRENHAM CITY LIMIT LINE
M.P. 15.730

M.P. 15.436

Existing City Limit

0.341
60 MPH

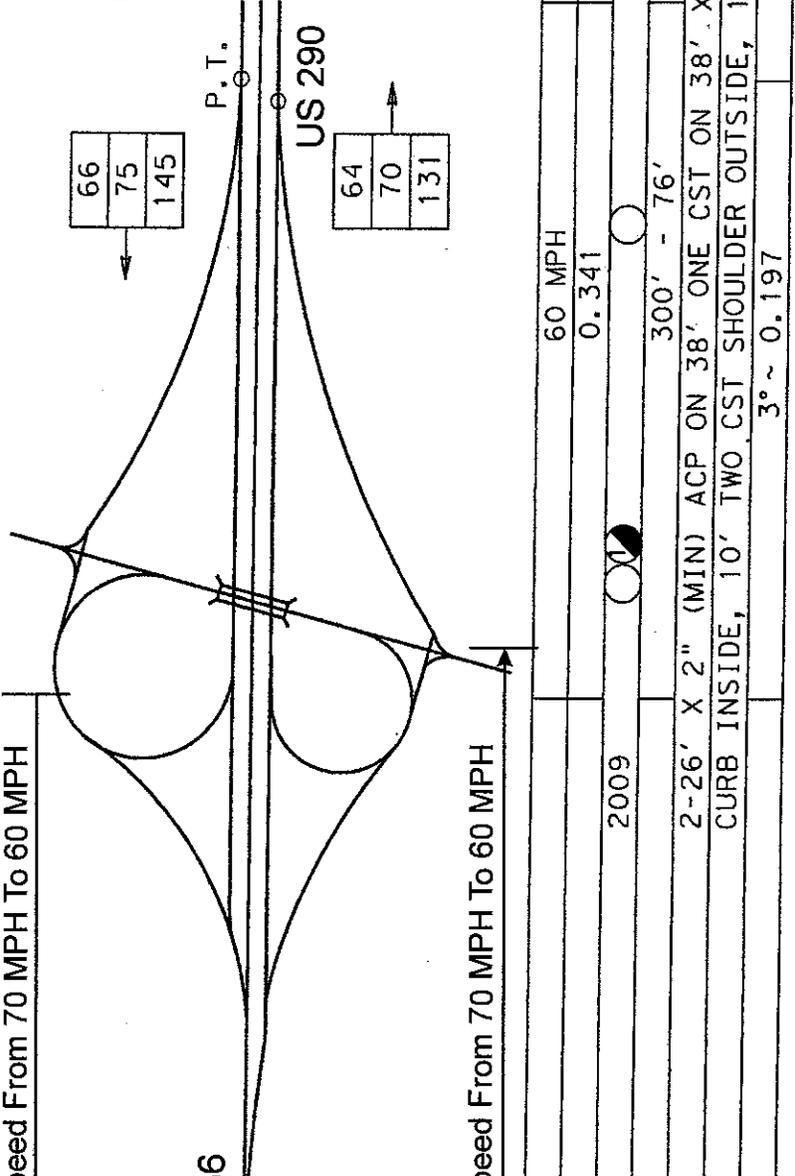
Reduce Speed From 70 MPH To 60 MPH

THIS SECTION PREVIOUSLY
SPEED ZONED UNDER
COMMISSION MINUTE ORDER
NO. 108507, 4/26/2001

C.S. 0186-06 SH 36

To Somerville

To Houston



60 MPH
0.341

2009

300' - 76'

2-26' X 2" (MIN) ACP ON 38' X 20" FLEX BASE,
CURB INSIDE, 10' TWO CST SHOULDER OUTSIDE, 12' ACP MEDIAN, 4 LANES
3° ~ 0.197

RURAL

NO.	DATE
S	DATE
D BY	DATE
D BY	DATE
DATE	DATE

42
62
125

85 PERCENTILE SPEED
TOP SPEED MEASURED
NUMBER OF CARS CHECKED

SPEED ZONE



FATAL ACCIDENT



AGENDA FORM

DATE OF MEETING: 7-21-11	DATE SUBMITTED: 7-14-11	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Doug Baker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Closure of the Railroad Crossing on Vulcan Street at its Intersection with BNSF Railway between North Austin Parkway and North Austin Street		
SUMMARY STATEMENT: Our discussions about the quiet zone have always included the closure of the railroad crossing on Vulcan Street. Not closing the crossing increases our Quiet Zone Risk Index, but not to the point of disqualifying us from the implementation of the zone. The motivating factor for closing the crossing has been the cash reimbursement we stand to receive from BNSF in exchange for the closed crossing. At the beginning of the quiet zone process, BNSF was offering \$40,000 for each closed crossing. In December of 2010 this offer was reduced to \$25,000. As indicated on the following pages, this amount could be something less now. I have discussed this with Mr. Huya and I believe that he will do everything he can to honor the \$25,000 offer. Similarly, TxDot's policy has been to pay \$7,500 for each abandoned crossing. At this time, this has not been confirmed with TxDot, but they have promised an answer before next Thursday. If BNSF honors its \$25,000 offer, I believe we should proceed with the closing of the Vulcan crossing because the money can help offset the cost to implement the quiet zone. If, on the other hand, BNSF determines that there will be not offer or that the amount will be reduced to some insignificant amount, we may want to consider not closing the crossing. I am therefore requesting that you approve this closure ordinance on its first reading anticipating that before the second reading we will know more specifically how much the reimbursement will be..		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS: Closing the crossing gives us the opportunity to receive funds to help offset the cost of the quiet zone. Closing the crossing lowers our Quiet Zone Risk Index.		
B. CONS: Not closing the crossing does not affect the traffic circulation in that area. Not closing the crossing makes it somewhat difficult to warn motorists, with required signage, that the train horns do not blow once the quiet zone is implemented. The installation of traversable medians at this crossing will not be possible.		

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Ordinance; (2) Email Correspondence with BNSF Railway

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve the ordinance on its first reading providing for the closure of the Vulcan Street crossing.

APPROVALS: Terry Roberts

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR CLOSING OF THE VULCAN STREET BNSF RAILROAD CROSSING TO ESTABLISH A QUIET ZONE; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH CLOSURE; AUTHORIZING THE MAYOR TO EXECUTE ANY DOCUMENTS NECESSARY TO CLOSE THE VULCAN STREET RAILROAD CROSSING.

WHEREAS, the silencing of the train horns within the corporate limits of the City of Brenham, Texas will improve the quality of life for the citizens of Brenham; and

WHEREAS, the train horns can be silenced by the establishment of a Railroad Quiet Zone; and

WHEREAS, certain safety measures must be taken in accordance with federal law and regulations governing the establishment of a Railroad Quiet Zone; and

WHEREAS, Vulcan Street is divided into two sections by the Burlington Northern Santa Fe Railroad (BNSF); and

WHEREAS, the City Council of the City of Brenham hereby finds that the closing of the Vulcan Street BNSF Railroad Crossing is in the best interest of the citizens of Brenham promotes the health, safety and general welfare;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS:

SECTION 1: That the Vulcan Street BNSF Railroad Crossing be and the same is hereby closed and shall no longer be used by the public as a thoroughfare for vehicles or pedestrians.

SECTION 2: That this Ordinance does not release or convey any right, title or interest in or to any portion of Vulcan Street. The City of Brenham retains and reserves all right, title and interest in Vulcan Street.

SECTION 3: That the City Council does hereby authorize the City Manager or his designee to take any appropriate action to close the Vulcan Street BNSF Railroad Crossing to establish a Railroad Quiet Zone, and further does hereby authorize the Mayor to execute any and all documents necessary to close the Vulcan Street BNSF Railroad Crossing as authorized by this Ordinance.

SECTION 4: That all ordinances that are in conflict with the provisions of this Ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 5: Should any paragraph, sentence, subdivision, clause, phrase, or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 6: This Ordinance shall take effect immediately from and after its passage and publication as required by law; however, notwithstanding any other provisions herein, this Ordinance shall not be effective unless BNSF provides a cash reimbursement to the City of Brenham in exchange for the closing of the Vulcan Street BNSF Railroad Crossing in an amount [determined appropriate by the Mayor] [or] [not less than \$_____]

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary

Doug Baker

From: Huya, Tim J <Tim.Huya@bnsf.com>
Sent: Tuesday, December 07, 2010 8:46 AM
To: 'Darin.Kosmak@txdot.gov'; 'Douglas.Vollette@txdot.gov'; 'Guy.Godfrey@txdot.gov';
'Christine.Cano@txdot.gov'; 'Roland.Merz@txdot.gov'; 'Marvin.Wright@txdot.gov';
'art.henson@madisoncountytexas.org'; 'Cindy.Parks@txdot.gov';
'William.Shrewsbury@la.gov'; 'Russell.Wiles@fortworthgov.org'; Doug Baker;
'James.Robertson@txdot.gov'; 'mayor@rayne.org'
Cc: Huya, Tim J
Subject: 12-07-10 BNSF lowers closure incentive funding limits

Due to recent company policy changes, ALL closure offers of BNSF funds cannot exceed \$25k per public crossing. Any BNSF closure offer NOT already under contract will have a revised offer letter issued. ALL pending offers (not under contract) in excess of \$25k will default to a revised BNSF contribution of \$25,000 per public crossing closure.

I understand that this policy change may affect your closure proposals.

Thank you for your understanding.

Tim Huya
Manager Public Projects
BNSF Railway
5800 North Main Street
Saginaw, TX 76179
817-352-2902

Doug Baker

From: Huya, Tim J <Tim.Huya@bnsf.com>
Sent: Tuesday, July 12, 2011 4:00 PM
To: Doug Baker
Cc: Gene Kruppa; Perry, Douglas D; Huya, Tim J
Subject: RE: closure offer of \$25k for VULCAN STREET in Brenham

Doug Baker
City of Brenham

Due to changes in our closure funding department, I will need to submit a request for the closure. That department/team actually determines an amount to offer. I will specify the last communication of \$25,000 to close. I will let you know once I get a reply from that closure review team.

Tim

From: Doug Baker [<mailto:DBaker@ci.brenham.tx.us>]
Sent: Tuesday, June 07, 2011 2:57 PM
To: Huya, Tim J
Cc: Gene Kruppa
Subject:

Tim,

We will be able to begin installing the medians and signs required for the establishment of the quiet zone within the next few weeks. (1) How do we schedule the BNSF flagman for the portion of the work that will be on railroad right of way and how much advanced notice is required to get him here, and (2) is the \$25,000 closure offer still available. If so, what is the process for getting the \$25,000. I assume we remove the pavement, replace curb and gutter where necessary, erect barricades, and request the money. Is that correct?

Doug



AGENDA FORM

DATE OF MEETING: July 21, 2011	DATE SUBMITTED: July 18, 2011	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits		
SUMMARY STATEMENT: Upon review of the Code of Ordinances, it was determined that the City of Brenham's ordinance regulating sexually oriented businesses has not been reviewed and/or updated since 1993.		
<p>Back on June 2, 2011 I advised Council that I had begun researching regulations of other cities and the various effects of sexually oriented businesses on communities. During my research, I discovered that community concerns about sex businesses create somewhat of a balancing act with the U. S. Constitution's First Amendment Rights that protect certain explicit materials and various forms of expression found in the media, presentations and performances. Therefore, any and all ordinances must be content neutral or it may be deemed unconstitutional.</p> <p>Over the past couple of months, I have been working closely with the City Attorney to write an ordinance that would protect our community from the negative secondary effects related to sexually oriented businesses while respecting the Constitutional Rights of sexually oriented businesses. There are still some minor adjustments to the ordinance that will need to be made before 2nd reading but I feel that this is a very good ordinance and if challenged could be defended as a Constitutionally sound ordinance.</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		

ATTACHMENTS: (1) A new ordinance regulating sexually oriented businesses

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve an Ordinance on its first reading amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to provide for the regulation of sexually oriented businesses within the city limits.

APPROVALS: Terry Roberts

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A SEVERABILITY, REPEALER AND SAVINGS CLAUSE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.

WHEREAS, the City of Brenham (“City”) is a home rule municipality located in Washington County, Texas, acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the Texas State Legislature, in Section 243.001 of the Texas Local Government Code finds “that the unrestricted operation of certain Sexually Oriented Businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity;” and

WHEREAS, Section 243.003 of the Texas Local Government Code authorizes municipalities to adopt regulations restricting the location of Sexually Oriented Businesses, which are defined in Section 243.002 to mean a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other similar commercial enterprise, the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer; and

WHEREAS, the City, for the purpose of protecting the public health, safety and welfare, has regulated Sexually Oriented Businesses since December 2, 1993 by enactment of Ordinance No. O-93-034, and required permitting by the City of such businesses to this present date; and

WHEREAS, the City did not have a Sexually Oriented Business within its city limits on December 2, 1993 and no licenses or permits for such businesses have been reported or issued by the City from December 2, 1993 to the date of this Ordinance; and

WHEREAS, the City Council, in performance of its police power to protect the public health, safety and welfare of the City and its citizens, has determined that it is necessary and advisable to establish, implement and enforce new regulations, licensing procedures and location criteria applicable to Sexually Oriented Businesses; and

WHEREAS, the City Council intends that these regulations should have neither the purpose nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression and communicative materials, nor the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

WHEREAS, studies, reports and findings considered by the City Council are as follows: *Survey of Texas Appraisers – Secondary Effects of Sexually Oriented Businesses on Market Values*, Texas City Attorneys Association (2008); *Report on Adult Oriented Businesses in Austin*, City of Austin, Texas (1986); *Report to City Council Regarding the Regulation of Sexually Oriented Businesses*, City of Burleson, Texas (2004); *Sexually Oriented Business Ordinance Revision Committee Legislative Report*, City of Houston, Texas (1997); and *Survey [of real estate appraisers regarding the secondary effects an adult bookstore would have on the surrounding community]*, City of Kennedale, Texas (2003); and

WHEREAS, said studies, reports and findings, which document the adverse secondary effects of Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

WHEREAS, lawsuit case decisions considered by the Council are as follows: *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (986); *Young v. American Mini Theaters*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas*, 289 F. 3d 358 (5th Cir. 2002); *Schultz v. City of Cumberland*, 228, F. 3d 831 (7th Cir. 2000); and

WHEREAS, said legal opinions, which provide further documentation regarding the detrimental secondary effects associated with Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

WHEREAS, based on its review, the City Council finds that the presence of a Sexually Oriented Business would have detrimental secondary effects on surrounding properties; and

WHEREAS, the above referenced studies, legal opinions, reports and findings show that Sexually Oriented Businesses have a deleterious effect on surrounding businesses and residential areas, causing increased crime, a downgrading of property values, and increased incidence of sexually transmitted diseases; and

WHEREAS, the City Council finds, based on the above referenced studies, legal opinions, reports and findings, that these ancillary, unlawful and unhealthy activities will not be controlled by the operators of Sexually Oriented Businesses, and absent municipal regulation aimed at reducing adverse secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on or about their premises and as a consequence of their operations; and

WHEREAS, the City Council finds that based on the above cited studies, legal opinions, reports and findings, that it is reasonably likely that establishment of one or more Sexually Oriented Business within the City will give rise to adverse secondary effects; and

WHEREAS, the City Council finds that based on the above cited studies, legal opinions, reports and findings that adverse secondary effects associated with Sexually Oriented Businesses are magnified when such businesses are located within close proximity to each other; and

WHEREAS, the City has a legitimate and substantial governmental interest in limiting the adverse secondary effects associated with Sexually Oriented Businesses as a means of promoting the public health, safety and welfare of the citizens of Brenham; and

WHEREAS, the City Council finds that the institution of reasonable regulations, licensing procedures, and location criteria provides an appropriate mechanism for achieving said legitimate and substantial governmental interest; and

WHEREAS, the City Council finds, based on the above-referenced studies, legal opinions, reports and findings, that limiting the locations of Sexually Oriented Businesses as provided herein is necessary in order to minimize the adverse secondary effects of Sexually Oriented Businesses on surrounding properties; and

WHEREAS, the City Council finds that the regulations, licensing procedures and location criteria contained herein do not attempt and not intended to prohibit constitutionally protected speech, but rather, serve to mitigate the adverse secondary effects associated with Sexually Oriented Businesses; and

WHEREAS, the City Council finds that the regulations, licensing procedures and location criteria contained herein have neither the purpose, intent, nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials, nor is it the purpose or intent of this Ordinance to have the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

WHEREAS, the City Council finds that the adoption of the regulations, licensing procedures and location criteria contained herein will still leave available reasonable locations for the establishment of Sexually Oriented Businesses within the city limits; and

WHEREAS, the City Council finds that the adoption of the regulations, licensing procedures, and location criteria contained herein will promote the public health, safety and general welfare of the citizens of the City;

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

SECTION 1:

The recitals and preamble to this Ordinance together with the June 2, 2011 *Report to the City of Brenham City Council on Sexually Oriented Businesses* prepared by the City Secretary, including all appendices, are incorporated in this Ordinance by reference for all purposes as if fully set forth herein.

SECTION 2:

Section 16-16 of the Code of Ordinances of the City of Brenham, Texas is hereby repealed.

SECTION 3:

Chapter 16 of the Code of Ordinances of the City of Brenham, Texas is hereby amended by adding the following provisions:

SEXUALLY ORIENTED BUSINESSES

Sec. 16-20. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the City of Brenham, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses in close proximity to each other within the City. The regulations contained herein have also been established for the purpose of limiting the well-documented, adverse secondary effects suffered by properties located within one thousand (1,000) feet of a sexually oriented business.

The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Sec. 16-21. Findings and basis for regulation.

The regulations contained herein, including those pertaining to the licensing, operation, and location of sexually oriented businesses, are based on studies, reports, findings, court case decisions, and evidence made available to and considered by the City Council. These regulations have also been established under the authority granted to municipalities by Chapter 243 of the Texas Local Government Code.

A copy of the City Secretary's report on sexually oriented businesses (dated June 2, 2011), together with the studies, reports, findings, and court case decisions (as referenced herein) are on file in the Office of the City Secretary.

Sec. 16-22. Definitions.

Adult arcade. Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by regularly depicting or describing specified sexual activities or specified anatomical areas.

Adult bookstore, adult novelty store or adult video store. A commercial establishment for which the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer constitutes twenty-five percent (25%) or more of the items in inventory and/or floor space of the sexually oriented business, including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items used for birth control or for the prevention of sexually transmitted diseases.

Adult cabaret. A commercial establishment that regularly features the offering to customers of live entertainment that:

- (1) Is intended to provide sexual stimulation or sexual gratification to such customer; and
- (2) Is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities.

Adult motel. A hotel, motel, or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the regular depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from any public right-of-way that advertises the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by the depiction or description of specified sexual activities.

Applicant.

- (1) A person or entity in whose name a license to operate a sexually oriented business is requested to be issued;
- (2) Each individual who signs an application for a sexually oriented business license as required by Section 16-27;
- (3) Each individual who is an officer of a sexually oriented business for which a license application is made under Section 16-27, regardless of whether the individual's name or signature appears on the application;
- (4) Each individual who has a twenty percent (20%) or greater ownership interest in a sexually oriented business for which a license application is made under Section 16-27, regardless of whether the individual's name or signature appears on the application; and

- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under Section 16-27, regardless of whether the individual's name or signature appears on the application.

Chief of police. The Chief of Police of the City or the Chief's designee.

Child-care facility. A facility licensed by the State of Texas or other governmental entity having jurisdiction, or an agency thereof, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. Conviction includes disposition or charges against a person by probation, deferred disposition or deferred adjudication.

Distinguished or characterized by an emphasis upon. The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

Employee. Any individual who:

- (1) Is listed as a part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or sexually oriented business; or
- (2) Performs or provides entertainment or any other services on the sexually oriented business premises for any form of compensation or consideration.

Entertainer. A person who, for consideration, entertains for others.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease or other live performance that is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities, for another person.

Escort agency. A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

Establishment. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) Any building, structure or premises operated as a sexually oriented business.

Hearing officer. The City Manager, or his or her designee. The hearing officer shall exercise those powers authorized under applicable state law, the charter of the City, and the Code of Ordinances of the City, as appropriate in the furtherance of his or her duties.

Hospital. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

Licensee.

- (1) A person in whose name a license to operate a sexually oriented business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an officer of a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (4) Each individual who has a twenty percent (20%) or greater ownership interest in a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application.

Manager. A person responsible for planning and/or directing the work of others and monitoring them when necessary.

Nude model studio. Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, viewed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

Nudity or a state of nudity. A state of dress which fails to fully and opaquely cover the anus, genitals, pubic region, or perineum anal region, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the anus, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human female breast are exposed, or shows the covered male genitals in a discernibly turgid state.

Operates or causes to be operated. To cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operation control of the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Public park. Any City park defined by Chapter 19 of the Code of Ordinances, or any park or recreational area operated by a city/county/state government, or any park to which the general public has access.

Regularly features or regularly shown. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Religious institution. A building or group of buildings in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief. For the purposes of this definition, the term religious institution shall include, but not be limited to, a church, synagogue, mosque or temple.

Residential district. A single-family, duplex, townhouse, multiple family, manufactured home, mobile home, or other residential zoning district as defined in the City's zoning ordinance.

Residential use. A single-family, duplex, multiple family, manufactured home park, manufactured home subdivision, mobile home park, mobile home subdivision, campground, or other residential use as defined in the City's zoning ordinance.

Semi-nude or semi-nudity or state of semi-nudity. The exposure of the post-puberty female nipple or areola, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the post-puberty female nipple or areola, so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term semi-nude shall not apply to an individual exposing a post-puberty female nipple or areola in the process of breastfeeding a child under that person's care.

Sexual encounter center. A business or commercial establishment that as one of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of sexual encounter center or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually oriented business. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or other commercial enterprise for which the regular offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer constitutes twenty-five percent (25%) or more of the items in inventory and/or floor space of the sexually oriented business. The term "sexually oriented business" shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or nude model studio, regardless of whether the percentage of items in inventory and/or floor space constitute twenty-five percent (25%) or more of the total items in inventory and/or floor space.

Sign. Any display, design, message, pictorial, image or other representation that is:

- (1) Constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a sexually oriented business; and
- (2) Used to seek the attraction of the public to any goods, services, or merchandise available at the sexually oriented business.

The term sign also includes any representation painted on or otherwise affixed to any exterior portion of a sexually oriented business establishment or to any part of the tract upon which the establishment is situated.

Specified anatomical areas.

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered:
 - (a) Any human genitals, pubic region, or pubic hair;
 - (b) Any buttock; or
 - (c) Any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities. Any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.

Transfer of ownership or control of a sexually oriented business. Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec. 16-23. Classification.

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores, adult novelty stores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult theaters;
- (6) Adult motion picture theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers.

Sec. 16-24. Nonconforming uses.

- (1) Any sexually oriented business that is in violation of Section 16-25, or any other location requirement of any other City ordinance that was legally operating at the time it was licensed, or the effective date of any amendment of such ordinance or regulation, shall be deemed a nonconforming use.
- (2) Any legally established, sexually oriented business that is in violation of this article because of annexation into the City shall be deemed to be a nonconforming use.
- (3) A sexually oriented business that is lawfully operating within the City on or after the effective date of this article shall not be rendered a nonconforming use by the subsequent location of a protected use listed in Section 16-25 within one thousand (1,000) feet of the sexually oriented business.
- (4) Notwithstanding anything contained in this article or in the City's zoning ordinance as amended to the contrary, a legal nonconforming sexually oriented business shall be required to meet all applicable requirements of this article except locational requirements established by Section 16-25 within sixty (60) days of the date the sexually oriented business becomes nonconforming. The Board of Adjustment may grant a nonconforming sexually oriented business an extension of time to comply with these requirements if the business shows, upon timely written application, that meeting these requirements within sixty (60) days imposes an unnecessary hardship on the business.
- (5) Legal nonconforming sexually oriented businesses shall not be increased, enlarged, extended or altered except that the use may be changed to a use other than a sexually oriented business to the extent allowed by the City's zoning ordinance. A person commits an offense if he increases, enlarges, extends or alters, or causes to be increased, enlarged, extended or altered, a nonconforming sexually oriented business.

Sec. 16-25. Location requirements.

A person commits a violation if the person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zoning district as defined in the City's zoning ordinance.

A person commits a violation if the person operates or causes to be operated a sexually oriented business within one thousand (1,000) feet of:

- (1) A religious institution including a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility or child care facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- (3) A boundary of a residential zoning district as defined in the City's zoning ordinance;
- (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trail, swimming pool, athletic field, basketball, or tennis court, pedestrian/bicycle path, or other similar public land within the City, or its ETJ;
- (5) The property line of a lot or parcel devoted to a residential use as defined in the City's zoning ordinance;
- (6) A family oriented recreation facility including but not limited to a roller skating rink, an ice skating rink or a facility devoted to children's athletic activities;
- (7) Any premise licensed pursuant to the alcoholic beverage control regulations of the State of Texas, or an agency thereof;
- (8) A public library.

A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business.

A person commits a violation if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

For the purpose of subsection (b) of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (b). The presence of a City, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

For the purposes of subsection (c) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

Sec. 16-26. Sexually oriented business license required.

A person commits an offense if the person operates or causes to be operated a sexually oriented business without a valid license, issued by the City for the particular classification of sexually oriented business. The person, association, firm, partnership or corporation desiring to obtain a sexually oriented business license shall make an application on a form provided by the City Secretary.

The fact that a person, association, firm, partnership, corporation or other legal entity possesses other types of state or City permits or licenses does not exempt the person from the requirement of obtaining a license for a sexually oriented business.

An application for a sexually oriented business license shall only be considered to be complete if it contains all information specified in subsections (1) through (14) below:

- (1) The applicant's full and true name along with any other names used in the preceding five (5) years. Any person with a twenty percent (20%) or greater interest in the business shall:
 - (a) Be considered to be an applicant and shall sign the license application form;
 - (b) Provide all information and documentation required of the applicant;
 - (c) Be qualified under Section 16-24;
 - (d) Be considered a licensee if a license is granted.
- (2) The applicant's current address;
- (3) A set of fingerprints suitable for conducting necessary background checks pursuant to this article, and the applicant's Social Security number, to be used for the same purpose;
- (4) The business name as it is to be displayed on the premises, the company name, if different than the preceding, the property address and legal description, the business mailing address, business telephone number, and any e-mail or website addresses that are to be used in conjunction with the business;
- (5) Written proof of age, in the form of a birth certificate accompanied by a current photograph, a current driver's license, or other picture identification issued by a domestic governmental agency;
- (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor;
- (7) The name and address of the statutory agent or other agent authorized to receive service of process;
- (8) A diagram showing a plan of the premises. The diagram shall:
 - (a) Be oriented to the north, or to a designated street;
 - (b) Be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches;
 - (c) Designate any portion of the premises in which customers will not be permitted;
 - (d) Specify the location of all manager's stations, if applicable; and

- (e) Designate the place at which the license, if granted, will be conspicuously displayed.
- (9) An approved City sign permit accompanied by a photograph verifying posting of notification signage required by Sec. 243.075 of the Texas Local Government Code;
- (10) A list of all employees, or prospective employees, along with copies of complete updated employment application, valid driver's license, state identification card, or passport containing a photograph of the employee;
- (11) A notarized affidavit signed by each applicant and certifying all information and documentation provided with the application to be true and correct;
- (12) A nonrefundable application fee in the amount of \$750.00;
- (13) A Certificate of Occupancy, if required, issued by the City's building inspector; and
- (14) All information, supported by any necessary documentation, required by this article.

An application submitted without all of the required information, or without the application fee, shall be deemed incomplete. Incomplete applications shall be denied and within forty-five (45) business days of its receipt by the City Secretary, be returned to the applicant, accompanied by a notice specifying the reasons for application denial.

Sec. 16-27. Issuance of sexually oriented business license.

The annual fee for a sexually oriented business license shall be \$750.00. A sexually oriented business license shall be valid from the date of issuance through January 31 of the following year. The annual fee shall not be prorated.

The Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within thirty (30) days after receipt of an application, unless the Chief, or his designee, finds one (1) or more of the following to be true:

- (1) The location of the sexually oriented business is or would be in violation of Section 16-25 of this article.
- (2) The applicant failed to supply all of the information requested on the application.
- (3) The applicant gave false, fraudulent or untruthful information on the application.
- (4) An applicant is under eighteen (18) years of age.
- (5) An applicant or an applicant's spouse is overdue in payment to the Secretary of State or the City of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

- (6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this article, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (7) The license fee required by this article has not been paid.
- (8) The applicant has not demonstrated that the owner of the sexually oriented business owns or holds a lease for the property or the applicable portion thereof upon which the sexually oriented business will be situated or has a legally enforceable right to acquire the same.
- (9) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:
 - (a) Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection; or
 - (b) Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same;
 - (c) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 - (d) Any of the following offenses as described in of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) Indecency with a child;
 - (iv) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
 - (v) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
 - (vi) Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code;
 - (e) For which:
 - (i) Less than two (2) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense; or

- (ii) Less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
 - (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- (10) The applicant or the applicant's spouse is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure.
- (11) The applicant failed to comply with any of the requirements of Sec. 243.0075 of the Texas Local Government Code regarding the posting of an outdoor sign.
- (12) The applicant of the proposed establishment is in violation of or is not in compliance with any of the requirements outlined in Section 16-27 or Section 16-25, or any other applicable law, ordinance or regulation.

An applicant, or applicant's spouse, who has been convicted of or placed on deferred disposition, probation or community supervision for an offense listed in subsection 9(c) or 9(d) above, may qualify for a sexually oriented business license only when the time period required by subsection (9)(e)(i-iii) above, has elapsed.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall be posted in accordance with the provisions of Section 16-26.

Sec. 16-28. Manager/Entertainer license required.

A person commits an offense if the person manages and/or or entertains in a licensed sexually oriented business without a valid manager and/or entertainer license, issued by the City.

The person desiring to obtain a manager and/or entertainer license shall make an application on a form provided by the City Secretary and provide all of the following information:

- (1) A valid copy of the current sexually oriented business license for each of the sexually oriented businesses in which the manager and/or entertainer proposes to work or perform;
- (2) Applicant's name, any aliases, mailing address for receipt of notices, home address and telephone number, date and place of birth, social security number, and, in the case of entertainers, any stage names or nicknames used in entertaining;

- (3) Name and address of each sexually oriented business where the applicant intends to work;
- (4) A statement that the applicant is eighteen (18) years or older, confirmed by provision of documentation issued by a state or federal agency bearing the applicant's date of birth and photograph;
- (5) A statement that the applicant has not been convicted of, or released from confinement or conviction of, or received an order for, deferred adjudication or disposition, of any felony or any misdemeanor (other than traffic offenses) where such felony or misdemeanor violation constitutes a specified criminal act; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (6) A statement that the applicant has not been convicted of or released from confinement for conviction of, or received an order for, deferred adjudication or disposition, whichever event is later, of any other felony within the five (5) years or any other misdemeanor (other than traffic offenses) within the two (2) years immediately preceding the date of application; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (7) A statement that the applicant has not had a sexually oriented business manager or entertainer license, or comparable license, of any type revoked within the past five (5) years nor one suspended within the past two (2) years, immediately preceding the date application, the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (8) A statement that the applicant has not had, within the two (2) years immediately preceding the date of application, an ownership, operational or managerial position, of a sexually oriented business that has demonstrated an inability to operate in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (9) A statement that the applicant does not owe delinquent taxes, assessments or other financial obligations to the City, or if such debts and/or obligations are owed, that arrangements satisfactory to the City Manager have been made for the payment of such debts or obligations; and
- (10) A statement signed under oath by the applicant that the information contained in the application is true and correct; that the applicant grants permission to the city to perform any necessary background checks on the applicant; and that the applicant has read all the provisions of the Chapter regulating sexually oriented businesses.

If the applicant fails to provide all of the information required by this Section, or if the information provided is false or misleading, the application shall be denied. Further, a license issued under this Section may be revoked and/or suspended after issuance if the information provided by the applicant is later found to be false or misleading.

Sec. 16-29. Issuance of manager/entertainer license.

The annual fee for a manager and/or entertainer license shall be \$150.00. A manager and/or entertainer's license shall be valid from the date of issuance through January 31 of the following year. The annual fee for a manager/entertainer license shall not be prorated.

If the applicant meets all the applicable requirements, the Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within fifteen (15) days after receipt of a complete application.

In the event the application is determined incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete. The applicant may resubmit the application within ten (10) days of the City's written notice to the applicant. Once a completed application has been re-submitted, the Police Chief shall have fifteen (15) days to approve or disapprove the application.

The Chief of Police shall base his decision on the information provided by the applicant, the police department's investigation, license requirements and denial criteria, and any other information provided by other City departments or governmental agencies. The applicant shall be notified in writing within ten (10) days after the Chief's decision.

The license, if granted, shall state on its face: the license number, the name of the license holder (including any stage names), a photograph of the licensee, the date of issuance and expiration, the address of the sexually oriented business where such license is applicable.

A valid copy of the manager's license shall be posted in accordance with the provisions of Section 16-26. A valid copy of the entertainer's license shall not be posted but shall be available for inspection on the premises of the sexually oriented business at any time.

Sec. 16-30. Certificate of occupancy.

Prior to submitting an application for a sexually oriented business license, the applicant must obtain a certificate of occupancy from the City's building official.

If a building and/or other construction related permit is required under applicable City ordinances, the applicant shall submit to the building inspection department, all necessary plans and permit applications. The building official shall cause all plans and permit applications to be processed and reviewed under the terms of applicable codes and ordinances. Upon approval of a final inspection, by applicable City departments, the building official shall issue a certificate of occupancy.

Sec. 16-31. Inspection and maintenance of records.

A licensee, owner, operator and/or employee of a sexually oriented business shall be subject to regulation under this article and shall permit representatives of the City, including but not limited to the police department, health department, fire department, building inspections division and code enforcement division to inspect all portions of the premises and to inspect the records required to be maintained under this article, for the purpose of ensuring compliance with all applicable regulations, at any time it is occupied or open for business.

A licensee, owner or operator of a sexually oriented business commits an offense if:

- (1) The person operates the establishment without maintaining a current list of all employees of the business, along with a completed, updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the person appears at the time the person is hired, shall be required and maintained on the premises with the employee's application.
- (2) The person refuses to permit a lawful inspection of the records and premises by a representative of the police department or other department of the City at any time the sexually oriented business is occupied or open for business.
- (3) The person does not maintain the required records on the premises of the licensed establishment.
- (4) The person does not permit representatives of the police department to take photographs of the licensee, owner, operator or employee of the sexually oriented business, for official police department purposes, at any time it is occupied or open for business.

The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Sec. 16-32. Expiration and renewal of licenses.

An application for renewal of a sexually oriented business license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A licensee that fails to renew a license shall forfeit the right to conduct business within the City until such time as the renewal is approved. A sexually oriented business license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$750.00. Annual renewal fees shall not be prorated.

An application for renewal of a manager and/or entertainer license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A person that fails to renew their license shall forfeit the right to manage and/or entertain within the City until such time as the renewal is approved. A manager and/or entertainer license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$75.00. Annual renewal fees shall not be prorated.

Sec. 16-33. Suspension of license.

The Chief of Police shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the Chief determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
- (3) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (4) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Sec. 16-34. Revocation of license.

The Chief of Police shall issue a written notice of intent to revoke a sexually oriented business license if:

- (1) A cause of suspension in Section 16-33 occurs and the license has been suspended one (1) other time within the preceding twelve (12) months;
- (2) On two (2) or more occasions within a five-year period of time a licensee(s) or operator(s) (or any combination thereof) has/have been convicted of or placed on deferred adjudication or disposition, probation or community supervision for conduct occurring in a licensing period on the premises of a sexually oriented business that constitutes any of the offenses of the state or criminal attempt, conspiracy, or solicitation to commit same for:

- (a) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 - (b) Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) Indecency with a child;
 - (c) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
 - (d) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
 - (e) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in section 12.04 of the Texas Penal Code.
- (3) A licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process;
 - (4) A licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
 - (5) A licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
 - (6) A licensee or operator knowingly operated the sexually oriented business during a period of time when the licensee’s license was suspended;
 - (7) A licensee or operator has, on two (2) or more occasions, knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term sexual contact shall have the same meaning as it is defined in Section 21.01, Texas Penal Code;
 - (8) A licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business;
 - (9) The licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure; or
 - (10) A license is transferred in violation of Section 16-36;

The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Subsection (7) above does not apply to adult motels as a ground for revoking the license, unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

Sec. 16-35. Denial, suspension and revocation procedures.

If the Chief of Police determines that facts exist for denial, suspension or revocation of a license under this article, the City Secretary shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

The notification shall be directed to the most current business address on file with the City. Within five (5) business days of receipt of such notice, the respondent may provide to the City Secretary, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended or revoked. Within five (5) business days of the receipt of respondent's written response, the City Secretary shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

Within fifteen (15) business days of the City Secretary's receipt of respondent's written response, the City Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the City Secretary in the time stated above or, if after the hearing, the City Manager finds that grounds as specified in this article exist for denial, suspension or revocation, then such denial, suspension, or revocation shall become final five (5) business days after the hearing unless within that time the City Manager sends, by certified mail, written notice that the license has been denied, suspended, or revoked or if the license will be issued or allowed to remain in effect. If the license is denied, suspended or revoked such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If after a hearing, the City Manager finds that insufficient grounds exist for the denial, suspension or revocation of a license, then within five (5) business days after the hearing, the City Manager shall withdraw the intent to deny, suspend or revoke the license, and shall so notify the respondent in writing of such action by certified mail and shall contemporaneously issue the license or allow the license to remain in effect, as applicable.

When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application of a license has been denied, or whose license has been suspended or revoked, shall have the immediate right to appeal such action to a court of competent jurisdiction. Until the court of competent jurisdiction issues its final judgment, the decision to deny, suspends or revoke a license shall remain in effect and be enforced.

A sexually oriented business license or the ownership or control of a sexually oriented business which is directly or indirectly a part of civil litigation, an administrative hearing, or procedures regarding the denial, suspension or revocation of the license, such license shall not be transferred, sold or given to another person during the pendency of the judicial or administrative processes.

Sec. 16-36. Transfer of license.

A person commits a violation if the person transfers a license or permits to another person or operates a sexually oriented business under the authority of a license at any place other than the address designated on the license. A transfer of a license is deemed to have occurred if there is a transfer of more than fifty percent (50%) of the ownership or control of a sexually oriented business.

A person commits a violation if the person counterfeits, forges, changes, defaces or alters a license.

Sec. 16-37. Regulations pertaining to exhibition of sexually explicit films, videos, or live entertainment in viewing rooms.

A person who operates or causes to be operated a sexually oriented business (other than an adult motel) which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video, or live entertainment which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises providing all information specified in Section 16-26 of this article. Manager stations shown on this diagram shall be dimensioned and shall not contain in excess of thirty-two (32) square feet of floor area per station.
- (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.
- (3) It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

- (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (5) It shall be the duty of the licensee to ensure that the view area specified in subsection (4) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
- (6) No viewing room may be occupied by more than one (1) person at any time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level.
- (8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (9) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (10) No person shall make or attempt to make an opening of any kind between viewing rooms or booths.
- (11) The licensee shall, during each business day, regularly inspect the walls between the viewing booths or rooms to determine if any openings or holes exist.
- (12) The license shall cause all floor coverings in viewing booths or rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

A person having a duty under subsections (1) through (13) above commits a violation if he or she knowingly fails to fulfill that duty.

Sec. 16-38. Additional regulations for escort agencies.

An escort agency shall not employ any person under the age of eighteen (18) years.

A person commits a violation if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years.

Sec. 16.39. Additional regulations concerning public nudity.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears nude or in a state of nudity or engages in specified sexual activities.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears in a semi-nude state, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

A person commits a violation if the person receives directly any pay or gratuity from any patron or customer, or if any patron or customer pays or gives any gratuity directly to the person, while the person is an employee and semi-nude in a sexually oriented business.

A person commits a violation if the person, while semi-nude, knowingly and intentionally touches a part on or the clothing of a patron or customer.

Sec. 16-40. Prohibition against children in a sexually oriented business.

A person commits a violation if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

Sec. 16-41. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of twelve o'clock (12:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays, and twelve o'clock (12:00) a.m. and noon (12:00) p.m. on Sundays.

Sec. 16.42. Exemptions.

It is a defense to prosecution under Section 16-39 that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the state; a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (b) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
 - (c) Where no more than one (1) nude model is on the premises at any one time.

Sec. 16-43. Violation a misdemeanor.

Except as otherwise stated herein, any person, firm, corporation, agent or employee thereof who violates any provision of this article (a violation) shall be guilty of a Class A misdemeanor punishable by a fine not to exceed \$4,000.00 and/or confinement in jail for a term not to exceed one (1) year.

Each day that a violation exists or is permitted to exist shall constitute a separate offense.

The refusal to issue a license based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a license based on ineligibility.

The revocation or suspension of a license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.

Sec. 16-44. Civil remedies.

The City reserves the right to seek all available civil remedies in a court of law to include, but not be limited to, injunction and civil fines for any violations of this article.

Any person, firm, corporation, agent or employee thereof who violates any provision of this article, in addition to any criminal remedies, shall be subject to a civil fine up to and including one thousand dollars (\$1,000.00) per day for each day the violation occurs.

Sec. 16.45. Notice of violation.

The City shall provide to a sexually oriented business written notice of each citation issued to an operator or employee of the business for an alleged violation of this article. The notice may be sent by certified mail, return receipt requested, to the business address of the sexually oriented business as it appears on its license application, to the attention of the licensee, as it appears on the license application, or may be personally delivered to the licensee. A failure of the City to provide such notice is not a violation of this article, and shall not affect or invalidate the citation.

Sec. 16-45 – 16.49. RESERVED.

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 violations 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 MEETINGS

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 at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary