



CITY OF TEXARKANA
CITY COUNCIL
MINUTES • OCTOBER 24, 2016

Council Chambers**Regular Meeting****6:00 PM**

220 TEXAS BLVD.
TEXARKANA, TX 75501

I. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM

Attendee Name	Title	Status	Arrived
Bob Bruggeman	Mayor	Present	
Jean H. Matlock	Ward 1	Present	
Willie Ray	Ward 2	Present	
Tina Veal-Gooch	Ward 3	Absent	
Brian Matthews	Ward 4	Present	
Christy P. Paddock	Ward 5	Present	
Josh Davis	Ward 6	Present	

Staff Present: City Manager John Whitson, Jennifer Evans, Shirley Jaster, Kristin Peeples, David Orr, Kyle Dooley, Eric Schlotter, Jim Powell, Robby Robertson, Lisa Thompson, Lynn Henry, Keith Lee, Karey Parker, Craig Hicks and Jerry Sparks.

Legal Counsel: Jeff Lewis

II. INVOCATION AND PLEDGE BY COUNCIL MEMBER JOSH DAVIS

III. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

Upcoming City Council Meetings:

Monday, November 14, 2016 at 6:00 p.m.

Monday, November 28, 2016 at 6:00 p.m.

Monday, December 12, 2016 at 6:00 p.m.

Monday, December 26, 2016 at 6:00 p.m. - Meeting is cancelled - City Holiday.

Parks & Recreation Events:

October 27 th	Movies in the Park - "The Town that Dreaded Sundown" - Original	Spring Lake Park
October 29 th	Community Yard Sale & Electronics Recycling	Spring Lake Park

****Movie will start at 7:00 p.m.****

Mayor Bruggeman reminded everyone that the Downtown Post Office largest city photo op event is scheduled for Tuesday, October 25th at 10:00 a.m. This event is in celebration of the recently acquired Texas Cultural District Designation for the City of Texarkana.

Presentations

Texas Cultural District Designation

Mr. Gary Gibbs, Executive Director of the Texas Commission on the Arts, commended the Texarkana Arts and Historic District on its achievement of submitting a successful application to the Commission and being selected for the Texas Cultural District Designation. Texarkana is now one of 35 Texas Cultural Districts and is eligible for future cultural district program grants.

Charles Jordan, representing 4th District Congressman John Ratcliffe, pledged support for the project which honors Texarkana with the Texas Cultural District Designation and expressed congratulations to the city.

Texarkana Cultural District Day Proclamation

Mayor Bruggeman read the joint proclamation.

NAACP 79th Annual Convention Letter of Appreciation

Mayor Bruggeman read the appreciation letter received by Jennifer Montoya and the staff of the Hilton Garden Inn & Convention Center. Robert Jones, current President of the Greater Texarkana NAACP Branch, gave KUDOS to the city and Jennifer Montoya, Director of Convention Services, for making the annual convention experience memorable for years to come.

Attendees of the convention were extremely grateful for the exceptional customer service and hospitality received during their stay at the Hilton Garden Inn & Convention Center.

Jennifer Montoya, in behalf of convention center staff, thanked Mr. Jones and the city for making the experience pleasant and easy to host.

RESULT:	COMPLETED
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Appointments to Boards & Commissions

There were no appointments made to any board or commission.

IV. OPEN FORUM: COMMENTS FROM THE PUBLIC (LIMIT 5 MINUTES EACH)

Items scheduled for "Public Hearing" or have been heard at a previous "Public Hearing" are not to be addressed at the "Open Forum".

There were no public comments made at Open Forum.

V. ITEMS FOR CONSIDERATION

Consent Items

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Christy P. Paddock, Ward 5
SECONDER:	Brian Matthews, Ward 4
AYES:	Matlock, Ray, Matthews, Paddock, Davis
ABSENT:	Veal-Gooch
EXCUSED:	Bruggeman

1. Consider approval of the minutes of the Regular Meeting of the City Council held on October 10, 2016 at 6:00 PM.
2. Ordinance No. 2016-122 amending the Tax Increment Reinvestment Zone 2012 Bond budget expenditures for the fiscal year ending September 30, 2017.

Public Hearing:
Second Briefing:
Council Vote: October 24, 2016

3. Resolution No. 2016-123 ratifying the reappointment of Gerald Brooks to the Civil Service Commission.

Public Hearing:
Second Briefing:
Council Vote: October 24, 2016

Action Items - None

VI. FIRST BRIEFINGS

1. Resolution No. 2016-120 approving Bowie Central Appraisal District's 2016 tax roll.

Public Hearing: November 14, 2016
Second Briefing: November 28, 2016
Council Vote: December 12, 2016

Kristin Peeples briefed this item.

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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2. Resolution No. 2016-121 authorizing the City Manager to enter into an incentive agreement under Chapter 380 of the Texas Local Government Code with Legato Holdings LLC for plans to remodel a facility located at 3103 Summerhill Road.

Public Hearing: November 14, 2016
Second Briefing: November 28, 2016
Council Vote: December 12, 2016

Jerry Sparks briefed this item.

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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VII. PUBLIC HEARINGS

1. Ordinance No. 2016-117 amending Chapter 11 Sec. 105-99 of the International Residential Code.

Public Hearing: October 24, 2016
Second Briefing: November 14, 2016
Council Vote: November 28, 2016

There were no public comments made at this hearing.

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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2. Ordinance No. 2016-119 amending the Code of Ordinances Secs. 28-1(b), 130-5, 140-179 and 140-239 for sidewalk board type signs to be allowed for advertising in the Central Business zoning district.

Public Hearing: October 24, 2016
Second Briefing: November 14, 2016
Council Vote: November 28, 2016

There were no public comments made at this hearing.

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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VIII. SECOND BRIEFING WITH UPDATES - NONE

IX. SECOND BRIEFING WITHOUT UPDATES

1. Resolution No. 2016-113 establishing a Community Relations Expenditures Policy.

Public Hearing: October 10, 2016
Second Briefing: October 24, 2016
Council Vote: November 14, 2016

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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2. Resolution No. 2016-114 authorizing the expenditure of Community Relations funds in support of the KCS Holiday Express Train event.

Public Hearing: October 10, 2016
Second Briefing: October 24, 2016
Council Vote: November 14, 2016

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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3. Resolution No. 2016-116 revising the Fire Department's swap time policy.

Public Hearing: October 10, 2016
Second Briefing: October 24, 2016
Council Vote: November 14, 2016

RESULT:	MOVED FORWARD	Next: 11/14/2016 6:00 PM
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X. ITEMS FOR DISCUSSION

Staff Updates

Staff had no updates for council.

XI. ADMINISTRATIVE COMMENTS

1. City Council

Mayor Bruggeman thanked Parks and Recreation staff for the nice appearance of the fence row at the Swanger Complex in Spring Lake Park along Interstate 30. The Mayor also thanked staff for timely responding to several council mowing requests for various parts of the city.

2. City Staff

Staff had no administrative comments for council.

XII. ADJOURNMENT

A motion was made to adjourn the meeting.

(6:40 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Willie Ray, Ward 2
SECONDER:	Brian Matthews, Ward 4
AYES:	Matlock, Ray, Matthews, Paddock, Davis
ABSENT:	Veal-Gooch
EXCUSED:	Bruggeman



Jennifer Evans
City Secretary



Bob Bruggeman
Mayor

Briefing Sheet

Version:
Update Date: 10/17/2016 1:23 PM

Lead Department: City Manager

Action Officer: Jennifer Evans, City Secretary

Subject: Texarkana Cultural District Day Proclamation

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

Potential Options:

- None
-

Fiscal Implications:

None

Staff Recommendation:

Mayor to proclaim Tuesday, October 25th as "Texarkana Cultural District Day" in Texarkana USA.

Advisory Board/Committee Review:

NONE

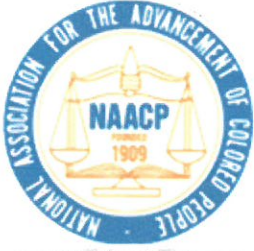
Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments



Texas State Conference of NAACP Units

7901 Cameron Rd., Bldg. 2, Suite 350, Austin, TX 79784
Telephone: 512 322 9547 FAX 512 322 0757

Mailing Address: PO Box 380777, Duncanville, TX 75138

October 10, 2016

Jennifer Montoya
Director of Convention Services
Texarkana Convention Center
2910 South Cowhorn Creek Loop
Texarkana, TX 75503

Dear Jennifer and The Staff of the Hilton Garden Inn & Convention Center:

I wanted to give my sincere thanks on behalf of the Texas State Conference of NAACP Units for the incredible service and hospitality we experienced during our 79th Annual Convention. All our participants agreed this was the best hotel & convention site we have used during any convention.

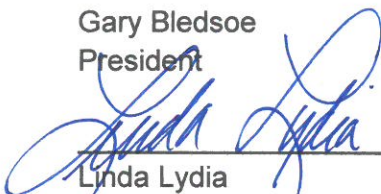
Your willingness to work with us within our budget; the solicitation of a local business to provide gratis snacks to our attendees; the great morning breakfasts; room set-ups; quick and responsive service to all requests; wonderful clean rooms; promotional material including our huge welcome banner at the entrance to the property; other signage promoting our convention; friendly & caring staff; ease of check-in; and incredible meals; are only a few of the stellar memories of our stay with you in Texarkana. There are legends that will be created and expectations elevated due to the Hilton Garden Inn & Convention Center in Texarkana.

Our State Conventions favor the Hilton family of hotels but after our stay at your hotel we will definitely seek out Hilton properties, exclusively.

Jennifer, thanks so much and please extend our thanks to your manager, entire sales team, catering & food service, front desk, housekeeping and the entire city of Texarkana for the extreme customer service and hospitality. We look forward to a return to your site and the city.

Sincerely,

Gary Bledsoe
President



Linda Lydia
Convention Chair

Communication: NAACP 79th Annual Convention Letter of Appreciation (Presentations)



CITY OF TEXARKANA
CITY COUNCIL
MINUTES • OCTOBER 10, 2016

Council Chambers**Regular Meeting****6:00 PM**

220 TEXAS BLVD.
TEXARKANA, TX 75501

I. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM

Attendee Name	Title	Status	Arrived
Bob Bruggeman	Mayor	Present	
Jean H. Matlock	Ward 1	Present	
Willie Ray	Ward 2	Present	
Tina Veal-Gooch	Ward 3	Present	
Brian Matthews	Ward 4	Present	
Christy P. Paddock	Ward 5	Present	
Josh Davis	Ward 6	Present	

Staff Present: City Manager John Whitson, Jennifer Evans, Shirley Jaster, Kristin Peeples, Sherry Jackson Hawkins, David Orr, Eric Schlotter, Robby Robertson, Jim Powell, Karey Parker and Craig Hicks.

Legal Counsel: Louise Tausch

II. INVOCATION AND PLEDGE BY MAYOR BOB BRUGGEMAN

III. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

Upcoming City Council Meetings:

Monday, October 24, 2016 at 6:00 p.m.
Monday, November 14, 2016 at 6:00 p.m.
Monday, November 28, 2016 at 6:00 p.m.

Upcoming Joint City Meeting:

The Texarkana Chamber of Commerce will host the first "Joint Texarkana Community Committee" meeting with Texarkana, Arkansas on Tuesday, October 11th at 3:00 p.m. The meeting will be held at the chamber building located at 819 No. State Line Avenue. The meeting will be open to the public.

Parks & Recreation Events:

Minutes Acceptance: Minutes of Oct 10, 2016 6:00 PM (Consent Items)

October 13 th	Movies in the Park - "Angry Birds"	Spring Lake Park
October 20 th	Movies in the Park - "Goosebumps"	Spring Lake Park
October 20 th	Fall Festival	Spring Lake Park
October 22 nd	Softball Tournament	Karrh and Wallace Parks
October 27 th	Movies in the Park - "The Town that Dreaded Sundown" - Original	Spring Lake Park
October 29 th	Community Yard Sale & Electronics Recycling	Spring Lake Park

"Movies will start at 7:00 p.m."

For a complete list of Parks & Recreation activities and information call 903-798-3978 or visit the city website: <http://tx-texarkana.civicplus.com>

Mayor Bruggeman said Texarkana has been busy the past week with lots of well attended activities:

National Night Out was held on Tuesday, October 4th - Mayor Bruggeman thanked Council Member Paddock for co-hosting the Shilling South Subdivision block party. He also thanked Police and Fire Department staff for supporting the approximately twenty block parties held around the city.

The 79th NAACP Convention was held Thursday, Friday and Saturday, October 6th-8th at the Texarkana Convention Center. Several comments were made that this event had an excellent turnout and great city support.

A first time "Fly-In" was held on Saturday, October 8th at the Texarkana Regional Airport. Mayor Bruggeman thanked Council Member Davis for his support. This event was geared towards getting community youths interested and involved in the field of aviation.

The Komen Race for the Cure is scheduled for Saturday, October 15th and will be held at the Four States Fairgrounds. Opening ceremonies begin at 8:00 a.m. and the race begins at 9:00 a.m.

Texarkana Arts and Historic District will celebrate the Texas Cultural District Designation by the Texas Commission on the Arts on Tuesday, October 25th at 10:00 a.m. The event will be held at the U.S. Post Office in Downtown Texarkana. The largest photo EVER will be taken of attendees across the state line. Everyone is invited to attend and be a part of the celebration.

Mayor Bruggeman recognized and welcomed students from Mr. Littman's government class at Texas High School.

Presentations

1. Manufacturing Month Proclamation

Mayor Bruggeman read the proclamation to the audience.

2. Fire Fighter Collective Bargaining Ballot Measure Update

City Manager Whitson gave an update on the fire fighter collective bargaining ballot measure and shared some new slides in his presentation. The revised presentation would be available on the city's website beginning Tuesday, October 11th.

Appointments to Boards & Commissions

Council Member Matthews recommended the reappointment of Linda Hooks to the Community Healthcare board. Council Member Veal-Gooch acknowledged Ms. Hooks in the audience.

(6:46 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Tina Veal-Gooch, Ward 3
SECONDER:	Brian Matthews, Ward 4
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman

IV. OPEN FORUM: COMMENTS FROM THE PUBLIC (LIMIT 5 MINUTES EACH)

Items scheduled for "Public Hearing" or have been heard at a previous "Public Hearing" are not to be addressed at the "Open Forum".

There were no public comments made at Open Forum.

V. ITEMS FOR CONSIDERATION

Consent Items

(6:46 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Christy P. Paddock, Ward 5
SECONDER:	Josh Davis, Ward 6
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman

1. Consider approval of the minutes of the Regular Meeting of the City Council held on September 26, 2016 at 6:00 PM.

Fire Fighter Ballot Initiative CM Presentation

*Action Items - None***VI. FIRST BRIEFINGS**

1. Ordinance No. 2016-117 amending Chapter 11 Sec. 105-99 of the International Residential Code.

Public Hearing: October 24, 2016
 Second Briefing: November 14, 2016
 Council Vote: November 28, 2016

Shirley Jaster briefed this item.

RESULT:	MOVED FORWARD	Next: 10/24/2016 6:00 PM
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2. Ordinance No. 2016-119 amending the Code of Ordinances Secs. 28-1(b),130-5,140-179 and 140-239 for sidewalk board type signs to be allowed for advertising in the Central Business zoning district.

Public Hearing: October 24, 2016
 Second Briefing: November 14, 2016
 Council Vote: November 28, 2016

Shirley Jaster briefed this item.

RESULT:	MOVED FORWARD	Next: 10/24/2016 6:00 PM
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VII. PUBLIC HEARINGS

1. Motion to move Ordinance No. 2016-110 up for council vote.
 (7:04 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Christy P. Paddock, Ward 5
SECONDER:	Josh Davis, Ward 6
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman

2. Ordinance No. 2016-110 granting a Specific Use Permit to allow the one additional use of a tattoo studio for the application of permanent cosmetics on a .34 acre tract (Tract 49) in the MEP & P HRS, A-421, located in a tenant space at 4066 Summerhill Square. Alan Schimming, owner. Jordan Chandler, agent.

Public Hearing: October 10, 2016
 Second Briefing: October 24, 2016
 Council Vote: November 14, 2016

Donovan Driver, representative for Alan Schimming, spoke at the hearing. Jordan Chandler spoke and asked for council consideration to expedite the vote on this agenda item. Lucretia Barry spoke in favor of this agenda item.
 (7:05 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Tina Veal-Gooch, Ward 3
SECONDER:	Willie Ray, Ward 2
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman

3. Motion to move Ordinance No. 2016-111 up for council vote.

(7:07 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Brian Matthews, Ward 4
SECONDER:	Willie Ray, Ward 2
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman

4. Ordinance No. 2016-111 rezoning a 1.574 acre tract of land in the MEP & P HRS, A-18, located at 6872 Hampton Road. General Retail to Commercial. Mike Berry, Texarkana Hampton Road LLC, owner. Jason Vanderhoof, agent.

Public Hearing: October 10, 2016
 Second Briefing: October 24, 2016
 Council Vote: November 14, 2016

There were no public comments made at this hearing.
 (7:08 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Brian Matthews, Ward 4
SECONDER:	Josh Davis, Ward 6
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman

5. Resolution No. 2016-113 establishing a Community Relations Expenditures Policy.

Public Hearing: October 10, 2016
 Second Briefing: October 24, 2016
 Council Vote: November 14, 2016

There were no public comments made at this hearing.

RESULT:	MOVED FORWARD	Next: 10/24/2016 6:00 PM
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6. Resolution No. 2016-114 authorizing the expenditure of Community Relations funds in support of the KCS Holiday Express Train event.

Public Hearing: October 10, 2016
 Second Briefing: October 24, 2016
 Council Vote: November 14, 2016

There were no public comments made at this hearing.

RESULT:	MOVED FORWARD	Next: 10/24/2016 6:00 PM
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7. Motion to move Resolution No. 2016-115 up for council vote.

Mayor Bruggeman asked the City Secretary for a roll call vote.
 (7:26 p.m.)

RESULT:	ADOPTED [5 TO 1]
MOVER:	Brian Matthews, Ward 4
SECONDER:	Jean H. Matlock, Ward 1
AYES:	Matlock, Ray, Matthews, Paddock, Davis
NAYS:	Veal-Gooch
EXCUSED:	Bruggeman

8. Resolution No. 2016-115 authorizing the expenditure of Community Relations funds in support of the Live United Bowl Team's Banquet.

Public Hearing: October 10, 2016
 Second Briefing: October 24, 2016
 Council Vote: November 14, 2016

Alan Brown addressed council and asked for council consideration to expedite the vote on this agenda item. Dean Barry spoke at this hearing. Vicki Huckabee spoke at this hearing. Mayor Bruggeman asked the City Secretary for a roll call vote.

(7:30 p.m.)

RESULT:	ADOPTED [5 TO 1]
MOVER:	Brian Matthews, Ward 4
SECONDER:	Josh Davis, Ward 6
AYES:	Matlock, Ray, Matthews, Paddock, Davis
NAYS:	Veal-Gooch
EXCUSED:	Bruggeman

9. Resolution No. 2016-116 revising the Fire Department's swap time policy.

Public Hearing: October 10, 2016
 Second Briefing: October 24, 2016
 Council Vote: November 14, 2016

There were no public comments made at this hearing.

RESULT:	MOVED FORWARD	Next: 10/24/2016 6:00 PM
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VIII. SECOND BRIEFING WITH UPDATES - NONE

IX. SECOND BRIEFING WITHOUT UPDATES - NONE

X. ITEMS FOR DISCUSSION

Staff Updates

City Manager Whitson said a one-page fact sheet regarding the fire fighter ballot issue has been prepared for the council. An electronic copy would be available on the city's website beginning Tuesday, October 11th.

Mayor Bruggeman asked Mr. Whitson to share with council how one city employee was affected by the recently adopted budget which incorporated raises for city staff. Mr. Whitson stated that an employee in the Public Works Department tearfully expressed appreciation for receiving a raise that he would allow him to more abundantly provide for his family's needs.

XI. ADMINISTRATIVE COMMENTS

1. City Council

Council Member Davis recognized and thanked Senior Pastor Brad Morgan of Williams United Methodist Church for his attendance at the meeting.

Council Member Matthews asked if the traffic circle "roundabout" situation at Gibson Lane and Pavilion Parkway has been corrected. City Manager Whitson responded that the markings which caused the confusion have now been re-striped and traffic seems to be flowing smoothly.

2. City Staff

Staff had no comments for council.

XII. ADJOURNMENT

A motion was made to adjourn the meeting.
(7:44 p.m.)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Willie Ray, Ward 2
SECONDER:	Brian Matthews, Ward 4
AYES:	Matlock, Ray, Veal-Gooch, Matthews, Paddock, Davis
EXCUSED:	Bruggeman



Jennifer Evans
City Secretary



Bob Bruggeman
Mayor

City of Texarkana, Texas

Version: A

Update Date: 10/20/2016 11:53 AM

Briefing Sheet

Lead Department: Economic Development **Action Officer:** Jerry Sparks, Economic Developer
Subject: Ordinance No. 2016-122 amending the Tax Increment Reinvestment Zone 2012 Bond budget expenditures for the fiscal year ending September 30, 2017.
Briefing: 10/24/2016 **Public Hearing:** Second **Council Vote:** 10/24/2016

Item ScheduleSchedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**(Insert Date Here):

(Insert Text Here) or Select, Delete this and all text with parentheses and say "NOT APPLICABLE"

Executive Summary and Background Information:

The following changes are requested to appropriate additional FY2017 Tax Increment Reinvestment Zone (TIRZ) 2012 Bond.

Tax Increment Reinvestment Zone 2012 Bond

Project	GL #	Revised FY16	Revised FY17
Linear Park	422-9701-57072	-0-	\$508,788.71
Gibson Extension to FM989	422-9701-57079	-0--	\$1,00,000.00

The items were in the FY2016 budget. The funds were not expended during FY16. This amendment will allow for the funding of the project payments in FY17.

Potential Options:

- Approve request to amend FY 2017 budget
- Deny request to amend FY 2016 budget
-

Fiscal Implications:

Amendment will increase the expenditures from the TIRZ 2012 Bond Fund by \$1,508,788.71 representing funds that were budgeted in FY2016 but not spent.

Staff Recommendation:

Staff recommends approval

Advisory Board/Committee Review:

City of Texarkana, Texas

NONE

Board/Committee Recommendation:

Not Applicable

Advisory Board/Committee Meeting Date and Minutes:

Not Applicable

Attachments

- a. 2016-122 ORD Amending TIRZ 2012 Bond for for FY17 (DOCX)
- b. 2016-122 ATTH 01 Budget Amend narrative for TIRZ 2012 Bond (DOCX)

Staff Coordination

Economic Development	Jerry Sparks	Department Head Review
Completed	10/14/2016 10:39 AM	
Finance Department	Kristin Peebles	Finance Review
10:43 AM	Completed	10/14/2016
Assistant City Manager	Shirley Jaster	Assistant City Manager
Review	Completed	10/19/2016 10:52 AM
Public Information Officer	Lisa Thompson	PIO Review
10/19/2016 10:53 AM	Completed	
City Manager	John Whitson	City Manager Review
3:16 PM	Completed	10/20/2016
City Council	Jennifer Evans	Meeting
6:00 PM	Completed	10/24/2016

Meeting History

ORDINANCE NO. 2016-122

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE TAX INCREMENT REINVESTMENT ZONE 2012 BOND BUDGETED EXPENDITURES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith TO THE EXTENT OF SUCH CONFLICT; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

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

SECTION 1: That the budget estimate of the expenditures of the Tax Increment Reinvestment Zone 2012 Bond Fund of the City of Texarkana, Texas, as prepared by the City Manager and appropriated by the City Council for the fiscal year beginning October 1, 2016, and ending September 30, 2017, be amended to reflect additional expenditures appropriated as a result of the following items:

1. Increase appropriations in the Linear Park (422-9701-57072) payments to \$508,788.61 to fund payment for park construction.
2. Increase appropriations in the Gibson Extension to FM 989 (422-9701-57079) payments to \$1,000,000 to fund payments under a reimbursement agreement.

SECTION 2: That a copy of said amended final adopted budget shall be filed with the City Secretary, the Texarkana Public Library, and placed on the City's website.

SECTION 3: It is further provided that in case a section, clause, sentence, or part of this Ordinance shall be deemed or adjudged by a Court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage and approval, and after the adoption of this budget or budget amendment, budget officer shall provide for the filing of a true copy of the approved budget or amendment in the Office of the City Secretary.

PASSED AND APPROVED in Regular Council Session on this the 12th day of December, 2016.

BOB BRUGGEMAN, MAYOR

ATTEST:

JENNIFER EVANS, CITY SECRETARY

Budget Amendment Narrative Ordinance 2016-122

City of Texarkana Texas

Economic Development

Budget Amendments requested to Adopted Budget for FYE 9/30/2017

The following changes are requested to appropriate additional FY2017 Tax Increment Reinvestment Zone (TIRZ) 2012 Bond.

Tax Increment Reinvestment Zone 2012 Bond

Project	GL #	Revised FY16	Revised FY17
Linear Park	422-9701-57072	-0-	\$508,788.71
Gibson Extension to FM989	422-9701-57079	-0--	\$1,00,000.00

The items were in the FY2016 budget. The funds weren't expended during FY16. This amendment will allow for the funding of the project payments in FY17.

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 10/14/2016 4:20 PM

Lead Department: Human Resources **Action Officer:** Jim Powell, Director of Human Resources
Subject: Resolution No. 2016-123 ratifying the reappointment of Gerald Brooks to the Civil Service Commission.
Briefing: 10/24/2016 **Public Hearing:** **Second Briefing:** **Council Vote:** 10/24/2016

Item Schedule

Updates/History of Briefing:

N/A

Executive Summary and Background Information:

Mr. Gerald Brooks has agreed to continue to serve as the Chairperson of the Civil Service Commission. This will be his fifth consecutive term requiring a two-thirds majority vote of the city council to ratify the City Manager's reappointment of Mr. Brooks.

Potential Options:

- None

Fiscal Implications:

None

Staff Recommendation:

Ratification by City Council.

Advisory Board/Committee Review:

NONE

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

- 2016-123 RES GERALD BROOKS Civil Service Commission Appointment (DOCX)
- 2016-123 Goals & Perspectives (DOCX)

City of Texarkana, Texas

Staff Coordination

Human Resources	Jim Powell	Department Head Review	Completed
	10/14/2016 4:20 PM		
Assistant City Manager		Shirley Jaster	Assistant City Manager
Review	Completed	10/19/2016 4:06 PM	
Public Information Officer		Lisa Thompson	PIO Review
	10/19/2016 4:10 PM		Completed
City Manager	John Whitson	City Manager Review	Completed
3:16 PM			10/20/2016
City Council	Jennifer Evans	Meeting	Completed
6:00 PM			10/24/2016

Meeting History

RESOLUTION NO. 2016-123**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, CONFIRMING THE REAPPOINTMENT OF MR. GERALD BROOKS TO THE CITY OF TEXARKANA, TEXAS CIVIL SERVICE COMMISSION; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the Texas Local Government Code, Section 143.006 states that the Fire Fighters' and Police Officers' Civil Service Commission (hereinafter "Commission") shall consist of three members appointed by the municipality's chief executive; and

WHEREAS, the Commission members serve staggered three-year terms with the term of one member expiring each year; and

WHEREAS, the municipality's chief executive may reappoint a Commission member to consecutive terms; and

WHEREAS, a Commission member may not be reappointed to more than a third consecutive term unless the member's reappointment to a fourth or subsequent consecutive term is confirmed by a two-thirds majority of all the members of the municipality's governing body; and

WHEREAS, Mr. Gerald Brooks fourth term expired on 30 SEP 16; and

WHEREAS, City Manager John A. Whitson has reappointed Mr. Gerald Brooks to a three-year term; and

WHEREAS, Mr. Gerald Brooks' membership on the Commission for the period beginning on 01 OCT 16 and ending on 30 SEP 19 is hereby ratified as continuing without any break in service.

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

SECTION 1: That the City Council hereby confirms the City Manager's reappointment of Mr. Gerald Brooks to the Civil Service Commission and thanks him for his dedication and continued service to the community.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **24th day of October, 2016.**

BOB BRUGGEMAN, MAYOR

ATTEST:

JENNIFER EVANS, CITY SECRETARY

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☐ Provide a Safe Community ☒ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☒ Enhance Community Preparedness & Responsiveness ☐ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☒ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☒ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☒ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐ Newspaper Notice (Required by Statute)	☐ Public Hearing (Required by Statute)
☐ Public Forum/Input Session	☐ Press Release
☐ E-News Distribution	☐ Website Notice
☐ Social Media (Twitter, Facebook, etc.)	☐ Special Mailing
☐ Flyers Posted	☐ Banners Posted
☐ Survey	☐ Automated Phone Call
☒ None Required	☐

Other:

City of Texarkana, Texas

Version: A

Update Date: 10/14/2016 1:35 PM

Briefing Sheet

Lead Department: Finance Department **Action Officer:** Kristin Peeples,
Subject: Resolution No. 2016-120 approving Bowie Central Appraisal District's 2016 tax
roll.
Public **Second** November 28, **Council**
Briefing: 11/14/2016 **Hearing:** 11/14/2016 **Briefing:** 2016 **Vote:** 12/12/2016

Item ScheduleSchedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**

Not Applicable

Executive Summary and Background Information:

Bowie Central Appraisal District has completed and presented the City's 2016 tax roll for the City, TIRZ District No. 1 and TIRZ District No. 2. This roll, as presented, needs to be approved by signature of the City Council, and returned to the Appraisal District.

Potential Options:

- Approve
- Deny

Fiscal Implications:

Collections by Bowie Central Appraisal District from the approved tax roll provide funds needed for the operating budget for fiscal year ending September 30, 2017.

Staff Recommendation:

Staff recommends approval

Advisory Board/Committee Review:

None

Board/Committee Recommendation:

None

Advisory Board/Committee Meeting Date and Minutes:

Not Applicable

Attachments

- a. 2016-120 RES 2016 Tax Roll(DOC)
- b. 2016-120 EXH 'A' 2016 Tax Roll (PDF)
- c. 2016-120 RES Goals & Perspectives (DOCX)

City of Texarkana, Texas

Staff Coordination

Finance Department	Kristin Peebles	Department Head Review	Completed
	10/11/2016 4:22 PM		
Assistant City Manager		Shirley Jaster	Assistant City Manager
Review	Completed	10/12/2016 11:18 AM	
Public Information Officer		Lisa Thompson	PIO Review
	10/12/2016 11:28 AM		Completed
City Manager	John Whitson	City Manager Review	Completed
9:21 AM			10/19/2016
City Council	Jennifer Evans	Meeting	Completed
6:00 PM			10/24/2016

Meeting History

RESOLUTION NO. 2016-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, APPROVING THE BOWIE CENTRAL APPRAISAL DISTRICT 2016 TAX ROLL FOR THE CITY OF TEXARKANA, TEXAS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Bowie Central Appraisal District has completed the 2016 Tax Roll; and

WHEREAS, it is recommended by the Finance Department that the 2016 Tax Roll for the City of Texarkana, Texas be approved as presented.

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

SECTION 1: That the 2016 Tax Roll for the City of Texarkana, Texas as prepared and presented by the Bowie Central Appraisal District is hereby approved. Copies of the City of Texarkana, Texas 2016 Tax Roll are attached hereto and incorporated herein as **Exhibit “A”**.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the 12th day of December, 2016.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2016-120 RES 2016 Tax Roll [Revision 1] (1553 : 2016-120 RES approving 2016 Tax Roll)

BCAD

BCAD
122 Plaza West Suite A
Texarkana, TX 75505

PHONE 903-793-8936
FAX 903-792-8889

October 5, 2016

CITY OF TEXARKANA
P O BOX 1967
TEXARKANA, TX 75504-1967

Enclosed is a copy of your 2016 Tax Roll. Please have it signed and return it to our office at your earliest convenience.

Sincerely,



Kim Kinder
Director of Collections

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)

CITY OF TEXARKKANA

2016 TAX ROLL

TOTAL TAXABLE VALUE	2,146,986,211
GROSS TAX LEVY	\$15,028,911.21
LESS TAX ON FROZEN ITEMS	\$1,935,617.97
PLUS FROZEN TAXES	\$1,403,048.76
PLUS LATE PENALTY GAIN	\$39,321.61
TOTAL TAX LEVY	\$14,535,663.61

COUNCIL MEMBERS :

MAYOR, BOB BRUGGEMAN

MEMBER JEAN MATLOCK

MEMBER MS WILLIE RAY

MEMBER TINA VEAL GOOCH

MEMBER BRIAN MATTHEWS

MEMBER JOSH DAVIS

MEMBER, CHRISTY PADDOCK

APPROVED THE _____ DAY OF _____

2016

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)

CITY OF TEXARKKANA T1

2016 TAX ROLL

TOTAL TAXABLE VALUE	326,694,049
GROSS TAX LEVY	\$2,286,858.54
LESS TAX ON FROZEN ITEMS	\$17,612.73
PLUS FROZEN TAXES	\$10,882.63
PLUS LATE PENALTY GAIN	\$89.59
TOTAL TAX LEVY	\$2,280,218.03

COUNCIL MEMBERS :

MAYOR , BOB BRUGGEMAN

MEMBER BRIAN MATTHEWS

MEMBER MS WILLIE RAY

MEMBER TINA VEAL GOOCH

MEMBER JEAN MATLOCK

MEMBER JOSH DAVIS

MEMBER, CHRISTY PADDOCK

APPROVED THE _____ DAY OF _____

2016

CITY OF TEXARKKANA T2

2016 TAX ROLL

TOTAL TAXABLE VALUE	53,176,506
GROSS TAX LEVY	\$372,235.75
LESS TAX ON FROZEN ITEMS	\$5,283.32
PLUS FROZEN TAXES	\$4,068.25
PLUS LATE PENALTY GAIN	\$0.00
TOTAL TAX LEVY	\$371,020.68

COUNCIL MEMBERS :

MAYOR , BOB BRUGGEMAN

MEMBER JEAN MATLOCK

MEMBER MS WILLIE RAY

MEMBER TINA VEAL GOOCH

MEMBER BRIAN MATTHEWS

MEMBER JOSH DAVIS

MEMBER, CHRISTY PADDOCK

APPROVED THE _____ DAY OF _____

2016

Attachment: 2016-120 EXH 'A' 2016 Tax Roll (1553 : 2016-120 RES approving 2016 Tax Roll)

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☐ Provide a Safe Community ☐ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☐ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☐ Model a Positive City Image ☐ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☒ Maintain Fiscal Strength ☒ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☒	Newspaper Notice (Required by Statute)	☒	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☐	Press Release
☐	E-News Distribution	☐	Website Notice
☐	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☐	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	

Other:

City of Texarkana, Texas

Version: B

Update Date: 10/14/2016 1:34 PM

Briefing Sheet

Lead Department: Economic Development **Action Officer:** Jerry Sparks, Economic Developer
Resolution No. 2016-121 authorizing the City Manager to enter into an incentive agreement under Chapter 380 of the Texas Local Government Code with Legato Holdings LLC for plans to remodel a facility located at 3103 Summerhill Road.

Subject: Summerhill Road.

Briefing: 11/14/2016 **Public Hearing:** 11/14/2016 **Second Briefing:** November 28, 2016 **Council Vote:** 12/12/2016

Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

Updates/History of Briefing:

"NOT APPLICABLE"

Executive Summary and Background Information:

Legato Holdings LLC has a contract with State of Texas agency to relocate office space with 37 existing jobs. A second State of Texas agency wants to move an operation from Austin creating 38 new jobs in Texarkana. According to the application:

- The estimated value of the building after renovations is \$3,000,000.
- There will be an increase of 38 jobs. The majority of those jobs are above the current per capita income
- The cost to remodel the structure will increase property tax. This property has not been on the tax rolls while owned by Texarkana College and was unoccupied when purchased by Legato.

Potential Options:

- Approve staff recommendation for incentive agreement
- Deny application for incentive agreement

Fiscal Implications:

The fiscal implication is the use of an amount not to exceed 50% of the City's portion of property tax to provide an incentive for the project. The estimated value is \$10,500 per year for a five year period.

Staff Recommendation:

Staff recommends approving an incentive of a property tax rebate equal to 50% of the City's portion of the ad valorem tax for a period of five years with the potential of a 5-year renewal.

Advisory Board/Committee Review:

The internal review committee approves the recommendation.

City of Texarkana, Texas

Board/Committee Recommendation:

The internal review committee met at City Hall on October 6, 2016.

Advisory Board/Committee Meeting Date and Minutes:

"NOT APPLICABLE"

Attachments

- a. 2016-121 RES Authorizing CM to enter into incentive agreement (DOC)
- b. 2016-121 ATTH 01 2015-12 Chapter 380 Program Guidelines 8 Dec 2015 (JCL) (PDF)
- c. 2016-121 ATTH 02 Briefing Sheet Legato Holding briefing (DOCX)
- d. 2016-121 ATTH 03 Cost Analysis Legato Holdings LLC (XLSX)
- e. 2016-121 ATTH 04 Application Legato Holds LLC (PDF)
- f. 2016-121 ATTH 05 Legato Holdings Finn Cap Letter (PDF)
- g. 2016-121 Goals & Perspectives (DOCX)

Staff Coordination

Economic Development	Completed	Jerry Sparks	Department Head Review	
		10/13/2016 1:55 PM		
Finance Department	Kristin Peeples	Finance Review	Completed	10/14/2016 10:52 AM
Planning and Community Development		David Orr	Review	Completed
		10/14/2016 11:42 AM		
Assistant City Manager		Shirley Jaster	Assistant City Manager	
Review	Completed	10/14/2016 12:46 PM		
Public Information Officer		Lisa Thompson	PIO Review	Completed
		10/14/2016 12:46 PM		
City Manager	John Whitson	City Manager Review	Completed	10/20/2016 3:17 PM
City Council	Jennifer Evans	Meeting	Completed	10/24/2016 6:00 PM

Meeting History

RESOLUTION NO. 2016-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INCENTIVE AGREEMENT, USING GUIDELINES APPROVED IN RESOLUTION NO. 2015-120 OF THE CITY OF TEXARKANA UNDER CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, FUNDED BY A REBATE OF AN AMOUNT NOT TO EXCEED FIFTY PERCENT (50%) OF THE CITY'S PORTION OF THE AD VALOREM TAX PAID BY LEGATO HOLDINGS LLC FOR A TERM NOT TO EXCEED FIVE (5) YEARS WITH A POTENTIAL FIVE YEAR (5) RENEWAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council established in Resolution No. 2015-120 a policy for the use of Chapter 380 of the Texas Local Government Code to provide incentives for specified activities; and

WHEREAS, Legato Holdings LLC has requested an incentive in response to their plans to remodel a facility at 3103 Summerhill Road that will retain existing jobs and create new jobs in our community.

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

SECTION 1: That the City Manager, be and is hereby authorized to enter into an incentive agreement with Legato Holdings LLC to rebate an amount not to exceed fifty percent (50%) of the City's portion of paid ad valorem taxes for the property at 3103 Summerhill Road for a period of no more than five (5) years.

SECTION 2: That said agreement will have the potential for a five-year renewal based upon the number of jobs retained, the number of jobs created and the continuous occupancy of the facility.

SECTION 3: That the City Manager is hereby authorized to execute the necessary documents to enter into said incentive agreement.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **12th** day of **December, 2016**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2016-121 RES Authorizing CM to enter into incentive agreement (1554 : 2016-121 RES authorizing the City Manager to enter into

City of Texarkana, Texas
Chapter 380 Program Requirements

Preamble

Pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City of Texarkana, Texas, establishes a program for making loans and grants of public money and providing personnel and services of the City to promote local economic development and to stimulate business and commercial activity in the City.

Policy Statement

The City Council chooses to extend business incentives as authorized by Texas law when such incentives improve the quality of life for all citizens through the creation and retention of job opportunities within the community. The program requirements provide the criteria for City administrative review and City Council consideration when exercising discretion to grant business incentives. This program neither requires nor binds the City Council to grant any business incentive.

Effective Date and Duration

These program requirements are effective upon the date of the City Council's adoption. The City Council may, at any time, eliminate the program or modify any provision.

Section 1. Definitions.

- 1.1 "Agreement" means a written contract authorized by resolution of the City Council and signed by the City Manager and the Business Incentive Prospect.
- 1.2 "Business Incentive" means any financial or non-financial inducement offered by the City to a Business Incentive Prospect.
- 1.3 "Business Incentive Period" means the commencement date and termination date of the Business Incentive.
- 1.4 "Business Incentive Prospect" means a property owner, lessor, or lessee who proposes a project for consideration of a Business Incentive.
- 1.5 "City" or "Texarkana" means the City of Texarkana, Texas.
- 1.6 "City Council" means the City's elective Council as constituted by Texarkana's City Charter.

- 1.7 “Deferred Maintenance Improvements” means improvements necessary for continued operation that either do not improve productivity or do not alter the process technology.
- 1.8 “Eligible Project” means Eligible Property, Exceptional Project, Existing Facility, Expanded Facility, Facility Modernization, or New Facility which, as a direct result of granting a Business Incentive, is reasonably likely to cause (1) the retention or expansion of primary employment, (2) an increase in the City's property tax base, or (3) the attraction of a major investment that would contribute to new economic development within the City.
- 1.9 “Eligible Property” means buildings, structures, fixed machinery and equipment, site improvements, or related fixed improvements, made or added subsequent to and specified in an Agreement. “Eligible Property” does not include “Ineligible Property”.
- 1.10 “Exceptional Project” means a project that makes use of an underutilized asset, diversifies the local economic base, creates leverage with local economic interests, expands the local market for a good or service, or is located in a designated redevelopment or historical area or neighborhood.
- 1.11 “Expanded Facility” means the addition of buildings, structures, machinery, equipment or payroll to an Existing Facility for purposes of increasing production capacity.
- 1.12 “Existing Facility” means property improvements completed or in the process of construction which together comprise an integral whole.
- 1.13 “Facility Modernization” means replacing or upgrading an Existing Facility, through one or more combinations of construction, alteration, or installation of buildings, structures, machinery, or equipment, which increases the productive input or output, updates the technology, or substantially lowers the unit cost of an operation.
- 1.14 “Force Majeure” means an event, circumstance, or act of a third party that is beyond the control of either the City or the Business Incentive Prospect (e.g., “acts of God” as recognized by law; an act of the public enemy; an act of a government entity; acts of war; compliance with laws or regulations; strikes or other labor disturbances; hurricanes; earthquakes; fires; floods; epidemics; embargoes; war; and riots).
- 1.15 “Ineligible Property” means land, inventories, housing, supplies, tools, furnishings, other personal property, Deferred Maintenance Improvements, and property which has a Productive Life of less than ten (10) years.
- 1.16 “Leased Property” means the property associated with or related to an Eligible Project which is offered or intended to be offered for lease.
- 1.17 “New Facility” means a property previously undeveloped which is placed into service by means other than or in conjunction with an Expanded Facility or Facility Modernization.

- 1.18 “Non-appropriations Event” means a lack of sufficient funding or revenue, funds becoming unavailable, no funds appropriated by the City, or insufficient funds appropriated by the City, for any Business Incentive due under the Agreement or any other performance of City obligations under the Agreement.
- 1.19 “Productive Life” means the number of years a property improvement is expected to be in service.

Section 2. Limited Availability, Exclusions, and Threshold Prerequisites

- 2.1 *Limited Availability.* Subject to Section 2.2, a Business Incentive shall be available only for an Eligible Project.
- 2.2 *Exclusions to Eligible Project.* A Business Incentive shall not be available to an otherwise Eligible Project in the event of any of the following:
- 2.2.1 Any proposed project activity (not including the Business Incentive Prospect's planning and due diligence) occurs prior to the filing of an application for a Business Incentive.
 - 2.2.2 The Business Incentive Prospect, including any business or property owned or leased in whole or in part by the Business Incentive Prospect, has an outstanding tax lien owing to any governmental entity.
 - 2.2.3 The Business Incentive Prospect, including any business or property owned or leased in whole or in part by the Business Incentive Prospect, within the five-year period preceding the date of filing the application, has been cited, noticed, or fined for noncompliance or violation of a federal law or regulation, a state law or regulation, or a City code, ordinance, or resolution.
 - 2.2.4 The Business Incentive Prospect, including any business or property owned or leased in whole or in part by the Business Incentive Prospect, is a party to a claim or proceeding against the City or is implicated in a claim or proceeding against a third party that may hinder or interfere with the efficacy of the Business Incentive.
- 2.3 *Threshold Prerequisites.* As a condition for application filing and City administrative evaluation, the project must:
- 2.3.1 Conform to the City's Comprehensive Zoning Ordinance;
 - 2.3.2 Comply with all City ordinances and state and federal laws and regulations;
 - 2.3.3 Meet at least one of the following:

- 2.3.3.1 The project value, including land, construction and fixed improvements, totals at least \$10,000,000 for new Construction or at least \$5,000,000 for an Existing Facility;
- 2.3.3.2 The City deems the project an Exceptional Project;
- 2.3.3.3 The project contributes to the retention or expansion of employment;
- 2.3.3.4 The project contributes substantially to redevelopment efforts as opposed to merely transferring employment from one business in the City to another;
- 2.3.3.5 At least fifty (50) jobs will be created or retained that meet or exceed the per capita income level in the Texarkana MSA.
- 2.3.3.6 At least \$5,000,000 in annual payroll will be paid by the project; or
- 2.3.3.7 At least \$400,000 in local sales taxes are to be directly generated by the project.

Section 3. Application Guidelines and Evaluation.

- 3.1 *Application.* Any Business Incentive Prospect may request the consideration of a Business Incentive by filing a completed Business Incentive Program Application with the City Secretary.
 - 3.1.1 *Map, Description, and Schedule.* The Business Incentive Prospect must include with the application submission a detailed map and property description together with a time schedule for undertaking and completing the project.
 - 3.1.2 *Application materials.* The Business Incentive Prospect must submit detailed financial and other information to enable City to evaluate the proposed project with the evaluative criteria set forth in section 3.2. Any required appraisal or appraised value required in section 3.2 by shall be performed or otherwise secured from the Chief Appraiser of the Bowie Central Appraisal District.
 - 3.1.3 *Administrative rejection of application without prejudice.* The City administration shall reject any incomplete application or an application proposing a project that does not conform with the Section 2 requirements. The Business Incentive Prospect may submit a new application to cure any incomplete or deficient application rejected under this subsection.
- 3.2 *Administrative evaluation.* The City administration shall review each application on its individual merits utilizing the following criteria as applicable to the proposed project.

- 3.2.1 The Business Incentive Prospect's financial capacity and available resources to fund, develop, and complete the proposed project, excluding consideration of any Business Incentive.
- 3.2.2 The assessed, taxable value of land and existing improvements, if any, associated with the project, separately stated for real and personal property, for the tax year immediately preceding the year of application.
- 3.2.3 Type, value, and Productive Life of proposed project improvements.
- 3.2.4 Number of existing jobs that meet or exceed the per capita income level for the Texarkana MSA to be retained by the proposed project.
- 3.2.5 Number and type of new jobs that meet or exceed the per capita income level for the Texarkana MSA to be created by the proposed project, and whether the new jobs will be filled by persons residing or projected to reside within the Texarkana MSA.
- 3.2.6 Amount of payroll within the City's territorial jurisdiction to be created or retained by the proposed project.
- 3.2.7 Amount of payroll within the City's extraterritorial jurisdiction to be created or retained by the proposed project.
- 3.2.8 Amount of local sales tax to be generated directly by the proposed project.
- 3.2.9 Amount of property tax base valuation that will be increased during and after the Business Incentive Period.
- 3.2.10 City costs to be incurred to provide facilities or services directly resulting from the proposed project.
- 3.2.11 The amount of ad valorem taxes to be paid to the City during the Business Incentive Period, taking into consideration the pre-application values, the amount and type of the Business Incentive, the Business Incentive Period, and the value after expiration of the Business Incentive Period.
- 3.2.12 The population growth of the City that occurs directly as a result of the proposed project.
- 3.2.13 The types and values of public improvements, if any, to be made by the Business Incentive Prospect.
- 3.2.14 Whether the proposed project restricts or enhances the business opportunities of existing businesses within the City.

- 3.2.15 Whether the proposed project attracts other new business or new economic development to the area.
 - 3.2.16 Whether the project is environmentally compatible with the City as it exists prior to receipt of the application.
 - 3.2.17 Whether the proposed project will generate a negative impact on the quality of life within the City, constitute a nuisance, or constitute a hazard to public safety, health, and welfare.
 - 3.2.18 Whether and to what extent the proposed project makes a substantial contribution to redevelopment efforts or special area plans by enhancing either functional or visual characteristics (examples include historical structures, traffic circulation, parking, facades, signs, materials, and urban design).
 - 3.2.19 Whether the location of the proposed project furthers the City's development goals.
 - 3.2.20 Whether the proposed project or requested Business Incentive would result in an adverse effect on government services or the local tax base.
 - 3.2.21 Whether the proposed project or requested Business Incentive would decrease or exclude the amount of the tax increment of any taxing unit or any deposit made by any taxing unit to the tax increment fund for the City's Tax Increment Reinvestment Zones.
- 3.3 *Confidential or Proprietary Information.* Submission of an application shall be deemed an acknowledgement by the Business Incentive Prospect that the City is subject to Chapter 552 of the Texas Government Code, otherwise known as the "Texas Public Information Act" or "Texas Open Records Act" ("the Act"), the City has made no representation as to whether any information contained in the application is excepted from required disclosure under the Act, the Business Incentive Prospect has had the opportunity to consult with its own legal counsel regarding the Act, and the Business Incentive Prospect agrees to the following with regard to the information it provides to the City:
- 3.3.1 Unless disclosure is required by law, the City shall exercise reasonable measures to safeguard information that the Business Incentive Prospect deems confidential or proprietary; provided that prior to submission to the City, the Business Incentive Prospect explicitly identifies and marks any such information as to document, page, paragraph, and sentence, as applicable, identifying the asserted section(s) of the Act authorizing withholding as required by the Act for the purpose of asserting a statutory exception to withhold information from public disclosure.
 - 3.3.2 Information shall not be considered proprietary in the following circumstances: the Business Incentive Prospect authorizes disclosure or has already publicized

the information; the City obtained the information from a source independent of the Business Incentive Prospect; or an opinion of the Attorney General of the State of Texas or court order requires disclosure.

- 3.3.3 In the event the City receives a third-party request for information pursuant to the Act that affects information contained in the application, then upon notice to the Business Incentive Prospect of such request, the Business Incentive Prospect shall state in writing to the City within three (3) business days of receiving the City's notice whether it intends to approve release of the requested information or assert to the Attorney General statutory exceptions to withhold the information from public disclosure. If the Business Incentive Prospect decides to assert exceptions to the Act in response to the request, then the Business Incentive Prospect shall, at its own expense, prepare and send the notices, comments, and briefing for its submission to the Attorney General in accordance with the substantive requirements and time periods provided in the Act. The Business Incentive Prospect shall also prepare at its expense for the City's use the notices, comments, and briefing for the City's submission to the Attorney General in accordance with the substantive requirements and time periods provided in the Act.
- 3.3.4 In the event the Business Incentive Prospect seeks a judicial ruling on its asserted statutory exceptions to withholding information requested under the Act by a third party, for any lawsuit pursuant to Sections 552.324 and 552.325 of the Act, the Business Incentive Prospect shall bear all litigation costs, expenses, attorney's fees, and assessments, including the costs, expenses, and attorney's fees incurred by the City and any adverse assessments against the City arising out of the City being a named party to such a suit. As a condition precedent to City's involvement in such a suit, the Business Incentive Prospect shall deposit with the City the dollar amount estimated by the City that will be incurred for costs, expenses, and attorney's fees.
- 3.4 *City Council consideration.* City administration shall prepare a recommendation on the application and submit the recommendation to the City Council for consideration.
 - 3.4.1 The City Council shall receive a first briefing on the recommendation during a regular council meeting.
 - 3.4.2 Following the first briefing, the City Council shall conduct at least one public hearing to be held at a subsequent regular council meeting, at which hearing the Business Incentive Prospect applicant and any interested person shall have the opportunity to comment.
 - 3.4.3 A Business Incentive shall only be approved by formal resolution of the City Council authorizing an Agreement. Any motion to approve a Business Incentive that fails to secure the affirmative votes required by the City Charter shall bar the Business Incentive Prospect from submitting an application for the same or

similar project for a calendar year from the date of the council meeting at which the motion to approve failed.

3.4.4 *City signing of Agreement.* The signing of any Agreement authorized by the City Council shall be delayed indefinitely until such time that:

3.4.4.1 The Business Incentive Prospect has provided all necessary information and documentation to the City for implementation of the Business Incentive and preparation of the Agreement; and

3.4.4.2 The Agreement contains, to the satisfaction of the City Manager and City Attorney, the required provisions set forth in Section 4 and any other provisions required by City ordinance, state and federal law, and the resolution of the City Council authorizing the Agreement.

Section 4. Required Agreement Provisions.

Any Agreement authorized by the City Council shall include the following provisions:

4.1 Business Incentive specific provisions

4.1.1 The type and value of the Business Incentive, deducting general fees set by the City Council for City functions involved with the proposed project, and deducting City costs and expenses specific to the proposed project.

4.1.2 The Business Incentive Period, including provisions for City recovery of any Business Incentive, as applicable, in the event the Business Incentive Prospect relocates, sells, closes, or discontinues the business relating to the proposed project (examples including the Business Incentive Prospect bearing responsibility for payment of any remaining balance of a loan or execution of a promissory note with sufficient security for such balance).

4.1.3 The proposed project and intended use of project features (including such particulars, as applicable, identifying the nature of construction and project improvements, time schedule for construction and completion, City remedies for project delay, size of investment and average number of new jobs specific to the proposed project, and description and map of affected property).

4.1.4 For an Agreement involving Leased Property, the lessor(s) and lessee(s) shall sign the Agreement and shall each agree to joint and several responsibility for compliance with the Agreement.

4.1.5 Reasonable access by City to the areas of the proposed project and access to current financial documentation to evaluate performance of the Agreement.

- 4.1.6 For an Agreement involving construction, a payment bond or other comparable security to ensure full and timely payment to contractors and subcontractors.
- 4.1.7 A condition precedent to all City obligations under the Agreement, including the Business Incentive, shall be availability of funds out of current revenues and appropriated for such purposes. In the event a Non-appropriations Event occurs, City will notify the Business Incentive Prospect of such occurrence and the Agreement shall terminate, without penalty or expense to the City of any kind whatsoever, on the last day of the fiscal period for which appropriations were received or the day previously-appropriated funds have been exhausted or become unavailable, whichever is earlier. Upon City's termination due to a Non-appropriations Event, each party shall return all documentation and other information disclosed or otherwise delivered to the other party prior to such termination.
- 4.1.8 For an Agreement involving capital improvements, a periodic report from the Business Incentive Prospect delivered to City stating (i) the value of capital improvements made during the prior year, (ii) the number of new full-time employees employed during the preceding calendar year, including the number of hours worked, and (iii) the amount of ad valorem taxes paid by the Business Incentive Prospect with regard to the facility for which the improvements are intended for the immediately preceding calendar year, including, if known, the amount of such taxes that constitute real property taxes.
- 4.1.9 City right of offset with respect to any amounts due from a Business against any debt (including taxes) lawfully due to the City from the Business Incentive Prospect and any affiliated persons, regardless of whether the debt arises pursuant to the terms of the Agreement and regardless of whether the debt has been adjudicated.
- 4.1.10 When the Business Incentive Prospect is a corporation, company, partnership or other entity, a personal guarantee shall be executed by all owners of the Business Incentive Prospect having an ownership interest of five percent (5%) or more.
- 4.1.12 Business Incentive Prospect shall make representations with respect to the proposed project property regarding environmental issues, as applicable, stating that there are no pending environmental actions, no releases on the proposed project property, no underground storage tanks, no presence of asbestos, no hazardous substances, and no other environmental conditions on the proposed project property.
- 4.1.13 Business Incentive Prospect shall represent that it has not previously been, nor to its present knowledge, is not now in violation of or noncompliant with any City codes, ordinances, or resolutions, or any state or federal laws or regulations, including environmental laws or environmental permits.

- 4.1.14 City, through its designated agents or auditors, shall have the right at all reasonable times to audit, review and examine by any means, including electronically through the use of telecommunications devices or otherwise, at City's expense, the books, records, accounts and tax returns of Business Incentive Prospect to ensure compliance with the terms of the Agreement.
- 4.1.15 Other provisions specific to the proposed project and Business Incentive as deemed necessary by the City Manager and City Attorney.
- 4.2 Restrictions on assignment
- 4.2.1 Assignment shall only be authorized by a new resolution of the City Council.
- 4.2.2 Prospective Assignee must submit audited financial documentation proving financial capacity and capability to perform Agreement.
- 4.2.3 No proposed assignment shall be submitted to the City Council for consideration if any party to the Agreement or a proposed assignee is delinquent on paying any obligation to any third party.
- 4.3 Termination and Default provisions
- 4.3.1 Grounds for termination of the Agreement and a reasonable period for the Business Incentive Prospect to cure a default or breach of the Agreement.
- 4.3.2 Termination of the Agreement in the event of Force Majeure.
- 4.3.3 Suspension of Business Incentive during any cure period, dispute resolution period, or Force Majeure.
- 4.3.4 City recapture or recovery of Business Incentive with interest as provided under Chapter 2264 of the Texas Government Code in the event of the Business Incentive Prospect's default or breach of the Agreement, violation of state or federal law, or delinquency on payment of ad valorem taxes owed to City.
- 4.4 Insurance provisions
- 4.4.1 Throughout the term of the Agreement, the Business Incentive Prospect shall, at its expense, maintain in full force and effect the following insurance:
- | | |
|-----------------------|---------------------------------------|
| Type of Insurance | Amount |
| Worker's Compensation | as required by law |
| Commercial General | \$1,000,000 Each Accident/Occurrence. |

Builder's risk insurance	in the amount of the construction values
Liability (Public)	\$1,000,000 Aggregate; \$1,000,000 Products & Completed Operations Aggregate
Owner's Protective	\$600,000 per occurrence
Liability Insurance	\$1,000,000 aggregate
Excess/Umbrella Liability	\$10,000,000 per occurrence w/drop-down coverage
Automobile Liability	\$1,000,000 Combined single limit per occurrence
Environmental Insurance	\$1,000,000

4.4.2 All insurance and certificate(s) of insurance shall contain the following provisions:

- 4.4.4.1 name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance;
- 4.4.4.2 provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal or material change of the insurance; and
- 4.4.4.3 provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

4.4.3 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

4.4.4 A certificate of insurance evidencing the required insurance shall be submitted to the City prior to any implementation of the Business Incentive.

4.4.5 Without limiting any of the other obligations or liabilities of the Business Incentive Prospect, the Business Incentive Prospect shall require its general contractors, at the general contractor's own expense, to maintain during the term of the Agreement the required insurance coverage, the required certificate, and the policy conditions as stated in this section 4.4.

4.5 Dispute resolution provisions

4.5.1 Initial resolution process requiring the party raising a dispute to provide written notice to the other party with sufficient detail describing the provision of the

Agreement alleged to be breached, the underlying facts of the dispute, a proposed solution consistent with the terms of the Agreement, and the relief sought.

- 4.5.2 A required meeting of the designated representatives of the parties within thirty (30) days following receipt of the written notice to discuss the dispute.
- 4.5.3 Mandatory arbitration, if initial resolution process results in an impasse, in accordance with and governed by Texas state law: the City and the Business Incentive Prospect shall each select a disinterested representative who shall be either a qualified registered engineer or certified public accountant experienced in economic development projects; the two selected representatives then choosing a third person similarly qualified; the three persons shall comprise the “arbitration panel”, with authority as provided under Chapter 171 of the Texas Civil Practice and Remedies Code, to render a binding decision on the matter in dispute; each party shall compensate its respective panel member and also shall equally share responsibility for compensating the third panel member; and the breaching party, as determined by the arbitration panel, shall pay the non-breaching party's costs, expenses, attorney's fees, expert fees, and fees and costs for arbitration panel members.
- 4.6 Confidential or Proprietary Information
 - 4.6.1 Same provisions as set forth in Section 3.3 of these program requirements, covering specific information identified and marked by the Business Incentive Prospect prior to the Agreement, and any specific information identified and marked by the Business Incentive Prospect provided after City Council approval of the Agreement and during the Business Incentive Period.
- 4.7 Indemnity / Hold Harmless provisions:
 - 4.7.1 Business Incentive Prospect shall indemnify, defend, and hold harmless City from and against any and all suits, actions, losses, damages, claims or liability of any character, type or description, including all reasonable expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury or loss to any property, received or sustained by any person or persons, including the Business Incentive Prospect, relating to, occasioned by, or arising from the performance of the Agreement.
 - 4.7.2 With regard to the proposed project property, Business Incentive Prospect shall indemnify and hold harmless City from and against, and shall reimburse City for any and all losses arising out of, based on or in any way relating to any environmental claim arising under federal or state environmental laws or regulations, or relating to any remedial action arising pursuant to any federal or state environmental laws or regulations. Such claims or actions may include, but shall not be limited to, investigation, remediation, treatment, or cleanup of any hazardous substance which has been or is present, released, or disposed of on the

proposed project property, or which has migrated or has been discharged or transported from the proposed project property in violation of environmental laws. Business Incentive Prospect shall also agree to indemnify, defend, and hold harmless City from and against any and all suits, actions, losses, damages, claims or liability of any character, type or description, including all reasonable expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury or loss to any property, received or sustained by any person or persons, including the Business Incentive Prospect, relating to, occasioned by, or arising from any environmental claim with regard to the proposed project property; any such defense of the City shall be made by legal counsel, acceptable to City, who is retained and paid for by the Business Incentive Prospect.

4.7.3 The indemnity and hold harmless provisions shall be solely for the benefit of the City and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

4.7.4 The indemnity and hold harmless provisions shall be extended by the Business Incentive Prospect to indemnify and protect the City from the negligent, reckless, or intentional acts of the Business Incentive Prospect, its officers, employees, agents, contractors, and privies, regardless of whether such acts are the sole or partial cause of any such injury, death, or damage.

4.8 Limitation of City's Liability and Attorney's Fees:

4.8.1 The parties agree that City's liability, if any, for breach of contract shall be governed and limited as provided in Chapter 271, subchapter I, of the Texas Local Government Code.

4.8.2 In the event any legal action or proceeding is commenced between the City and the Business Incentive Prospect to enforce provisions of the Agreement, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action to the extent allowed by law and subject to the limitations of Chapter 271, subchapter I, of the Texas Local Government Code.

4.9 General Provisions:

4.9.1 *No Third Party Beneficiaries.* Nothing in the Agreement should be construed to benefit any person or entity not a signatory to the Agreement.

4.9.2 *Governing Law and Venue.* The Agreement shall be governed exclusively by the laws of the State of Texas with venue fixed in Bowie County, Texas.

4.9.3 *Construction.* In construing the Agreement, none of the parties shall have any term or provision, or any uncertainty or ambiguity as to any provisions, construed against such party solely by reason of such party having drafted the same.

- 4.9.4 *Independent Contractors.* The parties to the Agreement shall be independent contractors. No party shall exercise control over either the performance of the other party or the employees of the other party; and no party shall be deemed to be the agent, employee, or representative of the other party.
- 4.9.5 *No Liability of City Officials.* No City councilmember, officer, agent, employee, or independent contractor shall be personally responsible for any liability arising under or growing out of the Agreement.
- 4.9.6 *No Creation of Debt.* Any Business Incentive extended under the Agreement shall not be construed nor deemed to create a debt under Texas law.
- 4.9.7 *Execution of Agreement.* The Agreement shall be approved by all applicable and requisite corporate or company actions of the Business Incentive Prospect, with a representation that the signatory on behalf of the Business Incentive Prospect has legal authority to enter into the Agreement.
- 4.9.8 *Not Conflict with Business Incentive Prospect's Other Agreements.* Business Incentive Prospect shall represent and warrant that the Agreement, the consummation of the transactions contemplated in the Agreement, and the fulfillment of and compliance with the terms and conditions in the Agreement, do not and will not result in either a breach or default of any agreement or instrument to which Business Incentive Prospect is a party or beneficiary, or a right of the Business Incentive Prospect to cancel any agreement or instrument to which Business Incentive Prospect is a party.
- 4.9.9 The Agreement shall bind, and the benefits thereof shall inure, to the respective parties to the Agreement and their representatives, executors, administrators, successors and assigns.
- 4.9.10 The Agreement constitutes the entire agreement between the parties. Any and all negotiations and oral understandings between the parties shall be merged into the Agreement and superseded by the Agreement. The Agreement may only be amended or changed by a written document executed by all contracting parties.

2016-121
Legato Holdings LLC
Chapter 380 agreement application
Briefing Sheet

PROGRAM: Chapter 380 agreement incentive
FUNDING SOURCE: GENERAL FUND
PROJECT: Construction of commercial building (former Robbins Toyota/Texarkana College)
Objective: Retain & create jobs and increase gross payroll in non-redevelopment area
Impact: Increased wages in non-redevelopment area
Narrative:

Legato Holdings LLC has a contract with State of Texas agency to relocate office space with 37 existing jobs. A second State of Texas agency wants to move an operation from Austin creating 38 new jobs in Texarkana. According to the application:

- The estimated value of the building after renovations is \$3,000,000.
- There will be an increase of 38 jobs. The majority of those jobs are above the current per capita income
- The cost to remodel the structure will increase property tax. This property has not been on the tax rolls while owned by Texarkana College and unoccupied.

Staff comments:

- This project would provide incentives to move jobs.
- The project does meet some of the “threshold prerequisites” established in the Chapter 380 program.
- The application asks for an 80% ad valorem tax rebate plus a rebate of sales tax.

Staff recommendations/options:

1. Rebate 50% of the ad valorem tax for a period of up to five (5) years based upon continuous occupancy.
2. Upon a review of the total investment and the number of jobs retained or created, City will consider a renewal of the 50% rebate of the ad valorem tax for an additional five (5) years.

City of Texarkana
Chapter 380 agreement request
Legato Holdings-Summerhill Road

FYE	Incremental	City of	Bowie	Total	Gross	<i>Estimated</i>	Total	Rebate
30-Sep	Taxable	Texarkana	County	Operating	Property Tax	Incremental	Incremental	Recommendation
	Assessed Value	Tax Rate	Tax Rate	Tax Rates	Contribution	Sales Tax	Revenue	50%
2016	\$ 3,000,000	0.7000		0.7000		\$ -	\$ -	
2017	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	\$ 10,500.0
2018	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	\$ 10,500.0
2019	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	\$ 10,500.0
2020	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	\$ 10,500.0
2021	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	\$ 10,500.0
2022	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2023	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2024	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2025	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2026	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2027	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2028	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2029	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2030	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2031	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2032	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2033	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2034	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
2035	\$ 3,000,000	0.7000		0.7000	\$ 21,000		\$ 21,000	
					<u>\$ 399,000</u>	<u>\$ -</u>	<u>\$ 399,000</u>	<u>\$ 52,500</u>

Assumption

No changes to valuation

No changes made to property tax rate

**Application for Business Incentive
Chapter 380 Program (Res. # 2015-120)****Business Incentive Prospect ("BIP")**

BIP Name [see below if BIP is an entity]	Legato Holdings, LLC
Primary Contact	David J. Potter II
Address	2 Forrest Brook
City	Texarkana, TX
State/Zip	Texas 75503
Phone	870-216-1611
Email	david@potter-properties.com
Fax	870-216-2081
Cell	903-278-7448
Source of referral: (Chamber, realtor, etc.)	Contacted Jerry Sparks
BIP's NAICS Code	531120

If BIP is an entity: Attach documentation that identifies the legal status, verifies the entity's right to transact business in the State of Texas, and discloses the entity's officers, directors, and owners.

Project Description

Describe your project with sufficient detail so that a determination may be made as to its eligibility for a business incentive according to the definition of "Eligible Project" in the program requirements.

The application must include a detailed map and property description together with a time schedule for undertaking and completing the project.

Attached please find a map, special warranty deed (which includes a legal description), proposed floor plan, building elevations, and site plan. The first phase of the project is due to be complete by April 1, 2017. The second phase (call center) has not yet been awarded, the anticipated completion would be January 2018.

7. The project should be deemed an Exceptional Project (defined as a project that makes use of an underutilized asset, diversifies the local economic base, creates leverage with local economic interests, expands the local market for a good or service, or is located in a designated redevelopment or historical area or neighborhood).

☒ Yes ☐ No

(If you answered “yes” to no. 7, explain why the project should be deemed an Exceptional Project. Attach additional sheets if necessary.)

Describe how your proposed project conforms to the Comprehensive Zoning Ordinance of the City of Texarkana, Texas, and complies with all City ordinances and state and federal laws and regulations. Include in your response whether the project will require any zoning changes or special use permits.

Business Incentive Requested

Describe the requested “Business Incentive” and “Business Incentive Period” as those terms are defined in the program requirements.

Business Incentive:

Business Incentive Period:

Disclose your efforts, if any, to request similar incentives from any other public or private entity, and the progress of those efforts.

Specific Review Criteria

Provide responses to each of the criteria below, or explain why a particular criterion should not apply to your project.

1. Disclose the BIP's financial capacity and available resources to fund, develop, and complete the proposed project, excluding consideration of any Business Incentive. (*Note: disclosure of financial capacity and available resources typically involves providing business plans together with audited financial statements and tax returns from the preceding three years.*)

Exclusions and Threshold Prerequisites

Answer "yes" or "no" the following:

1. Has any proposed project activity (not including the BIP's planning and due diligence) occurred prior to the filing of this application? ☐ Yes ☒ No
2. Does the BIP, including any business or property owned or leased in whole or in part by the BIP, have an outstanding tax lien owing to any governmental entity? ☐ Yes ☒ No
3. Has the BIP, including any business or property owned or leased in whole or in part by the BIP, within the five-year period preceding the date of filing this application, been cited, noticed, or fined for noncompliance or violation of a federal law or regulation, a state law or regulation, or a Texarkana, Texas, city code, ordinance, or resolution? ☐ Yes ☒ No
4. Is the BIP, including any business or property owned or leased in whole or in part by the BIP, a party to a claim or proceeding against the City of Texarkana, Texas, or is implicated in a claim or proceeding against a third party that may hinder or interfere with the efficacy of the Business Incentive requested? ☐ Yes ☒ No

Answer "yes" or "no" for any item listed below that applies to your proposed project:

1. The project value, including land, construction and fixed improvements, totals at least \$10,000,000 for new Construction or at least \$5,000,000 for an Existing Facility. ☐ Yes ☒ No
2. The project contributes to the retention or expansion of employment. ☒ Yes ☐ No
3. The project contributes substantially to redevelopment efforts as opposed to merely transferring employment from one business in the City to another. ☒ Yes ☐ No
4. At least fifty (50) jobs will be created or retained that meet or exceed the per capita income level in the Texarkana MSA. ☒ Yes ☐ No
5. At least \$5,000,000 in annual payroll will be paid by the project. ☐ Yes ☒ No
6. At least \$400,000 in local sales taxes are to be directly generated by the project. ☐ Yes ☒ No

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2. Disclose the assessed, taxable value of land and existing improvements, if any, associated with the project, separately stated for real and personal property, for the tax year immediately preceding the year of application.
3. Disclose the type, value, and Productive Life of proposed project improvements.
4. Identify the number of existing jobs that meet or exceed the per capita income level for the Texarkana MSA to be retained by the proposed project.
5. Identify the number and type of new jobs that meet or exceed the per capita income level for the Texarkana MSA to be created by the proposed project, and whether the new jobs will be filled by persons residing or projected to reside within the Texarkana MSA.
6. Disclose the amount of payroll within the territorial jurisdiction of the City of Texarkana, Texas, to be created or retained by the proposed project.
7. Disclose the amount of payroll within the extraterritorial jurisdiction of the City of Texarkana, Texas, to be created or retained by the proposed project.
8. Disclose the amount of local sales tax to be generated directly by the proposed project.
9. Disclose the amount of property tax base valuation that will be increased during and after the Business Incentive Period.
10. Identify or otherwise disclose costs to be incurred by the City of Texarkana, Texas, to provide facilities or services directly resulting from the proposed project.
11. Disclose the amount of ad valorem taxes to be paid to the City of Texarkana, Texas, during the Business Incentive Period, taking into consideration the pre-application values, the amount and type of the Business Incentive, the Business Incentive Period, and the value after expiration of the Business Incentive Period.
12. Disclose your projection of the population growth of the City of Texarkana, Texas, that will occur directly as a result of the proposed project.
13. Identify the types and values of public improvements, if any, to be made by the BIP.

14. Disclose whether the proposed project restricts or enhances the business opportunities of existing businesses within the City of Texarkana, Texas.
15. Disclose whether the proposed project attracts other new business or new economic development to the area.
16. Disclose whether the project is environmentally compatible with the City of Texarkana, Texas, as it exists prior to receipt of the application.
17. Disclose whether the proposed project will generate a negative impact on the quality of life within the City of Texarkana, Texas, constitute a nuisance, or constitute a hazard to public safety, health, and welfare.
18. Disclose whether and to what extent the proposed project makes a substantial contribution to redevelopment efforts or special area plans by enhancing either functional or visual characteristics (examples include historical structures, traffic circulation, parking, facades, signs, materials, and urban design).
19. Disclose whether the location of the proposed project furthers the development goals of the City of Texarkana, Texas.
20. Disclose whether the proposed project or requested Business Incentive would result in an adverse effect on government services or the local tax base.
21. Disclose whether the proposed project or requested Business Incentive would decrease or exclude the amount of the tax increment of any taxing unit or any deposit made by any taxing unit to the tax increment fund for the Tax Increment Reinvestment Zones of the City of Texarkana, Texas.

The City may contact the BIP for additional information specific to the proposed project and Business Incentive as deemed necessary by the City Manager and City Attorney (*see* § 4.1.15 of the Program Requirements).

Acknowledgement of Business Incentive Prospect

The undersigned, whether individually as the Business Incentive Prospect or in a representative capacity as authorized by the Business Incentive Prospect, acknowledges reading the Chapter 380 Program Requirements, including but not limited to the specific provisions pertaining to Confidential or Proprietary Information and required Agreement provisions in the event the City Council authorizes an Agreement for a Business Incentive. The undersigned affirms having full authority to submit this

application, that the Business Incentive Prospect shall comply fully with all Program Requirements, and that the information attached to this application and answers provided herein are true and correct.

Signature: _____

Printed Name: _____

Dated: _____

Return completed application form and requested information to:

Jerry Sparks
Economic Developer
City of Texarkana, Texas
P. O. Box 1967- 220 Texas Blvd.
Texarkana Texas 75504-1967
Office 903.798.1715 Cell 903.278.0102

Required attachments:

Business Plan

Financial statements (corporate, partnership, or personal)

Project costs documentation

Answers to Application for Business Incentive Chapter 380 Program

Project Description:

The project is a redevelopment of the Old Robins Toyota Building located at 3103 Summerhill Road. The facility was sold to Texarkana College prior to the Toyota's relocation to its new facility. Robins leased the facility back from Texarkana College for approximately one year, before relocating in 2009. The property has remained vacant or underutilized since Robins relocated. The redevelopment of the property includes the remodel, expansion, and modernization of the existing building for use by the Texas Department of Health and Human Services (HHSC). In addition to the Texas Department of Health and Human Services, the location of a State of Texas operated call center would lead to the construction of an additional 6800 to 7000 square feet.

The project meets the "Eligible Project" definition because:

- 1) The project will help retain and expand jobs associated with the HHSC. In addition to the jobs retained and created within the HHSC, the new State of Texas operated call center would create 38 new full time positions.
- 2) The project will return the property to the tax rolls and increase the base. The property in recent years has been tax exempt or underutilized.
- 3) The development will also contribute the redevelopment and stabilization of the immediate area surrounding the property.

Business Incentive Requested:

The request is for an 80% rebate of the city property tax.

Business Incentive Period:

The incentive period would be for a term of ten (10) years.

Disclose your efforts, if any, to request similar incentives from any other public or private entity, and progress of those efforts.

I meet with Jerry Sparks to discuss available incentive programs that would help in the recruitment of the State of Texas operated call center. After describing the project to Mr. Sparks, he suggested that I might pursue the Business Incentive Chapter 380 program. I understand that Bowie County may offer a similar program. We will be pursuing the same incentive program through Bowie County.

Specific Review Criteria

1) See Attached

2) The property was previously valued at \$1,084,671 by Bowie County, but was owned by Texarkana College and was tax exempt. The college signed a lease with a commercial tenant. Based upon the lease of part of the building to a non-exempt tenant, in 2015 the total taxable market value assessed by the Bowie County Appraisal District was \$346,303. In February 2016 the tenant relocated and thus the property would have been fully exempt under the Texarkana College umbrella in the upcoming 2017 tax year. Details Attached.

3) The improvements will be the expansion and modernization of the existing facility which will include the new construction of 6800 to 7000 for a State of Texas operated call center. The facility is under design at this time. The building will receive a complete new finish out, to include a new façade, plumbing, electrical, roof, parking lot renovations, roof, and removal of the existing in-ground lifts and tanks. The overall productive life of the improvements, if maintained, is 50 years.

4) The number of existing jobs that meet or exceed the per capita income level for the Texarkana MSA for the proposed project is Seventy (70).

5) The number of new jobs that meet or exceed the per capita income level for the Texarkana MSA for the proposed project is Thirty-Eight (38).

6) The existing state agencies that will occupy the building include Health and Human Services Commission (HHSC), Department of Family and Protective Services (DFPS), Department of State Health Services (DSHS), and Department of Aging and Disability Services (DADS). Each agency runs its own payroll. I was unable to obtain an exact figure for total payroll within the Territorial Jurisdiction of the City of Texarkana, Texas. However, the total payroll including the new call center will exceed \$4,000,000 per year.

7) Not Applicable as the project is entirely located within the territorial jurisdiction of the City of Texarkana, Texas.

8) The total construction cost is estimated to be \$2,100,000. If city receives 1.5% of the 8.25% local sales tax, the city's portion would be \$173,250.00.

9) The property was formerly owned by Texarkana College. Texarkana College is tax exempt. The increase property tax base is effectively from zero (0) up to \$3,000,000, if the new call center is awarded.

10) No known cost to the City of Texarkana, Texas to provide services as a result of the proposed project.

11) The current property tax rate in Texarkana, Texas is .669293 per \$100 dollars. Divide \$3 million by \$100 equals \$30,000. Multiply \$30,000 by .669293 equals \$20,078.79. Multiply \$20,078.79 by .2 equals \$4,015.76 on new tax revenue to the city per years or \$40,157.58 over the ten years Business Incentive Period. The value to the City of Texarkana, Texas after the incentive period is \$30,000 in new revenue per year or \$300,000 over ten years.

12) I do not believe any meaningful population growth will result from this project. The proposed facility will serve the residents of Bowie County.

13) Not applicable

14) I do not believe the proposed project restricts business opportunities other business in Texarkana, Texas nor do I believe the proposed project will restrict business opportunities for neighboring businesses. I believe the proposed project contributes to the resurgence of the Summerhill Road area. The adjacent area has seen a new Walmart Neighborhood Center, the remodel of the McLarty Ford dealership, and the opening of the new Orr Max.

15) As stated above, I believe the proposed project contributes to the resurgence of the Summerhill Road area. The adjacent area has seen a new Walmart Neighborhood Center, the remodel of the McLarty Ford dealership, and the opening of the new Orr Max.

16) The proposed project will be environmentally compatible with the City of Texarkana, Texas. The project includes the removal of stored oil and hydraulic fluid and six in-ground lifts associated with the operation of the former Toyota dealership.

17) The proposed project will not be a negative impact on the quality of life within the City of Texarkana, Texas, nor will the project constitute a nuisance, or constitute a hazard to public safety, health, and welfare. The proposed project will serve residence of Texarkana, Texas and Bowie County. Additionally, the project provides employment for 108 of our residence.

18) As stated above, I believe the proposed project contributes to the resurgence of the Summerhill Road area. The adjacent area has seen a new Walmart Neighborhood Center, the remodel of the McLarty Ford dealership, and the opening of the new Orr Max. The proposed project will convert a vacant and largely underutilized property to like new condition, including the addition of 6800 to 7000 square feet of new construction. The proposed project will make a substantial contribution to the redevelopment efforts of Summerhill Road. The new facility will enhance functional and visual characteristics of the area. I will construct or erect signage conforming to the wishes of the city.

19) I believe the proposed project is consistent with the development goals of the City.

20) The proposed project and Business Incentive will improve government services to the and increase the local tax base.

21) The proposed project and Business Incentive would not decrease or exclude tax revenue to any taxing entity or Tax Increment Reinvestment Zones of the City of Texarkana, Texas. The property was formerly owned by Texarkana College and was tax exempt.

Google Maps



3103 Summerhill Rd
Texarkana, TX 75503

Property Details

PIDN: 30040003800 Long Account Number: 30040003800

Owner Name TEXARKANA COLLEGE
Mailing Address 2500 N ROBISON RD
TEXARKANA, TX 75501-3249
Location 3103 SUMMERHILL RD
Legal W W WOOTEN A-652
42 43 47A
5477/086 10/02/08
BLK/TRACT 40 41
3.55 ACRES

Total Market Value **\$346,303**
Previous Year Value \$1,084,671
Percent Change -68.07%
Total Assessed Value \$346,303
Improvement Value \$215,765
Land Value \$130,538
Agri Prod Value \$0
Timber Prod Value \$0
Restricted Product Value \$0

Data up to date as of Jul 22, 2015 Including 2015 Certified values.

Property Map



Property Details

Exemptions	ABS,
Freeze Exempt	N
Agent Code	
Living Area (sqft)	21244
Land Acres	3.550
State Code	XF1
Neighborhood Code	30040
Neighborhood	W W WOOTEN A-652
Abstract	0

Estimated Taxes

Code	Entity Name	Appraised Value	Exemption Amount	Taxable
01B	Bowie County	\$346,303	\$346,303	\$0
02T	Texarkana	\$346,303	\$346,303	\$0
03T	Texarkana ISD	\$346,303	\$346,303	\$0
04C	Texarkana Community College District	\$346,303	\$346,303	\$0

Improvement Information

Description	SQFT	Year Built
PO04SA	8,016	1986
WW05SA	12,220	1986
PO03FA	1,008	1992

Segment Information

Imp ID	Seg ID	Description	Class	Area
1	1	COMMERCIAL	PO04SA	8,016
1	2	OPEN PORCH	PO04SA	525
2	1	COMMERCIAL	WW05SA	12,220
3	1	COMMERCIAL	PO03FA	1,008
3	2	OPEN PORCH	PO03FA	192
3	3	OPEN PORCH	PO03FA	16

Land Information

Land Seq	SPTB Code	Class	Homesite	Size	Size Unit
	XF1	LSCM	N	87025.000	SQFT
	XF1	LSFM	N	67600.000	SQFT

Bowie
Tina Petty
County Clerk
New Boston, Texas 75570



70 2016 00007721

Instrument Number: 2016-7721

Recorded On: June 22, 2016

As
Recording

Parties: TEXARKANA COLLEGE

To LEGATO HOLDINGS LLC

Billable Pages: 4

Number of Pages:

Comment: SPECIAL WARRANTY DEED

(Parties listed above are for Clerks reference only)

**** THIS IS NOT A BILL ****

Recording	38.00
Total Recording:	38.00

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2016-7721

Receipt Number: 333795

Recorded Date/Time: June 22, 2016 01:42:05P

Record and Return To:

TWIN CITY TITLE COMPANY

3615 RICHMOND ROAD

TEXARKANA TX 75503

User / Station: A Dorsey - Cash Station #3

Attachment: 2016-121 ATTH 04 ApplicationLegato Holds LLC (1554 : 2016-121 RES authorizing the City Manager to enter into incentive

Filed For Record In:
Bowie County, Texas
Tina Petty
County Clerk
On: Jun 22, 2016 at 01:42P

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Special Warranty Deed

Date: June 17, 2016

1613690
MJ

Grantor: TEXARKANA COLLEGE

Grantor's Mailing Address:

TEXARKANA COLLEGE
2500 N. Robinson Road
Texarkana, Texas 75501

Grantee: LEGATO HOLDINGS, LLC, a Texas limited liability company

Grantee's Mailing Address:

LEGATO HOLDINGS, LLC
210 N. State Line Avenue
Texarkana, Arkansas 71854

Consideration:

Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements):

All that certain tract or parcel of land situated in and being a part of the W.W. WOOTEN HEADRIGHT SURVEY, Abstract No. 652, Bowie County, Texas and the herein described tract of land being those certain tracts conveyed from Eddie E. Robbins and wife, Janis P. Robbins to Eddie E. Robbins Family Limited Partnership by Warranty Deed dated January 3, 2000 and recorded in Volume 3196, Page 11-12 of the Real Property Records of Bowie County, Texas and the subject tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch reinforcing steel rod set for corner at an existing fence corner at the Southwest corner of said Robbins tract and being the Northwest corner of a certain

tract of land conveyed to Fleeman Family Limited Partnership by Deed dated January 3, 2003 and recorded in Volume 3889, Page 23 of the Real Property Records of Bowie County, Texas;

THENCE: N 01 degrees 52' 22" W, 423.98 feet with the West line of said Robbins tract and with the East line of Brookhaven addition to the City of Texarkana, Texas by Deed recorded in Volume 204, Page 73 of the Plat Records of Bowie County, Texas, and subsequently with the East line of a certain tract conveyed to Samuel J. Cornelius by Deed dated December 19, 1975 and recorded in Volume 594, Page 106 of the Deed Records of Bowie County, Texas, to a 1/2 inch reinforcing steel rod set for corner at an existing fence corner at the Northwest corner of said Robbins tract and the Southwest corner of a certain tract conveyed to Crane Lincoln Mercury by Deed dated August 14, 1986 and recorded in Volume 879, Page 81 of the Real Property Records of Bowie County, Texas;

THENCE: N 88 degrees 27' 52" E, 361.35 feet with the North line of said Robbins tract and the South line of said Crane Lincoln Mercury tract to a 1/2 inch reinforcing steel rod set for corner in the West right-of-way line of Texas State Highway No. 93 (Summerhill Road);

THENCE: Southeasterly with the West right-of-way line of State Highway No. 93, being a curve to the left having a radius of 3707.46 feet, a distance of 256.23 feet through a central angle of 3 degrees 57' 35" (chord being S 15 degrees 41' 12" E, 256.18 feet) to an "X" marked in concrete at the end of said curve at a point being 50.00 feet at right angles from centerline Station No. 415+00.00 of State Highway No. 93;

THENCE: S 17 degrees 40' 00" E, 84.87 feet with the West right-of-way line of State Highway No. 93 to a 1/2 inch reinforcing steel rod found for corner on the South line of said Robbins tract;

THENCE: S 76 degrees 32' 00" W, 454.89 feet along an existing fence line and with the South line of said Robbins tract and the North line of said Fleeman Family tract to the POINT OF BEGINNING and containing 3.520 acres of land, more or less.

Reservations from Conveyance:

None

Exceptions to Conveyance and Warranty:

Easement dated June 28, 1985 in favor of Southwestern Electric Power Company and recorded in Volume 773, Page 703 of the Real Property Records of Bowie County, Texas.

Easement dated October 21, 1986 in favor of Southwestern Electric Power Co. and recorded in Volume 911, Page 177 of the Real Property Records of Bowie County, Texas.

Drainage Easement dated April 29, 1991 in favor of the City of Texarkana, Texas and recorded in Volume 1616, Page 39 of the Real Property Records of Bowie County, Texas.

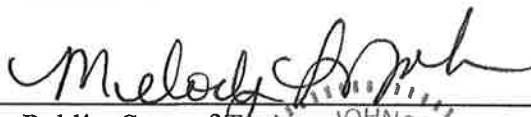
Taxes for 2016, which Grantee assumes and agrees to pay, but not subsequent assessments

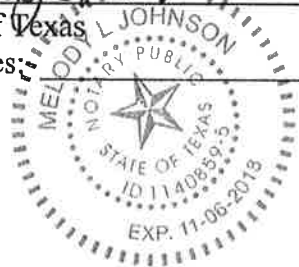
STATE OF TEXAS)

COUNTY OF BOWIE)

Before me, the undersigned notary public, on this day personally appeared JAMES HENRY RUSSELL, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of TEXARKANA COLLEGE, as its President, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 17 day of June, 2016.


 Notary Public, State of Texas
 My commission expires:



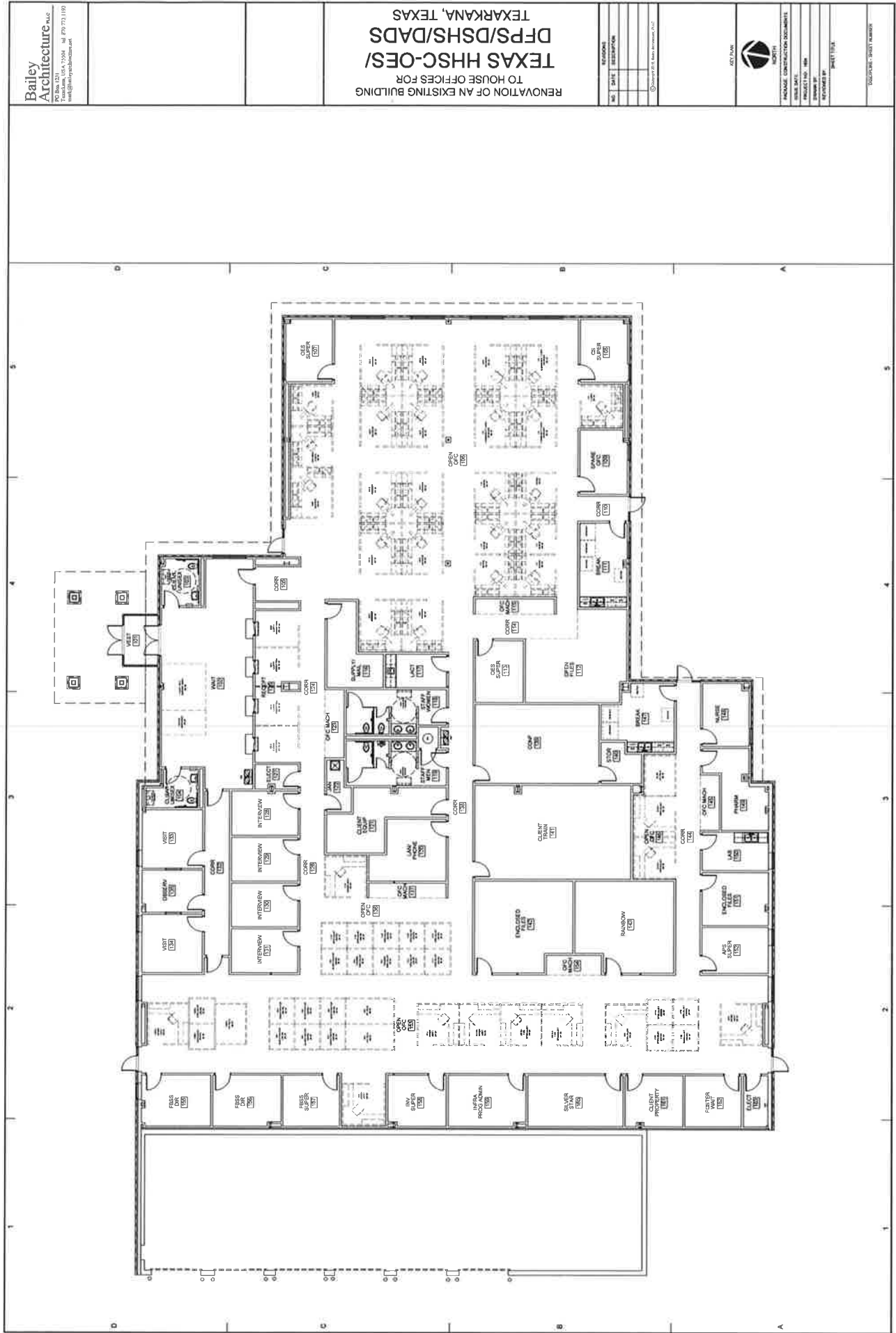
PREPARED IN THE OFFICE OF:

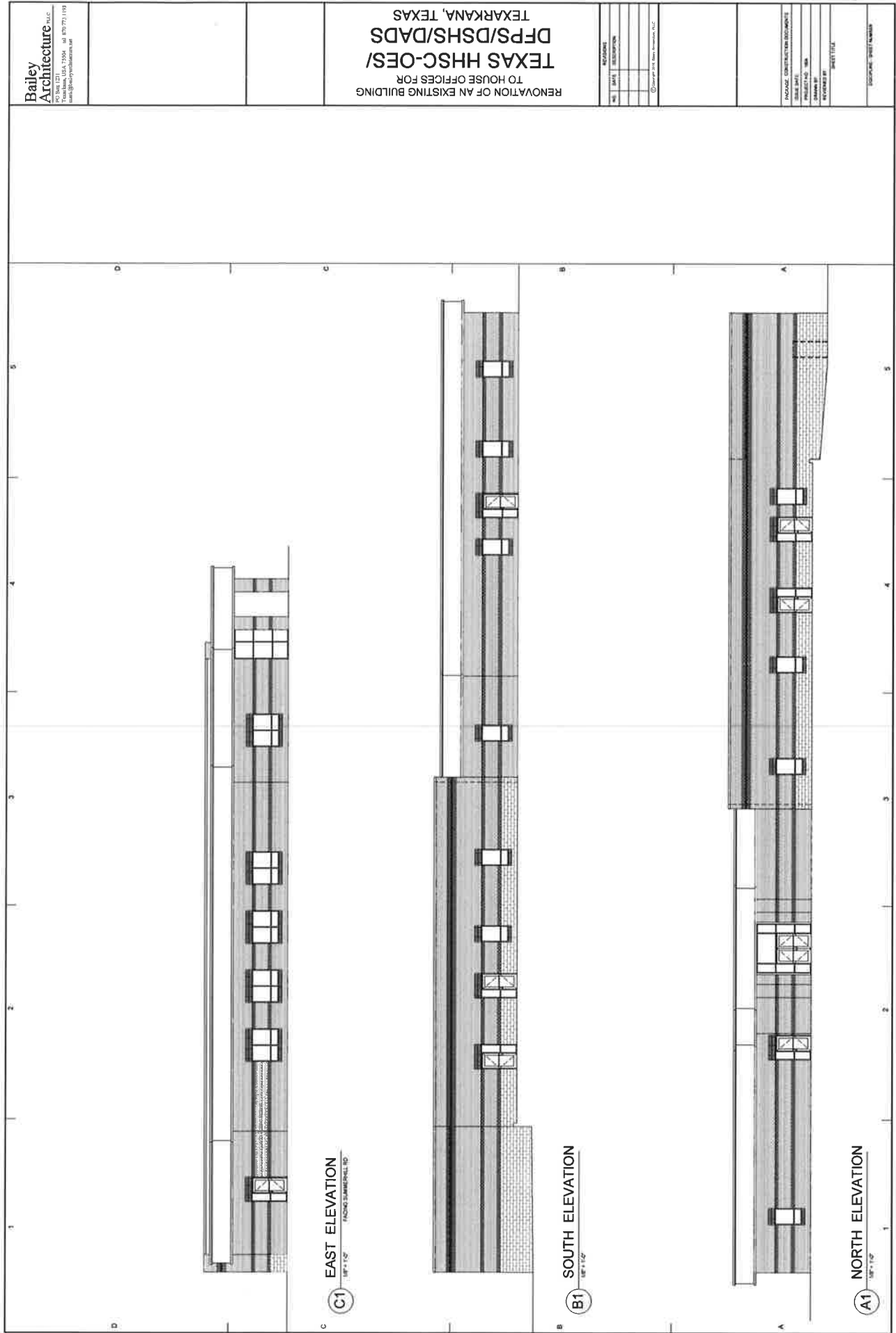
LANGDON ★ DAVIS
 P.O. Box 1221
 New Boston, TX 75570
 Tel: (903) 628-5571
 Fax: (903) 628-5868
 Email: kdavis@ldatty.com

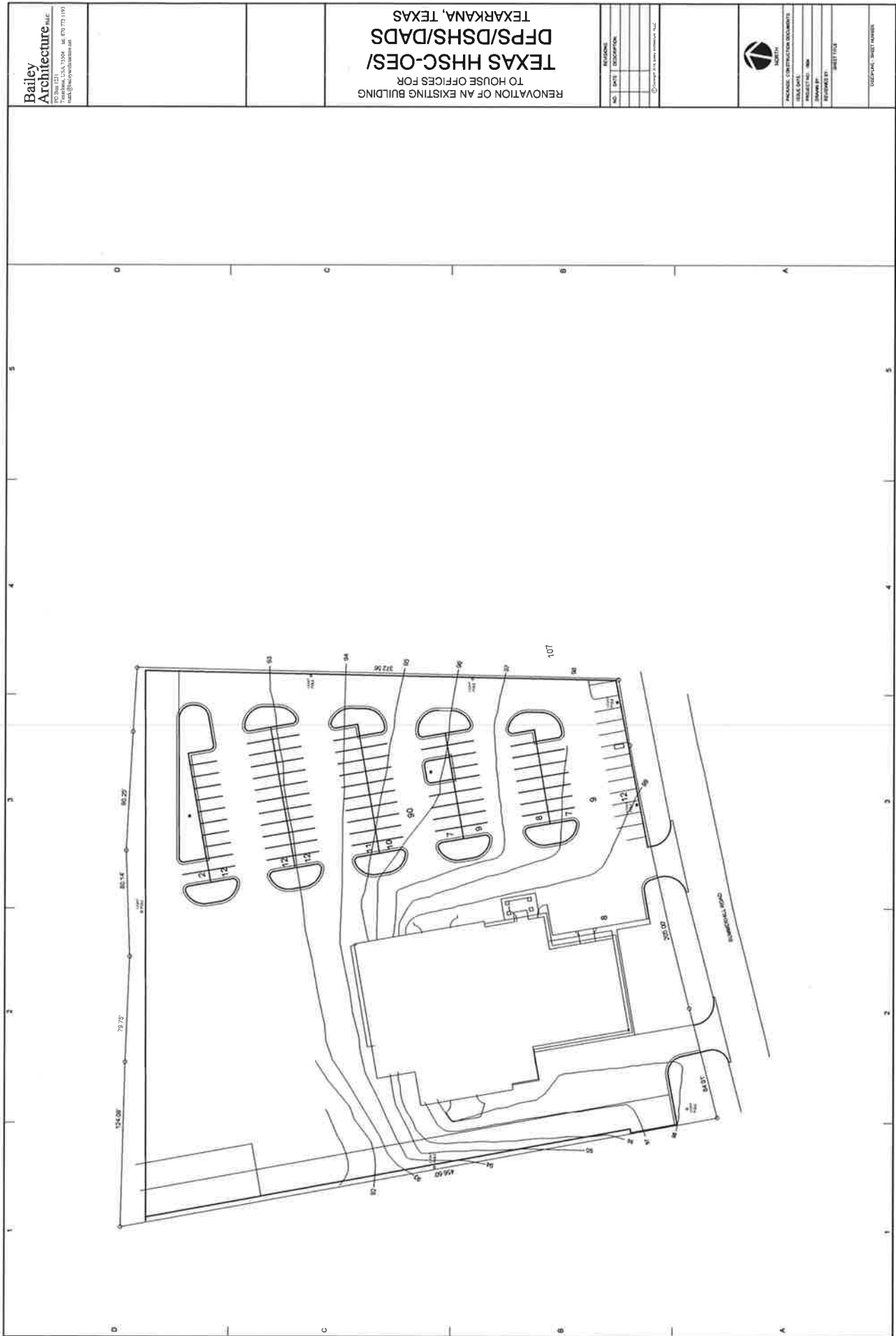
AFTER RECORDING RETURN TO:
 TWIN CITY TITLE
 3615 Richmond Road
 Texarkana, Texas 75503
 Tel: (903) 793-7671

When recorded return to
 Twin City Title Company
 3615 Richmond Rd
 Texarkana, TX 75503

Filed For Record In:
 Bowie County, Texas
 Tina Petty
 County Clerk
 On: Jun 22, 2016 at 01:42P









September 22, 2016

City of Texarkana, Texas
Attn: Jerry Sparks
P.O. Box 1967
Texarkana, TX 75504

Re: Legato Holdings, LLC, Financial Capacity Letter, Application of Business Incentive

Dear Mr. Sparks

This letter is to serve as a Financial Capacity letter for Legato Holdings, LLC (the Business Incentive Prospect, "BIP") to satisfy their current Application for Business Incentive Plan Chapter 380 Program (Res. # 2015-120) submitted to the City of Texarkana, Texas. We state that Legato Holdings, LLC has the financial capacity and available resources to fund, develop, and complete the proposed project at 3101 Summerhill Road, excluding consideration of any Business Incentive granted by the City. I hope this satisfies the needs of City in this application process, and as always, if you have any questions, or if I can be of any further help, please contact me directly.

Sincerely,

A handwritten signature in blue ink that reads "Philip K. Mobley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Philip K. Mobley
Senior Vice President

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☐ Provide a Safe Community ☒ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☐ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☐ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☒ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐ Newspaper Notice (Required by Statute)	☐ Public Hearing (Required by Statute)
☐ Public Forum/Input Session	☐ Press Release
☐ E-News Distribution	☐ Website Notice
☐ Social Media (Twitter, Facebook, etc.)	☐ Special Mailing
☐ Flyers Posted	☐ Banners Posted
☐ Survey	☐ Automated Phone Call
☒ None Required	☐

Other:

City of Texarkana, Texas

Version: B

Update Date: 11/8/2016 9:46 AM

Briefing Sheet

Lead Department: Building Code Administration **Action Officer:** Lynn Henry
Subject: Ordinance No. 2016-117 amending Chapter 11 Sec. 105-99 of the International Residential Code.
Briefing: 11/28/2016 **Public Hearing:** 10/24/2016 **Second Briefing:** November 14, 2016 **Council Vote:** 11/28/2016

Item Schedule**Updates/History of Briefing:**

NOT APPLICABLE

Executive Summary and Background Information:

Beginning with all new homes permitted September 1, the statewide move to the 2015 energy code ushered in significant changes for single-family and low-rise (three stories and lower) multifamily construction. The catalyst for these changes was HB 1736, a Texas Association of Builders priority bill, passed by the legislature last session. The bill made Texas one of the first states to adopt the energy Chapter (Chapter 11) of the 2015 International Residential Code (IRC), while Texas remained in the 2009

Version. While the statute makes clear that the energy efficiency chapter of the IRC was adopted statewide on September 1, local amendments in these areas can be less stringent than the unamended 2015 Code. A jurisdiction like Texarkana that is outside of what is referred to as a non-attainment area or affected county can take action to amend the 2015 energy code, as prescribed by state law, back to the framework that was in place prior to September 1.

The 2015 energy code requirements will increase the cost of residential construction in Texarkana. Therefore, staff recommends taking action to amend the 2015 energy code back to the framework that was in place prior to September 1. This will require amending the Code of Ordinances to reflect that Chapter 11- Energy Conservation from the 2015 International Residential Code is deleted, and to reflect re-adoption of the corresponding chapter from the 2009 code.

Potential Options:

- Leave the 2015 Code intact.
-

Fiscal Implications:

City of Texarkana, Texas

None

Staff Recommendation:

Staff recommends adoption of this ordinance.

Advisory Board/Committee Review:

None

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

- a. 2016-117 ORD Amending Code Sec. 105-99 (DOC)
- b. 2016-117 ATTH 1 comparison (DOCX)
- c. 2016-117 Goals & Perspectives (DOCX)

Staff Coordination

Building Code Administration	Lynn Henry	Department Head Review
Completed	09/29/2016 10:07 AM	
Municipal Prosecutor Deborah Jones	Asst. City Attorney Review	Completed
09/29/2016 11:18 AM		
Assistant City Manager	Shirley Jaster	Asst. City Manager Review
Completed	09/29/2016 11:23 AM	
City Attorney Jeffery C. Lewis	City Attorney Review	Completed 09/29/2016
12:48 PM		
Assistant City Manager	Shirley Jaster	Assistant City Manager
Review	Completed	09/29/2016 1:22 PM
Public Information Officer	Lisa Thompson	PIO Review
09/29/2016 1:39 PM		Completed
City Manager John Whitson	City Manager Review	Completed 10/06/2016
11:02 AM		
City Council Jennifer Evans	Meeting	Completed 10/10/2016
6:00 PM		

Meeting History

10/10/16 City Council MOVED FORWARD Next: 10/24/16

PUBLISH

ORDINANCE NO. 2016-117

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE LAND DEVELOPMENT CODE, BUILDING AND CONSTRUCTION, SECTION 105-99, OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS, AND PROVIDING FOR PUBLICATION; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, with all new homes permitted September 1, the statewide move to the 2015 energy code by HB 1736, adopted by the Texas Legislature last session, ushered in significant changes for single-family and low-rise multifamily construction; and

WHEREAS, the 2015 energy code requirements will increase the cost of residential construction in Texarkana; and

WHEREAS, Texarkana is a jurisdiction outside of what is referred to as a non-attainment area or an affected county as defined by law; and

WHEREAS, Texas law makes clear that a jurisdiction outside of what is referred to as a non-attainment area or an affected county can take action to amend the 2015 energy code with less stringent energy efficiencies, such as the framework under the 2009 code that existed prior to September 1; and

WHEREAS, to avoid an increase in the cost of residential construction in Texarkana, the City Council finds and determines that the Code of Ordinances should be amended to delete the 2015 energy code and adopt the 2009 energy code as allowed by state law.

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

SECTION 1: That Section 105-99 of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended with the following additions to this existing section, which read as follows:

Chapter 11, Energy conservation, of the said International Residential Code 2015 adopted by Section 105-98 herein, is hereby deleted in its entirety.

With respect to energy conservation, there is hereby adopted by the city, for the purpose of regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and providing for permits and penalties, that certain *Chapter 11, Energy Conservation*, of the building code known as the International Residential Code, 2009 edition ("IRC 2009"), said Chapter 11 of the IRC 2009 being incorporated herein as if fully set out herein; and with respect to the subject matter in said chapter, the

Attachment: 2016-117 ORD Amending Code Sec. 105-99 [Revision 2] (1546 : 2016-117 ORD amend Sec. 105-99)

PUBLISH

provisions thereof shall be controlling in the condition and maintenance of all property, buildings and structures contained within the corporate limits of the city.

SECTION 2: That in case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a Court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are specifically repealed.

SECTION 4: That the City Secretary shall give notice of the passage of this Ordinance as provided in Article XI, Section 3 of the Charter of the City of Texarkana, Texas.

SECTION 5: That this Ordinance shall be in full force and effect ten (10) days after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **14th day of November, 2016.**

BOB BRUGGEMAN, MAYOR

ATTEST:

JENNIFER EVANS, CITY SECRETARY

2009

Eliminate the requirement of dust blast
and blower door testing

A programmable thermostat **but** eliminate
programmable thermostat
set by the manufacturer.

Require the placement of an energy certificate
visual inspection of ductwork and insulation
by a third party

2015

Requirement of dust blast
and blower door testing.

Programmable thermostat
set by the manufacturer.
78 degrees max cool
70 degrees max heat

Attachment: 2016-117 ATTH 1 comparison (1546 : 2016-117 ORD amend Sec. 105-99)

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☒ Provide a Safe Community ☒ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☐ Maximize Partnership Opportunities ☒ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☐ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐ Newspaper Notice (Required by Statute)	☐ Public Hearing (Required by Statute)
☐ Public Forum/Input Session	☐ Press Release
☐ E-News Distribution	☐ Website Notice
☐ Social Media (Twitter, Facebook, etc.)	☐ Special Mailing
☐ Flyers Posted	☐ Banners Posted
☐ Survey	☐ Automated Phone Call
☒ None Required	☐

Other:

City of Texarkana, Texas

Version: G

Update Date: 10/17/2016 3:49 PM

Briefing Sheet

Lead Department: Assistant City Manager **Action Officer:** Shirley Jaster, Assistant City Manager
Subject: Ordinance No. 2016-119 amending the Code of Ordinances Secs. 28-1(b), 130-5, 140-179 and 140-239 for sidewalk board type signs to be allowed for advertising in the Central Business zoning district.
Briefing: 11/28/2016 **Public Hearing:** 10/24/2016 **Second Briefing:** November 14, 2016 **Council Vote:** 11/28/2016

Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

Updates/History of Briefing:

Creating a definition of this type sandwich or stand up temporary sign was presented to the planning and zoning commission for their review and recommendation in September.

Executive Summary and Background Information:

This is a request to amend the Code of Ordinances, Land Development Code,
 Following are the highlighted proposed changes:

- Amend 28-1 b
 Sec. 28-1. - Advertisements, handbills, etc.
 (b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may by ordinance identify zones or specific public rights-of-way for placement by license of private advertising on or within public rights-of-way when said advertising is done in connection with either promotion of a business adjoining the public rights-of-way or projects beneficial to the public interest. The city manager or designee may require the removal of said advertising at any time that it violates any provision of this Code or otherwise becomes destroyed, unsightly, or deteriorated.
- Amend Section 130-5 to regulate and add guidelines for public sidewalk and other ROWs that grant an encumbrance exemption for sidewalk board and stand up type temporary signs in the downtown, Central Business zoning district as shown in Exhibit A of the proposed ordinance. Other changes include language for benches, tables, planters and other items regulated as to ADA requirements for sidewalk clearances, dimensions etc. (See attachment 1 for a red line version and key highlighted changes and sidewalk board type sign information)
- Add a new definition to Section 140-179 "Special definitions and explanations noted in use regulations to read as follows:

Sign, sandwich or stand-up, means an advertising sign displaying predominately legible words and constructed with durable material that will withstand inclement weather.

City of Texarkana, Texas

- Add this new signage “sandwich or stand-up sign” to the chart in Section 140-239 “Temporary Type Signs” as follows. (This type signage will only be allowed in the downtown Central Business District and the maximum size will be 3 ½ feet in height and 2 feet in width.)

Temporary Type Signs:			
Real estate	12 square feet	All residential districts.	One for each platted lot or tract and for acreage-One for each 200 feet of street frontage.
	No restriction	In all districts, except residential.	None specified.
Construction sign	60 square feet	In all districts	None
Promotional/banner sign	64 square feet	In all districts	See section 140-79 (<i>Sign, temporary</i>)
Development sign	400 square feet	In all districts	**See below
“Sandwich” or stand-up sign	H: 3 1/2 feet W: 2 feet	CB, license only - see section 130-5(d)(1-a)	See sections 130-5(d)(1-a), 140-79

Potential Options:

Approve, amend or deny the ordinance

Fiscal Implications:

\$ 10 fee per sign (sandwich board or stand up) in downtown CB zoning district.

Staff Recommendation:

Approval

Advisory Board/Committee Review:

Planning and Zoning Commission on zoning code changes Sections 140-179 and 140-239.

Board/Committee Recommendation:

Planning and Zoning Commission recommended approval

Advisory Board/Committee Meeting Date and Minutes:

Meeting date September 6, 2016

Attachments

- a. ORD 2016-119 amending secs 28-1b, 130-5, 140-179 and 140-239 of the code of ordinances (DOCX)
- b. 2016-119 ATTH 2 red line Sec 130-5 (DOCX)
- c. 2016-119 ATTH 1 red line Sec 28-1 (DOCX)
- d. 2016-119 Goals & Perspectives (DOCX)

Staff Coordination

Assistant City Manager	Shirley Jaster	Department Head Review
Completed	09/29/2016 10:13 AM	
Municipal Prosecutor Shirley Jaster	Asst. City Attorney Review	Skipped
09/28/2016 5:15 PM		

City of Texarkana, Texas

Assistant City Manager	Shirley Jaster	Asst. City Manager Review	
Completed	09/29/2016 10:13 AM		
City Attorney	Jeffery C. Lewis	City Attorney Review	Completed 10/03/2016
4:57 PM			
Public Works Department	Kyle Dooley	Review	Completed
10/04/2016 11:37 AM			
Planning and Community Development	David Orr	Review	Completed
10/04/2016 2:30 PM			
Assistant City Manager	Shirley Jaster	Assistant City Manager	
Review	Completed	10/04/2016 2:47 PM	
Public Information Officer	Lisa Thompson	PIO Review	Completed
10/04/2016 2:50 PM			
City Manager	John Whitson	City Manager Review	Completed 10/06/2016
11:02 AM			
City Council	Jennifer Evans	Meeting	Completed 10/10/2016
6:00 PM			

Meeting History

10/10/16	City Council	MOVED FORWARD	Next: 10/24/16
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ORDINANCE NO. 2016-119

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, REVISING LICENSING PROVISIONS TO ENCUMBER RIGHT-OF-WAY OR EASEMENTS AND ESTABLISHING NEW LICENSING PROVISIONS TO ENCUMBER SIDEWALKS IN THE CB CENTRAL BUSINESS DISTRICT BY AMENDING SECTIONS 28-1(b), 130-5, 140-179, AND 140-239 OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS; CONTAINING A REPEALER CLAUSE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the city has received several requests for sandwich or stand-up type advertising signs to be used in the downtown or CB, Central Business zoning district; and

WHEREAS, in the downtown area all sidewalks are public right of way(s), ROW, and not private property; and

WHEREAS, the use of public ROW is not allowed for private use unless an encumbrance is granted by the city.

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

SECTION 1: Section 28-1(b), “Advertisements, handbills, etc.”, of Article I. - In General, of Chapter 28 of the Code of Ordinances of the City of Texarkana, Texas, shall be amended in its entirety as follows:

(b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may by ordinance identify zones or specific public rights-of-way for placement by license of private advertising on or within public rights-of-way when said advertising is done in connection with either promotion of a business adjoining the public rights-of-way or projects beneficial to the public interest. The city manager or designee may require the removal of said advertising at any time that it violates any provision of this Code or otherwise becomes destroyed, unsightly, or deteriorated.

SECTION 2: Section 130-5, “Encumbrances and obstructions on streets, sidewalks and other public rights-of-way”, of Article I. - In General, of the Land Development Code of the City of Texarkana, Texas, shall be amended in its entirety as set forth in **Exhibit A** to this Ordinance, incorporated herein by reference for all purposes.

SECTION 3: Section 140-179, “Special definitions and explanations noted in use regulations,” of Article VII, “Supplemental Regulations” of the Land Development Code of the City of Texarkana, Texas, is hereby amended to add the following definition:

Sign, sandwich or stand-up, means an advertising sign displaying predominantly legible words and constructed with durable material that will withstand inclement weather (see section 130-5).

SECTION 4: That the City Council approves the amendment to the Code of Ordinances, Land Development Code, Chapter 140, Zoning, Section 140-239, “Permanent type signs,” by changing the caption to “Permanent and temporary type signs” and by amending the chart of “Temporary Type Signs” to add the following:

“Sandwich” or stand-up sign	H: 3 1/2 feet W: 2 feet	CB, license only - see section 130-5(d)(1-a)	See sections 130-5(d)(1-a), 140-79
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SECTION 5: All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

SECTION 6: In case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

SECTION 7: The City Secretary shall give notice of the passage of this Ordinance as provided in Article XI, Section 3 of the Charter of the City of Texarkana, Texas.

SECTION 8: This Ordinance shall be in full force and effect ten (10) days after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **28th day of November, 2016.**

BOB BRUGGEMAN, MAYOR

ATTEST:

JENNIFER EVANS, CITY SECRETARY

EXHIBIT A

Sec. 130-5. - Encumbrances and obstructions on streets, sidewalks and other public rights-of-way.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alley means a minor way that is used primarily for installation of public utilities and for vehicular service access to the backside or the side of the property otherwise abutting the street.

Easement means a right held by the city to be used for access, drainage or the placement of utilities such as, but not limited to, water, sewer, gas, telephone, cable television and electrical lines.

Franchise means a grant of authority by the city to utilize the public right-of-way under certain specific terms and conditions given by ordinance.

Noncertificated telecommunications provider means an entity who has not been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority to offer local exchange telephone service.

Right-of-way means any strip or area of land, including, surface, overhead or air space, or underground or subsurface space that is used, or intended to be used, or dedicated to be used wholly or in part as a public street, [sidewalk](#), alley or as the location of public walkways and utility or drainage facilities or installations.

Sidewalk means the concrete or asphalt surfaced portion of a street between either the curbline or roadway and the adjacent property line intended for pedestrian use.

Street means the entire width between the boundary lines of every right-of-way, other than an alley, publicly maintained when any part of it is opened to the public for vehicular use.

- (b) *Other definitions.* Definitions not expressly described herein are to be determined in accordance with customary usage in municipal planning and engineering practices.
- (c) *Unlawful activities.* The following activities, uses, conditions or occurrences on the public right-of-way shall be deemed unlawful:
- (1) Operating any machinery having tracks, feet or pulling lugs over or along any paved streets or alleys.
 - (2) Hauling of gravel, brick, sand, concrete, ready mix concrete or mortar in such a manner to scatter or waste these substances onto any streets, alleys or sidewalks.
 - (3) Dropping, spilling or leaking out of any tank or vessel, whether connected with a motor vehicle or otherwise, any gasoline or other oil or petroleum-based substance on to any street, alley or sidewalk.
 - (4) Discharging any odorous water, sewage, wastewater, waste oils, kitchen grease, kitchen slop water, mop water or other offensive or hazardous substance onto any public right-of-way.
 - (5) Placing, storing, constructing, installing or maintaining any structure, building, object, vehicle, device, fence, wall or other material on or within any public right-of-way. Trees and other living, domesticated vegetation located within the parkway area of a paved street and mailboxes are exempt from this prohibition. Provided, however, the city, or its authorized agents, shall not be required to replace any obstruction on or within any public way that must be removed during the course of maintenance, construction and/or reconstruction on or within the public way.
 - (6) Casting, placing or storing any animal, offal, garbage, trash, refuse or debris into or upon any street, alley, sidewalk, street gutter or other public right-of-way.

- (7) Constructing or placing any temporary or permanent structure within, on or over any public utility or drainage easement, except for franchised utilities, other public facilities associated with drainage, or as provided herein. The property owner may place removable section type fencing, asphalt or concrete paving, or landscaping within any dedicated public utility easement. Provided, however, that the city or any franchised utility of the city shall not be required to replace anything that must be removed during the course of maintenance, construction or reconstruction within any public utility or drainage easement.
- (d) *License to encumber right-of-way or easements.* The following shall control the consideration of requests for encumbrances on, over, under or through public rights-of-way or easements.
- (1) The right to encumber the public right-of-way may be granted only by license and every grantee of a license shall agree to indemnify and hold the city harmless from any and all damages to persons or property or both, arising in any manner out of the use of licensed premises. Each applicant for a license shall complete an application form obtained from the Public Works Department and submit a nonrefundable deposit to cover the expenses of the processing costs associated therewith. The total deposit shall be credited toward the issuance of the first year license fee, should the applicant be approved for a license. The applicant shall provide a certificate of insurance naming the City as a co-insured with liability insurance coverage in a minimum amount of \$1,000,000 for each person for bodily injury and \$500,000 for each single occurrence for injury to or destruction of property. The application must be accompanied by plans or drawings showing the area to be used and a statement of the purpose for which the right-of-way is to be used. ~~The applicant is responsible for the establishment of the fair market value in the areas of consideration for license. Fair market value may be established by use of the county appraisal district records for adjacent properties. The nonrefundable deposit shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.~~
- (1-a) The right to encumber a public sidewalk shall be restricted to the CB Central Business District and shall be subject to these additional criteria:
- a. A license authorized by this subsection shall be held only by the applicant and shall not be transferable.
- b. Any encumbrances authorized by this subsection shall be
- (i) restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;
- (ii) placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet (4'), a minimum of one foot (1') away from the curb line or edge of vehicular traveled way, and allow ease of movement by many persons in and around the encumbrances; and
- (iii) limited to chairs, benches, tables, window boxes, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see secs. 140-179, 140-239).
- c. The following placement of encumbrances shall be prohibited:
- (i) placement in front of any door or other means of ingress or egress;
- (ii) placement which blocks or hinders access to the adjoining property;
- (iii) placement which blocks or hinders visibility of drivers or pedestrians;
- (iv) placement on a corner lot within twenty feet (20') of the points of intersection of the joining street rights-of-way;
- (v) placement on the sidewalk of any hazardous material; and
- (vi) for "sandwich boards" or stand-up signs, placement on the sidewalk at such times as the applicant's business is closed to the public.

- d. The license may be revoked with or without notice if, in the discretion of the Director of Public Works or Code Enforcement Officer, the use or utilization of the encumbrance or public sidewalk violates any provision of the Code, or the encumbrance becomes destroyed, unsightly, or deteriorated. This provision is cumulative of any other remedies or enforcement provisions contained in the Code.
- (2) No individual, person, firm or corporation shall be granted a license for an encumbrance of the public right-of-way that would adversely affect the public health, safety or welfare of the citizens of the city.
 - (3) Subject to the exemptions set forth~~Unless otherwise specified in this subsection (e) of this section,~~ no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.
 - (4) Subject to the exemptions set forth~~Unless otherwise specified in this subsection (e) of this section,~~ a licensee shall pay a license fee depending upon the amount of right-of-way encumbered as set out below. In no event shall a license fee be less than \$200.00 for a period of one year.
 - a. For a private license authorizing a surface encroachment at the ground level, the annual license fee shall be 100 percent of the fair market value times the square footage of encumbrance.
 - b. For a private license authorizing an air space encroachment above the ground level, the annual license fee shall be ten percent of the fair market value times the square footage of encumbrance.
 - c. For a private license to encumber subsurface area, the annual license fee shall be ten percent of the fair market value times the square footage of encumbrance.
 - ~~(5) Said. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license fee for each licensee. Fair market value may be subject to established by use of the county appraisal district records for adjacent properties.~~
 - (5) Unless otherwise specified in this subsection, any deposits, license fees or annual review fees required by this section shall be in an amount as established by the city council from time to time and is subject to change on file in the city secretary's office or city website.
 - (6) The total deposit shall be credited toward the license fee for the issuance of the first year if a license should be granted. Any individual, person, firm or corporation wishing to encumber the public right-of-way in any manner shall submit a license application and required deposit to the director of public works. Upon receipt and normal review by various city departments and public utility companies of such application, the director of public works shall forward the request to the city manager for approval.
 - (7) Any license granted hereunder shall specify the area licensed for use and shall be drafted~~issued~~ by the ~~city attorney's office~~Public Works Department.
 - (8) ~~In the event any individual, firm, person or corporation is~~Any applicant denied a license, ~~they~~ shall have the right to appeal such denial to the city council by filing a written notice of appeal with the city secretary no later than five days from ~~their~~ receipt of notice of the denial of the request.
 - (9) The city council shall hear the applicant's request within 30 days of notice of appeal and shall determine whether or not to uphold the denial, to grant the request as presented or to modify it.
- (e) *Exemptions.*
- (1) Any applicant who wishes to encumber public rights-of-way for installation of a private water line, with a diameter of one inch or less, and for a distance of not more than 300 feet; a private sewer line with a diameter of four inches or less, and for a distance of not more than 300 feet; and an overhead line for a distance of not more than 300 feet; or for an encroachment by a building, is hereby exempt from the annual license fee and shall be subject to a one-time

license fee. An applicant who wishes to encumber the public right-of-way adjacent to the applicants' private property for the purpose of installation of a private lawn sprinkler or irrigation system is hereby exempt from the license fee requirements of this chapter. However, neither the city nor any franchised utility shall be responsible or liable for damages or expenses resulting from the maintenance or operations of utilities in said right-of-way. ~~The license fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.~~

- (2) Noncertificated telecommunications providers shall be subject to an annual fee, per lineal foot, of an amount as established by the city from time to time and is on file in the city secretary's office or city website.
- (3) Any applicant who is approved for a license to encumber public right-of-way for the placement of an ornamental device, is hereby exempt from the annual license fee and subject to a one-time license fee. The license fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.

(4) In the CB Central Business District, any applicant who is approved for a license to encumber a specified area of a public sidewalk is hereby exempt from the annual license fee and subject to a one-time license fee.

- (f) *No obstruction of public property.* The applicant shall not, unnecessarily or for an unreasonable period of time, obstruct or interfere with the public use of any streets, roads, highways, alleys or public ways owned or controlled by the city.
- (g) *Repair of damages.* Applicant shall repair any and all damages caused by the applicant to any real property owned or controlled by the city and shall restore such real property to substantially its condition immediately before the incident causing such damage. The applicant shall commence such repairs immediately upon completion of the work or activity in which the applicant was involved at the time the damage occurred and shall complete such repairs to the satisfaction of the city for one-year from the date of surface of said street, road, highway, alley or public way is broken for such construction or maintenance work, after which time, responsibility for the maintenance shall become the duty of the city. The city may, from time to time, adopt reasonable ordinances regulating such work.
- (h) *Conduct of work ~~and/or~~ activities.* The applicant shall use reasonable care in conducting its work ~~and/or~~ activities in order to prevent injury to any person and unnecessary damage to any real or personal property.
- (i) *Use of alleys.* The applicant shall attempt to utilize the alleys of the city insofar as is reasonably practical in conducting its work and activities hereunder. Notwithstanding the foregoing, however, the applicant may, when approved by city, utilize the streets and any other public ways owned or controlled by the city to perform such work and activities.
- (j) *Changes in encroachments.* Applicant shall (at the applicant's expense), upon written request from the city, change the location, position, route, depth or height of any encroachment or other components of the encroachment if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway, alley, public way or other real property owned or controlled by the city or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing or operating, any pavement, curbs, gutters or underground or aboveground wires, cables or water or sewer pipes owned or controlled by the city. The city's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.
- (k) *Maps of encumbrances.* The applicant shall, at all times, keep on file with the city engineer a map showing the current location of all encumbrances and other components of the applicant's facilities located in the city.

~~(l) Jurisdiction. Any agreement shall be construed under and in accordance with the laws of the state, and all obligations of the parties hereunder are performable in the county.~~

Publish

~~(m)~~(l) *Conflicts*. In the event of any conflict between the provisions of this section and any other provision of this Code or other ordinances, this section shall control. Provided, however, that nothing in this section shall effect the right of a holder of a lawfully granted franchise.

~~(n) *Penalty*. That any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to the fine as prescribed by law for Class C misdemeanors and that each day of any such violation shall be a separate offense.~~

~~(Code 1961, § 24-5; Ord. of 11-8-1920, § 1; Ord. No. 359-91, § 1, 12-9-1991; Ord. No. 254-2000, § 1, 8-28-2000; Ord. No. 293-06, § 1, 10-9-2006)~~

Attachment: ORD 2016-119 amending secs 28-1b, 130-5, 140-179 and 140-239 of the code of ordinances [Revision 2] (1550 : 2016-119 ORD

EXHIBIT A

Sec. 130-5. - Encumbrances and obstructions on streets, sidewalks and other public rights-of-way.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alley means a minor way that is used primarily for installation of public utilities and for vehicular service access to the backside or the side of the property otherwise abutting the street.

Easement means a right held by the city to be used for access, drainage or the placement of utilities such as, but not limited to, water, sewer, gas, telephone, cable television and electrical lines.

Franchise means a grant of authority by the city to utilize the public right-of-way under certain specific terms and conditions given by ordinance.

Noncertificated telecommunications provider means an entity who has not been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority to offer local exchange telephone service.

Right-of-way means any strip or area of land, including, surface, overhead or air space, or underground or subsurface space that is used, or intended to be used, or dedicated to be used wholly or in part as a public street, sidewalk, alley or as the location of public walkways and utility or drainage facilities or installations.

Sidewalk means the concrete or asphalt surfaced portion of a street between either the curbline or roadway and the adjacent property line intended for pedestrian use.

Street means the entire width between the boundary lines of every right-of-way, other than an alley, publicly maintained when any part of it is opened to the public for vehicular use.

- (b) *Other definitions.* Definitions not expressly described herein are to be determined in accordance with customary usage in municipal planning and engineering practices.
- (c) *Unlawful activities.* The following activities, uses, conditions or occurrences on the public right-of-way shall be deemed unlawful:
- (1) Operating any machinery having tracks, feet or pulling lugs over or along any paved streets or alleys.
 - (2) Hauling of gravel, brick, sand, concrete, ready mix concrete or mortar in such a manner to scatter or waste these substances onto any streets, alleys or sidewalks.
 - (3) Dropping, spilling or leaking out of any tank or vessel, whether connected with a motor vehicle or otherwise, any gasoline or other oil or petroleum-based substance on to any street, alley or sidewalk.
 - (4) Discharging any odorous water, sewage, wastewater, waste oils, kitchen grease, kitchen slop water, mop water or other offensive or hazardous substance onto any public right-of-way.
 - (5) Placing, storing, constructing, installing or maintaining any structure, building, object, vehicle, device, fence, wall or other material on or within any public right-of-way. Trees and other living, domesticated vegetation located within the parkway area of a paved street and mailboxes are exempt from this prohibition. Provided, however, the city, or its authorized agents, shall not be required to replace any obstruction on or within any public way that must be removed during the course of maintenance, construction and/or reconstruction on or within the public way.
 - (6) Casting, placing or storing any animal, offal, garbage, trash, refuse or debris into or upon any street, alley, sidewalk, street gutter or other public right-of-way.

- (7) Constructing or placing any temporary or permanent structure within, on or over any public utility or drainage easement, except for franchised utilities, other public facilities associated with drainage, or as provided herein. The property owner may place removable section type fencing, asphalt or concrete paving, or landscaping within any dedicated public utility easement. Provided, however, that the city or any franchised utility of the city shall not be required to replace anything that must be removed during the course of maintenance, construction or reconstruction within any public utility or drainage easement.
- (d) *License to encumber right-of-way or easements.* The following shall control the consideration of requests for encumbrances on, over, under or through public rights-of-way or easements.
- (1) The right to encumber the public right-of-way may be granted only by license and every grantee of a license shall agree to indemnify and hold the city harmless from any and all damages to persons or property or both, arising in any manner out of the use of licensed premises. Each applicant for a license shall complete an application form obtained from the Public Works Department and submit a nonrefundable deposit to cover the expenses of the processing costs associated therewith. The total deposit shall be credited toward the issuance of the first year license fee, should the applicant be approved for a license. The applicant shall provide a certificate of insurance naming the City as a co-insured with liability insurance coverage in a minimum amount of \$1,000,000 for each person for bodily injury and \$500,000 for each single occurrence for injury to or destruction of property. The application must be accompanied by plans or drawings showing the area to be used and a statement of the purpose for which the right-of-way is to be used. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license. Fair market value may be established by use of the county appraisal district records for adjacent properties. The nonrefundable deposit shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.
- (1-a) The right to encumber a public sidewalk shall be restricted to the CB Central Business District and shall be subject to these additional criteria:
- a. A license authorized by this subsection shall be held only by the applicant and shall not be transferable.
 - b. Any encumbrances authorized by this subsection shall be
 - (i) restricted to the front of the applicant's licensed business and used solely for purposes directly related to the applicant's licensed business;
 - (ii) placed in such a manner as to leave a minimum unobstructed sidewalk width of four feet (4'), a minimum of one foot (1') away from the curb line or edge of vehicular traveled way, and allow ease of movement by many persons in and around the encumbrances; and
 - (iii) limited to chairs, benches, tables, window boxes, and one "sandwich board" or stand-up sign per license, with display of advertising restricted solely to "sandwich boards" or stand-up signs (see secs. 140-179, 140-239).
 - c. The following placement of encumbrances shall be prohibited:
 - (i) placement in front of any door or other means of ingress or egress;
 - (ii) placement which blocks or hinders access to the adjoining property;
 - (iii) placement which blocks or hinders visibility of drivers or pedestrians;
 - (iv) placement on a corner lot within twenty feet (20') of the points of intersection of the joining street rights-of-way;
 - (v) placement on the sidewalk of any hazardous material; and
 - (vi) for "sandwich boards" or stand-up signs, placement on the sidewalk at such times as the applicant's business is closed to the public.

d. The license may be revoked with or without notice if, in the discretion of the Director of Public Works or Code Enforcement Officer, the use or utilization of the encumbrance or public sidewalk violates any provision of the Code, or the encumbrance becomes destroyed, unsightly, or deteriorated. This provision is cumulative of any other remedies or enforcement provisions contained in the Code.

- (2) No individual, person, firm or corporation shall be granted a license for an encumbrance of the public right-of-way that would adversely affect the public health, safety or welfare of the citizens of the city.
 - (3) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection ~~(e) of this section~~, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three-foot width.
 - (4) ~~Subject to the exemptions set forth~~Unless otherwise specified in this subsection ~~(e) of this section~~, a licensee shall pay a license fee depending upon the amount of right-of-way encumbered as set out below. In no event shall a license fee be less than \$200.00 for a period of one year.
 - a. For a private license authorizing a surface encroachment at the ground level, the annual license fee shall be 100 percent of the fair market value times the square footage of encumbrance.
 - b. For a private license authorizing an air space encroachment above the ground level, the annual license fee shall be ten percent of the fair market value times the square footage of encumbrance.
 - c. For a private license to encumber subsurface area, the annual license fee shall be ten percent of the fair market value times the square footage of encumbrance.
 - ~~(5) Said. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license fee for each licensee. Fair market value may be subject to established by use of the county appraisal district records for adjacent properties.~~
 - ~~(5) Unless otherwise specified in this subsection, any deposits, license fees or annual review fees required by this section shall be in an amount as established by the city council from time to time and is subject to change on file in the city secretary's office or city website.~~
 - (6) The total deposit shall be credited toward the license fee for the issuance of the first year if a license should be granted. Any individual, person, firm or corporation wishing to encumber the public right-of-way in any manner shall submit a license application and required deposit to the director of public works. Upon receipt and normal review by various city departments and public utility companies of such application, the director of public works shall forward the request to the city manager for approval.
 - (7) Any license granted hereunder shall specify the area licensed for use and shall be drafted~~issued~~ by the ~~city attorney's office~~Public Works Department.
 - (8) ~~In the event any individual, firm, person or corporation is~~Any applicant denied a license, ~~they~~ shall have the right to appeal such denial to the city council by filing a written notice of appeal with the city secretary no later than five days from ~~their~~ receipt of notice of the denial of the request.
 - (9) The city council shall hear the applicant's request within 30 days of notice of appeal and shall determine whether or not to uphold the denial, to grant the request as presented or to modify it.
- (e) *Exemptions.*
- (1) Any applicant who wishes to encumber public rights-of-way for installation of a private water line, with a diameter of one inch or less, and for a distance of not more than 300 feet; a private sewer line with a diameter of four inches or less, and for a distance of not more than 300 feet; and an overhead line for a distance of not more than 300 feet; or for an encroachment by a

building, is hereby exempt from the annual license fee and shall be subject to a one-time license fee. An applicant who wishes to encumber the public right-of-way adjacent to the applicants' private property for the purpose of installation of a private lawn sprinkler or irrigation system is hereby exempt from the license fee requirements of this chapter. However, neither the city nor any franchised utility shall be responsible or liable for damages or expenses resulting from the maintenance or operations of utilities in said right-of-way. ~~The license fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.~~

- (2) Noncertificated telecommunications providers shall be subject to an annual fee, per lineal foot, of an amount as established by the city from time to time and is on file in the city secretary's office or city website.
- (3) Any applicant who is approved for a license to encumber public right-of-way for the placement of an ornamental device, is hereby exempt from the annual license fee and subject to a one-time license fee. The license fee shall be in an amount as established by the city council from time to time and is on file in the city secretary's office or city website.

(4) In the CB Central Business District, any applicant who is approved for a license to encumber a specified area of a public sidewalk is hereby exempt from the annual license fee and subject to a one-time license fee.

- (f) *No obstruction of public property.* The applicant shall not, unnecessarily or for an unreasonable period of time, obstruct or interfere with the public use of any streets, roads, highways, alleys or public ways owned or controlled by the city.
- (g) *Repair of damages.* Applicant shall repair any and all damages caused by the applicant to any real property owned or controlled by the city and shall restore such real property to substantially its condition immediately before the incident causing such damage. The applicant shall commence such repairs immediately upon completion of the work or activity in which the applicant was involved at the time the damage occurred and shall complete such repairs to the satisfaction of the city for one-year from the date of surface of said street, road, highway, alley or public way is broken for such construction or maintenance work, after which time, responsibility for the maintenance shall become the duty of the city. The city may, from time to time, adopt reasonable ordinances regulating such work.
- (h) *Conduct of work ~~and/or~~ activities.* The applicant shall use reasonable care in conducting its work ~~and/or~~ activities in order to prevent injury to any person and unnecessary damage to any real or personal property.
- (i) *Use of alleys.* The applicant shall attempt to utilize the alleys of the city insofar as is reasonably practical in conducting its work and activities hereunder. Notwithstanding the foregoing, however, the applicant may, when approved by city, utilize the streets and any other public ways owned or controlled by the city to perform such work and activities.
- (j) *Changes in encroachments.* Applicant shall (at the applicant's expense), upon written request from the city, change the location, position, route, depth or height of any encroachment or other components of the encroachment if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway, alley, public way or other real property owned or controlled by the city or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing or operating, any pavement, curbs, gutters or underground or aboveground wires, cables or water or sewer pipes owned or controlled by the city. The city's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.
- (k) *Maps of encumbrances.* The applicant shall, at all times, keep on file with the city engineer a map showing the current location of all encumbrances and other components of the applicant's facilities located in the city.

~~(l) *Jurisdiction.* Any agreement shall be construed under and in accordance with the laws of the state, and all obligations of the parties hereunder are performable in the county.~~

~~(m)~~(l) *Conflicts.* In the event of any conflict between the provisions of this section and any other provision of this Code or other ordinances, this section shall control. Provided, however, that nothing in this section shall effect the right of a holder of a lawfully granted franchise.

~~(n) *Penalty.* That any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to the fine as prescribed by law for Class C misdemeanors and that each day of any such violation shall be a separate offense.~~

~~(Code 1961, § 24-5; Ord. of 11-8-1920, § 1; Ord. No. 359-91, § 1, 12-9-1991; Ord. No. 254-2000, § 1, 8-28-2000; Ord. No. 293-06, § 1, 10-9-2006)~~

Sec. 28-1. - Advertisements, handbills, etc.

- (a) The printing, pasting, stitching or placing of any advertisement, handbill or placard or any printed, pictured or written matter upon any house, wall, building, fence or other private property without the permission of the owner or person in charge thereof is hereby prohibited.
- (b) All advertising of any form, whether temporary or permanent, is hereby prohibited on all streets, sidewalks, rights-of-way, easements, parks or any other public property within the corporate limits of the city; provided, however, that the city council may, ~~after hearing, grant to civic organizations the privilege by ordinance identify zones or specific public rights-of-placing-way for placement by license of~~ private advertising on ~~or within~~ public ~~property~~ ~~rights-of-way~~ when said advertising is done in connection with ~~either promotion of a business adjoining the public rights-of-way or~~ projects beneficial to the public interest. The city ~~council~~ ~~manager or designee~~ may require the removal of said advertising at any time that it ~~violates any provision of this Code or otherwise~~ becomes destroyed, unsightly, ~~or deteriorated or in bad taste.~~
- (c) Any such advertisement not in compliance with this section which is not removed by the owner or person in charge thereof shall be removed by the proper city officials and disposed of.

~~(Code 1961, § 15-2; Ord. of 6-23-1953, § 7; Ord. No. 39-70, § 1, 3-9-1970; Ord. No. 121-71, § 1, 6-28-1971; Ord. No. 49-98, § 1, 3-9-1998)~~

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☒ Provide a Safe Community ☒ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☐ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☐ Deliver Efficient Services ☒ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

NA

No Additional

Other Potential Impacts:

NA

Public Information Plan:

☒	Newspaper Notice (Required by Statute)	☒	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☐	Press Release
☐	E-News Distribution	☒	Website Notice
☐	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☐	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	Sign Posted

Other:

City of Texarkana, Texas

Version: B

Update Date: 11/8/2016 9:43 AM

Briefing Sheet

Lead Department: City Manager **Action Officer:** John Whitson, City Manager
Subject: Resolution No. 2016-113 establishing a Community Relations Expenditures Policy.
Briefing: 11/14/2016 **Public Hearing:** 10/10/2016 **Second Briefing:** October 24, 2016 **Council Vote:** 11/14/2016

Item Schedule

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

Throughout the fiscal year the city often pays to participate in certain community relations activities sponsored by non-governmental organizations. Staff charges these city expenses to various accounts within the city council's budget such as "Training and Travel" or "Supplies" since no account had been established with a clear designation for these types of charges.

During FY16 the staff created a new account number 101-xxxx-54514 wherein these types are charges can be recorded as properly classified. During the development of the FY17 budget the staff recommended that \$50,000 be appropriated in the account 101-1000-54514 permitting the city council to have some flexibility throughout the year to fund certain activities classified as community relations activities.

After the city council adopted the recommended FY17 budget the city council, by motion, second, and vote, directed the staff to prepare and present the city council with a policy of how these funds may be expended. Since prior year expenditures had been charged to various other accounts the \$50,000 does not represent all new funding. Other accounts were reduced accordingly to help provide for the \$50,000 grand total. Therefore, some expenditures are expected to be consistent with prior years' expenditures. Generally, these expenditures include activities such as:

Dine-on-the-Line
 USMC Birthday Ball
 Freedom Fund Awards Banquet
 MLK Gala
 Economic Outlook Dinner
 Firefighters' Ball
 RRAD Hail and Farewell
 and others

Staff has prepared a simple policy permitting the city manager's office to continue to approve expenditures similar to expenditures in past fiscal years in amounts of up to \$2,000 per single

City of Texarkana, Texas

expenditure. All other expenditures must be approved by resolution of the city council. The policy also includes a general policy statement that these funds are not available for contribution or distribution to non-governmental organizations but rather for the city to participate with non-governmental organization by providing a service to the organization or event.

Potential Options:

- Adopt the recommended resolution
- Amend and Adopt the resolution
- Deny the recommended resolution

Fiscal Implications:

Expect to expend approximately \$6,000 for routine charges but subject to expending the full \$50,000 should appropriate opportunities be presented by qualifying organizations.

Staff Recommendation:

Recommend adoption of the resolution as presented

Advisory Board/Committee Review:

NONE

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

- a. 2016-113 RES Establishing Policy Related to the Expenditures of Community Relations Funds (DOC)
- b. 2016-113 Goals & Perspectives (DOCX)

Staff Coordination

City Manager	John Whitson	Department Head Review	Completed
	09/16/2016 8:18 AM		
Assistant City Manager		Shirley Jaster	Assistant City Manager
Review	Completed	09/16/2016 11:17 AM	
Public Information Officer		Lisa Thompson	PIO Review
	09/16/2016 11:49 AM		Completed
City Manager	John Whitson	City Manager Review	Completed
9:16 AM			09/21/2016
City Council	Jennifer Evans	Meeting	Completed
6:00 PM			09/26/2016

City of Texarkana, Texas**Meeting History**

09/26/16	City Council	MOVED FORWARD	Next: 10/10/16
10/10/16	City Council	MOVED FORWARD	Next: 10/24/16

RESOLUTION NO. 2016 - 113**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEXARKANA, TEXAS, ESTABLISHING POLICY RELATED TO
THE EXPENDITURES OF COMMUNITY RELATIONS FUNDS;
AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, city staff recommended and programmed \$50,000 to be appropriated in the FY17 Budget for the purpose of promoting community relations; and

WHEREAS, upon adoption of the FY17 budget, the city council directed that a policy be presented for their consideration concerning the approval of Community Relations expenditures; and

WHEREAS, throughout any given fiscal year a number of opportunities are generally presented wherein the city is asked to financially participate in certain activities that are intended to promote community spirit in support of a specific non-governmental activity; and

WHEREAS, in previous fiscal years and budgets the staff has programmed some undesignated funds within an unrelated account or has reviewed expenditures and determined undesignated funds were available to accommodate a small level of city support of activities that might be classified as community relations activities; and

WHEREAS, some of the previous requests include; Railroad Company Holiday Train Visit; Dragon Boat Race; Mayoral and/or City Council Parade Floats; and other similar activities; and

WHEREAS, other activities such as tickets and/or table sponsorships for Dine-On-The-Line; USMC Birthday Ball; Freedom Fund Awards Banquet; MLK Gala; Economic Outlook Dinner; Roast and Toast of Prissy Hickerson; Firefighters' Ball; RRAD Hail and Farewell; Annual Chamber of Commerce Celebration Dinner; and other similar invitations and events; and

WHEREAS, the \$50,000 appropriation for Community Relations does not represent all new funding but rather a combination of some new funding and reprogrammed funds that in previous years these activity charges had been assigned to other accounts within the city council budget.

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

SECTION 1: The general policy statement related to Community Relations Funding is that the funds are not intended to be funds to be contributed or distributed to non-governmental organizations but rather for the city to provide a service to or to participate with other community service or social organizations that generally serve the community.

SECTION 2: Expenditure of Community Relations Funds requires city council approval by resolution for single expenditures exceeding \$2,000. All other expenditures such as admission tickets, table sponsorships, celebratory meals, and other similar charges are hereby authorized as approved by the city manager's office.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **14th day of November, 2016.**

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☐ Provide a Safe Community ☐ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☒ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☐ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐ Newspaper Notice (Required by Statute)	☐ Public Hearing (Required by Statute)
☐ Public Forum/Input Session	☐ Press Release
☐ E-News Distribution	☐ Website Notice
☐ Social Media (Twitter, Facebook, etc.)	☐ Special Mailing
☐ Flyers Posted	☐ Banners Posted
☐ Survey	☐ Automated Phone Call
☒ None Required	☐

Other:

City of Texarkana, Texas

Version: C

Update Date: 9/23/2016 9:25 AM

Briefing Sheet

Lead Department: City Manager **Action Officer:** John Whitson, City Manager
Subject: Resolution No. 2016-114 authorizing the expenditure of Community Relations funds in support of the KCS Holiday Express Train event.
Briefing: 11/14/2016 **Public Hearing:** 10/10/2016 **Second Briefing:** October 24, 2016 **Council Vote:** 11/14/2016

Item ScheduleSchedule 1: Brief twice - vote once (six weeks)**Updates/History of Briefing:**

NOT APPLICABLE

Executive Summary and Background Information:

Frequently the Kansas City Southern Railroad Company will stop their Holiday Express Train in Texarkana for the community to access and enjoy the train. The event is generally an evening event and thousands of area families participate in the event. Often the city staff is not aware of Texarkana being selected as a stop during the development of the city budget, therefore funds to support this event are not always budgeted.

This event meets the definition of being a Community Relations Event as it provides a holiday celebration for the community but requires local support to make the event happen. The city will be coordinating manpower and equipment and also providing city staff support throughout the event.

It is anticipated that the city will contract with TISD for buses with drivers in amount of approximately \$2,000. Rentals of other equipment such as portable toilets and light unites are estimated to be about \$1,000. Overtime for city staff supporting the event will be about \$700. The police department will be providing eight to ten officers for traffic control and security.

Potential Options:

- Adopt the resolution as recommended
- Revise and adopt the resolution
- Deny the resolution

Fiscal Implications:

Not to exceed \$4,000 in total expenditures

Staff Recommendation:

Approve the resolution as presented

Advisory Board/Committee Review:

NONE

City of Texarkana, Texas

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

- a. 2016-114 RES Approving Community Relations Expenditures for the KCS Holiday Express Train (DOC)
- b. 2016-114 Goals & Perspectives (DOCX)

Staff Coordination

City Manager	John Whitson	Department Head Review	Completed	
	09/16/2016 10:01 AM			
Parks, Recreation & Health		Robby Robertson	Review	Completed
	09/16/2016 10:14 AM			
Public Works Department		Kyle Dooley	Review	Completed
	09/16/2016 10:26 AM			
Police	Dan Shiner	Review	Completed	09/16/2016
10:50 AM				
Fire Department	Eric Schlotter	Review	Completed	09/16/2016
12:45 PM				
Finance Department	Kristin Peeples	Finance Review	Completed	09/20/2016
9:22 AM				
Assistant City Manager		Shirley Jaster	Assistant City Manager	
Review	Completed	09/20/2016 9:58 AM		
Public Information Officer		Lisa Thompson	PIO Review	Completed
	09/20/2016 10:20 AM			
City Manager	John Whitson	City Manager Review	Completed	09/21/2016
9:20 AM				
City Council	Jennifer Evans	Meeting	Completed	09/26/2016
6:00 PM				

Meeting History

09/26/16	City Council	MOVED FORWARD	Next: 10/10/16
10/10/16	City Council	MOVED FORWARD	Next: 10/24/16

RESOLUTION NO. 2016 - 114

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER
TO EXPEND UP TO \$4,000 OF COMMUNITY RELATIONS
FUNDING IN SUPPORT OF THE 2016 KCS HOLIDAY TRAIN
STOP IN TEXARKANA; AND ESTABLISHING AN EFFECTIVE
DATE.**

WHEREAS, the Kansas City Southern Railroad Company has announced that their 2016 Holiday Express Train will stop in Texarkana on December 10, 2016; and

WHEREAS, the Kansas City Southern Railroad Company has requested that the city provide local support for families to visit and enjoy the train while it is in Texarkana; and

WHEREAS, city staff is coordinating with the Texas Independent School District to use the football stadium area as a staging area and to provide school buses with drivers to shuttle visitors between the staging point and the train and return; and

WHEREAS, city staff and community volunteers will provide the necessary support to get people onto and off of the buses and the train.

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

SECTION 1: The City Manager is hereby authorized to expend up to \$4,000 of Community Relations funds in support of the KCS Holiday Express Train Stop in Texarkana.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **14th day of November, 2016.**

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☒ Provide a Safe Community ☒ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☒ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☐ Deliver Efficient Services ☒ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: Medium

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐ Newspaper Notice (Required by Statute)	☐ Public Hearing (Required by Statute)
☐ Public Forum/Input Session	☐ Press Release
☐ E-News Distribution	☐ Website Notice
☐ Social Media (Twitter, Facebook, etc.)	☐ Special Mailing
☐ Flyers Posted	☐ Banners Posted
☐ Survey	☐ Automated Phone Call
☒ None Required	☐

Other:

City of Texarkana, Texas

Briefing Sheet

Version:

Update Date: 9/21/2016 2:40 PM

Lead Department: Fire DepartmentAction Officer: Eric Schlotter, Fire ChiefSubject: Resolution No. 2016-116 revising the Fire Department's swap time policy.

Public **Second** **Council**
Briefing: 11/14/2016 **Hearing:** 10/10/2016 **Briefing:** October 24, 2016 **Vote:** 11/14/2016

Item Schedule

Schedule 1: Brief twice - vote once (six weeks)

Updates/History of Briefing:

"NOT APPLICABLE"

Executive Summary and Background Information:

The Fire Department currently has a practice of allowing firefighters to "swap time" with one another. Swapping time is when one firefighter works for another. When this occurs the firefighter who was supposed to be on duty is paid as though he is at work while another firefighter is actually in his position. The person who is working for another firefighter is on duty for all practical purposes other than for pay. Currently, there is a policy that governs swap time; however, this policy is in need of revision as some of the current practices are not in-line with the law and do not have proper control of the practice which allows for abuse.

The practice of swapping or trading time is authorized under the Fair Labor Standards Act in section 7(p)(3). While the practice is legal there are certain current practices that may not be in accordance with the law. Currently, firefighters use two options to payback another firefighter who has swapped with them, they either work for the person who worked for them or they provide them with remuneration the second of which may not be in accordance with the law. While conducting research for the policy revision I have not been able to find another department that allows remuneration. In fact, many strictly prohibit the practice.

In addition to addressing the issue of remuneration, the revised policy sets limits on the number of swap occurrences a firefighter can have in a given period. The current policy does not set a limit, other than to prohibit the practice of swapping multiple consecutive shifts, and this has led to abuse of the privilege. In the past three years there have been employees who have swapped as many as 35 shifts in a year. Thirty five shifts is the equivalent of three and a half months of working time.

The proposed policy would prohibit remuneration, and create a maximum number of swaps per year.

Potential Options:

- Make only the changes necessary to comply with applicable laws.
- Propose alternate provisions for the policy.

City of Texarkana, Texas

Fiscal Implications:

There are no fiscal implications for the City.

Staff Recommendation:

Staff recommends approval of the resolution as presented.

Advisory Board/Committee Review:

"NONE"

Board/Committee Recommendation:

"NOT APPLICABLE"

Advisory Board/Committee Meeting Date and Minutes:

"NOT APPLICABLE"

Attachments

- a. 2016-116 RES Revising the Fire Department Policy and Procedure Manual (DOC)
- b. 2016-116 RES Goals & Perspectives (DOCX)
- c. 2016-116 ATTH 01 City of Texarkana FD Policy 20161114 (PDF)
- d. 2016-116 ATTH 02 City of Texarkana FD Policy 20091102 (DOC)
- e. 2016-116 ATTH 03 Trade Time Log (PDF)
- f. 2016-116 ATTH 04 29 CFR 553 Substitution (PDF)
- g. 2016-116 ATTH 05 email from Labor Counsel Cranford (PDF)
- h. 2016-116 ATTH 06 Council Minutes 28 DEC 54 - FF Double (PDF)
- i. 2016-116 ATTH 07 City of McKinney FD Policy (PDF)
- j. 2016-116 ATTH 08 City of Nacogdoches FD Policy (DOC)
- k. 2016-116 ATTH 09 City of Longview FD Policy (PDF)
- l. 2016-116 ATTH 10 City of Burleson FD Policy (PDF)
- m. 2016-116 ATTH 11 City of Lufkin FD Policy (PDF)
- n. 2016-116 ATTH 12 City of Paris FD Policy (DOC)
- o. 2016-116 ATTH 13 City of Sherman FD Policy (PDF)
- p. 2016-116 ATTH 14 City of Tyler FD Policy (PDF)
- q. 2016-116 ATTH 15 City of Duncanville FD Policy (PDF)
- r. 2016-116 ATTH 16 City of Irving FD Policy (PDF)

Staff Coordination

Fire Department	Eric Schlotter	Department Head Review	Completed
	09/20/2016 7:25 AM		
Assistant City Manager		Shirley Jaster	Assistant City Manager
Review	Completed	09/20/2016 8:55 AM	
Public Information Officer		Lisa Thompson	PIO Review
	09/20/2016 2:19 PM		Completed
City Manager	John Whitson	City Manager Review	Completed
8:18 AM			09/23/2016

City of Texarkana, Texas

City Council
6:00 PM

Jennifer Evans

Meeting

Completed

09/26/2016

Meeting History

09/26/16	City Council	MOVED FORWARD	Next: 10/10/16
10/10/16	City Council	MOVED FORWARD	Next: 10/24/16

RESOLUTION NO. 2016 - 116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, REVISING THE TEXARKANA, TEXAS FIRE DEPARTMENT POLICY AND PROCEDURE MANUAL, GENERAL PERSONNEL POLICIES, SECTION 8 - SUBSTITUTES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Fire Department allows for the use of substitutes; and

WHEREAS, the Fire Department strives to maintain compliance with applicable laws; and

WHEREAS, the proper operation of the Fire Department requires well-developed policies and procedures.

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

SECTION 1: That Section 8 - Substitutes of the General Personnel Policies, contained in the Texarkana, Texas Fire Department Policy and Procedure Manual is revised as written in **Attachment #1**.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **14th day of November, 2016**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☐ Provide a Safe Community ☒ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☐ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☒ Model a Positive City Image ☐ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☐ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☒ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved: No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐ Newspaper Notice (Required by Statute)	☐ Public Hearing (Required by Statute)
☐ Public Forum/Input Session	☐ Press Release
☐ E-News Distribution	☐ Website Notice
☐ Social Media (Twitter, Facebook, etc.)	☐ Special Mailing
☐ Flyers Posted	☐ Banners Posted
☐ Survey	☐ Automated Phone Call
☒ None Required	☐

Other:

	Texarkana Fire Department		
	Policy and Procedures Manual		
	Title: General Personnel Policies		
	Applies to: All Personnel		
	Approved by:	Effective Date: 11-14-2016	
 Eric Schlotter, Fire Chief	Revision Date: 11-14-2016		
	Pages: <u>1 of 13</u>	Tab: 19	

This Policy/Procedure is for the Texarkana Texas Fire Department's internal use only and does not enhance an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Policy/Procedure, if proven, may only form the basis for a complaint by the Texarkana Texas Fire Department in a non-judicial, administrative setting.

Section 1 Administration

- 1-1 Purpose: The purpose of this section is to provide information on various personnel related issues within the department. This policy should be used in conjunction with Chapter 143, Texas Local Government Code; City of Texarkana, Texas Personnel Policies; and various Federal and State of Texas laws related to personnel issues.
- 1-2 Scope: This policy applies to all personnel. When conflicts arise between various laws and policies governing personnel issues, they are to be resolved by the following priority order:
- a) Federal Statutes and Rules
 - b) Chapter 143, Texas Local Government Code (Civil Service)
 - c) Other State of Texas statutes and rules
 - d) City of Texarkana, Texas Local Civil Service Rules
 - e) City of Texarkana, Texas Personnel Policies
 - i) Exception: In circumstances where department policies are more stringent than city policies, the more stringent policy will apply.
 - f) Texarkana Fire Department Policies and Procedures

Section 2 Definitions

- 2-1 Civil Service Law – Chapter 143 of the Texas Local Government Code.
- 2-2 Local Civil Service Rules – Rules governing local Civil Service as approved by the Civil Service Commission and published by the Civil Service Director
- 2-3 Personnel Policies – Policies of the City of Texarkana, Texas as approved by the City manager and City Council and made available to employees by the Human Resources Director.
- 2-4 USSERA – *Uniformed Services Employment and Reemployment Rights Act*. This Federal law specifies rights regarding employment and re-employment for veterans returning from active duty.

Section 3 Pay and Benefits

- 3-1 Base Pay – All members shall receive base pay as approved by the City Council in the current budget. All members holding the same rank and having the same tenure in their rank shall receive the same base pay.

- 3-2 Longevity Pay – All members shall receive longevity pay at the rate of \$4.00 per month per year of service. The maximum longevity pay is \$100.00 per month.
- 3-3 Certification Incentive Pay – Members who hold advanced levels of certification from the Texas Commission on Fire Protection are eligible for certification incentive pay. Members with Intermediate certification shall receive \$50.00 per month. Members with advanced certification shall receive \$100.00 per month. Members with master certification shall receive \$150.00 per month. Members may receive both certification incentive pay and education incentive pay.
- 3-4 Education incentive pay – Eligible members may receive education incentive pay. Qualifications and pay amounts are listed in the City Personnel Policy Handbook. Members may receive both certification incentive pay and education incentive pay.
- 3-5 Overtime pay – Overtime pay shall be calculated and paid in accordance with the Fair Labor Standards Act and City Personnel Guidelines. In Operations Division, overtime pay shall be calculated based on a 15 day FLSA cycle. Overtime shall be paid on the payday following the pay period in which the FLSA cycle ends. In calculating overtime, leave time shall be credited in accordance with City personnel guidelines.
- 3-6 Step-up Pay – Members temporarily working in a higher classification shall be paid step-up pay. Step-up pay shall be the difference between the member's base pay and the lowest base pay of the next higher classification.
- 3-7 Assignment Pay – Members assigned to Fire Prevention or Training Divisions will receive assignment pay in the amount specified in the City budget. Other members may receive assignment pay if assigned to special functions and assignment pay is approved in the City budget.
- 3-8 Vacation – Members shall accumulate 15 days of vacation per year. Rate of accumulation shall be as indicated in the city personnel guidelines.
- 3-9 Holidays – Members shall receive holiday leave as indicated in the city personnel guidelines.
- 3-10 For members in Operations Division, two (2) days of leave time shall be equivalent to one (1) 24 hour shift.
- 3-11 Members in Operations Division shall take holidays with their vacation. Vacations and holidays shall be scheduled as directed by the Fire Chief.
- 3-12 Members in all divisions except Operations shall take holidays on the scheduled day as listed in the city personnel guidelines. These members shall request vacation time by submitting a written request to their immediate supervisor for approval.

- 3-13 Sick Leave – Members shall accumulate 15 days of sick leave per year as indicated in the city personnel guidelines. Members may take sick leave as allowed by the City personnel guidelines and by the section in this chapter entitled "Sick Leave".

Section 4 Working in a higher classification

- 4-1 Members working temporarily in a higher classification shall receive step-up pay in accordance with paragraph 3-6 above.
- 4-2 The Battalion Chief of Operations is authorized to approve step-up in accordance with these guidelines. Any exceptions to these guidelines shall be approved by the Fire Chief.
- 4-3 Each individual selected to step-up shall be qualified and capable of filling the position in the next higher rank that is open. Not every individual of a particular rank meets these requirements. Determination of the fitness to step-up is based solely on the judgment of the Operations Chief and/or Fire Chief.
- 4-4 Members shall not step-up more than one rank.
- 4-5 Newly promoted members shall not step-up until after successful completion of a six-month training period in their new rank. This six-month training period also applies to personnel transferred from other divisions who do not have prior experience at their current rank in Operations Division.
- 4-6 Newly hired members shall not step-up until after completion of their probationary period
- 4-7 Members shall not step-up to fill positions if there are members of the appropriate rank available to fill the position.

Section 5 Sick Leave

- 5-1 All members are eligible for sick leave benefits. Members shall accumulate sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-2 Members retiring or resigning from the Fire Department shall receive pay for unused sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-3 All Members are eligible for incentive days for non-use of sick leave as described in City personnel guidelines.
- 5-4 Sick leave shall be granted for the following reasons only:
- a) When a member is unable to perform his duties due to illness or an off-duty injury.
 - b) When a medical, dental, or optical examination or treatment is necessary. Members shall attempt to schedule such appointments on off-duty time when possible. All such appointments shall be approved in advance by the Fire Chief or the member's Battalion Chief.

- c) When a member has been exposed to a contagious disease (as would normally be subject to quarantine as prescribed by Health Department Standards) and presence on the job would jeopardize the health of others.
 - d) When a medical situation arises involving illness of a member's immediate family. The relationship must meet the requirements defined in the City Personnel Guidelines.
 - e) When leave is needed for the purpose of attending a funeral, making arrangements, or otherwise attending to the affairs of a deceased family member.
 - f) When leave is authorized by the Family and Medical Leave Act.
- 5-5 Members shall provide a physician's release in certain circumstances. The release shall state that the member has been under the physician's care and that the member is released to perform full or regular duties. The member shall provide the release prior to or at the time of returning to work. Supervisors shall not allow a member to return to work without this release. A release is required in all the following circumstances:
- a) Any sick leave taken for personal illness or injury which exceeds 48 hours (2 shifts).
 - b) Any sick leave taken due to exposure to contagious disease.
 - c) Following any surgery, whether sick leave was taken or not.
 - d) Any off-duty injury requiring a physician's examination or treatment.
 - e) When requested by the Fire Chief.
- 5-6 Frequent claiming of sick leave may constitute grounds for the assumption by the Fire Chief that the physical condition of a member is below the standard required for the proper performance of duties and this may lead to a request for a physical examination to determine fitness for the job. Any such examination shall be conducted in accordance with requirements of Texas Civil Service law.
- 5-7 Members who abuse sick leave are subject to disciplinary action, up to and including indefinite suspension.
- 5-8 In Operations Division, members claiming sick leave shall notify the Operations Chief on duty of their inability to report to work and the reason they cannot report. Members shall make this notification at least 30 minutes prior to their scheduled duty shift. The Operations Chief receiving this notification shall notify the station captain where the member was scheduled to work and both the Battalion Chief and the captain shall notify their relief at shift change. In other divisions, members shall notify someone in the office of their absence. This notification shall be made within 30 minutes of the start of their scheduled shift.
- 5-9 While on sick leave, members shall not work at another job. The Fire Chief may make exceptions to this rule with appropriate medical clearance.

- 5-10 Members who use sick leave shall sign a personnel action form and shall indicate on the form the reason for their absence.
- 5-11 Members who are members of the “Doubling List” and whose sick leave is exhausted are allowed to have other members work for them in accordance with the guidelines on substitutes and rules of the “Doubling List” as established by the members.

Section 6 Military Leave

- 6-1 Fifteen (15) days of military leave per Federal fiscal year are available to members of the reserves or National Guard. This military leave may be taken for weekend drills, annual duty, specialized training, or any other active military duty.
- 6-2 Members must notify their chain of command as far in advance as possible of the need to take military leave.

Section 7 Return from Active Military Duty

- 7-1 Return from active military duty will be handled in accordance with USERRA and applicable sections of Civil Service law.
- 7-2 In order to be eligible to be returned to duty after a period of military service, a member must meet each of the following requirements:
 - a) Member must have received an honorable discharge or other honorable separation from service
 - b) Member must remain physically and mentally fit to discharge the duties of their position
 - c) Member must make application for reinstatement within the time limits established in USERRA
 - d) Member must maintain current required certifications, including TCFP structure firefighter and DSHS Emergency Medical Technician
- 7-3 To determine physical fitness for duty, members may be required to complete an entry physical and the incumbent physical ability test
 - a) Members whose absence for military duty is greater than or equal to one year shall be required to take the physical and PAT
 - b) Members whose absence for military service is less than one year may be required to take the physical and PAT at the discretion of the Fire Chief
- 7-4 Mental fitness for duty will be assumed unless evidence indicates otherwise. If a question as to mental fitness arises, the Fire Chief will institute proceedings under Section 143.081 of Civil Service law.
- 7-5 At the discretion of the Fire Chief, an orientation and retraining period may be required prior to a returning member being assigned to fire suppression duties.

Section 8 Substitutes

- 8-1 Members in operations division may employ substitutes (commonly called swap time) to work in their place.
- 8-2 Members may have no more than 12 substitutions during the fiscal year (Oct. 1st – Sept. 30th), exceptions may be requested in writing to the Fire Chief.
- 8-3 When a member employs a substitute, the member is on duty for payroll purposes only. The substitute is on duty for all other purposes.
- 8-4 Members shall request approval for substitutes at least one shift in advance on the form provided for this purpose. The Company Officer shall recommend approval or disapproval of the substitution and forward the form to the Operations Chief. The Operations Chief shall make the final decision of approval or disapproval of the substitution. Operations Chief substitutes shall be approved or disapproved by the Fire Chief. Requests for substitutes received less than one shift in advanced may be considered at the discretion of the officers involved.
- 8-5 Members shall make a reasonable effort to employ a substitute of equal rank. In every case, substitutes shall be qualified to perform the duties of the position filled. Members shall not employ substitutes more than one rank below their own.
- 8-6 Substitutions are time for time only, no other form of remuneration is allowed regardless of the circumstance.
- 8-7 Members working overtime are not permitted to employ a substitute.
- 8-8 Station officers shall record substitutes in the company log book. Operations Chiefs shall record substitutes in the Operations Chief's log book and on the status report.
- 8-9 Members shall not work another job while off with a substitute with the exception of required military reserve drills.
- 8-10 Any substitute arrangements that will result in a member being off multiple shifts shall not be approved.
- 8-11 Receiving time off by employing a substitute is a privilege, not a right. Members who abuse this privilege are subject to disciplinary action and/or having this privilege revoked on an individual basis at the discretion of the Fire Chief.

Section 9 Disciplinary Action

- 9-1 All disciplinary action taken shall be taken in accordance with State and local Civil Service rules and regulations and in accordance with any applicable federal, state, and local statutes.
- 9-2 The degree of disciplinary action that may be taken by the Fire Department is as follows:

- a) Oral reprimand (including documented oral reprimand)
 - b) Written reprimand
 - c) Demotion
 - d) Temporary suspension without pay.
 - e) Indefinite suspension without pay.
- 9-3 Action taken will depend on the degree of the offense, the record of the offender, and the seriousness of the consequences of the violation.
- 9-4 Company officers and Battalion Chiefs may give oral reprimands. If desired, these officers may document these oral reprimands to the Fire Chief on the form provided.
- 9-5 All levels of disciplinary action other than oral reprimand shall be given by the Fire Chief. Officers who believe disciplinary action is needed shall initiate such action by letter through channels to the Fire Chief. Officers shall include in this letter a description of the problem, any supporting evidence or documentation, and a recommendation for action.
- 9-6 Any member subject to disciplinary action shall be given an opportunity to present any information he/she has or any mitigating circumstances prior to disciplinary action being taken.
- 9-7 The Fire Chief shall have the final decision in all disciplinary matters, subject to appeal procedures in civil service statutes.

Section 10 Promotional Procedures

- 10-1 The Fire Chief shall make all promotions in accordance with Texas civil service law and City of Texarkana, Texas Civil Service Rules and Regulations.
- 10-2 At least two copies of all books on promotional reading lists will be available at the Texarkana Public Library. One copy of each book will be kept in the library and will be available to study there. One or more copies of each book will be available to members to check out. Books shall be checked out for seven (7) days only. Books shall not be checked out consecutively by the same person
- 10-3 Books on promotional reading lists may be available from the Fire Department library. When a promotional exam is not posted, members may check out these books in accordance with normal procedures. From the time an exam notice is posted until an exam is given, members may check out these books for no longer than seven (7) consecutive days. Books shall not be checked out consecutively by the same person.
- 10-4 From the time an exam notice is posted until an exam is given, only those members eligible to take that promotional exam may check out study material for that exam. This applies both at the public library and at the department library.

- 10-5 Members shall return any books that are on the reading list for a currently posted promotional exam in a prompt manner and no later than the due date. Failure to return books on time will result in disciplinary action.
- 10-6 Members shall not take promotional exams while on duty; however, members may employ a substitute while taking a promotional exam.
- 10-7 Members must make arrangements to be present when an exam is given regardless of vacation or other leave time.
- 10-8 The Civil Service Director shall schedule the date, time, and location of exams. Member's dates of eligibility for the exam will not be consulted when scheduling the exam.

Section 11 Overtime Hiring and Emergency Recall

11-1 Routine Overtime Hiring

- a) Routine overtime hiring must be done in a consistent manner to insure fairness to all members. Circumstances in hiring vary. Generally, someone must be hired immediately. Sometimes time is not a concern within reasonable limits. Be sure that all members are afforded the same opportunity to work if they so desire, within the guidelines imposed by these rules.
- b) Overtime hiring worksheets will be provided for each crew. Each crew's worksheet will have the names of members on the other two crews listed in order of seniority. Care must be exercised to be certain that the appropriate worksheet for the crew on duty is used.
- c) The last member hired will be listed in the Operations Chief log book and on the list kept in the Operations Chief's office for that purpose. Each shift will have a separate column on the "last hired" sheet.
- d) When hiring, the member calling (normally the Operations Chief) will start with the first name on the overtime hiring worksheet under the person last hired.
- e) Members will be called in the order that their name appears on the worksheet. No member will be skipped except for reasons listed in this procedure. If a member is hired, write the time hired for and the station on the left side of their name. If a member is not hired, indicate the reason on the right side of their name.
- f) Overtime hiring will be for ½ shift at a time under normal circumstances. All daytime slots will be filled prior to hiring evening slots.
- g) Members will be utilized at their rank whenever possible. If not possible, they will be utilized at the highest available position below their rank.

- h) Members must be capable of filling the position needed. Members who cannot drive fire department vehicles, including those on probation, may be hired if sufficient personnel are available to fill required driver and officer positions. (Except see policy on probationary firefighters for exception during first few months of employment.) Otherwise, no member should be excluded from working overtime if arrangements can reasonably be made to fill all required positions.
- i) Members on sick leave will not be hired overtime. For purposes of overtime, sick leave begins when a member calls in sick and does not end until the member reports back to work. For example, a member is off on sick leave 24 hours on Monday. His next scheduled shift is Thursday. He is not eligible for overtime on Tuesday or Wednesday.
- j) Members on vacation are not eligible for overtime. For purposes of overtime, vacation leave begins at the time a member is actually off work and ends when he reports back. For example, a member's vacation starts at 7:00 AM on April 15 and he reports back to work at 7:00 AM on April 30. He is eligible for overtime on April 13 and 14, but he is not on April 28 or 29. This rule is written for purposes of consistency. This is being approached in different ways by different people.
- k) Members off on holiday, vacation, or incentive leave of one shift or less are ineligible for overtime only on their shift while they are actually on leave. For example, a member takes a holiday on Monday night. He is eligible for overtime on Tuesday.
- l) Operations Chiefs may consider response time in the hiring process. For example, it is 06:45 and the next person on the list for hiring lives approximately 90 minutes away. The position needs to be filled at 07:00 or someone will be forced to stay overtime. It is appropriate to skip the out of town person and go down the list to someone who lives closer. It would not be appropriate to skip someone if the hiring is being done for the PM shift and there is sufficient time for travel. The Operations Chief needs to use judgment in this process. He must balance giving equal rights to overtime work to all members against the immediate need to fill an open position. If a member is skipped when hiring for daytime because of travel time, the skipped member(s) shall be considered for the PM shift if needed.
- m) When calling for overtime, always identify yourself and the purpose of your call to the person answering the phone even if the member is not home. If you reach an answering machine, leave this information on the machine. This is the proper and courteous thing to do and helps prevent complaints that the member was not called.

- n) Phone rings are only 5 seconds apart. Always let the phone ring at least 6 times before hanging up and writing “no answer” on the call sheet.
- o) Both primary and secondary contact numbers are shown on the overtime sheet. Primary numbers will always be called. Secondary numbers are shown for convenience sake and are not required to be called. Be consistent. If you call the secondary number for one person, call them for all.
- p) Show equal consideration to all members when hiring overtime. Each member deserves an equal chance to work. If you have time to let one member’s spouse call him to call you back, treat all the same. Favoritism has no place in the hiring process.
- q) Only members assigned to Operations Division are eligible for regular overtime in Operations Division. New members who have not completed training and members assigned to other divisions are not eligible. Members are not eligible for regular overtime on their own shift.

11-2 Emergency Recall

- a) Emergency recall hiring will be handled differently. If an entire shift is needed to be recalled, or all off duty personnel, the Incident Commander should request the dispatcher to initiate a recall of a particular shift or shifts through the “Code Red” system. When the Incident Commander needs a certain number of personnel (less than a full shift), he should contact the investigator on call and request that the investigator initiate a recall of personnel until he has contacted the required number. Members living in the immediate Texarkana area will be called before those who travel any significant distance. No particular order of calling is required in an emergency recall. Any members who can be reached will be hired.

Section 12 Miscellaneous Provisions

12-1 Moonlighting

- a) City personnel guidelines require that all full-time city employees who hold other positions of paid employment or accept pay for services obtain written approval of their department head prior to accepting such employment. The Department Head may cancel such approval at any time it is determined that such outside employment conflicts or interferes with a member's duties and responsibilities as an employee of the City of Texarkana, Texas.
- b) Members wishing to request such approval shall do so on a form available from the Fire Chief's office. Members must fill out forms completely, providing all requested information.

- c) Members shall give priority to their duties and responsibilities as Fire Department employees over any responsibility to other employers. Such responsibility to another employer shall not be a valid reason for not responding to an emergency recall, mandatory overtime, required meeting, required training, or any other obligation to this department.
- d) Members shall not engage in business activities related to other employment while on duty and shall not use city property or facilities for such activities.
- e) Members shall use care in selecting outside employment to ensure that the employment does not create a conflict of interest with regard to their Fire Department employment.
- f) Members shall not use their status as Fire Department members in any way to generate additional business or solicit favors in regard to outside employment.
- g) Members shall inform the Fire Chief on the appropriate form when the member leaves employment at a part-time job previously approved.

12-2 Flower Fund

- a) A flower fund has been established in the Fire Department. This fund shall be maintained to provide flowers in accordance with these guidelines.
- b) When the balance in the fund is depleted, the Battalion Chiefs in charge of each crew and division will collect a contribution from each participating member. The particular amount of the contribution will be determined by the Fire Chief. Participation by members is voluntary.
- c) The flower fund will be administered by the Fire Department Administrative Coordinator. The Administrative Coordinator will receive and deposit all contributions, make payments, and place orders. In the absence of the Administrative Coordinator, the Fire Chief or a member designated by the Fire Chief will administer the fund.
- d) Flowers will be sent to the funeral of a current member, the immediate family of a current member, or a retired member. For purposes of this section, immediate family is defined as husband, wife, son, daughter, father, mother, brother, sister, father-in-law, or mother-in-law.
- e) If requested by the family of the deceased, a contribution may be made to a chosen charity in lieu of sending flowers.
- f) Members who become aware of a death in one of these categories shall notify the Battalion Chief on duty. The Battalion Chief shall notify the Fire Chief so that necessary arrangements can be made.

12-3 Nepotism

- a) City personnel guidelines regulate nepotism within the City government. Refer to the personnel guidelines for exact wording.

- b) Within the Fire Department, the nepotism rules will be applied as follows:
 - i) Two related members will not be allowed to work at the same station.
 - ii) Two related Captains will not be allowed to work on the same crew.
 - iii) No member shall supervise, directly or indirectly, a related member.
- c) As long as the requirements in 3-9.02 above are not violated, related members may work on the same shift. Operations Chiefs should make a reasonable effort to accommodate related members when a related member is eligible for overtime on his relative's shift.
- d) Related members will not normally be permanently assigned to the same crew. While legal, it would present scheduling problems if the restrictions had to be dealt with on a regular basis.

12-4 Education and Training Procedures

- a) In order to maintain consistency between City personnel guidelines and Fire Department policies while maintaining an awareness of differences in Fire Department schedules, the following policy will be followed in regard to attending training or college & university classes on duty days.
 - i) Members may employ a substitute (swap time) to attend classes, but not from 7:00 AM to 5:00 PM weekdays.
 - ii) Regular college classes may not be attended on duty regardless of job relationship except for classes that are required by the department.
 - iii) Shorter seminars (one or two day) that are job related will be considered on an individual basis by the Fire Chief.
- b) Exceptions to the above policy may be made if the Fire Chief considers a particular class beneficial to the department as a whole and the exception is reasonable.

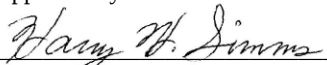
12-5 Public Service Leave

- a) A member called to jury duty or subpoenaed to testify as a witness will receive public service leave during the time of the court appearance.
- b) If a member is not selected for a jury, the member will return to work immediately after being dismissed by the judge.
- c) If a member is selected to serve on a jury, the member will return to work after the completion of the trial and dismissal by the judge.
- d) A member called as a witness will return to work as soon as released by the judge.

- e) The above guidelines are general. Obviously, if a member is selected for a jury but does not have to report for an extended period of time, he should work when scheduled in the interim. Common sense must be used in applying these guidelines.
- f) All members shall document court appearance requirements by providing a copy of the juror summons or the subpoena.

12-6 Member Telephone Numbers

- a) All members are required to provide their home telephone number for contact during off duty hours.
- b) Normally, member phone numbers will be posted at all fire stations and in the Operations Chief's office.
- c) If a member requests in writing, his phone number will be omitted from the lists posted at the fire stations. It will still be included on the list posted at the Operations Chief's office.
- d) Member's phone numbers are not to be released to callers. If a request is received for a member phone number, advise the caller that the number cannot be released. Offer to take the caller's name and phone number and relay the information to the member as soon as possible. Always maintain a professional and courteous attitude when dealing with this situation.

	Texarkana Fire Department	
	Policy and Procedures Manual	
	Title: General Personnel Policies	
	Applies to: All Personnel	
	Approved by:  Harry H. Simms, Fire Chief	Effective Date: 11-02-2009
	Revision Date: 11-02-2009	
	Pages: 1 of 14	Tab: 19

This Policy/Procedure is for the Texarkana Texas Fire Department's internal use only and does not enhance an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Policy/Procedure, if proven, may only form the basis for a complaint by the Texarkana Texas Fire Department in a non-judicial, administrative setting.

Section 1 Administration

- 1-1 **Purpose:** The purpose of this section is to provide information on various personnel related issues within the department. This policy should be used in conjunction with Chapter 143, Texas Local Government Code; City of Texarkana, Texas Personnel Policies; and various Federal and State of Texas laws related to personnel issues.
- 1-2 **Scope:** This policy applies to all personnel. When conflicts arise between various laws and policies governing personnel issues, they are to be resolved by the following priority order:
- a) Federal Statutes and Rules
 - b) Chapter 143, Texas Local Government Code (Civil Service)
 - c) Other State of Texas statutes and rules
 - d) City of Texarkana, Texas Local Civil Service Rules
 - e) City of Texarkana, Texas Personnel Policies
 - i) Exception: In circumstances where department policies are more stringent than city policies, the more stringent policy will apply.
 - f) Texarkana Fire Department Policies and Procedures

Section 2 Definitions

- 2-1 **Civil Service Law** – Chapter 143 of the Texas Local Government Code.
- 2-2 **Local Civil Service Rules** – Rules governing local Civil Service as approved by the Civil Service Commission and published by the Civil Service Director
- 2-3 **Personnel Policies** – Policies of the City of Texarkana, Texas as approved by the City manager and City Council and made available to employees by the Human Resources Director.
- 2-4 **USSERA** – *Uniformed Services Employment and Reemployment Rights Act*. This Federal law specifies rights regarding employment and re-employment for veterans returning from active duty.

Section 3 Pay and Benefits

- 3-1 **Base Pay** – All members shall receive base pay as approved by the City Council in the current budget. All members holding the same rank and having the same tenure in their rank shall receive the same base pay.

- 3-2 Longevity Pay – All members shall receive longevity pay at the rate of \$4.00 per month per year of service. The maximum longevity pay is \$100.00 per month.
- 3-3 Certification Incentive Pay – Members who hold advanced levels of certification from the Texas Commission on Fire Protection are eligible for certification incentive pay. Members with Intermediate certification shall receive \$50.00 per month. Members with advanced certification shall receive \$100.00 per month. Members with master certification shall receive \$150.00 per month. Members may receive both certification incentive pay and education incentive pay.
- 3-4 Education incentive pay – Eligible members may receive education incentive pay. Qualifications and pay amounts are listed in the City Personnel Policy Handbook. Members may receive both certification incentive pay and education incentive pay.
- 3-5 Overtime pay – Overtime pay shall be calculated and paid in accordance with the Fair Labor Standards Act and City Personnel Guidelines. In Operations Division, overtime pay shall be calculated based on a 15 day FLSA cycle. Overtime shall be paid on the payday following the pay period in which the FLSA cycle ends. In calculating overtime, leave time shall be credited in accordance with City personnel guidelines.
- 3-6 Step-up Pay – Members temporarily working in a higher classification shall be paid step-up pay. Step-up pay shall be the difference between the member's base pay and the lowest base pay of the next higher classification.
- 3-7 Assignment Pay – Members assigned to Fire Prevention or Training Divisions will receive assignment pay in the amount specified in the City budget. Other members may receive assignment pay if assigned to special functions and assignment pay is approved in the City budget.
- 3-8 Vacation – Members shall accumulate 15 days of vacation per year. Rate of accumulation shall be as indicated in the city personnel guidelines.
- 3-9 Holidays – Members shall receive holiday leave as indicated in the city personnel guidelines.
- 3-10 For members in Operations Division, two (2) days of leave time shall be equivalent to one (1) 24 hour shift.
- 3-11 Members in Operations Division shall take holidays with their vacation. Vacations and holidays shall be scheduled as directed by the Fire Chief.
- 3-12 Members in all divisions except Operations shall take holidays on the scheduled day as listed in the city personnel guidelines. These members shall request vacation time by submitting a written request to their immediate supervisor for approval.

- 3-13 Sick Leave – Members shall accumulate 15 days of sick leave per year as indicated in the city personnel guidelines. Members may take sick leave as allowed by the City personnel guidelines and by the section in this chapter entitled "Sick Leave".

Section 4 Working in a higher classification

- 4-1 Members working temporarily in a higher classification shall receive step-up pay in accordance with paragraph 3-6 above.
- 4-2 The Battalion Chief of Operations is authorized to approve step-up in accordance with these guidelines. Any exceptions to these guidelines shall be approved by the Fire Chief.
- 4-3 Each individual selected to step-up shall be qualified and capable of filling the position in the next higher rank that is open. Not every individual of a particular rank meets these requirements. Determination of the fitness to step-up is based solely on the judgment of the Operations Chief and/or Fire Chief.
- 4-4 Members shall not step-up more than one rank.
- 4-5 Newly promoted members shall not step-up until after successful completion of a six-month training period in their new rank. This six-month training period also applies to personnel transferred from other divisions who do not have prior experience at their current rank in Operations Division.
- 4-6 Newly hired members shall not step-up until after completion of their probationary period
- 4-7 Members shall not step-up to fill positions if there are members of the appropriate rank available to fill the position.

Section 5 Sick Leave

- 5-1 All members are eligible for sick leave benefits. Members shall accumulate sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-2 Members retiring or resigning from the Fire Department shall receive pay for unused sick leave in accordance with Texas Civil Service Law and City personnel guidelines.
- 5-3 All Members are eligible for incentive days for non-use of sick leave as described in City personnel guidelines.
- 5-4 Sick leave shall be granted for the following reasons only:
- a) When a member is unable to perform his duties due to illness or an off-duty injury.
 - b) When a medical, dental, or optical examination or treatment is necessary. Members shall attempt to schedule such appointments on off-duty time when possible. All such appointments shall be approved in advance by the Fire Chief or the member's Battalion Chief.

- c) When a member has been exposed to a contagious disease (as would normally be subject to quarantine as prescribed by Health Department Standards) and presence on the job would jeopardize the health of others.
 - d) When a medical situation arises involving illness of a member's immediate family. The relationship must meet the requirements defined in the City Personnel Guidelines.
 - e) When leave is needed for the purpose of attending a funeral, making arrangements, or otherwise attending to the affairs of a deceased family member.
 - f) When leave is authorized by the Family and Medical Leave Act.
- 5-5 Members shall provide a physician's release in certain circumstances. The release shall state that the member has been under the physician's care and that the member is released to perform full or regular duties. The member shall provide the release prior to or at the time of returning to work. Supervisors shall not allow a member to return to work without this release. A release is required in all the following circumstances:
- a) Any sick leave taken for personal illness or injury which exceeds 48 hours (2 shifts).
 - b) Any sick leave taken due to exposure to contagious disease.
 - c) Following any surgery, whether sick leave was taken or not.
 - d) Any off-duty injury requiring a physician's examination or treatment.
 - e) When requested by the Fire Chief.
- 5-6 Frequent claiming of sick leave may constitute grounds for the assumption by the Fire Chief that the physical condition of a member is below the standard required for the proper performance of duties and this may lead to a request for a physical examination to determine fitness for the job. Any such examination shall be conducted in accordance with requirements of Texas Civil Service law.
- 5-7 Members who abuse sick leave are subject to disciplinary action, up to and including indefinite suspension.
- 5-8 In Operations Division, members claiming sick leave shall notify the Operations Chief on duty of their inability to report to work and the reason they cannot report. Members shall make this notification at least 30 minutes prior to their scheduled duty shift. The Operations Chief receiving this notification shall notify the station captain where the member was scheduled to work and both the Battalion Chief and the captain shall notify their relief at shift change. In other divisions, members shall notify someone in the office of their absence. This notification shall be made within 30 minutes of the start of their scheduled shift.
- 5-9 While on sick leave, members shall not work at another job. The Fire Chief may make exceptions to this rule with appropriate medical clearance.

- 5-10 Members who use sick leave shall sign a personnel action form and shall indicate on the form the reason for their absence.
- 5-11 Members who are members of the “Doubling List” and whose sick leave is exhausted are allowed to have other members work for them in accordance with the guidelines on substitutes and rules of the “Doubling List” as established by the members.

Section 6 Military Leave

- 6-1 Fifteen (15) days of military leave per Federal fiscal year are available to members of the reserves or National Guard. This military leave may be taken for weekend drills, annual duty, specialized training, or any other active military duty.
- 6-2 Members must notify their chain of command as far in advance as possible of the need to take military leave.

Section 7 Return from Active Military Duty

- 7-1 Return from active military duty will be handled in accordance with USERRA and applicable sections of Civil Service law.
- 7-2 In order to be eligible to be returned to duty after a period of military service, a member must meet each of the following requirements:
 - a) Member must have received an honorable discharge or other honorable separation from service
 - b) Member must remain physically and mentally fit to discharge the duties of their position
 - c) Member must make application for reinstatement within the time limits established in USERRA
 - d) Member must maintain current required certifications, including TCFP structure firefighter and DSHS Emergency Medical Technician
- 7-3 To determine physical fitness for duty, members may be required to complete an entry physical and the incumbent physical ability test
 - a) Members whose absence for military duty is greater than or equal to one year shall be required to take the physical and PAT
 - b) Members whose absence for military service is less than one year may be required to take the physical and PAT at the discretion of the Fire Chief
- 7-4 Mental fitness for duty will be assumed unless evidence indicates otherwise. If a question as to mental fitness arises, the Fire Chief will institute proceedings under Section 143.081 of Civil Service law.
- 7-5 At the discretion of the Fire Chief, an orientation and retraining period may be required prior to a returning member being assigned to fire suppression duties.

Section 8 Substitutes

- 8-1 Members in operations division may employ substitutes (commonly called swap time) to work in their place.
- 8-18-2 ~~Members may have no more than 12 substitutions during the fiscal year (Oct. 1st-Sept. 30th), exceptions may be requested in writing to the Fire Chief.~~
- 8-28-3 When a member employs a substitute, the member is on duty for payroll purposes only. The substitute is on duty for all other purposes.
- 8-38-4 Members shall request approval for substitutes at least one shift in advance on the form provided for this purpose. The Company Officer shall recommend approval or disapproval of the substitution and forward the form to the Operations Chief. The Operations Chief shall make the final decision of approval or disapproval of the substitution. Operations Chief substitutes shall be approved or disapproved by the Fire Chief. Requests for substitutes received less than one shift in advanced may be considered at the discretion of the officers involved.
- 8-5 Members shall make a reasonable effort to employ a substitute of equal rank. In every case, substitutes shall be qualified to perform the duties of the position filled. Members shall not employ substitutes more than one rank below their own. ~~Operations Chiefs may make exceptions to this rule if sufficient qualified members are available to fill all positions, any moving by members is voluntary, no step up pay is created, and no major disruption of the crew is created.~~
- 8-6 ~~Substitutions are time for time only, no other form of remuneration is allowed regardless of the circumstance.~~
- 8-48-7 ~~Members working overtime are not permitted to employ a substitute.~~
- 8-58-8 Station officers shall record substitutes in the company log book. Operations Chiefs shall record substitutes in the Operations Chief's log book and on the status report.
- 8-68-9 Members shall not work another job while off with a substitute with the exception of required military reserve drills.
- 8-78-10 Any substitute arrangements that will result in a member being off multiple shifts ~~over an extended period of time will shall~~ not be approved.
- 8-88-11 ~~Substitutes may be employed to attend college or university classes but not between the hours of 7:00 a.m. and 5:00 p.m. weekdays.~~
- 8-98-12 Receiving time off by employing a substitute is a privilege, not a right. Members who abuse this privilege are subject to disciplinary action and/or having this privilege revoked on an individual basis at the discretion of the Fire Chief.

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Section 9 Disciplinary Action

- 9-1 All disciplinary action taken shall be taken in accordance with State and local Civil Service rules and regulations and in accordance with any applicable federal, state, and local statutes.
- 9-2 The degree of disciplinary action that may be taken by the Fire Department is as follows:
 - a) Oral reprimand (including documented oral reprimand)
 - b) Written reprimand
 - c) Demotion
 - d) Temporary suspension without pay.
 - e) Indefinite suspension without pay.
- 9-3 Action taken will depend on the degree of the offense, the record of the offender, and the seriousness of the consequences of the violation.
- 9-4 Company officers and Battalion Chiefs may give oral reprimands. If desired, these officers may document these oral reprimands to the Fire Chief on the form provided.
- 9-5 All levels of disciplinary action other than oral reprimand shall be given by the Fire Chief. Officers who believe disciplinary action is needed shall initiate such action by letter through channels to the Fire Chief. Officers shall include in this letter a description of the problem, any supporting evidence or documentation, and a recommendation for action.
- 9-6 Any member subject to disciplinary action shall be given an opportunity to present any information he/she has or any mitigating circumstances prior to disciplinary action being taken.
- 9-7 The Fire Chief shall have the final decision in all disciplinary matters, subject to appeal procedures in civil service statutes.

Section 10 Promotional Procedures

- 10-1 The Fire Chief shall make all promotions in accordance with Texas civil service law and City of Texarkana, Texas Civil Service Rules and Regulations.
- 10-2 At least two copies of all books on promotional reading lists will be available at the Texarkana Public Library. One copy of each book will be kept in the library and will be available to study there. One or more copies of each book will be available to members to check out. Books shall be checked out for seven (7) days only. Books shall not be checked out consecutively by the same person

- 10-3 Books on promotional reading lists may be available from the Fire Department library. When a promotional exam is not posted, members may check out these books in accordance with normal procedures. From the time an exam notice is posted until an exam is given, members may check out these books for no longer than seven (7) consecutive days. Books shall not be checked out consecutively by the same person.
- 10-4 From the time an exam notice is posted until an exam is given, only those members eligible to take that promotional exam may check out study material for that exam. This applies both at the public library and at the department library.
- 10-5 Members shall return any books that are on the reading list for a currently posted promotional exam in a prompt manner and no later than the due date. Failure to return books on time will result in disciplinary action.
- 10-6 Members shall not take promotional exams while on duty; however, members may employ a substitute while taking a promotional exam.
- 10-7 Members must make arrangements to be present when an exam is given regardless of vacation or other leave time.
- 10-8 The Civil Service Director shall schedule the date, time, and location of exams. Member's dates of eligibility for the exam will not be consulted when scheduling the exam.

Section 11 Overtime Hiring and Emergency Recall

11-1 Routine Overtime Hiring

- a) Routine overtime hiring must be done in a consistent manner to insure fairness to all members. Circumstances in hiring vary. Generally, someone must be hired immediately. Sometimes time is not a concern within reasonable limits. Be sure that all members are afforded the same opportunity to work if they so desire, within the guidelines imposed by these rules.
- b) Overtime hiring worksheets will be provided for each crew. Each crew's worksheet will have the names of members on the other two crews listed in order of seniority. Care must be exercised to be certain that the appropriate worksheet for the crew on duty is used.
- c) The last member hired will be listed in the Operations Chief log book and on the list kept in the Operations Chief's office for that purpose. Each shift will have a separate column on the "last hired" sheet.
- d) When hiring, the member calling (normally the Operations Chief) will start with the first name on the overtime hiring worksheet under the person last hired.

- e) Members will be called in the order that their name appears on the worksheet. No member will be skipped except for reasons listed in this procedure. If a member is hired, write the time hired for and the station on the left side of their name. If a member is not hired, indicate the reason on the right side of their name.
- f) Overtime hiring will be for ½ shift at a time under normal circumstances. All daytime slots will be filled prior to hiring evening slots.
- g) Members will be utilized at their rank whenever possible. If not possible, they will be utilized at the highest available position below their rank.
- h) Members must be capable of filling the position needed. Members who cannot drive fire department vehicles, including those on probation, may be hired if sufficient personnel are available to fill required driver and officer positions. (Except see policy on probationary firefighters for exception during first few months of employment.) Otherwise, no member should be excluded from working overtime if arrangements can reasonably be made to fill all required positions.
- i) Members on sick leave will not be hired overtime. For purposes of overtime, sick leave begins when a member calls in sick and does not end until the member reports back to work. For example, a member is off on sick leave 24 hours on Monday. His next scheduled shift is Thursday. He is not eligible for overtime on Tuesday or Wednesday.
- j) Members on vacation are not eligible for overtime. For purposes of overtime, vacation leave begins at the time a member is actually off work and ends when he reports back. For example, a member's vacation starts at 7:00 AM on April 15 and he reports back to work at 7:00 AM on April 30. He is eligible for overtime on April 13 and 14, but he is not on April 28 or 29. This rule is written for purposes of consistency. This is being approached in different ways by different people.
- k) Members off on holiday, vacation, or incentive leave of one shift or less are ineligible for overtime only on their shift while they are actually on leave. For example, a member takes a holiday on Monday night. He is eligible for overtime on Tuesday.

- l) Operations Chiefs may consider response time in the hiring process. For example, it is 06:45 and the next person on the list for hiring lives approximately 90 minutes away. The position needs to be filled at 07:00 or someone will be forced to stay overtime. It is appropriate to skip the out of town person and go down the list to someone who lives closer. It would not be appropriate to skip someone if the hiring is being done for the PM shift and there is sufficient time for travel. The Operations Chief needs to use judgment in this process. He must balance giving equal rights to overtime work to all members against the immediate need to fill an open position. If a member is skipped when hiring for daytime because of travel time, the skipped member(s) shall be considered for the PM shift if needed.
- m) When calling for overtime, always identify yourself and the purpose of your call to the person answering the phone even if the member is not home. If you reach an answering machine, leave this information on the machine. This is the proper and courteous thing to do and helps prevent complaints that the member was not called.
- n) Phone rings are only 5 seconds apart. Always let the phone ring at least 6 times before hanging up and writing "no answer" on the call sheet.
- o) Both primary and secondary contact numbers are shown on the overtime sheet. Primary numbers will always be called. Secondary numbers are shown for convenience sake and are not required to be called. Be consistent. If you call the secondary number for one person, call them for all.
- p) Show equal consideration to all members when hiring overtime. Each member deserves an equal chance to work. If you have time to let one member's spouse call him to call you back, treat all the same. Favoritism has no place in the hiring process.
- q) Only members assigned to Operations Division are eligible for regular overtime in Operations Division. New members who have not completed training and members assigned to other divisions are not eligible. Members are not eligible for regular overtime on their own shift.

11-2 Emergency Recall

- a) Emergency recall hiring will be handled differently. If an entire shift is needed to be recalled, or all off duty personnel, the Incident Commander should request the dispatcher to initiate a recall of a particular shift or shifts through the "Code Red" system. When the Incident Commander needs a certain number of personnel (less than a full shift), he should contact the investigator on call and request that the investigator initiate a recall of personnel until he has contacted the required number. Members living in the immediate Texarkana area will be called before those who travel any significant distance. No particular order of calling is required in an emergency recall. Any members who can be reached will be hired.

Section 12 Miscellaneous Provisions

12-1 Moonlighting

- a) City personnel guidelines require that all full-time city employees who hold other positions of paid employment or accept pay for services obtain written approval of their department head prior to accepting such employment. The Department Head may cancel such approval at any time it is determined that such outside employment conflicts or interferes with a member's duties and responsibilities as an employee of the City of Texarkana, Texas.
- b) Members wishing to request such approval shall do so on a form available from the Fire Chief's office. Members must fill out forms completely, providing all requested information.
- c) Members shall give priority to their duties and responsibilities as Fire Department employees over any responsibility to other employers. Such responsibility to another employer shall not be a valid reason for not responding to an emergency recall, mandatory overtime, required meeting, required training, or any other obligation to this department.
- d) Members shall not engage in business activities related to other employment while on duty and shall not use city property or facilities for such activities.
- e) Members shall use care in selecting outside employment to ensure that the employment does not create a conflict of interest with regard to their Fire Department employment.
- f) Members shall not use their status as Fire Department members in any way to generate additional business or solicit favors in regard to outside employment.
- g) Members shall inform the Fire Chief on the appropriate form when the member leaves employment at a part-time job previously approved.

12-2 Flower Fund

- a) A flower fund has been established in the Fire Department. This fund shall be maintained to provide flowers in accordance with these guidelines.
- b) When the balance in the fund is depleted, the Battalion Chiefs in charge of each crew and division will collect a contribution from each participating member. The particular amount of the contribution will be determined by the Fire Chief. Participation by members is voluntary.
- c) The flower fund will be administered by the Fire Department Administrative Coordinator. The Administrative Coordinator will receive and deposit all contributions, make payments, and place orders. In the absence of the Administrative Coordinator, the Fire Chief or a member designated by the Fire Chief will administer the fund.
- d) Flowers will be sent to the funeral of a current member, the immediate family of a current member, or a retired member. For purposes of this section, immediate family is defined as husband, wife, son, daughter, father, mother, brother, sister, father-in-law, or mother-in-law.
- e) If requested by the family of the deceased, a contribution may be made to a chosen charity in lieu of sending flowers.
- f) Members who become aware of a death in one of these categories shall notify the Battalion Chief on duty. The Battalion Chief shall notify the Fire Chief so that necessary arrangements can be made.

12-3 Nepotism

- a) City personnel guidelines regulate nepotism within the City government. Refer to the personnel guidelines for exact wording.
- b) Within the Fire Department, the nepotism rules will be applied as follows:
 - i) Two related members will not be allowed to work at the same station.
 - ii) Two related Captains will not be allowed to work on the same crew.
 - iii) No member shall supervise, directly or indirectly, a related member.
- c) As long as the requirements in 3-9.02 above are not violated, related members may work on the same shift. Operations Chiefs should make a reasonable effort to accommodate related members when a related member is eligible for overtime on his relative's shift.
- d) Related members will not normally be permanently assigned to the same crew. While legal, it would present scheduling problems if the restrictions had to be dealt with on a regular basis.

12-4 Education and Training Procedures

- a) In order to maintain consistency between City personnel guidelines and Fire Department policies while maintaining an awareness of differences in Fire Department schedules, the following policy will be followed in regard to attending training or college & university classes on duty days.
 - i) Members may employ a substitute (swap time) to attend classes, but not from 7:00 AM to 5:00 PM weekdays.
 - ii) Regular college classes may not be attended on duty regardless of job relationship except for classes that are required by the department.
 - iii) Shorter seminars (one or two day) that are job related will be considered on an individual basis by the Fire Chief.
- b) Exceptions to the above policy may be made if the Fire Chief considers a particular class beneficial to the department as a whole and the exception is reasonable.

12-5 Public Service Leave

- a) A member called to jury duty or subpoenaed to testify as a witness will receive public service leave during the time of the court appearance.
- b) If a member is not selected for a jury, the member will return to work immediately after being dismissed by the judge.
- c) If a member is selected to serve on a jury, the member will return to work after the completion of the trial and dismissal by the judge.
- d) A member called as a witness will return to work as soon as released by the judge.
- e) The above guidelines are general. Obviously, if a member is selected for a jury but does not have to report for an extended period of time, he should work when scheduled in the interim. Common sense must be used in applying these guidelines.
- f) All members shall document court appearance requirements by providing a copy of the juror summons or the subpoena.

12-6 Member Telephone Numbers

- a) All members are required to provide their home telephone number for contact during off duty hours.
- b) Normally, member phone numbers will be posted at all fire stations and in the Operations Chief's office.
- c) If a member requests in writing, his phone number will be omitted from the lists posted at the fire stations. It will still be included on the list posted at the Operations Chief's office.

- d) Member's phone numbers are not to be released to callers. If a request is received for a member phone number, advise the caller that the number cannot be released. Offer to take the caller's name and phone number and relay the information to the member as soon as possible. Always maintain a professional and courteous attitude when dealing with this situation.

[illegible]

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[illegible]

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[illegible]

[illegible]

§ 553.31**29 CFR Ch. V (7-1-11 Edition)**

in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a *different capacity*. This would be the case even though the work was *occasional or sporadic*, and, was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a *different capacity*.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a *different capacity*. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a *different capacity*, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

§ 553.31 Substitution—section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

November 23, 2004

FLSA2004-23

Dear **Name***,

This is in response to your letter requesting an opinion letter concerning the issue of "donating" and "exchanging" time under section 7(p)(3) of the Fair Labor Standards Act (FLSA) for firefighters employed by the **Name***. We regret the long delay in responding.

A firefighter suffered an injury and was unable to work for an extended period. Her fellow firefighters decided to work her regular shift to ensure that her pay and benefits would continue uninterrupted. The employer, after becoming aware of this practice, disallowed it, and stated that the injured firefighter would be required to repay all the donated time. A discussion between you and a member of my staff on March 9, 2004, revealed that this employee has not worked for about four months, and during that time up to nine of her co-workers voluntarily substituted in her place during her scheduled shifts. On average, each of the firefighters substituted one 24 hour shift on her behalf.

You ask whether a group of firefighters may "donate" time to another firefighter by working in her place during her regular shift schedule in order for her to receive regular pay. The FLSA does not use the terms "donate" or "exchange," but rather uses the term "substitute." Generally, the FLSA and the implementing regulations provide that public agency employees may agree to substitute for each other and that the pay of both the substituting and substituted employee is unaffected. These provisions would permit the scenario described in your letter as long as the "substitution" comports with the statutory and regulatory substitution requirements set out below.

Section 7(p)(3) of the FLSA provides that two individuals employed in the same capacity by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours. 29 U.S.C. §207(p)(3). It further states that the hours worked by the substituting employee shall be excluded by the public agency in the calculation of the hours for which the substituting employee is entitled to overtime compensation under the Act. The implementing regulations provide that when "one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift." 29 CFR §553.31(a).

The regulations limit the application of section 7(p)(3) to situations where the "employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or 'trade time' with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience." 29 CFR §553.31(b).

The implementing regulations also provide guidance on satisfying the statutory requirement for a public agency to approve an agreement between employees to substitute for one another. This approval requirement is satisfied "when the employer is aware of the substitution and indicates approval in whatever manner is customary." 29 CFR §553.31(d).

Finally, there is no provision in section 7(p)(3) or its implementing regulations that could be construed to require one individual to "repay" the other individual who agrees to a work substitution arrangement. Previous opinion letters issued by the Wage and Hour Division, dated January 2, 1987 and December 13, 1993, have stated consistently that there is no FLSA requirement that an employee substitute in turn in order to pay back the other employee. This is a matter left for the parties to resolve.

You also ask whether a firefighter may substitute shifts with more than one firefighter at any one time.



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

Neither section 7(p)(3) nor its implementing regulations limit the number of substitutions between employees. See January 2, 1987 opinion letter. However, as mentioned above, an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. Additionally, section 7.7 of the collective bargaining agreement between the **Name*** and the **Name*** Professional Fire Fighters Union Local 3174 is consistent with this requirement by noting that employees "may exchange shifts if advance approval is obtained from the Fire Chief, and there shall be no liability for overtime pay as a result of the shift exchange." Thus, while both section 7(p)(3) and the collective bargaining agreement require employer approval to substitute work performed by one employee for another employee, neither prohibits a public agency from limiting the number of times work substitutions can be exchanged.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

*Note: * The actual name(s) was removed to preserve privacy.*

TTFD-Schlotter, Eric

From: Melissa Cranford <cranford@laborcounsel.net>
Sent: Wednesday, July 22, 2015 10:35 AM
To: TEX-Powell, Jim
Subject: SWAP time issue

CONFIDENTIAL COMMUNICATION: PROTECTED BY ATTORNEY-CLIENT PRIVILEGE

Dear Jim:

Per our conversation of yesterday, please be advised that the City has a large area of discretion in regulating the practice of shift swapping in the fire department. Please find some of the options we discussed below, from most restrictive to least:

1. Prohibit employees from engaging in shift swapping. (The only caution I would add, is that it needs to be applied uniformly and in both the police and fire departments.)
2. Prohibit employees from paying workers directly. (This is probably a good limitation for a number of reasons, as the City does have some exposure in allowing an individual to work if it results in either a minimum wage violation or an overtime deficit because of additional time worked for which the employee would not receive a time and a half equivalent. Allowing the extra shifts also drives up the potential cost of overtime if paid in accordance with the FLSA and the City's payroll practices. Further, by allowing an employee to pay a co-worker out of pocket to work instead of a time-for-time swap results likely results in a non-payment of payroll taxes and proportional retirement benefits.)
3. Require a minimum number of hours to be worked by each employee per pay period or per month. (This restriction is also backed up by the guidelines for the Affordable Care Act. Under the ACA, to be considered a full-time employee and eligible for employee sponsored coverage, employees must work 30 hours per week. Employees who are not working 30 hours per week, but are accepting benefits may be engaging in fraudulent conduct under the insurance plan. Employers who knowingly allow the employee's conduct may also encounter liability through the plan documents.)
4. Require a minimum number of shifts to be worked per pay period or per month.
5. Require that shift swap be paid back within a pay period.
6. Require approval from supervisor to engage in shift swapping
7. Prohibit shift swapping between ranks. (i.e., only drivers may work for drivers.)

These are some of the most obvious and common limitations, but a combination of any of these rules may also be instituted. Please let me know what questions you might have in forming a policy.

Kindest regards,

Melissa H. Cranford

Approved;

C. P. Birmingham, Fire Chief

Texarkana, Texas
December 15th, 1954To: C. P. Birmingham
Chief Fire Department
Texarkana, Texas

We; the undersigned members of the Texarkana, Texas Fire Department, desire to make the following agreement. It is agreed and understood by and between each of the undersigned that in the event any of us should become sick or disabled to the extent that we are unable to carry out our duties in the Fire Department., and after all sick leave has been exhausted by the man affected that we agree to "double" for him. Providing however, that the following provisions are complied with.

(1) No member is to be actively engaged in gainfull employment while receiving the benefits of this agreement. If the members of this agreement feel that this provision is being violated or abused they can by a majority vote "expell" the member in question.

(2) No member is required to work (double) during his vacation or specified (regular) day off.. However this provision is optional and should a man elect to work during these periods he can do so. Should a member desire ~~not~~ to work during these periods he is required to make up the time at a later date. Each mans cooperation will contribute to the success of this agreement.

agreement

(3) The members of this ~~xxxx~~ request the Chief and Department Officers to allow the men that are doubling to work at the station where the vacancy exists, as a result of man being off sick or disable. However this request is made with the thought in mind of maintaining the efficiency of the Department at all times.

EACH UNDERSIGNED MEMBER IS ENTITLED TO RECEIVE DOUBLING BENEFITS OF 180 WORKING DAYS (not to exceed 180 work days)

Resigned	<i>Charles W. Ryan</i>	<i>E. D. Dixon</i>	Retired
Deceased	<i>Calvin Hall</i>	<i>B. H. Jamell</i>	Retired
3	<i>Wm. Hutchison</i>	<i>H. D. Schlink</i>	Retired
4	<i>Jack Haines</i>	<i>E. F. Slaton</i>	
5	<i>Raymond Jackson</i>	<i>Joe A. Burnett</i>	Resigned
6	<i>R. T. Ames</i>	<i>G. I. Bennett</i>	
7	<i>Joe Smith</i>	<i>J. H. Hughes</i>	Resigned
Deceased	<i>W. M. Wargis</i>	<i>Joe H. Gill</i>	
9	<i>A. C. Brandon</i>	<i>Joe E. Benjamin</i>	Retired
Retired	<i>B. B. Ball</i>	<i>B. W. Galt</i>	
Retired	<i>I. B. O'Donnell</i>	<i>H. E. McFee</i>	
11	<i>Wm. A. Johnston</i>	<i>B. J. Chapman</i>	Retired
Resigned	<i>Paul M. Piffard</i>	<i>J. H. L. Brown</i>	Resigned
Retired	<i>John</i>	<i>B. J. Fox</i>	
13	<i>H. E. Lendley</i>	<i>Joe E. Pope</i>	Deceased
14	<i>Joe E. Pope</i>	<i>Edward Benzig</i>	
Resigned	<i>W. H. Dyer</i>	<i>Clayton R. Finney</i>	Deceased

Additional signatures to be made on the reverse side.

REGULAR MEETING
DECEMBER 28, 1954
7:00 P.M.

The City Council of the City of Texarkana, Texas, met in Regular Session in the Council Chambers of the Municipal Building, December 28, 1954 at 7:00 P.M. Mayor A. P. Miller, Jr. present and presiding.

CALL TO ORDER

Chief of Police Leon Arnold called the meeting to order.

ROLL CALL

On roll call the following Aldermen were present:

Hon. J. R. Bryant, Alderman Ward 1	Hon. N. S. Petty, Alderman Ward 5
Hon. A. P. LeGrand, Alderman Ward 2	Hon. C. E. Hervey, Alderman Ward 6
Hon. Paul Blankenship, Alderman Ward 3	Hon. Geo. McCoppin, Alderman at large
Hon. J. W. Poore, Jr., Alderman Ward 4	

* * * * *

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LIGHT, WATER AND FIRE

Alderman Petty discussed the matter of off duty firemen which was placed in his Committee at the last meeting.

ACTION TAKEN

Motion was made by Alderman Petty, seconded by Alderman Bryant, that firemen in the Fire Department of the City of Texarkana, Texas, shall be permitted to engage in agreements to double for sick or disabled fellow firemen, not sick, injured or disabled in line of duty, said doubling to be on a volunteer basis, without any compulsion from anyone. The sick, injured or disabled firemen shall be carried on the payroll of the City of Texarkana, Texas, after his sick leave has been exhausted so long as there is some qualified fireman of the Fire Department of the City of Texarkana, Texas, working for him during his tour of duty, and the period of time for such doubling shall not exceed 180 working days. For the purposes of clarity, if a fellow fireman agrees to double for the sick, injured or disabled employee, fails to present himself for work, the sick, injured or disabled firemen shall be considered absent without leave. If a fellow fireman presents himself for work and begins work, the fellow fireman will be considered in line of duty for all purposes, except pay purposes. If the fellow fireman violates any civil service rule while doubling for a sick, injured or disabled fireman, the fellow fireman shall be subject to such disciplinary action as though he were on his regular tour of duty.

On roll call the following Aldermen voted:

Yeas: Bryant, LeGrand, Blankenship, Poore, Petty, Hervey, McCoppin
Yeas: 7
Nays: None

McKINNEY FIRE DEPARTMENT
ADMINISTRATIVE DIRECTIVE

Issued 08/09/2013	Archived:
Effective: 08/09/2013	
Revised: 05/21/15	
Authorized by: D T Kistner	Date: 05/21/15

Trade-Out 1.028

Related Directives/SOG/Memo's	Related Forms

1.028.01 **PURPOSE:**

It is the purpose of this policy to outline and define the Trade-out Policy for the McKinney Fire Department.

1.028.02 **SCOPE:**

It is the policy of the McKinney Fire Department to allow shift personnel to trade with each other on a limited basis while meeting the needs of the Department. It shall be the responsibility of all members and Fire Department employees to be familiar, understand, and implement this directive.

1.028.03 **DEFINITIONS:**

Trade-out – By mutual agreement, one individual of equal classification is voluntarily working for another with the concurrence of their supervisors.

Company Officer – the officer (s) for whom a person works and officially reports.

1.028.04 **POLICY:**

- A. Company officers are responsible for their personnel; they have the authority to approve or deny trade-out requests.
- B. All trade-outs shall be on a time-for-time basis only.
- C. Trade-out shall be allowed on an “as needed” basis, regulated by the company officer. The members involved in the trade-out will be within the same classification and have the necessary knowledge and expertise to perform all the duties of the position. (e.g., Captain for

Captain, Driver for Driver, Firefighter for Firefighter). Duties, functions, and activities of a particular assignment shall not be compromised.

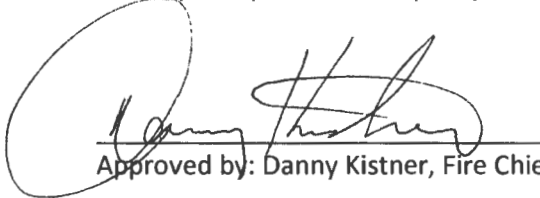
- D. Members are responsible for their particular shift. Members cannot delegate responsibility for their work shift to another. When a substitute does not or cannot report as agreed, the responsibility for securing another substitute remains with the member originally scheduled to work. If a substitute cannot be secured, the regularly scheduled member shall report for work as scheduled. If a substitute calls in sick or must leave due to illness or family emergency, the sick time will be charged to the regularly scheduled member.
- E. Trade-out records will be the responsibility of the members trading time. The company officer will be responsible for recording the trade on the Central Calendar as well as keeping all records in the stations trade-out log. Disputes should be settled at the company officer's level, then up the chain of command as required.
- F. Member will not be eligible for trade-outs while on probation for fire recruit or disciplinary probation.

1.028.04 SUSPENSION:

- A. Trade-out leave shall be considered a privilege, and as such, may be suspended. Any individual placed on trade-out suspension shall not give or receive new trade-outs for the duration of the suspension. Any outstanding time to be received or given by the suspended individual shall only be allowed upon approval of the Battalion Chief.

1.028.05 EXCEPTIONS:

- A. Any exceptions to this policy shall be at the discretion of the Fire Chief or designee.


 Approved by: Danny Kistner, Fire Chief

Nacogdoches Fire & Rescue	104.3
Standard Operating Procedure	Leave Time – Exchange of Time
Originally Issued: 00-00-00	Approved By:
Last Revision: 07-13-11	

OBJECTIVE:	The objective of this section is to establish guidelines regarding exchange of time that are in addition to those leave guidelines established in the City of Nacogdoches Personnel Policies guidebook. The following information is specific for Nacogdoches Fire & Rescue operations.
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PHILOSOPHY

Exchange of time between members increases flexibility among firefighters, improves employee morale and has a direct relationship to decreased use of sick and emergency leave.

STANDARD

- I. Exchange of Time
 - A. Members may have another member work for them for a total of 96 hours each month. Exchange of time must meet other conditions of this section.
 - B. Exchanges of time are just that, exchanges of time. Members may work for others who can reasonably be expected to repay them with time (see subsection I(2) below for special circumstances). Members are not authorized to exchange time for remuneration other than like time itself.
 - C. All exchanges must be documented on the Department's Exchange of Time Agreement form and must be approved prior to the occurrence of the exchange.
 - D. A station officer has the authority and responsibility for approving or not approving Exchange of time request for Driver/Engineers and Firefighters.
 - E. With due cause, a BC may disapprove an Exchange of Time that was approved by a Captain.
 - F. A Battalion Fire Chief (BC) has the authority and responsibility for approving or not approving Exchange of time request for Captains.
 - G. With due cause, a BC may disapprove an Exchange of Time that was approved by a Captain.
 - H. Exchanges permitted:
 1. Battalion Fire Chief for Battalion Fire Chief
 2. Captain for Captain or Driver/Engineer
 3. Driver/Engineer for Captain, Driver/Engineer, or Firefighter
 4. Firefighter for Firefighter or Driver/Engineer
 - I. Exchange of Time form: The Exchange of Time form is to be filled out before the exchange of time takes place. This document is to cover any possible questions about why an employee was working other than their normal shift. Both parties must sign the form before the exchange takes place.
 - J. Special Circumstances:
 1. If an employee exhausts all leave time due to a major illness or accident, other members may at their own choice exchange time for that employee without the affected employee having to replace the time. Such situations must be approved by the Fire Chief

2. From time to time other situations occur that make non-traditional exchange of time appropriate (working outside of permitted ranks, extended family illness, etc.). Variances of this policy to accommodate those occasions require approval of the fire chief.
- K. Qualifying Situations:
1. An employee may not work for another employee on Exchange of Time after being absent due to sickness until they have completed their next shift assignment.
 2. If an Exchange of Time request was previously signed before an employee is off sick, it is the responsibility of the member who was to work to get someone else to take their place or notify the member for whom they were to work for that they cannot work. Any disciplinary action, docked pay, or charged leave time will be against the employee who was to work for another employee.
 3. Anyone on Firefighter Probation status is not eligible to work for another employee but they may have someone else work in their place.
 4. An employee on the same shift cannot take Vacation or Comp-time to Exchange Time with someone on their particular shift.
 5. An employee working overtime cannot get someone to work for him/her.
- L. Exceptions: Exceptions to this policy may be made in extenuating circumstances. Members who feel they have a need for an exception shall present their request in writing to their BC. The final decision will come from the Fire Chief.

Legal Basis

Texas Local Government Code

Section 142.001. GENERAL PROVISIONS RELATING TO HOURS OF LABOR AND VACATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN MUNICIPALITIES.

(d) Sections 142.0013, 142.0015, and 142.0017 do not prevent a fire fighter or police officer from working extra hours when exchanging hours of work with another fire fighter or police officer with the consent of the department head.

29 CFR §553.31(a).

Title 29: Labor

Subtitle B: Regulations Relating to Labor (Continued)

CHAPTER V: WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

SUBCHAPTER A: REGULATIONS

PART 553: APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Subpart A: General

553.31 – Substitution - section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee

substitute or trade time with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or trade time under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

		
Exchange of Time Agreement		
In accordance with Chapter 142 of the Texas Local Government Code, firefighters are eligible to exchange time for time with other firefighters with approval of the department head. Exchanges must be hour for hour unless otherwise approved by the Fire Chief (ex: extended illness, etc.). Exchanges for any remuneration other than time are not authorized.		
Member Giving Exchange		Person Receiving Exchange
Date of Exchange	Begin Time	End Time
This agreement is for a total exchange of _____ hours.		
CERTIFICATION		
- The member <u>giving the exchange</u> is responsible for reporting to the assigned station on the date and time shown to work. - The member <u>giving the exchange</u> will be charged leave time or docked pay to cover any and all overtime cost as a result of failing to fulfill the terms of this Agreement and may be subject to disciplinary action. - The member <u>giving the exchange</u> certifies that they are capable of performing the duties of the person they are working for. - The member <u>giving the exchange</u> shall not be absent due to emergency or illness on their last shift prior to the exchange. - The member <u>giving the exchange</u> is not on firefighter probationary status. - Members may only receive 96 hours per month in exchanges unless approved by the Fire Chief. - Exchanges must be approved in advance and may be denied for the good of the Department or other valid reason by the shift commander.		
Member Receiving Exchange		Date
Member Giving Exchange		Date
Officer Authorizing Exchange		Date



Standard Operating Procedures/Guidelines

Revision Number

2

Shift Adjustment Policy

Date Issued: 10/19/2012 • Date Revised: 09/09/2016

Purpose: This policy will serve as the guideline for personnel wishing to perform mutually agreed-upon shift adjustment(s). This policy will only address mutual shift adjustment(s) or "time-for-time" agreements. Effective with this policy, shift adjustments based on "time-for-cash" or "time-for-services" agreements **will no longer be an option.**

Scope: The *Shift Adjustment Policy (aka: Traded Hours/Shift Trade/Time Trade)* SOP/SOG applies to all members within the Operational field of the Longview Fire Department.

Definitions: TRO (Traded Hours Off) is the payroll code for the time off an employee is using.
TRW (Traded Hours Worked) is the payroll code for the time worked for another employee.

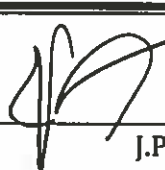
I. Policy

- A.** An employee will be allowed no more than 10 shifts or 240 hours of TRO (Traded Hours Off) per calendar year. In addition, no employee will be allowed more than 10 shifts or 240 hours of TWO (Traded Hours Worked) per calendar year.
- B.** Employees participating in a mutually agreed-upon shift adjustment must be completely capable of fulfilling the expected job-duties of the individual with whom they are replacing.
- C.** Firehouse will be properly documented to reflect a shift adjustment taking place with the proper payroll codes TRW or TRO as the employee's Activity Code for that particular time/shift as well as the other mutually agreeing party.
- D.** When an employee wishes to arrange a shift adjustment they will notify their immediate supervisor not less than 24-hours prior to the scheduled date that the adjustment is to occur.
- E.** The Station Officer and/or Battalion Chief retain the authority to approve/deny any shift adjustment being requested at their discretion with reasonable justification.
- F.** Once a shift adjustment has been mutually agreed-upon at the individual-level and further approved at the supervisory-level, the responsibility of ensuring that the work expectation is met becomes that of the individual who agreed to cover the position. In the event that circumstances arise (sick, emergency, etc.) that prevent the adjustment from taking place as arranged, the responsibility to have the position covered remains with the individual who was expected to

work and any subsequent replacements must also meet all applicable work expectations.

- G.** The Training Section Chief must authorize (prior to Operational approval) all shift adjustments involving Apprentices and non-checked off Firefighter/Medics.
- H.** Violations of the Shift Adjustment Policy by exceeding the guidelines within the calendar year shall result in disciplinary action (Class II offense) and restriction from participating in future shift adjustments for a period of twelve months.

APPROVED:



J.P. Steelman, Fire Chief

BURLESON FIRE DEPARTMENT



104.06

Exchange of Time

Purpose

The purpose of this policy is to establish the procedures to be followed when exchanging time with another employee.

Policy

The Burleson Fire Department will allow exchanges of time when all stated procedures are followed.

Procedures

The following conditions and guidelines will designate when a trade out will be allowed:

1. A Burleson Cobweb form must be completed online prior to trade date, to be placed on the calendar, and immediate supervisor notified by employee.
2. A new employee will not be eligible for exchange of time until they complete their probation.
3. An employee will be responsible for making up any mandatory training missed, if the trade alters any scheduled training or any planned special events.
4. At all times, persons in each assigned apparatus positions must have completed the appropriate qualifications in the Task Books (SOP 102.02, 102.03, 102.04).



LUFKIN FIRE DEPARTMENT

TRADE OUT POLICY

ADMINISTRATIVE
DIRECTIVE
125

9.3.m

Issued/Revised: 02/15/2012, 02/10/2014 Effective: 02/15/2012, 03/12/2014 Reviewed: 01/14/2014	<u>Related Directives/Memos/SOP</u>	<u>Related Forms</u>
	AD 150 Sick Leave Policy AD 190 General Orders	Trade Out Form at BC Office

125.01 PURPOSE

To provide a standardized policy for managing trade outs within the department. This Directive details the guidelines for the following scenarios:

- A. Battalion Chief's Discretion
- B. Planned Trade Out
- C. Unplanned Trade Out
- D. Sick leave use by scheduled working employee
- E. Unexcused absence

125.02 BATTALION CHIEF'S DISCRETION

It shall be at the Battalion Chief's discretion whether to accept or deny the trading of a shift or any portion of a shift with another member or employee whether it is planned or unplanned. A trade out request form must be filled out and signed by both parties and the Battalion Chief prior to allowing a planned trade out. Failure to adhere to the following procedures may result in loss of trade out privileges and/or possible disciplinary action depending on circumstances, frequency, and/or severity.

It is the responsibility of the replacement to disclose to the affected Battalion Chief any lack of qualifications and/or capabilities with regard to their ability to perform all of the duties of the requesting employee. Disclosure is to take place prior to approval or disapproval of the trade-out.

125.03 PLANNED TRADE OUT:

A planned trade out is defined as one in which all paperwork has been completed and signed by the shift before the trade-out is to take place.

The required paperwork is the form on the clipboard at the office of the Battalion Chief. It must be completed and all required signatures obtained, as well as approved by the Battalion Chief. The trade-out should be placed on the department electronic calendar by the Battalion Chief or their designee, so that it will be noted when morning assignments are being completed.

Persons trading out must be of the **SAME** EMS certification level for the Lt. and FF positions. All persons trading out must be within one rank of each other. It should also be understood that if the person working is not trained to fill in a specialized position of the requesting employee, then the trade out will be refused on that basis.

This is the **PREFERRED** method of trading shifts.

125.04 UNPLANNED TRADE OUT:

The department recognizes that occasionally unforeseen personal events arise and employees need to be off within reasonable parameters and frequencies. When the concerned parties are unable to complete the required paperwork prior to the date the trade out is to occur the

Attachment: 2016-116 ATTH 11 City of Lufkin FD Policy (1545 : 2016-116 RES revising fire department swap time policy)

following procedure **MUST** be followed **WITHOUT** deviation.

- A. The person requesting the trade will contact their Battalion Chief (or designee) prior to the designated shift and request the trade. If the trade is approved, then the working employee will contact the affected Battalion Chief and verify that they will report for duty in place of the requesting employee.
- B. If the requestor is unable to contact their Battalion Chief they are to contact the on duty Battalion Chief and submit their request under the same procedure and in accordance with all other policies and procedures of the department.
- C. As soon as possible, on the shift in question, the working employee will complete all required paperwork.
- D. Failure to follow these procedures may result in the loss of trade out privileges which may be invoked by a Battalion Chief or the Fire Chief.

125.05 SICK LEAVE USE BY REPLACEMENT EMPLOYEE:

If an employee has been approved to work for another employee and then finds that they are sick and unable to work the shift then they are directed to call and attempt to find a replacement. If they are unable to find a replacement then they are directed to conform to the normal **sick leave procedure (AD 150)**. The person who was scheduled to work will be debited vacation, not the person who agreed to work the shift. The trade-out will need to be resolved between the affected employees.

125.06 UNEXCUSED ABSENCE: If the preceding policy is not followed, the employee will be considered to be AWOL, and appropriate departmental disciplinary policies will be adhered to. (See General Orders 190.29)



Ted Lovett, Fire Chief

STANDARD OPERATIONAL GUIDELINES	SECTION 6	SUBSECTION B
EMPLOYEE SUBSTITUTIONS		AUGUST 2013

Par. 01 **Purpose**

A. To establish appropriate policy, to be used by Paris Fire Department personnel, for regulating shift trades.

Par. 02 **Substitution Matrix**

A. The following applies:

1. A Deputy Chief may substitute for another Deputy Chief or for a “qualified” Captain.
 - a. *Qualified* – refers to the capabilities/experience of an employee who has previous experience stepping-up to the higher rank and can competently complete those duties at the higher ranking level (e.g., a Captain which has previously stepped up to the Deputy Chief position and has had Incident Command experience would be “qualified” to repay a Deputy Chief for a time trade).
2. A Captain may substitute for another Captain, a Driver Engineer, or for a Deputy Chief (if qualified).
3. A Driver Engineer may substitute for another Driver Engineer, a Firefighter, or a Captain (if qualified and then only at the discretion of that shift’s Deputy Chief), but **NOT** for a Deputy Chief.
4. A Firefighter may substitute for another Firefighter, or a Driver Engineer,
5. A Probationary Firefighter (PF) may substitute for another PF or a Firefighter, but only as allowed by the shift’s Deputy Chief of whom the substitution will be on.

Par. 03 **Prerequisites**

A. Substitutions are a privilege and are not to be abused and of equal rank wherever possible.

1. Substitutions are an equal time-for-time trade.
2. Substitutions do not qualify for step-up or any salary compensation.
 - a. An employee substituting for another employee at a higher ranking level does so without remuneration.
3. An employee may NOT pay cash or offer other considerations for future substitutions.
 - a. Monetary reimbursement for time already owed, however, may be permitted, but only with special permission of the Fire Chief.
 4. Each and every substitution must be verified by both shift’s Deputy Chief’s prior to a trade.
 - a. Deputy Chief’s must ensure that apparatus staffing and/or special skill needs are not jeopardized.
 - b. Once a trade has been verified with the DC’s involved, the substitute employee then becomes responsible for the duty.
 - aa. If the substitute employee fails to report for the substitute shift, that person (the substitute employee) will be considered AWOL and subject to loss in pay
 - bb. If, however, the proposed trade has not been verified with the Deputy Chief’s, then the person originally scheduled to work the shift will be responsible for the duty and, if the duty is not met, will be considered AWOL and subject to loss in pay.
5. A person substituting for an employee whose duties include driving/operating apparatus must have the Driver/Operator Certification.

STANDARD OPERATIONAL GUIDELINES	SECTION 6	SUBSECTION B
EMPLOYEE SUBSTITUTIONS		AUGUST 2013

6. An employee of rank, who is working as a substitute, will be used in a position of rank instead of utilizing “step-up” for another employee to fill the position.
 - a. An exception may be for training purposes as authorized by the Fire Chief.

CITY OF SHERMAN FIRE DEPARTMENT
STANDARD OPERATING PROCEDURES
 103 Exchange Time

Issued: 10/2001
 Revised 01/2013
 Page 1 of 4

OBJECTIVE: To establish guidelines for the substitution of time for members of the Sherman Fire Department

103.01 EXCHANGE TIME

- 103.01.01 Exchange time is voluntary and is a agreement between two members of the department. Members are responsible for tracking exchange time and "pay back" of time.
- 103.01.02 Exchange time shall not result in overtime, out of classification pay, mileage pay or other costs to the City of Sherman
- 103.01.03 The Station Officer being affected by the trade may approve substitution for all exchanges within the same rank and classification. Exchanges out of rank or classification must be approved by the Shift Commander. Once the Station Officer approves an exchange time he must notify the Shift Commander as soon as possible of the trade.
- 103.01.04 The request for substitution must be submitted no later than one (1) hour prior to the trade beginning. Request for exchange time must be completed on the Department Exchange time form. **Request via e-mail and verbal request** will not be accepted. In case of an emergency situation the affected Station Officer shall complete an exchange time form by proxy and note on the form that the form was approved without signature. (01/2013).
- 103.01.05 Members may exchange time with members who do not hold the same qualifications only if the Company efficiency will not be unduly affected by the trade time. Minimum Company efficiency will be defined as three EMT-P personnel at sub stations and a minimum of one EMT-P at Central Station.
- 103.01.06 Members may stay over or relieve early another member up to a maximum of 1.0 hours without having to complete an exchange time form. Approval must be granted from the Station Officer, who must then inform the Shift Commander. (01/2013)

Approved and in effect. J J Jones, Fire Chief

CITY OF SHERMAN FIRE DEPARTMENT
STANDARD OPERATING PROCEDURES
 103 Exchange Time

Issued: 10/2001
 Revised 01/2013
 Page 2 of 4

- 103.01.06.01 If, during the one (1) hour early relief or late relief, the member is required to respond to an incident, the member shall complete a request for overtime. (01/2013).
- 103.01.07 Sick leave by either member involved in the exchange time, prior or immediately after a trade time will result of forfeiture of trade time privileges for a period of three (3) months on the first occurrence. A second occurrence will result in forfeiture of trade time privileges for a period of six (6) months. This may be appealed to the Fire Chief.
- 103.01.08 It is understood that members trading time are expected to maintain any continuing education requirements missed at their own expense.
- 103.01.09 Battalion Chiefs desiring to exchanging time must obtain approval from the Fire Chief.
- 103.01.10 Exchange time must be completed (paid back) within the same calendar year (01/2013). Each member shall work the required number of shifts each calendar year, including approved leaves.(01/2013).
- 103.01.11 Under no circumstance shall a "Cash Sub" be allowed. Trade time is for time only and no other form of compensation shall be permitted. (01/2013).

103.02 RESPONSIBILITY

- 103.02.01 When the exchange time has been approved by both members and approved by the supervisor, the employee who has agreed to work shall be responsible for the duty shift. When the employee who has agreed to work is unable to report as agreed, the responsibility for securing another substitute and getting the approval of the Shift Commander, remains his/her responsibility. (09/08).

Approved and in effect. J J Jones, Fire Chief

CITY OF SHERMAN FIRE DEPARTMENT
STANDARD OPERATING PROCEDURES
 103 Exchange Time

Issued: 10/2001
 Revised 01/2013
 Page 3 of 4

- 103.02.02 If the member who has agreed to work utilizes sick leave to cover the exchange time he will be required to verify the illness according to departmental policy. The member will be charged Sick Leave for the agreed hours and will be placed on trade time restriction for a period of three (3) months on the first occurrence. This may be appealed to the Fire Chief. (09/08).
- 103.02.03 A second occurrence will result in a forfeiture of exchange time privileges for a period of six (6) months. This may be appealed to the Fire Chief.
- 103.02.04 If the member who has agreed to work does not report for duty, that member will be considered to be in violation of Departmental Standard Operating Procedures and may be subject to disciplinary action. (09/08)
- 103.02.05 If the exchange time was not approved or submitted on the Department Trade Time Form, the responsibility for the duty hours remains with the person normally assigned to that shift. (09/08)
- 103.02.05 Members who are working exchange time, for any period of time, are considered "On Duty" and are subject to all department rules and regulations as well as City of Sherman Personnel Policies and Procedures. (10/08)
- 103.02.06 Members who are working exchange time are considered "On Duty" for purposes of protection under Worker Compensation and other like benefits. (10/08).

Approved and in effect. J J Jones, Fire Chief

CITY OF SHERMAN FIRE DEPARTMENT
STANDARD OPERATING PROCEDURES
 103 Exchange Time

Issued: 10/2001
 Revised 01/2013
 Page 4 of 4

Sherman Fire Department
 Exchange Time Form

Name of member regularly scheduled for duty: _____

Name of member who will be working: _____

Date exchange will occur: _____

Hours exchange will occur: _____

Name of affected supervisor: _____

The undersigned members have agreed to trade time. Both members understand that a trade of time should be paid back. Both members participating in the exchange of time understand this is voluntary and in accordance with department policy.

 Supervisor Signature

 Member Signature
 (Regularly scheduled for duty)

 Member Signature
 (Member who will be working)

 (Date form submitted to supervisor)

Approved and in effect. J J Jones, Fire Chief

Tyler

RULES & REGULATIONS**SECTION 33: TRADING OF TIME**

Personnel are allowed to trade time rank for rank with their supervisor's permission. District Chiefs may approve other than rank for rank trading of time in cases of emergencies or unusual circumstances. Members are not allowed to pay someone to work for them.

TTFD-Schlotter, Eric

From: Jennifer Otey <jotey@ci.duncanville.tx.us>
Sent: Thursday, July 30, 2015 8:48 AM
To: TEX-Powell, Jim
Subject: RE: Civil Service Fire Department - Swap Time

Trading Work Time

7.9 A trade or trading time is defined as any exchange of time within one shift between two members of the department. Employees involved in the trade scenario are making an agreement between themselves and not the city or department.

7.9.1 Trades can be taken for the enhancement of education, community service, and personal matters. The number of trades per individual or per shift will be at the discretion of the Station Officers. However, no shift trades shall be allowed if it will cause the employee to work more than (48) forty-eight consecutive hours without time off.

7.9.2 The Fire Department is not responsible for any controversy or discrepancies over trade time, owed, to be paid back, or when trade time is to be paid back.

7.9.3 All trades will be documented on a Trade Form and approved by the Station Officer of the on-duty shift prior to the trade become a bona-fide trade. Trade forms are located at each fire station.

7.9.4 Trades shall be between individuals of equal rank and capabilities.

7.9.5 Any employee who assumes a tour of duty for another also undertakes all responsibilities for that tour of duty.

7.9.6 Failure to report for a trade shall be considered absence without leave and will result in disciplinary action.

7.9.7 Trade time does not impact the FLSA twenty-eight day cycle.

7.9.8 Trade time can only be used when the person requesting the trade is scheduled to be on duty for his/her assigned shift. Trade time cannot be used for days when 114 the individual is not scheduled to be on duty, i.e. you cannot use a trade day if you are scheduled to be on vacation, ESL, holiday, and you cannot use a trade day if you are off on sick leave or workers compensation leave.

Jennifer Otey
HR Manager

From: TEX-Powell, Jim [mailto:Jim.Powell@txkusa.org]

Sent: Wednesday, July 29, 2015 4:46 PM

To: scollard@paristexas.gov; rivy@cityoflufkin.com; Denise Myers; pearls@ci.nacogdoches.tx.us; lstdidham@nbtexas.org; rray@tylertexas.com; jrogers@tylertexas.com; jpittman@tylertexas.com; cjohnston@marshalltexas.net; wgraves@marshalltexas.net; craigl@ci.sherman.tx.us; jvaughn@coppelltx.gov; lnorris@gptx.org; kshields@ci.desoto.tx.us; Janet.goad@midlothian.tx.us; dlee@lancaster-tx.com; Jennifer Otey

Subject: Civil Service Fire Department - Swap Time

Our Fire Department is Civil Service and participates in "swap time," the trading of work shifts among firefighters. I am wanting to know if any of you have a policy regarding swap time. If so, please share. Thanks. jim

Jim Powell, CPM

19.7 – SUB CALLS

- A. Trading or exchanging of on-duty work time between members shall be known as a “sub call”. Sub calls shall be by mutual agreement between the members concerned. Each member will be individually responsible for sub time they owe and sub time owed to them. **A sub call is the exchange of on-duty time; cash transactions related to sub calls are prohibited.** A member who is away from duty on a properly approved sub call where the sub actually works the member’s scheduled duty period shall be considered as present for duty for pay purposes. Members scheduled for duty are the members paid for such duty.
1. A member may be off with a sub only during the member’s regularly scheduled duty period.
 2. A member who subs for another cannot qualify for overtime pay during the period of the sub call.
- B. Sub calls shall be applicable only to members assigned to 24-hour shift duty, Fire Prevention Specialist assigned to the Fire Prevention Division, and members below the classification of Battalion Chief assigned to the Communications Section.
- C. Sub calls are a privilege and are **not** an earned right; abuse of sub calls is cause for this privilege to be revoked. A prime factor to be considered prior to approving a sub call request is operational effectiveness.
- D. Members are allowed to trade time, rank for rank, with their supervisor’s permission. Battalion Chiefs must approve out of rank subs between Firefighters and Drivers and between Lieutenants and Captains. Sub calls for Fire Prevention Specialists must be approved by the Fire Marshal. Assistant Chiefs must approve subs between Captains and Battalion Chiefs.
- E. Sub calls are ineligible for sick leave. If a member becomes ill and unable to work prior to or while serving as a sub, it shall be his/her responsibility to obtain another sub or notify the individual for who he/she was subbing. If another sub cannot be arranged or if the individual who arranged the sub cannot come in and finish the shift, the member who arranged the sub will be charged vacation leave for the remainder of the shift. When vacation time is utilized in these situations, a memo initiated by the member’s immediate supervisor shall be forwarded through the chain-of-command to the Chief of Department for notification purposes.

- F. Members who are injured in the line of duty are eligible for injury leave and Worker's Compensation benefits. This also applies to members injured in the line of duty while subbing. However, if the injured member is unable to work the remainder of the shift due to an injury while serving as a sub, it shall be his/her responsibility to obtain another sub or notify the individual for whom he/she was subbing. If another sub cannot be arranged or if the individual who arranged the sub cannot come in and finish the shift, the member who arranged the sub will be charged vacation leave for the remainder of the shift. When vacation time is utilized in these situations, a memo initiated by the member's immediate supervisor shall be forwarded through the chain-of-command to the Chief of Department for notification purposes.
- G. Sub calls requiring a member to work more than forty-eight (48) continuous hours on an MICU are not allowed. Sub calls for more than two (2) of the member's consecutive shifts must be approved by the Battalion Chief. Such requests must be justified and submitted to the Battalion Chief. The Battalion Chief will determine any impact the request would have on operational effectiveness and forward the request to the Assistant Chief, Operations for notification purposes only.