City of Kingsville, Texas

AGENDA CITY COMMISSION

MONDAY, MAY 12, 2025

REGULAR MEETING

CITY HALL

HELEN KLEBERG GROVES COMMUNITY ROOM

400 WEST KING AVENUE

5:00 P.M.

Live Videostream: https://www.facebook.com/cityofkingsvilletx

I. Preliminary Proceedings.

OPEN MEETING

INVOCATION / PLEDGE OF ALLEGIANCE — (Mayor Fugate)

MINUTES OF PREVIOUS MEETING(S)

Regular Meeting - April 28, 2025

II. Public Hearing - (Required by Law).¹

None.

III. Reports from Commission & Staff.²

"At this time, the City Commission and Staff will report/update on all committee assignments which may include but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance – Financial Services - Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works-Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

Interim City Manager

IV. Public Comment on Agenda Items.³

1. Comments on all agenda and non-agenda items.

V.

Consent Agenda

Notice to the Public

The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.

<u>CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:</u>

(At this point the Commission will vote on all motions, resolutions, and ordinances not removed for individual consideration)

- 1. Motion to approve final passage of an ordinance amending the zoning ordinance by changing the zoning in reference to 3rd, Block 22, Lot 24-27 (Property ID 17385) also known as 620 E. Alice Ave., Kingsville, Texas from R1 (Single Family District) to C2 (Retail District); amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (for Wholesale Bakery Use, Famosa Tortilla Factory). (Director of Planning and Development Services).
- 2. Motion to approve final passage of an ordinance amending the zoning ordinance by granting a Special Use Permit for Wholesale Bakery Use (Tortilla Factory) in C2 (Retail District) at 620 E. Alice Ave., Kingsville, Texas, also known as 3rd, Block 22, Lot 24-27 (Property ID 17385); amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Director of Planning and Development Services).
- 3. Motion to approve final passage of an ordinance amending the zoning ordinance granting a Special Use Permit for a Wireless Telecommunications Pole Tower in C4-Commercial at Paulson's SUB, Lot B, also known as 1025 E. General Cavazos, Kingsville, Texas (Property ID 25758); amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (for a 120' monopole) (Director of Planning and Development Services).
- 4. Motion to approve final passage of an ordinance amending the Fiscal Year 2024-2025 Budget to provide additional funding for South Creek and Golf Course Road lift stations. (repairs to wastewater lift stations for TCEQ compliance) (Public Works Director).
- 5. Motion to approve reappointment of Joy Ansley to the City of Kingsville Health Board for a three-year term, expiring April 25, 2028. (Health Director).
- 6. Motion to approve reappointment of Joni B. Harrel to the City of Kingsville Health Board for a three-year term, expiring May 9, 2028. (Health Director).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

- 7. Consideration and approval of awarding Bid #25-14 for GLO CDGB-MIT Program State Contract number 22-082-016-D218 <u>Project 4A</u>: Alley between E. Johnston Ave. and E. Fordyce Ave. Sanitary Sewer Improvements, as per the recommendation of the consulting engineer. (City Engineer).
- 8. Consideration and approval of a resolution authorizing the Mayor to execute Step 2-Detailed Applications to the Texas Department of Transportation for the 2025

Transportation Alternatives Set-Aside (TASA) Program. (NOTE: City approved Step 1 applications on 1/13/25). (City Engineer).

- Discuss and consider introduction of an ordinance amending the Fiscal Year 2024-2025 Budget to correct funding source on BA #24 and BA #25. (Finance Director).
- 10. Discussion regarding process for selection of a Mayor Pro Tempore. (Commissioner Hinojosa).
- 11. Discuss and consider giving direction to staff on possible charter amendments for the November 4, 2025 election cycle. (Commissioner Alarcon).

VII. Adjournment.

- No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
- 2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
- Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative Commission votes. The speaker must identify himself by name and address.
- Items being considered by the Commission for action except citizen's comments to the Mayor and Commission, no comment at this point without 5 affirmative votes of the Commission.

NOTICE

This City of Kingsville and Commission Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 361/595-8002 or FAX 361/595-8024 or E-Mail mvalenzuela@cityofkingsville.com for further information. Braille Is Not Available. The City Commission reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Section 551-071 (Consultation with Attorney), 551-072 (Deliberations about Real Property), 551-073 Deliberations about Gifts and Donations), 551-074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551-086 (Certain Public Power Utilities: Competitive Matters), and 551-087 (Economic Development).

I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board at City Hall, City of Kingsville, 400 West King Avenue, Kingsville, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time:

May 7, 2025, at 10:00 A.M. and remained posted continuously for at least 72 hours proceeding the scheduled time of said meeting.

Mary Valenzuela, TRMC, City Secretary
City of Kingsville, Texas

This public notice was removed from the official pos	ting board at the Kingsville City Hall on the
following date and time:	
By:	
City Secretary's Office, City of Kingsville, Texas	

MINUTES OF PREVIOUS MEETING(S)

APRIL 28, 2025

A REGULAR MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON MONDAY, APRIL 28, 2025, IN THE HELEN KLEBERG GROVES COMMUNITY ROOM, 400 WEST KING AVENUE, KINGSVILLE, TEXAS AT 5:00 P.M.

CITY COMMISSION PRESENT:

Edna Lopez, Commissioner Hector Hinojosa, Commissioner Leo Alarcon, Commissioner

CITY COMMISSION ABSENT:

Sam R. Fugate, Mayor Norma N. Alvarez, Commissioner

CITY STAFF PRESENT:

Charlie Sosa, Interim City Manager Mary Valenzuela, City Secretary Courtney Alvarez, City Attorney Derek Williams, Systems Administrator Emilio Garcia, Health Director Leticia Salinas, Accounting Manager Erik Spitzer, Director of Economic & Development Services James Creek, Captain Diana Gonzales. Human Resources Director Kobby Agyekum, Senior Planner/HPO Susan Ivy, Parks Director Deborah Balli, Finance Director Rudy Mora, City Engineer John Blair. Chief of Police Juan J Adame, Fire Chief Bill Donnell, Public Works Director Mike Mora, Capital Improvements Manager

Raul Soliz, Human Resources Specialist/Safety & Training

I. Preliminary Proceedings.

OPEN MEETING

Mayor Fugate opened the meeting at 5:00 p.m. with three commission members present. Mayor Fugate and Commissioner Alvarez are absent.

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

The invocation was delivered by Ms. Courtney Alvarez, City Attorney, followed by the Pledge of Allegiance and the Texas Pledge.

MINUTES OF PREVIOUS MEETING(S)

Regular Meeting - April 14, 2025

Special Meeting - April 21, 2025

Motion made by Commissioner Alarcon to approve the minutes of April 14, 2025, and April 21, 2025, as presented. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

- II. Public Hearing (Required by Law).1
 - 1. <u>Public hearing on request to rezone from R1 (Single Family) to C2 (Retail) for a Wholesale Bakery Use (Tortilla Factory) at 3rd, Block 22, Lot 24-27, (Famosa Tortilla</u>

<u>Factory</u>), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385). (Director of Planning and Development Services).

Commissioner Lopez read and opened this public hearing at 5:01 p.m. Commissioner Lopez further announced that this is a public hearing. If anyone would like to speak on behalf of this item, they may do so now with a five-minute limit. Additional time cannot be extended by the City Commission.

Mr. Erik Spitzer, Director of Planning and Development Services stated that Mr. Jose Flores and Mr. Jaime Flores, applicants and owners approached the Planning Department on February 20, 2025, requesting approval of re-zoning the parcel of land located at 620 E. Alice from R1 Single Family District to C2 Retail District to support re-opening a tortilla factory that was open for 50 years. The property has been vacant for 3 years and is located in the city's historic district. He further stated that this establishment was recently purchased after remaining vacant for approximately 3 years. It is currently zoned R1 Single Family District. Adjacent parcels of land are currently zoned R1 Single Family District. Parcels of land located two to three blocks away are zoned C1 Neighborhood Service District. Mr. Spitzer continued to state that a Planning and Zoning Commissioner meeting was held on April 16, 2025, and deliberated over the request to rezone the parcel of land located on 620 E. Alice. Staff mailed twenty-five letters to neighbors within the 200-foot buffer, and the city has received no feedback from those notified. The Planning and Zoning Commission voted to recommend approval of the rezone to support reopening a tortilla factory.

Commissioner Alarcon commented that years ago there were other businesses within the area. This establishment has been there for 50 years.

There being no further discussion, Commissioner Lopez closed this public hearing at 5:08 p.m.

2. <u>Public hearing on request for a Special Use Permit for a Wholesale Bakery Use</u> (Tortilla Factory) in C2 (Retail) at 3rd, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385). (Director of Planning and Development Services).

Commissioner Lopez read and opened this public hearing at 5:08 p.m. Commissioner Lopez further announced that this is a public hearing. If anyone would like to speak on behalf of this item, they may do so now with a five-minute limit. Additional time cannot be extended by the City Commission.

Mr. Spitzer stated that this is related to the first public hearing, but for a request for a Special Use Permit. The Planning and Zoning Commission met on April 16, 2025, and voted to recommend approval of a Special Use Permit to support the reopening of a tortilla factory.

There being no further discussion, Commissioner Lopez closed this public hearing at 5:10 p.m.

3. <u>Public hearing on request for a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole in C4 (Commercial) at Paulson's SUB, Lot B, acres .0, also known as 1025 E. General Cavazos, Kingsville, TX 78363 (Property ID 25758). (Director of Planning and Development Services).</u>

Commissioner Lopez read and opened this public hearing at 5:01 p.m. Commissioner Lopez further announced that this is a public hearing. If anyone would like to speak on behalf of this item, they may do so now with a five-minute limit. Additional time cannot be extended by the City Commission.

Mr. Spitzer stated that Mr. Vincent Gerard & Associates, Applicant and Robert De Pol, Owner, approached the Planning Department on March 17th, 2025, requesting approval of a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole

antenna in C4 (Commercial) of Paulson's SUB, Lot B, Acres .0, also known as 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758). In accordance with the City of Kingsville's Land Use Chart, telecommunication mounting structures over 100' tall require a Special Use Exception (SUE); we accomplish this requirement with a Special Use Permit (SUP) application. AT&T Mobility is proposing a wireless site at 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758) to improve coverage in the area. AT&T radio frequency engineers have received numerous complaints from NAS Kingsville customers. This solution will benefit both NAS Kingsville and existing interior sites within the City of Kingsville. An existing monopole antenna located approximately 2300' northwest (owned by Cellco) has zero additional ground space for increasing capacity, nor does it have adequate height to optimize coverage. This proposed unmanned site will be accessed once per month by a maintenance worker. In addition, the FAA confirmed the future planned structure would not exceed obstruction standards, nor would be a hazard to air navigation. The request also has approval recommendation from Commander, Training Air Wing TWO. The Planning and Zoning Commission meeting was held on April 16th, 2025, with 6 of 7 members in attendance. Members deliberated over the request to recommend approval of a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole antenna at 1025 E General Cavazos, Kingsville, TX 78363. Five notice letters were sent out to neighbors within the 200 feet buffer and the city has received no feedback from those notified. The Planning and Zoning Commission board members voted to approve the recommendation of a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole antenna at 1025 E General Cavazos, Kingsville, TX 78363.

There being no further discussion, Commissioner Lopez closed this public hearing at 5:14 p.m.

III. Reports from Commission & Staff.²

"At this time, the City Commission and Staff will report/update on all committee assignments which may include but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance – Financial Services - Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works-Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

Commissioner Lopez read and presented a proclamation regarding Public Service Recognition Week.

Mr. Charlie Sosa, Interim City Manager, reported that the Loteria Festival that occurred this past weekend was well attended. He further thanked staff for their hard work in putting this event together. Mr. Sosa then gave a brief update on street projects.

Ms. Courtney Alvarez, City Attorney, reported that the next city commission meeting is scheduled for May 12, 2025. The deadline for staff to submit their agenda items for that meeting is Wednesday, April 30, 2025.

Commissioner Hinojosa commented that in front of them today, they have a letter from Mayor Fugate stating that in his absence, Commissioner Lopez will be running the meeting tonight. Hinojosa further commented that he and Mayor Fugate went round and round about a disagreement, which rubbed him the wrong way. He feels that this needs to be put to rest and have an agenda item to determine who will be Mayor Pro Tem. He further commented that this decision is up to the Commission, which is where he and the Mayor are in disagreement of. Hinojosa stated that it is the mayor's interpretation that what he is doing is correct, but he feels that it is wrong. Commissioner Hinojosa commented that he would like to see an agenda item on the next agenda to put this to rest and move forward. Hinojosa also commented that there were a lot of options that he had either to walk off or cancel this meeting, but that would not be the right way to do it. This would only let the taxpayers down. Hinojosa further stated that it is his request to have an item on the agenda for the next meeting to determine and take action on how to handle the Mayor Pro Tem. He further commented that maybe it could be done on a yearly, monthly, or quarterly basis.

Commissioner Alarcon commented that he would like an opinion from outside council or the Attorney General to give us an opinion or some answers on this situation, as the City Charter is not clear. He further stated that it states that the Mayor can appoint but yet the council has to approve. He stated that they have already made the determination that they will not be going with his request. Alarcon further stated that he would like an Attorney General's opinion so this can be cleared up.

IV. Public Comment on Agenda Items.³

1. Comments on all agenda and non-agenda items.

Mr. Joel Saenz, 307 W. Ailsie, commented that he was in attendance at the last special city commission meeting. He further commented that he has brought the city commission information on 201 S. 6th Street, which is the property he is currently assisting a friend with. He further commented that on Tuesday, he received a call from the Planning Director, to which he didn't take the call well. He further stated that apparently he doesn't know what he is doing or dumb to approach the commission at the time. But as he resides in Kingsville, he has that right. He stated that since then, he has been angry about this, but someone told him on Wednesday that he should be as he doesn't know the truth here, but a gentleman doesn't live in Kingsville, he doesn't pay utility bills, taxes, or even vote for a Mayor or City Commissioner. Mr. Saenz stated that he was told that the calls were being recorded, and if someone on staff wishes to hear the phone conversation, the call took place on Tuesday between 3:35 p.m. to 4:25 p.m. He further commented that he does know what he is talking about.

V. <u>Consent Agenda</u>

Notice to the Public

The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.

<u>CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM</u> PREVIOUS MEETINGS:

(At this point the Commission will vote on all motions, resolutions, and ordinances not removed for individual consideration)

Motion made by Commissioner Alarcon to approve the consent agenda as presented, seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez, voting "FOR".

- 1. Motion to approve final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to KT&I Co, Block 18, Lot Pt 9, Pt 10, (10.98 acres) (Property ID #17868), Kingsville, Texas, from R1 (Single Family Residential District) to R3 (Multi-Family Residential District), (off Loop 428); amending the Comprehensive Plan to account for any deviations from the existing Comprehensive Plan. (Director of Planning and Development Services).
- 2. <u>Motion to approve final passage of an ordinance amending the City of Kingsville Code of Ordinances Chapter XI-Business Regulations, Article 2-Ambulance Service, Section 28-Ambulance Billing Rates for Services Provided by the City of Kingsville Ambulance Service, providing for revisions to rates. (Fire Chief).</u>
- 3. Motion to approve final passage of an ordinance amending the Fiscal Year 2024-2025 Budget to accept and expend grant funding from the Ed Rachal Foundation for salaries and park field improvements. (authorizing resolution #2024-95 approved 11/25/24) (Parks Director).
- 4. Motion to approve final passage of an ordinance amending the Fiscal Year 2024-2025 Budget to accept and expend grant funding from StoneGarden for Police overtime, portable radios, and vehicle maintenance. (authorizing resolution #2025-14 approved 1/27/25) (Police Chief).
- 5. Motion to approve final passage of an ordinance amending the Fiscal Year 2024-2025 Budget to reallocate Utility Funds ARP funding for the water meter project to General Fund ARP funding for the animal shelter project. (Purchasing Manager).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

- VI. Items for consideration by Commissioners.⁴
 - 6. Discuss and consider introduction of an ordinance amending the zoning ordinance by changing the zoning in reference to 3rd, Block 22, Lot 24-27 (Property ID 17385) also known as 620 E. Alice Ave., Kingsville, Texas from R1 (Single Family District) to C2 (Retail District); amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (for Wholesale Bakery Use, Famosa Tortilla Factory). (Director of Planning and Development Services).

Introduction item.

7. Discuss and consider introduction of an ordinance amending the zoning ordinance by granting a Special Use Permit for Wholesale Bakery Use (Tortilla Factory) in C2 (Retail District) at 620 E. Alice Ave., Kingsville, Texas, also known as 3rd, Block 22, Lot 24-27 (Property ID 17385); amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Director of Planning and Development Services).

Introduction item.

8. <u>Discuss and consider introduction of an ordinance amending the zoning ordinance granting a Special Use Permit for a Wireless Telecommunications Pole Tower in C4-Commercial at Paulson's SUB, Lot B, also known as 1025 E. General Cavazos, Kingsville, Texas (Property ID 25758); amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (for a 120' monopole) (Director of Planning and Development Services).</u>

Mr. Spitzer stated that the company plans on placing a 120-foot monopole, but the location will be blocked by trees, and the area will be gated.

Introduction item.

9. <u>Discuss and consider the continuation of All-Risk Property Insurance with TMLIRP as per staff recommendation.</u> (Human Resources Director).

Mrs. Diana Gonzales stated that this item authorizes the city to continue with Texas Municipal League Intergovernmental Risk Pool (TMLIRP) for all risk property insurance coverage, except for windstorm, for May 1, 2025, through September 30, 2025, at a cost of \$61,802.00. This policy covers fire, flood, earthquake, lightning, and equipment breakdown. The city's total insured values are approximately \$64,701493.00, which includes TMLIRP's additional 3% for inflationary factors. Property insurance premiums are budgeted in the prepaid liability account and subsequently charged to specific line items in the different funds ending in 33501. The increased costs for the all-risk policies are to be funded with the savings realized from the decrease in the windstorm insurance policy.

Motion made by Commissioner Hinojosa to approve the continuation of All-Risk Property Insurance with TMLIRP as per staff recommendation, seconded by Commissioner Alarcon. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

10. <u>Discuss and consider the renewal of Windstorm & Hail Insurance, including named storms, through Victor Insurance Managers LLC as per staff recommendation.</u> (Human Resources Director).

Ms. Gonzalez stated that this item authorizes the city to enter into a contract with Victor Insurance Managers, LLC, from Houston, TX, for Windstorm & Hail Coverage, including named storms for May 1, 2025, through April 30, 2026. Scheduled values total \$53,883,906.00. Victor Insurance Managers LLC sought proposals for windstorm coverage from different carriers. Victor received 30 responses, which included several companies declining to quote. The quote for windstorm coverage under Victor Insurance Managers, LLC is \$356,249.00 annually for May 1, 2025, to April 30, 2026. This is a decrease of \$26,142.00. Property insurance premiums are budgeted in the prepaid liability account and subsequently charged to specific line items in the different funds ending in 33501. After discussion with the Interim City Manager, staff recommends proceeding with Option 2 provided by Victor Insurance Managers, LLC, which utilizes the following carriers to provide windstorm and named storm insurance coverage: TWIA, Lexington (LEAD), Velocity, Markel, RSUI, and Lloyds.

Motion made by Commissioner Hinojosa to approve the renewal of Windstorm & Hail Insurance, including named storms, through Victor Insurance Managers LLC as per staff recommendation, option 2, seconded by Commissioner Alarcon. The motion was passed and approved by the following vote: Alarcon, Hinojosa, Lopez voting "FOR".

11. Consideration and approval of a resolution of the City of Kingsville, Texas providing for the City to become a member of the American Flood Coalition. (Commissioner Alvarez).

Mr. Sosa stated that this item authorizes the city to join the American Flood Coalition. There are no fees to join, and this will allow the city the opportunity to apply for different grants.

Motion made by Commissioner Alarcon to approve the resolution of the City of Kingsville, Texas, providing for the City to become a member of the American Flood Coalition, seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

12. Consideration and approval of a resolution authorizing the Interim City Manager to execute the Construction Contract with Mor-Wil LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 3: E. Caesar Ave. Storm Water Improvements. (from 18th St. to 240 ft. east of 24th St.) (Bid #25-11; awarded 4/14/25) (City Engineer).

Mr. Rudy Mora, City Engineer, stated that bid 25-11 Project 3 was awarded on April 14, 2025, and staff is requesting the construction contract be awarded in the amount of \$7,026,961.60.

Motion made by Commissioner Alarcon to approve the resolution authorizing the Interim City Manager to execute the Construction Contract with Mor-Wil LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 3: E. Caesar Ave. Storm Water Improvements. (from 18th St. to 240 ft. east of 24th St.) (Bid #25-11; awarded 4/14/25), seconded by Commissioner Lopez. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

13. Consideration and approval of a resolution authorizing the Interim City Manager to execute the Construction Contract with Mor-Wil LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 5: E. Caesar Ave. Storm Water Improvements. (from E. Carlos Truan Blvd. to 18th St.) (Bid #25-12; awarded 4/14/25) (City Engineer).

Motion made by Commissioner Lopez to approve the resolution authorizing the Interim City Manager to execute the Construction Contract with Mor-Wil LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 5: E. Caesar Ave. Storm Water Improvements. (from E. Carlos Truan Blvd. to 18th St.) (Bid #25-12; awarded 4/14/25), seconded by Commissioner Hinojosa and Commissioner Alarcon. The motion was passed and approved by the following vote: Alarcon, Hinojosa, Lopez voting "FOR".

14. Consideration and approval of a resolution authorizing the Interim City Manager to execute the Construction Contract with D&J Utility Services LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 10: N. Armstrong Ave. Storm Water Improvements. (from Corral Ave. to Santa Gertrudis Ave.) (Bid #25-13; awarded 4/14/25) (City Engineer).

Mr. Mora stated that this bid was awarded April 14, 2025. It is the staff's request to award the construction contract for an amount of \$1.087,788.00.

Motion made by Commissioner Alarcon to approve the resolution authorizing the Interim City Manager to execute the Construction Contract with D&J Utility Services LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 10: N. Armstrong Ave. Storm Water Improvements. (from Corral Ave. to Santa Gertrudis Ave.) (Bid #25-13; awarded 4/14/25), seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

15. Consideration and approval of a resolution authorizing the Interim City Manager to execute Change Order No. 2 for the Construction Contract with R.S. Parker Construction, LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 2: N. 19th Street Storm Water Improvements Project. (City Engineer).

Mr. Mora stated that this is approval for Change Order No. 2 for the General Land Office (GLO) Community Development Block Grant Mitigation Contract No. 22-085-009-D237 Project 2, N. 19th Street stormwater improvements project. There was an error in the wage rate schedule for this project. A highway classification was used instead of a heavy classification, and the change order is to correct the error. There are no funds needed for this change order as it is being corrected administratively. There is also a request for additional time for the project due to manufacturing delays for an additional 60 calendar days.

Motion made by Commissioner Hinojosa to approve the resolution authorizing the Interim City Manager to execute Change Order No. 2 for the Construction Contract with R.S. Parker Construction, LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 2: N. 19th Street Storm Water Improvements Project, seconded by Commissioner Alarcon. The motion was passed and approved by the following vote: Alarcon, Hinojosa, Lopez voting "FOR".

16. Consideration and approval of a resolution authorizing the Interim City Manager to execute Change Order No. 1 for the Construction Contract with Donald Hubert Construction Co. for the GLO CDBG-MIT Contract 22-085-009-D237 Project 6: Carlos Truan Blvd. Storm Water Improvements Project. (City Engineer).

Mr. Mora stated that staff is seeking approval for Change Order No. 1. There was an error in the wage rate schedule for this project and this change order will correct that error. No additional funds are needed.

Motion made by Commissioner Alarcon to approve the resolution authorizing the Interim City Manager to execute Change Order No. 1 for the Construction Contract with Donald Hubert Construction Co. for the GLO CDBG-MIT Contract 22-085-009-D237 Project 6: Carlos Truan Blvd. Storm Water Improvements Project, seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

17. Consideration and approval of a resolution authorizing the Interim City Manager to execute Change Order No. 1 for the Construction Contract with R.S. Parker Construction, LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 8: Alice Ln/Margaret Ln Storm Water Improvements Project. (City Engineer).

Mr. Mora stated that this is similar to the prior items. There was an error in the wage schedule for this project. This change order will correct the error with no additional funds needed.

Motion made by Commissioner Hinojosa to approve the resolution authorizing the Interim City Manager to execute Change Order No. 1 for the Construction Contract with R.S. Parker Construction, LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 8: Alice Ln/Margaret Ln Storm Water Improvements Project, seconded by Commissioner Alarcon. The motion was passed and approved by the following vote: Alarcon, Hinojosa, Lopez voting "FOR".

18. Consideration and approval of a resolution authorizing the Interim City Manager to execute Change Order No. 3 for the Construction Contract with R.S. Parker Construction, LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 13: W. Johnston Ave. Storm Water Improvements Project. (City Engineer).

Mr. Mora stated that this is similar to the prior items. There was an error in the wage schedule for this project. This change order will correct the error with no additional funds needed.

Motion made by Commissioner Alarcon to approve the resolution authorizing the Interim City Manager to execute Change Order No. 3 for the Construction Contract with R.S. Parker Construction, LLC for the GLO CDBG-MIT Contract 22-085-009-D237 Project 13: W. Johnston Ave. Storm Water Improvements Project, seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Alarcon, Lopez voting "FOR".

19. <u>Discuss and consider introduction of an ordinance amending the Fiscal Year 2024-2025 Budget to provide additional funding for South Creek and Golf Course Road lift stations. (repairs to wastewater lift stations for TCEQ compliance) (Public Works Director).</u>

Mr. Bill Donnell, Public Works Director, stated that the request is for \$33,795.00 for repairs needed at the South Creek lift station that was built in 1993 and for repairs at the Golf Course lift station which was built in 1994. Both of these have concrete erosion to the gases and the sewer system. These improvements and repairs will need to be made due to a TCEQ inspection.

Introduction item.

20. Consideration and approval of resolution authorizing the Interim City Manager to execute the Contract with PM Construction & Rehab LLC for Emergency Repair Cured-In-Place 18" CIPP on E. Corral Ave. for the Public Works, Wastewater Collections Division. (Public Works Director).

Mr. Donnell stated that this 18" clay sewer line services the Northeast portion of Kingsville and crosses under US Highway 77, then continues to gravity feed sewer to the North Treatment Plant. Wastewater collection crews work to clean and remove debris from the line, but breaks and offsets continue to hinder the line from being successfully cleared to allow maximum flow. Financial impact, this will reduce the budget amendment reserve line account 001-5-7001-86000 balance by \$56,714.00, decrease ARP Utility Fund balance by \$44,786.00 and decrease Wastewater Collections Sewer line account by \$5,235.00 and increase the Wastewater Collections Utility Plant by \$106,735.00.

Motion made by Commissioner Hinojosa to approve the resolution authorizing the Interim City Manager to execute the Contract with PM Construction & Rehab LLC for Emergency Repair Cured-In-Place 18" CIPP on E. Corral Ave. for the Public Works, Wastewater Collections Division, seconded by Commissioner Lopez and Commissioner Alarcon. The motion was passed and approved by the following vote: Alarcon, Hinojosa, Lopez voting "FOR".

VI. Adjournment.

There being no further business to come before the City Commission, the meeting was adjourned at 5:56 p.m.

	Sam R. Fugate, Mayor
ATTEST:	
Mary Valenzuela, TRMC, City Secretary	

CONSENT AGENDA

AGENDA ITEM #1

Planning and Development Services 410 W King Kingsville, TX 78363 PH: 361-595-8055



MEMO

Date:

April 17th, 2025

To:

Charlie Sosa (Interim City Manager)

From:

Erik Spitzer (Director of Planning and Development Services)

Subject:

The City of Kingsville Planning and Development Services Department is seeking approval from the City Commissioners and Mayor to re-zone the parcel of land located at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID

17385).

Summary: Jose Flores and Jaime Flores, Applicants/Owners, approached the Planning Department on February 20th, 2025, requesting approval of re-zoning the parcel of land located at 620 E Alice from R1 (Single Family District) to C2 (Retail District) to support re-opening a tortilla factory that was open for ~ 50 years. The property has been vacant for 3 years and is located in the city's Historic District.

Background: 620 E Alice was recently purchased after remaining vacant for approximately 3 years. It is currently zoned R1 (Single Family District); adjacent parcels of land are currently zoned R1 (Single Family District). Parcels of land located 2-3 blocks away are zoned C1 (Neighborhood Service District), C2 (Retail District), C3 (Central Business District) and C4 (Commercial District). See attached zoning slides in the agenda packet.

Discussion: In reading the attached "Land Use Regulation for Texas Cites," article dated February 11, 2016, located within the agenda packet, on page 2 the author of the article states, "Two pitfalls that cities must be careful to avoid in zoning are "spot zoning" and "contract zoning." "Spot zoning" is the illegal practice of zoning a single tract of land in a manner that is incompatible with the surrounding area and in a manner that is incompatible with the city's zoning ordinance and comprehensive plan." Of note, the city does not have a comprehensive plan; we have an outdated 2008 Master Plan; (we have recently contracted with Halff Associates to apply for a grant to produce a new comprehensive plan for the City of Kingsville as soon as possible). Within the 2008 Master Plan, the area in the vicinity of 620 E Alice was designated as an R1 - Single Family District, as well as the current city ordinances.

Also within this article, the term, "nonconforming use" is discussed. "If property is previously rezoned for a specific use, and a zoning change occurs that negates the previous zoning, then the use of that property becomes a legal nonconforming use." "A city may include a provision in its zoning ordinance that terminates non-conforming uses after a set period of time following the zoning change (e.g., , 25 years) so that the property owner has an opportunity to recoup his investment in the nonconforming use over the normal life-span of the non-conforming structure."

Within the City of Kingsville Ordinances found in your agenda packet, the City of Kingsville defines "Nonconforming status" as "A nonconforming status shall exist under one of the following conditions:

- (A)
- (1) When a use does not conform to the regulations prescribed in the district in which it is located, and was lawfully existing and operating prior to the adoption of this article, or any amendment thereto which creates nonconformity, and where there has been no discontinuance of the use for a period of time exceeding six months or;
- (2) When a structure does not conform to the regulation prescribed in the district in which it is located, and was lawfully existing and constructed prior to the adoption of this article, or any amendment thereto which creates nonconformity.
- (B) Maintenance permitted. A nonconforming building or structure may be maintained.
- (C) Repairs and alterations. Repairs and structural alterations may be made to a nonconforming building or to a building housing a nonconforming use.
- (D) Additions, enlargements and moving.
 - (1) A building or structure occupied by a nonconforming use and a building or structure nonconforming as to height, area or yard regulations shall not be added to or enlarged in any manner or removed to another location except as provided by subdivision (2) of this division hereof.
 - (2) A building or structure occupied by a nonconforming use or a building or structure nonconforming as to height, area, or yard regulations may be added to or enlarged or moved to a new location on the lot upon a permit authorized by the Board of Adjustment, which may issue, provided that the Board of Adjustment, after hearing, shall find:
 - (a) The addition to, enlargement of, or moving of the building will be in harmony with one or more of the purposes of this article as stated in § 15-6-2 hereof, and shall be in keeping with the intent of this article.
 - (b) The proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.
 - (c) LOT shall mean that parcel of land owned at the time the use became nonconforming and upon which the use existed, whether defined in one or more legal descriptions provided that all legal descriptions are contiguous.
- (E) Alteration where parking insufficient. A building or structure lacking sufficient automobile parking space in connection therewith as required by this article may be altered or enlarged provided additional automobile parking space is supplied to meet the requirements of this article for such alteration or enlargement.
- (F) Restoration of damaged buildings. A nonconforming building or structure or a building or structure occupied by a nonconforming use which is damaged or destroyed by fire, flood, wind, or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building, structure, or part thereof, which existing at the time of such damage or destruction may be continued or resumed, provided that such restoration is started within a period of six months and is diligently prosecuted to completion and is not located in an overlay zone.
- (G) Six month vacancy. A building or structure or portion thereof occupied by a nonconforming use, which is, or hereafter becomes, vacant and remains unoccupied by a nonconforming use for a continuous period of six months, except for dwellings, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.
- (H) Continuation of use. The occupancy of a building or structure by a nonconforming use, existing at the time this Title became effective, may be continued.

- (I) Occupation within six months. A vacant building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of six months after the use became nonconforming.
- (J) Change of use. The nonconforming use of a building or structure may not be changed except to a conforming use, but where such change is made, the use shall not thereafter be changed back to a nonconforming use.
- (K) Nonconforming use of land. The nonconforming use of land, existing at the time this article became effective, may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of six months or more, any future use of such land shall be in conformity with the provisions of this article.

In reading the attached American Planning Association Texas Chapter, A Guide to Urban Planning in Texas Communities, 2013 article, "Chapter 4 Zoning Regulations in Texas," "In 1987, the sections of Article 1011 were codified in Chapter 211 of the Texas Local Government Code. Chapter 211 currently provides that the zoning regulatory power is "for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance."

In addition, "a violation of a zoning ordinance is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the city."

Moreover, "A party challenging the zoning ordinance must show that the ordinance is arbitrary or unreasonable because it bears no substantial relationship to the public health, safety, morals or general welfare."

With respect to equal protection, "An equal protection challenge may be brought if an individual can demonstrate that the city treated the individual differently from other similarly situated individuals without any reasonable basis."

Also, the article addresses spot zoning: "Some zoning changes may be challenged if the rezoning is deemed to be "Spot Zoning". ""Spot Zoning" is the process of singling out a small tract of land and treating it differently from similar surrounding land "without any showing of justifiable changes in conditions." In *City of Pharr v. Tippitt*, the Texas Supreme Court identified the following factors to be reviewed in determining whether a rezoning is Spot Zoning:

- 1. Whether the City has disregarded the zoning ordinance or long-range master plans and maps that have been adopted by ordinance;
- 2. The nature and degree of an adverse impact on surrounding properties; i.e. is the change substantially inconsistent with surrounding properties; and,
- 3. Whether the use of the property as presently zoned is suitable or unsuitable;
- 4. Whether the rezoning ordinance bears a substantial relationship to the public health, safety, morals or general welfare or protect and preserve historical and cultural places and areas."

Lastly, the City Attorney provided a memo on March 24th, 2025 that addresses this re-zone request. In the memo, the attorney states that "...the commercial use requested (Wholesale Bakery Use) is the same as the one that existed for at least fifty years at this location." The attorney also states "...so, if the same proposed use were to have a detrimental impact on the valuation of surrounding properties, then that impact would have already been done when the prior use existed. It is highly unlikely that there would be an adverse impact on neighboring land since the same use existed at the site for five decades." The attorney states "While times have changed during the last fifty years the factory operated at this site, the business' historical significance to the community should not be overlooked."

The Planning and Zoning Commission meeting was held on April 16th, 2025, with 6 of 7 members in attendance.

Members deliberated over the request to re-zone the parcel of land located at 620 E Alice from R1 (Single Family District) to C2 (Retail District) to support reopening a tortilla factory that was open for ~ 50 years. 25 Notice Letters were sent out to neighbors within the 200 feet buffer and the city has received no feedback as of today.

The Planning and Zoning Commission board members voted to recommend approval of the re-zone of a parcel of land located at 620 E Alice from R1 (Single Family District) to C2 (Retail District) to support reopening a tortilla factory. A recorded vote of all members present was taken and board members Steve Zamora, Larry Garcia, Rev. Idotha Battle, Debbie Tiffee, Mike Klepac and Krystal Emery all voted "YES."

The meeting was adjourned at 7:10 p.m.

The department recommends approval.

Erik Spitzer

Director of Planning and Development Services



CITY OF KINGSVILLE PLANNING AND ZONING DIVISION MASTER LAND USE APPLICATION

email: hsolis@cityofkingsville.com / Phone (361) 595-8055

PROPERTY INFORMATION: (Please PRINT or TYPE)	
Project Address 620 E Alice Nearest Intersection 10th 5th	
(Proposed) Subdivision NameLot_24-a7 Block 22	
Legal Description 3ed, Block 22, 1st 24-27 (famosa Tortilla factor)	
Existing Zoning Designation 2 Future Land Use Plan Designation C-2	₹
OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)	
Applicant/Authorized Agent Jose and Jane Flores Phone 361 - 215 - 9449	
Email Address (for project correspondence only):	_
Mailing Address 42) to Ave A city Kingsville State To Zip 783	63
Property Owner Jaime Flores Phone 361-215-9449 FAX	
Email Address (for project correspondence only):	-
	<u></u> -
Mailing Address 427 W Ave A City kingsville State Tx Zip 783	<u>43</u>
Select appropriate process for which approval is sought. Attach completed checklists with this application.	
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This form available on our website: https://www.cityofkingsville.com/departments/planning-and-development-services/

Kleberg CAD Property Search

■ Property Details

Account

Property ID:

17385

Geographic ID: 100502224000192

Type:

R

Zoning: R1

Property Use:

Location

Situs Address:

620 E ALICE

Map ID:

C1

Mapsco:

Legal Description:

SRD, BLOCK 22, LOT 24-27, (FAMOSA TORTILLA FACTORY)

Abstract/Subdivision:

S005

Neighborhood:

Owner

Owner ID:

15566

Name:

LA FAMOSA DRC INC

Agent:

Mailing Address:

620 E ALICE AVE

KINGSVILLE, TX 78363-4637

% Ownership:

100.0%

Exemptions:

For privacy reasons not all exemptions are shown online.

Property Values

Improvement	Homesite	Value:

\$0 (÷)

Improvement Non-Homesite Value:

\$127,130 (+)

Land Homesite Value:

\$0 (+)

Land Non-Homesite Value:

\$15,000 (+)

Agricultural Market Valuation:

\$0 (+)

Market Value:

\$142,130 (=)

Agricultural Value Loss: @

\$0 (-)

Appraised Value:

\$142,130 (=)

HS Cap Loss: 0

\$0 (-)

Circuit Breaker: @

\$0 (-)

https://esearch.kleberg-cad.org/property/view/17385?printView=detail

45.^{1/5}

Assessed Value:

\$142,130

Ag Use Value:

00

Information provided for research purposes only. Legal descriptions and acreage amounts are for Appraisal District use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to verify all information for accuracy.

■ Property Taxing Jurisdiction

Owner: LA FAMOSA DRC INC %Ownership: 100.0%

Entity	Description	Tax Rate	Market Value	Taxable Value	Estimated Tax
GKL	KLEBERG COUNTY	0.771870	\$142,130	\$142,130	\$1,097.06
CKI	CITY OF KINGSVILLE	0.770000	\$142,130	\$142,130	\$1,094.40
SKĪ	KINGSVILLE I.S.D.	1.410400	\$142,130	\$142,130	\$2,004.60
WST	SOUTH TEXAS WATER AUTHORITY	0.065695	\$142,130	\$142,130	\$93.37
CAD	KLEBERG COUNTY APPRAISAL DISTRICT	0.000000	\$142,130	\$142,130	\$0.00

Total Tax Rate: 3.017965

Estimated Taxes With Exemptions: \$4,289.43

Estimated Taxes Without Exemptions: \$4,289.43

■ Property Improvement - Building

Type: COMMERCIAL Living Area: 520.0 sqft Value: \$22,380

MA OP1	Description	Class CD	Year Built	SQFT
MA	MAIN AREA	RS2A	1970	520
OP1	OPEN PORCH BASIC (20%)	* <u></u>	1970	120
CON	CONCRETE SLAB COMMERCIAL	m ti	1970	3554

Type: COMMERCIAL Living Area: 3480.0 sqft Value: \$104,750

_			•	
Type	Description	Class CD	Year Built	SQFT
***************************************	the state of the s	grand make a company of the contract of the co	 and the same of the same of the same of	
MA	MAIN AREA	IN2A	1970	3480
	the contract of the contract o	The second secon		

■ Property Land

					to a management	•	
Type	Description	Acreage	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
F1	F1	0.32	14,000.00	100.00	140.00	\$15,000	\$ 0

■ Property Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap Loss	Assessed
2024	\$127,130	\$15,000	\$0	\$142,130	\$0	\$142,130
2023	\$129,330	\$15,000	\$0	\$144,330	\$0	\$144,330
2022	\$113,590	\$7,000	\$0	\$120,590	\$0	\$120,590
2021	\$121,540	\$7,000	\$0	\$128,540	\$0	\$128,540
2020	\$52,010	\$7,000	\$0	\$59,010	. \$0	\$59,010
2019	\$59,460	\$7,000	\$0	\$66,460	\$0	\$66,460
2018	\$61,500	\$7,000	\$0	\$68,500	. \$0	\$68,500
2017	\$56,110	\$7,000	\$0	\$63,110	\$0	\$63,110
2016	\$54,510	\$7,000	\$0	\$61,510	\$0	\$61,510

WRITTEN CONSENT TO USE OF SIMILAR ENTITY NAME

of LA FAMOSA DRC, INC. a Texas corporation

This written consent is made and tendered in accordance with 1 Texas Administrative Code 79.42 to provide unequivocal consent to Jose L. Flores and/or Jaime Antonio Flores, or either of them, their agents, and assigns, the right to use the name "LA FAMOSA DRC" in the creation of any other entity authorized by the laws of any political subdivision of the United States, including but not limited to the creation of their planned limited liability company to be created under the laws of the State of Texas or

IN WITNESS WHEREOF, the undersigned officer authorized by the Company in accordance with a unanimous resolution of all shareholders of the Company, executes this written consent in the presence to be effective immediately.

Rosa Maria Torres, its Vice President

COUNTY OF Klebens

This instrument was acknowledged before me on <u>Jonus 17</u>, 2025, by Rosa Maria Flores, Vice President of La Famosa DRC, LLC, a Texas corporation on behalf of said corporation.

ANTONIO ARREDONDO
Notary Public, State of Texas
Comm. Expires 05-10-2026
Notary ID 131562673



CERTIFICATE OF FILING OF

La Famosa DRC, LLC File Number: 805863291

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 01/17/2025

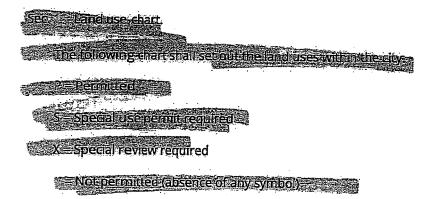
Effective: 01/17/2025



gave Habern

Jane Nelson Secretary of State

APPENDIX A. - LAND USE CATEGORIES



[Land Use Chart on the following pages]

Land Use Chart													
Land Use Description	R1	R2	R2A	R3	R4	МН	C1	C2	C3	C4	11	12	Ag
Dwelling, one-family det.	Р	Р		Р	Р	Р	P	Р	Р				Р
Dwelling, one-family att.		Р	P	Р	Р		S	Р					Р
Dwelling, two-family		Р		Р	Р	·	S	Р					
Dwelling, multi- family				Р	Р		Р	p.	Р				
Tiny Homes		P	Р			Р							

Bakery or confectionery shop, retail sales (less than 2,500 square feet)				P	P	P	P			
Bakery, wholesale					S	Р	Р			
Brewpub				-	P	S	P	Р	Р	
Building materials sales	-				S	P	Ρ	S		
Cafeteria orrestaurant				الله الله الله الله الله الله الله الله	ا بيما	<u> </u>	<u></u>	P)		
Camera shop				S	Р	Р	Р			
Laundry or self- service laundry shop (limited area)				S	P	تص	P			
Clinic, medical, dental, chiropractor, optometrist or other office of licensed Health related profession	*	•		S	P	Р	Р	Р		
Drug store or pharmacy				Р	Р	Р	Р			

Land Use Regulation for Texas Cities

By Brad Young¹ Bickerstaff Heath Delgado Acosta LLP February 11, 2016

I. Zoning

A city's zoning authority is governed by chapter 211 of the Texas Local Government Code. Under the Code, a municipality may adopt zoning regulations for "the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural significance." The municipality may also amend, repeal or otherwise change existing zoning regulations or boundaries.

A. What goes into a zoning ordinance?

A city's zoning ordinance will contain the city's preferences for use of land in all areas within the city limits. Chapter 211 of the Local Government Code requires all cities to adopt their zoning regulations in accordance with a Comprehensive Plan.⁴ The comprehensive plan is a document that sets forth the city's vision for land use in the future. Most cities adopt their comprehensive plan after receiving input from various citizens' groups and other stakeholders. If a city wants to amend its zoning ordinance in a way that conflicts with the comprehensive plan the city must first amend the comprehensive plan before it can amend its zoning ordinance. It is prudent for a city to review and update its comprehensive plan periodically.

Most zoning ordinances contain the same basic elements: (1) general definitions; (2) land use definitions; (3) land use districts; (4) administrative provisions; (5) development standards; and penalty and enforcement provisions. Cities have a fair amount of discretion in determining what land uses they wish to allow in various districts. For example, most cities do not allow industrial uses to locate in a single-family residential district, or a truck stop to locate in a district that is reserved for hospital and medical uses. Some cities allow for special districts (often called "Planned Development Districts") that provide even greater flexibility for land use than is available in a normal zoning district. For example, a planned development district may provide

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² TEX. LOC. GOV'T CODE § 211.001.

³ Id. at § 211.002.

⁴ Id. at §211.004.

for a mix of residential, retail, and professional office uses on terms and conditions that the city includes in the planned development district ordinance.

Iwo pitfalls that cities must be careful to avoid in zoning are spot zoning? and "contract zoning." "Spot zoning is the illegal practice of zoning a single tract of land in a manner that is incompatible with the surrounding area and in a manner that is incompatible with the city's zoning ordinance and comprehensive plan. "Contract zoning" is an illegal agreement between the city and a property owner to adopt a certain zoning classification in exchange for certain promises by the property owner. Because contract zoning usurps the city council's legislative function, the council cannot enter into such a contract.

B. Planning and Zoning Commission

Most cities that have a zoning ordinance also have a Planning and Zoning Commission. ⁵ The commission is an advisory body appointed by the city council that advises the council on requests for changes to the zoning ordinance. A request for rezoning may come from a property owner, or the city council or commission may initiate rezoning on its own initiative. Generally, a request for rezoning will involve the classification of a certain tract of property (e.g., a request to rezone property from multi-family residential to retail). But the commission also reviews and advises the council on requests for changes to zoning regulations (e.g., the creation of a new type of zoning district or an amendment to the land use definitions in the zoning ordinance).

If a city has a Planning and Zoning Commission, the city council generally cannot make changes to the zoning ordinance without first seeking the review and recommendation of the commission.

C. Procedural Requirements

Prior to making a rezoning decision, the city council considers the recommendations of city staff and the planning and zoning commission (if there is one). In addition, section 211.006 of the Texas Local Government Code requires the city to publish advance notice in the newspaper, mail notice to surrounding property owners, and hold a public hearing at which "parties in interest and citizens" have an opportunity to be heard.

In some cases, the receipt of written protests by interested landowners will require the council to approve the change by more than a simple majority in order for the zoning change to become effective. If the owners of land of at least twenty percent of either: (1) the area of the lots or land covered by the proposed zoning change; or (2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area file a protest, then the council must approve the rezoning by an affirmative vote of at least three-fourths of all members of the governing body. The protest must be in writing and signed by the property owners. Note that the area of streets and alleys is included in determining whether the protestors have met the twenty percent threshold.⁶

⁵ Id. at § 211.007.

⁶ Id. at § 211.006.

Elimately, however, the council has discretion as a legislative body to make the decision of whether to rezone. Once the council has denied a rezoning application, it is common for the zoning ordinance to impose a waiting period of one year or more before an applicant can file a new zoning application with the city for the same parcel of land. Depending on the ordinance, however, the council may have specific authority to waive the waiting period.

D. Zoning Board of Adjustment

A city's ordinances also may provide for the creation of a Zoning Board of Adjustment. ⁷ Like the Planning and Zoning Commission, the Board of Adjustment consists of members appointed by the city council. Unlike the commission, the Board of Adjustment does not make recommendations to the city council. Instead, the Board acts as a quasi-judicial body. Generally, the Board has authority over two main types of decisions: (1) whether to grant a variance from the city's zoning regulations; and (2) consideration of appeals from decisions of city administrative officials. Appeals from decisions of the Board of Adjustment do not go to the city council; they go directly to the district court.⁸

When considering whether to grant a variance, the Board must make specific findings regarding the request, including: (1) that the variance is not contrary to the public interest; (2) whether due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship to the property owner; and (3) whether by granting the variance spirit of the ordinance will be observed and substantial justice will be done. Note that "unnecessary hardship" does not include a hardship created by the property owner. Further, the hardship must be unique to the property. Finally, the Board cannot grant a variance that would allow a land use otherwise prohibited by the zoning ordinance. Typical variances include items like additions or reductions to height, square footage, or setback requirements. But the Board could not, for example, approve a variance that would allow a commercial use in a zoning district zoned exclusively for residential uses.

Section 211.010 of the Texas Local Government Code also provides the exclusive procedure for a plaintiff to appeal a decision of a city administrative official:

- (a) [A]ny of the following may appeal to the board of adjustment a decision made by an administrative official:
 - (1) a person aggrieved by the decision; or
 - (2) any officer, department, board, or bureau of the municipality affected by the decision.

⁷ *Id.* at §§ 211.008 – 211.011.

⁸ Id. at §§ 211.011.

(b) The appellant *must* file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal *must* be filed within a reasonable time as determined by the rules of the board...⁹

This administrative process is the sole procedure through which the district court may obtain jurisdiction to review the decision of an administrative official. "With regard to a complaint of a Void permit issued under a valid ordinance . . . a party aggrieved by his decision must exhaust his administrative remedy by appealing to the Board of Adjustment before he may sue in a court for redress." A suit not brought pursuant to the statutory provisions of sections 211.010 and 211.011 of the Texas Local Government Code is an impermissible collateral attack on the administrative official's decision. When a party has failed to exhaust his or her administrative remedies, the trial court lacks subject matter jurisdiction over the appeal. 12

E. Moratorium on Continued Development

A moratorium is a tool that permits a city to give itself some "breathing room" to review and update its land use regulations. The Texas Supreme Court has held that a moratorium does not constitute a taking *per se* under the Texas Constitution.¹³ Out of an apparent concern that cities were overreaching in their use of moratoria, however, the Texas Legislature has heavily regulated the use of moratoria under Chapter 212 of the Texas Local Government Code.

For example, the Legislature has imposed fairly stringent notice and hearing requirements on cities that seek to impose moratoria on development. Before the city can impose a moratorium on property development, it must conduct a public hearing that provides municipal residents and affected parties the opportunity to be heard. The city must publish notice of the hearing in a newspaper of general circulation on the fourth day before the date of the hearing. Beginning on the fifth day after the city publishes notice, a temporary moratorium will automatically take effect. During the period of the temporary moratorium, the city may stop accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property to which the moratorium applies.¹⁴

⁹ Id. at § 211.010 (a), (b) (emphasis added).

¹⁰ City of Dallas v. Gaechter, 524 S.W.2d 400, 405 (Tex.Civ.App. - Dallas 1975, writ dism'd).

¹¹ City of San Antonio v. El Dorado Amusement Co., 195 S.W.3d 238, 250 (Tex. App. – San Antonio 2006, pet. denied); see also Horton v. City of Smithville, No. 03-07-00174-CV, 2008 WL 204160, at *4 (Tex.App.-Austin Jan. 25, 2008, pet. denied) (mem. op.) ("Texas Local Government Code sections 211.009 and 211.110 provide administrative remedies that must be exhausted before such matters may be brought to the courts for determination.").

¹² El Dorado Amusement Co., 195 S.W.3d at 250.

¹³ Sheffield Dev. Co. v. City of Glenn Heights, 140 S.W.3d 660, 679-80 (Tex. 2004).

¹⁴ TEX. LOC. GOV'T CODE § 212.134(a)-(c).

If the city has a planning and zoning commission, the city must hold a second public hearing before the commission. If the city does not have a planning and zoning commission, then the city must hold two hearings before the city council. The city must make a final determination of whether to impose the moratorium within twelve days after the date of the public hearing. In addition, the council must give at least two readings of the ordinance adopting the moratorium, separated by at least four days, before the ordinance can take effect. 15

Other requirements for imposing a moratorium can be found in sections 212.131 – 212.139 of the Texas Local Government Code.

II. Subdivision

An additional source of a city's land use regulations is through the city's subdivision ordinance. The subdivision of land is the first step in the process of development. The distribution and relationship of residential, nonresidential and agricultural uses throughout the community, along with the system of improvements for thoroughfares, utilities, public facilities and community amenities, determine, in large measure, the quality of life enjoyed by the residents of the community. Health, safety, economy, amenities, environmental sensitivity, and convenience are all factors that influence and determine a community's quality of life and overall character. A community's quality of life is of the public interest. Consequently, the subdivision of land, as it affects a community's quality of life, is an activity where regulation is a valid function of municipal government. Subdivision regulations are intended to encourage the development of a quality municipal environment by establishing standards for the provision of adequate light, air, open space, storm water drainage, transportation, public utilities and facilities, and other needs necessary for ensuring the creation and continuance of a healthy, attractive, safe and efficient community that provides for the conservation, enhancement and protection of its human and natural resources.

Unlike zoning, which only applies within the city's corporate limits, cities have the authority to extend their subdivision regulations by ordinance to include their extraterritorial jurisdictions (ETJs).¹⁷ In fact, with certain exceptions, state law requires an owner of a tract of land located in the city limits or extraterritorial jurisdiction (ETJ) of a city to file and record a plat any time the property owner subdivides the tract into two or more parcels.¹⁸

A property owner must file the plat with the city for review and approval. If the city has a planning and zoning commission, then the commission generally is the body that has the authority to review and approve plats. However, the city may provide by ordinance that the city

¹⁵ Id. at § 212.134(d)-(f).

¹⁶ Id. at § 212.001, et seq.

¹⁷ Id. at § 212.003.

¹⁸ Id. at § 212.004.

council must approve plats in addition to the commission.¹⁹ Note that the authority of the commission and/or the city council to review and approve plats is virtually ministerial – section 212.005 provides that the reviewing body "must approve a plat or replat . . . that satisfies all applicable regulations." Further, a plat is considered approved of the city does not act on the plat within thirty days after the plat is filed (or up to an additional thirty days if the ordinance requires additional review and approval by the city council).²⁰

A city's real land use authority relating to subdivisions arises not in the procedures, but in the text of the city's subdivision ordinance. A typical subdivision ordinance will include: (1) definitions; (2) design standards; (3) requirements for public sites and open spaces; (4) improvements required prior to acceptance by the city; (5) procedures for filing; and (6) enforcement and penalties. The subdivision ordinance may require proper zoning prior to approval of a plat. The ordinance also may divide the platting process into multiple steps. For example, the ordinance may first require approval of a less detailed, preliminary plat before the applicant can submit a final plat that the applicant ultimately will file with the county following city approval. Generally, the ordinance will require that all subdivision plats be prepared and sealed by a professional and licensed engineer.

If a subdivision plat includes multiple properties, the developer may include (and the city may require) streets, parks, sidewalks, utility rights-of-way, and other public facilities that the developer intends to dedicate to the city. Once the city accepts the dedication, the city then accepts responsibility for maintaining such public facilities. But just because a city has approved a plat that includes public facilities does not mean that the city automatically becomes responsible for all of the parks, roads and other facilities included on the plat. A dedication of public facilities does not become official until the city council formally accepts the dedication.

III. Annexation

A third method that cities use to control future growth and land use is targeted annexation. The procedures and requirements for annexation are found in Chapter 43 of the Texas Government Code. Because annexation will be addressed separately in this seminar, this paper does not include a detailed discussion of the annexation process.

IV. Development Agreements (ETJ)

Section 212.172 of the Texas Local Government Code gives cities the ability to contract with landowners in the city's ETJ. The statute gives the parties broad discretion to determine the terms of the agreement, including the right to provide for terms regarding annexation:

The governing body of a municipality may make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality to:

¹⁹ Id. at §212,006.

²⁰ Id. at §212.009.

- (1) guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the municipality for a period not to exceed 15 years;
- (2) extend the municipality's planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized;
- (3) authorize enforcement by the municipality of certain municipal land use and development regulations in the same manner the regulations are enforced within the municipality's boundaries;
- (4) authorize enforcement by the municipality of land use and development regulations other than those that apply within the municipality's boundaries, as may be agreed to by the landowner and the municipality;
- (5) provide for infrastructure for the land, including:
 - (A) streets and roads;
 - (B) street and road drainage;
 - (C) land drainage;
 - (D) water, wastewater, and other utility systems:
- (6) authorize enforcement of environmental regulations:
- (7) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties;
- (8) specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or
- (9) include other lawful terms and considerations the parties consider appropriate.²¹

²¹ Id. at § 212.172,

A municipality may not require an agreement under this statute as a condition for providing water, sewer, electricity, gas, or other utility service from a municipally owned or municipally operated utility that provides any of those services.²²

An ETJ Development Agreement must be in writing, contain an adequate legal description of the subject territory, be approved by both the city and the landowner, and be recorded in the real property records of all the counties in which the territory is located.

To some extent, the powers that the Legislature granted municipalities under section 212.171 mirror those in effect prior to 2003 under section 42.044 of the Local Government Code (Creation of Industrial District in Extraterritorial Jurisdiction). Pursuant to section 42.044, a municipality may enter into an annexation agreement through which the municipality agrees not to annex business property in a designated industrial district for a period up to fifteen (15) years. The term "industrial district" is defined to include its ordinary meaning in addition to any area where tourist-related businesses and facilities are located.²³ Although similar, section 42.044 is more restrictive than section 212.174. In addition to providing a wider menu of contract term options, section 212.171 does not require cities to designate an industrial district prior to entering into an agreement.

V. Other Land Use Authority

Cities have other sources of land use authority sprinkled throughout the Texas statutes. This section briefly addresses three: (1) alcohol regulation; (2) regulation of sexually oriented businesses; and (3) tax increment financing.

A. Alcohol Regulation

Section 1.06 of the Texas Alcoholic Beverage Code (TABC) generally preempts local legislation of alcoholic beverages: "Unless otherwise specifically provided by the terms of this code the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code." Similarly, section 109.57(b) of the Code provides: "It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code."

In Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas, 852 S.W.2d 489, 491-92 (Tex. 1993), the Texas Supreme Court held, "The Legislature's intent is clearly expressed in

²² Id. at § 212.174.

²³ Id. at § 42.044.

²⁴ Tex. Alco. Bev. Code § 1.06.

²⁵ Id. at § 109.57(b).

section 109.57(b) of the TABC - the regulation of alcoholic beverages is exclusively governed by the provisions of the TABC unless otherwise provided." The Attorney General has interpreted this language broadly, concluding that "to the extent that [an] ordinance purports generally to regulate the sale of all alcoholic beverages of whatever kind, it is preempted by section 109.57(b) of the Alcoholic Beverages Code."

The Code does provide a "grandfathering" exception, however, for certain municipal ordinances that were in effect before June 11, 1987:

Neither this section nor Section 1.06 of this code affects the validity or invalidity of a zoning regulation that was formally enacted before June 11, 1987, and that is otherwise valid, or any amendment to such a regulation enacted after June 11, 1987, if the amendment lessens the restrictions on the licensee or permittee or does not impose additional restrictions on the licensee or permittee. For purposes of this subsection, "zoning regulations" means any charter provision, rule, regulation, or other enactment governing the location and use of buildings, other structures, and land.²⁷

There is an additional exception from state preemption of local regulation of alcoholic beverages for local regulations that affect business that serve or sell alcohol in the same way that such regulations affect businesses that do not serve and sell alcohol. For example, the Supreme Court has indicated that an ordinance requiring all businesses with the same kind of premises to have a fire extinguisher would not violate section 109.57 of the TABC, but an ordinance that required alcohol-related businesses to have two fire extinguishers but only required all other businesses with the same kind of premises to have one would violate the statute.²⁸ Similarly, an ordinance banning the sale of all beverages in glass containers would be permissible, but an ordinance that only banned the sale of alcoholic beverages in glass containers would not.²⁹

In addition, the Code provides two separate statutes through which a municipality may extend the hours of operation for the holders of a mixed beverage permit and a retail dealer's license (*i.e.*, beer license) respectively. A city that has a population of less than 800,000, according to the last preceding federal census, or less than 500,000, according to the 22nd Decennial Census, may adopt an ordinance extending the hours for the sale of mixed beverages to 2:00 a.m. on any day.³⁰ Similarly, a city that has a population of less than 800,000, according to the last preceding federal census, or less than 500,000, according to the 22nd Decennial

²⁶ Op. Tex. Att'y Gen. No. GA-0110, at 2 (2003).

²⁷ TEX. ALCO. BEV. CODE § 109.57(c).

²⁸ Dallas Merchant's, 852 S.W.2d at 492 n.5.

²⁹ Op. Tex. Att'y Gen. No. GA-0110 at 4 (2003).

³⁰ Id. at § 105.03.

Census, may adopt an ordinance extending the hours for the sale of beer to 2:00 a.m. on any day "or any part of [such] extended hours." 31

Section 109.33 of the Code permits cities to prohibit the sale any alcoholic beverage within 300 feet of a church, public or private school, or public hospital. A city by charter or ordinance may prohibit the sale of beer in a residential area, 32 and a home rule city by charter may prohibit the sale of liquor in a residential area. Finally, a city can regulate the location of:
(1) a massage parlor, nude modeling studio, or other sexually oriented business; or (2) an establishment that derives 75 percent or more of the establishment's gross revenue from the onpremise sale of alcoholic beverages. 34

B. Sexually Oriented Businesses

Because the courts have determined that sexually oriented businesses engage in protected speech under the First Amendment of the United States Constitution, a city cannot outlaw sexually oriented businesses entirely. Nevertheless, cities have authority to regulate the location and operation of sexually oriented businesses, including, but not limited to, strip clubs, video arcades, and retailers that earn a large portion of their profits from the sale of pornography and related items. One source of such authority is Chapter 243 of the Texas Local Government Code. Among other powers, that chapter authorizes a city to: (1) restrict the location of sexually oriented businesses; (2) prohibit sexually oriented businesses within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business; (3) regulate the density of sexually oriented businesses; and (4) require that an owner or operator of a sexually oriented business obtain a license or other permit or renew a license or other permit on a periodic basis for the operation of a sexually oriented business.

Many cities have included regulations in their ordinances designed to address the "secondary effects" of such businesses on the areas in which they are located -e.g., higher crime and loss of property value. A good sexually oriented business ordinance should include detailed legislative findings that cite published studies to support the premise that the regulation of such businesses is reasonable and necessary to control the secondary effects that such businesses

³¹ Id. at § 105.05.

³² Id. at §109.32.

³³ Id. at §109.31.

³⁴ Id. at §109.57(c).

³⁵ TEX. LOC. GOV'T CODE § 243,006(a)(1).

³⁶ Id. at § 243.006(a)(2).

³⁷ Id. at § 243.006(b).

³⁸ Id. at § 243.007.

bring. In Encore Videos, Inc. v. City of San Antonio, 330 F.3d 288 (5th Cir. 2003), the Fifth Circuit held that the studies that Texas cities traditionally had cited to support their secondary effects regulations did not apply to retail-only sexually oriented businesses. In response to Encore, the Texas City Attorneys Association and a number of Texas Cities commissioned an off-site secondary effects study, Survey of Texas Appraisers: Secondary Effects of Sexually-Oriented Businesses on Market Values and Crime-Related Secondary Effects: Secondary Effects of "Off-Site" Sexually-Oriented Businesses, which is available for download at http://www.texascityattomeys.org/bulletin-SOB.html.

C. Tax Increment Financing (TIF) Zone

A Tax Increment Financing (TIF) Agreement permits a municipality to designate a "TIF" zone (a.k.a reinvestment zone) to fund projects within the zone through additional tax dollars generated by growth of real property value in the zone.³⁹ To be designated as a reinvestment zone under the TIF statute, an area must meet the following criteria:

- (1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:
 - (A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;
 - (B) the predominance of defective or inadequate sidewalks or streets;
 - (C) faulty size, adequacy, accessibility, or usefulness of lots:
 - (D) unsanitary or unsafe conditions;
 - (E) the deterioration of site or other improvements;
 - (F) tax or special assessment delinquency exceeding the fair market value of the land:
 - (G) defective or unusual conditions of title;
 - (H) conditions that endanger life or property by fire or other cause; or
 - (I) any combination of these factors;

³⁹ Tex. Tax Code §§ 311.001 et seq.

- (2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality; or
- (3) be in a federally assisted new community located in a homerule municipality or in an area immediately adjacent to a federally assisted new community located in a home-rule municipality; or . .
- (4) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.⁴⁰

The Attorney General has determined that an area designated for TIF treatment must be "unproductive, underdeveloped or blighted" w/in the meaning of article VIII, section 1-g(b) of the Texas Constitution.⁴¹

VI. Vested Rights

"Vested rights" refer to a property owner's right to use the owner's property in a certain manner based on the regulations in place at a particular time, which is usually the date on which the property owner first received approval from the city for such use. A property owner has no vested right in a particular zoning category or restriction. Similarly, a neighboring property owner cannot enforce previous zoning requirements against future construction. Therefore, if the city were to eliminate a building setback requirement, for example, neighboring property owners who were subject to the setback requirement when they built their homes would not have legal standing to enforce the setback against future builders.

⁴⁰ ld. at § 311.005(a).

⁴¹ Op. Tex. Atty Gen. No. JC-0152 (1999).

⁴² Williamson Pointe Venture v. City of Austin, 912 S.W.2d 340, 343 (Tex. App. - Austin 1995, no writ).

⁴³ 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING § 4:28 (4th ed. 2003).

⁴⁴ See Nusbaum v. City of Norfolk, 145 S.E. 257, 259 (Va. 1928).

A. Nonconforming use

Where a property owner is already using a particular tract of land in accordance with current zoning regulations, a change in zoning will not immediately affect that property. A municipality may not make the restrictions in its zoning ordinance retroactive. We property is previously zoned for a specific use, and a zoning change occurs that negates the previous zoning then the use of that property becomes a legal nonconforming use. A nonconforming use is a use that exists legally when a new zoning restriction becomes effective and that continues to exist. A city may include a provision in its zoning ordinance that terminates non-conforming uses after a set period of time following the zoning change (e.g., 25 years) so that the property owner has an opportunity to recoup his investment in the nonconforming use over the normal life-span of the non-conforming structure.

As a general rule, mere preparation for use of property before adoption of a zoning change is not enough to establish a nonconforming use. Note, however, that a change in zoning that unreasonably restricts development may result in a taking under the Texas Constitution. In Sheffield Dev. Co., Inc. v. City of Glenn Heights, 49 for example, the Texas Supreme Court held that a city's decision to "down zone" the area of a proposed subdivision from 6,500 square foot lots to 12,000 square-foot lots did not unreasonably interfere with the property owner's investment-backed expectations for development of the property. However, the Court left open the possibility that under different facts, a city's decision to down zone could rise to the level of an unconstitutional taking of private property.

B. Chapter 245 of the Texas Local Government Code ("Vested Rights Statute")

The legislature originally enacted Chapter 245 of the Texas Local Government Code, "Issuance of Local Permits," to protect property owners from changes in local regulations that occurred after the property owner had already begun development on his or her property. Now known as the "vested rights" or "entitlement" statute, the statute has become a sword for developers and a burden on cities that seek to control growth and development within their jurisdictions.

The Texas Legislature enacted the vesting provisions under Chapter 245 of the Texas Local Government Code to require that "each permit in a series required for a development project be subject to only the regulations in effect at the time of the application for the project's

⁴⁵ City of Corpus Christi v. Allen, 254 S.W.2d 759, 761 (Tex. 1953).

⁴⁶ City of Univ. Park v. Benners, 485 S.W.2d 773, 777 (Tex. 1972).

⁴⁷ Murmur Corp. v. Bd. of Adjustment of City of Dallas, 718 S.W.2d 790, 798 (Tex. App. - Dallas 1986, writefed n.r.e.).

⁴⁸ City of Pharr v. Pena, 853 S.W.2d 56, 64 (Tex. App. - Corpus Christi 1993, writ denied).

^{49 140} S.W.3d 660 (Tex. 2004).

first permit, and not any intervening regulations." Chapter 245 defines "project" as "an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor." The statute defines "permit" as "a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility agency owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought." The statute applies to "political subdivisions," which includes municipalities.

Under Chapter 245, the city must consider the permit application solely on the basis of the regulations that were in effect: (1) at the time the original application for the permit was filed for any purpose, including review for administrative purposes; or (2) a plan for development of real property or plat application was filed with the city.⁵³ Further, the applicant's rights "vest" on the filing of an application "that gives the regulatory agency fair notice of the project and the nature of the permit sought."⁵⁴ And if a series of permits is required for a project, the regulations in place at the time of the original application for the permit in the series must be the sole basis for consideration of all subsequent permits required for completion of the project.⁵⁵ After the application for a project is filed, the city may not shorten the duration of any permit required for the project.⁵⁶ At least one court has held that the filing of a plat is the first permit application in a series of permits constituting a "project" under section 245.002(b) of the Local Government Code.⁵⁷

The Legislature did leave some authority for cities. First, the city may provide that a permit application expires after 45 days if the applicant fails to provide the necessary information and the city provides the applicant with notice within 10 days after the filing of the application.⁵⁸ In addition, the city may, by ordinance, impose an expiration date on "dormant projects" for which no progress has been made towards completion of the project. The expiration date can be no earlier than September 1, 2010. After that time, the expiration date can be two years for an individual permit but for a "project", no earlier than five years after the date the first permit

⁵⁰ Quick v. City of Austin, 7 S.W.3d 109, 128 (Tex. 1998) (construing predecessor statute); see also TEX. Loc. GoV'T Code § 245.002.

⁵¹ Tex. Loc. Gov't Code § 245.001(3).

⁵² Id. at § 245.001(1).

⁵³ Id. at § 245,002(a).

⁵⁴ Id. at § 245.002(a-1).

⁵⁵ Id. at § 245.002(b).

⁵⁶ Id. at § 245.002(c).

⁵⁷ Hartsell v. Town of Talty, 130 S.W.3d 325, 327-38 (Tex. App. - Dallas 2004, pet. denied).

⁵⁸ TEX. LOC. GOV'T CODE § 245.002(e).

application was filed. The statute provides multiple avenues for the developer to establish that it has made progress toward completion of the project, including: (1) the submission of an application for a final plat or plan; (2) a good-faith attempt to file a permit application necessary to begin or continue towards completion of the project; (3) the incursion of costs in developing the project (exclusive of land acquisition) that equal five percent of the most recent appraised market value of the real property in which the project is located; (4) the posting of a bond with the city to ensure performance of an obligation that the city requires; or (5) payment of utility connection fees or impact fees.⁵⁹

Finally, the legislature has exempted certain regulations from Chapter 245's vesting provisions. These include: (1) building permits that are at least two years old, provided that the building or structure is intended for human occupancy and habitation, and the permit was issued under laws or regulations adopting only uniform building, fire, electrical, plumbing, or mechanical codes and local amendments to those codes; (2) zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by restrictive covenant required by the municipality; (3) regulations that specifically control only the use of the land and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage or building size; (4) regulations for sexually oriented businesses; (5) municipal or county regulations affecting colonias; (6) fees imposed in conjunction with development permits; (7) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication; (8) regulations for utility connections; (9) flood control regulations; (10) construction standards for public works located on public lands or easements; (11) regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size, residential or commercial density, or the timing of a project, or that do not change development permitted by restrictive covenant required by the municipality. 60

An aggrieved applicant cannot recover money damages under Chapter 245. Rather, the statute provides that the only method of enforcement is through mandamus or declaratory or injunctive relief.⁶¹

C. Legal Use Prior to Annexation

Section 43.902 of the Texas Local Government Code permits a property owner to continue certain land uses following annexation:

§ 43.002. Continuation of Land Use

(a) A municipality may not, after annexing an area, prohibit a

⁵⁹ Id. at § 245.005.

⁶⁰ Id. at § 245.004.

⁶¹ Id. at § 245.006.

person from:

- (1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or
- (2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if:
 - (A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and
 - (B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.
- (b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.
- (c) This section does not prohibit a municipality from imposing:
 - (1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;
 - (2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;
 - (3) a regulation relating to preventing imminent destruction of property or injury to persons;
 - (4) a regulation relating to public nuisances;
 - (5) a regulation relating to flood control;
 - (6) a regulation relating to the storage and use of hazardous substances; or
 - (7) a regulation relating to the sale and use of fireworks.

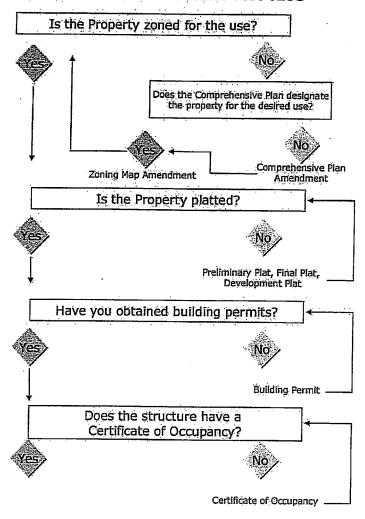
(d) A regulation relating to the discharge of firearms or other weapons is subject to the restrictions in Section 229.002. 62

Under the above statute, the basic test is: (1) was the land use legal in the county prior to annexation; and (2) if it was, does the regulation that the city is seeking to impose fall within one of the exceptions under subsection (c) (e.g., public nuisances, flood control, fireworks etc.)? A good rule of thumb is that the city rarely will be able to force the property owner to change his land use to comply with the city's zoning ordinance following annexation, but the city almost always can force the property owner to comply with the city's nuisance ordinances.

⁶² Tex. Loc. Gov't Code § 43.002.

APPENDIX "A"

PROPERTY DEVELOPMENT PROCESS



^{*} Describes current ordinance requirements

^{*}From Subdivision Ordinance of the City of Granite Shoals, Texas.

Sec. 15-6-4. - Changes and amendments; application fee.

(A)

This zoning article, including boundaries of districts and regulations, may be amended, supplemented or changed by ordinance of the City Commission. The City Commission shall receive the report of the Planning and Zoning Commission prior to adopting any change or amendment to the zoning ordinance.

a.

The Planning and Zoning Commission shall conduct a public hearing, announcement of which shall be published once in a newspaper of local circulation fifteen (15) days prior to such hearing before acting upon any zoning matter.

i.

All property owners within 200 feet of the property on which the change is proposed shall be sent written notice not less than ten (10) days before the hearing date. The list of property owners shall be prepared from the last city tax roll listing all property owners who have rendered their property for city taxes. Notice is adequately served by depositing properly addressed and postage paid notice with the city post office. Property owners whose names do not appear on the city tax roll are adequately notified by the publication in a newspaper of local circulation.

b.

Following the Planning and Zoning Commission public hearing and report, the City Commission shall conduct a public hearing, announcement of which shall be published once in a newspaper of local circulation fifteen (15) days prior to such hearing before acting upon any zoning matter.

i.

Three-fourths (%) vote of the members of the City Commission shall be necessary to make any change should a petition opposed to such change be presented by the owners of 20% of either the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom.

Ϊİ.

Three-fourths (2) vote of the members of the City Commission shall be necessary to overrule a recommendation of the Planning and Zoning Commission that a proposed amendment supplement or change be denied.

Vote of the City Commission means members eligible to vote. With a five (5) member commission, 3/4ths vote is 4 of 5 members eligible to vote. The absence of a commission member from a meeting does not change the number of votes required (ie, still 4 of 5). If a commission member were to die, resign, or be disqualified (ie, due to a conflict of interest), then that is considered a vacancy which reduces the number of eligible votes so that the vote would then be 3/4ths of the four (4) members eligible to vote.

C.

Applications for Special Use permits, changes of districts (rezones), or other applications which require notification or publication shall be accompanied by a fee of \$250.00.

Sec. 15-6-24. Nonconforming uses and structures.

Share Link to sectionPrint sectionDownload (Docx) of sectionsEmail sectionCompare versions

(A)

Nonconforming status. A nonconforming status shall exist under one of the following conditions:

(1)

When a use does not conform to the regulations prescribed in the district in which it is located, and was lawfully existing and operating prior to the adoption of this article, or any amendment thereto which creates nonconformity, and where there has been no discontinuance of the use for a period of time exceeding six months or;

(2)

When a structure does not conform to the regulation prescribed in the district in which it is located, and was lawfully existing and constructed prior to the adoption of this article, or any amendment thereto which creates nonconformity.

(B)

Maintenance permitted. A nonconforming building or structure may be maintained.

(C)

Repairs and alterations. Repairs and structural alterations may be made to a nonconforming building or to a building housing a nonconforming use.

(D)

Additions, enlargements and moving.

(1)

A building or structure occupied by a nonconforming use and a building or structure nonconforming as to height, area or yard regulations shall not be added to or enlarged in any manner or removed to another location except as provided by subdivision (2) of this division hereof.

(2)

A building or structure occupied by a nonconforming use or a building or structure nonconforming as to height, area, or yard regulations may be added to or enlarged or moved to

a new location on the lot upon a permit authorized by the Board of Adjustment, which may issue, provided that the Board of Adjustment, after hearing, shall find:

(a)

The addition to, enlargement of, or moving of the building will be in harmony with one or more of the purposes of this article as stated in \S 15-6-2 hereof, and shall be in keeping with the intent of this article.

(b)

The proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.

(c)

LOT shall mean that parcel of land owned at the time the use became nonconforming and upon which the use existed, whether defined in one or more legal descriptions provided that all legal descriptions are contiguous.

(E)

Alteration where parking insufficient. A building or structure lacking sufficient automobile parking space in connection therewith as required by this article may be altered or enlarged provided additional automobile parking space is supplied to meet the requirements of this article for such alteration or enlargement.

(F)

Restoration of damaged buildings. A nonconforming building or structure or a building or structure occupied by a nonconforming use which is damaged or destroyed by fire, flood, wind, or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building, structure, or part thereof, which existing at the time of such damage or destruction may be continued or resumed, provided that such restoration is started within a period of six months and is diligently prosecuted to completion and is not located in an overlay zone.

(G)

Six month vacancy. A building or structure or portion thereof occupied by a nonconforming use, which is, or hereafter becomes, vacant and remains unoccupied by a nonconforming use for a continuous period of six months, except for dwellings, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

(H)

Continuation of use. The occupancy of a building or structure by a nonconforming use, existing at the time this Title became effective, may be continued.

(I)

Occupation within six months. A vacant building to structure may be occupied by a use for which the building or structure was designed or intended it so occupied within a denociol six months after the use became nonconforming.

(J)

Change of use. The nonconforming use of a building or structure may not be changed except to a conforming use, but where such change is made, the use shall not thereafter be changed back to a nonconforming use.

(K)

Nonconforming use of land. The nonconforming use of land, existing at the time this article became effective, may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of six months or more, any future use of such land shall be in conformity with the provisions of this article.

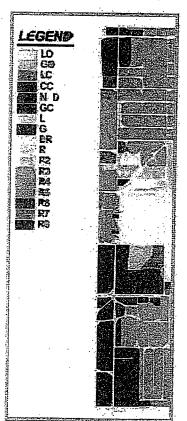


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Chapter 4 Zoning Regulations in Texas

William Dahlstrom, JD, AICP



This chapter explains the basics of zoning law in Texas. It provides a definition and breif history, along a legal basis for zoning and the statutory authority. The chapter discusses the connection between zoning and the comprehensive plan and districts, the basic zoning units to divide cities. These boundaries and ordinainces are approved by zoning commissions. Procedures includes hearings and notice or zoning commission meetings, city council meetings, and general law city council meetings. The supermajority vote is described and the board of adjustement is discussed in detail. The chapter also describes ways in which municipalities enforce zoning ordinances and the variety of exceptions to zoning authority. Additional zoning concepts are breifly discussed as well as the ways in which zoning laws are challenged. Understanding such regulations are valuable because zoning is an essential tool, if not the essential tool, used to implement the comprehensive plan along with subdivision regulations, infrastructure planning, and economic strategies.

This chapter was developed from the 17th Annual Land Use Planning Law Conference with the University of Texas School of Law on March 20, 2013

Left: Zoning map of a neighborhood

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DEFINITION AND HISTORY

"Zoning" is the fundamental regulation of a governmental entity used to control land uses pursuant to a comprehensive plan. "Zoning regulation is a recognized tool of community planning, allowing a municipality, in the exercise of its legislative discretion, to restrict the use of private property."

As the result of the mounting problems from industrialization and urbanization of cities in the late nineteenth and early twentieth cities, municipal governments recognized the need to adopt regulations to make cities more livable, safe and sanitary. Widely recognized as the first comprehensive zoning ordinance, the New York City Zoning Ordinance of 1916 was enacted to regulate height and setbacks of larger buildings to allow sunlight and air to reach adjacent properties and to restrict incompatible uses from residential districts. ²

In 1921, U.S. Secretary of Commerce Herbert Hoover, commissioned an advisory committee to draft a model zoning statute, The Standard Zoning Enabling Act of 1926, which became the model for zoning legislation throughout the country. The Act included a section on a "Grant of Power" which authorized zoning for "the purpose of promoting health, safety, morals, or the general welfare of the community."³

Section 3 of the Act, "Purposes in View" provided,

Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. ⁴

Typically, zoning will consist of:

(i) an ordinance that sets forth items such as definitions, permitted land uses and development standards, and

(ii) a map designating the districts within the jurisdiction.

Municipal governments recognized the need to adopt regulations to make cities more livable, safe and sanitary.

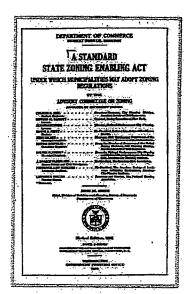
4 Id. at Section 3

¹ City of Brookside Village. v. Comeau, 633 S.W.2d 790, 792 (Tex. 1982), cert. denied, 459 U.S. 1087 (1982).

New York City Department of City Planning Website, 2013

A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations; Section 1, U.S. Department of Commerce (1926)





The Standard Zoning Enabling Act of 1926 became the model for zoning legislation throughout the country.

In Village of Euclid, Ohio v. Ambler Realty Co., the Court ruled that there may be valid reasons to separate intensive uses from less intensive uses for the general welfare

The Act also included sections describing the means of adopting and amending the regulations, the establishment of a zoning commission and board of adjustment, the enforcement of regulations, and the resolution of conflicts with other laws.5

LEGAL BASIS

The United States Supreme Court ruled in 1926 that zoning is a valid exercise of the municipality's police power. In Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926), the Village of Euclid enacted an ordinance that established six classes of use districts, three classes of height districts, and four classes of area districts in an effort to control industrial expansion from the City of Cleveland into the Village. Ambler Realty argued that the classification of its property deprived it "of liberty and property without due process of law" and denied "it the equal protection of the law,"6 Ambler Realty also specifically argued that the zoning ordinance attempted "to restrict and control the lawful uses of appellee's land so as to confiscate and destroy a great part of its value."7 The Court ruled that there may be valid reasons to separate intensive uses from less intensive uses for the general welfare holding, "it is enough for us to determine, as we do, that the ordinance, in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority."8

The validity of zoning in Texas was approved by the Texas Supreme Court in Lombardo v. City of Dallas. In that case, the Court acknowledged that "it appears that full authority was delegated cities and incorporated villages to restrict the use of buildings, structures and land for trade, industry, residence, or other purposes. Zoning, in general, is the division of a city or area into districts, and the prescription and application of different regulations in each district; generally, such division is into two classes of districts, such as was attempted by the ordinance under consideration. Effective zoning regulations, as that term is now well understood, comprehends, necessarily, prohibitions and restrictions; prohibitions against certain uses in named districts, and restrictions as to the area of lots to be built upon, the size and height of

⁵ A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations, U.S. Department of Commerce (1926)
6 Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 384 (1926)

Id. at 397



structures, yard spaces to be left unoccupied, etc." The Court held, "that the legislative act and the ordinance of the city of Dallas, called in question, and the provisions of same as applied to plaintiff and his property, are not subject to the objections urged by plaintiff, but that they are valid and enforceable." **io

STATUTORY AUTHORITY

In Lombordo, the City of Dallas relied on Texas' adopted version of the Standard Zoning Enabling Act adopted in 1927 as Article 1011 of the Texas General Statutes. In 1987, the sections of Article 1011 were codified in Chapter 211 of the Texas Local Government Code. Chapter 211 currently provides that the zoning regulatory power is for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical cultural, or architectural importance and significance."

Under Section 211.003, the municipality may regulate:

- 1. The height, number of stories, and size of buildings and other structures;
- 2. The percentage of a lot that may be occupied;
- 3. The size of yards, courts, and other open spaces;
- 4. Population density;
- 5. The location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- 6. The pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health, ¹²

Further, the Statute provides that a city may regulate "the construction,

12 Id. at Section 211.003 (a)

"...promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance"

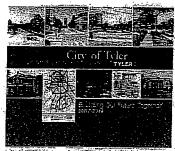
⁹ Lombardo v. City of Dallas, 47 S.W.2d 495, 499 (Tex. Civ. App.—Dallas 1932), aff d, 124 Tex. 1, 73 S.W.2d 475 (1934) 10 Id.

¹¹ Texas Local Government Code Section 211.001 (2013)



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The Purpose in View of the Standard Zoning Enabling Act states that "such regulations shall be made in accordance with a comprehensive plan..." The above image is of the City of Tyler, Texas Comprehensive Plan 2007-2030.

reconstruction, alteration, or razing of buildings and other structures" with regard to designated places and areas of historical, cultural, or architectural importance and significance.13 The governing body of a home-rule municipality may also regulate the bulk of buildings.14

THE COMPREHENSIVE PLAN

Zoning is one of the primary implementation tools of a municipality's comprehensive plan. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- Lessen congestion in the streets;
- 2. Secure safety from fire, panic, and other dangers;
- 3. Promote health and the general welfare;
- Provide adequate light and air;
- 5. Prevent the overcrowding of land;
- Avoid undue concentration of population; or
- 7. Facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.15

DISTRICTS

According to the Chapter 211, a city may divide the municipality into districts of a number, shape, and size and within each district, the city may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land. 16 The regulations must be uniform for each class or kind of building in a district; however, the regulations may vary from

Id. at Section 211.003 (b)

Id. at 211.003 (c)

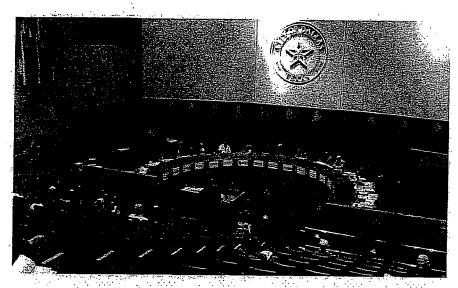
¹⁵ 16

Id. at 211.004 Id. at 211.005 (a)



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Left: Dallas, Texas Council Chambers.

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district to district and shall be adopted "with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality." 18

CREATION OF A ZONING COMMISSION

A city may appoint a zoning commission to make recommendations regarding the boundaries of the original zoning districts and zoning regulations. Often, a city will appoint a commission that performs the recommending authority under Chapter 211 and the planning commission authority regarding subdivisions and plats granted under Chapter 212 of the Texas Local Government Code.

With regard to zoning, this body is a 'recommending' body. However, some zoning ordinances also provide that the zoning commission is charged with approval of site plans pursuant to the provisions of that city's zoning ordinance. In that regard, they may be the final municipal authority for the

¹⁷ Id. at 211.005 (b) 18 Id. at 211.005 (c)

¹⁸ Id. at 211.005 (c) 19 Id. at 211.007 (a)



review and approval of a site plan.

PROCEDURES

Hearings

Approval of a zoning ordinance, districts and amendments of the same require public hearings before the zoning commission and city council. The commission is required to make a preliminary report, hold the public hearing and submit a final report to the city council.²⁰ The city council must receive the report before it can conduct its hearing.²¹ A home rule city may allow joint hearings of the city council and zoning commission provided the city council, by two-thirds vote, has prescribed the type of notice and location for the hearing.²²

Notice

Zoning Commission

Written notice of the zoning commission hearing must be sent to the owners of the property within 200 feet of the property on which a change in classification is proposed "before the 10th day before the hearing date." Notice is sufficient if it is deposited in the municipality, with properly addressed with postage paid, in the United States mail.²³

City Council

Notice of the time and place of the city council hearing must be published in official newspaper or a newspaper of general circulation in the city, "before the 15th day before the date of the hearing."²⁴

General law city without a zoning commission

A general law city without a commission must provide notice of the city council hearing to the property owners within 200 feet of the property subject to change in the same manner as notice prior to a commission hearing.²⁵

20	Id. at 211.007 (b)
21	Id.
22	Id. at (d)
23	Id. at 211.007 (c)
24	Id. at 211.006 (a)
25	Id. at 211.006 (b)



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SUPERMAJORITY VOTE

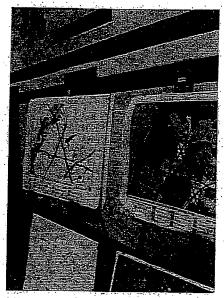
The Statute provides that three-fourths majority affirmative vote is required to approve a change in a regulation or boundary if written protest is filed by the owners of at least 20 percent of either:

- 1. The area of the lots or land covered by the proposed change; or
- 2. The area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area. 26

Further, the city may by ordinance require that the affirmative vote of at least three-fourths majority of city council is required to overrule a recommendation of the zoning commission that a proposed change to a regulation or boundary be denied.27

However, in Appolo Development, Inc. v. City of Garland, the Court ruled that the supermajority requirement did not apply to property that was subject to interim zoning at the time of annexation.

"We do not believe it was intended that Section 5 of Ordinance 1011 [predecessor of Section 211.006 (d)] should have the effect of so zoning all property thereafter annexed that no owner of newly annexed property could apply for permanent zoning without placing himself under the burden of obtaining a favorable vote of three-fourths of the members of the City Council if a protest were made by adjacent property owners described in Article 1011e."28



Above: Zoning and land use maps

Image by tracktwentynine on Flickr and reproduced under Creative Commons 2.0

BOARD OF ADJUSTMENT

The city may appoint a board of adjustment to consider variances, special exceptions and appeals of administrative officials in the enforcement of the zoning regulations.29 The board consists of five members who are appointed by the city council. Each case before the board must be heard by at least 75 percent of the members of the board.30 Boards of adjustment in cities in excess of 500,000 may consist of several panels with at least five members

Id. at Section 211.006 (d) Id. at Section 211.006 (f) 27

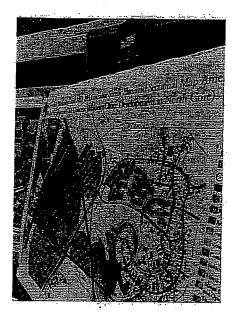
Appolo Development, Inc. v. City of Garland, 476 S.W.2d 365 (Tex. App.-Dallas, 28 1972; rehr g denied 1972) 29 TEXAS LOCAL GOV'T CODE, Section 211.008

Id. at 211.008 (d) 30



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per panel.31

The board of adjustment may hear and decide:

- 1. Appeals of an order, requirement, decision, or determination made by an administrative official in the enforcement of zoning regulations;
- Special exceptions:
- Variances from the terms of a zoning ordinance; and
- 4. Other matters authorized by an ordinance adopted under Chapter 211.32

Variances by definition are modifications to zoning regulations authorized by the board when the following standards are met:

- 1. The variance is not contrary to the public interest;
- 2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. (A financial hardship will not be sufficient to qualify as an unnecessary hardship adequate for a variance request. 33);
- 3. The spirit of the ordinance must be observed; and
- 4. Substantial justice must be done. 34

Special Exceptions are modifications to the zoning regulations specifically set forth in the zoning ordinance that allow such if certain criteria set forth in the ordinance are satisfied.35

Additionally, some cities authorize the board to amortize nonconforming uses after conducting hearings and enabling the owner of the nonconforming use to recoup its investment in the nonconforming use. In City of University Park v. Benners, the Texas Supreme Court ruled "[m]unicipal zoning ordinances requiring the termination of nonconforming uses under reasonable

Id. at 211.012

Id. at 211.009 (a)

³³ Board of Adjustment of the Company of the Compan Board of Adjustment of the City of Piney Point Village v. Solar, 171 S.W. 3d 251, 255



conditions are within the scope of municipal police power."36

Any person aggrieved by the decision of an administrative official or any officer, department, board, or bureau of the municipality affected by the decision may appeal the decision of the administrative official by filing with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal will stay all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. 38

Park v. Benners, the Texas Supreme Court ruled that cities could terminate nonconforming uses under reasonable conditions.

In City of University

A concurring vote of 75 percent of the board members is required to:

- 1. Reverse an order, requirement, decision, or determination of an administrative official;
- 2. Decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or
- 3. Authorize a variation from the terms of a zoning ordinance. 39

The decision of the board may be appealed to district court or county court, but not to the zoning commission or city council.⁴⁰ The appeal must be a verified petition, presented within 10 days after the date the decision is filed in the board's office, stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality.

The party attacking the decision of the board must demonstrate that the decision is a "very clear showing of abuse of discretion" and that the board could have reasonably reached only one decision. The Courts in Texas hold that the Board "is a quasi-judicial body and the district court sits only as a court of review by writ of certiorari." The order of the Board is presumed valid and the party attacking the order must establish a "very clear showing of abuse of discretion." [cite omitted] A zoning board abuses its discretion

The appeal or verified petition must be filed by:

- 1. A person aggrieved by a decision of the board;
- 2. A taxpayer; or
- 3. An officer, department, board, or bureau of the municipality.¹

Id.

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if it acts without reference to any guiding rules and principles or clearly fails to analyze or apply the law correctly. [cites omitted] With respect to a zoning board's factual findings, a reviewing court may not substitute its own judgment for that of the board. [cite omitted]. Instead, a party challenging those findings must establish that the board could only have reasonably reached one decision. [cite omitted].⁴⁴

ENFORCEMENT

A violation of a zoning ordinance is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the city. The governing body may also provide civil penalties for a violation.⁴⁵ Per chapter 54 of the Texas Local Government Code, a fine or penalty for violation of a zoning regulation may not exceed \$2,000.00.⁴⁶

Further, the city may institute the following measure if a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of zoning regulations:

- 1. Prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- 2. Restrain, correct, or abate the violation;
- 3. Prevent the occupancy of the building, structure, or land; or
- 4. Prevent any illegal act, conduct, business, or use on or about the premises.

EXCEPTIONS TO A CITY'S ZONING AUTHORITY

State or Federal Preemption

Matters regulated by state or federal law are preempted from local zoning authority. For example, the Texas Alcoholic Beverage Code specifically provides

⁴⁴ Vanesko at 771.

⁴⁵ Id. at 211.012

⁴⁶ Id. at 54.001 (b)



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that such Code "shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code."47 However, that Code permits city regulation of alcoholic beverage sales and service in specific areas. City regulation of alcoholic beverages where not otherwise permitted by the Texas Alcoholic Beverage Code would be preempted.

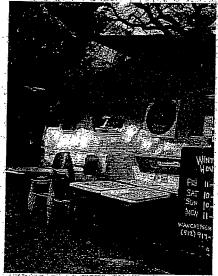
In the case of Southern Crushed Concrete, LLC v. City of Houston, a concrete crushing company secured an air quality permit from the Texas Commission on Environmental Quality, but was denied a similar permit by the City whose regulations were more restrictive to the point of rendering the use unlawful. The Texas Supreme Court ruled, "But, the express language of section 382.112(b) compels us to give effect to the Legislature's clear intent that a city may not pass an ordinance that effectively moots a Commission decision. We hold that the Ordinance makes unlawful an 'act approved or authorized under . . . the [C]ommission's . . . orders' and is thus preempted by the TCAA and unenforceable. TEX. HEALTH & SAFETY CODE § 382.113(b)."48

State and Federal Buildings

The Local Government Code provides that zoning regulations enacted pursuant to Chapter 211 do not apply to "a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency."49 However, zoning will apply to a privately-owned building which is leased to a state agency.50

Pawnshops

Pawnshops are afforded some protection under the Texas Local Government Code. Section 211.0035 provides a city must designate pawnshops, which have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as "a permitted use in one or more zoning classifications and cannot "impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop."51



Above: Austin, TX food truck Many cities do not indicate 'mobile food truck vending among approved land uses listed in the city zoning codes.

Image by Katherine Lynch on Flickr and reproduced under Creative Commons 2.0

(Tex. 2013)

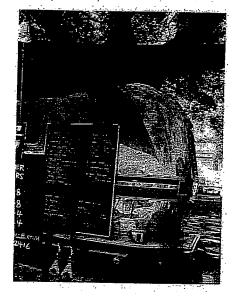
Texas Alcoholic Beverage Code, Section 109,57 (b)
Southern Crushed Concrete, LLC v. City of Houston;
TEXAS LOCAL GOV'T CODE, Section 211.013 (c)
Id. at Section 211.013 (d)

⁴⁷ 48 49 50 51



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SOME ADDITIONAL ZONING CONCEPTS

Accessory Use A use that is customarily incidental to a main use. Typically, these uses must be on the same lot as the main use and are permitted in the same zoning district as the main use.

Conservation Zoning Zoning regulations that provide development standards aimed at protecting environmental, historic or cultural amenities of a community. Often these types of regulations provide modifications to standard zoning development standards, including but not limited to setbacks and lot sizes, and may provide density bonuses, in order to provide flexibility and incentives for protecting the targeted amenities.

Cumulative Zoning Zoning regulations in which uses in more restrictive districts are permitted in more intensive districts.

Euclidean Zoning Zoning regulations that provide individual districts for permitted uses and development standards.

Design Guidelines Standards aimed at maintaining the architectural integrity of a unique area of a city or at providing an architectural or design theme for an area of the city.

Exclusionary Zoning A discriminatory zoning system in which regulations are enacted to unlawfully exclude certain groups of people.

Form-Based Code A zoning code in which the regulations "address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks." 52

Incentive Zoning Zoning regulations that provide bonuses or other incentives pursuant to standards that further specific community development objectives.

Inclusionary Zoning Zoning that provides for wide array of residential uses including low income and affordable units.

52 Definition of a Form-Based Code, Form-Based Code Institute; 2011 [Form-Based Code Institute website]



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Nonconforming Uses Uses that were previously permitted on a property, but subsequently prohibited by zoning regulations imposed with annexation or an amendment to the zoning regulations.

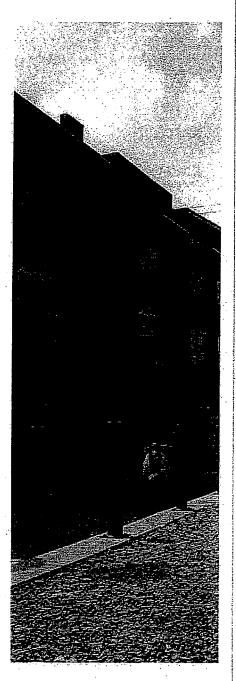
Performance Zoning Zoning regulations that focus on performance criteria rather than solely on the separation of uses.

Planned Development District (PD) or Planned Unit Development (PUD) A zoning classification that provides flexible development regulations to allow the construction of a unified development concept which may not conform entirely to the standard zoning regulations. Often these types of development include mixed uses, protection of environmentally significant features, preservation of and provision for open space, interconnection of uses, modified development standards, and special design guidelines and landscaping requirements. Because the authority and limitations for planned development districts are set forth in a city's zoning code, it is necessary to review those portions of the city's code to determine to what extent a planned development district may be used.

Smart Growth According to the American Planning Association,

Smart Growth is not a single tool, but a set of cohesive urban and regional planning principles that can be blended together and melded with unique local and regional conditions to achieve a better development pattern. Smart Growth is an approach to achieving communities that are socially, economically, and environmentally sustainable. Smart Growth provides choices — in housing, in transportation, in jobs, and in amenities (including cultural, social services, recreational, educational, among others) — using comprehensive planning to guide, design, develop, manage, revitalize, and build inclusive communities and regions to:

- Have a unique sense of community and place;
- Preserve and enhance valuable natural and cultural resources:
- Equitably distribute the costs and benefits of land development, considering both participants and the short- and long-term time scale;
- Create and/or enhance economic value;



150

Chapter 4: Zoning Regulations in Texas



American Planning Association Texas Chapter

A Guide to Urban Planning in Texas Communities 2013



Chapter 4: Zoning Regulations in Texas

- Expand the range of transportation, employment, and housing choices in a fiscally responsible manner;
- Balance long-range, regional considerations of sustainability with short-term incremental geographically isolated actions;
- Promote public health and healthy communities;
- Apply up-to-date local and regional performance measures of successful urban and regional growth;
- Encourage compact, transit-accessible (where available), pedestrian-oriented, mixed-use development patterns and land reuse; and,
- Increase collaboration and partnerships to advance place-based and regional goals and objectives, while respecting local land-use preferences and priorities.

Core principles of Smart Growth include:

- 1. Efficient use of land and infrastructure
- Creation and/or enhancement of economic value
- 3. A greater mix of uses and housing choices
- 4. Neighborhoods and communities focused around human-scale, mixed-use centers
- 5. A balanced, multi-modal transportation system providing increased transportation choice
- 6. Conservation and enhancement of environmental and cultural resources
- 7. Preservation or creation of a sense of place
- 8. Increased citizen participation in all aspects of the planning process and at every level of government



- 9. Vibrant center city life
- 10. Vital small towns and rural areas
- 11. Amulti-disciplinary and inclusionary process to accomplish smart growth
- 12. Planning processes and regulations at multiple levels that promote diversity and equity
- Regional view of community, economy and ecological sustainability
- 14. Recognition that institutions, governments, businesses and individuals require a concept of cooperation to support smart growth
- 15. Local, state, and federal policies and programs that support urban investment, compact development and land conservation
- 16. Well defined community edges, such as agricultural greenbelts, wildlife corridors or greenways permanently preserved as farmland or open space.⁵³

The U.S. Environmental Protection Agency identifies the following ten basic principles of Smart Growth developments:

- 1. Mix land uses
- 2. Take advantage of compact building design
- 3. Create a range of housing opportunities and choices
- 4. Create walkable neighborhoods
- 5. Foster distinctive, attractive communities with a strong sense of place

Policy Guide on Smart Growth, American Planning Association; Originally Ratified by Board of Directors, April 15, 2002; Updated Guide Adopted by Chapter Delegate Assembly, April 14, 2012; Updated Guide Ratified by Board of Directors, April 14, 2012



Preserve open space, farmland, natural beauty, and critical environmental areas

- 7. Strengthen and direct development towards existing communities
- 8. Provide a variety of transportation choices
- 9. Make development decisions predictable, fair, and cost-effective
- 10. Encourage community and stakeholder collaboration in development decisions.54

Street Design Standards Standards focusing on various elements of street design and construction including, but not limited to street width, curbs and gutters, medians, lane widths, street parking, sidewalks, pedestrian amenities, bicycle lanes, crosswalks, landscaping, lighting, and street.

Transit-Oriented Development Typically higher density, mixed use development surrounding a transit station (usually 1/4-1/2 mile radius) which is designed to exploit the transportation opportunities afforded by the transit station.

Unified Development Code A single code that incorporates all development-related regulations including zoning and subdivision regulations, but may also include signage, landscaping, screening and fencing, environmental performance, and other development-related regulations.

Zoning Overlay "A set of zoning ordinances, optional or required, specifying land use and/or design standards for a designated portion of the underlying zoning within a defined district; typically used to keep architectural character and urban form consistent, make adjacent uses compatible, and/or accelerate the conversion of non-conforming land uses."55

55 Makin website] (2013)

Chapter 4: Zoning Regulations in Texas

About Smart Growth, U.S. Environmental Protection Agency, (2013) [U.S. EPA web-54 site] Makin Smart Growth Happen, U.S. Environmental Protection Agency, [U.S.EPA



CHALLENGES

Zoning is an exercise of a municipality's legislative powers⁵⁶ and courts will give deference to the municipality's ordinances and "[i]f reasonable minds may differ as to whether or not a particular zoning ordinance has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the ordinance must stand as a valid exercise of the city's police power."57 Therefore, a zoning ordinance receives deference and is presumed valid. A party challenging the zoning ordinance must show that the ordinance is arbitrary or unreasonable because it bears no substantial relationship to the public health, safety, morals or general we fare 58"Determining the reasonableness of a zoning ordinance is a question of law for the court."59

The following are some of the common challenges to zoning ordinances:

Inverse condemnation, taking, damaging

The U.S. Supreme Court has held that, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking" in violation of the Fifth Amendment of the U.S. Constitution. 60 In this sense the action of the governmental authority is characterized as a "regulatory taking" as opposed to a physical taking such as the acquisition of property for a public purpose. "In a regulatory taking, it is the passage of the ordinance that injures a property's value or usefulness."61

A regulatory taking may occur if a regulation deprives a property owner of all economically beneficial use of his land.62 A regulatory taking may also be found if the regulation unreasonably interferes with a landowner's right to use and enjoy his property or does not substantially advance a legitimate

- 56 City of Pharr v. Tippitt, 616 S.W. 2d 173, 173 (Tex. 1981) citing Thompson v. City of Palestine, 510 S.W. 2d 579 (Tex. 1974)
 57 Id. at 176
- 57 58

- 58 Id.
 59 City of San Antonio v. Arden Encino Partners, Ltd., 103 S.W.3d 627, 630 (Tex. App.-San Antonio 2003)Id. at 103 S.W.3d 627
 60 Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413, 43 S.Ct. 158, 67 L.Ed. 322 (1922)
 61 Lowenberg v. City of Dallas, 168 S.W.3d 800, 802 (Tex. 2005)
 62 Lucas v. South Carolina Coastal Commission, 112 S.Ct. 2886 (1992); Mayhew v.
 70wn of Sunnyvale, 964 S.W.2d 922, 935 (Tex. 1998) cert. denied, 526 U.S. 1144, 119 S.Ct. 2018, 143 L.Ed.2d 1030 (1999).

CHALLENGES:

- 1. Inverse condemnation, taking, damaging
- Substantive due process
- Procedural due process
- 4. Failure to comply with statutory or local procedures
- 5. Equal protection
- Free exercise
- Spot Zoning
- Contract Zoning

In order to challenge a zoning ordinance, one must show that the ordinance is

- 1. arbitrary or
- 2. unreasonable

because it bears no substantial relationship to the:

- public health,
- safety,
- morals or
- general welfare.



A regulatory taking may occur if a regulation deprives a property owner of all eco-

nomically beneficial

use of his land.

governmental interest. 53 Further, regulations may be deemed as takings if they unreasonably interfere with an owner's investment-backed expectations while also considering the economic impact of the regulation on the property owner, and the character of the governmental action.64

Substantive due process

Regulations may be subject to a substantive due process challenge if they fail to further a legitimate State interest or fail to have any relation to the public health, safety or welfare. 55 The regulations must first be "rationally related to legitimate government interests."66 Further, the regulations must not be arbitrary, unreasonable or capricious and must have a substantial relationship to the public health, safety or welfare. 67

"When a zoning determination is challenged on substantive due process grounds, if reasonable minds could differ as to whether the city's zoning action had a substantial relationship to the public health, safety, morals or general welfare, the action must stand as a valid exercise of the city's police power. ***

Procedural due process

Procedural due process mandates that a property owner who is deprived of a property right must have been given an "appropriate and meaningful opportunity to be heard."69 A city satisfies this standard if it provides notice and an opportunity to be heard.70

Failure to comply with Statutory or local procedures

Zoning ordinances are invalid, and not merely voidable, if the statutory procedure is not followed. "(F)ull compliance with the statute is necessary to the validity of amendatory, temporary or emergency zoning ordinances."71 Further, the "right to have notice and appear before a zoning commission is a

⁶³ Ma 64 She (Tex. 2004) 65 Ma 66 Id. 67 Id. 68 Cth 69 Ma 70 Id. 71 Bol Mayhew at 935 Sheffield Development Company, Inc. v City of Glenn Heights, 140 S.W. 3d 660, 672 Mayhew at 938 Id. City of Waxahachie v. Watkins, 154 Tex. 206, 275 S.W.2d 477, 481 (1955) Mayhew at 939

Bolton v. Sparks, 362 S.W. 946, 950 (Tex. 1962)



statutory right, not a due-process requirement."72 Therefore, one complaining of defective notice, based solely on noncompliance with the statute, does not have a constitutional claim.

Equal protection

An equal protection challenge may be brought if an individual can demonstrate that the cuty treated he individual differently from other similarly situated individuals without any reasonable basis. Such an ordinance generally must only be rationally related to a legitimate state interest unless the ordinance discriminates against a suspect class or infringes.73 "Economic regulations, including zoning decisions, have traditionally been afforded only rational relation scrutiny under the equal protection clause."74

Cities cannot treat individuals differently from other similarly situated individuals without any reasonable basis.

Free Exercise

Regulations that attempt to regulate religious activities may be challenged if they interfere with the exercise of religious freedoms in violation of the First Amendment of the U.S. Constitution. The Religious Land Use and Institutionalized Persons Act (RLUIPA), provides further protection by prohibiting:

"zoning and landmarking laws that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where: (i) the state or local government entity imposing the substantial burden receives federal funding; (ii) the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or (iii) the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses. In addition, RLUIPA prohibits zoning and landmarking laws that:

- Treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions:
- Discriminate against any assemblies or institutions on the basis of religion or religious denomination;

⁷² Murmur Corporation v. Board of Adjustment of the City of Dallas, 718 S.W. 2d 790, 792 (Tex. App-Dallas, 1986, writ ref d n.r.e.)
73 Mayhew at 939
74 Id.



- 3. Totally exclude religious assemblies from a jurisdiction; or
- 4. Unreasonably limit religious assemblies, institutions, or structures within a jurisdiction. laws."75

Spot Zoning

Some zoning changes may be challenged if the rezoning is deemed to be "Spot Zoning". Spot Zoning is the process of singling out a small tract of land and treating it differently from similar surrounding land "without any showing of justifiable changes in conditions." In City of Pharr v. Tippitt, the Texas Supreme Court identified the following factors to be reviewed in determining whether a rezoning is Spot Zoning.

- 1. Whether the City has disregarded the zoning ordinance or long-range master plans and maps that have been adopted by ordinance;
- 2. The nature and degree of an adverse impact on surrounding properties; i.e. is the change substantially inconsistent with surrounding properties; and,
- Whether the use of the property as presently zoned is suitable or unsuitable;
- 4. Whether the rezoning ordinance bears a substantial relationship to the public health, safety, morals or general welfare or protect and preserve historical and cultural places and areas.

Contract Zoning

Zoning ordinances whereby the City commits itself to rezone land in consideration of the landowner to use or not use his land in a particular manner, or provide some other consideration in exchange for the zoning may be challenged as "Contract Zoning." Contract zoning is invalid because the city dele-

6 City of Pharr v. Tippitt, 616 S.W.2d 173, 177 (Tex.1981)

⁷⁵ Religious Land Use and Institutionalized Persons Act of 2000; The United States Department of Justice

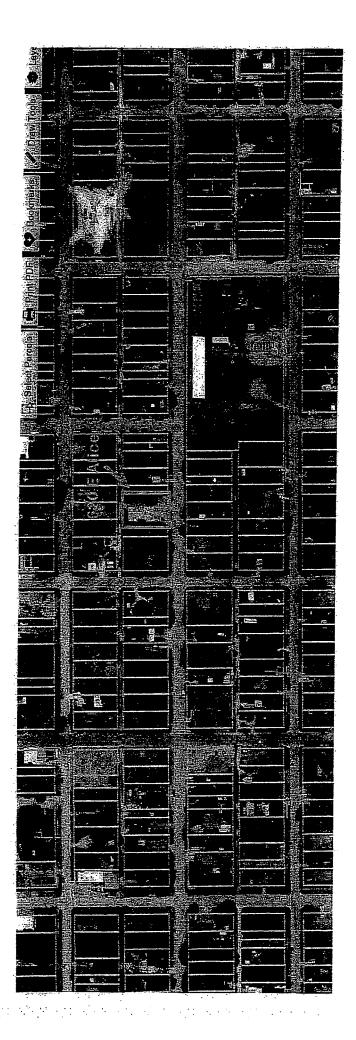


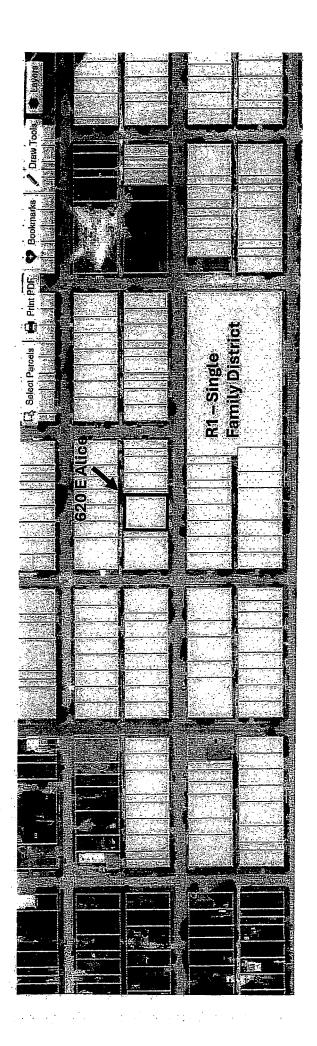
gates its legislative authority and bypasses the legislative process.⁷⁷ Zoning is legislative function of municipalities that they cannot contract away.⁷⁶

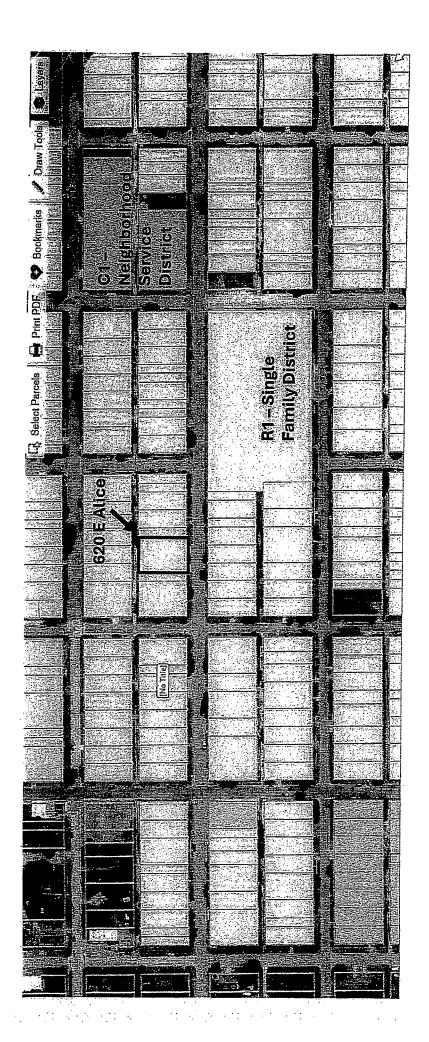
CONCLUSION

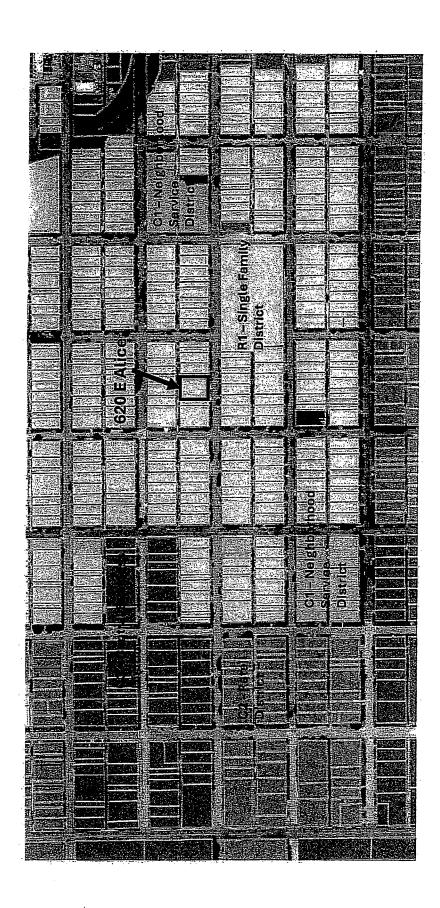
Comprehensive plans are intended to set forth a city's goals and objectives for future growth and identify a strategy by which the city will strive to achieve them. Zoning is an essential tool, if not the essential tool, used to implement the comprehensive plan along with subdivision regulations, infrastructure planning, and economic strategies. As evidenced above, there are numerous technical, legal and political issues that must be evaluated in the enactment and modification of zoning regulations. This article was intended to introduce these concepts at a broad level and not penetrate the deeper judicial analyses and more developed standards of review. A fundamental awareness of zoning should include the basics of the grant of authority, purposes, police power, process, and enforcement just as those same basic concepts were imperative in the Standard Zoning Enabling Act of 1926.

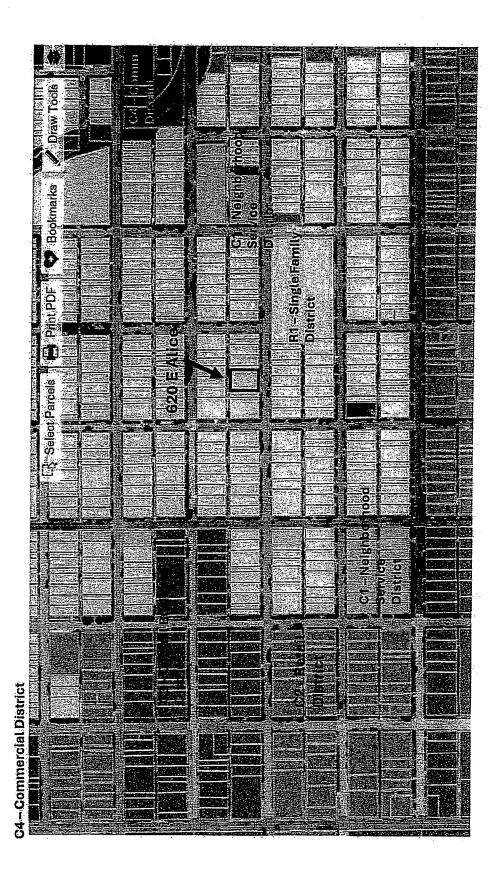
⁷⁷ Super Wash, Inc. v City of White Settlement, 131 S.W.3d 249,257 (Tex. App.-Fort Worth, 2004)
78 Id.











City of Kingsville Legal Department

TO:

Erik Spitzer, Director of Planning and Development Services

CC:

Charlie Sosa, Interim City Manager

FROM:

Courtney Alvarez, City Attorney

DATE:

March 24, 2025

SUBJECT:

Zoning at 620 E. Alice

Summary: An ordinance to request the rezone of 620 E. Alice, Kingsville, Texas from R1 (Residential Use) to C2 (Commercial Use) and for an ordinance to request a Special Use Permit for a Wholesale Bakery Use in C2 can move forward to the Planning & Zoning Commission and the City Commission for consideration.

Background:

The property located at 620 E. Alice, Kingsville, Texas was the site of a tortilla factory (Wholesale Bakery Use) from approximately 1970-2020. Recently, the property was sold and the new owner wishes to reopen the tortilla factory at that site. When the new owner came to the Planning Department for permits, it was discovered that City records show 620 E. Alice to be zoned R1 (Residential Use) despite the fifty-year long commercial use at that location. Texas state law sets out the process for rezoning a property. That process is codified in the City of Kingsville's Code of Ordinances.

The rezoning of property involves a specific process and the analysis of a variety of factors. The rezoning of a property from R1 to C2 in a largely residential area would typically raise concerns of spot zoning. However, an analysis of all the facts surrounding a rezone should be considered before making a final decision.

In this instance, the commercial use requested (Wholesale Bakery Use) is the same as the one that existed for at least fifty years at this location. There is another non-residential use on the same block at the property proposed for rezone. Several commercially zoned properties exist within two blocks of the property proposed for rezone.



City of Kingsville Legal Department

The property proposed for rezone existed as a tortilla factory for at least fifty years at this same site, so if the same proposed use were to have a detrimental impact on the valuation of surrounding properties, then that impact would have already been done when the prior use existed. It is highly unlikely that there would be an adverse impact on neighboring land since the same use existed at the site for five decades. The property in question is within the City's Historical District. When the tortilla factory first opened at this site in 1970, the area was geared toward uses that largely served Hispanic persons and commerce as pockets of commerce existed to serve different neighborhoods at that time. While times have changed during the last fifty years the factory operated at this site, the business' historical significance to the community should not be overlooked. The proposed rezone could be viewed as serving a substantial public purpose as reopening the factory could increase employment and increase sale tax revenues. Had the same use not recently existed at this site for fifty years, then the analysis might be different.

The most restrictive rezone that could be considered for the site for the intended purpose is C2 (Commercial Use) with a Special Use Permit for Wholesale Bakery Use. A wholesale bakery use is only allowed under the City's Code of Ordinances Zoning Land Use Chart in a C2 zoned area with a Special Use Permit. The Special Use Permit permits a particular zoning use while allowing the governing body to limit the exact type of use for the protection of the community and surrounding area.

Financial Impact: There is no expense to the City by considering and approving the requested actions.

Recommendation: Allow the process to move forward following state law and city ordinances so that the Planning and Zoning Commission and City Commission can determine whether to allow the proposed zoning changes (rezone from R1 to C2 & a Special Use Permit for Wholesale Bakery Use) to the site.



Raul G Longoria ETAL 828 N Reynalds Alice, TX 78332 #12769

singdeplaggings a tall A

Guillermo Gonzalez ETUX Brenda Gonzalez 528 E Alice Ave Kingsville, TX 78363 #10307

Ruben R Est Melinda Kerwin 916 E Santa Gertrudis Kingsville, TX 78363 #17256

Maria I Garcia 603 E Richard Kingsville, TX 78363 #17279

Frances Olivarez 224 E Richard Ave Kingsville, TX 78363 #18035

Frances Olivarez 224 E Richard Ave Kingsville, TX 78363 #18815

Frances T Olivarez 611 E Richard Ave Kingsville, TX 78363 #19595

Manuel Trevino EST ETUX Esabel EST % Nelda Aguilar 1301 Clearfield Dr Austin, TX 78758-7314 #20390

> Eduardo Gonzalez Oralia Gonzalez 701 E Richard Kingsville, TX 78363 #13474

Laura L Elizondo Garrick A Phillips 603 E Alice Ave Kingsville, TX 78363 #25215

Thurst describe to verice party

Ruben G Soliz 1624 N Armstrong Ave Kingsville, TX 78363 #22680

Francisco P Chapa Est Mrs. Yolanda R Torres PO Box 290 Kingsville, TX 78364 #15095

Belinda J Lopez 9699 Southmeadow Beaumont, TX 77706 #23441

David Michael Isassi 1631 Connell Villa Kingsville, TX 78363 #24203

Eliseo M Torres 620 E Alice Ave Kingsville, TX 78363 #24983

John Edward Cadriel 1949 Zenaida Ave McAllen, TX 78504-5626 #18916

Daniel Avendano ETUX Idalia 8001 Morelos St Pharr, TX 78577-8705 #11167

KISD PO Box 871 Kingsville, TX 78364 #22290

Yofanda Saenz 74 Lake Shore DR Corpus Christi, TX 78413-2634 #18175

> Kleberg County PO Box 72 Kingsville, TX 78364 #15901

Gregorio Islas ETUX Teodula (Life EST) Francisco E Romero 621 E Alice Ave Kingsville, TX 78363 #13067

Francisco E Romero 621 E Alice Ave Kingsville, TX 78363 #12266

Michael W Bars 823 S 23rd St Kingsville, TX 78363 #11452

Michael W Bars 823 S 23rd St Kingsville, TX 78363 #10672

Jose Arturo Rodriguez ETUX Rosa Laura 607 E Alice Ave Kingsville, TX 78363 #25983

PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a Public Hearing Wednesday, April 16, 2025, at 6:00 p.m. wherein the Commission will discuss and/or take action on the following item and at which time all interested persons will be heard:

Jose Flores and Jaime Flores, Applicant/Owners; requesting approval of Re-Zoning from R-1 (Single Family) to C-2 (Retail) for a Wholesale Bakery Use (Tortilla Factory) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385).

The meeting will be held at City Hall, 400 West King Ave., Kingsville, TX in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the Planning Department at (361) 595-8055.

PUBLIC HEARING NOTICE

The City Commission of the City of Kingsville will hold a Public Hearing Monday, April 28, 2025, at 5:00 p.m. wherein the City Commission will discuss the consideration of the following item and at which time all interested persons will be heard:

Jose Flores and Jaime Flores, Applicant/Owners; requesting approval of Re-Zoning from R-1 (Single Family) to C-2 (Retail) for a Wholesale Bakery Use (Tortilla Factory) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385).

The meeting will be held at City Hall, 400 West King Ave., Kingsville, Texas in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the City Secretary at (361) 595-8002.

EWS

Bishop CISD school board elections scheduled for May 3, early voting begins April 22

By Ted Figueroa

The Blakop CISD School Board in prepared for the next school board in prepared for the next school board elections that will take place on Saturday, May 3.

In Place 2, Incumbert Judy Murchadow will Street School and Endings Chairle and the Jane of F. Here Liberary in Corpus Christian Goldwin St. Street School board cloth will Street School board cloth will be seen and like the second of the superintendent to begin a part of part of the board will not challenge reals Chairle.

But youing will begin on April 22 with the presented proposer for the same on April 28 and 28 from 7 a.m., for 7 p.m.

tary,

The board also discussed the MOU mater position.

with the City of Bishop Police De-partment who has provided an SRO during this action) year.

The board decided to move on from that agreement and will pursue other options for its executy.

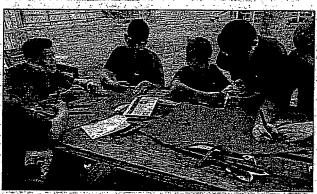
Superintendent Chelston's Gutterres said that far the 2005-26 action) year, the district may have a stelly and som-riny director and will be looking into hirting armed, guarders, well.

The board aim scrapted the resigna-tion of Head Good Rigo Moriles who has taken to be a position of head coach, and alther coordinates in the Valley.

Misting CISD is already advertising for the head coach/Minnive coordi-nates proceedings.



Eighth Annual Easter Eggstravaganza set



Boy Scouts take time to help The Purple Door

Boy Soust Troop 186 has participal with The Purple Doir and liave decorated T-shirts with positive massages for local survi-voirs of abuse. The clothes will be displayed at La Palmena Mall in Corpus Clotest during the month of April for Second Assault Awareness month. At the end of the worlds the T-shirts will be donated to The Purple Door (Contributed photo)

PUBLIC HEARING NOTICE

The Planning & Zoring Commission of the City of Kinesville will hold a Public Hearing Wednesday, April 16, 2025, at 6:00 p.m. wherein the Commission will discuss and/or take action on the following trem and at which time all interested persons will be heard:

Jose Flores and Jaime Flores, Applicant/Owners; requesting approval of a Special Use Permit for a Wholesale Bakery Use (Tortilla Factory) in C-2 (Retail) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID

The meeting will be held at City Hall, 400 West King Ave., Kingsville, TX in the Helen Kleberg Groves Community Room, If you have any questions about the Items on the agenda, please contact the Planning Department at (361) 595-8055.

PUBLIC HEARING NOTICE

The City Commission of the City of Kingsville will hold a Public Hearing Manday, April 28, 2025, at 5:00 p.m. wherein the City Commission will discuss the consideration of the following item and at which time all interested persons will be heard:

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The meeting will be held at City Hall, 400 West King Ave., Kingsville, Texas in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the City Secretary at (361) 595-8002.

PITTIFICE (9)



Jane Anne Sellers Keese October 8, 1936 - March 28, 2025

Center 2, 1936 - Marci 18, 2015

Levie Anne Sellers

Keese ya lifelong resident of Kingsville,
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william Samu-

longs for the past four years.

Born on October 4, 1936, in Kingsville to William Samuel Selbers and Elser Catherine, Glassock Compton, Jane Anne cane from proneering families who helped singe the Kingsville community. Her father was a respected local businessman who nowed and openied a gorcery store in Kingsville for many years.

years.
Jame Anne dedicatjame Anne dedicatded 30 years of her life
to education, fouchling countless young
life with her passion
for teaching. Her impact on her students remained evident throughout her life, as former pupils would often enthusiastical

often enthustastically greet her whenever she returned to
Kingsville for special
occasions.

Tallowing her refrement from education, Jane Arme devoked much of her thine
to service at First Baptist Church of Ture

William Edward Soll-cus, and her believed husband, James Mil-iam Keese.

The family will re-ceive condelences at 10 arm on Fiday, April 4, 2023, at Tur-cotte Press Mortany, with a chapel service beginning at 1030 arm, officiated by David Goffiths, Rife of committed and in-terment will follow

at Chamberlain, Cem-etery in Kingsville, Texas,
Her family would like to thank her lov-ing cavegivers from Worm Hearts, that provided wonderful care to her in the past few years. Your kind-

care to her in the past few years. Your kind-ness will never be for-gotten.

In lieu of flowers, donations may be made in South Texas Children's Hame in Beeville, Texas re-flecting Jame Arne's lifelong commitment to children and edu-cation.

PERFECHEARING NOTICE

The Planting & Zoning Commission of the City of Kingsville will a Public Bearing Wednesday April 16, 7027, at 6100 pm; where

Printe Henrie, wentsony, April 16, 2027, in 600 pm; wherein the Commission will ficies and/or plat action on the following tern and a which into all interested persons will be heard.

Jose Flores and Jaime Plotts, Applicant Owners, requesting approval of Re-Zaning Interested Plotts, Applicant States, and the Property Lord May 1866 (Property D. 1738).

The meeting will behead at Chy Hall 400 West King Ave. Kingoville TK in the Helen Kleberg Groves Community Room Thom have any questions bour the terms on the speaks, please council the Planning Department at (361) 595-8055.

PUBLIC HEARING NOTICE

In City Commission of the City of Kingwill will held a Public Hearing Monday April 20 275 at 100 pm. wherein the City Commission will

discuss the consideration of the following item and at which finer all interested person unlike hunt for following item and at which finer all force following them and at which finer all force following them and faith a force Applicant/Owners; requesting approval of Re-Zoning from R-1 (Single Family) in C-2 (Retail) for a Wholesale Bakers, Use (Untille Ractiory) at 3RD, Block 22, Lot 24-27, (Famata Tarrilla Factory) at 3RD, Block 24, Lot 24-27, (F

The meeting will be held at City Hall, 400 West King Ave., Kingsvill, Texas in the Hitlers Kieberg Circles Community Room. If you have any questions about the trenson the agenda, please contact the City Secretary at (361) 535-8002

ORDINANCE #2025-	
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AMENDING THE ZONING ORDINANCE BY CHANGING THE ZONING MAP IN REFERENCE TO 3RD, BLOCK 22, LOT 24-27 (PROPERTY ID 17385) ALSO KNOWN AS 620 E. ALICE AVE., KINGSVILLE, TEXAS FROM R1 (SINGLE FAMILY DISTRICT) TO C2 (RETAIL DISTRICT); AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; AND PROVIDING FOR PUBLICATION.

WHEREAS, the Planning & Zoning Commission has forwarded to the City Commission it's reports and recommendations concerning the application of Jose Flores & Jaime Flores, property owners/ applicants, for amendment to the zoning map of the City of Kingsville;

WHEREAS, the property was the site of a tortilla factory for at least fifty years though zoning maps show the property to be zoned R1-Single Family District, and there are other non-residential uses on this block and several other uses within two blocks of this previous existing use, so that any potential impact to surrounding properties would already have been experienced due to the long term prior same use;

WHEREAS, it is desired for the area to be used as a wholesale bakery use (tortilla factory), which is the same use that had existed at this same location for at least fifty years up until about three years ago and while notice letters were sent to neighbors and a notice was published in the newspaper, no one has contacted city staff about this;

WHEREAS, with proper notice to the public, public hearings were held on Wednesday, April 16, 2025, during a meeting of the Planning & Zoning Commission, and on Monday, April 28, 2025, during a meeting of the City Commission, in the Helen Kleberg Groves Community Room/Commission Chambers, at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

WHEREAS, the item was APPROVED with a 6-0 vote of the Planning & Zoning Commission regarding the requested rezone with no abstentions; and

WHEREAS, the City Commission has determined that this amendment would best serve public health, necessity, and convenience and the general welfare of the City of Kingsville and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

SECTION 1. That the Zoning Ordinance of the City of Kingsville, Texas, is amended by changing the zoning of the premises known as 620 E. Alice Ave., Kingsville, Texas, also known as 3RD, Block 22, Lot 24-27 (Property ID 17385), from R1-Single Family District

to C2-Retail District, as more specifically described on the Zone Change Map, attached as Exhibit A.

SECTION 2. That the official Zoning Map of the City of Kingsville, Texas, is amended to reflect the amendments to the Zoning Ordinance made by Section 1 of this ordinance.

SECTION 3. That the Zoning Ordinance and Zoning Map of the City of Kingsville, Texas, as amended from time to time, except as changed by this ordinance and any other ordinances adopted on this date, remain in full force and effect.

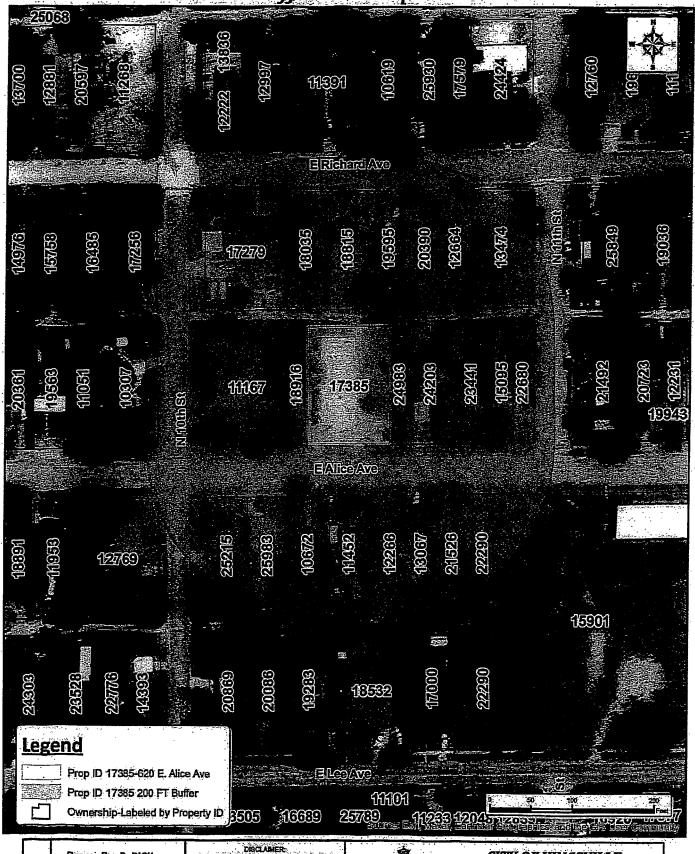
SECTION 4. That to the extent that these amendments to the Zoning Ordinance represent a deviation from the Comprehensive Plan, the Comprehensive Plan is amended to conform to the Zoning Ordinance, as amended by this ordinance.

SECTION 5. That all ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed.

SECTION 6. That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.

INTRODUCED on this the 28th day of April, 2025.	
PASSED AND APPROVED on this the <u>12th</u> day of <u>May</u> , 2025	
Effective Date:	
THE CITY OF KINGSVILLE	
Sam R. Fugate, Mayor	
ATTEST:	
Mary Valenzuela, City Secretary	
APPROVED:	
Courtney Alvarez, City Attorney	

200-FT Buffer at Prop ID: 17385



Drawn By: R. PICK

Last Update: 2/20/2025

Note: Ownership is labeled with its Prop ID.

DISCLAMER
THIS MAP IS FOR VISUAL PURPOSES ONLY.
THE MAP IS FOR VISUAL PURPOSES ONLY.
THE MAP OF THE CHAP OF THE SHEET MAY
CONTAIN MACCURACES OR ERRORS.
THE CITY OF KINGSVILLE IS NOT
RESPONSIBLE IF THE MYDORMATION
CONTAINED HERSIN IS USED FOR MY
DESIGN, CONSTRUCTION, PLANNING, BUILDING,
OR ANY OTHER PURPOSE.



CITY OF KINGSVILLE ENGINEERING DEPARTMENT

400 W King Ave; Kingsville, TX 78363 Office: (361) 595-8007 Fax: (361) 595-8064

Page:

AGENDA ITEM #2

Action Item - SUP (below)

Planning and Development Services 410 W King Kingsville, TX 78363 PH: 361-595-8055



MEMO

Date:

April 17th, 2025

To:

Charlie Sosa (Interim City Manager)

From:

Erik Spitzer (Director of Planning and Development Services)

Subject:

The City of Kingsville Planning and Development Services Department is seeking approval from the City Commissioners and Mayor for a Special Use Permit (SUP) for a Wholesale Bakery (Tortilla Factory) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E.

Alice Ave., Kingsville, TX 78363 (Property ID 17385).

Summary: Jose Flores and Jaime Flores, Applicants/Owners, approached the Planning Department on February 20^{th} , 2025, requesting approval of a Special Use Permit (SUP) to support re-opening a tortilla factory that was open for ~ 50 years at the parcel of land located at 620 E Alice. The property has been vacant for 3 years and is located in the city's Historic District.

Background: 620 E Alice was recently purchased after remaining vacant for approximately 3 years. It is currently zoned R1 (Single Family District). The most restrictive rezone that could be considered for the site for the intended purpose is C2 (Retail District) with a Special Use Permit for Wholesale Bakery use.

Discussion: Referencing the City Attorney's memo from March 24th, 2025, "A wholesale bakery use is only allowed under the City's Code of Ordinances Zoning Land Use Chart in a C2 zoned area with a Special Use Permit. The Special Use Permit permits a particular zoning use while allowing the governing body to limit the exact type of use for the protection of the community and surrounding area."

The Planning and Zoning Commission meeting was held on April 16th, 2025, with 6 of 7 members in attendance.

Members deliberated over the request to approve a Special Use Permit (SUP) to support re-opening a tortilla factory that was open for ~ 50 years at the parcel of land located at 620 E Alice. 25 Notice Letters were sent out to neighbors within the 200 feet buffer and the city has received no feedback as of today.

The Planning and Zoning Commission board members voted to recommend approval of a Special Use Permit (SUP) to support re-opening a tortilla factory at 620 E Alice. A recorded vote of all members present was taken and board members Steve Zamora, Larry Garcia, Rev. Idotha Battle, Debbie Tiffee, Mike Klepac and Krystal Emery all voted "YES."

The meeting was adjourned at 7:10 p.m.

The department recommends approval.

Erik Spitzer

Director of Planning and Development Services

Planning and Development Services 410 W King Kingsville, TX 78363 PH: 361-595-8055



MEMO

Date:

April 9th, 2025

To:

Planning & Zoning Commission

From:

Erik Spitzer (Director of Planning and Development Services)

Subject:

The City of Kingsville Planning and Development Services Department is seeking approval from the Planning & Zoning Commission to approve a Special Use Permit (SUP) for a Wholesale Bakery (Tortilla Factory) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E.

Alice Ave., Kingsville, TX 78363 (Property ID 17385).

Summary: Items 5 & 6: Jose Flores and Jaime Flores, Applicants/Owners, approached the Planning Department on February 20th, 2025, requesting approval of a Special Use Permit (SUP) to support reopening a tortilla factory that was open for ~ 50 years at the parcel of land located at 620 E Alice. The property has been vacant for 3 years and is located in the city's Historic District.

Background: Items 5 & 6: 620 E Alice was recently purchased after remaining vacant for approximately 3 years. It is currently zoned R1 (Single Family District). The most restrictive rezone that could be considered for the site for the intended purpose is C2 (Retail District) with a Special Use Permit for Wholesale Bakery use.

Discussion: <u>Hems 5 & 6</u>: Referencing the City Attorney's memo from March 24th, 2025, "A wholesale bakery use is only allowed under the City's Code of Ordinances Zoning Land Use Chart in a C2 zoned area with a Special Use Permit. The Special Use Permit permits a particular zoning use while allowing the governing body to limit the exact type of use for the protection of the community and surrounding area."

Erik Spitzer

Director of Planning and Development Services



CITY OF KINGSVILLE PLANNING AND ZONING DIVISION MASTER LAND USE APPLICATION

email: hsolis@cityofkingsville.com / Phone (361) 595-8055

PROPERTY INFORMATION: (Please PRINT or TYPE)
Project Address 620 E Alice Nearest Intersection 10th St
(Proposed) Subdivision Name Lot 24-27 Block 22
Legal Description 3ed, Block 22, 1st 24-27 (famosa Tortilla factory)
Existing Zoning Designation P Future Land Use Plan Designation C-2
OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE) Applicant/Authorized Agent Jose and Jame Flores Phone 361 - 215 - 9449
Email Address (for project correspondence only):
Mailing Address 427 W Ave A City King Sville State To Zip 78363
Property Owner Taime Flores Phone 361-215-9449 FAX
Email Address (for project correspondence only):
Mailing Address 42) W Ave A City King Sville State Tr Zip 78363
Select appropriate process for which approval is sought. Attach completed checklists with this application.
Annexation Request No Fee Preliminary Plat Fee Varies Administrative Appeal (ZBA) \$250.00 Final Plat Fee Varies
Comp. Plan Amendment Request \$250.00 Minor Plat \$100.00
Re-zoning Request \$250 Re-plat \$250.00
SUP Request/Renewal \$250 Vacating Plat \$50.00 Zoning Variance Request (ZBA) \$250 Development Plat \$100.00
Zoning Variance Request (ZBA) \$250 Development Plat \$100.00 PUD Request \$250 Subdivision Variance Request \$25.00 ea
Please provide a basic description of the proposed project: Would like to open Famosa Tortilla factory but its Zoned RI. The Building was used as a Tortilla Factory for many years
Rezone from R1 - to CZ
I hereby certify that I am the owner and /or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.
Applicant's Signature Date: 20 FB 2025
Property Owner's Signature Date:
Accepted by: Date: Zo FEB 2025

This form available on our website: https://www.cityofkingsville.com/departments/planning-and-development-services/

Kleberg CAD Property Search

■ Property Details

Account

Property ID:

17385

Geographic ID: 100502224000192

Type:

R

Zoning: R1

Property Use:

Location

Situs Address:

620 E ALICE

Map ID:

C1

Mapsco:

Legal Description:

3RD, BLOCK 22, LOT 24-27, (FAMOSA TORTILLA FACTORY)

Abstract/Subdivision:

S005

Neighborhood:

Owner

Owner ID:

15566

Name:

LA FAMOSA DRC INC

Agent:

Mailing Address:

620 E ALICE AVE

KINGSVILLE, TX 78363-4637

% Ownership:

100.0%

Exemptions:

For privacy reasons not all exemptions are shown online.

■ Property Values

Improvement Homesite Value:

\$0 (+)

Improvement Non-Homesite Value:

\$127,130 (+)

Land Homesite Value:

\$0 (+)

Land Non-Homesite Value:

\$15,000 (+)

Agricultural Market Valuation:

\$0 (+)

Market Value:

\$142,130 (=)

Agricultural Value Loss:0

\$0 (-)

Appraised Value:

\$142,130 (=)

HS Cap Loss: 0

\$0 (-)

Circuit Breaker: 8

\$0 (-)

https://esearch.kleberg-cad.org/property/view/17385?printView=detail

1/5

Assessed Value:

\$142,130

Ag Use Value:

\$0

Information provided for research purposes only. Legal descriptions and acreage amounts are for Appraisal District use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal District to Verify all information for accuracy.

■ Property Taxing Jurisdiction

Owner: LA FAMOSA DRC INC %Ownership: 100.0%

Entity	Description	Tax Rate	Market Value	Taxable Value	Estimated Tax
GKL	KLEBERG COUNTY	0.771870	\$142,130	\$142,130	\$1,097.06
CKI	CITY OF KINGSVILLE	0.770000	\$142,130	\$142,130	\$1,094.40
SKI	KINGSVILLE I.S.D.	1.410400	\$142,130	\$142,130	\$2,004.60
WST	SOUTH TEXAS WATER AUTHORITY	0.065695	\$142,130	\$142,130	\$93.37
CAD	KLEBERG COUNTY APPRAISAL DISTRICT	0.000000	\$142,130	\$142,130	\$0.00

Total Tax Rate: 3.017965

Estimated Taxes With Exemptions: \$4,289.43

Estimated Taxes Without Exemptions: \$4,289.43

■ Property Improvement - Building

Type: COMMERCIAL Living Area: 520.0 sqft Value: \$22,380

Type	Description	Class CD	Year Built	SQFT
MA	MAIN AREA	RS2A	1970	520
OP1	OPEN PORCH BASIC (20%)	4 .	1970	120
CON.	CONCRETE SLAB COMMERCIAL	*	1970	3554

Type: COMMERCIAL Living Area: 3480.0 sqft Value: \$104,750

Туре	Description	Class CD	Year Built	SQFT
MA	MAIN AREA	IN2À.	1970	3480

■ Property Land

Туре	Description	Acreage	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
F1	Fi	0.32	14,000.00	100.00	140.00	\$15,000	\$0

■ Property Roll Value History

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap Loss	Assessed
2024	\$127,130	\$15,000	\$0	\$142,130	\$0	\$142,130
2023	\$129,330	\$15,000	\$0	\$144,330	\$0	\$144,330
2022	\$113,590	\$7,000	\$0	\$120,590	\$0	\$120,590
2021	\$121,540	\$7,000	\$0	\$128,540	\$0	\$128,540
2020	\$52,010	\$7,000	\$0	\$59,010	\$0	\$59,010
2019	\$59,460	\$7,000	\$0	\$66,460	\$0	\$66,460
2018	\$61,500	\$7,000	\$0	\$68,500	\$ 0	\$68,500
2017	\$56,110	\$7,000	\$0	\$63,110	\$0	\$63,110
2016	\$54,510	\$7,000	\$0	\$61,510	\$0	\$61,510

WRITTEN CONSENT TO USE OF SIMILAR ENTITY NAME

of LA FAMOSA DRC, INC. a Texas corporation

This written consent is made and tendered in accordance with 1 Texas Administrative Code 79.42 to provide unequivocal consent to Jose L. Flores and/or Jaime Antonio Flores, or either of them, their agents, and assigns, the right to use the name "LA FAMOSA DRC" in the creation of any other entity authorized by the laws of any political subdivision of the United States, including but not limited to the creation of their planned limited liability company to be created under the laws of the State of Texas or

IN WITNESS WHEREOF, the undersigned officer authorized by the Company in accordance with a unanimous resolution of all shareholders of the Company, executes this written consent in the presence to be effective immediately.

Rosa Maria Torres, its Vice President

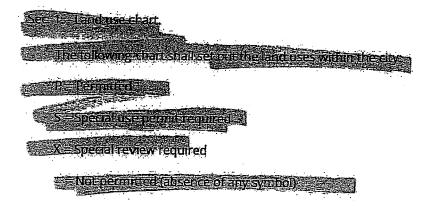
COUNTY OF Kleben

This instrument was acknowledged before me on <u>Nonue 1</u>, 2025, by Rosa Maria Flores, Vice President of La Famosa DRC, LLC, a Texas corporation, on behalf of said corporation.

ANTONIO ARREDONDO
Notery Public, Stees of Texas
Comm. Expires 05-10-2026
Notery ID 131562673

Notary Public, State of Texas
My commission expires: 5/10/74.

APPENDIX A. - LAND USE CATEGORIES



[Land Use Chart on the following pages]

Land Use Chart													
Land Use Description	R1	R2	R2A	R3	R4	МН	C1	C2	СЗ	C4	11	12	Ag
Dwelling, one-family det.	Р	P		Р	Р	Р	Р	Р	Р		•	·	P
Dwelling, one-family att.		Ρ	P	P	₽		S	Р					P
Dwelling, two-family		Þ		P	Р		S	Р					
Dwelling, multi- family				Ρ	Р		Р	₽	Р				
Tiny Homes		Р	Р			P							

Contract of the second	F .	۱ ۱	• •	1 '	1 "	ı	l			!	I		[
Confectionery retail sales (les 2,500 square f	s than							P	P	Р	P			
Bakery, whole	sale –			,					S	Р	P			
Brewpub					:				P	S	P	Р	Р	
Building mater	rials								S	P	T	S		
Cafeteria or Frestaurant								(6)	P	P		<u> </u>	P	
Camera shop			4 2					S	Р	P.	Р			
Laundry or sel service laundr (limited area)	ŀ							S	P	Р	Р			
Clinic, medical dental, chiroproperties or office of licens Health related profession	other							S	P	P	Р	P		
Drug store or pharmacy								P	Р	Р	P			



CERTIFICATE OF FILING OF

La Famosa DRC, LLC File Number: 805863291

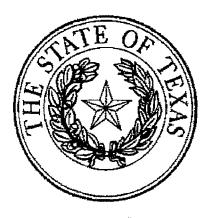
The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 01/17/2025

Effective: 01/17/2025



Jone Melson

Jane Nelson Secretary of State

City of Kingsville Legal Department

TO:

Erik Spitzer, Director of Planning and Development Services

CC:

Charlie Sosa, Interim City Manager

FROM:

Courtney Alvarez, City Attorney

DATE:

March 24, 2025

SUBJECT:

Zoning at 620 E. Alice

Summary: An ordinance to request the rezone of 620 E. Alice, Kingsville, Texas from R1 (Residential Use) to C2 (Commercial Use) and for an ordinance to request a Special Use Permit for a Wholesale Bakery Use in C2 can move forward to the Planning & Zoning Commission and the City Commission for consideration.

Background:

The property located at 620 E. Alice, Kingsville, Texas was the site of a tortilla factory (Wholesale Bakery Use) from approximately 1970-2020. Recently, the property was sold and the new owner wishes to reopen the tortilla factory at that site. When the new owner came to the Planning Department for permits, it was discovered that City records show 620 E. Alice to be zoned R1 (Residential Use) despite the fifty-year long commercial use at that location. Texas state law sets out the process for rezoning a property. That process is codified in the City of Kingsville's Code of Ordinances.

The rezoning of property involves a specific process and the analysis of a variety of factors. The rezoning of a property from R1 to C2 in a largely residential area would typically raise concerns of spot zoning. However, an analysis of all the facts surrounding a rezone should be considered before making a final decision.

In this instance, the commercial use requested (Wholesale Bakery Use) is the same as the one that existed for at least fifty years at this location. There is another non-residential use on the same block at the property proposed for rezone. Several commercially zoned properties exist within two blocks of the property proposed for rezone.



City of Kingsville Legal Department

The property proposed for rezone existed as a tortilla factory for at least fifty years at this same site, so if the same proposed use were to have a detrimental impact on the valuation of surrounding properties, then that impact would have already been done when the produce existed. It is highly unlikely that there would be an adverse impact on neighboring land since the same use existed at the site for five decades. The property in question is within the City's Historical District. When the tortilla factory first opened at this site in 1970, the area was geared foward uses that largely served Hispanic persons and commerce as pockets of commerce existed to serve different neighborhoods at that time. While times have changed during the last lifty years the factory operated at this site; the business historical significance to the community should not be overlooked. The proposed rezone could be viewed as serving a substantial public purpose as reopening the factory could increase employment and increase sale tax revenues. Had the same use not recently existed at this site for fifty years, then the analysis might be different.

The most restrictive rezone that could be considered for the site for the intended purpose is C2 (Commercial Use) with a Special Use Permit for Wholesale Bakery Use. A wholesale bakery use is only allowed under the City's Code of Ordinances Zoning Land Use Chart in a C2 zoned area with a Special Use Permit. The Special Use Permit permits a particular zoning use while allowing the governing body to limit the exact type of use for the protection of the community and surrounding area.

Financial Impact: There is no expense to the City by considering and approving the requested actions.

Recommendation: Allow the process to move forward following state law and city ordinances so that the Planning and Zoning Commission and City Commission can determine whether to allow the proposed zoning changes (rezone from R1 to C2 & a Special Use Permit for Wholesale Bakery Use) to the site.



Raul G Longoria ETAL 828 N Reynalds Alice, TX 78332 #12769

spined applied where a month

Guillermo Gonzalez ETUX Brenda Gonzalez 528 E Alice Ave Kingsville, TX 78363 #10307

Ruben R Est Melinda Kerwin 916 E Santa Gertrudis Kingsville, TX 78363 #17256

Maria I Garcia 603 E Richard Kingsville, TX 78363 #17279

Frances Olivarez 224 E Richard Ave Kingsville, TX 78363 #18035

Frances Olivarez 224 E Richard Ave Kingsville, TX 78363 #18815

Frances T Olivarez 611 E Richard Ave Kingsville, TX 78363 #19595

Manuel Trevino EST ETUX Esabel EST % Nelda Aguilar 1301 Clearfield Dr Austin, TX 78758-7314 #20390

> Eduardo Gonzalez Oralia Gonzalez 701 E Richard Kingsville, TX 78363 #13474

Laura L Elizondo Garrick A Phillips 603 E Alice Ave Kingsville, TX 78363 #25215 ្នីនិងស្ត្រី ខ្លួនមន្តិសម្ព័ន្ធ នេះ នេះពេលវិទិ

Ruben G Soliz 1624 N Armstrong Ave Kingsville, TX 78363 #22680

Francisco P Chapa Est Mrs. Yolanda R Torres PO Box 290 Kingsville, TX 78364 #15095

Belinda J Lopez 9699 Southmeadow Beaumont, TX 77706 #23441

David Michael Isassi 1631 Connell Villa Kingsville, TX 78363 #24203

Eliseo M Torres 620 E Alice Ave Kingsville, TX 78363 #24983

John Edward Cadriel 1949 Zenaida Ave McAllen, TX 78504-5626 #18916

Daniel Avendano ETUX Idalia 8001 Morelos St Pharr, TX 78577-8705 #11167

K I S D PO Box 871 Kingsville, TX 78364 #22290

Yolanda Saenz 74 Lake Shore DR Corpus Christi, TX 78413-2634 #18175

> Kleberg County PO Box 72 Kingsville, TX 78364 #15901

Gregorio Islas ETUX Teodula (Life EST) Francisco E Romero 621 E Alice Ave Kingsville, TX 78363 #13067

Francisco E Romero 621 E Alice Ave Kingsville, TX 78363 #12266

Michael W Bars 823 S 23rd St Kingsville, TX 78363 #11452

Michael W Bars 823 S 23rd St Kingsville, TX 78363 #10672

Jose Arturo Rodriguez ETUX Rosa Laura 607 E Alice Ave Kingsville, TX 78363 #25983

News

Bishop CISD school board elections scheduled (1) bituin ites: for May 3, early voting begins April 22

By Ted Figueros

The Bishipp CISD School Board is prepared for the next school board elections that will take place on Satur-

elections that will take place on Samu-day, May 3.

In Place 2, incumbent Judy Mur-slock with 18 years experience will face of against Billy Kinsel.

In Place 6, incumbent Dawn Ca-vanneph who is completing for 28th year on the beard will face challenger Julic Chander.

Voters on your at the Bishop Milligenesse Binding, Petromits School,
Nucces County Court House, The Dadring House County Court House, The Dadring House County Court House, The County Court House, The County of the County County County in the Agus Duler, the Edward Prodysteman
of Hartie Electry in Corpus County.

The Other bushness, the school borning massed all of the counter them and ambustness the superintendent to begin the county of the

with the City of Bishop Folice De-parament who has provided an SRO during this model wat.

The bessel decided to many on from that appearant and will pursue other options for security.

Separament and will pursue other options for security.

Separament and will pursue other options for security.

Separament of the factor of security and security director and will be looking into hirting semmel guanti as well.

The bound into accorded the resignation of Fixed Coach Rigo Monales who far staken on a position of best coach and affiliate coordinate in the Valley.

Bishop CISD is already adventising for the fixed coach many continued on the Valley.

Eighth Annual Easter Eggstravaganza set



Boy Scouts take time to help The Purple Door

Roy Scott Tray 166 has partiered with The People Deer and leve described Tehinis with positive messages for local survivors of above. The closics will be displayed at La Palment Med in Copyes Curist during the month of April for Second Assault Assuremess manufa. At the end of the morth the Tehinis will be demand to The Purple Door. (Continuous) plains)



Jane Anne Sellers Keese

Jane Anne Sellers Keese

Cetorer 8, 1936 Marit 28 2025

Jane Anne Sellers
Keese; a lifelong resident of Kingsville, Ireas and Jongtime Million Keese, Blores, Bossed Million Keese, Marit Janes Million Keese, Sellers Million Keese,

the nad made her bome for the past four years.

Boan on October 8, 1935, in Kingsville in William Samiat, Selfest and Hisle Catherine Gascock Compton-Jare Anne came from planetening families who helped shope the Kingsville community. Het father was a respected local businessman who owined and operated a grocery store in Kingsville for many years.

The Anne dedicate Tare 1998.

Kingwille for many years.

Jane Anne dedicated 30 years of her life for estocation, truthing countless young lives with her passion for reaching. Her impact on her students evident evident. managed evident throughout her life, as former jurifle would otten enflusiastical-by greet her when-ever she returned in Kingsville, for special occasions.

occasions:
Following her refrom educafrom Jaine Anne devoted much of her time
to service at First Baptist Church of Three

in lieu of flowers, dordstors may be made to South Jesus Children's Home in flexible Jesus in flexing Jare Anne's lifelong commisment to children and education.

PUBLICHEARING NOTICE
The Hamme & Joung Commission of the Crys of Kingsville will hold a Philin Hearing Weinesday April 16, 2025 at 600 pm: wherein the Commission will discuss and/or take action on the following tern and at

which funcial interested persons will be heard:

Jose Hores and James Plates, Applicant Owners, requesting approval
of a Special Use Fermit for a Wholesche Balery Use (Intillia Factory)
in Ca (Redul) at 180, Block 22, East 14-27, (Famous Torolla Factory),
in Ca (Insula St. 20) V. Aller Ave. Kungwille, IX 2843 (Frontery ID
17385).

The meeting will be held at City Hall 2011 West King Ave. Kingswille, TX in the Heters Kleberg Grove Community Reform Hypor have any questions about the terms on the agents, please contact the Planning Department at (361) 595-8055.

PURLICHEARING NOTICE

The Chy Communication of the Cry of King-yells will hold a Public Hearing Minday Annield. 2025; if \$100 p.m. wherein the City Communication will district the consideration of the following temporal at which time all minimaters peaces will be beautiful.

Low Places and Links Perric Applicant/Owners, respecting approval of a Special His Perric Hars Windows Pairer Unit Clarifies Sectory).

In C.2 (Reinlyst 30th, Block 27: Lot 24-77, Hanness Latriffic Farthery), this hasses at \$20.27 After Ave., Kingsysle, E.A. (Hass) (Toperty ID 1785).

The meeting will be field at Cay Hall, 100 West King Ave, Kungville, Tense in the Helen Kleiner Groves Community Room. If you have any questions about the firms in the agencia, please connect the City Secretary at (36), 595 2002.

PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a Public Hearing Wednesdry, April 16, 2025, at 6:00 p.m. wherein the Commission will discuss and/or take action on the following Bern and at which time all interested persons will be heard:

which there are interested persons with the central force Flores and Jaline Flores, Applicant/Owners, requesting approval of Re-Zoning from R-1 (Single Family) to C-2 (Rectail) for a Wholesale Bakery Use (Tortilla Factory) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Klogsville, TX 78363 (Property ID 17385).

The meeting will be held at City Hall, 400 West King Ave., Kingsville, TX in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the Planning Department at (361) 595-8055.

PUBLIC HEARING NOTICE

The City Commission of the City of Kingsville will hold a Public Hearing Monday, April 28, 2025, at 5:00 p.m. wherein the City Commission will discuss the consideration of the following them and at which time all interested persons will be heard:

José Flores and Jaime Flores, Applicant/Owners; requesting approval of Re-Zoning from R-1 (Single Family) to C-2 (Retail) for a Wholesale Bakery Use (Tortilla Factory) at JRD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385).

The meeting will be held at City Hall, 400 West King Ave., Kingsville, Texas in the Helen Kleberg Groves Community Room. If you have any estions about the items on the agenda, please contact the City Secretary at (361) 595-8002.

PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a Public Hearing Wednesday, April 16, 2025, at 6:00 p.m. wherein the Commission will discuss and/or take action on the following item and at which time all interested persons will be heard:

Jose Flores and Jaime Flores, Applicant/Owners; requesting approval of a Special Use Permit for a Wholesale Bakery Use (Tortilla Factory) in C-2 (Retail) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385).

The meeting will be held at City Hall, 400 West King Ave., Kingsville, TX in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the Planning Department at (361) 595-8055.

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The City Commission of the City of Kingsville will hold a Public Hearing Monday, April 28, 2025, at 5:00 p.m. wherein the City Commission will discuss the consideration of the following item and at which time all interested persons will be heard:

Jose Flores and Jaime Flores, Applicant/Owners; requesting approval of a Special Use Permit for a Wholesale Bakery Use (Tortilla Factory) in C-2 (Retail) at 3RD, Block 22, Lot 24-27, (Famosa Tortilla Factory), also known as 620 E. Alice Ave., Kingsville, TX 78363 (Property ID 17385).

The meeting will be held at City Hall, 400 West King Ave., Kingsville, Texas in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the City Secretary at (361) 595-8002.

ORDINANCE NO.	2025-
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AMENDING THE ZONING ORDINANCE BY GRANTING A SPECIAL USE PERMIT FOR WHOLESALE BAKERY USE (TORTILLA FACTORY) IN C2 (RETAIL DISTRICT) AT 620 E. ALICE AVE., KINGSVILLE, TEXAS, ALSO KNOWN AS 3RD, BLOCK 22, LOT 24-27 (PROPERTY ID 17385); AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; PROVIDING FOR PUBLICATION.

WHEREAS, the Planning & Zoning Commission has forwarded to the City Commission it's reports and recommendations concerning the application of Jose Flores & Jaime Flores, property owners/ applicants, for amendment to the zoning map of the City of Kingsville;

WHEREAS, the property was recently zoned R1-Single Family Residential District but was rezoned to C2-Retail District and it is desired for the area to be used as a wholesale bakery use (tortilla factory), which is the same use that had existed at this same location for at least fifty years up until about three years ago;

WHEREAS, there are other non-residential uses on this block and several other uses within two blocks of this previous existing use, and while notice letters were sent to neighbors and a notice was published in the newspaper, no one has contacted city staff about this;

WHEREAS, the City Code of Ordinances, Chapter XV-Land Usage, Appendix A-Land Use Categories states that in C2 a special use permit is required to have a wholesale bakery use (tortilla factory); and

WHEREAS, the City of Kingsville Code of Ordinances section 15-6-142 regulates special use permits; and

WHEREAS, with proper notice to the public, public hearings were held on Wednesday, April 16, 2025, during a meeting of the Planning & Zoning Commission, and on Monday, April 28, 2025, during a meeting of the City Commission, in the Helen Kleberg Groves Community Room/Commission Chambers, at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

WHEREAS, a majority of the Planning & Zoning Commission voted 6-0 to APPROVE, with no abstentions, the requested special use permit; and

WHEREAS, the City Commission has determined that this amendment would best serve public health, necessity, and convenience and the general welfare of the City of Kingsville and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

SECTION 1. That the Zoning Ordinance of the City of Kingsville, Texas, is amended and a Special Use Permit is granted for a Wholesale Bakery Use (tortilla factory) in C2 (Retail District) on the premises known as 620 E. Alice Ave., Kingsville, Texas, also known as 3RD, Block 22, Lot 24-27 (Property ID 17385), as more specifically describe on site plan attached as Exhibit A.

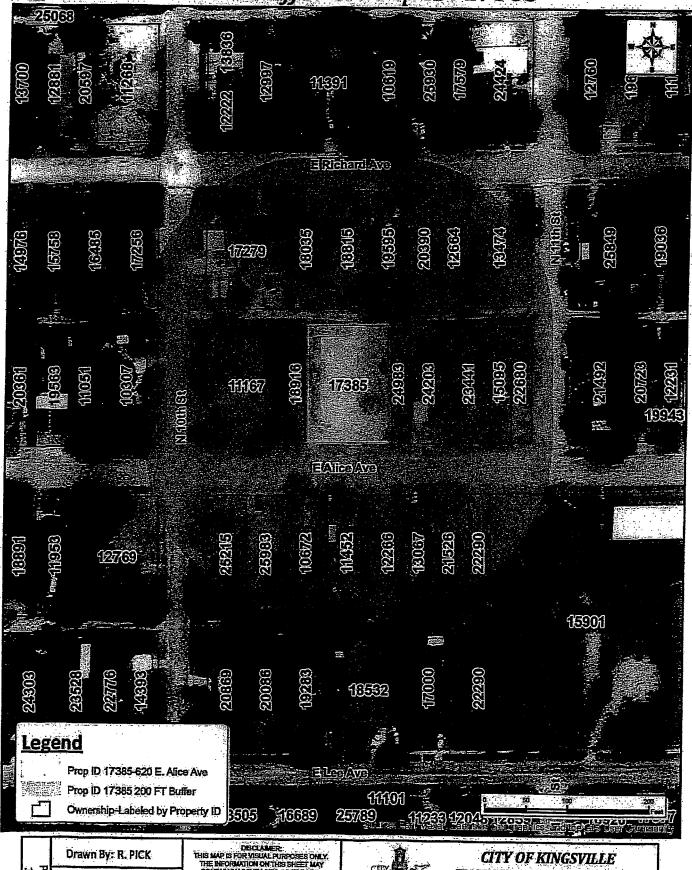
SECTION 2. That the Special Use Permit granted in Section 1 of this Ordinance is subject the following conditions:

- 1. ALLOWED USE: The only uses authorized by this Special Permit other than the permitted "C2" Retail District uses is as a Wholesale Bakery Use (tortilla factory).
- 2. STATE LICENSE: The premises or operator be licensed or registered by the State of Texas, if required.
- 3. TIME LIMIT: This Special Permit is good for the duration of the business from the date of this ordinance unless the property is not being used for the purpose outlined in Condition 1 or any other conditions have not been complied with.
- 4. SPECIAL CONDITION: The applicant shall obtain all required background checks, business licenses and cooperation with all annual fire safety, health, and sanitation inspections, as required by the State and the City of Kingsville, and any other laws or regulations regarding such business in order to maintain compliance with state and city regulations for the tortilla factory.
- **SECTION 3.** That the official Zoning Map of the City of Kingsville, Texas, is amended to reflect the amendment to the Zoning Ordinance made by Section 1 of this ordinance.
- **SECTION 4.** That the Zoning Ordinance and Zoning Map of the City of Kingsville, Texas, as amended from time to time, except as changed by this ordinance and any other ordinances adopted on this date, remain in full force and effect.
- **SECTION 5.** That to the extent that this amendment to the Zoning Ordinance represents a deviation from the Comprehensive Plan, the Comprehensive Plan is amended to conform to the Zoning Ordinance, as amended by this ordinance.
- **SECTION 6.** That all ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed.
- **SECTION 7.** That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.

INTRODUCED on this the <u>28th</u> day of <u>April</u>, 2025.

PASSED AND APPROVED on this ti	he <u>12th</u>	_day of _	<u>May</u>	2025.
Effective Date:	, 202		•	
THE CITY OF KINGSVILLE				
Sam R. Fugate, Mayor	-			
ATTEST:				
Mary Valenzuela, City Secretary	-			
APPROVED AS TO FORM:				
Courtney Alvarez, City Attorney	•			

200-FT Buffer at Prop ID: 17385



Last Update: 2/20/2025

Note: Ownership is labeled with its Prop ID.

DISCIAMER:
THIS MAP IS FOR VISUAL PURPOSES DMLY.
THE INFORMATION ON THIS SHEET MAY
CONTAIN INACCURACES OR ERRORS.
THE CITY OF KINGSVILE IS NOT
RESPONSIBLE THE PROPRIATION
CONTAINED HERBIN RUSED FOR ANY
DEBIGN, CONTRIBUTION PAINING, BUILDING,
OR ANY OTHER PURPOSE.



ENGINEERING DEPARTMENT

400 W King Ave; Kingsville, TX 78363 Office: (361) 595-8007 Fax: (361) 595-8064

AGENDA ITEM #3

Acoron Item -SUP pole

Planning and Development Services 410 W King Kingsville, TX 78363 PH: 361-595-8055



MEMO

Date:

April 17th, 2025

To:

Charlie Sosa (Interim City Manager)

From:

Erik Spitzer (Director of Planning and Development Services)

Subject:

The City of Kingsville Planning and Development Services Department is seeking approval from the City Commissioners and Mayor for a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole antenna in C4 (Commercial) of Paulson's SUB, Lot B, Acres .0, also known as 1025 F. Cararal Cararas Vinneille, TV 503.63 (Research Coraras VINneille, TV 5

known as 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758).

Summary: Vincent Gerard & Associates, Applicant and Robert De Pol, Owner, approached the Planning Department on March 17th, 2025, requesting approval of a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole antenna in C4 (Commercial) of Paulson's SUB, Lot B, Acres .0, also known as 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758).

Background: In accordance with the City of Kingsville's Land Use Chart, telecommunication mounting structures over 100' tall require a Special Use Exception (SUE); we accomplish this requirement with a Special Use Permit (SUP) application.

Discussion: AT&T Mobility is proposing a wireless site at 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758) to improve coverage in the area. AT&T radio frequency engineers have received numerous complaints from NAS Kingsville customers. This solution will benefit both NAS Kingsville and existing interior sites within the City of Kingsville. An existing monopole antenna located approximately 2300' northwest (owned by Cellco) has zero additional ground space for increasing capacity, nor does it have adequate height to optimize coverage. This proposed unmanned site will be accessed once per month by a maintenance worker. In addition, the FAA confirmed the future planned structure would not exceed obstruction standards, nor would be a hazard to air navigation. The request also has approval recommendation from Commander, Training Air Wing TWO.

The Planning and Zoning Commission meeting was held on April 16th, 2025, with 6 of 7 members in attendance.

Members deliberated over the request to recommend approval of a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole antenna at 1025 E General Cavazos, Kingsville, TX 78363. 5 Notice Letters were sent out to neighbors within the 200 feet buffer and the city has received no feedback as of today.

The Planning and Zoning Commission board members voted to approve the recommendation of a Special Use Permit for a Wireless Telecommunications Facility with a 120' monopole antenna at 1025 E General Cavazos, Kingsville, TX 78363. A recorded vote of all members present was taken and board members Steve Zamora, Larry Garcia, Rev. Idotha Battle, Debbie Tiffee, Mike Klepac and Krystal Emery all voted "YES."

The meeting was adjourned at 7:10 p.m.

The department recommends approval.

Erik Spitzer
Director of Planning and Development Services

Planning and Development Services 410 W King. Kingsville, TX 78363 PH: 361-595-8055



MEMO

Date:

April 9th, 2025

To:

Planning & Zoning Commission

From:

Erik Spitzer (Director of Planning and Development Services)

Subject:

The City of Kingsville Planning and Development Services Department is seeking approval from the Planning & Zoning Commission for a Special Use Permit for a Wireless Telecommunications Facility with 120' Monopole in C4 (Commercial) of Paulson's SUB, Lot B, Acres .0, also known as

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Summary: Items 1 & 2: Vincent Gerard & Associates, Applicant and Robert De Pol, Owner, approached the Planning Department on March 17th, 2025, requesting approval of a Special Use Permit for a Wireless Telecommunications Facility with a 120' Monopole in C4 (Commercial) of Paulson's SUB, Lot B, Acres .0, also known as 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758).

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Erik Spitzer

Director of Planning and Development Services



CITY OF KINGSVILLE PLANNING AND ZONING DIVISION MASTER APPLICATION

email: hsolis@cityofkingsville.com / Phone (361) 595-8055

PROPERTY INFORMATION: (Please PRINT or TYPE)		
Project Address 2025 E GENERAL CAVAZOS BLVD Nea	arest Intersection PAULSON FALLS RD & E.GENERAL CAV	/AZOS
(Proposed) Subdivision Name_PAULSONS SUB	Lot B Block	
Legal Description PAULSONS SUB, LOT B, ACRES .0	·	
Existing Zoning Designation 64 COMMERCIAL DISTRICT Futi	ure Land Use Plan Designation	
OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE) Applicant/Authorized Agent VINCENT GERARD & ASSOCIAT)	-
Email Address (for project correspondence only): HUNTERB		
Mailing Address 5524 Bee Caves Road #K4 City Austin	in State TX Zip 7874	6.
Property Owner DE POL ROBERT Pho	neFAX	
Email Address (for project correspondence only):		
Mailing Address 1702 E 5TH ST. City PA	ALMETTO State FL Zip 3422	<u>!1</u>
Select appropriate process for which approval is sought. Atta	ach completed checklists with this application.	
Annexation Request No Fee	Preliminary Plat Fee	Varies
Administrative Appeal (ZBA) \$250.00	Final Plat Fee	Varies
Comp. Plan Amendment Request \$250.00	Minor Plat \$100	0.00
Re-zoning Request \$250 ✓ SUP Request/Renewal \$250	Re-plat \$25	0.00
Zoning Variance Request (ZBA) \$250	Vacating Plat\$50	0.00
PUD Request \$250	Development Plat \$10 Subdivision Variance Request \$25	0.00
Please provide a basic description of the proposed project: PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY WITH 120' MONO		
I hereby certify that I am the owner and /or duly authorize	zed agent of the owner for the purposes of	this
application. I further certify that I have read and examin- true and correct. If any of the information provided on the approval may be revoked.	ed this application and know the same to h	e
Applicant's Signature 4	Date: 3/17/2025	
Property Owner's Signature LOA PROVIDED WITH APPLICATION	Date: 0/17/2020	: :
Accepted by:	Date: 19 MAR 70	75
		-

Kleberg CAD Property Search

■ Property Details

Account

Property ID:

25758

Geographic ID: 152700002000192

Type:

R

Zoning:

Property Use:

Location

Situs Address:

2029 E GENERAL CAVAZOS TX

Map ID:

B2

Mapsco:

Legal Description:

PAULSON'S SUB, LOT B, ACRES .0

Abstract/Subdivision:

S527

Neighborhood:

Owner

Owner ID:

65801

Name:

DE POL ROBERT

Agent:

Mailing Address:

1702 E 5TH ST

PALMETTO, FL 34221

% Ownership:

100.0%

Exemptions:

For privacy reasons not all exemptions are shown online.

■ Property Values

Improvement Homesite Value:

\$0 (±)

Improvement Non-Homesite Value:

\$0 (+) \$0 (+)

Land Non-Homesite Value:

Land Hömesite Value:

\$22,470 (+)

and the same of th

\$0 (+)

Agricultural Market Valuation:

\$22,470 (=)

Agricultural Value Loss:0

\$0 (-)

Appraised Value:0

\$22,470 (=)

HS Cap Loss: 0

Market Value:

\$0 (-)

Circuit Breaker: 0

\$2,886 (-)

Assessed Value:

\$19,584

Ag Use Value:

\$0

Information provided for research purposes only. Legal descriptions and acreage amounts are for Appraisal District use only and should be verified prior to using for legal purpose and or documents. Please contact the Appraisal

District to verify all information for accuracy.

■ Property Taxing Jurisdiction

Owner: DE POL ROBERT %Ownership: 100.0%

Entity	Description	Tax Rate	Market Value	Taxable Value	Estimated Tax
GKL	KLEBERG COUNTY	0.771870	\$22,470	\$19,584	\$151.16
СКІ	CITY OF KINGSVILLE	0.770000	\$22,470	\$19,584	\$150.80
SKI	KINGSVILLE I.S.D.	1.410400	\$22,470	\$19,584	\$276,21
WST	SOUTH TEXAS WATER AUTHORITY	0.065695	\$22,470	\$19,584	\$12.87
CAD	KLEBERG COUNTY APPRAISAL DISTRICT	0.000000	\$22,470	\$19,584	\$0.00

Total Tax Rate: 3.017965

Estimated Taxes With Exemptions: \$591.04

Estimated Taxes Without Exemptions: \$678.14

P Pi	roperty Land						
Туре	Description	Acreage	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
C1	C1	0.93	40,510.80	0.00	. 0.00	\$22,470	\$0

Ą	Prope	rty Ro	ll Val	ue Hi	story

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap Loss	Assessed
2024	\$0	\$22,470	\$0	\$22,470	\$0	\$19,584
2023	\$0	\$16,320	\$0	\$16,320	\$0	\$16,320
2022	\$0	\$14,930	\$0	\$14,930	\$0	\$14,930
2021	\$0	\$15,000	\$0	\$15,000	\$0	\$15,000
2020	\$0	\$13,700	\$0	\$1,3,700	\$0	\$13,700
2019	\$0	\$9,300	\$0	\$9,300	\$0	\$9,300
2018	\$0	\$9,300	\$0	\$9,300	\$0	\$9,300
2017	\$0	\$9,300	\$0	\$9,300	\$0	\$9,300
2016	\$0	\$9,300	\$0	\$9,300	\$0	\$9,300

■ Property Deed History

Deed Date	Туре	Description	Grantor	Grantee	Volume	Page	Number
3/5/2019	WD	WARRANTY DEED	JOHNSON JOE VAUGHN	DE POL ROBERT			317522
5/12/2008	WDW/ASMP	WARRANTY DEED W/ASSUMPTION	JOHNSON JOE V	JOHNSON JOE VAUGHN	390	270	

Şec. 1. - Land use chart.

The following chart shall set out the land uses within the city:

- P = Permitted
- S = Special use permit required
- X = Special review required
 - = Not permitted (absence of any symbol)

[Land Use Chart on the following pages]

Land Use Chart					•								
Land Use Description	R1	R2	R2A	R3	R4	МН	C 1	C2	C3	ď	11	12	Ag
Dwelling, one-family det.	P	Р		P	P	P	Р	₽	Р			•	Р
Dwelling, one-family att.		P	P	Р	P		S	Р				•	Р
Dwelling, two-family		Ρ		Р	Р		S	Р					
Dwelling, multi- family			•	Р	P	·	P	Р	Р				
Tiny Homes	-	Р	Р			Р							
Dwelling, above business									Ρ			-	
Work/live units									Р				

switching, relay, and

transmitting

equipment

Sec. 15-6-142. - Special use permits.

- (A) All requests for permits in districts which involve uses listed as special uses in § 15-6-19 and areas designated as an overlay district shall be referred to the City Planner.
- Special uses are conditional upon a demonstration of conditions and facts by the applicant that the special use is appropriate to the state.
- (C) The Planning Department shall collect a fee of \$250.00 to cover the cost of advertising and the mailing of announcements regarding pending special use permit applications to all property owners within 200 feet of the site for which the special use permit is requested.
- (D) Applicants shall supply suitable plans and information concerning the location, function and characteristics of any use proposed to the Planning Department prior to the scheduling of any hearing. The Planning Department shall evaluate the proposed use and submit preliminary recommendations to the Planning and Zoning Commission.
- (E) The City Planner shall evaluate all requests for special use permits and shall submit the application to the Planning Commission and to the City Commission unless he finds:
 - (1) There is inadequate information upon which to evaluate the request;
 - (2) The applicant requests a deferral; or
 - (3) The applicant withdraws the application.
- (F) The Planning Department, after receiving authorization from the City Commission by ordinance, shall authorize the Building Inspector to issue a special use permit. Conditions may be attached to the permit to assure compliance with the intent and purposes of this article and further the public welfare.

(1962 Code, § 11-6-6)

Sec. 1. - Zoning districts where telecommunications facilities are authorized.

Telecommunication		Code			
Facility Type	Nonresidential	Residential ²	Historical/Cultura	Reference	
Amateur Radio Towers under 50 feet (15 m)	Yes	Yes	No	<u>§ 15-6-48(B)</u>	
Self-supporting Latti	ce, Guyed and Ot	her Towers		<u></u>	
- 0 to 50 feet (15 m)	Yes	No	No	§ 15-6-48(D)	
- over 50 feet (15 m)	SUE ^{3,4}	No	No	<u>§ 15-6-48(</u> D)	
Monopole Towers					
- 0 to 85 feet (26 m)	Yes	SUE 3	No	<u>§ 15-6-48(</u> C)	
- over 85 feet (26 m)	SUE ^{SA}	No	No	<u>§ 15-6-48</u> (D)	
Alternative Mounting	Structures		J		
- 0 to 100 feet (30 m)	Yes	SUE ^{3,5}	Stealth	<u>§ 15-6-48(</u> E) (1)	
over 100 feet(30 m)	SUE ²	SUEZ		<u>§ 15-6-48(</u> E) (2)	
Antenna Only Mounti	ngs				
electronic transmission towers	Yes	Yes		<u>§ 15-6-49(</u> B) (3)	

	· · · · · · · · · · · · · · · · · · ·		· · · · · · · · · · · · · · · · · · ·	
- existing telecom towers over 40 feet (12 m)	Yes	Yes	Stealth	<u>§ 15-6-49(B)</u> (1)
- utility poles over 40 feet 12 m)	Yes	Yes	Stealth	§ 15-6-49(B)
- light poles over 40 feet (12 m)	Yes	Yes	Stealth	§ 15-6-49(B) (1)
- conforming billboards	Yes	Yes	Stealth	§ 15-6-49(B) (5)
- building-mounted panels	Stealth	Stealth ⁶	Stealth	§ 15-6-49(B) (6)
- building-mounted whips	Yes	Yes ⁶	Stealth	§ 15-6-49(B) (7)
- roof-mounted arrays	Yes ⁷	Yes ⁷	Stealth	§ 15-6-49(B) (7)
Dish Antenna Mount	ings			
- building/roof- mounted under 3.3 feet (1 m) in diameter	Yes	Yes	Stealth	§ 15-6-49(C) (4)
- building/roof- mounted under 6.6 feet (2 m) in diameter	Yes ⁷	Yes ⁷	Stealth	<u>§ 15-6-49(</u> C) (5)

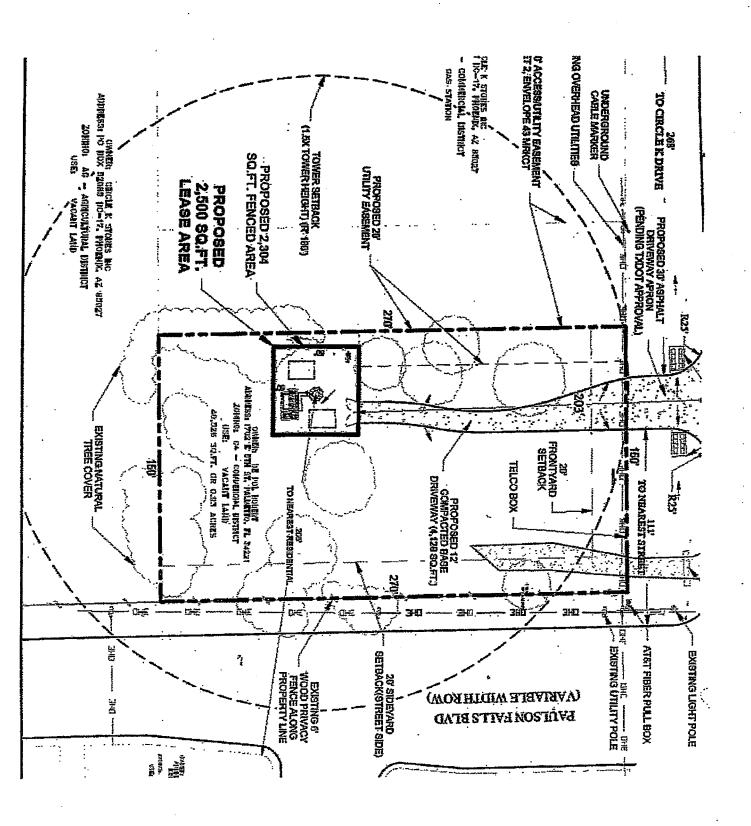
- building/roof- mounted over 6.6 feet (2 m) in diameter	Yes ⁸	Yes ⁸	Stealth	<u>§ 15-6-49(C)</u> (6)
- ground-mounted under 10 feet (3 m) in diameter	Yes	Yes	Stealth	<u>§ 15-6-49(</u> C) (3)
- ground-mounted over 10 feet (3 m) in diameter	Yes	No	Stealth	<u>§ 15-6-49(C)</u> (3)

Notes:

- ¹ For the purpose of this article and table, *NONRESIDENTIAL* means zoning districts C-1, C-2, C-3, C-4, I-1 and I-2.
- ² For the purpose of this article and table, *RESIDENTIAL* means zoning districts R-1, R-2, R-3, R-4, MH and Ag.
- ³ SUE means a special use exception, obtained under $\frac{9.15-6-142}{15-6-142}$, is required by $\frac{8.15-6-6}{12}$
- ⁴ In an I-2 zoning district, there is no tower-height limitation and SUE is not required.
- ⁵ Alternative mounting structures 100 feet (30 meters) or less in height that are also used to provide lighting to parks, stadiums, athletic fields, school playgrounds, tennis courts and other recreational areas are permitted, by right, in residential districts.
- ⁶ Nonresidential and multifamily structures only.
- Nonresidential and multifamily structures.

⁸ Structures in excess of 100,000 square feet (900 square meters) of floor area.

(Ord. 2001-15, passed 8-13-01)



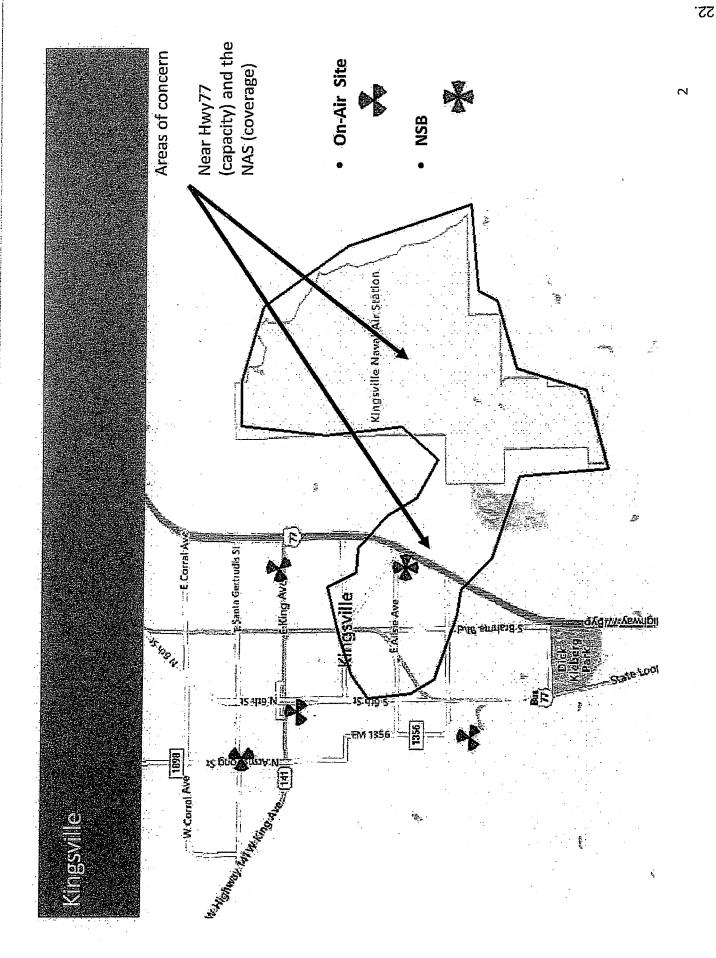


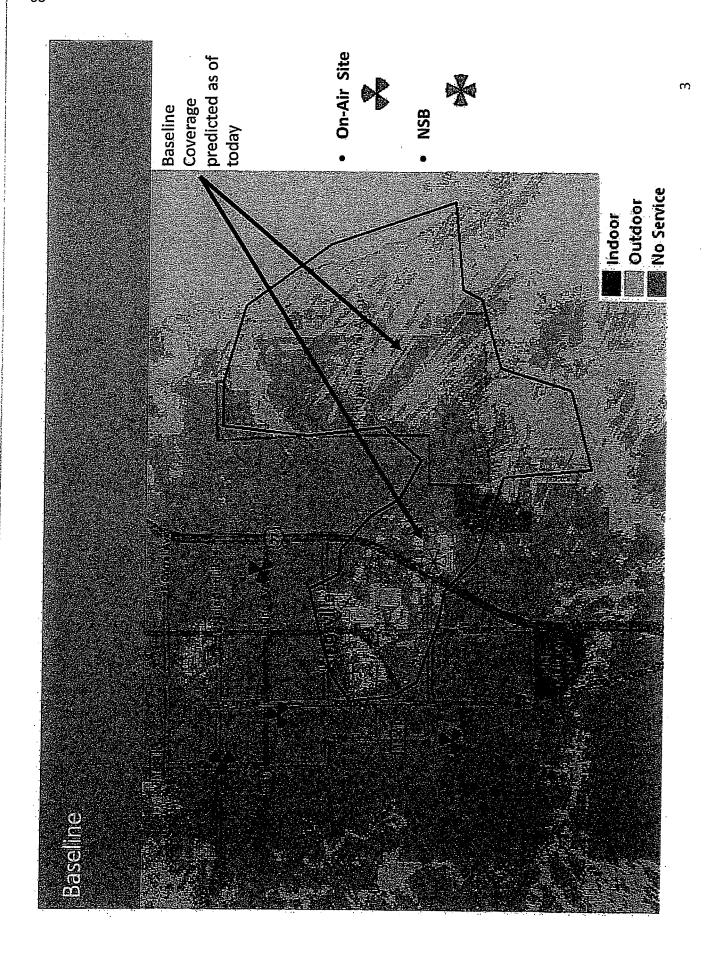
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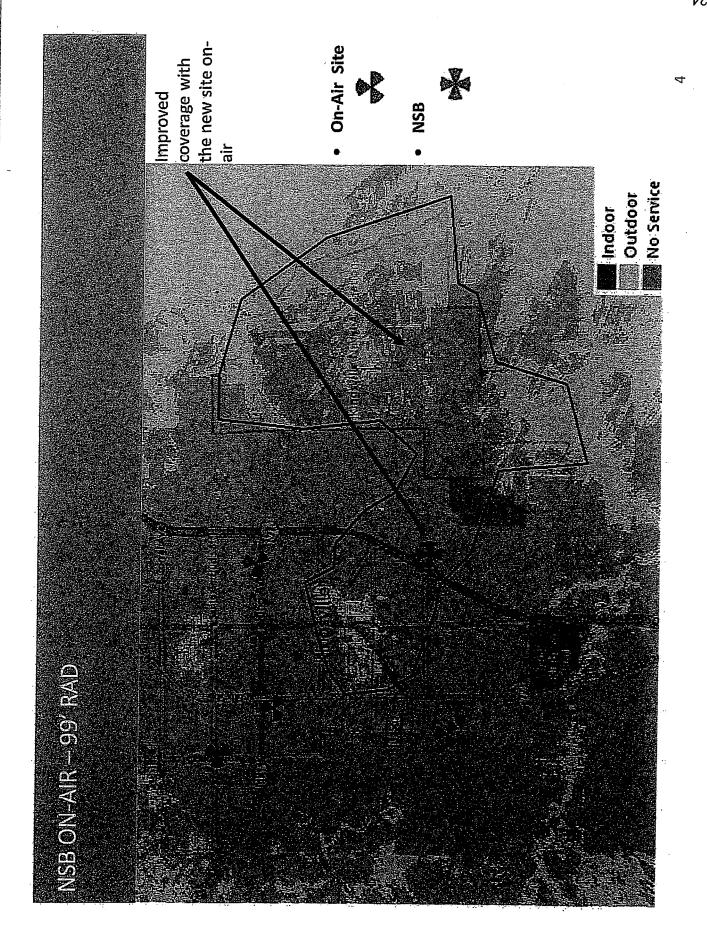
New Site Solution – FA 15470650 Neesen

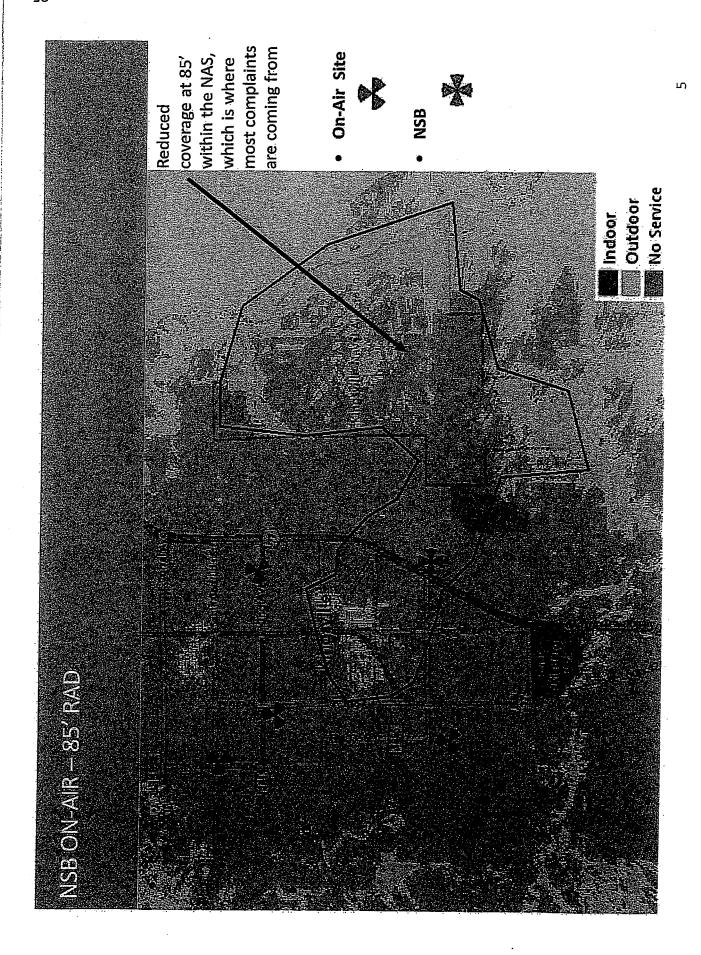
Damon Bindock - Assoc Director STX

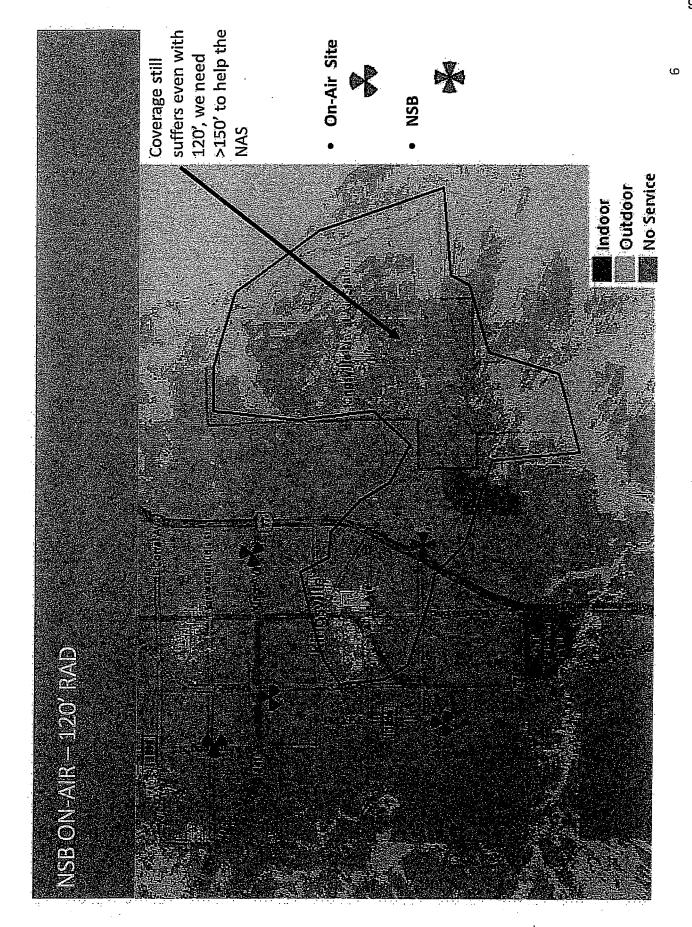








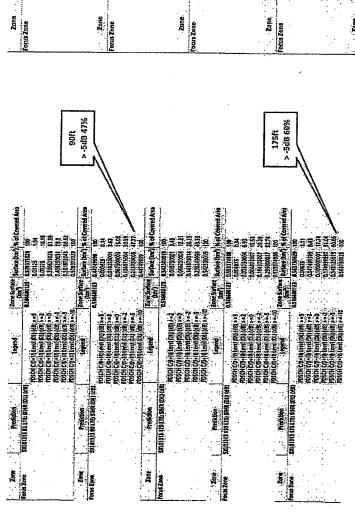




> -90dBm 4%

van's oloranalysis shows the inteed for Alsoy for the INAS

1900 SINR and RSRP area % in HotSpot (Navy Base)



> -90dBm 18% > -90dBm 57% 175ft **90f** DOLL BATH (AS EPTR) Level (defin) x = 30

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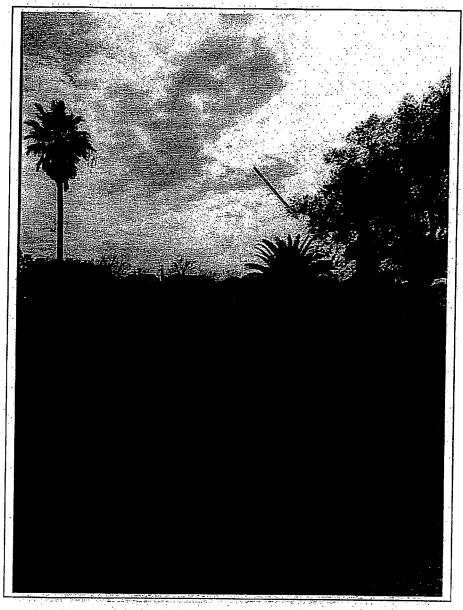
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HXL06097 NSB 4 Sectors / Oct 8th, 2024 / © 2024 AT&T Intellectual Property - AT&T Proprietary (Internal Use Only)



Site located strategically behind tree cover



Vincent Gerard & Associates, Inc.

Mr. Erik Spitzer Director - Kingsville Development & Planning Kingsville Texas

March 17th, 2025

Summary Letter for TVT III General Cavasos Wireless Facility Site, 2029 E General Cavasos Blvd. Kingsville Texas

Mr. Erik Spitzer,

After a request from AT&T Mobility and a search of all properties within a 1/6-mile search ring study, we believe we have found an excellent location and solution for a wireless site in the Southeast corridor of Kingsville along General Cavasos Boulevard for better coverage in this area? This site will accommodate all the major carriers. AT&T radio frequency engineers have received numerous complaints from Kingsville NAS customers. This proposed site upgrades existing interior sites in Kingsville and the Naval Air Station coverages. There is an existing monopole approximately 2-300. Northwest owned by Celleo. It has zero additional ground space for equipment and does not have the adequate height to allow AT&T Mobility to optimize their customers' coverage and their "FirstNet" equipment. AT&T made an economic business decision to request Tower Ventures III to construct a new 120' monopole at this location. By code Article 6 Chapter 15-6-45 through 51, this site complies with the requirements listed for wireless and we are respectfully requesting an Special Use Exception for this land use from the Planning and Zoning commission and City Council. It is at 1.5x height from a Major Arterial and over 120' away from the residential lots to the east. The unmanned site will be accessed by personnth by maintenance worker by pickup truck. We are proposing to use the existing tree cover as landscape screening. If a waiver is necessary for the landscaping plans, consider this summary for that specific purpose.

The current tract of land is vacant, zoned C4 Commercial and has adequate space for leasing to other carriers' equipment. Tower Ventures will actively pursue other carriers on this site. It is located along busy US Highway 77. Please review the SUE package, the site plan and the additional supplemental information required and let us know if you have any questions.

Sincerely

Vincent G. Huebinger

Xc: Kobby Agyelum, City of Kingsville

TVT III. LLC

495 Tennessee Street Suite 152 Memphis, Tennessee 38103

Phone:

(901) 794-9494

Toll Free:

(800) 875-5109

March 5, 2025

Re: Agent Authorization Letter, Vincent Gerard & Associates Inc.

To Whom it may Concern:

TVT III, LLC, authorizes Vincent Gerard & Associates to represent their interest in zoning, site plan submittals variances and building permits within the State of Texas. If there are any questions regarding this agreement, please contact us.

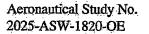
Should you have any questions about this, please call Benjamin Orgel at 901-428-3381.

Sincerely,

Benjamin Orgel

Principal/Real Estate Director

Office: 901-244-4001 Cell: 901-428-3381





Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177

Issued Date: 03/12/2025

Craig Royal TVT III, LLC 495 Tennessee Street, Suite #152 Memphis, TN 38103

** DETERMINATION OF NO HAZARD TO AIR NAVIGATION **

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:

Monopole TX1036 Kingsville E. General Cavazos

Location:

Kingsville, TX

Latitude:

27-29-26.94N NAD 83

Longitude:

97-50-39.77W

Heights:

54 feet site elevation (SE)

128 feet above ground level (AGL) 182 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is (are) met:

Emissions from this site must be in compliance with the parameters set by collaboration between the FAA and telecommunications companies and reflected in the FAA 5G C band compatibility evaluation process (such as power, frequencies, and tilt angle). Operational use of this frequency band is not objectionable provided the Wireless Providers (WP) obtain and adhere to the parameters established by the FAA 5G C band compatibility evaluation process. Failure to comply with this condition will void this determination of no hazard.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

	At least	10 days prior	r to start of cor	istruction (74	460-2, Part 1)		
X	Within	5 days after t	the construction	n reaches its	greatest height	(7460-2,	Part 2)

See attachment for additional condition(s) or information.

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/ lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M Change 1.

This determination expires on 09/12/2026 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (817) 222-5922, or debbie.cardenas@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2025-ASW-1820-OE.

Signature Control No: 647599671-650169363
Debbie Cardenas
Technician

(DNE)

Attachment(s)
Additional Information
Frequency Data

Map(s)

cc: FCC

Additional information for ASN 2025-ASW-1820-OE

Part 77 authorizes the FAA to evaluate a structure or object's potential electromagnetic effects on air navigation, communication facilities, and other surveillance systems. It also authorizes study of impact on arrival, departure, and en route procedures for aircraft operating under visual or instrument flight rules, as well as the impact on airport traffic capacity at existing public use airports. Broadcast in the 3.7 to 3.98 GHz frequency (5G C band) currently causes errors in certain aircraft radio altimeters and the FAA has determined they cannot be relied upon to perform their intended function when experiencing interference from wireless broadband operations in the 5G C band. The FAA has adopted Airworthiness Directives for all transport and commuter category aircraft equipped with radio altimeters that prohibit certain operations when in the presence of 5G C band.

This determination of no hazard is based upon those mitigations implemented by the FAA and operators of transport and commuter category aircraft, and helicopters operating in the vicinity of your proposed location. It is also based on telecommunication industry and FAA collaboration on acceptable power levels and other parameters as reflected in the FAA 5G C band evaluation process.

The FAA 5G C band compatibility evaluation is a data analytics system used by FAA to evaluate operational hazards related to aircraft design. The FAA 5G C band compatibility evaluation process refers to the process in which the telecommunication companies and the FAA have set parameters, such as power output, locations, frequencies, and tilt angles for antenna that mitigate the hazard to aviation. As the telecommunication companies and FAA refine the tools and methodology, the allowable frequencies and power levels may change in the FAA 5G C band compatibility evaluation process. Therefore, your proposal will not have a substantial adverse effect on the safe and efficient use of the navigable airspace by aircraft provided the equipment and emissions are in compliance with the parameters established through the FAA 5G C band compatibility evaluation process.

Any future changes that are not consistent with the parameters listed in the FAA 5G C band compatibility evaluation process will void this determination of no hazard.

Frequency Data for ASN 2025-ASW-1820-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
6	7	GHz	55	dBW
б	7	GHz	42	dBW
10	11.7	GHz	55	dBW
10	11.7	GHz	42	₫BW
17.7	19.7	GHz	55	dBW
17.7	19.7	GHz	42	dBW
21.2	23.6	GHz	55	dBW
21.2	23.6	GHz	42	dBW
614	698	MHz	2000	W
614	698	MHz	1000	w
698	806	MHz	1000	w
806	824	MHz	500	w
806	901	MHz	500	w
824	849	MHz	500	w
851	866	MHz	500	w
869	894	MHz	500	w
896	901	MHz	500	w
901	902	MH2	7	w
929	932	MHz	3500	w
930	931	MHz	3500	w
931	932	MHz	3500	w
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1670	1675	MHz	500	W
1710	1755	MHz	500	W
1850	1910	MHz	1640	W
1850	1990	MHz	1640	W
1930	1990	MHz	1640	W
1990	2025	MHz	500	W
2110	2200	MHz	500	W
2305	2360	MHz	2000	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W
2496	2690	MHz	500	W
3700	3980	MHz	3280	\mathbf{w}
3700	3980	MHz	1640	W

Circle K Stores INC PO Box 52085 DC-17 Phoenix, AZ 85027-2085 #4001444 Edquetties distraction and and

Circle K. Stores INC PO Box 52685 DC-17 Phoenix, AZ 85027-2085 #28657

Robert De Pol 1702 E 5th St Palmetto, FL 34221 #25758

Elda Nora Lopez 1725 Mildred ` Kingsville, TX 78363 #43178

Axel Messenger LLC 1210 Cypher St Kingsville, TX 78363 #43201

NEWS



(Above) Matria Hamilion received the busine of leavy species? Secondary District Teacher of the Eart See was the immed at the HMK High School Teacher of the twen they was second by her peers. Supermembers the Carry Reprodis-Press and HMK IS Principal Data Monte are parameter with her (Refers) Yearns Related to present the house of heavy sected. Elementary District Teacher of the New Sected Here Hamenersy School Teacher of the New Sected Here Hamenersy School Teacher of the Year and say school May be peers. Set is pairmed with Dr. Reynolds-Peers and Itaria Principal Nicole Lordally at the Matrix 2 KED School March meeting. (Photos by Glosis Rigger Clinia).



KISD

Communication ration rates T

SHAC is a health advisory council which consists of five members with the majority being KISD startest patents and not employed with the district.

ind out employed wan undistrict.

Trusters manimously and Constal Bend Science
approved the lagrement for
clinical services, between
the University of Tears Hin
Conade Valley and Kingsville Independent School
District The assuring pertain
to meanth facility and Kingsing from deposition to be
traviously replained, Student
the Tear of the Condition of the C

receive dinical services via video calls.
Also approved was the In-teriocal Student Transfer and Tuffinn Agreement between KISD and Ricardo ISD for the 2025-26 school year, Bi-cardo ISD, does not have a terboci Stident Trintefer and Verr announcements were in the Trintin Agreement between made.

KIND and Ricardo IN for Recognized were Vienta the 2025-26 school year 84toratio IN fices not have a high school. The trustees approved the Melicus Garantie, Petra He10 non-business days pro-

updates at the lengthy school board meeting.

The first action approved ing of localized Policy Updates 124 was unanimously Work Proclamation. The spround the policy deals the with financial editor, investment of April 6-12 in National Library Work. The chart of April 6-12 in National Library Work. The special meets, intellectual propertional Library Work. The concist intellectual propertional Library Work. The concist intellectual propertional Library Work. The concist intellectual propertional Library Work The concist intellectual propertional Library Work. The concist intellectual propertional contract of the School Concist. In peach in open contract on echool premiers.

were recognized.

Elementary and Secondary
Campus Teachers of the Year
and District Elementary and
Secondary Teachers of the
Veir atmanuscements were

from proclamations to policy panel by the 2015 calendar Gillett Middle School, Many options of the English school and the School and Park Homilion, HMK High board meeting.

The first action approved to got Localized Policy Updates at the National Labrary date; 124 was unanimously be a was mined Hermitian approved. The policy deals. Hamilton was named Secondary District of the Year Teacher. The teachers were selected

with financial ethics, investments, intellectual property, employes standard of
conduct, special grograms,
grided and laplect conduct on school premises.
At the legaming of the
meeting numerous students
and teachers received reognitismic Kinderparten in
eighth grade students were
recognized for the District
and Caustal Beril Science
Feithcones.
Albo announced were the

carer exploration course, will offer students hands on exposure to 14 different programs of study throughout the school year.

Also reported was the fact that the Education Service

Center Region 2, ESC-2 has received a grant to apprade school libraries in the area. Harrel Elementary School is one of the schools that will

is one of the schools that will receive funding to opgrade the library.

The total amount of the grant less 200.

The next school bound meeting will be held on April to

Battle

CONTINUED FROM TAGE 1

a West Touth, and Addition that a Per-tury with Eakery Recogniting the table with the most irredulble denser.

Woy Factor, Arradic Flowers with Anti-tude Honoring the table that lever a lesting impression and is truly undirectable.

Mayor Sam Fugute and Interior Chamber

ed to the all-around most favored participant of the event. All some properties of the event. All some prope

Bishop CONTINUED FROM PACE 1

forcement career as a faller in Jim Hogg County in 2014. She graduated from the Lar-edo Police Academy in 2016 and served two years as a deputy, sheriff in Jim Hogg

County.
She also served as a Kings-yille foliogother for one year before being hired with the

Hishop Police Department where the has risen through the ranks and also served as a

"I'm all about our commonity and kids and I want to be the ranks and also served as a detective and stood resource officer.

Torres has appear the last complete weeks needing and make more paint and make more weeks a way from the more many needs to be a served to be a se



Chanks of street surface a male broken and initial following structural failure the resurfacing provided 1 the resurfacing provided by Andale. The \$600,000 project cas completed last ye (Photo by JT Strasner)

City

CONTINUED FROM PACE 1.

In other business, the commission approved a resolution running the city grats' youth soft-hall need as David Charge Field.

hall field is David Chiner Field.

Pails Dept. Director Seam by said Chare,
war an imprise for local Esteadul and soffield
games for more than three depades.

He had a great once of humore and served
our community for many years. by reid.

The faintly of Chiner secured more than
2.500 signatures in support of re-numing the
pails, she hadded,

Members of Chareft family were in attendance at the mexico.

dance at the meeting

A commony will be held once the plague is secured.

came track in Jain April, but it may be mild.

May before they return.

This, they are gainst re-do the whole thing for my Surgard.

They began the gainst re-do the whole thing for my Surgard.

The wiss a good man include good friend. For on these surgards are mind to my my man to the park he was for the was pleased the enthroproject with the mention of the strong program agreement between the Kingwille Fire Department and Delandon and the strong program agreement and Delandon the strong program agreement to the park he was a strong program agreement to the park he was a strong program agreement the strong p

gust stati. "If you ever wond to the park he was on there."

Commitminess also approved a resolution for 2 the stong program agreement between the Kingwiller Fire Department and DelMar andmain previously had to do their rick-alongs in Corpus Christi.

Some states by administ up get a schedule statement by administ up get a schedule there, "Fire Chief II Adams said.

Some said the Street, Department further itselfesting; the suffice of Saint, Germodil from Stati. Street to Armstrong has tweek. Some added, but any residual bose gravel would be morrord. He said the distribution method he removed. He said the distribution method was working much better on this particular project.

The city will hold the animal spring Tractio Offerention April 12 from \$50 a.m. to nown.

The fact city commission meeting will be held April 13 a. 5 p.m.

PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a Public Hearing Wednesday, April 16, 2025, at 6:00 p.m. wherein the Commission will discuss and/or take action on the following item and at which time all interested persons will be heard:

Vincent Gerard & Associates Applicant, Robert De Pol, Owner; requesting approval of a Special Use Permit for a Wireless Telecommunications Facility with 120 Monopole in C4 (Commercial) of Faulson's SUB, Lot B, Acres. 0, also known as 1025 E General Cavazon, Kingsville, TX 78363 (Property ID 25758).

The meeting will be held at City Hall, 400 West King Ave, Kingsville, TX in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the Flanning Department at (361) 595-8055,

PUBLIC HEARING NOTICE

The City Commission of the City of Kingsvills will hold a Public Hearing Monday, April 28, 2025, at 5:00 p.m. wherein the City Commission will discuss the consideration of the following item and at which time all interested persons will be heard:

Vincent Gerard & Associates Applicant, Robert De Pol, Owner; requesting approval of a Special Use Permit for a Wireless Telecommunications Facility with 120 Monopole in C4 (Commercial) of Panison's SUB, Lot B, Acres .0, also known as 1025 E General Cavazos, Kingsville, TX 78363 (Property ID 25758).

The meeting will be held at City Hall, 400 West King Ave. Kingsville, Texas in the Helen Kleberg Groves Community Room. If you have any questions about the Items on the agenda, please contact the City Secretary at (361) 595-8002

SGA defeats London



The SGA Lady Llons, ranked No. 23 of the Inter YGHSGA Class 3A rankings defeated the Lou-ilon Lady Pirmes 9-1 during a allitrict stimulown Monday night. illuties storedown Menday piglic.
Lady Llon feer De Luc Santos ha
a. grand siam and Kuma Cruz
blasted a 2-run homer in the victusy. The Ludy liams hald an overall
record of 207 oberall and \$5-1 in
district action after the victury.
(Contributed photo)

ORDINANCE	#2025-
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AMENDING THE ZONING ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A WIRELESS TELECOMMUNICATIONS POLE TOWER IN C4-COMMERCIAL AT PAULSON'S SUB, LOT B, ALSO KNOWN AS 1025 E. GENERAL CAVAZOS, KINGSVILLE, TEXAS (PROPERTY ID 25758); AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; PROVIDING FOR PUBLICATION.

WHEREAS, the City Commission approved a wireless telecommunications facilities ordinance (sections 15-6-45 through 15-6-51) in 2001, as allowed by the Federal Telecommunications Act of 1996, and modified it in 2004 to regulate the placement, construction, and modification of cellular telephone facilities and other personal wireless telecommunication service facilities in order to protect and promote public safety, minimize and mitigate any adverse visual or aesthetic impacts on the community and promote the orderly development of telecommunication facilities within the city; and

WHEREAS, city staff has received an application from Vincent Gerard & Associates, applicant, for Robert De Pol, owner, for the installation of an up to 120-foot monopole antenna/wireless telecommunications pole in a C4-Commercial District area; and

WHEREAS, the applicant plans to install an up to 120-foot monopole tower on private property in a C2-Retail District area, but Appendix C to the City ordinance requires a Special Use Permit process as the pole monopole tower is up to 120 feet and is to be located in a C4-Commercial District area; and

WHEREAS, the Planning and Zoning Commission has forwarded to the City Commission it's reports and recommendations concerning the application of Vincent Gerard & Associates for amendment to the zoning map of the City of Kingsville with the request based on City Code sections 15-6-45 and 15-6-46;

WHEREAS, with proper notice to the public, public hearings were held on Wednesday, April 16, 2025, during a meeting of the Planning and Zoning Commission, and on Monday, April 28, 2025, during a meeting of the City Commission, in the Helen Kleberg Groves Community Room at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

WHEREAS, on a motion to approve the item, a majority of the Planning Commission voted 6-0, to APPROVE the requested Special Use Permit; and

WHEREAS, the City Commission has determined that this amendment would best serve public health, necessity, and convenience and the general welfare of the City of Kingsville and its citizens.

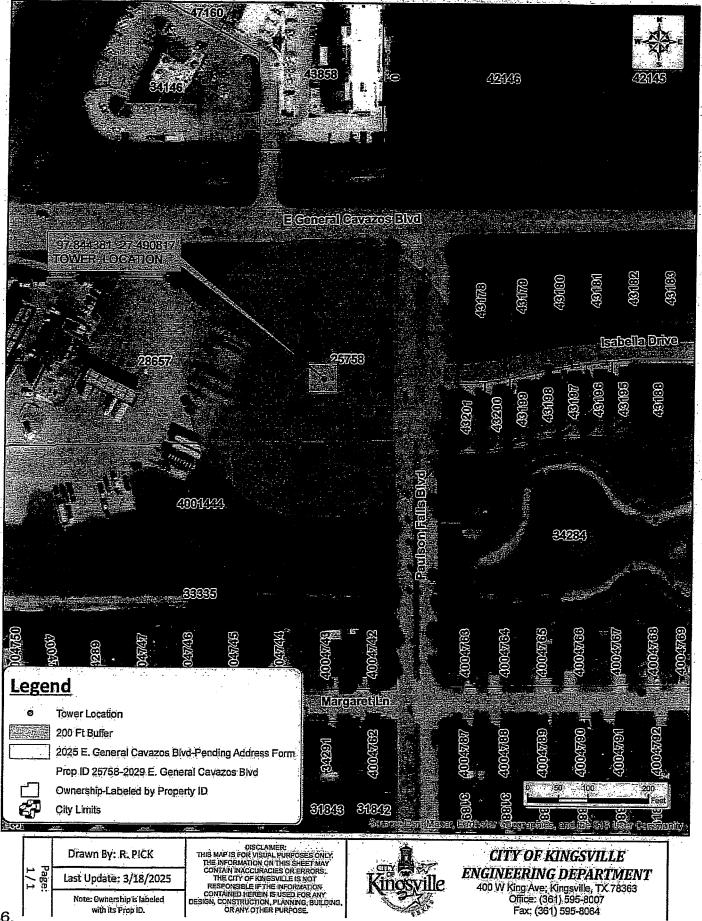
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

- **SECTION 1.** That the Zoning Ordinance of the City of Kingsville, Texas, is amended and a Special Use Permit is granted for an up to 120-foot wireless telecommunications monopole tower in a C4-Commercial District area at Paulson's Sub, Lot B, also known as 1025 E. General Cavazos, Kingsville, Texas (Property ID 25728) as more specifically described on the site plan attached as Exhibit A.
- **SECTION 2.** That the Special Use Permit granted in Section 1 of this Ordinance is subject the following conditions:
- 1. ALLOWED USE: The only use authorized by this Special Use Permit is for the development and operation of a wireless telecommunications monopole tower (hereafter referred to as the "Special Permit Business") in C4-Commercial District at Paulson's Sub, Lot B, also known as 1025 E. General Cavazos, Kingsville, Texas (Property ID 25728).
- 2. TIME LIMIT: This Special Permit is good for the duration of the Special Permit Business from the date of this ordinance **unless** (a) the property is not being used for the purpose outlined in Condition 1, or (b) any other conditions have not been complied with.
- 3. <u>SPECIAL CONDITION</u>: (3.1) The applicant shall obtain all required licenses for operating the Special Permit Business and permits as applicable for building, fire and health thereby meeting all adopted codes to operate said Special Permit Business, and shall cooperate with all annual fire safety, health, and sanitation inspections, in order to maintain compliance with federal, state, and city regulations for such a structure/use at the location. (3.2) All activity on site shall be in complete compliance with all City codes, especially the telecommunications, nuisance, fire, building and zoning codes. (3.3) The applicant shall install and maintain a brick or masonry 8-foot fence. (3.4) The applicant shall install and maintain landscaping at the site.
- **SECTION 3.** That the official Zoning Map of the City of Kingsville, Texas, is amended to reflect the amendments to the Zoning Ordinance made by Section 1 of this ordinance.
- **SECTION 4.** That the Zoning Ordinance and Zoning Map of the City of Kingsville, Texas, as amended from time to time, except as changed by this ordinance and any other ordinances adopted on this date, remain in full force and effect.
- **SECTION 5.** That to the extent that these amendments to the Zoning Ordinance represent a deviation from the Comprehensive Plan, the Comprehensive Plan is amended to conform to the Zoning Ordinance, as amended by this ordinance.
- **SECTION 6.** That all ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed.
- **SECTION 7.** That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.

INTRODUCED on this the <u>28th</u> day of <u>April.</u> 2025.

PASSED AND APPROVED on this the 12th day of May, 2025.
EFFECTIVE DATE:
THE CITY OF KINGSVILLE
Sam R. Fugate, Mayor
ATTEST:
Mary Valenzuela, City Secretary
APPROVED AS TO FORM:
Ву:
Courtney Alvarez, City Attorney

200-FT Buffer at 2500 SF Leased Area



36.

City of Kingsville Public Works, Wastewater Collection Division

TO:

Mayor and City Commissioners

CC:

Charley Sosa, Interim City Manager

FROM:

William Donnell, Director of Public Works

DATE:

April 17, 2025

SUBJECT:

Wastewater Lift Station Repairs

Summary:

This item authorizes an increase for repairs to the South Creek Lift Station and the Golf Course Road Lift Station to satisfy TCEQ inspections requirements.

Background:

South Creek Lift Station was built in 1993 to service the South Creek Subdivision at the south end of Kingsville on US Hwy-77. Although maintenance repairs have been made to maintain the lift station to current the status, repairs to the bottom concrete floor and lower wall are currently required for TCEQ compliance. This repair is estimated to be \$18,650.00 by Donald Hubert Construction.

The lift station located on Golf Course Road built in 1994 is also in need of repairs. Exposed rebar is to be coated with anticorrosive paint/epoxy and two inches of special mix cement on the ceiling and two feet below the ceiling line for TCEQ compliance. This repair is estimated to be \$15,145.00. by Donald Hubert Construction.

Financial Impact:

This will reduce the Budget Amendment Reserve line account 051-5-7001-86000 balance by \$33,795.00 and increase the North Wastewater Treatment Utility Plant account 051-5-7001-54300 by \$33,795.00.

Recommendation:

Donald Hubert Construction is the only responsive bidder, staff is requesting adoption of the proposed budget amendment to cover the cost of repairs of these two lift stations to maintain TCEQ compliance.

|--|

AN ORDINANCE AMENDING THE FISCAL YEAR 2024-2025 BUDGET TO PROVIDE ADDITIONAL FUNDING FOR SOUTH CREEK AND GOLF COURSE ROAD LIFT STATIONS.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for this expenditure in this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2024-2025 budget be amended as follows:

CITY OF KINGSVILLE DEPARTMENT EXPENSES BUDGET AMENDMENT – BA#37

Dept No.	Dept Name	Account Name	Account Number	Budget Increase	Budget Decrease
Fund (051 – Utility Fu	nd			
Expen	<u>ditures</u>				
7001	North Plant	Budget Amend Reserve	86000		\$33,795
7001	North Plant	Utility Plant	54300	\$33,795	

[To amend the City of Kingsville FY 24-25 budget to provide additional funding for repairs to the South Creek and Golf Course Rd lift stations. There is \$150,000 available in the UF Budget Amendment Reserve line item for this request.]

· [].

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

THAT this Ordinance shall not be codified but shall become effective on and a	after adoption and
publication as required by law.	•

INTRODUCED on this the 28th day of April 2025.

PASSED AND APPROVED on this the 12th day of May 2025.
EFFECTIVE DATE:
Sam R. Fugate, Mayor
ATTEST:
Mary Valenzuela, City Secretary
APPROVED AS TO FORM:
Courtney Alvarez, City Attorney

City of Kingsville Health Department

TO:

Mayor and City Commissioners

CC:

Charlie Sosa, Interim City Manager

Courtney Alvarez, City of Kingsville Attorney

FROM:

Emilio H. Garcia, City of Kingsville Health Director

DATE:

April 30, 2025

SUBJECT:

Re-appointment of Health Board Member

Summary: Please be advised that the Health Board term for Joy Ansley expired on April 25, 2025. I have spoken to Joy Ansley, and she has agreed to remain on the Board for another 3-year term. It is my recommendation the Joy Ansley be re-appointed to the City of Kingsville Health Board.

Background: Ms. Joy Ansley has served on the City of Kingsville Health Board for 3 years and would like to be re-appointed for another 3 years.

Financial Impact: None.

Recommendation: I am requesting that the City Commission consider their re-appointment of Joy Ansley at the next Regular Commission meeting. Approve request.



City of Kingsville Health Department

TO:

Mayor and City Commissioners

CC:

Charlie Sosa, Interim City Manager

Courtney Alvarez, City of Kingsville Attorney

FROM:

Emilio H. Garcia, City of Kingsville Health Director

DATE:

April 30, 2025

SUBJECT:

Re-appointment of Health Board Member

Summary: Please be advised that the Health Board term for Joni B. Harrel expired on May 9, 2025. I have spoken to Joni B. Harrel, and she has agreed to remain on the Board for another 3-year term. It is my recommendation that Joni B. Harrel be re-appointed to the City of Kingsville Health Board.

Background: Mrs. Joni B. Harrel has served on the City of Kingsville Health Board for 3 years and would like to be re-appointed for another 3 years.

Financial Impact: None.

Recommendation: I am requesting that the City Commission consider their re-appointment of Joni B. Harrel at the next Regular Commission meeting. Approval request.



REGULAR AGENDA

City of Kingsville Engineering Dept.

TO: Mayor and City Commissioners

CC: Charlie Sosa, Interim City Manager

FROM: Rutilio P. Mora Jr, P.E., City Engineer

DATE: May 12, 2025

SUBJECT: Consider Awarding Bid No. 25-14 for the General Land Office (GLO)

Community Development Block Grant Mitigation (CDBG-MIT) Contract No. 22-082-016-D218 Project 4A – Alley Between E. Johnston Ave. and E.

Fordyce Ave. Sanitary Sewer Improvements

Purpose:

We seek approval to award Bid No. 25-14 for the General Land Office (GLO) Community Development Block Grant Mitigation (CDBG-MIT) Contract No. 22-082-016-D218 Project 4A – Alley Between E. Johnston Ave. and E. Fordyce Ave. Sanitary Sewer Improvements. The project will consist of 2 manholes, 177 feet of wastewater line and related appurtenances. The project will be completed in 60 calendar days after Notice to Proceed is provided.

Summary:

This project was advertised in the local newspaper and city's website on March 27th, and April 3rd. Sealed bids for Bid No. 25-14 were received prior to the deadline of April 29, 2025, at 2:00pm and read out loud, from three bidders:

- 1. D&M Underground Const. Corp, Corpus Christi, Texas
- 2. D&J Utility Services LLC, Sinton, Texas
- 3. Artillery LLC, Edinburg, Texas

The base bids range from \$60,650.00 to \$143,980.00. The alternate bids range from \$1,296.00 to \$8,100.00. The total bids range from \$61,946.00 to \$143,980.00. After review, staff recommends awarding the project to the lowest bidder, D&M Underground Construction Corp, for the <u>total bid amount of \$61,946.00</u>. Also, the bid is 49% below the engineer's estimate.

Background:

This project is a continuation of Project 4 which has been completed and accepted by the city on September 23, 2024. Also, this project was an alternate bid for Project 4 but wasn't



City of Kingsville Engineering Dept.

awarded due to the need for a contract amendment with the state. The project is required because there is a structure built over the existing clay wastewater line and the reroute is needed for safety concerns and access to an underground utility line for maintenance and operation.

Financial Impact:

Project 4A will be funded by Fund 113 Citywide Wastewater Collection System Improvements in the amount of \$61,946.00.

Recommendation:

Staff recommends awarding CDBG-MIT GLO Contract No. 22-082-016-D218 — Project 4A — Alley Between E. Johnston Ave. and E. Fordyce Ave. Sanitary Sewer Improvements to D&M Underground Construction Corp. in the amount \$61,946.00.

Attachments:

Bid Recommendation/Award Letter for Project 4A Bid Tabulation for Project 4A





April 30, 2025

Rutilio "Rudy" Mora, P.E., CFM City Engineer City of Kingsville 400 W. King Ave. Kingsville, TX 78363

Re: CDBG-MIT GLO Contract No. 22-082-016-D218 Project 4A, (City of Kingsville Bid No. 25-14) – ICE award recommendation

Dear Mr. Mora,

This memorandum is in reference to ICE's recommendation for award of the above-mentioned project which consists of the installation of 177 LF of 8" Ø sanitary sewer line, two (2) 4'Ø sanitary sewer fiberglass manholes, plug and abandon 147 LF of existing 8"Ø sanitary sewer line from S. 18th St. to S. 19th St. near E. Johnston Ave. with items associated with the installation (tie-in connections, curb and gutter repairs, pavement repairs, traffic control, etc.).

The following is a Bid Summary for the above referenced project. Three (3) general contractors submitted bids to the City of Kingsville on 04/29/2025. Their information is attached herewith. The bidders' list with their total bid is given below:

Rank	Company	Base Bid	Additive Bid No. 1	Total Bid
1	D&M Underground Corp.	\$60,650.00	\$1,296.00	\$61,946.00
2	D&J Utility LLC	\$103,788.00	\$6,180.00	\$109,968.00
3	Artillery LLC	\$135,880.00	\$8,100.00	\$143,980.00

D&M Underground Corp. submitted the lowest total bid of \$61,946.00. On 04/29/2025 D&M Underground Corp. was notified of the low bid pending GLO and City of Kingsville approval. A notice to proceed will delivered upon commencement of the preconstruction meeting.

The engineer's estimate is \$122,250.00. The bid is 49% below the engineer's estimate which is considered reasonable. Furthermore, no clerical errors were found in D&M Underground Corp.'s packet.



Therefore, it is ICE's recommendation that D&M Underground Corp. be awarded this bid. It is the city's discretion to waive any informality or to reject any or all bids.

If you have any questions or need additional information, please contact me at (361) 826-5805 or charlie@icengineers.net

Sincerely,

Juan Carlos "Charlie" Cardenas, P.E.

Senior Engineer

City of Kingsville GLO SS Project 4A (GLO Contract No. 22-982-016-D218) Bid Tabulation Bid Opening Location: City Hall 400 W. King Ave., Kingsville, TX 78363

	transfer for the control of the cont									
				Artillery LLC		D&J Utility Services LLC		D&M Underground Corp		
ITEM	DESCRIPTION	QTY	UNIT	UNIT COST	AMOUNT	UNIT COST	AMOUNT	UNIT COST	AMOUNT	
A1	Mobilization / Bonds / Insurance	1	LS	\$35,000.00	\$35,000.00	\$20,000.00	\$20,000.00	\$5,000.00	\$5,000.00	
A2	Traffic Control	1	LS	\$5,000.00	\$5,000,00	\$3,500.00	\$3,500.00	\$3,800.00	\$3,800.00	
- A3	SWPP (Sediment Control Fence)	350	LF	\$7.00	\$2,450.00	\$5.50	\$1,925.00	\$5,00	\$1,750.00	
A4	SWPP (Erosian Control Log)	24	LF	\$10.00	\$240.00	\$7.00	\$168.00	\$25.00	\$600.00	
A5	Abandon, Cut, Plug, and Fill Exist. 8" Ø SS Pipe with Flowable Fill	147	LF	\$100.00	\$14,700.00	\$90.00	\$13,230.00	\$40.00	\$5,880.00	
A6.	Remove Existing H.M.A.C. Pavement	100	SY	\$30.00	\$3,000.00	\$20.00	\$2,000.00	\$13.50	\$1,350.00	
A7	Remove Existing Curb and Gutter	10	LF	\$50.00	\$500.00	\$40.00	\$400.00	\$18.00	\$180.00	
. A8	Trench Safety	178	LF	\$20.00	\$3,560,00	\$24,00	\$4,272.00	\$7,50	\$1,335.00	
A9	4' Ø Fiberglass Sanitary Sewer Manhole	2	£Α	\$12,000.00	\$24,000.00	\$8,500.00	\$17,000.00	\$8,500.00	\$17,000.00	
A10	8" Ø Sanitary Sewer Line PVC SDR-26 (Green Color)	177	LF	\$130.00	\$23,010.00	\$119.00	\$21,063.00	\$55.00	\$9,735.00	
A11	8" Ø PVC Tie-in Connection to Existing Sanitary Sewer Manhole	1	EA	\$3,000.00	\$3,000.00	\$1,950.00	\$1,950.00	\$7,500.00	\$7,500.00	
A12	H.M.A.C. Pavement Repair	100	SY ·	\$180.00	\$18,000.00	\$165.00	\$16,500.00	\$60.00	\$6,000.00	
A13	6" Curb & Gutter Repair	10	LF	\$300.00	\$3,000.00	\$150.00	\$1,500.00	\$38.00	\$380.00	
A14	Remove Existing Fence	14	LF	\$30.00	\$420.00	\$20.00	\$280.00	\$10.00	\$140.00	
	Total Base Bid				\$135,880.00		\$103,788.00		\$60,650.00	

12-15-42	ADDITIVE ALTERNATE BID NO. 1										
Artillery LLC D&J						D&J Utility	Services LLC	D&M Under	ground Corp		
ITEM	IDESCRIPTION	QTY	LUNIT	UNIT COST	AMOUNT	UNIT COST	AMOUNT	UNIT COST	AMOUNT		
81	Tree Removal	1	EA	\$6,000.00	\$6,000.00	\$4,500.00	\$4,500.00	\$750,00	\$750.00		
B2	Repair Fence	14	LF	\$150.00	\$2,100.00	\$120.00	\$1,680.00	\$39.00	\$546.00		
	Total Additive Alternate Bid No. 1				\$8,100.00		\$6,180.00		\$1,296.00		

RECOMMENDED AV	VARD OPTIONS	strada (f. pari et Pepea Le	u sanda ayran iy
OPTION DESCRIPTION	Artillery 1LC	D&J Utility Services LLC	D&M Underground Corp
1 Base Bid + Add. Aft. Bid No. 1	\$143,980.00	\$109,968.00	\$61,946.00
2 Base Bid	\$135,880.00	\$103,788.00	\$60,650.00



City of Kingsville Engineering Dept.

TO:

Mayor and City Commissioners

CC:

Charlie Sosa, Interim City Manager

FROM:

Rutilio P. Mora Jr, P.E., City Engineer

DATE:

May 12, 2025

SUBJECT:

Consider a Resolution authorizing Participation in the Federal

Transportation Alternative Set-Aside Program Step 2 (Detailed Application)

through the 2025 TA Call for Projects Administered by the Texas

Department of Transportation (TxDOT).

Summary:

On April 18, 2025, TxDOT notified the City that one preliminary application is eligible to move forward to Step 2 (detailed application) and the deadline is June 20, 2025.

The project includes drainage, sidewalks, ADA ramps, crosswalks, lighting and a pedestrian shelter for students. The project limits are along E. Ceasar Ave between 14th and Hwy77/I-69 and E. General Cavazos between 6th Street and Bramha Blvd.

Background:

On January 3, 2025, Texas Department of Transportation (TxDOT) issued the 2025 Transportation Alternatives (TA) Call for Projects. The application is a two-step process. Step 1 – Project Sponsors submit Preliminary Application(s) (PA) by February 2025. Step 2 – Project Sponsors submit Detailed Application(s) (DA) by June 2025. If funds are awarded, the City would be notified in the Fall of 2025. See below.

The project(s) would typically be funded by both federal (80%) and local (20%) funds. Local funds should not be required since the City's local fund match can be covered by Transportation Development Credits (TDCs). This year the grant also considers an adjustment factor for inflation.

<u>Eligible TA Project Activities</u> include bicycle infrastructure improvements, shared use paths, sidewalk improvements and infrastructure-related projects to improve safety for non-motorized transportation.

<u>Project Evaluation and Selection Criteria</u> includes Safety, Project Readiness, Geographic Equity, Connectivity & Accessibility, Community Support & Planning and Demand.



City of Kingsville Engineering Dept.

<u>Allowable Costs eligible for federal reimbursement</u> include Project Construction, Preliminary Engineering and design, including preparation of construction plans, specifications and estimates, Environmental Documentation, Planning activities and Right-of-way acquisition on a case -by-case basis as approved by TxDOT.

<u>Costs not eligible for federal reimbursement</u> include Planning Activities, Environmental Mitigation, Utility Adjustments, Landscape Improvements and Land Acquisition.

The City may submit two (2) applications in 2025. Two project locations the city may focus on are:

- General Cavazos/Bramha Blvd/E. Escondido Road lighting, sidewalk, pedestrian bridge and bike lane improvements
- E. Ceasar Ave. between 6th Street and Highway 77 Bicycle, Sidewalk, Ramps and Crosswalk Improvements.

Financial Impact:

There is no financial impact in submitting the detailed application.

Recommendation:

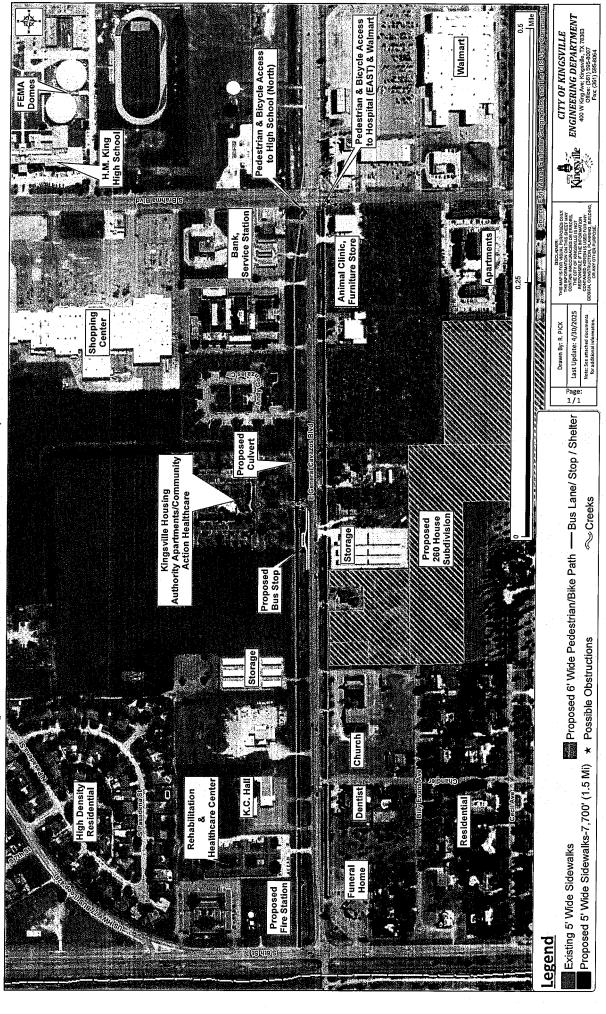
Staff recommends applying to the Transportation Alternatives Set-Aside Program 2025 Call for Projects for Step 2 Detailed Application.

Attachments:

Exhibit 1 - General Cavazos Exhibit 2 - Caesar Ave. Resolution 2025

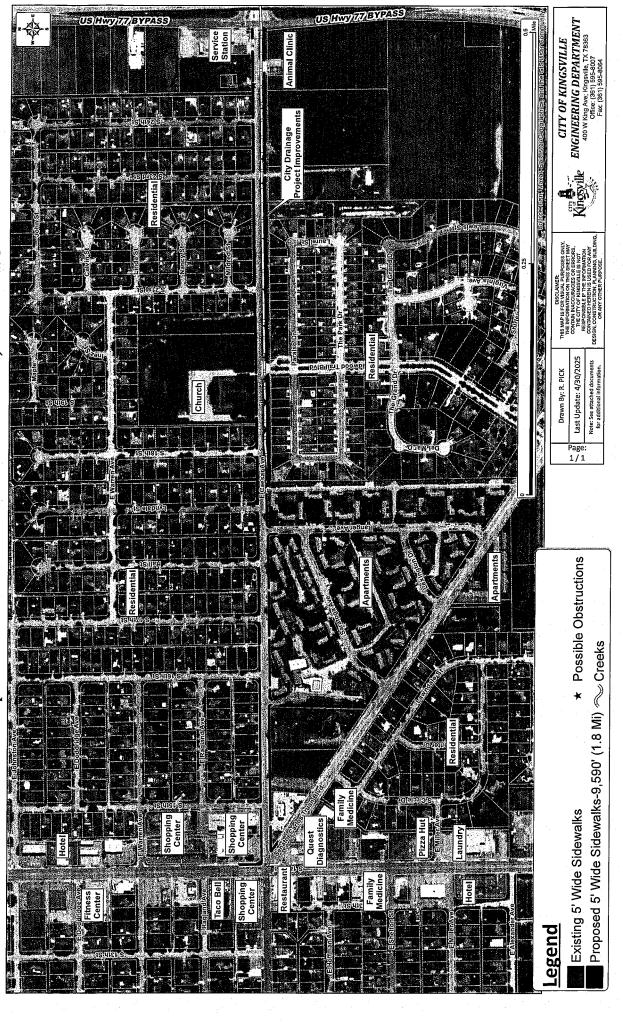


Transportation Alternatives - Exhibit 1, General Cavazos Blvd



- not approved for Step 2

Transportation Alternatives 2025 - Exhibit 2, Caesar Ave



Approved for Step 2

RESOLUTION NO. 2025-	
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RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE STEP 2-DETAILED APPLICATIONS TO THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE 2025 TRANSPORTATION ALTERNATIVES SET-ASIDE (TASA) PROGRAM.

WHEREAS, on January 3, 2025, the Texas Department of Transportation (TxDOT) issued the 2025 TASA Call for Projects, which is a two-step process that consists of: Step 1-Project sponsors submit Preliminary Applications (PA) by February 2025, and Step 2-Project sponsors submit Detailed Applications (DA) by June 2025;

WHEREAS, if funds are awarded, the City would be notified in the Fall of 2025 whether its project(s) for design and construction of ADA sidewalks, shared-use paths, lighting, bridges, sidewalks, bike lanes, crosswalks, and ramps; and

WHEREAS, on January 13, 2025 the City Commission approved Resolution #2025-04 to authorize submittal of two projects for application in the 2025 TASA Call for Projects Step 1 to focus on: (1) General Cavazos/Brahma Blvd/E. Escondido Road- lighting, sidewalk, pedestrian bridge and bike lane improvements, and (2) E. Caesar Ave. between 6th Street and Highway 77-bicycle, sidewalk, ramps, and crosswalk improvements;

WHEREAS, the TASA funds typically require a local cash match but that can be covered by Transportation Development Credits, so no cost should be required by the City. This year the grant also considers an adjustment factor for inflation. As the Project Sponsor, the City of Kingsville would be responsible for all non-reimbursable costs and 100% of overruns, if any;

WHEREAS, on April 18, 2025 City staff learned that only one of the projects submitted for the 2025 TASA had been deemed eligible to move forward to Step 2 (detailed application) of the process and the deadline for submittal of that is June 20, 2025;

WHEREAS, the governing body of the City of Kingsville desires to reaffirm its support of the E. Caesar Ave. Project that has been authorized to move forward and approves and authorizes the submission of Step 2 -detailed application to the TxDOT 2025 TASA for this proposed project.

NOW, THEREFORE BE IT RESOLVED by the City Commission of the City of Kingsville, Texas:

THAT	the City	Comn	nission	authorize	s the	Mayo	or to exec	cute S	Step 2 ap	pliq	cations
to the	TxDOT	2025	TASA	Program	for th	ne É.	Caesar	Ave.	Project	as	stated
above											

II.

THAT the Mayor, or his designee, is hereby authorized and directed to act on the City's behalf in all matters pertaining to these applications.

III.

THAT this Resolution shall become effective upon adoption.

PASSED AND APPROVED by a majority vote of all members of the City Commission of the City of Kingsville on the <u>12th</u> day of <u>May</u>, 2025.

Sam R. Fugate Mayor	
ATTEST:	
Mary Valenzuela City Secretary	_
APPROVED AS TO FORM:	
Courtney Alvarez	
City Attorney	



City of Kingsville Finance Department

TO:

Mayor and City Commissioners

CC:

Charlie Sosa, Interim City Manager

FROM:

Deborah Balli, Finance Director

DATE:

May 05, 2025

SUBJECT: BA#38 - BA#24 and BA#25 Corrections

Summary:

When BA#24 and BA#25 was submitted, it was stated that the funding source would come from the Budget Amendment Reserve line. The table in the Budget Amendment form did not include the funding source, so this BA is a correction of that error. Total amount of this budget amendment is \$87,040.74 which is the balance of the Budget Amendment line item.

BA#24

Dept No.	Dept Name	Account Name	Account Number	Budget Increase	Budget Decrease
Fund 09	8 – Economic D	evelopment			
Expendi	<u>tures</u>			<u>, , , , , , , , , , , , , , , , , , , </u>	
1060	Econ Devel	Professional Services	31400	\$6,500.00	

BA#25 - Only \$80,540.74 funded from Budget Amendment line item. The \$1,079.12 was from

the unappropriated fund balance.

Dept No.	Dept Name	Account Name	Account Number	Budget Increase	Budget Decrease
Fund 0	01 – General Fund		10 M 2 Shift ()		
Expend	<u>itures</u>				The state of the s
1010	City Manager	Salaries	11100	\$66,133.28	
1010	City Manager	Car Allowance	11200	\$3,507.78	
1010	City Manager	FICA	11500	\$5,327.54	
1010	City Manager	TMRS	11400	\$6,460.95	······································
1010	City Manager	Workers Comp	11700	\$190.31	
		Total	· · · - · · ·	\$81,619.86	



City of Kingsville Finance Department

GL Account 001-5-1030-86000 line item balance.

Budget Summary			
baaget barminary			
Original Budget	300,000.00 -212,959,26		
<u>Adjustments</u>			
Current Budget	87,040.74		
Activity	0.00		
Encumbrances	0.00		
Reserves	0.00		
Budget Remaining	87,040.74		
<u>Pending</u>	0.00		
Budget Available	87,040.74		

Recommendation:

The Finance Department recommends approval of the submitted Budget Amendment.

ORDINANCE NO.	2025-
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AN ORDINANCE AMENDING THE FISCAL YEAR 2024-2025 BUDGET TO CORRECT FUNDING SOURCE ON BA #24 AND BA #25

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for this expenditure in this fiscal year.

1.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2024-2025 budget be amended as follows:

CITY OF KINGSVILLE DEPARTMENT EXPENSES BUDGET AMENDMENT – BA#38

Dept No.	Dept Name	Account Name	Account Number	Budget Increase	Budget Decrease
Fund (001 – General F	und			
Expen	<u>ditures</u>				
1030	City Special	Budget Amend Reserve	86000		\$87,040.74

[To amend the City of Kingsville FY 24-25 budget to correct the funding source for BA #24-\$6,500 & BA #25 - \$80,540.74. The funding source for these two BA's were listed in the memo and the actual budget amendment but were left off the table of the budget amendment forms.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

INTRODUCED on this the 12th day of May 2025.
PASSED AND APPROVED on this the 27th day of May 2025.
EFFECTIVE DATE:
Sam R. Fugate, Mayor
ATTEST:
Mary Valenzuela, City Secretary
APPROVED AS TO FORM:

THAT this Ordinance shall not be codified but shall become effective on and after adoption and

publication as required by law.

Courtney Alvarez, City Attorney

Section 11. - Duties of mayor and commissioners.

The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the City, except that the Mayor shall act as presiding officer of the Commission, and in his absence a Mayor pro tempore may be chosen. The Mayor, or his representative as may be annually designated by the Mayor in writing, shall sign all official documents for the City upon the consent and proper instruction from the Commission, and shall perform all duties imposed upon him by this Charter, and by the ordinances of the City, or upon the order of said Commission.

about:blank

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Sec. 3-1-13. - Rules of decorum.

The following rules of decorum shall be fully applicable to all City Commissioners and other persons appearing before the Commission or present at Commission meetings.

- (A) *Recognition by presiding officer.* No person shall address the Commission without first being recognized by the presiding officer.
- (B) Speaking procedure; limitation on discussion and questioning. Each person addressing the Commission shall step up to the podium provided for the use of the public and give his name and address in an audible tone of voice for the records, state the subject he wishes to discuss, state whom he is representing if he represents an organization or other persons, and unless further time is granted by majority vote of the Commission, shall limit his remarks as otherwise provided for herein. All remarks shall be addressed to the Commission as a whole and not to any member thereof. No person other than members of the Commission and the person having the floor shall be permitted to enter into any discussion, whether directly or through a member of the Commission, without the permission of the presiding officer. No question may be asked a Commission member or the city staff without the permission of the presiding officer and except for a Commission member, the City Manager, or City Attorney permission of the City Manager.
- (C) Improper references, disorderly conduct by persons addressing Commission. Any person making, expressly or impliedly, personal, impertinent, slanderous, derogatory, discourteous, snide, or profane remarks or who willfully utters loud, threatening or abusive language, or engages in any disorderly conduct which would impede, disrupt, or disturb the orderly conduct of any meeting, hearing or other proceedings, shall be called to order by the presiding officer and, if such conduct continues, may, at the discretion of the presiding officer, be ordered barred from further audience before the Commission during that meeting.
- (D) Addresses after public hearing closed. After a public hearing has been closed, no member of the public shall address the Commission from the audience on the matter under consideration without first securing permission to so do by majority vote of the City Commission.
- (E) Campaign speeches prohibited. No person will be allowed to address the City Commission by making campaign speeches for or against any candidate who has announced or does announce his intention to run, or issue already ordered on a ballot for election.
- (F) *Disorderly conduct*. No person in the audience shall engage in disorderly conduct such as handclapping, stamping of feet, whistling, using profane language, yelling, and similar demonstrations, which conduct disturbs the peace and good order of the meeting.

(G)

Limitations on use of supplemental lighting. Limitations on use of supplemental lighting for television and motion-picture cameras to create the least amount of interference with or disturbance of Commission proceedings and/or discomfort to the public shall be maintained.

- (H) Sergeant at Arms. The City Manager shall act as Sergeant at Arms for the City Commission and shall furnish whatever assistance is needed in enforcing the rules established herein. The City Manager may call on any peace officer of the state when he deems it necessary to assist in his enforcement of these rules.
- (I) No unauthorized persons permitted within the dais. No person except members of the City Commission and the city staff shall be allowed within the dais without the consent of the presiding officer.
- (J) *Eating, drinking or smoking.* All persons shall refrain from smoking, eating, or drinking (except water) while in the Chamber during a City Commission meeting.
- (K) Members shall preserve order and decorum. During City Commission meetings, the members of the Commission shall preserve order and decorum and shall not, by conversation or otherwise, delay or interrupt proceedings or refuse to obey the orders of the presiding officer or the rules of the City Commission.
- (L) Questioning the administrative staff. Every Commission member desiring to question the administrative staff shall address the questions to the City Manager who should be entitled to answer the inquiries himself or to designate some member of his staff for that purpose.

 Commission appointees shall not be considered administrative staff.
- (M) Mayor and Commissioners to exercise equal power. The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the city, except that the Mayor or in his absence the Mayor pro-tempore shall act as presiding officer of the Commission. The Mayor shall perform all duties imposed upon him by the City Charter and by ordinances of the city, or upon order of the Commission.

(Ord. 96002, passed 1-22-96; Ord. 2019-54, passed 10-15-19)

Cross reference— Penalty, see § 3-1-99.

McKibben, Martinez & Wood, L.L.P.

555 N. Carancahua, Ste. 1100 Corpus Christi, Texas 78401 361.882.6611. 361.883.8353 (facsimile)

laguilarwood@mmjw-law.com

May 5, 2025

City of Kingsville Commission c/o City Attorney Courtney Alvarez 400 W. King Kingsville, Texas 78363

Re: Opinion Letter

City of Kingsville Commission,

The Commission has sought a legal opinion regarding what is called for by the Charter regarding the selection of a Mayor pro tempore to preside over a city commission meeting in the Mayor's absence. In rendering this opinion, I have reviewed and analyzed the relevant sections of the City Charter and the City Code of Ordinances.

The duties of the Mayor and the Commissioners are addressed in Article V, Section 11. of the Charter. Section 11 provides as follows:

The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the City, except that the Mayor shall act as presiding officer of the Commission, and in his absence a Mayor pro tempore may be chosen. The Mayor, or his representative as may be annually designated by the Mayor in writing, shall sign all official documents for the City upon the consent and proper instruction from the Commission, and shall perform all duties imposed upon him by this Charter, and by the ordinances of the City, or upon the order of said Commission.

Although Section 11 does not plainly and unequivocally state whether it is the Mayor or the Commissioners who choose the Mayor pro tempore, it is my opinion, for the reasons outlined below, that it is the Mayor.

Analysis of Section 11.

Section 11's first sentence is not clearly written and contains a misplaced comma, creating ambiguity and giving rise to alternate interpretations.¹

¹ The misplaced comma is highlighted and bolded in red.

The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the City, except that the Mayor shall act as presiding officer of the Commission, and in his absence a Mayor pro tempore may be chosen.

In sentence construction, two commas are used in the middle of a sentence to set off a clause, phrase or words that are not essential to the meaning of a sentence. If correctly used, when a sentence is read without the text offset by the commas, the meaning/main idea(s) of the sentence continues to remain intact. Here, when the sentence is read without the text offset by the commas, the meaning of the sentence is significantly altered. That is, lost from the sentence is a main idea: the Mayor has a duty to act as presiding officer of the Commission. ²

The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the City and in his absence a Mayor pro tempore may be chosen.

However, when properly punctuated without the second comma, the main ideas remain intact and the meaning of the sentence is clearer.

The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the City, except that the Mayor shall act as presiding officer of the Commission and in his absence a Mayor pro tempore may be chosen.

The properly punctuated sentence communicates that: (1) the Mayor and Commissioners exercise equal power and authority in the transaction of City business and (2) the Mayor has power and authority that the Commissioners do not have, namely to: (a) act as the presiding officer of the Commission and (b) chose a Mayor pro tempore to preside when his absence will interfere with his duty to serve as presiding officer.

The undersigned does not conclude that the "exercise of equal power and authority in the transaction of business" extends to the selection of a presiding officer in the Mayor's absence. If it were so intended, the reference to selection of a Mayor pro tempore wouldn't have been necessary because, in the Mayor's absence, the Commissioners would simply exercise their equal power and authority to select a presiding officer. Moreover, as a practical matter, if the Commissioners were intended to choose the presiding officer, there would be the potential for situations in which a split vote would result in a presiding officer not being chosen. As a presiding officer is required,³ the undersigned opines that the intent was that the Mayor choose the presiding officer.

² Additionally, the sentence does not make sense. It reads as though text is missing between the text in black and the text in blue.

³ A presiding officer is required. See City Code of Ordinances, Section 3-1-13, Rules of Decorum at (A), (B), (C), (I), (K), and (M).

While the first sentence interjects ambiguity regarding whether the Mayor or Commissioners have the power and authority to choose the Mayor pro tempore, the second sentence interjects clarity.⁴

The Mayor, or his representative as may be annually designated by the Mayor in writing, shall sign all official documents for the City upon the consent and proper instruction from the Commission, and shall perform all duties imposed upon him by this Charter, and by the ordinances of the City, or upon the order of said Commission.

The Mayor's power and authority to designate a representative to "perform all duties imposed on him by [the] Charter" is explicitly stated. And serving as the presiding officer is a duty imposed on the Mayor. It is the Mayor's duty to ensure that his duty is met. As such, the Mayor is responsible for designating in writing "his representative" (commissioner) who will fulfill his duty to serve as presiding officer in his absence.

When the first and second sentences of Section 11 are read together, it is evident that the Charter contemplates that the Mayor, not the Commissioners, choose which commissioner will serve as presiding officer in the Mayor's absence.

In summary, after reviewing and analyzing Article V. Section 11 of the Charter, it is my opinion that the Mayor has the power, authority, and responsibility to designate a Mayor pro tempore to preside over a city commission meeting in his absence.

Please let me know if I may be of further assistance.

Best,

/s/ Liza Aguilar Wood

Liza Aguilar Wood

⁴ This sentence also includes misplaced commas which are noted in red. Said commas are unnecessary. Removal of these commas does not change the meaning of the sentence.

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Section 11. - Duties of mayor and commissioners.

The Mayor and Commissioners shall exercise equal power and authority in the transaction of business for the City, except that the Mayor shall act as presiding officer of the Commission, and in his absence a Mayor pro tempore may be chosen. The Mayor, or his representative as may be annually designated by the Mayor in writing, shall sign all official documents for the City upon the consent and proper instruction from the Commission, and shall perform all duties imposed upon him by this Charter, and by the ordinances of the City, or upon the order of said Commission.

Section 30. - City manager.

A city manager shall be chosen by the Commission on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of accepted practice in respect to the duties of his office. At the time of his appointment, he need not be a resident of the City or State, but during his tenure in office, he shall reside within the City. No Commissioner shall be appointed City Manager during the term for which he shall have been elected nor within one year after the expiration of his term.

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