

Item # 4

VIETNAM VETERANS DAY PROCLAMATION

WHEREAS; On January 12, 1962, United States Army pilots lifted more than 1,000 South Vietnamese service members over jungle and underbrush to capture a National Liberation Front stronghold near Saigon. Operation Chopper marked America's first combat mission against the Viet Cong and the beginning of one of our longest and most challenging wars. Through more than a decade of conflict that tested the fabric of our Nation, the service of our men and women in uniform stood true. Today, we honor the more than 3 million Americans who served, we pay tribute to those we have laid to rest, and we reaffirm our dedication to showing a generation of veterans the respect and support of a grateful Nation; and

WHEREAS; The Vietnam War is a story of service members of different backgrounds, colors, and creeds who came together to complete a daunting mission. It is a story of Americans from every corner of our Nation who left the warmth of family to serve the country they loved. It is a story of patriots who braved the line of fire, who cast themselves into harm's way to save a friend, who fought hour after hour, day after day to preserve the liberties we hold dear. From Ia Drang to Hue, they won every major battle of the war and upheld the highest traditions of our Armed Forces; and

WHEREAS; Eleven years of combat left their imprint on a generation. Thousands returned home bearing shrapnel and scars; still more were burdened by the invisible wounds of post-traumatic stress, of Agent Orange, of memories that would never fade. More than 58,000 laid down their lives in service to our Nation. Now and forever, their names are etched into two faces of black granite, a lasting memorial to those who bore conflict's greatest cost; and

WHEREAS; Our veterans answered our country's call and served with honor, and on March 29, 1973, the last of our troops left Vietnam. Yet, in one of the war's most profound tragedies, many of these men and women came home to be shunned or neglected -- to face treatment unbefitting their courage and a welcome unworthy of their example. We must never let this happen again. Today, we reaffirm one of our most fundamental obligations: to show all who have worn the uniform of the United States the respect and dignity they deserve, and to honor their sacrifice by serving them as well as they served us. Over half a century after those helicopters swept off the ground and into history, we pay tribute to the fallen, the missing, the wounded, the millions who served, and the millions more who awaited their return. Our Nation stands stronger for their service, and on Vietnam Veterans Day, we honor their proud legacy with our deepest gratitude.

NOW, THEREFORE, I, Joanna Morgan, Mayor of the City of Smithville, do hereby Proclaim March 29, 2022, as

VIETNAM VETERANS DAY

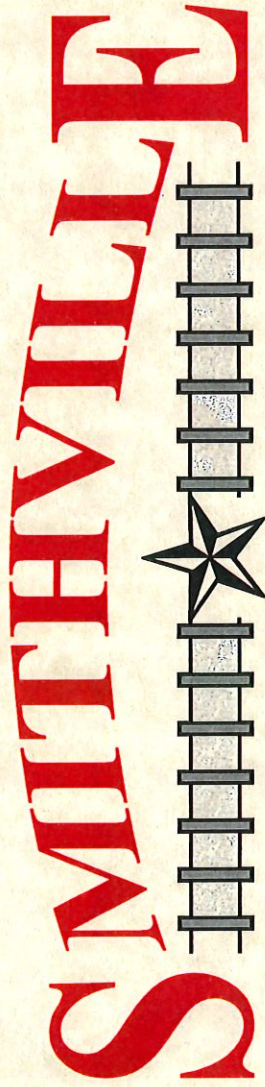
in the City of Smithville, Texas. I urge all citizens to join me in recognizing the dedication and sacrifice of our Vietnam Veterans.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Smithville to be affixed this 14th day of March 2022.

ATTEST:

Joanna Morgan, Mayor

Jennifer Lynch, City Secretary



Volunteer Appreciation Certificate

Presented to:

United Methodist Men

Special thanks for 25-years of dedicated service to the community. Your time and energy greatly helped benefit the Smithville Recycling Center and the people it serves.



March 14, 2022

DATE

Joanna Morgan

MAYOR, CITY OF SMITHVILLE

Item # 5

CITY OF SMITHVILLE
COUNCIL MEETING AND PUBLIC HEARING MINUTES
FEBRUARY 14, 2022

Present: Mayor Joanna Morgan, Councilmembers Janice Bruno, Bill Gordon, Tom Etheredge, Sharon Foerster, Stan Gerdes, and City Manager Robert Tamble.

Open Meeting: Call to order: Mayor Morgan called the meeting to order at 6:00 p.m.
Invocation and Pledge by Bill Gordon.

Recognition/Awards/Proclamations/Announcements/Presentations:

- a) Proclamation – “African American History Month” – Read by Bill Gordon.
- b) Proclamation – “Honoring Sonny Rhodes” Proclamation read by Robert Tamble and presented to the family of Sonny Rhodes.

Citizen Comments: None

Approval of the minutes from January 10, 2022, Council Meeting and Public Hearing.
Councilwoman Bruno moved to approve the minutes. Councilman Gordon seconded and the motion passed unanimously.

Hear recommendation from Planning and Zoning on:

- a) Amending the Zoning Ordinance, Exhibit A, Chapter 14, City of Smithville Code of Ordinances, By Amending Section 5.5.3 to add Considerations for Variances Related to Structures. Brian Riewe (P&Z Chairman) said P&Z recommends approving the ordinance.

Public Hearing:

Hear citizen's comments on:

- a) Amending the Zoning Ordinance, Exhibit A, Chapter 14, City of Smithville Code of Ordinances, By Amending Section 5.5.3 to add Considerations for Variances Related to Structures -. No one signed up to speak for or against this item.

Open Meeting:

Council Discussion and Action on:

- a) Amending the Zoning Ordinance, Exhibit A, Chapter 14, City of Smithville Code of Ordinances, By Amending Section 5.5.3 to add Considerations for Variances Related to Structures – Per HB-1475 passed during the Texas 87th legislative session, additional considerations for granting a variance that would result in an

unnecessary hardship involving structures (i.e., land being used or developed for a reason other than homeowner building or improving a homeowner's residence) must be added to our Zoning Ordinance. Councilman Gerdes made a motion to approve the ordinance. Councilwoman Bruno seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on an amendment to the Financial Management Policy for the City of Smithville: In order to comply with the terms and conditions of the GLO CDBG-MIT grant, the City of Smithville (COS) when utilizing the cash advance method will minimize the time elapsing between the transfer of funds from the Federal or State agency and the disbursement by the COS for eligible costs. This period must not exceed 3 business days from the date of receipt/deposit of funds. Prior to this change, the transfer of funds requirement was 5 business days. Councilman Gordon made a motion to approve the amendment. Councilwoman Foerster seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on approving a resolution to enter into a Municipal Maintenance Agreement (MMA) with the Texas Department of Transportation: TxDOT District Operations office manages all MMAs. Once a proposed MMA is initiated, a city resolution is required to enter into a new MMA. TxDOT and the city will collaborate and negotiate on responsibilities, add exhibits, and finalize maps. Exhibits can help provide more resolution on delineation of responsibilities or add special or existing agreements, such as illumination or signal agreements. The last MMA between the City of Smithville and TXDOT was signed on May 12, 1969. Councilman Gordon made a motion to approve the resolution. Councilwoman Foerster seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on Awarding the Grant Management/ Administration Services Contract for FEMA DR-4485 HMGP (COVID-19): The City of Smithville published a Request for Proposals ("RFP") in the Austin American Statesman on January 6, 2022 for professional administration services to assist in developing an application(s) for funding under the FEMA Hazard Mitigation Grant Program (HMGP). The city will be applying for FEMA HMGP funding for a pandemic-related project in response to the federally declared disaster DR-4485 associated with COVID-19. Proposals for grant management services were reviewed by City staff on January 21, 2022. Experience, work performance, capacity to perform, and cost were the criteria used by the City staff to evaluate/differentiate each grant management consultant's qualifications. Langford Community Management Services, Inc. (LCMS) was the only administrative / management consulting firm to submit an RFQ packet. Councilwoman Bruno made a motion to award the Grant Management Services to Langford Community Management Services, Inc. Councilman Gordon seconded and the motion passed unanimously.

Discussion and Action on Awarding the Engineering Services Contract for FEMA DR-4485 HMGP (COVID-19): The City of Smithville published a Request for Qualification ("RFQ") in the Austin American Statesman on January 6, 2022 for engineering services required to develop a budget, scope of work, and draft specifications for the preparation of a FEMA Hazard

Mitigation Grant Program (HMGP) application to fund a pandemic-related project in response to the federally declared disaster DR-4485 associated with COVID-19. Specifically, the funding will be used for the purchase, design, and installation of generators with auto-transfer switching capability for our water plants. Proposals for engineering services for the City of Smithville COVID-19 project were reviewed by City staff on 1/21/22. Experience, work performance, and capacity to perform were criteria used by the City staff to evaluate/differentiate each engineering consultant's qualifications. Four (4) Engineering services consultants submitted their qualifications. TRC Engineers, Inc. received the highest total score (reference bid tabulation spreadsheet in your electronic binders). Councilwoman Foerster made a motion to award the Engineering Contract to TRC Engineers, Inc. Councilman Etheredge seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on the approval of the Financial Report. Councilwoman Foerster made a motion to accept the Financial Report. Councilwoman Bruno seconded and the motion passed unanimously.

Adjourn 6:35 p.m.

Joanna Morgan, Mayor

Attest:

Jennifer Lynch, City Secretary

CITY OF SMITHVILLE
SPECIAL CALLED COUNCIL MEETING AND WORKSHOP MINUTES
FEBRUARY 23, 2022

Present: Mayor Morgan, Councilmembers, Bill Gordon, Janice Bruno, Sharon Foerster, Tom Etheredge, Stan Gerdes, and City Manager Robert Tamble.

Open Meeting: Call to order: Mayor Morgan called the meeting to order at 5:00 p.m.

Citizen Comments: None

Discussion and Action on Awarding the Construction Contract for the NW 2nd Street Drainage Project (CDBG-DR Contract No. 20-065-139-C527). Tim Sanders with BEFCO Engineering said they would recommend awarding the Construction Contract to WJC Constructors. Tim said that WJC Constructors came in with the lowest bid at \$561,589.00. Councilman Etheredge made a motion to award the Construction Contract to WJC Constructors. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on American Recovery Plan Act (ARPA) fund allocation for the second round. There was discussion on whether or not the City wanted to use ARPA funds for a July 4th fireworks display. The money would come from the Council Chambers AV system set aside because there is a delay in getting the AV system supplies. Councilman Etheredge wants the City to fund this community event to give some relief to the local businesses that usually donate to these events. Councilwoman Foerster was opposed because she thinks it would require the city to fund other organizations. Councilwoman Bruno agreed the city should have a July 4th celebration. In her hometown of Michigan, they always had a big Celebration. Councilman Etheredge made a motion to reallocate AV improvement money to the July 4th Event due to the parts not being available at this time and won't be available for several months. Councilwoman Bruno seconded and the vote was:

For: Etheredge, Bruno, Gerdes, Gordon

Opposed: Foerster

Workshop:

Citizen Comments: Joel Kirkby signed up to speak and said to please consider lowering the dbA to 65 instead of 75. John Gilkinson signed up to speak and started out saying thank you for taking a reasonable approach it is equal and fair. Mr. Vickery couldn't make the meeting due to illness but wanted it to be noted that he would like to see the dbA at 65 instead of 75. Carrie Keith (Rio Social House) couldn't make the meeting but wanted it noted she would like the weekend hours extended to Sunday.

Discussion on Sound Ordinance/Permit (re. Chapter 8 Offenses and Nuisances, Article 8.04 Nuisances, Division 2. Noise. It was suggested that the city do a sound test at the Gazebo on Main. Chief Repka will organize this and let everyone know when this will happen. No formal action was taken on the Sound ordinance.

Citizen Comments: None

Discussion on a Short-Term Rental Ordinance. Mayor Morgan gave a presentation on a proposal for managing Short-Term rentals in Smithville. It was recommended the city organize a group of stakeholders to get input on how this ordinance should work. The city will hold more workshops in the future on this topic. No formal action was taken.

CITY OF SMITHVILLE
SOUND DEMO WORKSHOP MINUTES
MARCH 9, 2022

Present: Mayor Morgan, Councilmembers, Bill Gordon, Tom Etheredge, Police Chief David Repka, City Manager Robert Tamble, and Citizens.

Workshop:

Call to order: Mayor Morgan called the workshop to order at 5:30 p.m.

Citizen Comments:

Demonstration and Discussion on the Sound levels of 65 dB(A) and 75dB(A). The City conducted a sound demo to display the difference between 65dB(A) and 75 dB(A). No action was taken.

Adjourn: The meeting adjourned at 6:15 p.m.

Joanna Morgan, Mayor

Attest:

Jennifer Lynch, City Secretary

Item # 6

Jennifer Lynch

From: CityManager
Sent: Tuesday, January 25, 2022 1:08 PM
To: Tracie Wallace
Cc: Jennifer Lynch; Jack Page
Subject: FW: PDD Removal- Capella
Attachments: Ordinance - PDD Rezone.pdf

If you have not already done so, please send the attached document and email below from our General Counsel to the P&Z as back up for the meeting on February 1st.

Robert Tamble, CSP / CIT



City Manager
317 Main Street
Smithville, TX 78957
(512) 237-3282 - office
(512) 423-9390 - cell

From: Jason Rammel <Jason@rammelpc.com>
Sent: Monday, October 11, 2021 10:56 AM
To: CityManager <CityManager@ci.smithville.tx.us>
Cc: Jennifer Lynch <JDLynch@ci.smithville.tx.us>; Jack Page <JPage@ci.smithville.tx.us>
Subject: PDD Removal- Capella

Robert:

I'm following up on our conversation last week. I believe we discussed the Capella PDD.

Under section 5.3.4 of the zoning ordinance (or at least the most current one that I have dated 1/11/21), P&Z can initiate a zoning change if the developers fail to meet the development schedule. This will be a zone change that will have to be noticed like all other zone changes.

I have attached an ordinance rezoning the property.

Let me know if you have any questions.

Thanks,

JASON M. RAMMEL

LAW OFFICE OF JASON M. RAMMEL, P.C.
17130 Hwy. 46 W, Suite 5
Spring Branch, Texas 78070
Phone: (830) 885-2406
Cell: (512) 981-8868
Fax: (866) 561-5512

MAYOR
JOANNA MORGAN

MAYOR PROTEM
WILLIAM GORDON
COUNCIL MEMBERS
JANICE BRUNO
STAN GERDES
SHARON FOERSTER
TOM ETHEREDGE

CITY MANAGER
ROBERT TAMBLE



317 MAIN STREET
P.O. BOX 449
SMITHVILLE, TEXAS
78957
(512) 237-3282
FAX (512) 237-4549

01/03/2022

Dear Property Owner/Current Resident,

Your address is within 200' of one or more of the following proposed agenda items. This notice is to inform you that The City of Smithville Planning and Zoning Commission will hold a Public Hearing on February 1, 2022, at 6:00 p.m. in the Council Chambers located at 317 Main Street, Smithville, TX for:

Discussion and action on amending the zoning for the area generally known as Parcel 16962, 1716 Colorado Drive, Smithville, TX 78957, from Planned Development District to C-3 Highway Commercial; Directing the amendment of the Zoning Map.

The Commission will hear all citizens' concerns for or against the Zone Change. The Planning and Zoning Commission will give the City Council a recommendation to approve or deny the request(s) that will go before City Council on March 14, 2022, at 6:00 p.m.

Please follow us on our YouTube Page: (www.youtube.com/channel/UCN7rJz0wVks4zWV9EvKcH5w).

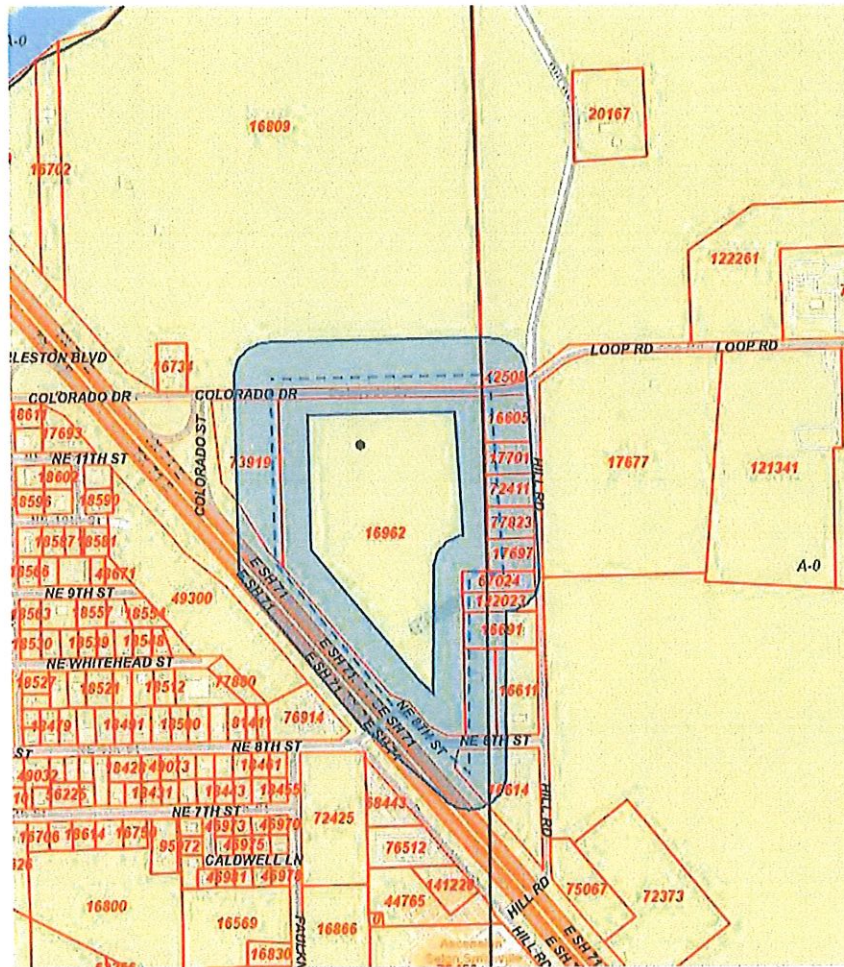
You can also go to the City's website and click the link on the Planning & Zoning page to access our YouTube page. We will go live at 6:00 p.m. so that you can view the live meeting. **If you have any questions or concerns, please reach out to Tracie Dzenowski at 512-237-3282 ext. 2101 and check the City's website for any updates about this meeting.**

Thank You,

Tracie Dzenowski
City of Smithville
512-237-3282 ext 2101

Planning and Zoning Commission: Brian Riewe, Nancy Catherman, Edward Lick, Dianna Ewen, and Caroline Noya.

200' of 16962



Prop. ID	Property owner on file	Legal Description	Street Address	City	State	Zip	Property owner address	Prop. City State prop Zip Prop
127023	PARSONS, TODD G & CANDICE L	A46 Lomas, L, ACRES 0.999	438 HILL RD	SMITHVILLE	TX	78957	438 HILL RD	SMITHVILLE TX 78957
16605	HICHLIS, SETH O'NEIL & CHELSEA LEIGH	A46 LOMAS, L, ACRES 1.430	1734 COLORADO DR	SMITHVILLE	TX	78957	1734 COLORADO DR	SMITHVILLE TX 78957
16611	WAUCHE, ERWIN H JR & KATHRYN	RIVERDALE, LOT OUTLOT 4, ACRES 2.4900	1733 East 8TH ST	SMITHVILLE	TX	78957	1733 E 8TH ST	SMITHVILLE TX 78957
16614	CEHTEPPOINT ENERGY RESOURCES CORP	RIVERDALE, ACRES 4.3000, OUTLOT 10 (FR)	400 HILL RD	SMITHVILLE	TX	78957	P O BOX 1700	HOUSTON TX 77251
16691	MCHIE, JOEL	ABS A46 Lomas, L, 1.829 ACRES	436 HILL RD	SMITHVILLE	TX	78957	436 HILL RD	SMITHVILLE TX 78957
16609	MILDRED VEEHSTRA FAMILY TRUST	A46 LOMAS, L, ACRES 134.0000	1499 COLORADO DR	SMITHVILLE	TX	78957	124 KINGSLAND RANCH RD	KINGSLAND TX 78639
16962	JSM EHD EAVORS LLC	Riverdale, Lot 2, 3, 4 & 5 FR'S, ACRES 36.642	1716 COLORADO DR	SMITHVILLE	TX	78957	1822 W DRAKER LN #80321	AUSTIN TX 78708
17697	BLACKWELL, AARON HEAL	HANINATH SUBDIVISION, LOT 2, ACRES 1.0045	450 HILL RD	SMITHVILLE	TX	78957	450 HILL RD	SMITHVILLE TX 78957
17701	CHRONIS, ANGEL JR & MARTINA G	AB BARTON, BENJAMIN, ACRES 1.0150	472 HILL RD	SMITHVILLE	TX	78957	472 HILL RD	SMITHVILLE TX 78957
42508	MILDRED VEEHSTRA FAMILY TRUST	AB Barton, Benjamin, ACRES 405.759, (LOCATION OF CEHTEP MACHINE					124 KINGSLAND RANCH RD	KINGSLAND TX 78639
44678	ZIGAL, MIKE & CHIDY F	RIVERDALE, LOT OUTLOT 4, ACRES 1.820	1723 East 8TH ST	SMITHVILLE	TX	78957	1723 EAST 8TH STREET	SMITHVILLE TX 78957
67024	BARTON, SEJIEH O JR & HOPE D C	AB Barton, Benjamin, ACRES 1.005	442 HILL RD	SMITHVILLE	TX	78957	5603 FIREZEA DR	HOUSTON TX 77035
72411	SAUIDERS, GARY C & LISA L	AB BARTON, BENJAMIN, ACRES 1.0000	464 HILL RD	SMITHVILLE	TX	78957	464 HILL RD	SMITHVILLE TX 78957
73919	JSM EHD EAVORS LLC	RIVERDALE, LOT OUTLOT 2 FR, ACRES 5.3700					1822 W DRAKER LN #80321	AUSTIN TX 78708
77823	KOLLER, EUGENE & BREHDA	HANINATH SUBDIVISION, LOT 1, ACRES 1.0075	458 HILL RD	SMITHVILLE	TX	78957	458 HILL RD	SMITHVILLE TX 78621

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SMITHVILLE, TEXAS AMENDING THE ZONING FOR THE AREA GENERALLY KNOWN AS 1716 COLORADO DRIVE, SMITHVILLE, TEXAS 78957, FROM PLANNED DEVELOPMENT DISTRICT TO C-3 HIGHWAY COMMERCIAL; DIRECTING THE AMENDMENT OF THE ZONING MAP; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the subject property located at 1716 Colorado Drive, Smithville, Texas 78957 and depicted and described in the attached Exhibit "A" (the "**Property**") is currently zoned Planned Development District No. 2 pursuant to Ordinance 2017-537, adopted August 14, 2017 (the "**Ordinance 2017-537**");

WHEREAS, Section 5.3.4, Chapter 14, of the Code of Ordinances of the City of Smithville, Texas, provides that the Planning and Zoning Commission for the City of Smithville, Texas (the "**Commission**") may initiate proceedings to amend the City's Zoning District Map and place an area within a Planned Development District into another appropriate zoning district if the Commission determines that the owners of property have failed to meet the approved development schedule for the Planned Development District;

WHEREAS, the approved development schedule applicable to the Property, attached hereto as Exhibit B, provides that all four phases of the development of the Property should be completed by Summer 2019;

WHEREAS, as of the Effective Date of this Ordinance, no development of the Property has occurred and the Commission has: (1) found that the owners of the Property have failed to meet the approved development schedule; (2) found that C-3 Highway Commercial is an appropriate zoning district for the Property; and (3) initiated proceedings to change the zoning of the Property from Planned Development District No. 2 as set forth in Ordinance 2017-537 to C-3 Highway Commercial;

WHEREAS, following notice and a hearing, the Commission recommended changing the zoning from Planned Development District No. 2 as set forth in Ordinance 2017-537 to C-3 Highway Commercial;

WHEREAS, the City Council has determined that changing the zoning of the Property from Planned Development District No. 2 as established under Ordinance 2017-537 to C-3 Highway Commercial will promote the health, safety and welfare of the public;

WHEREAS, the Planning and Zoning Commission of the City of Smithville, Texas, and the City Council of the City of Smithville, Texas, in compliance with State law with reference to the zoning ordinance and zoning map of the City of Smithville, Texas, have given requisite notices by publication and otherwise, and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council, having received the final report of the Planning and Zoning Commission and having determined that the proposed zoning change will be harmonious with existing buildings, structures, and uses on abutting and nearby properties in the vicinity of the Property in accordance with the current zoning regulations of the City, has determined that changing the zoning of the Property as set forth herein will promote the health, safety and welfare of the public and is of the opinion that the Property should be zoned as set forth herein; and

WHEREAS, the City Council finds and determines that the meeting at which this Ordinance was passed was open to the public, that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code;

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

1. **Findings of Fact.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.
2. **Enactment.** The Property is hereby zoned C-3 Highway Commercial.
3. **Amendment of Zoning Map.** The City Manager is hereby ordered and directed to cause the Zoning Map of the City of Smithville to be amended to establish zoning for the Property in conformance with this ordinance.
4. **Repealer.** All ordinances, resolutions, or parts thereof, that are in conflict or are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict or inconsistency, and the provisions of this Ordinance shall be and remain controlling as to the matter regulated herein.
5. **Severability.** Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause, or phrase of this ordinance and same are deemed severable for this purpose.
5. **Effective Date.** This Ordinance shall be effective as of the date of adoption.

PASSED, APPROVED AND ADOPTED THIS ____ DAY OF _____, 2021.

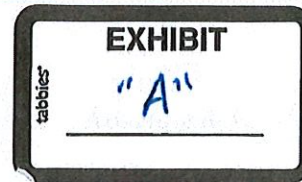
APPROVED:

Joanna Morgan, Mayor

ATTEST:

Jennifer Lynch, City Secretary

**JAMES E. GARON
& ASSOCIATES, INC.**
PROFESSIONAL LAND SURVEYORS



P.O. Box 1917
Bastrop, Texas 78602
512-303-4185
Firm Reg. #10058400
jgaron@austln.r.com

January 10, 2017

LEGAL DESCRIPTION: BEING A 41.879 ACRE TRACT OF LAND LYING IN AND BEING SITUATED OUT OF THE LEWIS LOMAS SURVEY, ABSTRACT 46 AND THE BENJAMIN BARTON SURVEY, ABSTRACT 8 IN BASTROP COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 252.8 ACRE TRACT OF LAND AS RECORDED BY PLAT IN CABINET 1, PAGES 19B, PLAT RECORDS, BASTROP COUNTY, TEXAS AND AS DESCRIBED BY DEED RECORDED IN VOLUME 142, PAGE 19 DEED RECORDS, BASTROP COUNTY, TEXAS; SAID 41.879 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES IN NOVEMBER, 2016:

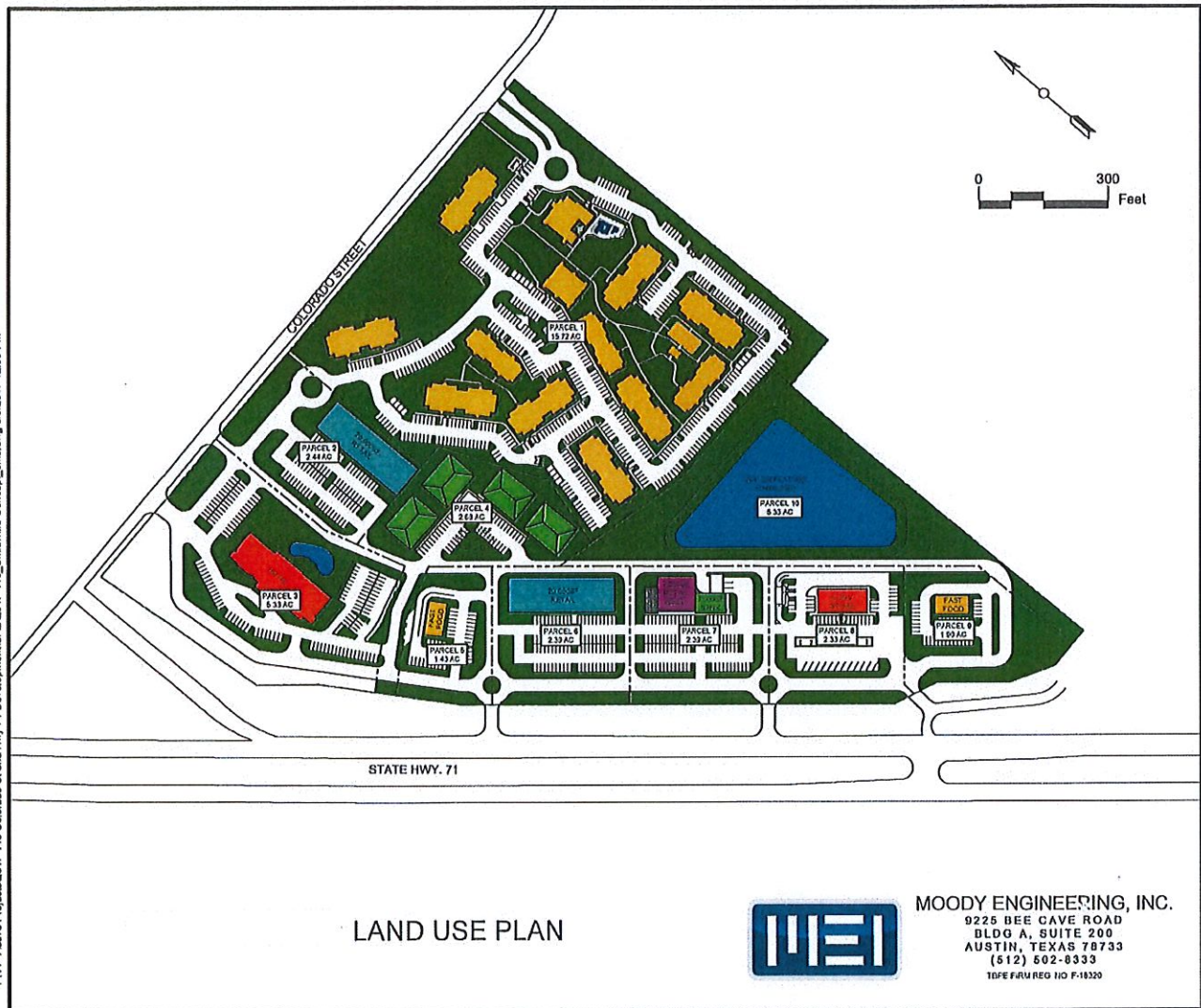
BEGINNING at a 1/2" Iron pipe found on the northerly right-of-way (70') line of NE 8th Street and a northerly line of Riverdale Estates as shown on plat of record in Cabinet 1, Page 15B of said plat records for the southeasterly corner hereof and the southwesterly corner of that certain 1.820 acre tract of land conveyed to W. Glen Ray and Laverne H. Ray by deed recorded in Volume 625, Page 786 official records, Bastrop County, Texas;

THENCE S 87°29'34" W a distance of 104.47 feet along NE 8th Street to a concrete right-of-way monument found on the northeasterly right-of-way line of SH 71 as conveyed by Judgment recorded in Volume 305, Page 259 of said deed records;

THENCE along said right-of-way line the following seven (7) calls:

1. N 62°43'40" W a distance of 110.18 feet to a concrete right-of-way monument found for angle point;
2. N 42°15'22" W a distance of 170.00 feet to a concrete right-of-way monument found for angle point;
3. N 68°49'16" W a distance of 111.80 feet to a concrete right-of-way monument found for angle point;
4. N 42°15'22" W a distance of 1030.00 feet to a concrete right-of-way monument found for angle point;
5. N 32°47'40" W a distance of 304.14 feet to a concrete right-of-way monument found for angle point;
6. N 42°15'22" W a distance of 150.00 feet to a concrete right-of-way monument found for angle point;
7. N 08°06'33" W a distance of 451.26 feet to a concrete right-of-way monument found on the south line of Colorado Drive for the northwest corner hereof;

P:\A - Active Projects\2017-110 Colorado St and Hwy 71 Development\CAD\2017-110_Southville-Concept_ums.dwg 8/3/2017 12:33 PM



LAND USE PLAN



MOODY ENGINEERING, INC.
9225 BEE CAVE ROAD
BLOO A, SUITE 200
AUSTIN, TEXAS 78733
(512) 502-8333
TDFE FIRM REG NO F-18320



MOODY ENGINEERING INC.

9225 Bee Cave Road
Bldg. A, Suite 200
Austin, Texas 78746

Telephone: (512)502-8333
Toll Free: (800)821-9112
Fax: (512)502-8334
MOODYENGINEERING.COM

July 31, 2017

VIA E-MAIL
Mr. Robert Tample
City Manager
City of Smithville
317 Main Street
Smithville, TX 78957

RE: Request for Planned Development (PD) Rezoning – Comment Response
41.879 acres in the Benjamin Barton Survey, Abstract 8 and the Lewis Lomas Survey,
Abstract 46
Mixed Use Project – Texas 71 and Colorado Street
1716 Colorado Drive

Dear Mr. Tample,

Thank you for your review and comments concerning our application PD zoning. Please see the following in response to your questions:

1) *Provide preliminary development schedule.*

We intend to phase the development approximately according to the table below. The timing will depend upon market demand and the availability of utility service (sanitary sewer capacity). As we monitor the market and interest in our site by end users, and as we work with the City through the platting phase and detailed engineering, this plan may change. Some phases may be combined, or some parcels may move between phases. At each juncture of the development process beyond this rezoning request, we will be able to, and intend to provide a regular update to the City Council on the phasing.

PHASE	PARCELS	ACREAGE	LUEs	Approximate Timeline
I	7, 8, 9, 10	11.98	57	Winter/Spring 2017/18
II	4, 5, 6	6.30	87	Summer 2018
III	2, 3	8.03	72	Winter 2018/19
IV	1	15.75	165	Summer 2019

- 2) *Provide detail list of set-backs and diagram showing set-back in relation to anticipated use*
We have prepared a "Setback and Use Separation Plan" to help communicate our intent with each parcel and proposed use.

- 3) *Show utility easements and size of lines on site plan*
At this stage of seeking zoning approval, we have not performed the engineering analysis to a level that would determine exact line sizes and corresponding easement sizes. This will occur as a matter of course as we enter the platting process, and through our discussions with City staff and consulting engineers. We intend to follow the subdivision process per your ordinance, as well as construction standards and codes.

- 4) *Provide estimated demand/use for electric, water and sewer by parcel and in aggregate for site*
Electric demand/use estimates are not known to us at this time. The water and sewer demands are estimated as follows:

Parcel	Land Use	Phase	LUEs
1	Multi-Family	IV	165
2	Retail	III	12
3	Hotel	III	60
4	Senior/Assisted Living	II	50
5	Restaurant	II	25
6	Retail	II	12
7	Retail/Office	I	10
8	Retail/Restaurant	I	20
9	Restaurant	I	25
10	Water Feature/Parkland	I	2
TOTAL			381

- 5) *Provide drainage plan/study for site.*
At this stage of seeking zoning approval, we have not performed the engineering analysis of the drainage system. This will occur as a matter of course as we enter the platting process, and through our discussions with City staff and consulting engineers. We intend to follow the subdivision process per your ordinance, as well as construction standards and codes.
- 6) *Provide additional detail regarding the MF residential planned for Parcel #4 (e.g., are the units depicted 2-story)*
We intend to provide 3-story buildings. The exact building location and size are not determined at this time, although the density will not exceed 22 units per acre. With the platting and subsequent site plan process, we intend to follow all City codes, as well as the development standards which we are setting with this PD request.
- 7) *Show Parcel 11 on site plan to match use matrix.*
There is not a Parcel 11. The mislabeling of Parcel 10 has been fixed as shown on the attached, updated Development Plan.

Mr. Robert Tumble
Page 3 of 3

- 8) *Add cell to use matrix showing Parcel 10 as a stand-alone water / parkland feature.*
Parcel 10 was originally mislabeled, and this has been fixed as shown on the attached, updated Development Plan.

Please let me know if you have any questions. If there is additional information you will need for your review process, please let us know. Please do not hesitate to contact me at (512) 502-8333.

Sincerely,

A handwritten signature in blue ink, appearing to read "Christopher M. Stewart".

Christopher M. Stewart
Senior Planner
Moody Engineering, Inc.

Cc: Mr. Vincent Musat, P.E., LEED AP, Capella Capital Partners
Mr. Jack Page, Public Works Director, City of Smithville

Attachments

CITY OF SMITHVILLE

PLANNING & ZONING APPLICATION

APPLICATION TYPE

Zoning Change Request:

- ☐ Change in Zoning Class
- ☐ Change in Ordinance
- ☐ Variance
- ☐ Special Use Permit
- ☒ Minor Plat/Subdivision
- ☐ Other _____

Number of Requests:

- ☐ Single
- ☐ Multiple

PROPERTY IDENTIFICATION

Street Address _____

*** Applicant must submit an accurate location map and site plan for application to be considered ***

Legal description

- ☐ Platted Land (please provide subdivision, block and lot information below)
- ☐ Unplatted Land (please submit the metes and bounds description from deed)

Subdivision Name: M5 SUBDIVISION

Property Tax Code: 16800 Block Number: A46 LOMAS, L. Lot Number: 9, 10 & 11

Property Owner (as listed on Deed): 230 PROPERTIES LLC

Property Owner Mailing Address: PO Box 10 Rosanky, TX 78953

Owner's Phone No: [REDACTED] Owner's Email: [REDACTED]@YAHOO.COM

Agent's Name (if applicable): WAYNE MCUTCH

Agent's Mailing Address: PO Box 10 Rosanky TX

Agent's Phone No: [REDACTED] Agent's Email: [REDACTED]@YAHOO.COM

DESCRIPTION OF VARIANCE / EXCEPTION REQUEST

Current Zone Class:	SF-1 <input type="checkbox"/>	SF-2 <input type="checkbox"/>	Proposed Zone Class:	SF-1 <input type="checkbox"/>	SF-2 <input type="checkbox"/>
	MR <input type="checkbox"/>	C-1 <input type="checkbox"/>		MR <input type="checkbox"/>	C-1 <input type="checkbox"/>
	C-2 <input type="checkbox"/>	C-3 <input type="checkbox"/>		C-2 <input type="checkbox"/>	C-3 <input type="checkbox"/>
	MHS <input type="checkbox"/>	MF <input type="checkbox"/>		MHS <input type="checkbox"/>	MF <input type="checkbox"/>
	CF <input type="checkbox"/>	PD <input type="checkbox"/>		CF <input type="checkbox"/>	PD <input type="checkbox"/>
	PD-Z <input type="checkbox"/>	I <input type="checkbox"/>		PD-Z <input type="checkbox"/>	I <input type="checkbox"/>
	CBD <input type="checkbox"/>	PD-Z <input type="checkbox"/>		CBD <input type="checkbox"/>	PD-Z <input type="checkbox"/>

Describe variance requested:

Describe special use requested:

Reason for Request:
(explain why special exception is sought or why a variance has been requested)

Final Plat

PETITION

As Owner/Agent, I hereby petition the City of Smithville for approval of the above described request as provided by the laws of the State of Texas and Ordinances of the City. I understand and agree that the Petition fee is non-refundable and that I must attend the Planning & Zoning meeting and subsequent City Council meeting in order for my application to be considered for approval.

Signature: _____



Date: 2-10-22

OFFICE USE ONLY:

Fee Amount: 675-

Fee Payment: 675-

P&Z Date: March 11, 2022

Council Date: March 14, 2022

Accepted By: [Signature]

Date Submitted: 2-10-2022

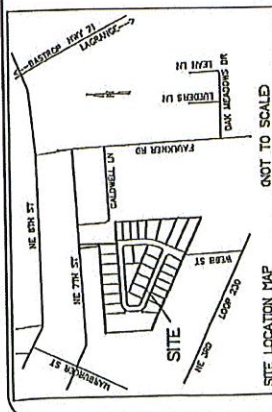
☒ Notice sent to property owners within 200 feet of proposed property

City of Smithville - Approved - 21324286

FINAL PLAT:

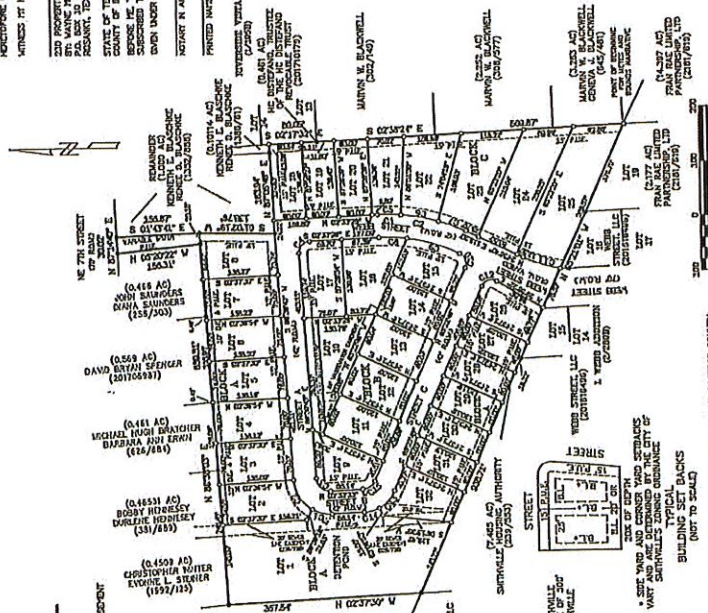
M5 SUBDIVISION

0.655 ACRES COMPRISED OF PORTIONS OF LOTS 9, 10 AND 11 AND THOSE TRACTS LABELED JOHN TOWNSEND "5 AC CLOS/9/31" AND "5 AC CLOS/92/" SHOWN ON THE RE-SUBDIVISION OF A PORTION OF RIVERDALE ESTATES, A RE-SUBDIVISION OF C/249 INCLUDING OUTLOT 7, RIVERDALE ESTATE, A SUBDIVISION OUT OF THE LEVINS LOWLAND SURVEY ABSTRACT 46 IN THE CITY OF RIVERDALE, TEXAS, THE LAND BEING OF BALSTROP COUNTY, TEXAS



DATE RECEIVED: _____

1. UTILITY SERVICE PROVIDERS - SERVICE PROVIDED BY THE CITY OF STAMFORD
A. WATER SERVICE PROVIDED BY STAMFORD WATER SUPPLY COMPANY, INC.
B. SEWER SERVICE PROVIDED BY STAMFORD WATER SUPPLY COMPANY, INC.
C. TRASH COLLECTION PROVIDED BY THE CITY OF STAMFORD
D. POWER - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
E. TELEPHONE - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
F. POSTAL SERVICE - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
G. STREET LIGHTING - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
H. STREET CLEANING - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
I. STREET MAINTENANCE - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
J. STREET REPAIRS - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
K. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
L. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
M. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
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Q. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
R. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
S. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
T. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
U. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
V. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
W. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
X. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
Y. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD
Z. STREET CLOSURES - COOPERATION OF ALL UTILITIES IN THE CITY OF STAMFORD



CURVE NAME		ONE	TWO	THREE	FOUR	FIFTH
REF1	DATA	0.0000	0.0000	0.0000	0.0000	0.0000
C1	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C2	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C3	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C4	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C5	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C6	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C7	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C8	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C9	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C10	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C11	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C12	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C13	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000
C14	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000

[illegible][illegible]

NO PORTION OF THE SUBDIVISION LIES WITHIN A DESIGNATED FLOOD HAZARD
AREA AS SHOWN ON FLOOD INSURANCE RATE MAP, CFI NO. 0446-C02X
COUNTY NO. 40221C 0395 E DATED JAN 12, 2004.

I, C. REWARD RALPH, DO HEREBY CERTIFY THAT I PREPARED THE PLAT FROM AN ACTUAL AND ACCURATE ON-THE-GROUND SURVEY OF THE LAND, AND THAT THE CORNER MONUMENTS AND BOUNDARIES THEREON ARE IN ACCORDANCE WITH THE ORIGINAL SURVEYING IN ACCORDANCE WITH THE ACTS OF CONGRESS.

SUBMITTED BY: _____
C. EDWARD MALONE AND SERVITOR NO. 029


COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
JULY 23, 2013
DATE

[illegible]

Smithville - 06/04/2021

WISTA BARTSCH, COUNTY CLERK
DEPUTY

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KRESTA BARITICH, COUNTY CLERK

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DATE _____

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Newspaper notices for Special Called Meeting March 11,2022 PZ meeting:

The City of Smithville Planning and Zoning Commission will hold a Special Called Public Hearing on March 11, at 6:00 p.m. for discussion and action final plat of M5 Subdivision, R16800, Legal description A46 Lomas, L., ACRES 10.650, LOTS 9, 10 & 11 FR'S, (RESUB OF OUTLOT 7 RIVER DALE EST.), property owner 230 Properties LLC, Agent Wayne Meuth. A recommendation will be given at the City Council meeting by the Planning and Zoning Commission. The City Council will hold a public hearing and Council meeting to discuss and seek action on March 14, 2022, at 6:00 p.m. Please check the city website for any updates about this meeting.

Please run the following dates and provide a sworn affidavit 2/24/2022 & 3/3/2022 in the Smithville Times.

MAYOR
JOANNA MORGAN

MAYOR PROTEM
WILLIAM GORDON
COUNCIL MEMBERS
JANICE BRUNO
STAN GERDES
SHARON FOERSTER
TOM ETHEREDGE

CITY MANAGER
ROBERT TAMBLE



317 MAIN STREET
P.O. BOX 449
SMITHVILLE, TEXAS
78957
(512) 237-3282
FAX (512) 237-4549

02/14/2022

Dear Property Owner/Current Resident,

Your address is within 200' of one or more of the following proposed agenda items. This notice is to inform you that The City of Smithville Planning and Zoning Commission will hold a Special Called Meeting Public Hearing on March 11, 2022, at 6:00 p.m. in the Council Chambers located at 317 Main Street, Smithville, TX for:

Discussion and action Final Plat of M5 Subdivision, R16800, Legal description A46 Lomas, L., ACRES 10.650, LOTS 9, 10 & 11 FR'S, (RESUB OF OUTLOT 7 RIVER DALE EST.), property owner 230 Properties LLC, Agent Wayne Meuth.

The Commission will hear all citizens' concerns for or against the Final Plat. The Planning and Zoning Commission will give the City Council a recommendation to approve or deny the request(s) that will go before City Council on March 14, 2022, at 6:00 p.m.

Please follow us on our YouTube Page: (www.youtube.com/channel/UCN7rJz0wVks4zWV9EvKcH5w). You can also go to the City's website and click the link on the Planning & Zoning page to access our YouTube page. We will go live at 6:00 p.m. so that you can view the live meeting. **If you have any questions or concerns, please reach out to Tracie Dzenowski at 512-237-3282 ext. 2101 and check the City's website for any updates about this meeting.**

Thank You,

Tracie Dzenowski
City of Smithville
512-237-3282 ext 2101

Planning and Zoning Commission: Brian Riewe, Nancy Catherman, Edward Lick, Dianna Ewen, and Caroline Noya.

Item # 11

Procedure for Processing Franchise Revision Ordinance

City of Smithville, Texas
_____, 2022

1. The ordinance should be passed at 1 separate regular meetings of the City Council.
 - (a) The City Council should have a written notice of the date, hour, place, and subject of the meetings (at which the franchise ordinance is to be passed on first reading) posted for at least 72 hours preceding the scheduled times of the meetings on a bulletin board located in a place in the City Hall that is convenient and readily accessible to the general public at all times.
 - (b) A certified copy of the resolution passed by the City Council, establishing the time and place of its regular meetings should be obtained.
2. The City Council is composed of a Mayor and five (5) commissioners. A quorum of the Council should be present throughout the meeting at which the ordinance is passed, and a majority of those present must vote in favor of the ordinance.
3. The Mayor should approve the ordinance by signing the copy that is introduced, read, and passed.
4. The City Secretary should complete the certificate attached to the ordinance. This certifies that the ordinance was adopted, and that notice was posted 72 hours before the meeting was held.
5. Within seven (7) days following the first presentation of the ordinance, the entire text of the ordinance must be published in the official newspaper of the city, once each week for two (2) consecutive weeks with the expense of such publication to be borne by our company. The Publisher should certify before a Notary Public that the ordinance was properly published. Said certificate shall be filed with the City within thirty (30) days after the passage of this ordinance.
6. After the ordinance has been passed, the following instruments should be forwarded to the Division Office for completion and distribution as indicated:
 - (a) One certified copy of the resolution establishing the time and place of the regular meetings of the City Council as described in item 1(b) (to be placed in the general files of the company).
 - (b) One original copy of the ordinance, executed by the Mayor, with Secretary's certificate attached should be returned to the Division Office (Legal will do one final review to ensure accuracy before it is sent to the VP for signature). The original will be accepted by the Company and returned to the City. The City Secretary should certify in the place provided on the last page that acceptance by the Company was received and filed. The original should be returned to the Legal Department in Houston. Photocopies should be made and distributed accordingly:
 1. One copy may be retained by the City.
 2. One copy should be returned to the Division Office for placement in the files.
 3. One copy to James Brown at CNP-T 3610D in Houston.
 4. If there is a change in the percentage of gross receipts to be paid, please forward a copy of the signed franchise to Keith Wall in the Rate Department at CNP-T 1940 in Houston.

CITY OF SMITHVILLE
ORDINANCE NO. _____

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF SMITHVILLE, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SMITHVILLE.

Section 1. GRANT OF AUTHORITY. Subject to the terms, conditions and provisions of this ordinance, the right, privilege and franchise is hereby granted to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, hereinafter called "Company", to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the Public Rights-of-Way of the City of Smithville, Texas for the transportation, delivery, sale and distribution of natural gas within the corporate limits of the City of Smithville, as the same are now and as the same may from time to time be extended.

Section 2. DEFINITIONS.

- A. "City" shall mean the City of Smithville, Texas.
- B. "Company" shall mean CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, a Delaware Corporation, and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege or franchise granted hereunder.
- C. "Facilities" shall mean pipes, pipelines, natural gas mains, laterals, feeders, regulators, meters, fixtures, connections and attachments and other instrumentalities and appurtenances, used in or incident to providing transportation, distribution, supply and sales of natural gas for heating, lighting, power and any other purposes for which natural gas may now or hereafter be used.
- D. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.
- E. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

Section 3. TERM OF FRANCHISE. This Franchise shall become effective on the Effective Date described in Section 21 and shall be in full force and effect for a term of thirty (30) years. This franchise shall automatically renew itself for successive five (5) year periods following the primary term unless either the City or Company provides notice to the contrary to the other at least ninety (90) days prior to the expiration of the primary term or any succeeding five (5) year renewal term.

Section 4. CONSTRUCTION AND MAINTENANCE OF NATURAL GAS DISTRIBUTION SYSTEM. All Facilities installed by Company shall be of sound material and good quality, and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities shall be installed in accordance with applicable Federal and State regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 13 the relocation of Company's Facilities at Company's cost within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. Company shall keep current and up-to-date maps showing the physical location of Company's facilities and make available for inspection by the City at no cost during normal working hours.

Section 5. STREETS TO BE RESTORED TO GOOD CONDITION. Company and its contractors shall give City reasonable notice, of the dates, location and nature of all work to be performed on its Facilities within the Public Rights-of-Way. This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of-Way when necessary for the installation, replacement, abandonment, operation or maintenance of Company's Facilities. Company and contractors performing work for Company shall not be required to obtain any permits in addition to the Franchise or to pay any license, charge, fee, street or alley rental, or other character of charge or levy in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way. If City does charge Company any such additional amount, then Company may deduct the amount charged from the next succeeding franchise payment or payments, as provided in Section 7, until fully reimbursed. Following completion of work in the Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases Company shall comply with all City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

Section 6. QUALITY OF SERVICE. The service furnished hereunder to the City and its inhabitants shall be in accordance with the quality of service rules of the Railroad Commission of Texas, state and federal regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise. An exception to this requirement is automatically in effect, but only for so long as is necessary, when caused by a shortage in materials, supplies and equipment beyond the control of the Company as a result of fires, strikes, riots, storms, floods and other casualties, governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and unforeseeable and unusual demands for service. In any of such events the Company shall do all things reasonably within its power to restore normal service as quickly as practicable.

Section 7. PAYMENT TO THE CITY. In consideration of the rights and privileges herein granted, the administration of the Franchise by the City, the temporary interference with the use of Public Rights-of-Way and cost and obligations undertaken by the city in relation thereto and in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy of the Streets,

alleys, and public places of the City, and in lieu of any inspection fee, the Company agrees to pay to the City franchise fees in the amount and manner described herein, subject to an offset as described in Section 5.

Company agrees to pay to the City quarterly during the continuance of this Franchise a sum of money equal to five percent (5%) of the Company's gross receipts for the preceding calendar quarter received by the Company from the sale of gas within the corporate limits of the City plus seven cents (7¢) per Mcf for natural gas transported by Company for its Transport Customers during such quarter. "Transport Customer" means any person or entity for whom Company transports gas through the distribution system of Company within the corporate limits of City for consumption within the corporate limits of City. The franchise fees hereunder shall be calculated for the calendar quarters ending March 31, June 30, September 30, and December 31 and shall be payable on or before the fifteenth day of May, August, November, and February following the quarter for which payment is made, beginning with the first such date following the Effective Date of this Franchise and each August 15th, November 15th, February 15th, and May 15th thereafter; provided, however, the first such payment shall be prorated as necessary to reflect only those gross receipts received and transportation volumes delivered by Company after the Effective Date of this Franchise. In no event shall the Company be required to remit to the City franchise fee amounts that for any reason whatsoever are not fully recoverable from its customers. Upon receipt of the above amount of money, the City Secretary shall deliver to the Company a receipt for such amount. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date.

Section 8. ANNEXATIONS BY CITY. This Franchise shall extend to and include any and all territory that is annexed by the City during the term of this Franchise. Within sixty (60) days from the receipt of notice from the City of any such annexation, the Company shall assure that any and all customers within such annexed territory are included and shown on its accounting system as being within the corporate limits of the City of Smithville. After such sixty (60) day period the payment provisions specified in Section 7 of this Franchise shall apply to gross receipts and transport fees received by the Company from customers located within such annexed territory. Company shall true-up its map of City boundaries to the City's map on an annual basis.

Section 9. NON-EXCLUSIVE FRANCHISE. Nothing contained in this Franchise shall ever be construed as conferring upon the Company any exclusive rights or privileges of any nature whatsoever.

Section 10. COMPLIANCE AND REMEDIES. (a) In the event the Company by act or omission violates any material term, condition or provision of this Franchise, the City shall notify the Company in writing of such violation. Should the Company fail or refuse to correct any such violation within thirty (30) days from the date of City's notice, the City shall, upon written notification to the Company, have the right to terminate this agreement. Any such termination and cancellation shall be by ordinance adopted by City Council; provided, however, before any such ordinance is adopted, the Company must be given at least sixty (60) days' advance written notice. Such notice shall set forth the causes and reasons for the proposed termination and cancellation, shall advise the Company that it will be provided an opportunity to be heard by City Council regarding such proposed action before any such action is taken and shall set forth the time, date and place of the hearing.

(b) Other than its failure, refusal or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, the Company shall not be declared in

default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

(c) The rights and remedies of City and Company set forth herein shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity and City's exercise of any particular remedy shall not constitute a waiver of its rights to exercise any other remedy.

Section 11. RESERVE OF POWERS. Except as otherwise provided in this Franchise, the City by the granting of this Franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers, claims and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Texas and under the Charter and Ordinances of the City of Smithville or other applicable law, to regulate public utilities within the City and to regulate the use of the Streets by the Company; and the Company by its acceptance of this Franchise agrees that, except as otherwise provided in this Franchise, all lawful powers and rights, whether regulatory or otherwise, as are or as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

SECTION 12. INDEMNITY. THE COMPANY, ITS SUCCESSORS AND ASSIGNS, SHALL PROTECT AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") HARMLESS AGAINST ANY AND ALL CLAIMS OR DEMANDS FOR DAMAGES TO ANY PERSON OR PROPERTY BY REASON OF THE CONSTRUCTION AND MAINTENANCE OF THE COMPANY'S NATURAL GAS DISTRIBUTION SYSTEM, OR IN ANY WAY GROWING OUT OF THE RIGHTS GRANTED BY THIS FRANCHISE, EITHER DIRECTLY OR INDIRECTLY, OR BY REASON OF ANY ACT, NEGLIGENCE OR NONFEASANCE OF THE COMPANY OR THE CONTRACTORS, AGENTS OR EMPLOYEES OF THE COMPANY OR ITS SUCCESSORS AND ASSIGNS, AND SHALL REFUND TO THE CITY ALL SUMS WHICH THE CITY MAY BE ADJUDGED TO PAY ON ANY SUCH CLAIM, OR WHICH MAY ARISE OR GROW OUT OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED OR BY THE ABUSE THEREOF, AND THE COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND ON ACCOUNT OF ALL DAMAGES, COSTS, EXPENSES, ACTIONS, AND CAUSES OF ACTION THAT MAY ACCRUE TO OR BE BROUGHT BY, A PERSON, PERSONS, COMPANY OR COMPANIES AT ANY TIME HEREAFTER BY REASON OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED, OR OF THE ABUSE THEREOF.

Section 13. RELOCATION OF FACILITIES. The Company shall, upon written request of the City, relocate its Facilities within Public Rights-of-Way at Company's own expense, exclusive of Facilities installed for service directly to City, whenever such shall be reasonably necessary on account of the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. City shall bear the costs of all relocations of Facilities installed for service directly to City and of any relocation of other Facilities requested by City for reasons other than the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

Section 14. GOVERNMENTAL FUNCTION. All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

Section 15. RECORDS AND REPORTS. (a) Books of Account. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be kept at the company's principal office in Houston, Texas.

(b) Access by City. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than three (3) years before the commencement of such audit, inquiry, or pursuit of a cause of action. Each party shall bear its own costs of any such audit or inquiry. Upon receipt of a written request from the City, all books and records related to Company's operations under this Franchise shall be made available for inspection and copying no later than thirty (30) days from receipt of such request.

(c) Interest on Underpayments and Overpayments. (1) Amounts due to City for late payments shall include interest, compounded daily equal to the return on equity plus three percent (3%) granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. (2) If the City identifies, as a result of a franchise fee compliance review, amounts owed by the Company from prior periods or prior underpayments, then the Company shall pay simple interest on such amounts equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. Said interest shall be payable on such sums from the date the initial payment was due until it is paid and shall not be billed to customers. (3) Amounts due Company for past overpayments shall include simple interest equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City; provided, however, if there is a change in the approved return on equity during the time period subject to the City's audit or inquiry, then for each time period during which there was an overpayment, the approved return on equity in effect during such time period shall be used in calculating interest under this subparagraph (c). Interest payable on such sums shall be credited to customers.

Section 16. EASEMENT. In consideration for the compensation set forth in Section 7, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

Section 17. ORIGINAL JURISDICTION OVER RATES AND SERVICES. Pursuant to Section 103.003 of the Gas Utility Regulatory Act, the City hereby elects to surrender to the Railroad Commission of Texas the City's exclusive original jurisdiction over the rates, operations and services of the Company effective as of the Effective Date of this Franchise and for the term of this Franchise. Notwithstanding the above surrender of the City's exclusive original jurisdiction over the rates, operations and services of the Company, such surrender shall not affect in any manner the City's rights and privileges pursuant to the provisions of the Gas Utility Regulatory Act as currently enacted, or as amended, or in any successor legislation, or as otherwise provided at law for the City to both participate in any ratemaking proceeding at the Railroad Commission of Texas which affects the City's gas rates, and to recover from the Company any reasonable expenses incurred by the City in its participation in such a ratemaking proceeding as provided for in law.

Section 18. ACCEPTANCE. The Company shall, within thirty (30) days following the final passage and approval of this Franchise, file with the City Secretary of the City of Smithville either 1) a written statement signed in its name and behalf in the following form or 2) this document duly executed below by the Vice President of Regional Operations:

“To the Honorable Mayor: and City Council of the City of Smithville:

CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, its successors and assigns, hereby accepts the attached Franchise Ordinance and agrees to be bound by all of its terms and provisions.”

CENTERPOINT ENERGY RESOURCES CORP.,
DBA CENTERPOINT ENERGY TEXAS GAS
OPERATIONS

By:

Tal R. Centers Jr., Division Vice President,
Regional Operations

Dated this _____ day of _____ 2022.

Section 19. GOVERNING LAW AND SEVERABILITY. This Franchise shall be governed and construed according to the laws of the State of Texas excluding, however, any conflict of laws rule that would apply the law of another jurisdiction. If any provision, section, subsection, sentence, clause or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent the City of Smithville in adopting this Franchise that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.

Section 20. NOTICES. Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

CenterPoint Energy Resources Corp.
Vice President Regulatory Relations
PO Box 4567
Houston, TX 77210-4567

With a copy to:

General Counsel, Gas Division
PO Box 2628

Houston, TX 77252-2628

Every such communication to the City or the City Council shall be sent to the:

Mayor, City of Smithville
317 Main St.
Smithville, Texas 78957

With a Copy to:

City Secretary
317 Main St.
Smithville, Texas 78957

Section 21. PUBLICATION, PASSAGE AND EFFECTIVE DATE. This Franchise, having been published, if required, shall take effect and be in force from and after the first day of the month following thirty days after receipt by the Company's acceptance filed pursuant to Section 18 ("Effective Date"). The Company shall pay the cost of those publications.

Section 22. COMPLIANCE WITH CHARTER AND ORDINANCES. This Franchise, the rights granted hereby, and the operations and activities performed by Company pursuant hereto shall be subject to applicable provisions of the Charter of the City of Smithville, Texas. Except to the extent otherwise expressly provided herein, the Franchise and rights granted hereby and the operations and activities performed by Company pursuant hereto, shall be subject to all valid ordinances and regulations of the City insofar as such ordinances and regulations (a) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the Franchise and right granted to Company hereby, (b) do not conflict with or are not inconsistent with the terms and provisions contained in this ordinance, (c) do not modify, preempt, or cause Company to violate the terms of a tariff approved by the Railroad Commission of Texas, Railroad Commission Rules, or the Gas Utility Regulatory Act, or (d) do not unreasonably regulate the Company's operations and activities in the City Right of Way. If Company believes a future Ordinance unreasonably regulates its operations and activities in the City Right-of-Way, City and Company shall meet and reach a mutually agreeable solution.

Read in full, passed and adopted on first reading at a regular meeting of the City Council of Smithville, Texas, on the _____ day of _____, 2022 and approved by the Mayor.

APPROVED:

Joanna Morgan, Mayor
City of Smithville, Texas

ATTEST:

Jennifer Lynch, City Secretary
City of Smithville, Texas

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

I, the duly appointed, qualified and acting City Secretary of Smithville, Texas, do hereby certify that the above and foregoing ordinance was read, passed and adopted on first reading at a regular meeting of the City Council of said Smithville, Texas, held on the ____ day of _____, 2022; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least 72 hours preceding the day of said meeting; that the Mayor _____, and _____ Council members:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | |

were present at said meeting and acted as the Council throughout; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the City Secretary and recorded by the City Secretary in full in the books for the purpose of recording the ordinances of the City of Smithville, Texas.

EXECUTED under my hand and the official seal of the City of Smithville, Texas at said City, this _____ day of _____, 2022.

City Secretary
City of Smithville, Texas

[SEAL]

Centerpoint Energy Entex
Study of Franchise Options
Smithville, TX
PC 1128163
Class 5 Residential, Small Commercial
Franchise paid Quarterly

Year 2021

	Current Ordinance	Proposed Ordinance			
	<u>2.00%</u>	<u>3.00%</u>	<u>4.00%</u>	<u>5.00%</u>	
Taxable Revenue					
Residential	661,520.28	668,324.79	675,326.35	682,392.74	
Small & Large Commercial	169,462.14	171,203.74	172,997.32	174,807.50	
Industrial	-	-	-	-	
Total Taxable	830,982.42	839,528.53	848,323.67	857,200.24	
Net Write Offs	\$4,124.36	4,124.36	4,124.36	4,124.36	
Net Taxable	826,858.06	835,404.17	844,199.31	853,075.88	
Franchise Rate	2.00%	3.00%	4.00%	5.00%	
Franchise Amount	16,537.17	25,062.13	33,767.97	42,653.79	
Total paid for 2021 Franchise (Apr 2021-Jan 2022)	16,537.17				
Transport (2021 sales volumes)		50,270	50,270	50,270	
		0.07	0.07	0.07	
		3,518.90	3,518.90	3,518.90	
Plus: Misc. Revenue		13,016.00	13,016.00	13,016.00	
Misc. Revenue Franchise		390.48	520.64	-	
Total Franchise		28,971.51	37,807.51	46,172.69	

Variance from current ordinance

28,971.51 37,807.51 46,172.69

Item # 12

ORDINANCE No. 2022-XXX

AN ORDINANCE OF THE CITY OF SMITHVILLE, TEXAS AMENDING CHAPTER 8 OFFENSES AND NUISANCES, DIVISION 2 NOISE, CITY OF SMITHVILLE CODE OF ORDINANCES, BY AMENDING SECTION 8.04.031, SECTION 8.04.33, SECTION 8.04.038 AND DELETING SECTION 8.04.039 IN ITS ENTIRETY; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city would like to extend the Daytime hours from 9:00 p.m. to 10:00 p.m.;

WHEREAS, the city would like to clean up verbiage in the ordinance in certain sections by deleting received and replacing with generated; and

WHEREAS, the city would like to do away with amplified sound permits and would delete Section 8.04.039;

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

- 1. Findings of Fact.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.
- 2. Enactment.** Chapter 8 Offenses and Nuisance, Division 2 Noise of the City of Smithville Ordinance is amended in accordance with Exhibit A, attached hereto and incorporated herein.
- 3. Repealer.** All ordinances, resolutions, or parts thereof, that are in conflict or are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict or inconsistency, and the provisions of this Ordinance shall be and remain controlling as to the matter regulated herein.
- 4. Severability.** Should any section, subsection, sentence, provision, clause, or phrase be held to

be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause, or phrase of this ordinance, and same are deemed severable for this purpose.

5. **Effective Date.** This Ordinance shall be effective as of the date of adoption.

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF _____ 2022.

APPROVED:

Joanna Morgan, Mayor

ATTEST:

Jennifer Lynch, City Secretary

EXHIBIT A

Chapter 8 Offenses and Nuisances, Division 2 Noise of the Code of Ordinances of the City of Smithville, Texas is amended as shown below, with insertions indicated by underlines (e.g., underlines) and deletions indicated by strikethroughs (e.g., ~~strikethroughs~~):

Division 2. Noise

Sec. 8.04.031 Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Daytime hours mean the hours between 7:00 a.m. on one day and ~~9:00~~ 10:00 p.m. the same day.

dB(A) means the intensity of a sound expressed in decibels read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss, which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, or which is otherwise necessary to restore property to a safe condition following a fire, accident or natural disaster, or which is required to protect persons or property from exposure to danger, or which is required to restore public utilities.

Nighttime hours mean the hours between ~~9:00~~ 10:00 p.m. on one day and 7:00 a.m. the following day.

Nonresidential property means any real property within the limits of the city which is not included in the definition of residential property as defined in this division.

Person means any individual, association, partnership or corporation.

Property line means the line along the ground surface, and its vertical extension, which separates the real property owned, leased or occupied by one person from that owned, leased or occupied by another person, and the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

Public right-of-way means any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.

Residential property means any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Responsible person means any owner, operator, or lessee of the property or premises from which a sound emanates, whether real property or personal property, or any other person who causes, suffers, allows or permits a sound.

Sound nuisance means any sound which either exceeds the maximum permitted sound levels specified in section 8.04.033, or, for purposes of sections 8.04.035 and 8.04.037, otherwise unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

Sec. 8.04.032 Penalty

Any person who violates any provision of this division is guilty of a misdemeanor and, upon conviction, shall be subject to a fine as set forth in the general penalty provision in section 1.01.009 of this code. Upon a second or subsequent conviction for a violation of this division within a twelve-month period, said person shall be fined in accordance with the general penalty provision set forth in section 1.01.009 of this code. Each occurrence of any violation shall constitute a separate offense. To the extent that any conduct prohibited under this division also constitutes an offense under state law, then it shall be punishable as provided by state law.

Sec. 8.04.033 Maximum permissible sound levels

(a) No person shall conduct, permit or allow any activity or sound source to produce a sound that is discernible beyond the property lines of the property on which the sound is being received generated that when measured as provided in section 8.04.038 below exceeds the applicable dB(A) level listed below for the property on which the sound is received generated:

(1) Residential property: 65 dB(A) during either daytime or nighttime hours, except Friday and Saturday.

(2) Nonresidential property: 60 65 dB(A) during either daytime or nighttime hours, except Friday and Saturday.

(3) Residential and Non-Residential property: 75 dB(A) during daytime hours on Friday and Saturday

(b) The dB(A) levels set forth in this section apply to the property where the sound is being received generated. Any sound that when measured at the property where the sound is being received generated exceeds the dB(A) levels set forth in this section is a violation of this division. Evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in this section, when measured at the site where the sound is being received generated, if available, shall be prima facie evidence of a sound nuisance which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city in violation of this division.

Sec. 8.04.034 General prohibition

(a) It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued or permit the continuance of any sound which either exceeds the maximum permitted sound levels specified in section 8.04.033 or, for purposes of sections 8.04.035 and 8.04.037, otherwise unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

(b) The acts enumerated in the following sections of this division, among others, are declared to be sound nuisances which are unreasonably loud, irritating, disturbing, or excessive sounds in violation of this division, but such enumeration shall not be deemed to be exclusive.

Sec. 8.04.035 Noisy vehicles

The use of any automobile, motorcycle, or other vehicle so out of repair, so loaded, or in such a manner so as to create loud and unreasonable grating, grinding, rattling or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

Sec. 8.04.036 Amplified sound from motor vehicle

The production or reproduction of sound from amplification equipment contained in or mounted on a motor vehicle that produces sound in excess of the limits set forth in section 8.04.033, when measured at or near fifteen (15) feet from the nearest external point on the vehicle, is hereby prohibited and declared to be unlawful as a sound nuisance in violation of this division, except as permitted by section 8.04.0397.

Sec. 8.04.037 Defenses

The following defenses shall apply to any offense established in this division:

- (1) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger or attempted crime or an authorized test or drill for emergency, danger or attempted crime.
- (2) The sound was produced by an authorized emergency vehicle.
- (3) The sound was produced by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster.
- (4) The sound was generated:
 - (A) At a lawfully scheduled stadium event;
 - (B) By a parade and spectators and participants on the parade route during a permitted parade;
 - (C) By spectators and participants at a lawfully scheduled amphitheater event;
 - (D) By patrons and participants using cannons and gunfire during historical battle re-enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;
 - (E) By a pyrotechnic display that was inspected and approved by the fire marshal;
 - (F) By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert which was sponsored, cosponsored, or permitted by the city; or

(G) At any other lawful activity which constitutes protected expression pursuant to the First Amendment of the United States Constitution.

(5) The sound was produced by the erection, excavation, construction, demolition, alteration, or repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in any such activity, conducted between the hours of 7:00 a.m. and ~~9~~10:00 p.m. and which activity did not produce a sound exceeding 75 dB(A) when measured from the nearest residential property where the sound is being received.

(6) The sound was produced by aircraft in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.

(7) The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and ~~9:30~~10:00 p.m. and which device did not produce a sound exceeding 75 dB(A) when measured from the nearest residential property where the sound is being received and was used for the maintenance or upkeep of the property on which it was used.

~~(8) The sound was generated as authorized under the terms of a permit issued under section 8.04.039.~~

~~(89)~~ The sound was produced by the operation of any air-conditioning unit which did not produce a sound exceeding 60 dB(A) on residential property or 60 dB(A) on nonresidential property, when measured at or near fifteen (15) feet from the air-conditioning unit producing the sound being measured.

~~(940)~~ The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours and which did not exceed five continuous minutes in duration in any one-hour period.

Sec. 8.04.038 Method of sound measurement

Whenever portions of this division prohibit sound over a certain decibel limit, measurement of said sound shall be made with a calibrated sound level meter. Noise levels shall be measured in decibels. The unit of measurement shall be designated as dB(A). Meters shall be maintained in calibration and good working order. Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of said meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. Except as provided in sections 8.04.036 and 8.04.037, measurements shall be taken at or near the nearest property line of the property where the sound is being ~~received~~ generated.

~~Sec. 8.04.039—Permit for use of outdoor sound amplification equipment~~

~~(a) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier or any other machine or device which produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner which exceeds the levels specified in section 8.04.033, when measured from the property where the sound is being received, without first obtaining a permit to do so. Such permit:~~

~~(1) — May be obtained by making application to the director of the city department so designated by the mayor.~~

~~(2) — Requires payment of a fee as set by resolution of the city council.~~

~~(3) — Is valid for one fourteen (14) hour period between the hours of 8:00 a.m. and 10:00 p.m., except for events in Vernon L. Richards Riverbend Park, for which the permit is valid for two sixteen (16) hour periods ending at 12:00 o'clock midnight on Thursday and Friday and one seventeen (17) hour period between the hours of 8:00 o'clock a.m. on Saturday and ending at 1:00 o'clock a.m. on the next following Sunday.~~

~~(4) — Shall not be issued for the same location more than twice during any thirty (30) day period, except for events at Vernon L. Richards Riverbend Park, for which there may be three permits issued during any thirty (30) day period.~~

~~(5) — Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound which exceeds 85 dB(A) when measured from the nearest receiving property.~~

~~(b) — The use of any loudspeaker, loudspeaker system, sound amplifier or any other similar machine or device which is permitted pursuant to this section is subject to the following regulations:~~

~~(1) — The only sound permitted shall be either music or human speech, or both.~~

~~(2) — The volume of the sound amplified pursuant to this section shall not exceed 85 dB(A) when measured from the nearest receiving property.~~

~~(3) — No equipment permitted pursuant to this section shall be operated during the hours between 10:00 p.m. and 8:00 a.m., except as provided in section 8.04.039(a)(3).~~

~~(c) — The application for the permit required to be filed pursuant to this section shall contain the following information:~~

~~(1) — The date of the application and the date and hours for which the permit is requested.~~

~~(2) — The name and address of the applicant.~~

~~(3) — The name and address of the person who will have charge of the sound amplifying equipment.~~

~~(4) — The purpose for which the sound equipment will be used.~~

~~(5) — The address and a description of the location where the sound equipment will be used.~~

~~(6) — A description of the type of sound amplifying equipment to be used.~~

~~(d) — If an applicant for a permit under this section is unable to pay the full amount of the permit fee pursuant to subsection (a)(2) of this section, the fee shall be reduced to that amount the applicant is able to pay, provided the applicant submits a sworn affidavit containing the following information:~~

~~(1) — A statement that the applicant and the group or organization on whose behalf he is making the application are unable to pay the full amount of the permit fee.~~

~~(2) — A statement that the applicant and the group or organization on whose behalf he is making the application have made diligent efforts to raise money to pay the permit fee.~~

~~(3) — A statement of the exact amount the applicant and the group or organization on whose behalf he is making the application are able to pay for the permit fee.~~