



**NOTICE OF SPECIAL WORK SESSION
AND SPECIAL MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**



Monday, December 19, 2016 - 6:00 PM

6:00 P.M. SPECIAL WORK SESSION:

1. Receive a presentation to discuss an "Opportunity Assessment" of the Country View Golf Club course and its management operations conducted by Touchstone Golf, LLC.
2. Receive a presentation from The Retail Coach regarding the development of a Retail Recruitment Strategy.
3. Receive a presentation and discuss Article 14.900 of the Lancaster Development Code Tree Preservation.

ADJOURN SPECIAL WORK SESSION

7:00 P.M. SPECIAL MEETING:

CALL TO ORDER

CONSENT AGENDA:

At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.

1. Consider a resolution approving the terms and conditions of the agreement for support services with PST Services, Inc. to provide professional ambulance billing and collection services.

ACTION:

2. Consider confirmation of Police Chief of the Lancaster Police Department; and administer Oath of Office.
3. Discuss and consider a resolution establishing the City of Lancaster Legislative Priorities for the 85th Session of the Texas Legislature.
4. Discuss and consider a resolution ratifying an economic development agreement authorized by Resolution 2015-02-13 Pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and In N Out Burgers, Inc.

5. Discuss and consider a resolution ratifying an economic development agreement for tangible personal property authorized by Resolution 2015-02-14 by and between the City of Lancaster and In N Out Burgers, Inc.
6. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between In N Out Burgers, Inc. and the Lancaster Economic Development Corporation.
7. Discuss and consider a resolution approving the first amendment to the municipal maintenance agreement between the City of Lancaster and the Texas Department of Transportation, for additional mowing and litter control maintenance.
8. Discuss and consider a resolution approving the Millbrook East Public Improvement District (PID) Board Appointments.
9. Consider confirmation of Civil Service Commission appointment as designated by the City Manager.
10. Discuss and consider annual appointments to City of Lancaster boards and commissions.
11. Consider confirmation of nominations made by the Mayor for appointments to the City of Lancaster Zoning Board of Adjustment.

PUBLIC HEARING:

12. Conduct a public hearing and consider a resolution approving the 2017 Standards of Care for Youth Programs operated by the Quality of Life and Cultural Services Department.
13. Z16-10 Conduct a Public Hearing and consider a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use at 2625 North Dallas Avenue, Lancaster, TX, consisting of an approximately 1.588 acre tract currently zoned Retail (R).
14. Z16-11 Conduct a Public Hearing and consider a rezoning request from SF-6 Single Family Residential to LI Light Industrial at 3520 Waters Street, Lancaster, TX, consisting of an approximately 1.094 acre tract, being a portion of the Silas B. Runyon Abstract 1199, Page 180, Lancaster, Dallas County, Texas.

EXECUTIVE SESSION:

15. The City Council shall convene into closed executive session pursuant to Section § 551.072 of the Texas Government Code, discuss and deliberate the acquisition, purchase, exchange, lease or value of real property as deliberation in this open meeting would have a detrimental effect of the position of the City of Lancaster in negotiations with third persons.
16. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

ADJOURNMENT

EXECUTIVE SESSION: The City Council reserve the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on December 16, 2016 @ 6:10 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Sorangel O. Arenas
City Secretary

LANCASTER CITY COUNCIL

City Council Special Work Session

1.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community
Sound Infrastructure

Submitted by: Sean Johnson, Managing Director

Agenda Caption:

Receive a presentation to discuss an "Opportunity Assessment" of the Country View Golf Club course and its management operations conducted by Touchstone Golf, LLC.

Background:

During the FY 2016 annual strategic planning session (June 2015) City Council established a goal to have an assessment of the Country View Golf Club course and its operations be conducted in an effort to provide information to consider the future direction of the golf course and its operations. The City of Lancaster Purchasing Division advertised an RFP (Request for Proposals) in April of 2016 and awarded the consultant contract to Touchstone Golf, LLC. The assessment began in June 2016 which included a week long site visit and review of the golf course and its entire operations, as well as, ongoing communication with Golf Pro David Royar and city staff.

The City entered into an extended golf course management agreement with David Royar on December 12, 2005 that originated July 1, 2003. The term of the extended contract was ten years, ending in 2015 with an automatic six month renewal unless either party gives notice of termination. In 2013, City Council extended this contract from the 2015 end date to 2017.

This extension was given to allow David Royar to go into a four year term lease versus a two or three year term lease for carts. The shorter term lease would be more costly and impact golf course maintenance as a result of the higher cart lease payments.

The conditions of the new agreement included modifying the existing agreement to relinquish the City of Lancaster of any financial obligations arising from or pertaining to the lease of said golf carts, as well as, providing a discounted rate of (25%) for City of Lancaster residents on green and cart fees.

This assessment will provide information to assist with "next steps" as to the future of Country View Golf Club course and its operations.

Council will receive a presentation from Touchstone Golf, LLC.

LANCASTER CITY COUNCIL

City Council Special Work Session

2.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Financially Sound Government
Quality Development

Submitted by: Kay Brown, Community Relations Coordinator

Agenda Caption:

Receive a presentation from The Retail Coach regarding the development of a Retail Recruitment Strategy.

Background:

The City Council, during its strategic planning session identified an intentional methodology to attract and recruit retailers to the City of Lancaster.

Operational Considerations:

The City received a presentation from The Retail Coach at the July 17, 2016 work session, and entered into an agreement at the August 8, 2016 regular meeting.

Council will receive a presentation from The Retail Coach regarding steps thus far and to discuss next steps.

LANCASTER CITY COUNCIL

City Council Special Work Session

3.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community
Quality Development

Submitted by: Opal Mauldin-Robertson, City Manager

Agenda Caption:

Receive a presentation and discuss Article 14.900 of the Lancaster Development Code Tree Preservation.

Background:

As presented in the City Council rules and procedures as amended September 2016, Section 1D. City Council Agenda Process, Councilmember Marco Mejia requested an item be included on the agenda for the purpose of having a discussion regarding the Tree Preservation ordinance.

City Council previous discussions have been related to the protected tree category. Council approved the Comprehensive Plan update in October 2016. Part of the implementation process is to strategically review applicable ordinances and sections to ensure compatibility, clarify and eliminate any potential conflicts.

The City entered a professional services agreement with Stantec to complete an analysis and review of the Comprehensive Plan and reversion ordinances.

Council will receive a presentation, that will review the tree ordinance and protected tree lists from survey cities to include variances, caveats, landscape plan options and other considerations.

The main purpose of the Lancaster Tree ordinance is to achieve the following objectives:

Prohibit the clearing of trees and natural areas;

Protect and increase the value of residential and commercial properties within the City as well as forest value;

Protect healthy quality trees; promote and enhance the ecological, environmental and aesthetic qualities of the City in future development;

To encourage the increase of arboreal elements in design plans so as to improve both aesthetic and healthful conditions within the City;

To further the preservation of trees and natural areas by protecting them during the planning, site design, construction and maintenance phases of any residential or commercial development within the City of Lancaster, Texas, with specific exemptions as outlined in Section 5 of the LDC; and

To retain the optimum number of trees on any development site.

LANCASTER CITY COUNCIL

City Council Special Meeting

1.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community

Submitted by: Rob Franklin, Fire Chief

Agenda Caption:

Consider a resolution approving the terms and conditions of the agreement for support services with PST Services, Inc. to provide professional ambulance billing and collection services.

Background:

The State of Texas mandates that electronic patient care reporting for EMS Providers be submitted to the Trauma Registry and to The University of Texas Southwestern Medical Center for Medical Quality Assurance. The Lancaster Fire Department would like to continue the 4 year relationship with PST Services, Inc. for ambulance billing and collections. This service also includes updated hardware that will assist paramedics with improved patient care and assist the patient in the billing process.

Operational Considerations:

New hardware included as part of this agreement will allow our paramedics to provide more expedient patient care and provide for more accurate processes for the transfer of information.

Legal Considerations:

The City Attorney has reviewed the agreement, and resolution and approved as to form.

Public Information Considerations:

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

The cost is 7.12% of the net revenue collected on behalf of the City. This is the standard rate for other North Texas cities. A deduction from these revenues will be for new computer hardware used to capture patient billing information.

Options/Alternatives:

1. Approve the resolution as presented.
2. Reject the resolution and search for other billing alternatives.

Recommendation:

Staff recommends approval of the resolution.

Attachments

Resolution

Exhibit "1"

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE AGREEMENT TO PROVIDE FOR PROFESSIONAL AMBULANCE BILLING AND COLLECTION SERVICES WITH PST SERVICES, INC, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT 1; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster Fire Department has had on ongoing business relationship with PST Services, Inc.; and;

WHEREAS, the City provides emergency medical services within the corporate limits of the City and bills for a portion of those services;

WHEREAS, PST Services, Inc. provides ambulance billing and collection services; and

WHEREAS, the City Council finds it is in the best interest of the City of Lancaster and its citizens to approve said Agreement in order to meet HIPAA regulations.

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

The City Council hereby authorizes, approves and accepts the terms and conditions of the Agreement for ambulance billing and collections services with PST Services, Inc., which is attached hereto and incorporated herein as Exhibit 1.

SECTION 1. The City Manager of the City of Lancaster, Texas, is hereby authorized to execute said Agreement provided as Exhibit 1.

SECTION 2. That this Resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

THE STATE OF TEXAS §

Contract

COUNTY OF DALLAS §

This Contract is made and entered into this January 1, 2017, by and between PST Services, Inc., hereinafter referred to as "Contractor," and the **City of Lancaster (the "City")**, a municipal corporation located in Dallas County, Texas, hereinafter referred to as "Client."

WITNESSETH:

THAT IN CONSIDERATION of the terms and conditions contained herein, the parties does mutually agree as follows:

I.

Employment of Contractor and Client's Obligations Necessary for Performance of Contract

The Purpose of this contract is to provide BILLING AND COLLECTION OF EMERGENCY MEDICAL SERVICES FEES in accordance with the scope of work and contract requirements included herein **in Exhibits A and B**, which are attached hereto and incorporated herein. Contractor will provide services set forth in Exhibits A and B. Contractor will perform as an independent contractor all services under this contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same consulting profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. Where Contractor represents that it has special expertise in one or more areas to be utilized in this contract, then Contractor agrees to perform those special-expertise services to the appropriate local, regional and national professional standards. In the event of discrepancy or conflict between the proposal and this contract, this contract shall have priority. City shall perform tasks, or secure additional services, as necessary for implementation of this contract, including, but not limited to, a survey of the corridor to identify right-of-way lines, easements, lot lines, building frontages and major utilities.

II.

Term

The contract term will be for three years, effective January 1, 2017 and will include one one-year renewal option to be mutually agreed upon by both parties. The percent of collections maybe adjusted by no more than the previous 12 month average increase of the DFW monthly CPI as monitored by the Bureau of Labor Statistics.

III.

Contractor Fees

For services rendered under the Agreement, Client shall pay Contractor a service fee equal to 7.12% of Client's net revenue collected under this Agreement. Contractor agrees to provide the Client with the use of hardware and software set forth on Schedule 1, which is attached hereto and incorporated herein (collectively, "Equipment") to Clients address set forth in this Agreement. With respect to the "Equipment", Contractor agrees it will be responsible for annual fees for hardware and software including the billing interface module. Contractor will also be responsible for the initial and monthly fees related to air-cards on internet service fees for the duration of the Agreement. Net revenue shall mean cash receipts arising from the provision of patient services and related activities less refunds. Client shall not be required to make any payments to Contractor when Contractor is in default under this contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which Client may have if Contractor is in default, including the right to bring legal action for specific performance of this contract. Waiver of any default under this contract shall not be deemed a waiver of any subsequent default.

In addition to the fees for Supplemental Payment Recovery Assistance Services rendered under Exhibit A-1, which is attached hereto and incorporated herein, Client will pay Contractor a service fee equal to 4.5% of the Supplemental Payments recovered by Contractor on behalf of Client. Supplemental Payments shall include any payments for ambulance services, including all nonemergency and emergency patient transports that are reimbursed by Texas Medicaid to Client as part of the Texas Ambulance Supplemental Payment Program. Client acknowledges and agrees that Contractor shall be entitled to receive service fees for Services provided by Contractor under this Contract even after expiration or early termination of this Contract provided that Contractor provided such services on or before the

date of expiration or termination of this Contract.

IV.
Funding and Non-Appropriation Clause

Contractor recognizes that the continuation of any contract after the close of, or during, any given fiscal year of the City, which fiscal year ends on September 30 of each year, shall be subject to Council budget approval of the City providing for or covering such contract item as an expenditure therein. The Client does not represent that said budget item will actually be adopted as this determination is within the sole discretion of the City Council. Should funding not be approved by the City Council for any given budget year during the contract term, the contract will terminate and become null and void; however, any work performed to date shall be paid.

V.
Revisions of Scope of Work and Workplan

In response to changes in needs of the project, Client reserves the right to direct substantial revision to the scope of work initially agreed, including changes to the drawings, specifications or other project documents after due approval by Client, as Client may deem necessary which shall be in writing and be adopted as an amendment to this Agreement. In such event, Client shall pay Contractor its regular compensation for services rendered in making such revisions, provided such compensation is customarily reasonable. When Contractor is directed to make substantial revisions under this section of the contract, Contractor shall provide to Client a written proposal for the entire costs involved and the completion time involved in providing the revisions. Client shall not knowingly require any revision that is illegal or that violates the professional ethics of Contractor. Prior to Contractor undertaking any substantial revision as directed by Client, Client must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

VI.
Contract Termination Provisions

This contract may be terminated at any time by the Client with or without cause by thirty (30) days' notice in writing to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue all services, and Contractor will immediately terminate placing orders or entering into contracts for assistance, supplies, facilities or material in connection with this contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this contract. If the contract is cancelled, the Client shall pay Contractor for the work completed prior to the date of cancellation.

VII. Notices

Any notice, payment, statement, or demand required or permitted to be given hereunder by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three days after mailing.

If intended for Client, to:

Fire Chief
City of Lancaster
1650 North Dallas Avenue
Lancaster, TX 75134

Copy to:

City Manager
City of Lancaster
212 Henry Street
Lancaster, TX 75134

If intended for Contractor, to:

President (with a copy to General Counsel)
5995 Windward Parkway
Alpharetta, GA 30005

VIII.
Insurance

Contractor shall, at its own expense, purchase, maintain and keep in force during the term of this contract policies of commercial general liability insurance or captive insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate statutory workers compensation and employers liability coverage with \$1,000,000 limit each accident or disease. McKesson shall, at the written request of Customer, furnish a certificate of insurance evidencing the maintenance in full force of such insurance. Additionally, McKesson will use reasonable efforts to provide Customer with 30 days advance written notice of cancellation of such insurance coverage, prior to policy expiration.

Upon written request of the Client, Contractor shall provide to Client certified copies of all required insurance policies and/or certificates.

IX.
Right to Inspect Records

Contractor agrees that Client shall, until the expiration of one (1) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor involving transactions relating to this contract. Contractor agrees that Client shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Client shall give Contractor reasonable advance notice of intended audits no less than 3 business days. Contractor further agrees to include in subcontract(s), if any, a provision that any subcontractor or subcontractor agrees that Client shall, until the expiration of one (1) years after final payment under any subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor or subcontractor involving transactions to the subcontract and further, that Client shall have access during normal working hours to all subcontractors or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. Client shall give the subcontractors or subcontractor reasonable advance notice of intended audits no less than 3 business days.

X.
Successors and Assigns

Client and Contractor each binds itself and its successors, executors, administrators and assigns to the other party of this contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this contract. Neither Client nor Contractor shall assign or transfer its interest herein without the prior written consent of the other.

XI.
Indemnification

CONTRACTOR DOES HEREBY COVENANT AND AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OR DEBT OF ANY PERSON, OR FOR LOSS OF, DAMAGE TO OR LOSS OF USE OF ANY PROPERTY ARISING OUT OF CONTRACTOR'S NEGLIGENT PERFORMANCE OF ITS SERVICES IN ACCORDANCE WITH THIS CONTRACT, AND SUCH INDEMNITY WILL APPLY TO THE CLAIMS, SUITS, LOSSES, DAMAGES, CAUSES OF ACTION OR LIABILITY TO THE EXTENT THEY ARISE FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR OR ANY OF ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES OR INVITEES. ALSO, IT IS UNDERSTOOD BY CONTRACTOR THAT SUCH INDEMNITY IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT CLIENT FROM ANY LIABILITY, CLAIMS, SUITS, LOSSES, DAMAGES OR CAUSES OF ACTION DUE TO CONTRACTOR'S NEGLIGENCE, ERROR OR OMISSION. THE CLIENT SHALL PROVIDE CONTRACTOR WRITTEN NOTICE OF ITS RIGHT TO INDEMNIFICATION UNDER THIS PROVISION WITHIN TEN (10) BUSINESS DAYS AFTER THE CLIENT RECEIVES A NOTICE OF CLAIM FROM ANY PERSON OR PARTY ALLEGING A CLAIM OR

CAUSE OF ACTION THAT FALLS OR COULD FALL WITHIN THE SCOPE OF THIS PROVISION. CLIENT'S FAILURE TO PROVIDE SUCH NOTICE TO CONTRACTOR WILL RELIEVE CONTRACTOR OF ITS CONTRACTUAL OBLIGATION TO INDEMNIFY THE CLIENT PURSUANT TO THIS PROVISION. CONTRACTOR'S OBLIGATIONS TO THE CLIENT UNDER THIS PROVISION SHALL BE LIMITED TO THE APPLICABLE INSURANCE COVERAGE(S) THE CONSULTANT IS REQUIRED TO PROVIDE IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS CONTRACT. NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE CLIENT OR ITS EMPLOYEES OR AGENTS ARE NOT INCLUDED IN THIS INDEMNIFICATION.

XII.
Severability

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XIII.
Independent Contractor

Contractor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of Client; that Contractor shall have exclusive control of and the exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondent superior shall not apply as between Client and Contractor, its officers, agents, employees, contractors, subcontractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between Client and Contractor.

XIV.
Disclosure

By signing this contract, Contractor acknowledges to Client that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed project and business relationships with abutting property owners. Contractor further agrees that it will make disclosure in writing of any conflicts of interest which develop subsequent to the signing of this contract and prior to final payment under the contract.

XV.
Venue

The parties to this contract agree and covenant that this contract will be enforceable in Texas; and that if legal action is necessary to enforce this contract, exclusive venue will lie in Dallas County, Texas.

XVI.
Entire Agreement

This contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written agreement of the parties, including, but not limited to the Business Support Services Agreement dated January 1, 2013 between Lancaster Texas Fire Department and MED3000, Inc.

XVII.
Applicable Law

This Contract is entered into subject to the Charter and ordinances of the City, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and Federal United States of America laws. The parties to this contract agree and covenant that for all purposes, including

performance and execution, that this contract will be enforceable in Texas; the County of Dallas; the State of Texas and the United States of America; and that if legal action is necessary to enforce this contract, exclusive venue will lie in Dallas County, Texas. The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations, and lawful orders of any public authority bearing on the performances of the services. This agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the City of Lancaster, County of Dallas, State of Texas and federal laws of the United States of America. The Contractor warrants and covenants to the Client that all services will be performed in compliance with all applicable federal, state, county, and city health and safety codes, rules and ordinances including, but not limited to, the Texas Industrial Safety and Health Act, the Workers Right to Know Law, and the Immigration Reform and Control Act of 1986 (IRCA). Additionally, this agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement. The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. Department of Justice Form I-9. **THE CONTRACTOR/VENDOR WARRANTS THAT CONTRACTOR/VENDOR IS IN COMPLIANCE WITH IRCA AND WILL MAINTAIN COMPLIANCE WITH IRCA DURING THE TERM OF THE CONTRACT WITH THE CLIENT. CONTRACTOR/VENDOR WARRANTS THAT CONTRACTOR/VENDOR HAS INCLUDED OR WILL INCLUDE A SIMILAR PROVISION IN ALL WRITTEN AGREEMENTS WITH ANY SUBCONTRACTORS ENGAGED TO PERFORM SERVICES UNDER THIS CONTRACT.**

XVIII.
Default

Client reserves the right to terminate this contract immediately upon breach of any term or provision of this contract by Contractor; or if at any time during the term of this contract, Contractor shall fail to commence the work in accordance with the provisions of this contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this contract or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this contract, then Client shall have the right, if Contractor shall not cure any such default after thirty (30) days' written notice thereof, to terminate this contract and complete the work in any manner it deems desirable, including engaging the services of other parties therefore. Any such act by Client shall not be deemed a waiver of any other right or remedy of Client.

IXX.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.
Equal Employment Opportunity

Contractor shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include but not be limited to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection of training, including apprenticeship.

XXI.
Use of Work Product

Contractor retains co-ownership of all its work product and may utilize it for any and all purposes including, but not limited to, marketing.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their representatives duly authorized on the day and year first written above.

PST Services, Inc.

BY _____
Signature

Printed/Typed Name

Printed/Typed Title

Tax Identification Number

City of Lancaster

BY _____
Signature

Printed/Typed Name

Printed/Typed Title

WITNESS:

Attest
Sorangel Arenas
City Secretary

EXHIBIT A
EMERGENCY MEDICAL SERVICES
LANCASTER FIRE DEPARTMENT

The Agreement and this Exhibit A apply to all services rendered by Contractor under this Exhibit.

1 SCOPE OF SERVICES

1.1 Scope. Contractor will provide the services related to the billing of Emergency Medical Services (“EMS”) as specified below based on information provided by Client for professional ambulance services rendered by Client in accordance with the terms of the Agreement and this Exhibit.

1.2 Responsibilities. Each party agrees to perform its respective responsibilities identified below in a timely and diligent manner. Client acknowledges and agrees that Contractor’s performance of the Services described herein is dependent upon Client’s performance of its responsibilities as set forth in this Exhibit.

1.2.1 Contractor Responsibilities. Contractor will have managerial responsibilities over all business support services as they relate to the billing of EMS provided by Client, subject to Client’s ultimate control. In order for Contractor to provide the necessary business support services on behalf of Client, the following operating policies will be used with respect to Client’s Emergency Medical Services (“EMS”) Squad:

(a) Billing Responsibilities. Contractor shall be responsible for billing for all EMS provided by Client. Contractor shall be responsible for implementing and providing the on-going support needed to support the billing and collection activities required by Client. Contractor shall provide those billing and collection services that are customarily necessary for an EMS Squad, including but not limited, to the following items:

- (i) Process all demographic and charge information entered into the billing system based on the information provided by Client, including the schedule of EMS fees;
- (ii) Process all required insurance forms whether submitted electronically or on hard copy. Insurance claims shall be submitted at least weekly based on the availability of information received from the Client;
- (iii) Provide all HCFA-1500 universal claim forms needed to submit claims for EMS services provided by the Client;
- (iv) Print and mail patient statements for accounts with patient balances greater than \$5.00. Mail up to three statements according to the schedule set forth by the Client, to patients for fees not reimbursed by third-party payments including deductibles, co-payments and non-covered services for which the Client maintains appropriate waiver documentation. Client shall specify if residents receive a balance due statement and if unpaid patient balance due amounts are written-off or forwarded to a collection agency for further activity;
- (v) Receive from Client’s lockbox, notification of payment and original remittance advices, and all other billing correspondence, as appropriate;
- (vi) Enter all remittance information, including, contractual adjustments for third-party payers with which the Client participates (based upon an approved list provided by the Client), and submit secondary insurance claims as necessary;
- (vii) For a period of one year, maintain a paper or electronic copy of explanation of benefit statements (“EOBs”) received from third-party payers. At the end of one year, all EOBs will be returned to Client when requested or may be destroyed by Contractor;

- (viii) Evaluate appropriate documentation of any request by a patient, third-party, or referring physician for an adjustment to a patient's bill, and coordinate findings with Client;
 - (ix) Follow coding and billing standards as established by organizations recognized as experts in coding and billing including, but not limited to, the American Medical Association;
 - (x) Recommend and assist Client in establishing fees for new services;
 - (xi) Provide perpetual updates to master HCFA Common Procedure Coding System (HCPCS) coding and descriptions, and maintain current database of ICD codes and edits; and
 - (xii) Assist with designing for the Client all necessary forms, fee slips, insurance authorizations, etc., for processing. Costs of actual forms, etc. will be the responsibility of Client.
- (b) Collection Responsibilities. In undertaking these responsibilities, Contractor shall:
- (i) Answer all patient and third-party payer inquiries. In some cases, additional data will be requested from Client. Responses to all patient inquiries shall be made within 24 hours whenever possible;
 - (ii) Pay for all telephone costs for patient and third-party payer inquiries and follow-up;
 - (iii) Pursue balances with any third-party payer as follows:
 - Monitor the balances and follow-up either in writing or by telephone, as appropriate, when payments are overdue.
 - Monitor all payments received against anticipated payments. Discrepancies noted shall be reviewed and, when appropriate, contact will be made by telephone, in writing, or in person with the third-party payer to request claim review.
 - Monitor payment patterns for each third-party payer at least monthly to identify any third-party payer with large amounts of pending open claims. Appropriate action shall be taken with the third-party payer to expedite prompt payment.
 - In the event any claim is denied by any third-party payer for reasons other than a patient's insured status, Contractor shall use its commercially reasonable efforts to re-submit a clean claim in a timely manner. In the event a claim is denied as a result of improper coding or other act attributable to Contractor, Contractor shall pursue a timely appeal of the denied claim.
 - Follow up with the third-party payer on assigned claims based upon the appropriate strategy for working with such third-party payer.
 - (iv) Pursue balances with patients by attaching notes on statements at pre-determined intervals using language approved by Client; and
 - (v) Amounts due from a third-party or patient, that have not been collected after the activities described above and that have aged greater than 120 days, will be considered uncollectable. Contractor will provide pertinent demographic and transactional detail to the Client identifying uncollectable accounts monthly. Unless otherwise instructed by the client, Contractor will write-off the identified accounts as bad debts and will cease collection efforts associated with those accounts.
- (c) Reporting Responsibilities. Contractor shall be responsible for making periodic reports to Client on the current status of all active patient accounts. In undertaking these responsibilities, Contractor shall:
- (i) Produce monthly activity and summary reports as follows:

- Fire/EMS Executive Summary - of the EMS for current month and year to date produced by:
 - Number of transports and gross charges/receipts by level of service delivered;
 - Drop off location; and
 - Payer Category Analysis.
 - Financial Summary - of charges, write-offs and payments of the EMS for current month and year to date analyzed by:
 - Current charges and payments received;
 - Payer Category Analysis; and
 - Summary aging of accounts receivable and adjustments and write-offs.
- (ii) Provide off-site back up of all active data files; and
- (iii) Provide additional reports reasonably requested by the Client.
- (d)** Implementation. Contractor shall be responsible for implementing the billing and collection services on behalf of Client. In undertaking such implementation, Contractor shall:
- (i) Assign an account manager to Client who shall be responsible for the following:
- Act as primary contact with the personnel of Client;
 - Serve as the liaison with the Contractor employees assigned to perform services for Client;
 - Communicate regularly with the key management of Client to review all activities with respect to the billing and collection services;
 - Work closely with Client to ensure a smooth transition and implementation; and
 - Review all participating insurance agreements.
- (ii) Review both its procedures and the procedures of Client and recommend and implement approved changes for improvements of collections; and
- (iii) Maintain knowledge about prevalent government and third-party payer regulations and guidelines to assist Client in conformance with such regulations.
- (e)** Credentialing Responsibilities with Third-Party Payers. Contractor shall be responsible for:
- (i) Completing all necessary paperwork and submitting applications to establish provider numbers. Contractor has no control and cannot be held responsible for the individual timeframes or actual acceptance by payers. Contractor will assist in follow-up activities to gain approval; and
- (ii) Providing necessary credentialing information to new payers or updates to existing payers.

1.2.2 Client Responsibilities. In order for Contractor to undertake the billing and collection services, Client will:

- (a)** Subject to the terms of the Agreement, appoint Contractor as its lawful attorney-in-fact for the sole purpose of billing and collecting, in the name of Client and on Client's behalf, from patients, insurance companies, Medicare, Medicaid and all other third-party payers, all charges resulting from the provision of equipment, devices and supplies provided to patients and for all services rendered to patients, including, but not limited to, technical and ancillary services and all professional medical service or EMS provided by Client;
- (b)** Cause the personnel of Client to timely submit to Contractor the name of the patient when available, a paper copy of the Patient Care Report or an electronic

extract when available, the date of service, a description of the nature, and the extent of services provided and any supporting medical information necessary to obtain payment or reimbursement. Contractor shall rely on the truth and accuracy of such information and shall not in any event be required to verify medical treatment information submitted to Contractor by the Client. Furthermore, Client shall use its best efforts to procure all necessary consents to all assignments and obtain all other approvals, consents, and signatures necessary for Contractor to collect payment for reimbursement on behalf of Client;

- (c) Assist Contractor with establishing dialog with transport hospitals means to gather patient demographic and insurance data from transport hospitals when requested, or provide copies of the hospital face sheet if other means of capturing this data are not available;
- (d) Be solely responsible for securing or causing to be secured from or on behalf of patients whose accounts are covered under this Exhibit, any and all necessary consents for the release of information to third parties as contemplated by this Exhibit, and any and all necessary assignments of insurance benefits and benefits due from and rights to payment or reimbursement by any other third party. Client shall notify Contractor in the event that assignment was not obtained;
- (e) Supply complete and accurate patient charge information;
- (f) Provide to Contractor a schedule of professional fees charged for services rendered by Client's EMS Squad. Contractor shall make revisions to the fee schedule from time to time upon at least 10 days prior written notice from Client to the effective date of any such revision. Contractor shall continue to bill at the rates then in effect until receipt of such notice. Fee schedule revisions must include an effective date for the new charges;
- (g) Establish adequate controls to assure that all charges are captured, batched and reconciled with batch totals;
- (h) Provide all input forms;
- (i) Provide medical expertise regarding reimbursement of medically necessary services of Client arising from third-party payer disputes or patient inquiries;
- (j) Be responsible for all medical decisions concerning patient care; and
- (k) When refunds are necessary, write a check to Contractor's refund account for refunds to be sent to the patient or third-party payer based upon information provided by Contractor.

2 SERVICE FEES

- 2.1 For business support services rendered under this Exhibit Contractor shall be paid a service fee equal to 7.12% of the net revenue of Client.
- 2.2 Contractor agrees to provide the Client with the use of the hardware and software set forth on Schedule1 attached hereto and made a part hereof (collectively, "Equipment"). Client acknowledges that the Equipment and any services related thereto are provided strictly "as is," and Contractor makes no additional warranties, express, implied, arising from course of dealing or usage of trade, or statutory, as to the Equipment, any associated services or any matter whatsoever. In particular, any and all warranties of merchantability, fitness for a particular purpose, title and non-infringement are expressly excluded.
- 2.3 Net revenue shall mean cash receipts arising from the provision of patient services and related activities less refunds.
- 2.4 All service fees are exclusive of all federal, state and local taxes, including sales taxes, assessed on or due in respect of any Services performed by Contractor under the Agreement, for which taxes Client shall be solely responsible. Client shall reimburse Contractor for all those costs and expenses of Client paid by Contractor or any subsidiary or affiliate of Contractor Group on behalf of Client in connection with the provision of Services hereunder.

Schedule 1
Equipment Quote
Lancaster Fire Department

Hardware -- If the Agreement terminates prior to the term set forth in Section II of the Agreement, than Client will reimburse Contractor for the remaining costs as outlined in the attached Amortization Schedule. Client is not responsible for interest on the Equipment, calculated at eleven percent (11%).

Toughbooks / Toughpads / Accessories			Qty
1	CF-20A0001KM	Base Unit Multi Touch Toughbook 20 <i>Win10 Pro, Intel Core m5-6Y57 1.10 GHz, vPro, 10.1" WUXGA 10-pt Gloved Multi Touch, 8GB, 128GB SSD, Intel WiFi a/b/g/n/ac, TPM, Bluetooth, Dual Pass (Ch1:WWAN/Ch2:WWAN), Webcam, Emissive Backlit Keyboard, Toughbook Preferred</i>	4
	4173409	Upgrade to 256GB Solid State Hard Drive <i>Installed and imaged</i>	4
3	194GLTEFU	Integrated 4G LTE Mobile Broadband + GPS (Verizon, AT&T, Sprint) <i>Satellite based LTE GPS (Qualcomm chipset) Details: Built into current Gobi and Multi-carrier LTE chipsets 32 sec. time to initial fix. Doesn't require radio to be provisioned (Flexibility for enabling mobile broadband later) Accuracy- roughly 15 ft.</i>	4
	CF-SVCLTNF3Y	Upgraded 3-Year Protection Plus Warranty / Accidental Damage Coverage for Toughbook <i>Additional layer of protection against unintentional physical damage. See official PDF for more details.</i>	4

ESO Solutions – ePCR. In the event that Client continues its contract directly with ESO Solutions, Contractor will reimburse Client the costs associated with such software.

Annual auto renewal of contract (initial contract began in 2008).

Transport coverage = 3,750-5,000 tier (Lancaster currently runs approximately 4,300 per year)

Continued offer maintenance, support, and upgrades for the ESO Mobile software, ESO Cardiac Monitor Interface, and ESO CAD Interface previously purchased by or on behalf of Lancaster Fire Department.

Support Services and Service Levels terms will continue as is defined in the ePCR agreement with Lancaster.

Equipment Amortization Chart
Lancaster Fire Department

Contractor will deliver to Client Equipment to be utilized by Client. Client acknowledges it is responsible for installation of the Equipment.

Month	Balance Due
1	\$13,222.22
2	\$12,844.44
3	\$12,466.67
4	\$12,088.89
5	\$11,711.11
6	\$11,333.33
7	\$10,955.56
8	\$10,577.78
9	\$10,200.00
10	\$9,822.22
11	\$9,444.44
12	\$9,066.67
13	\$8,688.89
14	\$8,311.11
15	\$7,933.33
16	\$7,555.56
17	\$7,177.78
18	\$6,800.00
19	\$6,422.22
20	\$6,044.44
21	\$5,666.67
22	\$5,288.89
23	\$4,911.11
24	\$4,533.33
25	\$4,155.56
26	\$3,777.78
27	\$3,400.00
28	\$3,022.22
29	\$2,644.44
30	\$2,266.67
31	\$1,888.89
32	\$1,511.11
33	\$1,133.33
34	\$755.56
35	\$377.78
36	\$-

EXHIBIT A-1
SUPPLEMENTAL PAYMENT RECOVERY ASSISTANCE SERVICES

1. Description of Services. As part of the Supplemental Payment Recovery Assistance Services, Contractor's responsibilities under this Agreement will include:
 - (a) Managing the program applications and required cost reports for Client in accordance with the TASPP;
 - (b) Preparing and submitting HHSC Ambulance Services Cost Report on an annual basis, as required by the TASPP;
 - (c) Assisting Client with submitting other annual reports as my required by the TASPP;
 - (d) Ensuring that cost report preparer(s) engaged on behalf of Client by Contractor are certified in accordance with all applicable rules, laws and regulations; and
 - (e) Ensuring that it utilizes separate staff for all billing and cost report preparation services provided to Client.

2. Client Responsibilities. Client acknowledges and understands that inaccurate or false data submissions, even advertent ones, can lead to a false claim charge or Medicaid program exclusion. Therefore, Client agrees that it will use best efforts to:
 - (a) Ensure the accuracy of all cost report data provided by Client to Contractor and provide written certification of the accuracy of such data to Contractor and all applicable governmental agencies;
 - (b) Make its internal practices, books and records relating to all cost report data provided to Contractor by Client available to Contractor to ensure the accuracy of all such data;
 - (c) Comply with Contractor policies and procedures for the documentation of all cost report data as established and provided to Client by Contractor from time to time; and

3. Indemnification. Client will indemnify and hold harmless Contractor and its affiliates, employees and agents from and against, and at the option of Contractor (or any of its affiliates, employees or agents) defend against, at Client's sole expense, all claims, liabilities, damages, losses and expenses as they are accrued, including court costs and fees and expenses of attorneys, expert witnesses and other professionals, arising out of, relating to or resulting from:
 - (a) any breach or alleged breach of any representation, warranty, covenant or obligation of Client pertaining to the Supplemental Payment Recovery Assistance Services; and
 - (b) any alleged negligent act or omission or intentional misconduct of Client or Client's employees or agents or subcontractors related to any of Client's obligations pertaining to the Supplemental Payment Recovery Assistance Services.

EXHIBIT B BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between PST Services, Inc. (“Business Associate”) and Lancaster Texas Fire Department (“Covered Entity”). Business Associate and Covered Entity may be individually referred to as a “Party” and, collectively, the “Parties” in this Agreement. This Agreement shall be incorporated into and made part of the Underlying Agreement (as defined below).

STATEMENT OF PURPOSE

Pursuant to the Underlying Agreement, Business Associate provides services to Covered Entity and Covered Entity discloses certain information, including PHI (as defined below), to Business Associate. The purpose of this Agreement is to protect the privacy and provide for the security of such PHI in compliance with the Privacy Rule and Security Rule.

SECTION 1: DEFINITIONS

“**Electronic Protected Health Information**” or “**Electronic PHI**” will have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity.

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

“**Security Rule**” will mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C

“**Underlying Agreement**” will mean the applicable written services agreement(s) between Covered Entity and Business Associate under which Covered Entity may disclose PHI to Business Associate.

Capitalized Terms. Capitalized terms used in this Agreement and not otherwise defined herein will have the meanings set forth in the Privacy Rule and the Security Rule which definitions are incorporated in this Agreement by reference.

SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI

- 2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 2.2 Permitted Uses of PHI by Business Associate. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- 2.3 Permitted Disclosures of PHI by Business Associate. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this Agreement), and that the person agrees to notify Business Associate of any instances in which it is aware that the confidentiality of the information has been breached.
- 2.4 Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services for the Health Care Operations of the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.5 De-identified Data. Business Associate may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

SECTION 3: OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Appropriate Safeguards. Business Associate will use appropriate administrative, physical, and technical safeguards to comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Underlying Agreement and this Agreement. Except as expressly provided in the Underlying Agreement or this Agreement, Business Associate will not assume any obligations of Covered Entity under the Privacy Rule. To the extent that Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. Business Associate will report to Covered Entity any use or disclosure of PHI not permitted under this Agreement, Breach of Unsecured PHI or any Security Incident, without unreasonable delay, and in any event no more than fourteen (14) days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate's notification to Covered Entity of a Breach will comply with the requirements set forth in 45 C.F.R. § 164.404.

3.3 Business Associate's Agents. Business Associate will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate for services provided to Covered Entity, providing that the agent agrees to restrictions and conditions that are no less restrictive than those that apply through this Agreement to Business Associate with respect to such PHI.

3.4 Access to PHI. To the extent Business Associate agrees in the Underlying Agreement to maintain any PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity pursuant to 45 C.F.R. § 164.524, within ten (10) business days of Business Associate's receipt of a written request from Covered Entity; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity.

3.5 Amendment of PHI. To the extent Business Associate agrees in the Underlying Agreement to maintain any PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity for amendment pursuant to 45 C.F.R. § 164.526 within ten (10) business days of Business Associate's receipt of a written request from Covered Entity.

3.6 Documentation of Disclosures. Business Associate will document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.7 Accounting of Disclosures. Business Associate will provide to Covered Entity, within twenty (20) business days of Business Associate's receipt of a written request from Covered Entity, information collected in accordance with Section 3.6 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.8 Governmental Access to Records. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, Business Associate will cooperate with Covered Entity's efforts to mitigate a harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that is not permitted by this Agreement.

3.10 Minimum Necessary. Business Associate will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

SECTION 4: CHANGES TO PHI AUTHORIZATIONS

Covered Entity will notify Business Associate fifteen (15) days, if practicable, prior to the effective date of (1) any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, (2) any changes in, or revocation of, permission by an Individual to use or disclose PHI, or (3) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522. Covered Entity will make such notification to the extent that such limitation, restriction, or change may affect Business Associate's use or disclosure of PHI.

SECTION 5: TERM AND TERMINATION

5.1 Term. The term of this Agreement will commence as of the Effective Date, and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

5.2 Termination for Cause. Upon either Party's knowledge of a material breach by the other Party of this Agreement, such Party may terminate this Agreement immediately if cure is not possible. Otherwise, the non-breaching party will provide written notice to the breaching Party detailing the nature of the breach and providing an opportunity to cure the breach within thirty (30) business days. Upon the expiration of such thirty (30) day cure period, the non-breaching Party may terminate this Agreement and the affected underlying product or service if the breaching party does not cure the breach or if cure is not possible.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this Agreement for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, at Covered Entity's expense, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of Business Associate.

5.3.2 If it is infeasible for Business Associate to return or destroy the PHI upon termination of the Underlying Agreement or this Agreement, Business Associate will: (a) extend the protections of this Agreement to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3.3 The respective rights and obligations of Business Associate under Section 5.3 of this Agreement will survive the termination of this Agreement and the Underlying Agreement.

SECTION 6: COOPERATION IN INVESTIGATIONS

The Parties acknowledge that certain breaches or violations of this Agreement may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

SECTION 7: COMPLIANCE WITH LAW

Business Associate will comply with all applicable federal privacy and security laws governing PHI, as they may be amended from time to time.

SECTION 8: AMENDMENT

This Agreement may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both Parties. In addition, if any relevant provision of the Privacy Rule or the Security Rule is amended in a manner that changes the obligations of Business Associate or Covered Entity that are embodied in terms of this Agreement, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this Agreement to give effect to such revised obligations.

SECTION 9: GENERAL

This Agreement is governed by, and will be construed in accordance with, the laws of the State that govern the Underlying Agreement. Covered Entity will not assign this Agreement without the prior written consent of Business Associate, which will not be unreasonably withheld. All notices relating to the Parties' legal rights and remedies under this Agreement will be provided in writing to a Party, will be sent to its address set forth in the Underlying Agreement, or to such other address as may be designated by that Party by notice to the sending Party, and will reference this Agreement. Nothing in this Agreement will confer any right, remedy, or obligation upon anyone other than Covered Entity and Business Associate.

LANCASTER CITY COUNCIL

City Council Special Meeting

2.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Professional & Committed City Workforce

Submitted by: Opal Mauldin-Robertson, City Manager

Agenda Caption:

Consider confirmation of Police Chief of the Lancaster Police Department; and administer Oath of Office.

Background:

Section 143.013 of the Texas Local Government Code requires the appointment of a person as head of the police department to be confirmed by the municipality's governing body.

In June 2016, we entered into a Professional Services Agreement with Waters Consulting to conduct a search for Police Chief.

Samual Urbanski has been appointed to serve as Police Chief for the Lancaster Police Department.

Urbanski holds a Bachelor of Science in Computer Art and a minor in Criminal Justice from Stephen F. Austin State University. He graduated first in his class at the Eastfield Police Academy. Urbanski began his career with the Lancaster Police Department in 2002 after his graduation from the academy. He spent 3 years as a Police Officer, 2 years as a Police Sergeant, 5 years as a Police Lieutenant and currently holds the rank of Assistant Chief of Police. During his time with the Lancaster Police Department he has served as a field training officer, SWAT officer, SWAT Commander, training and recruiting officer, Internal Affairs Lieutenant, Assistant Chief and Interim Chief. Urbanski has taken a large variety of police related classes including SWAT team leader, TCOLE instructor, NAPD driving instructor, Reid investigation and a number of Internal Affairs (IA) interview classes. He is also a graduate of ILEA Supervisor College and the FBI National Academy class #244. He holds a Master Peace Officer certificate and has received the Lancaster Police Department award for supervisor of the year.

Public Information Considerations:

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meeting Act.

Recommendation:

The City Manager respectfully requests confirmation of Samuel Urbanski as Police Chief for the Lancaster Police Department.

LANCASTER CITY COUNCIL

City Council Special Meeting

3.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community

Submitted by: Fabrice Kabona, Assistant to the City Manager

Agenda Caption:

Discuss and consider a resolution establishing the City of Lancaster Legislative Priorities for the 85th Session of the Texas Legislature.

Background:

The Texas Legislature meets in a regular session every two years, convening on the second Tuesday in January of every odd-numbered year. These biennial sessions are limited to 140 days. The governor can also call additional special sessions as necessary, which cannot exceed 30 days. The 85th Legislative Session is scheduled for January 10 through May 29, 2017.

Prior to the start of each legislative session, the Lancaster City Council establishes legislative priorities that it considers of great importance and relevance to the City.

The attached resolution will officially establish those priorities and allow staff to coordinate with the Best Southwest Cities as well as other municipalities and regional organizations such as, the North Texas Commission and Best Southwest Partnership, to advocate the City position.

The following priority items are being proposed based on recommendation from the Texas Municipal League (TML) as having the most impact on municipalities if passed:

Support:

- Support legislation to expand home-rule authority and facilitate the provision of services to the Lancaster residents.
- Support increased funding for the Texas recreation & parks account local park grant program and the Texas state park system.
- Support legislation that directly benefits parks, recreation, open space, trails, tourism, health and wellness (i.e. utility corridors and mobility).
- Support legislation banning the box - referring to checkboxes on employment applications asking about arrests - does not mean that the criminal records of potential employees could not be looked at or considered by those doing the hiring, be they public or private entities.
- Support expansion of sales tax base, but only if the city tax base fully benefits from the expansion.

Oppose:

- Oppose any legislation that would erode local taxing authority in any way; impose an unfunded mandate, or otherwise be detrimental to the City of Lancaster; this includes legislation that would impose a revenue cap of any type, lower rollback tax rate, and any other measures that would create new obstacles for funding sources.
 - Bills have been introduced to cap the amount of property tax revenue cities can collect each

year in a misguided effort to reduce the property tax burden on homeowners and businesses. Currently, if a Texas city increases property tax collections by more than eight percent over the previous year, voters can petition for an election to rollback the increase. Bills have been introduced to replace that eight percent "rollback rate" with a hard cap of four percent and require mandatory elections on an increase over four percent - all with the false claim that this would provide property tax relief.

- **H.B. 345 (Canales) - Revenue Cap:** would: (1) lower the property tax rollback rate from eight percent to five percent; (2) require the comptroller to annually determine an inflation rate based on the amount computed by determining the percentage change in the consumer price index for the proceeding calendar year as compared to the consumer price index for the calendar year proceeding that calendar year; and (3) provide that if the inflation rate exceeds five percent in a given year, the rollback tax rate shall be calculated by a taxing unit using the lower of the inflation rate or eight percent.
 - **H.B. 44 (Keough) - Appraisal Cap:** would reduce the property tax appraisal cap on homesteads from ten to five percent and apply the new appraisal cap to all real property.
 - **H.B. 376 (Metcalf) - Appraisal Cap:** same as **H.B. 44**, above.
 - **H.B. 167 (Bell) - Appraisal Cap:** same as **H.B. 44**, above.
 - **H.J.R. 17 (Keough) - Appraisal Cap:** same as **H.B. 44**, above.
 - **H.J.R. 26 (Bell) - Appraisal Cap:** same as **H.B. 44**, above.
 - **H.J.R. 33 (Metcalf) - Appraisal Cap:** same as **H.B. 44**, above.
 - **S.B. 2 (Bettencourt) - Revenue Cap:** would (1) lower the property tax rollback rate from eight to four percent, with an exception for taxing unit located in an area declared a disaster area by the governor or president of the United States during the current tax year; (2) require a taxing unit to hold a ratification election on the November uniform election date of the applicable year in order to adopt a tax rate that exceeds the four-percent rollback rate (as opposed to current law, which only requires an election if a petition is received from the citizens); and (3) make numerous calendar changes to the property tax appraisal, collection, and rate-setting process in order to have property tax ratification elections on the November uniform election date.
 - **S.B. 172 (Nichols) - Appraisal Cap:** would (1) reduce the property appraisal cap on homesteads from ten to five percent; (2) authorize a county commissioners court to call an election to increase the homestead appraisal cap for all taxing jurisdictions in the county back to some percentage between six and ten; and (3) prohibit a subsequent election from occurring for ten years after such an election is held.
 - **S.B. 103 (Hall) - Plastic Bags:** would provide that: (1) a business that sells an item to a customer may provide to the customer at the point of sale a bag or other container made from any material; and (2) a city may not enforce an ordinance or regulation that purports to restrict or prohibit a business from, require a business to charge a customer for, or tax or impose penalties on a business for providing to a customer at the point of sale a bag or other container made from any material.
- Oppose any legislation that would expand the Texas Public Utility Commission's authority to include cities.
 - Oppose any legislation that erodes municipal annexation authority.
 - **H.B. 424 (Huberty) - Annexation:** would completely rewrite the Municipal Annexation Act to severely curtail the ability of cities to annex property. Generally, the bill would provide that: (1) a city wholly or partly located in a county with a population of 200 or more unless: (a) the city holds an election in the area that approves the annexation; and (b) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area; (2) a city wholly located in one or more counties each with a population of less than 500,000 that proposes to annex an area in a county with a population of 500,000 or more must meet requirements of (1)(a) and (1)(b), above; and (3) with certain very limited exceptions, beginning September 1, 2017, a city may not enter into a strategic partnership agreement that provides for limited purpose annexation.

- **H.B. 299 (Larson) - Annexation:** Same as **H.B. 424**, above.

Operational Considerations:

Staff will coordinate with similarly situated municipalities to advocate the position of the city related to the legislative priorities.

Legal Considerations:

There are no legal requirements at this time.

Public Information Considerations:

This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Attachments

Resolution

Ban the Box

Public Utility Commission

Revenue Cap

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER ESTABLISHING THE CITY OF LANCASTER 2016 LEGISLATIVE PRIORITIES FOR THE 85th SESSION OF THE TEXAS LEGISLATURE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, beginning January 10, 2017, the legislature will convene in its biannual 140-day session; and

WHEREAS, it is always a challenge for municipalities with limited resources to prevent encroachments on local authority and correct issues with existing statutes; and

WHEREAS, is more important than ever to establish priorities among the items considered so as to maximize the cities impact.

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

SECTION 1. That the City of Lancaster will attempt to find sponsors, provide testimony and actively work on behalf of the selected items. Items in the support category will be actively supported with testimony and receive support letters. The City of Lancaster will work with other similarly situated municipalities to oppose items in the oppose category.

SECTION 2. That the City of Lancaster adopts the following list of prioritized goals:

SECTION 3. That in addition to the specific items listed above, the general principles to be followed are to support legislation which preserves local determination and oppose legislation which reduces local control by municipal government; to fight any attempt to reduce annexation authority; to specifically monitor closely any proposed legislation which would adversely impact city funding sources, especially related to lowering caps on valuation increases, tax increment financing districts, or Type A or Type B (4A or 4B) corporations; and to work with other similarly situated municipalities and with the Texas Municipal League on items of mutual interest.

SECTION 4. That this resolution shall be in full force and effect from and after its passage and approval and it is accordingly so resolved

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December 2016.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

“Ban the box”

The city of Dallas might become Texas' second major city to "ban the box" and require private employers to delay asking applicants about their criminal backgrounds until they have been given a conditional offer of employment. The policy change would bring private employers in line with the city itself, Dallas County, Austin and companies such as Starbucks, Target and Wal-Mart.

The city has delayed asking about criminal backgrounds for all non-sworn city employees since 2007. Dallas County, thanks to a strong push from County Judge Clay Jenkins, started doing the same last year. State Representative Eric Johnson, a Democrat from Dallas, also spearheaded a failed charge to delay background checks during the hiring of state employees during the 2015 legislative session. He intends to pick the fight back up in 2017.

"Many employers use any disclosure [of a criminal record] as an immediate disqualifier for a potential employee," Johnson said last year. "As a result of that type of behavior on the part of employers, an individual who was formerly incarcerated - no matter the reason, no matter what the conviction was for - is never really given an opportunity, and certainly not an opportunity to come in for an interview."

"Banning the box" - referring to checkboxes on employment applications asking about arrests - does not mean that the criminal records of potential employees could not be looked at or considered by those doing the hiring, be they public or private entities. Delaying a background check is delayed until after a decision to hire the applicant has been made will allow someone with a criminal background to win over whoever's doing the hiring without a scarlet letter hanging over his or her head.

Urmit Graham, Dallas County's interim director of human resources, said late last year that delaying asking about criminal records is essential to getting those with records back in the workforce.

"The key is to get those people through the door. Right now, through self-selection, [ex-offenders] automatically say, 'Since they ask these questions, I'm not even going to apply,'" Graham said. "We [at Dallas County] get over 100,000 applications a year. Managers, trying to find the top 20, may see an [application with the box checked] and decide that's not something they want to worry about. Hopefully having these questions at the back end will delay [cutting qualified applicants]."

Austin's law, which is presented as a model in a presentation Dallas city staff is set to give the City Council on Wednesday, only applies to for-profit businesses with more than 15 employees. When enforcement of the ordinance begins in 2017, employers who violate the law will face fines.

After being briefed Wednesday, the council could vote on a background check ordinance as early as this summer.

Cities in the PUC's Crosshairs

The Texas Public Utility Commission is the state agency that regulates private utility providers. Every so often, however, the Commission seeks to expand its authority to include cities.

For example, the Commission sought input on whether it could completely eliminate telecommunications franchise fees in 2009. Of course, it doesn't have the statutory authority to do so. Since that time, only a handful of instances have required intervention to preserve municipal authority.

Fast-forward to this year, and it appears that a number of private utility providers, including telecommunications, water, and electric, are using the Commission to seek to chip away at municipal authority. The League has filed briefs in *five* proceedings in the last six months that seek to usurp municipal authority:

1. **Right-of-Way Fees:** *Public Utilities Commission Docket No. 45280, Complaint of Exenet Network Sys., Inc. against the City of Houston for imposition of fees for use of public right-of-way.* In this proceeding, a certificated telecommunications provider is asking the Commission to allow it to place wireless telecommunications equipment in a city's rights-of-way by right and without paying compensation to the city. The brief in support of the City of Houston was filed on February 17, 2016.
2. **Water Rate Jurisdiction:** *Appeal of Water and Sewer Rates Charged by the Town of Woodloch Nos. 12312 and 20141, PUC Docket No. 42862.* In this proceeding, the Commission asserted jurisdiction over the *in-city* rates of a municipally owned water utility. The League filed comments in support of the City of Woodloch on April 25, 2016, and also filed reply comments on May 5, 2016.
3. **Certificates of Convenience and Necessity:** *Application of the City of Cibolo for Single Certification in an Incorporated Area and to Decertify Portions of Green Valley SUD's Sewer Certificate of Convenience and Necessity in Guadalupe County, PUC Docket No. 45702.* In this proceeding, a special utility district argues that federal debt in connection with its *sewer* certificate of convenience and necessity is enough to prohibit a city from decertifying a portion of the city's *water* CCN under state law. The League filed comments in support of the City of Cibolo on June 14, 2016.
4. **Municipal Subdivision Ordinance/Electric Undergrounding:** *Appeal of CenterPoint Energy Houston Electric, LLC from an Ordinance of the City of League City, Texas and Application for Declaratory Relief, PUC Docket No. 45259.* In this docket, CenterPoint Energy claims that a city may not, through its subdivision ordinance, require a developer to request undergrounded distribution lines pursuant to a city's subdivision ordinance. The League filed a letter in support of League City on June 29, 2016.

5. **Municipal Zoning/PUC Jurisdiction:** *Appeal of Brazos Electric Cooperative, Inc. and Denton County Electric Cooperative, Inc. D/B/A CoServ Electric from an Ordinance of The Colony, Texas, and, in the alternative, Application for a Declaratory Order*, PUC Docket No. 45175. In this docket, electric cooperatives appeal a city's denial of a specific use permit for an electric substation and claim that the Commission has jurisdiction to overturn the city's zoning ordinance. The League filed comments in support of the City of The Colony on July 8, 2016.

Standing alone, each of the Commission proceedings above could have a serious impact on cities. Altogether, they could be devastating. League staff will continue to monitor and participate as necessary.



Revenue Caps on Cities: The \$2.75 Property Tax Cut

Bills have been introduced to cap the amount of property tax revenue cities can collect each year in a misguided effort to reduce the property tax burden on homeowners and businesses. Currently, if a Texas city increases property tax collections by more than eight percent over the previous year, voters can petition for an election to rollback the increase. Bills have been introduced to replace that eight percent “rollback rate” with a hard cap of four percent and require mandatory elections on an increase over four percent – all with the false claim that this would provide property tax relief.

You Call This Tax Relief?

If the four percent cap on city property tax increases had been in effect in 2013, the owner of a homestead in the City of Dallas with an assessed value of \$250,000 would have seen a “cut” in city property taxes of \$33.10 annually or about \$2.75 per month. The tax savings would have been **even less** if the homeowner was disabled or elderly and qualified for additional exemptions.

How about Zero Tax Relief?

According to the state comptroller’s latest survey of property tax rates in 1,002 cities in Texas, 67 percent of cities either **reduced their property taxes** or raised their property taxes by **less than four percent** from 2012 to 2013 (37 percent of all cities actually reduced their property taxes). That means property owners in at least 669 Texas cities would have seen **no reduction in their city property taxes** if the four percent cap had been in effect.

The Impact on City Services Can Be Large

While the savings to individual taxpayers are very small or even non-existent, a four percent cap could hit city services hard. The following chart shows how much a four percent revenue cap would save homeowners in several cities, and what it represents in terms of city services.

City	4% Revenue Cap Savings for \$250,000 Homeowner Yearly	Potential Revenue Loss	Represents What In City Budget?
McKinney	\$29.65	\$1,411,863	7 police officers and 4 fire fighter salaries and benefits
Tyler	\$14.73	\$458,468	Traffic management enhancements, fire station and park improvements
San Juan	\$45.32	\$148,496	Police and fire personnel, equipment and gear, salary funding for 12 lifeguards, and pool repairs
Orange	\$33.83	\$150,672	6 police vehicles
Midland	\$8.51	\$301,896	2 police officer salaries and benefits and maintenance of the city traffic signal system

Cities Are Not the Cause of High Property Taxes

Cities collect just 16 percent of the property taxes levied in Texas. Most of the property taxes paid by Texans (55 percent) go to school districts. According to the comptroller’s report, the total amount of property taxes collected by cities rose by 3.61 percent between 2012 and 2013, while school district tax collections rose by more than twice that rate or 7.72 percent. School property taxes have been rising because the legislature continues to reduce the state’s share of funding for schools which forces districts to get more revenue from property taxes.

**Imposing a revenue cap on cities:
Does not provide meaningful tax relief
Robs cities of the ability to meet local needs
Diverts attention from the real cause of higher property taxes**

To learn more, visit www.tml.org or call 512-231-7400
Legislative direct contact: Shanna Igo 512-750-8718

LANCASTER CITY COUNCIL

City Council Special Meeting

4.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Quality Development

Submitted by: Ed Brady, Economic Development Director

Agenda Caption:

Discuss and consider a resolution ratifying an economic development agreement authorized by Resolution 2015-02-13 Pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and In N Out Burgers, Inc.

Background:

In N Out Burgers, a California corporation, has purchased approximately 20 acres of land in the Houston School Road IH 20 corridor with the intent to construct and occupy an approximately 130,000 square foot food processing, distribution and office facility.

The company estimates approximately \$52,000,000 value added capital investment at their operations in Lancaster and has applied for a real property incentive grant in compliance with the City's incentive policy.

This agreement was previously considered and approved by the Council on February 29, 2015. In N Out Burger, Inc. failed to return the executed agreement due to an unexpected delay in the commencement of the construction of their project. The project construction is now underway.

Operational Considerations:

In N Out Burgers will annually submit receipts for real property tax payments in order to exercise the grant. Within 60 days of verification of payment, the City will remit sixty percent (60%) of the payment to the company for a period of seven (8) years.

Legal Considerations:

The City Attorney has reviewed and approved the resolution and agreement as to form.

Public Information Considerations:

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

Fiscal Impact:

Based on the estimated value added capital investment submitted by the company and in consideration of the (60%) sixty percent real property tax grant for (8) years, the project will represent approximately \$1,115,000 over the (8) eight year period in new revenue to the City.

Options/Alternatives:

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may reject the resolution and agreement.

Recommendation:

Staff recommends approval of Resolution and Agreement

Attachments

Resolution

Exhibit 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING RESOLUTION 2015-02-13 AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT(S) ATTACHED HERETO AS EXHIBIT 1 PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND IN N OUT BURGER, INC. (“IN N OUT”); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, In N Out Burger, Inc. is a leading national hamburger restaurant chain; and

WHEREAS, In N Out Burger, Inc. has purchased approximately twenty (20) acres of real property in Lancaster, Texas and desires to construct and occupy approximately a one hundred thirty thousand (130,000) square foot facility (hereinafter defined as the “Premises”), and construct improvements thereon for a food processing and distribution operation; and

WHEREAS, In N Out Burger’s development of the Premises will provide employment opportunities within the City; and

WHEREAS, the location of In N Out Burger, Inc., Inc. on the Premises will result in a significant capital investment and improvements on the Premises; and

WHEREAS, In N Out Burger, Inc. has advised the City that a contributing factor that would induce the company to construct and occupy the facility would be an agreement by the City to provide an economic development grant to the company; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to In N Out Burger, Inc. in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City desires to authorize the City Manager to enter into an Economic Development Agreement with In N Out Burger, Inc. pursuant to Chapter 380 of the Texas Local Government Code.

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

SECTION 1. That the City Manager is hereby authorized to execute an Economic Development Agreement, which is attached hereto and incorporated herein as Exhibit 1, pursuant to Chapter 380 of the Texas Local Government Code (and any amendments thereto, including any related instruments), on behalf of the City of Lancaster, Texas, with In N Out Burger, Inc. (and its affiliated and related entities).

SECTION 2. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Exhibit “1”

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Economic Development Agreement

This Economic Development Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and In N Out Burger, Inc. a California corporation, (the “Company”), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, the Company has purchased approximately 20 acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit “A”** (the “Property”); and

WHEREAS, the Company intends to construct and occupy an approximately one hundred thirty thousand (130,000) square foot facility and related infrastructure for a food processing and distribution center (the “Project”); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Estate Taxes (hereinafter defined); and

WHEREAS, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to 60 percent (60%) of the Real Property Taxes assessed against the Premises for a given tax year for a period of eight (8) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2018.

“Company” shall mean In N Out Burger, Inc., a California corporation.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

“Effective Date” shall mean the last date of execution hereof.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean seventh (7th) year after the payment of the first Annual Grant.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Premises” shall mean the real property described on Exhibit “A” with or without improvements.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the development of the Premises, by the design, construction and maintenance of new improvements and related infrastructure for an approximately 130,000 square foot food processing and distribution facility and/or secondary office building.

“Real Property” shall mean all real estate ad valorem taxes assessed by the City on the real property, with or without improvements.

“Related Infrastructure” shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issue “Certificate of Occupancy” at completion of project activities.

“Required Use” shall mean Company’s continuous occupancy of the improvements and the Company’s continuous operation of a food processing and distribution center on the Premises.

“Taxable Value” shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and end on the eighth (8th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III

Economic Development Grants

3.1 **Annual Grants.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual Grants to be paid on March 1 of each calendar year, (or the immediately following business day of March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received the Real Estate Taxes assessed against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Premises for tax year 2016 is \$100,000.00 then the amount of the first Annual Grant for the Premises for Tax Year 2016 would be, \$60,000.00 ($\$100,000.00 \times 60\%$), and would be paid on March 1, 2017.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less

than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV

Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own and occupy the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within twelve months (12 months) of the execution date of this agreement.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

Article V

Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

Article VI Miscellaneous

6.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster
Attn: Opal Mauldin Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

In N Out Burger, Inc.
Attn: Carl G. Van Fleet
Executive Vice President Planning
& Development
13502 Hamburger Lane
Baldwin Park, California 91706-5885

6.6 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to lease the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

6.12 **Recitals**. The recitals to this Agreement are incorporated herein.

6.13 **Counterparts**. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 **Survival of Covenants**. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent**. This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

Signature page to follow

EXECUTED in triplicate originals on this 5th day of December, 2016.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

Attest:

By: _____
Sorangel O. Arenas, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this _____ day of _____, 2016.

IN N OUT BURGER, INC.

By: _____
Carl G. Van Fleet, Executive Vice President
Planning & Development

EXHIBIT A

LEGAL DESCRIPTION

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin Robertson , City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____day of _____, 2016.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF _____ §
 §
COUNTY OF _____§

BEFORE ME, the undersigned authority, a Notary Public in and for the State of California, on this day personally appeared Carl G. Van Fleet of In N Out Burger, a California corporation, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____day of _____,
2016.

Notary Public, State of California

My Commission Expires:

LANCASTER CITY COUNCIL

City Council Special Meeting

5.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Quality Development

Submitted by: Ed Brady, Director of Economic Development

Agenda Caption:

Discuss and consider a resolution ratifying an economic development agreement for tangible personal property authorized by Resolution 2015-02-14 by and between the City of Lancaster and In N Out Burgers, Inc.

Background:

In N Out Burgers, a California corporation, has purchased approximately 20 acres of land in the Houston School Road IH 20 corridor within the SouthPointe Park, with the intent to construct and occupy an approximately 130,000 square foot food processing, distribution and office facility.

The company estimates they will maintain approximately \$8,000,000 of Tangible Business Personal Property at their facility in Lancaster and has applied for a tangible business personal property incentive grant in compliance with the City's incentive policy.

This agreement was previously considered and approved by the Council on February 29, 2015. In N Out Burger, Inc. failed to return the executed agreement due to an unexpected delay in the commencement of the construction of their project. The project construction is now underway.

Operational Considerations:

In N Out Burgers will annually submit receipts for tangible personal property tax payments in order to exercise the grant. Within 60 days of verification of payment, the City will remit forty percent (40%) of the payment to the company for a period of eight (8) years.

Legal Considerations:

The City Attorney has reviewed and approved the resolution and agreement as to form.

Public Information Considerations:

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

Fiscal Impact:

Based on the estimated value of the tangible personal property submitted by the company and in consideration of the (40%) forty percent tangible personal property tax grant for (8) years, the project will represent approximately \$350,000 over the (8) eight year period in new revenue to the City.

Options/Alternatives:

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may deny the resolution and agreement.

Recommendation:

Staff recommends approval of the resolution and agreement.

Attachments

Resolution

Exhibit 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING AN ECONOMIC DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND IN N OUT BURGERS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, In N Out Burgers is a leading national hamburger restaurant chain; and

WHEREAS, In N Out Burgers, a national hamburger restaurant chain, desires to construct and occupy an approximately one hundred thirty thousand (130,000) square foot facility on property owned by the company in the City of Lancaster, Texas (hereinafter defined as the "Premises"), for a food processing and distribution center; and

WHEREAS, the City Council has approved Resolution 2015-02-14 which approved a Chapter 380 incentive agreement (hereinafter called "Agreement"); and

WHEREAS, the agreement was executed by the City, however was not executed by In N Out Burgers, Inc.;

WHEREAS, the executed agreement continues to provide an enhancement to the economic development well-being of the City; and

WHEREAS, the City Council desires to ratify such agreement.

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

SECTION 1. That the agreement by and between IN N Out Burgers, Inc. and its affiliates and/or entities and the City of Lancaster, dated February 9, 2015 are hereby ratified and in full force and effect as approved in Resolution 2015-02-14.

SECTION 2. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
§
§ Economic Development Agreement
COUNTY OF DALLAS §

This Economic Development Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and In N Our Burger, Inc., a California corporation, (the “Company”), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, the Company has purchased approximately twenty acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit “A”** (the “Property”); and

WHEREAS, the Company intends construct and occupy an approximately one hundred thirty thousand square foot (130,000) facility and related infrastructure for a food processing and distribution operation (the “Project”); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the costs of acquisition, installation and maintenance of certain Tangible Personal Property (hereinafter defined); and

WHEREAS, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to forty percent (40%) of taxes assessed and paid against the Tangible Business Personal Property for a given tax year for a period of eight (8) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a certificate of occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2018.

“Company” shall mean In N Out Burger, Inc., a California corporation.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

“Effective Date” shall mean the last date of execution hereof.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or

in-action (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean the seventh (7th) year after the payment of the first Annual Grant.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Premises” shall mean the real property described on Exhibit “A.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the construction and occupancy of an approximate one hundred thirty thousand (130,000) square foot facility and related infrastructure for the operation of a food processing and distribution center.

“Required Use” shall mean Company’s continuous occupancy of the Improvements and the Company’s continuous operation of a food processing and distribution center on the Premises.

“Tangible Personal Property” shall have the same meaning assigned by Tax Code, Section 1.04 and shall mean all tangible personal property, equipment, fixtures, and machinery, excluding inventory and supplies, owned or leased by the Company and located on the Premises at the Project on January 1 of each applicable tax year, as rendered to the Dallas Central Appraisal District by Company on an annual basis.

“Taxable Value” shall mean the assessed value of Tangible Business Personal Property as certified by the appraisal district, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and end on the third (8th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III

Economic Development Grants

3.1 **Annual Grants.** Subject to the Company’s continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual

Grants to be paid on March 1 of each calendar year, (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date of the next two consecutive years thereafter, provided the City has timely received the ad valorem taxes assessed against the Tangible Personal Property in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such ad valorem taxes with constructive respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the ad valorem taxes assessed against the Tangible Personal Property for tax year 2016 is \$10,000.00 then the amount of the first Annual Grant for the Tangible Personal Property for Tax Year 2014 would be, \$4,000.00 (\$10,000.00 x 40%), and would be paid on March 1, 2017.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Tangible Personal Property, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Tangible Personal Property or the amount of ad valorem taxes assessed and due for the Tangible Personal Property, or portion thereof, after an Annual Grant has been paid for such Tangible Personal Property for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties

shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own and occupy the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within twelve months (12 months) from the execution date of this agreement.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

4.5 The Company shall not be default of any of its city taxes or exemptions.

Article V Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

Article VI Miscellaneous

6.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster
Attn: Opal Mauldin-Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

In N Out Burger, Inc.
Attn: Carl G. Van Fleet
Executive Vice President Planning
& Development
13502 Hamburger Lane
Baldwin Park, California 91706-5885

6.6 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to own the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

6.12 **Recitals.** The recitals to this Agreement are incorporated herein.

6.13 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

Signature page to follow

EXECUTED in triplicate originals on this 19th day of December, 2016.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

Attest:

By: _____
Sorangel O. Arenas, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this _____ day of _____, 2016.

IN N OUT BURGER, INC.

By: _____
Carl G. Van Fleet, Executive Vice President
Planning & Development

EXHIBIT A

LEGAL DESCRIPTION

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin Robertson, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____day of _____, 2016.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of California, on this day personally appeared Carl G. Van Fleet of In N Out Burger, a California corporation, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____ day of _____, 2016.

Notary Public, State of California

My Commission Expires:

LANCASTER CITY COUNCIL

City Council Special Meeting

6.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Quality Development

Submitted by: Ed Brady, Director of Economic Development

Agenda Caption:

Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between In N Out Burgers, Inc. and the Lancaster Economic Development Corporation.

Background:

The board of directors of the Lancaster Economic Development Corporation convened on November 8, 2016, to consider a grant applied for by In N Out Burgers in an amount equal to a twenty five percent (25%) refund of City permit fees associated with the construction of their approximately 130,000 square foot food processing, distribution and office facility in Lancaster. The grant is not to exceed \$30,000.

The board of directors unanimously approved the grant and incentive agreement.

Operational Considerations:

In N Out Burgers will submit receipts for City permit fees to LEDC upon the company receiving a City issued Certificate of Occupancy for their facility.

Legal Considerations:

The City Attorney has reviewed and approved the resolution and agreement as to form.

Public Information Considerations:

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

Fiscal Impact:

The grant total not to exceed \$30,000 is within the LEDC incentive fund.

Options/Alternatives:

1. The City Council may approve the resolution as presented.
2. The City Council may reject the resolution.

Recommendation:

Staff recommends approval of resolution ratifying the actions of LEDC.

Attachments

Resolution

Exhibit A

RESOLUTION NO.

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN INCENTIVE GRANT BY AND BETWEEN IN N OUT BURGER, INC. AND THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING LEDC TO ENTER INTO A FORMAL AGREEMENT; PROVIDING AND EFFECTIVE DATE.

WHEREAS, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2016-06 which was passed and approved on the 8th of November, 2016 by the Board of Directors of the Lancaster Economic Development Corporation (LEDC), offering an incentive grant to In N Out Burger, Inc.; and

WHEREAS, In N Out Burger has purchased approximately twenty (20) acres of real property in the City of Lancaster with the intent to construct and occupy an approximately one hundred thirty thousand (130,000) square foot food processing and distribution facility and create 65 new jobs; and

WHEREAS, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

WHEREAS, the City may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code, which authorizes loans and grants of a city's general funds pursuant to a "program" to stimulate business and commercial activity in the municipality; and

WHEREAS, pursuant to Texas Local Government Code, Chapter 501, et seq, as amended, LEDC, as a non-profit corporation, in accordance with the Act, shall promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities, through the use of a sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, pursuant to the City's Charter, the Act and applicable Texas Statutes, the City has the authority to enter into agreements as the City considers necessary or convenient to implement economic development in Lancaster, Texas; and

WHEREAS, pursuant to the Act and the bylaws of the Lancaster Economic Development Corporation, LEDC has authority to enter into agreements as LEDC considers necessary or convenient to implement economic development in Lancaster, Texas; and

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

SECTION 1. The City Council ratifies the November 8, 2016 actions of the Board of Directors of the LEDC approving an incentive grant to In N Out Burger, Inc.

SECTION 2. The City Council authorizes LEDC to enter into an incentive agreement with In N Out Burger, Inc., which is attached hereto and incorporated herein as Exhibit A.

SECTION 3. This resolution shall be effective from and after its passage as provided by law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

RESOLUTION NO. 2016-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC), IN SUPPORT OF A GRANT TO IN N OUT BURGER, INC. FROM FUNDS COLLECTED FROM ¼ OF 1 PERCENT ADDITIONAL SALES AND USE TAX FOR THE PROMOTION AND DEVELOPMENT OF NEW AND EXPANDED BUSINESS ENTERPRISES, AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lancaster Economic Development Corporation recognizes how important business and community development is to the vitality and growth of Lancaster; and

WHEREAS, In N Out Burger, Inc. has selected Lancaster as the location for their newest regional processing and distribution facility; and

WHEREAS, In N Out Burger, Inc., Inc. has requested a grant for reimbursement of 25% of permit fees not to exceed \$30,000 associated with the construction and finish out of an approximately 130,000 square foot food processing and distribution facility located on property owned by In N Out Burger, Inc. in Lancaster, Texas ; and

WHEREAS, the Board of Directors of LEDC are responsible for the review and evaluation of Type A incentive applications; and

WHEREAS, the board of LEDC is also responsible for recommending Type A Incentive Grants to the Lancaster City Council for review and approval;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION:

SECTION 1. That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution and Incentive Agreement which is attached hereto.

SECTION 2. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and adopted on this 8th day of November, 2016.

APPROVED: 
Vanessa Sheffield, President

ATTEST: 
Mayra Ortiz, Executive Secretary

APPROVED AS TO FORM: 
Robert E. Hagar, City Attorney

INCENTIVE AGREEMENT

This Incentive Agreement (the "Agreement") is entered into by and between the Lancaster Economic Development Corporation, a non-profit corporation chartered by the State of Texas, acting by and through its Board of Directors (hereinafter referred to as the "LEDC") and In N Out Burger, Inc., a State of California corporation, licensed to do business in Texas. (hereinafter referred to as "the Company"), acting by and through its authorized officer, Carl G. Van Fleet, hereinafter referred to as ("the Company").

W I T N E S S E T H :

WHEREAS, the Lancaster Economic Development Corporation was established to promote enhanced business opportunities within the corporate limits of the City of Lancaster, Texas; and

WHEREAS, the LEDC recognizes the need to offer business incentives to develop real property within the City of Lancaster; and

WHEREAS, in order to maintain and enhance the economic and employment base within the City of Lancaster, it is in the best interests of the LEDC to enter into this Agreement in accordance with the terms provided herein; and

WHEREAS, the Company wishes to expand its operations as a viable economic project within the City thereby creating new business investment and new jobs in the City; and

WHEREAS, the Board of Directors of LEDC finds that the intended scope of the Project, hereinafter defined, is to construct and occupy approximately 130,000 square feet of manufacturing, office and distribution space on twenty acres in Lancaster owned by the company.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of employment, the attraction of major investment within the City which contributes to the economic development of Lancaster, and to the enhancement of the tax base for the City, the parties agree as follows:

I. EFFECTIVE DATE; TERM OF AGREEMENT

This Agreement shall become effective upon the City Council of the City of Lancaster authorizing the LEDC to enter into an agreement with the Company and on the last date of execution of this Agreement by the LEDC and the Company, and shall continue for a period of one year (12 months) following the issuance of a Certificate of Occupancy for the Facility.

II. DEFINITIONS

Whenever used in this Agreement, the following term shall have the meaning ascribed to it:

"City" shall mean the City of Lancaster, Texas

"Company" shall mean In N Out Burger, Inc., a California corporation.

"Improvements" shall mean the construction and finish out work necessary to commence company operations in their approximately 130,000 square foot facility located on Company land described in Exhibit A, Lancaster, Texas.

"Premises" shall mean the property described in **Exhibit A**, attached hereto and made a part hereof for all purposes, including any improvements made thereto.

"Project" shall mean the improvements, related infrastructure and occupancy activities associated with the location, construction, finish out and maintenance of the Company's approximately 130,000 square foot facility and operations in Lancaster, Texas.

"Related Infrastructure" shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issue "Certificate of Occupancy" at completion of project activities.

III. PROVISIONS RELATING TO INCENTIVE AGREEMENT

In N Out Burger, Inc.'s Obligations:

- A. The Company will begin construction within twelve months (12 months) from the date of execution of this agreement and occupy approximately 130,000 square feet of space in the building located on approximately twenty acres owned by the Company in Lancaster, Texas as described in Exhibit A.
- B. The Premises and improvements constructed thereon at all times shall be used in a manner that is consistent with the City of Lancaster's Comprehensive Zoning Ordinance, as amended and other applicable ordinances.
- C. The Company agrees to provide any and all documentation necessary to confirm data required to implement provisions of the incentive grant.

LEDC's Obligations:

- A. LEDC agrees to pay a grant to the Company for reimbursement of 25% of permit fees paid by the Company directly to the City of Lancaster not to exceed a grand total of \$30,000 associated with the construction and preparation of their facility for

their business operations. The Company will pay the City of Lancaster the full cost of permit fees associated with the construction and finish out of their building and present to LEDC copies of actual paid receipts for said fees. LEDC will issue a reimbursement payment of twenty five percent (25%) of those receipts submitted not to exceed a grand total of \$30,000 within 30 days of submittal after company receives a final Certificate of Occupancy from the City.

- B. All grant of funds shall be made from available sales tax proceeds from the LEDC and, any grant made herein, is not pledged against future sales tax proceeds or the full faith and credit of LEDC or the City of Lancaster.

IV.

DEFAULT; RECAPTURE OF GRANT FUNDS

- A. In the event the Company (i) fails to commence project and improvements on property located in Lancaster, Texas within one year of execution of this agreement (ii) fails to complete the Project in accordance with this Agreement; or (iii) materially breaches any of the terms or conditions of this Agreement, then the Company, after the expiration of the notice and cure periods described in Paragraph IV (B) below, shall be in default of this Agreement. As liquidated damages in the event of such non-cured default, INOB, shall refund to LEDC all grants previously paid by LEDC. The parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The parties further agree that the recapture of grant funds due LEDC as a result of the Company, default under this Agreement, shall be recoverable against the Company, its successors and assigns and shall continue as a lien on the Premises.
- B. Upon breach by the Company, of any obligations under this Agreement, the LEDC shall notify the Company, in writing. The Company shall have ninety (90) days from receipt of the notice in which to cure any such default.
- C. If the Company fails to cure the default within the time provided as specified in Paragraph IV(B) above, or, as such time period may be extended by written agreement of the parties, then the LEDC at its sole option shall have the right to demand repayment of the incentives it has made hereunder in accordance with this section IV.
- D. Upon the LEDC's election under the preceding paragraph, all incentives shall be repaid as set forth in paragraph IV(A), and shall become due and payable ninety (90) days after notice to the Company of a non-cured default. The LEDC shall have all remedies provided by law for the collection of the grant funds. The LEDC at its sole discretion has the option to provide a repayment schedule. The obligation of the Company, to repay the grant funds to LEDC in the event of default shall survive the termination of this Agreement.

**V.
SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may be assigned only with the consent of the LEDC.

**VI.
NOTICES**

All notices required by this Agreement shall be addressed to the following, or other such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

In N Out Burger, Inc. to:

Carl G. Van Fleet
Executive Vice President Planning & Development
In N Out Burger, Inc.
13502 Hamburger Lane
Baldwin Park, California 91706-5885

LEDC to:

Ed Brady
Lancaster Economic Development Corporation
P.O. Box 940
Lancaster, Texas 75146

**VII.
LEDC AUTHORIZATION**

This Agreement was authorized by resolution of the LEDC, approved by its Board of Directors, authorizing its officer to execute this Agreement on behalf of the LEDC.

**VIII.
SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

**IX.
APPLICABLE LAW**

THIS AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. Venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

**X.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**XI.
ENTIRE AGREEMENT**

This Agreement embodies the complete agreement between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of the Company who acquire any right, title, or interest in or to the Premises, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement. While there is no obligation for the LEDC to fund future expansion, nothing herein precludes the Company from requesting further assistance on future projects.

**XII.
RECORDATION OF AGREEMENT**

A certified copy of this Agreement may be recorded in the Deed Records of Dallas County, Texas.

**XIII.
INCORPORATION OF RECITALS**

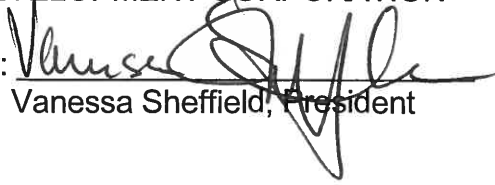
The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein a part of this Agreement.

**XIV.
EXHIBITS**

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

EXECUTED in triplicate originals this 8th day of November, 2016.

LANCASTER ECONOMIC
DEVELOPMENT CORPORATION

By: 
Vanessa Sheffield, President

IN N OUT BURGER, INC.

By: _____
Carl G. Van Fleet, Executive Vice
President Planning & Development

EXHIBIT A

LEGAL DESCRIPTION

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Vanessa Sheffield, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

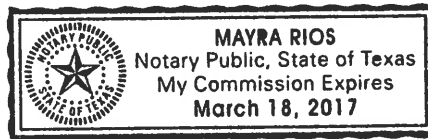
GIVEN UNDER MY HAND SEAL OF OFFICE this the 8th day of November, 2016.



Notary Public, State of Texas

My Commission Expires:

03-18-2017



ACKNOWLEDGMENT

STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of California, on this day personally appeared _____ of In N Out Burger, Inc., a State of California corporation, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____ day of _____, 2016.

Notary Public, State of California

My Commission Expires:

LANCASTER CITY COUNCIL

City Council Special Meeting

7.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community

Submitted by: Alton Dixon, Purchasing Agent

Agenda Caption:

Discuss and consider a resolution approving the first amendment to the municipal maintenance agreement between the City of Lancaster and the Texas Department of Transportation, for additional mowing and litter control maintenance.

Background:

In May 2015, as a result of correspondence with the Texas Department of Transportation (TxDOT) area offices, staff met with the Area Engineer to address ongoing concerns related to litter, debris and mowing along Interstates 35E and 20. Council received a presentation in June 2015. In December 2015, Council approved a resolution authorizing a landscape maintenance agreement with TxDOT for the landscaping at Houston School Road and Interstate 20 (installed by the City of Dallas). The state will only pick up litter and mow the rights-of-way along Interstates 35E and 20 three cycles per year in May, August and November. We continue to experience litter accumulation and growth of grass and weeds in the area that affects the cleanliness of our community. At Council request we explored increased clean-up however, to do so requires the City to amend our Municipal Maintenance Agreement. The delay on the amendment was a result of revisions to the services and agreements being received from TxDOT.

Operational Considerations:

The purpose of this request is for City Council to approve the First Amendment to the Municipal Maintenance Agreement, which will allow the city to perform directly or via third party contract more frequent mowing and litter removal.

Legal Considerations:

The first Amendment has been reviewed and approved by the City Attorney.

Public Information Considerations:

This resolution is being considered at a regular meeting of the City Council, in accordance with the Texas Open Meetings Act.

Fiscal Impact:

The state will reimburse the City for mowing and cleaning up litter on certain roads for a maximum of 3 mowing cycles per year and up to 12 litter cycles per year. The rate of reimbursement shall be based on the average 2016 mowing and litter pick up costs for Dallas County. The average cost was \$36.00/acre for mowing and \$14.44/acre for litter clean up. There is approximately 72 acres of TxDOT right-of-way within the City of Lancaster.

Options/Alternatives:

1. Council may approve the resolution as presented.
2. Council may deny the resolution.

Recommendation:

Staff recommends approval of the resolution as presented.

Attachments

Resolution

Exhibit 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE FIRST AMENDMENT TO THE MUNICIPAL MAINTENANCE AGREEMENT BETWEEN THE CITY OF LANCASTER AND THE TEXAS DEPARTMENT OF TRANSPORTATION, FOR ADDITIONAL MOWING AND LITTER CONTROL MAINTENANCE ALONG SPECIFIC STATE ROUTES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster and the Texas Department of Transportation have previously entered into an agreement for the Texas Department of Transportation to provide maintenance of State routes within the City; and

WHEREAS, the City of Lancaster finds it in the best interest to approve the First Amendment to the Municipal Maintenance Agreement for the additional mowing and litter control maintenance; and

WHEREAS, the City desires to perform additional mowing and litter control maintenance on the State routes specified in the agreement; and

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

SECTION 1. That the City Council hereby approves the First Amendment to the Municipal Maintenance Agreement, attached hereto and incorporated herein as Exhibit "1", and authorizes the City Manager to execute the same on behalf of the City.

SECTION 2. That any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 3. That should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 4. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



Texas Department of Transportation

4777 E. HWY 80, MESQUITE, TEXAS 75150 | WWW.TXDOT.GOV

Exhibit "1"

RECEIVED

NOV 03 2016

October 27, 2016

Amendment #1
Municipal Maintenance Agreement
Mowing and Litter Pick Up
City of Lancaster

Opal Mauldin-Robertson
City Manager
City of Lancaster
211 N. Henry Street
Lancaster, TX 75146

Dear Ms. Mauldin-Robertson:

Please find attached, two (2) *Amendments #1* to the original *Municipal Maintenance Agreement* for reimbursement for additional mowing and litter pick up within the boundaries in the amendment. If all is satisfactory, please obtain authorized signatures on both originals and return to me for further processing. A fully executed original will be returned to you for your files and use.

Feel free to contact Angela Green at 214-320-4432, if needed.

Sincerely,

Andrew R. Oberlander, P.E.
District Transportation Operations Engineer

Attachment

STATE OF TEXAS §

COUNTY OF TRAVIS §

AMENDMENT #1 TO MUNICIPAL MAINTENANCE AGREEMENT

WHEREAS, on the 12th day of August 1994, the Texas Department of Transportation, the "State", and the City of Lancaster, the "City" entered into a Municipal Maintenance Agreement intended to cover and provide for State participation in the maintenance of state routes within the City; and

WHEREAS, the State, under the aforementioned Agreement, provides mowing and litter clean up maintenance of approximately 58 acres on certain state routes within the City, including IH20 and IH35; and

WHEREAS, the State, conducts this mowing and litter control maintenance through its mowing and litter control contractors; and

WHEREAS, the City desires to perform additional mowing and litter control maintenance on the aforementioned state routes; and

WHEREAS, the City and the State agree to amend the existing Municipal Maintenance Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, the City and State do mutually agree to the amendment as follows:

State's Responsibilities (Controlled Access)

2. Reimburse the City for mowing and cleaning up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist, and between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas. Reimbursement shall be limited to 3 mowing cycles per year (in approximately May, August, and November), and up to 12 litter cycles per year (on a monthly basis). The rate of reimbursement shall be based on the average 2016 mowing and litter pick up costs for Dallas County. The average cost for each cycle was \$36.00/acre for mowing and \$14.44/acre for litter clean up. Reimbursement may be further limited if the State adopts a statewide policy reducing the number of mowing cycles to less than three per year or the number of litter cycles to less than 12 per year.

If there is a State policy change to further reduce the State's mowing or litter cycles, the State shall notify the City, in writing, within sixty (60) days of this change. If the State fails to notify the City as required under this paragraph, the State shall be responsible for payments to the City in accordance with the previously agreed upon reimbursement schedule.

City's Responsibilities (Controlled Access)

5. Mow and clean up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist, and between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas for a minimum period of five (5) years.
6. Submit invoices and cancelled checks for mowing and litter clean up cycles at intervals as established above.

The City agrees that for mowing and litter clean up, if performed by employees of the City, the City shall show proof of self-insurance. If mowing and/or litter clean-up is performed by a contractor(s) selected by the City through its selection process; the City shall require the contractor(s) to have in place, insurance as evidenced by the State's Certificate of Insurance form. The city will also require any contractor(s) to agree to indemnify and save harmless the state from all claims and liability due the contractor(s) materials or activities of itself, its agent, or employees, performed under the agreement with the city that are caused or may result from error, omission, or negligent act. Prior to any mowing or litter clean up by the City, such evidence of self-insurance or certificate of insurance shall be provided to the State.

Termination

This Amendment is expressly made subject to the rights granted to TxDOT to terminate this Amendment without cause upon notice and to the rights granted to The City to terminate this Amendment without cause upon notice after five (5) years and upon the exercise of any such right by either party, this Amendment will terminate. TxDOT or the City may terminate this Amendment upon notice at any time for a violation of the terms of this Amendment. The termination of this Amendment does not affect any other provisions of the existing Municipal Maintenance Agreement between the parties. If the City has entered into a contract with a third party to perform any services under this Amendment, this Amendment will continue in effect until the current term of the contract has expired.

In all other respects, the Agreement shall remain in force and effect without change.

IN TESTIMONY WHEREOF, the parties have hereto have caused this amendment to be executed in duplicate. The Amendment becomes effective when last executed.

THE CITY OF LANCASTER

Opal Mauldin-Robertson
City Manager

By: _____
City Manager

Date: _____

APPROVED AS TO FORM:
Robert E. Hager
City Attorney

By: _____
City Attorney

Date: _____

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

APPROVED:

By: _____
James K. Selman, P.E.
Dallas District Engineer
Texas Department of Transportation

Date: _____

EXHIBIT "A"

NON CONTROLLED ACCESS HIGHWAY

I. STATE MAINTAINED

- A. STATE HIGHWAY 342: From north city limit to approximately .3 miles south of Pecan Street (base, surface and bridge classification structures only).
- B. STATE HIGHWAY 342: From approximately .3 miles south of Pecan Street to 105' north of the centerline of the railroad structure (base, surface, assist in sweeping, mowing, cleaning litter and in maintenance of roadway ditches).
- C. STATE HIGHWAY 342: From 105' north of the centerline of the railroad Structure to north end of Ten Mile Creek structure (maintain base, surface and bridge classification structures only).
- D. STATE HIGHWAY 342: From north end of Ten Mile Creek structure to south city limit (base, surface, assist in mowing, cleaning litter, sweeping, and in maintenance of roadway ditches).

II. CITY MAINTAINED

None

EXHIBIT "B"

CONTROLLED ACCESS HIGHWAY

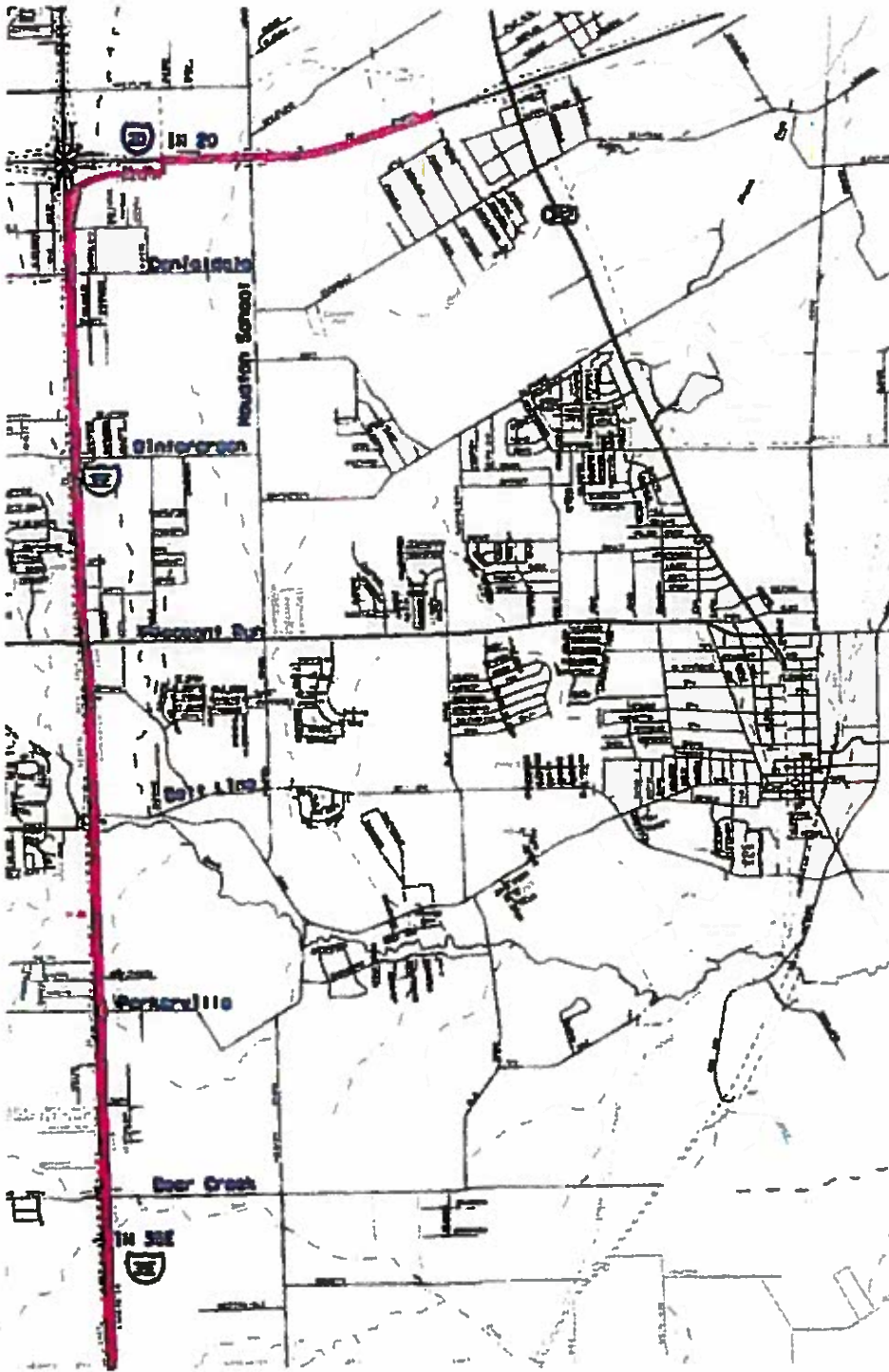
I. STATE MAINTAINED

- A. INTERSTATE HIGHWAY 20: From west city limit to east city limit
- B. INTERSTATE HIGHWAY 35E: From south city limit to north city limit



II. CITY MAINTAINED

- A. INTERSTATE HIGHWAY 20: Mowing and Litter from west city limit to east city limit.
- B. INTERSTATE HIGHWAY 35E Mowing and Litter from south city limit to north city limit.

EXHIBIT "B"
CONTROLLED ACCESS HIGHWAYS



LEGEND

-  **STATE MAINTAINED**
-  **CITY MAINTAINED - LITTER AND MOWING ONLY**

STATE OF TEXAS §

COUNTY OF TRAVIS §

AMENDMENT #1 TO MUNICIPAL MAINTENANCE AGREEMENT

WHEREAS, on the 12th day of August 1994, the Texas Department of Transportation, the "State", and the City of Lancaster, the "City" entered into a Municipal Maintenance Agreement intended to cover and provide for State participation in the maintenance of state routes within the City; and

WHEREAS, the State, under the aforementioned Agreement, provides mowing and litter clean up maintenance of approximately 58 acres on certain state routes within the City, including IH20 and IH35; and

WHEREAS, the State, conducts this mowing and litter control maintenance through its mowing and litter control contractors; and

WHEREAS, the City desires to perform additional mowing and litter control maintenance on the aforementioned state routes; and

WHEREAS, the City and the State agree to amend the existing Municipal Maintenance Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, the City and State do mutually agree to the amendment as follows:

State's Responsibilities (Controlled Access)

2. Reimburse the City for mowing and cleaning up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist, and between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas. Reimbursement shall be limited to 3 mowing cycles per year (in approximately May, August, and November), and up to 12 litter cycles per year (on a monthly basis). The rate of reimbursement shall be based on the average 2016 mowing and litter pick up costs for Dallas County. The average cost for each cycle was \$36.00/acre for mowing and \$14.44/acre for litter clean up. Reimbursement may be further limited if the State adopts a statewide policy reducing the number of mowing cycles to less than three per year or the number of litter cycles to less than 12 per year.

If there is a State policy change to further reduce the State's mowing or litter cycles, the State shall notify the City, in writing, within sixty (60) days of this change. If the State fails to notify the City as required under this paragraph, the State shall be responsible for payments to the City in accordance with the previously agreed upon reimbursement schedule.

City's Responsibilities (Controlled Access)

5. Mow and clean up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist, and between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas for a minimum period of five (5) years.
6. Submit invoices and cancelled checks for mowing and litter clean up cycles at intervals as established above.

The City agrees that for mowing and litter clean up, if performed by employees of the City, the City shall show proof of self-insurance. If mowing and/or litter clean-up is performed by a contractor(s) selected by the City through its selection process; the City shall require the contractor(s) to have in place, insurance as evidenced by the State's Certificate of Insurance form. The city will also require any contractor(s) to agree to indemnify and save harmless the state from all claims and liability due the contractor(s) materials or activities of itself, its agent, or employees, performed under the agreement with the city that are caused or may result from error, omission, or negligent act. Prior to any mowing or litter clean up by the City, such evidence of self-insurance or certificate of insurance shall be provided to the State.

Termination

This Amendment is expressly made subject to the rights granted to TxDOT to terminate this Amendment without cause upon notice and to the rights granted to The City to terminate this Amendment without cause upon notice after five (5) years and upon the exercise of any such right by either party, this Amendment will terminate. TxDOT or the City may terminate this Amendment upon notice at any time for a violation of the terms of this Amendment. The termination of this Amendment does not affect any other provisions of the existing Municipal Maintenance Agreement between the parties. If the City has entered into a contract with a third party to perform any services under this Amendment, this Amendment will continue in effect until the current term of the contract has expired.

In all other respects, the Agreement shall remain in force and effect without change.

IN TESTIMONY WHEREOF, the parties have hereto have caused this amendment to be executed in duplicate. The Amendment becomes effective when last executed. .

THE CITY OF LANCASTER

Opal Mauldin-Robertson
City Manager

By: _____
City Manager

Date: _____

APPROVED AS TO FORM:
Robert E. Hager
City Attorney

By: _____
City Attorney

Date: _____

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

APPROVED:

By: _____
James K. Selman, P.E.
Dallas District Engineer
Texas Department of Transportation

Date: _____

EXHIBIT "A"

NON CONTROLLED ACCESS HIGHWAY

I. STATE MAINTAINED

- A. STATE HIGHWAY 342: From north city limit to approximately .3 miles south of Pecan Street (base, surface and bridge classification structures only).
- B. STATE HIGHWAY 342: From approximately .3 miles south of Pecan Street to 105' north of the centerline of the railroad structure (base, surface, assist in sweeping, mowing, cleaning litter and in maintenance of roadway ditches).
- C. STATE HIGHWAY 342: From 105' north of the centerline of the railroad Structure to north end of Ten Mile Creek structure (maintain base, surface and bridge classification structures only).
- D. STATE HIGHWAY 342: From north end of Ten Mile Creek structure to south city limit (base, surface, assist in mowing, cleaning litter, sweeping, and in maintenance of roadway ditches).

II. CITY MAINTAINED

None

EXHIBIT "B"

CONTROLLED ACCESS HIGHWAY

I. STATE MAINTAINED

A. INTERSTATE HIGHWAY 20: From west city limit to east city limit

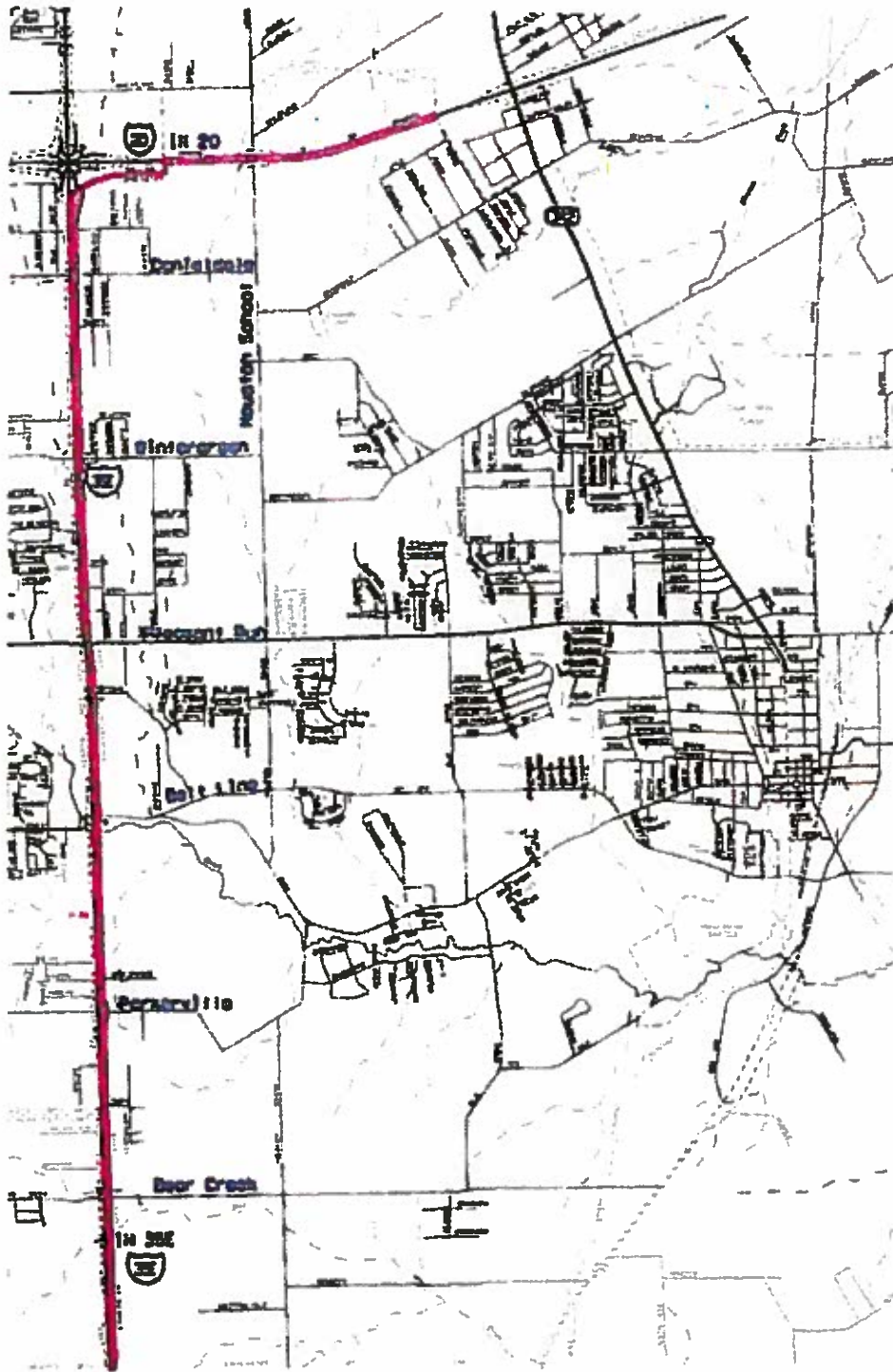
B. INTERSTATE HIGHWAY 35E: From south city limit to north city limit

II. CITY MAINTAINED

A. INTERSTATE HIGHWAY 20: Mowing and Litter from west city limit to east city limit.

B. INTERSTATE HIGHWAY 35E Mowing and Litter from south city limit to north city limit.

EXHIBIT "B"
CONTROLLED ACCESS HIGHWAYS



LEGEND

- STATE MAINTAINED
- CITY MAINTAINED - LITTER AND MOWING ONLY

LANCASTER CITY COUNCIL

City Council Special Meeting

8.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda.

Goal(s): Healthy, Safe & Vibrant Community
Quality Development
Civic Engagement

Submitted by: Rona Stringfellow, Assistant City Manager

Agenda Caption:

Discuss and consider a resolution approving the Millbrook East Public Improvement District (PID) Board Appointments.

Background:

At the April 28, 2014 regular meeting, City Council adopted a Public Improvement District (PID) policy establishing a uniform policy for all PID Advisory Boards. As part of the adoption of the policy was a provision for all of the Board appointments to be confirmed by the governing body.

Operational Considerations:

The City Manager's office, Community Relations Division is responsible for the implementation of PIDs. As prescribed by Chapter 372 of the Texas Local Government Code and the PID policy, the Lancaster City Council will confirm all PID Advisory board elections following the policy adoption. Each year during PID service plan consideration, the PID Advisory Board confirmations will be included in all future action.

On October 25, 2016, the Millbrook East PID Board held the annual meeting and elected the following members to the Board.

Evelyn Dubois
Cynthia Adams
Gloria Freeman
Andre Jones
LaShonjia Harris

Legal Considerations:

The City Attorney has reviewed and approved the resolution as to form.

Public Information Considerations:

This item is considered at a meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives:

1. City Council may approve the resolution as presented.
2. City Council may deny the resolution.

Recommendation:

Staff recommends approval of the Millbrook East PID Board Members.

Attachments

Resolution

Exhibit A

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING THE MILLBROOK EAST PUBLIC IMPROVEMENT DISTRICT BOARD APPOINTMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster, Texas has previously adopted a Public Improvement District Policy; and

WHEREAS, Public Improvement Districts support Lancaster neighborhoods and seeks to strengthen and connect neighborhoods; and

WHEREAS, the City Council has determined that it is in the best interest of the City to provide a consistent process of implementing Public Improvement Districts; and

WHEREAS, the City Council desires to support the process of policy implementation for the purposes of uniformity amongst all City boards and commissions.

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

SECTION 1. That the following appointment of the Millbrook East Public Improvement District Board is attached hereto as Exhibit "A".

SECTION 2. That should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 3. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

PUBLIC IMPROVEMENT DISTRICT (PID)
MILLBROOK EAST BOARD MEMBERS

FY 2016-2017

MILLBROOK EAST PID

Evelyn Dubois

Cynthia Adams

Gloria Freeman

Andre Jones

LaSonjia Harris

LANCASTER CITY COUNCIL

City Council Special Meeting

9.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Professional & Committed City Workforce

Submitted by: Dori Lee, Director of Human Resources

Agenda Caption:

Consider confirmation of Civil Service Commission appointment as designated by the City Manager.

Background:

Our Police Officers and Firefighters serve under the State Civil Service provisions. State law requires the City to have a three-member Civil Service Commission. It also requires that the City Manager make the appointments to the Commission with confirmation by City Council.

There are currently no vacancies on the Civil Service Commission. Commission member Audley Logan has a term that expires in 2016. He has submitted his application seeking to be re-appointed to the Civil Service Commission. There are no other terms that expire in 2016.

The City Manager respectfully submits the following name for appointment to the Civil Service Commission:

Re-Appointment of Audley Logan, current term expires 2016

Current members include:

Lafayette Miles, term expires 2017
Keith Whitley, term expires 2018

Operational Considerations:

State law requires that the City maintain a Civil Service Commission. With only three members on the Commission, it is important that all three positions be filled in order for the Commission to conduct its required business.

Public Information Considerations:

This item is being considered at a meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives:

1. Confirm the City Manager's recommendation.
2. Reject the City Manager's recommendation and request Manager to solicit additional applications.

Recommendation:

The City Manager is asking for favorable consideration from City Council by confirming the appointment.

LANCASTER CITY COUNCIL

City Council Special Meeting

10.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Civic Engagement

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Discuss and consider annual appointments to City of Lancaster boards and commissions.

Background:

For board and commission appointments, recruiting efforts for applications were made through various sources including:

- Fall Issue - *Lancaster Connection*
- Lancaster Live – weekly email for 3 weeks
- Invitation letter to 2015 graduates of the Civic Leadership Academy
- Invitation letter to 2016 graduates of the Civic Leadership Academy
- Invitation letter to representatives for Homeowners Associations and PID
- City of Lancaster website
- Social media: Facebook and Twitter
- Marquee signs

A total of twenty-one applications were received. On December 8, 2016, City Council conducted interviews in preparation for appointments.

An appointment worksheet is attached to facilitate nominations to fill vacancies. The worksheet outlines all vacancies. Appointments may be made for:

Property Standards and Appeals Board
Parks and Recreation Advisory Board / Lancaster Recreation Dev. Corp.
Library Advisory Board
Animal Shelter Advisory Committee
Historic landmark Preservation Committee
Museum Advisory Board

Operational Considerations:

Vacancies may be filled through any combination of reappointment of existing members or appointment of new applicants and alternates. Appointments for regular members are for a two-year term unless filling an unexpired term. Alternates are appointed for a one-year term.

Animal Shelter Advisory Board

Please note that there are state requirements for appointment to the Animal Shelter Advisory Board. Under Section 823.005 of the Texas Health and Safety Code, a municipality in which an animal shelter is located is required to appoint an advisory committee to assist in complying with state requirements.

Under the state code, the advisory committee must be composed of at least:

- one licensed veterinarian
- one municipal officer
- one person whose duties include the daily operation of animal shelter
- one representative from an animal welfare organization

In addition, a resolution adopted by Council in October 2009 provides for a councilmember and a resident to be on the advisory committee for a total of five regular members and one alternate. A resident and councilmember are not required by the state code. Currently a councilmember is not seated on the advisory committee. Council may choose to seat a councilmember if desired. The Animal Shelter Advisory Committee consists of the following five members and alternate:

Member	Role/Capacity	Term Expires
Dr. Jean Eye	veterinarian*	2016**
Katherine Corrao	involved in operations of shelter*	2016**
Christylla Miles	municipal officer*	2017
Stacey jaglowski	regular position	2017
Rosanna Ross	animal welfare*	2017
Vacant	alternate	2016
	*state requirement	**desires reappointment

It is necessary that Council make appointments such that state requirements are met.

Other Appointment Notes

Zoning Board of Adjustment members are appointed by the Mayor and confirmed by City Council; there is a companion item for ZBOA appointments. The Planning & Zoning Commission makes recommendations for appointments to the Historic Landmark Preservation Committee, which are confirmed by City Council. Civil Service Commission appointments are recommended by the City Manager and confirmed by City Council.. Appointments to the Youth Advisory Committee are made by the City Manager or her designee.

Options/Alternatives:

The Council may choose to:

1. Make appointments from new applications on hand.
2. Reappoint members whose terms are expiring.
3. Appoint an alternate to fill a regular position and then appoint a new alternate.
4. Delay some appointments until a future Council meeting.
5. Leave any regular position or alternate position unfilled at this time.

Recommendation:

Board and Commission appointments are solely at Council's pleasure.

Attachments

2016 Appointment Worksheet

List of applicants (indicates board/commission preferences)

2016 Expiring Terms and Vacancies Recap (indicates those desiring rappointment)



**Worksheet
Board & Commission Appointments
December 19, 2016**

Planning and Zoning Commission – 2 regular positions

Desiring Reappt. / Notes

1. _____

Isabel Aguilar

2. _____

Racheal Hill

Airport Advisory Board – 3 regular positions; 1 alternate

1. _____

Andy Mungenast

2. _____

Dr. Charles Waldrop Jr.

3. _____

Keith Hutchins

4. _____ (alternate)

James O. Knight

Property Standards & Appeals Board – 3 regular positions; 1 alternate

1. _____

Carolyn Morris

2. _____

Sue Wyrick

3. _____

Vacant

4. _____ (alternate)

Carlton Terry

Parks & Recreation Advisory/

Recreational Development Board – 4 regular positions, 1 alternate, 3 Vacancies

1. _____

Jerry W. Giles

2. _____

Vacant

3. _____

Vacant

4. _____

Vacant

5. _____ (alternate)

Joe Smith

Worksheet (Cont'd)

Desiring Reappt. / Notes

Economic Development Corp. – 2 regular positions (3 year terms)

1. _____ Ric Peterson
2. _____ Sandi Collier

Library Advisory Board – 4 regular positions, 1 alternate

1. _____ Angela McCowan
2. _____ Vacant
- 3.. _____ Sonja Shipp
4. _____ Vacant
5. _____ (alternate) Vacant

Animal Shelter Advisory Committee – 2 regular positions, 1 alternate

1. _____ Dr. Jean Eye
2. _____ Katherine Corrao
3. _____ (alternate) Vacant

*fills state requirement

Historic Landmark Preservation Committee – 3 regular positions, 1 alternate

1. _____ Dee Hinkle
2. _____ Vacant
3. _____ Patricia Siegfield-Giles
4. _____ (alternate) Vacant

Worksheet (Cont'd)

Desiring Reappt. / Notes

Zoning Board of Adjustment (Mayor appoints; Council confirms)

- | | |
|----------------------|----------------|
| 1. _____ | Vacant |
| 2. _____ | Vacant |
| 3. _____ (alternate) | Syrinthia Mann |

Museum Advisory Board – 5 regular positions, 1 alternate

- | | |
|----------------------|-----------------|
| 1. _____ | Mary Ryan |
| 2. _____ | Vacant |
| 3. _____ | Vacant |
| 4. _____ | Shannon Boyd |
| 5. _____ | Lillian Cullors |
| 6. _____ (alternate) | Clara Butler |

Notes:

1. Historic Landmark Preservation Committee – P & Z appoints; Council confirms
2. Civil service Commission- City Manager appoint; Council confirms
3. Youth Advisory Committee appointments by City Manager or her designee



Boards and Commissions Applicants

2016



Applicants	Airport	PSAB	HLPC	Library	ZBA	LEDC	P&Z	Parks/4B	Animal SAB	Museum	Comments
Allen, Thomas					1						
Anthony Ronald						1	3	2			
Beard, Janae						1		3			Youth Advisory Committee-2
Cade, Charlene			1								
Campbell, LePorsche						1					
Collins, Karen						1	3	2			
Covington, Petra L.					2	3		1			
Gibbons, Felicia											Youth Advisory Committee - 1
Guinn, Mary			1								
Jackson, Tamyra				1							
Lewis, Kayshellyn						1					
Matthews, Reba				1		2					Youth Advisory Committee - 3
McCoo, Don							1				Currently serving on PSA, term expires 2016 and would like to try a new board
Miller, Oscar										1	
Moore, Joseph						2	3				Civil Service Commission - 1
Smit, E Lawrence						1	2			3	
Ragland, Aderiance				2		3		1			
Reed, Jermy					2		1				
Thomas, John					2		1				
Whitson, Cecelia				4			2	1		3	Unable to attend interview due to family loss
Williams, Ivory						1	2		3		
Yeargin, Pamela						1					



**BOARDS COMMISSIONS
EXPIRING TERMS AND VACANCIES
RECAP - 2016**

<i>Boards/Commissions</i>	<i>Term Expires</i>	<i>Member Name</i>	<i>Desires Reappointment</i>		<i>Notes</i>
			YES	NO	
Planning and Zoning Commission	2016	Isabel Aguilar	✓		
	2016	Racheal Hill	✓		
Airport Advisory Board	2016	Andy Mungenast	✓		
	2016	Dr. Charles Waldrop Jr.	✓		
	2016	Keith Hutchins	✓		
ALTERNATE	2016	James O. Knight	✓		
Property Standards and Appeals Board	2016	Carolyn Morris	✓		
	2016	Sue Wyrick	✓		
	2016	Don McCoo		✓	
ALTERNATE	2016	Carlton Terry	✓		
Lancaster Recreational Development Corp. and Parks & Recreation Advisory Board	2016	Jerry W. Giles	✓		
	2016	Vacant			Resigned
	2016	Vacant			Resigned
	2017	Vacant			Resigned
ALTERNATE	2016	Joe Smith	✓		
Lancaster Economic Development Corp.	2016	Ric Peterson	✓		
	2016	Sandi Collier	✓		

**BOARDS COMMISSIONS
EXPIRING TERMS AND VACANCIES
RECAP - 2016**



Boards/Commissions	Term Expires	Member Name	Desires Reappointment		Notes
			YES	NO	
Library Advisory Board	2016	Angela McCowan	✓		
	2016	Tiffany Devereaux		✓	
	2016	Sonja Shipp	✓		
	2016	Ann Ordone		✓	
ALTERNATE	2016	Cassandra Lewis		✓	
Animal Shelter Advisory Committee	2016	Dr. Jean Eye	✓		
	2016	Katherine Corrao	✓		
ALTERNATE	2016	Linda Adair		✓	
Historic Landmark Preservation Committee	2016	Dee Hinkle	✓		
	2017	Vacant			Vacant per 2016-11-90
(P & Z appoints, Council confirms)	2016	Patricia Siegfild-Giles	✓		
ALTERNATE	2016	Shannon Abbott		✓	
Zoning Board of Adjustment	2016	Jack McCauley		✓	
(Mayor appoints, Council confirms)	2016	Rebecca Torres-Swanson			No Response
ALTERNATE	2016	Syrinthia Mann	✓		

**BOARDS COMMISSIONS
EXPIRING TERMS AND VACANCIES
RECAP - 2016**



<i>Boards/Commissions</i>	<i>Term Expires</i>	<i>Member Name</i>	<i>Desires Reappointment</i>		<i>Notes</i>
			<i>YES</i>	<i>NO</i>	
Museum Advisory Board	2016	Mary Ryan	✓		
	2016	Dianne McBride Allen		✓	
	2016	Ellie Pope		✓	
	2016	Shannon Boyd	✓		
	2016	Lillian Cullors	✓		
ALTERNATE	2016	Clara Butler	✓		
Civil Service Commission <i>(City Manager appoints, City Council Confirms)</i>	2016	Audley Logan	✓		

LANCASTER CITY COUNCIL

City Council Special Meeting

11.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Civic Engagement

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Consider confirmation of nominations made by the Mayor for appointments to the City of Lancaster Zoning Board of Adjustment.

Background:

As set by ordinance, the Zoning Board of Adjustment members are appointed by the Mayor and confirmed by the City Council.

The Zoning Board of Adjustment consists of five regular members and an alternate. Currently serving on the Zoning Board of Adjustment are:

	<u>Term Expires</u>
Deborrah Taylor	2017
Sherri Williams	2017
Margaret Brooks	2017
Jack McKauley	2016
Rebecca Torres-Swanson	2016
Alternate member:	
Syrinithia Mann	2016

Operational Considerations:

Mayor Knight will make nominations for appointments following other City board and commission appointments.

A motion, with a second, and an affirmative vote is required to confirm the appointments.

Recommendation:

Board and Commission appointments are solely at Council's pleasure.

LANCASTER CITY COUNCIL

City Council Special Meeting

12.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Healthy, Safe & Vibrant Community

Submitted by: Sean Johnson, Managing Director

Agenda Caption:

Conduct a public hearing and consider a resolution approving the 2017 Standards of Care for Youth Programs operated by the Quality of Life and Cultural Services Department.

Background:

Chapter 42 of the Human Resources Code, which regulates certain facilities, homes, and agencies that provide child-care services, states that municipal youth recreation programs may be exempted from the state's licensing requirement if cities comply with the provisions of the legislation. The legislation requires that cities establish and annually review their Parks and Recreation Department Standards of Care for Youth Programs and conduct a public hearing to allow citizen input.

The current Standards of Care was updated. A draft of the proposed 2017 Standards of Care for Youth Programs is attached for your review.

The proposed 2017 Standards of Care were reviewed and recommended for approval by the Parks and Recreation Advisory Board during a regular stated meeting on October 17, 2016. It was agreed that the addition of the photographic release authorization verbiage be included in the registration form versus the previous practice of an additional form being completed by each parent at time of registration.

Operational Considerations:

The Standards of Care policies identifies the staff responsibilities, department policies and procedures, parent's responsibilities, authorization forms required for participation in various activities and necessary contact information.

Legal Considerations:

Formal annual adoption of the Standards of Care for Youth Programs is required by the State of Texas. Failure to adopt a Standards of Care would result in termination of after school programs and day camps. The City Attorney has reviewed and approved the attached resolution and Standards of Care policies and procedures as to form.

Public Information Considerations:

A public hearing is required to receive citizen input regarding the Standards of Care.

Fiscal Impact:

There are no costs associated with adoption of the Standards of Care.

Options/Alternatives:

1. City Council may conduct the Public Hearing and approve the resolution as presented and as recommended by the Parks and Recreation Advisory Board.
2. City Council may conduct the Public Hearing and approve the resolution with modifications to the Standards of Care.
3. City Council may conduct the Public Hearing and reject the resolution or take no action which will terminate all City Youth After School and/or Day Camp programs

Recommendation:

Staff recommends approval of the resolution adopting the 2017 Standards of Care for Youth Programs operated by the Lancaster Quality of Life & Cultural Services (Parks and Recreation) Department as presented.

Attachments

Resolution

2017 SOC

Park Board Minutes

State Code Ch 42

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE 2017 STANDARDS OF CARE POLICIES FOR YOUTH PROGRAMS OPERATED BY THE LANCASTER QUALITY OF LIFE & CULTURAL SERVICES (PARKS AND RECREATION) DEPARTMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council of the City of Lancaster desire the Quality of Life & Cultural Services (Parks and Recreation) Department to operate Youth Programs for citizens of Lancaster; and

WHEREAS, state law exempts from regulation city sponsored youth programs from licensing requirements where the City has adopted a youth standard of care policy providing (a) standards relating to staff ratios, staff training, health, and safety; (b) a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children; (c) does not advertise as or otherwise represent the program as a child-care facility, day care center, or licensed before-school or after-school program or that the program offers child care services; (d) informs parents that the program is not licensed by the state; (e) does not solicit donations as compensation or payment for any good or service provided as part of the program and, (f) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety; and

WHEREAS, the legislation requires that cities establish and annually review their Park and Recreation Department Standards of Care for Youth Programs and conduct public hearings to allow citizen input; and

WHEREAS, the City has adopted an ordinance which provides that after public hearing, the city council will annually approve such standards of care; and

WHEREAS, the city council has held a public hearing to receive citizen input regarding the 2017 Standards of Care for Youth Programs operated by the City of Lancaster Quality of Life & Cultural Services (Parks and Recreation) Department.

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

SECTION 1. The City Council hereby adopts the 2017 Standards of Care for Youth Programs, which is attached hereto and incorporated herein as Exhibit A.

SECTION 2. That all resolutions of the City of Lancaster heretofore adopted which are in conflict with the provisions of this resolution be, and the same are hereby repealed, and all resolutions of the City of Lancaster not in conflict with the provisions hereof shall remain in full force and effect.

SECTION 3. If any article, paragraph, subdivision, clause or provision of this resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 4. That this Resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster
Quality of Life & Cultural
Services Department
(Parks & Recreation Division)



2017
Standards of Care
For
Youth Programs

Parks and Recreation Department
1700 Veterans Memorial Parkway
Lancaster, TX 75134
(972) 218-3700
(972) 218-3648 (Fax)
www.lancaster-tx.com

Table of Contents

Standards of Care	
General Administration	3
Organization	3
Definitions	3
Inspections/Monitoring/Enforcement	4
Enrollment	5
Suspected Abuse	5
Staffing – Responsibilities and Training	5
Youth Program Leader Qualifications	5
Leader Responsibilities	6
Training/Orientation	6
Service Standards	6
Appearance and Behavior	6
Communication with Parents	6
Additional Staff Responsibilities	7
Operations	7
Staff/Participant Ratio	7
Discipline	7
Programming	7
Communication	8
Transportation	8
Facility Standards	8
Safety	8
Fire	9
Health	9
General Information for Summer Camp Programs	11
Camp Registration Packet	18

LANCASTER YOUTH PROGRAMS

STANDARDS OF CARE

The following Standards of Care have been adopted by the City Council of the City of Lancaster, Texas to comply with Senate Bill 212 as approved by the Texas Legislature during the 74 legislative sessions. The Standards of Care are intended to be minimum standards by which the City of Lancaster Parks and Recreation Department will operate the City's Youth Programs. The programs operated by the City are recreational in nature and are not day care programs.

General Administration

1. Organization

- A. The governing body of the City of Lancaster Youth Programs is the City of Lancaster City Council.
- B. Implementation of the Youth Program Standards of Care is the responsibility of the Parks and Recreation Department Director and Departmental employees.
- C. Youth Programs ("Program") to which these Standards will apply include the Summer Day Camp Program, After School Care Program and the Holiday Day Camp Program.
- D. Each Youth Program site will have available for public and staff review a current copy of the Standards of Care.
- E. Parents of participants will be provided a current copy of the Standards of Care during the registration process.
- F. Criminal background checks will be conducted on prospective Youth Program employees. If results of that criminal check indicate that an applicant has been convicted of any of the following offenses, he or she will not be considered for employment:
 1. A felony or a misdemeanor classified as an offense against a person or family.
 2. A felony or misdemeanor classified as public indecency.
 3. A felony or misdemeanor violation of any law intended to control the possession or distribution of any controlled substance.
 4. Any offense involving moral turpitude.
 5. Any offense that would potentially put the City of Lancaster at risk.

2. Definitions

- A. City: City of Lancaster
- B. City Council: City Council of the City of Lancaster
- C. Department: Parks and Recreation Department of the City of Lancaster
- D. Youth Programs or Program: City of Lancaster Youth Programs consisting of the After School Programs, the Summer Day Camp Programs, Holiday Break Day Camp Programs, and ongoing recreational program offerings.
- E. Program Manual: Notebook of policies, procedures, required forms, and organizational and programming information relevant to City of Lancaster Youth Programs.
- F. Director: City of Lancaster Parks and Recreation Department Director or his or her designee.

- G. Program Coordinator or Coordinator: City of Lancaster Parks and Recreation Department full-time programmer who has been assigned administrative responsibility for a City of Lancaster Youth Program.
- H. Program Leader or Leader: City of Lancaster Parks and Recreation Department full-time or part-time employee who has been assigned responsibility to implement the City's Youth Programs.
- I. Program Site: Area and facilities where City of Lancaster Youth Programs is held, consisting of, but not limited to: Lancaster Parks and Recreation sites and Lancaster Independent School District sites as required.
- J. Participant: A youth whose parent(s) or legal guardian(s) have completed all required registration procedures and determined to be eligible for a City of Lancaster Youth Program.
- K. Parent(s): This term will be used to represent one or both parent(s) or legal guardian(s) who have legal custody and authority to enroll their child(ren) in City of Lancaster Youth Programs.
- L. Employee(s): Term used to describe people who have been hired to work for the City of Lancaster and have been assigned responsibility for managing, administering, or implementing some portion of the City of Lancaster Youth Programs.
- M. Recreation Center or Center: The Lancaster Recreation Center located at 1700 Veterans Memorial Parkway, Lancaster, TX 75134, (972) 218-3700.

3. Inspections/Monitoring/Enforcement

- A. The Coordinator of each Program to confirm the Standards of Care are being adhered to will initiate a monthly inspection report.
 - 1. Inspection reports will be sent to the Director or his/ her designee for review and kept on record for at least two years.
 - 2. The Director or his/ her designee will review the report and establish deadlines and criteria for compliance with the Standards of Care.
- B. The Director will make visual inspections of the Program based on the following schedule.
 - 1. The Summer Day Camp Program will be inspected twice during its summer schedule.
 - 2. The Holiday Day Camp Program will be inspected once during the winter break and once during the spring break.
- C. Complaints regarding enforcement of the Standards of Care will be directed to the Coordinator. The Coordinator will be responsible to take the necessary steps to resolve the problem(s). The Coordinator will record complaints regarding enforcement of the Standards of Care and their resolution. The Director will address serious complaints regarding enforcement of the Standards of Care and the complaint and the resolution will be noted.
- D. The Director or his/ her designee will make an annual report to the City Council on the overall status of the Youth Programs and their operation relative to compliance with the adopted Standards of Care.

4. Enrollment

- A. Before a child can be enrolled, the parents must sign registration forms that contain the child's:
1. name, home address, home telephone number;
 2. name and address of parent(s) or legal guardian(s) and telephone during program hours;
 3. the names and telephone numbers of people to whom the child can be released;
 4. a statement of the child's special problems or needs;
 5. emergency medical authorization;
 6. proof of residency when appropriate; and
 7. a liability waiver.

5. Suspected Abuse

Program employees will report suspected child abuse or neglect in accordance with the Texas Family Code. In a case where a City employee is involved in an incident with a child that could be construed as child abuse, the incident must be reported immediately to the Recreation Supervisor. The Recreation Supervisor will immediately notify the Police Department and any other agency as may be appropriate.

Texas state law requires the staff of these youth Programs to report any suspected abuse or neglect of a child to the Texas Department of Protective and Regulatory Services or a law enforcement agency. Failure to report suspected abuse is punishable by fines up to \$1000 and/or confinement up to 180 days. Confidential reports may be reported by calling 1-800-252-5400 (The Texas Abuse Hotline of the Department of Family and Protective Services).

Staffing - Responsibilities and Training

1. Youth Program Leader ("Leader") Qualifications

- A. Leaders will be full-time, part-time, or temporary employees of the Parks and Recreation Department.
- B. Staff working with children must be age 18 or older.
- C. Must be able to consistently exhibit competency, good judgment, and self-control when working with children.
- D. Must relate to children with courtesy, respect, tolerance, and patience.
- E. Must have successfully completed a course in first aid and CPR based on either American Heart Association or American Red Cross standards. An exception can be made for no more than one staff person at each site, and that person shall successfully complete a first aid and CPR course within four weeks of starting work.
- F. Must be able to furnish proof of a clear tuberculosis test within the 12 months prior to their employment date.
- G. Must pass a background investigation to include testing for illegal substances.
- H. Must be mature, responsible, and able to complete duties with minimal supervision.
- I. Must have a high school diploma or GED.

- J. Must be able to communicate well with the public and skilled at interacting with children.
- K. Must be skilled in supervising children of varying age levels in a group setting.
- L. Must have a valid Texas driver's license and eligible for a CDL.
- M. Must pass a departmental criminal background check and drug screening.
- N. Must have previous experience in supervising children and possess knowledge of recreational games, crafts, and activities.
- O. Must have First Aid and CPR certification during orientation.
- P. Must complete departmental day camp staff training.

2. Leader Responsibilities

- A. Provide participants with an environment in which they can feel safe, enjoy wholesome recreation activities, and participate in appropriate social opportunities with their peers.
- B. Know and follow all City, Departmental, and Program standards, policies, and procedures that apply to City Of Lancaster Youth Programs.
- C. Ensure that participants are released only to a parent or an adult designated by the parent. All Program Sites will have a copy of the Department approved plan to verify the identity of a person authorized to pick up a participant if the Leader does not know that person.

3. Training/Orientation

- A. The Department is responsible to provide training and orientation to Program employees in working with children and for specific job responsibilities. Coordinators will provide each Leader with a Program manual specific to each Youth Program.
- B. Program employees must be familiar with the Standards of Care for Youth Program operation as adopted by the City Council.
- C. Program employees must be familiar with the Program's policies including discipline, guidance, and release of participants as outlined in the General Program Information section of this document.
- D. Program employees will be trained in appropriate procedures to handle emergencies.
- E. Program employees will be trained in areas including City, Departmental, and Program policies and procedures, provision of recreation activities, safety issues, child psychology, and organization.
- F. Program employees will be required to sign an acknowledgment that they received the required training.

Service Standards

A. Appearance and Behavior

1. Staff shirts and name badges will be worn and clearly visible.
2. Participants and parents will be treated with respect at all times.

B. Communication with Parents

1. Staff will keep parents continuously informed of activities and schedules. A weekly schedule will be distributed and copies will be kept with the daily sign in sheets.
2. Staff will note details of behavior of participants (accomplishments, discipline problems, general activities, etc.) and update parents regularly.

C. Additional Staff Responsibilities

1. Staff will monitor the sign in/out log at all times.
2. Staff will spend 100% of their time actively involved with participants and/or parents.
3. Staff will attempt to answer any complaints at the site and resolve all problems. Situations that cannot be resolved on site by staff will be passed to a supervisor immediately. All complaints will be addressed within 24 hours if they are not resolved on site.
4. Prior to beginning work each day, all staff will check in at the appointed location for any messages, instructions, or information.

Operations

1. Staff/Participant Ratio

- A. In a Lancaster Youth Program, the standard ratio of participants to Leaders will be 20 to 1. In the event a Leader is unable to report to the Program site, a replacement will be assigned.
- B. Each participant shall have a Program employee who is responsible for him or her and who is aware of the participant's habits, interests and any special problems as identified by the participant's parent(s) during the registration process.
- C. At no time will a Program employee be alone with a child.

2. Discipline

- A. Program employees will implement discipline and guidance in a consistent manner based on the best interests of Program participants.
- B. There must be no cruel or harsh punishment or treatment.
- C. Program employees may use brief, supervised separation from the group if necessary.
- D. As necessary, Program employees will initiate discipline reports to the parent(s) of participants. Parents will be asked to sign discipline reports to indicate they have been advised about specific problems or incidents.
- E. A sufficient number and/or severe nature of discipline reports as detailed in the Program Manual may result in a participant being suspended from the Program.
- F. In instances where there is a danger to participants or staff, offending participants will be removed from the Program site as soon as possible.
- G. Any person(s) creating a nuisance, causing a disturbance, or creating an unsafe environment at any program site will be subject to ejection from the site, possible arrest, and legal action.
- H. The department reserves the right to terminate a participant from the program if they exhibit severe or extreme behavioral problems, which prevent staff from effectively administering the Program.

3. Programming

- A. Program employees will attempt to provide activities for each group according to participants' age, interests, and abilities. The activities must be appropriate to participants' health, safety, and well-being. The activities also must be flexible and promote the participants' emotional, social, and mental growth.
- B. Program employees will attempt to provide indoor and outdoor time periods that include:
 - 1. Alternating active and passive activities;
 - 2. Opportunity for individual and group activities;
 - 3. Outdoor time each day weather permitting.
- C. Program employees will be attentive and considerate of the participants' safety on field trips and during any transportation provided by the Program.
 - 1. During trips, Program employees supervising participants must have immediate access to emergency medical forms and emergency contact information for each participant;
 - 2. Program employees must have a written list of the participants in the group and must check the attendance frequently;
 - 3. Program employees must have first aid supplies and a guide to first aid and emergency care available on field trips.

4. Communication

- A. Program site will have a telephone to allow the site to be contacted by Recreation Center personnel. Each site will have access to a telephone for use in contacting the Recreation Center or making emergency calls
- B. The Coordinator will post the following telephone numbers adjacent to a telephone accessible to all Program employees at each site:
 - 1. Lancaster ambulance or emergency medical services;
 - 2. Lancaster Police Department;
 - 3. Lancaster Fire;
 - 4. Lancaster Recreation Center;
 - 5. Numbers at which parents may be reached;
 - 6. The telephone number for the site itself.

5. Transportation

- A. Before a participant can be transported to and from City sponsored activities, a transportation form must be completed by the parent of the participant and filed with the Coordinator
- B. First aid supplies and a first aid and emergency care guide will be available in all Program vehicles that transport children.

- C. All Program vehicles used for transporting participants must have available a 6-BC portable fire extinguisher which will be installed in the passenger compartment of the vehicle and must be accessible to the adult occupants.

Facility Standards

1. Safety

- A. Program employees will inspect Youth Program sites daily to detect sanitation and safety concerns that might affect the health and safety of the participants. A daily inspection report will be completed by the Program staff and kept on file by the Program Coordinator.
- B. Buildings, grounds, and equipment on the Program site will be inspected, cleaned, repaired, and maintained to protect the health of the participants.
- C. Program equipment and supplies must be safe for the participant's use.
- D. Program employees must have first aid supplies available at each site, during transportation, and for the duration of any off-site activity.
- E. Program air conditioners, electric fans, and heaters must be mounted out of participants' reach or have safeguards that keep participants from being injured.
- F. Program porches and platforms more than 30 inches above the ground must be equipped with railings participants can reach.
- G. All swing seats at Program sites must be constructed of durable, lightweight, relatively pliable material.
- H. Program employees must have first aid supplies readily available to staff in a designated location. Program employees must have an immediately accessible guide to first aid and emergency care.

2. Fire

- A. In case of fire, danger of fire, explosion, or other emergency, Program employees' first priority is to evacuate the participants to a designated safe area.
- B. The Program site will have an annual fire inspection by the local Fire Marshall, and the resulting report will detail any safety concerns observed. The report will be forwarded to the Director who will review and establish deadlines and criteria for compliance. Information from this report will be included in the Director's annual report to the Council.
- C. Each Program site must have at least one fire extinguisher approved by the Fire Marshall readily available to all Program employees. The fire extinguisher is to be inspected monthly by the Program Coordinator, and a monthly report will be forwarded to the coordinator's supervisor who will keep the report on file for a minimum of two years. All Youth Program staff members will be trained in the proper use of fire extinguisher.
- D. Fire drills will be initiated at Program sites based on the following schedule:
 - 1. Summer Day Camp Program: A fire drill twice during the entire summer session.
 - 2. Holiday Day Camp: A fire drill once during the fall and spring sessions.

3. Health

A. Illness or Injury

1. A participant who is considered a health or safety concern to other participants or staff will not be admitted to the Program.
2. Illnesses and injuries will be handled in a manner to protect the health of all participants and employees.
3. Program employees will follow plans to provide emergency care for injured participants or for participants with symptoms of an acute illness as specified in the Program manual.
4. Program employees will follow the recommendation of the Texas Department of Health concerning the admission or readmission of any participant after a communicable disease.

B. Program employees will administer medication only if:

1. Parent(s) complete and sign a medication form that provides authorization for staff to dispense medication with details as to times and dosages. The form will include a hold harmless clause to protect the City.
2. Prescription medications are in the original containers labeled with the child's name, a date, directions, and the physician's name. Program staff members will administer the medication only as stated on the label. Program staff will not administer medication after the expiration date.
3. Nonprescription medications are labeled with the child's name and the date the medication was brought to the Program. Nonprescription medication must be in the original container. The Program staff will administer it only according to label direction.
4. Medications dispensed will be limited to routine oral ingestion not requiring special knowledge or skills on the part of Program employees. The Program employees will administer no injections.
5. Program employees must ensure medications are inaccessible to participants. No refrigeration will be provided.

C. Toilet Facilities

1. The Program site will have inside toilets located and equipped so children can use them independently and program staff can supervise as needed.
2. There must be one flush toilet for every 30 children. Urinals may be counted in the ratio of toilets to children, but must not exceed 50% of the total number of toilets.
3. An appropriate and adequate number of lavatories will be provided.

D. Sanitation

1. The Program facilities must have adequate light, ventilation, and heat.
2. The Program must have an adequate supply of water meeting the standards of the Texas Department of Health for drinking water and ensure that it will be supplied to the participants in a safe and sanitary manner.
3. Program employees must see that garbage is removed from buildings daily.

City of Lancaster
Quality of Life & Cultural
Services Department
Parks & Recreation Division



2017
General Information
For Youth Camp Programs

General Program Information

Registration Procedures

Registration for Lancaster Youth Programs is on a first come, first serve basis with limited enrollment. Registration must be done by the child(ren)'s parent or legal guardian.

All participants must be toilet trained to participate in a Youth Program.

Parents/legal guardians will be required to purchase Participant Membership Card, pay the first installment and any activity fees at registration. Please see the section for Summer Day Camp Program fees in the current Lancaster Connection or visit the Parks and Recreation page at www.lancaster-tx.com.

Participant's Information Files

Parents/legal guardians must complete a set of registration forms for each child. The registration forms include the child's personal information, emergency information, authorized persons to release the child(ren) to, a medical release, and a liability waiver. The registration forms must indicate whether the child's shot record is on file at their school; if not, a copy of the shot record must be provided to be kept on file at the Recreation Center. A copy of these forms will be kept on file at the Recreation Center and a copy will be kept in the child's group binder. A parent/legal guardian may be removed by the other parent/legal guardian from the pick up list only with approved court documentation. The City Attorney may review court documents. Parents are responsible for providing Leaders or the Recreation Center office staff with updated information in writing.

Registration forms are not carried over from program to program. A new set of forms is required at registration for each program. Parents may stop by the Recreation Center to pick up registration forms or ask any additional information on programs.

Attendance

Parent(s) or legal guardian(s) of children who are enrolled in a Youth Program will check in with program employees upon arrival to the Program. The City is not responsible for participants until they have been checked in to the Program.

When a child is absent, the parent should call the Recreation Center at (972) 218-3700 to inform staff of the absenteeism. Staff will not call parents to verify an absence if the child is not in attendance.

Late Pick Up

Youth Summer camp and Seasonal Camp programs end at 6:00 pm. After School Program ends at 6:30pm. The first incident will result in a written reminder to the parents. Further incidents will result in a \$5.00 late charge for every 10-minute period after 6:00 pm. (or) 6:30pm for after school program.

Being late three times in a 30-day period could be cause for termination from the Program. Not paying the late fees within one week of the incident may result in termination from the program.

Appeals can be made to the Recreation Supervisor or Recreation Superintendent.

Discipline Policy

Disciplinary action will be taken when a child acts inappropriately, is disruptive, verbally or physically abusive, or creates a safety concern. Children will be warned and/or placed in time-out. If the behavior continues or is severe, the child will receive a Behavioral Report. Behavioral Reports are to be signed by the parent/legal guardian. Suspensions and terminations are determined by the severity of the incident and/or the number of Behavioral Reports issued.

Suspensions and terminations will have Recreation Superintendent Approval before being implemented, unless the parent requests immediate enforcement. Suspensions and terminations include all Lancaster Parks & Recreation Youth Programs.

1st Behavioral Report – Parent/legal guardian signs and receives a copy of the report.

2nd Behavioral Report – Parent/legal guardian signs and receives a copy of the report. The Program Coordinator will contact the parent to set up a conference. The mandatory conference is held with the parent/legal guardian, child, and Recreation Supervisor to discuss the reports. The parent/legal guardian and child are reminded the next report may result in a one-week suspension. If the parent/legal guardian does not respond to the request for a conference within five days, a written notice will be sent home to inform the parent/legal guardian that the two Behavioral Reports remain and the next Behavioral Report may result in a one-week suspension from the program.

3rd Behavioral Report – Parent/legal guardian signs and receives copy of report. Upon Recreation Superintendent Approval, the parent may have one business day grace period before the suspension begins. During the suspension period, the child will not be eligible to be registered for other youth programs. When the suspension period is completed, the child may register for other youth programs if space is available or may be placed on the waiting list. Refunds will not be issued for days the child serves on suspension. Parents will be responsible for staying current on program fees.

4th Behavioral Report – The parent signs and receives a copy of report. Upon Recreation Superintendent Approval, the parent may have one business day grace period before the termination begins.

The Parks & Recreation Department reserves the right to accelerate disciplinary steps as determined necessary.

Three months after being terminated from City of Lancaster Youth Programs, the parent may submit a written request to the Recreation Superintendent requesting the child be considered eligible for re-enrollment into the Lancaster Youth Programs. A meeting may be held between the

parent/legal guardian, child, Recreation Superintendent and the Program Coordinators to determine if the child will regain eligibility for enrollment. Eligibility may or may not be regained. A written response will be sent from the Recreation Superintendent to the parent/legal guardian regarding the decision.

A child who has been terminated from the Lancaster Youth Programs will not be eligible for enrollment or participation in any Lancaster Youth Programs unless eligibility has been regained. Children terminated from the Lancaster Youth Programs and who have already been registered for an upcoming Lancaster Youth Program will be removed from the upcoming program and fees refunded. If the child regains eligibility to enroll in Lancaster Youth Programs, then the child may register if space is available or may be placed on the waiting list.

When the probation period ends, the child will return to the normal disciplinary steps.

Two terminations in a calendar year may result in permanent termination from Lancaster Youth Programs.

Parent Release/Sign Out

The registration form includes a section for the parent/legal guardian to provide the names of those persons allowed to pick up their child (ren) from the youth program. Driver's license numbers are to be supplied for each authorized person, including the parent/legal guardian. Registration forms are not carried over from program to program. A new set of forms is required at registration for each program. For security reasons, staff may not give out information over the phone.

The following procedures will be followed at all times:

- a. When a parent/legal guardian picks up the child (ren), they are to sign the child (ren) out. Beckoning or waiving for the child (ren) to come out to the car is not acceptable.
- b. Identification may be requested.

When an unauthorized person picks up a child, the following procedures will be followed:

- a. Leaders will ask for identification from anyone with whom they are not familiar.
- b. The sign out policy will be explained.
- c. The parent/legal guardian will be called at work or at home to inform them of the person on site asking to pick up their child (ren). The parent or guardian will be asked for their driver's license number to verify that staff is speaking to parent/legal guardian.
- d. The parent/legal guardian will be asked to grant permission for their child (ren) to be released to the person on site. The parent or guardian will be asked to fax a signed permission letter to the Recreation Center at (972) 218-3648.
- e. Once permission is granted, the child will be released to the person on site.
- f. If the parent/legal guardian cannot be reached or does not grant permission, the child will not be released to the unauthorized person.
- g. If the unauthorized person takes the child (ren) without permission, the police will be notified and the situation will be handled as a criminal incident.

Visitors/Drop Ins

Parents/legal guardians are welcome to drop in and observe the program. Parents/legal guardians signing out their child (ren) should leave the program once child (ren) has been signed out.

Withdrawal Procedures

Any parent/legal guardian requesting to withdraw their child (ren) from a Youth Program must fill out a drop form at the time of departure. Drop forms will be available at the main office of the Recreation Center or may be requested by fax. Any child (ren) withdrawn from the program may be readmitted only as space allows.

Illness of Participants

Parents are responsible for informing the City of any special needs, concerns or information regarding their child (ren)'s health.

All participants must be able to participate in the full range of activities offered. Any child meeting any of the following criteria will not be admitted to any program:

- a. If the illness prevents the child from participating comfortably in the program activities.
- b. If the illness results in greater need for care than the staff can provide without compromising the health, safety, and supervision of the other children or staff.
- c. If the child has an oral temperature of 100.4 degrees or greater.
- d. If the child's symptoms and signs of possible severe illness include, but not limit to, the following: lethargy, uncontrolled breathing, uncontrolled diarrhea, vomiting illness, rash with fever, mouth sores with drooling, or wheezing. The participant will not be admitted back into the program until staff is comfortable that the child can be included in the Program activities.
- e. If the child has been diagnosed with a communicable disease, until medical evaluation determines the child is no longer communicable.
- f. If the child vomited in the morning prior to coming to program.
- g. If the child has discolored nasal discharge.

Participants with extensive sunburns (open sores, blisters) will be allowed into the Program, but will not be allowed to participate in any swimming activities until the area is completely healed.

Participants with a communicable disease, such as pink eye or lice, may not attend the program. Participants showing symptoms of illness will be removed from common areas and the parent will be notified and asked to pick up the child. Participants with lice will be required to return a form, signed by the parent, stating an initial treatment and a follow up treatment for lice have been applied. The receipt or the product's label must be attached to the signed treatment form. Participants may not return to the program until this signed form is on file. A copy of the form may be found in the Supplement section or at the main office. Participants with reoccurring head lice may be removed from the program at the Coordinator's discretion.

Parents/legal guardian will be notified by phone if the participant becomes ill while at the program. If the parent cannot be reached, the emergency contact will be called. Any child experiencing a fever over 100.4 degrees, vomiting, diarrhea three times within two hours or contagious skin or eye infections will be removed from common areas and should be picked up within one hour of contact with the parent/legal guardian.

Parents/legal guardian must provide a written statement from a physician stating the child is free from contagious disease before returning to the program after a contagious illness. Medical information may be faxed to the Recreation Center at (972) 218-3648.

In the event of critical illness or injury, proper medical personnel and parents/legal guardian will be notified. At the discretion of the medical personnel, the child may be transported to an emergency room or clinic by ambulance or by the parent/legal guardian. Parents/legal guardian will be responsible for any expenses incurred with treatment or transportation.

Medication

The City of Lancaster Youth Programs will administer medicine only with written parental permission and will administer medication only as stated on the label directions or as amended by the physician. A medicine form must be completed for each prescription the child receives at the Program. Medicine forms are available at the main office of the Recreation Center and at each site.

Medications must be in their original container, labeled with child name, the date (if prescription), directions on how to administer and include the physician name (if prescription). Refrigeration of medication is not available. Inhalers and peak flows must have instruction on label. The City of Lancaster Youth Program staff will not administer any type of injection. Over-the-counter drugs will be administered only when accompanied by a medicine form, in the original container and by label direction only.

Parents/legal guardians are responsible for removing medication at the end of the Program or when child is withdrawn. Leaders are responsible for administering medication at the time indicated on medicine form. Medications and the completed form will be kept in lock bag with each group.

Youth Program Payments

Parents/legal guardians are responsible for paying fees as scheduled. Youth Program payments may be made at the Recreation Center by cash or credit card.

Non-payment of fees within two months will be turned over to a collection agency. Payments for special activities and field trips not included in a program's activity fee are to be paid in cash. This applies to all programs.

Transportation

The participant to staff ratio, as stated in the Standards of Care, will be adhered to at all times when transporting participants. Participants may be transported only by City vehicle or any vehicle designated by the City. Participants may not be transported to and from activities or home by staff's personal vehicles.

All children will wear seat belts while being transported with the exception of commercial vehicles that do not offer seat belts.

Field Trips

Parents/legal guardian will be asked to sign permission form for their child (ren) to attend special field trips. Please do not send large amounts of spending money with your child (ren) on field trips. The City is not responsible for items lost during field trips. Parents are discouraged from picking their child up during field trip activities.

Parent/Child Communication

When a parent needs to contact their child (ren) at the Program, for emergency reasons only, the parent must call the Recreation Center at (972) 218-3700. Recreation Center staff will contact the child's Leader to deliver the message.

Personal Property

Personal electronics (i.e. cell phones, ipods, mp3 players, video games systems, etc.) are strictly prohibited. If caught using personal electronics, they will be confiscated and may only be retrieved by a parent or guardian. Personal property or electronics are not the responsibility of Lancaster Recreation Staff.

Staff Code of Ethics

Program Leaders are expected to adhere to the City's Staff Code of Ethics, which includes not accepting gifts from participants or babysitting/socializing with participants outside of the Program. If staff members do not comply with this policy, they are subject to disciplinary procedures.

City of Lancaster
Quality of Life & Cultural
Services Department
Parks & Recreation Division



2017
Youth Camp
Registration Packet



Lancaster Parks and Recreation Department
YOUTH PROGRAMS REGISTRATION FORM

Check program you are registering for: After School Program Summer Day Camp Seasonal Camp

PLEASE COMPLETE ALL BLANK AREAS IN ORDER TO QUALIFY FOR PROGRAM(S)
(Please print or type)

Registration Date_____

Child's Name_____ Home #_____

Address_____ City, State_____ Zip_____

School Attending_____ Grade Entering_____

Age_____ Date of Birth___/___/_____ Gender: Female Male

Mother/Legal Guardian Name_____ DL #_____

Address_____ City, State_____ Zip_____

Mother/Legal Guardian Workplace_____

Best Daytime #_____ Alternate Daytime #_____

Father/Legal Guardian Name_____ DL #_____

Address_____ City, State_____ Zip_____

Father/Legal Guardian Workplace_____

Best Daytime #_____ Alternate Daytime #_____

EMERGENCY CONTACTS/PERMISSION TO PICK UP CHILD:

Name_____ Relationship_____ DL #_____

Home #_____ Work #_____

Name_____ Relationship_____ DL #_____

Home #_____ Work #_____

Name_____ Relationship_____ DL #_____

Home #_____ Work #_____

ATTENDANCE AND TRANSPORTATION INFORMATION:

How will your child get home? (Check all that apply)

Parent/Guardian Carpool Other If Other, please explain_____



Lancaster Parks and Recreation Department
PROGRAMS MEDICAL AND AUTHORIZATION FORM

EMERGENCY MEDICAL AUTHORIZATION

I, _____ as parent and/or legal guardian, do hereby release The City of Lancaster, its staff and volunteers, from liability in the case of an accident or injury to my child or ward:

Name _____ Age _____ Grade Entering _____

Further, in case of accident, injury or sudden illness, I authorize any first aid or emergency medical care that may become necessary for my child or ward while he or she is enrolled in any Lancaster Youth Program. I also authorize that my child or ward may be transported to a local medical facility. If I cannot be contacted in an EMERGENCY, I hereby give permission to the physician selected by the Program Coordinator to hospitalize, secure proper treatment for, and to order injection, anesthesia or surgery for my child or ward, named above. I understand I am financially responsible for any expenses incurred for medical care or transportation on my child's behalf. By executing this document, I hereby assume, on behalf of my child or ward, all risk of injury or loss to which he or she may be exposed.

Parent/Legal Guardian Signature _____

Date _____

EMERGENCY MEDICAL AUTHORIZATION

In the event of an EMERGENCY, individuals will be taken directly to the nearest hospital.

If applicable, Family Physician Name _____

Address _____ Phone # _____

Shot Record/Medical Record on file at School: Yes No Date _____

Please list any medical allergies, physical or behavioral conditions of your child: _____

Please explain special need/problems your child may have: _____

AUTHORIZATIONS
(Initial all boxes that apply and sign below)

_____ I understand that responsibility for my child will be assumed by Lancaster Youth Program only when he/she has checked in with an authorized staff member of the program.

_____ I authorize the City of Lancaster Quality of Life & Cultural Services Department to utilize my child likeness for promotional purposes both electronically and in print.

_____ I authorize any Lancaster Youth Program to transport my child to and from Program activities and field trips.

_____ I acknowledge that the child described herein has permission to engage in all Program activities, except noted by me or family physician.

_____ I authorize the Youth Program to involve my child in appropriate water activities.

_____ I acknowledge receipt of the Lancaster Parks and Recreation Department "Standards of Care" for Youth Programs.

My signature below constitutes authorization for items initialed above.

Parent/Legal Guardian Signature _____

Date _____



Lancaster Parks and Recreation Department
YOUTH PROGRAMS LIABILITY WAIVER

Date: _____

Program: _____

Child's Name: _____

Age: _____

School Attending: _____

Grade Entering: _____

I understand that the activities in the Lancaster Parks and Recreation Department Youth Programs will include physical activity and exercise with the possibility of physical contact and bodily injury to my child or ward (named above), and that the Department, its staff and the City of Lancaster are not undertaking responsibility to see that the activities are free from risk of injury, loss or damage to person or property. I hereby assume all said risks for my child.

In consideration of the use and availability of services and facilities of the program site by my above named child or ward, I hereby agree to release, relieve, hold harmless, and indemnify the City, the Recreation Center, the Department, the Program, and their respective supervisors, Program Directors, Coordinators, leaders, agents, instructors and other employees from all liability and claims arising out of any accident or injury suffered or incurred by my above named child or ward at the Program site or while participating in any activity sponsored, organized or supervised by the Program except for acts of negligence of said responsible supervisors, directors, coordinators, leaders, agents, instructors or other employees.

Parent/Legal Guardian Signature

Date



Lancaster Parks and Recreation Department
YOUTH PROGRAM LATE PICK UP RECORD

Date _____

Parent's Name _____

Daytime # _____ Cell # _____

Child(ren)'s Name(s) _____

Circle One: 1st Incident 2nd Incident 3rd Incident

DATE _____

SIGNATURE _____

ARRIVAL TIME _____

REASON _____

AMOUNT PAID _____

STAFF INITIALS _____

Method of Payment: Cash, credit card or debit

First Incident: Warning, no charge

Subsequent Incidents: \$5.00 for each 10-minute period after 6:00 p.m.

Three incidents in a 30 day period may result in termination from the Program.

Non-payment of late pick up fees within one week may result in termination from the Program.

An appeals process is available and should be directed to the Recreation Superintendent at

(972) 218-3715



Lancaster Parks and Recreation Department
DAILY SITE INSPECTION – YOUTH PROGRAMS

Date _____ Site Inspected _____

General Weather Conditions: _____

Inspection Item	Good	Needed Action	Initials of Employee Checking
First Aid Kit Present & Stocked			
Fire Extinguisher Present & Charged			
Program & Participant Files Present			
Program Areas Clean & Safe			
Participant Check-in/Check-out Sheet Completed			
Bathrooms Clean/Stocked			
Program Supplies Present/Put Away			

Please specifically detail what actions were taken to address any of the inspection items that needed action:



Lancaster Parks and Recreation Department
DAILY SITE INSPECTION – YOUTH PROGRAMS

Date _____ Site Inspected _____

General Weather Conditions: _____

Inspection Item	Good	Needed Action	Initials of Employee Checking
First Aid Kit Present & Stocked			
Fire Extinguisher Present & Charged			
Program & Participant Files Present			
Program Areas Clean & Safe			
Participant Check-in/Check-out Sheet Completed			
Bathrooms Clean/Stocked			
Program Supplies Present/Put Away			

Please specifically detail what actions were taken to address any of the inspection items that needed action:



Lancaster Parks and Recreation Department
BEHAVIORAL REPORT

Date: _____

Program: _____

Participant's Name _____ Age _____

Address _____ Home # _____

Description of Incident _____

Staff Comments _____

1st Offense _____

2nd Offense _____

Mandatory meeting with Recreation Supervisor
Notification of next Report result in one (1) week suspension

3rd Offense _____

Notification of effective suspension dates

4th Offense _____

Termination from Program

Patron's Signature

Site Supervisor's Signature

Parent/Legal Guardian Signature

Program Coordinator's Signature

Parent's Cell or Work Phone#: _____



City of Lancaster
QUALITY OF LIFE AND CULTURAL SERVICES DEPARTMENT



1700 Veterans Memorial Parkway · Lancaster, TX 75134
972.218.3700 (Office) • 972.218.3648 (FAX)
www.lancaster-tx.com

MEETING

LANCASTER RECREATIONAL DEVELOPMENT CORPORATION (LRDC) TYPE B
LANCASTER PARKS AND RECREATION ADVISORY BOARD
AND
LANCASTER VETERANS MEMORIAL LIBRARY ADVISORY BOARD

Monday, October 17, 2016 6:30 p.m.

MINUTES

The members of the Lancaster Recreational Development Corporation (LRDC) TYPE B, Lancaster Parks and Recreation Advisory Board and Lancaster Veterans Memorial Library Advisory Board met Monday, October 17, 2016 at 6:30 p.m. at the Lancaster Recreation Center (Grand Hall), 1700 Veterans Memorial Parkway, Lancaster, TX 75134.

Lancaster Recreational Development Corporation (LRDC) TYPE B Board and Lancaster Parks and Recreation Advisory Board Members Present: Jerry Giles, Darwin Isham, Mary Sykes, and Joe Smith

Lancaster Recreational Development Corporation (LRDC) TYPE B Board and Lancaster Parks and Recreation Advisory Board Members Absent: Abe Cooper

Lancaster Veterans Memorial Library Advisory Board Members Present: Candace Gardner

Lancaster Veterans Memorial Library Advisory Board Members Absent: Quinnest Banks, Desarea Bradley, Tiffany Devereaux, Angela McCowan, Anne Ordone, Sonja Shipp, Cassandra Lewis

City Staff Present: Managing Director Sean Johnson, Assistant Director Michael Rasco, and Recreation Superintendent Bakahri Thornton

I. Call to Order

Mary Sykes called the Lancaster Recreational Development Corporation (LRDC) TYPE B, Jerry Giles Lancaster Parks and Recreation Advisory Board Meeting to order at 6:34 p.m. There was a lack of quorum for the Lancaster Veterans Memorial Library Board.

II. Consider Approval of Minutes (LRDC TYPE B August 22, 2016) (LPRAB June 20, 2016), and (LVMLAB April 21, 2016)

Jerry Giles made a motion to approved and seconded by Darwin Isham to approve the minutes of August 22, 2016 of the Lancaster Recreational Development Corporation (LRDC) TYPE B Board Meeting as written. The motion carried unanimously.

Mary Sykes made a motion to approved and seconded by Joe Smith to approve the minutes of June 20, 2016 of the Lancaster Parks and Recreation Advisory Board Meeting as written. The motion carried unanimously.

III. Briefing and Discussion regarding FY 2017 City Council Adopted 4B annual budget – Sean Johnson, Managing Director

Mr. Johnson provided information on the FY 2017 City Council Adopted 4B annual budget.

There were further questions/discussion.

IV. Status and Update concerning the FY 2017 Lancaster Comprehensive Plan: To Wit the Parks, Recreation, Open Space and Trails Master plan Updates – Sean Johnson, Managing Director

Mr. Johnson provided an update concerning the FY 2017 Lancaster Comprehensive Plan. 4B Board President Mary Sykes assigned a special committee to meet on November 1, 2016 at 5pm to discuss master plan updates.

There were further questions/discussions.

V. Presentation concerning FY 2017 Annual Special Event Calendar and Events – Bakahri Thornton, Recreation Superintendent

Mr. Thornton provided a presentation concerning FY 2017 Annual Special Event Calendar and Events.

There were further questions/discussions.

VI. Discuss and Consider the 2017 Youth Standards of Care – Mike Rasco, Assistant Director

Mr. Rasco gave an update regarding the 2017 Youth Standards of Care. After further review there were no recommended changes.

There were further questions/discussions.

Mary Sykes made a motion to approved and seconded by Joe Smith to approve the 2017 Youth Standards of Care as written. The motion carried unanimously.

VII. Status and Update concerning 2016 Texas State Library Special Projects Grant Award – Sean Johnson, Managing Director

Mr. Johnson provided an update regarding the status of the Special Project Grant awarded via the Texas State Library and Archives Commission (i.e. mobile book) Mobile Book.

There were further questions/discussions

VIII. Presentation concerning Village 2020 City of Lancaster/LISD Strategic Action Plan – Sean Johnson, Managing Director

Mr. Johnson gave a presentation concerning Village 2020 Strategic Action Plan and goals that are directly related to Quality of Life and Cultural Services.

There were further questions/discussions

IX. Set Date and Agenda of Next Meeting

- Date of Next Meeting for Lancaster Recreational Development Corporation (LRDC) TYPE B and Lancaster Parks and Recreation Advisory Board: Monday, November 14, 2016
- Lancaster Comprehensive Plan
- Library Special Projects Grant Award
- Village 2020

X. Adjournment

Joe Smith made a motion seconded by Darwin Isham to adjourn the LRDC 4 B board meeting; meeting adjourned at 8:01 p.m. Mary Sykes made a motion seconded by Darwin Isham to adjourn the LPRAB meeting; meeting adjourned at 8:02 p.m.

ATTEST:

Angela Collins, Board Secretary

APPROVED:

Mary Sykes
Lancaster Recreational Development Corporation (LRDC) President

Jerry Giles, Chair
Lancaster Parks and Recreation Advisory Board

HUMAN RESOURCES CODE

TITLE 2. DEPARTMENT OF HUMAN SERVICES AND DEPARTMENT OF
PROTECTIVE AND REGULATORY SERVICES

SUBTITLE D. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES;
CHILD WELFARE AND PROTECTIVE SERVICES

CHAPTER 42. REGULATION OF CERTAIN FACILITIES, HOMES, AND
AGENCIES THAT PROVIDE CHILD-CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate. With respect to a school or child-care facility sponsored by a religious organization, nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the:

(1) form, manner, or content of religious instruction, ministry, teaching, or the curriculum offered by the school or facility;

(2) ability of the school or facility to select and supervise qualified personnel, and otherwise control the terms of employment, including the right to employ individuals who share the religious views of the school or facility;

(3) internal self-governance and autonomy of the school or facility; or

(4) religious environment of the school or facility, such as symbols, art, icons, and scripture.

Acts 1979, 66th Leg., p. 2358, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 664, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 27, eff. September 1, 2007.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "General residential operation" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

(5) "Foster group home" means a child-care facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster home" means a child-care facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(8) "Group day-care home" means a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(9) "Family home" means a home that provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(10) "Agency foster group home" means a facility that provides care for seven to 12 children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards.

(11) "Agency foster home" means a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards.

(12) "Child-placing agency" means a person, including an organization, other than the natural parents or guardian of a child who plans for the placement of or

places a child in a child-care facility, agency foster home, agency foster group home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(15) "Religious organization" means a church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

(16) "Children who are related to the caretaker" means children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(17) "Regular care" means care that is provided at least:

(A) four hours a day, three or more days a week, for three or more consecutive weeks; or

(B) four hours a day for 40 or more days in a period of 12 months.

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a facility or family home.

(19) "Residential child-care facility" means a facility licensed or certified by the department that operates for all of the 24-hour day. The term includes general residential operations, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes.

(20) "Before-school or after-school program" means a child-care facility that provides care before or after, or before and after, the customary school day and

during school holidays, for at least two hours a day, three days a week, to children who attend prekindergarten through grade six.

(21) "School-age program" means a child-care facility that provides supervision, along with recreation or skills instruction or training, and may provide transportation, before or after the customary school day, for at least two hours a day, three days a week, to children attending prekindergarten through grade six. A school-age program may also operate during school holidays, the summer period, or any other time when school is not in session.

(22) "Children's product" means a product that is designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(A) an item that is not designed or intended to be used solely or primarily by a child under 13 years of age or in the care of a child under 13 years of age;

(B) a medication, a drug, food, or another item that is intended to be ingested; or

(C) clothing.

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001 or 261.401, Family Code; or

(B) neglect, as defined by Section 261.001 or 261.401, Family Code.

Acts 1979, 66th Leg., p. 2359, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2812, ch. 759, Sec. 1, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1052, Sec. 4.01, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 984, Sec. 1, eff. June 15, 1989; Acts 1997, 75th Leg., ch. 1022, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 3, eff. Sept. 1, 1997;

Acts 1997, 75th Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1997;
Acts 2001, 77th Leg., ch. 218, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.90, eff.
September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. [46](#), Sec. 1, eff.
September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 2, eff.
September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [91](#), Sec. 27.001(34),
eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 1, eff.
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. [1323](#), Sec. 3, eff.
June 17, 2011.

Sec. 42.003. REFERENCE TO CHILD-CARE INSTITUTION. A
reference in law to a "child-care institution" means a
general residential operation.

Added by Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 3, eff.
September 1, 2009.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 42.021. DIVISION DESIGNATED. (a) The
department may designate a division within the department
to carry out responsibilities the department may delegate
or assign under this chapter. The department shall ensure
the independence of the division from the child protective
services division.

(b) The commissioner shall appoint as director of a
division designated under Subsection (a) a person who meets
the qualifications set by the executive commissioner. The
commissioner shall ensure the director's independence from
the child protective services division and may not

terminate the director without the approval of the executive commissioner.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The commissioner may divide the state into regions for the purpose of administering this chapter.

Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.020, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1063, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.91, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 28, eff. September 1, 2007.

Sec. 42.0211. SAFETY SPECIALISTS, RISK ANALYSTS, AND PERFORMANCE MANAGEMENT. (a) The division shall employ at least one specially trained investigation safety specialist, whose duties include the duty to:

(1) review and evaluate the intake of reports that include allegations associated with a higher risk of harm to the child; and

(2) consult with the assigned investigator to provide specialized guidance and resources to assist the investigation.

(b) The division shall employ at least one risk analyst, whose duties include the duty to:

(1) identify facilities, including child-placing agencies, whose compliance histories indicate the potential for a higher risk of harm to children in the care of the facility;

(2) review the monitoring and inspection reports for any facilities described by Subdivision (1) to assess the quality of the investigation or monitoring; and

(3) identify any additional monitoring or enforcement action that may be appropriate to ensure the safety of a child in the care of the facility.

(c) The division must include a performance management unit with duties that include:

(1) conducting quality assurance reviews of randomly selected monitoring and investigative reports to ensure compliance with all relevant laws, rules, and agency policies; and

(2) making recommendations to improve the quality and consistency of monitoring and investigations.

Added by Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 29(a), eff. September 1, 2007.

Sec. 42.0221. COMMITTEE ON LICENSING STANDARDS. (a) The committee on licensing standards is composed of seven members appointed by the governor as follows:

(1) one member who operates a residential child-care facility licensed by the department;

(2) one member who operates a child-placing agency licensed by the department;

(3) one member who operates a licensed child-care facility that provides care for children for less than 24 hours a day;

(4) one member who is a parent, guardian, or custodian of a child who uses a facility licensed by the department;

(5) one member who is an expert in the field of child care and child development; and

(6) two members employed by the department who work with facilities licensed by the department.

(b) Members of the committee serve two-year terms, with the terms of three or four members, as appropriate, expiring February 1 of each year.

(c) The governor shall designate a member of the committee to serve as the presiding officer.

(d) The committee shall meet twice a year at the call of the presiding officer.

(e) The committee shall review and analyze the information provided by the department and committee members and shall make recommendations for policy and statutory changes relating to licensing standards and facility inspections. The review and analysis by the committee shall include the analysis of:

(1) the deaths of children who are in substitute care, including reports and findings of child fatality review teams under Subchapter F, Chapter 264, Family Code;

(2) the types of licensing violations for each weighted risk and region;

(3) the details of administrative reviews and appeals; and

(4) the type of technical assistance provided and the qualifications of those providing technical assistance.

(f) The committee shall report its findings and recommendations to the department and the legislature not later than December 1 of each year.

Added by Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 30, eff. September 1, 2007.

Sec. 42.023. ANNUAL REPORT. (a) The department shall prepare an annual written report regarding the department's activities under this chapter.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of initial licenses issued,

denied, or revoked, of licenses issued, denied, suspended or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies, if such agencies exist, with certification requirements;

(2) a summary of the training programs required by the department and their effectiveness;

(3) a summary of training and other professional development opportunities offered to facilities' staffs;

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year; and

(5) a report of trends in licensing violations on a statewide and regional basis and the department's plans to address those trends through the provision of technical assistance.

(c) Copies of the annual report shall be available to any state citizen on request.

Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 18, Sec. 2, eff. April 3, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 8.022, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1063, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.92, eff. September 1, 2005.

Sec. 42.024. ADMINISTRATIVE PROCEDURE. Chapter 2001, Government Code applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER C. REGULATION OF CERTAIN FACILITIES, HOMES, AND
AGENCIES

Sec. 42.041. REQUIRED LICENSE. (a) No person may operate a child-care facility or child-placing agency without a license issued by the department.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home or agency foster group home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Department of State Health Services;

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility that is accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten and above, a before-school or after-school program operated directly by an accredited educational facility, or a before-school or after-school program operated by another entity under contract with the

educational facility, if the Texas Education Agency, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school or after-school program operated under the contract;

(8) an educational facility that operates solely for educational purposes for prekindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers an educational program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades;

(12) an emergency shelter facility providing shelter to minor mothers who are the sole support of their natural children under Section 32.201, Family Code, unless the facility would otherwise require a license as a child-care facility under this section;

(13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional

facility certified under Section 51.125, Family Code, a juvenile facility providing services solely for the Texas Youth Commission, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless;

(16) a food distribution program that:

(A) serves an evening meal to children two years of age or older; and

(B) is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days;

(17) a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;

(18) a program:

(A) in which a child receives direct instruction in a single skill, talent, ability, expertise, or proficiency;

(B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;

(C) that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) that informs the parent or guardian:

(i) that the program is not licensed by the state; and

(ii) about the physical risks a child may face while participating in the program; and

(E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(19) an elementary-age (ages 5-13) recreation program that:

(A) adopts standards of care, including standards relating to staff ratios, staff training, health, and safety;

(B) provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children;

(C) does not advertise as or otherwise represent the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) informs parents that the program is not licensed by the state;

(E) is organized as a nonprofit organization or is located on the premises of a participant's residence;

(F) does not accept any remuneration other than a nominal annual membership fee;

(G) does not solicit donations as compensation or payment for any good or service provided as part of the program; and

(H) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(20) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker:

(A) had a prior relationship with the child or sibling group or other family members of the child or sibling group;

(B) does not care for more than one unrelated child or sibling group;

(C) does not receive compensation or solicit donations for the care of the child or sibling group; and

(D) has a written agreement with the parent to care for the child or sibling group;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A) the department is the managing conservator of the child or sibling group;

(B) the department placed the child or sibling group in the caretaker's home; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker; or

(22) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in

which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization.

(b-1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(1), eff. September 1, 2009.

(c) A single license that lists addresses and the appropriate facilities may be issued to a general residential operation that operates noncontiguous facilities that are across the street from, in the same city block as, or on the same property as one another and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

(d) A facility exempt from the provisions of Subsection (a) of this section that desires to receive or participate in federal or state funding shall be required to comply with all other provisions of this chapter and with all regulations promulgated under this chapter.

(e) The exemptions provided by Subsection (b) of this section do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

Text of subsection as added by Acts 2011, 82nd Leg., R.S.,
Ch. [343](#), Sec. 1

(f) A child-care facility that is exempt under Subsection (b)(3) from the licensing requirement of Subsection (a) may provide care for each child at the child-care facility for not more than 15 hours a week if the child-care facility:

(1) provides the child care so that a person may attend an educational class provided by a nonprofit entity; and

(2) is located in a county with a population of 800,000 or more that is adjacent to an international border.

Text of subsection as added by Acts 2011, 82nd Leg., R.S.,
Ch. [1082](#), Sec. 2

(f) Notwithstanding the requirements of Subsection (b)(14), a municipality that operates an elementary-age (ages 5-13) recreation program may, in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality:

- (1) has a population of 300,000 or more; and
- (2) has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2812, ch. 759, Sec. 2, 3, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1052, Sec. 4.03, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1115, Sec. 2, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 262, Sec. 54, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 847, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.46, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 664, Sec. 3, 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.93(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 25, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1037](#), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 19(1), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [343](#), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 2, eff. September 1, 2011.

Sec. 42.042. RULES AND STANDARDS. (a) The department shall make rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years. For purposes of this subsection, the six-year period begins on the latest of the date of:

(1) the conclusion of the review of the rules and standards;

(2) a decision by the department not to revise the rules and standards;

(3) a decision by the board not to revise the rules and standards; or

(4) board action adopting new standards.

(c) The department shall provide a standard procedure for receiving and recording complaints. The executive commissioner shall adopt rules regarding the receipt of anonymous complaints made regarding child-care facilities

and family homes to limit the number of anonymous complaints investigated by the department.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The department shall promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility or registered family home;

(2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities and registered family homes;

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs;

(7) prevent the breakdown of foster care and adoptive placement; and

(8) ensure that a child-care facility or registered family home:

(A) follows the directions of a child's physician or other health care provider in providing specialized medical assistance required by the child; and

(B) maintains for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home.

(e-1) The department may not prohibit possession of lawfully permitted firearms and ammunition in a foster home of any type, including a foster group home, a foster home, an agency foster group home, and an agency foster

home. Minimum standards may be adopted under this section relating to safety and proper storage of firearms and ammunition, including standards requiring firearms and ammunition to be stored separately in locked locations.

(e-2) The department may not prohibit the foster parent of a child who resides in the foster family's home from transporting the child in a vehicle where a handgun is present if the handgun is in the possession and control of the foster parent and the foster parent is licensed to carry the handgun under Subchapter H, Chapter 411, Government Code.

(f) In promulgating minimum standards for the provision of child-care services, the department shall recognize the various categories of services, including services for specialized care, the various categories of children and their particular needs, and the differences in the organization and operation of child-care facilities and general residential operations. Standards for general residential operations must require an intake study before a child is placed in an operation. The intake study may be conducted at a community mental health and mental retardation center.

(g) In promulgating minimum standards the department may recognize and treat differently the types of services provided by the following:

- (1) registered family homes;
- (2) child-care facilities, including general residential operations, foster group homes, foster homes, group day-care homes, and day-care centers;
- (3) child-placing agencies;
- (4) agency foster homes;
- (5) agency foster group homes;
- (6) before-school or after-school programs; and
- (7) school-age programs.

(g-1) In determining and enforcing minimum standards for a school-age program, the department shall consider

commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program.

(g-2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1082, Sec. 16(2), eff. September 1, 2012.

(h) The department shall promulgate minimum standards for child-placing agencies.

(h-1) The executive commissioner shall adopt rules governing:

(1) the placement and care of children by a child-placing agency, as necessary to ensure the health and safety of those children;

(2) the verification and monitoring of agency foster homes, agency foster group homes, and adoptive homes by a child-placing agency; and

(3) if appropriate, child-placing agency staffing levels, office locations, and administration.

(i) Before adopting minimum standards, the department shall:

(1) convene a temporary work group to advise the department regarding the proposed standards, composed of at least six members who represent the diverse geographic regions of this state, including:

(A) a department official designated by the commissioner to facilitate the work group's activities;

(B) a person with demonstrated expertise or knowledge regarding the different types and classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards;

(C) a parent with experience related to one of the different types or classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; and

(D) a representative of a nonprofit entity licensed under this chapter; and

(2) send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

(l) In promulgating minimum standards for the regulation of family homes that register with the department, the department must address the minimum qualifications, education, and training required of a person who operates a family home registered with the department.

(m) In determining minimum standards relating to staff-to-child ratios, group sizes, or square footage requirements applicable to nonresidential child-care facilities that provide care for less than 24 hours a day, the department shall, within available appropriations, conduct a comprehensive cost-benefit analysis and economic impact study that includes families and licensed child-care providers.

(n) Not later than the 60th day before the date the board adopts a revision to the minimum standards for child-care facilities, the department shall present the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

(p) The department by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The department may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

(q) Each residential child-care facility shall notify the department and the appropriate local law enforcement agency immediately on determining that a child is missing from the facility.

(r) A residential child-care facility that provides emergency services may temporarily exceed the facility's capacity for not more than 48 hours to provide temporary care for a child in an emergency. The facility shall notify the department within 24 hours of the placement that the facility temporarily exceeded the facility's capacity.

Acts 1979, 66th Leg., p. 2362, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.04, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 920, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1121, Sec. 1, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 218, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.94(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. [526](#), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [366](#), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 31, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [471](#), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 16(2), eff. September 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. [1300](#), Sec. 1, eff. June 17, 2011.

Sec. 42.0421. MINIMUM TRAINING STANDARDS. (a) The minimum training standards prescribed by the department under Section 42.042(p) for an employee, director, or operator of a day-care center, group day-care home, or registered family home must include:

(1) 24 hours of initial training that must be completed not later than the 90th day after the employee's first day of employment for an employee of a day-care center who has no previous training or less than two years of employment experience in a regulated child-care facility, eight hours of which must be completed before the employee is given responsibility for a group of children;

(2) 24 hours of annual training for each employee of a day-care center or group day-care home, excluding the director, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction; and

(3) 30 hours of annual training for each director of a day-care center or group day-care home, or operator of a registered family home, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction.

(b) The minimum training standards prescribed by the department under Section 42.042(p) must require an employee of a licensed day-care center or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome;

and

(3) understanding early childhood brain development.

(c) The department by rule shall require an operator of a registered family home who provides care for a child younger than 24 months of age to complete one hour of annual training on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome;

and

(3) understanding early childhood brain development.

(d) Section 42.042(m) does not apply to the minimum training standards required by this section.

(e) In addition to other training required by this section, the department by rule shall require an owner, operator, or employee of a day-care center, group day-care home, registered family home, child-care institution, foster group home, or agency foster group home who transports a child under the care of the facility whose chronological or developmental age is younger than nine years of age to complete at least two hours of annual training on transportation safety.

Text of subsection as added by Acts 2011, 82nd Leg., R.S.,
Ch. [882](#), Sec. 1

(f) In adopting the minimum training standards under Section 42.042(p), the department may not require more training hours than the number of hours prescribed by Subsection (a) for a day-care center, group day-care home, or a registered family home.

Text of subsection as added by Acts 2011, 82nd Leg., R.S.,
Ch. [82](#), Sec. 1

(f) The training required by this section must be appropriately targeted and relevant to the age of the children who will receive care from the individual receiving training and must be provided by a person who:

(1) is a training provider registered with the Texas Early Care and Education Career Development System's Texas Trainer Registry that is maintained by the Texas Head Start State Collaboration Office;

(2) is an instructor at a public or private secondary school or at a public or private institution of higher education, as defined by Section 61.801, Education Code, who teaches early childhood development or another relevant course, as determined by rules adopted by the commissioner of education and the commissioner of higher education;

(3) is an employee of a state agency with relevant expertise;

(4) is a physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) is a registered family home care provider or director of a day-care center or group day-care home in good standing with the department, if applicable, and who:

(A) has demonstrated core knowledge in child development and caregiving; and

(B) is only providing training at the home or center in which the provider or director and the person receiving training are employed; or

(7) has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) has been awarded a Child Development Associate (CDA) credential; or

(B) holds at least an associate's degree in child development, early childhood education, or a related field.

(g) The executive commissioner by rule shall adopt minimum training standards for before-school or after-school and school-age programs as required by Section 42.042(p). In adopting minimum training standards for before-school or after-school and school-age programs under this subsection, the executive commissioner may not require more initial or annual training hours than the number of hours required by Subsection (a) immediately before September 1, 2011.

Text of subsection as added by Acts 2011, 82nd Leg., R.S.,
Ch. [82](#), Sec. 1

(g) A person described by Subsection (f)(6) may provide training under this section only if the department has not taken an action under Section 42.071, 42.072, or 42.078, other than an evaluation, against the license, listing, or registration of the person or the home or center for which the person is a provider or director during the two-year period preceding the date on which the person provides the training.

Added by Acts 1999, 76th Leg., ch. 1211, Sec. 1, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 169, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [748](#), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [82](#), Sec. 1, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. [882](#), Sec. 1, eff. September 1, 2011.

Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing services to a resident of a general residential

operation, including a state-operated facility that is a residential treatment center or a general residential operation serving children with mental retardation, shall comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. [698](#), Sec. 7, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 7, eff. September 1, 2009.

Sec. 42.0423. CHILDREN'S PRODUCT SAFETY FOR CERTAIN NONRESIDENTIAL CHILD-CARE FACILITIES. (a) This section applies only to a licensed day-care center, licensed group day-care home, or registered family home.

(b) A children's product is presumed to be unsafe for purposes of this section if it has been recalled for any reason by the United States Consumer Product Safety Commission and the recall has not been rescinded.

(c) A children's product that has been recalled for any reason by the United States Consumer Product Safety Commission is not presumed to be unsafe if the product has been remanufactured or retrofitted so that the product is safe.

(d) The department shall include on its public Internet website a link to the United States Consumer Product Safety Commission's Internet website.

(e) A child-care facility subject to this section may not use an unsafe children's product or have an unsafe children's product on the premises of the child-care facility unless:

(1) the product is an antique or collectible children's product and is not used by, or accessible to, any child in the child-care facility; or

(2) the unsafe children's product is being retrofitted to make it safe and the product is not used by, or accessible to, any child in the child-care facility.

(f) The department shall notify a child-care facility subject to this section of the provisions of this section in plain, nontechnical language that will enable the child-care facility to effectively inspect the children's products at the facility and identify unsafe children's products. The department shall provide the notice required by this subsection:

(1) during the department's pre-application interview for a license, registration, or certification; and

(2) during an inspection.

(g) At least annually, each child-care facility subject to this section shall certify in writing that the facility has reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe products in the facility except products described by Subsection (e). The facility shall retain the certification form completed by each facility in the facility's licensing file.

(h) The executive commissioner of the Health and Human Services Commission shall adopt rules and forms necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. [46](#), Sec. 2, eff. September 1, 2009.

Sec. 42.0425. ASSESSMENT SERVICES. (a) The department by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by the department.

(b) The department by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

(c) In this section, "assessment services" means the determination of the placement needs of a child who requires substitute care.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 25, eff. Sept. 1, 1997.

Sec. 42.0426. TRAINING OF PERSONNEL. (a) A licensed facility shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

(b) A residential child-care facility shall implement a behavior intervention program approved by the department for the benefit of a child served by the facility who needs assistance in managing the child's conduct. The program must include:

(1) behavior intervention instruction for staff members who work directly with children served by the facility; and

(2) training for all employees regarding the risks associated with the use of prone restraints.

(c) Not later than the seventh day after the date an employee begins employment at a day-care center, group day-care home, or registered family home, the employee must complete an orientation to the facility.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 25, eff.
Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.95, eff.
September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. [882](#), Sec. 2, eff.
September 1, 2011.

Sec. 42.04261. OTHER TRAINING OF PERSONNEL: CHILD-
PLACING AGENCIES AND DAY-CARE CENTERS.

(a) Notwithstanding Section 42.0426(a)(1), a child-placing agency or day-care center shall provide training for staff members in prevention techniques for and the recognition of symptoms of sexual abuse and other maltreatment of children and the responsibility and procedure of reporting suspected occurrences of sexual abuse and other maltreatment of children to the department or other appropriate entity.

(b) The type of training required under Subsection (a) shall be determined by department rule. The training must be provided for at least an hour annually and must include training concerning:

(1) factors indicating a child is at risk for sexual abuse or other maltreatment;

(2) likely warning signs indicating a child may be a victim of sexual abuse or other maltreatment;

(3) internal procedures for reporting sexual abuse or other maltreatment; and

(4) community organizations that have existing training programs that are able to provide training or other education for child-placing agency or day-care center staff members, children, and parents.

(c) If a child-placing agency or day-care center determines that it does not have sufficient resources to provide the training required under this section, the agency or center may contact a department licensing

employee to obtain information concerning community organizations that will provide such training at no cost to the agency or center.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1323](#), Sec. 4, eff. June 17, 2011.

Sec. 42.0427. PARENTAL VISITATION. All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 25, eff. Sept. 1, 1997.

Sec. 42.0428. POLICIES ADDRESSING SEXUAL ABUSE AND OTHER MALTREATMENT OF CHILDREN. (a) Each child-placing agency or day-care center shall adopt and implement a policy addressing sexual abuse and other maltreatment of children.

(b) A policy required by this section must address:

(1) methods for increasing child-placing agency and day-care center staff and parent awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse or other maltreatment; and

(2) actions that, after contacting an agency or center, the parent of a child who is a victim of sexual abuse or other maltreatment should take to obtain assistance and intervention.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children must include:

(1) the training required under Section 42.04261; and

(2) strategies for coordination between the child-placing agency or day-care center and appropriate community organizations.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1323](#), Sec. 5, eff. June 17, 2011.

Sec. 42.043. RULES FOR IMMUNIZATIONS. (a) The department shall make rules for the immunization of children in facilities regulated under this chapter.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, mumps, rubella, rubeola, invasive pneumococcal disease, and hepatitis A and against any other communicable disease as recommended by the Department of State Health Services. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The Texas Department of Health shall make rules for the provisional admission of children to facilities regulated under this chapter and may modify or delete any of the immunizations listed in Subsection (b) of this section or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility regulated under this chapter if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization poses a significant risk to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief.

(d-1) An affidavit submitted under Section (d)(2) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted not later than the 90th day after the date the affidavit is notarized.

(e) Each regulated facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the department at all reasonable times.

(f) The Texas Department of Health shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

Acts 1979, 66th Leg., p. 2362, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 5, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.164, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. [563](#), Sec. 1, eff. September 1, 2005.

Sec. 42.0431. ENFORCEMENT OF SCREENING REQUIREMENTS RELATING TO VISION, HEARING, AND OTHER SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The department, after consultation with the Texas Department of Health, shall adopt rules necessary to ensure that children receiving care at a day-care center or group day-care home licensed under this chapter are screened for vision, hearing, and any other special senses or communication disorders in compliance with rules adopted by the Texas Board of Health under Section 36.004, Health and Safety Code.

(b) Each day-care center or group day-care home licensed under this chapter shall maintain individual

screening records for children attending the facility who are required to be screened, and the department may inspect those records at any reasonable time. The department shall coordinate the monitoring inspections in compliance with protocol agreements adopted between the department and the Texas Department of Health pursuant to Section 42.0442.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(2), eff. September 1, 2009.

Added by Acts 1999, 76th Leg., ch. 712, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 19(2), eff. September 1, 2009.

Sec. 42.044. INSPECTIONS. (a) An authorized representative of the department may visit a facility regulated under this chapter or a registered family home during operating hours to investigate, inspect, and evaluate.

(b) The department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(b-1) At least one of the unannounced, annual inspections of a residential child-care facility must be conducted by a team of at least two residential child-care monitoring staff, and, if feasible, members of the inspection team must be from different residential child-care monitoring units.

(b-2) Except as otherwise provided by this subsection, during an unannounced annual inspection of a day-care center, the department shall meet with the director designated by the day-care center as having daily, on-site responsibility for the operation of the day-care

center to assess whether the director meets the qualifications of a director specified by this chapter and department rules. If the director is not present during the unannounced annual inspection, the department shall schedule a subsequent meeting with the director for that purpose and shall conduct that meeting at the day-care center.

(c) The department must investigate a facility regulated under this chapter or a registered family home when a complaint is received. The representative of the department must notify the operator of a registered family home or the director or authorized representative of a regulated facility when a complaint is being investigated and report in writing the results of the investigation to the family home's operator or to the regulated facility's director or the director's authorized representative.

(c-1) The department:

(1) shall investigate a listed family home if the department receives a complaint that:

(A) a child in the home has been abused or neglected, as defined by Section 261.401, Family Code; or

(B) otherwise alleges an immediate risk of danger to the health or safety of a child being cared for in the home; and

(2) may investigate a listed family home to ensure that the home is providing care for compensation to not more than three children, excluding children who are related to the caretaker.

(c-2) The department must notify the operator of a listed family home when a complaint is being investigated under this section and report in writing the results of the investigation to the family home's operator.

(d) The department may call on political subdivisions and governmental agencies for assistance within their authorized fields.

(e) In addition to the department's responsibility to investigate an agency foster home or agency foster group home under Subsection (c), the department shall:

(1) periodically conduct inspections of a random sample of agency foster homes and agency foster group homes;

(2) investigate any report of a serious incident in an agency foster home or agency foster group home that pertains to a child under the age of six;

(3) investigate any alleged violation of a minimum standard by an agency foster home or agency foster group home that poses a high degree of risk to a child in the care of the home who is under the age of six; and

(4) conduct at least one annual enforcement team conference for each child-placing agency to thoroughly review the investigations or inspections of the child-placing agency and all of its agency homes to monitor and enforce compliance by a child-placing agency with rules and standards established under Section 42.042.

(f) The department shall use an inspection checklist that includes a list of all required items for inspection in conducting a monitoring inspection under this section.

Acts 1979, 66th Leg., p. 2363, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 27, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.96, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 32(a), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 3, eff. September 1, 2011.

Sec. 42.0441. INSPECTION RESULTS FOR CERTAIN NONRESIDENTIAL CHILD-CARE FACILITIES. Immediately after completing a monitoring inspection of a licensed day-care center, licensed group day-care home, or registered family home under Section 42.044, the authorized representative of the department shall review the results of the monitoring inspection with a representative of the facility and give the facility an opportunity to respond to the inspection results.

Added by Acts 1997, 75th Leg., ch. 253, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 28, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.97, eff. September 1, 2005.

Sec. 42.04411. INSPECTION RESULTS AND EXIT CONFERENCE FOR RESIDENTIAL CHILD-CARE FACILITIES. (a) On completion of an inspection of a residential child-care facility under Section 42.044, the inspector shall hold an exit conference with a representative of the inspected facility. The inspector shall provide to the representative a copy of the inspection checklist used by the inspector.

(b) The inspector shall provide the representative an opportunity to communicate regarding potential violations.

Added by Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.98, eff. September 1, 2005.

Sec. 42.04412. INTERFERENCE WITH INSPECTION; COURT ORDER. (a) A person may not interfere with an

investigation or inspection of a facility or family home conducted by the department under this chapter.

(b) During an investigation or inspection of a facility or family home under this chapter, the facility or family home shall cooperate with the department and allow the department to:

(1) access the records of the facility or family home;

(2) access any part of the premises of the facility or family home; and

(3) interview any child, employee, or other person who is present at the facility or family home and who may have information relevant to the investigation or inspection.

(c) If access to the records or premises of the facility or family home cannot be obtained, a district court in Travis County or in the county in which the facility or family home is located, for good cause shown and without prior notice or a hearing, shall issue an order granting the department access to the records or premises in order to conduct the inspection, investigation, or interview.

(d) To assist the department in investigating whether a person is operating a facility or family home without a required license, certification, registration, or listing, a district court in Travis County or in the county in which the suspected facility or family home is located may, for good cause shown and without prior notice or a hearing, issue an order allowing the department to enter the suspected facility or family home at a time when the department's evidence shows that the suspected facility or family home may be providing child care subject to regulation under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 9, eff. September 1, 2009.

Sec. 42.0442. COORDINATION OF INSPECTIONS;
ELIMINATION OF DUPLICATIVE INSPECTIONS. (a) The
department shall coordinate monitoring inspections of
licensed day-care centers, licensed group day-care homes,
and registered family homes performed by another state
agency to eliminate redundant inspections.

(b) The department shall form an interagency task
force with the Texas Department of Health, the Texas
Department of Human Services, and the Texas Workforce
Commission to develop an inspection protocol that will
coordinate inspections by those agencies. The protocol
must assign the required items for inspection by each
agency and facilitate the sharing of inspection data and
compliance history.

(c) The interagency task force shall establish an
inspection checklist based on the inspection protocol
developed under Subsection (b). Each state agency that
inspects a facility listed in Subsection (a) shall use the
inspection checklist in performing an inspection. A state
agency shall make a copy of the completed inspection
checklist available to the facility at the facility's
request to assist the facility in maintaining records.

(d) The department shall provide to facilities listed
in Subsection (a) information regarding inspections,
including who may inspect a facility and the purpose of
each type of inspection.

Added by Acts 1997, 75th Leg., ch. 253, Sec. 1, eff. Sept.
1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 28, eff.
Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 169,
Sec. 2, eff. Sept. 1, 2001.

Text of section as added by Acts 1997, 75th Leg., ch. 253,
Sec. 1

Sec. 42.0443. INSPECTION INFORMATION DATABASE. (a) If feasible using available information systems, the department shall establish a computerized database containing relevant inspection information on licensed day-care centers, licensed group day-care homes, and registered family homes from other state agencies and political subdivisions of the state.

(b) The department shall make the data collected by the department available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the department shall make the data directly available to the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission through electronic information systems. The department, the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

(c) The department may provide inspection data on licensed day-care centers, licensed group day-care homes, or registered family homes to the public if the department determines that providing inspection data enhances consumer choice with respect to those facilities.

Added by Acts 1997, 75th Leg., ch. 253, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 28, eff. Sept. 1, 1997.

Text of section as added by Acts 2003, 78th Leg., ch. 709, Sec. 1.

Sec. 42.0443. COORDINATION OF FIRE SAFETY AND SANITATION INSPECTIONS. (a) The department may not inspect a licensed day-care center, licensed group day-care home, or registered family home for compliance with the department's fire safety or sanitation standards if the facility, at the time of the department's inspection, provides the department with documentation relating to a current fire safety or sanitation inspection, as applicable, performed by a political subdivision of this state that indicates that the facility is in compliance with the applicable standards of the political subdivision.

(b) If the documentation provided under Subsection (a) indicates that the facility was required to take corrective action or that the political subdivision imposed a restriction or condition on the facility, the department shall determine whether the facility took the required corrective action or complied with the restriction or condition.

(c) The department may inspect a facility subject to this section for compliance with the department's fire safety or sanitation standards if:

(1) the facility does not provide the documentation described by Subsection (a); or

(2) the department determines that the facility did not take a corrective action or comply with a restriction or condition described by Subsection (b).

(d) Notwithstanding any other provision of this section, the department shall report to the appropriate political subdivision any violation of fire safety or sanitation standards observed by the department at a facility subject to this section.

(e) The department shall adopt rules necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 709, Sec. 1, eff. Sept. 1, 2003.

Sec. 42.04431. ENFORCEMENT OF STATE LAW BY COUNTY OR MUNICIPALITY. (a) A municipality or a county may enforce state law and rules adopted under state law concerning fire safety standards at a licensed group day-care home or a registered family home.

(b) A municipality or county shall report to the department any violation of fire safety standards observed by the municipality or county at a licensed group day-care home or registered family home.

Added by Acts 2011, 82nd Leg., R.S., Ch. [354](#), Sec. 1, eff. September 1, 2011.

Sec. 42.0445. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. (a) Before the department issues a license, listing, registration, or certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The department may adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 29, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 33, eff. September 1, 2007.

Sec. 42.0446. REMOVAL OF CERTAIN INVESTIGATION INFORMATION FROM INTERNET WEBSITE. The executive

commissioner shall adopt rules providing a procedure by which the department removes from the department's Internet website information with respect to a child-care facility or registered family home that relates to an anonymous complaint alleging that the facility or family home failed to comply with the department's minimum standards if, at the conclusion of an investigation, the department determines that the complaint is false or lacks factual foundation.

Added by Acts 2005, 79th Leg., Ch. [526](#), Sec. 2, eff. September 1, 2005.

Sec. 42.0447. FALSE REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally files a complaint alleging that a child-care facility or registered family home failed to comply with the department's minimum standards and the person knows the allegation is false or lacks factual foundation.

(b) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

Added by Acts 2005, 79th Leg., Ch. [526](#), Sec. 2, eff. September 1, 2005.

Sec. 42.0448. NOTIFICATION OF FAMILY VIOLENCE CALLS. The department shall notify a child-placing agency of each family violence report the department receives under Article 5.05, Code of Criminal Procedure, that:

(1) occurred at an agency foster home verified by the child-placing agency; or

(2) involves a person who resides at an agency foster home verified by the child-placing agency.

Added by Acts 2007, 80th Leg., R.S., Ch. [524](#), Sec. 4, eff. June 16, 2007.

Sec. 42.0449. REQUIRED ACTIONS AFTER NOTICE OF FAMILY VIOLENCE CALL. The executive commissioner shall adopt rules specifying the actions that the department, an independent foster home, and a child-placing agency shall take after receiving notice of a family violence report under Article 5.05, Code of Criminal Procedure, or Section 42.0448 to ensure the health, safety, and welfare of each child residing in the licensed foster home or verified agency foster home.

Added by Acts 2007, 80th Leg., R.S., Ch. [524](#), Sec. 4, eff. June 16, 2007.

Sec. 42.045. RECORDS. (a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who provides adoption services under a license to operate a child-placing agency shall furnish information required by the department to determine whether adoption related income and disbursements are reasonable, appropriate, and in compliance with the department's minimum standards.

(c) If a child-placing agency terminates operation as a child-placing agency, it shall, after giving notice to the department, transfer its files and records concerning adopted children, their biological families, and their adoptive families to the Bureau of Vital Statistics or, after giving notice to the Bureau of Vital Statistics, to a facility licensed by the department to place children for adoption.

(d) An independent foster home and a child-placing agency shall notify the department of any change of address for a licensed foster home or a verified agency foster home. The independent foster home and child-placing agency shall notify the department of the address change within the earlier of two business days or 72 hours of the date the foster home changes its address.

Acts 1979, 66th Leg., p. 2363, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 1782, ch. 342, Sec. 2, eff. Jan. 1, 1984; Acts 1989, 71st Leg., ch. 707, Sec. 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1129, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [524](#), Sec. 5, eff. June 16, 2007.

Sec. 42.0451. DATABASE OF FOSTER HOMES; INFORMATION PROVIDED TO DEPARTMENT OF PUBLIC SAFETY. (a) The department shall maintain a database of licensed foster homes and verified agency foster homes including the current address for each licensed or verified home as reported to the department. The database must be updated on a regular basis.

(b) The department shall make the database available to the Department of Public Safety for the purposes of Subsection (c).

(c) The Department of Public Safety shall include the information provided under Subsection (b) in the Texas Crime Information Center database and establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a street address is automatically provided information as to whether the address is licensed as a foster home or verified as an agency foster home under this chapter.

(d) Information provided to the Department of Public Safety under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. [524](#), Sec. 6, eff. June 16, 2007.

Sec. 42.0452. FOSTER PARENT RIGHTS AND RESPONSIBILITIES STATEMENT. (a) The department shall develop a statement that lists the rights and responsibilities of a foster parent in a foster home or an agency foster home and of the department or a child-placing agency, as applicable.

(b) The department shall provide a written copy of the statement developed under Subsection (a) to each foster parent in a foster home and to each child-placing agency licensed by the department. A child-placing agency shall provide a written copy of the statement developed under Subsection (a) to each foster parent in an agency foster home verified by the child-placing agency.

Added by Acts 2009, 81st Leg., R.S., Ch. [939](#), Sec. 1, eff. June 19, 2009.

Sec. 42.046. APPLICATION FOR LICENSE, LISTING, OR REGISTRATION. (a) An applicant for a license to operate a child-care facility or child-placing agency or for a listing or registration to operate a family home shall submit to the department the appropriate fee prescribed by Section 42.054 and a completed application on a form provided by the department.

(b) The department shall supply the applicant the application form and a copy of the appropriate minimum standards, if applicable.

(c) After receiving an application, the department shall investigate the applicant and the plan of care for children, if applicable.

(d) The department shall complete the investigation and decide on an application within two months after the date the department receives a completed application.

(e) The department may deny an application under this section if the applicant:

(1) has a residential child-care facility license revoked in another state; or

(2) is barred from operating a residential child-care facility in another state.

Acts 1979, 66th Leg., p. 2363, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 212, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 239, Sec. 4, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1022, Sec. 30, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.99, eff. September 1, 2005.

Sec. 42.0461. PUBLIC NOTICE AND HEARING IN CERTAIN COUNTIES: RESIDENTIAL CHILD CARE. (a) Before the department may issue a license or certificate for the operation or the expansion of the capacity of a foster group home or foster family home that is located in a county with a population of less than 300,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or of a general residential operation, the applicant for the license, certificate, or expansion shall, at the applicant's expense:

(1) conduct a public hearing on the application in accordance with department rules after notifying the department of the date, time, and location of the hearing; and

(2) publish notice of the application in a newspaper of general circulation in the community in which the child-care services are proposed to be provided.

(b) The notice required by Subsection (a)(2) must be published at least 10 days before the date of the public hearing required by Subsection (a)(1) and must include:

(1) the name and address of the applicant;

(2) the address at which the child-care services are proposed to be provided;

(3) the date, time, and location of the public hearing;

(4) the name, address, and telephone number of the department as the licensing authority; and

(5) a statement informing the public that a person may submit written comments to the department concerning the application instead of or in addition to appearing at the public hearing.

(c) The department shall require a representative of the department to attend the public hearing in an official capacity for the purpose of receiving public comments on the application.

(d) Before issuing a license or certificate described by Subsection (a), the department shall consider:

(1) the amount of local resources available to support children proposed to be served by the applicant;

(2) the impact of the proposed child-care services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children proposed to be served by the applicant; and

(3) the impact of the proposed child-care services on the community and the effect on opportunities for social interaction for the children proposed to be served by the applicant.

(e) The department may deny the application if the department determines that:

(1) the community has insufficient resources to support children proposed to be served by the applicant;

(2) granting the application would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the increase would adversely affect the children proposed to be served by the applicant; or

(3) granting the application would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

(f) A child-placing agency that proposes to verify an agency foster home or agency foster group home that is located in a county with a population of less than 300,000 that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker shall:

(1) comply with the notice and hearing requirements imposed by Subsections (a) and (b); and

(2) after conducting the required public hearing, provide the department with information relating to the considerations specified in Subsection (d).

(g) The department may prohibit the child-placing agency from verifying the proposed agency foster home or agency foster group home on the same grounds that the department may deny an application under Subsection (e). The department may invalidate the verification of an agency foster home or agency foster group home that was not

verified using the procedures required by Subsection (f) on or after September 1, 1997.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 31, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.100, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 34, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 10, eff. September 1, 2009.

Sec. 42.047. CONSULTATIONS. (a) The department shall offer consultation to potential applicants, applicants, and license, listing, registration, and certification holders about meeting and maintaining standards for licensing, listing, registration, and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities or homes.

Acts 1979, 66th Leg., p. 2364, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 6, eff. Sept. 1, 1997.

Sec. 42.048. LICENSING. (a) The department shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the department may impose restrictions on a facility, including but not limited to the number of children to be served and the type of children to be served.

(c) The department may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. Except as provided by this subsection, a change in location or ownership automatically revokes a license. A change in location of a child-placing agency does not automatically revoke the license to operate the child-placing agency.

(f) A license must be issued if the department determines that a facility meets all requirements. The evaluation shall be based on one or more visits to the facility and a review of required forms and records. A license is valid until revoked or surrendered.

Acts 1979, 66th Leg., p. 2364, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 1987. Renumbered from Human Resources Code Sec. 42.049 and amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 35, eff. September 1, 2007.

Sec. 42.049. LIABILITY INSURANCE REQUIRED. (a) A license holder shall maintain liability insurance coverage in the amount of \$300,000 for each occurrence of negligence. An insurance policy or contract required under this section must cover injury to a child that occurs while the child is on the premises of the license holder or in the care of the license holder.

(b) A license holder shall file with the department a certificate or other evidence from an insurance company

showing that the license holder has an unexpired and uncanceled insurance policy or contract that meets the requirements of this section.

(c) Should the license holder for financial reasons or for lack of availability of an underwriter willing to issue a policy be unable to secure the insurance required under Subsection (a) or should the policy limits be exhausted, the license holder shall notify the parent or a person standing in parental relationship to each child for whom the license holder provides care a written notice that the liability coverage is not provided and there will not be a ground for suspension or revocation of the license holder's license under this chapter. The license holder shall also notify the department that the coverage is not provided and provide the reason for same. In no case shall the inability to secure coverage serve to indemnify the license holder for damages due to negligence.

(d) The insurance policy or contract shall be maintained at all times in an amount as required by this section. Failure by a license holder to renew the policy or contract or to maintain the policy or contract in the required amount is a ground for suspension or revocation of the license holder's license under this chapter.

(e) This section does not apply to a group day-care home or a listed or registered family home.

Added by Acts 1993, 73rd Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1217, Sec. 7, eff. Sept. 1, 1997. Renumbered from Human Resources Code, Sec. 42.0491 and amended by Acts 1997 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Sec. 42.050. LICENSE RENEWAL. (a) A license holder may apply for a new license in compliance with the requirements of this chapter and the rules promulgated by the department.

(b) The application for a new license must be completed and decided on by the department before the expiration of the license under which a facility is operating.

(c) The department shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation may include a specified number of visits to the facility and must include a review of all required forms and records.

Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Sec. 42.051. INITIAL LICENSE. (a) The department shall issue an initial license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

- (1) the facility is not currently operating;
- (2) the facility has relocated and has made changes in the type of child-care service it provides; or
- (3) there is a change in ownership of the facility resulting in changes in policy and procedure or in the staff who have direct contact with the children.

(b) An initial license is valid for six months from the date it is issued and may be renewed for an additional six months.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 707, Sec. 2, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.101, eff. September 1, 2005.

Sec. 42.052. CERTIFICATION, LISTING, AND REGISTRATION. (a) A state-operated child-care facility or child-placing agency must receive certification of approval from the department. The certification of approval remains valid until revoked or surrendered.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A family home that provides care for compensation for three or fewer children, excluding children who are related to the caretaker, shall list with the department if the home provides regular care in the caretaker's own residence. The home may register with the department.

(d) A family home that provides care for four or more children, excluding children who are related to the caretaker, shall register with the department. A family home that provides care exclusively for any number of children who are related to the caretaker is not required to be listed or registered with the department.

(e) A registration or listing remains valid until revoked or surrendered. The operator of a registered home must display the registration in a prominent place at the home.

(f) To remain listed or registered with the department, a family home must comply with the department's rules and standards, if applicable, and any provision of this chapter that applies to a listed or registered family home.

(g) The certification requirements of this section do not apply to a Texas Youth Commission facility, a Texas Juvenile Probation Commission facility, or a facility providing services solely for the Texas Youth Commission.

(h) The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or a juvenile correctional facility certified under Section 51.125, Family Code.

(i) The department shall provide to a listed family home a copy of the listing. A listing must contain a provision that states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED." The operator of a listed home is not required to display the listing in a prominent place at the home but shall make the listing available for examination. The department by rule shall provide for a sufficient period to allow operators of family homes to comply with the listing requirement of this section.

(j) The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under Section 42.056. If the operator of a listed family home fails to submit the information required by Section 42.056 for a subsequent background and criminal history check, the department shall automatically:

(1) suspend the home's listing until the required information is submitted; and

(2) revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(j-1) A suspension or revocation under Subsection (j) is not a suspension or revocation under Section 42.072.

(k) The department shall issue a listing or registration to a family home, as appropriate, in both English and Spanish when the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in

which the family home is located is of Hispanic origin or Spanish-speaking.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2813, ch. 759, Sec. 4, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 212, Sec. 2, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 915, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1052, Sec. 4.06, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 707, Sec. 3, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 8.023, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 262, Sec. 55, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1022, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 6 to 8, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 26, eff. June 8, 2007.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 4, eff. September 1, 2011.

Sec. 42.0521. DEPOSIT OF FEES. The fees authorized by this chapter and received by the department shall be deposited in the general revenue fund.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 5, eff. Sept. 1, 1985.

Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES.
(a) A family home may not place a public advertisement that uses the title "registered family home" or any variation of that phrase unless the home is registered under this chapter. Any public advertisement for a registered family home that uses the title "registered

family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(b) A family home may not place a public advertisement that uses the title "listed family home" or any variation of that phrase unless the home is listed as provided by this chapter. Any public advertisement for a listed family home that uses the title "listed family home" must contain a provision in bold type stating: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

Added by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 9, eff. Sept. 1, 1997.

Sec. 42.0523. LISTING OF RELATIVE CHILD-CARE PROVIDERS. (a) A child-care provider who only provides child care under Chapter 313, Labor Code, to children related to the provider may list the provider's home as a family home.

(b) Before the department may list a child-care provider's home under this section, in addition to conducting any other background or criminal history check required for a family home listing, the department must search the central database of sex offender registration records maintained by the Department of Public Safety under Chapter 62, Code of Criminal Procedure, to determine whether the provider is listed in the registry as a sex offender.

(c) The address of a family home listed under this section is the address of the child-care provider's home, regardless of whether the child care is provided in the provider's home or in the child's home.

(d) A relative child-care provider's home listed as a family home under this section is exempt from the health and safety requirements of 45 C.F.R. Section 98.41(a).

Added by Acts 2011, 82nd Leg., R.S., Ch. [869](#), Sec. 3, eff. September 1, 2011.

Sec. 42.053. AGENCY FOSTER HOMES AND AGENCY FOSTER GROUP HOMES. (a) An agency foster home or agency foster group home is considered part of the child-placing agency that operates the agency foster home or agency foster group home for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency foster home or agency foster group home used by the agency.

(c) An agency foster home or agency foster group home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The department shall revoke or suspend the license of a child-placing agency if an agency foster home or agency foster group home operated by the licensed agency fails to comply with Subsection (c) of this section.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.07, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Sec. 42.0535. REQUIRED INFORMATION FOR VERIFICATION. (a) A child-placing agency that seeks to verify an agency home or an agency group home shall request background information about the agency home or group home from a child-placing agency that has previously verified that agency home or agency group home.

(b) Notwithstanding Section 261.201, Family Code, a child-placing agency that has verified an agency home or an agency group home is required to release to another child-placing agency background information requested under Subsection (a).

(c) A child-placing agency that releases background information under this section is immune from civil and criminal liability for the release of the information.

(d) For purposes of this section, background information means the home study under which the agency home or agency group home was verified by the previous child-placing agency and any record of noncompliance with state minimum standards received and the resolution of any such noncompliance by the previous child-placing agency.

(e) The department, by rule, shall develop a process by which a child-placing agency shall report to the department:

(1) the name of any verified foster home or foster group home that has been closed for any reason, including a voluntary closure;

(2) information regarding the reasons for the closure of the foster home or foster group home; and

(3) the name and other contact information of a person who may be contacted by another child-placing agency to obtain the records relating to the closed foster home or foster group home that are required to be maintained and made available under this section.

(f) Information gathered under Subsection (e) must be made available to child-placing agencies through a searchable database maintained by the department.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 36(a), eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 36, eff. September 1, 2007.

Sec. 42.0536. TRANSFER OF AGENCY FOSTER HOME. (a)

An agency foster home that is verified by a child-placing agency may transfer to another child-placing agency only if, before the date of the transfer, the agency foster home notifies the child-placing agency to which the agency foster home is transferring of each licensing violation for which the agency foster home has been cited by the department during the preceding three years.

(b) The child-placing agency to which the agency foster home is transferring shall submit a written request for transfer to the child-placing agency that verified the agency foster home.

(c) Not later than the 10th day after the date the child-placing agency receives a request for transfer under Subsection (b), the child-placing agency shall provide the child-placing agency that submitted the request a copy of any of the following documents regarding the agency foster home:

- (1) a corrective action plan;
- (2) an annual development plan; or
- (3) a description of any imposed or potential service limitation.

(d) The department caseworker for each child placed in the agency foster home may conduct a review meeting to determine whether the transfer of the agency foster home is in the best interest of each child in the home on the request of:

- (1) the child-placing agency to which the agency foster home is transferring;
- (2) the child-placing agency that verified the agency foster home;
- (3) the agency foster home; or
- (4) the caseworker.

(e) After a review meeting, the caseworker shall determine whether each child placed in the agency foster home shall:

(1) stay in the agency foster home after the agency foster home is transferred to the new child-placing agency; or

(2) be removed from the agency foster home before the agency foster home is transferred to the new child-placing agency.

Added by Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 37, eff. September 1, 2007.

Sec. 42.054. FEES. (a) The department shall charge an applicant a nonrefundable application fee of \$35 for an initial license to operate a child-care facility or a child-placing agency.

(b) The department shall charge each child-care facility a fee of \$35 for an initial license. The department shall charge each child-placing agency a fee of \$50 for an initial license.

(c) The department shall charge each licensed child-care facility an annual license fee in the amount of \$35 plus \$1 for each child the child-care facility is permitted to serve. The fee is due on the date on which the department issues the child-care facility's initial license and on the anniversary of that date.

(d) The department shall charge each licensed child-placing agency an annual license fee of \$100. The fee is due on the date on which the department issues the child-placing agency's initial license and on the anniversary of that date.

(e) The department shall charge each family home that is listed or registered with the department an annual fee to cover a part of the department's cost in regulating family homes. The amount of the fee is \$20 for a listed

home or \$35 for a registered home. The fee is due on the date on which the department initially lists or registers the home and on the anniversary of that date.

(f) If a facility, agency, or home fails to pay the annual fee when due, the license, listing, or registration, as appropriate, is automatically suspended until the fee is paid. The license, listing, or registration shall be revoked if the fee is not paid within six months after the date the automatic suspension begins. A suspension or revocation under this subsection is not a suspension or revocation under Section 42.072.

(g) The provisions of Subsections (b) through (f) of this section do not apply to:

(1) licensed foster homes and licensed foster group homes;

(2) nonprofit facilities regulated under this chapter that provided 24-hour care for children in the managing conservatorship of the department during the 12-month period immediately preceding the anniversary date of the facility's license;

(3) facilities operated by a nonprofit corporation or foundation that provides 24-hour residential care and does not charge for the care provided; or

(4) a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 10, 11, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.102, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. [869](#), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 5, eff. September 1, 2011.

Sec. 42.055. SIGN POSTING. (a) Each child-care facility shall post in a location that is conspicuous to all employees and customers a sign that includes:

(1) a description of the provisions of the Family Code relating to the duty to report child abuse or neglect;

(2) a description of the penalties for violating the reporting provisions of the Family Code; and

(3) a brief description of sudden infant death syndrome, shaken-baby syndrome, and childhood diabetes and methods for preventing those phenomena.

(a-1) A licensed day-care center, licensed group day-care home, or registered family home subject to Section 42.0423 shall include in the sign required under Subsection (a) a description of how to access a listing of unsafe children's products on the United States Consumer Product Safety Commission's Internet website or through the department's public Internet website.

(b) The department by rule shall determine the design, size, and wording of the sign.

(c) The department shall provide the sign to each child-care facility without charge.

(d) A person who operates a child-care facility commits an offense if the department provides a sign to the facility as provided by this section and the person intentionally fails to display the sign in the facility as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 20, Sec. 1, eff. Nov. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.47, eff. Sept. 1, 1997. Renumbered from Human Resources Code Sec. 42.056 and amended by Acts 1997, 75th

Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 221, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. [46](#), Sec. 3, eff. September 1, 2009.

Sec. 42.0551. POSTING OF EMPLOYEE LIST. (a) Each day-care center, group day-care home, and family home shall post a list of all current employees at the center or home in accordance with rules adopted by the executive commissioner.

(b) The executive commissioner shall adopt rules regarding the size, wording, and placement of the list required under this section.

Added by Acts 2005, 79th Leg., Ch. [308](#), Sec. 1, eff. September 1, 2005.

Sec. 42.056. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS; CRIMINAL PENALTIES. (a) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a child-care facility, child-placing agency, or family home shall, when applying to operate a child-care facility or child-placing agency or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval, submit to the department for use in conducting background and criminal history checks the name of:

(1) the director, owner, and operator of the facility, agency, or home;

(2) each person employed at the facility, agency, or home;

(3) each prospective employee of the facility, agency, or home;

(4) each current or prospective foster parent providing foster care through a child-placing agency;

(5) each prospective adoptive parent seeking to adopt through a child-placing agency;

(6) each person at least 14 years of age, other than a client in care, who:

(A) is counted in child-to-caregiver ratios in accordance with the minimum standards of the department;

(B) will reside in a prospective adoptive home if the adoption is through a child-placing agency;

(C) has unsupervised access to children in care at the facility or family home; or

(D) resides in the facility or family home;

or

(7) each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care.

(a-1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(3), eff. September 1, 2009.

(a-2) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a day-care center, before-school or after-school program, or school-age program shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7). This subsection does not apply to a program that is exempt from the licensing requirements of Section 42.041.

(a-3) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a child-placing agency, foster home, or foster group home must, before a child for whom the department is the

managing conservator is placed with the agency or in the home, submit a complete set of fingerprints of the following persons:

(1) a person who applies to be a foster or adoptive parent, including a person who has previously adopted a child unless the person is also verified as a foster or adoptive home; and

(2) a person who is 18 years of age or older and who lives in the home of a person who applies to be a foster or adoptive parent.

(a-4) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a child-care facility or family home shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) if:

(1) the person resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a); or

(2) the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

(a-5) The rules adopted by the executive commissioner under Subsections (a-2), (a-3), and (a-4):

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the department to waive the submission of fingerprints required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history record check on file with the department; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the department through the Department of Public Safety; and

(B) the date on which the current submission of fingerprints is required occurs before the second anniversary of a previous name-based criminal history check of the person.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(b-1) In addition to any other background or criminal history check conducted under Subsection (b), for each person whose fingerprints are submitted under Subsection (a-2), (a-3), or (a-4), the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

(c) The department by rule shall require a child-care facility, child-placing agency, or registered family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(3), eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(3), eff. September 1, 2009.

(f) As part of a background check under this section, the department shall provide any relevant information available in the department's records regarding a person's previous employment in a facility or family home to the person submitting the request.

(g) Except as otherwise provided by this subsection, a person whose name is submitted under Subsection (a) may not provide direct care or have direct access to a child in a facility or family home before the person's background and criminal history checks under Subsections (b) and (b-1) are completed. A person may be employed at a facility or family home and may provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if:

(1) the facility or family home is experiencing a staff shortage;

(2) the state criminal history check and the background check using the department's records of reported abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and

(3) the person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date on which the person first:

(A) provides direct care to a child;

- (B) has direct access to a child; or
- (C) is hired.

(h) If the results of a criminal history check under Subsection (b-1) for a person employed by a facility or family home during a staffing shortage as authorized by Subsection (g) preclude the person from being present at the facility or family home, the director, owner, or operator of the facility or family home shall immediately terminate the person's employment.

(i) A director, owner, or operator of a facility or family home commits an offense if the director, owner, or operator knowingly:

(1) fails to submit to the department information about a person as required by this section and department rules for use in conducting background and criminal history checks with respect to the person; and

(2) employs the person at the facility or family home or otherwise allows the person to regularly or frequently stay or work at the facility or family home while children are being provided care.

(j) A director, owner, or operator of a facility or family home commits an offense if, after the date the director, owner, or operator receives notice from the department that, based on the results of a person's background or criminal history check, the person is precluded from being present at the facility or family home, the director, owner, or operator knowingly:

(1) employs the person at the facility or family home; or

(2) otherwise allows the person to regularly or frequently stay or work at the facility or family home while children are being provided care.

(k) An offense under Subsection (i) or (j) is a Class B misdemeanor.

(l) In accordance with rules adopted by the executive commissioner, a person that contracts to provide one or

more substitute employees to a facility or family home must submit to the department for use in conducting background and criminal history checks the name of each substitute employee. Before a substitute employee may be present at a facility or family home, the employee must meet the same requirements under this section as an employee present at the facility or family home who performs similar duties. The director, owner, or operator of a facility or family home must verify with the department that a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.103(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 38, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 39, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 11, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 19(3), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 6, eff. September 1, 2011.

Sec. 42.0561. INFORMATION RELATING TO FAMILY VIOLENCE REPORTS. Before the department may issue a license or registration for a foster home or a child-placing agency may issue a verification certificate for an agency foster home, the department or child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency

responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. [524](#), Sec. 7, eff. June 16, 2007.

Sec. 42.057. DRUG TESTING. (a) Each residential child-care facility shall establish a drug testing policy for employees. A residential child-care facility may adopt the model employee drug testing policy adopted by the executive commissioner under Subsection (b) or may use another employee drug testing policy approved by the executive commissioner.

(b) The executive commissioner by rule shall adopt a model employee drug testing policy for use by a residential child-care facility. The policy must be designed to ensure the safety of resident children through appropriate drug testing of employees while protecting the rights of employees. The model policy must require:

- (1) preemployment drug testing;
- (2) random, unannounced drug testing of each employee who has direct contact with a child in the care of the facility;
- (3) drug testing of an employee against whom there is an allegation of drug abuse; and
- (4) drug testing of an employee whom the department is investigating for the abuse or neglect of a child in the care of the facility, if the allegation of abuse or neglect includes information that provides good cause to suspect drug abuse.

(c) The department shall require a drug test of a person who directly cares for or has access to a child in a residential child-care facility within 24 hours after the department receives notice of an allegation that the person has abused drugs.

(d) An employee may not provide direct care or have direct access to a child in a residential child-care facility before completion of the employee's initial drug test.

(e) A residential child-care facility shall pay any fee or cost associated with performing the drug test for an employee.

Added by Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.104(a), eff. September 1, 2005.

Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The board may not adopt rules restricting competitive bidding or advertising by a license holder or registration holder except to prohibit false, misleading, or deceptive practices or to prevent a violation of this chapter.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's or registration holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder or registration holder; or

(4) restricts the license holder's or registration holder's advertisement under a trade name.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 33, eff. Sept. 1, 1997.

Sec. 42.059. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT WITH FACILITY OR REGISTERED FAMILY HOME. (a) An applicant for temporary or permanent employment with a

licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Resigned under threat of termination of employment or volunteerism for;
9. Had a report of child abuse or neglect made and substantiated against me for; or
10. Have any pending criminal charges against me in this or any other jurisdiction for;
Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):
 1. Any felony;
 2. Rape or other sexual assault;
 3. Physical, sexual, emotional abuse and/or neglect of a minor;

4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors resulting from a court order protecting a child or minor from abuse, neglect, or exploitation; or
17. Any type of child abduction.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed _____

Date _____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____, _____.

Signature of notarial officer

_____.

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1129, Sec. 3, eff. Sept. 1, 1999.

Sec. 42.060. CARBON MONOXIDE DETECTORS. (a) In this section, "carbon monoxide detector" means a device that detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas.

(b) Except as provided by Subsection (d), each day-care center, group day-care home, and family home must be equipped with carbon monoxide detectors in accordance with department rules.

(c) The department by rule shall prescribe requirements regarding the placement, installation, and number of carbon monoxide detectors and maintenance procedures for those detectors.

(d) A day-care center is exempt from the carbon monoxide detector requirements prescribed by this section if the day-care center is located in a school facility that is subject to the school facility standards adopted by the commissioner of education under Section 46.008, Education Code, or similar safety standards adopted by the board of a local school district.

Added by Acts 2003, 78th Leg., ch. 127, Sec. 1, eff. Sept. 1, 2003.

Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A person may not be employed as a controlling person or serve in that capacity in a facility or family home if the person is not eligible to receive a license or certification for the operation of a facility or family home under Section 42.072(g) or has been denied a license under Section 42.046 for a substantive reason.

Added by Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.105, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 7, eff. September 1, 2011.

Sec. 42.063. REPORTING OF INCIDENTS AND VIOLATIONS.

(a) In this section, "serious incident" means a suspected or actual incident that threatens or impairs the basic health, safety, or well-being of a child. The term includes:

(1) the arrest, abuse, neglect, exploitation, running away, attempted suicide, or death of a child;

(2) a critical injury of a child; and

(3) an illness of a child that requires hospitalization.

(b) A person licensed under this chapter shall report to the department each serious incident involving a child who receives services from the person, regardless of whether the department is the managing conservator of the child.

(c) An employee of a person described by Subsection (b) shall report suspected abuse or neglect directly to the statewide intake system.

(d) An employee or volunteer of a general residential operation, child-placing agency, foster home, or foster group home shall report any serious incident directly to the department if the incident involves a child under the care of the operation, agency, or home.

(e) A foster parent shall report any serious incident directly to the department if the incident involves a child under the care of the parent.

(f) The executive commissioner by rule shall prescribe:

(1) procedures governing reporting required under this section; and

(2) the manner in which a report under this section must be provided.

(g) The department shall implement this section using existing appropriations.

Added by Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.106, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 12, eff. September 1, 2009.

Sec. 42.064. INFORMATION REGARDING GANG-FREE ZONES. Each day-care center shall, in accordance with rules adopted by the executive commissioner, distribute to parents and guardians of children who attend the center information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

Added by Acts 2009, 81st Leg., R.S., Ch. [1130](#), Sec. 6, eff. June 19, 2009.

Sec. 42.065. ADMINISTERING MEDICATION. (a) In this section, "medication" means a drug that may be obtained with or without a prescription, excluding a topical ointment obtained without a prescription.

(b) This section applies only to a day-care center, group day-care home, before-school or after-school program, school-age program, or family home regardless of whether the facility or program is licensed, registered, or listed.

(c) A director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may not administer a medication to a child unless:

(1) the child's parent or guardian has submitted to the child-care facility a signed and dated document that

authorizes the facility to administer the medication for not longer than one year; and

(2) the authorized medication:

(A) is administered as stated on the label directions or as amended in writing by a practitioner, as defined by Section 551.003, Occupations Code; and

(B) is not expired.

(d) Notwithstanding Subsection (c)(1), a director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may administer medication to a child under this section without a signed authorization if the child's parent or guardian:

(1) submits to the child-care facility an authorization in an electronic format that is capable of being viewed and saved; or

(2) authorizes the child-care facility by telephone to administer a single dose of a medication.

(e) An authorization under Subsection (d)(1) expires on the first anniversary of the date the authorization is provided to the child-care facility.

(f) This section does not apply to a person that administers a medication to a child in a medical emergency to prevent the death or serious bodily injury of the child if the medication is administered as prescribed, directed, or intended.

(g) A person commits an offense if the person administers a medication to a child in violation of this section. If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

(h) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. [762](#), Sec. 2, eff. September 1, 2011.

SUBCHAPTER D. REMEDIES

Sec. 42.0705. RANGE OF PENALTIES. The department shall revoke or suspend a license or registration, place on probation a person whose license or registration has been suspended, or reprimand a license holder or registration holder for a violation of this chapter or a rule of the board. If a license or registration suspension is probated, the department may require the license holder or registration holder to:

- (1) report regularly to the department on matters that are the basis of the probation;
- (2) limit services to the areas prescribed by the department;
- (3) continue or review professional education until the license holder or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; or
- (4) take corrective action relating to the violation on which the probation is based.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 34, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 40, eff. September 1, 2007.

Sec. 42.071. SUSPENSION, EVALUATION, OR PROBATION OF LICENSE OR REGISTRATION. (a) The department may suspend the license of a facility or the registration of a family home that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license or registration.

(b) The department may suspend a facility's license or a family home's registration for a definite period

rather than deny or revoke the license or registration if the department finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license or registration suspension under this subsection, a facility or family home must suspend its operations and show that standards can be met within the suspension period.

(c) If the department finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, the department may schedule the facility or family home for evaluation or probation rather than suspend or revoke the facility's license or the family home's registration. The department shall provide notice to the facility or family home of the evaluation or probation and of the items of noncompliance not later than the 10th day before the evaluation or probation period begins. The department shall designate a period of not less than 30 days during which the facility or family home will remain under evaluation. During the evaluation or probation period, the facility or family home must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department shall revoke the license of a facility or the registration of a family home that does not comply with standards at the end of a license or registration suspension.

(e) The department may suspend or revoke the license of a facility or the registration of a family home that does not correct items that were in noncompliance or that does not comply with required standards within the applicable evaluation or probation period.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 111, ch. 23, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 1081, Sec. 2, eff. Sept. 1, 1987; Acts 1997,

75th Leg., ch. 1022, Sec. 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Sec. 42.0715. COSTS CHARGED TO FACILITY OR FAMILY HOME. The department may charge a facility or family home for reimbursement of the reasonable cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan for the facility or family home.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 36, eff. Sept. 1, 1997.

Sec. 42.072. LICENSE, LISTING, OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION. (a) The department may suspend, deny, revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license, listing, registration, or certification. The department may revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(b) If the department proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. An action under this section, including a revocation of a person's license, is a contested case as defined by Chapter 2001, Government Code, and is subject to judicial review under the substantial evidence rule in accordance with that chapter. Rules of practice adopted by the board under Section 2001.004, Government Code,

applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

(c) The department may not issue a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter before the fifth anniversary of the date on which the revocation takes effect by department or court order or the decision to deny the application is final.

(c-1) A person described by Subsection (c) may not be a controlling person in any facility or family home during the five-year period in which the person is ineligible to receive a license, listing, registration, or certification.

(d) The department by rule may provide for denial of an application or renewal for a licensed facility or for listing or registering a family home or may revoke a facility's license or a family home's listing or registration based on findings of background or criminal history as a result of a background or criminal history check.

(e) A person may continue to operate a facility or family home during an appeal of a license, listing, or registration revocation unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The department shall notify the facility or family home of the criteria the department used to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the department that the facility or home may not operate under this section may seek injunctive

relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the agency's action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final agency action unless conferred by Chapter 2001, Government Code.

(f) The department shall deny an application or renewal for listing or registering a family home or shall revoke a family home's listing or registration if the results of a background or criminal history check conducted by the department under Section 42.056 show that a person has been convicted of an offense under Title 5, or 6, Penal Code, or Chapter 43, Penal Code.

(g) Notwithstanding Subsection (c), the department may refuse to issue a license, listing, registration, or certification to:

(1) a person whose license, listing, registration, or certification for a facility or family home was revoked by the department or by court order;

(2) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3) a person who voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification after:

(A) the department took an action under Subsection (a) in relation to the facility, family home, or person; or

(B) the person received notice that the department intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3).

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 111, ch. 23, Sec. 2, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 977, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 37, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.107, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. [526](#), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 8, eff. September 1, 2011.

Sec. 42.073. EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR FAMILY HOME. (a) The department shall suspend a facility's license or a family home's listing or registration and order the immediate closing of the facility or family home if:

(1) the department finds the facility or family home is operating in violation of the applicable standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility or family home.

(b) An order suspending a license, listing, or registration and an order closing a facility or family home under this section is immediately effective on the date on which the holder of the license, listing, or registration receives written notice or on a later date specified in the order.

(c) An order is valid for 30 days after the effective date of the order.

Acts 1979, 66th Leg., p. 2366, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 977, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 38, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 14, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.108, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 14, eff. September 1, 2009.

Sec. 42.074. INJUNCTIVE RELIEF. (a) The department may file suit in a district court in Travis County or in the county in which a facility or family home is located for assessment and recovery of a civil penalty under Section 42.075, for injunctive relief, including a temporary restraining order, or for both a civil penalty and injunctive relief when it appears that a person:

(1) has violated, is violating, or is threatening to violate the licensing, certification, listing, or registration requirements of this chapter or

the department's licensing, certification, listing, or registration rules and standards; or

(2) knowingly fails to meet or maintain an exemption authorized under Section 42.041 and engages in activities that require a license or registration.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the department's request, the attorney general or the county or district attorney of the county in which the facility or family home is located shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a).

(d) Injunctive relief provided by this section is in addition to any other action, proceeding, or remedy authorized by law. It is not necessary to allege or prove in an action filed under this section that an adequate remedy at law does not exist or that substantial or irreparable harm would result from the continued violation.

(e) The department is not required to give an appeal bond in an action arising under this section.

Acts 1979, 66th Leg., p. 2367, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.09, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1022, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 15, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 15, eff. September 1, 2009.

Sec. 42.075. CIVIL PENALTY. (a) A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility or family home by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period;

(3) places a public advertisement for an unlicensed facility or an unlisted or unregistered family home;

(4) knowingly fails to meet or maintain any criterion of an exemption authorized under Section 42.041 and engages in activities that require a license or registration; or

(5) fails to inform the department of a change in status and the person knows the change in status requires the person to be licensed or registered under this chapter.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

Acts 1979, 66th Leg., p. 2367, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 16, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 16, eff. September 1, 2009.

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who operates a family home without a required listing or registration commits a Class B misdemeanor.

(c) A person who places a public advertisement for an unlicensed facility or an unlisted or unregistered family home commits a Class C misdemeanor.

(d) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without assistance of the professional.

Acts 1979, 66th Leg., p. 2367, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 915, Sec. 2, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 411, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 664, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 41, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 17, eff. Sept. 1, 1997.

Sec. 42.0761. CRIMINAL PENALTY FOR OPERATING DAY-CARE CENTER WITHOUT QUALIFIED DIRECTOR. (a) An owner or operator of a day-care center commits an offense if the owner or operator knowingly operates the day-care center:

(1) without a director who meets the qualifications of a director prescribed by department rules; or

(2) without the routine presence during the day-care center's hours of operation of a director described by Subdivision (1).

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 41, eff. September 1, 2007.

Sec. 42.077. NOTICE OF ACTION AGAINST FACILITY OR FAMILY HOME. (a) If the department revokes or suspends a facility's license or a family home's listing or registration, the department shall publish notice of this action:

(1) in a newspaper of general circulation in the county in which the facility or family home is located; or

(2) on the department's Internet website along with other information regarding child-care services.

(a-1) If notice is published in a newspaper under Subsection (a), the newspaper shall place the notice in the section in which advertisements for day-care services are normally published.

(b) If a person who operates a facility or family home that has had its license, listing, or registration revoked or suspended later applies for a new license, listing, or registration to operate the same facility or family home, the department shall charge the person an application fee in an amount necessary to reimburse the department for the cost of the notice relating to that facility or family home.

(c) The department shall pay for publication of the notice from funds appropriated to the department for licensing and regulating child-care facilities and for listing, registering, and regulating family homes and from appeal and application fees collected under Subsection (b) and appropriated to the department.

(d) A facility or family home that has its license, listing, or registration revoked or suspended shall mail notification of this action by certified mail to the parents or guardian of the child served by the facility or family home. The facility or family home shall mail the notification within five days of the effective date of the

revocation or suspension of the license, listing, or registration.

(d-1) If the department determines that the license of a residential child-care facility should be revoked or suspended, the facility shall mail notification of the action or proposed action by certified mail to a parent of each child served by the facility, if the person's parental rights have not been terminated, and to the child's managing conservator, as appropriate. The residential child-care facility shall mail the notification not later than the fifth day after the date the facility is notified of the department's determination that revocation or suspension of the license is appropriate.

(e) When the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which a family home whose listing or registration has been revoked or suspended is located is of Hispanic origin or Spanish-speaking, the department shall publish the notice under Subsection (a) in both English and Spanish.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 42, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 18, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.109, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. [720](#), Sec. 17, eff. September 1, 2009.

Sec. 42.078. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the

department may impose an administrative penalty against a residential child-care facility or a controlling person of a residential child-care facility if the facility or controlling person:

(1) violates a term of a license or registration issued under this chapter;

(2) makes a statement about a material fact that the facility or person knows or should know is false:

(A) on an application for the issuance of a license or registration or an attachment to the application; or

(B) in response to a matter under investigation;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by the facility; or

(B) any part of the premises of the facility;

(4) purposefully interferes with the work of a representative of the department or the enforcement of this chapter; or

(5) fails to pay a penalty assessed under this chapter on or before the date the penalty is due, as determined under this section.

(a-1) Nonmonetary, administrative penalties or remedies, including but not limited to corrective action plans, probation, and evaluation periods, shall be imposed when appropriate before monetary penalties.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the maximum number of children for whom the facility or family home was authorized to provide care or the number of children under

the care of the child-placing agency when the violation occurred:

(1) for violations that occur in a facility other than a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	\$50
21-40	\$60
41-60	\$70
61-80	\$80
81-100	\$100
More than 100	\$150

(2) for violations that occur in a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	\$100
21-40	\$150
41-60	\$200
61-80	\$250
81-100	\$375
More than 100	\$500

(c) In addition to the number of children, the amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) Monetary penalties shall not be assessed for violations that are the result of clerical errors.

(e) If the department determines that a violation has occurred, the department may issue a recommendation on the

imposition of a penalty, including a recommendation on the amount of the penalty.

(f) Within 14 days after the date the recommendation is issued, the department shall give written notice of the recommendation to the person owning or operating the facility or family home or to the controlling person, if applicable. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) If the person accepts the determination and recommended penalty of the department or fails to respond to the notice in a timely manner, the department shall issue an order and impose the recommended penalty.

(i) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(j) The notice of the administrative law judge's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(k) Within 30 days after the date the administrative law judge's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(1) Within the 30-day period, a person who acts under Subsection (k)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(m) On receipt of a copy of an affidavit under Subsection (l)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as

practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(n) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(o) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(p) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(q) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(r) A penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(s) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 43, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1129, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [268](#), Sec. 1.110(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. [1406](#), Sec. 42, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 9, eff. September 1, 2011.

SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

Sec. 42.151. DEFINITIONS. In this subchapter:

(1) "Employer-based day-care facility" means a day-care facility that is:

(A) operated by a small employer to provide care to not more than 12 children of the employer's employees; and

(B) located on the employer's premises.

(2) "Small employer" means a corporation, partnership, sole proprietorship, or other legal entity that employs fewer than 100 full-time employees.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [89](#), Sec. 1, eff. September 1, 2009.

Sec. 42.152. PERMIT REQUIRED. (a) Except as provided by Subsection (b), a small employer may not operate an employer-based day-care facility unless the employer holds a permit issued by the department under this subchapter.

(b) A small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a license to operate a child-care facility that is issued by the department under Subchapter C. An employer that holds that license must comply with the applicable provisions of Subchapter C, the applicable rules of the department, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a small employer that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate an employer-based day-care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.153. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall develop and implement a streamlined procedure by which a small employer may apply for and be issued a permit to operate an employer-based day-care facility. The employer must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.154, on receipt of a small employer's application for a permit, the department shall:

(1) conduct an initial inspection of the employer-based day-care facility to ensure that the

employer is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.159(a).

(c) The department may charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.154. CONVERSION OF LICENSE. (a) The department shall develop and implement a procedure by which a small employer that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2007, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the employer in applying for the permit.

(b) The department may waive the requirements under Section 42.153(b) for an initial inspection or background and criminal history checks with respect to a facility operated by a small employer seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY. An employer-based day-care facility operating under this subchapter may provide care only for a child whose parent or guardian:

- (1) is an employee of the small employer to which the permit to operate the facility was issued;
- (2) works within the same building in which the facility is located; and
- (3) is away from that building only for limited periods, as defined by department rules, during the hours the child is receiving care.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.156. CAREGIVER-TO-CHILD RATIO. An employer-based day-care facility operating under this subchapter shall maintain a caregiver-to-child ratio of at least one caregiver to every four children receiving care.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.157. MINIMUM STANDARDS. The department shall encourage an employer-based day-care facility operating under this subchapter to comply with the minimum standards applicable to a child-care facility licensed under Subchapter C.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.158. CAREGIVER QUALIFICATIONS. A caregiver employed by an employer-based day-care facility operating under this subchapter must:

- (1) be at least 18 years of age;
- (2) have received a high school diploma or its equivalent, as determined by the department;
- (3) receive at least the minimum training required for an employee of a licensed day-care center as prescribed by department rules in accordance with Sections 42.042(p) and 42.0421;
- (4) have a Child Development Associate or Certified Child-Care Professional credential or an equivalent credential, as determined by the department; and
- (5) not have been precluded from providing direct care or having direct access to a child by the department based on the results of a background and criminal history check conducted under Section 42.159.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.159. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) In accordance with rules adopted by the executive commissioner, a small employer shall, when applying for a permit under this subchapter and at least once during each 24 months after receiving that permit, submit to the department for use in conducting background and criminal history checks:

- (1) the name of any director of the employer-based day-care facility and the name of each caregiver employed at the facility to provide care to children; and
- (2) the name of each person 14 years of age or older who will regularly or frequently be staying or working at the facility while children are being provided care.

(b) The small employer shall also submit to the department for use in conducting background and criminal history checks the name of each prospective caregiver who will provide care to children at the facility or other prospective employee who will have direct access to those children.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a small employer that applies for a permit is considered an applicant for a license under this chapter; and

(2) an employer-based day-care facility operating under a permit issued under this subchapter is considered a child-care facility licensed under this chapter.

(e) The department shall require the small employer to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.160. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this subchapter, an employer-based day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to an employer-based day-care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. An employer-based day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.162. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a) The department may inspect an employer-based day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the facility.

(b) If the department inspects an employer-based day-care facility as authorized by this section, the department may require the small employer operating the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a small employer issued a permit under this subchapter a reasonable fee for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) The department may suspend, deny, or revoke a permit issued to a small employer under this subchapter if the employer does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a small employer that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) An employer-based day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

Added by Acts 2007, 80th Leg., R.S., Ch. [1414](#), Sec. 2, eff. September 1, 2007.

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

Sec. 42.201. DEFINITIONS. In this subchapter:

(1) "Shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to

individuals and families, including a family violence shelter, a homeless shelter, and an emergency shelter. The term does not include a temporary facility established in response to a natural or other disaster.

(2) "Shelter care" means child care that is provided:

(A) to seven or more children under 14 years of age who temporarily reside at a shelter each with an adult who is related to the child by blood or who is the child's managing conservator;

(B) by a person who is not a temporary resident of a shelter; and

(C) while the adult described by Paragraph (A) is away from the shelter.

(3) "Shelter day-care facility" means a shelter that provides shelter care for not more than 24 hours a day, but at least four hours a day, three or more days a week.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by Subsections (b) and (e), a shelter may not provide shelter care unless the shelter holds a permit issued by the department under this subchapter.

(b) A shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by the department under Subchapter C. A shelter that holds that license must comply with the applicable provisions of Subchapter C, the applicable rules of the department, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a shelter that holds a permit issued under this

subchapter is not required to hold a license under Subchapter C to operate a shelter day-care facility.

(d) The department may not issue a permit under this subchapter to a shelter that provides child care to a child who is not a resident of the shelter. A shelter that provides child care described by this subsection must hold a license to operate a child-care facility issued under Subchapter C.

(e) A shelter is not required to obtain a permit under this subchapter or a license under Subchapter C if the shelter provides shelter care for:

(1) less than four hours a day or for less than three days a week; or

(2) six or fewer children.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.203. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall develop and implement a streamlined procedure by which a shelter may apply for and be issued a permit to operate a shelter day-care facility. The shelter must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.204, on receipt of a shelter's application for a permit, the department shall:

(1) conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.206(a).

(c) The department may charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.204. CONVERSION OF LICENSE. (a) The department shall develop and implement a procedure by which a shelter that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2012, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the shelter in applying for the permit.

(b) The department may waive the requirements under Section 42.203(b) for an initial inspection or background and criminal history checks with respect to a licensed child-care facility seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING; CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall adopt rules that specify the minimum:

(1) qualifications and training required for a person providing child care in a shelter day-care facility; and

(2) child-to-caregiver ratios in a shelter day-care facility.

(b) In adopting rules under this section, the executive commissioner shall consider:

(1) the special circumstances and needs of families that seek temporary shelter; and

(2) the role of a shelter in assisting and supporting families in crisis.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) In accordance with rules adopted by the executive commissioner, a shelter shall, when applying for a permit under this subchapter and at least once during each 24-month period after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director or prospective director of the shelter day-care facility and the name of each caregiver or prospective caregiver employed at the facility to provide care to children;

(2) the name of each person counted in child-to-caregiver ratios at the shelter day-care facility; and

(3) the name of each person 14 years of age or older who will have unsupervised access to one or more children while in the care of the shelter day-care facility.

(b) In addition to the requirements of Subsection (a), a shelter shall submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a) if:

(1) the person has lived outside the state at any time during the previous five years; or

(2) the shelter has reason to suspect that the person has a criminal history in another state.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a shelter that applies for a permit is considered to be an applicant for a license under this chapter; and

(2) a shelter day-care facility operating under a permit issued under this subchapter is considered to be a child-care facility licensed under this chapter.

(e) The department shall require the shelter to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this subchapter, a shelter day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to a shelter day-care facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A shelter day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a) The department may inspect a shelter day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility.

(b) If the department inspects a shelter day-care facility as authorized by this section, the department may require the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until

corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a shelter issued a permit under this subchapter a reasonable fee for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION.

(a) The department may suspend, deny, or revoke a permit issued to a shelter under this subchapter if the shelter does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a shelter that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) A shelter day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1082](#), Sec. 10, eff. September 1, 2012.

LANCASTER CITY COUNCIL

City Council Special Meeting

13.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Quality Development

Submitted by: Rona Stringfellow, Assistant City Manager

Agenda Caption:

Z16-10 Conduct a Public Hearing and consider a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use at 2625 North Dallas Avenue, Lancaster, TX, consisting of an approximately 1.588 acre tract currently zoned Retail (R).

Background:

This is a request to allow for a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use.

1. Location and Size: The property is located at 2625 North Dallas Avenue, on the west side of North Dallas Avenue, approximately 195 feet south of West Wintergreen Road. The tract of land is approximately 1.588 acres in size.

2. Current Zoning: The subject property is currently zoned R-Retail.

3. Adjacent Properties:

North: R-Retail (vacant)
South: R-Retail (vacant)
East: R-Retail (vacant)
West: R-Retail (vacant)

4. Public Notification: On October 9, 2016, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to all of the 5 property owners that are within 200-feet of the subject site, and zoning signs were placed on the subject property. These actions fulfill the noticing requirement pursuant to Section 14.207 of the Lancaster Development Code (LDC). Out of the 5 notifications that were mailed to neighboring property owners, there was 1 notification returned in support of this application. There was 1 notification returned in opposition to this application.

Operational Considerations:

The applicant is requesting a Specific Use Permit for a 1.588 acre parcel. Pursuant to Section 14.404 of the LDC, a Specific Use Permit is required for any use identified in the Land Use Table as requiring one and for uses with standards where the standards are not being met, unless otherwise set out. Specific Use Permits allow the consideration of public welfare, operation, location, arrangement, and construction of any use for which a Specific Use Permit is sought.

The applicant is requesting a Specific Use Permit for a Commercial Amusement/Recreation (Indoor) use, which requires a Specific Use Permit to be granted in a Retail (R) district. Specifically, the applicant is requesting a total of 15 coin operated machines. Whenever an establishment contains more than four

coin-operated machines, as defined by the LDC, the use is determined to be Commercial Amusement/Recreation (Indoor).

The machines, commonly known as “eight liners”, are legal under Texas law, provided, however, that the machine must be modified in such a way as to “[reward] the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.” City staff is operating under the assumption that the machines in question are being operated in accordance with all applicable state laws. It should be noted that on October 10, 2016, the City Council passed an Ordinance which prohibits the display, exhibit, or offering of any games of chance. The ordinance included a 90 day grace period before enforcement begins. If the requested Specific Use Permit is recommended for approval, and subsequently approved by City Council, the operation of any games of chance would be required to cease by January 10, 2017.

Pursuant to Section 14.1101 of the LDC, when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. Below is an analysis of these considerations:

Consistency with the Comprehensive Plan:

The proposed change in zoning is for the addition of a Specific Use Permit to an existing Retail-zoned site, and as such, the new Comprehensive Plan designates the property as Suburban Neighborhood, which is an inconsistent zoning district.

Potential Impact on Adjacent Development:

The properties to the north, south, east, and west remain undeveloped. The addition of the Specific Use Permit does have the potential to affect adjacent properties, as the gaming machines may lead to increased traffic and loitering, and may effect congestion at the site.

Availability of utilities and access:

The property is already developed with a convenience store, gas pumps, and a restaurant. The addition of the Specific Use Permit would not cause further development of buildings or increased demand on utilities. Access to the site is from North Dallas Avenue and an access road from West Wintergreen Road and is currently sufficient. However, the addition of large numbers of gaming machines may lead to loitering and parking issues.

Site conditions such as vegetation, topography and flood plain:

This site is essentially already fully developed with a building, parking and vehicle maneuvering area, and landscaping. No part of the property is identified as being within the 100-year floodplain.

Timing of Development as it relates to Lancaster’s Capital Improvement Plan:

North Dallas Avenue is a state-maintained highway, and has been improved. Wintergreen Road is scheduled to be improved over the next couple of years.

Legal Considerations:

Should Council approve this request, the City Attorney will prepare an ordinance in conformance with approval.

Public Information Considerations:

On October 9, 2016, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to all of the 5 property owners that are within 200-feet of the subject site, and zoning signs were placed on the subject property. These actions fulfill the noticing requirement pursuant to Section 14.207 of the Lancaster Development Code (LDC).

Out of the 5 notifications that were mailed to neighboring property owners, there was 1 notification returned in support of this application. There was 1 notification returned in opposition to this application.

Fiscal Impact:

1. Approve the SUP request.
2. Deny the SUP as recommended by the P&Z and staff.

Recommendation:

On November 15, 2016, the P&Z Commission recommended denial of the rezoning request. It is of note that with the P&Z recommended denial of the rezoning request, a supermajority (6 of the 7 members of Council) is required to approve the request. Staff concurs with the P&Z, and recommends denial of this request. On October 10, 2016 City Council approved Ordinance 2016-10-28 which prohibits the exhibit, display, or offering for play only games of chance.

Attachments

P&Z Agenda Communication

Draft Minutes

Notifications

PLANNING & ZONING COMMISSION
Agenda Communication for
November 15, 2016

#4

Z16-10 Conduct a Public Hearing and consider a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use at 2625 North Dallas Avenue, Lancaster, TX, consisting of an approximately 1.588 acre tract currently zoned Retail (R).

Background

1. **Location and Size:** The property is located at 2625 North Dallas Avenue, on the west side of North Dallas Avenue, approximately 195 feet south of West Wintergreen Road. The tract of land is approximately 1.588 acres in size.
2. **Current Zoning:** The subject property is currently zoned R-Retail.
3. **Adjacent Properties:**
North: R-Retail (vacant)
South: R-Retail (vacant)
East: R-Retail (vacant)
West: R-Retail (vacant)
4. **Public Notification:** On October 9, 2016, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to all of the 5 property owners that are within 200-feet of the subject site, and zoning signs were placed on the subject property. These actions fulfill the noticing requirement pursuant to Section 14.207 of the Lancaster Development Code (LDC).

Out of the 5 notifications that were mailed to neighboring property owners, there was 1 notification returned in support of this application. There was 1 notification returned in opposition to this application.

Considerations

The applicant is requesting a Specific Use Permit for a 1.588 acre parcel. Pursuant to Section 14.404 of the LDC, a Specific Use Permit is required for any use identified in the Land Use Table as requiring one and for uses with standards where the standards are not being met, unless otherwise set out. Specific Use Permits allow the consideration of public welfare, operation, location, arrangement, and construction of any use for which a Specific Use Permit is sought.

The applicant is requesting a Specific Use Permit for a Commercial Amusement/Recreation (Indoor) use, which requires a Specific Use Permit to be granted in a Retail (R) district. Specifically, the applicant is requesting a total of 15 coin operated machines. Whenever an

establishment contains more than four coin-operated machines, as defined by the LDC, the use is determined to be Commercial Amusement/Recreation (Indoor).

The machines, commonly known as “eight liners”, are legal under Texas law, provided, however, that the machine must be modified in such a way as to “[reward] the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.” City staff is operating under the assumption that the machines in question are being operated in accordance with all applicable state laws. It should be noted that on October 10, 2016, the City Council passed an Ordinance which prohibits the display, exhibit, or offering of any games of chance. The ordinance included a 90 day grace period before enforcement begins. If the requested Specific Use Permit is recommended for approval, and subsequently approved by City Council, the operation of any games of chance would be required to cease by January 10, 2017.

Pursuant to Section 14.1101 of the LDC, when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. Below is an analysis of these considerations:

Consistency with the Comprehensive Plan:

The Comprehensive Plan identifies this site as Retail. The proposed change in zoning is for the addition of a Specific Use Permit to an existing Retail-zoned site, and as such, the request is consistent with the adopted comprehensive plan. It should be noted, however, that the City Council is scheduled to vote on the adoption of the 2016 Comprehensive Plan, and the new Comprehensive Plan designates the property as Suburban Neighborhood, which is an inconsistent zoning district.

Potential Impact on Adjacent Development:

The properties to the north, south, east, and west remain undeveloped. The addition of the Specific Use Permit does have the potential to affect adjacent properties, as the gaming machines may lead to increased traffic and loitering, and may effect congestion at the site.

Availability of utilities and access:

The property is already developed with a convenience store, gas pumps, and a restaurant. The addition of the Specific Use Permit would not cause further development of buildings or increased demand on utilities. Access to the site is from North Dallas Avenue and an access road from West Wintergreen Road and is currently sufficient. However, the addition of large numbers of gaming machines may lead to loitering and parking issues.

Site conditions such as vegetation, topography and flood plain:

This site is essentially already fully developed with a building, parking and vehicle maneuvering area, and landscaping. No part of the property is identified as being within the 100-year floodplain.

Timing of Development as it relates to Lancaster’s Capital Improvement Plan:

North Dallas Avenue is a state-maintained highway, and has been improved. Wintergreen Road is scheduled to be improved over the next couple of years.

Conclusion:

Based upon an analysis of the five (5) considerations that must be taken into consideration when reviewing a change in zoning application, staff has concluded that the proposed application has the potential to have a negative impact upon the community, and that the proposed application does not meet the change in zoning application criteria Pursuant to Section 14.1101 of the LDC.

Options/Alternatives

- 1) Recommend approval as requested
- 2) Recommend approval with the following conditions:
 - a. That all coin-operated machines be operated in conformance with Texas State Law and City of Lancaster, Texas Codes and Ordinances including the Lancaster Development Code
 - b. That the number of coin operated machines, as defined by the LDC, be limited to fifteen (15) in number
 - c. The inspection of the premises by any law enforcement, code enforcement, or city official be allowed at any time
 - d. That all City of Lancaster Codes and Ordinances be followed at all times
- 3) Postpone consideration and direct staff
- 4) Recommend denial of the request.

Recommendation

Staff recommends **denial** of the application as requested.

Approval Process

Upon recommendation by the Planning and Zoning Commission, the City Council will conduct a public hearing and render a final decision for this item at their December 12, 2016, regular meeting.

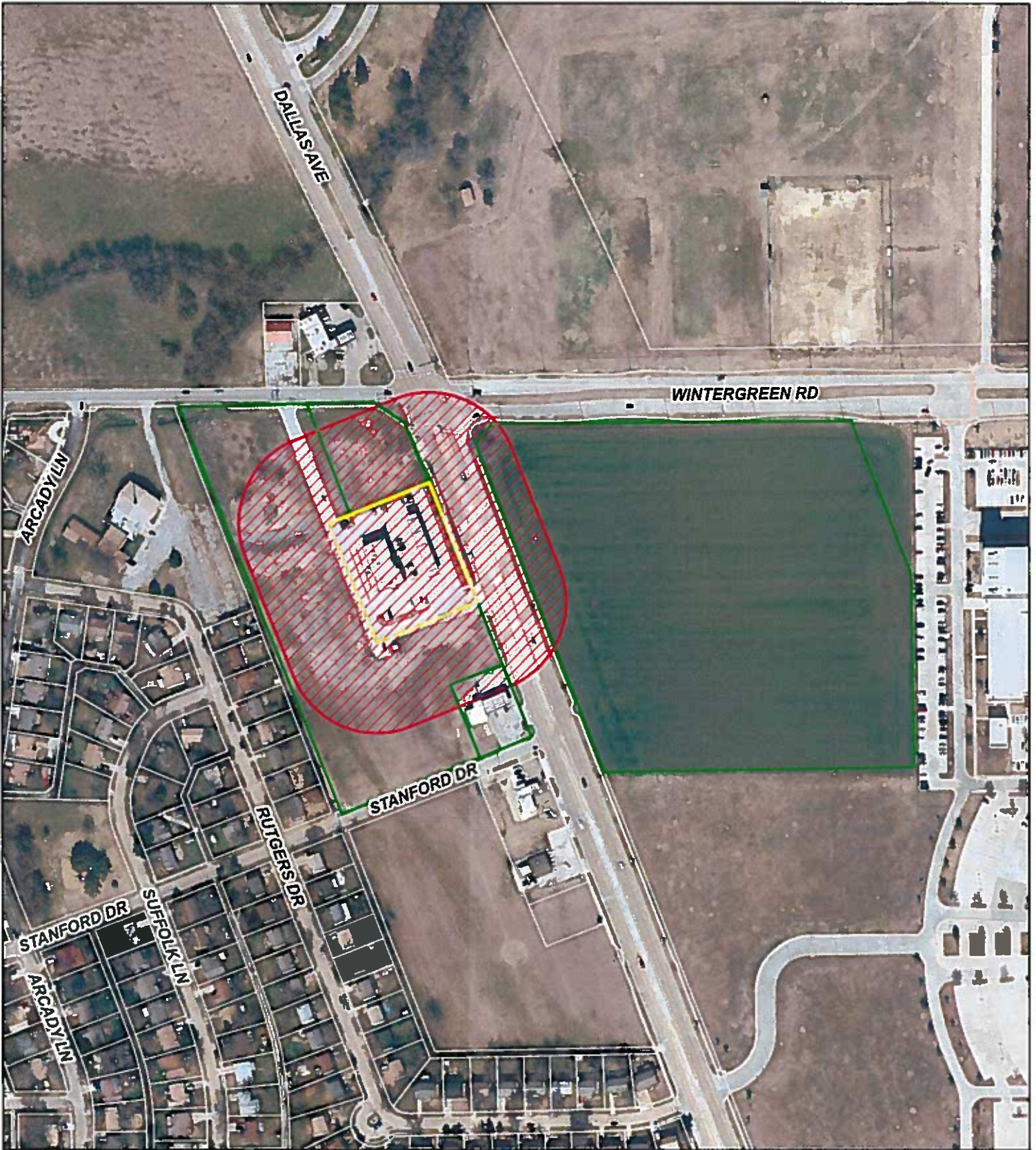
Attachments



Location map
Zoning exhibit

Prepared By and Submitted By:

Tony Felts, AICP
Interim Director of Planning and Development Services

Date: November 15, 2016



-  Parcels
-  Subject Parcel
-  Notification Parcels
-  200' Notification Area



City of Lancaster
2625 N Dallas Ave
200' Notification Area

cooler

cooler

8-liners Machine
DDD
DDD
DDD

Door

Shelves

Shelves

Shelves

Shelves

Register

Main Door

Dining Room

Office

Restroom

S

R

Call

Dining Room

Door

**Excerpt from Unapproved Minutes
Planning and Zoning Commission
November 15, 2016**

Item 4

Z16-10 Conduct a Public Hearing and consider a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use at 2625 North Dallas Avenue, Lancaster, TX, consisting of an approximately 1.588 acre tract currently zoned Retail (R).

Shai Roos read the staff report into the record.

A MOTION WAS MADE BY COMMISSIONER AGUILAR AND SECONDED BY COMMISSIONER PROTHRO TO OPEN THE PUBLIC HEARING.

**AYES: EARLE, AGUILAR, HILL, PROTHRO
NAYS: NONE**

THE MOTION CARRIED 4 to 0.

A MOTION WAS MADE BY COMMISSIONER PROTHRO AND SECONDED BY COMMISSIONER HILL TO CLOSE THE PUBLIC HEARING.

**AYES: EARLE, AGUILAR, HILL, JOHNSON
NAYS: NONE**

THE MOTION CARRIED 4 to 0.

Commissioner Prothro commented on the impact these types of uses have on a community, how it is a strain on the emergency responders and brings a criminal element into the community.

A MOTION WAS MADE BY COMMISSIONER HILL AND SECONDED BY COMMISSIONER PROTHRO TO RECOMMEND DENIAL TO THE CITY COUNCIL OF A SPECIFIC USE PERMIT (SUP) TO ALLOW A COMMERCIAL AMUSEMENT/RECREATION (INDOOR) USE AT 2625 NORTH DALLAS AVENUE, LANCASTER, TX, CONSISTING OF AN APPROXIMATELY 1.588 ACRE TRACT CURRENTLY ZONED RETAIL (R).

**EARLE, AGUILAR, HILL, PROTHRO
NAYS: NONE**

THE MOTION CARRIED 4 to 0.



City of Lancaster Planning Division



NOTICE OF PUBLIC HEARING

TO: Property Owner

RE: Case No. - Z 16-10: to conduct a public hearing and consider a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use in an R – Retail zone.

LOCATION: The property is located at 2625 North Dallas Avenue and contains approximately 1.588 acres of land located on the west side of North Dallas Avenue, approximately 195 feet south of West Wintergreen Road further described as Lot 2, Block A, Cedar Shell Addition Phase 1, Lancaster, Dallas County, Texas.

EXPLANATION OF REQUEST: The Applicant requests to rezone this property for the purpose a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use in an R – Retail zone.

- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS: THEY HAVE ALREADY PROVEN THEY WON'T FOLLOW CITY RULES. THEY HAVE HAD TOO MANY MACHINES AND THEY ALLOW SMOKING. WHY SHOULD THEY NOW BE REWARDED FOR BAD BEHAVIOR?

SIGNATURE: Michael W. Crank

ADDRESS: 2601 N. DALLAS AVE

Your written comments are being solicited in the above case. Additional information is available in the Department of Planning at 700 E. Main. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on **Tuesday, November 15, 2016 at 7:00 pm.** The City Council will hold a public hearing and take action on the above case at their meeting on **Monday, December 12, 2016 at 7:00 pm.** Meetings are typically held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

Please legibly respond in ink. If the signature and/or address are missing, your comments will not be recorded. Your response must be received in the Planning Division by **5 p.m. on Friday, 11/11/2016** for your comments to be recorded for the Planning and Zoning Commission's 3-1-16 meeting. Responses received after that time will be forwarded to the Commission at the public hearing.

<p>If you have any questions concerning this request, please contact the Planning Division Phone 972-218-1315 FAX 972-275-1862</p>	<p>RETURN BY FAX OR MAIL City of Lancaster Planning Division 211 N Henry St Lancaster, TX 75146-0940</p>
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City of Lancaster Planning Division



NOTICE OF PUBLIC HEARING

TO: Property Owner

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EXPLANATION OF REQUEST: The Applicant requests to rezone this property for the purpose a Specific Use Permit (SUP) to allow a Commercial Amusement/Recreation (Indoor) use in an R – Retail zone.

- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
 I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS:

SIGNATURE:

W. Seed

ADDRESS:

*2625 N. Dallas Ave
Lancaster, TX 75134*

Your written comments are being solicited in the above case. Additional information is available in the Department of Planning at 700 E. Main. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on **Tuesday, November 15, 2016 at 7:00 pm.** The City Council will hold a public hearing and take action on the above case at their meeting on **Monday, December 12, 2016 at 7:00 pm.** Meetings are typically held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

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If you have any questions concerning this request, please contact the Planning Division
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 FAX 972-275-1862

RETURN BY FAX OR MAIL
 City of Lancaster
 Planning Division
 211 N Henry St
 Lancaster, TX 75146-0940

LANCASTER CITY COUNCIL

City Council Special Meeting

14.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Quality Development

Submitted by: Rona Stringfellow, Assistant City Manager

Agenda Caption:

Z16-11 Conduct a Public Hearing and consider a rezoning request from SF-6 Single Family Residential to LI Light Industrial at 3520 Waters Street, Lancaster, TX, consisting of an approximately 1.094 acre tract, being a portion of the Silas B. Runyon Abstract 1199, Page 180, Lancaster, Dallas County, Texas.

Background:

1. **Location and Size:** The property is located at 3520 Waters Street, located on the northeast corner of Waters Street and W. Daniieldale Road. The tract of land is approximately 1.094 acres in size.

2. **Current Zoning:** The subject property is currently zoned SF-6 Single Family Residential.

3. **Adjacent Properties:**

North: SF-6 Single Family Residential (Single Family Residence)
South: LI Light Industrial (Logistics Center)
East: LI Light Industrial (Logistics Center)
West: CH Commercial Highway (Single Family Residence)

4. **Public Notification:** On October 9, 2016, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to all of the 17 property owners that are within 200-feet of the subject site, and zoning signs were placed on the subject property. These actions fulfill the noticing requirement pursuant to Section 14.207 of the Lancaster Development Code (LDC).

Out of the 17 notifications that were mailed to neighboring property owners, there were no notifications returned in support or opposition of this application.

Operational Considerations:

The applicant is requesting a rezoning from SF-6 Single Family Residential to LI Light Industrial for a 1.094 acre parcel. The applicant is proposing to construct a large truck parking area and office on the property. A portion of the property is currently developed with a Single Family Residence.

The subject property is approximately 1.094 acres in size, and it represents the southernmost part of an established single family residential neighborhood. Although the property to the west of the subject property, across Waters Lane, is zoned Commercial Highway, it is developed and utilized as a single family residence. Additionally, while there is a mixture of different zoning districts and land uses around the property, the proposed rezoning represents an encroachment into an established residential neighborhood.

The 2016 Comprehensive Plan designates the property as Logistics Distribution. While the proposed

use for the site may support the Logistics and Distribution function, the proposed zoning and land use still represents an encroachment into an established residential neighborhood.

W. Danieldale Road has been identified in the 2016 Comprehensive Plan as a Major Arterial street, and will be reconstructed and improved as part of the City Capital Improvement Project.

Pursuant to Section 14.1101 of the LDC, when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. Below is an analysis of these considerations:

Consistency with the Comprehensive Plan:

The 2016 Comprehensive Plan designates the property as Logistics Distribution. While the proposed use for the site may support the Logistics and Distribution function, the proposed zoning and land use still represents an encroachment into an established residential neighborhood.

Potential Impact on Adjacent Development:

The properties to the north and west are developed with single family residences, while the property to the east and south are developed, or are being developed, with logistics and distribution uses. The encroachment of light industrial uses into an area developed and functioning as single-family residential is not productive for the stabilization of the existing neighborhood, and would represent a significant impact on adjacent single-family residential development.

Availability of utilities and access:

The property is currently developed with a single-family residence, with adequate access to Waters Street and W. Danieldale Road, as well as availability of water and sewer services.

Site conditions such as vegetation, topography and flood plain:

This site is developed with a single-family residence, and relatively flat. No portion of the site is within the 100 year flood plain.

Timing of Development as it relates to Lancaster's Capital Improvement Plan:

W. Danieldale Road in this area is scheduled for improvement as part of the City's Capital Improvement Plan, and a portion of the property has been acquired for additional right-of-way for the project.

Legal Considerations:

Should Council approve this request, the City Attorney will prepare an ordinance in conformance with approval.

Public Information Considerations:

On October 9, 2016, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to all of the 17 property owners that are within 200-feet of the subject site, and zoning signs were placed on the subject property. These actions fulfill the noticing requirement pursuant to Section 14.207 of the Lancaster Development Code (LDC).

Out of the 17 notifications that were mailed to neighboring property owners, there were no notifications returned in support or opposition of this application.

Options/Alternatives:

1. Approve the rezoning request.
2. Deny the rezoning request as recommended by the P&Z and staff.

Recommendation:

On November 15, 2016, the P&Z Commission recommended denial of the rezoning request. It is of note that with the P&Z recommended denial of the rezoning request, a supermajority (6 of the 7 members of Council) is required to approve the request. Staff concurs with the P&Z, and recommends denial of this request.

Attachments

P&Z Agenda Communication

Draft P&Z Minutes

PLANNING & ZONING COMMISSION
Agenda Communication for
November 15, 2016

#5

Z16-11 Conduct a Public Hearing and consider a rezoning request from SF-6 Single Family Residential to LI Light Industrial at 3520 Waters Street, Lancaster, TX, consisting of an approximately 1.094 acre tract, being a portion of the Silas B. Runyon Abstract 1199, Page 180, Lancaster, Dallas County, Texas.

Background

1. **Location and Size:** The property is located at 3520 Waters Street, located on the northeast corner of Waters Street and W. Daniieldale Road. The tract of land is approximately 1.094 acres in size.
2. **Current Zoning:** The subject property is currently zoned SF-6 Single Family Residential.
3. **Adjacent Properties:**
North: SF-6 Single Family Residential (Single Family Residence)
South: LI Light Industrial (Logistics Center)
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Out of the 17 notifications that were mailed to neighboring property owners, there were no notifications returned in support or opposition of this application.

Considerations

The applicant is requesting a rezoning from SF-6 Single Family Residential to LI Light Industrial for a 1.094 acre parcel. The applicant is proposing to construct a large truck parking area and office on the property. A portion of the property is currently developed with a Single Family Residence.

The subject property is approximately 1.094 acres in size, and it represents the southernmost part of an established single family residential neighborhood. Although the property to the west of the subject property, across Waters Lane, is zoned Commercial Highway, it is developed and utilized as a single family residence. Additionally, while there is a mixture of different zoning

districts and land uses around the property, the proposed rezoning represents an encroachment into an established residential neighborhood.

The 2016 Comprehensive Plan designates the property as Logistics Distribution. While the proposed use for the site arguably supports the Logistics and Distribution function, the proposed zoning and land use still represents an encroachment into an established residential neighborhood.

W. Danieldale Road has been identified in the 2016 Comprehensive Plan as a Major Arterial street, and will be reconstructed and improved as part of the City Capital Improvement Project.

Pursuant to Section 14.1101 of the LDC, when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. Below is an analysis of these considerations:

Consistency with the Comprehensive Plan:

The 2016 Comprehensive Plan designates the property as Logistics Distribution. While the proposed use for the site arguably supports the Logistics and Distribution function, the proposed zoning and land use still represents an encroachment into an established residential neighborhood.

Potential Impact on Adjacent Development:

The properties to the north and west are developed with single family residences, while the property to the east and south are developed, or are being developed, with logistics and distribution uses. The encroachment of light industrial uses into an area developed and functioning as single-family residential is not productive for the stabilization of the existing neighborhood, and would represent a significant impact on adjacent single-family residential development.

Availability of utilities and access:

The property is currently developed with a single-family residence, with adequate access to Waters Street and W. Danieldale Road, as well as availability of water and sewer services.

Site conditions such as vegetation, topography and flood plain:

This site is developed with a single-family residence, and relatively flat. No portion of the site is within the 100 year flood plain.

Timing of Development as it relates to Lancaster's Capital Improvement Plan:

W. Danieldale Road in this area is scheduled for improvement as part of the City's Capital Improvement Plan, and a portion of the property has been acquired for additional right-of-way for the project.

Conclusion:

Based upon an analysis of the five (5) considerations that must be taken into consideration when reviewing a change in zoning application, staff has concluded that the proposed application is consistent with the 2016 Comprehensive Plan, however it does have the potential to adversely affect adjacent properties.

Options/Alternatives

- 1) Recommend approval as requested
- 2) Postpone consideration and direct staff
- 3) Recommend denial of the request.

Recommendation

Staff recommends **denial** of the application as requested.

Approval Process

Upon recommendation by the Planning and Zoning Commission, the City Council will conduct a public hearing and render a final decision for this item at their December 12, 2016, regular meeting.

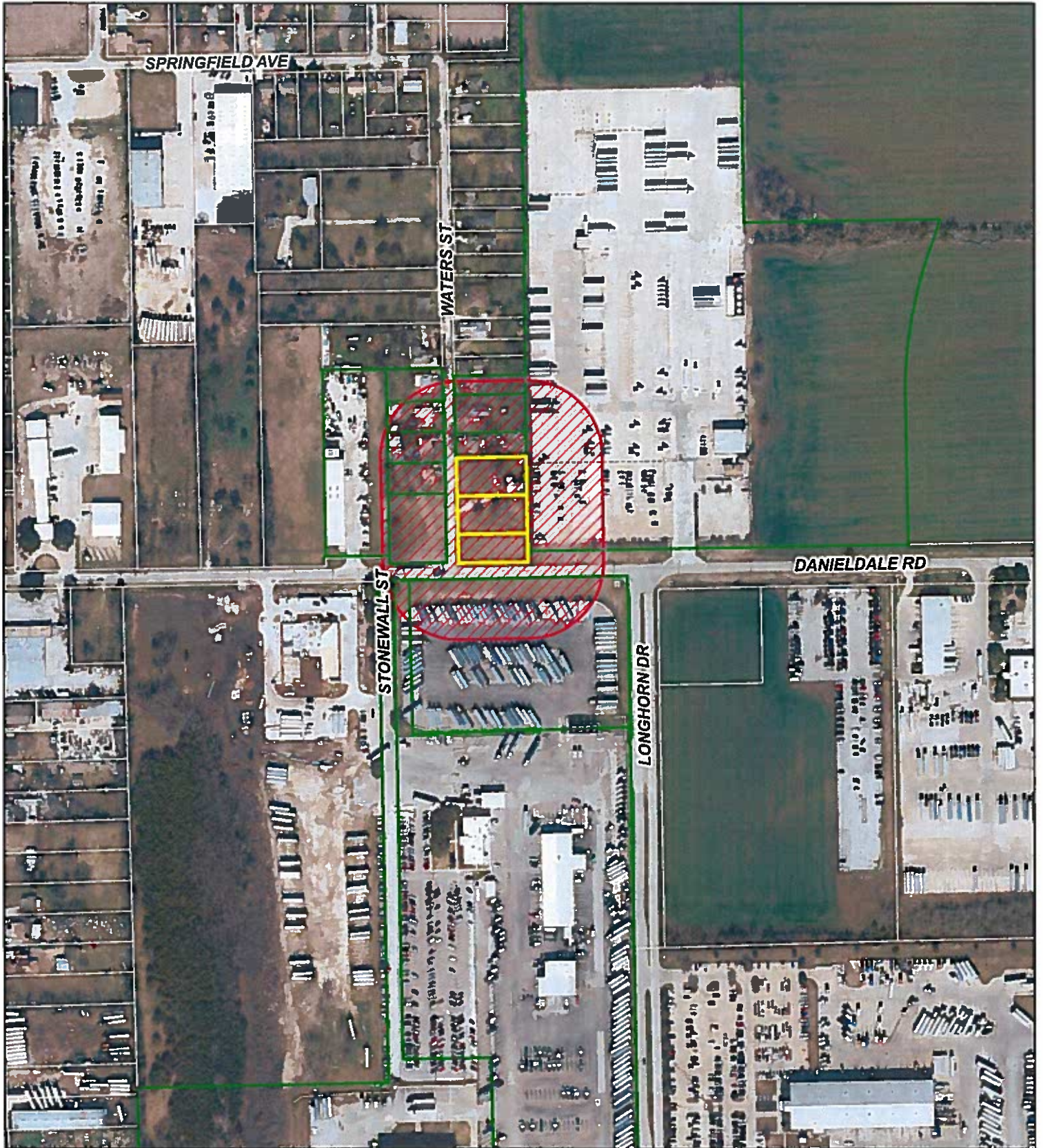
Attachments

Location map
Zoning exhibit

Prepared By and Submitted By:

Tony Felts, AICP
Interim Director of Planning and Development Services

Date: November 15, 2016



- Parcels
- Subject Parcel
- Notification Parcels
- 200' Notification Area



City of Lancaster 3520 Waters St 200' Notification Area

**Excerpt from Unapproved Minutes
Planning and Zoning Commission
November 15, 2016**

ITEM 5.

Z16-11 Conduct a Public Hearing and consider a rezoning request from SF-6 Single Family Residential to LI Light Industrial at 3520 Waters Street, Lancaster, TX, consisting of an approximately 1.094 acre tract, being a portion of the Silas B. Runyon Abstract 1199, Page 180, Lancaster, Dallas County, Texas.

Ms. Roos read the staff report into the record.

A MOTION WAS MADE BY COMMISSIONER PROTHRO AND SECONDED BY COMMISSIONER HILL TO OPEN THE PUBLIC HEARING.

**EARLE, AGUILAR, HILL, PROTHRO
NAYS: NONE**

THE MOTION CARRIED 4 to 0.

Gerald Anderson, 3536 Waters Street, stated that there is already a lot of Light Industrial in the area encroaching into our neighborhood, and once this property is changed to Light Industrial then that opens the door for any Light Industrial use that is allowed by right and there is a lot more uses that are allowed in that district that is more intrusive than this use.

Hugo Duran, 3520 Waters Street, stated he lives in a neighborhood where there is a lot of logistics uses with 18-wheeler parking in the area, and the whole area around us is zoned Light-Industrial.

A MOTION WAS MADE BY COMMISSIONER PROTHRO AND SECONDED BY COMMISSIONER HILL TO CLOSE THE PUBLIC HEARING.

**AYES: EARLE, AGUILAR, HILL, PROTHRO
NAYS: NONE**

THE MOTION CARRIED 4 to 0.

Commissioner Prothro stated we should not approve a zoning change that is in conflict with the newly adopted Comprehensive Plan.

Commissioner Hill agreed with Commissioner Prothro and stated that frequently when we do have citizens in opposition to a zoning change request it is usually against this type of use in their backyard and we need to be consistent with our recommendations for zoning change requests.

A MOTION WAS MADE BY COMMISSIONER PROTHRO AND SECONDED BY COMMISSIONER HILL TO RECOMMEND DENIAL TO THE CITY COUNCIL OF Z16-11 CONDUCT A PUBLIC HEARING AND CONSIDER A REZONING REQUEST FROM SF-6 SINGLE FAMILY RESIDENTIAL TO LI LIGHT INDUSTRIAL AT 3520 WATERS STREET, LANCASTER, TX, CONSISTING OF AN APPROXIMATELY 1.094 ACRE

**TRACT, BEING A PORTION OF THE SILAS B. RUNYON ABSTRACT 1199, PAGE
180, LANCASTER, DALLAS COUNTY, TEXAS.**

**AYES: EARLE, AGUILAR, HILL, PROTHRO
NAYS: NONE**

THE MOTION CARRIED 4 to 0.

LANCASTER CITY COUNCIL

City Council Special Meeting

15.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Professional & Committed City Workforce

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

The City Council shall convene into closed executive session pursuant to Section § 551.072 of the Texas Government Code, discuss and deliberate the acquisition, purchase, exchange, lease or value of real property as deliberation in this open meeting would have a detrimental effect of the position of the City of Lancaster in negotiations with third persons.

Background:

Executive Session matters.

LANCASTER CITY COUNCIL

City Council Special Meeting

16.

Meeting Date: 12/19/2016

Policy Statement: This request supports the City Council 2016-2017 Policy Agenda

Goal(s): Professional & Committed City Workforce

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

Background:

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.