



BAY CITY

MINUTES • JUNE 9, 2016

Council Chambers

Regular Meeting

7:00 PM

**1901 5TH STREET
BAY CITY, TX 77414**

1. CALL TO ORDER & CERTIFICATION OF QUORUM

Attendee Name	Title	Status	Arrived
Mark Bricker	Mayor	Present	
Julie Estlinbaum	Mayor Pro-Tem	Present	
William Cornman	Councilman	Present	
Chrystal Folse	Councilwoman	Present	
Steven Johnson	Councilman	Present	
Carolyn Thames	Councilwoman	Present	

2. INVOCATION & PLEDGE OF ALLEGIANCE - COUNCILMAN BILL CORNMAN

Texas State Flag Pledge:

"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."

3. PUBLIC COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

Ernest Austin informed Mayor and Council that he had been having an issue with getting water and sewer property on Hwy 35 that had been deannexed. In order for the City to drag water and sewer to the property it would cost \$600,000. Mr. Austin stated that he would like to get water from Van Vleck, but the property is inside City limits. He added that Van Vleck has the capability to service the property and their needs. The Mayor stated that the item would be an action item on the next meeting.

John K. Davis informed Mayor and Council that he was the son of John Davis. His father died a few years ago. Mr. Davis stated that his father loved Bay City. He reviewed some of his father's career and life accomplishments. Mr. Davis asked that Council consider and approve the renaming of the street after his father.

Esau Rodriguez presented Mayor and Council with his concerns regarding some utility and road issues. Mr. Rodriguez stated that there is a fire hydrant in front of his parents home that had not been seen by anyone in 2 months. Mr. Rodriguez spoke of a pot hole at the corner of Avenue E and Grace street that was really deep that could cause a lot of damage to someone's tire or wheel. He stated that he hoped it would not be another 3 - 5 years before something was done.

DC Dunham handed Mayor and Council an invitation to the Schulman Movie ground breaking.

4. REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL:**1. Public Hearing**

CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC COMMENT REGARDING THE REQUEST TO CHANGE THE NAME OF THE SECTION OF AVENUE C BETWEEN 6TH STREET AND WHITSON AVENUE TO JUDGE JOHN PAUL DAVIS AVENUE.

Marla Jasek, Asst. Director of Public Works

Mrs. Jasek explained to Mayor and Council the process that the applicant and staff went through to arrive at the item being placed on the agenda. Mrs. Clegg reiterated the issue of the property owner that originally signed the petition, but has since stated he did not agree with the street name change.

After discussion amongst the public and City Council, it was the consensus of Council that the request be amended from 6th Street and Whitson to 7th Street and Whitson.

The Mayor asked if the City would waive the \$100 fee, and the consensus of Council was yes.

The Mayor opened the Public Hearing at 7 p.m.

Donnye Stone asked if a new petition was needed, or just the signature of property owners from 6th Street to 7th Street.

Ronnie Reeves provided a suggestion on how the organizers should obtain the signatures. Mr. Reeves thought that changing the entire name of the street, from Adams to Whitson, would also help the first responders from being confused.

Martha Brown wanted it known that Mrs. Davis pounded the pavement to receive the signatures.

The Mayor closed the Public Hearing at 7:33 p.m.

RESULT:	WITHDRAWN
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2. Property

DISCUSS, CONSIDER, AND/OR APPROVING BY ORDINANCE THE APPLICATION TO RENAME THE SECTION OF AVENUE C FROM 6TH STREET TO WHITSON AVENUE TO JUDGE JOHN PAUL DAVIS AVENUE.

Ms. Joe Ann Davis and Marla Jasek, Asst Director of Public Works

The agenda item was tabled until further information could be received.

RESULT:	TABLED	Next: 6/23/2016 7:00 PM
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3. Agreement

DISCUSS, CONSIDER, AND/OR APPROVE THE AGREEMENTS TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE AND TAX INCREMENT REINVESTMENT ZONE NUMBER TWO WITH MATAGORDA COUNTY, PORT OF BAY CITY, AND MATAGORDA REGIONAL MEDICAL CENTER, AND DIRECT STAFF AS NECESSARY.

DC Dunham, BCCDC Executive Director

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Carolyn Thames, Councilwoman
SECONDER:	Julie Estlinbaum, Mayor Pro-Tem
AYES:	Estlinbaum, Cornman, Folse, Johnson, Thames

Enacted and approved this 9th day of June, 2016, at Bay City

4. Agreement

DISCUSS, CONSIDER, AND/OR APPROVE A RESOLUTION APPOINTMENT BOARD MEMBERS TO REPRESENT THE CITY OF BAY CITY TO TAX INCREMENT REINVESTMENT ZONE NUMBER ONE AND TAX INCREMENT REINVESTMENT ZONE NUMBER 2, AND DIRECT STAFF AS NECESSARY.

DC Dunham, BCCDC Executive Director

Mrs. Dunham informed Mayor and Council that they could appoint the same individuals to each TIRZ Board or different ones. The term limits for the board members would be four (4) members would serve a one (1) year term and five (5) members would serve a two (2) year term. There would be no term limits. City Council would appoint four (4) of the board members.

Councilman Cornman recommended that four (4) serve on both boards, and that Mrs. Dunham would be one of the members. The Mayor reviewed the individuals he would be appointing to both boards. Councilman Cornman stated that it would be a big mistake if DC was not a board member. He added that he would put her on both. Mayor Pro Tem Estlinbaum asked would call their meetings, and Mrs. Dunham stated that the Mayor would select a Chairperson.

It was the consensus of Council to have DC on the board; however, the Mayor was not in agreement. Councilman Cornman stated that he would like to have the recommendation on paper, and suggested that they wait until the next meeting to approve the item. He pointed out that if DC was not a part of the recommendations, he would not approve the item.

RESULT:	TABLED	Next: 6/23/2016 7:00 PM
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5. Property

DISCUSS, CONSIDER, AND/OR APPROVE A REQUEST TO ABANDON THE ALLEYWAY WITHIN BLOCK 1 OF THE NICHOLS AND NORVELL ADDITION (3100 7TH STREET, BAY CITY, TEXAS) BETWEEN NICHOLS AVENUE AND MARY AVENUE, AND DIRECT STAFF AS NECESSARY.

Mrs. Jasek stated that Public Works did not see an issue with abandoning the alley, so long as sewer line is considered an easement.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Councilwoman
AYES:	Estlinbaum, Cornman, Folse, Johnson, Thames

Enacted and approved this 9th day of June, 2016, at Bay City

6. Resolution

DISCUSS, CONSIDER, AND APPROVE A RESOLUTION ADOPTING REQUIRED COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CIVIL RIGHTS POLICIES IMPLEMENTED BY THE TEXAS DEPARTMENT OF AGRICULTURE, AND DIRECT STAFF AS NECESSARY.

Barry Calhoun, Director of Public Works

Councilman Cornman asked if they had to approve this resolution every time, or could the City put a policy in place. Mr. Kackley stated that they could work to put a policy in place.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Mayor Pro-Tem
SECONDER:	Carolyn Thames, Councilwoman
AYES:	Estlinbaum, Cornman, Folse, Johnson, Thames

RESOLUTION

Enacted and approved this 9th day of June, 2016, at Bay City

7. Report

RECEIVE UPDATE FROM THE PARKS AND RECREATION DEPARTMENT INCLUDING POSSIBLE PROGRAMS FOR MARKET DAYS, AND DIRECT STAFF AS NECESSARY.

Kelly Penewitt, Parks and Recreation Supervisor

Ms. Penewitt provided Mayor and Council with an update on the Parks and Recreation Department. Councilwoman Folse asked if industrial fans were being for the Open Gym program, and Ms. Penewitt stated yes.

Ms. Penewitt explained that she had spoken Stuart Lynn about the structural issues at the pool. He stated that the cost to shore the building, which is a temporary fix, was \$6,700. The cost for the enclosure and concrete was \$13,000 and \$14,000-\$15,000, respectively. She stated that the enclosure and concrete did not include walls.

Ms. Penewitt moved onto the activities for Market Days. She stated that her concern with having jump houses on the Square was that there was not enough grass space to secure it. She also pointed out some issues with showing movies outside. Councilwoman Folse suggested that she try something on a smaller scale first to see how it would be received, rather than trying to pay \$1,200 each time just starting out. Mayor Pro Tem Estlinbaum asked if the City had a sound system, and if so was it portable. Ms. Penewitt stated that Riverside had a sound system, but it was not portable.

It was the consensus of Council to try the movie on the Square on a smaller scale and then go from there. Mayor Pro Tem Estlibaum asked Councilwoman Folse if she was thinking of doing this in July, and Councilwoman Folse said yes.

Councilman Cornman asked when did Stuart Lynn say he would be able to shore up the building. Ms. Penewitt stated he did not say, but that she would email him in the morning.

8. Budget

RECEIVE UPDATE FROM THE MAYOR OF THE BASIC FRAMEWORK OF NEXT FISCAL YEAR'S BUDGET PROCESS AND TIMELINE, AND SET WORKSHOP MEETING DATES FOR COUNCIL REVIEW OF, AND INPUT TO, THE DRAFT BUDGET AND CAPITAL PLAN, AND DIRECT STAFF AS NECESSARY.

Councilman Cornman

The Mayor informed Council that he would provide to them the draft budget by June 23, 2016. Mayor Pro Tem Estlinbaum asked if he would have the budget to them by next meeting, and the Mayor said yes. Mayor Pro Tem Estlinbaum asked if he was looking at Saturday or Tuesday meetings. Councilman Cornman asked if they were going to review the Vision 2040 Plan, and the Mayor said yes. Councilman Cornman stated that they needed a date to review the Vision 2040 Plan and the budget.

It was the consensus of Council to set the dates for the budget meeting and the Vision 2040. Councilwoman Folse stated that she liked the Tuesday weekly meetings. Mayor Pro Tem Estlinbaum suggested starting on July 6, 2016, and have weekly meeting starting on Tuesday's after that. It was the consensus of Council to keep the meetings on Wednesdays. Council would meet every Wednesday beginning July 6th through the second week of August, to start at 6 p.m.

Councilman Cornman asked if Council were going to receive something at the meetings, as well as the CIP. The Mayor said yes.

5. ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Council thanked Mrs. Jasek for her work on the street name change process.

6. ADJOURNMENT

AGENDA NOTICES:

Action by Council Authorized:

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Attendance By Other Elected or Appointed Officials:

It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be Agenda City Council August 8, 2013 in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the

meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

This is to certify that the above notice of a Workshop Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on Thursday, June 2, 2016 before 7:00 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

Rhonda Clegg
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

WITHDRAWN

Meeting: 06/09/16 07:00 PM
Department: Public Works
Category: Public Hearing
Prepared By: Marla Jasek
Initiator: Marla Jasek
Sponsors:
DOC ID: 2315

AGENDA ITEM (ID # 2315)

**CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC
COMMENT REGARDING THE REQUEST TO CHANGE THE
NAME OF THE SECTION OF AVENUE C BETWEEN 6TH
STREET AND WHITSON AVENUE TO JUDGE JOHN PAUL
DAVIS AVENUE.**

The City received an application in the form of a petition requesting to change the name of Avenue C between 6th Street and Whitson Avenue to Judge John Paul Davis Avenue. The applicant stated that a shorter version of the name would be acceptable if the name as requested is considered too long.

Public Works has reviewed the application and it meets requirements for consideration by Council. The issue is referred to Council for consideration after a public hearing.

Comments received up to June 2, 2016 regarding the proposed name change are attached. Written comments received after June 2nd will be presented at the public hearing.

RESULT: WITHDRAWN

Ave C Rename Comment

Doug Matthes, Matagorda County Emergency Management, called me on Wednesday, May 25, 2016 at 1:25 pm regarding the proposed Ave C name change request. He had some questions as well as comments.

1. What is the city's process for handling requests for name changes? I explained the city ordinance and how this request was in the form of a petition with signatures from "not less than 50%" of the abutting property owners.
2. Why did the requestor choose these limits for the name change? I explained that the original request was for the entire limits, Whitson to Adams, but there were not enough signatures to meet the 50% requirement. The requestor submitted a second request with the shorter limits, Whitson to 6th Street.
3. Doug said he was "completely against it [the name change as presented]" because it creates confusion for law enforcement and other first responders. He also noted that there is a large expense for all when a street name changes. Government and residents all have to update/change address information on accounts and databases.
4. Doug said if Council does consider the name change, he would suggest a logical location for the north end of the change—not 6th Street but possible MLK. The south end at Whitson is reasonable.
5. He also commented that the proposed name change is too long. A shorter version should be considered.



Marla Jasek

Marla Jasek

From: Randy Frontz
Sent: Wednesday, June 01, 2016 2:51 PM
To: Marla Jasek
Subject: Re: Comment Requested--Rename Ave C

I have no problem with the renaming of Ave C. I would think 4th street or 7th street would be a better dividing line, but again, no problem.

Sent from my iPhone

On Jun 1, 2016, at 2:46 PM, Marla Jasek <mjasek@cityofbaycity.org> wrote:

Can you send me a quick comment to include in the council packet? Thanks.

From: Marla Jasek
Sent: Wednesday, May 25, 2016 10:32 AM
To: Randy Frontz <rfrontz@cityofbaycity.org>
Subject: RE: Comment Requested--Rename Ave C

I forgot the other 2 attachments.

From: Marla Jasek
Sent: Wednesday, May 25, 2016 10:30 AM
To: Randy Frontz <rfrontz@cityofbaycity.org>
Subject: Comment Requested--Rename Ave C

I forgot to send the emails out last week. I would appreciate any comments or concerns you have by May 31st to include in the Council's agenda packet but will be accepting them up to June 9th.

Marla Jasek, PE, CFM
 Asst. Director of Public Works
 City of Bay City
 979.323.1160

<Ave C Comment Request VFD.pdf>

<letter attachments 1.pdf>

<letter attachments 2.pdf>

Marla Jasek

From: Chief Barker
Sent: Thursday, May 26, 2016 9:53 AM
To: Marla Jasek
Subject: RE: Comment Requested--Rename Ave C

I have reviewed this request with both Captains and see no issue with the proposed change, except the name is a long. It would be nice to shorten it to Judge J.P. Davis.

Chief Roger Barker
Bay City Police Department
2201 Avenue H
Bay City, Texas 77414
(979)323-1703 office
(979)429-0550 mp

From: Marla Jasek
Sent: Wednesday, May 25, 2016 10:32 AM
To: Chief Barker <rbarker@cityofbaycity.org>
Cc: PD Dispatch <pd_dispatch@cityofbaycity.org>
Subject: RE: Comment Requested--Rename Ave C

I forgot the other two attachments.

From: Marla Jasek
Sent: Wednesday, May 25, 2016 10:30 AM
To: Chief Barker <rbarker@cityofbaycity.org>
Cc: PD Dispatch <pd_dispatch@cityofbaycity.org>
Subject: Comment Requested--Rename Ave C

I forgot to send the emails out last week. I would appreciate any comments or concerns you have by May 31st to include in the Council's agenda packet but will be accepting comments up to June 9th.

Marla Jasek, PE, CFM
Asst. Director of Public Works
City of Bay City
979.323.1160



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 06/09/16 07:00 PM
Department: Public Works
Category: Property
Prepared By: Marla Jasek
Initiator: Marla Jasek
Sponsors:
DOC ID: 2316

TABLED

AGENDA ITEM (ID # 2316)

**DISCUSS, CONSIDER, AND/OR APPROVING BY ORDINANCE
THE APPLICATION TO RENAME THE SECTION OF AVENUE
C FROM 6TH STREET TO WHITSON AVENUE TO JUDGE
JOHN PAUL DAVIS AVENUE.**

The City received an application in the form of a petition requesting to change the name of Avenue C between 6th Street and Whitson Avenue to Judge John Paul Davis Avenue. The applicant stated that a shorter version of the name would be acceptable if the name as requested is considered too long. The application has been reviewed in accordance with City Ordinance.

Section 94-229

- (a) The petition has been verified to contain signatures representing not less than 50% of all property owners abutting the subject city street.
- (b) Ms. Joe Ann Davis filed the application to rename this section of Avenue C to "honor [recognize] a local son."
- (c) The application fee was received.
- (d) Public Works has considered the length of the proposed name and would like council to consider a shorter version of the name to honor Judge Davis. The name as requested would require a nonstandard sign.

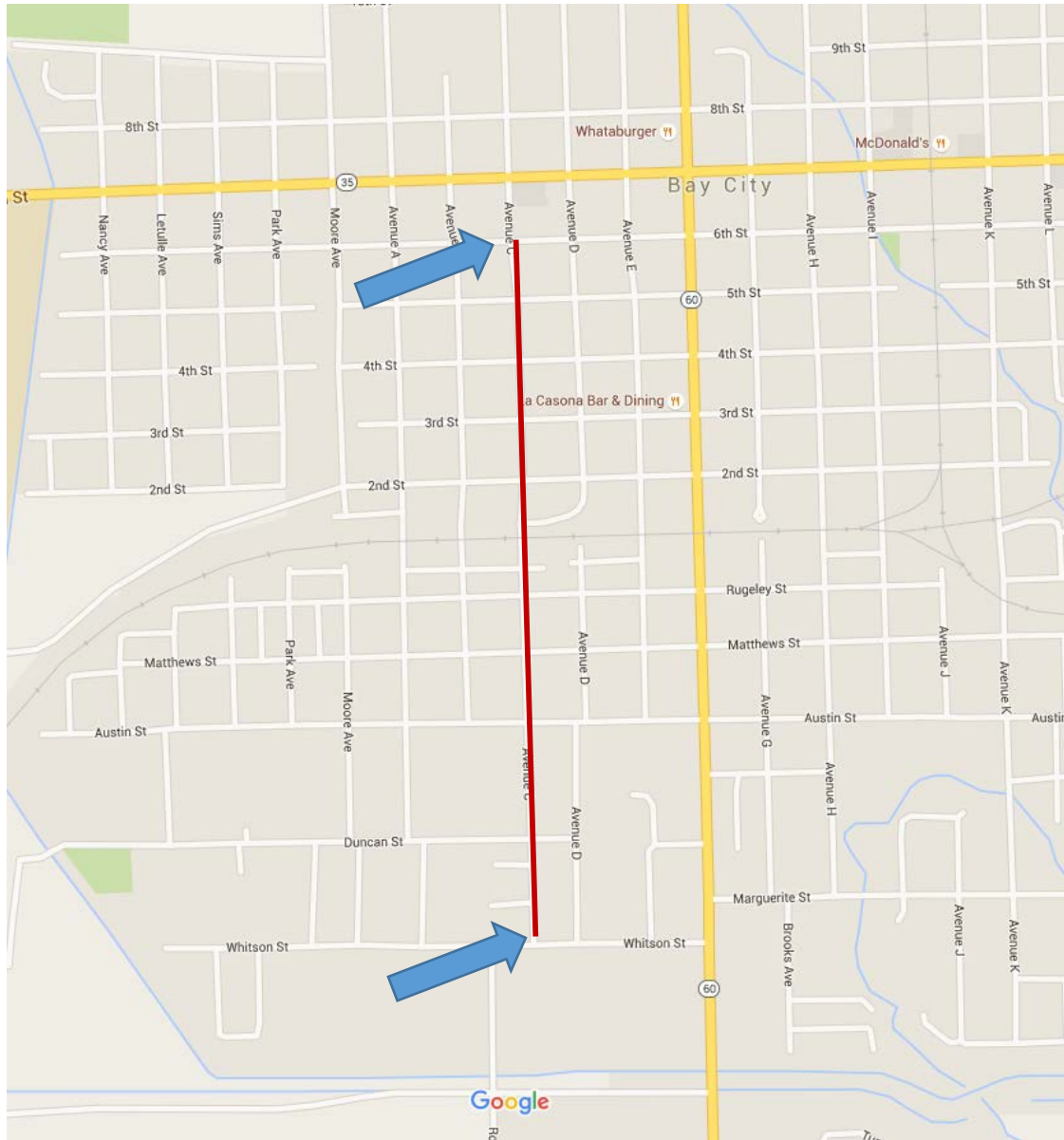
Public Works has reviewed the application and it meets requirements for consideration by Council.

Another concern from Public Works, the Volunteer Fire Department and Matagorda County is the continuity of the street's name. Whitson Ave is a logical point for a name change to start however 6th Street is not. Public Works suggests the limits of Whitson Avenue to Dr Martin Luther King Jr Drive or 4th Street for the proposed name change.

RESULT: Tabled

Next: 6/23/2016 7:00 PM

Limits for Requested Street Rename



Attachment: letter attachments 1 (2316 : Ave C rename)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS, RENAMING A SECTION OF AVENUE C FROM 6TH STREET AND WHITSON AVENUE TO JUDGE JOHN PAUL DAVIS AVENUE; PROVIDING A CUMULATIVE AND CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bay City, Texas (City) is a Home Rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, within the City is Avenue C. Avenue C currently begins at Whitson Ave to the south and extends up to Adams Road to the north. The middle section of Avenue C from 1st Street to Lois Street was platted as part of the Bay City Original Townsite in 1894. The Original Townsite grid consisted of Avenue A through Avenue M running north to south and 1st Street through 13th Street running east to west. The City extended Avenue C to the north and south as the City continued to grow; and

WHEREAS, under the provisions of the City Code of Ordinances Section 94-228, City Council may authorize the permanent change of City street names; and

WHEREAS, Ms. Joe Ann Davis filed an application to rename the section of Avenue C between 6th Street and Whitson Avenue to honor her son, the Honorable Judge John Paul Davis; and

WHEREAS, the City published notice of the Public Hearing to receive public comment on Ms. Davis' application to rename the section of Avenue C between 6th Street and Whitson Avenue to Judge John Paul Davis Avenue; and

WHEREAS, the City held a Public Hearing on June 9, 2016 to receive public comment on Ms. Davis' application to rename the section of Avenue C between 6th Street and Whitson Avenue to Judge John Paul Davis Avenue; and

WHEREAS, the City Council finds that all notices and requirements contained in the Code of Ordinances have been met and Ms. Davis' application to rename this Section of Avenue C is administratively complete and complies with Section 94-229 of the City's Code of Ordinances; and

WHEREAS, the City Council approves Ms. Davis' application and renames the section of Avenue C between 6th Street and Whitson Avenue to Judge John Paul Davis Avenue.

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

Section 1. The forgoing recitals are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and findings of the Council.

Section 2. That the City Council approves Ms. Davis' application to rename the section of Avenue C from 6th Street to Whitson Avenue to Judge John Paul Davis Avenue.

Section 3. That the section of Avenue C from 6th Street to Whitson Avenue is hereby renamed Judge John Paul Davis Avenue.

Section 4. That this Ordinance shall be implemented by the City's Public Works Department, and upon completion of the new street name sign installation, the City's Public Works Department shall notify City Council and the City Secretary in writing.

Section 5. That the City Secretary shall provide a copy of this Ordinance, as recorded in the City Secretary's Records, to all governmental subdivisions, agencies, and departments effected by the renaming of this Section of Avenue C and to the Matagorda County Appraisal District.

Section 6. This Ordinance shall be cumulative of all provisions of Ordinances of the City of Bay City, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event the conflicting provisions of such Ordinances are hereby repealed.

Section 7. That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

Section 8. This Ordinance shall become effective immediately upon its passage and approval as provided by law.

PASSED AND APPROVED on this 9th day of June 2016.

Mark A. Bricker, Mayor

ATTEST:

Rhonda Clegg, City Secretary

Attachment: ORDINANCE NO. - Rename Section of Ave C (2316 : Ave C rename)

APPROVED AS TO FORM:

M. Shannon Kackley, Asst. City Attorney
DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Julie L. Estlinbaum Mayor Pro Tem	_____	_____	_____
Bill Cornman	_____	_____	_____
Chrystal Folse	_____	_____	_____
Steven Johnson	_____	_____	_____
Carolyn Thames	_____	_____	_____

Mark A. Bricker, Mayor,
City of Bay City

ATTEST:

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:

M. Shannon Kackley, Assistant City Attorney
City of Bay City
DENTON, NAVARRO, ROCHA,
BERNAL, HYDE & ZECH, P.C.

Attachment: ORDINANCE NO. - Rename Section of Ave C (2316 : Ave C rename)



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 2322)

Meeting: 06/09/16 07:00 PM
Department: Community Development
Category: Agreement
Prepared By: D C Dunham
Initiator: D C Dunham
Sponsors:
DOC ID: 2322

**DISCUSS, CONSIDER, AND/OR APPROVE THE
AGREEMENTS TO PARTICIPATE IN TAX INCREMENT
REINVESTMENT ZONE NUMBER ONE AND TAX INCREMENT
REINVESTMENT ZONE NUMBER TWO WITH MATAGORDA
COUNTY, PORT OF BAY CITY, AND MATAGORDA REGIONAL
MEDICAL CENTER, AND DIRECT STAFF AS NECESSARY.**

Matagorda County, Port of Bay City and Matagorda Regional Medical Center have all agreed to participate at 100% of their property tax increment into the Tax Increment Fund. TIRZ #1 and TIRZ #2 are the same with the exception of property description.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Carolyn Thames, Councilwoman
SECONDER:	Julie Estlinbaum, Mayor Pro-Tem
AYES:	Estlinbaum, Cornman, Folse, Johnson, Thames

MATAGORDA COUNTY HOSPITAL DISTRICT RESOLUTION

PARTICIPATION OF MATAGORDA COUNTY HOSPITAL DISTRICT IN CITY OF BAY CITY TAX INCREMENT FINANCING REINVESTMENT ZONE NUMBER ONE

WHEREAS, the general laws of the State of Texas authorize governmental taxing entities to join other taxing jurisdictions in the establishment and funding of a reinvestment zone under the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (the "Act"), to provide incentive for the development and redevelopment of properties that might not be undertaken without such incentive; and

WHEREAS, the City Council of Bay City approved Ordinance No. 1556, dated November 19, 2015, establishing Tax Increment Financing Reinvestment Zone Number One of Bay City, Texas, in accordance with the Tax Increment Financing Act, to promote redevelopment of property in the Zone and the construction of new residential, commercial and retail development by providing for infrastructure improvements through the use of tax increment financing; and

WHEREAS, the City Council of Bay City provided all applicable notices to the Board of the Matagorda County Hospital District as to the City Council's establishment of the tax increment reinvestment zone and, through its appointed representatives made a presentation to the Board of the Matagorda County Hospital District regarding the reinvestment zone; and

WHEREAS, the Board of the Matagorda County Hospital District recognizes that their participation in the funding of the tax increment reinvestment zone will have the desired effect of developing the area to the benefit of all taxing units which levy taxes in the proposed reinvestment zone.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. That the Board of the Matagorda County Hospital District hereby approves participation in the Bay City Tax Increment Financing Reinvestment Zone #1 and the payment into the tax increment fund of one-hundred percent (100%) of the collected incremental tax revenue (as set forth in the Agreement) produced by applying Matagorda County Hospital District's tax rate to the incremental increase in the value of property located in the reinvestment zone, beginning with Tax Year 2016, through December 31, 2046, or until all project costs have been paid, whichever occurs first, in accordance with the terms of the attached Agreement.

SECTION 2. That Board of the Matagorda County Hospital District is entitled to appoint two (2) board members to the Board of Directors of the Bay City Tax Increment Financing Reinvestment Zone #1.

SECTION 3. That this Resolution is effective upon adoption by the Board of the Matagorda County Hospital District.

PASSED AND APPROVED by the Matagorda County Hospital District, Texas, this the ____ day of _____ 2016.

MATAGORDA COUNTY HOSPITAL DISTRICT:

By: _____
Mike Muecke, RPh.
Chairman of Board
Date: _____

ATTEST:

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____

**AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF BAY CITY, TEXAS**

This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, TEXAS** (“**Agreement**”) is entered into by and between the **CITY OF BAY CITY, TEXAS** (the “**City**”) and **PORT OF BAY CITY AUTHORITY OF MATAGORDA COUNTY, TEXAS** (the “**Port Authority**”).

The City and the Port Authority hereby agree that the following statements are true and correct and constitute the basis upon which the City and the Port Authority have entered into this Agreement:

- A. On November 19, 2015, the City Council of the City of Bay City, Texas (the “**Council**”) adopted City **Ordinance No. 1556** designating certain real property located in the central portion of the City, encompassing 85 acres as Tax Increment Reinvestment Zone Number One, City of Bay City, Texas (the “**Zone**”). City **Ordinance No. 1556** is hereby incorporated by reference for all purposes and collectively attached hereto as **Exhibit “A”**. Ordinance No. 1556 was amended by Ordinance No. 1567 which is attached, incorporated herein and marked Exhibit “B”.
- B. Designation of the Zone will cause development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. It is anticipated that other complementary development in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the Port Authority.
- C. Pursuant to Section 311.013(f) of the Texas Tax Code, the Port Authority is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City. The Port Authority wishes to enter into such an agreement with the City.

NOW, THEREFORE, for and in consideration of the conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and the Port Authority do hereby contract, covenant and agree as follows:

1. INCORPORATION OF RECITALS.

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

2. DEFINITIONS.

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Act means the Tax Increment Financing Act, as amended and as codified in Chapter 311 of the Texas Tax Code.

Captured Appraised Value in a given year means the total appraised value of all real property taxable by the Port Authority and located in the Zone for that year less the Tax Increment Base.

Project Plan means the Preliminary Project and Financing Plan attached hereto as **Exhibit “BC”** for the development and/or redevelopment of the Zone, and hereafter as adopted by the TIF Board and approved by the City Council.

TIF Board means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

Tax Increment in a given year means the amount of property taxes levied and collected by the Port Authority for that year on the Captured Appraised Value of real property taxable by the Port Authority and located in the Zone.

Tax Increment Base means the total appraised value as of January 1, 2015 of all real property taxable by the Port Authority and located in the Zone.

Tax Increment Fund means that fund created by the City pursuant to Section 311.014 of the Act and Section 7 of City Ordinance No. 1556, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including the Port Authority, and (ii) all accrued interest earned on the cash balance of the fund.

TIF Ordinance means City **Ordinances** No. 1556 and 1567 adopted respectively on November 19, 2015 and March 24, 2016, and attached hereto as **Exhibit “A” and “B”**.

Zone means the certain real properties and boundaries as described in City Ordinance No. 1556.

3. DEPOSIT OF TAX INCREMENT.

Pursuant to a Resolution duly adopted by the governing body of the Port Authority, which Resolution is attached hereto as **Exhibit “CD”** and is hereby made a part of this Agreement for all purposes, and specifically subject to Section 4 of this Agreement, the Port Authority hereby agrees to deposit each year of the Zone, beginning with the 2016 tax

year, one hundred percent (100%) of the Port Authority's Tax Increment into the Tax Increment Fund pursuant to Section 311.013 (c) of the Act. Notwithstanding anything to the contrary the City agrees to provide the Port Authority 30 days prior to payment due date a progress report that shall include an updated fact sheet that includes details as to what portion of the Project Plan has been completed to date and what is anticipated to occur in the upcoming year, the current roster of the TIF Board, including terms of members and entities that appointed them and the date of the next TIF Board meeting. In the event there are no obligations outstanding for the Tax Increment Fund in ~~Year 10 and Year 20~~ any year following the effective date of this Agreement the Port Authority shall have the option to terminate or decrease participation in this Agreement with a 60-day written notice to the City prior to any action by the Port Authority.

Per Section 311.012 of the Act, the amount of a taxing unit's tax increment for a year is the amount of property taxes levied and assessed by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone or the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone. In the event of a dispute of the amount owed by the taxing unit, the Port Authority Auditor shall determine the payment amount owed in accordance with Section 311.012 of the Act.

State law requires that all general-purpose local governments publish a complete set of financial statements presented in conformity with generally accepted accounting principles ("GAAP") and audited in accordance with U.S. generally accepted auditing standards by a firm of licensed certified public accountants and is referred to as the comprehensive annual financial report ("CAFR").

Such deposits shall be made in accordance with the City's CAFR, but only following receipt of a bill from the City that outlines the City's calculation of the amount of the deposit that is required for that year.

4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.

This Agreement is based on the following conditions, and the City agrees and acknowledges the Port Authority's right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied.

4.1 AMENDMENTS TO TIF ORDINANCE AND PROJECT AND FINANCING PLAN ORDINANCE.

The TIF Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIF Ordinance is amended, the Port Authority shall suspend payment into the TIF Fund as described in Section 3, for the amended portions of the Ordinance, until the

amendment is approved by the governing body of the Port Authority as an amendment to this Agreement.

In the event the Project and Financing Plan Ordinance is amended, the Port Authority shall suspend payment into the TIF Fund as described in Section 3, for the amended portions of the Ordinance, until the amendment is approved by the governing body of the Port Authority as an amendment to this Agreement.

4.2. CERTAIN ZONE PROJECT COSTS EXCLUDED.

The Tax Increment deposited into the Tax Increment Fund by the Port Authority shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All Tax Increment Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIF Board in accordance with the Project Plan. Notwithstanding anything to the contrary, all roads and improvements within the Zone will be built and maintained by Tax Increment Funds, private funds or comply with the City's standards for road construction and maintenance. The Port Authority may inspect project sites and project plans funded by the Zone at times and intervals that will not interfere with ongoing operations. The Port Authority shall not be responsible for construction or maintenance of roads within the Zone.

4.3. ZONE EXPANSION.

As defined, the Zone shall include real properties located within the boundaries as described in the TIF Ordinance. If the Zone is expanded, the Port Authority is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing body of the Port Authority as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment Fund by the Port Authority may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the governing body of the Port Authority as an amendment to this Agreement.

4.4 TIF BOARD MEMBERSHIP.

During the term of the Zone, the TIF Board shall consist of nine (9) members who shall serve for terms of two (2) years each. Of these nine (9) members, each taxing unit other than the City that levies taxes on real property in the Zone and contributes tax increment to the Zone may, but is not required to, appoint a member to the Board per the Act. The Port Authority may appoint one (1) board member.

5. TERM.

This Agreement shall take effect on the date as of which both parties have executed it and shall expire upon ~~expiration or termination of the Zone, which currently is the earlier of (i) December 31, 2046 or an earlier~~ a termination date designated by ordinance subsequently adopted by the City Council of the City or, (ii) the date on which all project

costs of the Zone, including, but not limited to, tax increment bonds and interest on those bonds, have been paid or otherwise satisfied in full, or (iii) December 31, 2026, whichever date or event occurs first.

6. **TIF FUND ACCOUNTING.**

No later than July 1 of each year following execution of this Agreement, the City shall provide the Port Authority with an annual accounting of the funds deposited to and disbursed from the Tax Increment Fund, including accrued interest. After all project costs of the Zone have been paid or at the time of the expiration of this Agreement, any funds remaining in the Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

Tax Increment shall only be deposited into the Tax Increment Fund per the definition stated above consistent with Section 311.013 (b) of the Act that says that each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit. Any interest collected by the Port Authority on outstanding taxes or attorney's fees shall not be deposited into the Tax Increment Fund and any interest validly charged by the Zone per Section 311.013 (c-1) of the Act shall be deposited into the Tax Increment Fund.

Pursuant to Section 311.016 (a) of the Act, on or before the 150th day following the end of the fiscal year of the municipality or county, the governing body of a municipality or county shall submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone created by the municipality or county a report on the status of the zone.

Notwithstanding anything to the contrary the Port Authority shall have no obligations or responsibilities (other than payments per this Agreement) including costs or expenses associated with management and administration of the Zone and any obligation to pay or repay any bond or other debt issued by another participating entity.

7. **RESPONSIBILITY FOR ACTS.**

The City and the Port Authority shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and the Port Authority, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

8. **NOTICES.**

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

City:

City of Bay City
Attn: Mayor
1900 Fifth Street
Bay City, Texas 77414

Port Authority:

Port of Bay City Authority
Attn: Chairman
P.O. Box 1426
Bay City, Texas 77404

9. **NO WAIVER.**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. **VENUE AND JURISDICTION.**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie only in state courts located in Matagorda County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

11. **NO THIRD PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the City and the Port Authority and are not intended to create any rights, contractual or otherwise, to any other person or entity.

12. **FORCE MAJEURE.**

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to *force majeure* or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

13. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and the Port Authority as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

16. DEFAULT.

If City materially breaches this Agreement, the Port Authority may provide written notice to City and Zone (with copy to other participating taxing entities) stating its intent to terminate participation in the Zone and detailing the material breach(s) of the Agreement. If the breach(s) of this Agreement set out in the notice are not resolved within 90 business days of the notice, the Port Authority may discontinue its payments and terminate participation in the Zone.

16. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the later date below:

**PORT OF BAY CITY AUTHORITY OF
MATAGORDA COUNTY, TEXAS:**

By: _____
Mike Griffith
Chairman
Date: _____

ATTEST:

By: _____
Name: Joey Sliva
Title: Secretary

APPROVED AS TO FORM:

By: _____
B. ALLEN CUMBIE, Attorney for the
Port of Bay City Authority of Matagorda
County, Texas

CITY OF BAY CITY, TEXAS

BY _____
Mark Bricker, Mayor

ATTEST:

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:
Shannon Kackley, Asst. City Attorney

BY _____

**AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF BAY CITY, TEXAS**

This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, TEXAS** ("**Agreement**") is entered into by and between the **CITY OF BAY CITY, TEXAS** (the "**City**") and **MATAGORDA COUNTY, TEXAS** (the "**County**").

The City and the County hereby agree that the following statements are true and correct and constitute the basis upon which the City and the County have entered into this Agreement:

- A. On November 19, 2015, the City Council of the City of Bay City, Texas (the "**Council**") adopted City Ordinance No. 1556 designating certain real property located in the central portion of the City, encompassing 85 acres as Tax Increment Reinvestment Zone Number One, City of Bay City, Texas (the "**Zone**"). City Ordinance No. 1556 is hereby incorporated by reference for all purposes and collectively attached hereto as **Exhibit "A"**.
- B. Designation of the Zone will cause development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. It is anticipated that other complementary development in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the County.
- C. Pursuant to Section 311.013(f) of the Texas Tax Code, the County is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City. The County wishes to enter into such an agreement with the City.

NOW, THEREFORE, for and in consideration of the conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and the County do hereby contract, covenant and agree as follows:

1. INCORPORATION OF RECITALS.

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

2. DEFINITIONS.

In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

Act means the Tax Increment Financing Act, as amended and as codified in Chapter 311 of the Texas Tax Code.

Captured Appraised Value in a given year means the total appraised value of all real property taxable by the County and located in the Zone for that year less the Tax Increment Base.

Project Plan means the Preliminary Project and Financing Plan attached hereto as **Exhibit "B"** for the development and/or redevelopment of the Zone, and hereafter as adopted by the TIF Board and approved by the City Council.

TIF Board means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

Tax Increment in a given year means the amount of property taxes levied and collected by the County for that year on the Captured Appraised Value of real property taxable by the County and located in the Zone.

Tax Increment Base means the total appraised value as of January 1, 2015 of all real property taxable by the County and located in the Zone.

Tax Increment Fund means that fund created by the City pursuant to Section 311.014 of the Act and Section 7 of City Ordinance No. 1556, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including the County, and (ii) all accrued interest earned on the cash balance of the fund.

TIF Ordinance means City Ordinance No. 1556 adopted on November 19, 2015, attached hereto as **Exhibit "A"**.

Zone means the certain real properties and boundaries as described in City Ordinance No. 1556.

3. **DEPOSIT OF TAX INCREMENT.**

Pursuant to a Resolution duly adopted by the governing body of the County, which Resolution is attached hereto as **Exhibit "C"** and is hereby made a part of this Agreement for all purposes, and specifically subject to Section 4 of this Agreement, the County hereby agrees to deposit each year of the Zone, beginning with the 2016 tax year, one-hundred percent (100%) of the County's Tax Increment into the Tax Increment Fund pursuant to Section 311.013 (c) of the Act. Notwithstanding anything to the contrary City agrees to provide the County 30 days prior to payment due date a progress report that shall include an updated fact sheet that includes details as to what portion of the Project Plan has been completed to date and what is anticipated to occur in the upcoming year, the current roster

of the TIF Board, including terms of members and entities that appointed them and the date of the next TIF Board meeting. In the event there are no obligations outstanding for the Tax Increment Fund in Year 10 and Year 20 following the effective date of this Agreement the County shall have the option to terminate or decrease participation in this Agreement with a 60-day written notice to the City prior to any action by the County.

Per Section 311.012 of the Act, the amount of a taxing unit's tax increment for a year is the amount of property taxes levied and assessed by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone or the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone. In the event of a dispute of the amount owed by the taxing unit, the County Auditor shall determine the payment amount owed in accordance with Section 311.012 of the Act.

State law requires that all general-purpose local governments publish a complete set of financial statements presented in conformity with generally accepted accounting principles ("GAAP") and audited in accordance with U.S. generally accepted auditing standards by a firm of licensed certified public accountants and is referred to as the comprehensive annual financial report ("CAFR").

Such deposits shall be made in accordance with the City's CAFR, but only following receipt of a bill from the City that outlines the City's calculation of the amount of the deposit that is required for that year.

4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.

This Agreement is based on the following conditions, and the City agrees and acknowledges the County's right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied.

4.1 AMENDMENTS TO TIF ORDINANCE AND PROJECT AND FINANCING PLAN ORDINANCE.

The TIF Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIF Ordinance is amended, the County shall suspend payment into the TIF Fund as described in Section 3, for the amended portions of the Ordinance, until the amendment is approved by the governing body of the County as an amendment to this Agreement.

In the event the Project and Financing Plan Ordinance is amended, the County shall suspend payment into the TIF Fund as described in Section 3, for the amended portions of the Ordinance, until the amendment is approved by the governing body of the County as an amendment to this Agreement.

4.2. CERTAIN ZONE PROJECT COSTS EXCLUDED.

The Tax Increment deposited into the Tax Increment Fund by the County shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All Tax Increment Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIF Board in accordance with the Project Plan. Notwithstanding anything to the contrary, all roads and improvements within the Zone will be built and maintained by Tax Increment Funds, private funds or comply with the City's standards for road construction and maintenance. The County may inspect project sites and project plans funded by the Zone at times and intervals that will not interfere with ongoing operations. The County shall not be responsible for construction or maintenance of roads within the Zone.

4.3. ZONE EXPANSION.

As defined, the Zone shall include real properties located within the boundaries as described in the TIF Ordinance. If the Zone is expanded, the County is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing body of the County as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment Fund by the County may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the governing body of the County as an amendment to this Agreement.

4.4 TIF BOARD MEMBERSHIP.

During the term of the Zone, the TIF Board shall consist of nine (9) members who shall serve for terms of two (2) years each. Of these nine (9) members, each taxing unit other than the City that levies taxes on real property in the Zone and contributes tax increment to the Zone may, but is not required to, appoint a member to the Board per the Act. Matagorda County may appoint two (2) board members.

5. TERM.

This Agreement shall take effect on the date as of which both parties have executed it and shall expire upon expiration or termination of the Zone, which currently is the earlier of (i) December 31, 2046 or an earlier termination date designated by ordinance subsequently adopted by the City Council of the City or, (ii) the date on which all project costs of the Zone, including, but not limited to, tax increment bonds and interest on those bonds, have been paid or otherwise satisfied in full.

6. TIF FUND ACCOUNTING.

No later than July 1 of each year following execution of this Agreement, the City shall provide the County with an annual accounting of the funds deposited to and disbursed from the Tax Increment Fund, including accrued interest. After all project

costs of the Zone have been paid or at the time of the expiration of this Agreement, any funds remaining in the Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

Tax Increment shall only be deposited into the Tax Increment Fund per the definition stated above consistent with Section 311.013 (b) of the Act that says that each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit. Any interest collected by the County on outstanding taxes or attorney's fees shall not be deposited into the Tax Increment Fund and any interest validly charged by the Zone per Section 311.013 (c-1) of the Act shall be deposited into the Tax Increment Fund.

Pursuant to Section 311.016 (a) of the Act, on or before the 150th day following the end of the fiscal year of the municipality or county, the governing body of a municipality or county shall submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone created by the municipality or county a report on the status of the zone.

Notwithstanding anything to the contrary the County shall have no obligations or responsibilities (other than payments per this Agreement) including costs or expenses associated with management and administration of the Zone and any obligation to pay or repay any bond or other debt issued by another participating entity.

7. RESPONSIBILITY FOR ACTS.

The City and the County shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and the County, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

8. NOTICES.

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

City:

City of Bay City
Attn: Mayor
1900 Fifth Street
Bay City, Texas 77414

County:

Matagorda County
Attn: County Judge
1700 Seventh Street, Room 301
Bay City, Texas 77414

9. **NO WAIVER.**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. **VENUE AND JURISDICTION.**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Matagorda County, Texas or the United States District Court for the Southern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

11. **NO THIRD PARTY RIGHTS.**

The provisions and conditions of this Agreement are solely for the benefit of the City and the County and are not intended to create any rights, contractual or otherwise, to any other person or entity.

12. **FORCE MAJEURE.**

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to *force majeure* or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

13. **INTERPRETATION.**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

14. **CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15. **ENTIRETY OF AGREEMENT.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement

between the City and the County as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

16. DEFAULT

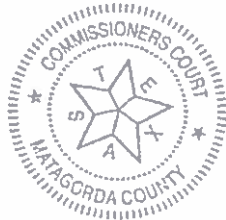
If City materially breaches this Agreement, County may provide written notice to City and Zone (with copy to other participating taxing entities) stating its intent to terminate participation in the Zone and detailing the material breach(s) of the Agreement. If the breach(s) of this Agreement set out in the notice are not resolved within 90 business days of the notice, the County may discontinue its payments and terminate participation in the Zone.

16. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the later date below:

MATAGORDA COUNTY, TEXAS:



By: Nate McDonald
 Nate McDonald
 County Judge
 Date: March 21, 2016

ATTEST:

By: Janet Hickl
 Name: Janet Hickl
 Title: County Clerk

APPROVED AS TO FORM*:

By: 
Matagorda County Attorney

** By law, the County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client and is limited to form only. Other parties should not rely on this approval and should seek review and approval by their own respective attorney (s).*

CITY OF BAY CITY, TEXAS

BY _____
Mark Bricker, Mayor

ATTEST:

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:
Shannon Kackley, Asst. City Attorney

BY _____



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 06/09/16 07:00 PM
Department: Community Development
Category: Agreement
Prepared By: D C Dunham
Initiator: D C Dunham
Sponsors:
DOC ID: 2323

TABLED

AGENDA ITEM (ID # 2323)

**DISCUSS, CONSIDER, AND/OR APPROVE A RESOLUTION
APPOINTMENT BOARD MEMBERS TO REPRESENT THE
CITY OF BAY CITY TO TAX INCREMENT REINVESTMENT
ZONE NUMBER ONE AND TAX INCREMENT REINVESTMENT
ZONE NUMBER 2, AND DIRECT STAFF AS NECESSARY.**

Each TIRZ board shall consist of nine (9) members who shall serve for terms of two (2) years each. Four of the directors shall be appointed for two-year terms, while five of the directors shall be appointed to a one-year term, beginning on the effective date of this Ordinance. Of these nine (9) members, each taxing unit other than the City that levies taxes on real property in the Zone and contributes tax increment to the Zone may, but is not required to, appoint a member to the Board per the Act. Matagorda County and Matagorda Regional Hospital have two (2) appointees each while the Port of Bay City has one (1) appointee leaving four (4) appointees from the City of Bay City.

RESULT: TABLED

Next: 6/23/2016 7:00 PM



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 06/09/16 07:00 PM
Department: City Secretary
Category: Property
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 2325

ADOPTED

AGENDA ITEM (ID # 2325)

**DISCUSS, CONSIDER, AND/OR APPROVE A REQUEST TO
ABANDON THE ALLEYWAY WITHIN BLOCK 1 OF THE
NICHOLS AND NORVELL ADDITION (3100 7TH STREET, BAY
CITY, TEXAS) BETWEEN NICHOLS AVENUE AND MARY
AVENUE, AND DIRECT STAFF AS NECESSARY.**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Councilwoman
AYES:	Estlinbaum, Cornman, Folse, Johnson, Thames



June 2, 2016

The City of Bay City
Bay City, Texas 77414

Re: 3100 Seventh Street
Bay City, Texas 77414

In connection with the above referenced property, located in Block 1, Nichols and Norvell Addition to Bay City, I respectfully request that the City of Bay City close the alley that runs through the middle of said Block 1.

I hereby authorize Bobby Wilkinson to act on behalf of Bay City East Gate Enterprises, Ltd. with respect to the closing of the alley currently located on the referenced property.

Thank you for your consideration.

Respectfully Submitted,
BAY CITY EAST GATE ENTERPRISES, LTD.

Bay City East Gate Enterprises, GT, LLC
Carol Ann Huitt, President
Carol Ann Huitt, President

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS, CLOSING AND ABANDONING TO THE ABUTTING PROPERTY OWNER A TWENTY FOOT (20) WIDE ALLEY IN BLOCK 1 OF THE NICHOLS AND NORVELL ADDITION TO BAY CITY, IDENTIFIED AS THAT SEGMENT OF AN ALLEY THAT RUNS PARALLEL TO SEVENTH STREET, BETWEEN NICHOLS AVENUE AND MARY AVENUE; AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS TO EFFECTUATE THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, by that certain instrument plat titled Nichols and Norvell Addition to Bay City (Addition) recorded in Volume 27, Page 58 of the Matagorda County Deed Records, the City of Bay City, Texas (City) is the owner of a twenty (20) foot wide alley (Alley) in Block 1 of the Addition that runs parallel to Seventh Street between Nichols Avenue and Mary as depicted in **Exhibit “A”**; and

WHEREAS, pursuant to Section 311.007 of the Texas Transportation Code, a home-rule municipality may vacate, abandon, or close a street or alley; and

WHEREAS, the City of Bay City, Texas, a home rule municipality, under the provisions of the City Code of Ordinances Section 94-139 may authorize an alley to be closed; and

WHEREAS, Bay City East Gate Enterprises, Ltd. owns Block 1 of the Nichols and Norvell Addition to Bay City and constitutes all of the abutting owners on both sides of the Alley; and

WHEREAS, Bay City East Gate Enterprises, Ltd. has petitioned the City to vacate, abandon, and close the Alley; and

WHEREAS, City Council has determined that there will be no detriment or hazard to the City or its citizens if the Alley is vacated, abandoned, and closed; and;

WHEREAS, the City Council finds and declares that it is in the best interest of the City that the Alley be vacated, abandoned, and closed and that its closing shall have the effect of reverting the Alley to a twenty (20) foot wide utility easement as required by Section 94-139 of the City Code of Ordinances.

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

Section 1. The forgoing recitals are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and findings of the Council.

Section 2. That the City Council finds that the vacation, abandonment, and closure of the Alley as requested by Bay City East Gate Enterprise, Ltd. will cause no harm or injury to the City or its citizens.

Section 3. That the Alley depicted on Exhibit "A", is hereby vacated, abandoned, and closed as authorized by Section 311.007 of the Texas Transportation Code and Section 94-139 of the City Code of Ordinances.

Section 4. That the vacation, abandonment, and closure of the Alley shall have the effect of reverting the Alley to a utility easement.

Section 5. That City Council hereby authorizes the Mayor to execute all documents on behalf of the City to effectuate the purpose of this Ordinance.

Section 6. That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

Section 7. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED on this 9th day of June 2016.

Mark A. Bricker, Mayor

ATTEST:

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:

M. Shannon Kackley, Asst. City Attorney
DENTON NAVARRO ROCHA BERNAL HYDE & ZECH, P.C.

EXHIBIT A

**METES AND BOUNDS DESCRIPTION
0.1370 ACRES (5,967 SQUARE FEET)
NICHOLS AND NORVELL ADDITION TO BAY CITY
MATAGORDA COUNTY, TEXAS**

All of that certain tract of land being 0.1370 acres (5,967 square feet) of which 0.1365 acres (5,944 square feet) is being all of the dedicated 20 foot wide Alley (Alley) located within Block 1 of the Nichols and Norvell Addition to Bay City as recorded in Volume 27, Page 58, Matagorda County Deed Records (M.C.D.R.), same being a 20 foot wide Public and Utility Easement as recorded in Volume 641, Page 112, M.C.D.R and of which 0.0005 acres (23 square feet) is being out of the right-of-way of Mary Avenue as shown on Nichols and Norvell Addition, Matagorda County, Texas, said 0.1370 acre tract being more particularly described by metes and bounds as follows: (bearings are based on the Texas State Plane Coordinate System, South Central Zone 4204, NAVD88, 2001 Adjustment and referenced to the recorded plat of Nichols and Norvell Addition)

COMMENCING at a found "X" cut in concrete lying on the Easterly line of a 17.5 foot wide strip of land out of the original Block 1 of said Nichols and Norvell and marking the intersection of the South right-of-way line of 7th Street (State Highway 35) (100 feet wide) and the West right-of-way line of said Mary Avenue, said "X" being the Southeasterly corner of a called 0.15 acre right-of-way acquisition tract described in deed to the State of Texas as recorded in Volume 1, Page 410, M.C.D.R., same being the Northeast corner of a called Tract No. 2 comprised of Lots 4, 5 and the adjoining Northerly portion of said 17.5 foot wide strip of land as recorded in Volume 516, Page 753, M.C.D.R., same being the Northernmost corner of a called 0.0014 acre tract (Tract I) being out of the right-of-way of Mary Avenue and described in deed to East Gate Enterprises, Ltd., a Texas Limited Partnership as recorded in Matagorda County Clerks File (M.C.C.F.) No. 2016-2174;

THENCE South 03°09'34" West, leaving said South right-of-way line of 7th Street, over and across the right-of-way of said Mary Avenue and along the Easterly line of said called 0.0014 acre tract a distance of 120.00 feet to a set P.K. Nail in Asphalt being the Southeast corner of the said called 0.0014 acre tract, same being the Northeasterly corner and the **POINT OF BEGINNING** of the herein described tract;

THENCE South 03°09'34" West, continuing over and across the right-of-way of said Mary Avenue and along the Easterly line of the herein described tract a distance of 20.00 feet to a set P.K. Nail in Asphalt being the Northeasterly corner of a called 0.0063 acre tract (Tract II) being out of the right-of-way of Mary Avenue and described in deed to East Gate Enterprises, Ltd., a Texas Limited Partnership as recorded in Matagorda County Clerks File (M.C.C.F.) No. 2016-2174, same being the Southeasterly corner of the herein described tract;

THENCE North 86°20'35" West, continuing over and across the right-of-way of said Mary Avenue and along the Southerly line of the herein described tract, passing a distance of 1.22 feet to a point lying on the original Westerly right-of-way line of said Mary Avenue and being the Northeast corner of a called 0.613 acre tract (Tract No. 3) being all of Lots 8, 9, 10, a portion of Lot 11 and the Easterly adjoining 17.5 foot wide strip of land (Southerly Strip) between Lot 8 and Mary Avenue as shown on said Nichols and Norvell Addition and described in deed to East Gate Enterprises as recorded in Volume 516, Page 753, M.C.D.R., continuing along the Northerly line of said called 0.613 acre tract, in

common with the Southerly line of the herein described tract, passing at a distance of 197.25 feet a point being the Northwesterly corner of said called 0.613 acre tract, same being the Northeasterly corner of a called 0.321 acre tract (Tract No. 4) being a portion of Lot 11 and all of Lot 12 all in Block 1 of said Nichols and Norvell Addition and described in deed to East Gate Enterprises as recorded in Volume 516, Page 753, M.C.D.R. and continuing along the Northerly line of said called 0.321 acre tract, in common with the Southerly line of the herein described tract for a total distance of 297.25 feet to a found P.K. Nail in asphalt lying on the Easterly right-of-way line of Nichols Avenue (F.M. 2668) (60 feet wide) as shown on said Nichols and Norvell Addition and being the Northwest corner of said called 0.321 acre tract, same being the Southwesterly corner of the herein described tract;

THENCE North 03°13'14"West, along said Easterly right-of-way line, in common with the Westerly line of the herein described tract a distance of 20.14 feet to a found P.K. Nail in asphalt being the Southwesterly corner of the residue of Lot 1 and described in deed to East Gate Enterprises, Ltd., a Texas Limited Partnership as recorded in Volume 516, Page 757, M.C.D.R., same being the Northwesterly corner of the herein described tract;

THENCE South 86°20'35" East, leaving said Easterly right-of-way line and along the Southerly line of said Lot 1, in common with the Northerly line of the herein described tract, passing at a distance of 80.94 feet a point being the Southeasterly corner of said Lot 1, same being the Southwesterly corner of the called Lots 2 and 3 (Tract No. 1) and described in deed to East Gate Enterprises, Ltd., a Texas Limited Partnership as recorded in Volume 516, Page 757, M.C.D.R., continuing along the Southerly line of said Tract No. 1, in common with the Northerly line of the herein described tract, passing at a distance of 180.94 feet a point being the Southeasterly corner of said Tract No. 1, same being the Southwesterly corner of the called Lots 4 and 5 and the Easterly adjoining 17.5 foot wide strip of land between Lot 8 and Mary Avenue (Tract No. 2) as shown on said Nichols and Norvell Addition and described in deed to East Gate Enterprises as recorded in Volume 516, Page 753, M.C.D.R., continuing along the Southerly line of said Tract No. 2, in common with the Northerly line of the herein described tract, passing at a distance of 298.44 feet a point lying on the original Westerly right-of-way line of said Mary Avenue and being the Southeasterly corner of said Tract No. 2, same being the Southwesterly corner of said called 0.0014 acre tract and continuing along the Southerly line of said called 0.0014 acre tract, in common with the Northerly line of the herein described tract for a total distance of 299.48 feet to the **POINT OF BEGINNING** and containing 0.1370 acres (5,967 square feet) of land.

This description is based on the Land Title Survey and plat made by Chris J. Broussard, RPLS 6107 on February 25, 2016.

Chris J. Broussard R.P.L.S. #6107
 Broussard Land Surveying, LLC
 1001 Herkimer Street
 Houston TX 77008
 Job Number: BLS-3345_ALLEY TRACT

ABANDONMENT AND CLOSURE OF EXISTING 20' ALLEY

STATE OF TEXAS §
 §
 COUNTY OF MATAGORDA §

WHEREAS, by that certain Plat recorded in Volume 27, Page 58 in the Matagorda County Deed Records titled the Nichols and Norvell Addition to Bay City ("Addition"), the City of Bay City, Texas ("City") is the owner of a Twenty Foot Alley ("Alley") within Block 1 of the Addition, wherein said Alley is parallel to Seventh Street and is located between Nichols Avenue and Mary Avenue; and

WHEREAS, Bay City East Gate Enterprises, Ltd is the sole owner of the properties which abut the Alley; and

WHEREAS, Bay City East Gate Enterprises, Ltd. has petitioned the City to vacate, abandon, and close the Alley that is located within Block 1 of the Addition and is parallel to Seventh Street and is located between Nichols Avenue and Mary Avenue, as depicted in **Exhibit A**, attached hereto and fully incorporated herewith for all purposes.

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Bay City, Texas does hereby for all purposes (i) vacates, abandons, and closes the Alley described in **Exhibit A**.

According to Section 94-139 of the Bay City Code of Ordinances, the Alley reverts to a twenty (20) foot wide utility easement.

IN WITNESS WHEREOF the City of Bay City, Texas has executed this Abandonment and Closure on this 9th day of June 2016.

 Mark Bricker, Mayor
 City of Bay City, Texas

Attest:

 Rhonda Clegg, City Secretary

Attachment: Abandonment and Release of Alleyway - East Gate Enterprises Ltd (2325 : Alleyway)

STATE OF TEXAS §
 §
 COUNTY OF MATAGORDA §

BEFORE ME, this undersigned, a Notary Public in and for the said County and State, on this day personally appeared Mark Bricker, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes herein expressed.

GIVEN under my hand and seal of office this the 9th day of June 2016.

Notary Public in and for
 Matagorda County, Texas

AFTER RECORDING, RETURN TO:

City of Bay City, Texas
 Mayor Mark Bricker
 1901 5th Street
 Bay City, Texas 77414

Attachment: Abandonment and Release of Alleyway - East Gate Enterprises Ltd (2325 : Alleyway)

EXHIBIT A**METES AND BOUNDS DESCRIPTION****0.1370 ACRES (5,967 SQUARE FEET)****NICHOLS AND NORVELL ADDITION TO BAY CITY****MATAGORDA COUNTY, TEXAS**

All of that certain tract of land being 0.1370 acres (5,967 square feet) of which 0.1365 acres (5,944 square feet) is being all of the dedicated 20 foot wide Alley (Alley) located within Block 1 of the Nichols and Norvell Addition to Bay City as recorded in Volume 27, Page 58, Matagorda County Deed Records (M.C.D.R.), same being a 20 foot wide Public and Utility Easement as recorded in Volume 641, Page 112, M.C.D.R. and of which 0.0005 acres (23 square feet) is being out of the right-of-way of Mary Avenue as shown on Nichols and Norvell Addition, Matagorda County, Texas, said 0.1370 acre tract being more particularly described by metes and bounds as follows: (bearings are based on the Texas State Plane Coordinate System, South Central Zone 4204, NAVD88, 2001 Adjustment and referenced to the recorded plat of Nichols and Norvell Addition)

COMMENCING at a found "X" cut in concrete lying on the Easterly line of a 17.5 foot wide strip of land out of the original Block 1 of said Nichols and Norvell and marking the intersection of the South right-of-way line of 7th Street (State Highway 35) (100 feet wide) and the West right-of-way line of said Mary Avenue, said "X" being the Southeasterly corner of a called 0.15 acre right-of-way acquisition tract described in deed to the State of Texas as recorded in Volume 1, Page 410, M.C.D.R., same being the Northeast corner of a called Tract No. 2 comprised of Lots 4, 5 and the adjoining Northerly portion of said 17.5 foot wide strip of land as recorded in Volume 516, Page 753, M.C.D.R., same being the Northernmost corner of a called 0.0014 acre tract (Tract I) being out of the right-of-way of Mary Avenue and described in deed to East Gate Enterprises, Ltd., a Texas Limited Partnership as recorded in Matagorda County Clerks File (M.C.C.F.) No. 2016-2174;

THENCE South 03°09'34" West, leaving said South right-of-way line of 7th Street, over and across the right-of-way of said Mary Avenue and along the Easterly line of said called 0.0014 acre tract a distance of 120.00 feet to a set P.K. Nail in Asphalt being the Southeast corner of the said called 0.0014 acre tract, same being the Northeasterly corner and the **POINT OF BEGINNING** of the herein described tract;

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This description is based on the Land Title Survey and plat made by Chris J. Broussard, RPLS 6107 on February 25, 2016.

Chris J. Broussard R.P.L.S. #6107

Broussard Land Surveying, LLC

1001 Herkimer Street

Houston TX 77008

Job Number: BLS-3345_ALLEY TRACT

Attachment: Abandonment and Release of Alleyway - East Gate Enterprises Ltd (2325 : Alleyway)



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 06/09/16 07:00 PM
Department: Public Works
Category: Policy
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 2324

ADOPTED

RESOLUTION (ID # 2324)

**DISCUSS, CONSIDER, AND APPROVE A RESOLUTION
ADOPTING REQUIRED COMMUNITY DEVELOPMENT BLOCK
GRANT (CDBG) CIVIL RIGHTS POLICIES IMPLEMENTED BY
THE TEXAS DEPARTMENT OF AGRICULTURE, AND DIRECT
STAFF AS NECESSARY.**

The adoption of the Civil Rights Policies is a new requirement implemented by the Texas Department of Agriculture for each separate grant project.

The City of Bay City was awarded grant funds through the 2015 Texas Community Development Block Grant (CDBG) Fund for Main Street sidewalk improvements to be completed along 6th Street in front of the BayTex Hotel. The grant budget is as follows:

Contract Funds: \$150,000
City Matching Funds: \$45,000
Total Project Funds: \$195,000

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Mayor Pro-Tem
SECONDER:	Carolyn Thames, Councilwoman
AYES:	Estlinbaum, Cornman, Folse, Johnson, Thames

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BAY CITY, TEXAS, ADOPTING CIVIL RIGHTS POLICES FOR THE 2015 TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT AWARD CONTRACT 7215202.

WHEREAS, the City of Bay City, Texas, (hereinafter referred to as "City of Bay City") has been awarded TxCDBG funding through a TxCDBG grant from the Texas Department of Agriculture (hereinafter referred to as "TDA");

WHEREAS, the City of Bay City, in accordance with Section 109 of the Title I of the Housing and Community Development Act. (24 CFR 6); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and for construction contracts greater than \$10,000, must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the CDBG activity, on the basis of race, color, religion, sex, national origin, age, or disability;

WHEREAS, the City of Bay City, in consideration for the receipt and acceptance of federal funding for the Contract, agrees to comply with all federal rules and regulations including those rules and regulations governing citizen participation and civil rights protections;

WHEREAS, the City of Bay City, in accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR Part 135, is required, to the greatest extent feasible, to provide training and employment opportunities to lower income residents and contract opportunities to businesses in the TxCDBG project area;

WHEREAS, the City of Bay City, in accordance with Section 104(1) of the Housing and Community Development Act, as amended, and State's certification requirements at 24 CFR 91.325(b)(6), must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations;

WHEREAS, the City of Bay City, in accordance with Section 504 of the Rehabilitation Act of 1973, does not discriminate on the basis of disability and agrees to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds; and

WHEREAS, the City of Bay City, in accordance with Section 808(e)(5) of the Fair Housing Act (42 USC 3608(e)(5)) that requires HUD programs and activities be administered in a manner affirmatively to further the policies of the Fair Housing Act, agrees to conduct at least one activity during the contract period, to affirmatively further fair housing.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, STATE OF TEXAS, ADOPTS THE FOLLOWING:

- Section 1. Citizen Participation Plan and Grievance Procedures (Form A1013);
- Section 2. Section 3 Policy (Form A1002);
- Section 3. Excessive Force Policy (Form A1003)
- Section 4. Section 504 Policy and Grievance Procedures (Form A1004); and
- Section 5. Fair Housing Policy (Exhibit 1015).

PASSED AND APPROVED on first and final reading this _____ day of June 2016.

CITY OF BAY CITY, TEXAS

Mark Bricker, Mayor

ATTEST:

Lillie Norris, Deputy City Secretary

APPROVED as to FORM:

M. Shannon Kackley, City Attorney
City of Bay City
DENTON, NAVARRO, ROCHA,
BERNAL, HYDE & ZECH, P.C.

CITIZEN PARTICIPATION PLAN
City of Bay City
TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

COMPLAINT PROCEDURES

These complaint procedures comply with the requirements of the Texas Department of Agriculture's Texas Community Development Block Grant (TxCDBG) Program and Local Government Requirements found in 24 CFR §570.486 (Code of Federal Regulations). Citizens can obtain a copy of these procedures at the City of Bay City, 1901 Fifth Street, Bay City, TX 77414, (979) 245-2137 during regular business hours.

Below are the formal complaint and grievance procedures regarding the services provided under the TxCDBG project.

1. A person who has a complaint or grievance about any services or activities with respect to the TxCDBG project, whether it is a proposed, ongoing, or completed TxCDBG project, may during regular business hours submit such complaint or grievance, in writing to the Mayor, at City of Bay City, 1901 Fifth Street, Bay City, TX 77414 (Mailing Address) or may call (979) 245-2137.
2. A copy of the complaint or grievance shall be transmitted by the Mayor to the entity that is the subject of the complaint or grievance and to the City Attorney within five (5) working days after the date of the complaint or grievance was received.
3. The Mayor shall complete an investigation of the complaint or grievance, if practicable, and provide a timely written answer to person who made the complaint or grievance within ten (10) days.
4. If the investigation cannot be completed within ten (10) working days per 3. above, the person who made the grievance or complaint shall be notified, in writing, within fifteen (15) days where practicable after receipt of the original complaint or grievance and shall detail when the investigation should be completed.
5. If necessary, the grievance and a written copy of the subsequent investigation shall be forwarded to the TxCDBG for their further review and comment.
6. If appropriate, provide copies of grievance procedures and responses to grievances in both English and Spanish, or other appropriate language.

TECHNICAL ASSISTANCE

When requested, the City shall provide technical assistance to groups that are representative of persons of low- and moderate-income in developing proposals for the use of TxCDBG funds. The City, based upon the specific needs of the community's residents at the time of the request, shall determine the level and type of assistance.

PUBLIC HEARING PROVISIONS

For each public hearing scheduled and conducted by the City, the following public hearing provisions shall be observed:

1. Public notice of all hearings must be published at least seventy-two (72) hours prior to the scheduled hearing. The public notice must be published in a local newspaper. Each public notice must include the date, time, location, and topics to be considered at the public hearing. A published newspaper article can also be used to meet this requirement so long as it meets all content and timing requirements. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.
2. When a significant number of non-English speaking residents are a part of the potential service area of the TxCDBG project, vital documents such as notices should be published in the predominant language of these non-English speaking citizens.

3. Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries and will include accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and the City must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to the hearing.
4. A public hearing held prior to the submission of a TxCDBG application must be held after 5:00 PM on a weekday or at a convenient time on a Saturday or Sunday.
5. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter should be present to accommodate the needs of the non-English speaking residents.

The City shall comply with the following citizen participation requirements for the preparation and submission of an application for a TxCDBG project:

1. At a minimum, the City shall hold at least one (1) public hearing to prior to submitting the application to the Texas Department of Agriculture.
2. The City shall retain documentation of the hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the proposed use of funds for three (3) years from closeout of the grant to the state. Such records shall be made available to the public in accordance with Chapter 552, Texas Government Code.
3. The public hearing shall include a discussion with citizens as outlined in the applicable TxCDBG application manual to include, but is not limited to, the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG program, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low- and moderate-income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing.
4. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter should be present to accommodate the needs of the non-English speaking residents.

The City must comply with the following citizen participation requirements in the event that the City receives funds from the TxCDBG program:

1. The City shall also hold a public hearing concerning any substantial change, as determined by TxCDBG, proposed to be made in the use of TxCDBG funds from one eligible activity to another again using the preceding notice requirements.
2. Upon completion of the TxCDBG project, the City shall hold a public hearing and review its program performance including the actual use of the TxCDBG funds.
3. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, for either a public hearing concerning substantial change to the TxCDBG project or for the closeout of the TxCDBG project, publish notice in both English and Spanish, or other appropriate language and provide an interpreter at the hearing to accommodate the needs of the non-English speaking residents..
4. The City shall retain documentation of the TxCDBG project, including hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the actual use of funds for a period of three (3) years three (3) years from closeout of the grant to the state. Such records shall be made available to the public in accordance with Chapter 552, Texas Government Code.

MARK BRICKER, MAYOR

DATE

SECTION 3 POLICY

In accordance with 12 U.S.C. 1701u, (Section 3), the City of Bay City agrees to implement the following steps, which, to the *greatest extent feasible*, will provide job training, employment and contracting opportunities for Section 3 residents and Section 3 businesses of the areas in which the program/project is being carried out.

- A. Introduce and pass a resolution adopting this plan as a policy to strive to attain goals for compliance to Section 3 regulations by increasing opportunities for employment and contracting for Section 3 residents and businesses.
- B. Assign duties related to implementation of this plan to the designated Civil Rights Officer.
- C. Notify Section 3 residents and business concerns of potential new employment and contracting opportunities as they are triggered by grant awards through the use of: Public Hearings and related advertisements; public notices; bidding advertisements and bid documents; notification to local business organizations such as the Chamber(s) of Commerce or the Urban League; local advertising media including public signage; project area committees and citizen advisory boards; local HUD offices; regional planning agencies; and all other appropriate referral sources. Include Section 3 clauses in all covered solicitations and contracts.
- D. Maintain a list of those businesses that have identified themselves as Section 3 businesses for utilization in grant funded procurements, notify those businesses of pending contractual opportunities, and make this list available for general Grant Recipient procurement needs.
- E. Maintain a list of those persons who have identified themselves as Section 3 residents and contact those persons when hiring/training opportunities are available through either the Grant Recipient or contractors.
- F. Require that all Prime contractors and subcontractors with contracts over \$100,000 commit to this plan as part of their contract work. Monitor the contractors' performance with respect to meeting Section 3 requirements and require that they submit reports as may be required by HUD or TDA to the Grant Recipient.
- G. Submit reports as required by HUD or TDA regarding contracting with Section 3 businesses and/or employment as they occur; and submit reports within 20 days of calendar year end which identify and quantify Section 3 businesses and employees.
- H. Maintain records, including copies of correspondence, memoranda, etc., which document all actions taken to comply with Section 3 regulations.

As officers and representatives of the City of Bay City, we the undersigned have read and fully agree to this plan, and become a party to the full implementation of this program.

 Mark Bricker, Mayor

 Date

Excessive Force Policy

In accordance with 24 CFR 91.325(b)(6), the City of Bay City hereby adopts and will enforce the following policy with respect to the use of excessive force:

1. It is the policy of the City of Bay City to prohibit the use of excessive force by the law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations;
2. It is also the policy of the City of Bay City to enforce applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.
3. The City of Bay City will introduce and pass a resolution adopting this policy.

As officers and representatives City of Bay City, we the undersigned have read and fully agree to this plan, and become a party to the full implementation of this program.

Signature

Mayor

Date

Section 504 Policy against Discrimination based on Handicap and Grievance Procedures

In accordance with 24 CFR Section 8, Nondiscrimination based on Handicap in federally assisted programs and activities of the Department of Housing and Urban Development, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309), City of Bay City hereby adopts the following policy and grievance procedures:

1. Discrimination prohibited. No otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development (HUD).
2. City of Bay City does not discriminate on the basis of handicap in admission or access to, or treatment or employment in, its federally assisted programs and activities.
3. City of Bay City's recruitment materials or publications shall include a statement of this policy in 1. above.
4. City of Bay City shall take continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipients that it does not discriminate on the basis of handicap in violation of 24 CFR Part 8.
5. For hearing and visually impaired individuals eligible to be served or likely to be affected by the TxCDBG program, City of Bay City shall ensure that they are provided with the information necessary to understand and participate in the TxCDBG program.
6. Grievances and Complaints
 - a. Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for City of Bay City) to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.
 - b. Complaints should be addressed to the Mayor, 1901 Fifth Street, Bay City, TX 77414 or call (979) 245-2137, who has been designated to coordinate Section 504 compliance efforts.
 - c. A complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.
 - d. A complaint should be filed within thirty (30) working days after the complainant becomes aware of the alleged violation.
 - e. An investigation, as may be appropriate, shall follow a filing of a complaint. The investigation will be conducted by the Mayor. Informal but thorough investigations will afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.
 - f. A written determination as to the validity of the complaint and description of resolution, if any, shall be issued by Mayor, and a copy forwarded to the complainant with fifteen (15) working days after the filing of the complaint where practicable.

- g. The Section 504 coordinator shall maintain the files and records of the City of Bay City relating to the complaints files.
- h. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the determination/resolution as described in f. above. The request for reconsideration should be made to the City of Bay City within ten working days after the receipt of the written determination/resolution.
- i. The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 complaint with the U.S. Department of Housing and Urban Development. Utilization of this grievance procedure is not a prerequisite to the pursuit of other remedies.
- j. These procedures shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and assure that the City of Bay City complies with Section 504 and HUD regulations.

4.6.e

Mark Bricker, Mayor

Date

A1015

Fair Housing Policy

In accordance with Fair Housing Act, the City of Bay City hereby adopts the following policy with respect to the Affirmatively Furthering Fair Housing:

1. City of Bay City agrees to affirmatively further fair housing choice for all seven protected classes (race, color, religion, sex, disability, familial status, and national origin).
2. City of Bay City agrees to plan at least one activity during the contract term to affirmatively further fair housing.
3. City of Bay City will introduce and pass a resolution adopting this policy.

As officers and representatives of City of Bay City, we the undersigned have read and fully agree to this plan, and become a party to the full implementation of this program.

Signature

Mayor

Date



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 06/09/16 07:00 PM
Department: City Secretary
Category: Report
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 2327

DISCUSSION ITEM (ID # 2327)

**RECEIVE UPDATE FROM THE PARKS AND RECREATION
DEPARTMENT INCLUDING POSSIBLE PROGRAMS FOR
MARKET DAYS, AND DIRECT STAFF AS NECESSARY.**



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 06/09/16 07:00 PM
Department: City Secretary
Category: Budget
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 2326

DISCUSSION ITEM (ID # 2326)

**RECEIVE UPDATE FROM THE MAYOR OF THE BASIC
FRAMEWORK OF NEXT FISCAL YEAR'S BUDGET PROCESS
AND TIMELINE, AND SET WORKSHOP MEETING DATES FOR
COUNCIL REVIEW OF, AND INPUT TO, THE DRAFT BUDGET
AND CAPITAL PLAN, AND DIRECT STAFF AS NECESSARY.**

The purpose of this agenda topic is for all Council members to 1) get a feel for the basic budget process that is currently contemplated, 2) understand the timing milestones we must comply with per the Charter (Article 10) and our taxing entity, and 3) most importantly, set dates for Council review in an effort to avoid other summer time conflicts with these important workshop meetings. All this is, of course, in reference to next fiscal years' Operating Budget, in it's entirety, plus the mandatory five year capital plan as prescribed in the Charter (Section 10.15).