



**AGENDA**  
**CITY COUNCIL MEETING**  
**DECEMBER 5, 2017 @ 5:30 P.M.**

Notice is hereby given the City Council for the City of Parker will meet in a Regular Meeting on Tuesday, December 5, 2017 at 5:30 P.M. at the Parker City Hall, 5700 E. Parker Road, Parker, Texas, 75002.

**CALL TO ORDER – Roll Call and Determination of a Quorum**

**EXECUTIVE SESSION 5:30 P.M. TO 7:00 P.M. – Pursuant to the provisions of Chapter 551, Texas Government Code the City Council may hold a closed meeting.**

1. RECESS TO CLOSED EXECUTIVE SESSION IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN:
  - Section 551.074 - (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or (2) to hear a complaint or charge against an officer or employee.
2. RECONVENE REGULAR MEETING.
3. ANY APPROPRIATE DELIBERATION AND/OR ACTION ON ANY OF THE EXECUTIVE SESSION SUBJECTS LISTED ABOVE.

**PLEDGE OF ALLEGIANCE**

AMERICAN PLEDGE: I pledge allegiance to the flag of the United States of America; and to the republic for which it stands, one nation under God, indivisible with liberty and justice for all.

TEXAS PLEDGE: Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

**PUBLIC COMMENTS** The City Council invites any person with business before the Council to speak to the Council. No formal action may be taken on these items at this meeting. Please keep comments to 3 minutes.

**CONSENT AGENDA** Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.

4. APPROVAL OF MEETING MINUTES FOR SEPTEMBER 19, 2017. [SCOTT GREY]
5. APPROVAL OF MEETING MINUTES FOR SEPTEMBER 28, 2017. [SCOTT GREY]
6. REPUBLIC WASTE QUARTERLY REPORT. [BERNAS]
7. DEPARTMENT REPORTS-ANIMAL CONTROL, BUILDING, COURT, FIRE, POLICE AND WEBSITE

8. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON SETTING A SPECIAL CITY COUNCIL MEETING DATE FOR DECEMBER 12, 2017 AND CANCELING THE DECEMBER 19, 2017 REGULAR MEETING. [MARSHALL]

### INDIVIDUAL CONSIDERATION ITEMS

9. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-560 MAKING APPOINTMENTS TO THE ZONING BOARD OF ADJUSTMENTS (ZBA). [MARSHALL] [TABLED – 11082017]
10. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON PARKER RANCH ESTATES PHASE 3 PRELIMINARY PLAT. [SHELBY]
11. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-561, REGARDING A BANK DEPOSITORY AGREEMENT. [BOYD]
12. DISCUSSION/CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON CODIFICATION. [PETTLE]
13. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON ORDINANCE NO. 757, ACCEPTING THE CITY OF PARKER, TEXAS WATER CONSERVATION IMPLEMENTATION PLAN. [FLANIGAN]

### ROUTINE ITEMS

14. FUTURE AGENDA ITEMS

- UPDATE ON FM 2551
- REMINDER - March 6, 2018 – Primary Election

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb 18	Feb 19 <i>President's Day</i>	Feb 20 Early Voting 8am–5pm	Feb 21 Early Voting 8am–5pm	Feb 22 Early Voting 8am–5pm	Feb 23 Early Voting 8am–5pm	Feb 24 Early Voting 7am–7pm
Feb 25 Early Voting 1pm–6pm	Feb 26 Early Voting 7am–7pm	Feb 27 Early Voting 7am–7pm	Feb 28 Early Voting 7am–7pm	Mar 1 Early Voting 7am–7pm	Mar 2 Early Voting 7am–7pm	Mar 3

15. ADJOURN

In addition to any specifically identified Executive Sessions, Council may convene into Executive Session at any point during the open meeting to discuss any item posted on this Agenda. The Open Meetings Act provides specific exceptions that require that a meeting be open. Should Council elect to convene into Executive Session, those exceptions will be specifically identified and announced. Any subsequent action, as a result of this Executive Session, will be taken and recorded in open session.

I certify that this Notice of Meeting was posted on or before December 1, 2017 by 5:00 p.m. at the Parker City Hall, and as a courtesy, this Agenda is also posted to the City of Parker Website at [www.parkertexas.us](http://www.parkertexas.us).

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Date Notice Removed

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Patti Scott Grey  
City Secretary

The Parker City Hall is Wheelchair accessible. Sign interpretations or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Secretary's Office at 972 442 6811.



## Council Agenda Item

Item 4  
C'Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: City Secretary
Fund Balance-before expenditure:	Prepared by: City Secretary Scott Grey
Estimated Cost:	Date Prepared: November 30, 2017
Exhibits:	Proposed Minutes

### AGENDA SUBJECT

APPROVAL OF MEETING MINUTES FOR SEPTEMBER 19, 2017. [SCOTT GREY]

### SUMMARY

Please review the attached minutes. If you have any questions, comments, and/or corrections, please contact the City Secretary at [PGrey@parkertexas.us](mailto:PGrey@parkertexas.us) prior to the City Council meeting.

### POSSIBLE ACTION

City Council may direct staff to take appropriate action.

Inter – Office Use			
Approved by:			
Department Head/ Requestor:	<i>Patti Scott Grey</i>	Date: <i>11/30/2017</i>	
City Attorney:		Date:	
City Administrator:	<i>Jeff Flanigan</i>	Date: <i>12/01/2017</i>	

**MINUTES**  
**CITY COUNCIL MEETING**  
**SEPTEMBER 19, 2017**

**CALL TO ORDER – Roll Call and Determination of a Quorum**

The Parker City Council met in a regular meeting on the above date at Parker City Hall, 5700 E. Parker Road, Parker, Texas, 75002.

Mayor Z Marshall called the meeting to order at 5:00 p.m. Council members Scott Levine (arrived 5:08 p.m.), Cindy Meyer, Lee Pettie, Cleburne Raney, and Ed Standridge were present.

Staff Present: City Administrator Jeff Flanigan, Finance/H.R. Manager Johnna Boyd, City Secretary Patti Scott Grey, City Attorney Brandon Shelby (arrived 5:20 p.m.), Fire Chief Mike Sheff, and Police Chief Richard Brooks

**PLEDGE OF ALLEGIANCE**

AMERICAN PLEDGE: Hugh Lewis led the pledge.

TEXAS PLEDGE: Fran Lewis led the pledge.

**PUBLIC COMMENTS** The City Council invites any person with business before the Council to speak. No formal action may be taken on these items at this meeting. Please keep comments to 3 minutes.

None

**ARCHITECT FIRM INTERVIEW 5:00 P.M. TO 6:00 P.M.**

1. PRESENTATION AND INTERVIEW BY ARCHITECTURAL SERVICES FIRM (5-6 p.m.)

Pierce, Goodwin, Alexander & Linville (PGAL) gave their presentation and answered questions.

**CONSENT AGENDA** Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.

Mayor Marshall asked that item 3, consideration and/or any appropriate action on amending the city sewer rates be removed from the consent agenda.

2. DEPARTMENT REPORTS-ANIMAL CONTROL, BUILDING, COURT, POLICE AND WEBSITE



4. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-551, REGARDING AN AGREEMENT WITH TXDOT FOR PARKER ROAD WATER LINE RELOCATION PROJECT. [FLANIGAN]
5. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-552, APPROVING A MOWING CONTRACT WITH GREENER PASTURES LANDSCAPE MANAGEMENT. [FLANIGAN]

MOTION: Mayor Pro Tem Levine moved to approve consent agenda items 2, 4, and 5, as presented. Councilmember Standridge seconded with Councilmembers Levine, Meyer, Pettie, Raney, and Standridge voting for the motion. Motion carried 5-0.

6. REMINDER/DISCUSSION OF HOUSEHOLD HAZARDOUS WASTE (HHW) DISPOSAL EVENT IS SATURDAY, OCTOBER 28, 2017, 10:00 AM – 2:00 PM.

Mayor Marshall reminded everyone of the Household Hazardous Waste (HHW) event.

### INDIVIDUAL CONSIDERATION ITEMS

3. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON AMENDING THE CITY SEWER RATES. [BOYD]

MOTION: Councilmember Standridge moved to table item 3. Councilmember Raney seconded with Councilmembers Levine, Meyer, Pettie, Raney, and Standridge voting for the motion. Motion carried 5-0.

7. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON REPUBLIC SERVICES RATE INCREASE. [BERNAS]

Republic Services, Inc. Division Municipal Services Manager Rick Bernas reviewed Republic's request for an annual rate adjustment, an adjustment to reflect changes in cost of doing business, and operating cost from year-to-year, per the terms of the contract. Mr. Bernas also reviewed a copy of the Consumer Price Index Indicator for 2016 and 2017 and breakdown, with a 3.25% increase from \$16.83 to \$17.38 for monthly service effective December 1, 2017. [See Exhibit 1 - Rick Bernas' September 19, 2017, 7:37 p.m. email, stating rate implementation would occur January 1, 2018.]

MOTION: Councilmember Standridge moved to approve the Republic Services Inc.'s rate increase request as stated. Councilmember Raney seconded with Councilmembers Levine, Meyer, Pettie, Raney, and Standridge voting for the motion. Motion carried 5-0.

- BULK TRASH – CONSIDERATION AND/OR ANY APPROPRIATE ACTION OF SPLITTING THE CITY'S BULK TRASH INTO SEPARATE WEEKS (EXAMPLE – EAST/WEST OF FM2551)

Mr. Bernas also discussed the need to split the City's bulk trash into separate weeks, providing bulk trash service to Parker east of Hogge Road one (1) week and to Parker

west of Hogge Road another week for better service. He said Republic was working out the details and planned to mail residents a rotation calendar. Once the information is made available, the City could add it to water bills and the City's website.

8. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON HOME RULE CHARTER COMMITTEE CRITERIA. [SHELBY/LEVINE]

Mayor Pro Tem Levine started the discussion by reviewing a draft of his research, included in the City Council packet. [See Exhibit 2 - Mayor Pro Tem Levine's Draft.]

After discussion, City Council agreed the Home Rule Charter Committee would consist of the Mayor, as a non-voting member; Mayor Pro Tem, as non-voting Advisor/Chair; and four citizens of Parker, as voting members; along with two alternate members, who would serve as voting members, if needed. City Staff would be available and assist the Committee, as needed. Further, the Mayor would interview residents, primarily any unfamiliar residents, who have applied or volunteered to serve on the Home Rule Charter Committee and recommend six (6) individuals to be interviewed by the entire City Council at an open meeting. It was noted the Home Rule Charter Committee should reflect the diversity of Parker and all the meetings shall be posted and open to the public.

MOTION: Councilmember Pettie moved to approve the Home Rule Charter Committee draft changes, as discussed. Councilmember Raney seconded with Councilmembers Levine, Meyer, Pettie, Raney, and Standridge voting for the motion. Motion carried 5-0.

9. DISCUSSION REGARDING BID PROCESS. [SHELBY]

City Attorney Shelby gave a presentation, outlining the basics of municipal procurement including the necessity of bidding and the rules and requirements of the bid process. [See Exhibit 3 - City Attorney Shelby's Legal Q&A information.]

**ARCHITECT FIRM INTERVIEW 7:00 P.M. TO 8:00 P.M.**

10. PRESENTATION AND INTERVIEW BY ARCHITECTURAL SERVICES FIRM (7-8 p.m.)

Randall Scott Architects gave their presentation and answered questions.

**ROUTINE ITEMS**

11. FUTURE AGENDA ITEMS

- ZONING CODE COMMITTEE UPDATE

Councilmember Pettie updated City Council on the Committee's progress, stating the Committee met weekly reviewing City Ordinances beginning with Chapter 152, Zoning Ordinances. After review, they found inconsistencies and out-of-date information. The committee is looking at the Code book layout with the objective of making the Code more consistent and user-

friendly. Questions and concerns, regarding codifications costs and whether codification was legally required, were raised and being researched. Committee members were also making revisions, as needed. Councilmember Pettie noted progress was taking longer than expected; however, the Committee thought the changes will be a great improvement.

- VOLUNTEERS FOR COLLIN CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS [MARSHALL]**

Mayor Marshall asked if anyone was interested in volunteering for the Board of Directors for the Collin County Appraisal District (CCAD). If so, please contact Mayor Marshall at [zmarshall@parkertexas.us](mailto:zmarshall@parkertexas.us). Councilmember Standridge said he was interested. The Mayor asked that an item, nominating Councilmember Standridge, be added to the future agenda items.

The Mayor reviewed the reminders.

- REMINDER NATIONAL NIGHT OUT (NNO) – TUESDAY, OCTOBER 3, 2017, 6:00 P.M. – 9:00 P.M.**

The Mayor asked Police Chief Brooks to provide City Council with a list of participating homeowners' associations (HOA) and encourage councilmembers to attend.

- REMINDER FIRE PREVENTION WEEK – OCTOBER 8-14, 2017**
- REMINDER NATIONAL PHARMACEUTICAL TAKE BACK INITIATIVE - SATURDAY, OCTOBER 28, 2017, 10:00 A.M. – 2:00 P.M., ALONG WITH EARLY VOTING**

Councilmember Standridge asked if there was any volume limit associated with this event. Police Chief Brooks said no, and the pharmaceuticals did not have to be expired.

- REMINDER OCTOBER 2017 WATER RATES**

Mayor Marshall reminded everyone of the water rate increase effective October 1, 2017, reflective November 1, 2017.

Water Rates - Residential		Effective Oct. 2016	Effective Oct. 2017	Effective Oct. 2018	Effective Oct. 2019	Effective Oct. 2020
Min Chg. – Includes 1 <sup>st</sup> 4,000 Gal		\$ 40.00	40.00	40.00	40.00	40.00
Volume Rate Per 1,000 Gal.						
4,001	15,000	\$ 3.55	3.85	4.10	4.20	4.35
15,000	30,000	\$ 4.35	4.75	5.10	5.25	5.40
30,001	50,000	\$ 5.45	5.95	6.35	6.55	6.75
50,001	70,000	\$ 8.70	9.50	10.15	10.45	10.75
70,001	Above	\$ 12.00	13.10	14.00	14.40	14.85

Mayor Marshall announced the next City Council meeting would be an Executive Session only meeting next Thursday, September 28, 2017.

Councilmember Pettie said she was unaware of the meeting. Ms. Pettie said she reported her parkertexas.us email address was not working in July and it still was not working. If anyone needed to contact her, she could be contacted through her AOL account. City Secretary Scott Grey said emails were going to both email addresses and IT was looking into the matter.

Mayor Marshall reminded everyone the October 3, 2017 City Council meeting was canceled, due to National Night Out and the next regularly scheduled meeting was Tuesday, October 17, 2017. The Mayor noted, due to the Councilmember Standridge's Collin Central Appraisal District Board of Directors nomination deadline, there may be a need to have a few brief items on the September 28, 2017 agenda.

Mayor Marshall asked if there were any additional items to be added to the future agenda. He noted the municipal sales tax item would be on the agenda as soon as the research information was completed. Councilmember Standridge asked when City Council would provide their input, regarding the architects. The Mayor said they should have an opportunity at one of the next couple Council meetings.

## 12. ADJOURN

Mayor Marshall adjourned the meeting at 8:50 p.m.

APPROVED:

\_\_\_\_\_  
Mayor Z Marshall

ATTESTED:

Approved on the 5th day  
of December, 2017.

\_\_\_\_\_  
Patti Scott Grey, City Secretary

**Patti Grey**

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**From:** Jeff Flanigan  
**Sent:** Wednesday, September 20, 2017 8:37 AM  
**To:** Johnna Boyd; Patti Grey  
**Subject:** FW: Rate adjustment

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**From:** Bernas, Rick [mailto:RBernas@republicservices.com]  
**Sent:** Tuesday, September 19, 2017 7:37 PM  
**To:** Jeff Flanigan <jflanigan@parkertexas.us>  
**Subject:** Rate adjustment

We will not implement the rate adjustment till January 1, 2018. The old agreement was in October the new one is January 1<sup>st</sup>. I will pull CPI numbers in October to see if it is lower. If it is I will adjust if it is more we will leave it alone.

**Rick Bernas**  
Municipal Marketing Manager  
North Texas

4200 East 14th Street Plano, TX 75074  
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EXHIBIT 1

The City of Parker has determined that a committee should be formed to explore the option of becoming a "home rule" city, governed by a City Charter, which would be adopted by the citizens. The committee, established by the City Council, shall be tasked with the creation of a preliminary draft charter, or charters, to be presented, considered and potentially revised by the City Council and then presented to the citizens of the City of Parker for approval, through a City-wide election. To facilitate an efficient and meaningful process, the Council has determined committee shall be comprised of five members, including the Mayor, the Mayor Pro-Tem, and three citizens of the City of Parker. It is also recommended that there be two alternate citizens on the committee. The City Administrator will serve in an advisory role. All meetings will be posted and open to the public, with quorum's required for official business to be conducted.

In order to promote genuine thought, discussion and debate, the committee shall reflect the natural diversity of our citizenry so as to encompass the uniqueness that embodies the City of Parker. It is the goal of the Mayor, as the representative appointed by the City Council to select the committee, to assemble a committee which reflects City residents diverse in location, age, affiliation and perspective, but who are unified in, and committed to, a single goal and purpose, the long term best interests of all who reside in our great city.

We expect this process to take a significant amount of time and it will not be a ballot initiative until November 2018 or May 2019.

## Legal Q&A

By Scott Houston  
TML Deputy Executive Director and General Counsel

### When is a city required to competitively procure goods and services?

With limited exceptions, before a city enters into a contract that requires an expenditure of more than \$50,000, it must comply with the procedures for competitive sealed bidding or competitive sealed proposals in Chapter 252 of the Texas Local Government Code. As an alternative to competitive sealed bidding or proposals, a city may use the following procurement methods: (1) the reverse auction procedure for purchasing in Section 2155.062(d) of the Government Code; (2) a cooperative purchasing program under Subchapters D and F of Chapter 271 of the Local Government Code; or (3) a method described by Chapter 2269 of the Government Code (alternative procurement methods for city construction projects). TEX. LOC. GOV'T CODE at §252.022(a).

Note that a city may use competitive sealed proposals for the purchase of any goods or services, including high technology items and insurance. However, construction projects must generally be procured using competitive bidding or specific alternative methods (discussed below). *Id.* §252.021(b).

### What criteria may a city use when competitively procuring a contract?

For general procurement of goods or services (as discussed below, special rules may apply to construction procurement), a contract must be awarded to: (a) the lowest responsible bidder, or (b) the bidder who provides goods or services at the "best value." TEX. LOC. GOV'T CODE §252.043. When determining "best value," the city may consider factors other than the purchase price of the goods and services, including among other things: (1) the reputation of the bidder and the bidder's goods or services; (2) the quality of the bidder's goods or services; (3) the bidder's past relationship with the city; and/or (4) any other lawful criteria. *Id.*

The city must indicate in the bid specifications and requirements that the contract will be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the city. *Id.*

In addition, two provisions authorize the use of local preference when awarding a contract. A city may consider a bidder's principal place of business when a city awards a contract for real or personal property. *Id.* §271.905. The provision provides that if a city receives one or more bids from a bidder whose principal place of business is in the city and whose bid is within three percent of the lowest bid price of a non-resident, the city may pick the resident bidder after a written determination that the decision is in the best interests of the city. *Id.* This is a useful provision for awarding contracts, but it appears to be directed towards the purchase of tangible items rather than services. Section 271.9051 authorizes a city to give a preference to a local bidder when awarding a contract for personal property *or services* if: (1) the local bid is within five percent of the lowest bid that isn't local, and (2) the city's governing body finds in writing

that the local bid offers the best combination of price and economic development factors such as local employment and tax revenues. Note that Section 271.9051 is limited to a contract for construction services in an amount of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000. *Id.* §271.9051.

**What are common exemptions from the competitive procurement requirements?**

A city does not have to comply with competitive procurement requirements for certain expenditures, even if the expenditure is over \$50,000. The most common exemptions are as follows (see Section 252.022(a) of the Local Government Code for a complete list of exemptions):

- A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality. TEX. LOC. GOV'T CODE §252.022(a)(1).
- A procurement necessary to preserve or protect the public health or safety of the municipality's residents. *Id.* §252.022(a)(2).
- A procurement necessary because of unforeseen damage to public machinery, equipment, or other property. *Id.* §252.022(a)(3).
- A procurement for personal, professional, or planning services. (Note: Certain professional services, however, must be procured through a competitive selection process under Chapter 2254 of the Government Code (the Professional Services Procurement Act)). *Id.* §252.022(a)(4).
- A purchase of land or a right-of-way. *Id.* §252.022(a)(6).
- A procurement of items that are available from only one source. *Id.* §252.022(a)(7).

Whether or not to use any of the exemptions is up to each city, and the decision should be made based on the advice of local legal counsel.

**When is a city required to contact historically underutilized businesses (HUBs) when making a purchase?**

A city, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two HUBs on a rotating basis, based on information provided by the Texas Comptroller's Office pursuant to Chapter 2161 of the Government Code (<http://cpa.state.tx.us/procurement/prog/hub/>). If the list fails to identify a HUB in the county in which the city is located, the city is exempt. TEX. LOC. GOV'T CODE §252.0215.

**What are the purchasing rules regarding city construction projects?**

For construction projects that involve the construction of a municipal facility (defined as any improvement to real property), a city may use any of the alternative procurement methods set out in Chapter 2269 of the Texas Government Code. TEX. LOC. GOV'T CODE §252.043. The only limitation is that design-build and job order contracting may not be used to procure civil engineering projects, except in limited circumstances. The alternative methods are:



- Competitive bidding (which is different than the “standard” competitive bidding processes in Chapter 252/Chapter 271, Subchapter B). TEX. GOV’T CODE §2269.101.
- Competitive sealed proposals. *Id.* §2269.151 et seq.
- Construction manager agent. *Id.* §2269.201 et seq.
- Construction manager at risk. *Id.* §2269.251 et seq.
- Design-build. *Id.* §2269.301. et seq. (A handful of very large cities – those over 100,000 in population – may use design-build for a limited number of civil engineering projects. *Id.* §2269.351 et seq. )
- Job order contract. (May be used only for buildings, and not be used for civil engineering projects.) *Id.* §2269.401 et seq.

For each of the methods listed above, a city awards the contract to the contractor who provides the “best value” to the city based on the selection criteria established by the city in its procurement documents. The selection criteria may generally include factors other than the construction cost, including among other things: (1) the reputation of the contractor and the contractor’s goods or services; (2) the quality of the contractor’s goods or services; and (3) the contractor’s past relationship with the city. *Id.* §2269.055.

#### **What effect does a home rule charter provision have on state purchasing rules?**

Any provision in the charter of a home rule city that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, the manner of publicly opening bids or reading them aloud, or the manner of letting contracts that is in conflict with Chapter 252 controls unless the governing body elects to have Chapter 252 supersede the charter. TEX. LOC. GOV’T CODE §252.022.

#### **What is a cooperative purchasing program?**

Chapter 271, Subchapters D and F, of the Local Government Code (Cooperative Purchasing Programs) authorize cities to enter into cooperatives with the state or other local governments for the purpose of procuring goods and services. The state purchasing cooperative is online at <http://www.window.state.tx.us/procurement/>, and a joint TML/Texas Association of School Board cooperative is online at [www.tml.org](http://www.tml.org). In addition, several councils of governments offer cooperative purchasing.

#### **What is reverse auction procurement?**

Section 2155.062(d) of the Texas Government Code authorizes the use of the reverse auction method for the purchase of goods and services. A reverse auction procedure is: (1) real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or (2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services. TEX. GOV’T CODE §2155.062(d).

**What are the penalties for failing to comply with competitive procurement laws?**

A contract made without compliance with competitive procurement laws is void, and performance of the contract may be enjoined by any property tax paying resident or a person who submitted a bid for a contract to which the competitive sealed bidding requirement applies, regardless of residency, if the contract is for the construction of public works. TEX. LOC. GOV'T CODE §252.061. The specific criminal penalties are as follows:

- A municipal officer or employee who intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive procurement requirements of Chapter 252 commits a Class B misdemeanor. *Id.* §252.062.
- A municipal officer or employee who intentionally or knowingly violates the competitive procurement requirements of Chapter 252 commits a Class B misdemeanor. *Id.*
- A municipal officer or employee who intentionally or knowingly violates Chapter 252 other than by conduct described above commits a Class C misdemeanor. *Id.*

A final conviction for an offense constituting a Class B misdemeanor results in the immediate removal of that person from office or employment. For a period of four years following conviction, the removed officer or employee is ineligible to be appointed or elected to a public office in Texas, to be re-employed by the city, or to receive any compensation through a contract with that city. *Id.* §252.063.

**Where can I find more information about competitive procurement laws?**

The League published a comprehensive document called "Texas Municipal Procurement Made Easy," which is available on the "Legal Resources" page at [www.tml.org](http://www.tml.org).

# Texas Municipal Procurement Laws Made Easy



## **2015 Editors**

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(Editor's Note: 2015 updates are highlighted.)

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# **Texas Municipal Procurement Laws Made Easy**

The following questions and answers provide an introduction to procurement laws that apply to city officials in Texas. It is meant as a guide only, and city officials should consult with their legal counsel regarding the application of the law to the facts of each particular situation.

## **I. Application of Municipal Procurement Laws**

### **1. What city purchases must generally be awarded through the use of statutory procurement methods?**

The Local Government Code provides that, before a city may enter into a contract for the purchase of most goods and services that require an expenditure of more than \$50,000 from one or more municipal funds, the city must:

- comply with statutory procedures for competitive sealed bidding or competitive sealed proposals, including high technology items or insurance;
- use the reverse auction procedure for purchasing;<sup>1</sup> or
- comply with certain statutorily prescribed methods of construction procurement.<sup>2</sup>

However, state law provides a number of specific exceptions that relieve the city of the duty to bid or seek proposals on an item. For example, state law does not require cities to follow any specific procedures to purchase real property (land and/or buildings).<sup>3</sup> The major statutory exceptions to the bidding or proposal requirement are discussed later in this article.

For contracts for certain professional services, a city is actually prohibited by law from awarding the contract by competitive bidding. For example, cities may not award contracts for the services of architects, engineers, or certified public accountants through competitive bidding. Instead, the Professional Services Procurement Act sets out a different set of procedures that must be followed to contract for these services.<sup>4</sup>

### **2. Is an economic development corporation required to comply with municipal procurement laws?**

The duty to comply with procurement laws is generally derived from some statute that specifically requires an entity to make its purchases through such a procedure. The implementing legislation for economic development corporations (the Development Corporation Act) does not contain a provision that subjects economic development corporations to municipal procurement requirements. Neither the Texas attorney general nor the Texas courts have directly addressed this question.

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<sup>1</sup> TEX. LOC. GOV'T CODE § 252.021(a)(2).

<sup>2</sup> *Id.* § 252.021.

<sup>3</sup> *Id.* § 272.001.

<sup>4</sup> TEX. GOV'T CODE § 2254.001 et seq. (Professional Services Procurement Act).

**3. Are simple leases of personal property such as the lease of autos, office equipment, or other items by a city subject to statutory procurement requirements?**

Competitive bidding or proposal requirements apply to any lease of personal property that will require an expenditure of more than \$50,000 in city funds, unless the expenditure is covered by a specific statutory exception that would relieve the city from the duty to bid or seek proposals on the item.<sup>5</sup> For example, if the lease were for an item that was necessary to preserve or protect the public health or safety of the city's residents, the city would not be under a duty to use competitive bidding or proposals for its acquisition.<sup>6</sup>

**4. Are lease/purchase agreements by a city subject to statutory procurement requirements?**

State law expressly authorizes cities to enter into lease-purchase agreements.<sup>7</sup> However, normal statutory procurement requirements would generally apply to these lease-purchase agreements.<sup>8</sup> That is, when a lease-purchase agreement for personal property will involve an expenditure of more than \$50,000 in city funds, the contract must be competitively procured unless the type of item purchased is covered by a specific exception to the statutory procurement requirements.

**5. Does a city have to use competitive bids or proposals to lease real property to an entity?**

Competitive bidding or proposal requirements under Chapter 252 of the Local Government Code do not apply to the lease of real property. Cities typically enter into leases of city real property through lease agreements with entities as would any other lessor. Additionally, the requirements under Chapter 272 of the Local Government Code that a city advertise the sale of real property do not apply to a normal term lease of a property.

At least one court has held that a city's temporary lease of property is not subject to the notice and bidding requirements in Chapter 272.<sup>9</sup> A recent attorney general opinion suggests that all of the following have a bearing upon the "temporary" status of a lease agreement: (1) the duration of the lease; (2) the city's right to control the land during the lease term; and (3) the city's right to make improvements upon termination of the agreement.<sup>10</sup> An older opinion suggests that the lessee's

<sup>5</sup> TEX. LOC. GOV'T CODE § 252.021

<sup>6</sup> *Id.* § 252.022(a)(2).

<sup>7</sup> *Id.* § 271.005.

<sup>8</sup> *Id.* § 271.006 (Requiring that a contract authorized by Section 271.005 comply with any applicable requirements in chapter 252 of the Local Government Code).

<sup>9</sup> *Walker v. City of Georgetown*, 86 S.W.3d 249, 259 (Tex. App.—Austin 2002, pet. denied) (“[T]he plain language of the statute indicates that the Legislature intended for the notice and bidding requirements to apply to the ‘sale or exchange’ of land, not the lease of land.”).

<sup>10</sup> Op. Tex. Att’y Gen. No. GA-0321 at 9 (2005).

option to purchase the leased property upon expiration of the lease may be indicative of a sale.<sup>11</sup>

Essentially, if the facts of the situation determine that a lease of the real property is for such an extended period that it would almost amount to a sale, the lease may be subject to the requirements for advertising the sale of real property under Chapter 272 of the Local Government Code.<sup>12</sup>

## **6. Are competitive bidding or proposals required if only state or federal funds are used to fund the city expenditure?**

A city expenditure is not necessarily exempt from competitive bidding or proposal requirements because it involves the use of only federal or state funds (e.g., grant funds or loans). Often, state or federal funds are considered city funds once they are acquired by or given to the city. Accordingly, any expenditure of these funds would ultimately be considered an expenditure of city funds and therefore subject to the bidding or proposal requirements. Additionally, many state and federal statutes expressly require that the funds provided to a city under the statute be expended in a manner that complies with local competitive bidding requirements. Cities should review applicable state or federal provisions that relate to any such funding they receive from state or federal programs.

One state law provides that competitive bidding requirements do not apply to certain appropriations, loans, or grants for conducting a community development program established under Chapter 373 of the Local Government Code.<sup>13</sup> Such expenditures must instead use the request for proposals process described in Section 252.042 of the Local Government Code.

## **7. Must a city bid for health insurance coverage or public official liability insurance for its officials or employees?**

Cities must seek competitive bids or proposals when purchasing insurance that will cost more than \$50,000.<sup>14</sup>

Chapter 252 of the Local Government Code does not specifically address the need to use competitive bidding or proposals if a city's liability coverage is gained through participation in a group risk pool. Under state law, the coverage provided by risk pools is not considered to be insurance or subject to the traditional requirements applicable to insurance policies. Therefore, most risk pools take the position that statutory procurement requirements do not apply. A city should consult its legal counsel if it wants to acquire coverage in this manner without participating in competitive bidding or proposals.

## **8. Is a city required to bid for excess or surplus insurance?**

Section 252.024 of the Local Government Code states that the statutory procurement requirements do not prohibit a city from selecting a licensed insurance broker as the sole broker of record for the

<sup>11</sup> Tex. Att'y Gen. LO-96-053 at 3.

<sup>12</sup> *Flagship Hotel, Ltd. v. City of Galveston*, 117 S.W.3d 552, 559 (Tex. App.—Texarkana 2003, pet. denied).

<sup>13</sup> TEX. LOC. GOV'T CODE ANN. § 252.021(d) (West Supp. 2011).

<sup>14</sup> *Id.* § 252.021(b).

city.<sup>15</sup> Such brokers obtain proposals and coverages for “excess or surplus insurance.” Excess or surplus coverage may include surplus coverage for public official liability, police professional liability, and airport liability. Some legal analysts have suggested that a city may avoid the bidding requirements when purchasing excess or surplus insurance if the city complies with the requirements of Section 252.024. The attorney general, however, has rejected this interpretation of Section 252.024.<sup>16</sup> In regard to whether the actual selection of the broker of record must comply with Chapter 252, the attorney general has allowed for the possibility that if the services to be performed by the broker are professional in nature, the selection of the broker would be exempt from competitive bidding. A city should, therefore, consult with its legal counsel if it wants to select an insurance broker of record without participating in competitive bidding.

## **9. Do competitive bidding requirements apply to city purchases of land or right-of-way?**

A city is not required to use competitive bidding to purchase or lease land or a right-of-way.<sup>17</sup> However, it is important to note that a city is generally required to take bids or – pursuant to legislation passed in 2013 for home rule cities only – hire a broker when it sells a city interest in real property.<sup>18</sup> Additionally, there are certain special statutory provisions that apply to the sale of park lands, municipal building sites, or abandoned roadways.<sup>19</sup> Further, if a city is to purchase real property wholly or partly with bond proceeds, the city must first obtain an independent appraisal of the property’s market value.<sup>20</sup>

## **II. Threshold Amount at which Bidding is Required**

### **10. What is the threshold amount at which competitive bidding or proposals are required?**

Generally, a city is required to follow the bidding or proposal procedures outlined in Local Government Code Chapter 252 when it plans to make an expenditure of more than \$50,000 in city funds.<sup>21</sup> Recent legislative changes make the above requirement equally applicable to purchases of insurance and high technology items.

### **11. May a home rule city charter provide a lower threshold for requiring competitive bids?**

If there is a conflict between the statutory threshold amount that triggers the requirements of Chapter

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<sup>15</sup> *Id.* § 252.024 (West 2005).

<sup>16</sup> Op. Tex. Att’y Gen. No. DM-70 (1991).

<sup>17</sup> See TEX. LOC. GOV’T CODE § 252.022(a)(6) (Purchase of land or right-of-way exempt from competitive bidding requirements).

<sup>18</sup> *Id.* § 272.001; S.B. 985 (2013).

<sup>19</sup> *Id.* § 253.001.

<sup>20</sup> *Id.* § 252.051.

<sup>21</sup> *Id.* § 252.021(a)-(b).

252 and the city's charter, the city should follow the lower of the two amounts.<sup>22</sup> Thus, if a city charter sets forth a lower threshold for requiring competitive bids than does state law, the city should follow the charter's requirements. For example, some city charters require the city to use competitive bidding for any purchases that exceed \$3,000. Such cities would have to follow bidding procedures as required by state law and as additionally required by the terms of the city charter. A city charter may not provide a higher threshold for bidding than is permitted under state law.

## **12. May a home rule city charter provide a lower threshold for requiring competitive bids?**

A city charter may provide certain different procedural requirements for handling competitive bidding. For example, a city charter may provide different requirements for the notice that must be provided for contracts to be bid, how the notices are advertised, the manner for taking certain sealed bids, the manner of publicly opening bids or reading them aloud, and the manner of awarding the contracts.<sup>23</sup> Such provisions in a city charter are controlling even if they conflict with Chapter 252 of the Local Government Code. However, a majority of the city council may vote to have the bidding provisions of Chapter 252 override any different procedural requirements contained in the city charter. Note that the city council can vote to override its charter only with regard to the *procedures* for handling competitive bids. The council may not override a city charter provision regarding the *threshold amount* at which competitive bidding is required.

## **13. Can a general law city (under 5,000 population) impose a lower threshold for requiring competitive bids?**

A general law city by ordinance or simply by vote of the city council could impose a lower threshold on itself for competitive bidding than would otherwise be required by state law.<sup>24</sup> This is true unless a statute forbids a city from using competitive bidding to obtain a particular type of good or service. As noted earlier, the Professional Services Procurement Act prohibits a city from using competitive bidding procedures to secure the services of certain professionals such as architects, engineers and certified public accountants.<sup>25</sup>

## **14. Can a city separate out its purchases over time to avoid the application of competitive bidding or proposal laws?**

A city may not avoid the application of competitive bidding or proposal laws by purposely dividing a single purchase into smaller components so that each component purchase is less than \$50,000. Chapter 252 of the Local Government Code prohibits the use of "separate, sequential, or component purchases" as a means of avoiding bidding requirements.<sup>26</sup>

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<sup>22</sup> *Id.* § 252.002.

<sup>23</sup> *Id.*

<sup>24</sup> See Op. Tex. Att'y Gen. No. DM-106 (1992) (City may procure services through competitive bidding even if those services qualify for an exemption from competitive bidding, unless those services are covered by the Professional Services Procurement Act.).

<sup>25</sup> TEX. GOV'T CODE § 2254.003.

<sup>26</sup> TEX. LOC. GOV'T CODE § 252.062.

It is important to note that the phrases “separate purchases,” “sequential purchases” and “component purchases” are all specifically defined by Chapter 252 of the Local Government Code.<sup>27</sup> “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase. “Sequential purchases” means purchases, made over a period of time, of items that in normal purchasing practices would be purchased in one purchase. “Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

Some think that by waiting a year or more between purchases they will automatically avoid the problem of separate, sequential or component purchases. However, the competitive bidding laws do not specify any such waiting period. Instead, if the purchases in question would normally have been made in one purchase, then there may be a violation of the bidding laws even though the city waited more than a year between each purchase. Accordingly, a city is well-advised to look at its purchasing practices in terms of whether such purchases are traditionally done all at once or whether it is necessary or prudent to acquire the items over time. If such items are traditionally purchased at one time, the city would not want to separate out the purchase in order to avoid competitive bidding requirements. If a city is not certain how such items are traditionally handled, it should consult the city’s legal counsel.

**15. If a city does not competitively bid an item because the total expenditure would be below the threshold requiring bids, can it later purchase more of the items if the extra items would take the total purchase over the \$50,000 threshold?**

A city may purchase items without competitive bidding if the total purchase amount will be below the \$50,000 threshold that requires bidding. However, if the city later wants to make additional purchases and these purchases would take the total purchase over the \$50,000 threshold, the city should use caution. State law provides criminal penalties if a city makes component, sequential or incremental purchases to avoid the competitive bidding requirements. If such a charge is at issue, the local prosecuting attorney would review the facts surrounding the involved transaction. Cities would be well-advised to look at their purchasing practices over past budget years and consider whether certain items should be purchased through competitive bids.

**16. If individual city departments make their own purchases of such commodities as office supplies, gasoline and vehicle parts, and the sum of all purchases exceeds the bidding threshold, must the purchase of those items be bid?**

Often individual city departments will make separate purchases of office supplies, gasoline or other items without competitive bidding because each department’s purchase amount will be below the \$50,000 threshold that requires bidding. If a city’s total purchases for these items would be over the \$50,000 threshold, the city should use caution. As noted earlier, state law provides that there are

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<sup>27</sup> *Id.* § 252.001(2), (6)-(7).

criminal penalties if a city makes component, sequential or incremental purchases to avoid the competitive bidding requirements. If such a charge is at issue, the local prosecuting attorney would review the facts surrounding the involved transaction. Cities would be well-advised to look at their purchasing practices over past budget years and consider whether certain items should be purchased through competitive bids.

**17. After a bid contract is awarded, can a city later decrease or increase the amount of its purchase or the quantity of work to be performed?**

Even after a bid has been awarded, a city may still increase or decrease the quantity of work to be done or the materials or supplies to be furnished if it is necessary to do so.<sup>28</sup> Such changes may not increase or decrease the original contract price by more than 25 percent. If the city wants to decrease the contract amount by more than 25 percent, it needs to obtain the approval of the contractor for such a change. There is no comparable authority for the city to simply gain contractor approval to increase the amount of the order by *more* than 25 percent. In such a situation, the city would need to seek bids or proposals for the work or products that would be beyond the 25 percent amount.

The city council may also delegate to city staff the authority to approve such change orders if it involves less than a \$50,000 decrease or increase in the contract amount.<sup>29</sup> If a change order for a public works contract in a city with a population of 300,000 or more involves a decrease or increase of \$100,000 or less, or a lesser amount as provided by ordinance, city council may delegate to city staff the authority to approve such change orders.<sup>30</sup>

**18. If a city seeks competitive bids for an item, can it include a time frame for extra items to be purchased at the same cost?**

The bidding laws do not specifically address whether it is appropriate for a city to include a time frame within which it may seek to purchase items at an awarded contract bid amount. However, if a city would like to have an extended opportunity to make such purchases at that cost, it should indicate this fact in the bid specifications. In no case can a city increase the total contract amount by more than 25 percent of the original awarded amount. If a city needs to purchase additional items that would result in a purchase of more than 25 percent over the original contract price, it would need to seek bids or proposals for the additional purchase.

**19. May a city seek bids or proposals for incrementally purchased items (such as office supplies) and award the contract to a single vendor for an entire year?**

Items, such as office supplies, could be bid and awarded to a single vendor for the entire year if the vendor committed to a set of prices for the items and all of the bidding procedures were followed to

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<sup>28</sup> *Id.* § 252.048

<sup>29</sup> *Id.* § 252.048(c).

<sup>30</sup> *Id.* § 252.048(c-1).

yield such a contract. The contract would need to have a maximum and a minimum number of items to be purchased so it could be determined under what circumstances a change order was permitted.

### **III. General Procedure Requirements**

#### **20. What is the general procedure for requesting competitive bids or proposals?**

To take bids or proposals on a purchase, the city must first publish notice of the time and place at which the bids or proposals will be publicly opened and read aloud.<sup>31</sup> The city should prepare specifications detailing the requirements that must be met by the goods or services the city intends to purchase. The published notice should include either a copy of these specifications or information on how a bidder may obtain a copy of the specifications.

If a city wishes to consider factors other than price in its selection, or other factors such as a bidder's previous performance or safety record in its selection, the city's bid specifications should clearly state that such factors will be considered. Also, the governing body of a city that is considering using a method other than competitive sealed bidding (e.g., competitive sealed proposals) must determine before notice is given the method of purchase that provides the best value for the city.

#### **21. What notice must a city provide to announce a request for bids or proposals?**

A city must publish a notice indicating the time and place at which the bids or proposals will be publicly opened and read aloud. The notice must be published at least once a week for two consecutive weeks.<sup>32</sup> The first publication must appear before the 14<sup>th</sup> day before the date that the bids or proposals are publicly opened and read aloud. The notice must be placed in a newspaper that is published in the city. If there is no newspaper published in the city, the notice must be posted at city hall for 14 days before the date that the bids or proposals are publicly opened and read aloud.

#### **22. Can city staff personally call potential vendors and ask them to participate in a bid?**

Nothing in state law explicitly prohibits a city from providing additional notice to potential bidders. In fact, many cities either keep a list of particular vendors or use a list of vendors that has been prepared by another entity, such as the Texas Facilities Commission. These cities then provide direct notice to the listed vendors when an item or project goes out for bids. However, although this is a common practice, cities should be aware that this practice has not been approved by the Texas courts or by an attorney general opinion. In fact, at least one attorney general opinion has concluded that "contact with potential providers outside the statutory notice and bidding process might run afoul of

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<sup>31</sup> *Id.* § 252.041

<sup>32</sup> *Id.*



[the competitive bidding notice requirements].”<sup>33</sup> The attorney general based this conclusion on a Texas case in which the court stated that “[c]ompetitive bidding...requires that all bidders be placed upon the same plane of equality....”<sup>34</sup> Thus, a city may wish to discuss any such practice with its legal counsel.

### **23. Can a city require or provide a preference for a particular brand or manufacturer in its bid specifications?**

At least one Texas attorney general opinion has concluded that a city may not require or indicate a preference for a particular brand name or manufacturer as part of the specifications for a bid request.<sup>35</sup> The only exception to this prohibition would be if it were necessary to acquire a particular brand or product because it is a “captive replacement part.” In such a case, however, competitive bidding is not required. Nonetheless, it is rare that a particular service or enhancement of a system can be accomplished only by one manufacturer or through one particular brand.

Some legal analysts disagree with the attorney general opinion that addressed this issue. However, as previously noted, it is not common that a particular item, service or enhancement of a system can be supplied by only one manufacturer or supplier or through only one particular brand or process. Because of the legal uncertainties involved, cities that desire to specify particular brands, products or processes should discuss this practice with legal counsel. In addition, a city should consider adding the phrase “or equal” to specifications that require a particular product, brand or process.

### **24. May a city accept bids or proposals through electronic transmission?**

Cities may receive bids or proposals through electronic transmission, provided the city council adopts rules to ensure the identification, security and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.<sup>36</sup>

### **25. Is there a special notice requirement if the city intends to issue time warrants to cover the cost of a contract award?**

Special notice requirements apply if a city intends to issue time warrants to pay for the cost of a contract award. The required newspaper notice must include a statement of the city council’s intention to issue time warrants.<sup>37</sup> That notice must also include the maximum amount of the proposed time warrant indebtedness, the rate of interest the time warrants will bear, and the maximum maturity date for the time warrants.

<sup>33</sup> Op. Tex. Att’y Gen. No. DM-70 at 5 (1991).

<sup>34</sup> *Sterrett v. Bell*, 240 S.W.2d 516, 520 (Tex. Civ. App.—Dallas 1951, no writ).

<sup>35</sup> Op. Tex. Att’y Gen. No. C-376 (1965).

<sup>36</sup> TEX. LOC. GOV’T CODE § 252.0415(a).

<sup>37</sup> *Id.* § 252.041(d).

**26. If a city chooses not to follow statutory procurement requirements for a particular item, should the city create any documentation to note why bidding laws were not applicable to that transaction?**

State law does not indicate any requirement that a city note in its purchasing documentation why bidding laws were not applicable to the involved transaction. Nonetheless, cities should consult local legal counsel regarding whether they would find placing such a justification on the record helpful to the city or the involved staff's legal position.

#### **IV. Consideration and Award of Bid or Proposal Requests**

**27. How are contracts awarded by the city that uses the competitive sealed bid method?**

If competitive sealed bid requirements are used, the city must award most contracts to either the lowest responsible bidder or to the bidder who provides goods or services at the "best value" for the city.<sup>38</sup> To determine the best value for the city, the city may consider the following:<sup>39</sup>

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the municipality's needs;
- the bidder's past relationship with the municipality;
- the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- the total long-term cost to the municipality to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids or proposals.

**28. Can the city take into account the safety record of the bidder in making the award?**

When awarding a contract using traditional competitive bidding, the city may only consider a bidder's safety record in regards to the bidder's "responsiveness" if notice has been given that such a criterion is relevant. Specifically, the governing body must have adopted a written definition and criteria for assessing the bidder's safety record and must have given notice in the bid specifications that the safety record will be considered. Of course, any decision that the city makes must not be arbitrary or capricious.<sup>40</sup>

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<sup>38</sup> *Id.* § 252.043(a)-(b).

<sup>39</sup> *Id.* § 252.043(b).

<sup>40</sup> *Id.* § 252.0435.

**29. What options does a city have if the lowest bidder has a prior history of poor performance?**

Under current law, if the city wishes to consider additional criteria, the city's bid specifications should clearly specify the various criteria that will be considered.

Again, the best practice is to clearly indicate in the city's specifications that a bidder's prior performance on similar contracts may be considered in evaluating the bids.

**30. What options does the city have if the city receives no bids in response to a request?**

If competitive bids or proposals are required by Chapter 252 of the Local Government Code, there is no exception that would allow the city to avoid the statutory requirements due to a lack of bids. If a city receives no response to a request, the city must either re-advertise or decide not to undertake the contract.

**31. What options does the city have if the city receives only one bid or proposal in response to a bid request?**

If a city receives only one bid or proposal in response to its request, the city may accept the bid or proposal received, reject the bid or proposal and re-advertise, or reject the bid or proposal and decide not to undertake the project.

**32. May competitive bids be rejected by a city staff member or must the city council decide which bids to reject?**

State law provides that the governing body of the city may reject any and all bids.<sup>41</sup> There is no provision that would allow the delegation of this decision to city staff. However, in certain cities the staff will open the bids and provide a recommendation to the city council on whether the bid is responsive to the bid request and whether it should be accepted as the lowest responsible bid.

**33. What is the general procedure for awarding a contract pursuant to competitive bidding?**

First, bids must be publicly opened and the bid amounts read aloud at the time and place specified in the bid notice.<sup>42</sup> The city council must then award the contract to the lowest responsible bidder or (if previously noticed) the bidder that provides the best value to the city. In the alternative, the city may reject all bids.<sup>43</sup> Once a bid has been opened, it may not be changed to correct minor errors in the bid

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<sup>41</sup> *Id.* § 252.043(f).

<sup>42</sup> *Id.* § 252.041.

<sup>43</sup> *Id.* § 252.043(a), (f).

price.<sup>44</sup> However, under certain circumstances, a bidder may be able to withdraw a bid if it contains a substantial mistake that would cause a great hardship if enforced against the bidder.

### **34. What is the general procedure for awarding a contract pursuant to competitive proposals?**

If a city decides to use the competitive sealed proposal procedures, it must first give notice of the request for proposals in the same manner as required for competitive bids.<sup>45</sup> Generally, this means that the city must publish at least two newspaper notices of the time and place at which the proposals will be opened. These notices must be published at least once a week for two consecutive weeks, and the first notice must be published more than 14 days before the date set for opening the proposals. Requests for proposals must also solicit quotations and specify the relative importance of price and other evaluation factors.<sup>46</sup>

Once proposals have been submitted, the city may conduct discussions with the offeror or offerors whom the city determines to be reasonably qualified for the award of the contract. Such discussions must comply with the request for proposals and with the regulations set by the city council. To obtain the best offers, the city may allow the submission of revisions after proposals are submitted and before the award of the contract. All offerors must be treated fairly and equally with respect to any opportunity for discussion and revision of the proposals.

In the end, the contract must be awarded to the offeror whose proposal is determined to be the most advantageous to the city.<sup>47</sup> The city is to determine which proposal is the most advantageous based on the relative importance of price and the other evaluation factors included in the request for proposals.<sup>48</sup>

### **35. Is information contained in a bid or proposal confidential under the Public Information Act?**

Section 552.104 of the Government Code provides as follows:

- (a) Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.
- (b) The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

The purpose of section 552.104(a) is to protect the interests of a governmental body in situations such as competitive bidding and requests for proposals, where the governmental body may wish to

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<sup>44</sup> *Id.* § 252.043(g).

<sup>45</sup> *Id.* § 252.041(b).

<sup>46</sup> *Id.* § 252.042.

<sup>47</sup> *Id.* § 252.043(h).

<sup>48</sup> *Id.* §§ 252.021(c), 252.043(h).

withhold information in order to obtain more favorable offers.<sup>49</sup> Significantly, it is not designed to protect the interests of private parties that submit information such as bids and proposals to governmental bodies. Because section 552.104(a) protects only the interests of governmental bodies, it is an exception that a governmental body may waive, for example, by disclosing the information to the public or failing to raise the exception within the ten-day deadline.<sup>50</sup>

Generally, section 552.104(a) protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104(a).<sup>51</sup> Section 552.104(a) is frequently raised to protect information submitted to a governmental body in response to a competitive bidding notice or request for proposals. In this context, the protection of section 552.104(a) is temporal in nature. Generally, section 552.104(a) does not except bids from public disclosure after bidding is completed and the contract has been executed.<sup>52</sup> However, bids may continue to be withheld from public disclosure during the period in which the governmental body seeks to clarify bids and bidders remain at liberty to furnish additional information.<sup>53</sup> Section 552.104(a) does not apply when a single individual or entity is seeking a contract as there are no "competitors" for that contract.<sup>54</sup> Note that even when section 552.104(a) does not protect bids from required public disclosure, section 552.110 will require the governmental body to withhold any portions of those bids that contain trade secrets or other commercial or financial information that is made confidential by law.<sup>55</sup> In addition to protecting the actual bid proposals, section 552.104(a) may protect information related to the bidding process that is not part of a bid.<sup>56</sup>

Although early decisions of the attorney general concluded that section 552.104(a) does not protect the interests of governmental bodies when they engage in competition with private entities in the marketplace,<sup>57</sup> this line of opinions has been reexamined. In Open Records Decision No. 593 (1991), the attorney general concluded that a governmental body may claim section 552.104(a) to withhold information to maintain its competitive advantage in the marketplace if the governmental body can demonstrate: (1) that it has specific marketplace interests and (2) the possibility of specific harm to these marketplace interests from the release of the requested information.<sup>58</sup> A governmental body that demonstrates that section 552.104 applies to information may withhold that information even if it falls within one of the categories of information listed in section 552.022(a).<sup>59</sup>

<sup>49</sup> Tex. Att'y Gen. ORD-592 at 8 (1991).

<sup>50</sup> TEX. GOV'T CODE § 552.302.

<sup>51</sup> Tex. Att'y Gen. ORD-593 at 2 (1991), ORD-541 at 4 (1990), ORD-514 at 2 (1988), ORD-463 (1987).

<sup>52</sup> Tex. Att'y Gen. ORD-541 at 5 (1990), ORD-514 at 2 (1988), ORD-319 at 3 (1982).

<sup>53</sup> Tex. Att'y Gen. ORD-170 (1977). *See also* Tex. Att'y Gen. ORD-541 at 5 (1990) (Recognizing limited situation in which statutory predecessor to section 552.104 of the Government Code continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

<sup>54</sup> Tex. Att'y Gen. ORD-331 (1982).

<sup>55</sup> Tex. Att'y Gen. ORD-319 (1982), ORD-309 (1982).

<sup>56</sup> Compare Op. Tex. Att'y Gen. No. MW-591 (1982) (Identity of probable bidders is protected from public disclosure because disclosure could interfere with governmental body's ability to obtain best bids possible) with Tex. Att'y Gen. ORD-453 (1986) (Identities of individuals who receive bid packets are not protected when governmental body fails to show substantial likelihood that these individuals would bid).

<sup>57</sup> Tex. Att'y Gen. ORD-463 (1987), ORD-153 (1977), ORD-99 (1975).

<sup>58</sup> *See, e.g.,* Tex. Att'y Gen. ORL 1997-2516. (City of San Antonio's records of costs various performers pay for use of Alamodome), ORL 1996-2186. (City of Alvin information regarding proposal to provide another city with solid waste disposal services).

<sup>59</sup> TEX. GOV'T CODE ANN. § 52.104(b).

### **36. Is information within a bid request concerning historically underutilized businesses confidential?**

Section 552.128 of the Government Code makes confidential certain information about disadvantaged or historically underutilized businesses.<sup>60</sup> General information about these businesses is confidential if it is submitted to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business. With two exceptions, this information may be disclosed only with the express written consent of the applicant or the applicant's agent.<sup>61</sup>

Without such consent, this information may be disclosed by a state or local governmental entity for one of the following two purposes: (1) to verify an applicant's status as a historically underutilized or disadvantaged business or (2) to conduct a study of public purchasing programs established under state law for historically underutilized or disadvantaged businesses.

It is important to note that this law protects only the information submitted with an *application for certification* as a historically underutilized or disadvantaged business.<sup>62</sup> The business's actual bid is subject to the same rules of disclosure as any other bid. Additionally, information submitted in connection with a specific proposed contractual relationship or within an application to be placed on a bidder's list is not confidential under section 552.128. Thus, this information may be accessible even though it involves data that would be confidential if it were contained in the entity's application for certification as a historically underutilized or disadvantaged business.

### **37. Must bidders be allowed to speak at a city council meeting to explain or defend their bids?**

A bidder does not have any special right to speak at an open meeting of the city council. The attorney general has concluded that the Open Meetings Act does not give members of the public a right to speak at an open meeting.<sup>63</sup> Further, if the city chooses to allow members of the public to speak at a council meeting, the council may make reasonable rules regulating the number of speakers on a particular subject and the length of each presentation.<sup>64</sup> However, the city council should not discriminate between one speaker and another, and the rules should be applied equally to all members of the public. The only situation in which the city council may be required to allow members of the public to speak would be if state law requires a public hearing on an issue or if state law requires that public comment be allowed on a particular subject. However, there is no such public hearing or comment requirement that is applicable to competitive bidding issues.

## **V. Bids for the Construction or Repair of Public Structures or Roads**

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<sup>60</sup> *Id.* § 552.128.

<sup>61</sup> *Id.* § 552.128(b).

<sup>62</sup> *Id.* § 552.128(c).

<sup>63</sup> Tex. Att'y Gen. Op. No. H-188 (1973).

<sup>64</sup> Tex. Att'y Gen. Op. No. H-188 (1973); Tex. Att'y Gen. LO-96-111.

**38. Is there a special bidding procedure for contracts in excess of \$50,000 for the construction or repair of a structure, road or other improvement to real property?**

Texas law does not single out cities or dictate special bidding procedures for procurement contracts exceeding \$50,000. In the past, Chapter 271, subchapter B, of the Local Government Code dictated a special bidding procedure for cities. However, the legislature exempted cities from that procedure in 1997.

Currently, on expenditures greater than \$50,000, cities may follow one of three basic procurement methods: (1) competitive sealed bidding or competitive sealed proposals, (2) the reverse auction procedure, or (3) an alternative procurement method.<sup>65</sup> While each of these procurement methods is authorized for general use by cities, the legislature has precluded the application of some of these methods for specific types of construction projects. These preclusions, as well as other procurement issues, are discussed further in this handbook.

**39. Are there special rules for the purchase of machinery for road construction or road maintenance?**

As with other procurement efforts, a city seeking to procure machinery for road construction or maintenance should provide notice in the newspaper.<sup>66</sup> The notice for this type of purchase must contain a general description of the type and specifications of machinery required.<sup>67</sup>

For example, a city requiring a bulldozer should specify the minimum size and horsepower of the desired bulldozer. In this way, newspaper notices can be kept reasonably brief and inexpensive, and more detail can be provided in the bid specifications, if necessary.

If, however, the procurement is required to replace unforeseen damage to previously owned equipment, the notice and bidding procedures do not apply.<sup>68</sup>

**40. Can a city require that bids for a public work or for the purchase of materials, equipment, or supplies be on a unit price basis?**

Yes. Cities may request bids based on unit prices.<sup>69</sup> This type of procurement may be especially helpful in the procurement of equipment and machinery. The city must publish the quantities desired with its notice. If the quantities actually consumed differ from the city's anticipated needs, then the actual purchase shall reflect the quantities supplied or consumed in the procurement.

Cities may ask bidders to indicate both a lump-sum price and a unit price. In fact, some cities specify

<sup>65</sup> TEX. LOC GOV'T CODE § 252.021(a).

<sup>66</sup> *Id.* § 252.041(a).

<sup>67</sup> *Id.* § 252.041(c).

<sup>68</sup> *Id.* § 252.022(a)(3).

<sup>69</sup> *Id.* § 252.047.

that bids may be awarded on a lump-sum basis, a unit price, or on whatever basis best serves the city's interest.

**41. Must a bidder execute a performance or payment bond if the contract is for the construction of a public work?**

The Government Code mandates that a city contracting for public work in excess of \$50,000 shall require its contractor to execute a payment bond solely for the protection of beneficiaries who supply materials or labor to the public works project and have a direct contractual relationship with the contractor.<sup>70</sup> A payment bond is required because material suppliers and laborers do not enjoy the same lien rights on public projects as they do on private projects. Without the benefit of lien rights to secure payments that are not timely received, those suppliers and laborers would lose much of their legal protection regarding payment. The payment bond requirements for public work essentially replace the protections afforded by lien rights with protections guaranteed by a surety.

The Government Code also mandates that a city contracting for public work in excess of \$100,000 shall require its contractor to execute a performance bond solely for the protection of the city. The performance bond protects the city in the event of a contractor default and/or termination.

Both the payment and performance bonds must be written for the total contract value and should be executed by a corporate surety in accordance with the Insurance Code prior to commencement of the work.

For more information on payment and performance bonds, a city should review Chapter 2253 of the Government Code and consult legal counsel.

**42. May a city require a performance or payment bond from a bidder even when state law does not require such bonds?**

Yes. Nothing in state law appears to prohibit a city from requiring a performance bond, a payment bond, or both, from anyone contracting to do work for the city regardless of the amount of the contracts in question. If a city wishes to impose such a requirement, it is advisable that the city make the requirement part of the bid specifications so all potential bidders are informed of the requirement before bidding.

**43. Is the city required to hire an engineer for the construction of a public work?**

If public health, safety, or welfare and professional engineering issues are involved, the engineering plans, specifications, and estimates for the construction of a public work generally must be prepared by a licensed professional engineer.<sup>71</sup> Further, the engineering for construction usually must be executed under the direct supervision of a licensed professional engineer.

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<sup>70</sup> TEX. GOV'T CODE § 2253.021.

<sup>71</sup> TEX. OCC. CODE § 1001.407.



There are two circumstances in which the above requirements do not apply to the construction of a public work by a city. First, they do not apply to a public work that involves a total expenditure of \$8,000 or less, even if the work involves structural, electrical or mechanical engineering. If the expenditure for such a public work will amount to or exceed \$8,000, the use of an engineer is required as noted above. Second, if the work does not involve structural, electrical or mechanical engineering, then the use of an engineer is not required as long as the total contemplated expenditure on the project will not exceed \$20,000.<sup>72</sup>

#### **44. Is the city required to hire an architect if the contract is for the construction of a public work?**

A registered architect must prepare the architectural plans and specifications for constructing a new city building if:

- the building will be used for education, assembly or office occupancy; and
- the construction costs exceed \$100,000.<sup>73</sup>

Also, for any alteration or addition to an existing city building, a registered architect must prepare the architectural plans and specifications if all three of the following circumstances are present:

- the building is used or will be used for education, assembly or office occupancy;
- the construction costs for the alteration or addition exceed \$50,000; and
- the alteration or addition requires the removal, relocation, or addition of any walls or partitions or requires the alteration or addition of an exit.<sup>74</sup>

#### **45. If a contract is for the construction of a public work, is the city required to ensure that all contractors provide workers' compensation coverage?**

Any city "building or construction" contract must require the general contractor to certify in writing that the contractor provides workers' compensation insurance to all of the contractor's employees involved in the project.<sup>75</sup> Additionally, each subcontractor must certify in writing to the general contractor that the subcontractor's employees are covered by workers' compensation insurance. The general contractor, in turn, must provide each subcontractor's written certification to the city.

The phrase "building or construction" is defined to include any of the following:

- Erecting or preparing to erect a structure, including a building, bridge, road, public utility facility or related structure;
- remodeling, extending, repairing or demolishing a structure; or
- otherwise improving real property or a structure related to real property through similar

<sup>72</sup> *Id.* § 1001.053.

<sup>73</sup> *Id.* § 1051.703(a)(2).

<sup>74</sup> *Id.* § 1051.73(a)(3).

<sup>75</sup> TEX. LAB. CODE § 406.096.

activities

Thus, a city must require contractors and subcontractors to provide workers' compensation insurance in any contract involving one or more of these activities. However, the contractor may provide this coverage through a group plan or through another method that is satisfactory to the city council.

State law specifies that the employment of a maintenance worker does not generally constitute engaging in "building or construction." State statutes do not appear to provide any other clear exceptions to the requirement that public works contractors provide workers' compensation insurance.

**46. If a contract is for the construction of a public work, must a city ensure that the contractors pay their workers according to the local prevailing wage rate for the work that is performed?**

Texas law requires that any worker employed on a public work contract be paid at least the general prevailing daily wage rate for work of a similar character performed in the same locality.<sup>76</sup> If a worker works overtime or on legal holidays, the worker must be paid at least the general daily wage rate for overtime or legal holiday work. The city council must determine the general prevailing daily wage rate for each craft or type of worker needed to execute a public works contract and the prevailing rate for legal holiday and overtime worked.<sup>77</sup> This determination must be based on either a survey conducted by the city or on the prevailing wage rate in the city as determined by the U.S. Department of Labor (if that department's figures are considered to be current). Further, both the call for bids and the contract itself must specify the applicable wage rates as determined by the city.

The prevailing wage rate requirement applies to any public work that is paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.<sup>78</sup> However, the requirement does not apply to work done directly by a public utility company under an order of a public authority. The prevailing wage requirement also does not apply to maintenance work.<sup>79</sup>

For more information on the prevailing wage rate requirements, a city should review Chapter 2258 of the Government Code and consult legal counsel.

**47. Is there express statutory authority for cities to enter into public/private partnerships?**

Yes. In 2011, Chapters 2267 and 2268 of the Government Code were passed by the Texas Legislature to encourage the use of public/private partnerships to develop "qualifying projects," which include various infrastructure projects as defined by the new law (essentially any improvements necessary or desirable to unimproved real estate owned by a governmental entity).

<sup>76</sup> TEX. GOV'T CODE ANN. § 2258.021.

<sup>77</sup> *Id.* § 2258.022.

<sup>78</sup> *Id.* § 2258.002.

<sup>79</sup> *Id.* § 2258.021(b).

The new law requires an opt-in by resolution of the governing body of a political subdivision, including a city, to elect to operate under its terms. It provides detailed procedures for the procurement and implementation of a qualifying project.<sup>80</sup>

## **VI. Alternative Delivery Methods for the Construction of Structures**

### **Background and Authority**

#### **48. What are alternative delivery methods for city construction projects?**

The alternatives to the basic competitive bidding model of construction procurement are best-value competitive bidding, competitive sealed proposals, design-build, construction management-agent, construction management at-risk, and job order contracting.

#### **49. What benefits can alternative delivery methods provide cities?**

Alternative delivery methods have some advantages over traditional competitive bidding. In the traditional competitive bidding process, a contract must be awarded to the lowest responsible bidder. Subjective considerations such as the contractor's track record on a particular type of project, anticipated use of minority and local contractors, and other factors generally cannot be taken into account. When subjective criteria are used in the selection process, cities have greater flexibility to choose contractors that can provide maximum quality on every project.

Further, alternative delivery systems are particularly advantageous on projects where time, flexibility and/or innovation is critical. Using alternative delivery methods such as design-build, the design and construction phases can overlap, allowing portions of work to begin before other final design decisions are made by the owner. The time savings are clear. For example, land can be cleared before the foundation is fully designed, and pier holes can be drilled before the interior colors are picked. Increased flexibility throughout the process allows the number of offices or rooms in a building to be changed relatively easily during the construction. Instead of following the old method of having an engineer design a project in the traditional way, alternative delivery systems can and do encourage innovation. A city can present a request for proposals with an end in mind and allow a firm to develop a plan whereby the most efficient and innovative materials and procedures are used.

#### **50. Where is the statutory authority for cities to use alternative delivery systems?**

In 2011, the Texas Legislature consolidated statutes in various codes and created chapter 2267 of the

<sup>80</sup> Subtitle F, Title 10, TEX. GOV'T CODE Chapters 2267 and 2268. The 82<sup>nd</sup> Legislature created two chapters of Chapter 2267 of the Government Code. Public and Private Facilities and Infrastructure was added by Senate Bill 1048. Question 47 concerns this version of Chapter 2267. Contracting and Delivery Procedures for construction projects was added by House Bill 628. Section VI of this handbook concerns this version of Chapter 2267, which was re-designated as Chapter 2269 in 2013 by S.B. 1093.

Government Code. In 2013, the chapter was re-designated as Chapter 2269. All authorizations and requisite procedures for the use of alternative delivery systems can be found in Chapter 2269 of the Government Code. (Prior to 2011, cities found their authority for these methods in chapter 271, subchapter H, of the Local Government Code.)

## **51. What alternative methods are cities currently authorized to use and for what types of projects?**

Under current law, cities may use the best-value competitive bidding process, competitive sealed proposal method, construction manager-agent method, construction manager-at-risk method, design-build method, and the job order contract method for public procurement in place of the standard competitive bidding method that is also allowed under Chapter 2269 of the Government Code or Chapters 252 and 271 of the Local Government Code.

With a limited exception, cities may use any of the alternative delivery methods for any project involving an improvement to real property. The exception involves the design-build method. Under Chapter 2269, the design-build method has been separated into two sections—one for vertical structures and a second one for certain types of civil projects. After the passage of H.B. 1050 in 2013, the use of design-build for civil projects is limited in availability to cities whose population is between 100,000 and 500,000 (limited to four projects per fiscal year up) and greater than 500,000 (limited to six projects per fiscal year).<sup>81</sup>

## **52. What are some preliminary matters in selecting which method to use?**

A city must choose which, if any, of the alternative methods will produce the best value for the city.<sup>82</sup> In many circumstances, traditional competitive bidding may remain the most appropriate choice.

# **VII. The Alternative Methods**

## **53. What is the “best value” competitive bidding method?**

Under Chapter 2269, the competitive bidding method is a procurement method by which the city contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.<sup>83</sup> However, because Chapter 2269 gives certain criteria that the city can consider that applies to all procurement methods in Chapter 2269, the city may consider more factors than just price in awarding a contract based on competitive bids that the city would by using competitive bidding under Section 252.043 of the Local Government Code.<sup>84</sup> The criteria that the city may consider are:

1. the price;

<sup>81</sup> TEX. GOV'T CODE ANN. § 2269.354(1) (West Supp. 2011).

<sup>82</sup> *Id.* § 2269.056(a).

<sup>83</sup> *Id.* § 2269.101.

<sup>84</sup> *Id.* § 2269.055.

2. the offeror's experience and reputation;
3. the quality of the offeror's goods or services;
4. the impact on the ability of the city to comply with rules relating to historically underutilized businesses;
5. the offeror's safety record;
6. the offeror's proposed personnel;
7. whether the offeror's financial capability is appropriate to the size and scope of the project; and
8. any other relevant factor specifically listed in the request for bids, proposals, or qualifications

Also, the city shall apply any existing laws and criteria related to historically underutilized business and the use of woman, minority, small, or disadvantaged business.<sup>85</sup> Even though this competitive bidding method employs more flexibility for the city to determine the lowest responsible bidder, the city can still elect to use the competitive bidding procedure in Section 252.043 of the Local Government Code.

## **54. What is the competitive sealed proposals method?**

The competitive sealed proposal method is a procurement method by which a city requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alterations, or repairing of facility.<sup>86</sup> In the competitive sealed proposal method, the city must first hire an architect or engineer to prepare construction documents.<sup>87</sup> Selection of an architect or engineer must be in accordance with the process required by section 2254.004 of the Government Code if the city does not employ, as a full time employee, its own architect or engineer to perform this service.<sup>88</sup> Once the construction documents have been completed, the city prepares a Request for Competitive Sealed Proposals (RFCSP).<sup>89</sup> The RFCSP should include construction documents, estimated budget, project scope, schedule and other information contractors may require in order to respond to the RFCSP. The city must also state the selection criteria and the relative weighting of the criteria that the city will employ in selecting the successful offeror. Unlike an RFQ under the design-build method, price information may be requested in the RFCSP and may be a selection criterion.

The city must publicly open and read aloud the proposals, including price information if such was required.<sup>90</sup> The city must also evaluate and rank the proposals in relation to the published selection criteria within 45 days after the opening. The city then selects the proposal that offers the best value based on the published selection criteria and its ranking evaluation.<sup>91</sup>

Following the selection, the contract negotiation process begins. The city negotiates first with the highest ranked offeror.<sup>92</sup> At this stage, the city and its architect or engineer may discuss

<sup>85</sup> *Id.* § h2269.055(b).

<sup>86</sup> *Id.* § 2269.151.

<sup>87</sup> *Id.* § 2269.152.

<sup>88</sup> *Id.* § 2269.057(b).

<sup>89</sup> *Id.* § 2269.153.

<sup>90</sup> *Id.* § 2269.154.

<sup>91</sup> *Id.* § 2269.155(a).

<sup>92</sup> *Id.* § 2269.155(b).

modifications to the proposed scope, time and price. Modifications are not required, and if they are discussed but not agreed to by the city and the offeror, a final contract may still be negotiated and agreed upon based on the original response to the RFCSP. If the two parties are unable to reach a final agreement, the city must inform that offeror in writing that negotiations are ended.<sup>93</sup> The city may then negotiate with the next ranked offeror. This continues in the order of the selection ranking until a contract is reached or all proposals are rejected. In this form of contract procurement, the city is not restricted to considering price alone in its selection, but may consider any other factor from among the established selection criteria to determine which offeror offers the city the best value.<sup>94</sup>

## **55. What is the construction manager-agent method?**

The construction manager-agent method allows cities which may not have the in-house expertise and/or sufficient staff to effectively oversee a construction project to employ an agent to oversee a project on their behalf. The party hired by the city to act on its behalf in overseeing the project is known as a Construction Manager-Agent (CMA).<sup>95</sup>

A CMA is defined as a legal entity that provides consultation to the city regarding construction, during and after the design or repair of a facility.<sup>96</sup> Practically speaking, the CMA will almost always be a general contractor or architect or engineer with experience constructing the type of project the city is building. The CMA manages the project for the city both during the procurement process and after a contract has been executed. A CMA represents the city in a fiduciary capacity.<sup>97</sup> Therefore, the CMA may not perform any portion of the actual design or construction of the project, with the exception of the general field conditions as provided by the contract.<sup>98</sup> General field conditions, when used in the context of a facilities construction contract, customarily include on-site management, administrative personnel, insurance, bonds, equipment, utilities and incidental work, including minor field labor and materials.<sup>99</sup>

Prior to or concurrent with the selection of a CMA, the city must hire an architect or engineer according to the requirements of section 2254.004 of the Government Code, to design the project if the city does not utilize for the design an architect or engineer which it employs on a full-time basis.<sup>100</sup> The architect or engineer may not serve, alone or in combination with any other person, as the CMA, unless hired as the CMA in a separate or concurrent CMA procurement process.<sup>101</sup> This does not prevent the architect or engineer from providing customary construction phase services under the original professional services agreement and applicable licensing laws.

Either after or concurrent with the selection of an architect or engineer, the city selects a CMA based on the same professional services procurement rules provided for the selection of an architect or

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<sup>93</sup> *Id.* § 2269.155(c).

<sup>94</sup> *See Id.* § 2269.055(a)(1).

<sup>95</sup> *Id.* § 2269.201(a).

<sup>96</sup> *Id.* § 2269.201(b).

<sup>97</sup> *Id.* § 2269.204.

<sup>98</sup> *Id.* § 2269.203, 202.

<sup>99</sup> *Id.* § 2269.001(4).

<sup>100</sup> *Id.* § 2269.205. *See Id.* § 2269.057(b).

<sup>101</sup> *Id.* § 2269.205(b)-c).

engineer under section 2254.004 of the Government Code.<sup>102</sup>

Under the CMA method, the city may engage a single prime contractor or multiple trade contractors to serve as prime contractors for their respective portions of the work in any manner authorized by the statutes governing the particular city.<sup>103</sup>

## **56. What is the construction manager at-risk method?**

A construction manager-at-risk (CMAR) assumes the risk for construction, rehabilitation, alteration or repair of a facility at the contracted price in the same manner as a general contractor, but also provides consultation to the city regarding construction during and after the design of the facility.<sup>104</sup> A CMAR may be hired by the city in either case by a one-step or two-step process that is outlined below.<sup>105</sup>

Prior to or concurrently with selecting a CMAR, the city must select or designate an architect or engineer who will be responsible for preparing the design and construction documents for the project.<sup>106</sup> This architect or engineer, if not a full-time employee of the city, must be selected according to section 2254.004 of the Government Code.<sup>107</sup> The city's architect or engineer, or an entity related to the city's architect or engineer, may not serve, either alone or in combination with another, as the CMAR.<sup>108</sup>

In the one-step selection process, the city issues a request for proposals (RFP). This RFP should include general information on the project site, scope, schedule, selection criteria, the weighted value of selection criteria, estimated budget, time/place for receipt of the proposal, whether a one or two-step selection process will be used, and any other information that would assist the city in its selection of a CMAR. In the one-step process, the city may request, as part of the requested proposals, information regarding proposed fees and prices for the fulfillment of the general field conditions. In other words, both qualifications and pricing are evaluated in one process.<sup>109</sup>

In the two-step selection process the city first produces a Request for Qualifications (RFQ), which is identical to the RFP as described above, except that no cost or price information may be requested of offerors in the initial RFQ. In the second step, the city selects a maximum of five offerors who responded to the RFQ to provide additional information. That information may include proposed fees and prices for the completion of the CMAR's general field conditions. The two-step CMAR process is similar to the two-step method for selecting a design-build firm discussed later in this paper.<sup>110</sup>

In both the one and two-step processes all proposals must be publicly opened and read aloud in their

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<sup>102</sup> *Id.* § 2269.207.

<sup>103</sup> *Id.* § 2269.206.

<sup>104</sup> *Id.* § 2269.251.

<sup>105</sup> *See Id.* § 2269.253

<sup>106</sup> *Id.* § 2269.252(a).

<sup>107</sup> *Id.* § 2269.057.

<sup>108</sup> *Id.* § 2269.252(b).

<sup>109</sup> *Id.* § 2269.253.

<sup>110</sup> *Id.*

entirety, including pricing information included in the proposal at the appropriate step.<sup>111</sup> The city must evaluate and rank the offers according to its published selection criteria within 45 days of the responses having been opened.<sup>112</sup> The city then selects the proposal that offers the best value for the city according to the published selection criteria and the ranking evaluation.<sup>113</sup> Following the selection of the offeror that offers the best value for the city, the contract negotiation process begins. The city negotiates first with the selected offeror. If the two parties cannot reach an agreement, the city must give formal written notice to that offeror that negotiations are ended. The city may then negotiate with the next ranked offeror. This process continues until the city and an offeror reach an agreement on a contract or negotiations with all ranked offerors end.<sup>114</sup>

The CMAR is required to properly advertise for bids or proposals from trade contractors or subcontractors for all work, except minor work that may be included in the general field conditions. The CMAR administers this process and selects the contract procurement method determined to provide the best value from among the various methods available to the city. The CMAR may seek to perform any part of the work on the project as long as the CMAR presents its bid or proposal in the same manner as any trade contractor or subcontractor and the CMAR's bid or proposal is determined by the city to provide the best value.<sup>115</sup>

The CMAR, city and its representative architect or engineer review the bid and proposals and select the various trade contractors or subcontractors in a manner so as not to disclose the price of the bids or proposals to the public. Ultimately, however, all bids or proposals shall be made public once the related contract has been awarded or seven days after the final selection of bids, whichever is later.<sup>116</sup>

The CMAR may recommend the acceptance of a particular bid or proposal, but the city has the right to require another bid or proposal be accepted. If the city overrides the CMAR's recommendation in selection of any trade contractor or subcontractor, it must compensate the CMAR for any changes in price, time, guaranteed maximum cost, or any additional cost or risk associated with the city's choice that differs from that recommended by the CMAR.<sup>117</sup>

The CMAR contracts directly with the selected trade contractors and subcontractors. If any trade contractor or subcontractor defaults, the CMAR may complete the work, without advertising for completion bids, or may select a replacement trade contractor or subcontractor.<sup>118</sup>

If no fixed contract amount or guaranteed maximum price has been determined when the CMAR's contract is executed, the performance and payment bonds shall be in the amount of the estimated budget of the project as set out in the RFQ or RFP. The CMAR must deliver the required bonds not later than the tenth day after the CMAR executes the contract unless the CMAR furnishes a bid bond or other financial security acceptable to the city to ensure that the CMAR will provide the

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<sup>111</sup> *Id.* § 2269.253(f).

<sup>112</sup> *Id.* § 2269.253(g).

<sup>113</sup> *Id.* § 2269.254(a).

<sup>114</sup> *Id.* § 2269.254(b)-(c).

<sup>115</sup> *Id.* § 2269.255.

<sup>116</sup> *Id.* § 2269.256(a).

<sup>117</sup> *Id.* § 2269.256(b).

<sup>118</sup> *Id.* § 2269.257.



performance and payment bonds once the price is fixed.<sup>119</sup>

## **57. What is the design-build method?**

The design-build method differs from traditional design-bid-build models in that the city contracts with one firm to perform both pre-construction design and post-design construction activities.<sup>120</sup> This method can save time and money if employed correctly. This method can facilitate multi-phased projects without the time consuming process of putting each phase out to bid separately. Also, it may allow work to begin before all decisions regarding the design or finish-out are made by the owner. The design-build method may alleviate the problems that cities often encounter related to project inefficiencies when dealing with items such as change orders or requests for information.

Under the design-build method of construction contract procurement, the city awards a single contract to a firm who both designs and constructs the facility.<sup>121</sup> A design-build firm, as that term is commonly defined, consists of a team that includes an architect or engineer and a builder qualified to engage in building construction in Texas.<sup>122</sup> However, the city must designate an independent architect or engineer to act as its representative for the duration of the project.<sup>123</sup> The design-build team may construct the work itself or it may subcontract out all or portions of the work. In so doing, the designer-builder contracts directly with its subcontractors and assumes complete responsibility for both the design and construction of the project.

## **58. What types of projects can be constructed using the design-build method?**

The design-build method can be used for both buildings and associated structures,<sup>124</sup> as well as, in limited circumstances and by certain cities, some civil projects such as roads, bridges, water supply projects and water plants.<sup>125</sup> When using the design-build method, cities must follow Subchapter G of Chapter 2269 of the Government Code for vertical structures or buildings and Subchapter H of Chapter 2269 for horizontal or civil projects.

## **59. How does a city solicit design-builders for a building project?**

If a city determines that the design-build method will provide the best value, it must prepare a request for qualifications (RFQ) that includes general information about a project, including the project site, project scope, budget, selection criteria, weighted value of selection criteria and other helpful information for bidders.<sup>126</sup> In addition to the RFQ, the city must publish a Design Criteria Package that includes more detailed information about the project.<sup>127</sup> The Design Criteria Package must specify both the criteria for selecting the design-build firm and the aspects or qualities the city

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<sup>119</sup> *Id.* § 2269.258.

<sup>120</sup> *Id.* § 2269.301.

<sup>121</sup> *Id.* § 2269.303.

<sup>122</sup> *Id.* § 2269.304.

<sup>123</sup> *Id.* § 2269.305.

<sup>124</sup> *Id.* § 2269.302.

<sup>125</sup> *Id.* § 2269.352, .353.

<sup>126</sup> *Id.* § 2269.306(a).

<sup>127</sup> *Id.* § 2269.306(b), (c).

considers necessary to design the project. The criteria may include the following information:

- a legal description of the project site,
- survey information,
- interior space requirements,
- special material requirements,
- material quality standards,
- conceptual criteria,
- special equipment requirements,
- cost and budget estimates,
- schedules,
- quality assurance and control requirements,
- site development requirements,
- applicable codes and ordinances,
- utility provisions,
- parking requirements, and
- other requirements as applicable.<sup>128</sup>

However, the city may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a RFQ.<sup>129</sup>

## **60. How does a city select a design-builder after publishing an RFQ?**

After preparing its RFQ and Design Criteria Package and advertising for proposals, the city evaluates statements of qualifications submitted by the potential offerors. The city may evaluate qualifications according to the following criteria: offeror's experience, technical competence, capability to perform, and past performance of offeror's team and members thereof.<sup>130</sup> The city may also consider other appropriate factors submitted by the offeror in response to the RFQ. However, the city may not consider cost-related or price-related evaluation factors. In their responses, the design-build offerors must certify that each architect or engineer that is a member of its team was selected on the basis of demonstrated competence and qualifications in the manner provided by section 2254.004 of the Government Code.<sup>131</sup>

After initially reviewing the responses to the Design Criteria Package and the RFQ, the city must select up to five responders to submit additional information. If the city chooses, it may interview these responders.<sup>132</sup>

The city evaluates the additional information from the selected offerors based on the criteria in the RFQ and the results of any interviews that occurred.<sup>133</sup> Additionally, the city may request information on the offeror's demonstrated competence, safety and durability considerations, the

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<sup>128</sup> *Id.* § 2269.306(c).

<sup>129</sup> *Id.* § 2269.306(d).

<sup>130</sup> *Id.* § 2269.307(a).

<sup>131</sup> *Id.* § 2269.307(b).

<sup>132</sup> *Id.* § 2269.307(c).

<sup>133</sup> *Id.* § 2269.307(d).

feasibility of the project as proposed, the offeror's ability to meet scheduling requirements, cost methodology and other appropriate factors.<sup>134</sup>

After evaluations, the city ranks the offerors according to the RFQ and selects the design-build firm that offers the best value for the city based on the published selection criteria and its ranking evaluations.<sup>135</sup>

## **61. How does a city negotiate a contract with the selected design-builder?**

After selecting the design-build firm that offers the best value for the city, the contract negotiation process begins. The city first negotiates with the selected offeror. If the parties cannot reach an agreement, the city must formally, and in writing, inform the offeror that it is ending the negotiations. The city may then negotiate with the next offeror in the order of the selection ranking process. The same negotiation process will continue until an agreement is reached that culminates in an executed contract or negotiations with all ranked offerors ends.<sup>136</sup>

Following selection and contract award, the chosen design-build firm completes the design and submits all design elements to the city or its architect or engineer representative for review and determination of scope compliance. The city's review may be done prior to or during construction.<sup>137</sup>

The design-build firm has the responsibility to provide the city with a signed and sealed set of construction documents (as-built drawings) at the project's conclusion.<sup>138</sup>

The design-build firm's payment and performance bonds are not required to provide, and may not provide, coverage for that portion of the design-build contract that includes design services only. If no guaranteed maximum price or fixed price has been established when the contract is awarded, the performance and payment bonds are required to be in the penal sum of the estimated budget for the project as specified in the Design Criteria Package. The design-build firm must deliver the performance and payment bonds not later than the 10th day after the firm executes the contract. However, if the design-build firm provides a bid bond or other financial security acceptable to the city to ensure it will provide the performance and payment bonds, the delivery of those bonds can be postponed until construction begins.<sup>139</sup>

## **62. How does the design-build method differ for civil projects?**

For civil projects, cities do not have the same requirements to weigh and select up to five offerors prior to selection and negotiation of a contract for civil works.<sup>140</sup> However, at the outset of a decision to use the design-build method, the city must determine that the design-build method is

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<sup>134</sup> *Id.* § 2269.307(e).

<sup>135</sup> *Id.* §§ 2269.307(f), .308(a).

<sup>136</sup> *Id.* § 2269.308(b)-(c).

<sup>137</sup> *Id.* § 2269.309.

<sup>138</sup> *Id.* § 2269.310.

<sup>139</sup> *Id.* § 2269.311.

<sup>140</sup> *Id.* § 2269.359.

appropriate for a civil project.<sup>141</sup>

**63. Is there a limit on the number of civil projects a city can build using the design-build method?**

After the passage of H.B. 1050 in 2013, for cities with a population of 500,000 or more, the limit on civil design-build projects is six per fiscal year.<sup>142</sup> For cities with a population of 100,000 or more but less than 500,000, the limit is four per fiscal year.<sup>143 144</sup>

Cities with a population of less than 100,000 may not use the design build method for civil projects.<sup>145</sup>

**64. Must a city select an independent engineer for civil projects?**

Yes. An engineer that is independent of the design-build firm must be selected to serve as the city's representative.<sup>146</sup>

**65. What is the process for selecting a design-build firm for civil projects?**

The first step is to issue a request for qualifications that includes information about the project scope, budget, schedule, criteria for selection, weighting of the criteria and other information that may assist potential design firms in submitting proposals.<sup>147</sup> Also, the city must prepare a Design Criteria Package that may include:

- additional budget or cost estimating;
- information on the site;
- performance criteria;
- special material requirements;
- critical design calculations;
- known utilities;
- capacity requirements;
- quality assurance and quality control requirements;
- type, size, and location of start-ups, and
- notice of any ordinance, rules, or goals adopted by the governmental entity relating to awarding contracts to historically underutilized business.<sup>148</sup>

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<sup>141</sup> *Id.* § 2269.353(c),(d).

<sup>142</sup> *Id.* § 2269.354(a)(1).

<sup>143</sup> *Id.* § 2269.354(b).

<sup>144</sup> *Id.* § 2269.354 (c).

<sup>145</sup> *See Id.* § 2269.352.

<sup>146</sup> *Id.* § 2269.355.

<sup>147</sup> *Id.* § 2269.357.

<sup>148</sup> *Id.* §§ 2269.357(b), .358.

The primary difference in selection criteria for civil projects and facilities is that the technical data required by the statute in the initial submission phase is higher for civil projects. Like other projects, price cannot be considered at the initial phase.<sup>149</sup> In the second step of the process, the pricing can be considered and then negotiations occur in much the same way as other projects.<sup>150</sup>

## **66. What is the job order contracting method?**

The job order method for procurement may be used for the maintenance, repair, alteration, renovation, remediation or minor construction of a facility when the work is recurring in nature and the time or quantities required are indefinite.<sup>151</sup> Examples of the type of work that would qualify for job order procurement would be ceiling tile replacement, door hanging, sidewalk construction and repainting.

The city must properly advertise for and publicly open competitive sealed proposals for job order contracts.<sup>152</sup> The base term of the job order contract may not exceed two years. The city may renew the contract annually for not more than three additional years.<sup>153</sup>

The city may award job order contracts to one or more of the offerors in the same solicitation. The city is not required to award a contract to whoever submits the lowest rates.<sup>154</sup>

Under a job order contract, specific work projects are authorized by the execution of a job order by the city and the contractor. The order may be a fixed price, lump sum order contract based on contractual unit pricing applied to estimated quantities, or a unit price order based on the quantities and line items delivered.<sup>155</sup>

If the amount or estimated amount of the job order is in excess of \$25,000, then the contractor must post a payment bond on the job order. If the job order is \$100,000 or more, a performance bond is also required.<sup>156</sup> However, note that the bonds are provided on each specific job order and not on the overall job order contract. Given the nature of job order work, it is possible that many job orders may not be of a size that would require performance bonds. However, it also means that a contractor may be required to post multiple bonds for multiple job orders during the same time period.

## **VIII. Ability to Provide Preference in Bid Awards**

### **67. Can a city provide a preference for local businesses in its bid award?**

State law allows a city to provide a preference for local businesses when awarding bids only in

<sup>149</sup> *Id.* § 2269.359(a).

<sup>150</sup> *Id.* §§ 2269.359-.362.

<sup>151</sup> *Id.* § 2269.401.

<sup>152</sup> *Id.* § 2269.405.

<sup>153</sup> *Id.* § 2269.409.

<sup>154</sup> *Id.* § 2269.406.

<sup>155</sup> *Id.* § 2269.410.

<sup>156</sup> *Id.* § 2269.411. *See Id.* § 2253.021(a).

specifically authorized situations.<sup>157</sup>

In the first situation, if two or more bidders have bids that are identical in nature and amount, with one bidder being a resident of the city and the other bidder or bidders being non-residents, the city council must select the resident bidder.<sup>158</sup>

Another provision geared towards purchases of tangible items allows the consideration of a bidder's principal place of business when a city awards a contract.<sup>159</sup> The statute states that:

"In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within three percent of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with [either]...the lowest bidder; or...the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government."<sup>160</sup>

A third provision authorizes cities that are purchasing real property, personal property not affixed to real property, or services (with the exception of certain telecommunications services) to enter into a contract with either: (1) the lowest bidder; or (2) a bidder whose principal place of business is in the city and whose bid is within five percent of the lowest bid price, if the governing body determines that the local bidder offers the city the best combination of contract price and additional economic development opportunities, including the employment of residents of the local government and increased tax revenues.<sup>161</sup> This is now limited to contracts for construction services for less than \$100,000.<sup>162</sup>

Finally, cities must give a preference to local businesses if there are out-of-state bidders that have bid on the contract and the out-of-state bidder or manufacturer is located in a state that discriminates against out of-state bidders in its bid awards in favor of local bidders.<sup>163</sup> For example, some states have laws that require an out-of-state bidder to underbid an in-state bidder by a certain minimum amount. In response to such requirements by other states, the Texas Legislature included a provision in Chapter 2252 of the Government Code. That chapter requires that Texas cities determine if a Texas bidder would be required to underbid the non-Texas bidder for a comparable contract in the non-Texas bidder's own state.<sup>164</sup> If such a preference is provided in that state, the non-Texas bidder is then required to underbid the lowest responsible Texas bidder by at least that amount. Thus, if a

<sup>157</sup> Op. Tex. Att'y Gen. No. DM-113 (1992); Tex. Att'y Gen. LO-93-073.

<sup>158</sup> TEX. LOC. GOV'T CODE § 271.901(b).

<sup>159</sup> *Id.* § 271.905.

<sup>160</sup> *Id.* § 271.905(b).

<sup>161</sup> *Id.* § 271.9051.

<sup>162</sup> *Id.*

<sup>163</sup> TEX. GOV'T CODE § 2252.001 et seq.

<sup>164</sup> *Id.* § 2252.002.

Texas city receives a bid from a non-Texas bidder, Chapter 2252 will give the lowest responsible Texas bidder the same advantage as the non-Texas bidder would have in its home state. If the non-Texas bidder is from a state where in-state bidders are not given preference over Texas bidders, then Chapter 2252 will not give the Texas bidder any advantage over the non-Texas bidder.

There are several important points to note with regard to the requirements of Chapter 2252 of the Government Code. First, a bidder's home state is determined by the location of its principal place of business or manufacturing. A contractor whose ultimate parent company or majority owner has its principal place of business in Texas would be considered a Texas bidder.<sup>165</sup> Second, information on the relevant bidding laws of other states is compiled by the comptroller's office. In ascertaining the relevant bidding laws of a particular state for purposes of meeting the requirements of Chapter 2252, a city must use the information provided by the Comptroller's Office.<sup>166</sup> Finally, Chapter 2252 does not apply to a contract involving federal funds.<sup>167</sup>

Finally, some attorneys believe that a city may include under "best value" criteria a local preference component. That opinion has not been tested in court.

## **68. Can a city provide a preference for historically underutilized businesses?**

A city that chooses to award a competitive bid or competitive proposal based on "best value" criteria may consider "the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities" or "any other relevant criteria" listed by the city in the specifications.<sup>168</sup> Some cities have used these provisions to continue seeking to procure services from historically underutilized businesses. In any case, a city may consider a factor that is not related to the bidder's capacity to fulfill the contract only when state law specifically authorizes the city to take that factor into account.<sup>169</sup>

## **69. When is a city required to contact historically underutilized businesses?**

A city must contact at least two historically underutilized businesses if the city makes an expenditure of between \$3,000 and \$50,000.<sup>170</sup> If the expenditure is for less than \$3,000 or for more than \$50,000, this special notification requirement would not apply. To determine what businesses within the county are classified as historically underutilized businesses, the city should use the list of such businesses provided by the Comptroller's Office.<sup>171</sup> If there are more than two such businesses in the county, the city can contact the listed businesses on a rotating basis. Even if the historically underutilized businesses in the county do not provide the goods or services that the city needs, at

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<sup>165</sup> *Id.* § 2252.001(4).

<sup>166</sup> *Id.* § 2252.003.

<sup>167</sup> *Id.* § 2252.004.

<sup>168</sup> *See Id.* § 2267.358(10); TEX. LOC. GOV'T CODE §§ 252.0215, .043.

<sup>169</sup> Op. Tex. Att'y Gen. No. DM-113 (1992); Tex. Att'y Gen. LO-93-073.

<sup>170</sup> TEX. LOC. GOV'T CODE § 252.0215.

<sup>171</sup> *Id.*, TEX. GOV'T CODE § 2161.061 (Comptroller's Office shall certify underutilized businesses.).

least two of those businesses must be contacted.<sup>172</sup> The city is only excused from this notification requirement if there are no such businesses located in the county in which the city is located. State law does not indicate the manner of individual notice that must be provided to the historically underutilized businesses. In any case, it may be advisable to use a manner of notice such as certified mail that would provide a record of contact with the listed businesses.

## **70. How does a city determine whether it has historically underutilized businesses within its area?**

To determine what businesses within the county are classified as historically underutilized businesses, the city should use the list of such businesses provided by the Comptroller's Office.<sup>173</sup> A city may obtain information about historically underutilized businesses from the Comptroller's Office website [www.window.state.tx.us/procurement/prog/hub/](http://www.window.state.tx.us/procurement/prog/hub/). (Note that, in 2013, H.B. 194 added a veteran with at least a 20-percent service-connected disability as eligible to be listed as a historically underutilized business by the state. A legal challenge to that addition is likely.)

## **71. Is a city required to provide a preference for recycled materials in its bid requests?**

Yes, a city must "give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality."<sup>174</sup> Furthermore, a city is required to regularly review and revise its procurement procedures and specifications to eliminate procedures and specifications that explicitly discriminate against products made of recycled materials. Cities are required to make sure their procurement procedures and specifications encourage the use of products made of recycled materials. The Texas Commission on Environmental Quality may order an exemption from these requirements for a city of less than 5,000 people if the commission finds that compliance would work a hardship on the city.<sup>175</sup>

# **IX. Statutory Exceptions to the Competitive Bidding or Proposal Requirements:**

## **Exceptions Due to Public Health, Safety or Welfare**

## **72. Is a city required to bid for purchases that are necessary because of a public calamity?**

A city is not required to follow the competitive procurement requirements of Local Government

<sup>172</sup> ALAN J. BORJORQUEZ, TEXAS MUNICIPAL LAW AND PROCEDURE MANUAL '13.12 (2005).

<sup>173</sup> TEX. LOC. GOV'T CODE § 252.0215 (City to contact historically underutilized businesses based on list provided by Comptroller's Office); TEX. GOV'T CODE § 2161.061 (Comptroller's Office shall certify underutilized businesses.).

<sup>174</sup> TEX. HEALTH & SAFETY CODE § 361.426; TEX. LOC. GOV'T CODE § 252.003 (Requiring that a city follow the requirements set forth in section 361.426).

<sup>175</sup> TEX. HEALTH & SAFETY CODE § 361.426(d).



Code Chapter 252 when making an expenditure because of a public calamity.<sup>176</sup> In order to qualify for this exception from the bidding requirements, the public calamity must be one that requires the immediate appropriation of money to relieve the necessity of the city's residents or to preserve the property of the city. For example, a city may need to purchase medicines or blankets to be dispersed at a temporary city shelter for victims of flooding or tornadoes. Such a purchase would arguably fall under this exception to the competitive bidding requirements. However, this practice does not appear to have been reviewed by the Texas courts or by the attorney general. Thus, a city will want to consult its legal counsel before relying on this exception to avoid competitive procurement requirements.

### **73. Can a city forego bidding or proposals if the purchases are necessary to protect the public health or safety of city residents?**

A city may forego the competitive bidding procedures of Chapter 252 of the Local Government Code when making a purchase that is necessary to preserve or protect the public health or safety of the city's residents.<sup>177</sup> Chapter 252 does not define or give examples of what constitutes a purchase that is "necessary to preserve or protect... public health or safety...." The following activities have been found to fall within the health and safety exception (and thus do not require competitive bidding): 1) building a sanitary sewage system and disposal plant;<sup>178</sup> 2) establishing a county ambulance service;<sup>179</sup> and 3) awarding a contract for collection, hauling and disposal of solid waste (garbage).<sup>180</sup> Cities have also used this exception for the purchase of emergency equipment for city personnel, such as self-contained breathing apparatus for firefighters or bullet-proof vests for police officers. However, these practices have not been reviewed by the Texas courts or the attorney general's office. Thus, a city will want to consult its legal counsel before relying on this exception to avoid competitive bidding requirements.

### **74. Can a city forego bidding or proposals for purchases that are necessary because of unforeseen damage to public machinery, equipment or other property?**

A city is not required to follow the competitive bidding procedures when making a purchase that is necessary because of unforeseen damage to public machinery, equipment or other property.<sup>181</sup> For example, cities have used this exception to justify not taking bids for the purchase of parts for emergency equipment, such as firefighting equipment, when the equipment was unexpectedly damaged or broken. However, parts needed for the routine maintenance of firefighting equipment are generally purchased through the competitive bidding process. In addition, these practices have not been reviewed by the Texas courts or the attorney general's office. Thus, a city will want to consult its legal counsel before relying on this exception to avoid competitive bidding requirements.

<sup>176</sup> TEX. LOC. GOV'T CODE § 252.022(a)(1).

<sup>177</sup> *Id.* § 252.022(a)(2).

<sup>178</sup> *Hoffman v. City of Mt. Pleasant*, 89 S.W.2d 193 (Tex. 1936).

<sup>179</sup> Op. Tex. Att'y Gen. No. M-806 (1971).

<sup>180</sup> *Browning-Ferris, Inc., v. City of Leon Valley*, 590 S.W.2d 729 (Tex. Civ. App.—San Antonio 1979, writ ref'd n.r.e.); Op. Tex. Att'y Gen. No. JM-908 (1988).

<sup>181</sup> TEX. LOC. GOV'T CODE § 252.022(a)(3).

## Exceptions for Specialized Services

### 75. Are contracts for personal services exempt from the requirements for competitive bidding?

Texas law specifically exempts contracts for personal services from the competitive bidding requirements.<sup>182</sup> The Texas Supreme Court has defined “personal services” to include only those services which are performed personally by the individual who contracted to perform them.<sup>183</sup> Further, for a contract to qualify as a contract for personal services, the compensation in the contract should mainly pay for the labor of the individual providing the service, not for such things as insurance or materials.<sup>184</sup>

For example, the attorney general held that a contract for the services of a construction manager was a contract for “personal services” and therefore not subject to competitive bidding requirements.<sup>185</sup> The attorney general has also concluded that a contract for janitorial services would constitute a contract for personal services if a specific person is required to perform those services.<sup>186</sup> However, the following have been found not to be exempt from bidding under the exemption for “personal services”: the provision of advertising space by a newspaper,<sup>187</sup> a contract for microfilming records,<sup>188</sup> an insurance contract,<sup>189</sup> a contract to operate container terminal facilities in a port,<sup>190</sup> and a contract for janitorial services that did not specify the particular person who was to perform the janitorial services.<sup>191</sup> Thus, these contracts were all subject to the competitive bidding requirements of Chapter 252 of the Local Government Code.

### 76. Can a city forego bidding for contracts for professional services?

Texas law specifically exempts contracts for professional services from the competitive bidding requirements.<sup>192</sup> Professional services have been described as those services which are mainly mental or intellectual rather than physical or manual. That is, professional services are those disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence.<sup>193</sup> For example, cities have used this exception to justify not taking bids for the services of an attorney. Some cities have also used this exception to justify employing outside consultants, such as insurance consultants, without competitively bidding those services. However, these practices have not been reviewed by the Texas courts or the attorney general’s office. Thus, a city will want to consult with its legal counsel before relying on this exception in order to avoid the application of competitive bidding requirements.

<sup>182</sup> *Id.* § 252.022(a)(4).

<sup>183</sup> *Van Zandt v. Fort Worth Press*, 359 S.W.2d 893, 895-896 (Tex. 1962).

<sup>184</sup> Op. Tex. Att’y Gen. No. MW-344 at 1137 (1981).

<sup>185</sup> Op. Tex. Att’y Gen. No. MW-530 (1983).

<sup>186</sup> Op. Tex. Att’y Gen. No. JM-486 (1986).

<sup>187</sup> *Van Zandt v. Fort Worth Press*, 359 S.W.2d 893, 896 (Tex. 1962).

<sup>188</sup> Op. Tex. Att’y Gen. No. JM-890 (1988).

<sup>189</sup> Op. Tex. Att’y Gen. No. MW-494 (1982).

<sup>190</sup> Op. Tex. Att’y Gen. No. MW-344 (1981).

<sup>191</sup> Op. Tex. Att’y Gen. No. JM-486 (1986).

<sup>192</sup> TEX. LOC. GOV’T CODE § 252.022(a)(4).

<sup>193</sup> Op. Tex. Att’y Gen. Nos. JM-1038 (1989), JM-940 (1988), MW-344 (1981) (Quoting with approval the definition of “profession” from Black’s Law Dictionary 1089-90 (5<sup>th</sup> ed. 1979)).

Additionally, it should be noted that a city is specifically prohibited under state law from obtaining certain professional services through competitive bidding. The Professional Services Procurement Act states that a city may not use traditional competitive bidding procedures to obtain the services of architects, engineers, certified public accountants, land surveyors, physicians, optometrists or state-certified real estate appraisers.<sup>194</sup> If the professional services desired by the city do not fall under the Professional Services Procurement Act, they may generally be obtained with or without the use of competitive bidding, as the city desires.<sup>195</sup>

**77. How may a city obtain the services of architects, engineers, certified public accountants, land surveyors, physicians, optometrists, landscape architects, geoscientists or state certified real estate appraisers?**

Cities are prohibited from using competitive bidding procedures to obtain the services of architects, engineers, certified public accountants, land surveyors, physicians, optometrists, landscape architects, geoscientists or state-certified real estate appraisers.<sup>196</sup> Instead, for contracts involving architectural, engineering or land surveying services, a city must first select the most highly qualified provider and then attempt to negotiate a fair and reasonable price.<sup>197</sup> If the city is unable to negotiate a contract with the most highly qualified provider, the city must then formally end negotiations with that provider. After negotiations have formally ended, the city must select the next most highly qualified provider and attempt to negotiate a contract with that provider. If necessary, the city must continue the process of formally ending negotiations with one provider and selecting another provider for negotiations until a contract is obtained.

The Professional Services Procurement Act does not specify the exact process by which a city may procure accounting, medical, optometrist or real estate appraisal services. The law merely prohibits obtaining these services through competitive bidding and requires that such services be selected on the basis of demonstrated competence and qualifications. Cities will want to consult their own counsel for advice on how best to proceed.

**78. What procedure must cities use to obtain the services of a lawyer or the services of a law firm?**

With the exception of certain bond counsel, state law does not specify any particular procedures for obtaining the services of a lawyer or of a law firm. The Professional Services Procurement Act does not apply to attorneys,<sup>198</sup> and the selection of an attorney is exempt from competitive bidding requirements as a "professional service."<sup>199</sup> Thus, a city may choose to obtain the services of an

<sup>194</sup> TEX. GOV'T CODE § 2254.003.

<sup>195</sup> Op. Tex. Att'y Gen. No. DM-106 (1992).

<sup>196</sup> TEX. GOV'T CODE §§ 2254.002(2), 2254.003.

<sup>197</sup> *Id.* § 2254.004.

<sup>198</sup> *See id.* § 2254.002 (Definition of "professional services" within the meaning of the Professional Services Procurement Act).

<sup>199</sup> *See* TEX. LOC. GOV'T CODE § 252.022(a)(4); Op. Tex. Att'y Gen. No. JM-940 at 3 (1988), MW-344(1981).

attorney with or without the use of competitive bidding. Many cities simply hire their legal counsel by majority vote of the city's governing body and then execute a contract for such services.<sup>200</sup> Cities should consult their current counsel for advice about this issue. When procuring the services of bond counsel, a city should review and comply with, if necessary, section 1201.027 of the Government Code, which requires that the selection of bond counsel shall be made in accordance with the provisions of the Professional Services Procurement Act that apply to the selection of an engineer.

## **79. Are contracts for planning services exempt from competitive bidding requirements?**

Texas law specifically exempts contracts for planning services from the competitive bidding requirements.<sup>201</sup> However, it is important to note that the phrase "planning services" is specifically defined by Chapter 252. That term means "services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan or regional land areas."<sup>202</sup> In order to be eligible for the planning services exception to the competitive bidding requirements, the planning services to be procured must fit this definition.

## **80. Does competitive bidding apply to services performed by blind or severely disabled persons?**

Competitive bidding does not apply to the purchase of services performed by blind or severely disabled persons.<sup>203</sup>

## **Exceptions for Items Available from Only One Source**

## **81. Does competitive bidding apply to the purchase of items that are available from only one source because of copyrights or "natural monopolies"?**

Competitive bidding requirements do not apply to items that are available from only one source due to "patents, copyrights, secret processes, or natural monopolies."<sup>204</sup> For example, at least one city has used this exception to avoid the bidding requirements when purchasing a special type of surveillance camera for police work. The camera in question was able to transmit pictures directly to a lap-top computer using a patented process. The entity that owned the patent for this process was the sole source for this type of camera. However, it should be noted that this transaction has not been reviewed by the Texas courts or the attorney general's office. Thus, a city will want to consult its legal counsel before relying on this exception to avoid competitive bidding requirements.

<sup>200</sup> Op. Tex. Att'y Gen. No. DM-106 (1992).

<sup>201</sup> TEX. LOC. GOV'T CODE § 252.022(a)(4).

<sup>202</sup> *Id.* § 252.001(5).

<sup>203</sup> *Id.* § 252.022(a)(13). See Op. Tex. Att'y Gen. No. JM-444 (1986) (General statutes that require counties, cities, hospital districts, and school districts to engage in competitive bidding in order to make certain purchases do not apply to purchases of services or produce produced by persons with disabilities pursuant to section 122.014 [now section 122.017] of the Human Resources Code.).

<sup>204</sup> TEX. LOC. GOV'T CODE § 252.022(a)(7)(A).

**82. Does competitive bidding apply to the purchase of “captive replacement parts” or components for equipment?**

Competitive bidding requirements do not apply to the purchase of captive replacement parts or components for equipment if those parts or components are available from only one source.<sup>205</sup> For example, cities have used this exception to justify not taking bids for the purchase of parts for specialized heavy equipment, such as fire trucks, sewer-cleaning equipment, and certain equipment for road building and maintenance. Frequently, only specialized parts manufactured by the vendor will properly fit such a piece of heavy equipment. It is important to note, though, that this use of the “captive replacement parts” exception has not been reviewed by the Texas courts or the attorney general’s office. Thus, a city will want to consult its legal counsel before relying on this exception to avoid competitive bidding requirements.

**83. Does competitive bidding apply to the purchase of electricity, gas, water and other utility services?**

Competitive bidding is not required for the purchase of gas, water and other utility services if those services are available from only one source.<sup>206</sup> The competitive bidding requirements do not apply to an expenditure for electricity.<sup>207</sup>

**84. Does competitive bidding apply to the purchase of advertising?**

Competitive bidding is not required for advertising by a city, other than legal notices.<sup>208</sup>

The definition of advertising is discussed in a number of court cases. Thus, city officials should consult with legal counsel (regarding *Edwards v. Lubbock County*, 33 S.W.2d 482; *Bay Electric Supply v. Travelers Lloyds*, 61 F.Supp.2d 611; and *Smith v. Baldwin*, 611 S.W.2d 611) prior to utilizing this exemption.

**85. Does competitive bidding apply to the purchase of books and other materials for a public library?**

Competitive bidding is not required for the purchase of books, papers and other materials for a public library if those books, papers or materials are available only from the persons holding exclusive distribution rights to the materials.<sup>209</sup> Additionally, competitive bidding requirements do not apply to the purchase of rare books, papers and other rare library materials for a public library.<sup>210</sup>

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<sup>205</sup> *Id.* § 252.022(a)(7)(D).

<sup>206</sup> *Id.* § 252.022(a)(7)(C).

<sup>207</sup> *Id.* § 252.022(a)(15).

<sup>208</sup> *Id.* § 252.022(a)(16).

<sup>209</sup> *Id.* § 252.022(a)(7)(E).

<sup>210</sup> *Id.* § 252.022(a)(8).

## **Exceptions for Distress or Auction Purchases**

### **86. Does a city violate bidding requirements if it purchases personal property at an auction?**

A city is not required to comply with competitive bidding procedures when purchasing personal property at an auction by a state licensed auctioneer.<sup>211</sup> Currently, it does not appear that cities use this exception with any great frequency.

### **87. Does a city violate bidding requirements if it purchases property at a going-out-of-business sale?**

A city is not required to comply with the competitive bidding procedures when purchasing personal property at a going-out-of-business sale.<sup>212</sup> However, for this exception to apply, the sale must comply with the requirements of subchapter F in Chapter 17 of the Business and Commerce Code. This practice has not been reviewed by the Texas courts or the attorney general's office. Thus, a city will want to consult its legal counsel before relying on this exception to avoid competitive bidding requirements.

## **Exceptions for Purchases from Other Governmental Entities**

### **88. Does a city violate bidding law if it purchases property or services directly from another political subdivision of this state, a state agency or a federal agency without following competitive bidding procedures?**

There are a number of statutes that allow a city to purchase either property or services from other governmental entities or agencies without following competitive bidding procedures.

The Interlocal Cooperation Act<sup>213</sup> generally allows a city to enter into an agreement with another local governmental entity, such as a county or another city, to perform specific governmental functions and services, such as solid waste collection, fire protection, planning and administrative services. The Act further provides that a city may agree with another local government, a state agency (including the Comptroller's Office), or a council of governments to purchase goods (and services reasonably related to the operation and maintenance of the goods) from that entity.<sup>214</sup>

Chapter 271, subchapter D, of the Local Government Code allows a city, by resolution of its governing body, to participate in cooperative purchasing programs established by the Comptroller's Office for the purchase of goods at prices established through purchase contracts of the Comptroller. The city must agree to be solely responsible for, among other things, submitting the proper

<sup>211</sup> *Id.* § 252.022(a)(12)(A).

<sup>212</sup> *Id.* § 252.022(a)(12)(B).

<sup>213</sup> TEX. GOV'T CODE ANN. § 791.001 et seq. (West 2004 & Supp. 2011).

<sup>214</sup> *Id.* § 791.025 (West Supp. 2011).

requisitions to the Comptroller under the contract in question, direct payment to the vendor and enforcement of the vendor's compliance with conditions for delivery and quality of the purchased goods.<sup>215</sup>

Sections 252.022(a)(12)(C) and (12)(D) of the Local Government Code exempt purchases of personal property sold by a political subdivision of the state, a state agency, an entity of the federal government, or a regional planning commission (e.g., a regional council of governments) under an interlocal contract for cooperative purchasing from competitive bidding.

Finally, Chapter 271, subchapter F, of the Local Government Code allows local governments (including cities) to enter into cooperative purchasing agreements with each other for goods and services.<sup>216</sup> Subchapter G allow local governments to purchase goods and services available under federal supply schedules established by the U.S. General Services Administration, without following competitive bidding procedures.<sup>217</sup>

Compliance with the requirements of any of the cooperative or interlocal agreement purchasing statutes described above automatically satisfies the competitive bidding requirements of state law. Many specific interlocal purchasing practices have not been reviewed by the Texas courts or the attorney general's office. For example, H.B. 1050 (2013) prohibits a local government from entering into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the local government certifies in writing that: (a) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications by an architect or engineer under current law; or (b) if current law requires plans and specifications to be prepared by an architect or engineer, that has been done.

Therefore, a city will want to consult its legal counsel before relying on any of the exceptions noted above to avoid competitive bidding requirements.

## **Exceptions for Purchases with Specialized Financing**

### **89. Does competitive bidding apply to a contract for paving, drainage, street widening and other public improvements if at least one-third of the cost is paid through special assessments?**

A city is not required to comply with competitive bidding requirements when expending money for paving, drainage, street widening and other public improvements if at least one-third of the cost is to be paid by special assessments levied on the benefited property.<sup>218</sup> Currently, it does not appear that cities use this exception with any great frequency.

<sup>215</sup> TEX. LOC. GOV'T CODE ANN. § 271.083 (West Supp. 2011); Op. Tex. Att'y Gen. No. DM-350 (1995).

<sup>216</sup> *Id.* § 271.102 (S.B. 1281, passed in 2015, allows agreements with local governments and cooperatives in other states).

<sup>217</sup> *Id.* § 271.103.

<sup>218</sup> *Id.* § 252.022(a)(9).

**90. Does competitive bidding apply to a contract for a previously authorized public improvement that is experiencing a deficiency in funding to complete the project?**

Competitive bidding requirements do not apply to expenditures for a public improvement that is already in progress if there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters.<sup>219</sup> This exception to the competitive bidding requirement only applies to a project that was authorized by the voters of the city. Currently, it does not appear that cities use this exception with any great frequency.

**91. Are developer participation contracts subject to competitive bidding if the city's participation is limited to thirty percent of the total contract price?**

A "developer participation contract" is a contract between the city and a developer for the developer to be responsible for the construction of public improvements (other than buildings). Under such a contract, the city agrees to pay for part of the cost of the public improvements. A city of 5,000 or more in population may enter into such a contract without following competitive bidding procedures if the contract meets all the requirements of Local Government Code Chapter 212, subchapter C.<sup>220</sup> Among the requirements of that subchapter is that the city's level of participation in the contract must not exceed 30 percent of the contract price if the city has a population of less than 1.8 million.<sup>221</sup> Additionally, the developer must execute a performance bond.<sup>222</sup> If a developer participation contract does not meet these requirements as well as all the other requirements contained in Chapter 212, subchapter C, then the contract is subject to all of the normal rules regarding competitive bidding.<sup>223</sup>

**92. Can a city forego bidding for work that is performed and paid for by the day?**

Yes, Chapter 252 of the Local Government Code specifically excepts from the bidding requirements "a procurement for work that is performed and paid for by the day as the work progresses."<sup>224</sup> Nearly identical language is found in the County Purchasing Act.<sup>225</sup> An attorney general opinion interpreting the County Purchasing Act concluded that a contract for work performed and paid for by the day is a contract only for the day.<sup>226</sup> The fact that payment on a contract is made on a daily basis does not make it into a contract for work performed and paid for by the day. Thus, a contract obligating the county to pay for all future work or obligating a party to provide day labor to do the future work on a project is not a contract for work performed and paid by the day. This is true even if

<sup>219</sup> *Id.* § 252.022(a)(10).

<sup>220</sup> *Id.* § 212.071.

<sup>221</sup> *Id.* § 212.072(b)(1).

<sup>222</sup> *Id.* § 212.073.

<sup>223</sup> *Id.* § 212.071.

<sup>224</sup> *Id.* § 252.022(a)(5).

<sup>225</sup> *Id.* § 262.024(a)(5).

<sup>226</sup> Tex. Att'y Gen. LO-98-015.



the contract stipulates that payment must be made on a daily basis. Since a contract for work performed and paid for by the day rarely reaches the \$50,000 bidding threshold, this exception is used very infrequently.

## **X. Ethical Requirements Relating to Municipal Procurement**

### **93. What is Chapter 176 of the Local Government Code?**

Chapter 176 is an ethics law. Originally enacted by H.B. 914 in 2005, Chapter 176 requires local government officers to disclose certain relationships with vendors who conduct business with local government entities. After the law was implemented, city officials and others realized that the law created several unintended consequences. Consequently, the bill's author sought an opinion from the Texas attorney general to clarify many provisions of Chapter 176. The attorney general's office released Opinion Number GA-0446, which concluded that legislative changes to the law were necessary. In response, the legislature passed H.B. 1491 during the 2007 regular legislative session. More recent amendments were made to Chapter 176 with the passage of H.B. 23 in the 2015 regular legislative session.

### **94. What local government entities are subject to this law?**

The requirements of chapter 176 apply to most political subdivisions, including a city.<sup>227</sup> The chapter also applies to a local government corporation, board, commission, district, or authority whose members are appointed by a mayor or the city council.

### **95. What local government officers are subject to this law?**

A "local government officer" (officer) under Chapter 176 includes: (1) a mayor or city councilmember; (2) a director, superintendent, administrator, president, or any other person who is designated as the executive officer of the local government entity; and (3) an agent (including an employee) of the local government entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.<sup>228</sup>

### **96. When is an officer required to file a "conflicts disclosure statement"?**

An officer is required to file a conflicts disclosure statement ("statement") in at least three situations.

1. An officer must file a statement if the officer or officer's family member has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months.<sup>229</sup> An officer who receives investment income, regardless of amount, is not required to file a

<sup>227</sup> TEX. LOC. GOV'T CODE § 176.001(3).

<sup>228</sup> *Id.* § 176.001(1), .001(4).

<sup>229</sup> *Id.* § 176.003(a)(2)(A).

disclosure statement. Investment income includes dividends, capital gains or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.<sup>230</sup>

2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts from a vendor with an aggregate value of more than \$100 in the preceding twelve months.<sup>231</sup> (A "gift" includes transportation, lodging, and entertainment, even as a guest.)
3. An officer is required to file a statement if the officer has a family relationship with the vendor.<sup>232</sup>

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.<sup>233</sup>

(Note: An officer is required to file a statement no later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require the filing of the statement.)<sup>234</sup>

## **97. How does Chapter 176 define a "vendor," and what does it mean to have a "family relationship" with a vendor?**

A vendor is any person who enters or seeks to enter into a contract with a city.<sup>235</sup> The term includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract; and (3) Texas Correctional Industries (but no other state agency).

An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage).<sup>236</sup> An officer's family relationships within the third degree by blood include the officer's: mother, father, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great-grandfather, great-grandmother, aunt, uncle, nephew, niece, great-grandson and great-granddaughter. An officer's family relationships within the second degree by marriage include the officer's: spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepchild, sister-in-law (brother's spouse or spouse's sister), brother-in-law (sister's spouse or spouse's brother), spouse's grandmother, spouse's grandfather, spouse's granddaughter, and spouse's grandson.

## **98. How does Chapter 176 define a "family member" of an officer?**

<sup>230</sup> *Id.* § 176.001(2-d).

<sup>231</sup> *Id.* § 176.003(a)(2)(B).

<sup>232</sup> *Id.* § 176.003(a)(2)(C).

<sup>233</sup> *Id.* § 176.003(a-2).

<sup>234</sup> *Id.* § 176.003(b).

<sup>235</sup> *Id.* § 176.001(7).

<sup>236</sup> *Id.* § 176.001(2-a).

An officer's family member is a person related to the officer within the first degree of consanguinity (blood) or affinity (marriage).<sup>237</sup> An officer's family member includes the officer's: father, mother, son, daughter, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law or step child.

## **99. To what types of contracts does the law apply?**

The law applies to any written contract for the sale or purchase of real property, goods (personal property) or services.<sup>238</sup> A contract for services would include one for skilled or unskilled labor, as well as for professional services.<sup>239</sup>

## **100. When is a vendor required to file a "conflicts of interest questionnaire?"**

A vendor is required to file a "conflicts of interest questionnaire" ("questionnaire") if the vendor has a business relationship with the city and: (1) has an employment or other business relationship with an officer or an officer's family member that results in the receipt by the officer or family member of taxable income of more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.<sup>240</sup>

A vendor is required to file a questionnaire not later than the seventh business day after the latter of the following: (1) the date the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member.

## **101. With whom should the statements and questionnaires be filed?**

The statements and questionnaires must be filed with the records administrator of the city.<sup>241</sup> A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under the chapter.<sup>242</sup>

A city that maintains a website is required to post on that website statements and questionnaires that are required to be filed under the chapter. However, a city that does not have a website is not required to create or maintain one.<sup>243</sup>

(Note: A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date the

<sup>237</sup> *Id.* § 176.001(2).

<sup>238</sup> *Id.* § 176.001(1-d), (2-c).

<sup>239</sup> *Id.* § 176.001(6).

<sup>240</sup> *Id.* § 176.006(a).

<sup>241</sup> *Id.* §§ 176.003(b), .006(a-1).

<sup>242</sup> *Id.* § 176.001(5).

<sup>243</sup> *Id.* § 176.009.

vendor becomes aware of a employment or business relationship with an officer or officer's family members, gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.<sup>244</sup>)

## 102. What happens if a statement is not filed?

An officer or vendor who knowingly fails to file a statement or a questionnaire when required to do so commits either a Class A, B, or C misdemeanor, depending on the amount of the contract.<sup>245</sup> A Class C misdemeanor is punishable by a fine of up to \$500. A Class B misdemeanor is punishable by a fine up to \$2,000, confinement in jail for a term not to exceed 180 days, or both. A Class A Misdemeanor is punishable by a fine up to \$4,000, confinement in jail for a term not to exceed one year, or both. It is an exception to an offense if the officer or vendor files the statement or questionnaire not later than the seventh business day after receiving notice from the city of the alleged violation.<sup>246</sup>

In addition to possible criminal punishment, a city may reprimand, suspend, or terminate an employee who knowingly fails to comply with the requirements of Chapter 176.<sup>247</sup> And the city council may declare a contract void if the council determines the vendor failed to file a questionnaire.<sup>248</sup>

(Note: The validity of a contract between a city and a vendor is not affected solely because an officer or vendor fails to file a questionnaire.)<sup>249</sup>

## 103. Where can an officer or vendor obtain the necessary forms?

The Texas Ethics Commission is charged with creating statement and questionnaire forms.<sup>250</sup> The forms can be found at [www.ethics.state.tx.us](http://www.ethics.state.tx.us) or by contacting the TML Legal Department at 512-231-7400 or [legalinfo@tml.org](mailto:legalinfo@tml.org).

## 104. What is Chapter 171 of the Local Government Code?

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.<sup>251</sup> It prohibits a local public official from voting or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public or, in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.<sup>252</sup>

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<sup>244</sup> *Id.* § 176.006(a-1).

<sup>245</sup> *Id.* §§ 176.013.

<sup>246</sup> *Id.* §§ 176.013(f)-(g).

<sup>247</sup> *Id.* § 176.013(d).

<sup>248</sup> *Id.* § 176.013(e).

<sup>249</sup> *Id.* § 176.006(i).

<sup>250</sup> *Id.* §§ 176.003(e), 176.006(b).

<sup>251</sup> *Id.* §§ 171.001-.010.

<sup>252</sup> *Id.* § 171.004(a).

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper, stating the nature and extent of the interest.<sup>253</sup> In addition, a local public official is required to abstain from further participating in the matter. However, a local public official who is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.<sup>254</sup>

More detailed information on Chapter 171 is available in a separate attorney general publication known as "*Conflicts of Interest Laws Made Easy*" located online at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov).

## **105. What is H.B. 1295?**

H.B. 1295 will apply to contracts entered into after January 1, 2016. The bill provides that: (1) a city is prohibited from entering into a contract with a business entity unless the business entity submits a disclosure of interested parties (i.e., discloses a person who has a controlling interest in the business or who actively participates in facilitating the contract for the business) if the contract: (a) requires an action or vote by the city council before the contract may be signed; or (b) the contract has a value of at least \$1 million; (2) the disclosure must be on a form prescribed by the Texas Ethics Commission; and (3) a city must, not later than 30 days after receiving a disclosure, submit a copy to the Texas Ethics Commission.

As of printing, the rules and form had not been adopted by the Ethics Commission. City officials should be aware of the new law and consult with local legal counsel regarding its application.

## **XI. Enforcement of Bidding Requirements**

### **106. What civil remedies are available to an individual or entity if the competitive bidding laws are not followed?**

If a city enters into a contract without complying with the requirements of Chapter 252 of the Local Government Code, the contract is void.<sup>255</sup> Any property tax paying resident of the city may bring suit in district court to stop the performance or payment of the contract. Further, if the contract is for the construction of public works, a person who submitted a bid for a contract for which the competitive sealed bidding requirement applies, regardless of residency, may bring suit in district court to stop the performance or payment of the contract.<sup>256</sup>

### **107. What criminal penalties apply if the competitive bidding laws are not followed?**

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<sup>253</sup> *Id.* § 171.004(a)-(b).

<sup>254</sup> *Id.* § 174.004(c).

<sup>255</sup> *Id.* § 252.061.

<sup>256</sup> *Id.*

If a person fails to comply with the competitive bidding or competitive proposal procedures required by Chapter 252, that person may be convicted of a Class B misdemeanor.<sup>257</sup> This includes a situation in which a person makes or authorizes separate, sequential or component purchases in an attempt to avoid competitive bidding requirements. A Class B misdemeanor may be punished by a fine of up to \$2,000, confinement in jail for up to 180 days, or both the fine and confinement.<sup>258</sup>

#### **108. Can city officials or employees be removed from office for failure to comply with competitive bidding laws?**

Under Texas law, an individual is automatically removed from his or her position if that person is finally convicted of failing to comply with the competitive bidding or competitive proposal procedures required by Local Government Code Chapter 252.<sup>259</sup> Once removed from office, such a person may not hold any public office in this state for four years after the date of final conviction. Also, for four years after the date of final conviction, the convicted person may not be employed by the city where the person was serving when the offense occurred and may not receive any compensation through a contract with the city. The convicted person may, however, continue to receive any retirement or workers' compensation benefits.

#### **109. Are there different consequences for elected officials, as compared to city staff, for bidding violations?**

There are not different consequences for elected officials or city staff for bidding violations.<sup>260</sup>

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<sup>257</sup> *Id.* § 252.062.

<sup>258</sup> TEX. PENAL CODE ANN. § 12.22.

<sup>259</sup> TEX. LOC. GOV'T CODE ANN. § 252.063.

<sup>260</sup> *Id.* §§ 252.062, .063.

## **Acknowledgments**

This paper has come about through the efforts of many attorneys over the years. It began as a publication of the Texas attorney general's office, where it was edited by Zindia Thomas, assistant attorney general, and Julian Grant, now assistant city attorney in Corpus Christi, based on previous work by Jeff Moore with Brown and Hofmeister ([www.bhlaw.net](http://www.bhlaw.net)) and others. The more recent updates have been provided by Jeff Chapman of Ford, Nassen, and Baldwin, and Scott Houston, Deputy Executive Director and General Counsel, Texas Municipal League.



## Council Agenda Item

Item 5  
C'Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: City Secretary
Fund Balance-before expenditure:	Prepared by: City Secretary Scott Grey
Estimated Cost:	Date Prepared: November 30, 2017
Exhibits:	Proposed Minutes

### AGENDA SUBJECT

APPROVAL OF MEETING MINUTES FOR SEPTEMBER 28, 2017. [SCOTT GREY]

### SUMMARY

Please review the attached minutes. If you have any questions, comments, and/or corrections, please contact the City Secretary at [PGrey@parkertexas.us](mailto:PGrey@parkertexas.us) prior to the City Council meeting.

### POSSIBLE ACTION

City Council may direct staff to take appropriate action.

Inter – Office Use			
Approved by:			
Department Head/ Requestor:	<i>Patti Scott Grey</i>	Date:	11/30/2017
City Attorney:		Date:	
City Administrator:	<i>Jeff Flanigan</i>	Date:	12/01/2017



**MINUTES**  
**CITY COUNCIL MEETING**  
**SEPTEMBER 28, 2017**

**CALL TO ORDER – Roll Call and Determination of a Quorum**

The Parker City Council met in a special meeting on the above date at Parker City Hall, 5700 E. Parker Road, Parker, Texas, 75002.

Mayor Z Marshall called the meeting to order at 6:00 p.m. Council members Scott Levine, Cindy Meyer, Lee Pettie, Cleburne Raney, and Ed Standridge were present.

Staff Present: City Administrator Jeff Flanigan, City Secretary Patti Scott Grey, City Attorney Brandon Shelby, and Police Captain Kenneth Price

**EXECUTIVE SESSION 6:00 P.M. TO 7:00 P.M. – Pursuant to the provisions of Chapter 551, Texas Government Code the City Council may hold a closed meeting.**

1. RECESS TO CLOSED EXECUTIVE SESSION IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN:
  - a. Section 551.071(1)—Consultation with City Attorney concerning Pending or Contemplated Litigation
  - b. Section 551.074 - (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

Mayor Marshall recessed the regular meeting at 6:02 p.m.

2. RECONVENE REGULAR MEETING.

Mayor Marshall reconvened the regular meeting at 7:00 p.m.

3. ANY APPROPRIATE DELIBERATION AND/OR ACTION ON ANY OF THE EXECUTIVE SESSION SUBJECTS LISTED ABOVE.

No action was taken.

**PLEDGE OF ALLEGIANCE**

AMERICAN PLEDGE: Eagle Scout Jacob (Jake) Reed led the pledge.

TEXAS PLEDGE: Ray Reed led the pledge.

None

## **PROCLAMATION**

PRESENTATION RECOGNIZING EAGLE SCOUT JACOB (JAKE) REED FOR HIS SERVICE FOR THE CITY OF PARKER. [MARSHALL]

Mayor Marshall read a proclamation, recognizing Eagle Scout Jacob (Jake) Reed for his many accomplishments. The Mayor, City Council, City Staff, and audience applauded. Eagle Scout Reed accepted the proclamation and thanked everyone.

## **INDIVIDUAL CONSIDERATION ITEMS**

4. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-553, REGARDING A NOMINATION FOR THE ELECTION OF COLLIN CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTIONS. [MARSHALL]

MOTION: Mayor Pro Tem Levine moved to approve Resolution No. 2017-553, nominating Ed Standridge, as a candidate for the Collin County Central Appraisal District Board of Directors. Councilmember Raney seconded with Councilmembers Levine, Meyer, Pettie, Raney, and Standridge voting for the motion. Motion carried 5-0.

5. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON ARCHITECTURAL SERVICES. [MARSHALL]

City Councilmembers voiced their opinions regarding the two (2) architectural firms, particularly the difference in presentations and approaches to the Municipal Complex project. City Council determined it would be in the City of Parker's best interest to have City Engineer John Birkhoff, P.E., "weigh in" or review the two (2) proposals and provide input, if any. Mayor Pro Tem Levine also asked City Administrator Flanigan to reach out to Randall Scott Architects to address Councilmember Pettie's concern whether their firm had the other services mentioned by Pierce, Goodwin, Alexander & Linville (PGAL). Mr. Flanigan said Randall Scott Architects had similar services. That information was provided in their proposal. Randall Scott Architects did not discuss their other services in the presentation.

MOTION: Mayor Pro Tem Levine moved to table any action regarding the selection of architectural services for additional information and review by City Engineer John Birkhoff. Councilmember Pettie seconded with Councilmembers Levine, Meyer, Pettie, Raney, and Standridge voting for the motion. Motion carried 5-0.

## **ROUTINE ITEMS**

6. FUTURE AGENDA ITEMS

Mayor Marshall said he needed to talk to Mayor Pro Tem Levine about the fact that he would be unavailable for the October 17, 2017 City Council meeting. He asked Mayor Pro Tem Levine if he would consider having a meeting that night. Mr. Levine said he could do that meeting. The Mayor noted Councilmember Raney would also be unavailable for that meeting. The next regularly scheduled meeting would be Tuesday, October 17, 2017. The Mayor also said he was considering a special meeting for October 24, 2017.

Mayor Marshall asked if there were any items to be added to the future agenda. He noted the selection of architectural services and asked City Attorney Shelby if he would be ready for the municipal sales tax item. Mr. Shelby said he would have the municipal sales tax research completed for the October 17, 2017 meeting.

7. ADJOURN

Mayor Marshall adjourned the meeting at 7:15 p.m.

APPROVED:

\_\_\_\_\_  
Mayor Z Marshall

ATTESTED:

Approved on the 5th day  
of December, 2017.

\_\_\_\_\_  
Patti Scott Grey, City Secretary

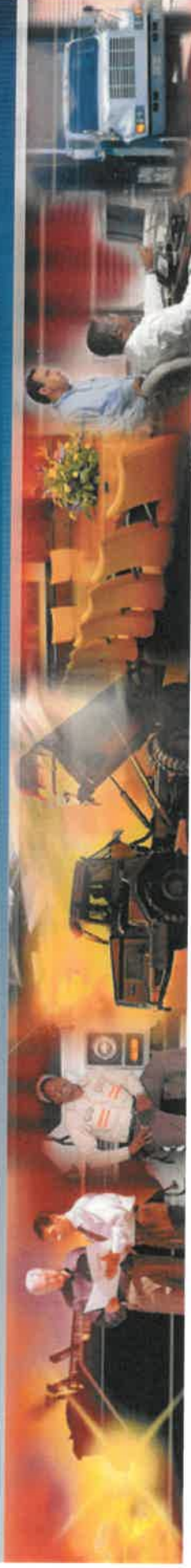
# ***City of Parker***



## **July 2017 - Sept. 2017 Quarterly Report**

**Rick Bernas**

**REPUBLIC SERVICES OF PLANO**





# YTD tons 2017



PARKER	1st Qtr 2016	1st Qtr 2017	2nd Qtr 2017	3 rd Qtr 2017
Solid Waste	345	368	386	392
Recycle	129	139	142	145
Bulk/Brush	245	325	356	369
<b>TOTALS</b>	<b>719</b>	<b>832</b>	<b>884</b>	<b>906</b>



# Drive By's 2017



Drive by's /all servcies

3rd - qtr:

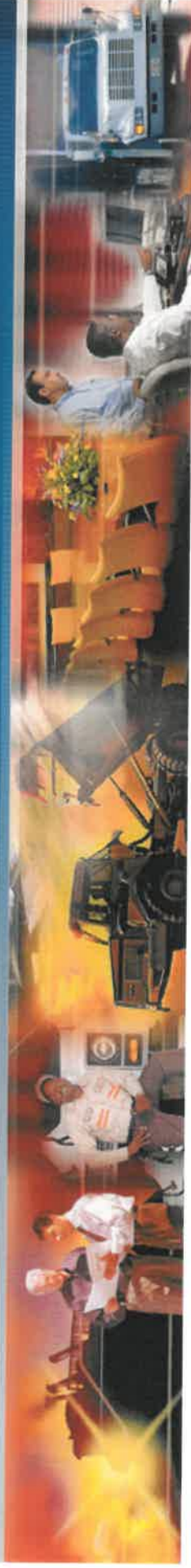
17,316-trash

8,658- recycle

3,996 - bulk

29,790 - drive by's

Homes: 1,332





## **Customer Satisfaction**



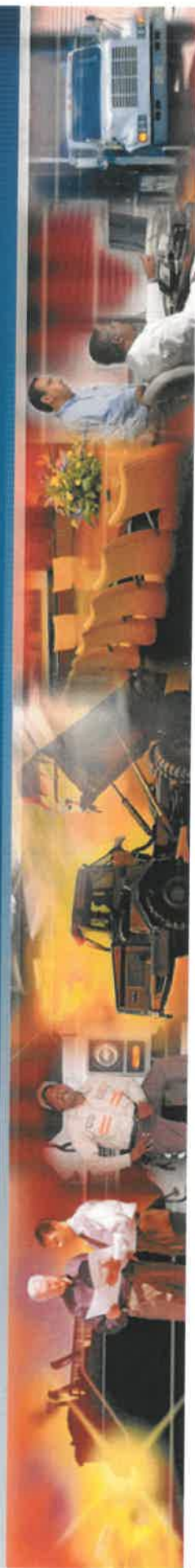
**3rd Quarter :**  
**.Successful HHW Event held**  
**Complaint log had only 2 calls**





TWO INDUSTRY INNOVATORS ARE NOW ONE ENVIRONMENTAL LEADER.

# Thank You CITY OF PARKER





# ANIMAL CONTROL REPORT OCTOBER 2017

<b>Call #</b>	<b>Date:</b>	10/2/2017	<b>Caller Remarks:</b>	FOUND 2 HORSES DITCH. OWNER FOUND. LOCK ON GATE WAS PICKED.VG	
<b>1</b>	<b>Invoice Type:</b>	No Charge	<b>Expected Charge:</b>	\$0.00	
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>	
	Stray	City Personnel	Other	NA	
<b>Call #</b>	<b>Date:</b>	10/4/2017	<b>Caller Remarks:</b>	DEAD SKUNK ON DUBLIN RD HALFWAY BETWEEN BETSY/PARKER.VG	
<b>2</b>	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00	
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>	
	Dead Animal	Murphy Animal Control	Murphy Pick Up	Destroyed	
<b>Call #</b>	<b>Date:</b>	10/5/2017	<b>Caller Remarks:</b>	CAME IN AND ADVISED OF BLK/WT DOG WITH FULL BODY HARNESS RAL AT CORINTH PRESBY CHURCH.	
<b>3</b>	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00	
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>	
	Stray	Murphy Animal Control	No Animal Found	NA	
<b>Call #</b>	<b>Date:</b>	10/10/2017	<b>Caller Remarks:</b>	DEAD RABBIT ON WEST SIDE OF BACK PATIO.VG	
<b>4</b>	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00	
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>	
	Dead Animal	Murphy Animal Control	Murphy Pick Up	Destroyed	

<b>Fiscal Year Budget = \$6,000</b>	
<b>Fiscal Year Charges</b>	
<b>October =</b>	<b>430.00</b>
<b>November =</b>	
<b>December =</b>	
<b>January =</b>	
<b>February =</b>	
<b>March =</b>	
<b>April =</b>	
<b>May =</b>	
<b>June =</b>	
<b>July =</b>	
<b>August =</b>	
<b>September =</b>	
<b>Total =</b>	<b>\$430.00</b>

# ANIMAL CONTROL REPORT OCTOBER 2017

<b>Call #</b>	<b>Date:</b>	10/10/2017	<b>Caller Remarks:</b>	PIT MIX-OLDER WHITE/TAN STANDING IN MIDDLE OF ROAD.VG
5	<b>Invoice Type:</b>	Service Fee + 3 Days	<b>Expected Charge:</b>	\$80.00
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>
	Stray	Murphy Animal Control	Murphy Pick Up	Holding
<b>Call #</b>	<b>Date:</b>	10/12/2017	<b>Caller Remarks:</b>	MICROCHIP ON DOG AT SHELTER SHOWS IT BELONGS IN PARKER. PERMISSION TO GO TO HOUSE AND LET OWNER KNOW.VG
6	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>
	Stray	Murphy Animal Control	Murphy Pick Up	Returned to Owner
<b>Call #</b>	<b>Date:</b>	10/13/2017	<b>Caller Remarks:</b>	CAT BITE. HOME QUARANTINE.KC
7	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>
	Animal Bite	Murphy Animal Control	Other	Quarantined/Follow Up
<b>Call #</b>	<b>Date:</b>	10/24/2017	<b>Caller Remarks:</b>	BLACK & WHITE MALE DOG RAL.LN
8	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>
	Stray	Murphy Animal Control	Murphy Pick Up	Returned to Owner-No ticket

# ANIMAL CONTROL REPORT OCTOBER 2017

<b>Call #</b>	<b>Date:</b>	10/24/2017	<b>Caller Remarks:</b>	CAT BITE. HOME QUARANTINE. KC
<b>9</b>	<b>Invoice Type:</b>	Service Fee Only	<b>Expected Charge:</b>	\$50.00
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>
	Animal Bite	Murphy Animal Control	Other	Quarantined/Follow Up
<b>Call #</b>	<b>Date:</b>	10/30/2017	<b>Caller Remarks:</b>	2 DOGS RAL ACROSS FROM 7507 FOREST BEND - GERMAN SHEP AND A ROTT - CALLER ADVISED THEY ARE KNOWN TO BE AGGRESSIVE. KC
<b>10</b>	<b>Invoice Type:</b>	No Charge	<b>Expected Charge:</b>	\$0.00
	<b>Call Type</b>	<b>Action Taken By:</b>	<b>Response</b>	<b>Disposition</b>
	Stray	City Personnel	No Animal Found	NA
			TOTAL=	430



<b>BUILDING PERMIT TOTALS</b>	
<b>Oct-17</b>	
ACCESSORY/OUTBUILDING PERMITS	3
IRRIGATION/LAWN SPRINKLER PERMITS	4
MISCELLANEOUS PERMITS	13
SWIMMING POOL PERMITS	3
REMODEL/ADDITION PERMITS	1
SINGLE FAMILY RESIDENTIAL PERMITS	11
INSPECTIONS	186

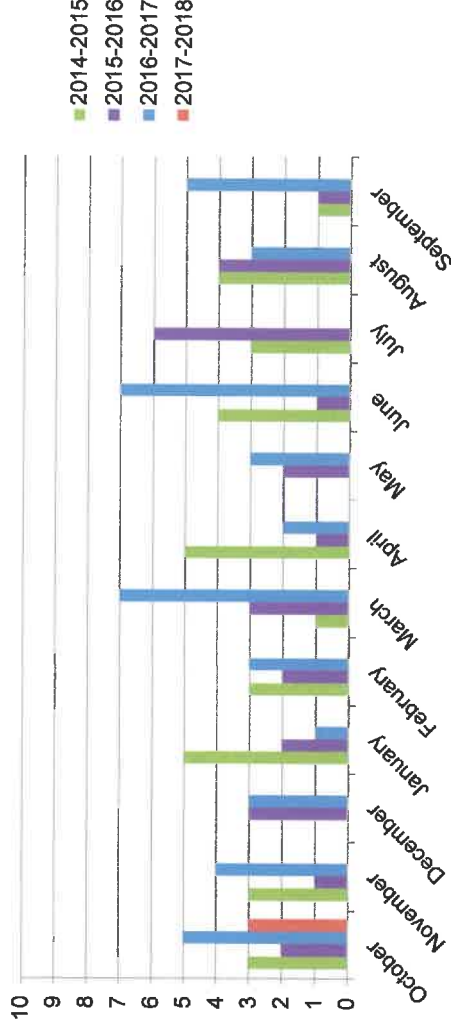
CITY OF PARKER  
PERMIT LOG  
OCTOBER 2017

PERMIT NUMBER	ISSUE DATE	TYPE	ADDRESS	CONTRACTOR	DESCRIPTION	ESTIMATED VALUE	TOTAL SQUARE FOOTAGE	PERMIT FEE	DEPOSIT FEE	WATER METER FEE	WATER IMPACT FEE	SEWER TAP FEE
2017-1034	10/5/2017	ACC	5903 MIDDLETON DR	FENCE DECK & PATIO	PATIO COVER	\$6,000	289	\$175.00	NA	NA	NA	NA
2017-1035	10/23/2017	ACC	4707 SHEFFIELD CT	GOLDEN CONSTRUCTION SERVICES	OUTDOOR ENTERTAINING	\$150,000	936	\$250.00	NA	NA	NA	NA
2017-1038	10/23/2017	ACC	4707 SHEFFIELD CT	GOLDEN CONSTRUCTION	FOUNTAIN	\$16,000	235	\$250.00	NA	NA	NA	NA
2017-2011	10/20/2017	ELEC	7004 STONY OAK CT	L&S MECHANICAL	INSTALL 20A GFCI CIRCUIT FOR GAT	NA	NA	\$75.00	NA	NA	NA	NA
2017-6032	10/20/2017	FENCE	5303 NORWICK DR	LOUIS HOUNG	FENCE	\$10,000	NA	\$75.00	NA	NA	NA	NA
2017-6033	10/23/2017	FENCE	7004 STONY OAK CT	TAYLOR FENCE & OUTDOORS	FENCE	\$8,000	NA	\$75.00	NA	NA	NA	NA
2017-6034	10/26/2017	FENCE	4707 SHEFFIELD CT	GOLDEN CONSTRUCTION SERVICES	FENCE	\$11,649	NA	\$75.00	NA	NA	NA	NA
2017-3020	10/31/2017	FSPR	6300 ASHFORD CT	RES COM	FIRE SPRINKLER	NA	NA	\$150.00	NA	NA	NA	NA
2017-3021	10/31/2017	FSPR	6208 WESTFIELD DR	RES COM	FIRE SPRINKLER	NA	NA	\$150.00	NA	NA	NA	NA
2017-3022	10/31/2017	FSPR	4810 SALISBURY DR	RES COM	FIRE SPRINKLER	NA	NA	\$150.00	NA	NA	NA	NA
2017-3023	10/31/2017	FSPR	6313 WESTFIELD DR	RES COM	FIRE SPRINKLER	NA	NA	\$150.00	NA	NA	NA	NA
2017-4046	10/18/2017	IRR	6405 BARRINGTON DR	LAWN LIQUID IRRIGATION	IRRIGATION	\$1,200	NA	\$75.00	NA	NA	NA	NA
2017-4047	10/18/2017	IRR	6600 ERIN LN	LAWN LIQUID IRRIGATION	IRRIGATION	\$1,200	NA	\$75.00	NA	NA	NA	NA
2017-4048	10/18/2017	IRR	4706 BRYCE DR	LAWN LIQUID IRRIGATION	IRRIGATION	\$1,200	NA	\$75.00	NA	NA	NA	NA
2017-4049	10/26/2017	IRR	5203 MIDDLETON DR	LAND PRO CREATIONS	IRRIGATION SYSTEM	\$3,000	NA	\$75.00	NA	NA	NA	NA
2017-5025	10/8/2017	MECH	4602 SPRINGHILL ESTATES DR	AIRMAX	4 TON CONDENSER, FURNACE, COIL	NA	NA	\$75.00	NA	NA	NA	NA
2017-5028	10/26/2017	MECH	5804 BRACKNELL DR	ON TIME EXPERTS	CONDENSER & COIL	NA	NA	\$75.00	NA	NA	NA	NA
2017-7061	10/12/2017	PLUM	4308 GLEN MEADOWS DR	COWBOY PLUMBING	60 GAL WH	NA	NA	\$75.00	NA	NA	NA	NA
2017-7062	10/27/2017	PLUM	5804 OVERTON DR	MASTER TECH	WATER HEATER	NA	NA	\$75.00	NA	NA	NA	NA
2017-10030	10/5/2017	POOL	5403 TENNYSON CT	VENTURE	POOL	\$43,000	NA	\$500.00	NA	NA	NA	NA
2017-10031	10/5/2017	POOL	5313 WESTFIELD DR	GOLD MEDAL POOLS	POOL	\$60,000	NA	\$500.00	NA	NA	NA	NA
2017-10035	10/18/2017	POOL	2805 DUBLIN PARK DR	MCDONALD POOL CONSULTING	POOL	\$60,000	NA	\$500.00	NA	NA	NA	NA
2017-80015	10/23/2017	REMOD	4707 SHEFFIELD CT	GOLDEN CONSTRUCTION	FOUNTAIN	\$10,000	100	\$250.00	NA	NA	NA	NA
2017-9043	10/5/2017	SFR	5400 TENNYSON CT	NEWCASTLE HOMES	NEW RESIDENCE	\$400,000	6,430	\$4,043.70	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9044	10/5/2017	SFR	5200 CHESHIRE LN	SHADDOCK HOMES	NEW RESIDENCE	\$713,370	4,965	\$3,179.35	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9045	10/5/2017	SFR	5102 CHESHIRE LN	SHADDOCK HOMES	NEW RESIDENCE	\$766,400	5,607	\$3,558.13	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9048	10/5/2017	SFR	4804 SALISBURY DR	NEWCASTLE HOMES	NEW RESIDENCE	\$600,000	7,787	\$4,844.33	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9049	10/5/2017	SFR	5105 KINGSTON CT	GRAND HOMES	NEW RESIDENCE	\$276,960	4,885	\$3,132.16	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9050	10/5/2017	SFR	5400 MIDDLETON DR	GRAND HOMES	NEW RESIDENCE	\$672,384	7,004	\$4,382.36	\$1,000	\$2,000.00	\$3,938.95	\$1,000.00
2017-9051	10/5/2017	SFR	5204 NORWICK DR	SHADDOCK HOMES	NEW RESIDENCE	\$1,158,177	7,796	\$4,849.64	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9046	10/23/2017	SFR	4305 WHITESTONE DR	SHADDOCK HOMES	NEW RESIDENCE	\$867,910	5,946	\$3,675.13	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9047	10/23/2017	SFR	4701 WHITESTONE DR	SHADDOCK HOMES	NEW RESIDENCE	\$743,160	6,299	\$3,375.41	\$1,000	\$2,000.00	\$3,938.95	NA
2017-9052	10/23/2017	SFR	6405 HOLBROOK CIR	GRAND HOMES	NEW RESIDENCE	\$910,176	9,481	\$5,843.79	\$1,000	\$2,000.00	\$3,938.95	\$1,000.00
2017-9053	10/23/2017	SFR	4804 DONNA LN	GRAND HOMES	NEW RESIDENCE	\$593,664	6,184	\$3,895.56	\$1,000	\$2,000.00	\$3,938.95	NA
2017-1037	10/23/2017	SOLAR	5111 CIMMARON CIR	KELLY	SOLAR PANELS TO GROUND	NA	NA	\$175.00	NA	NA	NA	NA
TOTAL =						\$7,971,450		\$48,885	\$11,000	\$22,000	\$43,328.45	\$2,000

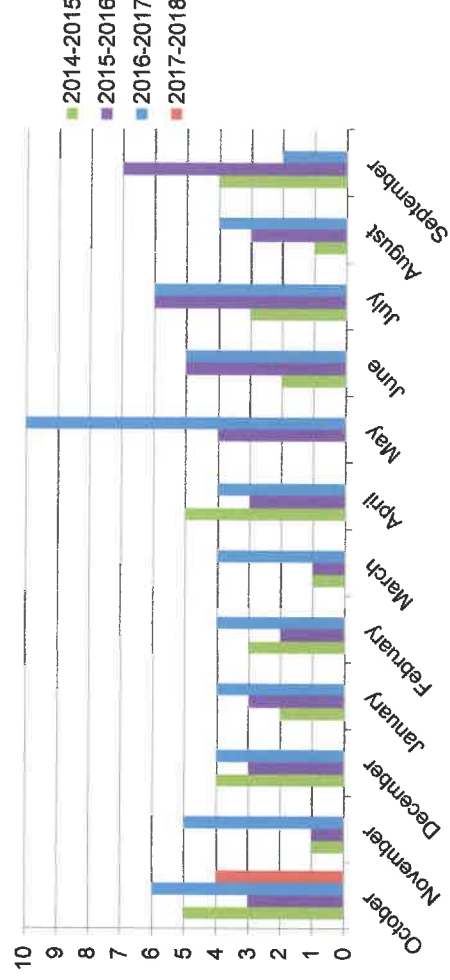
# PERMIT GRAPHS

Accessory/Outbuildings Permits				
Fiscal Year	2014-2015	2015-2016	2016-2017	2017-2018
October	3	2	5	3
November	3	1	4	
December	0	3	3	
January	5	2	1	
February	3	2	3	
March	1	3	7	
April	5	1	2	
May	0	2	3	
June	4	1	7	
July	3	6	0	
August	4	4	3	
September	1	1	5	
Y-T-D Total	32	28	43	
Irrigation/Lawn Sprinkler Permits				
Fiscal Year	2014-2015	2015-2016	2016-2017	2017-2018
October	5	3	6	4
November	1	1	5	
December	4	3	4	
January	2	3	4	
February	3	2	4	
March	1	1	4	
April	5	3	4	
May	0	4	12	
June	2	5	5	
July	3	6	6	
August	1	3	4	
September	4	7	2	
Y-T-D Total	31	41	60	

Accessory/Outbuilding Permits



Irrigation/Lawn Sprinkler Permits

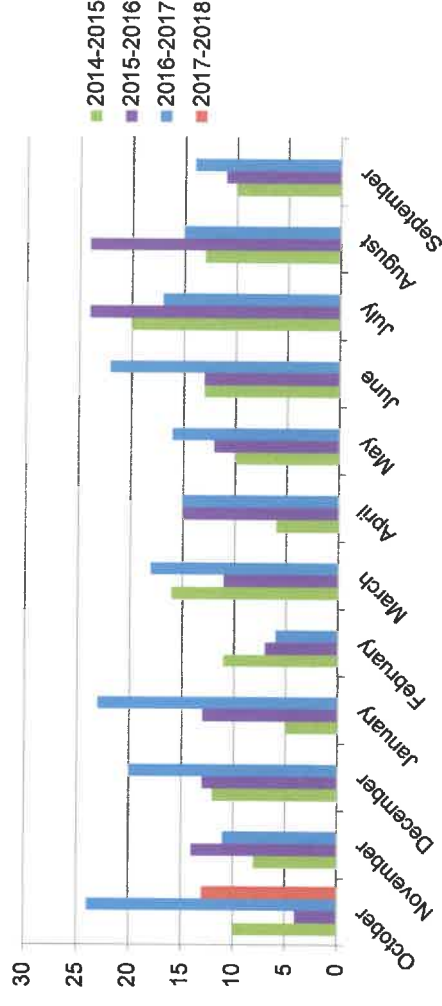


# PERMIT GRAPHS

## Miscellaneous Permits

Fiscal Year	2014-2015	2015-2016	2016-2017	2017-2018
October	10	4	24	13
November	8	14	11	
December	12	13	20	
January	5	13	23	
February	11	7	6	
March	16	11	18	
April	6	15	15	
May	10	12	16	
June	13	13	22	
July	20	24	17	
August	13	24	15	
September	10	11	14	
<b>Y-T-D Total</b>	<b>134</b>	<b>161</b>	<b>201</b>	

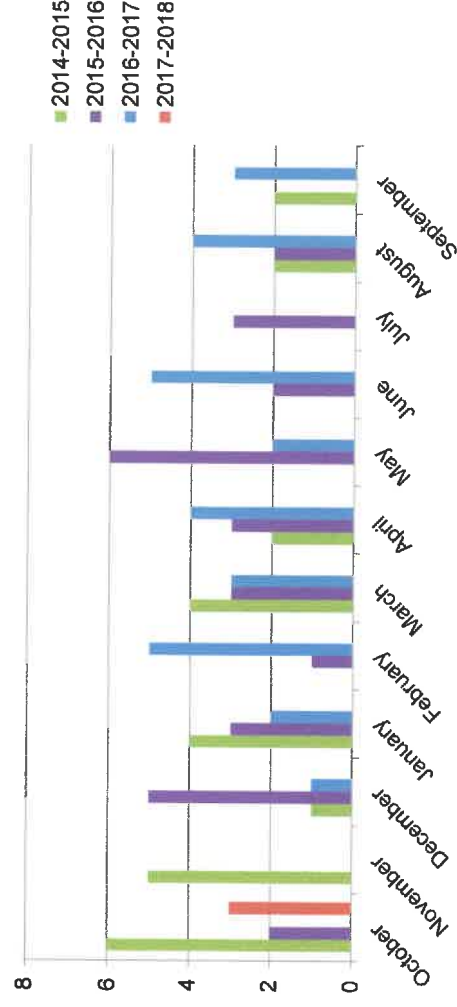
## Miscellaneous Permits



## Swimming Pool Permits

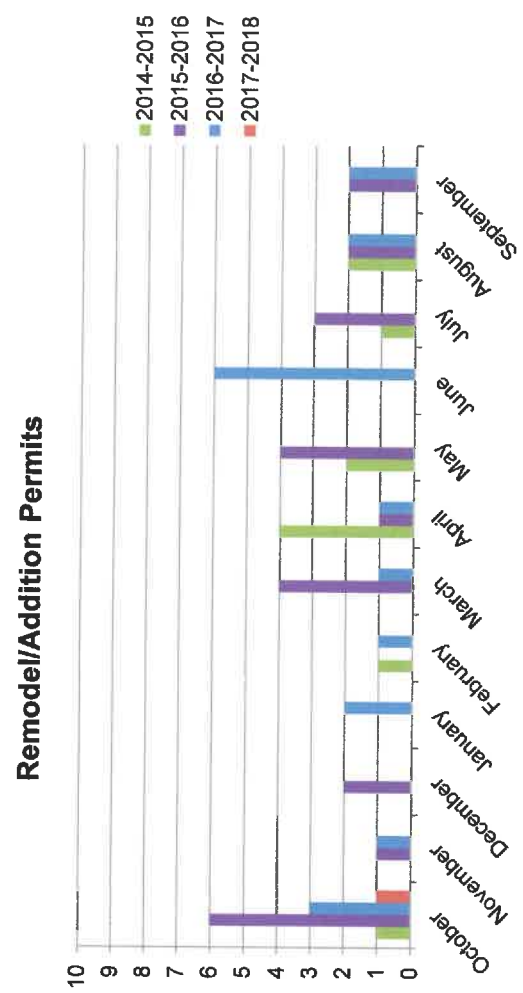
Fiscal Year	2014-2015	2015-2016	2016-2017	2017-2018
October	6	2	0	3
November	5	0	0	
December	1	5	1	
January	4	3	2	
February	0	1	5	
March	4	3	3	
April	2	3	4	
May	0	6	2	
June	0	2	5	
July	0	3	0	
August	2	2	4	
September	2	0	3	
<b>Y-T-D Total</b>	<b>26</b>	<b>30</b>	<b>29</b>	

## Swimming Pool Permits

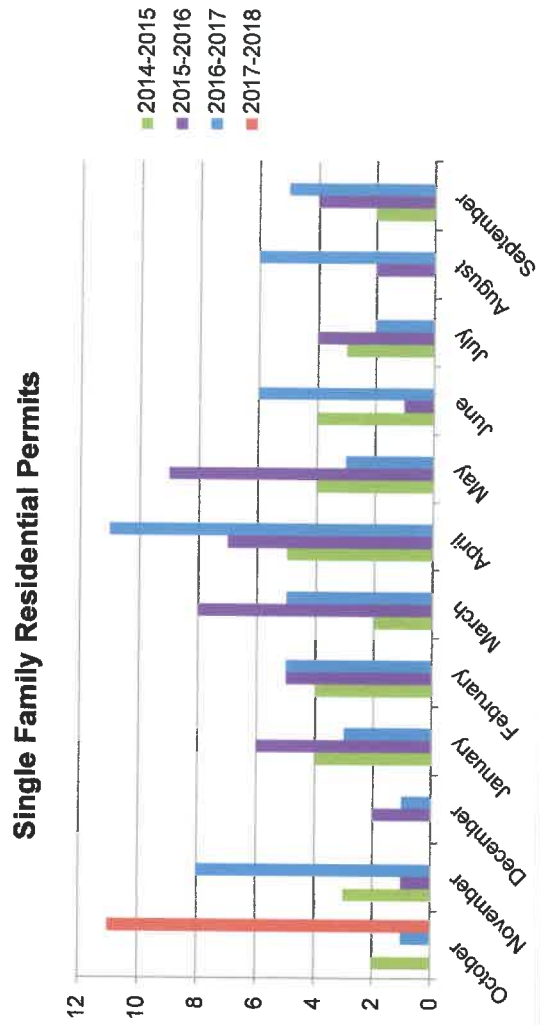


# PERMIT GRAPHS

Remodel/Addition Permits					
Fiscal Year	2014-2015	2015-2016	2016-2017	2017-2018	
October	1	6	3	1	
November	0	1	1		
December	0	2	0		
January	0	0	2		
February	1	0	1		
March	0	4	1		
April	4	1	1		
May	2	4	0		
June	0	0	6		
July	1	3	0		
August	2	2	2		
September	0	2	2		
Y-T-D Total	11	25	19		



Single Family Residential Building Permits					
Fiscal Year	2014-2015	2015-2016	2016-2017	2017-2018	
October	2	0	1	11	
November	3	1	8		
December	0	2	1		
January	4	6	3		
February	4	5	5		
March	2	8	5		
April	5	7	11		
May	4	9	3		
June	4	1	6		
July	3	4	2		
August	0	2	6		
September	2	4	5		
Y-T-D Total	33	49	56		





# INSPECTION LOG OCTOBER 2017

PERMIT NUMBER	ADDRESS	TYPE	INSPECTION	SCHEDULED	COMPLETED	RESULT	NOTES	STATUS	#
2017-1021	6802 CHESWICK CT	ACC	Building Final	10/19/2017		TRUE	FAILED 10/19/17	ISS	1
2017-1015	5303 ESTATE LN	ACC	Other	10/18/2017	10/19/2017	TRUE	UNDERGROUND WATER & SEWER	ISS	1
2017-1015	5303 ESTATE LN	ACC	Framing	10/23/2017	10/23/2017	TRUE		ISS	1
2017-1015	5303 ESTATE LN	ACC	Plumbing Top-Out	10/23/2017	10/23/2017	TRUE		ISS	1
2017-1015	5303 ESTATE LN	ACC	Electrical Rough	10/23/2017	10/23/2017	TRUE		ISS	1
2017-1015	5303 ESTATE LN	ACC	Mechanical Rough	10/23/2017	10/23/2017	TRUE		ISS	1
2017-1024	5807 RIDGEMORE DR	ACC	Building Final	10/18/2017	10/18/2017	TRUE		FINAL	1
2017-1022	4703 SHEFFIELD CT	ACC	Foundation	10/2/2017	10/2/2017	TRUE		ISS	1
2017-3022	4810 SALISBURY DR	FSPR	Fire Hydro Visual	10/19/2017	10/19/2017	TRUE		ISS	1
2017-3021	5209 WESTFIELD DR	FSPR	Fire Hydro Visual	10/16/2017	10/16/2017	TRUE		ISS	1
2017-5018	5105 E. PARKER RD	MECH	Condenser & Coll	10/20/2017		FALSE	NO ANSWER FAILED 10/20	ISS	1
2017-5010	4800 RIDGEVIEW DR	MECH	Final	10/16/2017	10/16/2017	TRUE		FINAL	1
2017-5010	4800 RIDGEVIEW DR	MECH	Other	10/16/2017	10/16/2017	TRUE	GAS LINE	FINAL	1
2017-7056	3403 BLUFFS LN	PLUM	Water Heater	10/20/2017	10/20/2017	TRUE		FINAL	1
2017-7059	5310 KARA LN	PLUM	Other	10/4/2017	10/4/2017	TRUE	UNDER SLAB PLUMBING REPAIR	FINAL	1
2017-7059	5310 KARA LN	PLUM	Other	10/11/2017	10/17/2017	TRUE	FOUNDATION REPAIR-FAILED 10/11 & 10/13	FINAL	3
2017-7058	5303 NORWICK DR	PLUM	Water Heater	10/11/2017		FALSE	NO ANSWER FAILED 10/11	ISS	1
2017-10024	4102 CHURCH LN	POOL	Fence Final	10/12/2017	10/12/2017	TRUE		FINAL	1
2017-10024	4102 CHURCH LN	POOL	Pool Final	10/17/2017	10/17/2017	TRUE		FINAL	1
2017-10022	5806 COX FARM EST	POOL	Fence Final	10/12/2017	10/12/2017	TRUE		ISS	1
2017-10022	5806 COX FARM EST	POOL	Pool Protection Certification	10/12/2017	10/12/2017	TRUE		ISS	1
2017-10017	6004 DUMONT CT	POOL	Pool Final	10/12/2017	10/12/2017	TRUE		FINAL	1
2017-10027	5803 MIDDLETON DR	POOL	Deck Steel	10/31/2017	10/31/2017	TRUE		ISS	1
2017-10026	4702 SHEFFIELD CT	POOL	Deck Steel	10/11/2017	10/17/2017	TRUE	FAILED 10/11 & 10/16	ISS	3
2017-10026	4702 SHEFFIELD CT	POOL	Fence Final	10/27/2017	10/27/2017	TRUE		ISS	1
2017-10028	4702 SHEFFIELD CT	POOL	Pool Protection Certification	10/27/2017	10/27/2017	TRUE		ISS	1
2017-10030	5403 TENNYSON CT	POOL	Belly Steel	10/19/2017	10/24/2017	TRUE	FAILED 10/19/17	ISS	2
2017-10015	4806 VISTA RIDGE	POOL	Pool Final	10/4/2017		FALSE	FAILED 10/4/17	ISS	1
2017-10029	5206 WESTFIELD DR	POOL	Belly Steel	10/19/2017	10/20/2017	TRUE	FAILED 10/19/17	ISS	2
2017-10028	7707 WINDOMERE DR	POOL	Deck Steel	10/12/2017	10/12/2017	TRUE		ISS	1
2017-80006	3100 BLUFFS LN	REMOD	Building Final	10/16/2017	10/17/2017	TRUE	FAILED 10/16/17	FINAL	2
2017-80013	5406 ELISA LN	REMOD	Other	10/11/2017	10/11/2017	TRUE	PIER INSPECTION	ISS	1
2017-9028	5300 ASHFORD CT	SFR	Plumbing Top-Out	10/27/2017		FALSE	FAILED 10/27/17	ISS	1
2017-9028	5300 ASHFORD CT	SFR	Electrical Rough	10/27/2017		FALSE	FAILED 10/27/17	ISS	1

# INSPECTION LOG OCTOBER 2017

PERMIT NUMBER	ADDRESS	TYPE	INSPECTION	SCHEDULED	COMPLETED	RESULT	NOTES	STATUS	#
2017-9028	5300 ASHFORD CT	SFR	Mechanical Rough	10/27/2017		FALSE	FAILED 10/27/17	ISS	1
2017-9028	5300 ASHFORD CT	SFR	Framing	10/27/2017		FALSE	FAILED 10/27/17	ISS	1
2017-9041	5300 BARRINGTON DR	SFR	T-Pole	10/4/2017	10/4/2017	TRUE		ISS	1
2017-9041	5300 BARRINGTON DR	SFR	Plumbing Rough	10/4/2017	10/4/2017	TRUE		ISS	1
2017-9041	5300 BARRINGTON DR	SFR	Form Survey	10/4/2017	10/4/2017	TRUE		ISS	1
2017-9008	5405 BARRINGTON DR	SFR	Meter Release - Electric	10/4/2017	10/4/2017	TRUE		ISS	1
2017-9008	6405 BARRINGTON DR	SFR	Meter Release - Gas	10/4/2017	10/18/2017	TRUE	FAILED 10/4/17 UNDER SLAB PLUMBING	ISS	2
2017-9014	5201 BERWICK LN	SFR	Other	10/31/2017	10/31/2017	TRUE	REPAIR	ISS	1
2017-9025	4701 BRYCE DR	SFR	Plumbing Top-Out	10/5/2017	10/11/2017	TRUE	FAILED 10/5/17	ISS	2
2017-9025	4701 BRYCE DR	SFR	Electrical Rough	10/5/2017	10/11/2017	TRUE	FAILED 10/5/17	ISS	2
2017-9025	4701 BRYCE DR	SFR	Mechanical Rough	10/5/2017	10/11/2017	TRUE	FAILED 10/5/17	ISS	2
2017-9025	4701 BRYCE DR	SFR	Framing	10/5/2017	10/11/2017	TRUE	FAILED 10/5/17	ISS	2
2017-9003	4705 BRYCE DR	SFR	Driveway Approach	10/11/2017	10/16/2017	TRUE	FAILED 10/11/17	ISS	2
2017-9045	5102 CHESHIRE LN	SFR	T-Pole	10/12/2017	10/12/2017	TRUE		ISS	1
2017-9045	5102 CHESHIRE LN	SFR	Plumbing Rough	10/12/2017	10/12/2017	TRUE		ISS	1
2017-9045	5102 CHESHIRE LN	SFR	Form Survey	10/12/2017	10/12/2017	TRUE		ISS	1
2017-9045	5102 CHESHIRE LN	SFR	Foundation	10/20/2017	10/20/2017	TRUE		ISS	1
2017-9044	5200 CHESHIRE LN	SFR	T-Pole	10/12/2017	10/16/2017	TRUE	FAILED 10/12/17	ISS	2
2017-9044	5200 CHESHIRE LN	SFR	Plumbing Rough	10/12/2017	10/12/2017	TRUE		ISS	1
2017-9044	5200 CHESHIRE LN	SFR	Form Survey	10/12/2017	10/12/2017	TRUE		ISS	1
2017-9044	5200 CHESHIRE LN	SFR	Foundation	10/20/2017	10/20/2017	TRUE		ISS	1
2017-9039	8612 CHILTON CT	SFR	Plumbing Rough	10/24/2017	10/27/2017	TRUE	FAILED 10/24/17	ISS	2
2017-9013	6501 ERIN LN	SFR	Driveway Approach	10/23/2017	10/23/2017	TRUE		ISS	1
2017-9027	6507 ERIN LN	SFR	Plumbing Top-Out	10/18/2017	10/20/2017	TRUE	FAILED 10/18 & 10/19	ISS	3
2017-9027	6507 ERIN LN	SFR	Electrical Rough	10/18/2017	10/20/2017	TRUE	FAILED 10/18 & 10/19	ISS	3
2017-9027	6507 ERIN LN	SFR	Mechanical Rough	10/18/2017	10/20/2017	TRUE	FAILED 10/18 & 10/19	ISS	3
2017-9027	6507 ERIN LN	SFR	Framing	10/18/2017	10/20/2017	TRUE	FAILED 10/18 & 10/19	ISS	3
2017-9019	6500 ERIN LN	SFR	Meter Release - Electric	10/11/2017	10/11/2017	TRUE		ISS	1
2017-9019	6500 ERIN LN	SFR	Meter Release - Gas	10/11/2017	10/20/2017	TRUE	FAILED 10/11/17	ISS	2
2017-9004	6603 ERIN LN	SFR	Building Final	10/25/2017	10/25/2017	TRUE		FINAL	1
2017-9004	6603 ERIN LN	SFR	Survey Plat	10/25/2017	10/25/2017	TRUE		FINAL	1
2017-9042	6703 ERIN LN	SFR	Foundation	10/11/2017	10/11/2017	TRUE		ISS	1
2017-9022	6807 GREENHILL CT	SFR	Plumbing Top-Out	10/12/2017	10/25/2017	TRUE	FAILED 10/12/17	ISS	2
2017-9022	6807 GREENHILL CT	SFR	Electrical Rough	10/12/2017	10/25/2017	TRUE	FAILED 10/12/17	ISS	2
2017-9022	6807 GREENHILL CT	SFR	Mechanical Rough	10/12/2017	10/25/2017	TRUE	FAILED 10/12/17	ISS	2
2017-9022	6807 GREENHILL CT	SFR	Framing	10/12/2017	10/25/2017	TRUE	FAILED 10/12/17	ISS	2

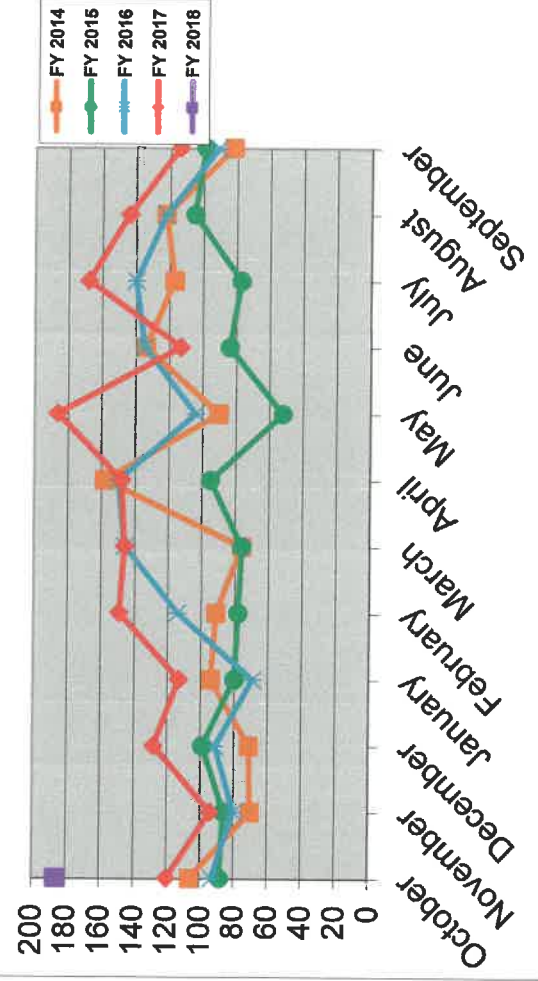
# INSPECTION LOG OCTOBER 2017

PERMIT NUMBER	ADDRESS	TYPE	INSPECTION	SCHEDULED	COMPLETED	RESULT	NOTES	STATUS	#
2017-9038	6317 HOLBROOK CIR	SFR	Plumbing Rough	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9038	6317 HOLBROOK CIR	SFR	Form Survey	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9038	6317 HOLBROOK CIR	SFR	Foundation	10/31/2017	10/31/2017	TRUE		ISS	1
2017-9052	6405 HOLBROOK CIR	SFR	T-Pole	10/27/2017	10/27/2017	TRUE		ISS	1
2017-9052	6405 HOLBROOK CIR	SFR	Plumbing Rough	10/27/2017	10/31/2017	TRUE	FAILED 10/27/17	ISS	2
2017-9052	6405 HOLBROOK CIR	SFR	Form Survey	10/27/2017	10/27/2017	TRUE		ISS	1
2017-9018	6601 HOLBROOK CIR	SFR	Driveway Approach	10/2/2017	10/3/2017	TRUE	FAILED 10/2/17	ISS	2
2017-9018	6601 HOLBROOK CIR	SFR	Meter Release - Gas	10/2/2017	10/2/2017	TRUE		ISS	1
2017-9032	3600 JEFFREY DR	SFR	Plumbing Top-Out	10/17/2017	10/19/2017	TRUE	FAILED 10/17/17	ISS	2
2017-9032	3600 JEFFREY DR	SFR	Electrical Rough	10/17/2017	10/19/2017	TRUE	FAILED 10/17/17	ISS	2
2017-9032	3600 JEFFREY DR	SFR	Mechanical Rough	10/17/2017	10/19/2017	TRUE	FAILED 10/17/17	ISS	2
2017-9032	3600 JEFFREY DR	SFR	Framing	10/17/2017	10/19/2017	TRUE	FAILED 10/17/17	ISS	2
2017-9049	5105 KINGSTON CT	SFR	T-Pole	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9049	5105 KINGSTON CT	SFR	Form Survey	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9049	5105 KINGSTON CT	SFR	Plumbing Rough	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9012	5203 MIDDLETON DR	SFR	Meter Release - Electric	10/4/2017	10/5/2017	TRUE	FAILED 10/4/17	ISS	2
2017-9012	5203 MIDDLETON DR	SFR	Meter Release - Gas	10/4/2017	10/4/2017	TRUE		ISS	1
2017-9012	5203 MIDDLETON DR	SFR	Driveway Approach	10/11/2017	10/11/2017	TRUE		ISS	1
2017-9050	5400 MIDDLETON DR	SFR	T-Pole	10/17/2017	10/17/2017	TRUE		ISS	1
2017-9050	5400 MIDDLETON DR	SFR	Plumbing Rough	10/18/2017	10/23/2017	TRUE	FAILED 10/18/17	ISS	2
2017-9050	5400 MIDDLETON DR	SFR	Form Survey	10/23/2017	10/23/2017	TRUE		ISS	1
2017-9050	5400 MIDDLETON DR	SFR	Foundation	10/30/2017	10/30/2017	TRUE		ISS	1
2017-9024	5304 NORWICK DR	SFR	Driveway Approach	10/4/2017	10/4/2017	TRUE		ISS	1
2017-9048	4604 SALISBURY DR	SFR	T-Pole	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9048	4604 SALISBURY DR	SFR	Plumbing Rough	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9048	4604 SALISBURY DR	SFR	Form Survey	10/16/2017	10/16/2017	TRUE		ISS	1
2017-9029	4610 SALISBURY DR	SFR	Plumbing Top-Out	10/19/2017	10/20/2017	TRUE	FAILED 10/19/17	ISS	2
2017-9029	4610 SALISBURY DR	SFR	Electrical Rough	10/19/2017	10/20/2017	TRUE	FAILED 10/19/17	ISS	2
2017-9029	4610 SALISBURY DR	SFR	Mechanical Rough	10/19/2017	10/20/2017	TRUE	FAILED 10/19/17	ISS	2
2017-9029	4610 SALISBURY DR	SFR	Framing	10/19/2017	10/20/2017	TRUE	FAILED 10/19/17	ISS	2
2017-9043	5400 TENNYSON CT	SFR	Foundation	10/18/2017	10/18/2017	TRUE		ISS	1
2017-9009	5403 TENNYSON CT	SFR	Meter Release - Electric	10/25/2017	10/25/2017	TRUE		ISS	1
2017-9016	6405 TENNYSON CT	SFR	Building Final	10/11/2017	10/16/2017	TRUE	FAILED 10/11/17	FINAL	2
2017-9040	6300 WARWICK WAY	SFR	Form Survey	10/16/2017	10/16/2017	TRUE		ISS	1

[illegible]

## Monthly Inspection Report

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
<b>October</b>	106	88	93	120	186
<b>November</b>	70	86	80	94	
<b>December</b>	71	99	91	128	
<b>January</b>	94	80	69	113	
<b>February</b>	91	78	114	149	
<b>March</b>	76	76	146	146	
<b>April</b>	158	95	150	148	
<b>May</b>	90	52	104	186	
<b>June</b>	134	84	135	113	
<b>July</b>	117	77	140	168	
<b>August</b>	122	105	122	144	
<b>September</b>	82	99	91	114	
<b>Year Total</b>	<b>1211</b>	<b>1019</b>	<b>1335</b>	<b>1623</b>	<b>186</b>



# CODE ENFORCEMENT REPORT

## 2017-2018

Violation Description	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	YTD Totals
High Grass	3												3
Illegal Dumping													0
Illegal Structure													0
Illegal Vehicle													0
Junked Vehicles													0
Lot Maintenance	8												8
Trash and Debris	1												1
ITEM TOTALS	12	0	0	0	0	0	0	0	0	0	0	0	12

Officer Actions	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	YTD Totals
Verbal Warnings	7												7
Door Hangers Issued	2												2
Complied/Resolved													0
10 Day Notice (Letters Mailed)	2												2
Extension Granted	1												1
Complied/Resolved	4												4
Citations Issued													0
Stop Work Order													0
Misc													0
ITEM TOTALS	16	0	0	0	0	0	0	0	0	0	0	0	16

## City of Parker Municipal Court Monthly Report

October, 2017	Traffic Misdemeanors	Non-Traffic Misdemeanors
<b>New Cases Filed</b>	139	26
<b>Total Pending Cases</b>	1067	364
<b>Uncontested Dispositions</b>	32	20
<b>Compliance Dismissals</b>		
After Driver Safety Course	16	
After Deferred Disposition	18	5
After Proof of Insurance	5	
Other Dismissals	3	1
<b>Total Cases Disposed</b>	74	26
<b>Arrest Warrants Issued</b>	2	
<b>Warrants Cleared</b>	15	
<b>Total Outstanding Warrants</b>	626	
<b>Show Cause Hearings Held</b>	10	0
<b>Trials</b>	0	0
<b>Fines, Court Costs &amp; Other Amounts Collected:</b>		
Retained by City	\$10,777.00	
Remitted to State	\$8,643.00	
<b>Total</b>	<b>\$19,420.00</b>	

**Definitions:**

**Show Cause Hearing** - A court hearing that is held for a defendant who has been granted a Driving Safety Course or Deferred Disposition to Show Cause for Non-Compliance

**All cases heard in Municipal Court are Class C Misdemeanors Only.**



# Parker Fire Department

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REPORT FOR 9 MOS. ENDING SEPTEMBER 2017  
(WITH FISCAL YEAR SUPPLEMENT)



# Highlights

## Emergency Calls

- For the **3 months** July through September 2017, the department responded to 101 calls for service. This compares to 76 calls over the same period of 2016, a 33% increase.
- For the **9 months** January through September 2017 the department responded to 257 calls for service, up 21% over the comparable six months of 2016.
- 42% of the calls occurred during the night shift where we rely on volunteers responding from home.
- Excluding mutual aid given, Parker calls are up 30%.

## Response Metrics

- Our overall average response time for the 9 mos. Jan – Sept 2017 was **8 minutes 23 seconds**, relatively unchanged from last year's comparable period. *This metric, measured from the time of dispatch, includes calls within Parker's immediate fire district and excludes mutual aid calls.*
- The overall average response time for our paid/stipend crew (8am – 6pm) was slightly over **5 minutes**, generally consistent with prior periods.
- The overall average response time for evening/night volunteers was over **11 minutes**, generally consistent with prior periods.

# Calls for Service

NATURE OF CALL	CALL VOLUME					Jan-Sept	
	2012	2013	2014	2015	2016	2016	2017
Structure Fire	18	11	15	13	16	11	10
Medical Call	98	103	122	135	133	101	114
All Others	144	126	147	166	138	100	133
<b>Total</b>	<b>260</b>	<b>240</b>	<b>284</b>	<b>314</b>	<b>287</b>	<b>212</b>	<b>257</b>
% change	11%	8%	18%	11%	-9%		21%
<b>Parker Only</b>						<b>164</b>	<b>214</b>
Mutual Aid						48	43

NIGHT SHIFT 109 CALLS (42%)  
DAY SHIFT 148 CALLS (58%)

Calls in Parker are up 30%

# Key Staffing Metrics

We staff a paid crew consisting of an officer and driver plus a stipend volunteer during the day (7 days, 8am-6pm). During evenings/nights emergency calls are answered by volunteers typically responding from their residence.

SHIFT STATISTICS	2016		2017	
	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun
Day coverage by two paid firefighters	100%	100%	100%	100%
Day coverage with two paid + at least 1 stipend firefighter	91%	83%	92%	86%
Paramedic included in day shift	100%	99%	97%	88%
Paid days in Quarter	92	92	90	91
Calls answered by Day shift			69%	55%
Calls answered by Night volunteers			31%	45%
Avg. response time of Day shift (hours:minutes)			5:09	5:18
Avg. response time of Night volunteers (hours:minutes)			11:47	11:37
				11:28

# Losses from Fires

---

- Total estimated property loss from fire for the period January – Sept 2017 was \$845,000 including one catastrophic house fire and the loss of vehicular and agricultural equipment on separate incidents.
- This compares unfavorably with \$237,000 in estimated loss during the full 2016 calendar year.

# Operational Readiness

---

## IN SERVICE:

- ✓ Engine 811 (1995)
- ✓ Engine 812 (2001)
- ✓ Truck 811 (2008)
- ✓ Brush 811
- ✓ Tac 811
- ✓ Tac 812

## COMMENTS

Subsequent to fiscal year end unscheduled vehicle repairs have already consumed nearly 50% of the FY 2018/2019 vehicle maintenance budget line.

# 2017 Continuing Initiatives

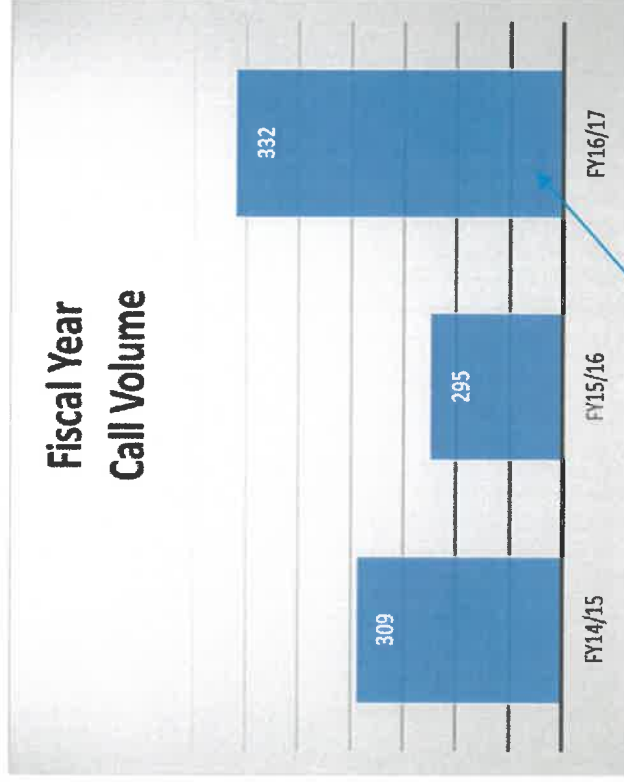
## Update Standard Operating Guidelines (ongoing)

Engage with Lucas Fire Dept. to develop common SOGs, tactics and training opportunities (on-going). Similarly engage with Murphy Fire-Rescue (4th calendar quarter)

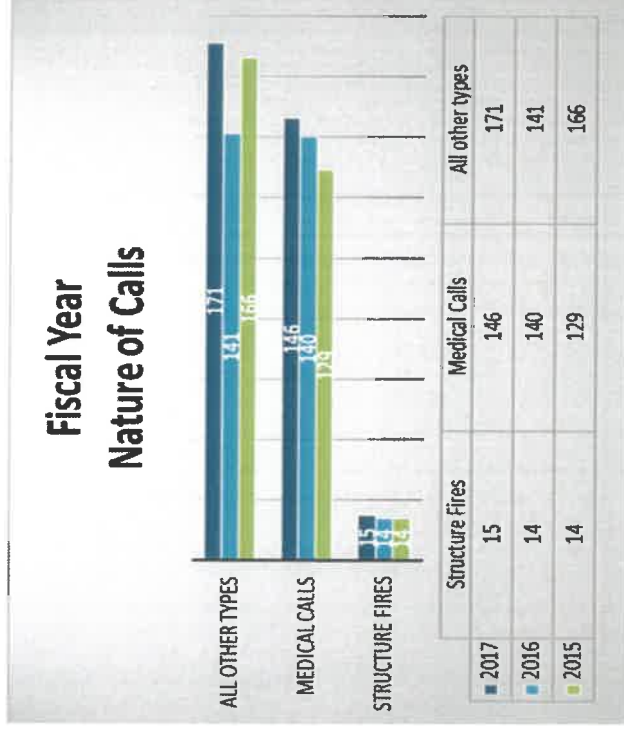
Investigate a shared resource dispatch/deployment model through Wylie Fire Rescue to include Lucas and Murphy FDs as potential solution partners.

- The concept is to contribute Truck 811 to a common first alarm assignment consisting of fire apparatus from Parker, Wylie, Lucas and Murphy under a seamless dispatch operated by Wylie FD within the existing PAWM radio network.
- Parker would receive a full first alarm consisting of four fire trucks plus associated chief officers fully consistent with NFPA standards. Conversely, Parker Truck 811 would respond on a first alarm to calls in our partner cities.
- Other than contracting with Wylie for dispatch services (under consideration, the shared cost of a single dispatcher) each city will support the cost of fire protection independent of another partner city.
- This model is foundational to a long term fire protection solution. Strategically, the cost of fire protection can be focused on staffing a single fire truck 24/7 while Parker receives the benefit of having four fire trucks and staff responding to fire emergencies.
- We retain the option to provide residents with Parker FD ambulance service at a future date

# Fiscal Year Supplement



Night Shift 135 calls (41%)  
Day Shift 197 calls (59%)



PARKER POLICE DEPARTMENT  
REPORT OF MONTHLY STATISTICS YEAR TO DATE

October 2017	THIS MONTH	THIS MONTH LAST YEAR	% CHANGE	YTD 2017	YTD 2016	% CHANGE
for Service Traffic	1504			9625		
Calls for Service	339			2185		
Traffic Contacts - All Units	280			1427		
House Watch	302			2719		
Other Service Response Incidents	583			3294		
<b>Reported Incidents - Part 1</b>	<b>5</b>			<b>24</b>		
Homicide	0			0		
Theft (Includes:)	1			13		
Larceny/Theft	1			9		
BMV's	0			2		
Auto Theft	0			2		
Residential Burglary	4			7		
Business Burglary	0			2		
Robbery	0			0		
Aggravated Assault	0			1		
Sexual Assault	0			1		
<b>Part 2 Offenses</b>	<b>12</b>			<b>115</b>		
Simple Assault	0			10		
Vandalism	1			5		
Narcotics	2			7		
Fraud (Forgery, ID Theft, etc.)	0			11		
Harassment	0			5		
Other Offenses	1			4		
Incident Reports	6			61		
Mental Health	2			11		
<b>Adult Arrests</b>	<b>4</b>			<b>13</b>		
Males	4			12		
Females	0			1		
<b>Juvenile Detentions</b>	<b>3</b>			<b>4</b>		
Males	3			3		
Females	0			1		
<b>Traffic Enforcement</b>	<b>280</b>			<b>1438</b>		
Citations	160			843		
Warnings	120			595		
<b>Accidents</b>	<b>10</b>			<b>67</b>		
Injury	2			18		
Non-Injury	6			41		
FLID	2			8		
<b>Investigations</b>	<b>166</b>			<b>753</b>		
Cases Assigned	22			121		
Clearances	12			87		
Cases Filed with DA	2			20		
Follow-Ups	130			522		
<b>Alarm Activations</b>	<b>26</b>			<b>205</b>		
Residential	25			185		
Chargeable	20			151		
Non-Chargeable	5			34		
Business	1			20		
Chargeable	0			14		
Non-Chargeable	1			6		
<b>Outside Agency Activities</b>	<b>12</b>			<b>172</b>		
Murphy PD	6			90		
Collin County SO	5			42		
Wylie PD	0			7		
Allen PD	0			12		
Other	1			21		
<b>Staff</b>	<b>Sworn</b>	<b>Civilian</b>	<b>Reserve</b>			
Authorized	10	1	2			
Current Strength	9	1	1			
In Training	0	0	0			
Openings	1	0	1			
% Staffed	90%	100%	50%			
<b>Reserve Hours</b>	<b>24.5</b>					





Parker, TX

Date range: October 2017

Monthly Web Report

# Visits Summary



Name	Value
Unique visitors	3,281
Visits	4,179
Actions	12,514
Maximum actions in one visit	153
Actions per Visit	3
Avg. Visit Duration (in seconds)	00:03:19
Bounce Rate	53%
























## Site Search Keywords

Keyword	Searches	Search Results pages	% Search Exits
ordinances	6	1	33%
bid posting	4	1	25%
building code	3	1	33%
home occupation ordinance	3	1	67%
parkerfest	3	1	33%
permits	3	1	67%
alarm	2	2	0%
bid	2	1	0%
biggs	2	1	100%
building codes	2	1	0%
building inspections	2	1	50%
city manager	2	1	50%
codes	2	1	0%
criminalrecord	2	1	50%
floodplain	2	2	0%
forms	2	1	0%
hours	2	2	50%
jobs	2	1	0%
logo	2	1	100%
parkerfest vendorregistrationind2015	2	1	100%
parkerfest vendorregistrationind2016	2	1	0%
parks	2	1	0%
reserve at southridge	2	2	50%
Others	156	209	26%




## Referrer Type

Referrer Type	Visits	Actions	Actions per Visit	Avg. Time on Website	Bounce Rate	Revenue
Direct Entry	2,642	7,115	3	00:03:05	61%	\$ 0
Search Engines	1,438	5,156	4	00:03:49	39%	\$ 0
Websites	99	243	3	00:02:23	59%	\$ 0

# Country

Country	Visits	Actions	Actions per Visit	Avg. Time on Website	Bounce Rate	Revenue
 United States	3,720	11,772	3	00:03:36	50%	\$ 0
 Philippines	91	137	2	00:01:10	76%	\$ 0
 India	41	92	2	00:01:37	66%	\$ 0
 Russia	39	41	1	00:00:24	95%	\$ 0
 Canada	35	35	1	00:00:00	100%	\$ 0
 China	33	35	1	00:00:02	94%	\$ 0
 South Africa	21	29	1	00:00:02	76%	\$ 0
 Nigeria	17	18	1	00:00:00	94%	\$ 0
 Germany	16	20	1	00:00:57	81%	\$ 0
 France	12	56	5	00:04:03	58%	\$ 0
 Malaysia	11	17	2	00:02:45	73%	\$ 0
 United Arab Emirates	11	13	1	00:00:00	82%	\$ 0
 Ukraine	10	10	1	00:00:00	100%	\$ 0
 Kenya	7	9	1	00:00:00	86%	\$ 0
 Tanzania	7	44	6	00:02:03	43%	\$ 0
 ? Unknown	7	9	1	00:00:03	86%	\$ 0
 Pakistan	6	13	2	00:05:10	33%	\$ 0
 Uganda	6	10	2	00:00:00	67%	\$ 0
 Singapore	5	6	1	00:00:00	80%	\$ 0
 Japan	4	36	9	00:09:41	75%	\$ 0
 United Kingdom	4	4	1	00:00:00	100%	\$ 0
 Ireland	3	3	1	00:00:00	100%	\$ 0
 Lebanon	3	3	1	00:00:00	100%	\$ 0
Others	70	102	2	00:01:41	70%	\$ 0

# Device type

Device type	Visits	Actions	Actions per Visit	Avg. Time on Website	Bounce Rate	Conversion Rate
 Desktop	2,801	9,388	3	00:03:45	50%	0%
 Smartphone	1,051	2,151	2	00:02:03	60%	0%
 Tablet	260	883	3	00:04:24	53%	0%
Unknown	46	53	1	00:00:19	91%	0%
Phablet	20	38	2	00:02:10	45%	0%
Portable media player	1	1	1	00:00:00	100%	0%



## Council Agenda Item

Item 8  
C:Sec Use Only

Budget Account Code:	Meeting Date:	December 5, 2017
Budgeted Amount:	Department/ Requestor:	City Council
Fund Balance- before expenditure:	Prepared by:	City Secretary Scott Grey
Estimated Cost:	Date Prepared:	November 30, 2017
Exhibits:	None	

### AGENDA SUBJECT

CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON SETTING A SPECIAL CITY COUNCIL MEETING DATE FOR DECEMBER 12, 2017 AND CANCELING THE DECEMBER 19, 2017 REGULAR MEETING. [MARSHALL]

### SUMMARY

Due to upcoming holidays, City Staff has requested City Council consider setting December 12, 2017, as the special City Council meeting for our annual planning session, and also consider canceling the regular December 19, 2017 City Council.

### POSSIBLE ACTION

Council may direct staff to take appropriate action.

Inter - Office Use			
Approved by:			
Department Head/ Requestor:		Date:	
City Attorney:		Date:	
City Administrator:	<i>Jeff Flanigan</i>	Date:	12/01/2017



## Council Agenda Item

Item 9  
C'Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: City Council
Fund Balance-before expenditure:	Prepared by: City Administrator Flanigan
Estimated Cost:	Date Prepared: November 30, 2017
Exhibits:	1. Proposed Resolution 2. Res. No. 2016-529 (2016 ZBA Appointments)

### AGENDA SUBJECT

CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-560 MAKING APPOINTMENTS TO THE ZONING BOARD OF ADJUSTMENT (ZBA). [MARSHALL]

### SUMMARY

The following Zoning and Board of Adjustments (ZBA) members, whose term(s) expired November 30th, expressed a desire to continue to serve on the ZBA in their current positions:

Member	Position	Term Expiration
Jack Albritton	Place One (1); Chairperson	Nov. 30, 2017
Andrew Ellison	Place Three (3); Voting	Nov. 30, 2017
Brian Deaver	Place Five (5), Voting	Nov. 30, 2017

The City has a vacancy.

Vacancy	Alternate Two (2)	Nov. 30, 2018
---------	-------------------	---------------

### POSSIBLE ACTION

Council may direct staff to take appropriate action.

Inter - Office Use			
Approved by:			
Department Head:	<i>Patti Scott Grey</i>	Date:	11/30/2017
City Attorney:	<i>Brandon S. Shelby</i>	Date:	11/02/2017 via email
City Administrator:	<i>Jeff Flanigan</i>	Date:	12/01/2017



**RESOLUTION NO. 2017-560**  
*(2017 Zoning Board of Adjustment Appointments)*

**A RESOLUTION OF THE CITY OF PARKER, COLLIN COUNTY,  
TEXAS, APPOINTING MEMBERS AND ALTERNATE MEMBERS TO  
SERVE ON THE ZONING BOARD OF ADJUSTMENT**

**WHEREAS**, Members and Alternate Members of the Zoning Board of Adjustment serve in staggered two year terms, commencing December 1st and ending on November 30th as set forth below:

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF PARKER, COLLIN COUNTY, TEXAS AS FOLLOWS:**

**SECTION 1. Appointment of Voting Members with terms expiring November 1, 2019**

The following are hereby appointed to serve on the Zoning Board of Adjustment as voting members for the remainder of a two year term, expiring November 30, 2019 or until their successors are appointed and qualified.

Place 1	_____
Place 3	_____
Place 5	_____

**SECTION 2. Voting Members with terms expiring November 30, 2018**

The following were previously appointed to serve on the Zoning Board of Adjustments as voting members for a term of two years, expiring November 30, 2018 or until their successors are appointed and qualified.

Place 2	Hal Camp
Place 4	Don Dickson

**SECTION 3. Alternate Members with terms expiring November 30, 2018**

The following were previously appointed to serve on the Zoning Board of Adjustment as alternate members for the unexpired portion of a two year term, expiring November 30, 2018 or until their successors are appointed and qualified.

Alternate 1	James Clay
Alternate 2	_____

**SECTION 4. Appointment of Officers**

The officers of the Zoning Board of Adjustment shall include a Chairperson and Vice-chairperson, for a term of two-years, expiring on the same date as the member's term, unless otherwise designated by council.

Chairperson \_\_\_\_\_  
Vice Chairperson Don Dickson

**SECTION 5 Effective Date**

This resolution shall be effective upon its passage.

**PASSED AND APPROVED** by the City Council of the City of Parker, Collin County, Texas on this the 5th day of December, 2017.

APPROVED:

\_\_\_\_\_  
Z Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Patti Scott Grey, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Brandon S. Shelby, City Attorney

**RESOLUTION NO. 2016-529**  
*(2016 Zoning Board of Adjustment Appointments)*

**A RESOLUTION OF THE CITY OF PARKER, COLLIN COUNTY,  
TEXAS, APPOINTING MEMBERS AND ALTERNATE MEMBERS TO  
SERVE ON THE ZONING BOARD OF ADJUSTMENT**

**WHEREAS**, Members and Alternate Members of the Zoning Board of Adjustment serve in staggered two year terms, commencing December 1st and ending on November 30th as set forth below:

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF PARKER, COLLIN COUNTY, TEXAS AS FOLLOWS:**

**SECTION 1. Appointment of Voting Members with terms expiring November 1, 2018**

The following are hereby appointed to serve on the Zoning Board of Adjustment as voting members for the remainder of a two year term, expiring November 30, 2018 or until their successors are appointed and qualified.

Place 2	Hal Camp
Place 4	Don Dickson

**SECTION 2. Appointment of Voting Members with terms expiring November 30, 2017**

The following are hereby appointed to serve on the Zoning Board of Adjustments as voting members for a term of two years, expiring November 30, 2017 or until their successors are appointed and qualified.

Place 1	Jack Albritton
Place 3	Andrew Ellison
Place 5	Brian Deaver

**SECTION 3. Appointment of Alternate Members with terms expiring November 30, 2018**

The following are hereby appointed to serve on the Zoning Board of Adjustment as alternate members for the unexpired portion of a two year term, expiring November 30, 2018 or until their successors are appointed and qualified.

Alternate 1	James Clay
Alternate 2	Phil Steiman

**SECTION 4. Appointment of Officers**

The officers of the Zoning Board of Adjustment shall include a Chairperson and Vice-chairperson, for a term of two-years, expiring on the same date as the member's term, unless otherwise designated by council.


Chairperson	Jack Albritton
Vice Chairperson	Don Dickson

**SECTION 5 Effective Date**

This resolution shall be effective upon its passage.

**PASSED AND APPROVED** by the City Council of the City of Parker, Collin County, Texas on this the 15th day of November, 2016.

APPROVED:

  
Z Marshall, Mayor

ATTEST:

  
Patti Scott Grey, City Secretary



APPROVED AS TO FORM:

  
Brandon Shelby, City Attorney



## Council Agenda Item

Item 10  
C:Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: City Council
Fund Balance- before expenditure:	Prepared by: City Attorney Shelby
Estimated Cost:	Date Prepared: November 30, 2017
Exhibits:	<ul style="list-style-type: none"><li>• Right-of-Way Dedication and Exhibit A</li></ul>

### AGENDA SUBJECT

CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON PARKER RANCH ESTATES PHASE 3 PRELIMINARY PLAT. [SHELBY]

### SUMMARY

Please review the City of Parker Right-of-Way Dedication Agreement provided, allowing Parker Ranch Estates 3 to move forward with the removal of the school's secondary access road. The developer will coordinate with Allen Independent School District.

### POSSIBLE ACTION

Council may direct staff to take appropriate action.

Inter – Office Use			
Approved by:			
Department Head/ Requestor:		Date:	
City Attorney:	<i>Brandon S. Shelby</i>	Date:	11/30/2017 via email
City Administrator:	<i>Jeff Flanigan</i>	Date:	12/01/2017

**CITY OF PARKER RIGHT-OF-WAY DEDICATION INSTRUMENT**

**CITY OF PARKER                   §  
  §  
COUNTY OF COLLIN         §**

**KNOW ALL MEN BY THESE PRESENTS, THAT First Texas Homes, Inc.,** (hereinafter called "Grantor" whether one or more), in consideration of the sum of One Dollar and No Cents (\$1.00), and other good and valuable consideration, including the benefits that will accrue to my property, paid by the City of Parker, (hereinafter called "Grantee"), the receipt and sufficiency of which is hereby acknowledged, do hereby give, grant and convey to said Grantee, 2200 Parker Road, Parker, Texas, its successors, and assigns, the tract of land described and depicted in **EXHIBIT "A"**, attached hereto and incorporated herein for all purposes of this dedication, for the use and benefit of the public as a perpetual right-of-way and easement for the passage and accommodation of vehicular and pedestrian traffic, and the construction, operation, use, maintenance, inspection, repair, alteration, and replacement of a paved road within the boundaries of the right-of-way and easement area, and for all other purposes for which a public street and right-of-way is commonly used, including installing, repairing, maintaining, altering, replacing, relocating and operation utilities in, into, upon, over, across, and under said right-of-way, and including but not limited to all such uses permitted by the Laws of the State of Texas and the Ordinances of the City of Parker, Texas.

**TO HAVE AND TO HOLD THE SAME**, together with, all and singular, the rights and appurtenances thereto in anywise belonging to the said GRANTEE, its successors and assigns forever, and GRANTOR does hereby bind himself, his heirs, successors and assigns, to Warrant and Forever Defend, all and singular, the said easement unto the said GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

GRANTOR covenants and agrees GRANTOR and GRANTOR'S heirs, representatives, successors and assigns shall at no time erect, place or construct, or cause to be erected, placed or constructed in, into, upon, over, across or under any easements granted herein any temporary or permanent structures, and it is further agreed that the City of Parker shall have the right to excavate and full upon said permanent easement, any fences, buildings or other obstructions as may now be found upon said permanent easement.

It is further intended that the permanent right-of-way and easement herein granted to the City of Parker shall run with the land and forever be a right in and to the land belonging to GRANTOR, and GRANTOR'S successors and assigns, and said grant is expressly excepted form any right of reversion of said premises under any prior deeds in GRANTOR'S chain of title. The permanent right-of-way and easement rights and privileges granted therein are exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by the grant to any other person.

**IN WITNESS WHEREOF** the said Grantors has executed this instrument this 11, day of October, 2017.

**GRANTOR:**

BY: Keith Hardesty

Keith Hardesty

ADDRESS: 500 Crescent Court, Suite 350, Dallas, TX 75201

**ACKNOWLEDGEMENT**

STATE OF TEXAS \*

\*

COUNTY OF DALLAS \*

\*

**BEFORE ME**, the undersigned authority, on this day personally appeared Keith Hardesty, 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 and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, on this the 11<sup>th</sup>  
day of October, 2017.

NOTARY SIGNATURE: Lachelle Balch

COMMISSION EXPIRES: Oct. 29, 2018



ALL PROPOSED STREET RIGHT OF WAYS ARE 60 FEET EXCEPT FOR CHAPARRAL DRIVE WHICH IS 105 FEET.  
BASIS OF BEARING DERIVED FROM THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE 4202, NORTH AMERICAN DATUM OF 1983



**City of Parker Easement Exhibit**  
**Parker Ranch, Phase 3**  
**James S. Bradley Survey ~ Abstract No. 89 and**  
**the John Snider Survey ~ Abstract No. 848**  
**City of Parker, Collin County, Texas**

**EXHIBIT A**  
**Sheet 1 of 1**  
**Date: 09/25/17**

**Westwood**

Phone (214) 473-4640 2740 Dallas Parkway, Suite 280  
Toll Free (888) 837-6150 Plano, TX 75083  
Survey Firm No. 10074301 westwoodps.com  
Westwood Professional Services, Inc.

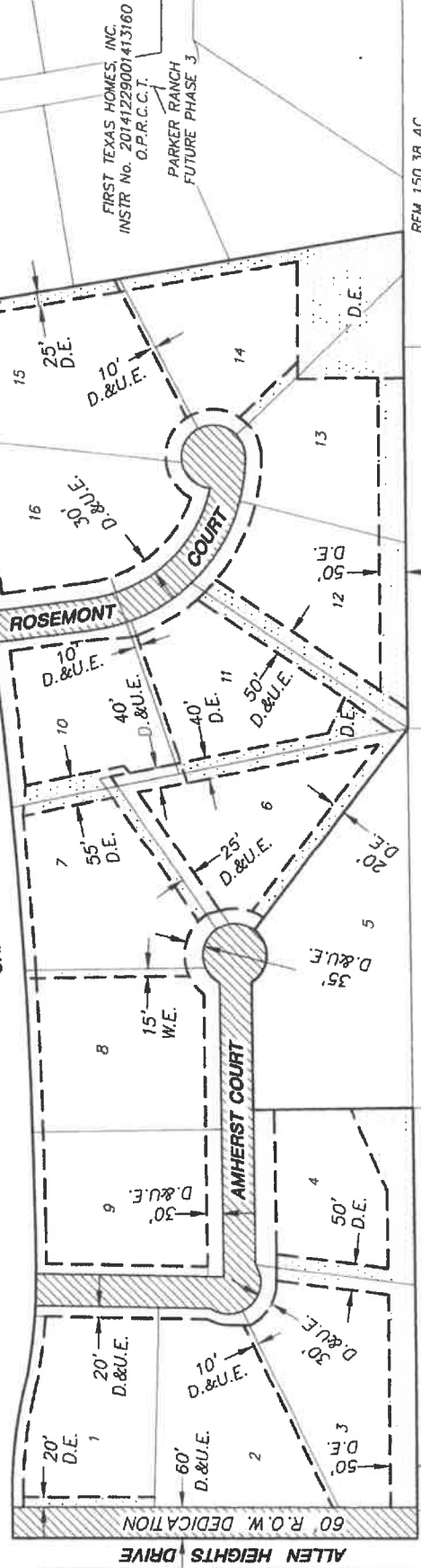
**LEGEND**  
D.U.E. DRAINAGE & UTILITY EASEMENT  
R.O.W. RIGHT-OF-WAY  
D.E. DRAINAGE EASEMENT  
W.E. WATER EASEMENT  
GRAPHIC SCALE 1" = 500'  
0' 500' 1,000'





PARKER RANCH PHASE 1  
VOL. 2016, PG. 550  
P.R.C.C.T.

CHAPARRAL ROAD



REPLAT OF LOTS 14  
THRU 19 IN BLOCK B  
SYCAMORE ESTATES  
VOL. C, PG. 415  
P.R.C.C.T.

SYCAMORE ESTATES  
VOL. 11, PG. 59  
P.R.C.C.T.

REM. 150.38 AC.  
DONIHOO FARMS, LTD.  
DOC No. 20150630000791540  
O.P.R.C.C.T.

ABSTRACT No. 89  
BRADLEY SURVEY

AMHERST COURT AND ROSEMONT COURT PROPOSED RIGHT OF WAY IS 60 FEET.  
BASIS OF BEARING DERIVED FROM THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL  
ZONE 4202, NORTH AMERICAN DATUM OF 1983

LEGEND	
	D.&U.E.
	DRAINAGE & UTILITY EASEMENT
	R.O.W.
	RIGHT-OF-WAY
	D.E.
	DRAINAGE EASEMENT
	W.E.
	WATER EASEMENT



**City of Parker Easement Exhibit**  
**Parker Ranch, Phase 2**  
**James S. Bradley Survey - Abstract No. 89 and**  
**the John Snider Survey - Abstract No. 848**  
**City of Parker, Collin County, Texas**

**EXHIBIT A**  
**Sheet 1 of 1**  
**Date 09/25/17**

**Westwood**  
Phone (214) 473-4840 2740 Dallas Parkway, Suite 280  
Toll Free (888) 837-5150 Plano, TX 75093  
Survey Firm No. 10074301 westwood.com  
Westwood Professional Services, Inc.



## Council Agenda Item

Item 11  
C Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: City Council
Fund Balance-before expenditure:	Prepared by: Finance/HR Manager Boyd
Estimated Cost:	Date Prepared: 11/30/2017
Exhibits:	1) Proposed Resolution, with agreements 2) Resolution No. 2015-467 (previous resolution)

### AGENDA SUBJECT

CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION NO. 2017-561, REGARDING A BANK DEPOSITORY AGREEMENT. [BOYD]

### SUMMARY

The City of Parker entered into a Depository Service Agreement with The American National Bank of Texas, effective from January 2015 to December 2017. This agreement allows for three (3) one year extensions. The staff recommends an extension of such agreement.

### POSSIBLE ACTION

Council may direct staff to take appropriate action.

Inter -- Office Use			
Approved by:			
Department Head/ Requestor:	<i>Johanna Boyd</i>	Date: 11/30/2017	
City Attorney:	<i>Brandon S. Shelby</i>	Date: 11/30/2017 via email	
City Administrator:	<i>Jeff Flanigan</i>	Date: 12/01 /2017	

**RESOLUTION NO. 2017-561**  
*(Extension of Depository Services Agreement for 2018)*

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARKER, COLLIN COUNTY, TEXAS, AUTHORIZING THE EXTENSION OF A DEPOSITORY SERVICES AGREEMENT WITH AMERICAN NATIONAL BANK OF TEXAS; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with the Public Funds Investment Act, Chapter 2256, Tex. Gov't Code, the City Council of the City of Parker, Texas by resolution adopted an investment policy; and

**WHEREAS**, the City of Parker entered into an Depository Services Agreement with American National Bank of Texas with an initial term effective January 1, 2015 through December 31, 2017; and

**WHEREAS**, the Depository Services Agreement with American National Bank of Texas allows for annual extension for three one-year terms following the expiration of the initial term ; and

**WHEREAS**, the City Council for the City of Parker is satisfied with the services provided by American National Bank of Texas and wishes to extend the Depository Services Agreement for a term effective January 1, 2018 through December 31, 2018.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PARKER, COLLIN COUNTY, TEXAS, AS FOLLOWS:**

**SECTION 1.** The City Council of the City of Parker hereby approves the extension of the Depository Services Agreement and related agreements with American National Bank of Texas, 720 South Greenville Avenue, Allen, Texas 75002 for a term effective January 1, 2018 through December 31, 2018.

**SECTION 2.** The City Council of the City of Parker hereby authorize the City Administrator to request said extension in writing and to execute all other necessary documents in connection therewith on behalf of the City of Parker. A copy of the original Depository Services Agreement is attached to this Resolution as Exhibit A.

**SECTION 3.** All provisions of the resolutions of the City of Parker, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this Agreement or resolution be adjudged or held to be void or unconstitutional,

the same shall not affect the validity of the remaining portions of said Agreement or Resolution which shall remain in full force and effect.

**DULY RESOLVED** by the City Council of the City of Parker, Collin County, Texas on this the 5th day of December, 2017, effective this date.

APPROVED:  
CITY OF PARKER

\_\_\_\_\_  
Z Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Patti Scott Grey, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Brandon Shelby, City Attorney

## **Depository Services Agreement**

This agreement is between the City of Parker, Texas, hereinafter referred to as the CITY, whose address is 5700 East Parker Road, Parker, Texas, 75002, and The American National Bank of Texas, hereinafter referred to as ANBTX, whose principle office for the purpose of this Agreement is located at 720 South Greenville Avenue, Allen, Texas 75002.

**I. Purpose** – The purpose of this Agreement is to state the terms and conditions under which ANBTX will serve as depository and provide banking services for the CITY.

**II. Services** – ANBTX will perform the services required by the CITY as noted in the proposal submitted December 5<sup>th</sup>, 2014. All contract terms remain as stated in this proposal with the exception of the items noted below.

- a. Pricing: CITY elected Option 2 Compensating Balances of \$1.8 Million defined below
  - i. CITY shall maintain average collected non-interest bearing balances of \$1.8 million and ANBTX will provide all banking services free of charge.
  - ii. Any interest bearing investment balances shall earn a rate equal to the current Public Funds Money Market rate plus 0.15%. The total current rate is 0.20%. The ANBTX Public Fund Money Market rate and Premium ECA rate is subject to change from time to time to reflect current market rates. However, ANBTX will guaranty it to go no lower during the contract period.
- b. Special note:
  - i. If balances do not meet the compensating requirement, all fees listed in Attachment A of the proposal shall apply.
  - ii. The waiver under Option 2 does not cover the following incremental Treasury Management Services offered: Card services, Smart Safe, Safekeeping, Bill Payment Consolidator or Merchant Processing services. Pricing on any new expanded services shall be disclosed prior to implementation.

ANB shall further provide such banking services related to the scope of this Agreement but not specifically listed herein and at such reasonable prices as may be mutually agreed upon in writing between ANB and the CITY.

**III. Term** – This Agreement is effective from January 1, 2015 to December 31, 2017. This agreement allows for three (3) one-year extensions, subject to the mutual agreement of both parties. CITY must request the extension of the Bank Depository Contract and related agreements in writing 90 days prior to the expiration of the initial two (2) year contract, and also 90 days prior to the expiration of each optional one (1) year extension.

Both parties further agree that in the event a different bank is selected to provide depository services for the year following the expiration of this Agreement, ANBTX will assist in the transition and provide depository services as the CITY may request in the same manner and at the same cost as provided in this Agreement, for a period up to 90 days after the expiration of this Agreement.

Should either the CITY or ANBTX breach the terms of this Agreement or default on any of its obligations hereunder, this Agreement may be terminated by the non-breaching party for cause upon 30 days written notice to the other party.

**IV. Notices** – Any notices to be given hereunder by either party to the other may be effected, in writing, either by personal delivery or by mail, registered or certified, postage prepaid with return receipt

requested. Mailed notices shall be addressed to the address of the parties as they appear in the initial paragraph of this Agreement, but each party may change this address by written notice in accordance with this paragraph.

**Compliance with Applicable Statutes, Ordinances and Regulations** – In performing the services required under this Agreement, ANBTX shall comply with all applicable Federal, State, and local laws, ordinances and regulations.

CITY time and demand deposits, inclusive of interest, in excess of the Federal Deposit Insurance Corporation insurance shall be secured at all times by collateral in accordance with the Public Funds Collateral Act (Texas Government Code 2257), pledged by ANBTX and held in trust by its custodian (FHLB – Dallas). ANBTX will maintain pledged balances in an amount equal to at least 102% of the total CITY deposits. A monthly report will be provided to the CITY.


**V. Assignments** – Neither party shall assign this Agreement or any interest of obligation hereunder without prior written consent of both parties.


**Miscellaneous** – This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assigned. Any oral representations or modifications concerning this Agreement shall be of no force or effect except through a subsequent modification in writing signed by both parties.

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives and successors.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not be construed as if such invalid, illegal or unenforceable provisions had never been contained.

By:   
CITY MANAGER ADMINISTRATOR (date)  
CITY OF PARKER, TEXAS

By:  1-8-15  
SVP & TREASURER (date)  
AMERICAN NATIONAL BANK OF TEXAS

**RESOLUTION NO. 2015-467**  
*(American National Bank 2014 Depository Services Bid)*

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PARKER, COLLIN COUNTY, TEXAS APPROVING AMERICAN NATIONAL BANK OF TEXAS' BID FOR DEPOSITORY SERVICES TO THE CITY DATED DECEMBER 5, 2014; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with Public Funds Investment Act, Chapter 2256, Tex. Gov't Code, the City Council of the City of Parker, Texas by resolution adopted an investment policy; and

**WHEREAS**, the City finds American National Bank of Texas has submitted a bid in accordance with the City of Parker, Texas 2014 Depository Services Request for Bids, and that all bids submitted have been reviewed under the applicable laws and requirements of the State of Texas;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PARKER, TEXAS AS FOLLOWS:**

**SECTION 1.** The City Council has received from the City Staff the recommendation to approve accept the bid of American National Bank of Texas, received in response to the City of Parker, Texas 2014 Depository Requests for Bid.

**SECTION 2.** The bid submitted by American National Bank of Texas is dated December 5, 2014, is composed of provisions contained in the three ring binder dated December 5, 2014, (the "Bid"). The City Council approves the Bid and its related and incorporated agreements from American National Bank of Texas, effective January 1, 2015, and concluding December 31, 2017. The Mayor, the Chair of the Investment Committee, and/or the City Administrator are authorized to execute the agreements presented with the Bid of American National Bank to effectuate the acceptance of the Bid and the terms of this Resolution.

**SECTION 3.** All provisions of the resolutions of the City of Parker, Texas, in conflict with provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

**SECTION 4.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this the Bid be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Bid which shall remain in full force and effect.

**SECTION 5.** This resolution shall become effective immediately from and after its passage.


**DULY RESOLVED AND ADOPTED** by the City Council of the City of Parker, Collin County, Texas, on this the 3 day of January, 2015.




CITY OF PARKER, TEXAS

  
Z Marshall, Mayor

ATTEST:

  
Carrie L. Smith, City Secretary

APPROVED AS TO FORM:

  
James E. Shepherd, City Attorney





## Council Agenda Item

Item 12  
C Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: Councilmember Pettie
Fund Balance-before expenditure:	Prepared by: City Administrator Flanigan
Estimated Cost:	Date Prepared: 11/30/2017
Exhibits:	• None

### AGENDA SUBJECT

DISCUSSION/CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON  
CODIFICATION. [PETTLE]

### SUMMARY

At the November 8, 2017 City Council meeting, Councilmember Pettie had concerns about the codification of the City of Parker ordinances and whether this process should continue. Ms. Pettie requested a discussion item be placed on the agenda.

### POSSIBLE ACTION

Council may direct staff to take appropriate action.

Inter – Office Use			
Approved by:			
Department Head/ Requestor:		Date:	
City Attorney:		Date:	
City Administrator:	<i>Jeff Flanigan</i>	Date:	12/01 /2017



## Council Agenda Item

Item 13  
C'Sec Use Only

Budget Account Code:	Meeting Date: December 5, 2017
Budgeted Amount:	Department/ Requestor: City Council
Fund Balance-before expenditure:	Prepared by: City Administrator Flanigan
Estimated Cost:	Date Prepared: 11/30/2017
Exhibits:	1. Proposed Ordinance 2. Draft City of Parker, Texas Conservation Implementation Plan

### AGENDA SUBJECT

CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON ORDINANCE NO. 757, ACCEPTING THE CITY OF PARKER, TEXAS WATER CONSERVATION IMPLEMENTATION PLAN. [FLANIGAN]

### SUMMARY

On November 20, 2017, City Engineer Birkhoff and City Administrator Flanigan met with North Texas Municipal Water District's (NTMWD's) Deputy Director Mike Rickman, Assistant Deputy Director-Water System Billy George, and Water Resource Program and Public Education Manager Denise Hickey, to present the City of Parker, Texas' Conservation Implementation Plan. Please review the plan for approval and final submission to NTMWD.

### POSSIBLE ACTION

Council may direct staff to take appropriate action.

#### Inter – Office Use

Approved by:			
Department Head/ Requestor:		Date:	
City Attorney:		Date:	
City Administrator:	<i>Jeff Flanigan</i>	Date: <i>TF</i>	12/01 /2017

**ORDINANCE NO. 757**  
*[Adopting Water Conservation Plan]*

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PARKER, TEXAS, ADOPTING A WATER CONSERVATION PLAN FOR THE CITY OF PARKER TO PROMOTE RESPONSIBLE USE AND CONSERVATION OF WATER; PROVIDING FOR REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City of Parker, Texas (“City”) recognizes that the amount of water available to its water customers is limited; and

**WHEREAS**, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of God which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times; and

**WHEREAS**, the Water Code and the regulations of the Texas Commission on Environmental Quality (“TCEQ”) require that the City adopt a Water Conservation Plan; and

**WHEREAS**, the City has determined it is in the best interest of the public to adopt a Water Conservation Plan; and

**WHEREAS**, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water sources; and

**WHEREAS**, the City has worked with the North Texas Municipal Water District (“NTMWD”) to develop a Water Conservation Plan tailored to the unique characteristics of the City; and

**WHEREAS**, the City Council of the City of Parker, Texas wishes to adopt such a plan.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARKER, TEXAS:**

**SECTION 1.** The City Council of the City of Parker hereby approves and adopts the City of Parker Water Conservation Plan (“Plan”) attached hereto as Exhibit “A”, as if recited verbatim herein.

**SECTION 2.** The City Administrator or his designee is hereby authorized to file and/or publish the Plan as may be required by law.

**SECTION 3.** That all Ordinances or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provision of this Ordinance shall be and remain controlling as to the matters ordered herein.

**SECTION 4.** That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

**ADOPTED** on this the 5th day of December, 2017.

**CITY OF PARKER, TEXAS**

**BY: \_\_\_\_\_**  
**Z. MARSHALL, MAYOR**

**ATTEST:**

**BY: \_\_\_\_\_**  
**PATTI SCOTT GREY, CITY SECRETARY**

**APPROVED AS TO FORM  
AND CONTENT:**

**BY: \_\_\_\_\_**  
**BRANDON S. SHELBY,**  
**CITY ATTORNEY**

**City of Parker, Texas**  
**CONSERVATION IMPLEMENTATION PLAN**  
*December 2017*

**I. INTRODUCTION AND OBJECTIVES**

Water supply has always been a key issue in the development of Texas. In recent years, the growing population and economic development of North Central Texas has led to increasing demands for water supplies. At the same time, local and less expensive sources of water supply are largely developed. Additional supplies to meet higher demands will be expensive and difficult to develop. It is therefore important that City of Parker make the most efficient use of existing supplies. This will delay the need for new supplies, minimize the environmental impacts associated with developing new supplies, and delay the high cost of additional water supply development.

Recognizing the need for efficient use of existing water supplies, the Texas Commission on Environmental Quality (TCEQ) has developed guidelines and requirements governing the development of water conservation and drought contingency plans for public water suppliers. The best management practices established by the Water Conservation Implementation Task Force, established pursuant to SB1094 by the 78<sup>th</sup> Legislature, were also considered in the development of the water conservation measures. Parker's water conservation plan was developed with that model and following TCEQ guidelines and requirements.

This plan includes measures that are intended to result in ongoing, long-term water savings. The objectives of this model water conservation plan are as follows:

- To reduce water consumption from the levels that would prevail without conservation efforts;
- To reduce the loss and waste of water;
- To improve efficiency in the use of water;
- To extend the life of current water supplies by reducing the rate of growth in demand.

## **II. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

### **RULES Conservation Plans**

The TCEQ rules governing development of water conservation plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 of the Texas Administrative Code. For the purpose of these rules, a water conservation plan is defined as “A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water.” The elements in the TCEQ water conservation rules covered in this conservation plan are listed below.

#### Minimum Conservation Plan Requirements

The minimum requirements in the Texas Administrative Code for Water Conservation Plans for Public Water Suppliers are covered in this report as follows:

1. 288.2(a)(1)(A) – Utility Profile
2. 288.2(a)(1)(B) – Record Management System (Billing System)
3. 288.2(a)(1)(C) – Specific, Quantified Goals
4. 288.2(a)(1)(D) – Accurate Metering (NTMWD)
5. 288.2(a)(1)(E) – Universal Metering
6. 288.2(a)(1)(F) – Determination and Control of Unaccounted Water
7. 288.2(a)(1)(G) – Public Education and Information Program
8. 288.2(a)(1)(H) – Non-Promotional Water Rate Structure
9. 288.2(a)(1)(J) – Means of Implementation and Enforcement (Ordinance)
10. 288.2(a)(1)(K) – Coordination with Regional Water Planning Group
11. 288.2(c) – Review and Update of Plan

#### Conservation Additional Requirements (Population over 5,000)

The Texas Administrative Code includes additional requirements for water conservation plans for drinking water supplies serving a population over 5,000:

12. 288.2(a)(2)(A) – Leak Detection, Repair, and Water Loss Accounting



### Additional Conservation Strategies

In addition to the TCEQ required water conservation strategies, the NTMWD also requires the following strategy:

13. 288.2(a)(3)(F) – Considerations for Landscape Water Management Regulations

TCEQ rules also include optional, but not required, conservation strategies, which may be adopted by suppliers. The NTMWD recommends that the following strategies:

- 14. 288.2(a)(3)(A) – Conservation Oriented Water Rates
- 15. 288.2(a)(3)(B) – Ordinances, Plumbing Codes or Rules on Water-Conserving Fixtures
- 16. 288.2(a)(3)(C) – Replacement or Retrofit of Water-Conserving Plumbing Fixtures
- 17. 288.2(a)(3)(F) – Considerations for Landscape Water Management Regulations
- 18. 288.2(a)(3)(G) – Monitoring Method
- 19. 288.2(a)(3)(H) – Additional Conservation Measures

## **1. WATER UTILITY PROFILE**

Appendix A to this water conservation implementation plan is based on the format recommended by the TCEQ for a water utility profile. Prior to adopting this plan, the city will provide a draft utility profile to NTMWD for review and comment. A final water utility profile will be provided to NTMWD upon adoption of and any updates to this plan.

## **2. Record Management System**

As required by TAC Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2(a)(2)(B), the city's record management system (billing software) allows for the separation of water sales and uses into residential, commercial, public/institutional, and industrial categories.

## **3. SPECIFIC QUANTIFIED GOALS**

TCEQ rules require the adoption of specific water conservation goals for a water conservation plan. The goals for this water conservation implementation plan include the following:

- Maintain the per capita municipal water use below the specified amount in gallons per capita per day.
- Maintain the level of unaccounted water in the system below twelve percent annually in 2018 and subsequent years.
- Implement and maintain a program of universal metering and meter replacement and repair.
- Increase efficient water usage through a water conservation ordinance, order or resolution. (This ordinance is required by the NTMWD.)
- Decrease waste in lawn irrigation by implementation and enforcement of landscape water management regulations.

- Raise public awareness of water conservation and encourage responsible public behavior by a public education and information program.
- Develop a system specific strategy to conserve water during peak demands, thereby reducing the peak use.

#### **4. Accurate Metering of Treated Water Deliveries from NTMWD**

Water deliveries from NTMWD are metered by NTMWD meters. These meters are calibrated on a quarterly basis by NTMWD to maintain the required accuracy as per contract. Calibration reports to be provided to City of Parker monthly.

#### **5. Universal Metering of Customer and Public Uses**

The provision of water to all customers, including public and governmental users, should be metered. The City of Parker already meters all residential, and retail water users. Beginning in January 2018, the city shall also have in place to meter all internal water uses, including parks, town facilities, special uses, firefighting and training (where practical), line testing, etc.

The City of Parker recently completed replacement of all of its meters. Going forward, all customer meters should be replaced at least every fifteen years, and the city shall maintain all records necessary to ensure said replacements are completed in a timely manner.

#### **6. Determination and Control of Unaccounted Water**

Unaccounted water is the difference between water delivered to the City from NTMWD and metered water sales to customers plus authorized but unmetered uses. (Authorized but unmetered uses include use for firefighting, releases for flushing of lines, uses associated with new construction, etc.) Unaccounted water can include several categories:

- Inaccuracies in customer meters.
- Accounts that are being used but have not yet been added to the billing system.
- Losses due to water main breaks and leaks in the water distribution system.
- Losses due to illegal connections and theft.

One of the key elements of water conservation is tracking water use and controlling losses through illegal diversions and leaks. It is important to carefully meter water use, detect and repair leaks in the distribution system and provide regular monitoring of unaccounted water.

Measures to control unaccounted water shall be a part of the routine operations of the city's utility department. Maintenance crews and personnel shall look for and report evidence of leaks in the water distribution system.

With the measures described in this plan, the City hopes to maintain unaccounted water below industry standards. If unaccounted water exceeds this goal, the City shall consider implementing a more intensive audit to determine the source(s) of and reduce the unaccounted water. The annual conservation report is the primary tool that shall be used to monitor unaccounted water.



## 7. PUBLIC EDUCATION AND INFORMATION PROGRAM

The city's continuing public education and information campaign on water conservation includes the following elements:

- Utilize the "Water IQ: Know Your Water" and other public education materials produced by the NTMWD.
- Promote "Water My Yard" in newsletter and website.
- Insert water conservation information with water bills. Inserts will include material developed by city staff and material obtained from the TWDB, the TCEQ, and other sources.
- Encourage local media coverage of water conservation issues and the importance of water conservation.
- Notify local organizations, schools, and civic groups that city staff and staff of the NTMWD are available to make presentations on the importance of water conservation and ways to save water.
- Promote the *Texas Smartscape* web site ([www.txsmartscape.com](http://www.txsmartscape.com)) and provide water conservation brochures and other water conservation materials available to the public at town hall and other public places.
- Make information on water conservation available on the city's website and include links to the "Water IQ: Know Your Water" website, *Texas Smartscape* website, and to information on water conservation on the TWDB and TCEQ web sites and other resources.

## **8.&14. NON – PROMOTIONAL WATER RATE STRUCTURE**

The City of Parker utilizes, an increasing block rate water structure intended to encourage water conservation and discourage excessive use and waste of water.

Current rates are as follows:

### **Residential (October 1, 2017)**

First 4000 gallons	\$40.00
4,001-15,000 gallons	\$3.85 per 1,000 gallons
15,001-30,000 gallons	\$4.75 per 1,000 gallons
30,001-50,000 gallons	\$5.95 per 1,000 gallons
50,001-70,000 gallons	\$9.50 per 1,000 gallons
70,001 and up gallons	\$13.10 per 1,000 gallons

### **Residential (October 1, 2018)**

First 4000 gallons	\$40.00
4,001-15,000 gallons	\$4.10 per 1,000 gallons
15,001-30,000 gallons	\$5.10 per 1,000 gallons
30,001-50,000 gallons	\$6.35 per 1,000 gallons
50,001-70,000 gallons	\$10.15 per 1,000 gallons
70,001 and up gallons	\$14.00 per 1,000 gallons

### **Residential (October 1, 2019)**

First 4000 gallons	\$40.00
4,001-15,000 gallons	\$4.20 per 1,000 gallons
15,001-30,000 gallons	\$5.25 per 1,000 gallons
30,001-50,000 gallons	\$6.55 per 1,000 gallons
50,001-70,000 gallons	\$10.45 per 1,000 gallons
70,001 and up gallons	\$14.40 per 1,000 gallons

### **Residential (October 1, 2020)**

First 4000 gallons	\$40.00
4,001-15,000 gallons	\$4.35 per 1,000 gallons
15,001-30,000 gallons	\$5.40 per 1,000 gallons
30,001-50,000 gallons	\$6.75 per 1,000 gallons
50,001-70,000 gallons	\$10.75 per 1,000 gallons
70,001 and up gallons	\$14.85 per 1,000 gallons

The City of Parker will review these rates in the spring of 2020

## **9. MEANS OF IMPLEMENTATION AND ENFORCEMENT**

The City of Parker shall enact ordinances as necessary to enforce and execute this plan. The City Mayor, City Administrator, Public Works Director, and their designees shall be authorized to take necessary measures to ensure compliance.

## **11. REVIEW AND UPDATE OF PLAN**

Following adoption, this water conservation plan shall be updated as required by TCEQ or as appropriate based on new and/or updated information.

## **12. Leak Detection and Repair**

Areas of the water distribution system in which numerous leaks and line breaks occur shall be targeted for replacement as funds are available.

## **13.&17. Landscape Water Management Measures**

The following landscape water management measures are required by the NTMWD. These minimal measures are hereby adopted as part of the city's plan in order to appropriately irrigate landscaping.

- Time of day restrictions prohibiting lawn irrigation watering from 10:00 a.m. to 6:00 p.m. from April 1 to October 31 of each year.
- Prohibition of watering of impervious surfaces.
- Prohibition of outdoor watering during precipitation or freeze events.
- Lawn and landscape irrigation limited to twice per week, implement seasonal watering and follow drought restrictions as appropriate.
- Prohibiting the use of treated water to fill or refill residential, amenity, and any other natural or manmade ponds. A pond is considered to be a still body of water with a surface area of 500 square feet or more.
- Rain and freeze sensors and/or ET or Smart controllers required on all new irrigation systems. Rain and freeze sensors and/or ET or Smart controllers must be maintained to function properly.
- Home car washing can be done only when using a water hose with a shut-off nozzle.
- Prohibition of watering areas that have been over-seeded with cool season grasses.

## **15.&16. Ordinances, Plumbing Codes, or Rules on Water-Conserving Fixtures**

The state has required water-conserving fixtures in new construction and renovations since 1992. The state standards call for flows of no more than 2.5 gallons per minute (gpm) for faucets, 3.0 gpm for showerheads, and 1.6 gallons per flush for toilets. Similar standards are now required nationally under federal law. These state and federal standards assure that all new construction and renovations will use water-conserving fixtures.

## 19. Additional Water Conservation Measures

The following water conservation measures may also be used by the town to encourage water conservation:

- Use of xeriscaping in all municipal landscape projects.
- Encourage for use of rain barrels.
- Encourage for the installation of pressure reducing valves for irrigation systems.
- Encourage for retrofitting irrigation systems with rain and freeze sensors and/or ET or Smart controllers capable of multiple programming.
- Require all new irrigation systems to be in compliance with state design and installation regulations (TAC Title 30, Part 1, Chapter 344).
- Native, drought tolerant, or adaptive plants shall be encouraged.
- Drip irrigation systems shall be promoted.
- Evapotranspiration (ET) / Smart controllers that only allow sprinkler systems to irrigate when necessary shall be promoted.
- Encourage for water efficient clothes washers.
- Other water conservation incentive programs.

CITY COUNCIL  
FUTURE AGENDA ITEMS

MEETING DATE	ITEM DESCRIPTION	CONTACT	Notes
TBD	Staff Contract Policy	Shelby/Staff	10/18/16 CC Mtg
Dec/Jan	Parks & Rec. Discussion		2017 1108 CC Mtg - Mayor
Dec/Jan	Fiscal Report 2017 - funds authorized by category - Audit?		2017 1108 CC Mtg - CM Meyer
December 12, 2017	Planning Session		
Dec/Jan	PVFD Pilot Program - 90 days Eval. Effectiveness		8/29/17 CC mtg
<b>2018</b>			
TBD	2018 City Fee Schedule		2015-16 Approved 2/29; added 2016-17 to FAI
TBD	Annual Codification Supplement	C'Sec	March
TBD	Staff Contract Policy	Shelby/Staff	10/18/16 CC Mtg
Jan., Apr., July., Oct.	Republic Waste Report		2016 1018 REQUIRED PER ORDINANCE AND AGREEMENT.
Jan., Apr., July, Oct.	Fire Dept. Report	Sheff/Barnaby	
January	ANNUAL AUDIT REPORT		2016 0119
January 16, 2018	Calling Election/Collin County Election Contract	C'Sec	Annual - January, if possible
Jan-Mar	Municipal Sales Tax Ord. for Ballot - 30 days		2017 1108 Mtg - CA Shelby
Jan/Feb	Racial Profiling Report		Per Capt. Price - Annual Report by March 1st