

KENNEDALE CITY COUNCIL
AGENDA
REGULAR MEETING
November 5, 2013
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

WORK SESSION - 5:30 PM
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the City Council reserves the right to adjourn into Executive Session at any time during the work session or the regular session to discuss posted executive session items or to seek legal advice from the City Attorney on any item posted on the agenda.**

- A. Update from the Youth Advisory Council.
- B. Governance discussion regarding e-cigarettes.
- C. Discuss any other items on the agenda.

III. EXECUTIVE SESSION

A. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion of any item posted on the agenda.

- 1. Discuss the use of tasers by Law Enforcement Officers.

IV. RECONVENE INTO OPEN SESSION

V. REGULAR SESSION

VI. ROLL CALL

VII. INVOCATION

VIII. UNITED STATES PLEDGE

IX. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

X. VISITOR/CITIZENS FORUM

At this time, any person with business before the Council not scheduled on the agenda may speak to the

Council. No formal action can be taken on these items at this meeting.

XI. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

- A. Recognition of Magistrates.
- B. Reports and updates from the Mayor.
 - Proclamation of Municipal Court Week, November 4 - 8, 2013
 - Upcoming events
- C. Reports and updates from Councilmembers.
- D. Reports and updates from the City Manager.

XII. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

- A. Consider approval of minutes from October 1, 2013 meeting.
- B. Consider approval of meeting minutes from October 10, 2013 meeting.
- C. Consider authorizing the city manager to execute a contract with the City of Fort Worth for radio system access for 2013-2014.
- D. Consider approval of a resolution declaring the City of Kennedale a hybrid entity for purposes of HIPAA and HITECH Acts
- E. Consider authorizing the Mayor to sign an Interlocal Agreement for administrative costs funding for Section 5310 program with the Fort Worth Transportation Authority.

XIII. REGULAR ITEMS

- A. Consider recommendations for Planning & Zoning Commission Chair and Vice-Chair for 2013-2014.
- B. CASE # PZ 13-05 to receive comments and consider approval on an ordinance amending Chapter 17, Article VI, "Zoning", of the code of ordinances of the City of Kennedale, Texas, as amended, by establishing a new zoning district, "Employment Center District" and regulations for same, including regulations on permitted uses, building design, site design, landscaping, and signs.
 - 1. Staff Presentation
 - 2. Public Hearing
 - 3. Staff Response and Summary
 - 4. Action by the City Council
- C. CASE # PZ 13-06 to receive comments and consider approval on a request by the City of Kennedale and the Kennedale Economic Development Corporation for a zoning change and ordinance adopting such change for 20 parcels totaling approximately 5 acres from "C-1" Restricted Commercial District to "EC" Employment Center District for properties located at 1101, 1103, 1105, 1107, 1109,

1111, 1113, 1115, 1117, 1119, 1121, & 1125 W Kennedale Pkwy, and 5409, 5413, 5417, 5421, 5429, 5433, & 5437 High Ridge Rd, with legal description of Oak Crest Addition Block 4 Lots 8, 9, 10A, 11A, 12A, 13A, 14- 18, 19A, 20-26, Tarrant County, Texas. The property in question is owned by the City of Kennedale and the Kennedale Economic Development Corporation.

1. Staff Presentation
2. Public Hearing
3. Staff Response and Summary
4. Action by the City Council

D. Consider authorizing the City Manager to execute an Interlocal Agreement for shared library services.

E. Consider approval of an Ordinance providing for the unappointment of prescribed magistrates Sakura Moten Dedrick and Tiffany Panhallegon-Oakes for the Kennedale Municipal Court.

XIV. EXECUTIVE SESSION

A. The Kennedale City Council will meet in closed session pursuant to Section 551.087 of the Texas Government Code to deliberate the offer of a financial or other incentive to a business project with whom the city is conducting economic development negotiations.

1. Review and discuss incentives for Watson Glass.

XV. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

XVI. ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Kennedale will provide for reasonable accommodations for persons attending City Council meetings. This building is wheelchair accessible, and parking spaces for disabled citizens are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meetings. Please contact Amethyst Cirno, City Secretary, at 817.985.2104 or (TDD) 1.800.735.2989

CERTIFICATION

I certify that a copy of the November 5, 2013, agenda was posted on the City Hall bulletin board next to the main entrance of the City Hall building, 405 Municipal Drive, of the City of Kennedale, Texas, in a place convenient and readily accessible to the general public at all times and said agenda was posted at least 72 hours preceding the schedule time of said meeting, in accordance with Chapter 551 of the Texas Government Code.



Amethyst G. Cirno, City Secretary

Date: November 5, 2013

Agenda Item No: WORK SESSION - A.

I. Subject:

Update from the Youth Advisory Council.

II. Originated by:

Amethyst G. Cirmo, City Secretary and Communications Coordinator

III. Summary:

The Youth Advisory Council is hosting a "Food Truck Tailgate" event in TownCenter Plaza on Tuesday, November 12th from 4:30PM to 7:30PM, directly before the KISD Basketball Game. The Marching Band and the Cheerleading Squad will be performing as well.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: November 5, 2013

Agenda Item No: WORK SESSION - B.

I. Subject:

Governance discussion regarding e-cigarettes.

II. Originated by:

Bob Hart

III. Summary:

As e-cigarettes grow in popularity, many cities are beginning to discuss their use, particularly within city buildings and vehicles. There is no conclusive evidence regarding health related issues – more testing is needed. Some employers are allowing these to be used in the workplace (they aren't a tobacco product, so no violation with no smoking policies), few are banning (based on no smoking policies), one company reported a "Don't ask don't tell" policy. I have attached a few more recent articles for review.

At this time Council will hold a general discussion on the issue.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

1.	E-Cigarette Article One	E Cigarettes Article 2.pdf
2.	E-Cigarettes Article 2	MedCityNews.July 2013.docx
3.	E-Cigarettes Article 3	Newest Policy Delemma.docx
4.	E-Cigarettes Article 4	Public health law center-2011.pdf

What Employers Need to Know About Electronic Cigarettes



**National
Business
Group on
Health**

Quick Facts About E-Cigarettes

- Not an FDA-approved tobacco cessation device.
- Contain nicotine and detectable levels of known carcinogens and toxic chemicals.
- Look very similar to regular cigarettes (especially from a distance).
- Manufactured using inconsistent or non-existent quality control processes.

Actions for Employers

- Determine whether the use of e-cigarettes is allowed in their jurisdictions, including in the workplace.
- Understand whether unions, works councils, or other laws can raise barriers to implementing workplace policies regulating e-cigarettes.
- Stay informed on any new laws and emerging scientific evidence regarding e-cigarettes.

What are electronic cigarettes (e-cigarettes)?

Electronic cigarettes, more commonly called “e-cigarettes,” are a type of electronic nicotine delivery systems (ENDS). They look very similar to regular cigarettes. The Food and Drug Administration (FDA) does not consider e-cigarettes as tobacco cessation devices.¹

There is no standard definition of an e-cigarette since different manufacturers use different designs and incorporate a range of ingredients. Most e-cigarettes consist of the following:²

- A cartridge containing a humectant (a substance to attract and absorb water molecules from the air) carrier, such as

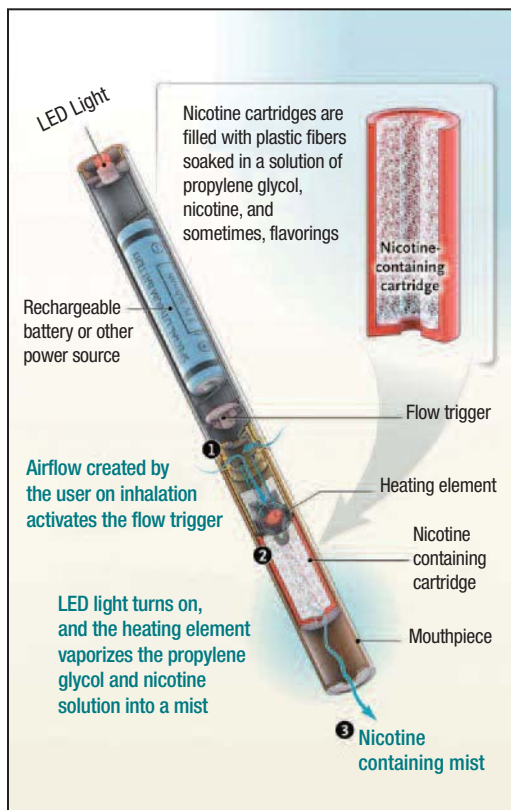
propylene glycol, and often with nicotine solution in different concentrations, but not necessarily derived from tobacco;

- A tube into which a cartridge is inserted and through which the user inhales; and
- A battery powered heating element from which the solution is drawn, causing the humectant to vaporize and form a mist.

When a user ‘lights’ the e-cigarette, a computer-aided sensor activates a heating element in the device that releases the liquid in aerosol form for inhalation. When users inhale, an LED at the end of the metal tube glows making the tip of the e-cigarette appear as if it was burning.³ A visible vapor is emitted that disappears within a few seconds. The process of using an e-cigarette is known as “vaping” or “e-smoking.”



Figure. Diagram of an Electronic Cigarette



Source: Reprinted with permission from the Massachusetts Medical Society. Cobb NK, Abrams DB. E-cigarette or drug-delivery device? Regulating novel nicotine products. *N Engl J Med.* 2011;365(3):194. Copyright 2011, Massachusetts Medical Society.

Currently, three related products are being sold: delivery devices, cartridges and refill solutions, sometimes referred to as “juice.” Cartridges generally contain up to 20 mg of nicotine and are device-specific.⁴ Starter cartridges are included with each device sold but are primarily sold separately by the device manufacturer or other suppliers. Refill kits allow the consumer to fill used cartridges with replacement solution at higher nicotine amounts than they originally contained.⁴

Created in China and first marketed internationally in 2002, e-cigarettes were not readily available in the United States until late 2006. The industry has grown from approximately a few thousand users in 2006 to several million worldwide, with tens of thousands of new e-cigarette users every week.⁵ Industry estimates put U.S. sales of the devices and accessories at more than \$200 million annually.^{6,7}

Why would an employer consider banning e-cigarettes from the workplace?^{3,8}

- Nicotine is addictive in any form.
- E-cigarettes look very similar to regular cigarettes (especially from a distance), making it harder for an employer to monitor employee cigarette use.
- The vapor emitted from e-cigarettes could be an annoyance to non-smoking employees. Also, allowing employees to smoke e-cigarettes in a tobacco-free workplace may encourage non-smoking employees to try to smoke real cigarettes in the workplace or at least question why they cannot do so.
- Some state and local governments currently ban or regulate the use of e-cigarettes in the workplace.
- There may be environmental and/or practical issues regarding the disposal of e-cigarettes.

What should employers do before implementing a workplace e-cigarette ban?³

- Determine whether the use of e-cigarettes is allowed in their jurisdictions, including in the workplace;
- Understand whether unions, work councils, or other laws can raise barriers to implementing workplace policies regulating e-cigarettes; and
- Stay informed on any new laws and emerging scientific evidence regarding e-cigarettes.

What are some employers doing about e-cigarettes?

Currently, many private employers are beginning to review the use of e-cigarettes in their workplaces. Several federal employers have banned e-cigarettes. The U.S. Air Force bans the use of e-cigarettes in most of its facilities based on the categorization by its Surgeon General's office in 2010 of e-cigarettes as “tobacco

products.” Additionally, the U.S. Department of Transportation prohibited the use of electronic cigarettes on airplanes, and plans to issue an official ban.⁹

How should employers create or revise tobacco-free workplace policies and tobacco cessation programs to address e-cigarettes?

Employers may want to revise their tobacco-free workplace policies to include e-cigarettes as a form of tobacco. An employer that bans the use of e-cigarettes should indicate that smoking in any form through the use of tobacco products (pipes, cigars and cigarettes) or “vaping” with e-cigarettes is prohibited.⁸

Furthermore, since e-cigarettes are not FDA-approved cessation devices, employees using e-cigarettes are still considered smokers.⁴ As a result, they may not be eligible for “non-tobacco user” status for health plans with premium differentials for tobacco users and non-tobacco users.

In order for employees to be considered non-tobacco users, they must be free of

all tobacco products or enrolled in cessation programs with FDA-approved cessation methods and devices. Smokers and e-cigarette users can use multiple nicotine replacement products that are approved, regulated and deemed to be safe and effective by the FDA, such as patches, gum, lozenges, nasal sprays and FDA-approved inhalers.

Does the FDA regulate e-cigarettes?

In April 2011, the FDA stated that e-cigarettes and other similar products cannot be regulated unless they are marketed for therapeutic purposes. However, products “made or derived from tobacco” can be regulated as “tobacco products” under the *Federal Food, Drug, and Cosmetic Act*.¹⁰ Currently, electronic cigarettes are not subject to pre-market review requirements of the *Family Smoking Prevention and Tobacco Control Act*. The FDA is developing a strategy to regulate this emerging class of products as tobacco products. Products that are marketed for therapeutic purposes will continue to be regulated as drugs and/or devices.



Highlights of the Family Smoking Prevention and Tobacco Control Act (2009), U.S. Food and Drug Administration (FDA)

- Orders a study on the public health implications of raising the minimum age to purchase tobacco products.
- Requires the Secretary of Health and Human Services to create a plan relating to enforcing restrictions on the advertising and promotion of menthol and other cigarettes to minors.
- Mandates larger, more varied and more prominent warning labels on tobacco products.
- Prohibits the FDA from banning existing tobacco products or requiring that they eliminate nicotine.
- Requires FDA review of new tobacco products before they can go to market unless they are similar to products marketed before February 15, 2007.
- Requires tobacco product manufacturers to:
 - Not promote products as lower-risk alternatives to traditional tobacco unless the FDA certifies that it is likely to improve public health;
 - Release all marketing research documents to the FDA;
 - Disclose all ingredients in its products;
 - Identify the form and delivery method of nicotine;
 - Disclose any research into the health, toxicological, behavioral, or physiologic effects of tobacco products to the FDA; and
 - Notify the FDA of any future changes to the ingredients of their products.

Source: GovTrack.us. H.R. 1256: *Family Smoking Prevention and Tobacco Control Act*.
<http://www.govtrack.us/congress/bill.xpd?bill=h111-1256&tab=summary>. Accessed August 29, 2011.

What have scientific studies concluded about the value and harms of e-cigarettes?

In 2009, the FDA conducted limited laboratory studies of certain e-cigarette samples. Testing of e-cigarette cartridges revealed quality control processes used to manufacture these products were “inconsistent or non-existent.”¹¹ Among its findings, cartridges labeled as containing no nicotine contained nicotine, as well as deviations from the content claimed on the label.⁴ Furthermore, vapor testing from the devices revealed similar variability, including “puff-to-puff” variation.¹² In addition, the FDA found that e-cigarettes “...contained detectable levels of known carcinogens and toxic chemicals to which users could

potentially be exposed.”¹¹ More research is necessary to determine the risks of e-cigarette use.

What are the state government policies/laws surrounding e-cigarettes?

Currently, no states have completely banned e-cigarettes. However, several states have prohibited e-cigarette sales to minors and included them in their indoor smoking bans. California, Colorado, Minnesota, New Hampshire, New Jersey and Utah have prohibited the sale of e-cigarettes to minors since March 2011.^{13,14} In New Jersey, e-cigarette use is banned in areas where smoking is banned.^{15,16} Currently, New Jersey is the only state that has this law.^{15,16} New York is considering a complete ban on electronic cigarettes.¹³

Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by the FDA

Due to the variability among products, this analysis should not be used to draw conclusions about what substances are or are not present in particular electronic cigarettes or brands of e-cigarettes.

ABOUT THE SAMPLES

- Electronic cigarettes and components from two leading brands.
- 18 various flavored, nicotine and no-nicotine cartridges offered for use with these products.

CARTRIDGES WERE TESTED FOR

- Nicotine content
- Presence of other tobacco constituents, and
- Substances known to be harmful to humans, including those that are potentially carcinogenic or mutagenic.

RESULTS

- Quality control processes used to manufacture these products are inconsistent or non-existent.
- Analysis revealed the following:
 - Diethylene glycol, an ingredient used in antifreeze, was detected in one cartridge. This substance is toxic to humans.
 - Certain tobacco-specific carcinogens (substances directly involved in causing cancer) were detected in half of the samples tested.
 - The electronic cigarette cartridges that were labeled as containing no nicotine had low levels of nicotine present in all cartridges tested, except one.
 - Three different electronic cigarette cartridges with the same label were tested and each cartridge emitted a markedly different amount of nicotine with each puff. The nicotine levels per puff ranged from 26.8 to 43.2 mcg nicotine/100 mL puff.
 - One high-nicotine cartridge delivered twice as much nicotine to users when the vapor from that e-cigarette brand was inhaled than was delivered by the FDA-approved smoking cessation nicotine inhaler.

Source: U.S. Food and Drug Administration. Summary of results: laboratory analysis of electronic cigarettes conducted by FDA. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>. Updated July 22, 2009. Accessed August 29, 2011.

What are some concerns voiced by public health professional associations about e-cigarettes?

The American Medical Association, American Cancer Society, American Heart Association, American Lung Association, Campaign for Tobacco-Free Kids and the American Academy of Pediatrics all advocate for a strong regulatory role by the FDA and recommend that smoke-free laws and policies prohibit the use of e-cigarettes.^{17,18} These organizations are concerned because there is no demonstrated public health benefit from e-cigarettes.¹⁹ Furthermore, they have also raised concerns that the marketing and flavors of e-cigarettes (such as coffee, chocolate, mint and apple) may appeal to minors.¹⁹

What are other countries doing about e-cigarettes?

The World Health Organization (WHO) convened a Regulatory Consultation on the Safety of Electronic Nicotine Delivery Systems in May 2010. Delegates from Australia, Brazil, Canada, the European Commission, New Zealand, Saudi Arabia, Singapore, South Africa, Switzerland, Thailand, Turkey, Ukraine and the United States attended the meeting.²⁰ They stated that “overall it is evident that there is growing concern internationally about the quality, safety, and ‘regulatory gap’ of these emerging products broadly called Electronic Nicotine Delivery Systems as they continue to penetrate new markets.”²⁰

The delegates concluded that:

- Nicotine and nicotine products for human use should be regulated.
- Electronic Nicotine Delivery Systems may be used to deliver other potentially toxic chemicals and ingredients.
- Electronic Nicotine Delivery Systems are often accompanied by inaccurate information.
- The quality and safety of these products need to be established.

As a result, they recommend that “Regulators of medical and tobacco products should collaborate in assessing the regulatory framework within their own countries to determine the most effective means of regulating (or possibly banning) Electronic Nicotine Delivery Systems to protect public health.”²⁰

Where can employers find additional information about e-cigarettes and tobacco programs and policies?

- National Business Group on Health:
[*Tobacco: The Business of Quitting, An Employer's Website for Tobacco Cessation*](#)
[*Moving Science into Coverage: An Employer's Guide to Clinical Preventive Services*](#)
- U.S. Food and Drug Administration:
[*Public Health Focus: Electronic Cigarettes*](#)
- America's Health Insurance Plans (AHIP) and Center for Health Research Kaiser Permanente:
[*Tobacco ROI Calculator*](#)
- American Lung Association
[*State Legislated Actions on Tobacco Issues 2010*](#)



References

- ¹ U.S. Food and Drug Administration. *E-cigarettes: questions and answers*. <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm225210.htm>. Accessed August 9, 2011.
- ² Cobb NK, Byron MJ, Abrams DB, Shields PG. Novel nicotine delivery systems and public health: the rise of the "e-cigarette." *Am J Public Health*. 2010;100(12): 2340-2342.
- ³ Joseph C. E-cigarettes: An issue for employers worldwide. Cross Border Employer Web site. <http://www.crossborderemployer.com/post/2011/01/19/E-Cigarettes-An-Issue-for-Employers-Worldwide.aspx>. January 19, 2011. Accessed August 8, 2011.
- ⁴ Cobb NK, Abrams DB. E-cigarette or drug-delivery device? regulating novel nicotine products. *N Engl J Med*. 2011;365(3):193-195. <http://www.nejm.org/doi/pdf/10.1056/NEJMp1105249>.
- ⁵ Felberbaum M. FDA proposes to regulate electronic cigarettes under less-strict tobacco rules. *USA Today*. April 25, 2011. <http://www.usatoday.com/money/industries/2011-04-25-Fda.htm>. Accessed September 12, 2011.
- ⁶ Associated Press. E-cigarettes to get FDA regulations like tobacco. CBS News Web site. <http://www.cbsnews.com/stories/2011/04/25/national/main20057307.shtml>. Accessed August 8, 2011.
- ⁷ Hauseman J. Smokeless e-cigarettes grow in popularity, but they're controversial. *Muskegon Chronicle*. July 14, 2011. http://www.mlive.com/news/muskegon/index.ssf/2011/07/smokeless_e-cigarettes_grow_in.html. Accessed August 8, 2011.
- ⁸ Smith A. Ruling may lead to rise in use of e-cigarettes. Society for Human Resource Management. <http://www.shrm.org/LegalIssues/FederalResources/Pages/ECigarette.aspx>. December 29, 2010. Accessed September 12, 2011.
- ⁹ Felberbaum M. Electronic cigarettes banned on U.S. flights. *Huffington Post*. February 11, 2011. http://www.huffingtonpost.com/2011/02/11/electronic-cigarettes-ban_n_821828.html. Accessed August 8, 2011.
- ¹⁰ Deyton L, Woodcock J, U.S. Food and Drug Administration. Regulation of e-cigarettes and other tobacco products. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm252360.htm>. April 25, 2011. Accessed August 8, 2011.
- ¹¹ U.S. Food and Drug Administration. Summary of results: laboratory analysis of electronic cigarettes conducted by FDA. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>. Updated July 22, 2009. Accessed August 29, 2011.
- ¹² Trtchounian A, Williams M, Talbot P. Conventional and electronic cigarettes (e-cigarettes) have different smoking characteristics. *Nicotine Tob Res*. 2010;12:905-912.
- ¹³ Carr T. for American Lung Association. *State legislated actions on tobacco issues 2010*. http://www.lungusa2.org/slati/reports/SLATI_2010_Final_Web.pdf. Accessed August 3, 2011.
- ¹⁴ Associated Press. E-cigarette age limit signed into law in Colorado. KKTV.com Web site. http://www.kktv.com/home/headlines/ECigarette_Age_Limit_Signed_Into_Law_in_Colorado_118692799.html. March 25, 2011. Accessed August 8, 2011.
- ¹⁵ NJToday.net. E-cigarette restrictions signed into law. <http://njtoday.net/2010/01/14/e-cigarette-restrictions-signed-into-law/>. January 14, 2010. Accessed August 8, 2011.
- ¹⁶ Felberbaum M. E-cigs: no smoke, but some areas are banning them. *Associated Press*. June 4, 2011.
- ¹⁷ Chicago Department of Public Health Office of Policy and Planning. E-cigarettes: are they safe? *The Policy Prescription*. January 2011. http://www.cityofchicago.org/content/dam/city/depts/cdph/policy_planning/Board_of_Health/PP_ElectronicCigarettes12011.pdf. Accessed August 29, 2011.
- ¹⁸ American Cancer Society, American Heart Association, American Lung Association, Campaign for Tobacco-Free Kids. Policy guidance document regarding e-cigarettes. http://www.ttac.org/tcn/tfp/2010/may-2010/pdfs/Policy_Guidance_E-Cigarettes.pdf. April 9, 2010. Accessed August 29, 2011.
- ¹⁹ U.S. Food and Drug Administration. Concerns voiced by the public health experts about electronic cigarettes. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173175.htm>. Updated July 22, 2009. Accessed August 29, 2011.
- ²⁰ World Health Organization. Conference of the parties to the WHO Framework Convention on Tobacco Control. *Control and prevention of smokeless tobacco products and electronic cigarettes*. Report by the Convention Secretariat. September 15, 2010. http://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4_12-en.pdf. Accessed August 29, 2011.

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This Fact Sheet was funded by the Centers for Disease Control and Prevention's National Center for Injury Prevention and Control as part of a cooperative agreement.

<http://medcitynews.com/2013/07/so-much-for-workplace-smoking-bans-e-cigarettes-vaper-policies-and-its-impact-on-healthcare/>

So much for workplace smoking bans? E-cigarettes, vaper policies and its impact on healthcare

July 14, 2013 10:43 am by [Evans, Terry](#) | 4 Comments



FORT WORTH -- Chris Putnam lights up at his desk several times a day. And, surprisingly enough, nobody seems to care.

"We can pretty much do it anywhere we want," said Putnam, who is allowed to smoke electronic cigarettes while he handles phone and front-counter sales for XL Parts in Fort Worth.

By being allowed to use the e-cigarettes inside the workplace, Putnam and his co-workers at the auto parts distribution company who also use the devices say they get more work done. They are commonly known as "vapers."

A pro-vaping policy "helps the company and me," said Putnam. "To smoke here you have to go completely outside the building, a good 15-minute round trip that you're not working."

Advertisement

XL Parts may be part of a growing number of employers who still don't want to see tobacco smoke in the workplace, but who turn a blind eye to e-cigarette vapors, changing policies that often banish employees to the far corners of the property, advocates of smoking alternatives said.

Some companies, unlike XL Parts, are reluctant to publicize that they allow vaping, the Star-Telegram found. Many of the 1,200 or so members of North Texas Vapers -- an organization that has more than doubled its membership in the last year -- have a don't-ask-don't-tell-like arrangements with their employers, said Mike Wright, founder of the group.

They can use their e-cigarettes in their cubicles or offices "as long as it doesn't draw negative attention," he said. "That improves efficiency about 30 percent because they're not stopping work to

get up and go somewhere to vape. But if there are one or two yoyos that want to make smoke signals, it ruins it for everybody."

It's difficult to tell how many employers are pro-vaping, said Carl V. Phillips, a spokesman for Consumer Advocates for Smoke-free Alternatives Association.

Unfortunately, there's "an enormous amount of political pressure to shut down the freedom of e-cigarettes that has nothing to do with anything legitimate," he said.

Stop-smoking aid

An e-cigarette simulates smoking by vaporizing a liquid inserted into the device into an aerosol mist. The vapor produced by e-cigarettes isn't completely odorless, but the aromas aren't unpleasant and don't hang in the air or cling to the users like tobacco smoke.

For the vapers, the devices give them the nicotine hit they crave, and they are often used by individuals who are trying to stop smoking. Putnam, for example, is a former cigarette smoker who kicked tobacco by switching to an e-cigarette.

Linc Williams the director of We Are Vapers , a documentary on the vaping movement, said e-cigarettes help people quit smoking, but don't encourage anyone to smoke, or vape.

"The ASH UK, which is an anti-smoking group in the United Kingdom, did a survey of people and found no evidence to support this gateway argument," he said.

Awareness of the tobacco alternative is growing. According to studies by the Centers for Disease Control and Prevention, about 10 percent of adult cigarette smokers had tried e-cigarettes in 2010. In 2011, that number grew to 21 percent. A CDC spokesperson said that about 6 percent of all adults surveyed in 2011 had tried e-cigarettes, roughly double the number in 2010.

Despite claims that e-cigarettes are a better alternative, anti-smoking organizations are also anti-vaping.

The American Cancer Society's advocacy arm, the Cancer Action Network, has called on the Food and Drug Administration to regulate e-cigarettes, said spokeswoman Joy Donovan Brandon.

"There has been a dramatic increase in use, so there's a push for the FDA to regulate these products," Donovan said. "We think people have the right to know what they're inhaling."

The American Lung Association also is concerned about e-cigarettes "because no one knows what's in them and what the ultimate impact on our health will be," said spokeswoman Mary Havel McGinty.

"We don't know what the long-term consequences of the use of electronic cigarettes are, and whether or not it will start kids on a lifelong addiction to nicotine," McGinty said.

Vapers who mix their own or buy liquids from specialized dealers and online sources know what they're inhaling, Wright said. It is a vaporized solution of water, propylene glycol and/or vegetable

glycerin, food-grade flavoring and nicotine in strengths that typically vary from about 18 milligrams to zero, he said.

But many vapers are just as interested in FDA regulation of e-cigarettes, said Spike Babaian, president of the National Vapers Club. The group has concerns about the health of its members who have consumed an unregulated product "and we hope that the FDA will expedite the process of proposing safety regulations for e-cigarettes in the interest of public health," she said.

Secondhand vapor

The perception that the e-cigarettes are at least safer to those who sit around someone who is using them was enough for the new owners of XL Parts, who banned smoking in the warehouse but did allow e-cigarettes to be used by employees at their desks.

"We have several people who use them, probably six or eight," said Cecil Traister, a shop supervisor who has never smoked. "They're basically odorless."

Junior Del Angel, a vaper who's on the management team of a Fuzzy's Taco in Arlington, said he and other vaping employees don't do it around the food or in the dining area. But his occasional vaping behind the cash register hasn't upset anyone.

"Sometimes people see me do it and they're curious about the e-cigarette," he said. "But I explain it to them and they're OK with it."

So far, the city of Arlington's OK with it, too, despite the fact that tobacco use is forbidden almost everywhere. The use of e-cigarettes is not prohibited under the city's smoking ordinance, said spokeswoman Sana Syed.

"Since vaping is not prohibited under our current smoking ordinance, it would be left to each property or business owner to set their own policies regarding the use of the product," she said.

Area cities that don't treat vaping and smoking differently include Fort Worth and Colleyville.

The issue of whether to allow or prohibit vaping hasn't come up in Southlake, said spokeswoman Pilar Schank.

Eules also doesn't have an official policy on vaping. But it imposes a monthly surcharge on health insurance for employees and their spouses who use tobacco products, said spokeswoman Betsy Deck. Tobacco cessation products prescribed by a physician are 100 percent covered by the city, but not e-cigarettes.

"With the implementation of the Affordable Care Act, electronic cigarettes are no longer considered a viable option for quitting smoking," she said. "I'm not sure the reason."

But policies and opinions aside, Wright said that clever vapers can do it virtually anywhere with impunity. Because the vapor dissipates so quickly, stealth vaping can be done practically under people's noses without them being aware.

Terry Evans, 817-390-7620 Twitter: @fwstevans ____

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Read more: <http://medcitynews.com/2013/07/so-much-for-workplace-smoking-bans-e-cigarettes-vaper-policies-and-its-impact-on-healthcare/#ixzz2ieIHfZqE>

YOUR NEWEST POLICY DILEMMA: HOW DO YOU HANDLE USE OF E-CIGARETTES?

by Christian Schappel September 6, 2013

The next big change to your employee policies may need to come from the latest smoking cessation fad: the use of electronic cigarettes.

Chances are, if they haven't arrived already, they're coming to your workplace ... soon.

So now's the time to consider your organization's position on the devices and whether or not they can be used on the job, inside your facility and/or around co-workers.

For those unfamiliar with e-cigarettes, here's how they work: The device, which looks just like a regular cigarette, uses a battery-powered cartridge to heat a liquid nicotine solution into a vapor. Users then inhale that vapor to get a dose of nicotine. They then exhale the vapor, which is nearly invisible as it leaves the body. Usually the vapor is odorless, but it may produce a mild scent if a flavored nicotine solution is used.

The pros

The devices have become a popular tobacco cessation device. Proponents and manufacturers of the devices assert that, unlike regular cigarettes, e-cigarettes have no proven health risks. In addition, they say the vapors do not disturb others the way second-hand smoke does.

As far as employer benefits go, there are two big ones ... maybe:

- Proponents claim e-cigarettes eliminate the need for productivity-killing "smoke" breaks (because they say the vapor they produce is innocuous), and
- Getting health plan participants to quit smoking may pay big dividends down the road via lower insurance premiums.

The cons

As promising as all of that sounds, there's a big problem many have with the devices: They are virtually unregulated and untested.

E-cigarettes have not received approval by the Food and Drug Administration to be used as a tobacco cessation device, and the [National Business Group on Health](#) claims e-cigarette solutions contain known carcinogens and toxic chemicals, and are manufactured using inconsistent or non-existent quality control processes.

And as the popularity of these devices grows, so does the uproar from opponents upset about the unregulated nature of them.

What does this mean for employers?

This leaves employers at a crossroads. Since the devices contain no tobacco, they won't be covered by any tobacco-usage policies your organization currently has in place. As a result, you'll soon be forced to decide whether or not to let these devices into your work spaces and whether to allow users to take "vaping" breaks.

Since some can create an odor, it may be wise to — at the very least — put an e-cigarette policy in place that mirrors any rules you have around the usage of colognes and perfumes in the workplace. If you currently ban the usage of anything that produces a noxious odor — to protect those with sensitivity to smells — you may want to incorporate e-cigarettes into that policy.

But that still leaves the door open for employees to use them on the job — as long as workers use odorless solutions.

So if you're nervous about how your employees will react to them, you may be better off banning their usage in non-smoking areas altogether — at least until they're proven safe.

One organization that has already banned the use of e-cigarettes is the [**U.S. Department of Transportation**](#). The devices aren't allowed to be used on airplanes.

This post originally ran on our sister website, HRBenefitsAlert.com.



Regulating E-Cigarettes

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Electronic Cigarettes (E-Cigarettes)

Electronic nicotine delivery systems (“electronic cigarettes” or “e-cigarettes”) are products often shaped like cigarettes, cigars or pipes that are designed to deliver nicotine or other substances to a user in the form of a vapor. Typically, e-cigarettes consist of battery-powered heating elements and replaceable cartridges that contain nicotine or other chemicals, and an atomizer that, when heated, converts the contents of the cartridge into a vapor that a user inhales.

First marketed in China in 2004, these products are now available around the world, thanks largely to Internet sales and aggressive marketing claims promoting the safety, convenience and cost-effectiveness of e-cigarettes over conventional cigarettes. E-cigarette manufacturers also claim that because their products are non-combustible and emit a vapor rather than secondhand smoke they can be legally used where traditional tobacco products are banned. While [proponents of e-cigarettes](#), including [some](#) in the public health community, view them as less hazardous alternatives to combustible cigarettes, others see them as gateway products to tobacco abuse and nicotine addiction and support their restriction or even removal from the market. Those in favor of regulating the product point out that e-cigarette cartridges are available in a variety of flavors that appeal to youth (such as bubblegum, chocolate and mint), and can be purchased at mall kiosks, where young people often congregate, as well as online, where safeguards against youth access can be breached more easily than in face-to-face purchases.



Public health authorities generally agree on the need for further scientific study to confirm the products’ unproven safety claims.² The [Food and Drug Administration](#) (FDA) and many leading public health organizations have expressed concern about the

lack of clinical studies on the potential health risks posed by e-cigarettes and the way these products are marketed without appropriate health warnings or legal age restrictions. In recent years, litigation between the FDA and e-cigarette manufacturers stemming from concerns about the safety and regulatory status of these products resulted in a temporary ban on the import of e-cigarettes into the United States.³ Today, as discussed below, federal policy regarding the regulation of e-cigarettes is in transition. This brief guide provides pointers for communities and policy makers to consider when drafting or implementing laws or policies that regulate e-cigarettes.

Policy Options

Public health organizations support regulating e-cigarettes for several reasons, such as: reducing youth initiation to nicotine and tobacco products, protecting the health of all users, and promoting the enforcement of smoke-free laws. There are several policy options that can advance these public health goals.

Regulating Sale. As discussed below, the FDA is developing a strategy to regulate e-cigarettes containing tobacco as tobacco products. State and local governments are not prevented from regulating the sale of tobacco products.⁴ For example, a government could prohibit the sale of such products anywhere within its jurisdiction, prohibit the sale of such products to minors, require these products to be kept behind the counter, or allow these products to be sold only in places adults are permitted to enter.

Regulating Marketing. State and local governments have an interest in protecting the public from false or misleading claims about any product. Prohibiting e-cigarette manufacturers and retailers from making unsubstantiated marketing claims about the safety and benefits of these products is in the best interest of public health. Every state and some local governments have laws in place to control misleading product claims, and these laws may be enforceable against some e-cigarette marketing efforts. For instance, state consumer protection and unfair trade practices statutes typically prohibit false or misleading advertising about products sold within the state. State and local governments may also be able to consider options designed to limit the targeted marketing of e-cigarettes to minors. While commercial speech concerns can be a part of such a policy consideration,⁵ thought should be given to how e-cigarettes are promoted in a community and whether restrictions can be placed on those efforts. Notably, a law prohibiting the sale of e-cigarettes would also be likely to substantially reduce the marketing of these products.

Regulating Use. Proponents of e-cigarettes claim these products are safer to use than traditional tobacco products, and do not expose bystanders to the risk of secondhand smoke.⁶ Yet concern about the lack of scientific data on e-cigarettes has caused a growing number of state and local governments to prohibit their use in various public places—often under existing or new smoke-free laws. The goal of such legislation is generally to minimize the use of products that pose unknown health risks – particularly unregulated products that deliver powerful drugs, such as nicotine, to the user. Another legislative goal is to prevent confusion in the enforcement of smoke-free laws caused by

the perception that e-cigarette smokers (also known as “vapers”) are actually smoking conventional cigarettes. Omitting e-cigarettes from smoke-free laws could cause conventional smokers to assume that smoking is permitted and nonsmokers might become needlessly concerned at what they see as a violation of a smoke-free law.

Policy Elements

Regardless of the type of policy effort pursued to regulate e-cigarettes, each policy shares a few common elements, such as:

- **Clear definitions and concise language:** To avoid confusion about what constitutes an e-cigarette, make sure your definitions are explicit about what they cover and broad enough to anticipate future product innovations. This eliminates ambiguity if new products are released that are similar to e-cigarettes but do not fall under a narrow definition.
- **Robust enforcement options:** Enforcing restrictions on the sale, marketing and use of e-cigarettes can be challenging unless clear procedures are established, including a reasonable penalty and appeal process. Effective enforcement of these policies often includes coordination among different enforcement agencies and consistent procedures throughout a community.
- **Well-planned implementation process:** Establish a process for publicizing the policy and educating the community, as well as procedures for receiving, tracking and following up on complaints. Make sure you set a realistic date for the policy to take effect.

Policy Challenges

One of the most controversial issues affecting the regulation of electronic cigarettes has been debate over their status as either drug delivery (e.g., smoking cessation) devices or tobacco products. The regulatory status of e-cigarettes was at the heart of recent litigation between the FDA and e-cigarette manufacturers, including *Sottera Inc. v. Food & Drug Administration*.⁷ Under the [Family Smoking Prevention and Tobacco Control Act](#) (Tobacco Control Act), the FDA has authority to regulate “any product made or derived from tobacco that is intended for human consumption.” The brands of e-cigarettes being marketed most widely today do not contain tobacco, but most often do contain nicotine extracted from tobacco.⁸ Between 2008 and 2010, the FDA determined that certain e-cigarettes were unapproved drug/device combination products, comparable to nicotine patches, which the agency has regulated for years under the drug and device provisions of the federal [Food, Drug and Cosmetic Act](#) (FDCA).

In December 2010, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *Sottera*, stating that e-cigarettes and other products “made or derived from tobacco” are not “drugs,” “devices,” or combination products, unless they are marketed for therapeutic purposes – and that the FDA can regulate them as tobacco products under the Tobacco

Control Act. On April 25, 2011, the FDA [announced](#) it will not appeal the court's decision and that it is now developing a strategy to regulate e-cigarettes containing tobacco as tobacco products under the Tobacco Control Act. For the latest federal information about regulating e-cigarettes, visit the FDA's website at <http://www.fda.gov>.

As with any tobacco product, state and local policies restricting the sale and marketing of e-cigarettes may be subject to legal challenges, such as Commercial Speech or Commerce Clause claims.⁹ Policies regulating the use of e-cigarettes may also be challenged in court, particularly since e-cigarette restrictions are often included in smoke-free laws, requiring drafters to redefine "smoking" to include the use of not only cigarettes, cigars, pipes and other traditional tobacco products, but also e-cigarettes. Communities may want to consider a comprehensive approach that targets similarly addictive gateway products on the market now or in the future (such as nicotine water or lobelia e-cigarettes).

Select Legislation and Policies

Below are a few examples of tobacco control policies that include provisions regulating the sale, marketing or use of e-cigarettes.¹⁰ Many of these provisions are included in smoke-free laws. Local and state governments might also want to consider other legislative avenues or regulatory options, such as pricing strategies.

If you consider adapting any language from the following policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. These examples are included simply to illustrate how various jurisdictions have defined and regulated these products.

Locality/State	Policy Name	Text of Policy
Minnesota	<u>Tobacco Modernization and Compliance Act of 2010, Minn. Stat. § 609.685</u>	Regulates sale of e-cigarettes and imposes criminal penalties for the sale of nicotine or lobelia delivery products, including e-cigarettes, to minors. "Whoever sells to a person under the age of 18 years a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined by section 609.685, is guilty of a misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a gross misdemeanor." Definition: A nicotine delivery device is "a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined by section 609.685."

New Hampshire	<u>An Act Prohibiting the Sale of E-Cigarettes to Minors, Chap. 0113</u>	Prohibits sale of e-cigarettes and liquid nicotine to minors, distribution of free samples of such products in a public place, and use of such products on grounds of any public educational facility. Definition: “ <i>E-cigarette</i> means any electronic smoking device composed of a mouthpiece, a heating element, a battery, and electronic circuits that provides a vapor of pure nicotine mixed with propylene glycol to the user as the user simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, ore-pipes, or under any other product name.”
New Jersey	<u>New Jersey Smoke-Free Air Act, P. L. 2009, Chap. 182</u>	Prohibits the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces. Definition: “ <i>Electronic smoking device</i> means an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe.”
Utah	<u>Utah Code § 76-10-101, 104, 105, 111</u>	Regulates sale, gift, or distribution of e-cigarettes by manufacturer, wholesaler, or retailer. Definition: “ <i>Electronic cigarette</i> means any device, other than a cigarette or cigar, intended to deliver vapor containing nicotine into a person’s respiratory system.”
Suffolk County, New York	<u>A Local Law Banning the Sale of E-Cigarettes to Persons Under the Age of 19, Local Law No. 29-2009</u>	Prohibits the sale of e-cigarettes to minors and “the use of e-cigarettes and like products in public places where traditional forms of smoking are already allowed.” Definition: “ <i>E-cigarette</i> shall mean any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user as he or she simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.”

Organizations

Americans for Nonsmokers’ Rights	<u>Model Ordinance</u>	Findings: “Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or ‘e-cigarettes,’ closely resemble and purposefully mimic the
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Prohibiting
Smoking in All
Workplaces and
Public Places

act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ("Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," *Food and Drug Administration (FDA)*, July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions."

Definition: "E-cigarette means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor."

Other Helpful Resources

The Americans for Nonsmokers' Rights website contains the latest news, reports and related [resources on e-cigarettes](#). For guidance and regulatory information about e-cigarettes, check the Food and Drug Administration's [website on e-cigarettes](#). For a different perspective on e-cigarettes, visit the website of the [American Association of Public Health Physicians](#).

Contact Us

Please feel free to contact the [Tobacco Control Legal Consortium](#) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy regulating e-cigarettes.

¹ The information contained in this document is not intended to constitute or replace legal advice.

² American Heart Assoc. et. al., *Policy Guidance Document Regarding E-Cigarettes* (April 9, 2010) (this document was released prior to the final decision in *Soterra Inc. v. Food & Drug Admin.*, but contains useful information about e-cigarettes from major public health organizations).

³ The Food and Drug Administration took enforcement action against several e-cigarette manufacturers for violations of the Federal Food, Drug, and Cosmetic Act (FDCA), including unsubstantiated claims and poor manufacturing practices. For information about the litigation between the FDA and e-cigarette manufacturers, as well as legal documents related to the enforcement actions taken by the FDA regarding these products, visit the FDA's e-cigarette website at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>.

⁴ Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (codified, in relevant part, at 15 U.S.C.A. §§ 1333-34 and 21 U.S.C.A. § 301 *et seq.* (2010)) (preserving local and state authority to regulate the sale of tobacco products).

⁵ See Tobacco Control Legal Consortium, *Restricting Tobacco Advertising – Tips and Tools* (2011).

⁶ Proponents claim that e-cigarettes emit an odorless vapor made of water and harmless chemicals rather than the hazardous secondhand smoke of combustible cigarettes.

⁷ *Sottera, Inc. v. Food & Drug Admin.*, 627 F.3d 891 (D.C. Cir. 2010).

⁸ Generally, the nicotine in electronic cigarettes is “derived from natural tobacco plants.” However, it is not entirely clear whether that is true of all electronic cigarettes currently on the market, or whether it will be true of future products. Furthermore, not all electronic cigarettes contain nicotine; some contain comparable chemicals such as lobelia. Letter from Michael M. Levy, Jr., Director, Division of New Drugs and Labeling Compliance, Food & Drug Administration, to William P. Bartkowski, President, Ruyan American, Inc. (Sept. 8, 2010), available at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm225181.htm>.

⁹ See Tobacco Control Legal Consortium publications on Commercial Speech and Commerce Clause issues in the regulation of tobacco products on its website section, Federal Regulation of Tobacco Products, at <http://publichealthlawcenter.org/topics/special-collections/federal-regulation-tobacco-collection>.

¹⁰ Several other states are considering legislation to regulate the sale and use of e-cigarettes and a growing number of countries, such as Australia, Canada, Brazil, Israel, Mexico and Hong Kong, have imposed marketing restrictions on these products. Also, back in 2008, the [World Health Organization](#) announced that it does not consider e-cigarettes an effective nicotine-replacement therapy and that these products need to undergo toxicity analyses and “operate within the proper regulatory framework.”

Updated: May 2011

Date: November 5, 2013

Agenda Item No: WORK SESSION - C.

I. Subject:

Discuss any other items on the agenda.

II. Originated by:

City Council, City Council

III. Summary:

At this time any Councilmember may choose to discuss any other item on the agenda.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: November 5, 2013

Agenda Item No: EXECUTIVE SESSION - A.

I. Subject:

The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion of any item posted on the agenda.

1. Discuss the use of tasers by Law Enforcement Officers.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

The City Council will meet in Executive Session at this time.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

1.	Taser Memo	taser memo 11-05-2013.doc
2.	Taser Guidelines	Taser Guidelines.pdf
3.	Taser Policy	Taser Policy.pdf
4.	Taser Case Decision	Taser Case Decision.pdf

Date: November 5, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - A.

I. Subject:

Recognition of Magistrates.

II. Originated by:

City Council, City Council

III. Summary:

At this time the Mayor will present certificates of recognition to Ray Cowan, Sakura Dedrick, and Tiffany Penhallegon to thank them for their service as magistrates.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

VII. Alternative Actions:

VIII. Attachments:

Date: November 5, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - B.

I. Subject:

Reports and updates from the Mayor.

- Proclamation of Municipal Court Week, November 4 - 8, 2013
- Upcoming events

II. Originated by:

City Council, City Council

III. Summary:

Mayor Clark will read the proclamation aloud.

Upcoming Events:

Tuesday 11/9 9:00AM - 3:00PM in TownCenter Park

Butterfly/Bird Garden Work day with KKB

Tuesday 11/12 4:30PM - 7:30PM in TownCenter Plaza

Food Truck Tailgate with the Youth Advisory Council

Tuesday, 11/19 6:30PM at KISD

Kennedale Historical Society Meeting featuring speaker Melvin Cooper talking about his memories of going to school in Kennedale.

Tuesday, 12/3 5:30PM in TownCenter Park

Tree Lighting Festival

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

1.	proclamation	PROCLAMATION 2013 Municipal Court Week.rtf
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PROCLAMATION:
Municipal Court Week
November 4 - November 8, 2013

Whereas, the Municipal Court of Kennedale, a time honored and vital part of local government, has existed since 1947,

Whereas, more people, citizens and non-citizens alike, come in personal contact with municipal courts than all other Texas courts combined, and

Whereas, public impression of the entire Texas judicial system is largely dependent upon the public's experience in municipal court,

Whereas, Municipal Judges and court support personnel have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all, and conform to the standards set by the Canons of Judicial Conduct,

Whereas, the Municipal Courts play a significant role in preserving the quality of life in Texas communities through the adjudication of traffic offenses, ensuring a high level of traffic safety for our citizens,

Whereas, the Municipal Courts serve as the local justice center for the enforcement of local ordinances and fine-only state offenses that protect the peace and dignity of our community,

Whereas, the Municipal Judges and Clerks continually strive to improve the administration of justice through participation in judicial education programs, seminars, workshops and the annual meetings of their state and local professional organizations.

Therefore, it is most appropriate that we recognize the accomplishments of the 916 Texas Municipal Courts, and salute their critical role in preserving public safety, protecting the quality of life in Texas communities, and deterring future criminal behavior,

Now, I **John Clark**, Mayor of the City of Kennedale, do recognize the week of
November 4 - November 8, 2013, as

Municipal Court Week

, and further extend appreciation to all Kennedale Municipal Judges and court support personnel for the vital services they perform and their exemplary dedication to our community. I call upon all residents of Kennedale to join with

the City Council in recognizing the vital service they perform and their exemplary dedication to the communities they represent.

Dated this day _____ of _____, 2013.

Mayor, John Clark

Attest: _____
City Secretary

Date: November 5, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - C.

I. Subject:

Reports and updates from Councilmembers.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Reports and updates from Councilmembers, if any.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: November 5, 2013

Agenda Item No: REPORTS/ANNOUNCEMENTS - D.

I. Subject:

Reports and updates from the City Manager.

II. Originated by:

Bob Hart

III. Summary:

Reports and updates from the City Manager, if any.

- YAC Food Truck Tailgate event in TownCenter Plaza on 11/12 from 4:30 - 7:30PM
- City Hall Closed on 11/28 and 11/29
- Tree Lighting Festival on 12/3

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

None

VII. Alternative Actions:

VIII. Attachments:

Date: November 5, 2013

Agenda Item No: CONSENT ITEMS - A.

I. Subject:

Consider approval of minutes from October 1, 2013 meeting.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Please see the attached minutes for approval.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	minutes	10.01.2013 CC Minutes.doc
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**KENNEDALE CITY COUNCIL
MINUTES
REGULAR MEETING
October 1, 2013
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

I. CALL TO ORDER

Mayor Clark called the work session to order at 5:30PM.

II. WORK SESSION

A. Governance discussion of 2013 board applicants.

III. REGULAR SESSION

Mayor Clark called the work session to order at 7:00PM.

IV. ROLL CALL

Present: John Clark, Frank Fernandez, Brian Johnson, Charles Overstreet, Kelly Turner, Liz Carrington

Absent: none

V. INVOCATION

VI. UNITED STATES PLEDGE

VII. TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

VIII. VISITOR/CITIZENS FORUM

One individual signed up to speak.

1. Michael Buchanan of 101 Hilltop Drive in Kennedale, Cub Scout Master for the Kennedale Boy Scouts. Thanks Council and the city for allowing the Boy Scouts to use Sonora Park for various events throughout the year. This year's Cub Scout shoot will be held on November 23, 2013, and summer camp will be held from June 9-13, 2014.

IX. REPORTS/ANNOUNCEMENTS

Councilmember Overstreet noted that he and the City manager would be attending the Texas Chapter of the American Planning Association conference to accept the planning award for the 2013 Comprehensive Land Use Plan with City Planner Rachel Roberts and City Manager Bob Hart. He also noted that staff would be awarded Scenic City designation next week, and the Train City USA designation on October 16th, 2013.

X. CONSENT ITEMS

All matters listed under consent agenda have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

- A. Consider approval of minutes from the September 12, 2013 regular meeting.
- B. Consider approval of minutes from the September 19, 2013 public hearing.
- C. Consider approval of minutes from the September 26, 2013 special meeting.
- D. Consider a resolution adopting an amended City of Kennedale Identity Theft Prevention Program Policy.
- E. Consider a resolution adopting an amended City of Kennedale Grant Submission & Acceptance Policy.
- F. Consider a resolution adopting an amended City of Kennedale Fraud Policy.
- G. Consider a resolution adopting an amended City of Kennedale Purchasing Policy.
- H. Consider a resolution adopting an amended City of Kennedale Procurement Card Program Policy.
- I. Consider a resolution adopting an amended City of Kennedale Investment Policy.
- J. Consider a resolution adopting an amended City of Kennedale Internal Controls & Cash Handling Policy.
- K. Consider a resolution adopting an amended City of Kennedale Financial Management Policy.

Motion To approve the consent agenda as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Frank Fernandez
Motion Passed Unanimously

XI. REGULAR ITEMS

- A. Consider approving the City Manager to execute an Interlocal Agreement for participation in the City of Fort Worth's Environmental Collection Center Household Hazardous Waste Program.

Bob Hart noted that this agreement has been in place for several years and allows Kennedale residents to obtain vouchers to dispose of household hazardous waste

Motion To approve the City Manager to execute an Interlocal Agreement for participation in the City of Fort Worth's Environmental Collection Center Household Hazardous Waste Program.. **Action** Approve, **Moved By** Charles Overstreet, **Seconded By** Kelly Turner
Motion Passed Unanimously

- B. Consider approval of Ordinance 534, regarding a negotiated resolution between the Atmos Cities Steering Committee and Atmos Energy Corporation., Mid-Tex Division and the company's 2013 annual rate review mechanism filing.

Bob Hart noted that Kennedale is One of 164 cities in Texas who participate in the steering committee. This is the most recent negotiated settlement, which all 164 cities have been asked to adopt.

Motion To approve Ordinance 534 as presented. **Action** Approve, **Moved By** Charles Overstreet, **Seconded By** Kelly Turner
Motion Passed Unanimously

C. Consider a resolution authorizing participation in various cooperative purchasing programs.

Bob Hart noted that anytime the city would like to participate in a cooperative purchasing agreement it must be approved by City Council. These purchasing networks are compiled though the state. The presented list is identical to last year's list.

Motion To approve the consent agenda as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Liz Carrington.
Motion Passed Unanimously

XII. EXECUTIVE SESSION

A. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion of any item posted on the agenda.

No executive session was held.

XIII. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

No executive session was held.

XIV. ADJOURNMENT

Motion To adjourn. **Action** Adjourn, **Moved By** Brian Johnson, **Seconded By** Liz Carrington.
Motion Passed.

Ayes: John Clark, Frank Fernandez, Brian Johnson, Charles Overstreet, Kelly Turner, Liz Carrington
Nays: Frank Fernandez

The meeting was adjourned at 8:25PM.

APPROVED:

ATTEST:

Mayor John Clark

City Secretary Amethyst G. Cirno

Date: November 5, 2013

Agenda Item No: CONSENT ITEMS - B.

I. Subject:

Consider approval of meeting minutes from October 10, 2013 meeting.

II. Originated by:

Amethyst G. Cirimo, City Secretary and Communications Coordinator

III. Summary:

Please see the attached minutes for approval.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	minutes	10.10.2013 CC Minutes.doc
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**KENNEDALE CITY COUNCIL
MINUTES
SPECIAL MEETING
October 10, 2013
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE**

I. CALL TO ORDER

Mayor Clark called the meeting to order at 5:30PM.

II. REGULAR SESSION

III. ROLL CALL

Present: John Clark, Frank Fernandez, Brian Johnson, Charles Overstreet, Kelly Turner, Liz Carrington

Absent: none

IV. INVOCATION

V. UNITED STATES PLEDGE

VI. TEXAS PLEDGE

VII. VISITOR/CITIZENS FORUM

Two individuals signed up to speak.

1. Michael Chandler, of the Keep Kennedale Beautiful Commission, approached the Council noting that the next "Bring It" recycling event would be held on Saturday, October 19th, 2013 in TownCenter Plaza.
2. Hollis Matthew, of 1252 _____, approached the Council and passed out a document titled 'Trust and Verify,' which he then described. The document referenced financial crisis management and monitoring programs.

VIII. REPORTS/ANNOUNCEMENTS

A. Proclamation - Arbor Day 2013.

Mayor Clark read the proclamation aloud.

Bob Hart noted that a test from Mistletree Drive had turned out a positive result for West Nile Virus. Due to the unusually small sample size, Tarrant County will be resampling the area next week.

Mayor Clark noted that he would be giving the annual 2013 State of the City Address on Wednesday, October 16th, 2013 at the Chamber of Commerce Luncheon. The city will also be receiving official designation from Union Pacific as a 'Train Town USA' at this meeting.

Mayor Clark also noted that they City had received official designation as a 'Scenic City.' Kennedale was one of seven cities selected for this award statewide.

Mayor Clark also noted that the City had won the '2013 Comprehensive Planning Award' from the Texas Chapter of the American Planning Association. Rachel Roberts, Bob Hart, and Councilmember Johnson attended the award ceremony in Galveston. Mayor Clark presented awards to Councilmembers Turner and Carrington, as they were heavily involved in the development of the new Comprehensive Land Use Plan.

IX. CONSENT ITEMS

A. Consider Resolution 416, adopting an amended City of Kennedale Unclaimed Property Policy.

Motion To approve the consent agenda as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Charles Overstreet
Motion Passed Unanimously

X. REGULAR ITEMS

A. Consider making the following appointments to the Board of Adjustment/Building Board of Appeals:

- Reappoint Brian Cassady to Place 1
- Reappoint Patrick Vader to Place 3
- Appoint Martin Young to Place 4
- Reappoint Jeff Madrid to Place 5
- Appoint Jeff Nevarez to Place 6
- Appoint Linda Elam to Place 7
- Appoint Lana Sather to Place 9

Motion To appoint the recommended slate of candidates to the Board of Adjustment/Building Board of Appeals as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Frank Fernandez. **Motion Passed Unanimously**

B. Consider making the following appointments to the Keep Kennedale Beautiful Commission

- Appoint Pamela Breault to Place 1
- Reappoint Wilda Turner to Place 5
- Reappoint Vickie Chandler to Place 7
- Reappoint Fred Winters to Place 9

Motion To appoint the recommended slate of candidates to the Keep Kennedale Beautiful Commission as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Charles Overstreet. **Motion Passed Unanimously**

C. Consider making the following appointments to the Kennedale Economic Development Corporation.

- Appoint Mike Johnson to Place 1
- Appoint Ronald Whitley to Place 3
- Appoint Adrienne Kay to Place 5
- Reappoint Rebecca Mowell to Place 7

Motion To appoint the recommended slate of candidates to the Kennedale Economic Development Corporation as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Charles Overstreet. **Motion Passed Unanimously**

D. Consider making the following appointments to the Parks and Recreation Board.

- Reappoint David Deaver to Place 1
- Reappoint Michael Chandler to Place 3
- Appoint LaCresha Sanders to Place 5
- Reappoint Jill Turner to Place 7

Motion To appoint the recommended slate of candidates to the Parks and Recreation Board as presented. **Action** Approve, **Moved By** Charles Overstreet, **Seconded By** Liz Carrington. **Motion Passed Unanimously**

E. Consider making the following appointments to the Planning and Zoning Commission.

- Appoint Mike Walker to Place 1
- Appoint Stephen Brim to Place 3
- Appoint Katherine McFadden to Place 5
- Appoint Donald Rawe to Place 7
- Appoint Carolyn Williamson to Place 8

Motion To appoint the recommended slate of candidates to the Planning and Zoning Commission as presented. **Action** Approve, **Moved By** Charles Overstreet, **Seconded By** Frank Fernandez. **Motion Passed Unanimously**

F. Consider making the following appointments to the Library Advisory Board.

- Reappoint Shirley Jackson to Place 1
- Reappoint Elaine Brower to Place 3
- Reappoint Donald Rawe to Place 5

Motion To appoint the recommended slate of candidates to the Library Advisory Board as presented. **Action** Approve, **Moved By** Kelly Turner, **Seconded By** Liz Carrington. **Motion Passed Unanimously**

G. Consider approval of Ordinance 535, abolishing the Arts and Culture Board.

Motion To approval of Ordinance 535 as presented. **Action** Approve, **Moved By** Brian Johnson, **Seconded By** Charles Overstreet. **Motion Passed Unanimously**

XI. EXECUTIVE SESSION

No executive session was held.

XII. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

No executive session was held.

XIII. ADJOURNMENT

Motion To adjourn, **Action** Adjourn. **Moved By** Brian Johnson, **Seconded By** Liz Carrington.
Motion Passed Unanimously

The meeting was adjourned at 7:08PM.

APPROVED:

Mayor John Clark

ATTEST:

City Secretary Amethyst G. Cirno

Date: November 5, 2013

Agenda Item No: CONSENT ITEMS - C.

I. Subject:

Consider authorizing the city manager to execute a contract with the City of Fort Worth for radio system access for 2013-2014.

II. Originated by:

Tommy Williams, Police Chief

III. Summary:

This is a recurring contract that allows us use of the Fort Worth P25 system.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	City of Fort Worth Radio Contract	CFW Radio Contract 2013-14.docx
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COMMUNICATIONS SYSTEM AGREEMENT

CATEGORY 1 – GOVERNMENT ENTITY

This **COMMUNICATIONS SYSTEM AGREEMENT** (the “**Agreement**”) is made and entered into by and between the **City of Fort Worth (“Fort Worth” or “CFW”)** acting herein by and through its duly authorized Assistant City Manager, and **the City of Kennedale (“USER”)**, acting herein by and through its duly authorized City Manager, individually referred to as a “party,” collectively referred to herein as the “parties.” The CFW or Fort Worth shall include all employees, directors, officers, agents, and authorized representatives. **USER** shall include all employees, directors, officers, agents, and authorized representatives.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791.001-791.029, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, Fort Worth owns, operates, and maintains Trunked Voice Radio Systems for the purpose of providing Public Safety voice radio communications and is the sole license holder of the CFW Trunked Voice Radio Systems with all privileges and responsibilities thereof.

NOW THEREFORE, Fort Worth and **USER** agree as follows:

1. GRANT OF LICENSE

Fort Worth hereby grants the **USER** specific permission to operate **USER’s** owned or leased field radio equipment or equipment attached and/or interfaced to the CFW Trunked Voice Radio Systems (the “Radio System”) infrastructure in accordance with the specific details and requirements for use as set forth in “**Exhibit A, Terms of Use,**” which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.

2. TERM

This Agreement shall begin upon the last day executed by all authorized parties and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in **Exhibit A**.

3. COMPENSATION

USER shall remit payment to Fort Worth in the amount and manner set forth in **Exhibit A**.

4. LIABILITY

Each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission or intentional misconduct. For purposes of this Section 4, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability.

5. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that **USER** shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the CFW. Subject to and in accordance with the conditions and provisions of this Agreement, **USER** shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** acknowledges that the doctrine of *respondeat superior* shall not apply as between the CFW, its employees, directors, officers, agents, and authorized representatives, and **USER** and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. **USER** further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between CFW and **USER**.

6. NON-APPROPRIATION OF FUNDS

Fort Worth and **USER** will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other party in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

7. RIGHT TO AUDIT

USER agrees that the CFW shall, at no additional cost to the CFW, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and

communications of the **USER** involving transactions relating to this Agreement. **USER** agrees that the CFW shall have access during normal working hours to all necessary **USER** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CFW shall give **USER** reasonable advance notice of intended audits.

8. ASSIGNMENT

USER shall not have the right to assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the CFW. Which such right shall be granted solely at the discretion of the CFW. Any assignment in violation of this provision shall be void.

9. NO WAIVER

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

10. GOVERNMENTAL POWERS/IMMUNITIES

It is understood and agreed that by execution of this Agreement, the neither CFW nor **USER** waives or surrender any of its governmental powers or immunities.

11. AMENDMENTS

No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by both parties.

12. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. CONFIDENTIAL INFORMATION

To the extent permitted by law, **USER** for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the CFW as confidential ("City Information") and shall not disclose any such information to a third party without the prior written approval of the CFW, unless such disclosure is required by law, rule, regulation, court order, in which event **USER** shall notify CFW in writing of such requirement in sufficient time to allow CFW to seek injunctive or other relief to prevent such disclosure. **USER** shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. **USER** shall notify the CFW immediately if

the security or integrity of any City Information has been compromised or is believed to have been compromised.

14. FORCE MAJEURE

The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

15. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

City of Fort Worth
Attn: Susan Alanis, Assistant City Manager
1000 Throckmorton
Fort Worth TX 76102-6311
Facsimile: (817) 392-8654

City of Kennedale
Attn: City Manager
405 Municipal Drive
Kennedale, TX 76060
Facsimile: (817) 478-7169

With Copy to the City Attorney
At same address

16. GOVERNING LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

17. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

18. ENTIRETY OF AGREEMENT

This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between Fort Worth and **USER** as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement.

19. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

EXECUTED IN MULTIPLE ORIGINALS on this the ____ day of _____, 20____.

CITY OF FORT WORTH:

By: _____

Susan Alanis
Assistant City Manager

Date: _____

City of Kennedale:

By: _____

Bob Hart
City Manager

Date: _____

ATTEST:

By: _____

Mary J. Kayser
City Secretary

ATTEST:

By: _____

Amethyst Sloane
City Secretary

**APPROVED TO FORM
AND LEGALITY:**

By: _____

Assistant City Attorney

APPROVED TO LEGALITY:

By: _____

Wayne Olson
City Attorney

Contract Authorization:

M&C: _____

Date Approved: _____

EXHIBIT A

CATEGORY 1, TERMS OF USE

The following definitions shall have the meanings set forth below and apply to this Agreement and the Terms of Use set forth herein:

DEFINITIONS

“Console System” shall mean all hardware and software associated with any dispatch console or set of consoles operated by the **USER** that are connected to the CFW Master Switch.

“Interoperable Communications Governance Committee” (“Governance Committee”) shall mean that group of individuals tasked with maintaining and administering the Interoperable Communications Plan. The Governance Committee shall consist of ten to fifteen individuals with CFW selecting at least one representative and each classification of users selecting at least one representative. The Governance Committee shall determine and may periodically adjust the number of members and the method for selecting members for each classification of users with a goal of ensuring that the Governance Committee reflects the full range of user types.

“Infrastructure Support Fee” shall mean the annual fee charged by CFW to offset costs incurred by the CFW in the operation and maintenance of the Radio System.

“Interoperable Communications Plan” (the “Plan”) means the plan developed and established by CFW and the Governance Committee to facilitate, enhance and simplify radio communications among all agencies utilizing the Radio System or connecting their Site Repeater Systems or Console Systems to the CFW Master Switch. The Plan is available upon request from CFW or can be found on the CFW website at <http://fortworthtexas.gov/itsolutions/>.

“Master Switch” shall mean the primary processing and network infrastructure to which all Console Systems and Site Repeater Systems must connect in order to operate on the Radio System. The Master Switch is currently located at the CFW Eagle Mountain facility.

“Over The Air Rekeying” (“OTAR”) shall mean the management and support of Subscriber Radio encryption keys via over-the-air, radio channel transmission.

“OTAR Administration Fee” shall mean the annual fee charged by CFW to offset costs incurred by the CFW in the management and support of Subscriber Radio encryption keys administered through the Radio System’s OTAR functions.

“Over the Air Programming” (“OTAP”) shall mean the method of implementing programming changes to Subscriber Radios using the over-the-air data capabilities of the Radio System.

“Private Call” shall mean a feature that reserves channel resources specifically for conversations between two Subscriber Radios.

“Site Repeater System” shall mean the base stations, shelter, tower and all site-specific hardware and software infrastructure associated with the provision of a radio site connected to the CFW Master Switch.

“System Upgrade Agreement Fee” shall mean the annual fee charged by CFW to offset cost charged to CFW by Motorola Solutions for the maintenance of the Software Upgrade Agreement applicable to the **USER’s** Console Systems and Site Repeater Systems.

“Subscriber Radio” shall mean a radio that has a unique identification number and is programmed to operate on the Radio System. The term shall include, but not be limited to, control stations (desk top radios), mobile radios, and portable radios.

“Talk Group” shall mean a specific group of Subscriber Radios allowed to communicate privately within that group over shared infrastructure resources.

TERMS OF USE

1. The installation and maintenance of the Radio System infrastructure equipment is the responsibility of CFW unless otherwise stated in this Agreement.
2. The CFW is the holder of the FCC (Federal Communications Commission) license(s) that the Radio System uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide **USER** with any rights whatsoever to the CFW FCC license(s) or to the Radio Frequency spectrum used by the Radio System.
3. The CFW makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The **USER** is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for **USER’s** equipment.
4. **USER** will be responsible for the acquisition, programming, and maintenance of all equipment **USER** will be utilizing in connection with the Radio System infrastructure, including, but not limited to, Subscriber Radios, consoles, and special equipment.
5. In order to ensure hardware and software compatibility with the Radio System infrastructure, all Subscriber Radios and consoles intended for use by **USER** on the Radio System shall be compliant with Project 25 standards established by the Telecommunications Industry Association. The use of unauthorized radios on the Radio System may result in suspended operation of the radios and/or termination of the Agreement.
6. **USER** agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of **USER’s** radios. The use of short, broad spectrum, or “stubby,” antennas is not recommended. **USER** shall be solely liable for coverage gaps in the event **USER** utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of **USER’s** radios.

7. No antenna gain greater than 3 DB will be allowed for mobiles and consolettes.
8. **USER** shall use due diligence in the maintenance and configuration of its Subscriber Radio equipment to ensure that no **USER** radio or console causes a degradation to the Radio System operation. The CFW shall have the right to remove from operation any field radio unit or equipment owned or leased by **USER** that is operating on, attached and/or interfaced to the CFW infrastructure, if CFW determines in its sole reasonable discretion that such equipment is causing interference or harm to the Radio System in any way. The CFW reserves the right to request that **USER** operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by an authorized radio repair facility approved by the CFW. The cost of such testing or repair will be the sole responsibility of **USER**. Furthermore, the CFW shall have the right to deactivate, without prior notification to or consent of **USER**, any field radio or other **USER** equipment suspected of causing interference, intentionally or unintentionally, to any other radios on the Radio System or to the Radio System's overall operation.
9. **USER**'s radios may be used for voice radio communications over the Radio System infrastructure in accordance with the terms and conditions of this Agreement for as long as this Agreement remains in effect.
10. The CFW will be responsible for managing infrastructure loading and demand. CFW reserves the right, without notice to incumbent users, to enter into a similar agreement with other entities or to deny the addition of new Subscriber Radio equipment to any user of the Radio System. The CFW shall have sole discretion in determining whether to allow additional users or radios based on CFW's determination of whether such addition to the Radio System can be made without adversely impacting the Radio System.
11. **USER** is prohibited from utilizing telephone interconnect on the Radio System. This prohibition shall include, but is not limited to, connecting to either the PSTN (Public Switched Telephone Network) or **USER**'s internal phone system(s) through a console patch into the Radio System or to any Subscriber Radio on the Radio System.
12. Due to the radio infrastructure resource allocations required by "Private Call," **USER** is not permitted to utilize "Private Call" on the Radio System.
13. **USER**'s utilization of data communications on the Radio System will be limited to the Radio System's OTAP functions. Performance of data communications over the Radio System is not guaranteed. For programming changes involving more than ten Subscriber Radios, **USER** agrees to coordinate with CFW prior to executing changes to minimize impact on other users and on the Radio System.
14. The use of OTAR in association with Subscriber Radio encryption is prohibited without prior approval of CFW. Administration of encryption keys will be performed exclusively by CFW. **USER** may utilize and administer other encryption methods as required.

15. The CFW will provide **USER** with an Advanced System Key (ASK) for use with the **USER's** Subscriber Radios only. The ASK will expire annually, and **USER** shall be responsible for requesting a new ASK following expiration if one is required. **USER** will be responsible for safeguarding the security of the ASK to prevent theft and/or loss. **USER** agrees to notify CFW immediately upon the theft or loss of the ASK.

16. CFW will assign the **USER** Talk Group IDs unique to **USER** operation. All Talk Group names shall include a prefix unique to the **USER's** agency. No other agency will be authorized to use **USER** Talk Groups without the express written permission of **USER**, and a copy of such permission must be on file with the CFW before such use may occur. The CFW reserves the right to require certain Talk Group ID's to be programmed in **USER** radios. Additionally, the CFW shall have the right to limit the number of Talk Group ID's to be used by **USER** and to disable Talk Groups ID's as it deems appropriate.

17. The CFW has established a coordinated Interoperable Communications Plan to apply to CFW and the users of its Radio System. **USER** agrees to participate in the Plan and include the Plan's interoperable Talk Groups in the programming of its Subscriber Radios and Console Systems.

18. Roaming to other systems or the use of **USER's** Talk Groups on other trunked systems that are interconnected to the Radio System is prohibited without prior approval by CFW. Roaming to other trunked systems will be limited to the Radio System's interoperable Talk Groups, although this capability may be terminated by CFW if its use is determined to result in performance degradation to either the Radio System or the interconnected trunked system.

19. **USER** may utilize a Network Management Console (NMC) to manage its own environment. **USER** is responsible for acquiring and maintaining, at **USER's** sole cost, all components required to connect the NMC to the Radio System. The **USER's** NMC must be partitioned in manner to limit access to **USER's** own environment only and to prevent **USER** from viewing, accessing, or making any changes to equipment that is not owned or leased by **USER**. The **USER** must ensure the NMC is located in a secure area. USB ports on the NMC must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. No other software applications may be utilized by the NMC.

20. CFW generally maintains aliases for units operating on the Radio System. If the **USER** has acquired the capability to modify its aliases, it may administer and maintain its own subscriber unit aliases. From that point, **USER** will be responsible for administering and maintaining its own subscriber unit aliases, and the CFW will no longer administer and maintain the **USER's** subscriber unit aliases.

21. USB ports on the **USER's** Console Systems must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. If required, all connectivity between the Console Systems and the Radio System is the responsibility of the **USER**, including software, hardware and carrier services. Associated costs will be incurred by the **USER**. Unless otherwise

approved by CFW, connectivity will be achieved through local terrestrial circuit facilities. The use of other connectivity methods, including but not limited to microwave or fiber, must be approved by the CFW. **USER** may incur additional costs from CFW for other connectivity methods.

22. The CFW shall execute with Motorola Solutions a System Upgrade Agreement for the Console Systems and Site Repeater Systems that would be affected by the software upgrades, including those owned (or leased) and operated by the **USER**. Unless the **USER** is notified otherwise by CFW, the software for the Radio System, all Site Repeater Systems and all Console Systems will be upgraded to the current level every two years. The **USER** will provide all reasonable coordination necessary for the upgrade of its Console Systems. **USER** acknowledges that reductions in functionality may occur during the upgrade process.

APPLICABLE FEES; TERMINATION; REFUNDS

23. **USER** shall pay the CFW an annual Infrastructure Support Fee in the amount of **\$24** per month, per Subscriber Radio or console. This fee is payable in advance on an annual basis for all active radio IDs issued to **USER** at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued, and thereafter, at the beginning of each CFW fiscal year. There will be no refunds or credits for radios removed from service during the fiscal year.

24. If the **USER** subscribes to OTAR services, the **USER** shall pay the CFW an annual OTAR Administration Fee in the amount of \$1 per month, per Subscriber Radio. This fee is payable in advance on an annual basis for all active radio IDs issued to **USER** at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued, and thereafter, at the beginning of each CFW fiscal year.

25. **USER** shall pay the CFW an annual System Upgrade Agreement Fee equal to the amount invoiced to the CFW by Motorola Solutions, Inc., or its successors, for the upgrade of the **USER's** Console Systems and any other component subject to upgrade as a result of the upgrade of the Radio System.

26. CFW shall have the right to increase any applicable fees under this Agreement each fiscal year to offset any increased costs incurred by CFW in the operation or maintenance of the Radio System. Any increase in applicable fees will be effective at the beginning of the next CFW fiscal year. CFW shall provide **USER** with 60 days' written notice of any intended fee increase, **provided, however**, that this notice period may be less than 60 days if Motorola Solutions provides CFW with less than 60 days' notice of an increase in the System Upgrade Agreement Fee and such reduced notice period shall not impact **USER's** obligation to pay the increased fee.

27. Either **USER** or CFW may terminate this Agreement for any reason, with or without cause, upon ninety (90) days written notice to the other party. If **USER** terminates, there will be no refunds or credits for any fee. If CFW terminates, CFW will issue a refund to the **USER** of all fees, **except for the System Upgrade Agreement Fee**, which is non-refundable, pro-rated to the end of the current fiscal year. The CFW, in its sole discretion, shall have the right to deny **USER** access to the radio infrastructure and/or the right to terminate the Agreement immediately if

USER fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due. The CFW further reserves the right to terminate this Agreement immediately, or deny access to the USER, upon notice of USER misuse of the Radio System. Notwithstanding the foregoing, the CFW, in its sole discretion, reserves the right to immediately deny access to the **USER** if such action is required to prevent the spread of a security breach or threatened security breach or due to an emergency, operational issue, or other critical incident between the Master Switch and the **USER's** environment. The CFW will use best efforts to restore access to the **USER** as soon as possible once the security breach, emergency, operational issue, or critical incident is resolved.

COMPLIANCE WITH LAWS

28. The **USER** shall comply with all current and future Federal, State, and Local laws, Ordinances, and Mandates, including Federal Communications Commission rules and regulations regarding proper use of radio communications equipment. The **USER** will also comply with the guidelines, or procedures set out in this Agreement. Furthermore, the **USER** is responsible for enforcing such compliance by its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants for **USER** Subscriber Radio equipment. Furthermore, the **USER** will be responsible for payment of any fines and penalties levied against the CFW (as the license holder) as a result of improper or unlawful use of Subscriber Radio equipment owned or leased by **USER**.

29. In order to comply with Federal, State, and Local Laws and/ or Mandates, the CFW, as the license holder, may need to act on behalf of the **USER** regarding possible modifications, reconfiguration, or exchange of Subscriber Radio equipment in order to meet these obligations. For as long as this Agreement is in force, the **USER** will allow the CFW to facilitate such activities on **USER's** behalf as necessary.

30. In the instance where **USER** Subscriber Radio equipment is to be replaced in order to be in compliance with Federal, State, and Local Laws and/or Mandates, title and ownership of such replacement Subscriber Radio equipment shall, upon delivery of Subscriber Radio equipment to the **USER's** site, pass directly to the owner of the equipment that is being replaced. The **USER** shall provide the CFW, or its designee, with the Subscriber Radio equipment to be replaced, in good working order, as determined by the CFW or its designee. **USER** shall be liable for payment of any fees associated with radios deemed to be not in proper working order. **USER** shall be liable for payment of any fees associated with upgrades to Subscriber Radio equipment.

[End of Document]

Date: November 5, 2013

Agenda Item No: CONSENT ITEMS - D.

I. Subject:

Consider approval of a resolution declaring the City of Kennedale a hybrid entity for purposes of HIPAA and HITECH Acts

II. Originated by:

III. Summary:

In 1996 Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) and in 2009 enacted the Health Information Technology Economic and Clinical Health Act (HITECH). In general, these acts establish standards for privacy and security of protected health information (PHI), as well as standards for electronic data interchange of health information. The privacy regulations specify standards for how protected health information (PHI) in any form or medium should be controlled and extend to every person whose information is collected, used or disclosed by covered entities.

When a city routinely handles protected health information, such as open enrollment, gathering information regarding health insurance choices by employees, administration and billing of health insurance payments, assisting employees with questions and concerns regarding health insurance and the Fire Department emergency medical services, it will be considered a covered entity and must comply with the Privacy Rule (45 CFR Parts 160 and 164).

The regulations provide an exception for certain organizations that use or disclose protected health information for only a part of its business operations. Such an entity, is known as a "hybrid entity." Hybrid entities must designate in writing "health care components" of the organization and describe the operation it conducts that constitute covered functions. After making this designation, the requirements of the Privacy rule apply only to the health care components. For example, the organization must train only those members of its workforce who are involved in the health care component, ensure that the health care information is only available to those employees who have access to and are trained, restrict access only to those employees and only for health plan functions; provide procedures for resolving employee violations of the requirements of the privacy rule.

By designating itself as a hybrid entity, the city is limiting the number of staff that could generate adverse legal consequences under these two Acts (HIPAA and HITECH).

In order to designate itself as a hybrid entity, City of Kennedale must adopt a resolution designating itself as a hybrid entity. This resolution must identify the city departments that are responsible for and have access to medical information of the general public as well as City employees. The resolution must also designate a Privacy Officer that will be responsible for overseeing HIPAA related issues.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:**VIII. Attachments:**

1.	HIPAA Resolution	Resolution HIPAA.docx
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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KENNEDEALE, TEXAS ESTABLISHING THE CITY OF KENNEDEALE, TEXAS AS A HYBRID ENTITY FOR THE PURPOSES OF HIPAA AND HITECH

WHEREAS, the federal government enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology Economic and Clinical Health Act of 2009 (HITECH) to protect patient health information; and

WHEREAS, HIPAA and HITECH allow entities that perform covered and non-covered functions to designate themselves as Hybrid Entities; and

WHEREAS, a Hybrid Entity is defined as a single legal entity that performs both HIPAA covered and non-covered functions that designates health care components in accordance with 45 CFR part 164; and

WHEREAS, the City has determined that it performs both covered and non-covered functions; and

WHEREAS, in order to designate itself a Hybrid Entity, the City must designate and document components of the City that are health care components; and

WHEREAS, the City will enact safeguards to prevent disclosure of PHI to another component of the covered entity where HIPAA would prohibit disclosure if the two were separate legal entities; and

WHEREAS, after thoughtful consideration the City believes it is in its best interest to declare itself a Hybrid Entity.

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

SECTION 1.

The City of Kennedale City Council hereby designates the City a Hybrid Entity pursuant to 45 CFR 164.103 and 164.105.

SECTION 2.

The following are considered health care components of the City:

- The Human Resources in its function administering the City's health insurance benefits plans for medical, dental, vision, and health flexible spending plans only. This designation does not extend to the Human Resources Department's other functions, including but not limited to its administration of the City's workers' compensation and voluntary disability benefits programs, its personnel management, and its hiring and disciplinary roles.

- The Finance Department in its function involving the billing, payment and administration of health insurance payments for medical, dental, vision, and health flexible spending plans only, which if provided external to the City, would make it a business associate for HIPAA purposes. This designation does not extend to other financial work performed by the finance department, including, but not limited to, payments relating to the City's workers' compensation and voluntary disability benefits programs.
- The Fire Department with respect to its provision of emergency medical services only. This designation does not extend to other work performed by the Fire department, including providing services as part of the City's workers' compensation program or fire response, inspection and investigatory activities.
- The Information Technology department with respect to its duties relating to providing technology services for the City's health care benefit plans for medical, dental, vision, and health flexible spending plans and the Fire Department's emergency medical services which if provided external to the City, would make it a business associate for HIPAA purposes.

SECTION 3.

The City Manager or his/her designee is hereby designated as the City's Privacy Officer to implement and coordinate the City's compliance with the privacy rule. The Fire Chief or his/her designee will act as the Privacy Officer for emergency medical services.

SECTION 4.

The City shall institute safeguards and policies to ensure that:

- Each designated health care component shall not disclose PHI to another non-health care component of the City in any circumstance in which HIPAA and prohibited such a disclosure if the health care component and non-health care component were separate and distinct legal entities.
- Designated health care components shall not use or disclose PHI that it creates or receives from or on behalf of the health care component in a way that is prohibited by HIPAA's privacy standards and shall comply with HIPAA's security standards.
- If an employee performs duties for both a health care component and non-health care component of the City, the employee shall not use or disclose PHI created or received in the course of or incident to his or her work for the health care component in a way prohibited by the HIPAA privacy and security standards.

SECTION 5.

This resolution shall be effective upon its approval by the City Council.

APPROVED this 5th day of November, 2013.

APPROVED:

Mayor John Clark

ATTEST:

Amethyst G. Cirno, City Secretary

Date: November 5, 2013

Agenda Item No: CONSENT ITEMS - E.

I. Subject:

Consider authorizing the Mayor to sign an Interlocal Agreement for administrative costs funding for Section 5310 program with the Fort Worth Transportation Authority.

II. Originated by:

Amethyst G. Cirmo, City Secretary and Communications Coordinator

III. Summary:

This is an annual agreement with the Fort Worth Transportation Authority that allows for FTA paratransit services in Kennedale

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	5310	Interlocal Agreement - 5310 Program.doc
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T Contract No. _____
City Secretary Contract No. _____

**INTERLOCAL AGREEMENT
FOR ADMINISTRATIVE COSTS FUNDING FOR
SECTION 5310 PROGRAM
BETWEEN
THE FORT WORTH TRANSPORTATION AUTHORITY
AND
THE CITY OF KENNEDALE, TEXAS**

The Fort Worth Transportation Authority (“T”) and the City of Kennedale, Texas (“City”) are both local governmental entities as that term is used in Chapter 791, Interlocal Cooperation Contracts, V.T.C.A., Government Code. They shall sometimes be referred to collectively as the “Parties”.

WHEREAS, the City of Kennedale desires to provide door-to-door paratransit services for elderly and persons with disabilities within Tarrant County and does not have a transportation service nor is a member of a transportation authority; and

WHEREAS, the Fort Worth Transportation Authority is a federal grantee of the Federal Transit Administration and the Federal Transit Administration provides funding to States under Section 5310 of Title 49 of the United States Code, and the goal of the Section 5310 program is to provide transportation for elderly and disabled persons residing in cities that do not have public transportation available to them; and

WHEREAS, the Texas Department of Transportation (TxDOT) asked the T to develop and implement a Section 5310 program (TCTS) for otherwise under served communities in Tarrant County; and

WHEREAS, the Fort Worth Transportation Authority has been awarded the grant for this area and the City of Kennedale is contributing \$1,288.00 towards the administrative costs of the Section 5310 service (TCTS); and

WHEREAS, the monies will support a portion of administrative costs for the transportation services to the described peoples during a 12 month period;

The parties pursuant to City of Kennedale action and Fort Worth Transportation Authority action agrees as follows:

1. This program is called Tarrant County Transportation Services (TCTS). This transportation is provided for a variety of purposes such as medical appointments, shopping or recreation.
2. Each party represents to the other that the delegated costs of the project under the Agreement, as well as any payments made by it pursuant to this Agreement, will be made from current revenues and/or specified grant funds. Further, each Party warrants and represents to the other party that each Party has been authorized by its respective governing body to do so. Each party further represents and warrants to the other Party that any renewal of, deletion, or change to this Agreement will be in writing and authorized by its respective governing body.
3. The Fort Worth Transportation Authority will administer transportation services to the citizens of the City of Kennedale under the program known as Tarrant County Transportation Services from January 1, 2014 through December 31, 2014.
4. The Fort Worth Transportation Authority will administer demand responsive transportation services for the seniors and persons with disabilities of Kennedale according to the federal requirements of the Section 5310 grant and according to the relevant State of Texas statutes.
5. The City of Kennedale will pay the authorized amount to the Fort Worth Transportation Authority within 30 days of receipt of invoice.
6. Fort Worth Transportation Authority will provide access upon request to the Section 5310 records to the City of Kennedale.
7. Parties will comply with all applicable State of Texas and federal statutes and regulations as required by their status as a federal grantee and transit authority of the State of Texas, and federal grantee and municipality of the State of Texas, respectively.
8. The term of this agreement will begin January 1, 2014 and end December 31, 2014.
9. The City of Kennedale will be considered a participating community and the qualifying residents of Kennedale will be entitled to ride TCTS for a one-way trip fare of \$2.50.

CITY OF KENNEDALE, TEXAS

FORT WORTH
TRANSPORTATION AUTHORITY:

By: _____
Mayor

By: _____
Anthony V. Johnson
Interim President/Executive Director

ATTEST: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney
City of Kennedale, Texas

Sylvia Hartless
General Counsel
Fort Worth Transportation Authority



Date: November 5, 2013

Agenda Item No: REGULAR ITEMS - A.

I. Subject:

Consider recommendations for Planning & Zoning Commission Chair and Vice-Chair for 2013-2014.

II. Originated by:

III. Summary:

In its October meeting, the Planning & Zoning Commission voted to recommend Ernest Harvey as chair of the Commission and Tom Pirtle as vice-chair.

IV. Notification:

V. Fiscal Impact Summary:

VI. Legal Impact:

VII. Recommendation:

Approve

VIII. Alternative Actions:

IX. Attachments:



Date: November 5, 2013

Agenda Item No: REGULAR ITEMS - B.

I. Subject:

CASE # PZ 13-05 to receive comments and consider approval on an ordinance amending Chapter 17, Article VI, "Zoning", of the code of ordinances of the City of Kennedale, Texas, as amended, by establishing a new zoning district, "Employment Center District" and regulations for same, including regulations on permitted uses, building design, site design, landscaping, and signs.

1. Staff Presentation
2. Public Hearing
3. Staff Response and Summary
4. Action by the City Council

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

This agenda item requests approval of an ordinance adopting a new zoning category, "Employment Center District". A request to rezone property under this zoning district will be considered under the next agenda item.

The code you are considering is one of the first steps toward implementing the updated comprehensive land use plan and is the biggest step forward the city has taken toward incorporating the use of form-based codes as one of its zoning and land use tools. As you read through the code, you'll see that most of the focus is on the form of development. Uses are regulated, but the use table is less specific than in the rest of the zoning code. Instead, uses are groups in more general categories, with the idea that the form of development and conditions imposed on certain kinds of uses will offset negative aspects of development.

As you may recall from previous discussions, form-based codes are not one-size-fits-all. Instead, they are calibrated based on the characteristics of the site to be regulated under the code, the needs of the district, and the comfort level of the community. In this case, since form-based codes are such a new concept for Kennedale, the proposed regulations do not go into the higher level of detail and control that you'll see in form-based codes in a number of other communities. They do, however, provide a tighter level of control over form than we see in more typical zoning codes. This amount of control is important given the Employment Center's importance as a gateway to Kennedale.

Regulations in the proposed code address building siting, building design, and site design, including regulations for parking, lighting, landscaping, and signs. The Employment Center code is intended to address a wide range of development issues so that new development is more predictable, which is important for potential developers, for city staff and city leaders, and for members of the public. It is intended to help potential developers move through the development review process more easily and more quickly. In addition, the code

is intended to be easier to read and understand than a standard zoning code tends to be. For this reason, the code includes a number of tables and illustrations.

As part of developing the proposed code, city staff and our consultant met with representatives of City Council, the Planning & Zoning Commission, and the Economic Development Corporation. Comments and concerns expressed by the representatives were addressed through an approach that aims to balance control and flexibility.

If adopted, the Employment Center district code would, at this stage, be applicable only to properties in the part of Oak Crest between Kennedale Parkway and High Ridge Rd. The code will be expanded later to include other parts of Oak Crest, after input from stakeholders.

(Note: some illustrations are still being revised and may change; revised versions will be presented to Council at the meeting.)

Recommendation by the Planning & Zoning Commission.

During its October meeting, the Planning & Zoning Commission voted to recommend approval of Case PZ 13-05.

We asked the Commissioners to let us know if they had any non-substantive changes they would like to see made to the code that weren't brought up during the meeting. We received only a few comments; the changes made based on the comments are underlined in the draft code. Staff has no objection to these changes, but you should note that they were not reviewed by the full Commission and are therefore not part of the official recommendation from the Commission.

Staff Recommendation.

Staff considers the Employment Center code to be in compliance with the comprehensive land use plan and with City Council goals. Staff therefore recommends approval of Case PZ 13-05.

Sample Motions.

For your reference, sample motions are provided below. The motions are examples only, and you do not have to use them when taking action on Case PZ 13-05.

I make a motion to approve Case PZ 13-05.

I make a motion to deny Case PZ 13-05 without prejudice.

I make a motion to deny Case PZ 13-05.

IV. Notification:

V. Fiscal Impact Summary:

VI. Legal Impact:

VII. Recommendation:

Approve

VIII. Alternative Actions:

IX. Attachments:

1.	PZ 13-05 ordinance	PZ 13-05 ordinance adopting Employment Center code.docx
2.	Employment Center Code	Employment Center Code Phase 1 -- Final for council.pdf

AN ORDINANCE AMENDING ORDINANCE NO. 40, THE ZONING ORDINANCE OF THE CITY OF KENNEDALE, TEXAS, AS AMENDED, BY AMENDING ARTICLE VI ZONING BY ADDING THE "EC" EMPLOYMENT CENTER DISTRICT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kennedale is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, in order to promote the public health, safety and general welfare the City Council desires to adopt the proposed amendment to its city code in order to begin implementing the comprehensive land use plan adopted in March 2012; and

WHEREAS, pursuant to Chapter 211 of the Local Government Code, the City has adopted a comprehensive zoning ordinance and map regulating the location and use of buildings, other structures and land for business, industrial, residential or other purposes, for the purpose of promoting the public health, safety, morals and general welfare, all in accordance with a comprehensive plan; and

WHEREAS, the Planning and Zoning Commission of the City of Kennedale, Texas held a public hearing on October 17, 2013, and the City Council of the City of Kennedale, Texas held a public hearing on November 5, 2013, with respect to the amendments described herein; and

WHEREAS, the City has complied with all requirements of Chapter 211 of the Local Government Code, Section 17-429 of the Zoning Ordinance, and all other laws dealing with notice, publication, and procedural requirements for the approval of amending Article VI of the Kennedale City Code.

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

SECTION 1.

The Zoning Ordinance of the City of Kennedale, Texas, as amended, is hereby amended by adding the "EC" Employment Center District as shown in Exhibit A, attached to this ordinance.

SECTION 2.

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Kennedale, Texas (1991), as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clause, or phrase of this Ordinance shall be declared unconstitutional

by the valid judgment or decree of any court of competent jurisdiction such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clause, and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause, or phrase.

SECTION 4.

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Kennedale are expressly saved as to any and all violations of the provisions of any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.

The City Secretary of the City of Kennedale is hereby directed to publish in the official newspaper of the City of Kennedale the caption, penalty clause, publication clause and effective date clause of this ordinance as provided by Section 3.10 of the Charter of the City of Kennedale.

SECTION 7.

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 5th DAY OF NOVEMBER 2013.

MAYOR

ATTEST:

CITY SECRETARY

EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY

Employment Center District Code

City of Kennedale

Adopted November 2013



EMPLOYMENT CENTER CODE

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EXHIBITS

Exhibit A Regulation Plan and Description of Boundaries

APPENDICES

Appendix A. Definitions

Appendix B. Native Plants

Appendix C. Irrigation

Appendix D. Photo & Illustration Credits

SECTION 1. PURPOSE & INTENT

In 2012, the City of Kennedale adopted a revised Comprehensive Land Use Plan. The new Comprehensive Plan establishes a long-term vision and goals for the city and serves as a policy guide and framework for land use decisions. The Plan supports a need for changing zoning and development standards for many areas of the city, including the Oak Crest area, which is located at the entrance to the city at Kennedale Parkway and I-20. In addition, recent studies and plans for Oak Crest and adjacent areas suggest the need for sidewalks, trails and green spaces, environmental cleanup, consolidation of lots that could support newer forms of development with a mix of uses that can leverage the potential of this critical location.

The Oak Crest area plays an important role in establishing the city's image in the region and locally. The Comprehensive Plan and the related Employment Center Concept Plan recognize the area's importance to community image and also note its potential desirability for businesses needing easy access to downtown Fort Worth, I-20, I-820, and surrounding communities. Based on the area's assets, the Comprehensive Land Use Plan envisioned this area as an Employment Center, a district with a vibrant mix of retail, office (corporate and small), lodging, and residential uses. Ideally, a mix of land uses—including office and retail—will eventually occupy this district, with an emphasis on employment and possible transit park & ride supportive uses. Development on the interior of the Employment Center should be designed to encourage and accommodate pedestrians. While it is understood that development on the exterior of the district will need to contend with a more auto-oriented reality, pedestrian safety, access, and comfort should not be ignored.

The Employment Center Concept Plan is an extension of the Comprehensive Plan. It lays out sub-zones that are intended to serve different purposes but are also related to and supported by the other sub-zones. The uses envisioned in the concept plan are retail/restaurant, hotel, office/flex space, senior living, a green corridor, a nature preserve/natural area and related outdoor activity center, and a park and ride stop.

This Code is intended to implement the Comprehensive Plan as it pertains to the Employment Center character district and also draws from the concept plan. The Employment Center is a redevelopment district; most of the properties have previously been developed, and many of these properties are now vacant lots or buildings awaiting reuse. The Employment Center is envisioned as a series of sub-districts, each implementing a specific redevelopment vision based on the context of the site. Standards for the entire Employment Center will be developed in phases, with this first phase addressing the part of the

district with the most visibility: properties located along Kennedale Parkway and along High Ridge Road. The Code will be updated and expanded at a later date to include the remaining segments of the Employment Center.

The development standards in this District have four main goals.

- Move toward development patterns that are closer to the vision of the comprehensive plan while taking advantage of frontages along major regional corridors such as Kennedale Parkway and Interstate-20;
- Serve as a transition between development along the Parkway and development in the interior of the Employment Center district, which will be more accommodating to pedestrians and a mix of uses, along with the potential for higher intensity development;
- Ensure new development and improvements to existing development support the City's vision of the Employment Center as a gateway to Kennedale; and
- Provide a high level of predictability, both for the development community and the public.

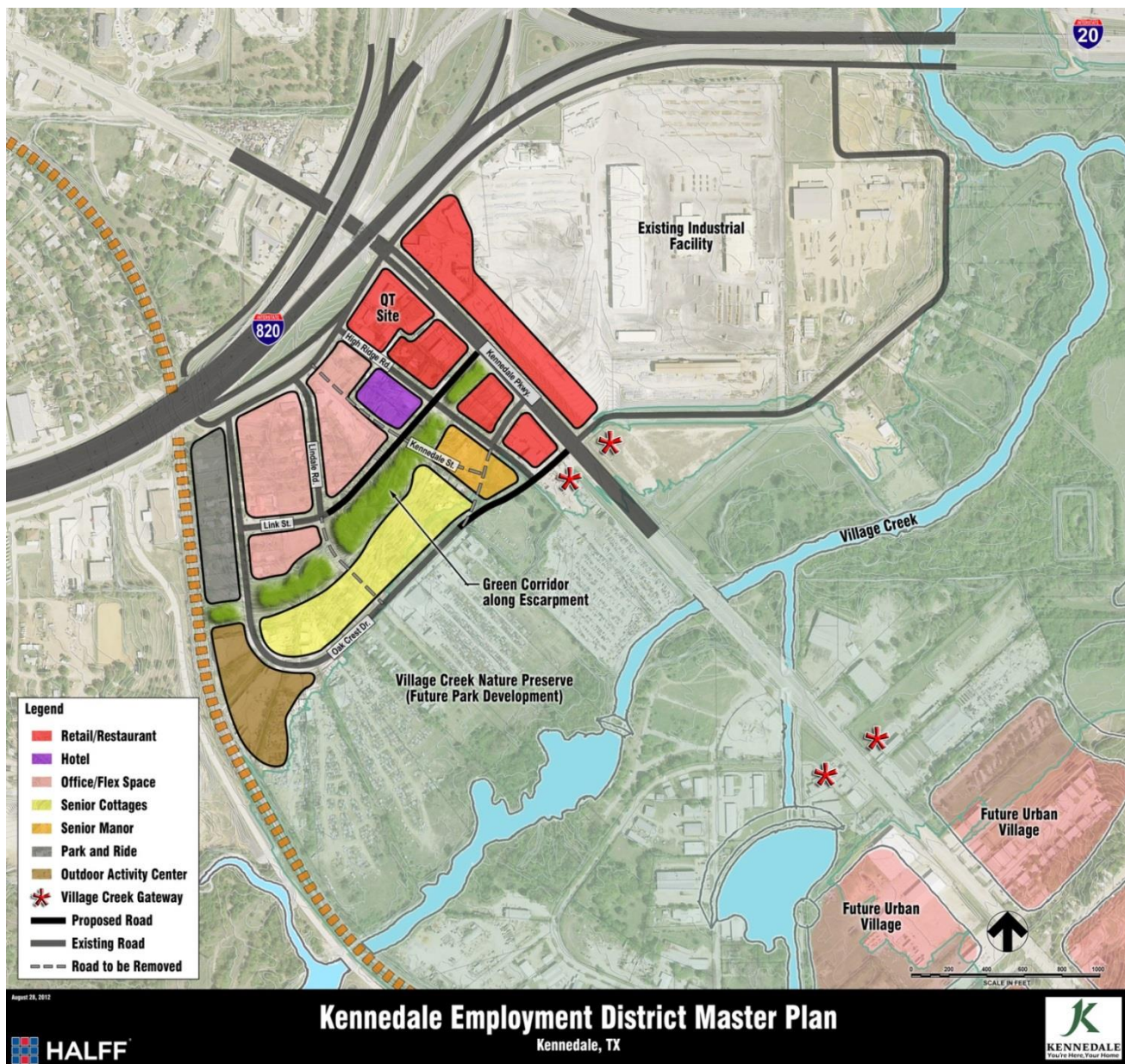


FIGURE 1. EMPLOYMENT CENTER MASTER PLAN

SECTION 2. REGULATING PLAN

The Employment Center character district shall ultimately consist of five districts: Corridor Commercial; Transition Zone; Flex Zone; Neighborhood Zone; and Green Corridor. Where not controlled by the Employment Center Code, the Employment Center shall be governed by the Kennedale Code of Ordinances to the extent the Code of Ordinances is not in conflict with the intent or text of the Employment Center Code.

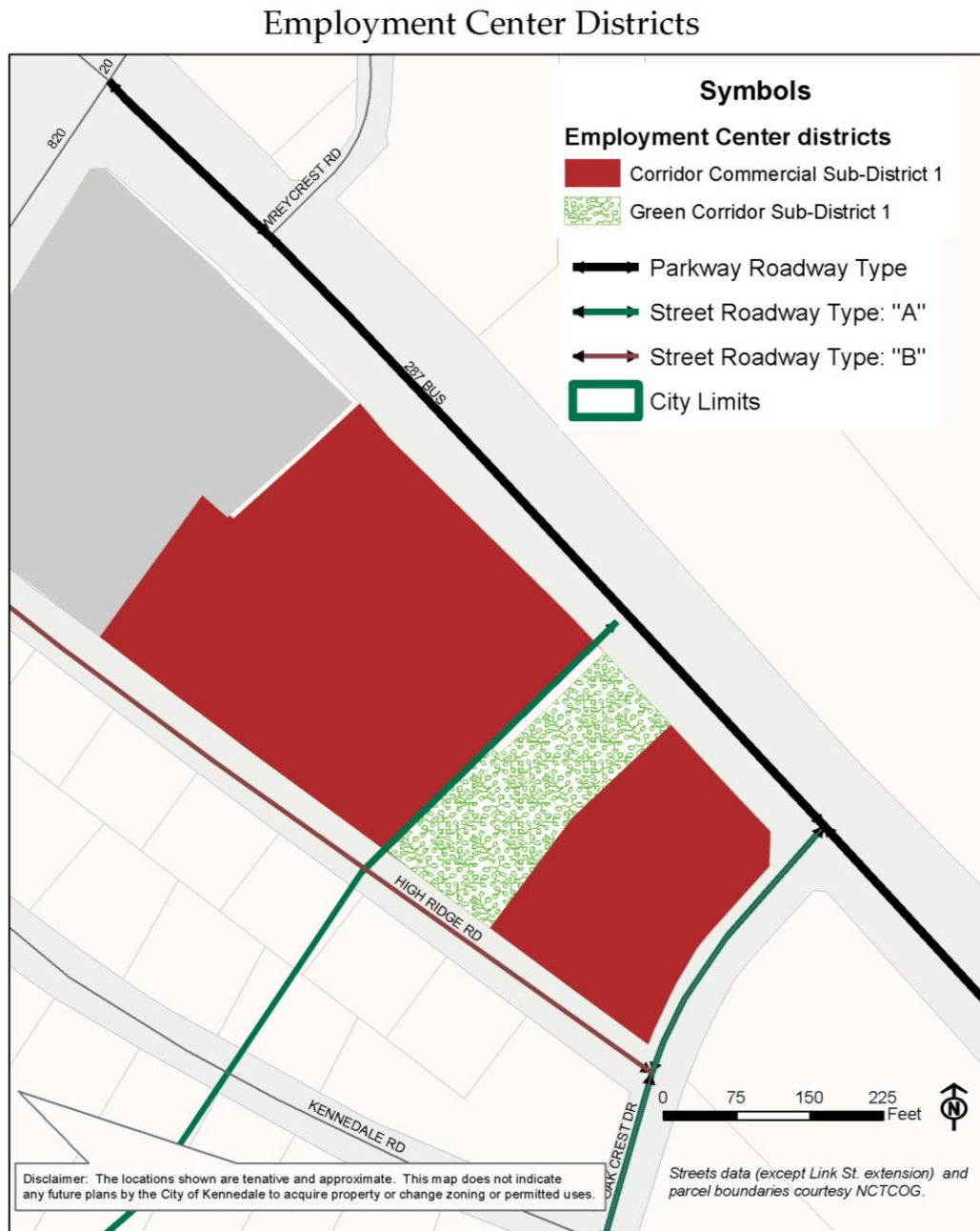


FIGURE 2. REGULATING PLAN BOUNDARIES

2.1 CORRIDOR COMMERCIAL

The purpose of the Corridor Commercial district is to encourage commercial development consistent with the vision for this important gateway into Kennedale, creating a hybrid development context that merges the predictability provided through some form-based code elements with the land use control provided through more traditional zoning tools. This zone creates a unified streetscape and landscape context for an area that is both a major gateway to the city and a major suburban thoroughfare. The district as proposed currently consists of two sub-districts: Corridor Commercial Sub-District 1, located on the south/west side of Kennedale Parkway (shown in the illustration above), and a second sub-district located on the north/east side of Kennedale Parkway. **This Code is intended to set forth regulations for Corridor Commercial Sub-District 1 and Green Corridor Sub-District 1 (described below) only.**

2.2 GREEN CORRIDOR

The Green Corridor district provides a green belt to buffer land located on either side of an escarpment running through the Employment Center and provides a transition between the residential uses of the Neighborhood district and the more commercial uses to be located north of the Green Corridor. The Green Corridor has two sub-districts: Green Corridor Sub-District 1 bisects the Commercial Corridor Sub-District 1; Green Corridor Sub-district 2 runs between the Transition and Flex districts and the Neighborhood district. **This Code is intended to set forth regulations for Corridor Commercial Sub-District 1 (described above) and Green Corridor Sub-District 1 only.**

2.3 OTHER SUB-DISTRICTS

Additional sub-districts will be established as this Code is updated in the future. The sub-districts will be drawn from the Employment Center Master Plan and will create a flex zone, a transition zone, and a neighborhood zone, as well as an additional corridor commercial district. The Flex Zone will provide for office uses, light manufacturing or small-scale distribution, live/work units, and light commercial. The Transition Zone will provide a buffer between the more auto-centric development patterns of the Corridor Commercial zone and the adjacent parts of Oak Crest that will likely redevelop over time into a more urban character. The Neighborhood Zone is intended for residential development for seniors; residences may take the form of single-family residential or small, context-sensitive multi-family residential. It is intended that all of the properties within the Employment Center will eventually be regulated by this Code, after the Code has been updated to include additional standards fitting the other sub-districts and maintaining the desired character of the district.

2.4 ROADWAY CONTEXT

The Employment Center is bounded by Kennedale Pkwy to the east, the I-20 frontage road to the north, a rail line to the west, and Village Creek to the south. The area is therefore not only the major gateway to Kennedale, but it is also disconnected from the rest of the city. New land development tools adopted for the Employment Center must be realistic about what kind of development can be expected but should also encourage or, at times, require building, site, and infrastructure design standards that help connect the neighborhood to other areas. And given that this area is physically separated from the rest of the city, and this separation can make residents and businesses more reliant on each other for success, intra-neighborhood connections are also important.

Connections can be enhanced through a well-designed transportation system. The comprehensive plan's Future Transportation Plan describes the kind of transportation options (automobile-based and pedestrian) that should be established for the Employment Center and notes that roadways should be designed using a Complete Streets approach. Complete streets are designed with a goal of balancing the safety and convenience of everyone using the road. Roadway design varies by location, topography, types of users, and a variety of other factors that may change from site to site. For example, areas intended to have heavy foot traffic should have a different roadway design than an interstate highway would have.

The Future Transportation Plan indicates that Kennedale Pkwy should be designed as a Parkway or Multiway Parkway roadway type. The Parkway type has two lanes of traffic in each direction separated by a 16-18-foot wide median and with sidewalks a minimum of five (5) feet in width. The Multiway Parkway type also has two travel lanes in each direction and has a 12-18-foot wide median, with sidewalks a minimum of 5 feet in width. The Multiway Parkway can also be designed with an access/slip lane. This Code includes a 6 foot minimum sidewalk width and sets a minimum front setback of twenty (20) feet, which falls within the 18-25 foot range for the Parkway roadway type; it also sets forth streetscape standards that will establish a quasi-slip lane along Kennedale Pkwy.

Interstate 20 runs along the northern border of the Employment Center, and the frontage road for I-20 may be an access point for properties located along the roadway. The Future Transportation Plan does not address how frontage roads should be designed, since the city is not authorized to build or maintain frontage roads. However, development with the district along these roads is within the city's review authority and, as such, this Code addresses site design standards for properties along frontage roads. Properties along the frontage road should be designed to the same streetscape and site design standards as Parkways.

The interior roadways in the Employment Center are classified as Streets. Streets typically have two travel lanes and no median. The Employment Center has two Street roadway types: "A" Streets and "B" Streets. Sidewalks for Streets should be 5-8 feet in width, and travel lanes should accommodate bicycle traffic safely and

comfortably. “A” Streets are considered primary thoroughfares on the interior of the district. These streets shall have higher standards for pedestrian-oriented design and access, ensuring that the relationship between buildings and the street and between the pedestrian and auto-oriented realms enforce the desired character for the district. “B” Streets are minor streets within the district. While design is less important for these streets, it still plays an important role in establishing community character and ease of access and connectivity.

SECTION 3. ADMINISTRATION

3.1 Authority

The code shall be administered by: the Kennedale City Council (“Council”); the Planning & Zoning Commission (“Commission”); the Zoning Administrator (“Administrator”); the Director of Planning (“Planning Director”); Director of Development Services (“Development Director”); the Director of Public Works (“Public Works Director”); the Permits & Planning Department (“Department”); and other City bodies and officials as identified in this Development Code.

3.2 Responsibility for Administration

This Employment Center District Code shall be administered by the Zoning Administrator (“Administrator”) and the other decision-making authorities as identified in this Code and the zoning ordinance. Administration of this Code shall follow the process established in Section 3.11 of this Code and Section 17-403 of the Kennedale City Code.

3.3 Interpretation and appeals

Interpretation and appeals of this Code shall follow the process established in Section 17-405 of the Kennedale City Code.

3.4 City Council duties.

The City Council shall consider and adopt, modify, or reject proposed amendments to this article or of its repeal after recommendation from the Planning & Zoning Commission.

3.5 Applicability.

This Code applies to all development, subdivisions, and land uses within the Regulating Plan boundaries, as shown in Figure 2 and more particularly described in Exhibit A. Where not controlled by the Employment Center code, the Employment Center shall be governed by the Kennedale Code of Ordinances to the extent the provisions in the Code of Ordinances are not in conflict with the intent or text of the Employment Center code. Signs specifically prohibited in the zoning ordinance or by City Code are prohibited in the Employment Center District unless specifically stated otherwise herein.

All private and public development and redevelopment projects are subject to review by the Permits & Planning Department for compliance with this Code, as defined below.

Table 3.1. Review Authority			
Type of Project	Zoning Administrator or City Staff Review Required	Planning & Zoning Commission / City Council Review Required	Board of Adjustment Review Required
New construction meeting the standards set forth in this Code	√		
Minor Modifications (see Section 3.11.B)	√		
Major Modifications (see Section 3.11.C)		√	
Variance Request (other than Minor Modifications)			√
Expand, renovate, or repair an existing building meeting the standards of this Code	√		
Expand an existing, non-conforming building, not to exceed 25% of the existing area of the land being occupied by the non-conforming use			√
Renovate an existing, non-conforming building without making structural alterations	√		
Renovate or repair an existing, non-conforming building, with renovations or repairs to include structural alterations			√
Repair an existing, non-conforming building without making structural alterations	√		
Appeal a decision made by the Zoning Administrator			√
Request an amendment to this Code		√	

3.6 Building permits.

No building permit shall be issued by the City of Kennedale for any new structure or addition unless the structure conforms to the provisions of this Code. No certificate of occupancy shall be issued for new development unless the structure conforms to the provisions of this Code.

3.7 Shall, should, may.

Provisions of this Code preceded by “shall” note regulations or standards that are required, “should” when recommended and encouraged, and “may” when optional.

3.8 Conflict with other city codes.

Where provisions of this Code conflict with other City of Kennedale codes, ordinances, or regulations, the provisions of this Code shall prevail.

3.9 Conflict with illustrations and text.

Where provisions of this Code provided through illustration conflict with provisions provided in text, the provisions provided in text shall prevail. Photographs used to illustrate text are for illustration purposes only unless otherwise noted.

3.10 Rules for interpretations of boundaries.

Where uncertainty exists as to the boundaries of zoning districts as shown on the official zoning map, boundaries shall be determined in accordance with Section 17-404(c) of the Kennedale City Code.

3.11 Development review process.

A. Administrative Review. Projects that comply with all standards of this Code shall be processed administratively by the Department. Projects that require interpretation shall be forwarded to the Administrator for review, and the Administrator may direct the Planning Director to forward such projects to the Planning & Zoning Commission and City Council for interpretation. See Figure 3 (flow chart) for more information on the process for development review under this Code.

The Zoning Administrator shall be responsible for the following:

- i) Approving minor modifications to the Regulating Plan or minor modifications from the standards set by this Code.
- ii) Forwarding to the Planning and Zoning Commission projects requiring or requesting major modifications.

The Planning Director shall be responsible for the following:

- i) Reviewing site plan applications for compliance with this Code.

- ii) Approving site plan applications that are in compliance with this Code and all applicable City regulations and ordinances.
- iii) Approving modifications or revisions to previously approved site plans that are in compliance with this Code and all applicable City regulations and ordinances.
- iv) Coordinating any necessary review of projects with other departments within the City of Kennedale.
- v) Forwarding to the zoning administrator projects requiring interpretation.
- vi) Forwarding to the Board of Adjustment requests for variances.

The Development Services Director shall be responsible for the following:

- i) Approving building permits for projects that are in compliance with this Code.

B. Minor Modifications. The Zoning Administrator is authorized to approve minor modifications to this Code. Permitted minor modifications are as follows:

- i) alternative masonry materials when new materials have been developed and are not yet listed in the Code but clearly meet the intent of the Code;
- ii) change in landscaping plants to similar plants that meet the intent of the Code and achieve the same effect;
- iii) minor changes in the site plan that do not significantly alter building orientation, vehicle or pedestrian traffic flow, location of parking areas, or building placement, or does not allow increase in building height.
- iv) Changes to a site plan (including landscaping and lighting plans) or building plan that require a modification of any numerical standard in this Code by no more than ten percent (10%) (increase or decrease) with the exception of additional building stories.

C. Major Modifications. The City Council is authorized to approve major modifications to this Code. Major modifications are changes that are beyond minor modifications specifically listed above in subsection B. Major modifications are considered an amendment to this Code and as such are subject to the procedures, notifications, public hearings, and other standards for zoning amendments as set forth in the Kennedale City Code Section 17-429.

D. Variances. The Board of Adjustment is authorized to approve variances beyond Minor Modifications as permitted by City Code section 17-430.

E. Required Documents. In general, the following information is required, as applicable:

- i) Site Plans (which may include, but are not limited to, landscaping plans, lighting plans, grading and drainage plans, and utility plans)
- ii) Building Plan(s) and Elevations
- iii) Landscape Plan
- iv) Material Specifications
- v) Plans and Specifications for Proposed Signs
- vi) Description of Proposed Scope of Work
- vii) Photographs of Site and Existing Conditions

City staff may ask for additional documentation to confirm compliance with this Code.

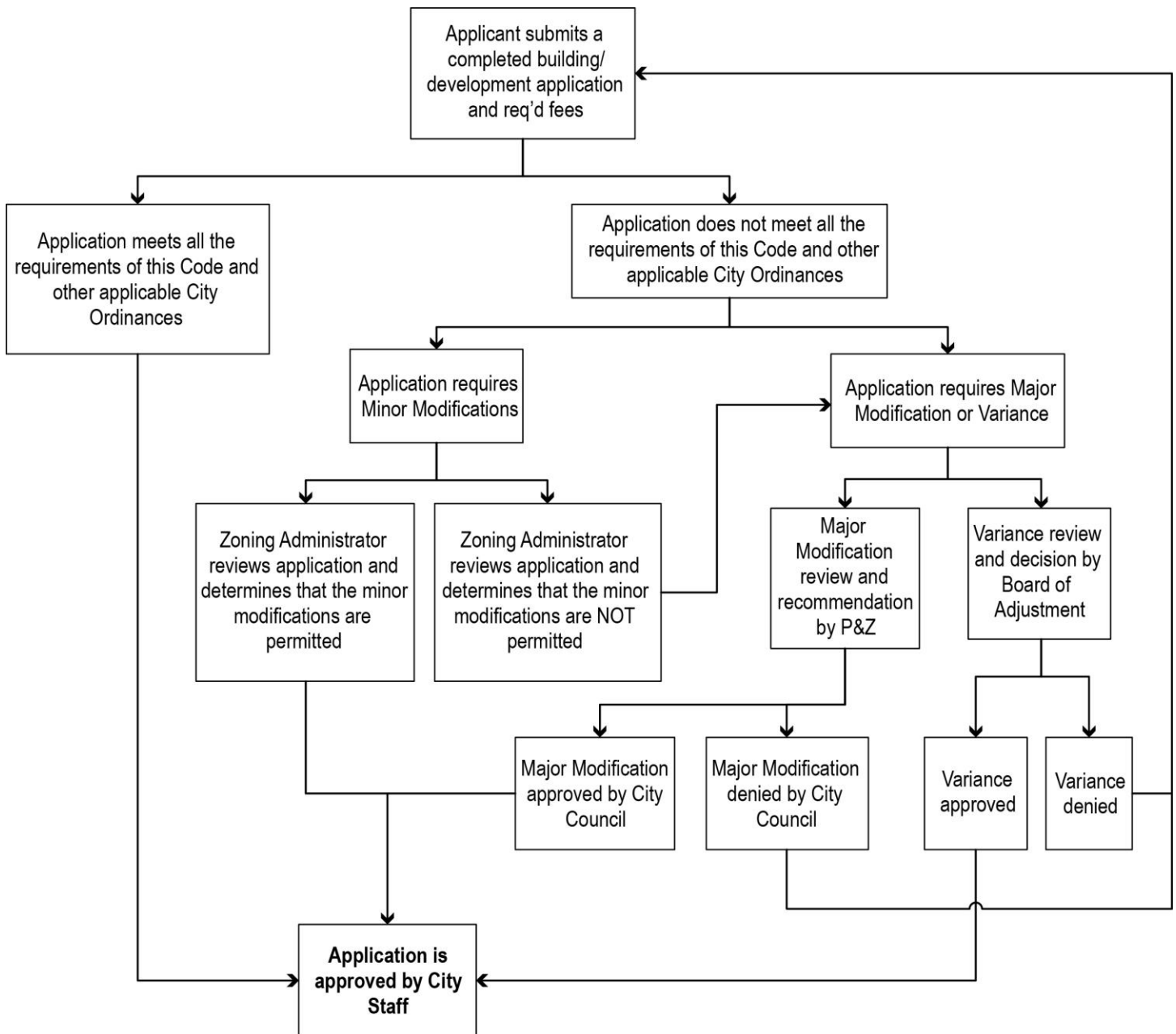


Figure 3. Approval process.

SECTION 4. BUILDING PLACEMENT & FRONTAGE

4.1 REQUIRED SETBACKS FOR CORRIDOR COMMERCIAL SUB-DISTRICT 1

Properties regulated by this Code shall adhere to the setback requirements set forth below.

Table 4.1 *Properties oriented toward or having primary access from Parkway roadway types*

Primary structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (from Parkway) ¹	20 (see Figure 10)	60 (see Figure 10)
Side (from side property line)	0 ²	--
Rear (from rear property line)	8	--
Accessory structures	Minimum setback (in feet) from primary structure	Maximum setback (in feet)
Front (setback from primary structure)	8	--
Side (from side property line)	0 ²	--
Rear (from rear property line)	8	--

1 Front setback for a primary structure is the distance between the front façade of a structure and the street right-of-way.
2 Side setback is 0', subject to fire code.

Table 4.2. *Properties oriented toward or having primary access from "A" type streets*

Primary structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (from "A" Street)	20	25
Side (from side property line)	0	--
Rear (from rear property line)	8	--
Accessory structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (setback from primary structure)	8	--
Side (from side property line)	0	--

Rear (from rear property line)	8	--
1 Front setback for a primary structure is the distance between the front façade of a structure and the street right-of-way. 2 Side setback is 0', subject to fire code.		

Table 4.3. Properties oriented toward or having primary access from "B" Street roadway types

Primary structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (from "B" Street)	20	25
Side (from side property line)	0	--
Rear (from rear property line)	8	--
Accessory structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (setback from primary structure)	8	--
Side (from side property line)	0	--
Rear (from rear property line)	8	--
1 Front setback for a primary structure is the distance between a structure and the street right-of-way. 2 Side setback is 0', subject to fire code.		

Table 4.4. Properties oriented toward or having primary access from the I-20 frontage road

Primary structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (from I-20 frontage road)	20	75
Side	0	--
Rear	8	--
Accessory structures	Minimum setback (in feet)	Maximum setback (in feet)
Front (setback from primary structure)	8	--
Side (from side property line)	0	--
Rear (from rear property line)	8	--
1 Front setback for a primary structure is the distance between a structure and the street right-of-way. 2 Side setback is 0', subject to fire code.-		

The terms “front setback,” “side setback,” and “rear setback” have the same meaning as “setback,” “front yard,” “side yard,” and “rear yard” as defined in Kennedale City Code Section 17-431.

4.2 GREEN CORRIDOR SUB-DISTRICT 1

Structures are prohibited within the Green Corridor. Retaining walls are permitted when required for safety or stabilization purposes.

4.3 FRONTAGE REQUIREMENTS

4.3.1 Minimum frontage requirement for “A” Type streets

Building frontage covering at least fifty percent (50%) of the lot shall be required at the front build-to zone (see Figure 5). The “Build-to zone” is the range of allowable distances from a street right-of-way that a building may be built. The principal building façade line shall be located within this area (see Figures 4). The Build-to Zone for properties along Parkways in the Corridor Commercial Sub-District 1, for example, is 20-60 feet from the street right-of-way.

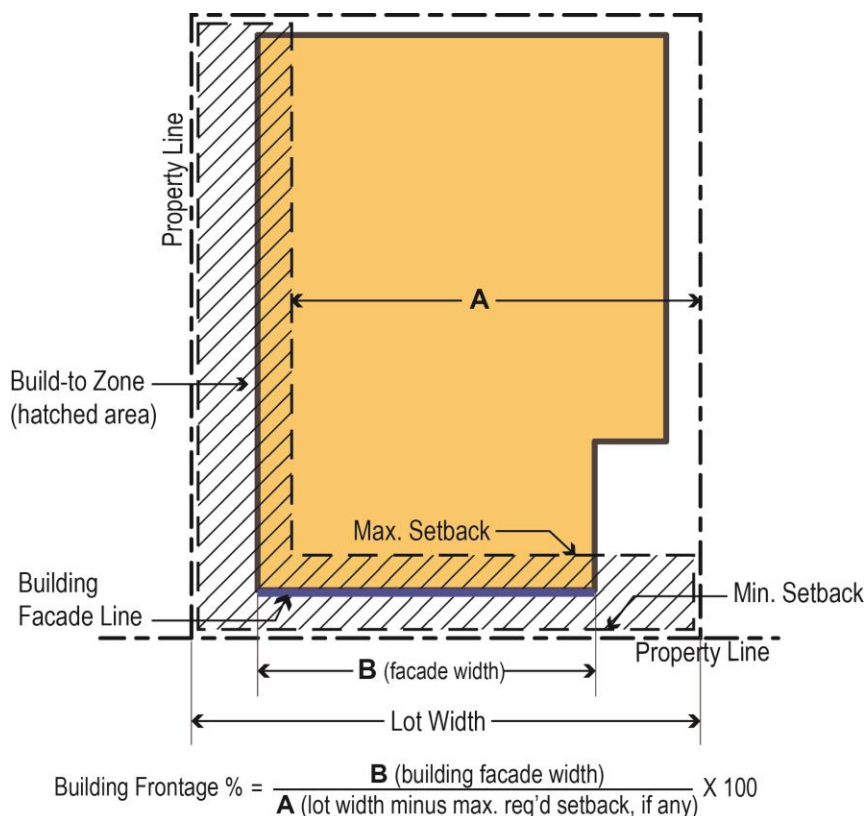


Figure 4. Percent of building façade required to be constructed within the build-to zone.

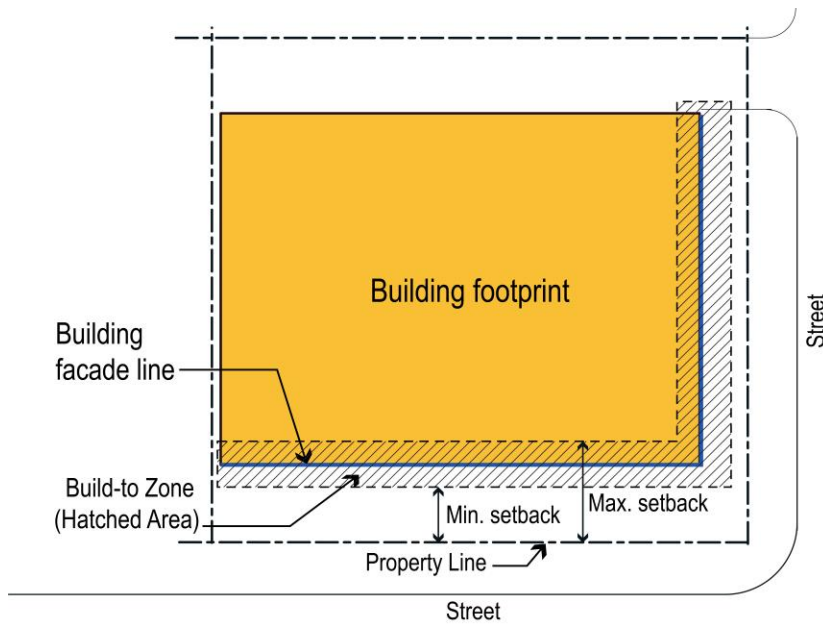


Figure 5. Illustration of build-to zone.

4.3.2 Corridor Commercial Sub-District 1

- A. *Properties with primary access from or primary orientation toward Link St*
For rectangular buildings, the longer length of the building shall be oriented toward Link St. Additional orientation standards are controlled by Section 5.1 “Building Orientation” in this document.
- B. *All other properties*
Building orientation is controlled by Section 5.1 “Building Orientation” in this document.

4.4 BUILDING HEIGHT

4.4.1 Corridor Commercial Sub-District 1

- A. *Maximum height.*
Primary structures shall not exceed five (5) stories in height.
- B. *Finish floor height.*
Buildings shall have a minimum floor-to-floor height of twelve (12) feet on ground floors and nine (9) feet on upper floors. The ground floor finish level shall be a maximum of twelve (12) inches above the sidewalk.

C. *Accessory structure size.*

Accessory structures shall clearly be secondary to the primary structure(s) in size and use.

4.4.2 Green Corridor Sub-District 1

Structures are prohibited with Green Corridor Sub-District 1.

SECTION 5. BUILDING DESIGN STANDARDS

5.1 BUILDING ORIENTATION

The orientation of buildings has a large impact on the character of a district. In the Employment Center, it is important to recognize the auto-oriented nature of this district while also accommodating visitors who come to the Employment Center by bike or on foot. The regulations in this sub-section are intended to ensure building orientation provides for a variety of access options and supports the district character.

A. Corridor Commercial Sub-District 1

1. *Pedestrian-oriented entrance required.* For each primary building whose primary entrance is oriented toward an off-street parking area, a pedestrian-oriented entrance shall be provided on at least one street-facing side of the building (at least one side of the building not oriented toward the off-street parking area). The entrance shall provide a connection to the closest street or sidewalk (or a farther street/sidewalk if another street or sidewalk is more pedestrian-oriented).
2. *Additional regulations for properties “A” Streets.* For properties with primary access from an “A” type roadway or where the primary building is oriented toward Link St, the primary building shall be oriented so that the primary entrance is along the “A” Street. The entrance shall provide a connection to the closest street or sidewalk. A second entrance shall be provided to the building from the side facing the off-street parking area.
3. *Location of uses within buildings.* Buildings shall foster a strong connection to the street by placing internal uses that require window openings and pedestrian entrances (such as offices) in the front of the building. Other internal uses (such as warehousing and storage) shall be placed in the back of the building.

5.2 FENESTRATION/GLAZING

The use and design of windows on a structure can have a significant impact on the character of a district, including appeal to pedestrians and to potential visitors driving by in cars, feeling of safety, and approachability of a particular building. This section regulates fenestration in order to provide the desired character for the Employment Center.

5.2.1 Corridor Commercial Sub-District 1

A. *Required glazing for primary structures with primary entrance on or oriented toward Parkways or "A" Street roadways*

(a) Structures accessible/visible to the public on four (4) or more sides. Primary structures shall have a minimum twenty percent (20%) glazing and a maximum of sixty percent (60%) glazing on at least two (2) sides and a minimum ten percent (10%) glazing (60% maximum) on at least one (1) other side.

(b) Structures accessible/visible to the public on three (3) or fewer sides. Primary structures shall have a minimum twenty percent (20%) glazing and a maximum of 60% glazing on at least one (1) side and a minimum ten percent (10%) glazing (60% maximum) on at least one (1) other side.

B. *Required Glazing for primary structures with primary entrance on or oriented toward "B" Street roadways*

Primary structures must have a minimum of twenty percent (20%) and a maximum of sixty percent (60%) glazing on the front (street-facing) façade and a minimum of ten percent (10%) and a maximum of sixty percent (60%) glazing on at least one other side.

C. *Blank walls not permitted.* Blank walls longer than sixty (60) feet are prohibited. For purposes of this section, "blank wall" means any building wall that is a portion of a building wall or façade without a window or door or similar architectural feature and is over four feet in height from ground level and longer than 60 feet, as measured horizontally, without having a window, door, building modulation (as defined in Appendix A Definitions, below), or other similar architectural feature meant to lessen the apparent bulk or massing of a structure.

D. *Visible Transmittance.* Glazing on ground-floor facades shall have a visible transmittance of 0.6 or higher. Glazing cannot be mirrored or darkly tinted glass that obscures visibility. For this section, "visible transmittance ('vt')" means the amount of light transmitted through a window. VT is expressed as a number between 0 and 1; the closer the number is to 1, the higher the potential for daylighting.

E. *Minimum height of glazing.*

Ground floor glazing shall have a maximum sill height of four (4) feet.

5.3 FAÇADE ARTICULATION

Articulation adds to the visual interest of a building and can make a building more appealing to pedestrians and other passers-by. This sub-section is intended to establish articulation standards reflecting the desired character of the Employment Center.

5.3.1 Corridor Commercial Sub-District 1

For all new structures (for which a building permit application is submitted to the City after the date the Employment Center code is adopted), primary building façades must be articulated every 40 feet, with a horizontal or vertical articulation of at least 24" (2 feet). New additions to existing buildings shall also be required to have articulation every 40 feet, with a horizontal or vertical articulation of at least 24" (2 feet).

Examples of articulation. Examples of acceptable articulation are as follows.

- (1.) Construction of building entrances, display windows, storefronts, balconies, columns, and arcades (obstructing of sidewalks or frontage zones is prohibited);
- (2.) Inclusion of awnings meeting the requirements of Section 7-Signs of this Code;
- (3.) Inclusion of a roof element projecting a minimum of five (5) feet from the building;
- (4.) Additional architectural elements may be used to meet this requirement. Elements not listed above require written approval from the Administrator.



Figure 6. Not permitted: Blank wall is longer than 60 feet, and no articulation is provided along the façade.

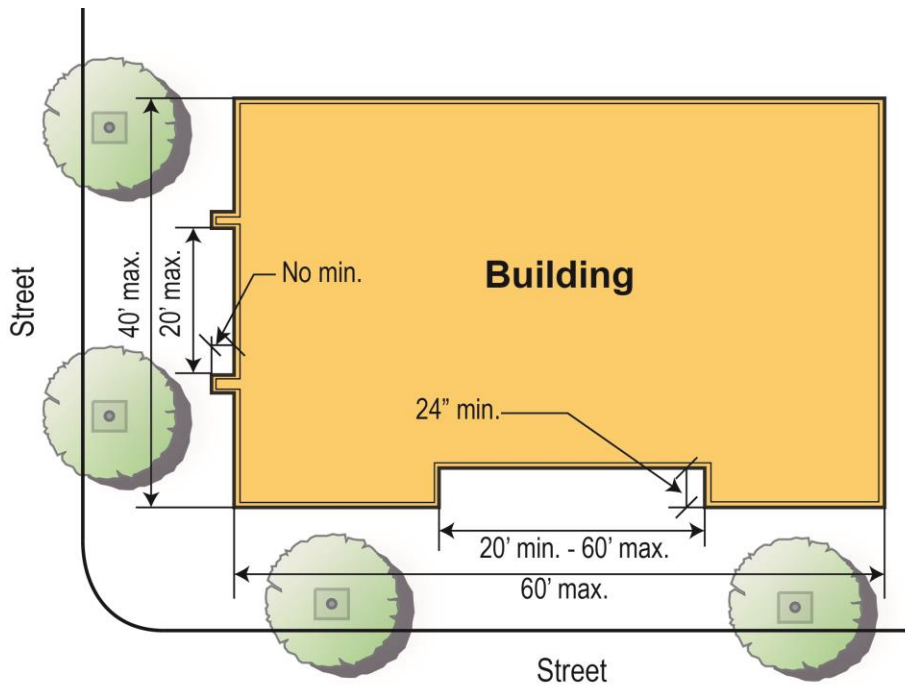


Figure 7. Illustration showing articulation along the building façade

5.4 BUILDING MATERIALS

5.4.1 Primary Structures

A Corridor Commercial Sub-District 1.

(1) Parkways and “A” Streets

All new primary structures shall be constructed of 100% masonry. A minimum of 50% of the masonry material shall be similar in color and style to Acme brand Burgundy type brick (see illustration), with contrasting color permitted for trim and/or cornice and other architectural details.

- a. The remaining fifty percent (50%) materials used may be determined by the builder/developer subject to the following, so long as masonry (as defined in Section 17-405 of Kennedale City Code) is used.
 - i. Board and batten, vinyl siding, and corrugated metal are prohibited.
 - ii. Hardie-Plank™ (or equivalent) shall be permitted on upper floors of residential buildings or lodging uses only
 - iii. EIFS shall only be permitted on facades ten (10) feet or more above the finished grade of the sidewalk along that façade.

(2) “B” Streets

All new primary structures must be constructed of a minimum of 80% masonry. Masonry materials used shall include a minimum 50% brick and the remaining materials permitted to be other masonry materials. For example, materials may be 40% brick, 40% stone, and 20% non-masonry materials such as cedar or architectural metal. The primary color shall be similar in color and style to Acme brand Burgundy brick (see illustration), with contrasting color permitted for trim and/or cornice and other architectural details.

- a. The remaining twenty percent (20%) accent materials used may be determined by the builder/developer subject to the following:
 - i. Board and batten, vinyl siding, and corrugated metal shall not be used for the remaining 20%.
 - ii. Hardie-Plank™ (or equivalent) shall be permitted on façades ten (10) feet or more above the finished grade of the sidewalk along that façade.
 - iii. EIFS shall only be permitted on façades ten (10) feet or more above the finished grade of the sidewalk along that façade.



Figure 8. Acme Burgundy brick, as seen in TownCenter

5.4.2 Secondary Structures

A. *Corridor Commercial Sub-District 1.*

Secondary or accessory structures must complement the primary structure. Secondary/accessory buildings must be 80% masonry as defined in Section 17-405 of the Kennedale City Code.

SECTION 6. SITE DESIGN STANDARDS

6.1 PARKING

6.1.1 Off-Street Parking Placement

A. *Corridor Commercial Sub-District 1*

(1.) *Properties oriented toward or with primary access from “A” Street roadways*

No off-street parking is permitted between the primary structure and the street (all parking must be behind or to the side of the primary structure). Off-street parking areas must be screened (see Parking Screens, below).

(2.) *Properties oriented toward or with primary access from Parkways or “B” Street roadways*

Off-street parking is permitted along the public street. Off-street parking must be setback from the right-of-way a minimum of six (6) feet and must be screened by masonry or vegetation (see Sub-Section 6.1.2).



Figure 9. Off-street parking area provided behind the primary structure (secondary building entrances shown)

6.1.2 Screening of Off-Street Parking

A. *Corridor Commercial Sub-District 1.*

Off-street parking visible from a public street must be screened in accordance with the table below.

Table 6.2			
Location of Off-Street Parking	Minimum Height of Screening (in feet) ¹	Maximum Height of Screening (in feet)	Permitted Screening Materials
"A" Street types	3	4	A combination of masonry and vegetation (maximum 50% of screening materials may be masonry)
All other streets	3	4	Vegetation (evergreen) or a combination of vegetation and masonry (maximum 50% of screening materials may be masonry)
¹ If requirements for maintaining a sight triangle do not permit a minimum of three (3) feet, screening must be the maximum height allowed by the sight triangle. ² For this sub-section, "masonry" is defined per Section 17-405 of the Kennedale City Code. ³ If masonry is used for screening, it must be of the same material as the primary building. ⁴ Vegetated screening must be in compliance with Section 6.5.4 of this Code and, where applicable, Section 17-425 and Chapter 17, Article VIII of the Kennedale City Code (where not in conflict with this Code). ⁵ When masonry is used for screening, no section of masonry screening shall exceed twenty (20) feet in length.			

6.1.3 Off-Street Parking Amount

A. Corridor Commercial Sub-District 1.

(1) For each of the use types listed below, the parking requirement listed is the minimum amount required.

Table 6.3	
Use Type	Minimum Number of Spaces Required
All non-residential <i>except</i> lodging	1 per 250 square feet of building area
Residential	1 per unit
Lodging	1 per guest room

(2) *Shared Parking.* Shared parking is permitted if a shared parking agreement has been signed and notarized by all users/parties who intend to share parking. The shared parking plan will be subject to

review and approval of the Administrator, and the parking agreement must be filed with the Tarrant County Clerk. A reduction of up to 20% of the required parking may be permitted. Parking may be shared by different uses on a shared or adjacent site, but the parking facility must be located within six hundred (600) feet of the primary structure for each use. The Administrator is not required to approve a reduction in the required number of parking spaces.

(3) *Compact Car Parking.* Up to fifteen percent (15%) of the required parking may be designed and sized for compact vehicles.

(4) *Handicapped Accessible Parking.* Number and size of handicapped parking spaces provided shall comply with the Americans with Disabilities Act, the Texas Accessibility Standards, and any other applicable federal, state, or local regulations.

6.1.4 Bicycle Parking

Parking for bicycles must be provided for every non-residential use.

- A. *Parking amount.* Bicycle parking shall be provided at a minimum amount of 5% of the number of spaces provided for car parking.
- B. *Design of bicycle parking spaces.* For each required bicycle parking space, a stationary object shall be provided to which a user can secure a bicycle with at least two points of contact with a 6-foot cable and lock. The stationary object shall be either a freestanding bicycle rack or a wall-mounted bracket. Freestanding bicycle racks shall be inverted “U,” post and ring, or some other form of bicycle rack providing at least two points of contact. Grid/fence-type racks and wave/ribbon-type bicycle racks are prohibited. Objects for securing bicycles must be dedicated for that purpose and may not be primarily for any other purpose (e.g., signage, traffic safety).
- C. *Location of bicycle parking.* The bicycle rack shall be located within 60 feet of the main entrance of the building it serves, and may be located between the street curb and the building, subject to the approval of the Development Services Director. Each bicycle parking area shall be separated from motor vehicle parking and maneuvering areas by a barrier, post, or bollard or by at least five (5) feet of open space.

6.1.5 Landscaping for Off-Street Parking

- A. *Corridor Commercial Sub-District 1.*

All parking lots and drive areas shall be designed and landscaped in accordance with the following provisions:

- (1.) Where off-street parking is permitted between the primary structure and a public road, all parking or drive areas shall be located a minimum of six (6) feet from right of way lines along public streets.
- (2.) Off-street parking located between the primary structure and the property line or street pavement edge shall be screened.
- (3.) Landscaped areas in a parking lot shall be in addition to all other landscape requirements of this Code and shall be provided in any parking lot of five (5) spaces or more in accordance with the following requirements.
- (4.) One (1) tree shall be provided for each ten (10) parking spaces in all developments, however, no car parking space shall be located greater than seventy-five (75) feet from the center of a tree. Trees shall be a minimum of three (3) inch caliper measured one (1) foot from the ground and planted within a planting island with a minimum dimension of five feet in width. The tree-planting island shall be further planted with a ground cover, grass, or shrubs.

B. Vehicle protection. All required landscape areas, planters, walls, and/or fences adjacent to vehicle use areas shall be protected by wheel stops, curbs, or other physical barriers. In no instance shall a parking area be designed so as to permit the encroachment or overhang of a vehicle beyond the required setback line(s) set out above in this sub-section.

6.2 SCREENING

6.2.1 Screening required between incompatible uses

A. Screening must be erected, placed, grown and maintained along the common boundary line of any commercial or industrial uses sharing a common boundary with an existing residential use before any commercial or industrial use is made of the property. This screening requirement shall be the responsibility of the owner of the commercial or industrial use. For the purposes of this section, “commercial or industrial use” means any use that is not primarily used for residential use. For example, a business with a caretaker living on site would not be considered a primarily residential use, nor would a hotel. However, a residence with an approved home

occupation would be considered a primarily residential use for purposes of this Code, even though some business may be transacted at the home.

B. No screening wall or fence shall be constructed of materials not manufactured or designed for the primary purpose of wall or fence construction. Gates shall be steel and painted in color corresponding to the primary structure.

6.2.2 Screening for garbage, refuse and trash collection/storage areas

- A. Garbage, refuse and trash collection/storage areas shall be screened by a masonry enclosure on three (3) sides. Screening walls shall be a minimum of one (1) foot in height above the materials being stored, and screening walls and fences shall not be greater than eight (8) feet in height. Materials being stored shall not be stored higher than one (1) foot below the screening provided.
- B. The fourth side shall be screened by a gate. The gate shall be made of wrought iron or architectural metal.
- C. The masonry used must be of the same material as the primary building.

6.2.3 Screening for loading docks

Loading docks shall be screened according to Section 17-424 of the Kennedale City Code.

6.2.4 Screening for parking areas

Screening of parking areas is controlled by Sub-section 6.1.2, "Screening of Off-Street Parking," above.

6.2.5 Screening for service bays

Service bays shall not face public streets unless screened according to the standards for parking areas, in Sub-section 6.1.2.

6.3 STREETSCAPE STANDARDS

The sidewalk widths as specified in Kennedale's Future Transportation Plan were established based on known best practices for pedestrian facilities, and they are the basis of sidewalk width requirements for this Code. The Future Transportation Plan states that Streets (the classification of roadways on the interior of the Employment Center) shall have a minimum sidewalk width of five (5) feet and a maximum sidewalk width of eight (8) feet. Sidewalks along Parkways or Multiway Parkways (the classifications applicable to Kennedale Pkwy) shall have a minimum sidewalk width of five (5) feet. In addition, sidewalks shall be designed to meet the requirements of the

Americans with Disabilities Act, the Texas Accessibility Standards, and any other applicable federal, state, or local regulations.

6.3.1 Kennedale Parkway frontage requirements

The following standards shall apply to all development with frontage along Kennedale Parkway (see Figure 10).

- A. If surface parking is located between the building and the street right of way, a pedestrian walkway of at least six (6) feet clear width shall be located immediately adjacent to the building. In addition, canopy trees shall be located within this walkway in tree planting strips (minimum 5'x5') at a rate of one (1) tree per thirty (30) linear feet of building frontage. Pedestrian scale lighting shall be added at a rate of one (1) per fifty (50) linear feet of building frontage.
- B. This walkway shall be clearly linked (through pavers or pavement markings and h/c ramps) to the public sidewalk within the right-of-way of Kennedale Parkway and to the walkway in front of any adjoining building.

6.3.2 Sidewalk requirements

A. Sidewalks are to be installed by the developer or builder. Notwithstanding any written agreement between the City and any other person or entity, in no case is the City obligated to install sidewalks. Where it is not feasible to install sidewalks at the time of development, the developer or builder shall pay a fee in lieu of installation.

B. Sidewalks shall be installed according to the standards in the Kennedale City Code and the Public Works Design Manual. Notwithstanding the above, sidewalks may be installed using Low-Impact Development Standards if approved, in writing, by the Director of Public Works. Requests to use Low-Impact Development standards must be made in writing. The Director of Public Works shall grant approval to use Low-Impact Development standards only when the Director of Public Works is satisfied the proposed standards will meet the same durability and safety standards as expected from sidewalk construction materials and construction practices required by Kennedale City Code and the Public Works Design Manual. The Director of Public Works is not required to approve the use of Low-Impact Development standards.

C. Sidewalks shall be installed at the minimum widths and additional requirements shown in the table below.

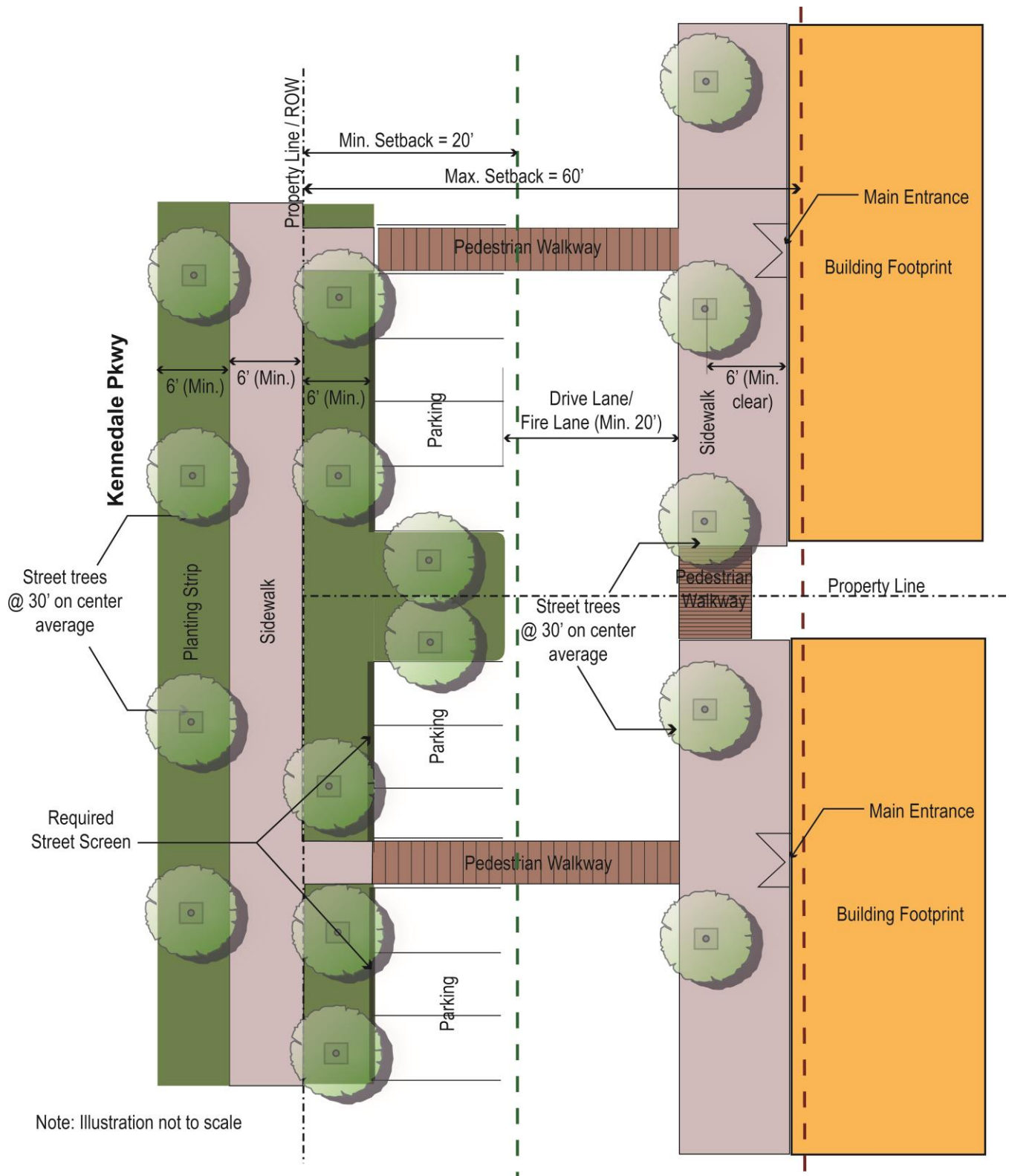


Figure 10. Example of parking area showing required streetscape and site design for properties along Parkway street type.

Table 6.5		
Sidewalk location	Minimum Width (in feet)	Additional Requirements
Parkways	6	Street trees shall be installed by the developer/builder when sidewalks are installed, if permitted by TxDOT.* If street trees are not permitted, then alternative landscaping plans shall be submitted to the City for review and approval.
"A" streets	5-8	Street trees shall be installed when a curb and gutter or approved alternative storm water conveyance system is installed. Minimum sidewalk width varies from 5 to 8 feet, depending on available right-of-way.
Frontage road	6	Street trees shall be installed by the developer/builder when sidewalks are installed, if permitted by TxDOT.* If street trees are not permitted, then alternative landscaping plans shall be submitted to the City for review and approval.
"B" streets	5	Street trees shall be installed by the developer/builder when sidewalks are installed.*
* Street trees may be installed after sidewalk installation in order to prevent damage to tree roots during construction. However, sidewalk improvements will not be accepted by the City until street trees are also installed, inspected, and accepted.		

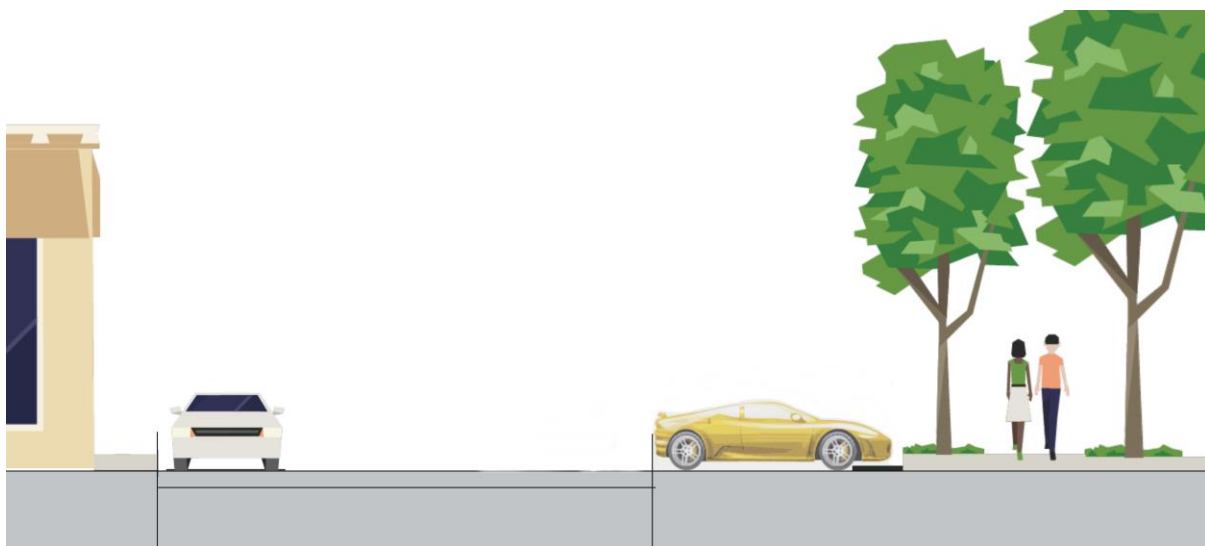


Figure 11. Example of sidewalk between planting strip and parking lot driveway (along Parkways).

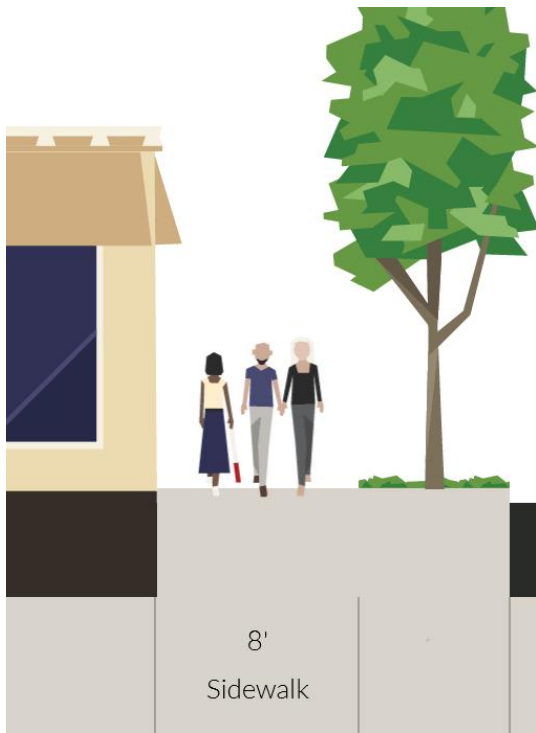


Figure 12. Example of sidewalk location along “A” street types.



Figure 13. Example of sidewalk location along “B” street types.

6.3.3 Connections

Pedestrian walkways shall be connected across properties to ensure safe, comfortable, and easily-accessible pedestrian connections are present throughout the Employment Center District.

6.4 CURB CUTS

Poor design and placement of parking lots and driveways can impede traffic flow and can also inhibit connectivity among sites and may reduce pedestrian safety. To enhance connectivity and increase safety, therefore, parking lots and driveways shall be planned to reduce the number of curb cuts and shall be designed to support pedestrian safety, connections, and comfort.

The sub-sections below establish criteria for curb cuts within the property regulated by this Code. The following regulations apply to any new curb cuts within the Employment Center and any existing curb cuts within the Employment Center for which a change in location or size is proposed.

- A. Primary driveways should be designed as streets. This includes designing pedestrian sidewalks and appropriate traffic control measures, as well as providing streetscape improvements and lighting to improve way-finding.
- B. Parking lots and driveways shall provide pedestrian connections to storefronts. Dedicated walkways through parking lots and sidewalks shall be included in the design of access roadways.
- C. Traffic calming techniques shall be employed in parking and driveway areas to support pedestrian circulation concepts.
- D. Drive approach size and construction standards shall be governed by the City of Kennedale Public Works Design Manual.

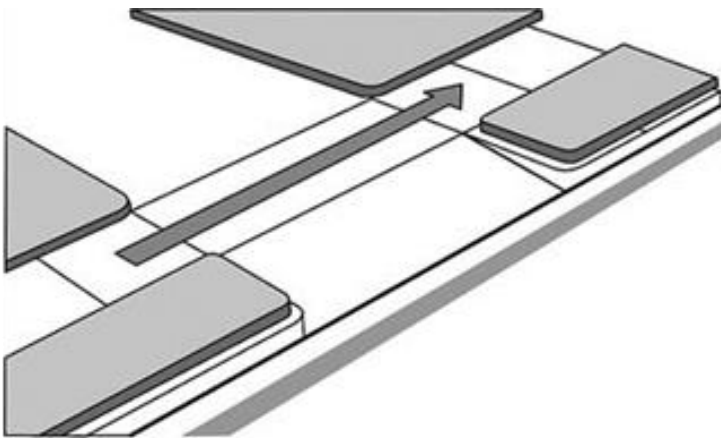


Figure 14. Primary driveway designed as a street, leading to off-street parking located behind the primary structure. Primary driveways should be designed as streets and should include pedestrian facilities such as sidewalks.

6.4.1 Kennedale Parkway

Placement and dimensions of curb cuts along Kennedale Pkwy shall be determined by the Texas Department of Transportation.

6.4.2 “A” Streets

- A. Curb cuts on “A” Streets shall be limited to 1 per 500 feet.
- B. Cross access or shared access easements shall be required.

6.4.3 “B” Streets

- A. Curb cuts on “B” Streets shall be limited to 1 per 250 feet.
- B. Cross access or shared access easements shall be required.

6.5 LANDSCAPING

Landscaping shall adhere to the requirements of Kennedale City Code except where modified by this Code.

6.5.1 Kennedale Parkway

Development along Kennedale Pkwy shall follow the landscaping plans approved for the City of Kennedale’s landscaping on the TxDOT green ribbon grant program.

6.5.2 “A” Streets

Street trees are required along roadways classified as “A” Streets. One (1) tree is required a minimum of every forty (40) feet and a maximum of fifty (50) feet, center to center, on average, but can vary to accommodate signage, topography, or other site conditions. For “A” Streets without curb and gutter storm water systems in place at the time of development, placement of street trees is deferred while existing storm water controls are in place. Until such time as curb and gutter or an approved alternative storm water conveyance system is installed, developers may pay a fee in lieu of planting trees.

6.5.3 “B” Streets

Street trees for roadways classified as “B” Streets shall follow the requirements of Kennedale City Code in terms of number of trees, size required, placement of trees, and care during construction, as well as any other requirement not in conflict with this Code.

6.5.4 Tree and Plant Selection

- A. *Street trees.* Street trees shall be selected from the list of approved street trees in Chapter 17, Article VIII, Section 17-605, Table A(b) of the Kennedale City Code, except that Chinese Pistache (*Pistachio Chinensis*) is prohibited.
- B. *Landscaping plants.* Landscaping plants shall be selected from the list of approved plants in Chapter 17, Article VIII, Section 17-605, Table A of the Kennedale City Code, except that the following plants are prohibited:
- Japanese Honeysuckle / Purple Leaf Honeysuckle (*Lonicera Japonica* / *Lonicera Japonica Halliana*)
 - Vinca / Bigleaf Periwinkle (*Vinca Major*)
- C. *Other permitted plants.* Notwithstanding the above, a landscaping plant not on the approved list may be used if it is demonstrated to be drought tolerant and is a native Texas plant suitable for growing in this area. A list of native plants suitable for North Central Texas is available online at the Lady Bird Johnson Wildflower Center website (www.wildflower.org), and a list of plants suitable for Tarrant County is available from the Texas Parks & Wildlife Department website (tpid.tpwd.state.tx.us). A list of plants recommended by these organizations is attached to this Code as an appendix. Non-invasive, native plants from these lists may be used for landscaping required by this Code.

6.5.5 Landscaping Used as Screening

For regulations governing use of landscaping to screen parking areas, see Sub-section 6.2.2 of this Code governing parking, above. For regulations governing use of landscaping for screening other uses, see Section 6.3.

6.5.6 Irrigation

Applicable regulations. Except where otherwise in Appendix C, irrigation shall be regulated as set forth in Kennedale City Code.

6.6 LIGHTING

Adequate lighting is important to ensure safety for employees who work in the Employment Center District, for customers, and for residents who live nearby. Proper lighting design can also add to the attractiveness and visibility of a property. Poor lighting design, however, can diminish the attractiveness of a site and can also impede

safety. This section is intended to regulate lighting in the Employment Center to ensure public health, safety, and general welfare and to ensure lighting contributes to the desired character of the district.

6.6.1 Requirements for Exterior Lighting

- A. Lighting for each property shall be designed for the context of traffic (automobile, bicycle, or pedestrian) on the surface streets abutting the property, rather than for visibility from Interstate 20.
- B. All luminaries used primarily for illuminating off-street parking areas, lighted canopies for commercial uses, and similar lighting needs shall have a maximum height of twenty (20) feet.
- C. All luminaires used primarily for walkways, trails, security, decorative effects, lighting equipment or storage areas, fountains, art work, building walls, or similar lighting needs shall have a mounting height no higher than fourteen (14) feet.
- D. Light trespass shall be minimized; light levels at the property line should not exceed 2 footcandles (fc). *Footcandle* means the unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one foot square from a distance of one foot.
- E. Fixtures for decorative lighting must be selected, located, aimed, and shielded so that direct illumination is focused solely on the building façade, plantings, and other intended site feature, and away from adjoining properties and the public street right-of-way.
- F. The operation of searchlights for advertising purposes is prohibited between the hours of 9:00 P.M. and 7:00 A.M.

SECTION 7. SIGNS

7.1 Purpose of Sign Regulations

The purpose of this section is to create the legal framework for a comprehensive and balanced system of signage in the Employment Center District. These regulations are intended to provide an easy and pleasant communication between people and their environment and avoid visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance. In addition to protecting the health, welfare, and safety of the community, these standards are adopted in order to:

- Maintain and enhance the aesthetics of our community;
- Enhance automobile and pedestrian safety;
- Encourage the integration of signage with landscaping and building design;
- Protect and enhance scenic views and natural landscapes;
- Protect and enhance economic viability of the city's commercial corridors by assuring aesthetic appeal to businesses and residents alike;
- Promote the use of aesthetically pleasing sign materials, colors, and types; and
- Require safe and effective signage.

7.2 Definitions

Terms in this section use the definitions provided in Section 17-502 of the Kennedale City Code unless otherwise specified in this section.

7.3 Administration and Enforcement

Administration and enforcement of this Section shall follow the administration and enforcement provisions of Section 17-503 of the Kennedale City Code.

7.4 Applicability.

Unless otherwise expressly prohibited under this section or regulated in this section, Sections 17-504 through 17-516 of the Kennedale City Code shall apply to all signs proposed in the Employment Center Zoning District.

7.5 Signs to be located on private property

All signs must be wholly located on private property. EDC-owned signs shall be located within an easement dedicated for the purpose of allowing installation, maintenance, and replacement of such signs.

7.6 Prohibited signs

Except as otherwise stated in this Code, any sign prohibited in Chapter 17 Section 17-514 of the Kennedale City Code is also prohibited within the Employment Center District. In addition, Electronic Reader Board/Message Board signs and Changeable Electronic Variable Message signs (CEVMS) (as defined in the Kennedale City Code) are also prohibited.

7.7 Sign Height and Location

Sign height, type, and location shall be as set forth in the tables below. Figures shown are for illustration purposes only. The illustrations used do not necessarily show signs meeting the standards of this Code.



Figures 15 and 16. Pole signs, various heights.

TABLE 7.1

POLE SIGNS

Location	Maximum height (in feet)	Maximum sign face area (in square feet)
Permitted on High Ridge Rd	75	360
Additional Requirements: 1) A total of two (2) pole signs are permitted within the District. A maximum of one (1) pole sign shall be permitted per lot. Pole signs shall be permitted on High Ridge Rd only and shall be located <u>between the I-20 frontage road and Link St, but shall not be located within one hundred (100) feet of Link St.</u> 2) Pole signs shall be shared between at least two tenants/businesses within the Employment Center District. 3) Pole signs shall not be permitted without a signed, recorded agreement as described in Section 17-510(e) of the Kennedale City Code concerning unified sign agreements. 4) Pole signs will not be permitted without an approved sign plan as described in Section 17-510(d) of the Kennedale City Code concerning unified sign agreements.		



Figure 17. Example of monument sign. Photo courtesy Morpho Landscape Architecture.

TABLE 7.2

MONUMENT SIGNS

Location	Maximum Height (in feet)	Maximum sign face area (in square feet)
All parcels ⁶	12 ²	100

Additional Requirements:

- 1) The sign base and sign structure shall be brick, stone, or masonry material matching the front façade of the primary building. The sign face shall be framed on the sides by a minimum of six (6) inches of brick, stone, or masonry material matching the front façade of the primary building.
- 2) Address numbers are required on business monument signs. If the area of the address number is five (5) square feet or less, the area will not count toward the maximum sign face area. The address numbers can be placed in or encroach into the masonry perimeter.
- 3) A maximum of one (1) monument sign is permitted per lot. A monument sign may not be located on the same lot as a KEDC-owned multi-tenant monument sign.
- 4) KEDC-owned monument signs shall follow regulations in Table 7.3.



Figure 18. Example of brick multi-tenant sign.

TABLE 7.3

KEDC*-OWNED MULTI-TENTANT MONUMENT SIGNS

Location	Maximum Height (in feet)	Maximum sign face area (in square feet)
To Be Determined	15	150 (each side)

- 1) One (1) sign of this height and area is permitted within the Employment Center Corridor Commercial sub-district.
- 2) The purpose of the sign is to permit multiple businesses to reserve space on a monument sign not located on the businesses' property, with design and maintenance of the sign to be the responsibility of the EDC.
- 3) The sign base and sign structure shall be brick, stone, or masonry material matching the front façade of the building. The sign face shall be framed on the sides by a minimum of six (6) inches of brick, stone, or masonry material matching the front façade of the building.

*KEDC = Kennedale Economic Development Corporation

The following illustrations are not intended to show signs that meet the requirements of this Code, but rather are intended to illustrate the general concept of a district identification sign.



Figures 19-21. Examples of district identification signs. Images courtesy WikiCommons users. See Appendix D for credit information.

TABLE 7.3

KEDC-OWNED DISTRICT IDENTIFICATION SIGNS

Location	Maximum Height (in feet)	Maximum sign face area (in square feet)
Kennedale Pkwy	27	135 (each side)

Additional Requirements:

- 1) On property owned by the Kennedale Economic Development Corporation (KEDC), the KEDC is permitted to install and manage one (1) identification sign, the purpose of which is to identify the Employment Center District. The sign shall serve as a gateway feature and may also be used to provide way-finding information for sub-districts and features within the District. The sign shall not be used to identify or promote individual tenants of the District but may be used to indicate the location of particular businesses or sub-districts. Sign listings shall have a consistent font type, color, and size so as not to promote individual tenants.
- 2) The sign(s) must be designed and maintained as an entry feature for the city and the district.
- 3) The sign base and sign structure shall be brick, stone, or masonry material matching the primary design theme for the District.



Figure 22. Example of an attached sign.

TABLE 7.4

ATTACHED SIGNS

Location	Maximum height	Maximum sign face area
Permitted on all properties	Shall not exceed 75% of façade	Maximum four hundred (400) square feet

Additional Requirements:

- 1) Attached signs facing existing residential or lodging uses shall be shielded or use lighting techniques that prevent the illumination from intruding into structures on adjacent or other properties at night.
- 2) A maximum of two (2) attached signs is allowed per business. Every sign should be an integral, subordinate element within the overall building and site design. The scale and proportion of the signage shall not overpower the building or obscure the building's architectural features.
- 3) The direct painting of signs on buildings shall be prohibited except for signs less than a three-square-foot area used for building identification (such as the street address).
- 4) In no case shall an attached sign project above the roof line of any building, except those attached to parapet walls, and the sign may not extend above the parapet wall.
- 5) Signs may be illuminated with internal lighting. No exposed neon is permitted.
- 6) For multi-tenant buildings, the following regulations apply:
 - (a) Each lease or tenant space shall be permitted only one attached sign per street front with a maximum of two attached signs per tenant/lease space.
 - (b) The dimensions of each of the two signs shall be based upon the street typology that the respective building façade faces.
 - (c) Signs may be illuminated with internal lighting. No exposed neon is permitted.



Figure 23. Example of an awning sign. Photo courtesy Gary Halvorson, Oregon State Archives.

TABLE 7.5

AWNING SIGNS

Location	Minimum height	Maximum sign face area
Permitted on all properties	8 ft above sidewalk/ clear zone	See below

Additional Requirements:

- Awnings may encroach into the sidewalk to within 2 feet of the curb (or within 2 feet of the edge of the clear zone, if building is not adjacent to the sidewalk) but must clear the sidewalk/clear zone vertically by at least 8 feet.
- Permitted materials shall be canvas cloth or equivalent (no shiny or reflective materials), metal, or glass.
- Awnings shall have a minimum depth of three (3) feet.
- No internal illumination is permitted through the awning/overhang.
- Except for wall signs permitted to be attached to canopies, lettering and/or logos on awning and canopies shall be limited to 5 inches tall on the vertically hanging fabric/face at the curb side of the awning or canopy.
- Lettering on awnings or canopies is limited to the business logo, business name, and/or slogan. Phone numbers, website addresses, and other additional wording that would clutter the lettering space are prohibited.

7.8 Measurement of sign height

As applied to a sign, height shall be measured as the vertical distance between the highest part of the sign or its supporting structure, whichever is higher, and final finished grade at the center of the base of the sign. *Final finished grade* means the top compacted and leveled earth for the purposes of constructing a slab foundation, as shown on the approved site plan for the development for which a sign is requested.

7.9 Master Sign Plan

The owner(s) of a tract or tracts of land may file a master sign plan request in order to ask for a multi-tenant sign to be permitted or for a modification of any requirements that may apply to a sign under this Code. To request a multi-tenant sign, the property or properties in question must qualify under a unified sign agreement under Section 17-510 of the Kennedale City Code and must follow the process for requesting a unified sign agreement as stated in Section 17-510. To request a master sign plan to permit a modification of sign requirements, the owner(s) shall follow the process as stated in Section 17-511 of the Kennedale City Code.

SECTION 8. LAND USES

Table 8.1 Schedule of Uses			
	Character Zone	Corridor Commercial Sub-Zone 1	Green Corridor Sub-Zone 1
Land Use			
Retail Sales or Service (personal service uses), <u>with no drive through facility</u>		X	NP
Retail Sales or Service (personal service uses), <u>with drive through facility</u> (Excluded from this category are retail sales and service establishments geared towards the automobile)		X/C	NP
Auto-related Sales or Service establishments		X/C	NP
Finance, Insurance, and Real Estate establishments including banks, credit unions, real estate, and property management services, <u>with no drive through facility</u>		X	NP
Finance, Insurance, and Real Estate establishments including banks, credit unions, real estate, and property management services, <u>with drive through facility</u>		X/C	NP
Offices for business, professional, administrative, and technical services such as accountants, architects, lawyers, doctors, etc.		X	NP
Research laboratory headquarters, laboratories and associated facilities		X	NP

Table 8.1 Schedule of Uses

Character Zone	Corridor Commercial Sub-Zone 1	Green Corridor Sub-Zone 1
Food Service Uses such as full-service restaurants, fast food establishments, cafeterias, bakeries and snack bars with <u>no drive through facilities</u>	X	NP
Food Service Uses such as full-service restaurants, fast food establishments, cafeterias, bakeries and snack bars <u>with drive through facilities</u> Included in this category is café seating within a public or private sidewalk area with no obstruction of pedestrian circulation. Also included in this category is the sale of alcoholic beverages (with food service).	X/C	NP
Pet and animal sales or service (incl. vet clinic)	X	NP
Amusement or theme park establishment (indoor) including bowling alleys, bingo parlor, games arcades, skating, etc.	X	NP
Art galleries	X	NP
Art, antique, furniture or electronics studio (retail, repair or fabrication; excludes auto electronics sales or service)	X	NP
Theater, cinema, dance, or music establishment	X	NP
Museums and other special purpose recreational institutions	X	NP
Fitness, recreational sports, gym, or athletic club	X	NP
Parks & open space, trails	X	X
Business associations and professional membership organizations	X	NP
Child day care and preschools	X	NP

Table 8.1 Schedule of Uses			
	Character Zone	Corridor Commercial Sub-Zone 1	Green Corridor Sub-Zone 1
Schools, libraries, and community halls		X	NP
Universities and colleges		X	NP
Technical, trade, and specialty schools		X	NP
Hospitals and nursing establishments		X	NP
Civic uses		X	NP
Social and fraternal organizations		X	NP
Social services and philanthropic organizations		X	NP
Public administration uses (including local, state, and federal government uses, public safety, health and human services)		X	NP
Religious Institutions		X	NP
Home Occupations		X/C	NP
Multi-family residential		NP	NP
Ground floor		NP	NP
Upper floors		X/C	NP
Live-work unit		X	NP
Publishing (newspaper, books, periodicals, software)		X	NP
Motion picture and sound recording		X	NP

Table 8.1 Schedule of Uses

	Character Zone	Corridor Commercial Sub-Zone 1	Green Corridor Sub-Zone 1
Telecommunications and broadcasting (radio, TV, cable, wireless communications, telephone, etc.)		X/C	NP
Information services and data processing		X	NP
Hotels		X	NP
Parking, surface (primary use of property)		NP	NP
Parking, surface (accessory use of property)		X/C	NP
Parking, structured		X	NP
Veterinary clinic		X	NP
Community garden		X	NP
Outdoor Display		X/C	NP
Antennas including cell, accessory, and mounted on top of buildings.		X/C and X/SE	NP
Wind energy equipment		C	NP
Solar energy equipment		C	NP
Special Event		CUP	CUP

X= Permitted by
right

NP= Not
Permitted

X/C = Permitted with Specific
Criteria as established in
Table 5.2

X/SE = Permitted with a
Special Exception from
the Board of Adjustment

CUP = Permitted with a
Conditional Use Permit
from the City Council

8.2 Use Criteria: All uses listed as X/C in Table 8.1 shall also meet the following standards in Table 8.2

Table 8.2 – Use Criteria		
<i>Use</i>	<i>Zone</i>	<i>Location & Design Criteria</i>
Non-Residential Uses		
Retail sales or service (personal service uses) with drive through facilities	Corridor Commercial Sub-Zone 1	Service windows and stacking lanes for drive-thru businesses shall have a minimized impact on public streets, particularly at corner sites. In cases where site constraints require the location of the drive-thru lanes between the street and the building, the view of the lanes should be minimized with the use of landscaping and other design elements.
Auto-related Sales or Service establishments	Corridor Commercial Sub-Zone 1	Automobiles or related items for sale shall be located behind the primary structure. Service bays shall not face a public street <u>unless screened</u>. Site design shall provide for safe, comfortable passage for pedestrians across the property where it abuts a public street. Various site design options will be considered by staff, but any design proposal shall insure pedestrians and drivers entering or exiting the site can see each other clearly and in enough time to avoid a crash. Other design options include, but are not limited to, providing a median or other pedestrian refuge for drive approaches 30 feet or wider, providing and maintaining clearly marked crosswalks across driveways or drive approaches, and other means of alerting drivers to the potential presence of pedestrians.
Finance, Insurance, and Real Estate establishments including banks, credit unions, real estate, and property management services <u>with drive through facility</u>	Corridor Commercial Sub-Zone 1	Service windows and stacking lanes for drive-thru businesses shall have a minimized impact on public streets, particularly at corner sites. In cases where site constraints require the location of the drive-thru lanes between the street and the building, the view of the lanes should be minimized with the use of landscaping and other design elements.
Food Service Uses such as full-service restaurants, fast food establishments, cafeterias, bakeries and snack bars <u>with drive through facilities</u>	Corridor Commercial Sub-Zone 1	Service windows and stacking lanes for drive-thru businesses shall have a minimized impact on public streets, particularly at corner sites. In cases where site constraints require the location of the drive-thru lanes between the street and the building, the view of the lanes should be minimized with the use of landscaping and other design elements.
Residential Uses		
Home occupations	Corridor Commercial Sub-Zone 1	Home Occupations are permitted as allowed in Kennedale City Code Section 17-423.
Multi-family residential Upper Floor	Corridor Commercial Sub-Zone 1	Residential uses may not exceed fifty percent (50%) of the structure's gross floor area.
Other Uses		
Telecommunications and broadcasting (radio, TV, cable, wireless communications, telephone, etc.)	Corridor Commercial Sub-Zone 1	- Fleet parking and outdoor storage are prohibited. - Radio & television towers, Microwave towers, and telephone exchanges require a special exception from the Board of Adjustment.
Parking, surface (accessory use of	Corridor Commercial Sub-Zone 1	Parking shall be screened as required by this Code. Commercial parking lots (parking for a fee) are not permitted.

Table 8.2 – Use Criteria

<i>Use</i>	<i>Zone</i>	<i>Location & Design Criteria</i>
property)		
Outdoor Display	Corridor Commercial Sub-Zone 1	Outdoor display is permitted when in compliance with Section 4-227 of the Kennedale City Code. Outdoor display shall not be used for storage. For the purposes of this Code, “display” means the exhibition of goods, wares, or merchandise for sale. Vehicles, trailers, or boats shall not be displayed outdoors. Items displayed outdoors shall be located within 15 feet of the primary building entrance and shall not exceed more than 20% of the width of the front façade.
Antennas including cell, accessory, and mounted on top of buildings	Corridor Commercial Sub-Zone 1	Satellite antennas shall be regulated under Section 17-417 of the Kennedale City Code. Other uses under this category require a special exception from the Board of Adjustment.
Wind energy equipment	Corridor Commercial Sub-Zone 1	- Freestanding wind energy equipment shall be considered an accessory building and shall be subject to the requirements for such, together with all other applicable building codes and ordinances, including height limits. Wind energy production/generation shall not be the primary use of any property within the Corridor Commercial Sub-Zone 1. - Wind energy equipment shall comply with the height requirements and other requirements for accessory buildings as regulated by Kennedale City Code Section 17-405. - Wind energy equipment shall be subject to Chapter 15, Article V of the Kennedale City Code concerning loud noises (nuisances). - All portions of the wind energy system shall be a non-reflective, non-obtrusive color, subject to the approval of the Planning Director. - Wind energy equipment shall not be used for displaying any advertising and shall not be illuminated. - The electrical collection system shall be placed underground within the interior of each parcel. - A building permit and any other permit related to work required to install wind energy equipment shall be obtained prior to installation of any wind energy equipment.
Solar energy equipment	Corridor Commercial Sub-Zone 1	- Freestanding solar collectors shall be considered an accessory building and shall be subject to the requirements for such, together with all other applicable building codes and ordinances, including height limits. Solar energy production/generation shall not be the primary use of any property within the Corridor Commercial Sub-Zone 1. - Structurally attached solar collectors are permitted in the Corridor Commercial Sub-Zone 1. “Structurally attached solar collector” means solar collectors attached to an existing structure’s roof or wall or serving as a structure’s roof, wall, window or other structural member. Structurally attached solar collectors installed on a building with a sloped roof shall not project vertically above the peak of the roof. Structurally attached solar collectors installed on a building with a flat roof shall not project vertically more than five (5) feet above the roof. - Roof-mounted or structurally attached solar energy systems shall comply with the maximum height requirements in the applicable zoning district. Ground-mounted solar energy equipment shall comply with the height requirements and other requirements for accessory buildings as regulated by Kennedale City Code Section 17-405. - A building permit, electrical permit, or any other permit related to work required to install solar energy equipment shall be obtained prior to installation of any solar energy equipment.
Special Event	Corridor Commercial Sub-Zone 1 Green Corridor Sub-District 1	- Special Events require approval from the City Council. Flea markets are prohibited (indoor or outdoor). - Special Events require approval from the City Council. - It shall be unlawful to place or erect any structure, sign, bulletin board, post, pole, or advertising device of any kind whatever, or to attach to any tree, shrub, fence, railing, post within the Green Corridor; provided, however, the city manager, or his designee, may permit in writing the erection of temporary decorations on occasions of public celebrations or holidays.

EXHIBITS

A District boundaries: property regulated by this Code

Property Regulated by This Code

The boundaries of the Employment Center district are, approximately: Kennedale Parkway to the east, the Union Pacific rail line to the west, the IH-20 frontage road to the north, and Village Creek to the south.

The Corridor Commercial Sub-District 1 is bisected by the Green Corridor Sub-District 1. The boundaries of the northern section are, approximately: the QuikTrip Planned Development District to the north, the Green Corridor Sub-District 1 to the south, High Ridge Road to the west, and Kennedale Pkwy to the east. The boundaries of the southern section are, approximately: the Green Corridor Sub-District 1 to the north, Oak Crest Drive to the south, High Ridge Road to the west, and Kennedale Pkwy to the east.

The boundaries of the Green Corridor Sub-District 1 are, approximately: Corridor Commercial Sub-District 1 to the north and to the south, High Ridge Rd to the west, and Kennedale Pkwy to the east.

More specific boundaries shall be established as properties are re-zoned under this Code.

APPENDICES

- A. Definitions
- B. Native plant lists
- C. Irrigation requirements
- D. Photo credits

APPENDIX A. DEFINITIONS

Blank wall means any building wall that is a portion of a building wall or façade without a window or door or similar architectural feature and is over four feet in height from ground level and longer than 60 feet, as measured horizontally, without having a window, door, building modulation, or other similar architectural feature meant to lessen the apparent bulk or massing of a structure.

Build-to zone means range of allowable distances from a street right-of-way that a building may be built.

Footcandle means the unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one foot square from a distance of one foot.

Frontage zone means the area between the pedestrian walkway or sidewalk and primary structure (or property line, for structures where no front setback is required). Pedestrians tend to avoid walking close to barriers such as buildings, storefronts, walls, or fences, in the same way that they tend to avoid walking close to the roadway. For this reason, some sub-districts in the Employment Center have a minimum frontage zone width in order to provide more comfort for pedestrians. Typically, the frontage zone is also the area in which sidewalk entertainment, such as street cafes and vendors, are located. Sometimes also referred to as a *clear zone*, the frontage zone buffers pedestrians from appurtenances, doorways, and similar obstacles.

Harvested rainwater means storm water that is conveyed from a building roof, stored in a cistern or rain barrel, and disinfected and filtered before being used.

Modulation means the stepping back or projecting forward of parts of a building.

Structure means anything constructed or erected having location on or under the ground or attached to something having location on or under the ground, but not including fences or screening walls required by this Code.

Visible Transmittance means the amount of light transmitted through a window. VT is expressed as a number between 0 and 1; the closer the number is to 1, the higher the potential for daylighting.

APPENDIX B.

NATIVE PLANTS APPROPRIATE FOR THE KENNEDALE REGION

APPENDIX B

Native Plants

The following plants are recommended by the Lady Bird Johnson Wildflower Center for use in the North Central Texas area.

Scientific Name	Common Name	Duration	Habit	Sun	Water
<i>Acer negundo</i>	Ash-leaf maple, Ash-leaved maple, Box elder, Boxelder, Fresno de guajuco	Perennial	Tree	Sun	Moist
<i>Aesculus glabra</i>	Ohio buckeye, Texas buckeye, Fetid buckeye, Horse chestnut	Perennial	Tree	Sun, Shade, Part-shade	Moist
<i>Amblyolepis setigera</i>	Huisache daisy, Butterfly daisy, Honey daisy	Annual	Herb	Part-shade	Dry
<i>Amorpha fruticosa</i>	Indigo bush, False indigo bush, False indigo, Desert false indigo	Perennial	Shrub	Sun, Part-shade	Moist
<i>Andropogon gerardii</i>	Big bluestem, Turkeyfoot	Perennial	Grass/Grass-like	Sun, Part-shade	Moist
<i>Anisacanthus quadrifidus</i> var. <i>wrightii</i>	Flame acanthus, Hummingbird bush, Wright's desert honeysuckle, Wright acanthus, Mexican flame, Wright's Mexican flame	Perennial	Shrub	Sun, Part-shade	Moist, Dry
<i>Aquilegia canadensis</i>	Eastern red columbine, Wild red columbine	Perennial	Herb	Shade, Part-shade	Moist, Dry
<i>Asclepias tuberosa</i>	Butterflyweed, Butterfly milkweed, Orange milkweed, Pleurisy root	Perennial	Herb	Sun, Part-shade	Moist, Dry
<i>Bignonia capreolata</i>	Crossvine	Perennial	Vine	Sun, Part-shade	Moist, Dry
<i>Bouteloua curtipendula</i>	Sideoats grama	Perennial	Grass/Grass-like	Sun, Part-shade	Moist, Dry
<i>Bouteloua dactyloides</i>	Buffalograss, Buffalo grass	Perennial	Grass/Grass-like	Sun	Dry
<i>Bouteloua gracilis</i>	Blue grama	Perennial	Grass/Grass-like	Sun	Dry
<i>Callicarpa americana</i>	American beautyberry, French mulberry	Perennial	Shrub	Part-shade	Moist
<i>Callirhoe digitata</i>	Finger poppy-mallow, Poppy mallow, Standing winecup, Wine cup, Winecup	Perennial	Herb	Sun	Dry

<i>Callirhoe involucrata</i>	Winecup, Purple poppy mallow	Perennial	Herb	Sun, Part-shade	Moist, Dry
<i>Campsis radicans</i>	Trumpet creeper, Trumpet vine, Common trumpet creeper, Cow vine	Perennial	Vine	Sun	Moist, Dry
<i>Carya illinoensis</i>	Pecan	Perennial	Tree	Sun	Moist
<i>Carya texana</i>	Black hickory	Perennial	Tree	Part-shade	Dry
<i>Castilleja indivisa</i>	Entireleaf indian paintbrush, Texas paintbrush, Indian paintbrush, Scarlet paintbrush, Entire-leaf indian-paintbrush	Annual	Herb	Sun	Dry
<i>Centaurea americana</i>	American basket-flower, American star-thistle, Basket-Flower, Star thistle, Shaving brush	Annual	Herb	Part-shade	Dry
<i>Cephalanthus occidentalis</i>	Common buttonbush, Buttonbush, Button willow	Perennial	Shrub	Shade, Part-shade	Wet, Moist
<i>Cercis canadensis</i> var. <i>texensis</i>	Texas redbud	Perennial	Tree	Sun, Part-shade	Dry
<i>Chromolaena odorata</i>	Jack in the bush, Fragrant boneset, Fragrant mistflower, Crucita, Blue mistflower	Perennial	Shrub	Part-shade	Dry
<i>Clematis pitcheri</i>	Purple clematis, Purple leatherflower, Leatherflower, Bluebill	Perennial	Vine	Sun, Part-shade	Moist
<i>Conoclinium coelestinum</i>	Blue mistflower	Perennial	Herb	Sun, Part-shade	Moist
<i>Cooperia drummondii</i>	Evening rain lily, Evening star rain lily	Perennial	Herb	Sun, Part-shade	Moist, Dry
<i>Coreopsis tinctoria</i>	Plains coreopsis, Golden tickseed, Goldenwave, Calliopsis	Annual	Herb	Sun, Part-shade	Moist
<i>Diospyros texana</i>	Texas persimmon, Mexican persimmon, Black persimmon, Chapote, Chapote prieto	Perennial	Tree	Sun, Part-shade	Dry
<i>Echinacea angustifolia</i>	Black Sampson, Black Samson echinacea, Narrow-leaf Coneflower	Perennial	Herb	Sun, Part-shade	Dry
<i>Echinacea purpurea</i>	Eastern purple coneflower, Purple coneflower	Perennial	Herb	Sun, Part-shade	Dry
<i>Engelmannia</i>	Engelmann's daisy, Engelmann Daisy,	Perennial	Herb	Sun	Dry

<i>peristenia</i>	Cutleaf Daisy				
<i>Eryngium leavenworthii</i>	Leavenworth's eryngo, Eryngo	Annual	Herb	Sun, Part-shade	Moist
<i>Eustoma exaltatum</i> ssp. <i>russellianum</i>	Texas bluebells, Texas bluebell, Bluebell, Showy prairie gentian, Prairie gentian	Annual, Biennial, Perennial	Herb	Sun	Moist
<i>Frangula caroliniana</i>	Carolina buckthorn, Carolina false buckthorn, Indian cherry	Perennial	Tree	Part-shade	Moist
<i>Fraxinus americana</i>	White ash	Perennial	Tree	Sun, Shade, Part-shade	Moist, Dry
<i>Gaillardia pulchella</i>	Firewheel, Indian Blanket	Annual	Herb	Sun, Part-shade	Dry
<i>Glandularia bipinnatifida</i> var. <i>bipinnatifida</i>	Prairie verbena, Purple prairie verbena, Dakota mock vervain, Dakota vervain	Annual, Perennial	Herb	Sun, Part-shade	Dry
<i>Helianthus maximiliani</i>	Maximilian sunflower, Max sunflower	Perennial	Herb	Sun	Moist, Dry
<i>Hesperaloe parviflora</i>	Red yucca, Coral yucca, Red flowered false yucca, Redflower false yucca, Samandoque, Yellow yucca	Perennial	Cactus/Succulent	Sun	Dry
<i>Hibiscus laevis</i>	Halberdleaf rosemallow, Halberdleaf hibiscus, Scarlet rose mallow	Perennial	Shrub	Sun, Part-shade	Moist
<i>Hilaria belangeri</i> var. <i>belangeri</i>	Curly-mesquite	Perennial	Grass/Grass-like	Sun	Dry
<i>Ilex decidua</i>	Possumhaw, Possumhaw Holly, Deciduous Holly, Winterberry, Deciduous yaupon	Perennial	Shrub	Sun, Part-shade	Moist
<i>Ilex vomitoria</i>	Yaupon, Yaupon holly, Cassina	Perennial	Shrub, Tree	Sun, Shade, Part-shade	Moist, Dry
<i>Juglans nigra</i>	Black walnut, Eastern black walnut	Perennial	Tree	Sun, Part-shade	Moist
<i>Juniperus ashei</i>	Ashe juniper, Ashe's juniper, Mountain cedar, Blueberry juniper	Perennial	Tree	Part-shade	Dry
<i>Juniperus virginiana</i>	Eastern red cedar, Eastern redcedar, Virginia juniper	Perennial	Tree	Sun, Shade, Part-shade	Dry
<i>Lantana urticoides</i>	Texas lantana, Calico bush, West	Perennial	Shrub	Sun	Dry

	Indian shrub-verbena				
<i>Leptochloa dubia</i>	Green sprangletop	Perennial	Grass/Grass-like	Part-shade	Dry
<i>Liatris elegans</i>	Blazing star, Gay feather, Pink-scale gayfeather, Pinkscale blazing star	Perennial	Herb	Sun	Dry
<i>Liatris mucronata</i>	Cusp gayfeather, Gayfeather, Blazing star, Narrow-leaf gayfeather, Texas gayfeather, Cusp blazing star	Perennial	Herb	Sun	Dry
<i>Lobelia cardinalis</i>	Cardinal flower	Perennial	Herb	Sun, Shade, Part-shade	Wet, Moist
<i>Lonicera albiflora</i>	Western white honeysuckle, Texas honeysuckle, White honeysuckle, White shrub honeysuckle, White limestone honeysuckle	Perennial	Vine	Sun, Part-shade	Moist, Dry
<i>Lonicera sempervirens</i>	Coral honeysuckle, Trumpet honeysuckle, Woodbine	Perennial	Vine	Sun, Part-shade	Moist
<i>Lupinus texensis</i>	Texas bluebonnet, Bluebonnet, Texas lupine, Buffalo clover, Wolf-flower	Annual	Herb	Sun	Dry
<i>Machaeranthera tanacetifolia</i>	Tanseyleaf tansyaster, Tahoka Daisy, Tansy Aster	Annual	Herb	Sun, Part-shade	Dry
<i>Mahonia swaseyi</i>	Texas barberry, Texas Oregon-grape	Perennial	Shrub	Sun	
<i>Mahonia trifoliolata</i>	Agarita, Agarito, Algerita, Laredo mahonia, Laredo Oregon-grape, Trifoliate barberry	Perennial	Shrub	Sun, Part-shade	Moist, Dry
<i>Melampodium leucanthum</i>	Blackfoot Daisy, Rock daisy, Plains blackfoot	Perennial	Herb	Sun, Part-shade	Dry
<i>Monarda citriodora</i>	Lemon beebalm, Horsemint, Purple horsemint, Lemon mint, Plains horsemint, Lemon horsemint	Annual	Herb	Sun, Part-shade	Dry
<i>Muhlenbergia lindheimeri</i>	Lindheimer's muhly, Big muhly, Lindheimer muhly	Perennial	Grass/Grass-like	Sun	Moist, Dry
<i>Muhlenbergia reverchonii</i>	Seep muhly	Perennial	Grass/Grass-like	Sun	Moist, Dry
<i>Oenothera macrocarpa</i> ssp. <i>macrocarpa</i>	Bigfruit evening-primrose, Fluttermill, Missouri evening primrose	Perennial	Herb	Sun, Part-shade	Dry
<i>Oenothera speciosa</i>	Pink evening primrose, Showy evening primrose, Mexican evening primrose, Showy primrose, Pink ladies, Buttercups, Pink buttercups	Perennial	Herb	Sun	Moist, Dry
<i>Palafoxia callosa</i>	Small palafox, Small palafoxia	Annual	Herb	Sun	Dry

<i>Panicum virgatum</i>	Switchgrass, Wand panic grass	Perennial	Grass/Grass-like	Sun, Part-shade	Moist, Dry
<i>Parthenocissus quinquefolia</i>	Virginia creeper	Perennial	Vine	Sun, Shade, Part-shade	Moist
<i>Passiflora incarnata</i>	Purple passionflower, Purple passion vine, Maypop, Apricot vine	Perennial	Vine	Sun, Part-shade	Moist, Dry
<i>Penstemon cobaea</i>	Wild foxglove, Prairie penstemon, Foxglove penstemon, False foxglove, Large-flowered beardtongue, Large-flowered penstemon, Prairie beardtongue, Cobaea penstemon	Perennial	Herb	Sun, Part-shade	Dry
<i>Phlox drummondii</i>	Annual phlox, Phlox, Drummond phlox	Annual	Herb	Sun, Part-shade	Dry
<i>Physostegia pulchella</i>	Beautiful false dragon-head, Showy false dragonhead	Perennial	Herb	Part-shade	Moist
<i>Platanus occidentalis</i>	American sycamore, Buttonwood, Plane-tree, Sycamore	Perennial	Tree	Sun, Shade, Part-shade	Moist
<i>Poa arachnifera</i>	Texas bluegrass, Texas blue grass	Perennial	Grass/Grass-like	Sun, Part-shade	Moist
<i>Prosopis glandulosa</i>	Honey mesquite	Perennial	Tree	Sun	Dry
<i>Prunus mexicana</i>	Mexican plum, Bigtree plum	Perennial	Tree	Sun, Part-shade	Moist, Dry
<i>Quercus fusiformis</i>	Escarpment live oak, Plateau live oak, Texas live oak, Scrub live oak, Hill country live oak, Plateau oak	Perennial	Tree	Sun, Part-shade	Dry
<i>Quercus macrocarpa</i>	Bur oak, Burr oak, Savannah oak, Overcup oak, Prairie oak, Mossy-cup oak, Mossy-overcup oak, Blue oak	Perennial	Tree	Sun, Shade, Part-shade	Wet, Moist, Dry
<i>Quercus marilandica</i>	Blackjack oak, Barren oak, Black oak, Jack oak	Perennial	Tree	Part-shade	Dry
<i>Quercus muehlenbergii</i>	Chinkapin oak, Chinquapin oak, Chestnut oak, Yellow chestnut oak, Yellow oak, Rock chestnut oak, Rock oak	Perennial	Tree	Sun, Part-shade	Dry
<i>Quercus shumardii</i>	Shumard oak, Shumard's oak, Shumard red oak, Southern red oak	Perennial	Tree	Sun, Part-shade	Moist, Dry

<i>Quercus stellata</i>	Post oak	Perennial	Tree	Part-shade	Dry
<i>Quercus texana</i>	Nuttall Oak, Texas red oak, Texas oak, Spanish oak, Rock oak	Perennial	Tree	Part-shade	
<i>Ratibida columnifera</i>	Mexican hat, Prairie coneflower, Upright prairie coneflower, Red-spike mexican-hat, Long-headed coneflower, Thimbleflower	Perennial	Herb	Sun	Moist, Dry
<i>Rhus aromatica</i>	Fragrant sumac, Aromatic sumac, Lemon sumac, Polecats bush	Perennial	Shrub	Sun, Shade, Part-shade	Moist, Dry
<i>Rhus lanceolata</i>	Prairie flameleaf sumac, Flame-leaf sumac, Prairie sumac, Lance-leaf sumac	Perennial	Tree	Sun	Dry
<i>Rudbeckia hirta</i>	Black-eyed Susan, Common black-eyed Susan, Brown-eyed Susan	Annual	Herb	Sun, Shade, Part-shade	Moist, Dry
<i>Salvia azurea</i>	Pitcher sage, Big blue sage, Azure sage, Giant blue sage, Blue sage	Perennial	Herb	Part-shade	Dry
<i>Salvia farinacea</i>	Mealy blue sage, Mealy sage, Mealcup sage	Perennial	Herb	Sun	Moist
<i>Salvia greggii</i>	Autumn sage, Cherry sage, Gregg salvia	Perennial	Shrub	Sun	Dry
<i>Salvia regia</i>	Mountain sage, Royal sage	Perennial	Shrub	Shade, Part-shade	Dry
<i>Salvia roemeriana</i>	Cedar sage	Perennial	Herb	Part-shade	Dry
<i>Sapindus saponaria</i> var. <i>drummondii</i>	Western soapberry, Soapberry	Perennial	Tree	Sun, Part-shade	Moist, Dry
<i>Schizachyrium scoparium</i>	Little bluestem	Perennial	Grass/Grass-like	Sun, Part-shade	Dry
<i>Sorghastrum nutans</i>	Indiangrass, Yellow indian grass	Perennial	Grass/Grass-like	Sun, Shade, Part-shade	Moist, Dry
<i>Styphnolobium affine</i>	Eve's necklace, Eve's necklacepod, Texas sophora	Perennial	Tree	Part-shade	Dry
<i>Taxodium distichum</i>	Bald cypress, Baldcypress, Common bald cypress, Southern bald cypress, Deciduous cypress	Perennial	Tree	Sun, Part-shade	Moist
<i>Thelesperma</i>	Stiff green thread, Green thread	Annual	Herb	Sun	Dry

<i>filifolium</i>					
<i>Tradescantia occidentalis</i>	Prairie spiderwort, Western Spiderwort, Spiderwort	Perennial	Herb	Sun, Part-shade	Dry
<i>Tripsacum dactyloides</i>	Eastern gamagrass	Perennial	Grass/Grass-like	Part-shade	Moist
<i>Ulmus americana</i>	American elm, White elm	Perennial	Tree	Sun, Part-shade	Moist
<i>Ulmus crassifolia</i>	Cedar elm, Fall elm, Olmo	Perennial	Tree	Part-shade	Moist
<i>Ungnadia speciosa</i>	Mexican buckeye	Perennial	Tree	Sun, Part-shade	Dry
<i>Vernonia baldwinii</i>	Baldwin's ironweed, Western Ironweed, Ironweed	Perennial	Herb	Sun	Moist
<i>Viburnum rufidulum</i>	Rusty blackhaw viburnum, Rusty blackhaw, Southern blackhaw, Downy viburnum	Perennial	Tree	Part-shade	Dry
<i>Wedelia texana</i>	Zexmenia, Orange zexmenia, Wedelia, Hairy wedelia, Texas creeping-oxeye	Perennial	Herb	Sun, Part-shade	Moist, Dry
<i>Yucca rupicola</i>	Twistleaf yucca, Twisted-leaf yucca, Texas yucca	Perennial	Cactus/Succulent	Sun, Part-shade	Dry

The following plants are recommended by the Texas Parks & Wildlife Department for Tarrant County (excepting southeastern Tarrant County).

Common Name	Scientific Name	Erosion Index	Wildlife Index
BLACKBERRIES-DEWBERRIES	RUBUS SPP.	EXCELLENT	EXCELLENT
PARTRIDGE PEA (PRAIRIE SENNA)	CHAMAECRISTA FASCICULATA	EXCELLENT	GOOD
MAXIMILLIAN SUNFLOWER	HELIANTHUS MAXIMILIANI	EXCELLENT	GOOD
VINE-MESQUITE	PANICUM OBTUSUM	EXCELLENT	GOOD
YELLOW INDIANGRASS	SORGHASTRUM NUTANS	EXCELLENT	EXCELLENT
PRAIRIE CORDGRASS	SPARTINA PECTINATA	EXCELLENT	EXCELLENT
AMERICAN ELDERBERRY	SAMBUCUS CANADENSIS	EXCELLENT	GOOD
SWITCHGRASS	PANICUM VIRGATUM	EXCELLENT	EXCELLENT
ILLINOIS BUNDLE FLOWER (PRAIRIE MIMOSA)	DESMANTHUS ILLINOENSIS	EXCELLENT	EXCELLENT

CHICKASAW PLUM	PRUNUS ANGUSTIFOLIA	EXCELLENT	EXCELLENT
BIG BLUESTEM	ANDROPOGON GERARDII	EXCELLENT	GOOD
SIDEOATS GRAMA	BOUTELOUA CURTIPENDULA	EXCELLENT	GOOD
COMMON REED	PHRAGMITES AUSTRALIS	EXCELLENT	GOOD
ASHE JUNIPER	JUNIPERUS ASHEI	EXCELLENT	GOOD
COTTONWOOD	POPULUS DELTOIDES	EXCELLENT	GOOD
COMMON CURLYMESQUITE	HILARIA BERLANGERI	EXCELLENT	GOOD
COFFEE BEAN	SESBANIA MACROCARPA	EXCELLENT	EXCELLENT
FRAGRANT SUMAC	RHUS AROMATICA	EXCELLENT	EXCELLENT
VIRGINIA CREEPER	PARTHENOCISSUS QUINQUEFOLIA	EXCELLENT	GOOD
BROOMSEDGE BLUESTEM	ANDROPOGON VIRGINICUS	EXCELLENT	GOOD
SOFTSTEM BULRUSH	SCIRPUS TABERNAEMONTANI (S. VALIDUS)	EXCELLENT	GOOD
SALTMARSH BULRUSH	SCIRPUS MARITIMUS	EXCELLENT	GOOD
WINGED ELM	ULMUS ALATA	EXCELLENT	GOOD
DELTA ARROWHEAD	SAGITTARIA PLATYPHYLLA	EXCELLENT	GOOD
WATER SMARTWEED	POLYGONUM AMPHIBIUM	EXCELLENT	EXCELLENT
PENNSYLVANIA SMARTWEED	POLYGONUM PENSYLVANICUM	EXCELLENT	EXCELLENT
CORALBERRY	SYMPHORICARPOS ORBICULATUS	EXCELLENT	EXCELLENT
LONG-LEAF PONDWEED	POTAMOGETON NODOSUS	EXCELLENT	GOOD
ROUND HEAD BUSHCLOVER (ROUNDHEAD LESPEDEZA)	LESPEDEZA CAPITATA	EXCELLENT	GOOD
DOTTED SMARTWEED	POLYGONUM PUNCTATUM	EXCELLENT	GOOD
TRUMPET HONEYSUCKLE	LONICERA SEMPERVIRENS	EXCELLENT	GOOD
LEAFY PONDWEED	POTAMOGETON FOLIOSUS	EXCELLENT	GOOD
GIANT CANE	ARUNDINARIA GIGANTEA	EXCELLENT	GOOD
WESTERN WHEATGRASS	ELYTRIGIA SMITHII (AGROPYRON SMITHII)	EXCELLENT	GOOD
LITTLE BLUESTEM	SCHIZACHYRIUM SCOPARIUM	EXCELLENT	GOOD
COMMON TRUMPET-CREEPER	CAMPSIS RADICANS	EXCELLENT	GOOD
SAND DROPSEED	SPOROBOLUS CRYPTANDRUS	EXCELLENT	GOOD
PURPLETOP	TRIDENS FLAUUS	EXCELLENT	GOOD
BLACK WILLOW	SALIX NIGRA	EXCELLENT	FAIR
WESTERN INDIGO (SCARLET PEA)	INDIGOFERA MINIATA	EXCELLENT	FAIR
PECAN	CARYA ILLINOENSIS	EXCELLENT	EXCELLENT
DOWNY VIBURNUM (RUSTY BLACKHAW)	VIBURNUM RUFIDULUM	EXCELLENT	EXCELLENT
RIVERBANK GRAPE	VITIS RIPARIA	EXCELLENT	EXCELLENT
CROTON, SPP.	CROTON, SPP.	EXCELLENT	EXCELLENT
AMERICAN BEAUTYBERRY	CALLICARPA AMERICANA	EXCELLENT	EXCELLENT

TEXAS PERSIMMON	DIOSPYROS TEXANA	EXCELLENT	GOOD
MUSTANG GRAPE	VITIS MUSTANGENSIS	EXCELLENT	GOOD
FARKLEBERRY (TREE HUCKLEBERRY)	VACCINIUM ARBOREUM	EXCELLENT	GOOD
RED MULBERRY	MORUS RUBRA	EXCELLENT	GOOD
TEXAS MULBERRY	MORUS MICROPHYLLA	EXCELLENT	GOOD
BROADLEAF WOODOATS	CHASMANTHIUM LATIFOLIUM	EXCELLENT	GOOD
PINCHOT JUNIPER (REDBERRY JUNIPER)	JUNIPERUS PINCHOTII	EXCELLENT	GOOD
BLUE GRAMA	BOUTELOUA GRACILIS	EXCELLENT	GOOD
GREEN ASH (RED ASH)	FRAXINUS PENNSYLVANICA	EXCELLENT	GOOD
BLACK WALNUT	JUGLANS NIGRA	EXCELLENT	GOOD
GREEN SPRANGLETOP	LEPTOCHLOA DUBIA	EXCELLENT	GOOD
LITTLE WALNUT (NOGALITO)	JUGLANS MICROCARPA	EXCELLENT	GOOD
BOXELDER	ACER NEGUNDO	EXCELLENT	GOOD
HONEY MESQUITE	PROSOPIS GLANDULOSA VAR. GLANDULOSA	EXCELLENT	GOOD
BUFFALOGRASS	BUCHLOE DACTYLOIDES	EXCELLENT	GOOD
DESERT WILLOW	CHILOPSIS LINEARIS	EXCELLENT	FAIR
COMMON PERSIMMON	DIOSPYROS VIRGINIANA	GOOD	EXCELLENT
LOTEBUSH	ZIZYPHUS OBTUSIFOLIA	GOOD	GOOD
POSSUM-HAW (DECIDUOUS HOLLY)	ILEX DECIDUA	GOOD	GOOD
EASTERN GAMAGRASS	TRIPSACUM DACTYLOIDES	GOOD	GOOD
CAROLINA BUCKTHORN	RHAMNUS CAROLINIANA	GOOD	GOOD
OSAGE ORANGE (BOIS D'ARC)	MACLURA POMIFERA	GOOD	GOOD
SESSILELEAF TICKCLOVER	DESMODIUM SESSILIFOLIUM	GOOD	GOOD
SMOOTH SUMAC	RHUS GLABRA	GOOD	GOOD
COMMON HONEY LOCUST	GLEDITSIA TRIACANTHOS	GOOD	GOOD
TROPIC CROTON	CROTON GLANDDULOSUS	GOOD	FAIR
WOOLLY CROTON	CROTON CAPITATUS	GOOD	FAIR
CURLTOP SMARTWEED (WILLOW- WEED)	POLYGONUM LAPTHIFOLIUM	GOOD	FAIR
OKLAHOMA BLACKBERRY	RUBUS OKLAHOMUS	GOOD	EXCELLENT
SUGAR HACKBERRY (SUGARBERRY)	CELTIS LAEVIGATA	GOOD	GOOD
COMMON BUTTONBUSH	CEPHALANTHUS OCCIDENTALIS	GOOD	GOOD
CANADA WILDRYE	ELYMUS CANADENSIS	GOOD	GOOD
ROUGHLEAF DOGWOOD	CORNUS DRUMMONDII	GOOD	GOOD
CHINKAPIN OAK	QUERCUS MUHLENBERGII	GOOD	GOOD
INDIGOBUSH (FALSE INDIGO)	AMORPHA FRUTICOSA	GOOD	GOOD
SLENDER LESPEDeza	LESPEDeza VIRGINICA	GOOD	GOOD

HAIRY GRAMA	BOUTELOUA HIRSUTA	GOOD	GOOD
FROST GRAPE	VITIS CORDIFOLIA	GOOD	GOOD
WHITE ASH	FRAXINUS AMERICANA	GOOD	GOOD
AGARITO	MAHONIA TRIFOLIOLATA	GOOD	GOOD
AMERICAN ELM	ULMUS AMERICANA	GOOD	GOOD
BLACK HICKORY (TEXAS HICKORY)	CARYA TEXANA	GOOD	GOOD
SAND LOVEGRASS	ERAGROSTIS TRICHODES	GOOD	GOOD
SLIPPERY ELM	ULMUS RUBRA	GOOD	GOOD
CEDAR ELM	ULMUS CRASSIFOLIA	GOOD	FAIR
BLUE SAGE	SALVIA AZUREA	GOOD	FAIR
SWAMP PRIVET	FORESTIERA ACUMINATA	GOOD	EXCELLENT
ALABAMA SUPPLEJACK (RATTAN VINE)	BERCHEMIA SCANDENS	GOOD	GOOD
VIRGINIA WILDRYE	ELYMUS VIRGINICUS	GOOD	GOOD
YELLOW SWEETCLOVER	MELILOTUS OFFICINALIS	GOOD	GOOD
GUM BUMELIA (CHITTAMWOOD)	BUMELIA LANUGINOSA	GOOD	GOOD
PURPLE PRAIRIE CLOVER	DALEA PURPUREA	GOOD	GOOD
CAROLINA SNAILSEED	COCCULUS CAROLINUS	GOOD	GOOD
SEDGES	CAREX SPP.	GOOD	GOOD
GREEN HAWTHORN	CRATAEGUS VIRDIS	GOOD	GOOD
SAW GREENBRIAR	SMILAX BONA-NOX	GOOD	GOOD
EASTERN HOP HORNBEAN	OSTRYA VIRGINIANA	GOOD	FAIR
FLORIDA PASPALUM	PASPALUM FLORIDANUM	GOOD	FAIR
REVERCHON HAWTHORN	CRATAEGUS REVERCHONI	GOOD	FAIR
SACAHUISTA (BEARGRASS)	NOLINA SPP.	GOOD	FAIR
MEXICAN PLUM	PRUNUS MEXICANA	GOOD	GOOD
CATCLAW SENSITIVEBRIAR	SCHRANKIA NUTTALLI	GOOD	GOOD
ELBOWBUSH	FORESTIERA PUBESCENS	GOOD	FAIR
COMMON BEEBUSH (WHITEBRUSH)	ALOYSIA GRATISSIMA	GOOD	FAIR
COCKSPUR HAWTHORN	CRATAEGUS CRUSGALLI	GOOD	FAIR
DOWNY HAWTHORN	CRATAEGUS MOLLIS	GOOD	FAIR
TEXAS BLUEBONNET	LUPINUS TEXENSIS	GOOD	FAIR
AMERICAN SYCAMORE	PLATANUS OCCIDENTALIS	GOOD	FAIR
FERN ACACIA (PRAIRIE ACACIA)	ACACIA ANGUSTISSIMA	GOOD	FAIR
MEXICAN PRIMROSE	OENOTHERA SPECIOSA	GOOD	LOW
YELLOW NUTGRASS (CHUFA)	CYPERUS ESCULENTUS	GOOD	EXCELLENT
WHITE CLOVER	TRIFOLIUM REPENS	GOOD	GOOD
COMMON GREENBRIAR	SMILAX ROTUNDIFOLIA	GOOD	GOOD
INLAND CEANOTHUS (REDROOT)	CEANOTHUS HERBACEUS	GOOD	GOOD
SILVER BLUESTEM	BOTHRIOCHLOA LAGUROIDES	GOOD	FAIR

RICE CUTGRASS	LEERSIA ORYZOIDES	GOOD	FAIR
ENGELMANN DAISY	ENGELMANNIA PINNATIFIDA	GOOD	FAIR
TEXAS SIGNALGRASS (TEXAS MILLET)	BRACHIARIA TEXANA	GOOD	FAIR
SKELETONLEAF GOLDEN-EYE	VIGUIERA STENOLOBA	GOOD	FAIR
HEATH ASTER	ASTER ERICOIDES	GOOD	FAIR
PLAINS COREOPSIS (GOLDEN TICKSEED)	COREOPSIS TINCTORIA	GOOD	FAIR
HEARTLEAF AMPELOPSIS	AMPELOPSIS CORDATA	FAIR	GOOD
COMMON RAGWEED	AMBROSIA ARTEMISIIFOLIA	FAIR	GOOD
EASTERN REDBUD	CERCIS CANADENSIS	FAIR	FAIR
SLICK SEED WILDBEAN	STROPHOSTYLES LEIOSPERMA	FAIR	FAIR
REDROOT PIGWEED	AMARANTHUS RETROFLEXUS	FAIR	FAIR
UPRIGHT PRAIRIE CONEFLOWER (MEXICAN HAT)	RATIBIDA COLUMINFERA	FAIR	FAIR
PRAIRIE SUMAC	RHUS LANCEOLATA	FAIR	FAIR
INDIAN BLANKET	GAILLARDIA PULCHELLA	FAIR	FAIR
LITTLE-LEAF SUMAC	RHUS MICROPHYLLA	FAIR	FAIR
COBAEA PENSTEMON (FOXGLOVE)	PENSTEMON COBAEA	FAIR	FAIR
LEAVENWORTH ERYNGIUM	ERYNGIUM LEAVENWORTHII	FAIR	FAIR
NETLEAF HACKBERRY	CELTIS RETICULATA	FAIR	GOOD
WESTERN RAGWEED	AMBROSIA CUMANENSIS	FAIR	GOOD
PRAIRIE SUNFLOWER	HELIANTHUS PETIOLARIS	FAIR	GOOD
TRAILING WILDBEAN	STROPHOSTYLES HELVOLA	FAIR	FAIR
SLIMLEAF SCURFPEA (WILD ALFALFA)	PSORALIDIUM TENUIFLORA	FAIR	FAIR
VIRGINIA TEPHROSIA (GOAT'S RUE)	TEPHROSIA VIRGINIANA	FAIR	FAIR
TEXAS SOPHORA (EVE'S NECKLACE)	SOPHORA AFFINIS	FAIR	FAIR
EVERGREEN SUMAC	RHUS VIRENS	FAIR	FAIR
GOLDEN CURRANT	RIBES AUREUM	FAIR	FAIR
BEEBALM (WILD BERGAMOT)	MONARDA FISTULOSA	FAIR	LOW
PROSTRATE KNOTWEED	POLYGONUM AVICULARE	FAIR	FAIR
POKEBERRY (POKEWEED)	PHYTOLACCA AMERICANA	FAIR	FAIR
TEXAS COLUBRINA	COLUBRINA TEXENSIS	FAIR	FAIR
BARNYARD GRASS	ECHINOCHLOA CRUSGALLI VAR. CRUSGALLI	FAIR	GOOD
GUAYACAN	GUAIACUM ANGUSTI-FOILIIUM	FAIR	FAIR
COMPASSPLANT	SILPHIUM LACINIATUM	FAIR	FAIR
PURPLE CONEFLOWER	ECHINACEA PALLIDA	FAIR	FAIR

CHOLLA	OPUNTIA (MULTIPLE SPECIES)	FAIR	FAIR
PRICKLYPEAR	OPUNTIA SPP.	FAIR	FAIR
AWNLESS BUSH SUNFLOWER	SIMSIA CALVA	FAIR	FAIR
LOW RUELLIA (HAIRY WILD-PETUNIA)	RUELLIA HUMILIS	FAIR	FAIR
BLACK DALEA	DALEA FRUTESCENS	FAIR	LOW
COMMON LANTANA	LANTANA HORRIDA	FAIR	LOW
AUTUMN SAGE	SALVIA GREGGII	FAIR	LOW
ROUGH BUTTOMWEED (POOR-JOE)	DIODIA TERES	FAIR	FAIR
CATCLAW ACACIA	ACACIA GREGGII	FAIR	FAIR
SPIKERUSH	ELEOCHARIS SPP.	FAIR	LOW
WESTERN SOAPBERRY	SAPINDUS SAPONARIA VAR. DRUMMONDII	FAIR	LOW
BEARDED SPRANGLETOP	LEPTOCHLOA FASCICULARIS	LOW	FAIR
FLATSLEDGE	CYPERUS SPP.	LOW	FAIR
BUSHY KNOTWEED	POLYGONUM RAMOSISSIMUM	LOW	LOW
BEAKRUSH	RHYNCHOSPORA SPP.	LOW	LOW
COMMON POOLMAT	ZANNICHELLIA PALUSTRIS	LOW	FAIR
LANCELEAF GAILLARDIA	GAILLARDIA AESTIVALIS	LOW	LOW
DUCKWEEDS	FAMILY LEMNACEAE	LOW	FAIR
KIDNEYWOOD	EYSENHARDTIA TEXANA	LOW	LOW
MESCALBEAN (TEXAS MOUNTAIN LAUREL)	SOPHORA SECUNDIFLORA	LOW	LOW
BEGGAR'S TICKS	BIDENS LAEVIS	LOW	LOW
SOUTHERN NAIAD	NAJAS GUADALUPENSIS	LOW	LOW
MEXICAN BUCKEYE (MONILLA)	UNGNADIA SPECIOSA	LOW	LOW

APPENDIX C. IRRIGATION

- I. *Control by automated irrigation system.* Landscaped areas shall be controlled by an automatically controlled timer, unless the use of the property would otherwise prohibit use of a timer. Irrigation systems shall be installed with a rain shut off sensor.
 - (a) The irrigation system shall be designed so that overspray onto structures, streets, sidewalks, windows, walls, and fences is minimized.
 - (b) High-efficiency irrigation systems, such as (but not limited to) drip or soaker hose systems, are required for non-turf areas.
 - (c) Manual shut-off valves (such as a gate valve, ball valve, or butterfly valve) shall be required as close as possible to the point of connection of the water supply to minimize water loss in case of an emergency (such as a main line break) or routine repair.
- II. *Cisterns.* The use of cisterns for rainwater harvesting is permitted.
 - (a) Harvest rainwater shall be used for irrigation only. Piping for rainwater harvesting systems shall be separate from and shall not include any direct connection to any potable water piping or to the city's sanitary sewer system. Cisterns shall not be used to provide potable water. Filter systems are required to remove solids and debris and shall be treated or controlled to prevent mosquito breeding.
 - (b) Cisterns shall be located in the rear yard or side yard and must be screened so as not to be seen from the public street. Screening must meet the screening regulations of this Code.
 - (c) Cisterns shall not exceed ten (10) percent coverage in any required yard. The maximum height of any cistern shall be ten (10) feet.
 - (d) Cisterns shall be located a minimum of eight (8) feet from any side lot line and a minimum of eight (8) feet from any rear lot line.
 - (e) Cisterns shall be made of durable materials sufficient to withstand weight and pressure from water storage and resist leaking or corrosion.
 - (f) Every irrigation outlet shall be permanently identified with an indelibly marked placard stating: "CAUTION: HARVESTED RAINWATER; DO NOT DRINK."
 - (g) Installation and repair of cisterns requires an irrigation permit or plumbing permit, as applicable, from the City of Kennedale. Cisterns larger than 175 square feet require an accessory building permit.
 - (h) Rain barrels with capacity of 100 gallons or less shall not require an irrigation or plumbing permit but shall meet all other requirements of this sub-section.
 - (i) The design, maintenance, and use of rainwater harvesting systems are the responsibility of the individual system owners

APPENDIX D. IMAGE CREDITS

All images in this document are courtesy City of Kennedale or Livable Plans & Codes unless otherwise stated below.

Figure 17. Morpho Landscape Architecture

Figure 19. Dsafdy (GFDL or CC-BY-SA-3.0-2.5-2.0-1.0, via Wikimedia Commons)

Figure 20. Xnatedawgx (Own work) [(CC-BY-SA-3.0 or GFDL), via Wikimedia Commons]

Figure 21. Stacalusa (Own work) (Public domain), via Wikimedia Commons

Figure 23. Gary Halvorson, Oregon State Archives



Date: November 5, 2013

Agenda Item No: REGULAR ITEMS - C.

I. Subject:

CASE # PZ 13-06 to receive comments and consider approval on a request by the City of Kennedale and the Kennedale Economic Development Corporation for a zoning change and ordinance adopting such change for 20 parcels totaling approximately 5 acres from "C-1" Restricted Commercial District to "EC" Employment Center District for properties located at 1101, 1103, 1105, 1107, 1109, 1111, 1113, 1115, 1117, 1119, 1121, & 1125 W Kennedale Pkwy, and 5409, 5413, 5417, 5421, 5429, 5433, & 5437 High Ridge Rd, with legal description of Oak Crest Addition Block 4 Lots 8, 9, 10A, 11A, 12A, 13A, 14- 18, 19A, 20-26, Tarrant County, Texas. The property in question is owned by the City of Kennedale and the Kennedale Economic Development Corporation.

1. Staff Presentation
2. Public Hearing
3. Staff Response and Summary
4. Action by the City Council

II. Originated by:

Rachel Roberts, City Planner

III. Summary:

Case Number: PZ 13-06

Request: Rezone property from C-1 Restricted Commercial to Employment Center

Applicant: City of Kennedale and Kennedale Economic Development Corporation

Overview and Background.

The City of Kennedale adopted a new comprehensive land use plan in March 2012. The comprehensive plan envisioned a new kind of land use district for the Oak Crest area, which the plan referred to as an Employment Center. After the comprehensive plan was adopted, the City adopted a concept master plan for the Employment Center. Since this summer, the City has been working with a consultant to develop a new zoning code to begin implementing the concept plan and the comprehensive plan. That zoning code is to be considered by the Council under Case PZ 13-05. If the code is recommended for approval, the City requests the Council also consider rezoning certain properties under that code. The properties under consideration are owned by the City of Kennedale and the Kennedale Economic Development Corporation.

Staff Review.

Compliance with comprehensive plan.

The code was drafted as a step in implementing the comprehensive plan. Because it is, essentially, a result of the comprehensive plan and was developed with the intention of furthering the plan's goals, staff considers this code to be in compliance with the comprehensive land use plan.

Compliance with other plans.

The Strategic Plan does not directly address the idea of developing new zoning standards for Oak Crest, but it does recognize the area as being in need of redevelopment and recommends undertaking a study of potential development options. It also recommends taking steps to attract new businesses to Kennedale. Staff believes the proposed code will make development more predictable and will therefore make development in the Oak Crest area more attractive.

Compliance with City Council goals.

One of the Council's goals is for Kennedale to be a sustainable, attractive city. The Employment Center code sets a higher standard for building form and site design than our current zoning code does, and development under the Employment Center code is expected to be more attractive than would be expected under the regular zoning code.

In addition, two of the Council's other goals also relate to this case. One goal, Achieve a Thriving Community, calls for providing more options for the community in terms of appropriate, desired businesses, as well as creating an environment where residents will want to live in Kennedale throughout their lives. The Employment Center code relates to this goal by setting standards that make this gateway area more attractive for residents and by establishing predictable development codes, which can be more appealing to potential businesses. These qualities also relate another Council goal, Balance the Tax Burden, which calls for diversifying land uses and attracting and retaining appropriate businesses. And finally, the city is encouraged to provide clarity for and flexibility to the business community in the goal Enhance the Business Climate. This goal is addressed by having a more predictable development code with more authority at the administrative level.

Staff Recommendation.

The rezoning requested is in compliance with the comprehensive plan and City Council goals. Staff recommends approval of Case PZ 13-06.

Recommendation by the Commission.

During its October meeting, the Planning & Zoning Commission voted to recommend approval of Case PZ 13-06.

Sample Motions.

For your reference, sample motions are provided below.

I make a motion to approve Case PZ 13-06.

I make a motion to deny Case PZ 13-06 without prejudice.

I make a motion to deny Case PZ 13-06.

IV. Notification:

Notice was published in the *Star-Telegram*, and letters were sent to property owners as required by city code.

V. Fiscal Impact Summary:

VI. Legal Impact:

VII. Recommendation:

VIII. Alternative Actions:

IX. Attachments:

1.	PZ 13-06 ordinance	PZ 13-06 ordinance.docx
2.	PZ 13-06 map	PZ 13-06 map.pdf

AN ORDINANCE AMENDING ORDINANCE NO. 40, AS AMENDED; REZONING PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF KENNEDALE; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP TO REFLECT SUCH CHANGES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kennedale is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, in order to promote the public health, safety and general welfare the City Council desires to amend the zoning classification of certain properties within the city limits as described below in order to begin implementing the comprehensive land use plan adopted in March 2012; and

WHEREAS, pursuant to Chapter 211 of the Local Government Code, the City has adopted a comprehensive zoning ordinance and map regulating the location and use of buildings, other structures and land for business, industrial, residential or other purposes, for the purpose of promoting the public health, safety, morals and general welfare, all in accordance with a comprehensive plan; and

WHEREAS, the City of Kennedale and the Kennedale Economic Development Corporation, persons or entities having a proprietary interest in certain property being approximately 5 acres located in the David Strickland Survey, Abstract No. 1376, and a part of blocks 43, 55, and 56 of the Shelby County School Lands Tarrant County, Texas, also known as Oak Crest Addition Block 4 Lots 8, 9, 10A, 11A, 12A, 13A, 14-18, 19A, 20-26 according to the deeds recorded in County Clerk's Instrument Numbers D210098119, D213166605, D213143127, D213048705, D213006234, Deed Records, Tarrant County, Texas, have requested to rezone the property from its present classification of "C-1" Restricted Commercial District to "EC" Employment Center District;

WHEREAS, the Planning and Zoning Commission of the City of Kennedale, Texas held a public hearing on September 19, 2013, and the City Council of the City of Kennedale, Texas held a public hearing on October 10, 2013, with respect to the amendments described herein; and

WHEREAS, all requirements of law dealing with notice to other property owners, publication and all procedural requirements have been complied with in accordance with Chapter 211 of the Local Government Code,

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

SECTION 1.

The Comprehensive Zoning Ordinance is hereby amended so that the zoning classification and the uses in the hereinafter described area shall be changed and or restricted as shown and described below:

Approximately 5 acres located in the David Strickland Survey, Abstract No. 1376, and a part of blocks 43, 55, and 56 of the Shelby County School Lands Tarrant County, Texas, also known as Oak Crest Addition Block 4 Lots 8, 9, 10A, 11A, 12A, 13A, 14-18, 19A, 20-26 according to the deed recorded in County Clerk's Instrument Numbers D210098119, D213166605, D213143127, D213048705, D213006234, Deed Records, Tarrant County, Texas, from its present classification of "C-1" Restricted Commercial District to "EC" Employment Center District.

SECTION 2.

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Kennedale, Texas (1991), as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clause, and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause, or phrase.

SECTION 4.

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Kennedale are expressly saved as to any and all violations of the provisions of any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or

not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.

The City Secretary of the City of Kennedale is hereby directed to publish in the official newspaper of the City of Kennedale the caption, penalty clause, publication clause and effective date clause of this ordinance as provided by Section 3.10 of the Charter of the City of Kennedale.

SECTION 7.

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 10th DAY OF OCTOBER 2013.

MAYOR

ATTEST:

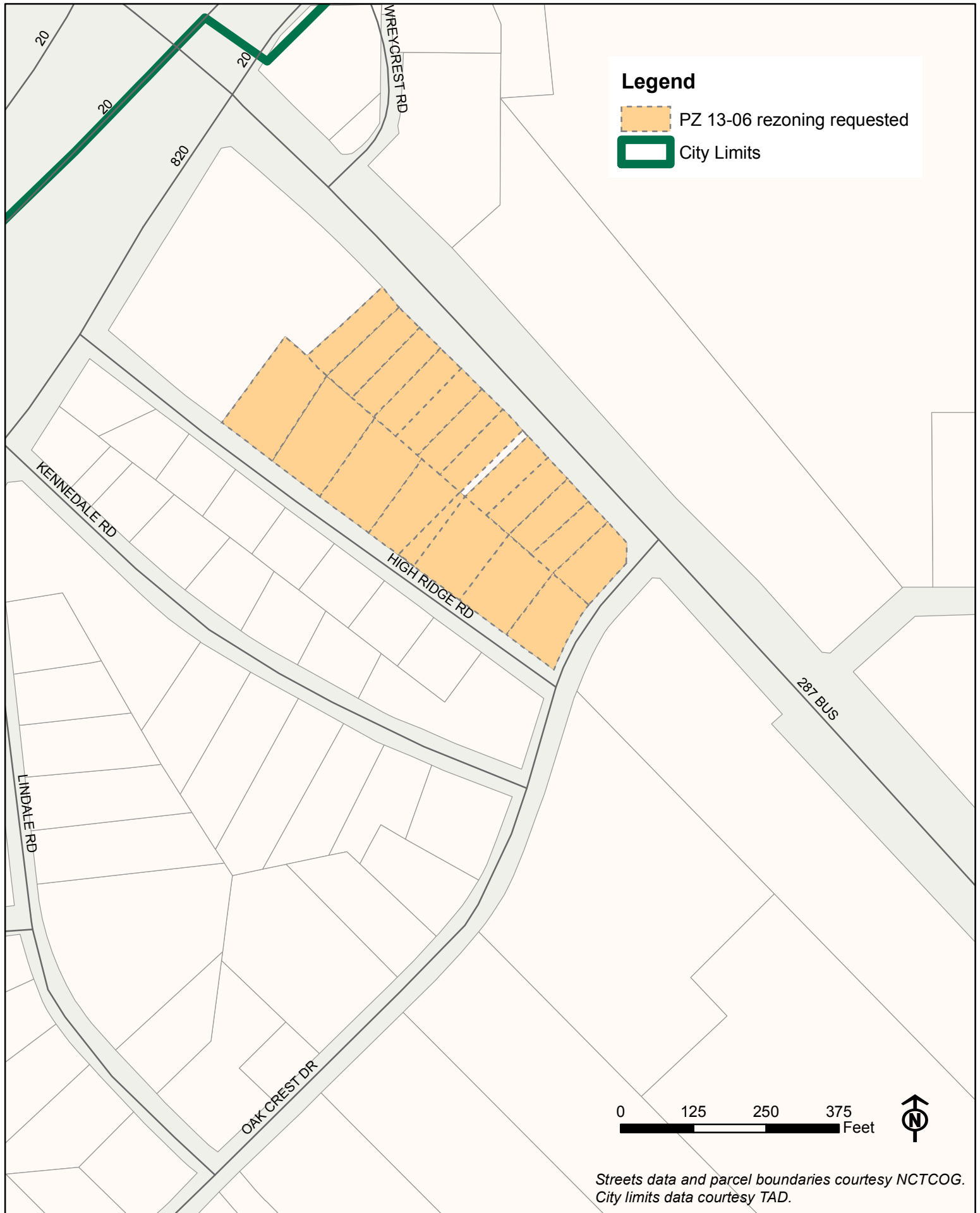
CITY SECRETARY

EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY

Case PZ 13-06 - Site of requested rezoning



Date: November 5, 2013

Agenda Item No: REGULAR ITEMS - D.

I. Subject:

Consider authorizing the City Manager to execute an Interlocal Agreement for shared library services.

II. Originated by:

Gwen Bevill, Library Director

III. Summary:

This agreement will delineate the structure for regional library resource sharing by allowing the Arlington, Kennedale and Mansfield Public Libraries to share integrated library system software. The agreement allows all three cities to offer residents virtually seamless library services through a shared catalog and patron database, courier services between the cities and shared customer service and technology training activities. As a result, users of all libraries will have access to a larger collection of materials.

The City of Kennedale will be purchasing software license agreements and related services in order to join the system. The City of Mansfield joined the system in FY 2011 utilizing a Library Cooperation Grant program, administered by the Texas State Library and Archives Commission (TSLAC) and funded by the federal Library Services and Technology Act (LSTA) through the Institute of Museum and Library Services (IMLS).

The initial term of the interlocal agreement is for one (1) year with automatic renewals of one year after the initial term.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

VIII. Attachments:

1.	interlocal agreement	20131101110553643.pdf
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Interlocal agreement for shared library services

WHEREAS, this Interlocal Cooperation Agreement for Library Services ("Agreement") is made and entered into by and between the City of Arlington ("Arlington"), the City of Kennedale ("Kennedale") and the City of Mansfield ("Mansfield"). The Agreement covers the purchase of equipment and software, as well as ongoing library services as specified below; and

WHEREAS, the City of Arlington operates an automated library system ("System") that uses technology specifically designed by GIS Information Systems, Inc. dba Polaris Library Systems ("Polaris") for the efficient circulation, cataloging, acquisition and processing of library materials, maintenance of patron accounts and access to online databases and other digital materials; and

WHEREAS, the cities of Arlington, Kennedale and Mansfield have joined together to share an automated system and to share physical and digital library collection resources for residents of Arlington, Kennedale and Mansfield; and

WHEREAS, pursuant to authority granted by the Interlocal Cooperation Act §§ 791.001 et. Seq. of the Texas Government Code, the governing bodies of Arlington, Kennedale and Mansfield wish to enter into an agreement for library services, and further find that this contract is in the common interest of both parties; and

WHEREAS, ARLINGTON, KENNEDALE and MANSFIELD in paying for the performance of governmental functions or in performing such governmental functions pursuant to the Interlocal Agreement shall make payments therefore only from current revenues legally available to such party; and

WHEREAS, the governing bodies of each entity believes that this AGREEMENT is necessary for the benefit of the public and that each party had the legal authority to provide the governmental function which is the subject of the Interlocal Agreement.

NOW THEREFORE, the parties agree as follows:

1. PURPOSE AND SCOPE:

The purpose of this Agreement is to promote the efficient provision of library services in public libraries in the communities of Arlington, Kennedale and Mansfield. A host computer located at Arlington's Central Library is the base of all operations related to the System. Subject to and in accordance with this Agreement, Mansfield Public Library and Kennedale Public Library will receive access and be linked to the System to the extent provided in Exhibit "A" which is attached hereto and hereby made a part of this Agreement for all purposes herein. Software licenses, hardware and services shall be purchased by Arlington using the FY 2011 LSTA Cooperation grant for Mansfield's use as specified in Section 4 below. Arlington will also provide Mansfield and Kennedale with

certain associated training services and administrative assistance. Mansfield and Kennedale shall execute any Contract Addendums necessary with Polaris for purchase and maintenance of all related hardware and software used by their libraries. Mansfield and Kennedale shall compensate Arlington for training services, administrative assistance and courier service as provided in this Agreement.

2. TERM:

This Agreement shall commence on the date of its execution by both parties ("Effective Date") and remain in effect for one (1) year from the date of the Effective Date. After one year, the agreement shall automatically renew for successive one (1) year terms ("Renewal Period") and shall continue in full force and effect unless terminated by either party upon written notice. Such notice shall be given no later than ninety (90) days prior to the end of the renewal period.

3. SERVICES PROVIDED.

3.1 Use of System

Mansfield and Kennedale shall enjoy full use of the modules and features available on the base System, including Acquisitions, Cataloging, Circulation, Online Public Access, Offline Circulation, Reports, Serials, Telephone Notification, and any others that may be added during subsequent System upgrades. Arlington is ultimately responsible for the quality and accuracy of the borrower, holdings and other System databases, and reserves the right to establish and implement standards and practices that will benefit all participants.

Mansfield and Kennedale shall enjoy full use of any new System services and features covered by its annual maintenance payments to Polaris. Mansfield and Kennedale will have the option to purchase new services and features that are not included with the base system but will consult with Arlington before doing so to determine if additional labor will be necessary to maintain the new module.

Mansfield and Kennedale will be responsible for carrying out routine operations of the various System modules. Polaris will provide training as specified in Section X to Kennedale staff. Arlington will provide necessary ongoing training on other system modules so that Mansfield and Kennedale staff can successfully carry out the operations themselves.

3.2. Telecommunications Access to System

Arlington shall maintain all telecommunications hardware, software, wiring and other equipment ("Telecommunications Equipment") at Arlington's public library necessary to provide Mansfield and Kennedale with a secure connection into and out of the System. Mansfield and Kennedale shall install and maintain any equipment needed for their internal operations within their respective

libraries. Any changes in the manner in which Mansfield or Kennedale connects to the Polaris server will be mutually agreed to by all parties.

3.3 System Customization.

Arlington shall make all reasonable efforts to customize the System to support Mansfield's and Kennedale's special requirements, so long as such customization does not interfere with Arlington's use and enjoyment of the System. Arlington reserves the right to pass on any related System Vendor charges and to bill Kennedale or Mansfield for customization beyond that normally required for operation of the System. Such customization will be provided on a schedule mutually agreed to in writing by all parties.

3.4 System Maintenance and Upgrades

Polaris will provide maintenance of system software and Arlington will provide maintenance and support for equipment located in Arlington. Arlington will install System patches, updates and new version releases that are made available by Polaris. Such updates and releases will be installed when Arlington deems them to be stable and when their installation is beneficial to the libraries

System patches, updates, and new releases are generally included as part of Mansfield's and Kennedale's annual maintenance costs. In the event there are additional software or hardware costs associated with a new release, Arlington will purchase the necessary components. Mansfield and Kennedale will reimburse Arlington for its share of the additional costs on a mutually agreed upon schedule.

If Mansfield or Kennedale requests access to an optional System enhancement that is not provided as part of routine System upgrades and new releases, the requesting library will reimburse Arlington for the costs associated with installing and maintaining these upgrades.

Mansfield and Kennedale are solely responsible for providing, maintaining, and updating their own local hardware and software necessary for use of the System as well as maintaining their connectivity components for access into the Arlington server. The also includes hardware/software upgrades required due to System upgrades, new releases and the implementation of additional optional System features. Arlington will notify Mansfield and Kennedale of local hardware and software upgrade requirements as far in advance as possible.

3.5. Service Support. Mansfield and Kennedale shall maintain an annual support and maintenance contract with Polaris that covers basic software support and problem resolution as specified in the Agreement dated August 9th, 1999 between the City of Arlington and Gaylord Brothers. Neither Arlington nor Polaris shall guarantee services for circuit disruptions outside the control of Arlington or Polaris.

3.6. Courier Services

Arlington shall provide Courier Services on a partial cost-recovery basis to deliver and return materials borrowed. The Courier schedule is developed by mutual agreement. Charges based on courier time and mileage are established prior to the beginning of each fiscal year and agreed to in writing each year. Arlington is not responsible for accidental loss or damage to materials shipped through the Courier Service or for missed or delayed deliveries due to mechanical failures or road conditions. Invoices will be sent by Arlington to Mansfield and Kennedale on a quarterly basis to recover courier costs.

4. SOFTWARE AND EQUIPMENT ACQUISITION

4.1 Software Purchases/Maintenance. Kennedale will purchase the following items in order to participate in the System. All software licenses will be owned by Kennedale.

4 Polaris Staff Client Licenses @\$750 ea.	\$3,000
Unlimited PowerPAC/Internet License	N/C
Polaris ILS Software Materials	N/C
Annual maintenance (4 staff client licenses)	\$540

Mansfield has previously purchased software licenses and they will be owned by Mansfield.

4.2 Data Migration & Installation Services. Database migration services provided by Polaris will be purchased by Kennedale. Ownership of Kennedale's data will remain with Kennedale. Kennedale accepts sole responsibility for the extraction of data from its current system.

Data Migration: (18,356 Bibliographic records, 19,442 item records, 6547 patron records)	\$5,000
De-duplication of MARC records with APL's database	\$2,500
Polaris training & implementation services (remote)	\$5,000

Mansfield has previously purchased database migration services and accepts sole responsibility for the extraction of data from its current system.

4.3 Training and Courier Services. Costs for courier services and Polaris system training and consultation services provided by Arlington to Kennedale during the FIRST year of service will be \$1,150 for 3 day per week courier service and \$3,417.00 for training and implementation. In future years of the agreement, the amount of compensation paid by Mansfield and Kennedale to Arlington for these services will be mutually agreed upon based on the previous year's labor and materials costs for maintaining the System and its services, as well as any relevant future projections.

- 4.4 Interlibrary loan and reciprocal borrowing. As part of consideration, and to further the purpose of this Agreement, Arlington, Kennedale and Mansfield shall provide interlibrary loan and reciprocal borrowing services to one another at no charge either to the parties or their customers. Reciprocal borrowing services shall be limited to residents of Arlington, Kennedale and Mansfield. Policies regarding interlibrary loan and reciprocal borrowing services are established through mutual agreement by all parties. Fines and fees received by one library that relate to items owned by another library within this agreement shall be paid to that library on a quarterly basis, with payment made within 30 days of the end of each quarter.

5. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- 5.1 Mansfield and Kennedale acknowledge that Arlington licenses its System from a third-party System Vendor. In addition Mansfield and Kennedale acknowledge that operation of the System by Arlington is largely dependent on software license agreements and other documents required by the System Vendor or a respective manufacturer. All contracts, purchase agreements, leases, software licenses and other documents related to the System ("System Documents") are public documents on file in the City Secretary's Office of Arlington, and are available for inspection and copying by Mansfield or Kennedale during normal business hours and are incorporated herein by reference for all purposes.

- 5.2 Mansfield and Kennedale understands and agrees that Arlington does not grant Mansfield and Kennedale any right that is greater than or different from any right that Arlington may have under the system documents. In addition, Mansfield and Kennedale understands and agrees that Arlington shall not be liable to Mansfield and Kennedale for any special, direct, indirect, incidental or consequential damages of any sort, including without limitation, damages to property or for personal injury, death, loss of profits or savings, loss of use or any other damages, whether based on strict liability or negligence and whether resulting from use of the system or otherwise, except for direct, specific damages for personal injury or property damage only to the extent caused by Arlington's gross negligence or willful misconduct. The entities do not intend to waive nor do they waive any of its immunities under law.

- 5.3 Mansfield and Kennedale hereby acknowledges and represents that it has independently determined, without reliance on any representations that may or may not have been made by Arlington, that the size, design, capacity of the system and the manufacturer and supplier are satisfactory to Mansfield and Kennedale in all respects and for all intended purposes. Arlington has not made and does not hereby make any representation, warranty or covenant, written or oral, statutory, express or implied, as to any matter whatsoever, including, without limitation, the design, quality, capacity, material, workmanship, operation, condition, merchantability or fitness for a particular purpose, hidden or latent defect of the system or any portion thereof, or as to any patent, copyright, or trademark infringement. As to Arlington, Mansfield and Kennedale hereby waives any claim it may have regarding, without

limitation, the design, capacity, material, workmanship, operation, condition, merchantability or fitness for a particular purpose, hidden or latent defect of the system or any portion thereof, and any claim it may have as to any patent, copyright or trademark infringement.

6. TERMINATION

6.1 By Either Party. Any party may terminate this Agreement in accordance with Section 2 above. Mansfield and Kennedale as applicable shall pay Arlington all compensation due hereunder through the effective date of termination. No advance payments to Arlington received prior to the effective date of termination shall be refunded. Within ninety (90) days of the effective date of termination, and at Mansfield's and Kennedale's sole cost and expense, Arlington will provide Mansfield and Kennedale as applicable with an industry-standard copy of Mansfield's and Kennedale's database on a machine-readable tape in MARC format or such other format reasonable requested by Mansfield and Kennedale and available to Arlington.

6.2. Default. Mansfield or Kennedale shall be in default under this Agreement if either party as applicable (i) fails to pay any compensation or other amounts payable hereunder for a period of ten (10) days or more (unless Arlington has given Mansfield and Kennedale written consent for additional time to pay such compensation or other amounts) following receipt by Mansfield and Kennedale of written notice thereof or (ii) takes any action that materially prevents Arlington from performing its duties and obligations hereunder (such as, for illustrative purposes only, restricting access for installation of the System) and such condition continues for a period of thirty (30) days or more following receipt by Mansfield of written notice thereof (collectively an "Event of Default")

6.3. Termination of System Documents. If any of the System Documents are terminated and such termination materially prevents Arlington from performance under this Agreement, Arlington may immediately terminate this Agreement upon provision of written notice to Mansfield and Kennedale.

7. MISCELLANEOUS

7.1 Ownership of Data Base. Both Arlington, Kennedale and Mansfield shall at all times retain ownership and use of their own database, including patron files and records

7.2 No Waiver. The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

7.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability or the remaining provisions shall not in any way be affected or impaired.

7.4 Force Majeure. The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems or existing contractual obligations directly related to the subject matter of this agreement.

7.5 Venue and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Tarrant, County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division.

7.6 System Documents Control. In the event of any conflict between this Agreement and the System Documents, the System Documents shall control.

7.7 Notices. Mansfield and Kennedale shall provide Arlington with the name, direct phone number, facsimile number, and e-mail address of the Mansfield and Kennedale employees who will be responsible contacts for all issues involving this Agreement.

7.8 Entirety of Agreement. This written instrument, including all Exhibits attached herto and any documents incorporated herein by reference, contains the entire understanding and agreement between Arlington, Kennedale and Mansfield as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. This Agreement may not be amended unless set forth in writing and signed by both parties.

7.9 Assignment. This Agreement may not be assigned by any party

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SEPARATE SIGNATURE PAGE OF EACH CITY TO FOLLOW

CITY OF KENNEDALE, TEXAS

By: _____

ATTEST:

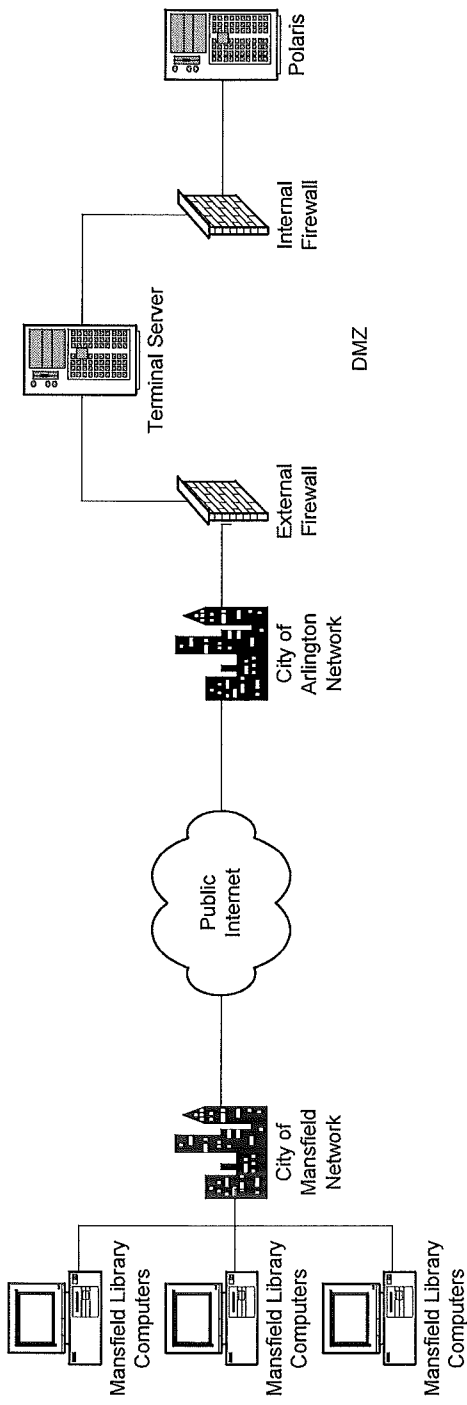
City Secretary

APPROVED AS TO FORM:

_____, City Attorney

By: _____

Interlocal Agreement for
Shared Library Services
Exhibit A



City of Mansfield Library will connect to the
City of Arlington's Library Terminal server
over the public internet.

The Terminal server will attach to Polaris
through the internal firewall.

Date: November 5, 2013

Agenda Item No: REGULAR ITEMS - E.

I. Subject:

Consider approval of an Ordinance providing for the unappointment of prescribed magistrates Sakura Moten Dedrick and Tiffany Panhallegon-Oakes for the Kennedale Municipal Court.

II. Originated by:

Sakura Moten-Dedrick, Director of Finance & IT

III. Summary:

The magistrate program was introduced to the City of Kennedale in 2005 after special legislation was written during the 79th legislature to allow civilian volunteers to act as city magistrates under section 15.17 of the Code of Criminal Procedure.

“Art. 15.17. DUTIES OF ARRESTING OFFICER AND MAGISTRATE.
(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel...”

In an effort to reduce expenses and allow for consistent, daily arraignments, Presiding Judge Bill Lane endorsed the Court Administrator (Jennifer Bozorgnia) and the Finance Director (Sakura Moten-Dedrick) to serve as the city's magistrates. Council approved this action on Sep 9, 2010. Each appointment was effective for a two year term beginning October 1, 2010, and at the expiration of said term, each magistrate would continue to serve until a successor is appointed.

As of December 2012, Jennifer Bozorgnia is no longer with the City of Kennedale as the Court Administrator. Due to the recent filling of this vacant position, this ordinance appoints Tiffany Panhallegon-Oakes (Court Administrator) as her successor magistrate. It also re-appoints Sakura Moten-Dedrick (Finance Director), who was previously approved. Tiffany comes to us from the cities of Copperas Cove and Lampasas, where she served as the Court Administrator for a combined total of approximately ten years.

IV. Fiscal Impact Summary:

V. Legal Impact:

VI. Recommendation:

Approve

VII. Alternative Actions:

Staff recommends that Council enact the proposed ordinance and appoint prescribed officials as city magistrates.

VIII. Attachments:

1.	Magistrate Ordinance	Ordinance To Amend Appointment of Magistrates.doc
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KENNEDALE, TEXAS AMENDING CHAPTER 14, "MUNICIPAL COURT", OF THE KENNEDALE CITY CODE, AS AMENDED, PROVIDING FOR THE APPOINTMENT OF PRESCRIBED MAGISTRATES FOR THE MUNICIPAL COURT OF RECORD IN THE CITY OF KENNEDALE; PROVIDING THAT THIS ORDINANCE BE CUMALATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kennedale, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council has determined that it is of great benefit to the City of Kennedale to have civilian magistrates perform various administrative and other duties within the municipal court in addition to the municipal court judge.

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

SECTION 1.

Chapter 14, "Municipal Court" of the Kennedale City Code is hereby amended by adding Section 14-7 "Magistrates" to read as follows:

Sec. 14-7 Magistrates.

In addition to the mayor, city council may appoint one or more magistrates who need not possess all the qualifications necessary to be a municipal court judge of the court of record. The magistrates may conduct an arraignment, hold an indigence hearing, accept a plea, sign a judgment, set the amount of bond and perform other functions under Article 15.17 of the Code of Criminal Procedure. A magistrate may not preside over the court or hear contested cases.

SECTION 2.

Tiffany Panhallegon-Oakes is hereby appointed as the primary city magistrate in the City of Kennedale, Texas for a two year term beginning February 14, 2013. At the expiration of said term, in accordance with Article 16, Section 17 of the Texas Constitution, Jennifer Bozorgnia shall continue to serve until her successor shall be duly qualified.

SECTION 3.

Sakura Moten-Dedrick is hereby appointed as an additional city magistrate to serve in the event the primary city magistrate is temporarily absent or unable to serve. The appointment shall last for a two year term beginning February 14, 2013. At the expiration of said term, in accordance with Article 16, Section 17 of the Texas Constitution, Sakura Moten-Dedrick shall continue to serve until her successor shall be duly qualified.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances of the City of Kennedale, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Kennedale, Texas, this the 14th day of February 2013.

APPROVED:

Mayor, John Clark

ATTEST:

City Secretary, Amethyst Cirimo

OFFICIAL SEAL



Date: November 5, 2013

Agenda Item No: EXECUTIVE SESSION - A.

I. Subject:

The Kennedale City Council will meet in closed session pursuant to Section 551.087 of the Texas Government Code to deliberate the offer of a financial or other incentive to a business project with whom the city is conducting economic development negotiations.

1. Review and discuss incentives for Watson Glass.

II. Originated by:

Bob Hart

III. Summary:

Bob Hart will present information on this topic during executive session.

IV. Recommendation:

None

V. Alternative Actions:

VI. Attachments: