



KENNEDALE CITY COUNCIL AGENDA
REGULAR MEETING | OCTOBER 15, 2024 AT 5:30 PM
CITY COUNCIL CHAMBERS | 405 MUNICIPAL DR, KENNEDALE, TX 76060

I. CALL TO ORDER

A. ROLL CALL

B. INVOCATION AND PLEDGES OF ALLEGIANCE TO THE U.S. AND TEXAS FLAGS

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

II. PUBLIC COMMENT

The Kennedale City Council welcomes comments from the public. Those wishing to speak must sign in prior to the start of the meeting. Speakers may speak on any topic, whether on the agenda or not. The Kennedale City Council cannot act upon, discuss issues raised or make any decisions at this time. Speakers under citizens' comments shall observe a three-minute time limit. Inquiries regarding matters not listed on this agenda may be referred to staff for research and/or possible future action by the board.

III. PRESENTATIONS

A. Issue Oath of Office to Fire Chief Eric R. Peterson.

IV. REGULAR SESSION

A. REPORTS AND ANNOUNCEMENTS

In addition to any items below, the Kennedale City Council, the presiding officer, and/or staff may give or receive reports regarding items of community interest, including, but not limited to, recognition of officials, citizens, staff, or departments; information regarding holiday schedules; and upcoming or attended events.

1. Updates from the City of Kennedale Mayor and City Council.

2. Updates from the City of Kennedale City Manager.

B. Financial Reports for the City and/or the EDC.

a. Quarterly Investment Report.

C. CONSENT AGENDA

These matters have appeared on previous agendas, require little or no deliberation, or are considered routine or ministerial tasks. If discussion is desired, items may be removed for separate consideration.

1. September 17, 2024, City Council Minutes.

D. ITEMS FOR INDIVIDUAL CONSIDERATION, DISCUSSION OR ACTION

1. Discuss naming a roundabout located in the 800 block of Sublett Rd. and the 600 block of Little School Rd. in Honor of Mr. Robert Mundy. -

Discussion Only

2. Discuss an update to the City of Kennedale Nuisance Ordinance providing additional regulations for outdoor lighting. - Discussion Only
3. Discuss and take action on a Lease Agreement at 705 E. Kennedale Pkwy. beginning January 1, 2025, through December 31, 2025, for temporary operations and housing of the Kennedale Fire Department. - Action Item
4. Discuss and take action if necessary regarding complaints against City Council Member Kenneth Michels and City Council Member Chris Gary. - Action Item

V. EXECUTIVE SESSION

The Kennedale City Council reserves the right to meet in Executive (Closed) Session at any time during the meeting pursuant to the below-cited sections of the Texas Government Code:

- A. PURSUANT TO §551.071** - 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, legal issues regarding the Open Meetings Act.

VI. RECONVENE INTO OPEN SESSION, AND TAKE ANY ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION

VII. ADJOURNMENT



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CERTIFICATION: I DO HEREBY CERTIFY THAT THE OCTOBER 15, 2024 KENNEDALE CITY COUNCIL AGENDA WAS POSTED INSIDE THE MAIN ENTRANCE OF CITY HALL (405 MUNICIPAL DRIVE), IN A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AT ALL TIMES; AND THAT SAID AGENDA WAS POSTED AT LEAST SEVENTY-TWO (72) HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING, IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), THE CITY OF KENNEDALE WILL PROVIDE FOR REASONABLE ACCOMMODATIONS FOR PERSONS ATTENDING MEETINGS. THIS FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR SIGN INTERPRETER SERVICES MUST BE MADE FORTY-EIGHT (48) HOURS PRIOR TO THE MEETING BY CALLING 817-985-2104 OR (TTY) 1-800-735-2989.

A QUORUM OF THE KENNEDALE EDC, THE KENNEDALE PLANNING AND ZONING COMMISSION, BOARD OF ADJUSTMENT, KEEP KENNEDALE BEAUTIFUL COMMISSION, PARKS AND RECREATION BOARD, BUILDING BOARD OF APPEALS, TOWNCENTER DEVELOPMENT DISTRICT, OR TAX INCREMENT REINVESTMENT DISTRICT MAY BE PRESENT. NO ACTION WILL BE TAKEN BY THE ABOVE-LISTED BOARDS.



STATE OF TEXAS §
COUNTY OF TARRANT §
CITY OF KENNEDALE §

APPOINTED OFFICIAL
STATEMENT

I ERIC PETERSON, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.

POSITION TO WHICH APPOINTED: FIRE CHIEF

SIGNATURE

DATE

SIGNATURE OF PERSON AUTHORIZED TO ADMINISTER OATH

PRINTED NAME AND TITLE

[SEAL]

.....



STATE OF TEXAS §
COUNTY OF TARRANT §
CITY OF KENNEDALE §

APPOINTED OFFICIAL
OATH OF OFFICE

I, ERIC PETERSON, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of FIRE CHIEF of the City of Kennedale of the State of Texas and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States and of this State, and the Charter and ordinances of this city, so help me God.

SIGNATURE

DATE

SIGNATURE OF PERSON AUTHORIZED TO ADMINISTER OATH

[SEAL]

PRINTED NAME AND TITLE

.....

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: REPORTS AND ANNOUNCEMENTS ITEM IV.A.

SUBJECT
REPORTS AND ANNOUNCEMENTS

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

STAFF REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: CONSENT AGENDA ITEM IV.A.1.

SUBJECT

Updates from the City of Kennedale Mayor and City Council

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

STAFF REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: REPORTS AND ANNOUNCEMENTS ITEM IV.A.2.

SUBJECT

Updates from the City of Kennedale City Manager

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

	CITY OF KENNEDALE MONTHLY FINANCIAL REPORT Month Ended September 30, 2024 EXECUTIVE OVERVIEW
TO Mayor and Members of City Council Darrell Hull, City Manager FROM Jon Horton, Finance Director DATE October 15, 2024 SUBJECT Monthly Financial Report for September 2024	

Below is an overview of the monthly financial results for the current fiscal year through September. Detail schedules for each fund are attached for your review.

Results through September represent 100% of the fiscal year. This is a draft as the FY is not closed.

GENERAL FUND (01)

- ◊ Property tax revenues received year-to-date \$6,113,829; 102.2% of total budget; prior year receipts through September were 100% of total
- ◊ Sales tax revenues received year-to-date \$1,821,103; 91.4% of total budget; receipts from the State are two months delayed; i.e. October sales taxes are received in December; November in January, etc.
- ◊ Prior year Sales Tax receipts through September were \$2,218,382; 100% of receipts
- ◊ General Fund expenditures year-to-date \$9,671,493 ; 93.1% of total budget
- ◊ Fund Balance year-to-date is \$4,141,512; 143 days of total budgeted expenditures and transfers out; revenues are ahead of spending for the fiscal year therefore fund balance is more than the projected fund balance for year-end of \$3,024,332 or 104 days of total budgeted expenditures and transfers out

WATER/SEWER FUND (10)

- ◊ Water service sales year-to-date \$2,655,607; 92.3% of budget ****Update not available at time of publish****
- ◊ Sewer service sales year-to-date \$1,587,782; 92.7% of budget ****Update not available at time of publish****
- ◊ Utility Billing and Operations expenditures year-to-date \$4,478,153; 123.60% of total budget
- ◊ Working Capital year-to-date is \$ 17,554,604; 493 days of total budgeted expenditures and transfers out; budgeted Days of Working Capital at year-end is 266 days

STORMWATER FUND (07)

- ◊ Drainage fees year-to-date \$254,766; 94.4% of budget ****Update not available at time of publish****
- ◊ Stormwater Fund expenditures year-to-date \$268,419; 105.9% of total budget
- ◊ Working Capital year-to-date is \$789,956; 1,337 days of total budgeted expenditures and transfers out; budgeted Days of Working Capital at year-end is 1,399 days

EDC FUND (15)

- ◊ Sales tax revenues received year-to-date \$606,725; 98.9% of total budget; receipts from the State are two months delayed; i.e. October sales taxes are received in December; November in January, etc.
- ◊ Prior year Sales Tax receipts through September were \$738,973; 100% of total receipts
- ◊ Rental fees for the Shopping Center year-to-date \$304,203; 97.8% of total budget
- ◊ EDC Operations expenditures year-to-date \$783,055; 109.6% of total budget; includes \$30,621 for annual Christmas event
- ◊ EDC Town Shopping Center expenditures year-to-date \$189,473; 56.0% of total budget
- ◊ Fund Balance year-to-date is \$2,159,339; 554 days of total budgeted expenditures and transfers out; budgeted Fund Balance at year-end is 478 days
- ◊ Monthly TownCenter activity not provided at time of publish

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

GENERAL FUND (01)									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
GENERAL FUND REVENUES									
Property Taxes	\$ 5,777,979	\$ 21,498	\$ 5,777,979	100.0%	\$ 5,980,866	\$ 16,955	\$ 6,113,829	102.2%	\$ (132,963)
Sales Taxes	2,218,382	608,386	2,218,382	100.0%	1,991,717	177,313	1,821,103	91.4%	170,614
Grants and Contributions	135,199	10,669	135,199	100.0%	-	-	-	0.0%	-
Licenses and Permits	281,185	14,022	281,185	100.0%	449,884	33,038	425,507	94.6%	24,377
Fines and Fees	232,568	26,001	232,568	100.0%	215,000	38,518	381,246	177.3%	(166,246)
Charges for Services	251,275	39,417	251,275	100.0%	225,000	33,019	309,307	137.5%	(84,307)
Intergovernmental	220,794	48,243	220,794	100.0%	165,000	95,176	211,047	127.9%	(46,047)
All Other Revenues	256,078	74,935	256,078	100.0%	154,999	23,759	324,997	209.7%	(169,998)
Total General Fund Revenues	9,373,461	843,172	9,373,461	100.0%	9,182,466	417,778	9,587,037	104.4%	(404,571)
GENERAL FUND EXPENDITURES									
City Manager - Dept 01	330,992	44,150	330,992	100.0%	366,952	37,620	337,115	91.9%	29,837
Mayor/Council - Dept 02	151,730	47,296	151,730	100.0%	187,100	26,715	196,555	105.1%	(9,455)
City Secretary - Dept 03	162,093	29,225	162,093	100.0%	194,147	27,621	180,309	92.9%	13,838
Municipal Court - Dept 04	181,028	21,404	181,028	100.0%	242,974	18,718	223,828	92.1%	19,146
Human Resources - Dept 05	163,243	22,833	163,243	100.0%	224,532	14,526	178,925	79.7%	45,607
Finance - Dept 07	466,574	55,011	466,574	100.0%	606,846	50,714	528,291	87.1%	78,555
Police - Dept 09	3,472,227	495,008	3,472,227	100.0%	3,606,007	261,398	3,497,624	97.0%	108,383
Fire - Dept 10	2,673,744	360,105	2,673,744	100.0%	2,961,998	298,781	2,721,595	91.9%	240,403
Community Development - Dept 12	617,476	129,743	617,476	100.0%	687,928	66,724	583,489	84.8%	104,439
Senior Citizen Center - Dept 16	48,584	10,409	48,584	100.0%	53,172	5,385	44,670	84.0%	8,502
Library - Dept 17	393,462	49,479	393,462	100.0%	501,153	58,061	437,267	87.3%	63,886
Communications - Dept 18	-	-	-	0.0%	26,100	2,579	10,009	38.4%	16,091
Non Departmental - Dept 90	544,203	33,679	544,203	100.0%	725,194	13,293	731,816	100.9%	(6,622)
Total General Fund Expenditures	9,205,355	1,298,341	9,205,355	100.0%	10,384,103	882,134	9,671,493	93.1%	712,610
Revenues Over (Under) Expenditures	168,105	(455,169)	168,105		(1,201,637)	(464,356)	(84,457)		
Transfers In	1,193,374	99,448	1,193,374	100.0%	1,263,732	105,311	1,263,732	100.0%	-
Transfers (Out)	(391,090)	(123,207)	(391,090)	100.0%	(188,958)	(15,747)	(188,958)	100.0%	-
Net Change in Fund Balance	970,389	(478,929)	970,389		(126,863)	(374,792)	990,317		
Beginning Fund Balance - October 1	2,180,806		2,180,806		3,151,195		3,151,195		
Ending Fund Balance - year-to-date	\$ 3,151,195		\$ 3,151,195		\$ 3,024,332		\$ 4,141,512		
Average Daily Annual Expenditures	\$ 26,292				\$ 28,967				
Days of Fund Balance	120		120		104		143		

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

UTILITY FUNDS									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
Stormwater Utility Fund (07)									
Stormwater Utility Fund Revenues	\$ 315,324	\$ 36,986	\$ 315,324	100.0%	\$ 272,850	\$ 3,945	\$ 288,971	105.9%	\$ (16,121)
Stormwater Utility Fund Expenditures	222,314	36,027	222,314	100.0%	215,655	44,061	268,419	124.5%	(52,764)
Revenues Over (Under) Expenditures	93,010	959	93,010		57,195	(40,117)	20,552		
Beginning Fund Balance - October 1	676,394		676,394		769,404		769,404		
Ending Fund Balance - year-to-date	<u>\$ 769,404</u>		<u>\$ 769,404</u>		<u>\$ 826,599</u>		<u>\$ 789,956</u>		
Average Daily Annual Expenditures	\$ 609				\$ 591				
Days of Fund Balance	1263		1263		1399		1337		
Water/Sewer Fund (10)									
W/S Fund Revenues and Bond Funds	\$ 20,409,510	\$ 15,610,235	\$ 20,409,510	100.0%	\$ 5,022,628	\$ 213,821	\$ 5,728,571	114.1%	\$ (705,943)
Water/Sewer Fund Expenditures									
Utility Billing - Dept 01	2,073,319	509,772	2,073,319	100.0%	1,450,700	392,007	2,391,817	164.9%	(941,117)
Operations - Dept 02	1,756,471	(97,093)	1,756,471	100.0%	2,172,320	80,684	2,086,335	96.0%	85,985
Debt Service - Dept 03	466,301	172,371	466,301	100.0%	295,312	-	295,312	100.0%	0
Capital Projects - Dept 04	-	(260,847)	-	100.0%	8,315,000	-	131,881	1.6%	8,183,119
Non Departmental - Dept 90	1,363,044	660,184	1,363,044	100.0%	757,450	57,652	718,329	94.8%	39,121
Total Water/Sewer Fund Expenditures	5,659,136	984,387	5,659,136	100.0%	12,990,782	530,343	5,623,675	43.3%	7,367,107
Revenues Over (Under) Expenditures	14,750,375	14,625,847	14,750,375		(7,968,154)	(316,522)	104,896		
Transfers In	187,525	15,627	187,525	100.0%	187,525	15,627	187,525	100.0%	-
Net Change in Fund Balance	14,937,900	14,641,474	14,937,900		(7,780,629)	(300,894)	292,421		
Beginning Fund Balance - October 1	2,324,284		2,324,284		17,262,184		17,262,184		
Ending Fund Balance - year-to-date	<u>\$ 17,262,184</u>		<u>\$ 17,262,184</u>		<u>\$ 9,481,555</u>		<u>\$ 17,554,604</u>		
Average Daily Annual Expenditures	\$ 15,504				\$ 35,591				
Days of Fund Balance	1113		1113		266		493		
Water Impact Fee Fund (61)									
Water Impact Fund Revenues	\$ 18,848	\$ 1,803	\$ 18,848	100.0%	\$ 58,752	\$ 500	\$ 29,245	49.8%	\$ 29,507
Water Impact Fund Expenditures	0	-	-	0.0%	-	-	-	0.0%	-
Revenues Over (Under) Expenditures	18,848	1,803	18,848		58,752	500	29,245		
Transfers (Out)	(30,000)	(2,500)	(30,000)	100.0%	(30,000)	(2,500)	(30,000)	100.0%	-
Net Change in Fund Balance	(11,152)	(697)	(11,152)		28,752	(2,000)	(755)		
Beginning Fund Balance - October 1	109,672		109,672		98,520		98,520		
Ending Fund Balance - year-to-date	<u>\$ 98,520</u>		<u>\$ 98,520</u>		<u>\$ 127,272</u>		<u>\$ 97,765</u>		
Sewer Impact Fee Fund (62)									
Fund 62 Sewer Impact Fund Revenues	\$ 19,289	\$ 2,494	\$ 19,289	100.0%	\$ 111,348	\$ 566	\$ 25,392	22.8%	\$ 85,956
Fund 62 Sewer Impact Fund Expenditures	-	-	-	0.0%	-	-	-	0.0%	-
Revenues Over (Under) Expenditures	19,289	2,494	19,289		111,348	566	25,392		
Transfers (Out)	(60,000)	(5,000)	(60,000)	100.0%	(60,000)	(5,000)	(60,000)	100.0%	-
Net Change in Fund Balance	(40,712)	(2,506)	(40,711)		51,348	(4,434)	(34,608)		
Beginning Fund Balance - October 1	184,924		184,924		144,213		144,213		
Ending Fund Balance - year-to-date	<u>\$ 144,213</u>		<u>\$ 144,213</u>		<u>\$ 195,561</u>		<u>\$ 109,605</u>		

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

DEBT SERVICE FUND (02)									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
Debt Service Fund Revenues	\$ 1,723,284	\$ 309,627	\$ 1,723,284	100.0%	\$ 2,683,268	\$ 11,084	\$ 2,737,613	102.0%	\$ (54,345)
Debt Service Fund Expenditures	1,863,100	191,327	1,863,100	100.0%	2,564,324	-	2,569,033	100.2%	(4,709)
Revenues Over (Under) Expenditures	(139,815)	118,300	(139,815)		118,944	11,084	168,580		
Beginning Fund Balance - October 1	838,142		838,142		698,327		698,327		
Ending Fund Balance - year-to-date	698,327		698,327		817,271		866,907		

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CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

CAPITAL PROJECT FUNDS									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
Capital Projects Fund (04)									
Capital Projects Fund Revenues	\$ 120,531	\$ 29,216	\$ 120,531	100.0%	\$ 95,700	\$ 825	\$ 133,301	139.3%	\$ (37,601)
Capital Projects Fund Expenditures	-	-	-	0.0%	-	-	-	0.0%	-
Revenues Over (Under) Expenditures	120,531	29,216	120,531		95,700	825	133,301		
Transfers (Out)	(104,800)	(104,800)	(104,800)	100.0%	(108,055)	-	(108,055)	100.0%	-
Net Change in Fund Balance	15,731	(75,584)	15,731		(12,355)	825	25,246		
Beginning Fund Balance - October 1	174,591		174,591		190,322		190,322		
Ending Fund Balance - year-to-date	<u>\$ 190,322</u>		<u>\$ 190,322</u>		<u>\$ 177,967</u>		<u>\$ 215,569</u>		
Capital Bond Fund (13)									
Capital Bond Fund Revenues	\$ 2,806,125	\$ 2,434,677	\$ 2,806,125	100.0%	\$ 173,250	\$ 34,323	\$ 363,438	209.8%	\$ (190,188)
Capital Bond Fund Expenditures	2,059,022	120,543	2,059,022	100.0%	6,768,295	585,042	2,639,898	39.0%	4,128,397
Revenues Over (Under) Expenditures	747,104	2,314,134	747,104		(6,595,045)	(550,719)	(2,276,461)		
Beginning Fund Balance - October 1	8,057,939		8,057,939		8,805,043		8,805,043		
Ending Fund Balance - year-to-date	<u>\$ 8,805,043</u>		<u>\$ 8,805,043</u>		<u>\$ 2,209,998</u>		<u>\$ 6,528,582</u>		
Park Dedication Fund (14)									
Park Dedication Fund Revenues	\$ 36,806	\$ 4,036	\$ 36,806	100.0%	\$ 27,000	\$ 1,462	\$ 31,973	118.4%	\$ (4,973)
Park Dedication Fund Expenditures	177,820	144,154	177,820	100.0%	45,000	-	301,083	669.1%	(256,083)
Revenues Over (Under) Expenditures	(141,014)	(140,119)	(141,014)		(18,000)	1,462	(269,111)		
Beginning Fund Balance - October 1	699,736		699,736		558,722		558,722		
Ending Fund Balance - year-to-date	<u>\$ 558,722</u>		<u>\$ 558,722</u>		<u>\$ 540,722</u>		<u>\$ 289,611</u>		
Library Building Fund (32)									
Library Building Fund Revenues	\$ 215	\$ 0	\$ 215	100.0%	\$ 202	\$ 30	\$ 444	219.9%	\$ (242)
Library Building Fund Expenditures	0	0	0	100.0%	0	-	-	0.0%	0
Revenues Over (Under) Expenditures	215	0	215		202	30	444		
Beginning Fund Balance - October 1	(1,868)		(1,868)		(1,653)		(1,653)		
Ending Fund Balance - year-to-date	<u>\$ (1,653)</u>		<u>\$ (1,653)</u>		<u>\$ (1,451)</u>		<u>\$ (1,209)</u>		
Roadway Impact Fee Fund (45)									
Roadway Impact Fee Fund Revenues	\$ 53,675	\$ 3,967	\$ 53,675	100.0%	\$ 141,695	\$ 1,445	\$ 160,137	113.0%	\$ (18,442)
Roadway Impact Fee Fund Exp	-	-	-	0.0%	-	-	192,723	0.0%	(192,723)
Revenues Over (Under) Expenditures	53,675	3,967	53,675		141,695	1,445	(32,586)		
Transfers (Out)	(107,525)	(8,960)	(107,525)	100.0%	(107,525)	(8,960)	(107,525)	100.0%	-
Net Change in Fund Balance	(53,850)	(4,993)	(53,850)		34,170	(7,516)	(140,111)		
Beginning Fund Balance - October 1	623,604		623,604		569,754		569,754		
Ending Fund Balance - year-to-date	<u>\$ 569,754</u>		<u>\$ 569,754</u>		<u>\$ 603,924</u>		<u>\$ 429,643</u>		

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

SPECIAL REVENUE FUNDS									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
TIF #1 New Hope Fund (21)									
TIF #1 New Hope Fund Revenues	\$ 79,265	\$ 1,191	\$ 79,265	100.0%	\$ 72,406	\$ 1,967	\$ 93,647	129.3%	\$ (21,241)
TIF #1 New Hope Fund Expenditures	48,848	19,195	48,848	100.0%	378,229	-	322,313	0.0%	55,916
Revenues Over (Under) Expenditures	\$ 30,417	(18,004)	\$ 30,417		\$ (305,823)	1,967	\$ (228,665)		
Transfers In	167,883	783	167,833	100.0%	170,000	-	201,881	118.8%	(31,881)
Net Change in Fund Balance	198,300	(17,220)	198,250		(135,823)	1,967	(26,784)		
Beginning Fund Balance - October 1	(21,022)		(21,022)		177,278		177,278		
Ending Fund Balance - year-to-date	\$ 177,278		\$ 177,228		\$ 41,455		\$ 150,493		
Hotel/Motel Tax Fund (30)									
Hotel/Motel Tax Fund Revenues	\$ 38,749	\$ 11,081	\$ 38,749	100.0%	\$ 25,000	\$ 418	\$ 32,579	130.3%	\$ (7,579)
Hotel/Motel Tax Fund Expenditures	13,258	-	13,258	100.0%	12,000	-	17,304	144.2%	(5,304)
Revenues Over (Under) Expenditures	\$ 25,491	11,081	\$ 25,491		\$ 13,000	418	\$ 15,275		
Beginning Fund Balance - October 1	41,927		41,927		67,418		67,418		
Ending Fund Balance - year-to-date	\$ 67,418		\$ 67,418		\$ 80,418		\$ 82,693		
Police Seizure Fund (31)									
Police Seizure Fund Revenues	\$ 125	\$ 17	\$ 125	100.0%	\$ 80	\$ 81	\$ 11,527	14408.6%	\$ (11,447)
Police Seizure Fund Expenditures	-	-	-	0.0%	3,810	-	-	0.0%	3,810
Revenues Over (Under) Expenditures	\$ 125	17	\$ 125		\$ (3,730)	81	\$ 11,527		
Beginning Fund Balance - October 1	3,650		3,650		3,775		3,775		
Ending Fund Balance - year-to-date	\$ 3,775		\$ 3,775		\$ 45		\$ 15,302		
LEOSE Fund (34)									
LEOSE Fund Revenues	\$ 1,438	\$ 4	\$ 1,438	100.0%	\$ 1,421	\$ 17	\$ 3,818	268.7%	\$ (2,397)
LEOSE Fund Expenditures	1,590	-	1,590	100.0%	1,500	1,930	2,340	156.0%	(840)
Revenues Over (Under) Expenditures	\$ (152)	4	\$ (152)		\$ (79)	(1,913)	\$ 1,478		
Beginning Fund Balance - October 1	1,002		1,002		850		850		
Ending Fund Balance - year-to-date	\$ 850		\$ 850		\$ 771		\$ 2,328		
Disaster Recovery Fund (35)									
Disaster Recovery Fund Revenues	\$ 254,371	\$ 199,274	\$ 254,371	100.0%	\$ 1,991,000	\$ 9,742	\$ 84,750	4.3%	\$ 1,906,250
Disaster Recovery Fund Expenditures	191,642	(95,786)	191,642	100.0%	2,039,300	-	41,876	2.1%	1,997,424
Revenues Over (Under) Expenditures	\$ 62,729	295,060	\$ 62,729		\$ (48,300)	9,742	\$ 42,875		
Beginning Fund Balance - October 1	7,300		7,300		70,029		70,029		
Ending Fund Balance - year-to-date	\$ 70,029		\$ 70,029		\$ 21,729		\$ 112,904		

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

OTHER FUNDS									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
Capital Replacement Fund (05)									
Capital Replacement Fund Revenues	\$ 361,296	\$ 147,403	\$ 361,296	100.0%	\$ 166,850	\$ 12,460	\$ 202,687	121.5%	\$ (35,837)
Capital Replacement Fund Expenditures	261,511	142,763	261,511	100.0%	97,103	4,028	90,118	92.8%	6,985
Revenues Over (Under) Expenditures	99,784	4,640	99,784		69,747	8,432	112,569		
Beginning Fund Balance - October 1	(399,257)		(399,257)		(299,473)		(299,473)		
Ending Fund Balance - year-to-date	\$ (299,473)		\$ (299,473)		\$ (229,726)		\$ (186,904)		
Court Security Fund (12)									
Court Security Fund Revenues	\$ 5,398	\$ 879	\$ 5,398	100.0%	\$ 3,850	\$ 1,096	\$ 10,464	271.8%	\$ (6,614)
Court Security Fund Expenditures	5,092	302	5,092	100.0%	10,000	6,608	6,853	68.5%	3,147
Revenues Over (Under) Expenditures	305	577	305		(6,150)	(5,512)	3,610		
Beginning Fund Balance - October 1	29,358		29,358		29,663		29,663		
Ending Fund Balance - year-to-date	\$ 29,663		\$ 29,663		\$ 23,513		\$ 33,274		
Court Technology Fund (16)									
Court Technology Fund Revenues	\$ 5,185	\$ 496	\$ 5,185	100.0%	\$ 4,050	\$ 816	\$ 8,031	198.3%	\$ (3,981)
Court Technology Fund Expenditures	8,828	8,721	8,828	100.0%	10,000	-	7,324	73.2%	2,676
Revenues Over (Under) Expenditures	(3,643)	(8,225)	(3,643)		(5,950)	816	708		
Beginning Fund Balance - October 1	17,769		17,769		14,126		14,126		
Ending Fund Balance - year-to-date	\$ 14,126		\$ 14,126		\$ 8,176		\$ 14,834		
Street Improvement Fund (17)									
Street Improvement Fund Revenues	\$ 815,474	\$ 116,685	\$ 815,474	100.0%	\$ 857,010	\$ 78,783	\$ 701,603	81.9%	\$ 155,407
Street Improvement Fund Expenditures	847,876	126,830	847,876	100.0%	1,200,755	92,852.24	1,032,617	86.0%	168,138
Revenues Over (Under) Expenditures	(32,402)	(10,145)	(32,402)		(343,745)	(14,070)	(331,014)		
Transfers In	112,248	9,354	112,248	100.0%	191,998	32,000	191,998	100.0%	-
Transfers (Out)	(151,797)	(11,050)	(151,797)	100.0%	(155,235)	(12,936)	(155,235)	100.0%	-
Net Change in Fund Balance	(71,951)	(11,841)	(71,951)		(306,982)	4,994	(294,251)		
Beginning Fund Balance - October 1	384,656		384,656		312,705		312,705		
Ending Fund Balance - year-to-date	\$ 312,705		\$ 312,705		\$ 5,723		\$ 18,454		
Local Youth Diversion Fund (18)									
Juvenile Case Manager Fund Revenues	\$ 560	\$ 41	\$ 560	100.0%	\$ 490	\$ 49	\$ 497	101.5%	\$ (7)
Juvenile Case Manager Fund Exp	-	-	-	0.0%	7,000	-	-	0.0%	7,000
Revenues Over (Under) Expenditures	560	41	560		(6,510)	49	497		
Beginning Fund Balance - October 1	8,623		8,623		9,183		9,183		
Ending Fund Balance - year-to-date	\$ 9,183		\$ 9,183		\$ 2,673		\$ 9,680		
Park Recovery/Donation Fund (41)									
Park Rec/Donation Fund Revenues	\$ 5,336	\$ 335	\$ 5,336	100.0%	\$ 5,625	\$ 223	\$ 36,630	651.2%	\$ (31,005)
Park Rec/Donation Fund Expenditures	7,604	7,390	7,604	100.0%	7,853	13,906	21,659	275.8%	(13,806)
Revenues Over (Under) Expenditures	(2,268)	(7,056)	(2,268)		(2,228)	(13,684)	14,972		
Beginning Fund Balance - October 1	(67)		(67)		(2,335)		(2,335)		
Ending Fund Balance - year-to-date	\$ (2,335)		\$ (2,335)		\$ (4,563)		\$ 12,637		

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

OTHER FUNDS - continued									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
Grant Fund Fund (40)									
Grant Fund Revenues				N/A	\$ 675,000	\$ -	\$ 55,958	8.3%	\$ 619,042
Grant Fund Expenditures				N/A	675,000	1,359	672,506	99.6%	2,494
Revenues Over (Under) Expenditures	-	-	-		-	(1,359)	(616,548)		
Beginning Fund Balance - October 1	-		-		-		-		
Ending Fund Balance - year-to-date	<u>\$ -</u>		<u>\$ -</u>		<u>\$ -</u>		<u>\$ (616,548)</u>		
Tree Restoration Fund (83)									
Tree Restoration Fund Revenues	\$ 7,429	\$ 322	\$ 7,429	100.0%	\$ 6,550	\$ 416	\$ 3,349	51.1%	\$ 3,201
Tree Restoration Fund Expenditures	-	-	-	0.0%	-	-	-	0.0%	-
Revenues Over (Under) Expenditures	7,429	322	7,429		6,550	416	3,349		
Beginning Fund Balance - October 1	<u>71,535</u>		<u>71,535</u>		<u>78,964</u>		<u>78,964</u>		
Ending Fund Balance - year-to-date	<u>\$ 78,964</u>		<u>\$ 78,964</u>		<u>\$ 85,514</u>		<u>\$ 82,313</u>		
Unclaimed Property Fund (85)									
Unclaimed Property Fund Revenues	\$ 18	\$ -	\$ 18	100.0%	\$ 20	\$ -	\$ -	0.0%	\$ 20
Unclaimed Property Fund Expenditures	-	-	-	0.0%	-	-	-	0.0%	-
Revenues Over (Under) Expenditures	18	-	18		20	-	-		
Transfers (Out)	0	-	-	0.0%	0	-	-	0.0%	0
Net Change in Fund Balance	18	-	18		20	-	-		
Beginning Fund Balance - October 1	<u>316</u>		<u>316</u>		<u>334</u>		<u>334</u>		
Ending Fund Balance - year-to-date	<u>\$ 334</u>		<u>\$ 334</u>		<u>\$ 354</u>		<u>\$ 334</u>		

CITY OF KENNEDALE MONTHLY FINANCIAL REPORT
Month Ended September 30, 2024

EDC FUNDS									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
EDC Fund (15)									
EDC Fund Revenues	\$ 1,178,119	\$ 299,937	\$ 1,178,119	100.0%	\$ 1,093,807	\$ 70,503	\$ 1,320,577	120.7%	\$ (226,770)
EDC Fund Expenditures									
Operations Expenditures	560,637	97,167	560,637	100.0%	714,406	47,141	783,055	109.6%	(68,649)
Debt Service Expenditures	301,233	(5,230)	301,233	100.0%	309,200	5,160	319,744	103.4%	(10,544)
Town Shopping Center Expenditures	73,091	7,461	73,091	100.0%	338,461	-	189,473	56.0%	148,988
Total EDC Fund Expenditures	934,961	99,399	934,961	100.0%	1,362,067	52,300	1,292,272	94.9%	69,795
Revenues Over (Under) Expenditures	243,158	200,538	243,158		(268,260)	18,203	28,305		
Transfers (Out)	(56,124)	(4,677)	(56,124)	100.0%	(61,520)	(5,127)	(61,520)	100.0%	-
Net Change in Fund Balance	187,034	195,861	187,034		(329,780)	13,076	(33,215)		
Beginning Fund Balance - October 1	2,005,520		2,005,520		2,192,554		2,192,554		
Ending Fund Balance - year-to-date	<u>\$ 2,192,554</u>		<u>\$ 2,192,554</u>		<u>\$ 1,862,774</u>		<u>\$ 2,159,339</u>		
Average Daily Annual Expenditures	\$ 2,715				\$ 3,900				
Days of Fund Balance	807		807		478		554		
EDC Bond Reserve Fund (95)									
EDC Bond Reserve Fund Revenues	\$ 4,350	\$ 589	\$ 4,350	100.0%	\$ 2,800	\$ 691	\$ 5,959	212.8%	\$ (3,159)
EDC Bond Reserve Fund Expenditures	0	-	-	0.0%	0	-	-	0.0%	0
Revenues Over (Under) Expenditures	4,350	589	4,350		2,800	691	5,959		
Beginning Fund Balance - October 1	126,575		126,575		130,925		130,925		
Ending Fund Balance - year-to-date	<u>\$ 130,925</u>		<u>\$ 130,925</u>		<u>\$ 133,725</u>		<u>\$ 136,884</u>		



INVESTMENT REPORT

For The Quarter Ended

September 30, 2024

INVESTMENT REPORT

For The Quarter Ended September 30, 2024

The information within comprises the quarterly investment report for the City of Kennedale, Texas. The under-signed acknowledge that the City's investment portfolio has been and is in compliance with the policies and strategies contained in the City's Investment Policy as approved by City Council in December 2023 for the City of Kennedale and is also in compliance with the requirements of the Public Funds Investment Act of the State of Texas.



Jonathan Horton, Director of Finance



Darrell Hull, City Manager

City of Kennedale Investment Report For Quarter Ended September 30, 2024

This report presents an overview of the City's investment portfolio. It shows how the portfolio is structured and how it performed during the quarter.

Investment Objectives

The objectives of the City's investment policy are safety, liquidity, yield and public trust.

Authorized Investments

The City's Investment Policy allows various types of investments with varying maturity dates to diversify the funds invested. Following are the investment types allowed and the parameters for each.

INVESTMENT TYPES AND PARAMETERS – BOOK VALUE

Investment Types	Portfolio % Parameters	Portfolio % as of September 30, 2024
Bank Depository Accounts	--	0.50%
Certificates of Deposit	50%	0.89%
State of Texas Obligations/Agencies	100%	0.00%
State and Local Agency Coupons	25%	0.00%
Local Govt Investment Pools	100%	38.02%
Money Market Funds	100%	1.38%
Repurchase Agreements	50%	0.00%
US Treasury and Agency Callables	25%	0.00%
US Govt Agencies & Instruments	100%	23.21%
US Treasury Notes/Bills	100%	35.99%

Investment Portfolio Balance

The total book value of the City's portfolio at the end of the quarter was \$38,645,919.19.

The City currently has investment products with four institutions: Frost Brokerage, RW Baird and Company (Baird), TexPool, and TexStar. The operating account, which is not interest bearing, is with Wells Fargo. The bulk of our tax deposits go directly into our account at TexPool. Funds are transferred to our operating account as-needed. TexStar serves as an alternative pool account. Frost Brokerage holds a money market account fully invested in Fidelity's Government Money Market Fund, CUSIP FZBXX, and has a series of Treasury Bills (T-Bills). T-Bills are purchased in tranches, with staggered maturity dates, designed to shield the City against rate fluctuations. Every 90 days a tranche hits maturity, giving the City an option to

remove funds from the investment strategy without penalty. Baird holds investments in sixteen different bonds, three of which are Treasury Notes. Thirteen bonds are United States Government Agencies. All but one of the bonds have maturity dates at least two years from the date of this report. The remaining bond funds are in a federally backed reserve account. Baird also has two Certificates of Deposit with a maturity date in July 2025.

Details of the portfolio are presented in the following tables:

Institution	Account Type	Beginning Balance	For the Quarter Ended 9/30/2024			Unrealized Income	Ending Balance (Market)
			Additions and Withdrawals - Net	Realized Income	Ending Balance (Book)		
TexPool	Pooled Funds	\$ 17,640,638.81	\$ 3,014,258.86	\$ 242,688.62	\$ 20,897,586.29	\$ -	\$ 20,897,586.29
TexStar	Pooled Funds	379,641.58		5,043.23	384,684.81	-	384,684.81
Frost Brokerage	Money Market	3,417,542.45	(3,400,916.87)	6,964.79	23,590.37	-	23,590.37
Frost Brokerage	Bonds	6,706,058.31	10,400,916.87	77,914.09	17,184,889.27	135,090.16	17,319,979.43
RW Baird & Co	Money Market	1,226.92	769,193.95	2,837.23	773,258.10	-	773,258.10
RW Baird & Co	Bonds	10,071,755.44	6,192,118.31	163,019.58	16,426,893.33	35,162.66	16,462,055.99
WF Operating	DDA	425,904.77	(147,020.01)	-	278,884.76	-	278,884.76
WF EHB Trust	DDA	3,150.91	(1,102.80)	4.02	2,052.13	-	2,052.13
Total Investment Activity		\$ 38,645,919.19	\$ 16,827,448.31	\$ 498,471.56	\$ 55,971,839.06	\$ 170,252.82	\$ 56,142,091.88

Institution	Account Type	Beginning Balance	Fiscal Year To Date 9/30/2024			Unrealized Income	Ending Balance (Market)
			Additions and Withdrawals - Net	Realized Income	Ending Balance (Book)		
TexPool	Pooled Funds	\$ 34,502,586.37	\$ (14,875,419.49)	\$ 1,270,419.41	\$ 20,897,586.29	\$ -	\$ 20,897,586.29
TexStar	Pooled Funds	364,824.03	-	19,860.78	384,684.81	-	384,684.81
Frost Brokerage	Money Market	3,120,314.28	(3,152,913.50)	56,189.59	23,590.37	-	23,590.37
Frost Brokerage	Bonds	-	17,034,937.20	149,952.07	17,184,889.27	135,090.16	17,319,979.43
RW Baird & Co	Money Market	-	768,105.52	5,152.58	773,258.10	-	773,258.10
RW Baird & Co	Bonds	-	16,220,206.74	206,686.59	16,426,893.33	35,162.66	16,462,055.99
WF Operating	DDA	339,115.01	(60,230.25)		278,884.76	-	278,884.76
WF EHB Trust	DDA	433.07	1,596.76	22.30	2,052.13	-	2,052.13
Total Investment Activity		\$ 38,327,272.76	\$ 15,936,282.98	\$ 1,708,283.32	\$ 55,971,839.06	\$ 170,252.82	\$ 56,142,091.88

The Wells Fargo Consolidated Operating Cash account is non-interest bearing.

Collateral

The City's depository bank shall comply with Chapter 2257 of the Government Code, Collateral for Public Funds, as required by the City's bank depository contract. The market value of the pledged collateral must be equal to or greater than 102% of the principal and accrued interest for cash balances in excess of the Federal Deposit Insurance Corporation (FDIC). The City receives a detailed collateral report each month.

The TexPool and TexStar funds are collateralized at the entire fund level by the entities that manage the funds.

Upcoming Action

Frost Brokerage:

Continue to review maturing bonds as those funds relate to future cash needs. With a staggered maturity of 90 days, bonds will mature every quarter.

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: CONSENT AGENDA ITEM IV.B.

SUBJECT
CONSENT AGENDA

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



STAFF REPORT
TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: CONSENT AGENDA ITEM IV.B.1.

SUBJECT
September 17, 2024, City Council Minutes

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

1.	September 17, 2024, City Council Minutes(1)	September 17, 2024, City Council Minutes(1).pdf
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KENNEDALE CITY COUNCIL MINUTES

REGULAR MEETING | SEPTEMBER 17, 2024 AT 5:30 PM
CITY HALL COUNCIL CHAMBERS | 405 MUNICIPAL DRIVE, KENNEDALE, TX 76060

I. CALL TO ORDER

Mayor Brad Horton called the meeting to order at 5:31 p.m.

A. ROLL CALL

Mayor Horton, Mayor Pro Tem Michels, Place 1 Glover, Place 2 Kobeck Place 4 Gary, and Place 5 Nevarez were in attendance, thus constituting a quorum.

The City Manager, department directors and various other staff were also present.

B. INVOCATION AND PLEDGES OF ALLEGIANCE TO THE U.S. AND TEXAS FLAGS

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

Place 5 Nevarez led the invocation followed by the Pledges to the American and Texas Flags led by Mayor Pro Tem Michels.

II. PUBLIC COMMENT

The Kennedale City Council welcomes comments from the public. Those wishing to speak must sign in prior to the start of the meeting. Speakers may speak on any topic, whether on the agenda or not. The Kennedale City Council cannot act upon, discuss issues raised or make any decisions at this time. Speakers under citizens' comments shall observe a three-minute time limit. Inquiries regarding matters not listed on this agenda may be referred to staff for research and/or possible future action by the board.

Ira Chamberlain, 1324 Tucker Lane, Opposition of the Enclave

Joe Palmer, 4017 Sanguine Court, Fort Worth, Opposition of the Comprehensive Plan

Sayed Syed, 6705 Sapphire Circle, Colleyville, TAD Board Election requesting Kennedale's Vote

Sara Johnson, 221 Village St, Complaint regarding Mayor Horton

Daniel Bennett, 408 Prembrook, White Settlement, TAD Board Election requesting Kennedale's Vote

III. PRESENTATIONS

A. Presentation of The Jet Teague Community Leadership Award to Recipient Joe Taylor

Mayor Brad Horton presented Mr. Joe Taylor with the Jet Teague Community Leadership Award.

B. Library Card Sign Up Proclamation

Mayor Horton presented a Proclamation regarding Library Card Sign Up Month.

C. Senior Center Month Proclamation

Mayor Horton presented a Proclamation Celebrating Senior Center Month.

D. National Association of Town Watch Proclamation

Mayor Horton Presented a Proclamation Celebrating the National Association of Town Watch.

IV. PUBLIC HEARINGS WITH NECESSARY ACTION

- A. Conduct a Public Hearing and consider a Planning and Zoning Case #24-08 a proposed Conditional Use Permit as required by Section 24.2 (C) of the Unified Development Code for “Battery Energy Storage Systems,” a new land use, located at 509 S New Hope Rd, Tract 1EE & A1327 TRS 2B01 & 2B04, Abstract 378, situated in the Cannon E C Survey, and 501 S NEW HOPE RD, Block 1, Lot 1, of the Kim Addition, and City of Kennedale, Tarrant County, Texas

Mayor Brad Horton opened the Public Hearing at 6:06 p.m.

Chad Gee, Kennedale ISD, In Favor of the Zoning Case

Dave McMillian, 3830 Kennedale New Hope Rd., In opposition of the Zoning Case

Mayor Brad Horton closed the Public Hearing at 6:09 p.m.

- B. Take action on an Ordinance of the City of Kennedale to amend the Unified Development Code as described in Zoning Case #24-08 a proposed Conditional Use Permit as required by Section 24.2 (C) of the Unified Development Code for “Battery Energy Storage Systems,” a new land use, located at 509 S New Hope Rd, Tract 1EE & A1327 TRS 2B01 & 2B04, Abstract 378, situated in the Cannon E C Survey, and 501 S NEW HOPE RD, Block 1, Lot 1, of the Kim Addition, and City of Kennedale, Tarrant County, Texas.

Community Development Director Nathan Gonzales provided a status report to the City Council stating that the property would need a Conditional Use Permit. Mr. Gonzales advised that the property is surrounded by industrial and residential uses with floodways existing within the property. Mr. Gonzales further stated that the City Staff met with the team of Cypress Creek Renewables regarding the site and the use that is being considered. Mr. Gonzales advised that due to existing and ongoing development, in addition to safety concerns, the staff was unable to recommend approval at this time.

Representatives from Cypress Creek Renewables were present and advised the City Council of the project. Representatives advised of a 20+ year anticipated project life, usage is to be battery storage, installed on large racks in battery containers, interconnected lithium-ion batteries, limited local hiring, no impacts on local roads or traffic, no anticipated water needs and other information pertinent to the project.

The City Council discussed concerns relating to the site, which included fire safety concerns with the applicant as well as Interim Chief Brian King. Chief King was not

in favor of the project.

Place 5 Nevarez motioned to approve an Ordinance of the City of Kennedale to amend the Unified Development Code as described in Zoning Case #24-08 a proposed Conditional Use Permit as required by Section 24.2 (C) of the Unified Development Code for “Battery Energy Storage Systems,” a new land use, located at 509 S New Hope Rd, Tract 1EE & A1327 TRS 2B01 & 2B04, Abstract 378, situated in the Cannon E C Survey, and 501 S NEW HOPE RD, Block 1, Lot 1, of the Kim Addition, and City of Kennedale, Tarrant County, Texas.

Place 2 Kobeck seconded the motion

Mayor Pro Tem Michels, Place 1 Glover, Place 4 Gary Opposed, No abstentions

Vote: The motion failed 2-3

- C. Conduct a Public Hearing on a Planning and Zoning Case #24-11 a proposed zoning change from “AG-Agricultural District” TO A “PD-Planned Development” For Lot 7A, Lot 6B1, Lot 6A1, Lot 6C1 of Estes, JM Home Tracts Addition, Located at 1102, 1106, 1108, 1110 Kennedale Sublett Rd, and Approximately 3.06 Acres of Block, Lot 11A & 11B of The Oliver Acres Subdivision, located at 305 Collett Sublett Rd, Kennedale, Tarrant County, Texas, 76060.

Mayor Horton opened the Public Hearing at 7:39 p.m.

Leland Verheyen, 1305 Collette Sublett Rd., Opposed to Zoning Case #24-11

Wendy Danner, 1341 Tucker Lane, Opposed to Zoning Case #24-11

Roy Boenig, 1020 Kennedale Sublett Rd., Opposed to Zoning Case #24-11

James Conner, 501 W. 3rd. St., Opposed to Zoning Case #24-11

Betty Usry, 1340 Tucker Lane, Opposed to Zoning Case #24-11

Mayor Horton closed the Public Hearing at 7:55 p.m.

Mayor Horton re-opened the Public Hearing at 7:56 p.m.

Reid Mullins, 1317 Tucker Lane., Opposed to Zoning Case #24-11

Christina Fowler, 1356 Collett Sublett Rd., Opposed to Zoning Case #24-11

Angelica Baza, 1304 Tucker Lane, Opposed to Zoning Case #24-11

Robert Shepard, 2310 W. I-20 Arlington, Opposed to Zoning Case #24-11

Joe Palmer, 4017 Sanguine Court, Fort Worth, Opposed to Zoning Case #24-11

Mayor Horton closed the Public Hearing at 8:09 p.m.

- D. Take action on an Ordinance to amend the Unified Development Code as described in Zoning Case #24-11 to change the current zoning from “AG-Agricultural District” to a “PD-Planned Development” For Lot 7A, Lot 6B1, Lot 6A1, Lot 6C1 of Estes, JM Home Tracts Addition, Located at 1102, 1106, 1108, 1110 Kennedale Sublett Rd, and Approximately 3.06 Acres of Block, Lot 11A & 11B of The Oliver Acres Subdivision, located at 305 Collett Sublett Rd, Kennedale, Tarrant County, Texas, 76060, described as “The Enclave”.

Community Development Director Nathan Gonzales presented Planning and Zoning Case #24-11 to the City Council. Mr. Gonzales advised that the properties are currently residential home sites, zoned "AG-Agricultural District." in which the landowners have attempted to sell in the past but have been unsuccessful due to previous unfavorable developments. Mr. Gonzales noted that a major issue for residents and previous City Councils was that the previous proposal did not include a second egress outlet onto Kennedale Sublett Rd. Mr. Gonzales continued to advise that the proposed zoning change and concept plan will now include a secondary egress outlet onto Kennedale Sublett Rd as well as a tie into Sterling Dr, an existing stubbed-out street located south within The Vineyards Subdivision.

Another concern addressed by Mr. Gonzales was narrow design of the street in the adjacent neighborhood of Magnolia Hills. Mr. Gonzales noted that the streets in the proposed Enclave Development are wider, having a minimum width of 31 FT, measured from back-of-curb to back-of-curb. Other updates addressed included sidewalks, parks, drainage requirements, and engineering submittals.

Mr. Gonzales advised that staff has reviewed the development against existing zoning requirements and has found the proposed development to best suited for a Planned Development. Staff confirmed that the proposed development was compatible with adjacent uses, the 2012 Comprehensive Plan and the Future Land Use Plan.

Mr. Gonzales confirmed that he had received protests from the adjacent landowners in excess of the 20% required to trigger a supermajority vote of the City Council to approve the development.

The City Council held discussions with the potential development which included confirming that the engineering studies would be provided in the platting and developmental stage including drainage studies. Traffic Concerns were also discussed with the Chief of Police Mike Holguin.

Place 1 Glover motioned to approve Ordinance to amend the Unified Development Code as described in Zoning Case #24-11 to change the current zoning from "AG-Agricultural District" to a "PD-Planned Development" For Lot 7A, Lot 6B1, Lot 6A1, Lot 6C1 of Estes, JM Home Tracts Addition, Located at 1102, 1106, 1108, 1110 Kennedale Sublett Rd, and Approximately 3.06 Acres of Block, Lot 11A & 11B of The Oliver Acres Subdivision, located at 305 Collett Sublett Rd, Kennedale, Tarrant County, Texas, 76060, described as "The Enclave".

Mayor Pro Tem Michels seconded the motion.

Place 2 Kobeck opposed the motion, Place 4 Gary abstained

Vote: 3-1-1 Motion failed due to lack of supermajority

City Attorney Carvan Atkins asked for clarification on Mr. Gary's vote regarding Case #24-11 asking if Mr. Gary abstained or had a conflict of interest. Mr. Gary confirmed that he had abstained from the motion.

Mayor Pro Tem Michels made a motion to adjourn into Executive Session pursuant to Section 551.074 (consultation with city attorney) of the Government Code

Place 5 Nevarez seconded the motion.

No opposition, no abstentions

Vote: The motion carried unanimously 5-0

Mayor Horton adjourned into executive session at 9:17 p.m.

Mayor Horton reconvened into open session at 9:31 p.m.

No action as a result of the executive session.

V. REGULAR SESSION

Mayor Horton moved Item #6 to take place first on the Regular Session Agenda.

6. Discuss and take action on an Ordinance to adopt the Comprehensive Plan for the City of Kennedale as recommended by the Planning and Zoning Commission.

Community Development Director Nathan Gonzales as well as Steven Cook with Dunaway and Associates updated the Council on changes that have been made since the previous Council meeting.

Place 5 Nevarez made a motion to approve an Ordinance to adopt the Comprehensive Plan for the City of Kennedale as recommended by the Planning and Zoning Commission.

Place 1 Glover seconded the motion.

No opposition, No abstentions

Vote: Motion passed unanimously

Mayor Horton moved back to the Reports and Announcements Section of the Agenda.

A. REPORTS AND ANNOUNCEMENTS

In addition to any items below, the Kennedale City Council, the presiding officer, and/or staff may give or receive reports regarding items of community interest, including, but not limited to, recognition of officials, citizens, staff, or departments; information regarding holiday schedules; and upcoming or attended events.

1. Updates from the City of Kennedale Mayor and City Council

The City Council and Mayor gave updates on items of public interest, including the Butterfly Party hosted by KKB, 9/11 Memorial, Concert in the Park, and Chamber of Commerce Luncheon.

2. Updates from the City of Kennedale City Manager

City Manager Hull gave an update on Capital Improvements.

3. Financial Reports for the City and/or the EDC

Finance Director Jonathan Horton reviewed the City financials with the Council.

B. CONSENT AGENDA

These matters have appeared on previous agendas, require little or no deliberation, or are considered routine or ministerial tasks. If discussion is desired, items may be removed for separate consideration.

1. August 20, 2024, City Council Minutes
2. Interlocal Agreement for Administrative Costs Funding for Section 5310 Program Between The Fort Worth Transportation Authority and The City of Kennedale.
3. PZ Case#24-13 a replat of Block 1, Lot 1R1, of The Soto Addition, Block 1, Lot 1R, of the Sather Addition, and Track 8 of the Prickett, Jacob Survey Abstract 1225, to create lots 1R1 and 2, Block A, of the Sather Addition, Totalling Approximately 3.097 Acres, Located in the City of Kennedale.

Mayor Pro Tem Michels made a motion to approve items 1 and item 3 of the consent agenda.

Place 2 Kobeck seconded the motion.

No opposition, No abstentions

Vote: Motion passed unanimously

Place 5 Nevarez motioned to approve item 2 with the updated change in the date to 2025.

Place 1 Glover seconded the motion

No opposition, No abstentions

Vote: Motion passed unanimously

C. ITEMS FOR INDIVIDUAL CONSIDERATION, DISCUSSION OR ACTION

1. Discuss the Kennedale Youth Advisory Council. - Discussion Item Only

The City Council and the City Manager discussed the former Kennedale Youth Advisory Council. The consensus of the Council was to have the City Secretary research and submit a plan to the Manager and Council to potentially have the program revisited.

2. Discussion on a proposed Lighting Ordinance for the City of Kennedale. - Discussion Item Only

City Council Member Glover presented a proposed Lighting Ordinance to the City Council for discussion. The Council held discussions regarding the bright lights and traffic concerns that arose due to the large display last holiday season. The Council had concerns regarding other properties, including industrial and commercial property, that could be affected by the implementation of a lighting ordinance. The City Manager requested that the Council send him suggestions for the Ordinance that could be added to best fit Kennedale.

3. Discuss and take action on the 2024/2025 Interlocal Agreement (ILA) renewal with the City of Ft. Worth for rabies control and use of the City of Ft. Worth Animal Shelter.

Place 5 Nevarez made a motion to approve the 2024/2025 Interlocal Agreement (ILA) renewal with the City of Ft. Worth for rabies control and use of the City of Ft. Worth Animal Shelter.

Place 2 Kobeck seconded the motion.

No opposition, No abstentions

Vote: The motion passed unanimously

4. Discuss and take action to cast the City of Kennedale's Official Ballot for the Election of the Region 8 Director of the TML Board of Directors.

Place 5 Nevarez motioned to cast an Official Ballot for Mr. John McKenzie to serve as the Region 8 Director of TML.

Mayor Pro Tem Michels seconded the motion.

No opposition, No abstentions

Vote: The motion passed unanimously

5. Discuss and take action to consider a Resolution of the City of Kennedale to make five (5) nominations to the Tarrant Appraisal District Board of Directors.

Place 5 Nevarez motioned to make the following nominations to the Tarrant Appraisal District.

1 Vote Fred Campos

1 Vote Gloria Pena

1 Vote Darrell Davis

1 Vote Sayeda Syed plus 4 additional votes to Sayeda Syed

Place 2 Kobeck seconded the motion.

No opposition, No abstention

Vote: Motion passed unanimously

VI. EXECUTIVE SESSION

IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE. If, during the course of the meeting and discussion of any items covered by this notice, the Kennedale City Council determines that a Closed or Executive session of the Board is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Section 551.071 consultation with counsel on legal matters; Section 551.074 personnel matters (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or (2) to hear a complaint or charge against an officer or employee. (b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. Section 551.072 - deliberation regarding purchase, exchange, lease or value of real property; Section 551.073 - deliberation regarding a prospective gift; Section 551.087 - deliberation regarding economic development negotiation; Section 551.089 - deliberation regarding security devices or security audits, and/or other matters as authorized under the Texas Government Code. If a Closed or Executive Session is held in accordance with the Texas Government Code as set out above, the Kennedale City Council will reconvene in Open Session in order to take action, if necessary, on the items addressed during Executive Session.

**VII. RECONVENE INTO OPEN SESSION, AND TAKE ANY ACTION NECESSARY
PURSUANT TO EXECUTIVE SESSION**

VIII. ADJOURNMENT

Mayor Pro Tem Michels motioned to adjourn the meeting.

Place 5 Nevarez seconded the motion.

There being no further business the Mayor adjourned the meeting at 10:34 p.m.

APPROVED:

ATTEST:

MAYOR BRAD HORTON

CITY SECRETARY BOBBIE JO TAYLOR

STAFF REPORT
TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: INDIVIDUAL CONSIDERATION ITEM IV.C.

SUBJECT

ITEMS FOR INDIVIDUAL CONSIDERATION, DISCUSSION OR ACTION

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: REGULAR SESSION ITEM IV.C.1.

SUBJECT

Discuss naming a roundabout located in the 800 block of Sublett Rd. and the 600 block of Little School Rd. in Honor of Mr. Robert Mundy. - Discussion Only

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

STAFF REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: REGULAR SESSION ITEM IV.C.2.

SUBJECT

Discuss an update to the City of Kennedale Nuisance Ordinance providing additional regulations for outdoor lighting. - Discussion Only

ORIGINATED BY NATHAN GONZALES

SUMMARY

As this item is a City Council-driven initiative, staff seeks to provide additional information that may be beneficial for review before action is taken. Attached are examples of the current UDC regulations about outdoor lighting. The UDC is currently being updated and staff would welcome any input from City Council on what revisions are desired. Be advised, however, that the UDC is a separate document intended to guide new and redevelopment. Staff believes the Kennedale Code of Ordinances is best suited to address any nuisances specifically. Having a separate stand-alone ordinance would make it difficult for staff and developers to keep track of requirements as they would not be codified within the same document. Staff recommends City Council consider updating Chapter 15 of the Code of Ordinance to include a definition for lighting trespass and a definition of seasonal decorations. Staff has also provided an example from the City of Seagoville, TX, and the Town of Westlake for review. The Town of Westlake example is tied to their Dark Sky Initiative. Given the existing conditions in the city, a Dark Sky Initiative may be best tailored to areas of town that have yet to be developed. Additionally, Staff has included a paper presented at the Texas Municipal League Annual Conference regarding municipal regulation of outdoor lighting. The paper includes relative case law and examples that staff believes can help further guide the discussion and decision-making.

RECOMMENDATION

Staff recommends updating Chapter 15 of the Code of Ordinance to include a definition of seasonal decorations and offense for light trespass while reserving all specifics about wattage and lumens for development for the UDC update.

ATTACHMENTS

1.	Kennedale Outdoor Lighting Ordinance Version 0.2 - DRAFT	Kennedale Outdoor Lighting Ordinance Version 0.2 - DRAFT.docx
2.	Current UDC Exterior Lighting Requirements	Current UDC Exterior Lighting Requirements.pdf
3.	City of Seagoville Definitions Example	City of Seagoville Definitions Example.pdf
4.	City of Seagoville Light Trespass Example	City of Seagoville Light Trespass Example.pdf
5.	City of Westlake Outdoor Lighting Example	
6.	TCCA/TML Paper on Outdoor Lighting	

Kennedale Outdoor Lighting Ordinance

SECTION 1: PURPOSE AND INTENT

The purpose of this subsection is to provide regulations for outdoor lighting created in such a manner as to:

- (A) Minimize the adverse offsite impacts of lighting such as trespass and glare.
- (B) Curtail light pollution, reduce sky glow, and improve the nighttime environment.
- (C) Conserve energy and resources to the greatest extent possible.
- (D) Eliminate nuisance lighting.

SECTION 2: CONFORMANCE WITH APPLICABLE CODES

All outdoor lighting shall be installed in conformance with the provision of this subsection, applicable electrical and energy codes and applicable section of the building code.

SECTION 3: APPLICABILITY

The provisions of the outdoor lighting regulations provided in this chapter shall apply in the following situation:

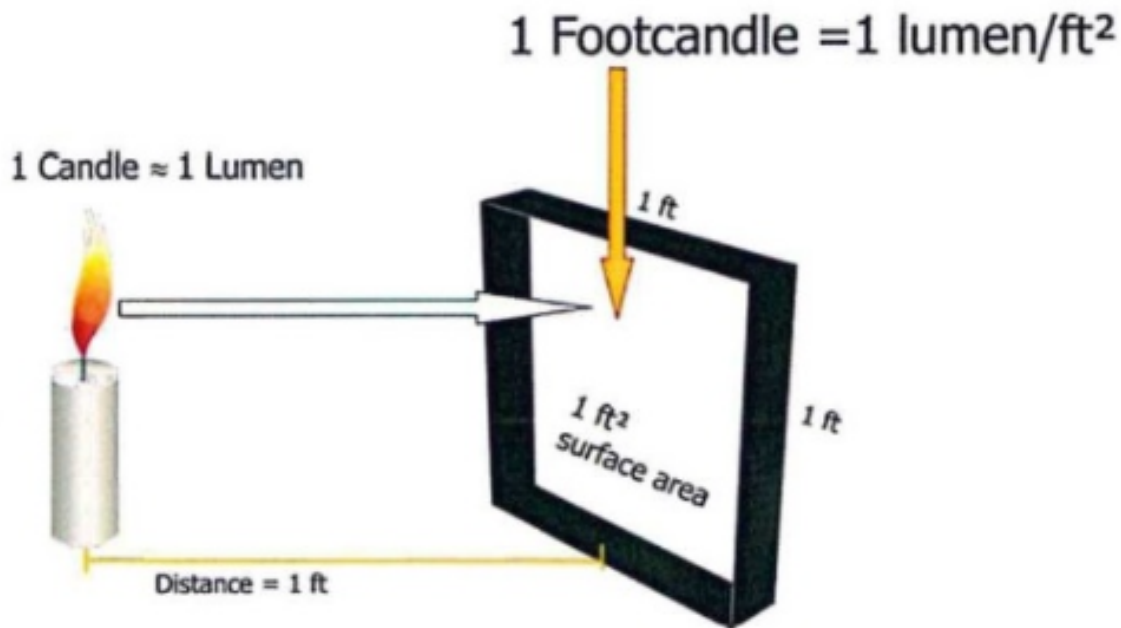
- (A) *New fixtures or additional lighting.* This subsection shall apply to all installations of new fixtures or additional lighting to any new or existing use or structure.
- (B) *Nuisance lighting.* Luminaires installed prior to the adoption of this Subchapter from which this subsection is derived shall immediately be re-aimed or shielded such that the fixture no longer creates a nuisance. Shielding may be accomplished by louvers, baffles, visors, or shields placed on the luminaires, or any other method whereby the light therefrom does not constitute a nuisance.
- (C) Exemptions.
 - a. Street lighting installed by a governmental agency for public benefit on public rights-of-way.
 - b. Public outdoor recreational sport fields, sport courts complexes, race tracks/speedways.
 - c. Temporary Seasonal lighting.
 - i. If 3 or more neighbors within a 200 ft radius of a residence report a lighting nuisance related to the operation of Seasonal Lighting, then the Seasonal Lighting must be brought into the normal lighting ordinance.

SECTION 4: DEFINITIONS

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FLOODLIGHTING. A system designed for lighting a scene or object to a luminance greater than its surroundings. It can be for utility, advertising, or decorative purposes.

FOOTCANDLE. The amount of illumination provided by one lumen uniformly distributed on one square foot of surface. See diagram below.



GLARE. Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that cause visual discomfort or reduced visibility.

LAMP and LIGHT SOURCE. A device that produces visible energy, such as a bulb.

LIGHT INTRUSION OR TRESPASS. A light flow that spills outside the location boundary causing a disturbance to adjacent areas.

LIGHTING STANDARD. The light pole and the base measured at the highest point on the pole or fixture including the base.

LUMEN. The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from "watt," a measure of power consumption).

LUMINAIRE. A complete lighting unit including a light source and all necessary mechanical, electrical, reflective and decorative parts.

POINT METHOD PHOTOMETRICS. A lighting design procedure for predetermining the illuminance at various locations in lighting installations by use of luminaire photometric data.

PRIVATE OUTDOOR RECREATIONAL ACTIVITIES. Any form of outdoor play or amusement, including, but not limited to, games or sports conducted on property not owned, operated, or leased for operation by the city, a school, school district, county, or other governmental agency.

PUBLIC OUTDOOR RECREATION SPORTS FIELDS AND SPORT COURTS COMPLEX. Any outdoor community recreation facilities owned, operated, or leased for operation by the city, a school, school district, county, or other governmental agency and may include swimming pools, tennis courts, softball and baseball facilities, soccer facilities, and other outdoor athletic facilities.

OUTDOOR LIGHTING NUISANCE. A nuisance created by light:

- (A) Which if measured at the property line adjacent is in excess of two-tenths (0.2) of one footcandle;
- (B) Which if measured at the property line adjacent to an arterial street, is in excess of one and one-half (1-1/2) footcandles; or
- (C) Which if measured at the property line adjacent to a collector or residential street, is in excess of two-tenths (0.2) of one footcandle.

VERTICAL ILLUMINANCE. Illuminance measured or calculated in a plane perpendicular to the site boundary or property line.

Seasonal lighting. Temporary lighting installed and operated for holidays or traditions.

SECTION 5: MEASUREMENT

- (A) *Metering equipment.* Lighting levels shall be measured in footcandles with a direct-reading, portable light meter.
- (B) *Method of footcandle measurement.* The meter sensor shall not be more than six inches above ground level in a horizontal position or six foot in a vertical position. The reading shall be taken only after the cell has been exposed long enough to provide a constant reading.

SECTION 6: PROHIBITED LIGHTING

- (A) Any lighting source above 315 lumens that is not aimed to prevent light trespass or glare beyond the property boundary;

- (B) Any lighting source above 315 lumens unless it is shielded sufficiently such that the luminous elements (lamp, reflective surface or lens cover) of the fixture are not visible from any other property;
- (C) The operation of searchlights, strobes, or pulsating lights;
- (D) The use of low pressure sodium bulbs as a light source;
- (E) An unshielded lighting source or drop lens, above 315 lumens;
- (F) Any light or combination of lighting that creates a nuisance; or
- (G) Any lighting installed to illuminate an unimproved surface or private outdoor activities that exceed requirements defined as a outdoor lighting nuisance.
- (H) A footcandle reading, as performed in accordance with **MEASUREMENT** and found to be in excess of those amounts defined as a outdoor lighting nuisance shall be prima facie evidence of violation of this chapter.

SECTION 7: HEIGHT

The maximum height for outdoor lighting pole standards shall be XX feet.

SECTION 8: BUILDING MOUNTED LIGHTING

All building mounted luminaires exceeding 315 lumens shall be directed down.

SECTION 9: PENALTY

- (A) 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 chapter shall be fined not more than \$XXX for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.
- (B) 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 shall be fined not more than \$X,XXX for each offense.

DRAFT

2. Location and Screening.

- a. Cisterns shall be located in the rear yard or side yard and must meet the screening regulations of this article.
 - b. 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.
3. Size and Height. Cisterns shall not exceed 10 percent coverage in any required yard. The maximum height of any cistern shall be 10 feet.
4. Materials. Cisterns shall be made of durable materials sufficient to withstand weight and pressure from water storage and resist leaking or corrosion.
5. Notice. Every irrigation outlet shall be permanently identified with an indelibly marked placard stating: "CAUTION: HARVESTED RAINWATER; DO NOT DRINK."
6. Permitting.
- a. 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.
 - b. 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.
7. Responsibility. Maintenance and use of rainwater harvesting systems are the responsibility of the individual system owners.

Section 13.11 Exterior Lighting

A. General Requirements.

1. Entrances and Exits. All entrances and exits shall be properly lighted to be distinguishable from surrounding ambient lighting.
2. Context. 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.
3. Luminaries. 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 14 feet.
4. Shielding and Fixture Types.
 - a. 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.
 - b. Direct or directly reflected light shall be confined on-site.
 - c. Under-canopy lighting shall be mounted flush or recessed.
 - d. Wall pack and pole-mounted light fixtures shall be a down-lighted type and 100 percent cut off. Light fixtures shall be constructed and installed in such a manner that all light emitted, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal plane through the lowest light-emitting part.
 - e. Light from any illuminated source shall be so shaded, shielded, or directed that the light intensity or brightness will not be objectionable to surrounding areas.

- f. Government flag lighting shall only illuminate the flag and shall be placed so lighting or glare is not directed toward streets or adjacent properties.

B. Prohibited Lighting.

1. Laser lights or any similar high intensity light for outdoor advertisement or entertainment.
2. Any lighting where the light source creates glare and is a hazard to travelers on an adjacent street.
3. Lighting that flashes, moves, or is intermittent.
4. Lighting that is similar to that used for traffic control devices or emergency vehicles.
5. The operation of searchlights for advertising purposes is prohibited between the hours of 9:00 p.m. and 7:00 a.m. and is limited to the ECD and Commercial and Industrial Zoning Districts.

C. Requirements for Non-Residential Uses.

1. **Applicability.** Lighting shall be provided throughout any public parking lot. Lights to illuminate parking lots shall not be attached to any building. This requirement does not apply to home occupations and home based businesses.
2. **Height.** Light fixtures shall have a maximum height of 20 feet when within 300 feet of residential property. All other outdoor areas shall be lighted to at least two (2) foot candles of illumination at the surface. All other light fixtures shall have a maximum height of 25 feet. The height of a fixture shall be measured from the parking lot grade to the nearest portion of the light source. No portion of the fixture may extend more than one (1) additional foot higher than the maximum heights.
3. **Illumination Levels.** Light levels on commercial sites shall meet the requirements in Table 9-8 for the developed portion of the site containing buildings, drives and parking lots.
 - a. Sites are not subject to minimum lighting levels during closed hours.
 - b. Table 13.11 shall not apply to ornamental street lighting, public street lights, or driveway/intersection lighting necessary for pedestrian and traffic safety.
 - c. The light level along a non-residential lot line may be increased to the maximum in cases where there is shared access/vehicular connections or the adjacent use is a similar use.

Table 13.11 Required Site Illumination Levels		
Location on Site	Minimum Footcandles	Maximum Footcandles
Parking Lots and Building Entrances	2.0	10.0
Walkways	0.2 (at any point) 1.0 (average)	10.0
Along Front Lot Line Adjacent to the Street Frontage	0.0	2.0
Along a Lot line Adjoining a Non-Residential Use or District	0.0	2.0
Along a Lot line Adjoining a Residential Use or District	0.0	0.5

- D. Demonstration of Compliance.** Compliance with the lighting design criteria shall be demonstrated by submitting the following information as part of the required site plan:

1. Lighting plan showing light fixture locations and type designations.
 2. Lighting equipment specifications and data sheets, including fixture height.
 3. Manufacturer's cut-sheets and any other materials or information required to convey the intent of the lighting design.
- E. *Photometric Plans.* The Administrator or Planning and Zoning Commission may require a photometric plan to ensure that the intent and requirements of this section are met. When required, a photometric plan (lighting grid) shall be prepared by an electrical engineer. The photometric plan shall show horizontal luminance levels (footcandles) in a point-by-point format.

§ 21.09.004. Definitions and regulations.

Seasonal decorations. Noncommercial signs, structures or other materials (e.g., air-filled figures, strings of holiday or twinkle lights, ornaments, cut-out figures, etc.) that are temporarily displayed. Seasonal decorations shall not be placed in any way that affects traffic safety or visibility. They shall not pose a hazard or threat to public safety, and shall not negatively affect surrounding properties, neighbors, etc. They shall not advertise any type of business sales, marketing, grand opening or other commercial event.

- (1) ☐ aximum height: ☐eight of main structure on the property/lot. If located on the roof of a structure in an agricultural or residential zoning district, decorations shall not extend more than eight feet (☐)above the top of the roof.
- (2) ☐ aximum size/area: No limit.
- (3) Allowed in all zoning districts.
- (4) ☐lacement/setbacks: Completely on private property (not in public right-of-way)☐can be erected or affixed to the roof, trees, fences and other fixtures on the property☐can be illuminated and/or animated☐can be mounted on the roof of a structure only within agricultural and residential zoning districts, only if securely tethered or secured to minimize movement of decorations, and only if decorations do not exceed eight feet (☐) in height.
- (5) ☐ aximum number: No limit.
- (6) Duration: Can be installed/displayed not more than fifty-nine (59) days.
- (7) ☐ermit is not required.

§ 13.01.004. Residential exterior lighting trespass and nuisance.

It shall be a public nuisance, a trespass, and unlawful for any residential use or operation of exterior lighting from any source to be located or concentrated so as to produce intense glare or direct illumination across the bounding property line or to be of such intensity as to detract from the use and enjoyment of adjacent property. All outside lights from any source which cast illumination on adjacent residential property shall be comprised of a light source and reflector that act together such that the light beam is controlled and not directed across any neighboring property line above a height of three (3) feet. The allowable maximum intensity measured at the property line adjoining a residential district shall be 0.25 footcandles, and at the property line adjoining a nonresidential district shall be 0.5 footcandles. Light poles shall not exceed the maximum height allowed in the subject property's zoning district, and they shall be placed on the site a setback equal to their height from all adjacent residential property. No lighting from any source shall shine directly on an adjacent dwelling.

(Ordinance 35-2019 adopted 11/4/19)

DIVISION 2. OUTDOOR LIGHTING¹

Sec. 102-206. Definitions.

Accent lighting. Lighting used to emphasize or draw attention to a special object or building.

Adaptive controls. Devices such as motion sensors, timers and dimmers used in concert with outdoor lighting equipment to vary the intensity or duration of operation of lighting.

Advertising searchlight. An outdoor advertising device used to direct beams of light upward.

Ambient light. The general overall level of lighting in an area.

Brightness. Strength of the sensation that results from viewing surfaces from which the light comes to the eye.

Bulb or lamp. The source of electric light. To be distinguished from the whole assembly (see luminaire). Lamp often is used to denote the bulb and its housing.

Candela (cd). Unit of luminous intensity. One candela is one lumen per steradian. Formerly called the candle.

Candlepower. Luminous intensity expressed in candelas.

Candlepower distribution curve. A plot of the variation in luminous intensity of a lamp or luminaire.

Coefficient of utilization (CU). Ratio of luminous flux (lumens) from a luminaire received on the "work plane" [the area where the light is needed] to the lumens emitted by the luminaire.

Color rendering index (CRI). A measure of the accuracy with which a light source of a particular CCT renders different colors in comparison to a reference light source with the same CCT under normal daylighting. A high CRI provides better illumination with the same or lower lighting levels.

Commission Internationale de l'Eclairage (CIE). The International Commission on Illumination. Sets most lighting standards.

Compact fluorescent. A discharge lamp having a coating of fluorescent material on its inner surface and containing mercury vapor whose bombardment by electrons from the cathode provides ultraviolet light which causes the material to emit visible light.

Correlated color temperature (CCT). A measure in degrees Kelvin (°K) of light's warmth or coolness. Lamps with a CCT of less than 3,200°K are pinkish and considered warm. Lamps with a CCT greater than 4,000°K are bluish-white and considered cool.

Cosine law. Illuminance on a surface varies as the cosine of the angle of incidence of the light. The inverse square law and the cosine law can be combined.

¹Editor's note(s)—Ord. No. 879, § 2, adopted Feb. 25, 2019, amended Div. 2 in its entirety to read as herein set out. Former Div. 2, §§ 102-206—102-217, pertained to similar subject matter, and derived from Ord. No. 386, §§ 2(3.1)—2(3.11), 6, adopted Jan. 22, 2001.

Cut off angle, of a luminaire. The angle, measured up from the nadir (i.e. straight down), between the vertical axis and the first line of sight at which the bare source (the bulb or lamp) is not visible.

Cutoff fixture. An IES definition "Intensity at or above 90° (horizontal) no more than 2.5% of lamp lumens, and no more than 10% of lamp lumens at or above 80°."

Dark adaptation. The process by which the eye becomes adapted to a luminance less than about 0.03 candela per square meter (0.01 footlambert).

Diffuser. A device used to distribute light from a source.

Dimmer. Dimmers can reduce the input power requirements and the rated lumen output levels of incandescent and fluorescent lights. Fluorescent lights need special dimming ballasts. Dimming incandescent lights reduces their efficiency.

Disability glare. Glare resulting in reduced visual performance and visibility. It is often accompanied by discomfort.

Discomfort glare. Glare that produces discomfort, but does not necessarily diminish visual performance.

Efficacy. The ratio of light output to its consumption of power, measured in lumens per watt (lm/W), or the ability of a lighting system to produce the desired result.

Efficiency. A measure of the effective or useful output of a system compared to the input of the system.

Energy (radiant energy). Unit is erg, or joule, or kWh.

Facade lighting. The illumination of the exterior of a building.

Fixture. The assembly that holds the lamp in a lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.

Fixture lumens. A light fixture's light output after processing of emitted light by optics in that fixture.

Fixture watts. The total power consumed by a fixture. This includes the power consumed by the lamp(s) and ballast(s).

Floodlight. A fixture designed to "flood" a well defined area with light.

Flux (radiant flux). Unit is erg/sec or watts.

Footcandle. Illuminance produced on a surface one foot from a uniform point source of one candela. A footcandle is equal to one lumen per square foot.

Footlambert. The average luminance of a surface emitting or reflecting light at a rate of one lumen per square foot.

Full-cutoff fixture. An IES definition; "Zero intensity at or above horizontal (90° above nadir) and limited to a value not exceeding 10% of lamp lumens at or above 80°."

Fully shielded. A luminary constructed or shielded in such a manner that all light emitted by the luminary either directly from the lamp or indirectly from the luminary, is projected below the horizontal plane through the luminary's lowest light emitting part as determined by photometric test or certified by the manufacturer.

Glare. Direct lighting emitted from a luminary that causes reduced vision or temporary blindness. Intense and blinding light that reduces visibility. A light within the field of vision that is brighter than the brightness to which the eyes are adapted.

Halogen lamp. A specialized type of incandescent lamp which has a significantly hotter filament than conventional incandescent lights. Rather than filling the bulb with an inert gas, the halogen bulbs use a highly reactive element. The resulting reaction produces a significantly brighter light and at extremely high temperatures.

HID lamp. In a discharge lamp, the emitted energy (light) is produced by the passage of an electric current through a gas. High-intensity discharge (HID) include mercury, metal halide, and high pressure sodium lamps. Other discharge lamps are LPS and fluorescent. Some such lamps have internal coatings to convert some of the ultraviolet energy emitted by the gas discharge into visual output.

High pressure sodium (HPS). A high intensity discharge lamp where radiation is produced from sodium vapor at relatively high partial pressures (100 torr). HPS is essentially point source light.

Horizontal plane. A line horizontal to the lowest point on the fixture from which light is emitted.

House-side shield. Opaque material applied to a fixture to block the light from illuminating a residence or other structure being protected from light trespass.

Illuminance. Density of luminous flux incident on a surface. Unit is footcandle or lux.

Illuminating Engineering Society of North America (IES or IESNA). the professional society of lighting engineers, including those from manufacturing companies, and others professionally involved in lighting.

Incandescent lamp. Any lamp that produces light by heating a filament through use of an electric current.

Infrared radiation. Electromagnetic radiation with longer wavelengths than those of visible light, extending from the nominal red edge of the visible spectrum at 700 nanometers to one mm.

Intensity. the degree or amount of energy or light.

Internally illuminated architecture. Any architectural element including walls or portions of buildings that is internally illuminated and that is not a sign, windows, or doors.

International Dark-Sky Association (IDA, Inc.). A non-profit organization whose goals are to build awareness of the value of dark skies, and of the need for quality outdoor lighting.

Inverse-square law. The illuminance at a point varies directly with the intensity, I , of a point source and inversely as the square of the distance, d , to the source. $E = I / d^2$

kWh: Kilowatt-hour. A unit of energy equal to the work done by one kilowatt (1,000 watts) of power acting for one hour.

Lamp life. The average life span for a specific type of lamp. Half of lamps will perform longer than the average; the others will fail before the average.

LED. Light emitting diode. A semiconductor device that emits visible light when an electric current passes through it.

LED, narrow-spectrum(band) amber. A light emitting diode (LED) with a peak wavelength between 585 and 595 nanometers and a full width at 50 percent power no greater than 15 nanometers.

Light pollution. Any adverse effect of artificial light.

Light quality. A measurement of a person's comfort and perception based on the lighting.

Light source. A device (such as a lamp) which produces visible energy as distinguished from devices or bodies which reflect or transmit light such as a luminary.

Light spill. The unwanted spillage of light onto adjacent areas and may affect sensitive receptors particularly residential properties and ecological sites.

Light trespass. The light from an artificial light source that is intruding into an area where it is not wanted or does not belong.

Lighting controls. The devices used for either turning lights on and off or for dimming. Photocells sensors that turn lights on and off in response to natural light levels. Some advanced mode can slowly dim or increase the lighting.

Low-pressure sodium (LPS) lamp. A discharge lamp where the light is produced by radiation from sodium vapor at a relatively low partial pressure (about 0.001 torr). LPS is a "tube source". It is monochromatic light.

Lumen. A unit of luminous flux; the flux emitted within a unit solid angle by a point source with a uniform luminous intensity of one candela.

Lumen depreciation factor. The light loss of a luminaire with time due to the lamp decreasing in efficiency, dirt accumulation, and any other factors that lower the effective output with time.

Luminaire. A complete lighting unit that usually includes the fixture, ballasts, and lamps.

Luminaire efficiency. The ratio of the light emitted by the luminaire compared to the light emitted by the enclosed lamps.

Luminance. At a point and in a given direction, the luminous intensity in the given direction produced by an element of the surface surrounding the point divided by the area of the projection of the element on a plane perpendicular to the given direction. Units: candelas per unit area.

Luminary. A device or fixture containing a light source and means for directing and controlling the distribution of light from the source.

Lux. One lumen per square meter. Unit of illuminance.

Mercury lamp. A high intensity discharge lamp where light is produced by radiation from mercury vapor.

Metal halide lamp. A high intensity discharge lamp where light is produced by radiation from metal halide vapor.

Nadir. A point on the celestial sphere directly below the observer, diametrically opposite the zenith.

Nanometer (nm). 10^{-9} meter. Often used as the unit for wavelength in the EM spectrum.

Nonessential lighting. Lighting that is not required to ensure the security, safety and the general welfare of the public and the premises.

Occupancy sensors, passive infrared. A lighting control system that uses infrared beams to sense motion. When beams of infrared light are interrupted by movement, the sensor turns on the lighting system. If no movement is sensed after a predetermined period, the system turns the lights off.

Occupancy sensors, ultrasonic. A lighting control system using high-frequency sound waves pulsed through a space to detect movement by depth perception. When the frequency of the sound waves change, the sensor turns on the lighting system. After a predetermined time with no movement, the system turns the lights off.

Opaque. Material must not transmit light from an internal illumination source.

Optic. The components of a luminaire such as reflectors, refractors, protectors which make up the light emitting section.

Outdoor light output, total. The maximum total amount of light, measured in lumens, from all outdoor light fixtures. Includes all lights and luminous tubing used outdoors or in areas open to the outdoors, and lights used for external illumination of signs, but does not include lights used inside of internally illuminated signs or luminous tubing used in neon signs. For luminous tubes used outside of signage, output is calculated per linear foot of tubing rather than per lamp. For lamp types that vary in their output as they age (such as high pressure sodium, metal halide and fluorescent), the initial output, as defined by the lamp manufacturer, is the value to be considered.

Partially shielded. Shielding so that the lower edge of the shield is at or below the centerline of the light source or lamp so as to minimize light transmission above the horizontal plane, or at least 90 percent of the emitted light projects below the horizontal plane as evidenced by the manufacturer's photometric data.

Photocell. An electronic device that changes the light output of a luminaire dynamically in response to the ambient light level around the luminaire.

Photometry or Photometric. The quantitative measurement of light level and distribution.

Quality of light. A subjective ratio of the pluses to the minuses of any lighting installation.

Reflector. An optic that achieves control of light by means of reflection (using mirrors).

Refractor. An optic that achieves control of light by means of refraction (using lenses).

Semi-cutoff fixture. An IES definition; "Intensity at or above 90° (horizontal) no more than 5% of lamp lumens and no more than 20% at or above 80°."

Shielding. An opaque, physical structure intended to restrict the transmission of light.

Skyglow. Diffuse, scattered sky light attributable to scattered light from sources on the ground.

Source intensity. This applies to each source in the potentially obtrusive direction, outside of the area being lit.

Spill light. Light emitted by the lighting installation that falls outside the boundaries of the property on which the installation is sited.

Spotlight. A fixture designed to light only a small, well-defined area.

Stray light. The emission of light that falls away from the area where it is needed or wanted. Light trespass.

Task lighting. Task lighting is used to provide direct light for specific activities without illuminating the entire area.

Ultraviolet light. Electromagnetic radiation with wavelengths from 400 nm to 100 nm, shorter than that of visible light but longer than x-rays.

Uniformity ratio. A ratio of the smoothness of the lighting pattern or the degree of intensity of light or areas to be lighted. Uniformity is the ratio between the lowest and the mean illuminance level in the area to be evaluated:

$$(u = \frac{E_{avg}}{E_{min}})$$

The lower the ratio the more uniform the lighting design.

Value measurement, maximum. The measurement of light measured horizontal to the ground and three feet from the ground and directly beneath the light source.

Value measurement, minimum. The measurement of light measured horizontal to the ground and three feet from the ground and midway between light sources. Minimum values are also the measurements taken for inside structure measurements or in areas of generally uniform coverage such as canopies, ballfields, tennis courts, etc.

Veiling luminance. A luminance produced by bright sources in the field-of-view superimposed on the image in the eye reducing contrast and hence visibility.

Visibility. Being perceived by the eye. Seeing effectively. The goal of night lighting.

Wallpack. A luminaire, typically affixed to the side of a structure, used for area lighting.

Watt. The unit used to measure the electrical power consumption of a lamp.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-207. Purpose.

This division is intended to establish procedures and standards that which will minimize light pollution glare, light trespass, and conserve energy and maintain the quality of the town's physical and aesthetic character while promoting the best practices as established by the Illuminating Engineering Society of North America (IESNA) and the International Dark Sky Association (IDA). The use of outdoor lighting is often necessary for adequate nighttime safety and utility, but common lighting practices can also interfere with other legitimate public concerns. Principles among these are:

- (a) Degradation of the nighttime visual environment by production of unsightly and dangerous glare; and
- (b) Lighting practices that interfere with the health and safety of Westlake's citizens and visitors; and
- (c) Unnecessary waste of energy and resources in the production of too much light or wasted light; and
- (d) Interference in the use or enjoyment of property that is not intended to be illuminated at night by light trespass, and the loss of the scenic view of the night sky due to increased urban sky-glow; and
- (e) The impact of inappropriately designed outdoor lighting that disrupts nocturnal animal behavior, particularly migrating birds and other species.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-208. Applicability.

All outdoor electrically powered illuminating devices shall be installed in conformance with the provisions of this division, the building code and the electrical code of the town as applicable and under appropriate permit and inspection. Except as approved otherwise by the town council, these performance standards shall apply to all zoning districts in the town. This division shall apply to all outdoor lighting including, but not limited to, search, spot or floodlights for:

- (a) Buildings and structures;
- (b) Recreational use lighting;
- (c) Parking lot lighting;
- (d) Landscape lighting;
- (e) Street and/or right-of-way lighting;
- (f) Other outdoor lighting.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-209. Outdoor lighting plan.

- (a) *Plan submittal.* An outdoor lighting plan must be submitted separately from any required site plan or landscape plan on all public or private properties, including rights-of-way, public easements, franchises and utility easements. The outdoor lighting plan shall be submitted prior to issuing a building permit. For nonresidential development the outdoor lighting plan must be approved by the town council. Except where required elsewhere, for residential developments, an outdoor lighting plan may be approved administratively by the town manager or their designee(s).

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- (b) *Applications.* Plans shall include the following:
- (1) A site plan of the proposed fixture locations;
 - (2) The luminous area for each proposed light source with photometrics in foot-candle measurement;
 - (3) The average lighting level of the development;
 - (4) The lamp type and height of the light fixture or of the light source above grade;
 - (5) The type of illumination;
 - (6) The cut-off angles of each fixtures;
 - (7) The number of lumens and wattage of each fixture;
 - (8) Color correlated temperature of each fixture measured in Kelvins as shown in Figure 1;
 - (9) A plan to manage glow and glare on the outside of the structure by lighting produced by interior lights. The plan shall include descriptions of window shading, window tinting, structural screening, and operational arrangement of interior lights.
 - (10) Such other information that the town manager or their designee(s) may determine is necessary to ensure compliance with this division.
- (c) *Plan approval.* If the town manager or their designee(s) determines that any proposed lighting does not comply with this division, the permit shall not be issued nor the plan approved. Appeals may be made to the town council by the following the provisions of section 102-217.
- (d) *Lamp or fixture substitution.* Should any outdoor light fixture or the type of light source therein be changed after the permit has been issued, a change request must be submitted to the town manager or their designee(s) for approval, together with adequate information to assure compliance with this division, which must be received prior to substitution.
- (e) *Certification of installation.* On projects where an engineer or architect is required, the developer shall verify in writing to the town that all outdoor lighting was installed in accordance with the approved plans before the certificate of occupancy is issued. Until this certification is submitted, approval for use of a certificate of occupancy shall not be issued for the project.
- (f) *Record drawings.* In addition to the certificate of installation, a record drawing of the outdoor lighting plan, as-built, shall be provided upon completion of a development or project where any outdoor lighting was used by the architect or engineer of record.

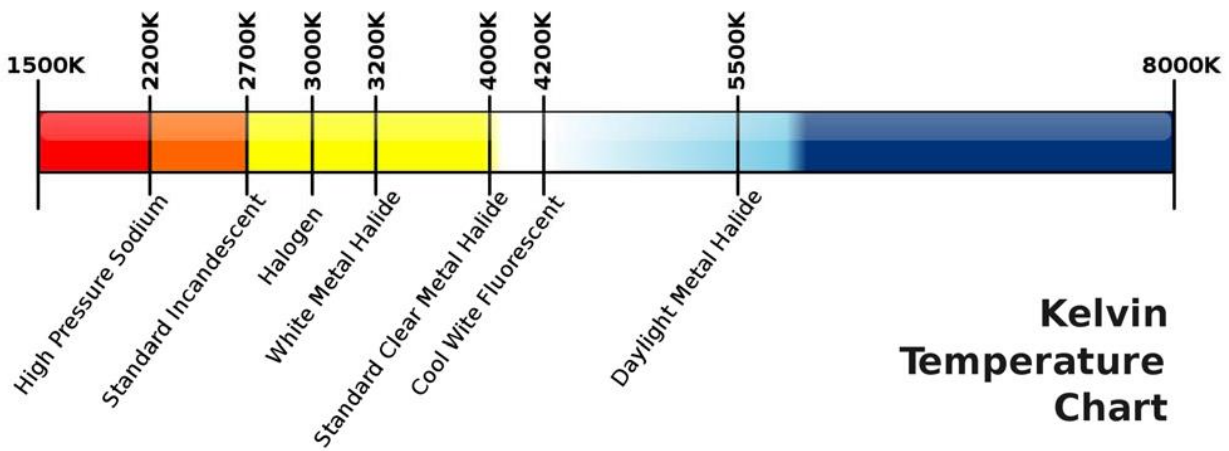
(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-210. General regulations.

- (a) *Preferred source.* Due to their high energy, long life, and spectral characteristics, low-pressure sodium (LPS) lamps and narrow-band amber LEDs (NBALED) are the preferred illumination source throughout the town. Their use is to be encouraged, when not required, for outdoor illumination whenever their use would not be detrimental to the use of the property. In all applications where LPS lighting is required or preferred, an acceptable alternative is narrow-band amber LEDs.
- (b) *Height of fixtures.* Lighting fixtures shall be a maximum of 16 feet in height for street lighting, right-of-ways, parking areas, and nonresidential zoning districts. Lighting fixtures shall be a maximum of eight feet in height within non-vehicular pedestrian areas. Lighting fixtures within residential districts shall be no more than 12 feet in height and no light fixtures located within 50 feet of any residential district shall exceed 12 feet in height. Lighting fixtures affixed to signalized intersection shall be no more than 20 feet in height.

- (c) *Light emitting diodes (LEDs)*. All LED lighting shall be dimmable and comport to all provisions of this division, unless specified otherwise. The following are preferred options for LED types in use with outdoor lighting:
- (1) Narrow-band amber LED (NBALED);
 - (2) Phosphor-converted amber (PCALED);
 - (3) Filter warm-white LED (FLED)
- (d) *Lighting temperature*. All lighting must be less than 3,000 Kelvins (K) per the correlated color temperature in Figure 1.

FIGURE 1. KELVIN TEMPERATURE CHART



- (e) *Lighting control requirements*.
- (1) *Automatic switching requirements*. Controls shall be provided that automatically extinguish all outdoor lighting when sufficient daylight is available using a control device or system such as a photoelectric switch, astronomic time switch or equivalent functions from a programmable lighting controller, building automation system or lighting energy management system, all with battery or similar backup power or device.
 - (2) *Motion sensing*. Motion sensing light fixtures shall be fully shielded and properly adjusted, according to the manufacturer's instruction, to turn off when detected motion ceases.
 - (3) *Dimmable lighting*. Where possible, all outdoor lighting shall contain a dimmable option that comports with the standards of this division.
- (f) *Lamp and shielding*. All light fixtures are required to be fully shielded and shall be installed in such a manner that the shielding complies with the definition of fully shielded light fixtures for all uses, including single-family, except as provided in Table 1.

TABLE 1. LAMPING AND SHIELDING

Lamp Type	Shielding
Low Pressure Sodium (LPS)	Fully shielded, with 80° cut-off
High Pressure Sodium (HPS)	Fully shielded, with 80° cut-off
Light Emitting Diode (LED)	Fully shielded, with 80° cut-off

Metal Halide	Fully shielded, with 80° cut-off
Halogen	Prohibited
Mercury Vapor	Prohibited
Fluorescent	Fully shielded, with 80° cut-off
Incandescent	Fully shielded, with 80° cut-off
Any light source 625 lumens and under	Unshielded permitted
Low intensity Neon, Krypton or Argon discharge tubes	Unshielded permitted

FIGURE 2. ACCEPTABLE/UNACCEPTABLE LIGHTING FIXTURES

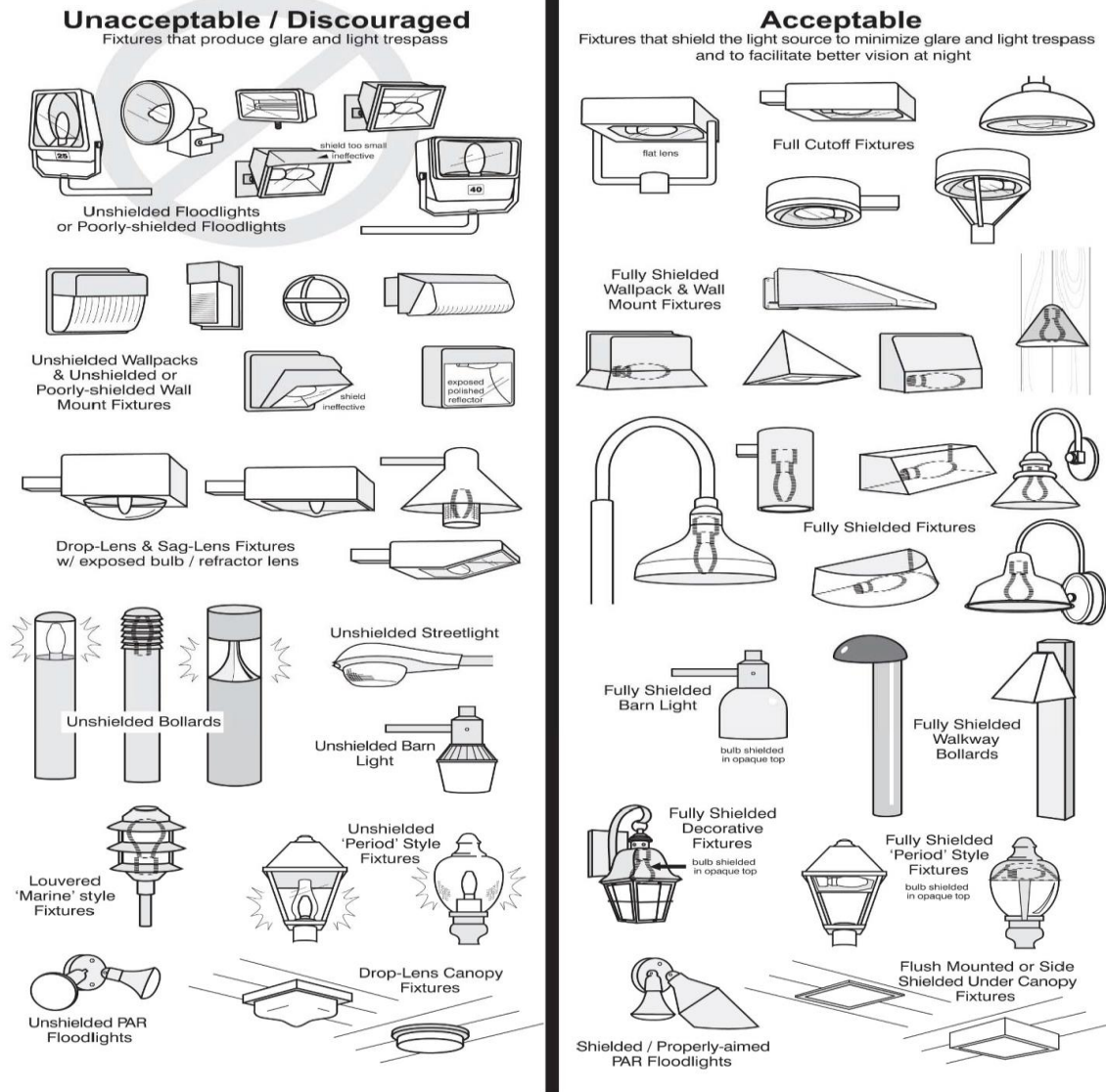


FIGURE 3. SHIELDING CONFIGURATION

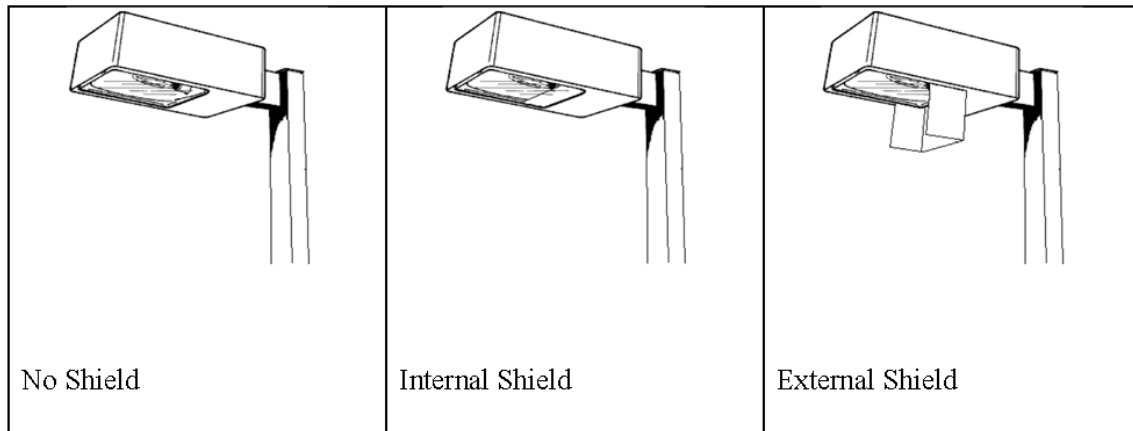
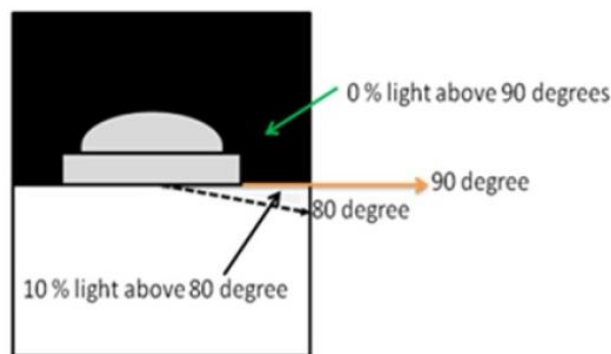


FIGURE 4. FIXTURE CUTOFF ANGLES

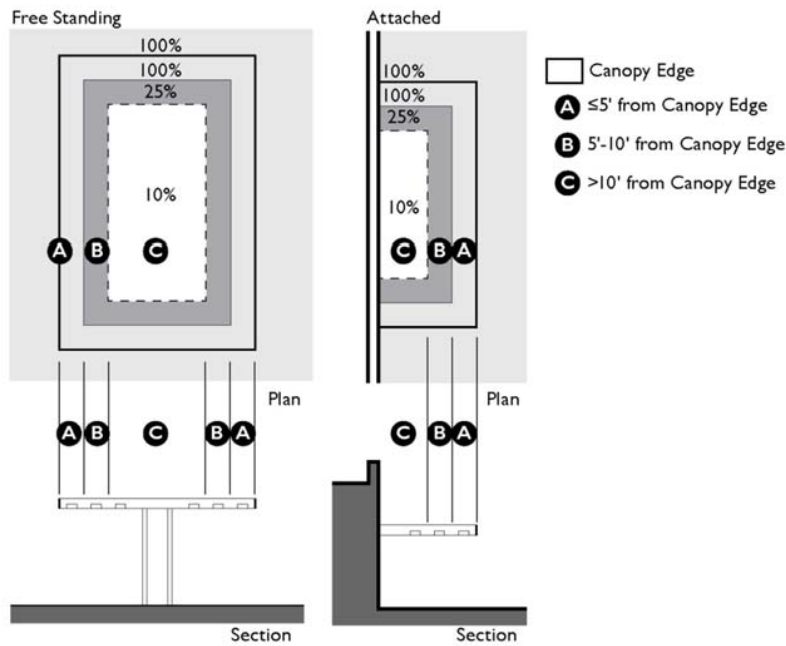


Full cutoff lights

- (g) *Total outdoor light output.* Light emitted from outdoor lighting is to be included in the total outdoor light output. Total outdoor light output shall not exceed 100,000 lumens per net acre for all nonresidential uses. Residential uses are evaluated on a per lot basis. Total outdoor light output shall be calculated as follows:
- (1) Light fixtures installed as described below shall be included in the total outdoor light output by adding 100 percent of the initial lumen outputs of the lamps used:
 - a. All unshielded or partially shielded fixtures, regardless of location;
 - b. Light fixtures installed on poles (such as parking lot light fixtures);
 - c. Light fixtures installed on the side of buildings or other structures but not located as described in paragraphs (2) or (3) below; and
 - d. Light fixtures installed within open parking garages, or under canopies, building overhangs, or roof eaves that are not fully shielded or are fully shielded but not located as described in paragraphs (2) or (3) below.
 - (2) Fully shielded light fixtures installed as described below shall be included in the total outdoor light output by adding only 25 percent of the initial lumen outputs of the lamps used:

- a. Fully shielded light fixtures located within open parking garages, or located under canopies, building overhangs, or roof eaves, where all parts of the light fixture are located at least five feet but less than ten feet from the nearest outdoor opening, canopy, or overhang edge.
- (3) Fully shielded light fixtures installed as described below shall be included in the total outdoor light output by adding only ten percent of the initial lumen outputs of the lamps used:
 - a. Fully shielded light fixtures located within open parking garages, or located under canopies, building overhangs, or roof eaves, where all parts of the light fixture are located ten feet or more from the nearest outdoor opening, canopy, or overhang edge.

FIGURE 5. FREE STANDING AND ATTACHED CANOPY SECTION



- (4) The total outdoor light output shall not exceed the limits in Table 2 averaged over the entire development. All site lighting shall not exceed the intensities and uniformity ratios in Table 2 below, unless otherwise specified in this division.

TABLE 2. AVERAGE LIGHTING LEVELS

Type of Lighting/Land Use	Lighting Levels (footcandles)		
	Minimum	Average	Maximum
Architectural lighting	0.0fc	1.0fc	3.0fc
Canopy area lighting	0.5fc	2.0fc	5.0fc
Entrances and exits	0.5fc	1.5fc	5.0fc
Loading and unloading areas	1.0fc	2.0fc	5.0fc
Multifamily residential	0.5fc	1.5fc	5.0fc
Nonresidential	0.5fc	1.5fc	10.0fc
Parking lots/vehicle areas/streets	0.25fc	1.0fc	5.0fc
Public facilities (recreational areas)	2.5fc	5.0fc	10.0fc

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Residential	0.0fc	1.0fc	5.0fc
Security lighting	0.20fc	1.0fc	5.0fc
Walkways, landscape or decorative lighting	0.0fc	1.0fc	3.0fc

- (h) *Time limits for outdoor lighting.* All outdoor lighting shall be turned off at the times listed below. Decorative holiday lights are exempt in accordance with the regulations outlined in this division.
- (1) *Nonresidential.* All nonessential lighting shall be turned off no later than 30 minutes after the business closes or after 11:00 p.m., whichever is later, and remain off for the remainder of the night or until the business reopens, leaving only necessary lighting for site security.
 - (2) *Residential.* All nonessential lights exceeding 625 lumens shall be turned off after 11:00 p.m., leaving only necessary lighting for site security.
 - (3) *Recreational facilities.* All events shall be scheduled so as to complete all activity before or as near to 10:30 p.m. as practical, but under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.
- (i) *Sign illumination.* Standards for external and internal sign illumination are subject to the provisions in Chapter 70—Signs. Light used for illumination of signs is included toward the total outdoor light output standards of this division.
- (Ord. No. 879, § 2, 2-25-2019)

Sec. 102-211. Illumination.

- (a) *Illumination.* Unless otherwise provided in this division, illumination, where required by this division, shall have intensities and uniformity ratios in accordance with the current recommended practices of the Illuminating Engineering Society of North America (IESNA) as from time to time amended and the International Dark-Sky Association (IDA).
- (b) *Measurement.* Illumination levels of outdoor lighting shall be measured by a qualified professional according to generally accepted Illuminating Engineering Society of North America methods.
 - (1) *Meter required.* Lighting levels of outdoor lighting shall be measured in foot-candles with a direct reading portable light meter with a color and cosine corrected sensor with multiple scales. The meter shall read within an accuracy of plus or minus five percent.
 - (2) *Horizontal method of measurement.* The meter sensor shall be mounted not more than six inches above ground level in a horizontal position. Readings shall be taken only after the cell has been exposed to provide a constant reading.
- (c) *Computation of illumination.* Illumination at a point may be computed in lieu of measurement. Computation methods shall consist of a generally accepted Illuminating Engineering Society of North America method, using certified photometric data furnished by the fixture manufacturer, lamp manufacturer, photometric laboratory, or other reliable authority satisfactory to the town. Computations shall be based on new, properly seasoned lamps, diffusers and other appurtenances in place, and with proper regard taken for mounting height, relative elevation, natural and manmade objects.
- (d) *Light trespass standard.* No use or operation in any district shall be located or conducted so as to produce glare, or either direct or indirect illumination across the bounding property line from a source of illumination into a residentially zoned property, nor shall any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property. For the purposes of this section, a nuisance shall

be defined as more than one-tenth of one footcandles of light measured at the residential property line and twenty-five hundredths of one footcandles at any adjoining nonresidential property line:

TABLE 3. LIGHTING AT PROPERTY LINES

Zoning of Property	Horizontal Foot-candles (fc)
Residential districts	0.10fc
Nonresidential districts	0.25fc

- (e) *Lumens*. Brightness of a light fixture shall be measured in lumens. Where applicants may need to measure equivalency of lumens and watts, Table 4 below shall be used. Where a ratio is not listed in the table, the best practices as prescribed by the IESNA shall apply:

TABLE 4. LUMEN-WATT EQUIVALENTS

Light Output (Lumens)	Power Consumption (Watts)		
	Standard Incandescent	Compact Fluorescent	LED
200 L	25 W	6 W	4 W
450 L	40 W	9 W	8 W
800 L	60 W	14 W	13 W
1,100 L	75 W	19 W	17 W
1,600 L	100 W	23 W	20 W
2,000 L	125 W	33 W	22 W
2,400—2,600 L	150 W	43 W	28 W

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-212. Special uses.

(a) *Security lighting*.

- (1) Unless otherwise provided in this division, all building lighting for security will be fully shielded type, not allowing any upward distribution of light. Wallpack type fixtures are acceptable only if they are fully shielded with 80-degree cut-off and shall not project above the fascia or roof line of the building.
- (2) Security fixtures shall not face residential uses.
- (3) Security fixtures shall not be substituted for parking area or walkway lighting and shall be restricted to loading, storage, service and similar locations.

(b) *Canopy area lighting*.

- (1) *Shielding*. All development that incorporates a canopy type area including, but not limited to, service stations, automated teller machines, awnings, arcades, porte-cochere or similar installations shall use a recessed lens cover flush with the bottom surface of the canopy that provides a cutoff or shielded light distribution. Such shielding must be provided by the fixture itself and shielding by surrounding structures such as canopy edges is not permitted. Lighting along the canopy edge, side or roof is not permitted.

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- (2) *Total under-canopy output.* The total light output used under service station canopies, defined as the sum of all under-canopy initial lamp outputs in lumens, shall not exceed 40 lumens per square foot of canopy and comply with the average lighting levels of Table 2.

$$\frac{\sum \text{Lumens under Canopy}}{\text{Square Feet of Canopy}} < 40 \text{ lumens per square foot}$$

- (3) All lighting mounted under the canopy, including but not limited to light fixtures mounted on or recessed into the lower surface of the canopy and any lighting within signage (but not including any lamps mounted within the pumps and used to illuminate information indicating the total cost of such items as fuel pumped and price per gallon), shall be included in the total outdoor light output for the site and is subject to the standards of this division.
- (c) *Entrances and exits.* All entrances and exits to buildings used for nonresidential purposes and open to the general public, along with all entrances and exits in multifamily residential buildings, shall be lighted to ensure the safety of persons and the security of the building. All lighting shall conform to average lighting levels of Table 2.
- (d) *Parking lots, garages and loading area lighting.*
- (1) All lighting facilities shall be arranged as to reflect the illumination away from any adjacent property. Such lighting facilities shall provide illumination within parking areas and shall distribute not more than one-fifth of a foot-candle of light upon any adjacent residential property.
 - (2) Parking lots and vehicle movement areas shall not exceed a maximum illumination value of five foot-candles or a minimum illumination value of one-fourth foot-candle. Lamps in decorative lantern type fixtures shall not exceed a maximum of 1,600 lumens. Total pole and fixture height shall not exceed a maximum of 16 feet, measured from grade at the base.
 - (3) All lighting facilities shall be placed, masked or otherwise arranged such that illumination or glare shall not intrude on residential property or create a hazard to motorists on any street, alley or other public or private right-of-way.
 - (4) All light fixtures used on open parking garages, including those mounted to the ceilings over the parking decks, shall be fully shielded.
 - (5) The lumen output of lamps mounted on or within open parking garages shall be included toward the total outdoor light output standards of this division.
- (e) *Outdoor recreational facilities.* Any light source permitted by this division may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, driving ranges, outdoor arenas and amphitheatres, show areas, or other field recreation facilities and are subject to the following conditions:
- (1) *Illumination.* Any illumination level exceeding a maximum of ten foot-candles must receive prior approval by the council.
 - (2) *Shielding.* All fixtures used for event lighting shall be fully shielded, or be designed or provided with sharp cut-off capability, so as to minimize up light, spill-light, and glare.
 - (3) *Time limits.* No illuminated sports facility shall be illuminated after the time limits outlined in this division, except to conclude a scheduled recreational or sporting event in progress prior to the time limitation.
- (f) *Street lighting.*
- (1) Standards for street lighting installed on public rights-of-way must conform to the town engineering standards and the town's comprehensive plan and the standards of this this division.

-
- (2) Street lighting installed on private rights-of-way shall be included within the total outdoor light output for the development.
 - (3) Streetlights for both public and private right-of-ways are not exempt from the provisions of this division.
 - (g) *Internally illuminated architectural elements.* Any architectural element including walls or portions of buildings that are internally illuminated and that is not a sign or fenestration (e.g. windows or doors) shall have 100 percent of the initial lamp output of all lamps used to provide such illumination counted toward unshielded lighting for the purposes of calculating total outdoor light output for the site and is subject to the standards of this division.
 - (h) *Architectural, aesthetic and landscape lighting.* Architectural lighting used to illuminate the wall of a building or landscape lighting used to illuminate trees or other landscape elements is permitted. All building lighting for aesthetics shall be fully shielded type, not allowing any upward distribution of light and must be externally lit from the top and shine downward, except as provided below:
 - (1) Architectural and landscape lighting that is directed downward onto a wall, tree or other landscape feature shall be included in the total outdoor light output standards provided in Table 2, based on whether a fully shielded or partially shielded light fixture is used; and
 - (2) Architectural and landscape lighting that is directed upward onto a wall, tree or other landscape feature shall be included in the total outdoor light output standards provided in Table 2. Fixtures shall be located, aimed or shielded to minimize light spill into the night sky.
 - (i) *Emergency lighting.* Emergency lighting that is only turned on in the event of a power failure or when an alarm is activated is permitted in all zoning districts and is excluded from the total lumen calculations for the site.
 - (j) *Neon building lighting.* Neon building lighting is included in the total outdoor light output calculations for the site. Any unshielded neon lighting is limited by the unshielded lighting limits of this division.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-213. Prohibited lighting.

- (a) *Laser source light.* The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is prohibited.
- (b) *Cobra-head fixtures.* Cobra-head-type fixtures having dished or drop lenses are prohibited.
- (c) *Searchlights.* The operation of searchlights for advertising purposes is prohibited.
- (d) *Floodlights.* The use of floodlights is prohibited.
- (e) *Up lighting.* Up lighting of display, building and aesthetic lighting is prohibited, except where provided otherwise in this division.
- (f) *Halogen lights.* Halogen lights are prohibited.
- (g) *Mercury vapor lights.* Mercury vapor lights are prohibited.
- (h) *Flashing lights.* Any lighting device located on the exterior of a building or on the inside of a window which is visible beyond the boundaries of the lot or parcel with intermittent fading, flashing, blinking, rotating or strobe light illumination.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-214. Exemptions.

The following are exempt from the provisions of this division:

- (1) *Emergency lighting by emergency services.* All temporary emergency lighting needed by the department of public safety or other emergency services, as well as all vehicular luminaries.
- (2) *Holiday decorations.* Seasonal decorative lighting is exempt from the provisions of this division provided that individual lamps are less than ten watts incandescent or equivalent lumens.
- (3) *Solar powered lighting.* Solar powered lights less than five watts incandescent or equivalent lumens per fixture used in residential landscaping application and to illuminate walkways are exempt from applicable lamp type and shielding standards, but must conform the average lighting levels of Table 2.
- (4) *Public art.* Lighting for public monuments and statuary as recommended by the public art competition advisory committee and approved by the town council are exempt from the standards of this division.
- (5) *Construction.* All outdoor lighting used for construction or major renovation structures and facilities are exempt from the provisions of this division unless specified elsewhere in this division or Code.
- (6) *Swimming pool and decorative water fountain lighting.* Underwater lighting in swimming pools and other water features are exempt from the lamp type and shielding standards.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-215. Temporary exemptions.

- (a) Upon approval by the town manager or their designee(s), temporary exemptions from the requirements of this division shall be for a period not to exceed ten days.
- (b) Any person may submit a written request, on a form prepared by the town for a temporary exemption request. The request shall fulfill the same requirements as defined in in the outdoor lighting plan standards of this division.
- (c) Requests for renewal or exemptions shall be processed in the same way as the original request. Each renewal shall be valid for not more than ten days or a time period designated by the town manager or their designee.
- (d) Approval for temporary exemptions will be based on the effect of location and use of outdoor lighting fixtures.
- (e) Roadway and/or street lighting, whether public or private, is not eligible for exemption.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-216. Nonconforming.

- (a) All luminaries lawfully in place prior to the date of the ordinance from which this division is derived shall be considered as having legal nonconforming status. However, any luminary that replaces a legal nonconforming luminary, or any legal nonconforming luminary that is moved, must meet the standards of this division, subject to the following conditions.
 - (1) If a person makes any change or addition to an existing lighting system, the change or addition shall conform to the provisions of this division;

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- (2) If a person makes any change or addition to an existing building which results in an increase in the size of the building by more than 20 percent, the person shall ensure that all existing outdoor lighting shall conform to the provisions of this division.

(Ord. No. 879, § 2, 2-25-2019)

Sec. 102-217. Appeals to town council.

An applicant shall have the right to appeal a decision of the town manager or their designee(s). All such appeals shall be heard by the town council. The appeal(s) shall be filed with the town manager or their designee(s) within 20 days after the date of decision by the town manager or designee. After the hearing on the appeal for an application, the town council shall grant or deny the appeal.

(Ord. No. 879, § 2, 2-25-2019)

Secs. 102-218—102-240. Reserved.

Municipal Regulation of Outdoor Lighting

by Alan Bojorquez

*Texas City Attorneys Association
Fall Conference in Conjunction with the
Texas Municipal League Annual
Conference and Exhibition*

October 2, 2014



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Alan has the privilege of serving as City Attorney for the municipalities of Dripping Springs, and West Lake Hills – both of which have enacted outdoor lighting regulations.

A. POLICY

1. **Problem Identification.** When drafting regulations, it is wise to begin with Problem Identification. Establish the nature of the *negative* to be prevented, or the *positive* to be encouraged. When it comes to writing outdoor lighting ordinances, it is prudent to spend time documenting the adverse effects of light pollution, and stating the policy objectives sought to be accomplished. Are there examples of bad lighting in the community that citizens are well-aware of or share an aversion to? Or conversely, are there positive examples of the benefits of dark skies that the community wants to preserve? For example, encouraging uniform aesthetics, attracting shoppers and reducing hazards to motorists and pedestrians have all been found to be legitimate reasons for municipalities to enact land use regulations.¹
2. **Expert Statements.** Absent specific factual situations documented locally, it is prudent to draw upon the published opinions of experts in the field. Articles, papers and presentations are worthwhile sources. Not every municipality has the time or resources to retain a consultant, but many of those educational materials are available online, and can be incorporated by reference into the file. Aside from the merits of star gazing, the comfort of dark skies, and the threats to vehicular and pedestrian safety, there is also ample documentation on the negative impact of artificial light at night on the health of humans and other living things.
3. **Comp Plan.** Ideally, the subjective value statements about the benefits of dark skies will be mentioned in the municipality's comprehensive plan.² The first step in the land use regulatory process is often the preparation of a comprehensive plan. Comprehensive planning is a process by which a community assesses what it had, what it has, what it wants, how to achieve what it wants, and finally, how to implement those objectives.

B. AUTHORITY

1. **Type of Municipality.** Once a need for the regulation has been identified, the next step is to locate the municipality's legal ability to regulate.

Home-Rule municipalities have the full power of local self-government.³ Generally a home-rule municipality may exercise any power not prohibited by the Constitution or laws of the State of Texas, which is lawfully conferred by its charter.⁴

General-Law municipalities look not to charters, but to state statutes as sources of regulatory authority.⁵ They may enact a regulation that is for the good government, peace or order of the municipality, and is necessary or proper for carrying out a power

¹ *Lamar Corp. v. City of Longview*, 270 S.W.3d 609, 616 (Tex. App.--Texarkana 2008, no pet.), citing *Murmur Corp. v. Bd. of Adjustment of City of Dallas*, 718 S.W.2d 790, 794 (Tex.App.--Dallas 1986, writ ref'd n.r.e.).

² Tex. Loc. Gov't Code §211.004.

³ Tex. Loc. Gov't Code §51.072.

⁴ *Bland v. City of Taylor*, 37 S.W.2d 291, (Tex. Civ. App. - Austin 1931) affirmed 67 S.W.2d 1033, (Tex. 1934).

⁵ Brooks, David, "Municipal Law and Practice," Texas Practice §3.03 (p. 205).

granted to the municipality or to an officer of the municipality (provided the regulation is not contrary to the constitution or state law).⁶

Type A general-law municipalities may adopt ordinances, acts, laws, or regulations, not inconsistent with state law, that are necessary for the government, interest, welfare, or good order of the municipality as a body politic.⁷

Type B general-law municipalities may adopt ordinances that are not inconsistent with the laws and Constitution of Texas, as it deems proper for the government of the municipality.⁸ Type B municipalities can prescribe the fine for the violation of an ordinance.⁹ Type B municipalities can take any other action necessary to carry out a provision of the Texas Local Government Code applicable to the municipality.¹⁰

Type C general-law municipalities of 201 to 500 inhabitants have all authority and duties as conferred upon the city council of a Type B municipality unless the authority or duty conflicts with provisions of the Texas Local Government Code relating specifically to Type C municipalities.¹¹ The city council of Type C municipalities of 501 to 4,999 inhabitants have all authority and duties as conferred upon the city council of a Type A municipality unless the authority or duty conflicts with provisions of the Texas Local Government Code relating specifically to Type C municipalities.¹²

2. **Zoning.** Municipalities have the power to enact zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.¹³ Pursuant to its zoning authority, a municipality may:

- (a) Regulate and restrict the height, number of stories, and size of buildings and other structures.
- (b) Regulate the percentage of a lot that may be occupied.
- (c) Regulate the size of the yards, courts, and other open spaces.
- (d) Regulate the density of population.
- (e) Regulate the location and **use** of buildings, structures, and land for trade, industry, residence, or other purposes.

⁶ Tex. Loc. Gov't Code §51.001.

⁷ Tex. Loc. Gov't Code §51.012.

⁸ Tex. Loc. Gov't Code §51.032(a).

⁹ Tex. Loc. Gov't Code §54.002.

¹⁰ Tex. Loc. Gov't Code §51.032(b).

¹¹ Tex. Loc. Gov't Code §51.051(b).

¹² Tex. Loc. Gov't Code §51.051(a).

¹³ Tex. Loc. Gov't Code §211.001.

- (f) Regulate and restrict the construction, alteration, reconstruction, or razing of buildings and other structures in designated places and areas of historic and cultural importance.¹⁴

The regulation of outdoor lighting is a reasonable application of this authority. It is also reasonable for a municipality to address outdoor lighting in the course of creating a Planned Development District (aka, “Planned Unit Development”), and as an added term imposed as a condition of rezoning (or a zoning overlay). Restricting outdoor lighting could also be a condition placed upon the granting of a variance (depending on the nature of the variance sought).

3. **Building Codes.** Municipalities have the authority to adopt, *and amend* several standard (national or international) building codes (electrical codes, rehabilitation codes, plumbing codes, fire codes, property maintenance codes and energy conservation codes).¹⁵ The regulations of lighting related to buildings and structures is a reasonable extension of this authority.
4. **Signs.** Municipalities have the authority to provide for the relocation, reconstruction, or removal of signs in the city limits and the extraterritorial jurisdiction (ETJ), including the establishment of procedures for doing so.¹⁶ The regulations of lighting related to signage falls under this authority.
5. **Historic Preservation.** A statutory attribute of zoning in Texas is the protection and preservation of places and areas of historical, cultural, or architectural importance and significance.¹⁷ The United States Supreme Court has recognized that historic preservation is a legitimate government purpose, and that restrictions on alteration and demolition are an appropriate way to carry out historic preservation goals.¹⁸ Restrictions on outdoor lighting fits within the larger regulatory effort to protect historic structures and place.
6. **Development Agreements.** Municipalities have broad authority to enter into written contracts with the owners of land in the ETJ to address a wide variety of development-related issues, including use and construction.¹⁹ Although not expressly enumerated, the parties can mutually agree to how outdoor lighting will be installed and operated.
7. **Nuisance.** Municipalities have the authority to define and abate nuisances.²⁰ There is ample documentation available to support the declaration that certain types of light trespass and / or light pollution constitute public nuisances, which can be regulated pursuant to this grant of authority.

¹⁴ Tex. Loc. Gov’t Code Ch. 212 [emphasis added].

¹⁵ Tex. Loc. Gov’t Code Ch. 214.

¹⁶ Tex. Loc. Gov’t Code Ch. 216.

¹⁷ Tex. Loc. Gov’t Code §211.001.

¹⁸ *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978).

¹⁹ Tex. Loc. Gov’t Code 212.171, *et. seq.*

²⁰ Tex. Loc. Gov’t Code Ch. 217.

C. COMMON LAW NUISANCE

Absent municipal regulations, property owners burdened by a neighbor's unrestricted lighting choices must turn to the courts and rely upon common law court decisions. Here is a sampling of cases:

- Water towers near plaintiffs home had lights that shined into plaintiff's bedroom, disturbing their sleep. The Court concluded glaring light to be a nuisance.²¹
- A cotton gin re-located near Plaintiff's home. The gin had bright floodlights that would shine onto plaintiff's premises. The Court concluded that erection and operation of the gin at the proposed site adjoining plaintiff's home was unreasonable and constituted a nuisance as a matter of law.²²
- Landowners brought a light and noise nuisance claim against owner of 126-foot cellular telephone tower. The tower had two floodlights that were on all night and that illuminated the Landowner's backyard so that one could read and write on their patio at night. The Court found the light to be a nuisance and awarded monetary damages for past nuisance damages, future damages expressly excluded.²³
- Landowners brought nuisance action against port authority under Texas Tort Claims Act, alleging that port authority's operation of marine container terminal caused excessive noise, light, and chemical pollution that interfered with landowners' use and enjoyment of their homes. The Court found the injuries to property were in common with the community, and resulted from the operation of a public work. In that case a governmental entity has immunity and the landowners were not compensated. In this case, the Court concluded it makes no difference whether the conditions alleged are characterized as a nuisance in fact or nuisance per se. In either circumstance, the Port Authority retains its immunity for nuisance damages.²⁴
- Plaintiff's claimed defendant's use of household lights amounted to light trespass. Plaintiff's claimed defendants' driveway lights were illuminated from early afternoon hours until the next morning and are *intentionally and maliciously* focused upon Plaintiffs' bedroom windows. The trial court's judgment found that the claim was "not warranted by existing law and not supported by any reasonable request for the extension, modification, or reversal of existing law." The appellate court affirmed.²⁵
- Neighbors to a high school object to the construction of a new stadium because the lights will cause a trespass. The Court concludes there is no substantial evidence in the record showing the Project's lighting elements *may have a significant effect on the environment*. Further, the Court stated, "the question is whether a project will affect the environment of

²¹ *City of River Oaks v. Moore*, 272 S.W.2d 389, 390 (Tex.Civ.App.—Fort Worth 1954, writ ref'd n.r.e.).

²² *Lamesa Co-op. Gin v. Peltier*, 342 S.W.2d 613, 616 (Tex. Civ. App. 1961).

²³ *GTE Mobilnet of S. Texas Ltd. P'ship v. Pascouet*, 61 S.W.3d 599, 606 (Tex. App. 2001).

²⁴ *Port of Houston Auth. v. Aaron*, 415 S.W.3d 355 (Tex. App. 2013).

²⁵ *Brozynski v. Kerney*, 10-05-00300-CV, 2006 WL 2160841 (Tex. App. Aug. 2, 2006). UNPUBLISHED

persons in general, not whether a project will affect particular persons.” The Court determined no significant environmental impact from the following findings: lighting's limited hours of operation, limited number of evening events, landscaping features, and limited number of residences affected by light trespass.²⁶

- “In Residence Districts the source of any lighting located out-of-doors on any lot shall not be visible from any other lot.” Court concluded this language in the zoning ordinance was not unconstitutionally vague, and supported the city’s denial of the outdoor lights to be installed on a football field in a residential neighborhood.²⁷
- Property owners in Henly, and up to two miles away from the ballpark, complain about the glaring lights from the Field of Dreams. One property owner says, “we avoid going on the porch at night because it’s unbearable.” In addition to light nuisance, property owners nearby complain of trash, traffic, and trespassers. This article discusses the lawsuit filed in July 2013 by Kenneth and Susan Troppy who live adjacent to the ballpark (See info on lawsuit below). They are seeking \$200,000 in damages for trespassers wandering on their property, property devaluation, and for light and noise nuisances. This article also indicates that Henly residents hosted a town hall meeting to discuss incorporation.²⁸
 - The Field of Dreams is an 18 acre parcel of flat land situated in the unincorporated town of Henly. It consists of 9 Baseball/Softball Fields, Batting Cages, and Concessions constructed and covering property/lot line to property/lot line. It is owned principally by Austin Select Baseball CEO John Martin and COO Sean Kinkaid but has an additional 13-15 private investors.
 - Of those 9 fields, 8 are for youth aged Select players, and 1 is for senior aged Select players with No Adult usage. All fields are lighted. The total number of 40ft. tall lighted poles is 23. They use 170 fixtures of 1,500 watt high density discharge sports lights for a total aggregate of 255,000 watts of unshielded light emitted when all fields are lighted.
 - Because of the size and maximum use of space, this development can host up to 80 teams per week and is marketing itself as an a Select athletic destination in order to host regional, state, and national events. It sits off of a 2 lane straight country road with informal parking and has had as many as 300-400 vehicles, including RV’s, on a busy day, which translates roughly into 700-800 people in foot traffic on the site.

And there are cases involving municipal regulations, and municipal oversight:

²⁶ *Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.*, 215 Cal. App. 4th 1013, 1040, 156 Cal. Rptr. 3d 449, 469-70 (2013), reh'g denied (Apr. 25, 2013).

²⁷ *Stephen Reney Saybrook*. 4 Conn. App. 111, 113, 492 A.2d 533, 534 (1985).

²⁸ *Troppy v. Central Texas Field of Dreams, LP*, Cause No. 13-1645, 428th District Court, Hays County. Case is pending.

- Neighbors, the Abramowitz's, complained to the City that their neighbors, the Marvin's, were violating the exterior lighting provisions of the Zoning Code. The Marvin's lowered the wattages and put on shields. The Abramowitz's still claimed the Marvin's lights reflected off of their garage causing a glare into their home. The Abramowitz's sued claiming the Zoning Board should require them to put on a timer, and that the Board's decision was inconsistent with the purpose of the zoning regulations. In part, the regulations read, "All exterior lights and sign illumination shall be designed, located, installed and directed in such a manner as to: (a) prevent direct or objectionable glare or light trespass, (b) be shielded to the extent possible, (c) employ soft, transitional light levels which are consistent from area to area, (d) minimize contrast between light sources, lit areas, and dark surroundings, and (e) be confined within the target area. The Court found for the City because the Zoning Board did not err in applying the Code."²⁹
- This case addresses grandfathering for lights. The plaintiffs argued that a Country Club had illegal lights according to the Code and that the lights were never permitted by the City. The court finds that a special permit for the Country Club specifically authorized outdoor lighting. Also, the Country Club was not required to obtain approval for its existing lights because such lights were permitted under the regulations in existence at the time they were installed.³⁰

D. PROCEDURES

Municipalities wishing to successfully enact outdoor lighting regulations should spend time at the outset considering the Policy Formation Process. How does the municipality want to approach enacting, amending or expanding its ordinance? Considering the technical aspects, legal intricacies, and possible political controversies, it is wise to lay out a plan for formulation, consideration and adoption.

If relying upon its zoning authority to enact the regulations, state law requires public notices and hearings. Beyond that, there may be home-rule charter requirements that influence the process. Regardless of state law mandates, a municipality should determine upfront how it wants to facilitate public input and public education. Decision-makers (the city council) might benefit from workshops at which they can become more comfortable with the terminology and technical standards. It might be helpful for the mayor to designate a city council subcommittee to help shepherd the outdoor lighting regulations through the process.

E. SCIENCE

In order to knowingly enact reasonable regulations and effective standards, it is important that the city council understand the technology. Watts v Lumens? Lumens v. Luminaires. Hooded v. Shielded? Full Cut-Off Fixtures? Time should be spent understanding what these words

²⁹ *Abramowitz v. Zoning Bd. of Appeals of Town of New Canaan*, FSTCV106006012S, 2011 WL 4908361 (Conn. Super. Ct. Sept. 16, 2011). UNPUBLISHED.

³⁰ *Shaw v. Redding Zoning Bd. of Appeals*, 31 61 40, 1995 WL 139555 (Conn. Super. Ct. Mar. 20, 1995) UNPUBLISHED.

mean, and how they will affect homeowners, business owners, and citizens at-large. It would also be wise to engage the city's engineer, or hire a lighting consultant.

F. SCOPE & APPLICABILITY

A crucial decision for would-be municipal regulators is the scope of the outdoor lighting ordinance. How broadly will it be applied?

1. **Zoning Districts.** It should be determined early on whether the regulations will be applied to just Non-Residential (i.e., Commercial / Retail / Industrial) properties, or will they also apply to Residential, Recreational, Government properties?
2. **Existing v. New Construction.** There are some municipalities that apply the new regulations to existing structures, while others limit the tougher standards only to new construction.
3. **Areas Illuminated.** Once the municipality has identified the types of property and projects the outdoor lighting regulations will apply to, city leaders must choose the areas on a building, structure or parcel that will be addressed by the ordinance. Commonly-addressed areas include the following:
 - (a) Entrances (Doors, Windows).
 - (b) Landscaping (Porches, Playscapes, Trees, Shrubbery).
 - (c) Sports Courts (Tennis, Basketball).
 - (d) Swimming Pools.
 - (e) Driveways / Walkways.
 - (f) Parking Lots.
 - (g) Security Lighting.
 - (h) Signs.
4. **Model Ordinance.** Early in the process of considering enacting (or amending) an outdoor lighting ordinance, city officials should consider the merits of structuring the regulations in accordance with the **Model Lighting Ordinance** (prepared by the International Dark-Sky Association (IDA) and Illuminating Engineering Society of North America (IESNA)).³¹ Other examples include those enacted by the cities of Dripping Springs,³² and West Lake Hills,³³ both of which are available online from Franklin Legal Publishing.³⁴

G. STANDARDS

1. **Common Standards.** While the terminology may be difficult for some to master, outdoor lighting regulations do not have to be complex. The goal should be to establish requirements that can be understood, and that are *enforceable*. Typical aspects of outdoor lighting standards include:

³¹ http://www.darksky.org/assets/documents/MLO/MLO_FINAL_June2011

³² Dripping Springs, Tx, Code of Ordinances, Article 24.06.

³³ West Lake Hills, Tx, Code of Ordinances, Article 24.03.

³⁴ <http://www.franklinlegal.net>

- (a) Lumens.
- (b) Hooding / Shielding.
- (c) Height.
- (d) Timing (Timers, Curfews).

2. **Specificity.** Due Process demands that municipal ordinances (just like federal or state statutes) must have an understandable meaning and establish a legal standard capable of application. Ordinances are subject to the same constitutional requirements and construction canons as statutes.³⁵ To determine whether a statute is unconstitutionally vague, we begin by presuming that the statute is constitutional.³⁶ The party challenging the statute's constitutionality has the burden of showing that the statute fails to meet constitutional requirements.³⁷ A statute or ordinance is unconstitutionally vague if the persons regulated by it are exposed to risk or detriment *without fair warning* or if it invites *arbitrary and discriminatory* enforcement by its lack of guidance for those charged with its enforcement.³⁸ Implicit in this constitutional safeguard is the idea that laws must have an understandable meaning and must set legal standards that are capable of application.³⁹ A law fails to meet the standards of due process if it is so vague and standardless as to *leave a governing body free to decide*, without any legally fixed guidelines, what is prohibited in each particular case.⁴⁰ Due process is violated and a law is invalid if persons of common intelligence are compelled to *guess* at a law's meaning and applicability.⁴¹

A law is not unconstitutionally vague merely because it does not define words or phrases.⁴² Only a reasonable degree of certainty is required,⁴³ and the reasonable-certainty requirement does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding.⁴⁴ Moreover, the mere fact that the parties disagree as to an ordinance's meaning does not mean we must necessarily guess at its meaning.⁴⁵ That being said, it is recommended that municipal outdoor lighting regulations define those terms that are not commonly understood in the general public.

³⁵ *Mills v. Brown*, 316 S.W.2d 720, 723 (Tex. 1958) ("The same rules apply to the construction of municipal ordinances as to the construction of statutes."); cf. *Texas Liquor Control Bd. v. Attic Club, Inc.*, 457 S.W.2d 41, 45 (Tex. 1970) ("A rule or order promulgated by an administrative agency acting within its delegated authority should be considered under the same principles as if it were the act of the Legislature.").

³⁶ *Walker v. Gutierrez*, 111 S.W.3d 56, 66 (Tex. 2003).

³⁷ *Id.*

³⁸ See *Comm'n for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998); *Attic Club*, 457 S.W.2d at 45; *City of Webster v. Signad, Inc.*, 682 S.W.2d 644, 646 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

³⁹ *City of Mesquite v. Aladdin's Castle, Inc.*, 559 S.W.2d 92, 94 (Tex. Civ. App.--Dallas 1977), writ ref'd n.r.e., 570 S.W.2d 377 (Tex. 1978) (per curiam).

⁴⁰ *Id.*

⁴¹ *Attic Club*, 457 S.W.2d at 45; *Pennington v. Singleton*, 606 S.W.2d 682, 689 (Tex. 1980); *Signad*, 682 S.W.2d at 646.

⁴² *Vista Healthcare, Inc. v. Texas Mut. Ins. Co.*, 324 S.W.3d 264, 273 (Tex. App.--Austin 2010, pet. denied).

⁴³ *Id.* (citing *Pennington*, 606 S.W.2d at 689).

⁴⁴ *Signad*, 682 S.W.2d at 646-47 (quoting *Sproles v. Binford*, 286 U.S. 374, 393 (1932)).

⁴⁵ *Mills v. Fletcher*, 229 S.W.3d 765, 770 (Tex. App.--San Antonio 2007, no pet.); see *Vista Healthcare*, 324 S.W.3d at 273. See also *City of Webster v. Signad, Inc.*, 682 S.W.2d at 645-46.

One court concluded that the absence of reasonable guidelines or standards rendered the term "substantial work" unconstitutionally vague as applied regardless of who is making that determination (i.e., a building official, or the Board of Adjustment).⁴⁶ Although courts recognize that myriad factual situations may arise, such that statutes can and should be worded with flexibility, the public must be provided fair notice of what is required or prohibited.⁴⁷

H. PRE-EXISTING

1. **Nonconforming.** A major issue to resolve (from administrative, political and legal perspectives) is how to deal with pre-existing and grandfathered lighting. Municipalities often intend that outdated, inconsistent, light fixtures contrary to the new regulations go away, eventually (one way or the other). A "nonconforming use" is one that lawfully existed on the land prior to the enactment of an ordinance, and continues to exist out of compliance with the ordinance after the effective date.⁴⁸

Some outdoor lighting experts, including the authors of the model ordinance, have concluded that most outdoor lighting will be fully depreciated at the end of 10 years (if not sooner).

Generally, courts have found it is reasonable for municipalities to terminate a use that does not meet the zoning standard (e.g., terminating an apartment building in an area zoned for single-family use).⁴⁹ However, the reasonableness standard only gives the landowner the opportunity to recoup his actual investment in the nonconforming use.⁵⁰ Thus, if a municipality opts not to apply the ordinance prospectively (i.e., it will apply to pre-existing buildings, structures, etc.), municipalities should consider amortization periods.

2. **Amortization.** Municipalities must allow enough time for recoupment of the actual investment of the nonconforming structure. There is no way to get around a case-by-case analysis. It is wise to set a reasonable amortization period, then allow a property owner to appeal that decision within the city. That way, the property owner must prove the actual investment has not yet been recouped. The Fort Worth Court of Appeals upheld such a regulatory structure.⁵¹ Also, the Texas Supreme Court determined in the hallmark amortization case, *City of University Park v. Benners*, that the involuntary termination of a

⁴⁶ *William L. Lindig v. City of Johnson City*, Cause Number 03-11-00660-CV, November 15, 2012 (The ordinance did not clearly specify what amount of building permit fee (if any) applied to a residential remodeling project; nonetheless, the building official assessed a fine and issued Stop Work Orders because (in part) the property owner refused to pay the fee.). See also *Texas Antiquities Comm. v. Dallas Cnty. Cmty. Coll.*, 554 S.W.2d 924, 928 (Tex. 1977) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on ad hoc and subjective basis, with the attendant [sic] dangers of arbitrary and discriminatory applications." (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972))).

⁴⁷ *Vista Healthcare*, 324 S.W.3d at 273.

⁴⁸ *City of Univ. Park v. Benners*, 485 S.W.2d 773 (Tex. 1972).

⁴⁹ *Dyer v. Bd. of Adjustment of City of Dallas*, 05-94-00093-CV, 1995 WL 23637 (Tex. App.--Dallas 1995, writ denied).

⁵⁰ *Id.* at 3.

⁵¹ *Coyel v. City of Kennedale*, 2-04-391-CV, 2006 WL 19604 (Tex. App.—Fort Worth Jan. 5, 2006, pet. denied).

nonconforming use through amortization that allows for recoupment of the investment does not amount to a constitutional taking.⁵²

Additionally, if the City can show that the light trespass is a nuisance and a safety concern, case law exists to suggest that a shorter amortization period would withstand challenge.⁵³

3. **Modifications or Destruction.** It's common in municipal zoning regulations for new regulations to be triggered upon a change in the use or alteration of the premises. The model ordinance suggests new regulations applying:

“Whenever there is a new use of a property (zoning or variance change) or the use of the property is changed...”⁵⁴

4. **Abandonment.** Municipalities have terminated nonconforming uses due to abandonment or discontinued use. Under Texas law, a discontinuance of a prior nonconforming use for fixed time such as six months will not of itself constitute abandonment. Courts have established a two-part test to determine whether the discontinuance of a nonconforming use constitutes abandonment. The test requires:

(a) an intent to abandon; and

(b) some overt act or failure to act which carries the implication of abandonment.⁵⁵

However, a municipality, by ordinance, may have the ability to avoid the impact of this common law precedent by providing that discontinuance of the use of nonconforming light fixtures for a fixed time constitutes abandonment. Some municipalities have legislatively created a rebuttable presumption of the intent to abandon a use if its operation ceases for a specific period of time.

5. **Uniformity of Requirements.** Often referred to as “grandfathering” or “vested rights,” pursuant to Chapter 245, a municipality must consider the approval, disapproval, or conditional approval of an application for a permit *solely on the basis* of regulations *in effect at the time* the *original* application for the *permit* is filed, or a plan for development or plat application is filed.⁵⁶ This statutory *freeze* on regulations might encompass outdoor lighting rules.
6. **Continuation of Land Use.** With regard to pre-existing uses subject to annexations, the state statutes do not support amortization. A municipality *cannot prohibit* the continued use of land after annexation if the use legally existed prior to annexation.⁵⁷ Once the landowner proves the use pre-dated the annexation, a municipality is bound to grandfather the use,

⁵² *City of University Park v. Benners*, 485 S.W.2d 773 (Tex. 1972).

⁵³ See *Lamar Corp. v. City of Longview*, 270 S.W.3d 609, 616 (Tex. App.—Texarkana 2008, no pet.).

⁵⁴ Model Lighting Ordinance, International Dark-Sky Association (IDA) and Illuminating Engineering Society of North America (IESNA) §VII.B (June 14, 2011).

⁵⁵ *Rosenthal v. City of Dallas*, 211 S.W.2d 279, 284 (Tex. Civ. App.—Dallas 1948, writ ref’d n.r.e.).

⁵⁶ Tex. Loc. Gov’t Code §245.002(a).

⁵⁷ Tex. Loc. Gov’t Code §43.002(a).

unless the use meets a public safety / welfare exception. The law is unclear at this point on whether the term “use” in this context would include a tangible specification such as light fixtures (but the author asserts the better argument is *against* such an interpretation).

I. ADMINISTRATION

As with any regulation, it is wise to consider how the rules will be implemented before you adopt the rules. With outdoor lighting ordinances, key questions are:

- (1) Will permits be required for the installation of all new fixtures (luminaires)?
- (2) Must lighting plans be submitted for approval addressing the entire property?
- (3) Will the city engage plan reviewers and inspectors trained in lighting regulations?
- (4) Are the standards imposed by the city measureable?

The enactment of outdoor lighting regulations can elicit opinions from recognized experts, and even lay experts, on issues such as whether light meters accurately measure lumens.

J. ENFORCEMENT

1. **Options Generally.** Municipalities have many options for achieving compliance with outdoor lighting regulations: voluntary compliance, administrative remedies, municipal court, and civil court. Municipalities also have many sources of authority for enforcement of its ordinances. State law provides general enforcement authority and procedures for enforcing health and safety ordinances through a quasi-judicial building and standards commission.⁵⁸ State law also provides for enforcement through the use of civil actions and for alternative administrative hearing procedure before a hearing officer appointed pursuant to ordinance with appeal to the municipal court.
2. **Criminal Enforcement.** A municipality may provide by ordinance for a fine of up to \$500 for violation of any ordinances and up to \$2,000 for violation of ordinances governing zoning, and certain other matters.⁵⁹ These higher limits apply to a municipality regardless of any contrary provision in a city charter.
3. **Civil Enforcement.** Any municipality may bring a civil suit to enforce certain ordinances concerning public safety in building construction, fire safety, zoning and subdivision requirements.⁶⁰

K. PUBLIC EDUCATION

Once city leaders have determined the scope and nature of the outdoor lighting rules, the crucial next step is explaining the law and technology to property owners, residents and the business community. In an ideal situation, public education activities will occur throughout the process, rather than at the final public meeting at which the ordinance will be adopted.

⁵⁸ Tex. Loc. Gov't Code Chapter 54.

⁵⁹ Tex. Loc. Gov't Code §54.001.

⁶⁰ Tex. Loc. Gov't Code §54.012.

Outdoor lighting ordinances can implicate strong sentiments regarding private property rights, safety, and the proper role of government. Public debates about exterior illumination can give rise to emotions on both sides regarding aesthetics, security and notions about what it means to be a good neighbor.

Municipalities exercising regulatory control over outdoor lighting should anticipate these human factors, attempt to educate the citizenry on the city's objectives, the state of modern technology, and how the new regulations will affect people's property and lifestyles.

Outdoor lighting demonstrations, photographs, examples of fixtures, and websites can all be useful educational tools that put the new regulation into proper perspective.



This paper is provided to the public as general education material, and does not constitute legal advice. The suggestions offered in this paper are informational, only, and do not give rise to an attorney – client relationship. People interested in acting on the tips outlined above are encouraged to consult with their lawyer.

STAFF REPORT
TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: REGULAR SESSION ITEM IV.C.3.

SUBJECT
Discuss and take action on a Lease Agreement at 705 E. Kennedale Pkwy. beginning January 1, 2025 through December 31, 2025 for the purpose of temporary operations and housing of the Kennedale Fire Department. - Action Item

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

1.	705 E Kenn. Lease Agreement. SW Abulance	705 E Kenn. Lease Agreement. SW Abulance.doc
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LEASE AGREEMENT

THE STATE OF TEXAS §

COUNTY OF TARRANT §

Article 1. Parties

This Lease Agreement, sometimes referred to herein as “lease agreement,” “Lease” or “agreement,” is made by and between Cartusciello Properties (“Lessor”), and The City of Kennedale. (“Lessee”).

Article 2. Description

In consideration of the mutual covenants and agreements of this Lease, Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the real property commonly known as 705 E KENNEDALE PKWY, Kennedale, Tarrant County, Texas (the “premises” or “leased premises”). A plat of the property is attached hereto as Exhibit “A”.

Article 3. Term

The term of this Lease shall be from January 1, 2025 to December 31, 2025, both days inclusive, unless sooner terminated as herein provided.

Article 4. Rent

Lessee agrees to pay to Lessor as rent for the premises the sum of \$6000.00 per month in advance on the 1st day of each month during the term of this Lease, commencing on Janaury 1, 2025.

Article 5. Covenant to Pay Rent

Lessee shall pay the rent and any additional rent as herein provided for, to Lessor at the place designated for the delivery of notices to Lessor, or at such other place as Lessor may designate in writing, without demand and without counterclaim, deduction or setoff.

Article 6. Quiet Enjoyment

Lessor covenants that if, and so long as, Lessee pays the rent and any additional rent as herein provided, and performs the covenants hereof, Lessee shall peaceably and quietly have, hold and enjoy the premises for the term herein mentioned, subject to the provisions of this Lease.

Article 7. Use, Occupancy and Acceptance of Premises

Lessee may use and occupy the premises to run its Fire Department operations, including the housing of Fire Department personnel and the storage of Fire Department equipment and vehicles on the premises, and all other operations necessary or incidental to the conduct of its business or other lawful purpose permitted under applicable zoning ordinances and restrictive covenants. Lessee, by entry hereunder, accepts the premises as suitable for the purposes for which the same are hereby leased, and Lessee accepts the premises as being in a good state of repair and in a sanitary condition.

Article 8. Utilities and Other Services Serving Premises

During the term of the Lease, Lessee shall pay, as the same become due and payable, all charges for water, sewer, gas, electricity, telephone or other communication services and all other utility or similar services used by Lessee in connection with the premises.

Lessee shall pay for the removal of all garbage and rubbish from the leased premises during the term of the Lease.

Article 9. Alterations and Improvements and Lessee's Signs

Lessor represents that the premises and its contents do not have any unique, historical or intrinsic value. Lessee agrees that it shall not alter, improve, or change the premises except as provided herein without the written consent of Lessor which Lessor shall not unreasonably withhold, provided, however, that the locating and relocating of room partitions, telephone, and electrical outlets, light fixtures, ovens, equipment and trade fixtures, and modifications which are necessary under any local, state or federal code or regulations to allow Lessee to conduct its operations shall not be deemed alterations, improvements or changes to the premises and shall not require Lessor approval.

Not later than the last day of the term of this Lease, Lessee shall, at Lessee's expense, remove all of Lessee's personal property and those improvements made by Lessee including trade fixtures, cabinet work, moveable paneling, partitions and the like, repair all injury done by or in connection with the installation or removal of said property and improvements and surrender the premises in as good condition as they were at the beginning of the term of this Lease, normal wear and tear expected.

If any alterations, additions, or improvements to the premises are mandated by legal requirements related to accessibility by persons with disability ("accessibility alterations"), Lessee is responsible for making them. This allocation of responsibility for compliance with such legal requirements is a material inducement for the parties to enter this Lease.

All repairs, alterations, additions, or improvements made by Lessor or Lessee shall comply with applicable building codes. Lessor agrees that Lessee may make any such repairs, alterations, additions or improvements which Lessee may be required to make in order to comply with applicable building codes without obtaining the approval of Lessor.

Lessee may install its customary and usual display signs on the premises, subject to applicable zoning ordinances and restrictive covenants. All signs located on the premises shall be in good taste so as not to detract from the general appearance of the premises or any building on the property, and such signs may specifically include neon signs and internally back-lit awning or canopy signs which are approved by Lessee as standard images or advertising practices.

Article 10. Care and Repair of Premises

Lessee shall commit no act of waste and shall take good care of the premises and fixtures and appurtenances therein, and shall, in the use and occupancy of the premises, conform to all laws, orders and regulations of the Federal, State and Municipal governments or any of their departments. Lessee, at its expense, shall maintain and keep the premises, including without limitation, windows, doors, air conditioning and heating system, interior walls, electrical system, and plumbing system of the building in good repair. Lessee shall also maintain in good condition the foundation, the roof and the structural soundness of the exterior walls (excluding

all windows, window glass, plate glass and all doors) of the building. Lessee shall also maintain in good repair the parking area located on the property.

Article 11. Accumulation of Waste or Refuse Matter

Lessee shall not permit the accumulation of waste or refuse matter on the premises.

Article 12. Inspection by Lessor

Lessee shall permit Lessor and its agents to enter into and upon the premises at all reasonable times for the purpose of inspecting the same or for any other purpose authorized by this Lease upon Lessor giving Lessee reasonable oral notice prior to each entry into and upon the premises.

Article 13. Insurance

Lessee shall at its expense procure and maintain throughout the lease term the following insurance policies: (I) commercial general liability insurance in amounts of not less than \$1,000,000.00 per occurrence, combined single limit, or such other amounts as Lessor may from time to time reasonably require, insuring Lessee and Lessor against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the premises, (ii) contractual liability insurance coverage sufficient to cover Lessee's indemnity obligations hereunder, and (iii) property and casualty insurance, in the form of an "all risks" policy covering loss by fire, and other hazards, including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke, water, and flood, if the premises are in a designated flood or flood insurance area, and earthquake, if the premises are in an earthquake prone area, and such other similar or dissimilar hazards customarily insured against in the vicinity of the premises and covering the full replacement cost of the premises and Lessee's leasehold improvements, personal property and other property (including the property of others), located in or on the premises. The term "full replacement cost," as used above, shall mean the cost of replacing the improvements without deduction for depreciation or wear and tear, and it shall include a reasonable sum for architectural and engineering fees connected with any restoration. Lessee shall furnish certificates of insurance and such other evidence satisfactory to Lessor of the maintenance of all insurance coverages required hereunder prior to

the first day of the term of this Lease, and Lessee shall obtain and deliver to Lessor prior to the first day of the term of this Lease, a written obligation on the part of each insurance company to notify Lessor at least thirty (30) days before cancellation or a material change of any such insurance. All property and casualty insurance policies shall name Lessor as a loss payee. All liability insurance policies shall name Lessor as additional insured. In the event Lessee fails to carry any insurance required hereunder, Lessor shall have the right, but not the obligation, to purchase such insurance that has lapsed. Should Lessor elect to purchase insurance on behalf of Lessee, then Lessee shall reimburse to Lessor the cost of such insurance and an administrative fee of ten percent (10%) of the amount of the premium with ten (10) days of the date of the notice from Lessor seeking the reimbursement.

Article 14. Right to Cure Lessee's Breach

If Lessee breaches any covenant or condition of this Lease, Lessor may, on reasonable notice to Lessee (except that no notice need be given in case of emergency), cure such breach at the expense of Lessee and the reasonable amount of all expenses, including attorney's fees, incurred by Lessor in so doing (whether paid by Lessor or not) shall be deemed additional rent payable on demand.

Article 15. Fee on Rent Arrearage

It is agreed by the parties hereto that any payments of rent or additional rent accruing under the provisions of this Lease that shall not be paid within 5 days of being due shall bear a LATE fee of 5% from the date when the same was payable by the terms hereof, until the same shall be paid by Lessee.

Article 16. Abandonment

Lessee shall not, without first obtaining the written consent of the Lessor, abandon the premises, or allow the premises to become vacant or deserted.

Article 17. Assignment and Subleasing by Lessee

Lessee shall not assign its right, title or interest under this Lease unless approved by Lessor in writing. Approval will not unreasonably be withheld. The Assignee shall execute such

documents evidencing its agreement to thereafter keep and perform, or cause to be kept or performed, all of the obligations of Lessee arising under this lease from and after the time of such assignment. Lessee shall not be released of its obligations hereunder until the end of the Term, even if an assignment is approved.

Article 18. Collection of Rent From Any Occupant

If the premises are sublet or occupied by anyone other than Lessee, and Lessee is in default hereunder, or if this Lease is assigned by Lessee, Lessor may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved. No such collection shall be deemed a waiver of the covenants herein against assignment and subletting, or the acceptance of such assignee, subtenant, or occupant as Lessee, or a release of Lessee from further performance of the covenants herein contained.

Article 19. Eminent Domain

If the premises or any part thereof which materially affects Lessee's use of the premises are taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of said termination date and any rent paid for any period beyond said date shall be refunded to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim against the condemning authority for taking of fixtures, improvements and good will owned by Lessee, and for moving expenses.

Article 20. Damage or Destruction

If the premises or any structures or improvements on them are damaged or destroyed by fire, tornado, or other casualty, Lessee must immediately give Lessor written notice of the damage or destruction including a general description of the damage and, as far as known to Lessee, the cause of the damage (“Lessee’s Damage or Destruction Notice”)

If the premises are totally destroyed by fire, tornado, or other casualty other than by the negligence, gross negligence, or intentional tort of Lessee or any person in or about the premises with Lessee’s express or implied consent, or if they are so damaged that rebuilding or repairs

cannot reasonably be completed within six (6) months and at a cost that will not exceed the amount of insurance required to be maintained by Lessee for the benefit of Lessor under this Lease, this Lease will terminate, and rent will be abated for the unexpired portion of this Lease, effective as of the date that Lessor shall be deemed to have received Lessee's Damage or Destruction Notice.

If the premises are damaged by fire, tornado, or other casualty other than by the negligence, gross negligence, or intentional tort of Lessee or any person in or about the premises with Lessee's express or implied consent, but not to such an extent that rebuilding or repairs cannot reasonably be completed with six (6) months and at a cost that will not exceed the amount of insurance required to be maintained by Lessor under this Lease, this Lease will not terminate except as follows:

- (1) If the premises are partially destroyed before the final twelve (12) months of the lease term, Lessor must, at its sole cost and risk, proceed immediately to rebuild or repair the premises to substantially the condition they were in before the damage. If the damage renders the premises untenantable in whole or in part the rent payable during the period in which they are untenantable will be adjusted equitably. If Lessor fails to complete the rebuilding or repairs within six (6) months after the date Lessor is deemed to have received Lessee's Damage or Destruction Notice, Lessee may terminate this Lease by written notification to Lessor. On the notification, all rights and obligations under this Lease will cease.
- (2) If the premises are partially destroyed during the final twelve (12) months of the lease term, Lessor need not rebuild or repair the premises. If Lessor elects not to rebuild or repair, Lessor shall notify Lessee of its election within thirty (30) days after Lessor is deemed to have received Lessee's Damage or Destruction Notice. On the notification, this Lease will terminate and rent will be abated for the unexpired portion of the term of this Lease, effective as of the date the premises are partially destroyed.

Article 21. Default by Lessee

The following shall be deemed to be events of default by Lessee under this Lease: (1) Any monthly rental payment or other sum of money required by the terms of this Lease to be paid by Lessee to Lessor is not received by Lessor on the date after it becomes due; (2) Lessee shall file a

petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of Lessee; (3) Lessee shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; (4) the liquidation, termination or dissolution of Lessee; or (5) Lessee shall be in default of any other term, provision or covenant of this Lease, other than those specified in subparts (2) through (5), above, and such default is not cured within twenty (20) days after written notice thereof from Lessor to Lessee.

Article 22. Remedies for Lessee's Default

Lessor recognizes that the premises are to be used for providing public safety and fire protections. Remedies that might otherwise be available to Lessor under Texas law are not appropriate in this relationship. Lessor agrees that it will provide notice of any breach of the Lessee in writing to the City Manager if the City of Kennedale and allow for a reasonable opportunity to cure such breach. In no event will Lessor interfere in any way with the operations of the Kennedale Fire Department if other public services being provided at the premises.

Article 23. Indemnity

Lessor shall not be liable to Lessee or those claiming by, through, or under Lessee for any injury to or death of any person or persons or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience (a "Loss") caused by casualty, theft, fire, third parties, or any other matter (including Losses arising through repair or alteration of any part of the premises, or failure to make repairs, or from any other cause), regardless of whether the negligence of any party caused such Loss in whole or in part, unless the loss was caused by the gross negligence or willful misconduct of Lessor.

SUBJECT TO THE PROVISIONS CONTAINED IN THE PRECEDING PARAGRAPH OF THIS ARTICLE 25., AND ONLY TO THE EXTENT ALLOWED BY TEXAS LAW, LESSEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LESSOR AND ITS EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, DEMANDS,

LIABILITIES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) FOR ANY LOSS ARISING FROM AN OCCURRENCE ON THE PREMISES OR CAUSED BY OR RESULTING FROM THE CONDITION OF THE PREMISES, OR FROM THE ACTS OR OMISSIONS OF LESSEE OR LESSEE'S EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES (OTHER THAN A LOSS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR), EVEN THOUGH CAUSED OR ALLEGED TO BE CAUSED BY THE JOINT, COMPARATIVE, OR CONCURRENT NEGLIGENCE OR FAULT OF LESSOR OR ITS EMPLOYEES, CONTRACTORS AND AGENTS, AND EVEN THOUGH ANY SUCH CLAIM, CAUSE OF ACTION, OR SUIT IS BASED UPON OR ALLEGED TO BE BASED UPON THE STRICT LIABILITY OF LESSOR OR ITS EMPLOYEES AND AGENTS, PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO A LOSS RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR. THIS INDEMNITY PROVISION IS INTENDED TO INDEMNIFY LESSOR AND ITS EMPLOYEES AND AGENTS AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE OR FAULT (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR) AS PROVIDED ABOVE WHEN LESSOR OR ITS EMPLOYEES AND AGENTS ARE JOINTLY, COMPARATIVELY, OR CONCURRENTLY NEGLIGENCE WITH LESSEE. All indemnity provisions contained in this Lease shall survive the termination of this Lease.

Article 24. Default by Lessor

Lessor shall be in default hereunder in the event Lessor has not begun and pursued with reasonable diligence the cure of any failure of Lessor to meet his obligations hereunder within thirty (30) days of the receipt by Lessor of written notice from Lessee of the alleged failure to perform.

Article 25. Conditions of Lessor's Liability

Lessee shall not be entitled to claim a constructive eviction from the premises unless Lessee shall have first notified Lessor in writing of the condition or conditions giving rise thereto, and, if the complaints be justified, unless Lessor shall have failed within a reasonable time after receipt of such notice to remedy such conditions.

Article 26. Mechanic's Liens

Lessee shall within ten (10) days after notice from Lessor discharge any mechanic's lien for materials or labor claimed to have been furnished to the premises on Lessee's behalf, or file suit to remove the mechanic's lien within ten (10) days after Lessee receives notice of the filing of the mechanic's lien as prescribed by applicable law.

Article 27. Lessee's Estoppel

Lessee shall, from time to time, upon not less than ten (10) days prior written request by Lessor, execute, acknowledge and deliver to Lessor a written statement certifying that the Lease is unmodified and in full force and effect, or that the Lease is in full force and effect as modified and listing the instruments of modification; the dates to which the rents and other charges have been paid; and, whether or not to the best of Lessee's knowledge Lessor is in default hereunder and, if so, specifying the nature of the default. It is intended that any such statement delivered pursuant to the preceding sentence may be relied upon by a prospective purchaser of Lessor's interest or mortgagee of Lessor's interest or assignee of any mortgage upon Lessor's interest in the premises.

Article 28. Holding Over

Should Lessee hold over the premises, or any part thereof, after the expiration of the term of this Lease, unless otherwise agreed in writing, such holding over shall constitute and be construed as tenancy from month to month only, at a rental equal to the monthly rent payable for the last month of the term of this Lease plus ten percent (10%) of such amount. The inclusion of the preceding sentence shall not be construed as Lessor's consent for Lessee to hold over.

Article 29. Exercise of Rights and Notice

The exercise of any right, privilege, duty or obligation of any party hereto or the giving of any notice, demand or request permitted or required hereunder shall be in writing and personally delivered or mailed to the other party unless a specific provision of this Lease provides otherwise. Such mailing or the mailing of any other notice required or permitted under this Lease shall be made by registered or certified United States mail or overnight express delivery service, postage or freight charges prepaid, addressed to the other party at the following respective addresses:

Lessor: Cartusciello Properties
 P. O. Box 917
 Kennedale, Texas 76060

Lessee: City OF Kennedale
 405 Municipal Dr
 Kennedale, TX 76060

Article 30. Gender and Number

Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Article 31. Parties Bound

This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this agreement.

Article 32. Texas Law to Apply

This agreement is performable in Tarrant County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas. Tarrant County, Texas, shall be a proper place of venue for all suits hereon.

Article 33. Legal Construction

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Lease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any amendments or exhibits hereto.

Article 34. Prior Agreements Superseded

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

Article 35. Amendments

No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

Article 36. Rights and Remedies Cumulative

The rights and remedies provided by this Lease agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise, and may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

Article 37. Waiver of Default

No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be waiver of any other breach of the same or any other term, condition or covenant contained herein.

Article 38. Attorneys' Fees

In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorneys' fees so incurred by such other party.

Article 39. Force Majeure

Neither Lessor nor Lessee shall be required to perform any term, condition or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

Article 40. Environmental Matters

For purposes of this Lease, the term "Hazardous Materials" shall mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any applicable local, state, or federal law, rule, regulation, or order, including, but not limited to, petroleum products and asbestos.

Throughout the term of this Lease, Lessee shall prevent the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, in, above, to, or from the leased premises other than in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders. To the extent allowed by Texas law, Lessee agrees to protect, indemnify, and hold harmless Lessor, its successors and assigns from and against any and all loss, damage, costs, expense, action, causes of action, or liability (including attorneys' fees and costs) directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Material on, under, in, above, from or about the premises during the term of this

Lease and any period of holding over thereof by Lessee, including without limitation, the costs of any required or necessary environmental investigation or monitoring, any repair, cleanup or detoxification of the premises and the preparation and implementation of any closure, remedial or other required plans.

In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the presence, suspected presence, release or suspected release of a Hazardous Material in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under, or within the premises (or any portion thereof), during the term of this Lease and any period of holding over thereof by Lessee, within thirty (30) days after written demand by Lessor for performance thereof (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), Lessee shall commence and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Lessor, and under the supervision of a consulting engineer approved by Lessor. All costs and expenses of such Remedial Work shall be paid by Lessee including, without limitation, Lessor's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Lessee shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lessor may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be paid to Lessor by Lessee promptly upon Lessor's demand to Lessee therefor.

The indemnity provisions contained in this Article are in addition to and are not in lieu of any other indemnity provisions contained in this Lease.

Article 41. Warranties and Representations by Lessor

In addition to any other warranties and representations by Lessor contained herein, Lessor expressly warrants and represents to Lessee that Lessor owns the premises and any building of which the premises are a part and has the right to lease the premises to Lessee.

Article 42. Headings

The headings used herein are for convenience only and do not limit or amplify the provisions hereof.

Article 43. Time of Essence

Time is of the essence of this agreement.

Article 44. Waiver of Implied Warranty of Suitability

LESSOR EXPRESSLY DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO THE LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE AND THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN A SUITABLE CONDITION. LESSEE EXPRESSLY AGREES TO LEASE THE PREMISES "AS IS," WHETHER SUITABLE OR NOT, AND EXPRESSLY WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

Article 45. Sale or Assignment of Premises by Lessor

Lessor shall have the right to sell, transfer or assign, in whole or in part, its rights and obligations under this Lease and in the premises. Upon any conveyance, sale or exchange of the leased premises or assignment of this Lease by Lessor, Lessor shall be entirely free and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the leased premises or this Lease occurring after the consummation of such sale or exchange and assignment.

Article 46. Brokerage

Lessor and Lessee represent and warrant each to the other that they have not dealt with any real estate agent or broker in connection with the negotiation and execution of this Lease and agree to indemnify and save each other harmless from and against all liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by reason of their breach of such representation and warranty.

Article 47. Option to Extend Term

Lessee has the right to extend this lease beyond the expiration date provided in Article 3 on the following terms and conditions:

- (1) Should Lessee fully and faithfully perform all of the terms and conditions of this lease, Lessee may extend the term of this Lease for a period of one (1) years, with the extended term to begin on the day following the expiration date of the lease term specified in Article 3; provided, however, that if at the date of expiration of the lease term, Lessee is in default, the option shall be null and void. All the terms, covenants, and provisions of the original lease term shall apply to the extended lease term except for the amount of the monthly rent. The amount of the monthly rent for the extended term will be the sum of \$ 6500.00 per month.
- (2) Lessee may exercise the option to extend the term of this Lease by giving to Lessor written notice of his intention to do so not later than ninety (90) days prior to the expiration of the original lease term. To constitute effective notice of an intention to exercise the option under this Lease, the notice must be sent by certified or registered mail to Lessor at the address provided in Article 29 of this Lease and must be postmarked no later than the latest date provided in this article for Lessee's exercise of the option.

Article 48. Counterparts, One Agreement

This agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee execute this agreement to be effective as of the _____ day of _____, 2025.

LESSOR:

Cartusciello Properties,

By: DOUGLAS FILBERT, (printed name)
Title: BUSINESS MANAGER

LESSEE:

City of Kennedale

By: _____, (printed name)
Title: _____

STAFF REPORT
TO THE HONORABLE MAYOR AND CITY COUNCIL

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: INDIVIDUAL CONSIDERATION ITEM IV.C.4.

SUBJECT

Discuss and take action if necessary regarding complaints on City Council Member Kenneth Michels and City Council Member Chris Gary. - Action Item

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

1.	Letter RE complaint C. Gary requesting CM Meeting_Redacted	Letter RE complaint C. Gary requesting CM Meeting_Redacted.pdf
2.	H. Browne complaint RE C. Gary_Redacted	H. Browne complaint RE C. Gary_Redacted.pdf
3.	B. McLellan comaplain RE C. Gary_Redacted	B. McLellan comaplain RE C. Gary_Redacted.pdf
4.	L. Ford complaint RE C. Gary_Redacted	L. Ford complaint RE C. Gary_Redacted.pdf
5.	G. Lewis complaint RE K. Michels_Redacted	G. Lewis complaint RE K. Michels_Redacted.pdf
6.	Petition Oct_2024-10-10_113708	Petition Oct_2024-10-10_113708.pdf

OCT 03 2024

Bob McLellan



September 30, 2024

Darrell Hull

City Manager and EDC Executive Director

Physical Address

405 Municipal Drive
Kennedale, TX 76060

Mr. Hull;

My name is Bob McLellan, and I am one of the landowners that relates to the Enclave Development Proposal. Lora Ford and Harry Browne are also landowners that have written a request for information and a meeting to discuss the City Council's denial for a zoning change. (PZ Case # 24-11), Agenda Item # Public Hearing Item III.C.1.

In accordance with city code, the City Council violated the local government code (chapter 171 Conflict of Interest). According to Chapter 176 it requires a council member to file a "conflict disclosure statement" with the city's record administrator within 7 days. Council Member Chris Gary did not file an Affidavit of Conflict even though the conflict was acknowledged by the city as a legitimate concern. Chris Gary lives within 200 feet of proposed development and his vote and presence should not have been considered. This is in accordance with Texas Municipal League and Texas Ethics Commission. Without his participation, there was a super majority vote of 3 to 1 for the motion to pass. The vote must be reviewed and reversed.

We three landowners have been trying to sell this property for the past 4 years. We have all had legal fees and expenses associated with the

third times the city has denied approval. All issues the City Council and P&Z have brought up over the past 4 years have been addressed.

The Enclave proposal falls within all guidelines of the new/proposed comprehensive plan, recommended and passed by the P&Z Committee and no objections from school district, police or fire department.

By Council Member Chris Gary, not recusing himself this appears to be an attempt to circumvent the proper legal process, which requires the filing of a conflict-of-interest sworn statement. When asked for a reason/justification for denial, we were ignored. If the City of Kennedale promotes Open Government Transparency we require and deserve answers.

Additionally, I am formally requesting that the city council conduct its own investigation on Mr. Gary's overall participation in meetings and discussions with Magnolia Hills homeowners prior to the city council vote, along with his failure to recuse himself from participating in the actual vote. It is my intent to resolve this issue within the jurisdiction of the City of Kennedale. We are prepared to fill a formal complaint with the Texas Municipal League and Texas Ethics Commission if needed.

Lora Ford, Harry Browne and I would like to meet with you on either Thursday Oct 3 or Friday Oct 4 to discuss these issues.

Thank you



Bob McLellan

Darrell Hull

From: Harry Browne [REDACTED]
Sent: Sunday, October 6, 2024 1:56 PM
To: Brad Horton; David Glover; Thelma Kobeck; Chris Gary; Jeff Nevarez; Kenneth Michels
Cc: Darrell Hull; Nathaniel Gonzales; 'loradell@sbcglobal.net'; r.mclellan@sbcglobal.net
Subject: Formal complaint to the Kennedale City Council

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My name is Harry Browne and I live at [REDACTED]

Our property was included in a recent rezoning application which I believe was handled improperly by the Kennedale City Council. Lora Ford, Bob McClellan, and myself met with Mr. Hull and Mr. Gonzalez this past Friday and were instructed to file this complaint. My intent of this email is for it to serve as a formal complaint and ask for an investigation of City Councilmember Chris Gary. Mr. Gary's actions, in my opinion, at the City Council meeting on September 17 regarding the PZ Case #24-11 Rezoning AG to PD were unethical and unlawful in accordance with Chapter 171 and 176 of Texas Conflict of Interest laws.

In my opinion, these are the reasons I believe Mr. Gary had a conflict of interest with our application and should have recused himself. Had he recused himself the rezoning application would have passed by super majority.:

- Mr. Gary lives within 200 feet of the proposed zoning change.
- Mr. Gary paid a premium for his lot which backs up to the project proposed in this PD application.
- Mr. Gary's failure to identify his conflict of interest violated his Oath of Office by failing to "faithfully execute the duties of the office"....He chose not to recuse himself when he should have. He chose not to file a Conflict-of-Interest Affidavit when he should have.
- Deliberate attempt to circumvent the proper legal process of Texas Law outlined by the Texas Municipal League and the Texas Ethic Commission - He was asked when he abstained his vote by the City Attorney if this was due to conflict of interest and he said "no".
- I believe Mr. Gary was involved in the creation of a petition that was circulated within the Magnolia Hills addition-- Texas Conflict of Interest Laws Chapter 171.

My concern is that our developer has spent a significant sum of money on this project and may sue the city for damages. I also believe that myself, Lora Ford, and Bob McClellan were directly prevented from selling our property which is under contract with the developer by Mr. Gary's unethical use of his position to abstain instead of recusing his vote.

Thank you

Harry Browne, P.E.
CEO Flow-Sync
[REDACTED]

Darrell Hull

From: BOB MCLELLAN [REDACTED]
Sent: Sunday, October 6, 2024 8:01 PM
To: Brad Horton; Kenneth Michels; Thelma Kobeck; David Glover; Jeff Nevarez; Chris Gary
Cc: Darrell Hull; Nathaniel Gonzales; Nathan Anderson
Subject: Formal Complaint to Kennedale City Council

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Bob McLellan
[REDACTED]
[REDACTED]
[REDACTED]

October 6, 2024

City of Kennedale City Council

Physical Address

405 Municipal Drive
Kennedale, TX 76060

To:
Kenneth Michaels Brad Horton
David Glover Thelma Kobeck
Chris Gary Jeff Nevarez
CC:
Darrell Hull Nathan Gonzales

My name is Bob McLellan, and I am one of the landowners affected by the Enclave Development Proposal. This letter serves as a formal request for an investigation into City Council's denial for a zoning change. (PZ Case # 24-11), Agenda Item # Public Hearing Item III.C.1. This involves procedural and ethical conduct by individuals of the city council.

Mr. Gary's overall participation in meetings and discussions with Magnolia Hills homeowners prior to the city council vote, along with his failure to recuse himself from taking part in the actual vote. Resulted in the following key issues:

1. **Direct Conflict of Interest—Mr. Gary lives within 200 feet of the proposed zoning change. He should have recused himself from the vote rather than abstaining.**
2. **Violated the Oath of Office by failing to "faithfully execute the duties of the office". He chose not to recuse himself when he should have. He chose not to file a Conflict-of-Interest Affidavit when he should have.**
3. **Deliberate attempt to circumvent the proper legal process of Texas Law outlined by the Texas Municipal League and the Texas Ethic Commission - He was asked when he abstained if this was due to conflict of interest and he said "no".**
4. **Refused to file a Conflict-of-Interest Affidavit.**
5. **It is my understand that Mr. Gary was advised of the legitimate concerns of Direct Conflict of Interest.**
6. **Made statement, that he paid extra for his lot so he could have a country view.**
7. **Personally involved organizing the petition by the magnolia Hills homeowners and at least one resident will testify that they were approached to sign the petition.**

Where is the cities OPEN GOVERNMENT TRANSPARENCY??? Emphasizing that the lack of engagement, failure to adequately engage to explain decisions and absence of open communications undermines public trust and violates principles of good governance.

All issues the City Council and P&Z have brought up over the past 4 years have been addressed. The Enclave proposal falls within all guidelines of the new/proposed comprehensive plan, recommended and passed by the P&Z Committee and no objections from school district, police or fire department.

In accordance with city code, the City Council violated the local government code (chapter 171 Conflict of Interest). According to Chapter 176. From conversations with city management and council members, Chris Gary did not file an Affidavit of Conflict and was acknowledged as a legitimate concern. Without his participation, there was a super majority vote of 3 to 1 for the motion to pass. Therefore, the vote must be reviewed and reversed.

It is my strong preference and intent to resolve this matter internally within the jurisdiction of the City of Kennedale, ensuring a fair and transparent review of the City Council's decision. However, should this issue remain unresolved, we are fully prepared to file a formal complaint with the Texas Municipal League and Texas Ethics Commission. We believe that addressing this issue locally is in the best interest of all parties involved and hopefully avoid further escalation.

Thank you

Bob McLellan

Sent from AT&T Yahoo Mail for iPad

Darrell Hull

From: Lora Ford [REDACTED]
Sent: Sunday, October 6, 2024 7:15 PM
To: Darrell Hull; Nathaniel Gonzales; Brad Horton; David Glover; Kenneth Michels; Jeff Nevarez; Thelma Kobeck; Chris Gary; ROBERT J. MCLELLAN; Harry Browne; Nathan Anderson
Subject: Complaint of Kennedale City Council Councilmember

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My name is Lora Ford. I live at [REDACTED]

I have been a citizen of Kennedale for 60 years and the actions of our City Council is starting to concern me. My intent of this email is to file a formal complaint and ask for an investigation of City Councilmember, Chris Gary. Mr. Gary's actions, in my opinion, at the City Council meeting on September 17 regarding the PZ Case #24-11 Rezoning AG to PD were unethical and unlawful in accordance with Chapter 171 and 176 of Texas Conflict of Interest laws.

In my opinion, these are a few of the items I feel that are of concern:

- Direct Conflict of Interest---Mr. Gary lives within 200 feet of the proposed zoning change. He should have recused himself from the vote rather than abstaining.
- Violated the Oath of Office by failing to "faithfully execute the duties of the office"....He chose not to recuse himself when he should have. He chose not to file a Conflict-of-Interest Affidavit when he should have.
- Deliberate attempt to circumvent the proper legal process of Texas Law outlined by the Texas Municipal League and the Texas Ethic Commission - He was asked when he abstained if this was due to conflict of interest and he said "no".
- Refused to file a Conflict-of-Interest Affidavit.
- I feel very certain that with a few of the strong leaders in our city, Mr. Gary was advised of the legitimate concerns of Direct Conflict of Interest.
- Engaged in conversations with neighbors regarding a petition that was circulated within the Magnolia Hills addition--Texas Conflict of Interest Laws Chapter 171.

My concern is that unethical small-town politics such as this can and will lead to a corrupt city council. And I believe that it would be in the best interest of the City of Kennedale for this to be handled within the city rather than by other means.

Thank you
Lora Ford

Darrell Hull

From: Garrison Lewis [REDACTED]
Sent: Monday, October 7, 2024 1:14 PM
To: Brad Horton; Darrell Hull
Cc: Bobbie Jo Taylor; David Glover; Thelma Kobeck; Kenneth Michels; Chris Gary; Jeff Nevarez
Subject: Immediate Attention Required: Conflict of Interest Involving Council Member Kenneth Michels

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City of Kennedale,

I am writing to bring to your immediate attention a serious concern involving City Council Member Kenneth Michels. His recent actions have raised significant questions about his ability to represent our community impartially and without bias or self-interest.

At the city council meeting on September 17, Mr. Michels voted on PZ Case #24-11, despite a clear and undeniable conflict of interest. Prior to the vote, I informed the city as well as Mr. Michels on September 12 via email (see original email below), providing evidence that the proposed construction of 95 homes near Mr. Michels' property would likely result in a direct financial benefit for him, increasing the value of his property. Despite being fully aware of this conflict, Mr. Michels chose to participate in the vote, which is deeply troubling.

Furthermore, it is publicly known that Mr. Michels has longstanding relationships with two of the landowners who stand to benefit financially from his vote. He has been friends with Ms. Miller and Ms. Ford for well over a decade, as they are neighbors. This connection only deepens the ethical concerns surrounding his involvement in this matter.

This behavior is a blatant violation of ethical standards and severely undermines public trust in our elected officials. The integrity of our city's leadership is crucial to the well-being of Kennedale, and actions like these risk long-term damage to the relationship between the council and the citizens they are entrusted to serve.

I strongly urge the city to take this matter seriously and conduct a thorough investigation into Mr. Michels' actions. Allowing such conflicts of interest to persist unchecked sets a dangerous precedent for the future governance of Kennedale. Swift and decisive action is necessary to restore faith in the integrity of our city council.

Additionally, in the interest of transparency to the citizens, I formally request that the content of this email, Mayor Horton's response, and the original email sent informing of the conflict of interest be made a matter of public record and included in the agenda packet for the city council meeting on October 15.

I look forward to your prompt response and to learning what steps will be taken to address this serious issue.

Sincerely,

Garrison Lewis
[REDACTED]

----- Forwarded Message -----

From: Brad Horton <bhorton@cityofkennedale.com>
To: Garrison Lewis [REDACTED]
Sent: Thursday, September 12, 2024 at 03:22:06 PM CDT
Subject: Re: City Council Meeting Sept. 17.

Mr. Lewis,

Thank you for reaching out and bringing this to our attention.

Brad

From: Garrison Lewis [REDACTED]
Sent: Thursday, September 12, 2024 6:59:33 AM
To: Brad Horton; Darrell Hull
Cc: Bobbie Jo Taylor; Chris Gary; Kenneth Michels
Subject: City Council Meeting Sept. 17.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City of Kennedale,

I am reaching out to raise a concern about potential conflicts of interest related to the City Council's upcoming vote on PZ Case #24-11, scheduled for September 17, 2024.

On September 5, 2024, during the P&Z meeting, board member Socorro Martinez chose to abstain from voting on this case due to a conflict of interest. It was revealed that her participation could have resulted in a substantial economic effect on her property, estimated at \$2,500 or more. Her decision to recuse herself was both ethical and necessary.

Given this precedent, I believe it is important to address similar concerns for the City Council vote. According to Chapter 171 of the Local Government Code, a local public official must abstain from voting or participating in matters involving a business entity or real property if their substantial interest would result in a special economic effect that is distinguishable from that on the public. In this case, if the action is reasonably foreseeable to affect the value of the official's property, the official should recuse themselves from voting.

Councilman Chris Gary lives within the Magnolia Hills community, which is adjacent to the proposed zoning change. The introduction of up to 95 new homes, priced between \$400,000 and \$700,000+, could reasonably impact his property value. Given this potential for personal financial impact, Councilman Gary should consider recusing himself from this vote.

Additionally, Councilman Ken Michels resides on Collett Sublett Rd, close to the rezoning area. Even though his property is approximately 1,000 feet from the proposed development, historical data from similar rezoning projects, such as the Magnolia Hills development, suggests that such changes can significantly affect nearby property values. For instance, the value of Councilman Michels' property increased substantially during the previous development. According to Zillow his property value increased by roughly 42% or about \$60,000 between Nov. 2021 and May 2022. This is the timeframe that most of the homes in Magnolia Hills were closing therefore affecting surrounding property values. With the current

proposal being approximately 200 feet closer to Ken Michels property, this indicates that a similar effect could occur with the current proposal.

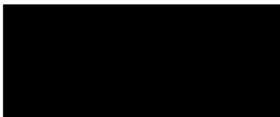
Both of these council members could face ethical concerns if they participate in this vote, based on two independent legal consultations which have indicated that their involvement could represent a conflict of interest.

To maintain the integrity of the decision-making process, I urge both Councilman Gary and Councilman Michels to recuse themselves from voting on PZ Case #24-11. Should they choose not to, I believe it will be necessary for the citizens of Kennedale to consider further legal action to address this issue.

Thank you for your attention to this matter. I trust that the council will act in the best interest of our community.

Sincerely,

Garrison Lewis



Home Value before Magnolia Hills in Jan. 2022: \$143,800

3 bd | 1 ba | 1,016 sqft

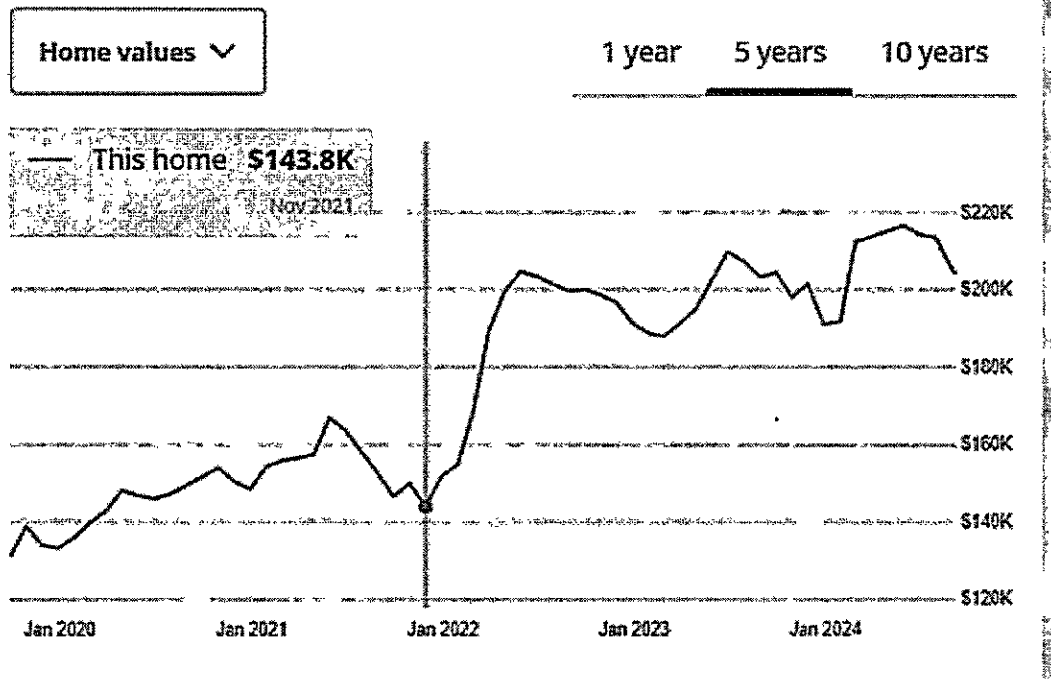
117 Collett Sublett Rd, Kennedale, TX 76060

● Off market

Zestimate®: \$203,800 | Rent Zestimate®: \$1,703

Est. refi payment: \$1,269/mo ⓘ Refinance your loan

Home value Owner tools Home details Neighborhood details



Home Value after Magnolia Hills in May 2022: \$204,400

3 bd | 1 ba | 1,016 sqft

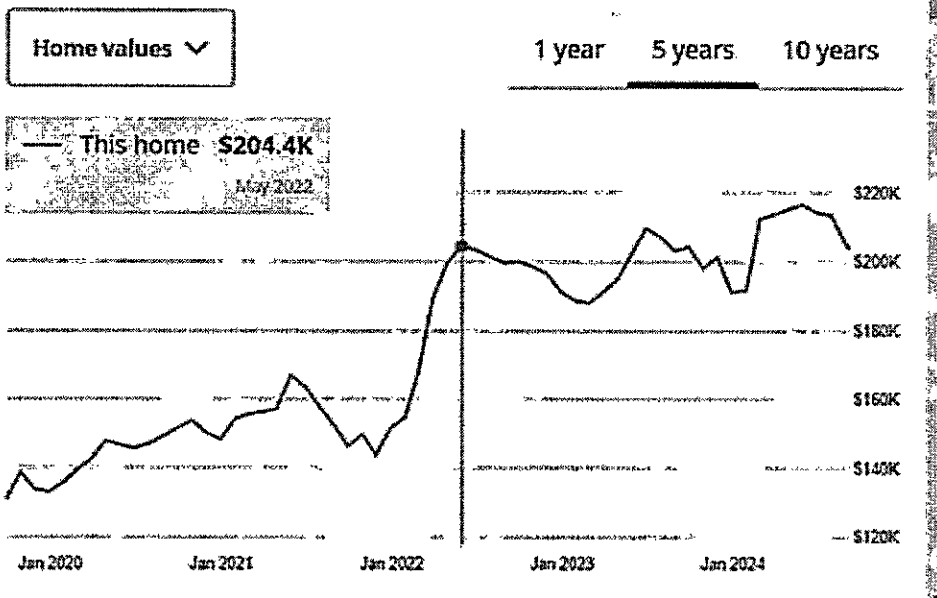
117 Collett Sublett Rd, Kennedale, TX 76060

● Off market

Zestimate®: \$203,800 | Rent Zestimate®: \$1,703

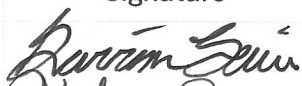
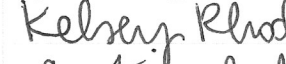
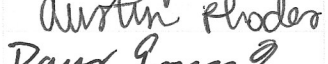
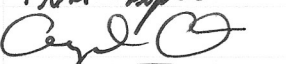
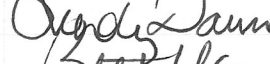
Est. refi payment: \$1,269/mo ● Refinance your loan

Home value Owner tools Home details Neighborhood details



We, the undersigned, citizens of Kennedale, TX, are in agreement that on September 17, 2024, at the City Council meeting, Councilman Kenneth Michels violated his oath of office to the people of Kennedale. He proceeded to vote on a matter in which he had a clear conflict of interest, thereby compromising the integrity of his position and undermining public trust in our local government.

This act has raised serious concerns regarding his ability to uphold the principles of fairness, transparency, and accountability, which are critical to serving the public interest.

Name	Signature	Address	Date
Garrison Lewis		1312 Tucker Ln.	10/8
Krista Lewis		1312 Tucker Ln	10/8
Jayme Walker		1320 Tucker Ln	10/9
Reid Mullins		1319 Tucker Ln	10/9
Veronica Cambis		1317 Tucker Ln	10/9
Kelsey Rhodes		1332 Tucker Ln	10/9
Austin Rhodes		1332 Tucker Ln	10/9
Danny Esquivel		1357 Collett Sublett Rd.	10/9
Tina Esquivel		1357 Collett Sublett Rd.	10/9
Abigail O'Riley		1360 Collett Sublett rd.	10/9
Jesse O'Riley		1360 Collett Sublett rd.	10/9
Jessica Medina-Rodriguez		1361 Collett Sublett Rd	10/9
Richard Rodriguez		1361 Collett Sublett Rd	10/9
DAVID NATHANSTEDT		1345 COLLETT SUBLETT RD	10/9
Ryan Bui		1341 Collett Sublett Rd	10/9
THON N NGUYEN		1341 Collett Sublett Rd	10/9
Wendy Danner		1341 Tucker Ln	10/9
Betty Llszy		1340 Tucker Ln	10/9
Christina Fowler		1356 Collett Sublett Rd.	10/9
PETERANA LINA		1368 McLELLAND CT	10/9
Vanmah Lina		1368 McLELLAND CT	10/9

Name	Signature	Address	Date
Saadia Ahmed	Saadia Ahmed	1320 McLellan Court	10/9
Faizan Mirza	Faizan Mirza	1320 McLellan Court	10/9
Sahar Mirza	Sahar Mirza	1320 McLellan Court	10/9
Farhan Mirza	Farhan Mirza	1320 McLellan Court	10/9
Pachell Buxco	Murphy	1352 COLLETT SUBLETT RD	10/9/24
Aaron Buxco	Aaron Buxco	1352 COLLETT SUBLETT RD	10/9/24
Elfreda Jones	Elfreda Jones	1336 COLLETT SUBLETT RT	10/9/24
Rachel Niblo	Rachel Niblo	1328 Collett Sublett	10/9/24
Grady Niblo	Grady Niblo	1328 Collett Sublett	10/9/24
Hannah Caywood	Hannah Caywood	1313 Collett Sublett	10/9/24
Bronco Ormur	Bronco Ormur	1301 Samuel St	10/9/24
Timmy Ormur	Timmy Ormur	1301 Samuel St	10/9/24
Kathryn Reed	Kathryn Reed	1228 Collett Sublett R	10/9/24
Anthony Pulliam	Anthony Pulliam	1316 Tucker Ln	10/9/24
Angelia Bara	Angelia Bara	1304 Tucker Ln	10/9/24
Dario Bara	Dario Bara	1304 Tucker Ln	10/9/24
Robin Minis	Robin Minis	1320 Tucker Ln	10/9/24
Serena Pulliam	Serena Pulliam	1316 Tucker Ln	10/9/24
IRA CHAMBERLAIN	IRA CHAMBERLAIN	1324 TUCKER LN	10/9/24
CARMEN CHAMBERLAIN	CARMEN CHAMBERLAIN	1324 TUCKER LN	10/9/24
Saroya Shrestha	Saroya Shrestha	1344 Tucker Ln	10/9/24
Paulina Acquaye	Paulina Acquaye	1337 Tucker Ln	10/10/2024
Isaac Osato Ayeeampong	Isaac Osato Ayeeampong	1337 Tucker Ln	10/10/2024
Chrissy Carole Morris	Chrissy Carole Morris	1245 Levee Lane	10/10/24
Michelle Butler	Michelle Butler	1312 Samuel St.	10/10/24
Ryan Peters	Ryan Peters	1312 Samuel St	10/10/24
Mary Farhan	Mary Farhan	1312 Samuel St	10/10/24
Lauren Nguyen	Lauren Nguyen	400 Cayman St	10/10/24
Johnny Nguyen	Johnny Nguyen	"	10/10/24
Tuan Nguyen	Tuan Nguyen	"	10/10/24

MEETING DATE: OCTOBER 15, 2024

AGENDA ITEM NUMBER: EXECUTIVE SESSION ITEM V.A.

SUBJECT

Pursuant to Section 551.071 to seek advice from the City Attorney

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS