



Janeshia A. Grider, Mayor

Christopher Garza
Sylvia Apodaca
Joe Molina

Maria Lozano
Mike Martin
Sally J. Hitt

CITY COUNCIL AGENDA
REGULAR MEETING
THURSDAY, MAY 9th, 2024 - 7:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219

This notice is posted pursuant to the Texas Open Meetings Act. The location where a quorum of the governmental body will be physically present is Kirby City Hall, City Council Chambers at 112 Bauman Street, Kirby, Texas 78219 and it is the intent to have a quorum present at that location and for the member of the governmental body presiding over the meeting to be physically present at that location. A member of the public who wishes to speak may do so by signing the participation sheet prior to the meeting being called to order.

Topic: Regular City Council Meeting
Date and Time: May 9, 2024 at 7:00 P.M. (Central Time)

1. Call Meeting to Order
2. Invocation and Pledge of Allegiance to the Flag
3. Mission Statement

“The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner.”

4. Roll Call

5. Citizen Participation

6. Consideration Of And Action On Minutes

- a. Special Minutes – April 18, 2024
- b. Regular Minutes – April 25, 2024

7. Updates and Reports

- a. Discussion and Update: Finance Department- Water Utility Update
- b. Discussion And Update: Public Works
- c. Discussion And Update: Municipal Court
- d. Discussion and Update: Ackerman Rd Construction

8. Discussion and Possible Action

- a. Receipt of Canvass Of The General Election Returns And Declaring The Results Of the General Election On May 4, 2024; For the Purpose Of Electing One Mayor And Three Council Members For Two Year Terms On The City Council.
- b. Discussion And Possible Action On Resolution no. R-2023-753 Canvassing The General Election Returns And Declaring The Results Of the General Election Held May 4, 2024, For the Purpose Of Electing Three Council Members.
- c. Recognition Of Outgoing Council Members
- d. Presentation Of Certificates of Election to Newly Elected Officials.
- e. Discussion and Possible Action on Change Order #5 – Manhole Reconstruction/Rehabilitation/Point Repairs
- f. Discussion and Possible Action on Sponsoring Judson Learning Academy (JLA) water tower for garden located at Kirby Middle School
- g. Discussion and Possible Action on Increasing Animal Control Manager Pay to \$21.00 Per Hour and Removal of Part-Time Kennel Technician for This Fiscal Year
- h. Discussion and Possible Action on Auction Agreement for Kirby Police Department

- i. Discussion And Possible Action On Interlocal Cooperation Agreement Establishing Concurrent Jurisdiction with the City of San Antonio.
 - j. Discussion and Consideration on providing a \$3000 Budget for Beautification & Recycle Committee
 - k. Discussion And Possible Action on Senior Center Legal Opinion for Local Government Code 171.
 - l. Discussion And Possible Action On 2 Cool Guys Duct Cleaning, LLC to Provide the Fire Department a Full-Service Duct Cleaning.
9. **Closed Session:** Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney): the city of Kirby City Council will convene in executive session on the following items:
- a. Discussion and Update on Pending Legal Cases and Investigations.
 - b. Council to Conduct Interviews For City Manager
 - c. To Discuss Agreement Terms with Texas First Group LLC, Regarding Providing Interim City Manager Services for the City of Kirby.
10. **Open Session:** The City Council will reconvene into Regular Session upon conclusion of the Closed Session and may recall any item posted for Closed Session for action, as necessary.
11. **City Manager Announcements**
- a. Announcements on City Events and Items of Community Interest.
12. **Request And Announcements**
- a. Requests By Mayor and Council Members for Items to Be Placed on Future City Council Agendas and Announcements on City Events/Community Interest.
13. **Adjournment**

Katelyn Ueckert
Interim City Secretary

The City Council reserves the right to adjourn into executive session at any time to discuss any of the matters listed on this agenda if authorized by Texas Government Code Section 551.071, Consultation with Attorney, Texas Government Code Section 551.072, Deliberations about Real Property, Texas Government Code Section 551.074, Personnel Matters, and Texas Government Code Section 551.076, Security Devices or Security Audits.

This meeting is wheelchair parking accessible at the main entrance located at 112 Bauman. Auxiliary services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours prior to the meeting) by calling 210/661-3198 or Relay Texas 800/735-2989 (hearing/speech impaired assistance).

DATE OF POSTING: May 6, 2024

TIME OF POSTING: 6:30 P.M.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 6.

- a. Special Minutes – April 18, 2024
- b. Regular Minutes – April 25, 2024



Janeshia A. Grider, Mayor

Christopher Garza
Sylvia Apodaca
Joe Molina

Maria Lozano
Mike Martin
Sally Hitt

CITY COUNCIL MINUTES
SPECIAL MEETING
THURSDAY, APRIL 18, 2024 - 7:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219

This notice is posted pursuant to the Texas Open Meetings Act. The location where a quorum of the governmental body will be physically present is Kirby City Hall, City Council Chambers at 112 Bauman Street, Kirby, Texas 78219 and it is the intent to have a quorum present at that location and for the member of the governmental body presiding over the meeting to be physically present at that location. A member of the public who wishes to speak may do so by signing the participation sheet prior to the meeting being called to order.

Topic: Special City Council Meeting
Date and Time: April 18, 2024 at 7:00 P.M. (Central Time)

1. Call Meeting to Order

Mayor Grider called the meeting to order at 7:04 P.M.

2. Invocation and Pledge of Allegiance to the Flag

Mayor Grider gave the Invocation and lead with the Pledge of Allegiance to the Flag

3. Mission Statement

“The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner.”

4. Roll Call

PRESENT

Mayor Pro-Tem Apodaca
Council Member Hitt
Council Member Martin
Council Member Lozano
Mayor Grider

ABSENT:

Council Member Garza
Council Member Molina

5. Citizen Participation

Tory ríes- Discussed last meeting and previos city manager(s) discussed city charter and ORR request and council involvement

Nancy Peña- had a speaker on her behalf, discussed lawsuit

Debbie Walczyk- Discussed council and previous city manager(s) requested council research charter
Susan street- Discussed emergency meeting scheduling discussed CDBG grant application discussed previous city manager(s)

6. Action Items

- a. Discussion and Possible Action on appointment of Interim City Manager.

Motion made by Mayor Pro-Tem Apodaca seconded by Council Member Hitt to Appoint Chief Cardona as the Interim City Manager

Aye:

Mayor Pro-Tem Apodaca
Council Member Hitt
Mayor Grider

Nay:

Council Member Martin
Council Member Lozano

Motion passed with a 3-2 vote

Council moved to closed session at 8:01 P.M.

Council reconvened into Regular Session at 8:55 P.M.

- b. Discussion and Possible Action on selection of dates and times to review and interview candidates for City Manager position.

Council discussed agenda item B

- c. Discussion of the 2024 CDBG application process.

Council discussed agenda item C

7. Closed Session: Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney), The City of Kirby will convene in executive session on the following items:

- a. To discuss Agreement terms with Texas First Group LLC. regarding providing Interim City Manager services for the City of Kirby.

8. Open Session: The City Council will reconvene into Regular Session upon conclusion of the Closed Session and may recall any item posted for Closed Session for action, as necessary.

9. Adjournment

Meeting Adjourned at 8:57P.M.

Janeshia Grider,
Mayor

Katelyn Ueckert,
Interim City Secretary

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DATE OF POSTING: April 15, 2024

TIME OF POSTING: 6:00 P.M.



Janeshia A. Grider, Mayor

Christopher Garza
Sylvia Apodaca
Joe Molina

Maria Lozano
Mike Martin
Sally J. Hitt

CITY COUNCIL MINUTES
REGULAR MEETING
THURSDAY, APRIL 25, 2024 - 7:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219

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Topic: Regular City Council Meeting
Date and Time: April 25, 2024 at 7:00 P.M. (Central Time)

1. Call Meeting to Order

Mayor Grider called the meeting to order at 7:03 P.M.

2. Invocation and Pledge of Allegiance to the Flag

Mayor Grider led with the Invocation and Pledge of allegiance

3. Mission Statement

“The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner.”

4. Roll Call

PRESENT

ABSENT:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

5.

Citizen Participation

Debbie Walczyk- Discussed citizen participation discussed council not taking emails
Willie Mae Clay- Discussed being unable to contact city hall discussed brush and bulk
discussed soap dispenser
Susan Street- Discussed meetings and procedures discussed ordinances discussed CDBG
agenda items
Tory Ries- Discussed emails and paddle discussed not following charter and ORRs
Roger Romans- discussed legal opinions and assessment on paramedics
Consideration Of And Action On Minutes

6.

- a. Regular Minutes – March 28, 2024
- b. Regular Minutes – April 11, 2024

7.

Updates and Reports

- a. **Discussion and Update: Finance Department- Water Utility Update**
ICM Chief Cardona discussed Agenda item 7A with council
- b. **Discussion And Update: Municipal Court**
ICM Chief Cardona discussed Agenda item 7B with council
- c. **Discussion and Update: Ackerman Rd Construction**
Interim Public works director Armondo and Carl Bain with BMBI discussed Agenda
item 7C with council

8.

Presentation

- a. **Proclamation For The 2024 National EMS Week "Honoring Our Past, Forging Our
Future."**
Chief Hilburn and Mayor Grider presented 8A
- b. **Fiesta Decorating Contest Winner**
Council Member Hitt Presented 8B

- c. Beautification And Recycle Committee "Yard Of The Quarter"
Council Member Hitt Presented 8C

8. **Discussion and Possible Action**

- a. Discussion and Possible Action On Appointment of Interim City Manager
Council moved to executive session at 8:07P .M.
Council Opened the Open meeting back at 9:52P .M.

- b. Discussion and Possible Action To Consider New Application For Beautification and Recycle Committee

Motion made by Council Member Garza seconded by Mayor Pro-Tem Apodaca
To accept Judith Hendrick to the Beautification and Recycle committee

Aye:

Nay:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

Motion passed with a 7-0 vote

- c. Discussion And Possible Action On Bain Medina Bain Engineer Firm To Request Bids For Foxcross Road Project

Motion made by Council Member Molina seconded by Council Member Hitt
To approve Bain Medina Bain Engineer Firm To Request Bids For Foxcross Road Project

Aye:

Nay:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

Motion passed with a 7-0 vote

- d. Discussion And Possible Action on Bain Medina Bain Engineer Firm to request bids for Vinecrest Sewer Project

Motion made by Council Member Martin seconded by Mayor Pro-Tem Apodaca to approve Bain Medina Bain Engineer Firm to request bids for Vinecrest Sewer Project

Aye:

Nay:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

Motion passed with a 7-0 vote

- e. Discussion And Possible Action to Consider Repair On Ground Storage Tank For The Water Level Indicator System On Well 3

Motion made by Council Member Garza seconded by Mayor Pro-Tem Apodaca to approve Repair On Ground Storage Tank For The Water Level Indicator System On Well 3

Aye:

Nay:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

Motion passed with a 7-0 vote

- f. Discussion And Possible Action On Increasing Starting Pay For Paramedics In The Fire Department, To Be Able To Offer For Competitive Salaries For Higher Trained Personnel

Motion made by Council Member Garza seconded by Mayor Pro-Tem Apodaca to approve Increasing Starting Pay For Paramedics In The Fire Department, To Be Able To Offer For Competitive Salaries For Higher Trained Personnel

Aye:

Nay:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

Motion passed with a 7-0 vote

g. Discussion And Possible Action On Senior Center Legal Opinion For Local Government Code 171

Council Discussed Agenda item G
Council agreed to bring back Agenda item G to next meeting

h. Discussion And Possible Action On The Interim City Manager Appointing An Acting City Manager Within 60 Days In Accordance With The City Charter

Motion made by Council Member Lozano seconded by Mayor Pro-Tem Apodaca to appoint Chief Hilburn as Acting City Manager

Aye:

Nay:

Mayor Pro-Tem Apodaca
Council Member Garza
Council Member Hitt
Council Member Martin
Council Member Molina
Council Member Lozano
Mayor Grider

Motion passed with a 7-0 vote

Closed Session: Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney): the city of Kirby City Council will convene in executive session on the following items:

Council moved to executive session at 8:07P.M.
Council Opened the Open meeting back at 9:52P.M.

a. Discussion and Update On Pending Legal Cases And Investigations.

b. Council to Conduct Interviews For City Manager

c. To Discuss Agreement Terms With Texas First Group LLC, Regarding Providing Interim City Manager Services For The City of Kirby

9. City Manager Announcements

ICM Chief Cardona announced June 29 Fireworks at the park

10. Request And Announcements

Mayor Pro-Tem Apodaca- Announced May 4 election day

Council Member Garza- Made a statement and discussed former ICM

Council Member Hitt- Congratulated all Beautification and Recycle winners

Council Member Martin- asked for Brush and Bulk to be readdressed

Council Member Molina- Had questions on Von Braun asked for ordinance Amendment to come back

Council Member Lozano- Thanked everyone and staff

Mayor Grider- Discussed former ICM's

11. Adjournment

Meeting Adjourned at 11:00 P.M.

Janeshia Grider,
Mayor

Katelyn Ueckert
Interim City Secretary

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twenty-four (24) hours prior to the meeting) by calling 210/661-3198 or Relay Texas 800/735-2989 (hearing/speech impaired assistance).

DATE OF POSTING: APRIL 22, 2024

TIME OF POSTING: 6:00 P.M.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 7.

- a. Discussion and Update: Finance Department- Water Utility Update
- b. Discussion And Update: Public Works
- c. Discussion And Update: Municipal Court
- d. Discussion and Update: Ackerman Rd Construction

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 a.

- a. Receipt of Canvass Of The General Election Returns And Declaring The Results Of the General Election On May 4, 2024; For the Purpose Of Electing One Mayor And Three Council Members For Two Year Terms On The City Council.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

C I T Y O F K I R B Y
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 b.

Discussion And Possible Action On Resolution no. R-2023-753 Canvassing The General Election Returns And Declaring The Results Of the General Election Held May 4, 2024, For the Purpose Of Electing Three Council Members.

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

C I T Y O F K I R B Y
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 c.

Recognition Of Outgoing Council Members

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 d.

Presentation Of Certificates of Election to Newly Elected Officials

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 e.

Discussion and Possible Action on Change Order #5 – Manhole
Reconstruction/Rehabilitation/Point Repairs

Ackerman Road Project Change Order Summary

Change Order #5

Austin Bridge & Road has submitted Change Order #5 to seek financial compensation for 61 extra mailboxes for the Ackerman Road project. The original bid form called out for 23 mailboxes and a total of 84 are needed to complete the project. The amount for Change Order #5 was reached by multiplying the 61 extra mailboxes by the original unit bid price of \$525.00 each. (61 x \$525.00 = \$32,025.00). BMB agrees that Change Order #5 is necessary to replace and relocate the existing mailboxes.

Change Order #6

Austin Bridge & Road has submitted Change Order #6 to seek financial compensation for additional expenses of off duty police officers to control traffic in and around detours for the Ackerman Road Project. In December 2023, Austin Bridge & Road decided to pull Change Order #6 from Council consideration. In March 2024, Austin Bridge & Road came back and mentioned they wanted to pursue Change Order #6 further and get it approved by City Council. BMB is NOT in agreement with Change Order #6 and have stated such in multiple bi-weekly meetings with the Contractor and City official present.

Change Order #7 – Not Needed.

Change Order #8 & #9

Change Order #8 is due to an existing 12" water main that conflicts with a 30" RCP storm sewer at approximately STA. 32+65 (intersection of Binz-Engleman & Ackerman Rd.). This change order would be for the adjustment of the 12" water main over the proposed 30" RCP storm sewer. The cost of two off duty officers is also included in the Change Order.

Change Order #9 is due to an existing 12" water main in conflict with the proposed Junction Box A-3, A-2, and A-1. Contractor recommendation is to adjust the existing water main around Junction Box A-3, A-2, and A-1.

BMB is also investigating if the design can be revised so that the Contractor will not have to perform the adjustments mentioned above for Change Order #8 and #9. As of March 22, 2024, proper documentation backing up these change orders was not submitted. Therefore, BMB did not submit Change Order #8 and #9 for Council consideration.

Future Change Order #10

Future Change Order #10 is for the rehabilitation and reconstruction of existing manholes along Ackerman Rd. The original bid form called for 3 reconstructed manholes and 42 VF of rehabilitated manholes. BMB performed an on-site inspection of each of the manholes within the project limits and found that 4 manholes need reconstruction and 6 manholes need to be rehabilitated, therefore 85 VF is necessary for rehabilitated manholes. BMB is currently finishing up their recommendation and will review with the City Manager. This means that 1 additional manhole will need to be reconstructed and

an additional 43 VF of rehabilitation of manholes will need to be added. BMB is also reviewing the condition of the existing sanitary sewer main on Hedwig for possible replacement or rehabilitation.

Contract Information

Original Contract Amount: \$10,066,581.70

Change Order #1 Amount: -\$204,277.85 – CPS Gas Alignment on Ackerman Rd.

Change Order #2 Amount: \$902.49 – Revised Project Signs

Change Order #3 Amount: \$36,154.98 – Original Off Duty Officers Cost

Change Order #4 Amount: \$22,929.92 – AC Pipe Removal

Total Change Order Amount to Date: -\$144,290.46

Contingency: No Contingency on Contract


Change Order No. 6

Date of Issuance: _____ Effective Date: April 3, 2023
Owner: City of Kirby Contractor's Project No.: 522012
Contractor: Austin Bridge and Road Engineer's Project No.: C-1594.03
Engineer: Bain Medina Bain, Inc.
Project: 2018 Street Bond Projects – Phase II

The Contract is modified as follows upon execution of this Change Order:

Description: Contractor is seeking financial compensation for the additional expenses incurred for the presence of off duty police officers to control traffic in and around detours in the Project.

Attachments: ABR Change Order Letter

CHANGE IN CONTRACT PRICE		CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>	
Original Contract Price:		Original Contract Times:	
\$ <u>10,066,581.70</u>		Substantial Completion: February 3, 2025	
		Ready for Final Payment: April 3, 2025	
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>5</u> :		[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>4</u> :	
\$ <u>112,261.46</u>		Substantial Completion: February 19, 2025	
		Ready for Final Payment: April 19, 2025	
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ <u>9,954,320.24</u>		Substantial Completion: February 19, 2025	
		Ready for Final Payment: April 19, 2025	
[Increase] [Decrease] of this Change Order:		[Increase] [Decrease] of this Change Order:	
\$ <u>38,943.58</u>		Substantial Completion: February 29, 2025	
		Ready for Final Payment: April 29, 2025	
Contract Price incorporating this Change Order:		Increase of 0 days	
\$ <u>9,993,263.82</u>		Contract Times with all approved Change Orders:	
		Substantial Completion: February 29, 2025	
		Ready for Final Payment: April 29, 2025	
RECOMMENDED:	ACCEPTED:	ACCEPTED:	
By: _____ Engineer	By: _____ City of Kirby	By:  Austin Bridge and Road	
Title: Executive Vice President	Title: City Manager	Title: <u>Treasurer</u>	
Date: March 21, 2024	Date: _____	Date: <u>3/22/24</u>	

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

C I T Y O F K I R B Y
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 f.

Discussion and Possible Action on Sponsoring Judson Learning Academy (JLA) water tower for garden located at Kirby Middle School



Gardopia Gardens sent you an estimate

Gardopia Gardens extends its heartfelt gratitude for the ongoing opportunity to collaborate with Judson Learning Academy on our garden-based learning program.

The positive impact that the garden-based learning program has on the students is truly inspiring. Witnessing their curiosity and enthusiasm as they engage with nature, learn about plant life cycles, and explore the wonders of our ecosystem reaffirms the importance of experiential learning. It's clear that the program is making a meaningful difference in their education and fostering a deeper connection to the environment.

I've attached the estimate outlining the rainwater tank, the flow meter, and cinder block pad to be installed.

Customer

Judson Learning Academy

ishuler@judsonisd.org

Additional Recipients

ahyman@judsonisd.org

Estimate #021425

February 20, 2024

Hide full details ^

Judson Learning Academy - Rainwater Tank

Rain Water Tank (200 Gallons) - Galvanized Metal	\$1,500.00
Flow Meter	\$0.00
Cedar Block Pad	\$0.00
Subtotal	\$1,500.00
Sales Tax	\$0.00
Total	\$1,500.00

Gardopia Gardens
122 Timberlane Dr.
SAN ANTONIO, TX 78209
info@gardopiagardens.org
+1 (210) 478-7292

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<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
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<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 g.

Discussion and Possible Action on Increasing Animal Control Manager Pay to \$21.00 Per Hour and
Removal of Part-Time Kennel Technician for This Fiscal Year

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 h.

Discussion and Possible Action on Auction Agreement for Kirby Police Department

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM: 8 i.

Discussion And Possible Action On Interlocal Cooperation Agreement Establishing Concurrent Jurisdiction with the City of San Antonio.

STATE OF TEXAS

COUNTY OF BEXAR

INTERLOCAL COOPERATION AGREEMENT
ESTABLISHING CONCURRENT JURISDICTION

The City of San Antonio ("COSA"), a home-rule municipality in Bexar County, Texas, and the City of _____, a home-rule municipality, enter this agreement acting through an ordinance adopted by the City of San Antonio's City Council and through action by the City of _____ City Council, both parties acting under the authority of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

WHEREAS, COSA is a Texas municipality with a population of more than 1.19 million and the City of _____ is a Texas municipality contiguous with COSA operating within Bexar County, Texas; and

WHEREAS, Section 791 of the Texas Government Code provides that governmental entities of the State may contract with each other to provide governmental functions and services and provide fire protection and associated services to protect public health; and

WHEREAS, it is to the mutual benefit of COSA and City of _____ that an agreement providing concurrent jurisdiction be adopted for the police services and municipal courts of either jurisdiction for all criminal cases arising from offenses under state law that are committed on the boundary of those municipalities or within 200 yards of that boundary and which are punishable by fine only.

WHEREAS, COSA and City of _____ have a duty to provide protection to citizens from traffic infractions and other fineable municipal offenses;

NOW, THEREFORE, in consideration of the terms contained in this Agreement, COSA and City of _____, through their respective governing bodies, agree as follows:

SECTION 1. SERVICES

1.01 Services to be Provided. The San Antonio Police Department provides police protection services in an area surrounding/adjacent to and up to the city limits of the City of _____.

1.02 Services to be Provided. By this agreement, effective as of the date of the adoption of this agreement, the parties agree to exercise concurrent jurisdiction for the municipal courts of either jurisdiction for all criminal cases arising from offenses under state law that are committed on the boundary of COSA and City of _____ or within 200 yards of that boundary and which are punishable by fine only, as provided under the terms of Section 29.003(h) of the Government Code.

SECTION 2. FUNDING

2.01 Source of Funds. Any party paying for performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

SECTION 3. TERM AND TERMINATION

3.01 Term of Agreement. This Agreement shall take effect when executed by both parties and remain in effect until August 31, 2026, so long as the governing bodies of the parties appropriate funds and provide staff to continue the Agreement. The parties may by written agreement extend this Agreement. Representatives of COSA and City of shall meet on or before April 1, 2026 to discuss the status of this agreement and whether or not to continue it.

3.02 Termination by the Parties. The City of San Antonio or the City of may terminate this Agreement at any time by giving ninety (90) days prior written notice to the other party.

SECTION 4. LIABILITY AND VENUE

4.01 Liability. Each party shall be liable for any and all costs, claims, liens, damages, causes of action, liability, and suits of any kind and nature arising out of, resulting from, or related to the acts or omissions of all such parties' agents, officers, directors, representatives, employees, consultants, or subcontractors.

4.02 Comparative Liability. In the event the parties are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas and the United States, without, however, waiving any governmental immunity available to the parties under Texas and Federal law and without waiving any defenses of the parties under Texas and Federal law.

4.03 Tort Claims Act. Each party acknowledges that the other party is a political subdivision of the State of Texas and is subject to, and complies with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

4.04 Notice of Claims. Each party shall promptly advise the other party in writing of any claim or demand against COSA or City of or known to it, related to or arising out of actions or omissions under this Interlocal Cooperation Contract and shall see to the investigation of and defense of such claim or demand at its expense. The other party shall have the right, at its option and at its own expense, to participate in such defense without relieving the advising party of any of its obligations under this paragraph.

4.05 Duty to Defend. Each party further agrees to defend, at its own expense, and on behalf of itself and the other party, any claim or litigation brought against it in connection with any such

injury, death, or damage caused solely through the negligent or other wrongful conduct of COSA or City of _____ in carrying out this Agreement.

4.06 Limit of Liability. COSA and City of _____ will use due diligence in providing police protection to all citizens in the zone of concurrent jurisdiction. Neither party waives any right to immunity from suit by any third parties except as specifically provided by the Texas Tort Claims Act.

4.07 Venue for Suit. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas and all obligations of the parties are performable in Bexar County, Texas.

SECTION 5. ASSIGNMENT

5.01 Assignment of Rights. Rights to receive services under this Agreement are not transferable or assignable by either city without the prior written consent of the other. Failure by either party to obtain written consent of the other before assigning any rights under this Contract shall result in automatic termination of the Agreement, and neither party shall have any further duty to perform or other liability. The parties hereby agree not to unreasonably withhold consent to the transfer or assignment of rights under this Agreement by the other party.

SECTION 6. SEVERABILITY

6.01 Severability. If any provision of this Agreement is held invalid or unenforceable under federal, state or local laws, such as the City Charter, City Code, or ordinances of either city, then, and in that event, it is the intention of the parties that any unenforceability shall not affect any other provision of this Agreement and that the remainder of this Agreement shall be construed as if such invalid or unenforceable provision was never included.

SECTION 7. NOTICE

7.01 Notice Requirements. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid as certified mail with return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited into the custody of a nationally recognized overnight delivery service such as Federal Express, addressed to such party at the address hereinafter specified.

7.02 Notice by Mail. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other

party no less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

If to COSA:

City of San Antonio
Attn: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

With a copy to:

William P. McManus, Chief of Police
San Antonio Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If to the City of :

City of
Attn:

With a copy to:

, Chief of Police
Police Department

SECTION 8. FORCE MAJEURE

8.01 Force Majeure. Neither party to the Agreement shall be required to perform a duty set out in this Agreement so long as that performance is delayed or prevented by acts of God, strikes, material or labor restrictions by any governmental authority, civil riot, floods, or any other cause not reasonably within the control of either party and which by the exercise of due diligence the party is unable, wholly or in part, to prevent or overcome.

SECTION 9. ENTIRE AGREEMENT BETWEEN PARTIES

9.01 Entire Agreement. This Agreement, together with its authorizing ordinance and exhibits constitutes the final and entire agreement between the parties. It contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties unless made in writing, as provided in Section 9.02.

9.02 Amendment Only by Written Agreement. This Agreement may be amended only by the mutual written agreement of the parties, and any such amendment is subject to subsequent approval by each party's governing body.

9.03 Parties Bound by Contract. This Agreement shall bind and benefit the parties to the Agreement and their respective successors and assigns, except as otherwise expressly provided for in this Agreement.

CITY OF SAN ANTONIO

City of

By: _____

Erik Walsh
City Manager

By: _____

City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Andrew Segovia
City Attorney

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM 8 j.

Discussion and Consideration on providing a \$3000 Budget for Beautification & Recycle Committee

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

C I T Y O F K I R B Y
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM 8 k.

Discussion And Possible Action on Senior Center Legal Opinion for Local Government Code 171.



Conflict of Interest/Disclosure Laws

Applicable to City Officials, Employees, and Vendors

This publication is for educational purposes and meant to provide basic information regarding *state* conflict of interest and disclosure laws applicable to city officials, employees, and vendors. A home rule charter, local policy, or ordinance may provide for more stringent requirements in some circumstances. This paper is neither an exhaustive treatment of the law on this subject nor a substitute for the advice of an attorney. It is important to consult the individual state laws cited for detailed information about the issues discussed here and to consult an attorney in order to apply these legal principles to specific fact situations. You can find additional resources regarding many of the topics discussed in this paper on our Web site at www.tml.org.

Updated August 2019

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A common source of alleged wrongdoing revolves around conflicts of interest. Whether real or perceived, these allegations often arise out of situations involving personal financial gain, employment, or special treatment for family members or business relations. To protect city transactions from the undue influence of such conflicts, various state laws require disclosure of city officer, employee, and vendor interests. In the past decade, the number and type of interests that must be disclosed have increased. Keep in mind that each state law discussed here comes with its own separate legal requirements. Thus, complying with one does not fulfill the obligations imposed by the other. In some circumstances, the same financial interest may require a city officer, employee, or vendor to file more than one disclosure form.

I. Local Government Code Chapter 171: Real Property and Business Interests

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.¹ It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.²

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper (usually the city secretary), stating the nature and extent of the interest.³ In addition, a public official is required to abstain from further participation in the matter except when a majority of the members of the governing body also have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.⁴

The term "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature." This term includes a member of a planning and zoning commission.⁵

A public official has a substantial interest in a business entity if the official:

1. owns 10 percent or more of the voting stock or shares of the business entity;
2. owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

¹ TEX. LOC. GOV'T CODE §§ 171.001–.010.

² *Id.* § 171.004.

³ *Id.* An example (not a model) affidavit is available here: <https://www.tml.org/DocumentCenter/View/276/Chapter-171-Conflict-of-Interest-Affidavit-Sample-PDF>.

⁴ TEX. LOC. GOV'T CODE § 171.004.

⁵ *Id.* § 171.001(1).

⁶ Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

3. receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.⁷

A public official has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more.⁸

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property.⁹ As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income which exceeds ten percent of her gross income.¹⁰

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."¹¹ A nonprofit corporation is considered a business entity.¹² The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.¹³ Public entities such as a city, state university or school district, are not business entities.¹⁴

The limit on "further participation" by a public official who has a conflict does not preclude the public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations.¹⁵ Thus, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations.¹⁶

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact.¹⁷ However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest.¹⁸ Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.¹⁹

⁷ Tex. LOC. GOV'T CODE § 171.002(a).

⁸ *Id.* § 171.002(b).

⁹ *Id.* § 171.002(c).

¹⁰ Tex. Att'y Gen. Op. No. JC-0063 (1999).

¹¹ TEX. LOC. GOV'T CODE § 171.001(2).

¹² Tex. Att'y Gen. Op. No. JM-424 (1986), at 2.

¹³ Tex. Att'y Gen. Op. No. DM-309 (1994), at 2.

¹⁴ Tex. Att'y Gen. Op. Nos. GA-0826 (2010), at 1, DM-267 (1993), at 2, JM-852 (1988), at 2.

¹⁵ Tex. Att'y Gen. Op. No. GA-0334 (2005), at 6.

¹⁶ *Id.*

¹⁷ Tex. Att'y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att'y Gen. LO-98-052.

¹⁸ Tex. Att'y Gen. Op. No. GA-0136 (2004), at 3.

¹⁹ Tex. Att'y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.—Dallas 1991, writ denied)).

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific.²⁰ In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.”²¹

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately.²² The affected member may not generally participate in consideration of that item.²³

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a substantial interest.²⁴ A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.²⁵

II. Local Government Code Chapter 176: Income and Gifts from, and Family Relationships with Vendors

Chapter 176 of the Local Government Code requires certain local government officers to disclose the receipt of gifts from and employment, business, and familial relationships with vendors who conduct business, or consider conducting business, with local government entities. The requirements apply to most political subdivisions, including cities.²⁶ The Chapter also applies to a “local government corporation, a board, commission, district, or authority” whose members are appointed by a mayor or the city council.²⁷

A “local government officer” (officer) includes: (1) a mayor or city councilmember; (2) a director, administrator, or other person designated as the executive officer of the city; and (3) an agent (including an employee) of the city who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.²⁸

An officer is required to file a conflicts disclosure statement in three situations.

²⁰ Tex. Att’y Gen. LO-96-049.

²¹ *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

²² TEX. LOC. GOV’T CODE § 171.005.

²³ *Id.*

²⁴ *Id.* § 171.006.

²⁵ *Id.* § 171.003; see also *Marras v. State*, 399 S.W.3d 664 (2013) (overturning a conviction under Local Government Code Section 171.003).

²⁶ TEX. LOC. GOV’T CODE § 176.001.

²⁷ *Id.*

²⁸ *Id.*

1. An officer must file a statement if the officer or officer's family member²⁹ has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months.³⁰ An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.³¹
2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts (including lodging, transportation, and entertainment accepted as a guest) from a vendor that has an aggregate value of more than \$100 in the preceding twelve months.³² An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.³³

3. An officer is required to file a statement if the officer has a family relationship with the vendor.³⁴

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.³⁵

An officer is required to file a statement no later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement.³⁶

A "vendor" includes any person that enters or seeks to enter into a contract with a city.³⁷ The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).³⁸

²⁹ An officer's "family member" is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.*

³⁰ *Id.* § 176.003(a)(2)(A).

³¹ *Id.* § 176.001.

³² *Id.* § 176.003(a)(2)(B). It is important to remember that state law prohibits the acceptance of certain gifts. *See, e.g.,* TEX. PENAL CODE §§ 36.02, 36.08.

³³ TEX. LOC. GOV'T CODE §§ 176.001(2-b), 176.003(a-1).

³⁴ *Id.* § 176.003(a)(2)(C). An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001.

³⁵ *Id.* § 176.003(a-2).

³⁶ *Id.* § 176.003(b).

³⁷ *Id.* § 176.001.

³⁸ *Id.*

Chapter 176 applies to any written contract for the sale or purchase of real property, goods (personal property), or services.³⁹ A contract for services includes one for skilled or unskilled labor, as well as professional services.⁴⁰

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.⁴¹

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date that the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date that the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.⁴²

The statements and disclosures must be filed with the records administrator of the city.⁴³ A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under Chapter 176.⁴⁴

A city that maintains a Web site is required to post on that site statements and disclosures that are required to be filed under Chapter 176.⁴⁵ However, a city that does not have a Web site is not required to create or maintain one.⁴⁶

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class A, B, or C misdemeanor, depending on the amount of the contract.⁴⁷ It is an exception to prosecution that an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation.⁴⁸ The validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.⁴⁹

The Texas Ethics Commission is charged with creating statements and disclosure forms. The forms (Form CIS and Form CIQ) may be found at <https://www.ethics.state.tx.us/forms/conflict/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* §176.006(a).

⁴² *Id.* §176.006(a-1).

⁴³ *Id.* §§176.003(b), 176.006(a-1).

⁴⁴ *Id.* §176.001(5).

⁴⁵ *Id.* § 176.009.

⁴⁶ *Id.*

⁴⁷ *Id.* §§ 176.013.

⁴⁸ *Id.*

⁴⁹ *Id.* § 176.006(i).

III. Government Code Chapter 553: Property Acquired with Public Funds

Chapter 553 of the Government Code provides that a “[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.”⁵⁰

Chapter 553’s affidavit requirement applies to a “public servant,” defined as a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government.⁵¹

The term “public funds” is defined to “include[] only funds collected by or through a government.”⁵² The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. There appears to be no case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit.⁵³

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation.⁵⁴ The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.⁵⁵

The affidavit must include: (1) the name of the public servant; (2) the public servant’s office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;” and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.⁵⁶ An affidavit example is available on our Web site at: <https://www.tml.org/DocumentCenter/View/275/Chapter-553-Property-Affidavit-Sample-PDF>.

⁵⁰ TEX. GOV’T CODE § 553.002(a).

⁵¹ *Id.* § 553.001(2).

⁵² *Id.* § 553.001(1).

⁵³ *Id.* § 553.002.

⁵⁴ TEX. GOV’T CODE § 553.002(a).

⁵⁵ *Id.* § 553.002(c).

⁵⁶ *Id.* § 553.002(b).

A person who violates Section 553.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property.⁵⁷

IV. Local Government Code Chapter 145: Financial Disclosure in Cities with a population of 100,000 or more

Local Government Code Chapter 145's financial disclosure requirements apply *only in a city with a population of 100,000 or more*.⁵⁸ In general terms, Chapter 145:

1. requires each mayor, each member of a city council, each city attorney, each city manager, and each candidate for city office filled by election to file an annual financial statement with the city clerk or secretary;⁵⁹
2. requires that the financial statement include an account of the financial activity of the covered individual and the individual's spouse and dependent children, if the individual had control over that activity; and⁶⁰
3. requires that the financial statement include all sources of income; shares of stocks owned, acquired, or sold; bonds, notes, or other paper held, acquired, or sold; any interest, dividend, royalty, or rent exceeding \$500; each person or institution to whom a personal debt of \$1,000 or more exists; all beneficial interests in real property or businesses owned, acquired, or sold; certain gifts received; income in excess of \$500 from a trust; and a list of all boards of directors on which the individual serves; and information about certain contracts with a governmental entity.⁶¹

Candidates for elected city office are required to file the financial disclosure statement not later than the earlier of: (1) the twentieth day after the deadline for filing an application for a place on the ballot in the election; or (2) the fifth day before the date of the election.⁶² Annually, the mayor, city councilmembers, the city manager, and the city attorney⁶³ must file a financial disclosure statement for the preceding year by April 30.⁶⁴ A new city manager or a new city

⁵⁷ *Id.* § 553.003.

⁵⁸ TEX. LOC. GOV'T CODE § 145.001.

⁵⁹ *Id.* §§ 145.002-.003.

⁶⁰ TEX. LOC. GOV'T CODE § 145.003(b)(2). TEX. GOV'T CODE § 572.023(a).

⁶¹ TEX. LOC. GOV'T CODE § 145.003(b)(2). TEX. GOV'T CODE § 572.023(b).

⁶² TEX. LOC. GOV'T CODE § 145.004(c).

⁶³ While there appears to be no case or opinion directly on point, advisory opinions issued by the Texas Ethics Commission suggest that an interim city manager or city attorney that has all the duties and powers of a permanent city manager or attorney would also be subject to this requirement. *See* Ethics Advisory Opinion Nos. 27 (1992), 265 (1995).

⁶⁴ TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(a).

attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.⁶⁵

City officers and candidates for elected city office must generally file the financial statement on a form (Form PFS-LOCAL) provided by the Texas Ethics Commission, available here: <https://www.ethics.state.tx.us/forms/QuickFindAForm.php>.⁶⁶ A detailed listing of the required contents is found in Section 572.023 of the Texas Government Code. If information in the financial disclosure form is required to be filed by category, Section 572.022 sets forth reporting categories. The city secretary must deliver (by mail, personal delivery, e-mail, or other electronic transfer) copies of the form to city officers and candidates for city office within certain time deadlines.⁶⁷

The completed financial disclosure statement is filed with the city clerk or secretary.⁶⁸ These statements are public records and are to be maintained so as to be accessible to the public during regular office hours.⁶⁹

Both criminal and civil penalties may be imposed for failure to file a financial disclosure statement. An offense under Chapter 145 is a Class B misdemeanor, which is punishable by a fine up to \$2,000 and/or confinement up to 180 days.⁷⁰ Section 145.010 sets forth a process whereby a civil penalty up to \$1,000 may be assessed upon failure to comply after notice is received from the city attorney.

The city secretary shall grant an extension of not more than sixty days for the filing of the financial disclosure statement to a city officer or a person appointed to a city office if: (1) the individual makes an extension request before the filing deadline; or (2) the individual's physical or mental capacity prevents either the filing or the request for an extension before the filing date.⁷¹ Extensions shall not be granted to candidates for elected city office.⁷²

The city secretary shall maintain a list of the city officers and candidates required to file a financial disclosure statement. No later than ten days after the filing deadline, the city secretary shall provide a list to the city attorney showing for each city officer and candidate for city office: (1) whether the individual filed a timely statement; (2) whether the individual was granted an extension and the new filing deadline; or (3) whether the individual did not timely file a financial statement or receive an extension of time.⁷³

⁶⁵ TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).

⁶⁶ TEX. LOC. GOV'T CODE § 145.005(a).

⁶⁷ *Id.* §§ 145.002, 145.005(b).

⁶⁸ *Id.* § 145.003(b).

⁶⁹ *Id.* § 145.007(a). On the written request of the municipal court judge or a candidate for municipal court judge, the residence address of the judge, the judge's spouse, or the candidate for judge shall be removed or redacted before the financial statement is made available to the public. *Id.* § 145.007(d). (Note: A municipal court judge appears to be subject to Chapter 145 only if the office is filled by election.)

⁷⁰ *Id.* § 145.009.

⁷¹ *Id.* § 145.004(e).

⁷² *Id.* § 145.004(f).

⁷³ *Id.* § 145.008.

V. Government Code Section 2252.908: Vendor Disclosure of Interested Parties

Government Code Section 2252.908 is a governmental transparency law originally enacted by H.B. 1295 in 2015. It prohibits a governmental entity (defined to include a city⁷⁴) or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (a Form 1295).

The Texas Ethics Commission (Commission) is charged with adopting rules to implement the statute, developing the disclosure of interested parties form, and posting the form on its Web site.⁷⁵

This new disclosure law applies only to contracts that: (1) require an action or vote by the city council before the contract may be signed; (2) have a value of at least \$1 million; or (3) are for services that would require a person to register as a lobbyist under Chapter 305.⁷⁶ Pursuant to the Commission's rules, a contract does not require an action or vote by the city council if:

1. The governing body has legal authority to delegate to its staff the authority to execute the contract;
2. The governing body has delegated to its staff the authority to execute the contract; and
3. The governing body does not participate in the selection of the business entity with which the contract is entered into.⁷⁷

It is important to note that the Commission defines the term "contract" to include an amended, extended, or renewed contract.⁷⁸ A new rule, effective January 1, 2017, further clarifies when a change to an existing contract triggers the filing of a disclosure form.⁷⁹

The business entities subject to this law are those entities "recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation."⁸⁰ The Commission's rules clarify that the term "business entity" includes nonprofits, but does not include a governmental entity.⁸¹ That means, for instance, if a city executes an interlocal agreement with another city the disclosure requirements of Section 2252.908 are not triggered.

⁷⁴ TEX. GOV'T CODE § 2252.908(a)(2) (defining "governmental entity" to include a city, county, public school district, or special-purpose district or authority).

⁷⁵ *Id.* § 2252.908(g).

⁷⁶ *Id.* § 2252.908(b); *but see id.* § 2252.908(c) (expressly exempting certain contracts including a contract with a publicly traded business entity, a contract with an electric utility, and a contract with a gas utility).

⁷⁷ 1 T.A.C. § 46.1(c).

⁷⁸ *Id.* § 46.3(a).

⁷⁹ *Id.* § 46.4.

⁸⁰ TEX. GOV'T CODE § 2252.908(a)(1).

⁸¹ 1 T.A.C. § 46.3(b).

Exactly what types of interested parties must a business entity disclose? A business entity must disclose: (1) a person who has a controlling interest in the business; and (2) any intermediary.⁸² The Commission defines the terms “controlling interest” and “intermediary” as follows:

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

“Intermediary,” . . . means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.⁸³

It is quite possible that, although a business entity is subject to Section 2252.908, no interested parties will exist. Thus, a business entity may end up filing a form that has very little information on it.

The process for completing and submitting Form 1295 is as follows:

1. A business entity must use the Commission’s online filing application to enter the required information on Form 1295.⁸⁴
2. The completed Form 1295 must be filed with the city “at the time the business entity submits the signed contract” to the city.⁸⁵
3. The city must notify the Commission, using the Commission’s filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the city receives the disclosure.⁸⁶

To further explain the process, the Commission has prepared instructional videos and a “FAQ” document, available here: <https://www.ethics.state.tx.us/filinginfo/QuickFileAReport.php> (under “Filing a 1295 Certificate”).

⁸² *Id.* § 46.3(d).

⁸³ *Id.* § 46.3(c)(e).

⁸⁴ *Id.* § 46.5.

⁸⁵ TEX. GOV’T CODE § 2252.908(d).

⁸⁶ *Id.* § 2252.908(f), 1 T.A.C. § 46.5(c).

In order for a business entity to complete Form 1295, it will need some information from the city. Although not required by Section 2252.908, the Commission's rules provide that the business entity must include on the form an "identification number used by the [city] . . . to track or identify the contract for which the form is being filed."⁸⁷ Even though the rules provide for such a number, nothing in the rule requires a city to create a numbering system of any type.

The whole purpose behind this new disclosure requirement is to give the public more information about government contracts. To that end, the Commission is required to post the completed Form 1295 on its Web site within seven business days after receiving notice from the city that the city has received the filed Form 1295 and certification of filing.⁸⁸ In addition, cities must provide the completed forms in accordance with the Public Information Act.

The Commission takes the position that it does not have any authority (beyond rulemaking and adoption of the form) to enforce or interpret Government Code Section 2252.908.⁸⁹ All the possible ramifications for a city's failure to comply with Section 2252.908 are unclear at this time. As for a business entity, the statute requires a Form 1295 disclosure contain "a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury."⁹⁰

VI. Miscellaneous Conflicts Provisions

A. Plat Approval

A provision governing conflicts of interest in the plat approval process was added to state law in 1989. It requires "[a] member of a municipal authority responsible for approving plats [who] has a substantial interest in a subdivided tract" to file an affidavit stating the nature and extent of the interest and abstain from further participation in the matter.⁹¹ The affidavit must be filed with the municipal secretary or clerk before a vote or decision regarding the approval of a plat for the tract.

For purposes of this disclosure requirement, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.⁹²

A person has a substantial interest in a subdivided tract if the person:

1. has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;

⁸⁷ 1 T.A.C. § 46.5(a)(4).

⁸⁸ TEX. GOV'T CODE § 2252.908(g), 1 T.A.C. § 46.5(d).

⁸⁹ *Cf., e.g.,* TEX. GOV'T CODE §§ 571.061 (listing the laws that the Commission administers and enforces), 571.091 (listing the statutes about which the Commission may issue advisory opinions).

⁹⁰ *Id.* § 2252.908(e)(2); *see also* TEX. PENAL CODE ch. 37 (providing for offense of perjury).

⁹¹ TEX. LOC. GOV'T CODE § 212.017(d).

⁹² *Id.* § 212.017(a).

2. acts as a developer of the tract;
3. owns 10% or more of the voting stock or shares of or owns either 10% or more or \$5,000 or more of the fair market value of a business entity that:
 - (A) has an equitable or legal ownership interest in the tract with a fair market value of 2,500 or more; or
 - (B) acts as a developer of the tract; or
4. receives in a calendar year funds from a business entity described in (3) that exceed 10% of the person's gross income for the previous year.⁹³

A person is also considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who has a substantial interest in the tract. An offense under this subsection is a Class A misdemeanor.⁹⁴ The finding by a court of a violation of this requirement does not render voidable an action of the municipal authority responsible for approving plans, unless the measure would not have passed without the vote of the member who violated the requirement.⁹⁵

B. Selection of City Depository

Local Government Code Section 131.903 regulates conflicts of interest with respect to a city's selection of a depository. A bank is disqualified from serving as the depository of the city if an officer or employee of the city who has a duty to select the depository owns or has a beneficial interest, individually or collectively, in more than 10 percent of the outstanding capital stock of the bank.⁹⁶ In other words, a city council may not select a bank as the city's depository if a mayor or councilmember owns more than 10 percent of the bank.

If an officer or employee of the city is a director or officer of the bank, or owns 10 percent or less of the capital stock of the bank, the bank is not disqualified from serving as the city's depository so long as: (1) the interested officer or employee does not vote or take part in the proceedings; and (2) a majority of the other members of the city council vote to select the bank as the depository.⁹⁷

The attorney general has concluded that Section 131.903 is an exception to the general conflicts of interest statute in Chapter 171 of the Local Government Code.⁹⁸ That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term is defined by Chapter 171 of the Local Government Code, comply with the Chapter 171 requirements of (1) filing an affidavit that discloses the potential conflict; and (2) abstaining

⁹³ *Id.* § 212.017(b).

⁹⁴ *Id.* § 212.017(e).

⁹⁵ *Id.* § 212.017(f).

⁹⁶ *Id.* § 131.903(a)(2).

⁹⁷ *Id.*

⁹⁸ Tex. Att'y Gen. LO-97-093.

from participating in the selection of the bank, even if the potential conflict doesn't trigger the specific conflict of interest provision under Local Government Code Section 131.903.

C. Prohibition Against Acting as a Surety

There are various instances in which a city may require an entity with which it contracts to utilize a surety (sometimes referred to as a guarantor or secondary obligor).⁹⁹ In addition, certain city officers may be required to execute a bond in conjunction with their office.¹⁰⁰

A local public official commits a Class A misdemeanor offense if the official knowingly: (1) acts as a surety for a business entity that has work, business, or a contract with the governmental entity or (2) acts as a surety on any official bond required of an officer of the governmental entity.¹⁰¹ For the purposes of these violations, a "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . who exercises responsibilities beyond those that are advisory in nature."¹⁰²

D. Profession-Specific Requirements

While it is beyond the scope of this publication to discuss in detail, it is important to remember that vendors must sometimes comply with disclosure requirements that are specific to their profession. For instance, investment advisers must disclose to their clients (on Form ADV) ownership and other details about their firm through the Securities and Exchange Commission's Investment Adviser Public Disclosure Web site. See <https://www.sec.gov/fast-answers/answerscrdhtm.html>.

⁹⁹ See, e.g., *Wiscorbaker v. Johnny Folinar Drilling Co.*, 334 S.W.2d 465, 466 (Tex. Civ. App.—Texarkana 1960, writ dismissed)(describing that the City of Quitman had filed suit against a drilling company and its surety on the company's performance bond for breach of contract).

¹⁰⁰ See, e.g., TEX. LOC. GOV'T CODE § 22.072(c) (authorizing the city council in a type A general law city to require municipal officers to execute a bond payable to the city and conditioned that the officer will faithfully perform the duties of the office).

¹⁰¹ TEX. LOC. GOV'T CODE § 171.003; see also Tex. Att'y Gen. Op. No. KP-0132 (2017) (concluding that 171.003 does not prohibit a local public official from acting as a surety on a bail bond, i.e., a surety for an individual made to secure the release of an individual defendant from the State's custody).

¹⁰² TEX. LOC. GOV'T CODE § 171.001(1).

Law Insider

Voting Stock definition

 Share  Cite


Voting Stock of a corporation means all classes of Capital Stock of such corporation then outstanding and normally entitled to vote in the election of directors.

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Sample 2

Sample 3



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Voting Stock means, with respect to any Person, shares of such Person's Stock having the right to vote for the election of members of the Board of

vote in the election of members of the board of Directors of such Person under ordinary circumstances.

[Sample 1](#) [Sample 2](#) [Sample 3](#)

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Examples of Voting Stock in a Sentence

Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the *Voting Stock*, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business.

The stockholders of the Corporation shall also have

the power to adopt, amend, alter, change or repeal the Bylaws at any special meeting of the stockholders of the Corporation if duly called for that purpose (provided that, in the notice of such special meeting, notice of such purpose shall be given), or at any annual meeting, by the affirmative vote of the holders of a majority of the ***Voting Stock***.

Subject to the provisions of the Certificate of Incorporation, these By-laws may be altered, amended or repealed, or new By-laws enacted, at any special meeting of the stockholders if duly called for that purpose (provided that in the notice of such special meeting, notice of such purpose shall be given), or at any annual meeting, by the affirmative vote of a majority of the voting power of the ***Voting Stock***, voting together as a single class.

More Definitions of *Voting Stock*

Voting Stock means, with respect to any person, such person's Equity Interests having the right to

vote for the election of directors of such person under ordinary circumstances.

[Sample 1](#)

[Sample 2](#)

[Sample 3](#)



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Voting Stock means with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

[Sample 1](#)

[Sample 2](#)

[Sample 3](#)



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Voting Stock means, with respect to any person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to vote in the election of the Board of Directors of such person.

[Sample 1](#)

[Sample 2](#)

[Sample 3](#)



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Voting Stock means outstanding shares of capital stock of the Corporation entitled to vote generally for the election of directors;

[Sample 1](#) 

[Sample 2](#) 

[Sample 3](#) 



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Voting Stock of an entity means all classes of Capital Stock of such entity then outstanding and normally entitled to vote in the election of directors or all interests in such entity with the ability to control the management or actions of such entity.

Sample 1

Sample 2

Sample 3



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Voting Stock means, with respect to any Person, all classes and series of Capital Stock of such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote in the election of the directors, managers or trustees (or other persons performing similar functions), as the case may be, of such Person.

Sample 1

Sample 2

Sample 3



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Voting Stock as applied to any Person, means shares, interests, participations or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of a majority of the directors (or the equivalent) of such Person, other than shares, interests, participations or other equivalents having such power only by reason of the occurrence of a contingency.

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LOCAL GOVERNMENT CODE

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 171.001. DEFINITIONS. In this chapter:

(1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more of \$25,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 37, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 849, Sec. 1, eff. Sept. 1, 1997.

Sec. 171.0025. APPLICATION OF CHAPTER TO MEMBER OF HIGHER EDUCATION AUTHORITY. This chapter does not apply to a board member of a higher education authority created under Chapter 53, Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

(1) a source of income to the board member; or

(2) a business entity in which the board member has an interest distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter 53, Education Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 41(a), eff. Aug. 28, 1989.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

(1) violates Section 171.004;

(2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or

(3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 401a), eff. Aug. 28, 1989.

Sec. 171.005. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit. If a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 401a), eff. Aug. 28, 1989.

Sec. 171.006. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 171.006 and amended by Acts 1989, 71st Leg., ch. 1, Sec. 401a), eff. Aug. 28, 1989.

Sec. 171.006. EFFECT OF VIOLATION OF CHAPTER. The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 171.005 by Acts 1989, 71st Leg., ch. 1, Sec. 401a), eff. Aug. 28, 1989.

Sec. 171.007. COMMON LAW EXEMPTED: CUMULATIVE OF MUNICIPAL PROVISIONS. (a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Amended by Acts 1989, 71st Leg., ch. 1, Sec. 401a), eff. Aug. 28, 1989.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Added by Acts 1989, 71st Leg., ch. 475, Sec. 2, eff. Aug. 28, 1989.

Sec. 121.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner that has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

- (1) the court over which the judge presides; or
- (2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

Added by Acts 2003, 78th Leg., ch. 227, Sec. 21, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1206, Sec. 3, eff. June 20, 2003.*

Voting Stock of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Voting Equity Interests means Equity Interests which at the time are entitled to vote in the election of, as applicable, directors, members or partners generally.

Voting Rights The portion of the voting rights of all of the Certificates which is allocated to any Certificate. As of any date of determination, (a) 1% of all Voting Rights shall be allocated to each Class of Notional Amount Certificates, if any (such Voting Rights to be allocated among the holders of Certificates of each such Class in accordance with their respective Percentage Interests), and (b) the remaining Voting Rights (or 100% of the Voting Rights if there is no Class of Notional Amount Certificates) shall be allocated among Holders of the remaining Classes of Certificates in proportion to the Certificate Balances of their respective Certificates on such date.

Beneficial Ownership Interest means the right to receive payments and notices with respect to the Bonds held in a Book Entry System.

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Business Entity

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law." TEX. LOC. GOV'T CODE § 171.001(2). A nonprofit corporation is also considered a business entity. TEX. ATT'Y GEN. OP. NO. JM-424 (1986) at 2. The term also includes a business entity that represents an entity or person with an interest in a matter before the city council. TEX. ATT'Y GEN. OP. NO. DM-309 (1994), at 2. A city and other public entities, such as a state university or school district, are not a business entity. TEX. ATT'Y GEN. OP. NOS. DM-267 (1993), at 2, JM-852 (1988), at 2.

Further Participation

The limit on "further participation" does not preclude the interested public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations. TEX. ATT'Y GEN. OP. NO. GA-0334 (2005), at 6. As such, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations. *Id.*

Special Economic Effect

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact. TEX. ATT'Y GEN. OP. NO. GA-0796, at 4 (2010); TEX. ATT'Y GEN. LO-98-052. However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest. TEX. ATT'Y GEN. OP. NO. GA-0136 (2004), at 3. Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property. TEX. ATT'Y GEN. OP. NO. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.-Dallas 1991, writ denied).

Reasonably Foreseeable

Whether it is "reasonably foreseeable" that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific. TEX. ATT'Y GEN. LO-96-049. In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was "reasonably foreseeable." *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); TEX. ATT'Y GEN. OP. NO. GA-0796 (2010), at 6.

Budget Adoption

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately. TEX. LOC. GOV'T CODE § 171.005. The affected member may not generally participate in consideration of that item. *Id.*

Depositories

A city may select a bank as its depository even if one or more of the members of the governing body is an officer or director of the bank or owns or has a beneficial interest, individually or collectively, in ten percent or less of the outstanding capital stock of the bank, so long as two conditions are met. *Id.* §131.903(a)(2). First, a majority of the members of the governing body must vote to select the bank as a depository. *Id.* §131.903(a)(2)(A). Second, the interested

member must abstain from voting or taking part in the proceedings. *Id.* §151.903(a)(2)(B). The attorney general has concluded that this provision regarding conflicts of interests in the selection of depositories is an exception to Chapter 171. Tex. Att’y Gen. LO-97-093.

Public Official Acting Individually

The attorney general has concluded that when the law contemplates an individual public official perform a specific duty, Chapter 171’s disclosure and abstention requirements may not apply. Tex. Att’y Gen. Op. Nos. GA-0784 (2010), GA-0510 (2007). The attorney general recognizes that the term “local public official” as defined in Chapter 171 could be an individual official or an official who is a member of a governing body. Tex. Att’y Gen. Op. No. GA-0784 (2010), at 4. And while an official acting individually does not “vote,” arguably such an official may make a “decision.” *Id.* Thus, when the law imposes on a single, specific official a duty and the official has a conflict under Chapter 171, the attorney general has concluded that the legislature could not have intended for the disclosure and abstention requirements to apply. *Id.* (concluding that section 171.004’s disclosure and abstention requirements did not apply to a sheriff’s statutory bail bond and forfeiture duties).

Enforcement

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a “substantial interest.” TEX. LOC. GOV’T CODE §171.006. A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.

Updated November 2017

TML Website

Chapter 171 of the Local Government Code – Conflicts of Interest

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest. TEX. LOC. GOV'T CODE §§ 171.001-.010. It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public. *Id.* §171.004(a).

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper, stating the nature and extent of the interest. *Id.* §171.004(b). In addition, a public official is required to abstain from further participation in the matter. *Id.* However, a public official that is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter. *Id.* §171.004(c).

Local Public Official

A "local public official" is defined as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any... municipality ... or other local governmental entity who exercises responsibilities beyond those that are advisory in nature." *Id.* §171.001(1). This term includes a member of a planning and zoning commission. Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

Substantial Interest

A public official has a substantial interest in a business entity if the official:

- (1) owns 10 percent or more of the voting stock or shares of the business entity; (2) owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
- (3) receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.

TEX. LOC. GOV'T CODE §171.002(a).

A person has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more. *Id.* §171.002(b).

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property. *Id.* §171.002(c). As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. TEX. GOV'T CODE §§ 573.023-.024; Tex. Att'y Gen. Op. No. DM-267 (1993), at 2; Tex. Att'y Gen. LO-95-080, at 3. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income. *See* Tex. Att'y Gen. Op. No. JC-0063 (1999).

CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

- (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity;

Question: (If there are 4 Board members on KSC who make voting decisions, Do they not own 10% or more of the voting stock? If NO, please explain)

Answer: No, the Board Members do not own anything in the Senior Center. No one person "Owns" or has an "ownership" interest in the Senior Center. It is a separate entity that is not owned by any individual Board Member and no one member meets that definition under "Business entity" of LGC 171.001(2). It functions with the Articles of Incorporation, Bylaws, and under LGC Chapter 394.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

- (1) violates Section 171.004; (Is the KSC board in violation of 171.004 since it appears that there is a substantial interest in the business?)

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

Question: Since the board is currently making all business decisions, were affidavits completed as required?) If so, do we have copies of those affidavits? If no conflict of interest, Can you explain why there is no COI?

Answer: It does not appear that affidavits are required. Chapter 171 does not apply to the members sitting as Council or the members sitting as the Senior Center Board members because they do not meet the "Substantial Interest" (LGC 171.002) in the "business entity" (LGC 171.001(2)) definition under that statute. If they do meet this definition under LGC 171.002, it would apply but it does not appear to be the case for either Council or Senior Center Board because of the structure of the Senior Center organization.

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity. (Where and When were these affidavits filed and who would be the official record keeper?)

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Question: If the affidavits were completed, it appears that there would be no COI or reason to abstain. Is this correct? Again where would we find the affidavits?)

Answer: Correct.

Sec. 171.005. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved

Question: Since the councilmembers sit on both the City Council and KSC Board, are they able to vote on any budget items that pertain to the KSC? Why or why not?

Answer: Yes, the Board Members are not sitting as the City Council, but acting as a separate capacity as the Senior Center Board. The Statute permits the a member of the governing body (Council) to be Board Members. LGC 394.021(a). The statute allows the entity through its Board to exercise powers incidental or necessarily to fulfill and carry out the purpose of the entity, and all other actions to accomplish the services. That would include voting on the monetary items. LGC 394.031, 394.032. The Council vote on budget items is for the City's best interests for the health, safety and welfare under the home rule authority while sitting in their capacity as the City Council.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity

Question: Since the KSC board is a non-compensated seat, then it sounds like it is possible for the City Council members to serve on the board. But is that providing that they Signed the Affidavits??)

Answer: Yes, the City Council members can serve on the Senior Center Board under LGC 171.009 and 171.021(a). No, no affidavits needed as explained below. This section (171.009) does not even address the affidavits and is inapplicable to the affidavit need or analysis.

ARTICLES OF INCORPORATION

OF

KIRBY SENIOR CENTER CORPORATION

We, the undersigned natural person, each of whom is eighteen (18) years of age or older, a resident and a qualified voter of the City of Kirby, Texas (the "City"), and a citizen of the State of Texas (the "State"), acting as incorporators of a corporation under the provisions of Texas Revised Civil Statutes Annotated Article 1528(1) ("Article 1528(1)") and Local Government Code Chapter 394, as amended ("Chapter 134"), hereby adopt the following Articles of Incorporation for Kirby Senior Center Corporation (the "Corporation"):

ARTICLE I

The name of the corporation is Kirby Senior Center Corporation.

ARTICLE II

The Corporation is a public non-profit corporation.

ARTICLE III

The Corporation's period of duration is perpetual.

ARTICLE IV

The purposes for which the Corporation is organized are as follows:

1. to aid, assist and act on behalf of the City in accomplishing a governmental purpose of the City by establishing a senior citizen center for educational, recreational, health, and nourishment programs to benefit senior citizens;
2. to receive, hold, administer, and disburse any money, securities, or other property which may be transferred to the Corporation by gift, devise, bequest, or otherwise, for any of the uses or purposes set forth above, and to invest, lend, conserve, use, and disburse such money, securities, or other property, and the income derived therefrom, for the uses and purposes herein specified, in accordance with the judgment and discretion of the board of directors;
3. to purchase, exchange, contract for, lease, rent, and in any and all other ways acquire, take, own, improve, and hold, and to sell, convey, mortgage, lease, rent to others, or otherwise dispose of real estate, improvements in real estate, interests in real estate, and personal property of every kind, character, and description;

add for incorporation
log to follow Purpose

4. to borrow money or raise money and to issue notes, bills, bonds, and other obligations and to mortgage, pledge, hypothecate, or otherwise encumber any and all of the assets of the Corporation as security therefor for the purpose of carrying out the goals of the Corporation; and
5. to do any and things necessary or convenient to the accomplishment of any of the purposes or for the exercise of any of the powers herein set forth, whether herein specified or not, either alone or in connection with other firms, individuals, or corporations, whether in the State or throughout the United States, and elsewhere, if not inconsistent with the laws under which this Corporation is organized.

The Corporation is formed pursuant to the provisions of Article 1528(1) and Chapter 394, which authorize the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purpose for its creation.

The Corporation shall have and exercise all the rights, powers, privileges, authority, and functions given by the general laws of the State to non-profit corporations incorporated under Article 1528(1) the Act including, without limitation, those permitted under Texas Revised Civil Statutes Annotated Article 1396-1.01, et seq., as amended.

The Corporation shall have all other power of a like or different nature not prohibited by law which are available to non-profit corporations in the State and which are necessary or useful to enable the Corporation to perform the purposes for which it is created.

ARTICLE V

The Corporation shall have no members.

ARTICLE VI

All powers of the Corporation shall be vested in a board of directors (the "Board") consisting of nine (9) persons, each of whom shall be appointed by resolution of the City Council of the City, Directors of the Corporation (individually, a "Director" or collectively, the "Directors") shall be appointed by position to the Board. Each initial Director named in Article VIII hereof shall serve for the term expiring On the date set forth in Article VIII. Each subsequent Director shall serve for a term of three (3) years or until his or her successor is appointed by the City Council of the City; provided, however, that any Director may be removed from office at any time, with or without cause, by the City Council. The number of Directors may only be increased or decreased by an amendment to these Articles of Incorporation.

To be qualified to serve as a Director, a person must be a resident of the City and at least eighteen (18) years old.

Not less than sixty (60) prior to the expiration date of the term of office of a Director, or as soon as possible after a vacancy occurs on the Board, because of death, resignation, removal, or other cause,

*This was not done by
current Board*

the Board shall make a recommendation to the City Council of the City of a qualified person or persons to be appointed for a new term, or to fill the vacancy on the Board for the remaining term, and deliver such recommendation to the Mayor of the City. The City Council will appoint a person or persons to serve the new term or to complete any term. The person or persons recommended by the Board may be appointed by the City Council, or the City Council may appoint any other person who is qualified to serve on the Board. If, for any reason, any person or persons recommended by the Board is not acceptable to the City Council, the City council may request the Board to provide an additional recommendation of a qualified person or persons for appointment to the Board.

All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with these Articles of Incorporation, or the laws of the State.

ARTICLE VII

The street address of the initial registered office of the Corporation is 112 Bauman St., Kirby, Texas 78219, and the name of its initial registered agent at such address is Kirby City Hall.

ARTICLE VIII

The number of Directors constituting the Board is nine (9). The names, addresses, positions, and terms of office of the initial Directors, each of whom resides within the City, are as follows:

<u>Pos.</u>	<u>Name</u>	<u>Address</u>	<u>Term</u>
1.	Joe Goodman	4210 Ackerman Rd., Kirby, Texas 78219	December 1, 1995
2.	Mary Kidd	5011 Frank Borman, Kirby, Texas 78219	December 1, 1995
3.	Mary Hollis	5431 Starfire Lane, Kirby, Texas 78219	December 1, 1995
4.	Francis Sutton	5401 Sir Robert, Kirby, Texas 78219	December 1, 1995
5.	Ramiro Pena	4034 Kirby Drive, Kirby, Texas 78219	December 1, 1995
6.	Richard Vogt	4506 Ackerman Rd, Kirby, Texas 78219	December 1, 1995
7.	Vera Fryer	5430 Boatman, Kirby, Texas 78219	December 1, 1995
8.	Lillian Patton	132 Hedwig, Kirby, Texas 78219	December 1, 1995
9.	Joe Hopkins	3511 Kirby Drive, Kirby, Texas 78219	December 1, 1995

ARTICLE IX

The names and street addresses of the incorporators, each of whom resides within the City, are as follows:

<u>Name</u>	<u>Address</u>
1. Joe Goodman	4210 Ackerman Rd., Kirby, Texas 78219
2. Mary Kidd	5011 Frank Borman, Kirby, Texas 78219
3. Mary Hollis	5431 Starfire Lane, Kirby, Texas 78219
4. Francis Sutton	5401 Sir Robert, Kirby, Texas 78219
5. Ramiro Pena	4034 Kirby Drive, Kirby, Texas 78219
6. Richard Vogt	4506 Ackerman Rd, Kirby, Texas 78219
7. Vera Fryer	5430 Boatman, Kirby, Texas 78219
8. Lillian Patton	132 Hedwig, Kirby, Texas 78219
9. Joe Hopkins	3511 Kirby Drive, Kirby, Texas 78219

ARTICLE X

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director except for liability (i) for any breach of the Director's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal of amendment of this Article shall be prospective only and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the State statutes hereafter enacted that further limits the liability of a Director.

ARTICLE XI

The City shall at all times have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. No part of the Corporation's income shall inure to the benefit of any private interests. In the event of dissolution or liquidation of the Corporation, all assets shall be turned over to the City unless the City Council shall otherwise direct.

ARTICLE XII

On December 3rd, 1992, the City Council of the City duly adopted a resolution approving the form of these Articles of Incorporation and approving the creation of the Corporation.

*27 for Mayor
Letter for Attorney*

the Board shall make a recommendation to the City Council of the City of a qualified person or persons to be appointed for a new term, or to fill the vacancy on the Board for the remaining term, and deliver such recommendation to the Mayor of the City. The City Council will appoint a person or persons to serve the new term or to complete any term. The person or persons recommended by the Board may be appointed by the City Council, or the City Council may appoint any other person who is qualified to serve on the Board. If, for any reason, any person or persons recommended by the Board is not acceptable to the City Council, the City council may request the Board to provide an additional recommendation of a qualified person or persons for appointment to the Board.

All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with these Articles of Incorporation, or the laws of the State.

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The number of Directors constituting the Board is nine (9). The names, addresses, positions, and terms of office of the initial Directors, each of whom resides within the City, are as follows:

<u>Pos.</u>	<u>Name</u>	<u>Address</u>	<u>Term</u>
1.	Joe Goodman	4210 Ackerman Rd, Kirby, Texas 78219	December 1, 1995
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4.	Francis Sutton	5401 Sir Robert, Kirby, Texas 78219	December 1, 1995
5.	Ramiro Pena	4034 Kirby Drive, Kirby, Texas 78219	December 1, 1995
6.	Richard Vogt	4506 Ackerman Rd, Kirby, Texas 78219	December 1, 1995
7.	Vera Fryer	5430 Boelman, Kirby, Texas 78219	December 1, 1995
8.	Lillian Patton	132 Hedwig, Kirby, Texas 78219	December 1, 1995
9.	Joe Hopkins	3511 Kirby Drive, Kirby, Texas 78219	December 1, 1995

ARTICLE XIII

These Articles of Incorporation may be amended at any time and from time to time by the Board with the approval of the City Council of the City.

IN WITNESS WHEREOF, we have hereunto set our hands 3rd day of December, 1992.

(Richard Vogt)

(Joe Goodman)

(Mary Hollis)

(Notarized)

RESOLUTION NUMBER: R-2023-759

A RESOLUTION APPROVING THE MANAGEMENT SERVICES AGREEMENT WITH THE KIRBY SENIOR CENTER AND AUTHORIZING THE CITY OF KIRBY TO ENTER INTO AN AGREEMENT PROVIDING MANAGEMENT SERVICES TO THE KIRBY SENIOR CENTER

WHEREAS, it is essential for the daily functioning of the Kirby Senior Center to receive certain administrative services and support, including without limitation, financial, bookkeeping, records management, information technology, and employee benefit services and support; and

WHEREAS, it is the best interest, efficiently and economically, of both the City of Kirby and the Kirby Senior Center Corporation for the City of Kirby to provide such administrative services; and

WHEREAS, the Kirby Senior Center provides resources to Kirby citizens, to assist with healthcare, financial planning, and community engagement; and

WHEREAS, the Kirby Senior Center offers meal and nutrition programs, health and fitness programs, and transportation services to the citizens of Kirby; and

WHEREAS, by the City providing such Services, the City will maintain control over the staff quality, efficiency, and expenditures; and

WHEREAS, the City Council of the City of Kirby finds that the Senior Center services and providing these Professional Services will improve the functioning of the Kirby Senior Center to focus its expenditures of funding on providing services to the community while retaining City oversight; and

WHEREAS, the City Council of the City of Kirby finds that the Kirby Senior Center services it provides to its citizens and providing Professional Services to the Kirby Senior Center Corporation serves a public purpose as required by the Texas Constitution, Article III, Section 52(a).

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Kirby that:

SECTION 1. The City Council hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The City Council hereby finds that the provision of certain administrative services is necessary for the Kirby Senior Center's daily functions and hereby approves the terms of the Management Services Agreement by and between the City of Kirby and the Kirby Senior Center Corporation for the provision of services and support as set forth and attached hereto as Exhibit "A".

SECTION 3. The City Council authorizes the City Manager to take all necessary actions including

the execution of the Agreement and related documentation, if any.

SECTION 4. This Resolution is effective upon passage.

Passed and Approved this the 16 day of August, 2023.


Jansha Grider, Mayor

ATTEST:


Katelyn Uecker, City Secretary

APPROVED FOR LEGAL SUFFICIENCY:


Clarissa M. Rodriguez, City Attorney

Exhibit "A"

**AGREEMENT FOR PROVISION OF PROFESSIONAL SERVICES
BETWEEN THE CITY OF KIRBY AND
THE KIRBY SENIOR CENTER**

THE STATE OF TEXAS § KNOWN ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

THIS AGREEMENT, effective the 14 day of August, 2023, by and between the CITY OF KIRBY, (hereinafter referred to as "City") acting by and through its City Council, and the KIRBY SENIOR CENTER CORPORATION, a Texas non-profit corporation (hereinafter referred to as "KSC") acting by and through its Executive Director of the Board is as follows:

WHEREAS, it is essential for the daily functioning of the Kirby Senior Center to receive certain administrative services and support, including without limitation, financial, bookkeeping, records management, information technology, and employee benefit services and support; and

WHEREAS, it is the best interest, efficiently and economically, of both the City of Kirby and the Kirby Senior Center Corporation for the City of Kirby to provide such administrative services; and

WHEREAS, the Kirby Senior Center provides resources to Kirby citizens, to assist with healthcare, financial planning, and community engagement; and

WHEREAS, the Kirby Senior Center offers meal and nutrition programs, health and fitness programs, and transportation services to the citizens of Kirby; and

WHEREAS, by the City providing such Services, the City will maintain control over the staff quality, efficiency, and expenditures; and

WHEREAS, the City Council of the City of Kirby finds that the Senior Center services and providing these Professional Services will improve the functioning of the Kirby Senior Center to focus its expenditures of funding on providing services to the community while retaining City oversight; and

WHEREAS, the City Council of the City of Kirby finds that the Kirby Senior Center services it provides to its citizens and providing Professional Services to the Kirby Senior Center Corporation serves a public purpose as required by the Texas Constitution, Article III, Section 52(a).

WHEREAS, the City Council of the City of Kirby passed Resolution R-2023-759 on 8/10 (date) approving the City Manager to enter into this Agreement for Professional Services.

WITNESSETH:

I.

The City agrees to provide management, professional, administrative, financial, and legal services to the KSC according to the terms of this agreement. Direct services the City shall perform for the KSC shall include:

1. Preparing all financial and other related reports and keeping all financial books and records required by the KSC's Bylaws including audits.
2. Preparing a budget for the forthcoming year for review and approval by the Board and City Council.
3. Providing all necessary budgeting, accounting, financial management and other related services through the City's Finance Department.
4. Providing a repository of records, office, and conference space.
5. Providing technological support for hardware, software, and phone systems through the City's Information Technology Department.
6. Providing executive and administrative support, review and oversight by various City departments including, but not limited to, City Administrator, City Secretary, City Attorney, and other necessary support from City resources and staff.
7. Assist in winding up of the Finance Corporation by which the Kirby Senior Center was created and transition the Kirby Senior Center into a City departmental function.

It is understood and agreed that access to City staff resources by the KSC is secondary to the needs of the City Council of the City of Kirby.

II.

Subject to the KSC continuing to contract with the City for management services, the KSC will pay to the City for its services pursuant to this agreement, a flat fee of Ten Dollars (\$10.00) per year.

In the event of the termination of this agreement, the KSC will be responsible for paying the City only the portion of the cost allocated to periods prior to the effective date of the termination of the agreement.

III.

It is the express purpose of this agreement for the City to provide certain management, professional, administrative, legal, and financial services to the KSC.

IV.

Subject to early termination as provided in Article V below, this agreement shall be in effect for a period of one year commencing July 1, 2023 and ending June 30, 2024, and said agreement shall be extended for additional one-year terms thereafter under the same terms and conditions unless one party gives to the other party written notification at least thirty (30) days prior to the end of the existing term of its desire to terminate the agreement.

V.

1. This contract may be terminated by the City or KSC, in whole, or from time to time, in part, upon thirty (30) days' notice from the terminating party to the other party. Termination

shall be effective thirty (30) days after delivery of Notice of Termination specifying to what extent performance or work under the contract shall be terminated thirty (30) days after receipt by the notified party.

2. After receipt of a Notice of Termination the City shall:
 - a. Stop work on the date as specified in the thirty (30) day Notice of Termination to the extent possible.
 - b. Place no further orders or subcontracts except as may be necessary for completion of the work not terminated.
 - c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination as far as possible.
 - d. The KSC shall pay all expenses incurred through the date of termination.

VI.

This Agreement shall take effect on the day of execution.

IN WITNESS WHEREOF, the parties have executed this Contract in the year and on the day indicated.

KIRBY SENIOR CENTER CORPORATION

CITY OF KIRBY, TEXAS


Kirby Senior Center Corporation
Executive Director


Dr. Brian Rowland
City Manager

1942

Exhibit B

BY-LAWS OF

KIRBY SENIOR CENTER CORPORATION

ARTICLE I

Powers and Purposes

Section 1.01: Purposes. The Kirby Senior Center Corporation (the "Corporation") is duly incorporated under and pursuant to the Texas Revised Civil Statutes Annotated Article 1528(1) ("Article 1528(1)") and Local Government Code Chapter 394 for the purpose of benefiting and accomplishing public purposes of, and on behalf of, the City of Kirby, Texas (the "City") as follows,

1. to aid, assist and act on behalf of the City in accomplishing a governmental purpose of the City by establishing a senior citizen center for educational, recreational, health, and nourishment programs to benefit senior citizens;
2. to receive, hold, administer, and disburse any money, securities, or other property which may be transferred to the Corporation by gift, devise, bequest, or otherwise, for any of the uses or purposes set forth above, and to invest, lend, conserve, use, and disburse such money, securities, or other property, and the income derived therefrom, for the uses and purposes herein specified, in accordance with the judgment and discretion of the board of directors;
3. to purchase, exchange, contract for, lease, rent, and in any and all other ways acquire, take, own, improve, and hold, and to sell, convey, mortgage, lease, rent to others, or otherwise dispose of real estate, and personal in real estate, interests in real estate, and description; property of every kind, character, and description;
4. to borrow money or raise money and to issue notes, bills, bonds, and other obligations and to mortgage, pledge, hypothecate, or otherwise encumber any and all of the assets of the Corporation as security therefor for the purpose of carrying out the goals of the Corporation; and
5. to do any and things necessary or convenient to the accomplishment of any of the purposes or for the exercise of any of the powers herein set forth, whether herein specified or not, either alone or in connection with other firms, individuals, or corporations, whether in the state or throughout the United States, and elsewhere, if not inconsistent with the laws under which this

Corporation is organized.

The Corporation is organized solely to carry out the purposes of Article 1528(1) as set forth in its Articles of Incorporation.

Section 1.02: Powers. The Corporation shall have all such powers as are conferred by the Articles of Incorporation and Article 1528(1).

Section 1.03: Exercise of Powers and Authorization of Bonds. The exercise of any or all powers granted by Article 1528(1) may be authorized, and bonds may be authorized to be issued under Article 1528(1) for the purposes set forth in Article 1528(1) and the Articles of Incorporation, which shall take effect immediately upon adoption.

Section 1.04: Books and Records. The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board of Directors.

ARTICLE II

Board of Directors

Section 2.01: Powers, Number and Term of Office. The property and affairs of the Corporation shall be managed and controlled by the Board of Directors, and, subject to the restrictions imposed by law, the Articles of Incorporation and these By-laws, the Board shall exercise and be vested with all the powers of the Corporation. The Board of Directors shall consist of nine (9) directors, all of whom shall be residents of the City, and all of whom shall be appointed by the City Council of the City. The initial Board of Directors shall hold office for such period as is specified in the Articles of Incorporation. Subsequent directors may be appointed by the City Council of the City for a term not in excess of three (3) years and are removable by the City Council of the City for cause or at will. Any vacancy occurring on the Board of Directors through death, resignation, or otherwise shall be filled by appointment by the City Council of the City for cause or at will. Any vacancy occurring on the Board of Directors through death, resignation, or otherwise shall be filled by appointment by the City Council of the City, the appointed member to hold office until the expiration of the term for which the vacating director had been appointed.

Section 2.02: Meetings of Directors. The directors shall hold their meetings in the City at such location as the Board of Directors may from time to time determine; provided, however, in the absence of any such determination by the Board of Directors, the meetings shall be held at the registered office of the Corporation in the State of Texas. All meetings of the Board of

Directors shall be called and conducted in accordance with the Open Meetings Act, Texas Revised Civil Statutes Annotated Article 6252-17 (the "Open Meetings Act").

Section 2.03: Regular Meetings. Regular Meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors.

Section 2.04: Special Meeting. Special Meetings shall be held whenever called by the president, by the secretary, by a majority of the directors for the time being in office, or upon advice of or request by the City Council of the City. In addition to notices required by the Open Meetings Act, the Secretary shall give notice to each director of each Special Meeting in person, or by mail, telephone, or telegraph, at least two (2) hours before the meeting. Whenever any notice is required to be given to any director hereunder, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 2.05: Quorum. A majority of the Directors shall constitute a quorum, and when a quorum is present, action may be taken by a majority vote of the directors present.

Section 2.06: Conduct of Business. At the meetings of the Board of Directors, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board of Directors may determine.

At all meetings of the Board of Directors, the president shall preside, and in the absence of the president, the vice president shall exercise the powers of the president.

The secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, but in the absence of the secretary, the assistant secretary shall act as secretary of the meeting.

Section 2.07: Compensation of Directors. Directors as such shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

ARTICLE III

Officers

Section 3.01: Titles and Terms of Office. The officers of the Corporation shall be a president, a vice president, a secretary, an assistant secretary, and a treasurer, and such other offices as the Board of Directors may from time to time elect or appoint. One person may hold more than one office, except that the president shall not hold the office of secretary. Terms of office shall not exceed three years. The president and vice president shall be chosen from the members of the Board of Directors. The ~~treasurer, secretary, and/or~~ assistant secretary may or may not be members of the Board.

Not Done

All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the entire Board of Directors.

A vacancy in the office of any officer shall be filled by a vote of a majority of the directors.

Section 3.02: Powers and Duties of the President. The president shall be the chief executive officer of the Corporation and, subject to the Board of Directors, shall be in general charge of the properties and affairs of the Corporation; the president shall preside at all meetings of the Board of Directors; in furtherance of the purposes of this Corporation and as approved by the Board of Directors, the president may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments in the name of the Corporation.

Amir

Section 3.03: Vice-President. The vice president shall have such powers and duties as may be assigned to the vice president by the Board of Directors and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability to act of the president at the time such action was taken.

Section 3.04: Treasurer. The treasurer shall have custody of all the funds and securities of the Corporation which come into the treasurer's hands. When necessary or proper, the treasurer may endorse for collection, on behalf of the Corporation, checks, notes, and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; the treasurer may sign all receipts and vouchers for payment made to the Corporation, either alone or jointly with such

other officer as may be designated by the Board of Directors; the treasurer shall whenever required by the Board of Directors; the treasurer shall render a statement of the Corporation's cash account; the treasurer shall enter or cause to be entered regularly in the books of the Corporation to be kept by the treasurer for that purpose full and accurate accounts of all money received and paid out on account of the Corporation; the treasurer shall perform all acts incident to the position of the treasurer subject to the control of the Board of Directors; the treasurer shall, if required by the Board of Directors, give such bond for the faithful discharge of the treasurer's duties in such form as the Board of Directors may require.

Section 3.05: Secretary. The secretary shall keep the minutes of all meetings of the Board of Directors in books provided for that purpose; the secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation, the secretary may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments of the Corporation; the secretary shall have charge of the corporate books, records, documents, and instruments, except the books of account and financial records and securities of which the treasurer shall have custody and charge, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection upon application at the office of the Corporation during business hours, and the secretary shall in general perform all duties incident to the office of secretary subject to the control of the Board of Directors.

Section 3.06: Assistant Secretary. The assistant secretary shall have such powers and duties as may be assigned to the assistant secretary by the Board of Directors and shall exercise the powers of the secretary during that officer's absence or inability to act. Any action taken by the assistant secretary in the performance of the duties of the secretary shall be conclusive evidence of the absence or inability to act of the secretary at the time such action was taken.

ARTICLE IV

Provisions Regarding Articles of Incorporation and By-Laws

Section 4.01: Effective Date. These By-laws shall become effective upon adoption by the Board of Directors.

Section 4.02: Amendments to Articles of Incorporation and Bylaws. The Articles of Incorporation may at any time and from time to time be amended, provided that the Board of Directors files with the City Council of the City a written application requesting

that the City Council approve such amendment to the Articles of Incorporation, specifying in such application the amendment or amendments proposed to be made. If the City Council by appropriate resolution finds and determines that it is wise, expedient, necessary, or advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the Board of Directors may proceed to amend the Articles of Incorporation as provided in Article 1528(1).

The Articles of Incorporation may also be amended at any time by the City Council of the City at its sole discretion by adopting an amendment to the Articles of Incorporation of the Corporation by resolution of the City Council and delivering the Articles of Amendment to the Secretary of State as provided in Article 1528(1).

These By-laws may be amended by majority vote of the Board of Directors upon notice to and written consent by the City Council of the City.

ARTICLE V

Fiscal Provisions

Section 5.01: Non-profit Corporation - Disposition of Earnings. The Corporation is a public non-profit corporation. No dividends shall be distributed to, or inure to the benefit of, its directors, officers, or other private persons, association, or corporation, except in reasonable amounts for services rendered, and except that in the event the Board of Directors of the Corporation shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City; provided, however, that nothing herein contained shall prevent the Board of Directors from transferring all or any part of its properties in accordance with the terms of any contract or agreement entered into by the Corporation.

Section 5.02: Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors.

Section 5.03: Checks, Demands for Money. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate provided that in no event shall a check be negotiated until it is signed by at least one officer.

Section 5.04: Dissolution of Corporation - Distribution of Funds and Properties. Upon dissolution of the Corporation, title to all funds and properties or interest in any real or personal

Directors can sign checks

property owned by the Corporation at the time of such dissolution shall vest in the City, and possession of such funds and properties or interest in properties shall forthwith be delivered to the City.

ARTICLE VI

General Provisions

Section 6.01: Principal Office. The principal office of the Corporation shall be within the City.

The Corporation shall have and continuously maintain in the State of Texas a registered office (which may be, but need not be, the same as the principal office) and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act. The Corporation may change its registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act. Process may be served on the Corporation in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.

Section 6.02: Seal. The seal of the Corporation shall be as determined by the Board of Directors.

Section 6.03: Resignations. Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipts by the president or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

ARTICLE VII

Indemnification

Section 7.01: Persons Indemnified. The Corporation shall, subject to the limitations provided in this Article, indemnify any person who is or was a director, officer, employee, or agent of the Corporation who, because such person is or was serving in such capacity, was, is, or is threatened to be made a named defendant or respondent in (i) any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, (ii) any appeal in such an action, suit, or proceeding, and (iii) any inquiry or investigation that could lead to such an action, suit, or proceeding, against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses (including court costs and attorneys' fees) actually incurred by such person in connection with any such action, suit, proceeding, appeal, inquiry, or investigation, but, if such action, suit, proceeding, appeal,

inquiry, or investigation was brought by or on behalf of the Corporation, such indemnification shall be limited to reasonable expenses actually incurred by such person in connection with such action, suit, proceeding, appeal, inquiry, or investigation.

Section 7.02: Indemnification Allowed. A person shall be indemnified by the Corporation under this Article only if he has been wholly successful, on the merits or otherwise, in the defense of the action, suit, proceeding, appeal, inquiry, or investigation described in Section 7.01 or if it is determined in accordance with Section 7.05 that such person (i) conducted himself in good faith, (ii) reasonably believed, in the case of conduct in his official capacity, that his conduct was in the best interest of the Corporation and, in all other cases, that his conduct was at least not opposed to the best interests of the Corporation, and (iii) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 7.03: No Indemnification. A person shall not be indemnified by the Corporation under this Article for obligations resulting from any action, suit, proceeding, appeal, inquiry, or investigation in which such person is found liable (i) on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in such person's official capacity, or (ii) to the Corporation.

Section 7.04: Advancements. The Corporation may pay or reimburse reasonable expenses (including court costs and attorneys' fees) in advance of the final disposition of an action, suit, proceeding appeal, inquiry, or investigation described in Section 7.01, but only after (i) the Corporation receives a written affirmation from the person receiving the payment or reimbursement of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking by or on behalf of such person, consisting of an unlimited general obligation, secured or unsecured, of such person, to repay the amount paid or reimbursed if it is ultimately determined that he has met those requirements, which undertaking shall be accepted without reference to financial ability to make repayment, and (ii) a determination is made in accordance with Section 7.05 that the facts then known to those making the determination would not preclude indemnification under this Article.

Section 7.05: Standard for Indemnification. Any determination of indemnity under Sections 7.01 through 7.03, any determinations as to reasonableness of expenses, and any determination or authorization of payment under Section 7.04 must be made (i) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the action, suit, proceeding, appeal, inquiry, or investigation described in

Section 7.01. (ii) if such a quorum cannot be obtained, by a majority vote of a committee of the board of directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in such action, suit, proceeding, appeal, inquiry, or investigation, (iii) by special legal counsel selected by the board of directors or a committee of the board of directors by vote as set forth in (i) or (ii) above, or, if such quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; provided, however, that if a determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified in (iii) above for the selection of special legal counsel.

Section 7.06: Insurance. The Corporation may purchase and maintain insurance on behalf of any person described in Section 7.01 against any liability asserted against him and incurred by him or her in a capacity described in Section 7.01 or arising out of his or her status as such a person, whether or not the Corporation would have the power to indemnify him or her against that liability under this Article.

Effective Date: December 3rd, 1992

c:\wp51\pdk\ktrby\bylaws

DENTON NAVARRO RODRIGUEZ BERNAL SANTEE & ZECH, P.C.
ATTORNEY CLIENT PRIVILEGE
NOT A PUBLIC RECORD
MEMORANDUM

TO: CITY OF KIRBY CITY COUNCIL
FROM: CITY ATTORNEY'S OFFICE
ISSUE: KIRBY SENIOR CENTER
DATE: MARCH 5, 2024

APPLICABLE LAW

Texas Local Government Code Chapter 394

SUMMARY OF LAW

The Kirby Senior Center Corporation was incorporated by the City of Kirby under Texas Local Government Code Chapter 394, the Housing Finance Corporation Act, to aid, assist and act on behalf of the City in accomplishing a governmental purpose of the City by establishing a senior citizen center for educational, recreational, health and nourishment programs to benefit citizens.

As defined by state law, the corporation, as a public instrumentality and nonprofit corporation, performs an essential governmental function on behalf of and for the benefit of the general public, the local government, and the state. Additionally, before August 31 of each year, a housing finance corporation must file with the Texas Department of Housing and Community Affairs an annual report.

The Board of Directors is appointed by, and serves at the will of, the City Council, in accordance with state law, the Articles of Incorporation and Bylaws. Further, those same authorities establish that the City has an unrestricted right to receive any income earned by the corporation, and upon dissolution of the corporation, the assets of the corporation become assets of the City of Kirby.

The meetings of the corporation are held in accordance with the Texas Open Meetings Act. The budget and audit of the corporation are presented, accepted and approved at a public meeting. The budget and audit are a matter of public record available for inspection by the public and the City of Kirby and required to be maintained by the Secretary of the Board.

The Kirby Senior Center Corporation is a public non-profit corporation created by, and to serve a public purpose of, the City of Kirby and State of Texas. As a public corporation and instrumentality

have we done this?

ARTICLES OF INCORPORATION

OF

KIRBY SENIOR CENTER CORPORATION

We, the undersigned natural person, each of whom is eighteen (18) years of age or older, a resident and a qualified voter of the City of Kirby, Texas (the "City"), and a citizen of the State of Texas (the "State"), acting as incorporators of a corporation under the provisions of Texas Revised Civil Statutes Annotated Article 1528(1) ("Article 1528(1)") and Local Government Code Chapter 394, as amended ("Chapter 134"), hereby adopt the following Articles of Incorporation for Kirby Senior Center Corporation (the "Corporation"):

ARTICLE I

The name of the corporation is Kirby Senior Center Corporation.

ARTICLE II

The Corporation is a public non-profit corporation.

ARTICLE III

The Corporation's period of duration is perpetual.

ARTICLE IV

The purposes for which the Corporation is organized are as follows:

1. to aid, assist and act on behalf of the City in accomplishing a governmental purpose of the City by establishing a senior citizen center for educational, recreational, health, and nourishment programs to benefit senior citizens;
2. to receive, hold, administer, and disburse any money, securities, or other property which may be transferred to the Corporation by gift, devise, bequest, or otherwise, for any of the uses or purposes set forth above, and to invest, lend, conserve, use, and disburse such money, securities, or other property, and the income derived therefrom, for the uses and purposes herein specified, in accordance with the judgment and discretion of the board of directors;
3. to purchase, exchange, contract for, lease, rent, and in any and all other ways acquire, take, own, improve, and hold, and to sell, convey, mortgage, lease, rent to others, or otherwise dispose of real estate, improvements in real estate, interests in real estate, and personal property of every kind, character, and description;

4. to borrow money or raise money and to issue notes, bills, bonds, and other obligations and to mortgage, pledge, hypothecate, or otherwise encumber any and all of the assets of the Corporation as security therefor for the purpose of carrying out the goals of the Corporation; and
5. to do any and things necessary or convenient to the accomplishment of any of the purposes or for the exercise of any of the powers herein set forth, whether herein specified or not, either alone or in connection with other firms, individuals, or corporations, whether in the State or throughout the United States, and elsewhere, if not inconsistent with the laws under which this Corporation is organized.

The Corporation is formed pursuant to the provisions of Article 1528(1) and Chapter 394, which authorize the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purpose for its creation.

The Corporation shall have and exercise all the rights, powers, privileges, authority, and functions given by the general laws of the State to non-profit corporations incorporated under Article 1528(1) the Act including, without limitation, those permitted under Texas Revised Civil Statutes Annotated Article 1396-1.01, et seq., as amended.

The Corporation shall have all other power of a like or different nature not prohibited by law which are available to non-profit corporations in the State and which are necessary or useful to enable the Corporation to perform the purposes for which it is created.

ARTICLE V

The Corporation shall have no members.

ARTICLE VI

All powers of the Corporation shall be vested in a board of directors (the "Board") consisting of nine (9) persons, each of whom shall be appointed by resolution of the City Council of the City, Directors of the Corporation (individually, a "Director" or collectively, the "Directors") shall be appointed by position to the Board. Each initial Director named in Article VIII hereof shall serve for the term expiring On the date set forth in Article VIII. Each subsequent Director shall serve for a term of three (3) years or until his or her successor is appointed by the City Council of the City; provided, however, that any Director may be removed from office at any time, with or without cause, by the City Council. The number of Directors may only be increased or decreased by an amendment to these Articles of Incorporation.

To be qualified to serve as a Director, a person must be a resident of the City and at least eighteen (18) years old.

Not less than sixty (60) prior to the expiration date of the term of office of a Director, or as soon as possible after a vacancy occurs on the Board, because of death, resignation, removal, or other cause,

RESOLUTION NUMBER: R-2023-759

A RESOLUTION APPROVING THE MANAGEMENT SERVICES AGREEMENT WITH THE KIRBY SENIOR CENTER AND AUTHORIZING THE CITY OF KIRBY TO ENTER INTO AN AGREEMENT PROVIDING MANAGEMENT SERVICES TO THE KIRBY SENIOR CENTER

WHEREAS, it is essential for the daily functioning of the Kirby Senior Center to receive certain administrative services and support, including without limitation, financial, bookkeeping, records management, information technology, and employee benefit services and support; and

WHEREAS, it is the best interest, efficiently and economically, of both the City of Kirby and the Kirby Senior Center Corporation for the City of Kirby to provide such administrative services; and

WHEREAS, the Kirby Senior Center provides resources to Kirby citizens, to assist with healthcare, financial planning, and community engagement; and

WHEREAS, the Kirby Senior Center offers meal and nutrition programs, health and fitness programs, and transportation services to the citizens of Kirby; and

WHEREAS, by the City providing such Services, the City will maintain control over the staff quality, efficiency, and expenditures; and

WHEREAS, the City Council of the City of Kirby finds that the Senior Center services and providing these Professional Services will improve the functioning of the Kirby Senior Center to focus its expenditures of funding on providing services to the community while retaining City oversight; and

WHEREAS, the City Council of the City of Kirby finds that the Kirby Senior Center services it provides to its citizens and providing Professional Services to the Kirby Senior Center Corporation serves a public purpose as required by the Texas Constitution, Article III, Section 52(a).

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Kirby that:

SECTION 1. The City Council hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The City Council hereby finds that the provision of certain administrative services is necessary for the Kirby Senior Center's daily functions and hereby approves the terms of the Management Services Agreement by and between the City of Kirby and the Kirby Senior Center Corporation for the provision of services and support as set forth and attached hereto as Exhibit "A".

SECTION 3. The City Council authorizes the City Manager to take all necessary actions including

the execution of the Agreement and related documentation, if any.

SECTION 4. This Resolution is effective upon passage.

Passed and Approved this the 10 day of August, 2023.


Janeshia Grider, Mayor

ATTEST:


Katelyn Uecker, City Secretary

APPROVED FOR LEGAL SUFFICIENCY:


Clarissa M. Rodriguez, City Attorney

Exhibit "A"

**AGREEMENT FOR PROVISION OF PROFESSIONAL SERVICES
BETWEEN THE CITY OF KIRBY AND
THE KIRBY SENIOR CENTER**

**THE STATE OF TEXAS § KNOWN ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §**

THIS AGREEMENT, effective the 14 day of August, 2023, by and between the CITY OF KIRBY, (hereinafter referred to as "City") acting by and through its City Council, and the KIRBY SENIOR CENTER CORPORATION, a Texas non-profit corporation (hereinafter referred to as "KSC") acting by and through its Executive Director of the Board is as follows:

WHEREAS, it is essential for the daily functioning of the Kirby Senior Center to receive certain administrative services and support, including without limitation, financial, bookkeeping, records management, information technology, and employee benefit services and support; and

WHEREAS, it is the best interest, efficiently and economically, of both the City of Kirby and the Kirby Senior Center Corporation for the City of Kirby to provide such administrative services; and

WHEREAS, the Kirby Senior Center provides resources to Kirby citizens, to assist with healthcare, financial planning, and community engagement; and

WHEREAS, the Kirby Senior Center offers meal and nutrition programs, health and fitness programs, and transportation services to the citizens of Kirby; and

WHEREAS, by the City providing such Services, the City will maintain control over the staff quality, efficiency, and expenditures; and

WHEREAS, the City Council of the City of Kirby finds that the Senior Center services and providing these Professional Services will improve the functioning of the Kirby Senior Center to focus its expenditures of funding on providing services to the community while retaining City oversight; and

WHEREAS, the City Council of the City of Kirby finds that the Kirby Senior Center services it provides to its citizens and providing Professional Services to the Kirby Senior Center Corporation serves a public purpose as required by the Texas Constitution, Article III, Section 52(a).

WHEREAS, the City Council of the City of Kirby passed Resolution R-2023-759 on 8/10 (date) approving the City Manager to enter into this Agreement for Professional Services.

WITNESSETH:

I.

The City agrees to provide management, professional, administrative, financial, and legal services to the KSC according to the terms of this agreement. Direct services the City shall perform for the KSC shall include:

1. Preparing all financial and other related reports and keeping all financial books and records required by the KSC's Bylaws including audits.
2. Preparing a budget for the forthcoming year for review and approval by the Board and City Council.
3. Providing all necessary budgeting, accounting, financial management and other related services through the City's Finance Department.
4. Providing a repository of records, office, and conference space.
5. Providing technological support for hardware, software, and phone systems through the City's Information Technology Department.
6. Providing executive and administrative support, review and oversight by various City departments including, but not limited to, City Administrator, City Secretary, City Attorney, and other necessary support from City resources and staff.
7. Assist in winding up of the Finance Corporation by which the Kirby Senior Center was created and transition the Kirby Senior Center into a City departmental function.

It is understood and agreed that access to City staff resources by the KSC is secondary to the needs of the City Council of the City of Kirby.

II.

Subject to the KSC continuing to contract with the City for management services, the KSC will pay to the City for its services pursuant to this agreement, a flat fee of Ten Dollars (\$10.00) per year.

In the event of the termination of this agreement, the KSC will be responsible for paying the City only the portion of the cost allocated to periods prior to the effective date of the termination of the agreement.

III.

It is the express purpose of this agreement for the City to provide certain management, professional, administrative, legal, and financial services to the KSC.

IV.

Subject to early termination as provided in Article V below, this agreement shall be in effect for a period of one year commencing July 1, 2023 and ending June 30, 2024, and said agreement shall be extended for additional one-year terms thereafter under the same terms and conditions unless one party gives to the other party written notification at least thirty (30) days prior to the end of the existing term of its desire to terminate the agreement.

V.

1. This contract may be terminated by the City or KSC, in whole, or from time to time, in part, upon thirty (30) days' notice from the terminating party to the other party. Termination

shall be effective thirty (30) days after delivery of Notice of Termination specifying to what extent performance or work under the contract shall be terminated thirty (30) days after receipt by the notified party.

2. After receipt of a Notice of Termination the City shall:
 - a. Stop work on the date as specified in the thirty (30) day Notice of Termination to the extent possible.
 - b. Place no further orders or subcontracts except as may be necessary for completion of the work not terminated.
 - c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination as far as possible.
 - d. The KSC shall pay all expenses incurred through the date of termination.

VI.

This Agreement shall take effect on the day of execution.

IN WITNESS WHEREOF, the parties have executed this Contract in the year and on the day indicated.

KIRBY SENIOR CENTER CORPORATION

CITY OF KIRBY, TEXAS


Kathy Cooper
Executive Director


Dr. Brian Rowland
City Manager

<u> X </u>	DISCUSSION AND POSSIBLE ACTION ITEMS
<u> </u>	SPECIAL CONSIDERATION
<u> </u>	CONSIDERATION OF MINUTES
<u> </u>	PUBLIC HEARING
<u> </u>	PRESENTATION
<u> </u>	WORKSHOP

C I T Y O F K I R B Y
C I T Y C O U N C I L M E E T I N G
A G E N D A I T E M S U M M A R Y

DATE: March 28, 2024

AGENDA ITEM: 8. k.

- k. Discussion and Possible Action on the Kirby Senior Center Management Services Agreement with the City – Resolution R-2023-759. (Councilmembers Garza and Martin)

: I had been notified of the last anonymous complaint I had reached out to other Senior Centers and had received ,dance regarding the meals. They had advised that the centers do NOT cook anything and only provide the congrega meals to the members. However, members do have potlucks occasionally to celebrate special occasions. For the potlucks the seniors are bringing in the items and the center does not provide anything. I had also spoken with a staff nutritionist at a San Antonio senior center who had advised that the center can't cook unless a dietician or nutritionist is on staff. But he did mention that meals can be purchased from a licensed kitchen that is following the appropriate guidelines.

The meals mentioned in the most recent anonymous complaint are potlucks provided by the members. For example, a member had a birthday today and the member's wife and other members wanted to cook and celebrate with the seniors at the center. The center still provided the congrega meals which the members ate and anyone that wanted to partake in their potluck did.

Are the members not allowed to hold their own potlucks? Please advise and I will make sure that the center is abiding by all rules and will no longer allow for potlucks to be held.

Respectfully,



Kathy Gomez

Executive Director

A: 3211 Alan Shepard Drive

Kirby, Tx 78219

P: 210-666-5124

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From: Gloria Givillancz <GGivillancz@aacog.com>

Sent: Monday, November 20, 2023 3:16 PM

To: Kathy Gomez (Executive Director) <kgomez@kirbyseniorcenter.com>

Cc: sapodaca@cityofkirby.org; jgrider@cityofkirby.org; sjhitt@cityofkirby.org; mlozano@cityofkirby.org; cgarza@cityofkirby.org; jmolina@cityofkirby.org; mmartin@cityofkirby.org; Miguel Juarez <MJuarez@aacog.com>; William McKnight <WMcknight@aacog.com>

Subject: CONGREGATE MEAL VIOLATION -Meals Served on Site

Hello Kathy,

Again, we received information that tacos, waffles, chalupas and lasagna, etc. are being prepared outside the Kirby congrega meal site and brought in for older adults to consume.

This is an extreme deviation from the approved scheduled meals and could pose serious harm to older adults with compromised health conditions.

You are in serious jeopardy of having reimbursements stopped and the AACOG contract cancelled.

I have previously discussed with you the funder's requirements regarding meals.

A menu prepared by a registered dietician is required to be submitted each month as documentation of the meals served.

I discussed with you, no food is allowed to be brought in and one birthday celebration a month is allowed with cake to celebrate all birthdays for that month.

Previously I had discussed with you that we received information that fruit cups and flavored sugared water was being prepared and served at the congregate meal site.

You assured me that water only infused with lemon/lime/oranges and no sugar added, was being served.

See attached email.

Please call me to further discuss these violations.

Gloria Givilancz, CTCM

Contract and Nutrition Coordinator, Certified Texas Contract Manager

Alamo Area Council of Governments

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**Alamo Area Council
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Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1994

Honorable Fred Hill
Chair

Committee on Urban Affairs
Texas House of Representatives
Austin, Texas 78768-2910

Opinion No. DM-309

Re: Whether the members of the City of
Dallas Planning and Zoning Commission are
"local public officials" under chapter 171 of
the Local Government Code and related
questions (RQ-689)

Dear Representative Hill:

You ask whether members of the City of Dallas Planning and Zoning Commission (the "commission") are "local public officials" under chapter 171 of the Local Government Code. Specifically, you ask if the members are "local public officials" for purposes of chapter 171

when they make recommendations on proposed changes to zoning regulations or boundaries in accordance with Section 211.007(b) of the [Local Government] Code in light of the fact that Dallas has adopted an ordinance in conjunction with Section 211.006(f) of the Local Government Code that requires an affirmative vote of at least three-fourths of the entire City Council to overrule a recommendation of denial by the commission.

Section 211.007 of the Local Government Code provides in pertinent part:

(a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning

commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

Local Gov't Code § 211.007. Section 211.006(f) provides as follows:

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Id. § 211.006.

Chapter 171 of the Local Government Code governs conflicts of interest on the part of "local public officials." "Local public official" is defined as follows:

"Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

Id. § 171.001(1). In light of the information you have provided, it is clear that a member of the commission exercises responsibilities beyond those that are advisory in nature. Thus, we conclude that a commission member is a "local public official" under the foregoing definition and therefore subject to the requirements of chapter 171. We further note that a commission member is subject to chapter 171 not just when he or she makes a recommendation specified in section 211.006(f). Rather, all of his or her acts as a commission member are subject to chapter 171.

Next you ask, "Does the term 'involving the business entity' used in Section 171.004(a) refer only to the business entity whose request is the subject matter of the vote or decision, or does it also include a business entity that is paid to represent the entity whose request is the subject matter of the vote or decision?" In a related question, you ask, "Does the term 'involving the business entity' used in Section 171.004(a) include a business entity that is paid to represent a person or group opposing the business entity whose request is the subject matter of the vote or decision?" We conclude that the term "business entity" includes any business entity that represents a party with an interest in a matter before the commission for the following reasons.

Section 171.004 provides in pertinent part:

(a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real

property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

- (1) if in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- (2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Section 171.004(a)(1) requires a commission member to file an affidavit if he or she has a substantial interest in a business entity¹ and the action on the matter will have a special economic effect on the business entity. *Id.* § 171.004(a)(1). Section 171.004(a)(1) is broadly written and does not require that the business entity have a direct interest in the matter. It only requires that the action on the matter have a special economic effect on the business entity. Furthermore, chapter 171 does not confine the term "business entity" to only those business entities with a direct interest in an action. See *id.* § 171.001(2) ("Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."). We believe that section 171.004(a)(1) extends to an action of the commission that will have a special economic effect on a business entity that represents an entity or person with an interest in a matter before the commission. Whether or not a particular action will have a special economic effect on a business entity that represents an entity or person with an interest in a matter before the commission is a question of fact and is therefore beyond the purview of the opinion process. See Attorney General Opinion DM-279 (1993) at 7. A local public official commits a criminal offense if he or she knowingly fails to file an affidavit stating the nature and extent of his or her substantial interest in a business entity

¹A person has a "substantial interest in a business entity" if (i) the person owns ten percent or more of the voting stock or shares of the business entity or owns either ten percent or more or \$5,000 or more of the fair market value of the business entity or (ii) funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year. See Local Gov't Code § 171.002(a).

on which a vote or decision will have a special economic effect, as required by section 171.004. See Local Gov't Code § 171.003.

S U M M A R Y

A member of the City of Dallas Planning and Zoning Commission (the "commission") is a "local public official" subject to the requirements of chapter 171 of the Local Government Code. Section 171.004(a)(1) extends to an action of the commission that will have a special economic effect on a business entity that represents an entity or person with an interest in a matter before the commission.

Yours very truly,

Dan Morales

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February 6, 1986

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Gary E. Miller, M.D.
Commissioner
Texas Department of Mental Health
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P. O. Box 12668
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Opinion No. JM-424

Re: Scope of article 988b,
V.T.C.S., with respect to mem-
bers of the Board of Trustees
of a Mental Health/Mental Re-
tardation Community Center

Dear Dr. Miller:

You ask several questions about article 988b, V.T.C.S., which relates to conflict of interest by local public officials. The statute provides in part:

Sec. 3. (a) Except as provided by Section 5 of this Act, a local public official commits an offense if he knowingly:

(1) participates in a vote or decision on a matter involving a business entity in which the local public official has a substantial interest if it is reasonably foreseeable that an action on the matter would confer an economic benefit to the business entity involved. . . .

. . . .

(b) An offense under this section is a Class A misdemeanor.

You first ask whether the term "business entity" as used in article 988b includes a nonprofit corporation. We conclude that the term does include a nonprofit corporation.

Article 988b, section 1(2), defines "business entity" as

a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized in law. (Emphasis added).

A nonprofit corporation is a corporate entity which does not distribute its income to its members, directors, or officers. It does, however, pay compensation for services rendered. See Texas Non-Profit Corporation Act, V.T.C.S. art. 1396-1.01 et seq. The legislature enacted a broad definition of "business entity" which is not limited to corporations incorporated under the Texas Business Corporation Act and does not exclude those incorporated under the Texas Non-Profit Corporation Act. Compare V.T.C.S. art. 988b, §1(2) with V.T.C.S. art. 6252-0b, §2(1) (defining "business entity" to include "any other entity . . . through which business for profit is conducted").

You ask as your second question whether article 988b applies to a member of the board of trustees of a community mental health or mental retardation center who received a salary in excess of ten percent of his gross income for the previous year as an employee of a nonprofit corporation. We believe that a member of such a board is a "local public official" within the definition found in article 988b:

'Local public official' means a member of the governing body or another officer, whether elected or appointed, paid or unpaid, of any district (including a school district), county, city, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

V.T.C.S. art. 988b, §1(1).

Community centers have characteristics of both an agency of the state and of a local governmental body. V.T.C.S. art. 5547-203; see, e.g., Attorney General Opinions JM-12 (1983); H-850 (1976); H-450 (1974); M-1266 (1972); M-336 (1968). They are supervised and assisted by the Department of Mental Health and Mental Retardation. See V.T.C.S. arts. 5547-203, §§3.05, 3.11; 5547-204, §§4.01, 4.03.

On the other hand, community centers are established and operated by counties, cities, hospital districts, school districts, or any combination of those. They are governed by boards of trustees composed of the governing body of a single city, county, hospital district, or school district or designated by the governing bodies which organized the center. See V.T.C.S. art. 5547-203, §3.02; Attorney General Opinion M-1266 (1972). Cf. Attorney General Opinions JM-38 (1983); H-850 (1976). In our opinion, a community center is a local governmental entity within article 988b, V.T.C.S., and its trustees are local public officials within that statute. See V.T.C.S. art. 5547-203, §§3.05, 3.06.

A trustee who receives a salary in excess of ten percent of his gross income from the previous year from a nonprofit corporation would have a substantial interest in that corporation. See V.T.C.S. art. 988b, §2(a)(2). Thus, transactions between the nonprofit corporation which employs the trustee and the community center he serves as trustee are subject to scrutiny under article 988b, V.T.C.S.

You next ask whether article 988b, V.T.C.S., overrules or merely supplements earlier Attorney General Opinions on conflict of interest, in particular Attorney General Opinions M-340 (1969) and H-1309 (1978).

Attorney General Opinion M-340 (1969) determined that the governing board of a community mental health, mental retardation center could not contract with a corporation in which a board member was interested as a director and stockholder. The opinion relied on the declaration of public policy made in Meyers v. Walker, 276 S.W. 305, 307 (Tex. Civ. App. - Eastland 1925, no writ):

If a public official directly or indirectly has a pecuniary interest in a contract, no matter how honest he may be, and although he may not be influenced by the interest, such a contract so made is violative of the spirit and letter of our law, and is against public policy.

The court declared the contract made in violation of this policy to be illegal and void. Id. The common law doctrine expressed in Meyers v. Walker has repeatedly been relied upon to invalidate contracts made by public officials with a pecuniary interest therein. See, e.g., City of Edinburg v. Ellis, 59 S.W.2d 99 (Tex. Comm. App. 1933, holding approved); Delta Electric Construction Co. v. City of San Antonio, 437 S.W.2d 602 (Tex. Civ. App. - San Antonio 1969, writ ref'd n.r.e.); Bexar County v. Wentworth, 378 S.W.2d 126 (Tex. Civ. App. - San Antonio 1964, writ ref'd n.r.e.); Attorney General Opinions JM-171 (1984); MW-179 (1980); H-1309 (1978); H-916 (1976); M-340 (1969); WM-1362 (1962); O-2929 (1942). See also Wooldridge v. Folsom, 564 S.W.2d 471 (Tex. Civ. App. - Dallas 1978, no writ). A subsequent Attorney General Opinion determined that an employee's interest in his company was sufficient to create a conflicting interest with his duties as a public officer. Attorney General Opinion H-916 (1976).

Attorney General Opinion H-1309 (1978) concluded that a governmental body could not contract with a private, nonprofit corporation which a member of the governmental body served in a management position. Such transactions were barred by the common law policy against dual agency: an agent may not represent both sides in a contract unless the principal consents. The state's agent may therefore not represent the opposite side in a transaction in the absence of legislative consent. See generally V.T.C.S. art. 2529c.

In our opinion, article 988b changes the common law rules on conflict of interest. For example, section 2(c) imputes to the local public official the pecuniary interests of his relatives:

An interest of a person related in the first or second degree by either affinity or consanguinity to the local public official is a 'substantial interest.'

V.T.C.S. art. 988b, §2(c). The common law doctrine did not extend to pecuniary interests of the officer's relatives. See Attorney General Opinion H-354 (1974) (county commissioners court may contract with corporation owned by a commissioner's brother).

Article 988b also differs from the common law in that it applies only to transactions in which a local public official has a "substantial business interest," defined as follows:

Sec. 2. (a) A person has a substantial interest in a business if:

(1) the interest is ownership of 10 percent or more of the voting stock or shares of the business entity or ownership of \$2,500 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) An interest of a person related in the first or second degree by either affinity or consanguinity to the local public official is a 'substantial interest.'

This office has, however, held that a negligible ownership interest in a business constitutes a pecuniary interest. See Attorney General Opinion H-624 (1975) (commissioners court may not purchase supplies from a farmer's cooperative in which a commissioner owns a small share). But see V.T.C.S. art. 988a (legislative overruling of result in Attorney General Opinion H-624).

Article 988b differs from the common law with respect to remedies:

Sec. 4. If a local public official . . . has a substantial interest in a business entity that would be peculiarly affected by any official action taken by the governing body, the local public official, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the official recordkeeper of the governmental entity.

. . . .

Sec. 6. The penalties and remedies provided by this article do not limit common law remedies of tort, contract, or equity, including a suit for damages, injunction, or mandamus. The finding by a court of a violation under this article does not render an action of the governing body voidable unless the measure that was the subject of an action involving conflict of interest would not have passed the governing body without the vote of the person who violated this article. (Emphasis added).

V.T.C.S. art. 988b, §§4, 6.

Under the common law, an officer cannot cure his conflict of interest by recusing himself. See Delta Electric Construction Co. v. City of San Antonio, supra. Moreover, the common law doctrine declares public contracts in which public officers are peculiarly interested to be void, while article 988b provides that they are only voidable and only in limited circumstances. See Delta Electric Construction Co. v. City of San Antonio, supra; City of Edinburg v. Ellis, supra; Meyers v. Walker, supra; Attorney General Opinions JM-171 (1984); MM-179 (1980); MM-34 (1979); H-916 (1976). In our opinion, article 988b was intended to repeal and replace the common law doctrine. Legislative history documents this intent.

Article 988b was enacted by Senate Bill No. 1044 of the Sixty-eighth Legislature. Acts 1983, 68th Leg., ch. 640 at 4079. Its enactment was recommended by the Public Servant Standards of Conduct Advisory Committee, a body established by a statute directing it to study laws on the conduct of public servants and to report to the legislature its recommendations for revising them. Acts 1981, 67th Leg., ch. 151, §9 at 371. The statute expressly stated that "[t]he legislature shall consider the committee's recommendations." Id. §9(b).

The Advisory Committee studied conflicts of interest which centered around voting, purchasing and contracts, and eventually recommended solutions based on a form of financial disclosure with abstention from participation. Background Report on Local Officers' Conflict of Interest Problems, published in Final Report of the Public Servant Standards of Conduct Advisory Committee, at 17 (August 1983). Its recommendations for legislation were primarily based on the work of the Conflict of Interest Subcommittee. The subcommittee sought to establish a degree of personal financial interest in a transaction above which a conflict occurred. Relying in part on Attorney General Opinion M-1236 (1972), which held that a 10 percent stock ownership constituted a substantial interest, the subcommittee determined that a threshold financial interest of 10 percent or \$2,500 would cover most potentially conflicting interests. See generally V.T.C.S. art. 6252-9b, §2(12) (defining a state officer's "substantial interest" in a business entity). The subcommittee also developed procedures for preventing the interested public official from participating in the governmental body's action. The Advisory Committee recommended the proposed legislation which eventually became article 988b, V.T.C.S.

The bill analysis to Senate Bill No. 1044 stated as follows:

The only current statutes covering conflicts of interest for local officials do not cover all such officers and do not provide guidelines for determining when a conflict exists or procedures for handling such situations.

Bill Analysis to S.B. No. 1044, prepared for House Committee on Judicial Affairs, filed in Bill File to S.B. No. 1044, 68th Leg., Legislative Reference Library. Testimony at a public hearing on the bill reflects the understanding that it would supplant the common law for officers it covered. One witness stated that current law prohibited a governmental body from contracting with a business controlled by a member of the governmental body, but article 988b would allow such a contract to be made. Public Hearing on S.B. No. 1044 before the Senate Committee on Intergovernmental Relations, 68th Leg. (April 7, 1983) (testimony of Dick Brown, Executive Director of Texas Municipal League). The witness also stated that the purpose of the bill was to inform the public that a member of the governmental body has a business interest in the proposed contract. Id. He explained that if the interested officer signs an affidavit and abstains from voting, the governmental body can conduct business with that company. Id. Unlike the common law, which deals with conflict of interest by prohibiting contracts altogether, article 988b was enacted to allow the governmental body to make the contract if the interested official discloses his interests and recuses himself. See also V.T.C.S. art. 6252-9b, §6 (concerning certain officials of state boards and commissions with private interests in official matters).

Our conclusion that the legislature intended article 988b to change the common law is not inconsistent with the judicial approach to conflict of interest questions. The judicial decisions rest in part on statutes which codified the common law doctrine. For example, former article 988, V.T.C.S., prohibited city officers from being interested in transactions financed from public funds. Acts 1981, 67th Leg., ch. 527, §2, at 2230. An earlier criminal law penalized city or county officers who were pecuniarily interested in contracts made by their political subdivisions. Acts 1874, 14th Leg., ch. XXXIX, at 47 (former Penal Code art. 373 (1925) (repealed 1973)). The courts viewed these statutes as expressing the public policy of the state, and implemented it by holding that contracts made in violation of it were void. City of Edinburg v. Ellis, supra; Delta Electric Construction Co. v. City of San Antonio, supra; Bexar County v. Wentworth, supra; Meyers v. Walker, supra. See also Lower Colorado River Authority v. City of San Marcos, 523 S.W.2d 641 (Tex. 1975) (violation of open meetings law subjects action taken to judicial invalidation); Cruthfield v. Rambo, 86 S.W. 950 (Tex. Civ. App. 1905, writ ref'd) (contract to divide lottery winnings is contrary to law and public policy and unenforceable); Annot., 55 A.L.R.2d 481 (1957) (discusses validity of contracts made in violation of criminal statute which does not specifically declare the contract invalid).

With one exception, the judicial decisions have not considered legislation which diverged from the common law. In Woodridge v. Folsom, 564 S.W.2d 471 (Tex. Civ. App. - Dallas 1978, no writ), residents of Dallas sued the mayor to nullify certain contracts on the ground of conflict of interest. The court held that the now-repealed article 988 did not apply to home rule cities such as Dallas, and that the contracts were not void. Under the city charter, contracts in which officers or employees were financially interested were "voidable by the city manager or the city council." 564 S.W.2d at 472. The court determined that a home rule city could adopt its own method of dealing with conflicts of interest.

The legislature intended to change the common law when it enacted article 988b. Transactions in which a public official has less than a substantial interest are no longer for that reason contrary to the public policy of Texas. Where the transaction involves the "substantial interest" of a "local public official" within article 988b, the governmental body may legally enter into it if the statutory procedures are followed. The contract or transaction will not in that case be void on account of that official's conflict of interest. Finally, the contract is voidable under the conditions set out in article 988b. The statutory procedures for disclosure and refusal replace the absolute common law prohibitions against transactions in which a member of the governmental body is pecuniarily interested. In answer to your third question, article 988b has changed the common law upon which numerous judicial decisions and attorney general opinions were based.

Your third question also inquires whether the principles of conflict of interest and dual agency would prevent public officials from contracting on behalf of the political subdivision with a private entity which provides them a salary or other benefit of less than 10 percent of their gross income for the previous year. As we have noted, the 10 percent interest is the threshold amount for identifying a conflict of interest under section 2(a)(2). The legislature has determined that lesser amounts simply do not create conflicts of interest. Cf. V.T.C.S. art. 988b, §2(a)(1) (ownership interest cannot exceed \$2,500); Attorney General Opinion JM-291 (1984).

Don't put in
The policy against dual agency, discussed in Attorney General Opinion E-1309 (1978) serves a similar function as the conflict of interest doctrine. We do not believe the legislature intended the policy of dual agency to prohibit the contracts authorized under article 988b. Thus, this policy does not prohibit a local board from contracting with a nonprofit corporation that employs one of its members in a management position, whether or not his salary constitutes a "substantial interest" under the statute. We caution, however, that his conduct must be consistent with the requirements of other civil and criminal statutes. See, e.g., Penal Code art. 39.01 (official misconduct).

Our answer to your third question makes it unnecessary to answer your fourth question.

You finally ask whether the Texas Department of Mental Health and Mental Retardation has authority under article 5547-204, V.T.C.S., to enact a rule which renders a community center ineligible for a grant-in-aid if one or more members of its board of trustees also serve on the board of a nonprofit organization with which the center conducts financial transactions.

The Sixty-ninth Legislature enacted Senate Bill No. 633 which replaced the grant-in-aid mode of financing for community centers with a method based on contracts for community based services between the department and community providers. Acts 1985, 69th Leg., ch. 496 at 4155. Section 4.03, which formerly concerned eligibility for grants, has been amended, and now concerns eligibility of community centers and other providers for community based services contracts. The changes in your statute have mooted your last question. If you wish to reframe and resubmit your question in the context of the amended provisions, we will address it at that time.

S U M M A R Y

A trustee of a Mental Health/Mental Retardation Community Center is a local public officer within article 988b, V.T.C.S. Article 988b, V.T.C.S.,

Dr. Gary E. Miller - Page 5 (JM-424)

modifies the common law concerning the pecuniary interest of a local public official in contracts entered into by the governmental body they serve. A governmental body may now contract with a private entity in which a member of the governmental body is pecuniarily interested if he follows the disclosure and recusal procedure stated in article 988b, V.T.C.S. The contract is voidable under the conditions set out in article 988b, V.T.C.S.

Very truly yours,

Jim Mattox

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CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF MUNICIPALITIES, COUNTIES,
AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

- (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity;

Question: (If there are 4 Board members on KSC who make voting decisions, Do they not own 10% or more of the voting stock? If NO, please explain)

Answer: No, the Board Members do not own anything in the Senior Center. No one person "Owns" or has an "ownership" interest the Senior Center. It is a separate entity that is not owned by any individual Board Member and no one member meets that definition under "Business entity" of LGC 171.001(2). It functions with the Articles of Incorporation, Bylaws, and under LGC Chapter 394.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

- (1) violates Section 171.004; (Is the KSC board in violation of 171.004 since it appears that there is a substantial interest in the business?)

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

Question: Since the board is currently making all business decisions, were affidavits completed as required? If so, do we have copies of those affidavits? If no conflict of interest, Can you explain why there is no COI?

Answer: It does not appear that affidavits are required. Chapter 171 does not apply to the members sitting as Council or the members sitting as the Senior Center Board members because they do not meet the "Substantial Interest" [LGC 171.002] in the "business entity" [LGC 171.001(2)] definition under that statute. If they do meet this definition under LGC 171.002, it would apply- but it does not appear to be the case for either Council or Senior Center Board because of the structure of the Senior Center organization.

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity. (Where and When were these affidavits filed and who would be the official record keeper?)

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Question: If the affidavits were completed, it appears that there would be no COI or reason to abstain. Is this correct? Again where would we find the affidavits?)

Answer: Correct.

Sec. 171.005. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved

Question: Since the councilmembers sit on both the City Council and KSC Board, are they able to vote on any budget items that pertain to the KSC? Why or why not?

Answer: Yes, the Board Members are not sitting as the City Council, but acting as a separate capacity as the Senior Center Board. The Statute permits the a member of the governing body (Council) to be Board Members. LGC 394.021(a). The statute allows the entity through its Board to exercise powers incidental or necessary to fulfill and carry out the purpose of the entity, and all other actions to accomplish the services. That would include voting on the monetary items. LGC 394.031; 394.032. The Council vote on budget items is for the City's best interests for the health, safety and welfare under the home rule authority- while sitting in their capacity as the City Council.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity

Question: Since the KSC board is a non-compensated seat, then it sounds like it is possible for the City Council members to serve on the board. But is that providing that they Signed the Affidavits??)

Answer: Yes, the City Council members can serve on the Senior Center Board under LGC 171.009 and 171.021(a). No, no affidavits needed as explained below. This section (171.009) does not even address the affidavits and is inapplicable to the affidavit need or analysis.

DISCUSSION AND POSSIBLE ACTION ITEMS	
<input checked="" type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

C I T Y O F K I R B Y
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

AGENDA ITEM 8 I.

Discussion And Possible Action On 2 Cool Guys Duct Cleaning, LLC to Provide the Fire Department a Full-Service Duct Cleaning.

2 Cool Guys Duct Cleaning, LLC
205 Arcadia Pl
Cibolo, TX 78108 US
(210) 626-8022
2coolguysllc@gmail.com



Estimate

ADDRESS
William Hilburn
Fire Department
5560 Duffek Dr
Kirby, TX 78219

SHIP TO
William Hilburn
Fire Department
5560 Duffek Dr
Kirby, TX 78219

ESTIMATE # E24135
DATE 04/25/2024
EXPIRATION DATE 10/31/2024

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
	Air Duct Cleaning	Commercial - Perform full service duct cleaning: Contact clean all supply vents. Clean vent covers (as needed).	52	200.00	10,400.00T
	Air Duct Cleaning - Return Vents	Commercial - Perform full service duct cleaning: Contact clean each return vent(s). Clean vent cover(s) as needed.	15	300.00	4,500.00T
	Sanitize HVAC System	Commercial - Decontaminate system -- apply sanitizer to each return	15	175.00	2,625.00T
	Clean Dryer Vent	Remove debris from dryer vent	1	100.00	100.00T

SUBTOTAL 17,625.00
TAX 0.00
TOTAL **\$17,625.00**

Accepted By

Accepted Date

Thanks for allowing us to service your ducts and help improve your indoor air quality!

~ Cleaner Ducts. Cleaner Air ~

DISCUSSION AND
<input checked="" type="checkbox"/> POSSIBLE ACTION ITEMS
<input type="checkbox"/> SPECIAL CONSIDERATION
<input type="checkbox"/> CONSIDERATION OF MINUTES
<input type="checkbox"/> PUBLIC HEARING
<input type="checkbox"/> PRESENTATION
<input type="checkbox"/> WORKSHOP

C I T Y O F K I R B Y
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y

DATE: May 9, 2024

9. Closed Session: Pursuant to Texas Government Code Section 551.074 (Personnel Matters) and 551.071(1) (Consultation with City Attorney): the city of Kirby City Council will convene in executive session on the following items:

- a. Discussion and Update on Pending Legal Cases and Investigations.
- b. Council to Conduct Interviews For City Manager
- c. To Discuss Agreement Terms with Texas First Group LLC, Regarding Providing Interim City Manager Services for the City of Kirby.

10. Open Session: The City Council will reconvene into Regular Session upon conclusion of the Closed Session and may recall any item posted for Closed Session for action, as necessary.