CITY COUNCIL WORKSHOP & REGULAR MEETING

City of Dripping Springs

Council Chambers, 511 Mercer St, Dripping Springs, TX

Tuesday, December 15, 2020 at 6:00 PM

VIDEOCONFERENCE MEETING

This meeting will be held via videoconference and the public is encouraged and welcome to participate. Public comment may be given during the videoconference by joining the meeting using the information below. Public comment for this meeting may also be submitted to the City Secretary at acunningham@cityofdrippingsprings.com no later than 3:00 PM on the day the meeting will be held.

The City Council respectfully requests that all microphones and webcams be disabled unless you are a member of the City Council or Board of Adjustment. City staff, consultants and presenters please enable your microphone and webcam when presenting to the City Council or Board of Adjustment.

AGENDA

MEETING SPECIFIC VIDEOCONFERENCE INFORMATION

Join Zoom Meeting
https://us02web.zoom.us/j/89837485344?pwd=Ull4bEhxYTZFL3NIOWEvenZFMy9PZz09

Meeting ID: 898 3748 5344
Passcode: 607455

Dial Toll Free:
877 853 5257 US Toll-free
888 475 4499 US Toll-free

Find your local number: https://us02web.zoom.us/u/kUhqqOt9

Join by Skype for Business: https://us02web.zoom.us/skype/89837485344

CALL TO ORDER AND ROLL CALL

City Council Members
Mayor Bill Foulds, Jr.
Mayor Pro Tem Taline Manassian
Council Member Place 2 Wade King
Council Member Place 3 Todd Purcell
Council Member Place 4 April Harris Allison
Council Member Place 5 Travis Crow

Staff, Consultants & Appointed/Elected Officials
City Administrator Michelle Fischer
Deputy City Administrator Ginger Faught
City Attorney Laura Mueller
City Secretary Andrea Cunningham
Senior Planner Amanda Padilla
Communications Director Lisa Sullivan

WORKSHOP

Workshop items are for discussion only and no action will be taken.

1. **Presentation and discussion regarding Density and Development, to include a report from the Planning & Zoning Commission.** *Sponsor: Mayor Bill Foulds, Jr.*

2. **Presentation on the City's process and goals for the rewrite of the Zoning Ordinance.** *Sponsor: Mayor Bill Foulds, Jr.*

CITY COUNCIL

PLEDGE OF ALLEGIANCE

PRESENTATION OF CITIZENS

A member of the public who desires to address the City Council regarding any item on an agenda for an open meeting may do so at presentation of citizens before an item or at a public hearing for an item during the City Council's consideration of that item. Citizens wishing to discuss matters not contained within the current agenda may do so, but only during the time allotted for presentation of citizens. Speakers are allowed two (2) minutes to speak during presentation of citizens or during each public hearing. Speakers may not cede or pool time. Members of the public requiring the assistance of a translator will be given twice the amount of time as a member of the public who does not require the assistance of a translator to address the City Council. It is the request of the City Council that members of the public wishing to speak on item(s) on the agenda with a noticed Public Hearing hold their comments until the item(s) are presented for consideration. Speakers are encouraged to sign in. Anyone may request a copy of the City's policy on presentation of citizens from the city secretary. By law no action may be taken during Presentations of Citizens.

PROCLAMATIONS & PRESENTATIONS

3. **Proclamation of the City of Dripping Springs Celebrating the Twenty Years of Service by Ginger Faught.**

CONSENT AGENDA

The following items are anticipated to require little or no individualized discussion due to their nature being clerical, ministerial, mundane or routine. In an effort to enhance the efficiency of City Council meetings, it is intended that these items will be acted upon by the City Council with a single motion because no public hearing or determination is necessary. However, a City Council Member or citizen may request separate deliberation for a specific item, in which event those items will be removed from the consent agenda prior to the City Council voting on the consent agenda as a collective, singular item. Prior to

voting on the consent agenda, the City Council may add additional items that are listed elsewhere on the same agenda.

4. **Approval of a Resolution adopting the revised City of Dripping Springs Meetings, Agendas and Minutes Policy and Procedure.** *Sponsor: Council Member Harris-Allison*

BUSINESS AGENDA

5. **Discuss and consider possible action regarding an Annual Dripping Springs Ranch Park Use Pass as a City of Dripping Springs Employee Benefit.**

6. **Discuss and consider approval of a Resolution regarding the Appointment of members to the Tax Increment Reinvestment Zone Boards No. 1 & No. 2 for one and two-year terms and determining place.** *Sponsor: Mayor Pro Tem Manassian*

REPORTS

Reports of Staff, Boards, Commissions, Committees, Boards and Agencies. All reports are on file and available for review upon request. The City Council may provide staff direction; however, no action may be taken.

7. **Economic Development Committee Monthly Report**
Kim Fernea, Committee Chair

EXECUTIVE SESSION AGENDA

The City Council for the City of Dripping Springs has the right to adjourn into executive session at any time during the course of this meeting to discuss any matter as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development). The City Council for the City of Dripping Springs may act on any item listed in Executive Session in Open Session or move any item from Executive Session to Open Session for action.

8. **Consultation with City Attorney regarding legal issues related to Emergency Management, Disaster Declaration, and Emergency Orders.** *Consultation with City Attorney, 551.071*

9. **Consultation with City Attorney and Deliberation of Real Property regarding property acquisition related to the South Regional Water Reclamation Project.** *Consultation with City Attorney, 551.071; Deliberation of Real Property, 551.072*

10. **Deliberation of Real Property and Consultation with City Attorney regarding legal issues related to Real Property for the Tax Increment Reinvestment Zone including the Town Center Project and uses and real property in the Triangle and Veterans Memorial Park.** *Consultation with City Attorney, 551.071; Deliberation of Real Property, 551.072*

11. **Consultation with Attorney regarding legal issues related to litigation on the trial court's judgment in *SOS v. TCEQ* in the 459th Judicial District Court of Travis County and**

related development, financial, and utility issues. *Consultation with City Attorney, 551.071*

12. **Deliberation regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the city planner.** *Personnel Matters, 551.074*

13. **Deliberation of Personnel Matters and Consultation with City Attorney regarding legal issues related to employee benefits for city facilities.** *Consultation with City Attorney, 551.071; Personnel Matters, 551.074*

UPCOMING MEETINGS

City Council Meetings
January 12, 2021 at 6:00 p.m.
January 19, 2021 at 6:00 p.m.

Board, Commission & Committee Meetings
Planning & Zoning Commission, December 16, 2020 at 6:30 p.m.
Farmers Market Association Board, December 17, 2020 at 10:00 a.m.
Transportation Committee, December 28, 2020 at 3:30 p.m.
Parks & Recreation Commission, January 4, 2021 at 6:00 p.m.
DSRP Board, January 6, 2021 at 12:00 p.m.
Historic Preservation Commission, January 7, 2021 at 4:00 p.m.
TIRZ No. 1 & No. 2 Board, January 11, 2021 at 4:00 p.m.
Founders Day Commission, January 11, 2021 at 6:30 p.m.
Utility Commission, January 13, 2020 at 4:00 p.m.

ADJOURN

TEXAS OPEN MEETINGS ACT PUBLIC NOTIFICATION & POSTING OF MEETING

All agenda items listed above are eligible for discussion and action unless otherwise specifically noted. This notice of meeting is posted in accordance with Chapter 551, Government Code, Vernon's Texas Codes. Annotated. In addition, the City Council may consider a vote to excuse the absence of any City Council Member for absence from this meeting.

Due to the Texas Governor Order, Hays County Order, City of Dripping Springs Disaster Declaration, and Center for Disease Control guidelines related to COVID-19, a quorum of this body could not be gathered in one place, and this meeting will be conducted through videoconferencing. Texas Government Code Sections 551.045; 551.125; and 551.127.

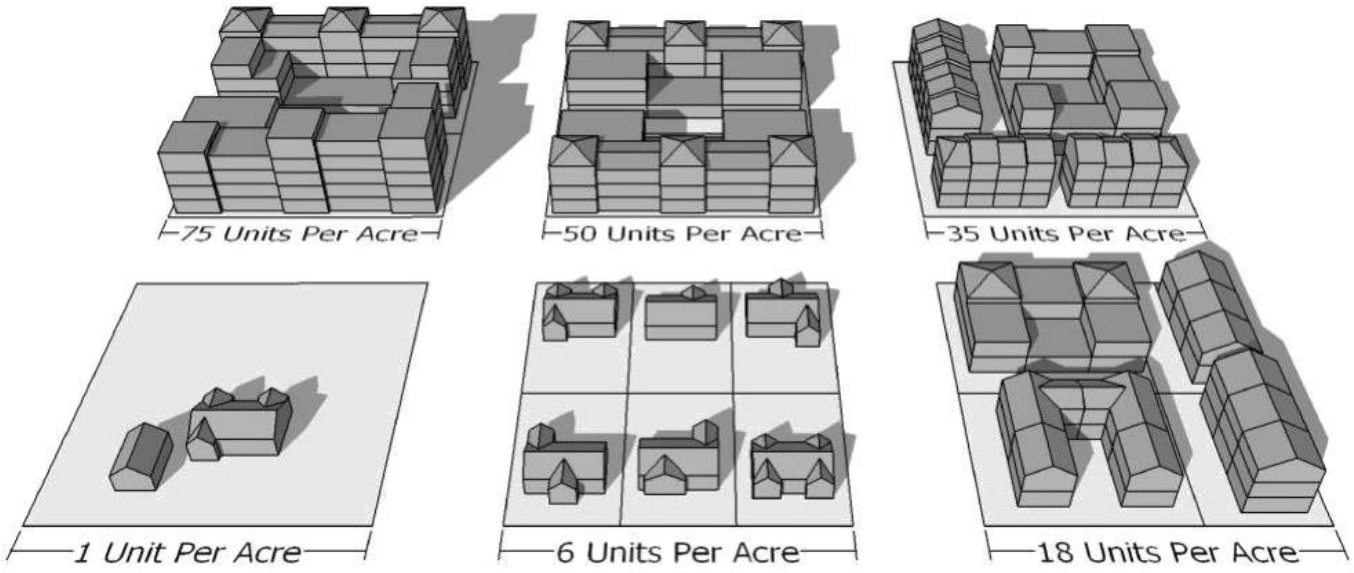
I certify that this notice of meeting was posted at the City of Dripping Springs City Hall and website, www.cityofdrippingsprings.com, on ***December 11, 2020 at 3:00 p.m.***

City Secretary

This facility is wheelchair accessible. Accessible parking spaces are available. Request for auxiliary aids and services must be made 48 hours prior to this meeting by calling (512) 858-4725.

What is Residential Density

- Residential density refers to the number of dwelling units per acres of land (DU/Acres)
- Density is used in planning for new residential development to measure the amount of new housing to go on a specific site.



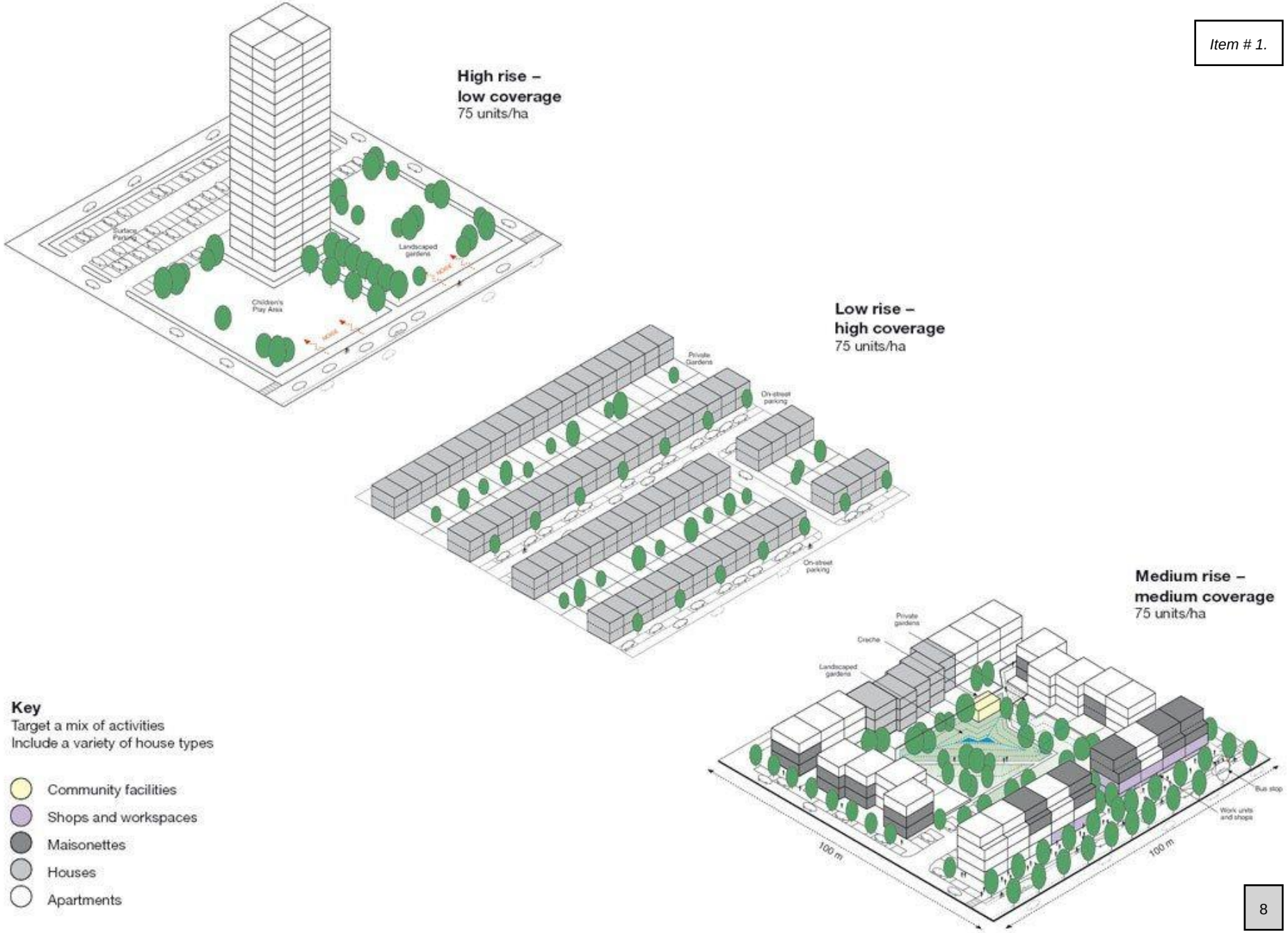
Calculating Density

- There are two ways to calculate density

1. Gross Density is the number of units divided by the acreage of the entire area

2. Net Density is the number of units divided by the acreage of residential area

Gross density can result in the same traffic congestion that can be a major concern of density

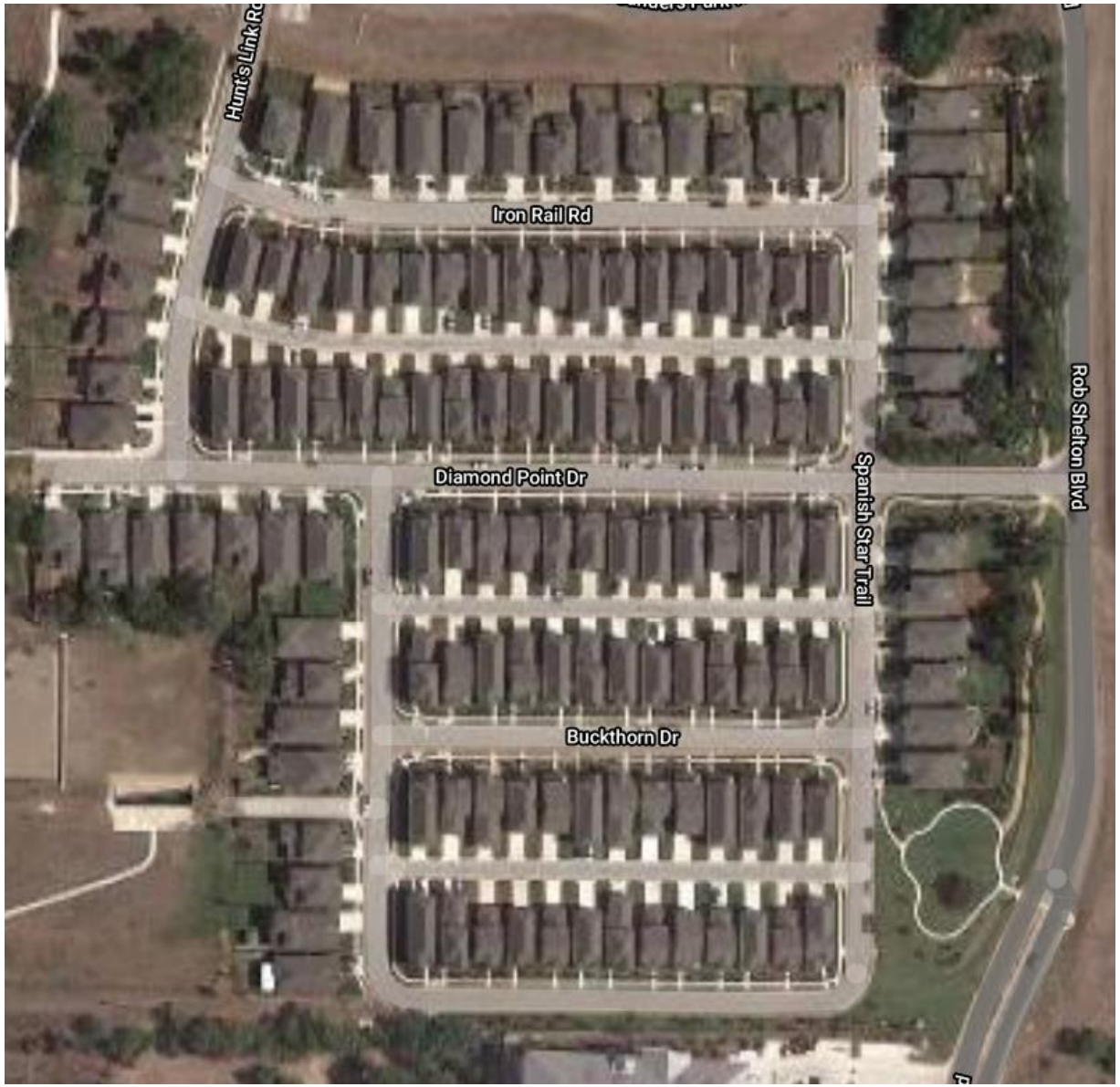


- Badly designed high density can lead to various issues
  - Cramped
  - Traffic congestion
  - Increased parking demand
  - Lack of privacy
  - Reduced open space
  - Inability to fit in with the surrounding community
- Low Density can lead to
  - Urban Sprawl
  - Feelings of isolation
  - Car dependency
  - Difficulties in offering a wider range of housing options
  - Affordability issues

Ways density is observed

- Visually
- Height
- Setbacks
- Impervious cover
- Open space
- Traffic congestion

High Density – Texas Heritage

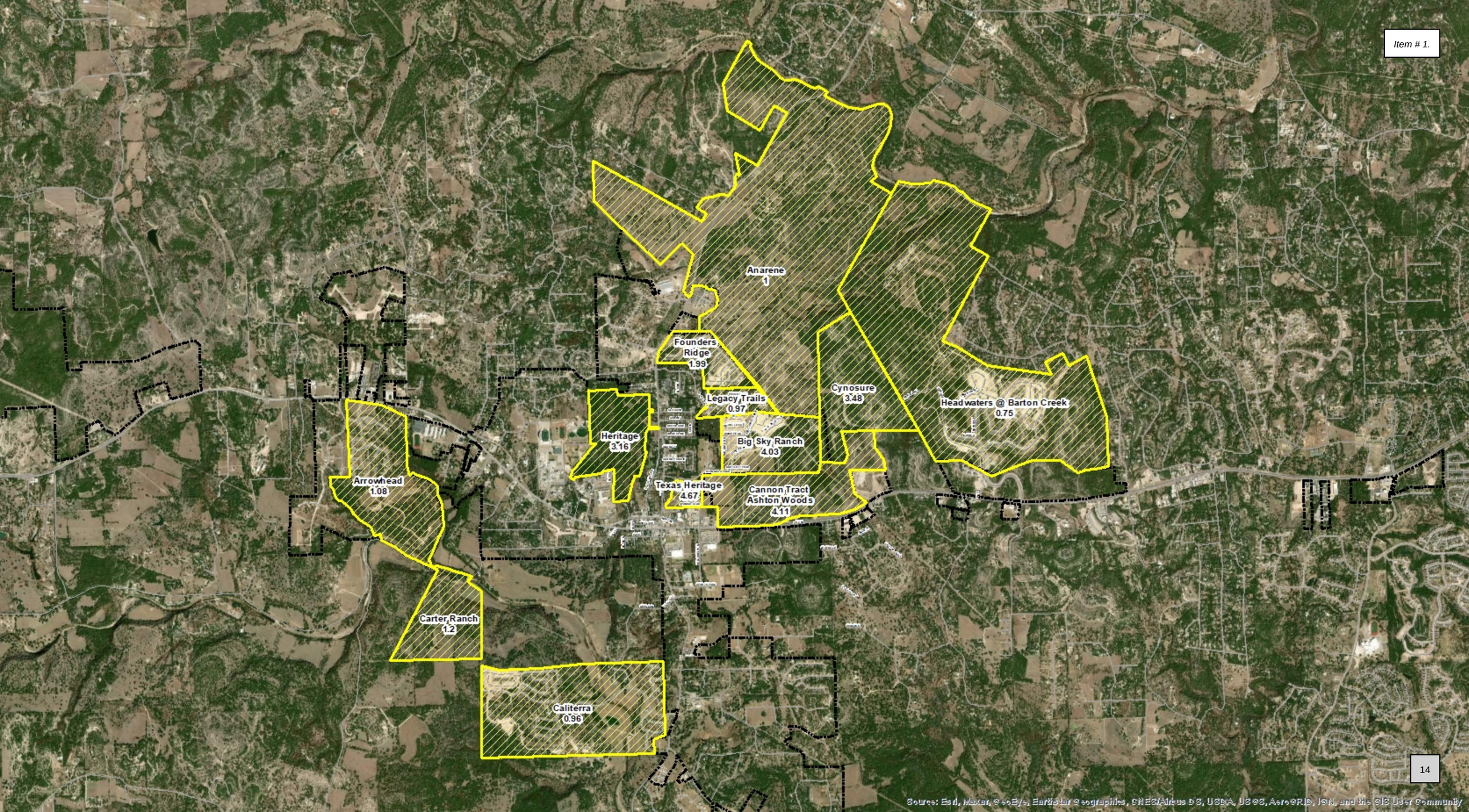


Low Density – Hidden Springs

ond Point Dr
Diamond Point Dr
Diamond Point Dr
Diamond Poin
Spanish Star Trail

Running Deer Ln
Running Deer Ln
Golden Eagle Ln

Density Map


Anarene
1
Founders Ridge
1.99
Legacy Trails
0.97
Heritage
3.16
Big Sky Ranch
4.03
Cynosure
3.48
Headwaters @ Barton Creek
0.75
Arrowhead
1.08
Texas Heritage
4.67
Cannon Tract
Ashton Woods
4.11
Carter Ranch
1.2
Caliterra
0.96
Sources: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Development	City Limits/ETJ	Single Family Lot or LUEs	Wastewater	Acreage	Density per Acreage	34/35	40	45	50	60	65/70
Anarene	ETJ	1677	WW-CODS	1677.61	1				X		
Arrowhead	City Limits	403	WW-CODS	374.2	1.08				X	X	X
Big Sky Ranch	City Limits	805	WW-CODS	200	4.03	X		X		X	
Caliterra	ETJ	567.7	WW-CODS	592	0.96				X		
Cannon Tract	City Limits	400	WW-CODS	97.049	4.12		X	X			
Carter Tract	ETJ	235	WW-CODS	196.8	1.19				X		
Cynosure	ETJ	985	WW-CODS (Proposed)	283	3.48		X		X	X	
Founders Ridge	City Limits	204	WW-CODS	102.479	1.99						X
Headwaters	ETJ	1000	WW-MUD	1336.7	0.75				X	X	X
Heritage	City Limits	595	WW-CODS	188.13	3.16	X	X	X	X	X	
Legacy Trails	City Limits	54	Septic	55.7026	0.97						
Texas Heritage	City Limits	139	WW-CODS	29.784	4.67	X		X			

Zoning Districts	Lot Size	Units per acre*	parkland per acre**
SF-1	1 acre	1	0.04
SF-2	0.5 acre	2	0.08
SF-3	3,500 sq ft	12.5	0.5
SF-4	10,000 sq ft	4.35	0.174
SF-5	2,500 sq ft	16.67	0.6668
MF	1,815 sq ft	24	0.96

1 acre= 43,560 sq ft

*Maximum density a subdivision can build to

** Based on SF= 1 LUE

ETJ Minimum Lot and Unit Sizes

Wastewater System	Aquifer Zone	Surface or Rainwater	Public Water Supply	Private Well
Public Sewer	Recharge	1.5	1.5	2
	Contributing	0.75	0.75	1.5
	WQBZ	2.0/Av 3.0	2.0/Av 3.0	2.0/Av 3.0
Private Septic	Recharge	2	2	2
	Contributing	1.5	1.5	2
	CWQZ	2	2	2
	WQBZ	2.0/Av 3.0	2.0/Av 3.0	2.0/Av 3.0

PLANNING & ZONING COMMISSION REGULAR MEETING

City of Dripping Springs

Council Chambers, 511 Mercer St, Dripping Springs, TX

Tuesday, October 27, 2020 at 6:30 PM

MINUTES

MEETING SPECIFIC VIDEOCONFERENCE INFORMATION

Join Zoom Meeting
https://us02web.zoom.us/j/85842339524?pwd=aDhXa1J6Y2RVM2lTaG85Yk0zTFptZz09

Meeting ID: 858 4233 9524
Passcode: 222242

Dial Toll Free:
877 853 5257 US Toll-free
888 475 4499 US Toll-free

Find your local number: https://us02web.zoom.us/u/kemKIZDvAw

Join by Skype for Business: https://us02web.zoom.us/skype/85842339524

CALL TO ORDER AND ROLL CALL

Commission Members present were:
Mim James, Chair
James Martin, Vice Chair
Christian Bourguignon
Roger Newman
Evelyn Strong
Tammie Williamson

Commission Member absent was:
John McIntosh

Staff, Consultants & Appointed/Elected Officials
City Attorney Laura Mueller
Senior Planner Amanda Padilla
City Engineer Chad Gilpin
Architectural Consultant Keenan Smith
Mayor Bill Foulds, Jr.
Mayor Pro Tem Taline Manassian
Council Member April Harris-Allison

With a quorum of the Commission present, Chair James called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE

Chair James led the Pledge of Allegiance to the Flag.

PRESENTATION OF CITIZENS

A member of the public who desires to address the Commission regarding any item on an agenda for an open meeting may do so at presentation of citizens before an item or at a public hearing for an item during the Commission's consideration of that item. Citizens wishing to discuss matters not contained within the current agenda may do so, but only during the time allotted for presentation of citizens. Speakers are allowed two (2) minutes to speak during presentation of citizens or during each public hearing. Speakers may not cede or pool time. Members of the public requiring the assistance of a translator will be given twice the amount of time as a member of the public who does not require the assistance of a translator to address the Commission. It is the request of the Commission that members of the public wishing to speak on item(s) on the agenda with a noticed Public Hearing hold their comments until the item(s) are presented for consideration. Speakers are encouraged to sign in. Anyone may request a copy of the City's policy on presentation of citizens from the city secretary. By law no action may be taken during Presentation of Citizens.

Council Member April Harris-Allison spoke and introduced herself to the Commission.

BUSINESS

1. **Approval of the September 22, 2020 Planning & Zoning Commission regular meeting minutes.**

   A motion was made by Vice Chair Martin to approve the September 22, 2020 Planning & Zoning Commission regular meeting minutes. Commissioner Bourguignon seconded the motion which carried unanimously 6 to 0.

2. **Discuss and consider approval of the Planning & Zoning Commission 2021 annual meeting calendar.**

   Andrea Cunningham's staff report is on file. Staff recommends approval of the 2021 meeting calendar with no changes.

   A motion was made by Vice Chair Martin to approve the Planning & Zoning Commission 2021 annual meeting calendar as recommended by staff. Commissioner Williamson seconded the motion which carried unanimously 6 to 0.

3. **Discuss and consider recommendation regarding the City of Dripping Springs Development Density.**

   Amanda Padilla presented the staff report which is on file.

   Vice Chair Martin commented on the maps and would like to know both net and gross density when looking at developments.

   Chair James referred to the comprehensive plan and its favor of higher density in the core. Discussion of what the City core is and the use of mix of lot sizes occurred.

Each commissioner member weighed in on the density issue in order to provide guidance to City Council:

Vice Chair Martin is concerned about high density causing fire safety (Texas Heritage Village). He likes the idea of setting aside green space in perpetuity, and believes walkability is important near downtown; however, he is worried about consumers' perceptions of a mix of lot sizes next to each other. Vice Chair Martin defines the City Core as East of HEB and heading West past Tractor Supply to Dripping Springs Middle School, and North on 12 to the Methodist Church and South almost to 150. He added that some of the best places to put commercial is where we already have residential because they requested it first, and the City should look at where we can still have commercial in downtown or near downtown Dripping Springs.

Commissioner Roger Newman is worried about maintenance on houses on smaller lots.

Commissioner Christian Bourguignon agrees that discussing density the core is important. He is not worried about maintenance on houses on smaller lots, deterioration occurs in all sizes of lots. He agrees with Vice Chair Martin definition of the core, and would the City to include something to encourage pedestrian traffic area and infill near downtown Dripping Springs - open spaces help with the traffic burden.

Commissioner Evelyn Strong agrees it's nice to have open space, but they become placeholders for future very valuable undeveloped real estate if they are not restricted. The City should make sure the land is restricted if that is the City's intent or save it for commercial or institutional uses, and defers to our expert planners. She sees Mercer Street and 12 as the core, and Arrowhead to Headwaters is the Core from east to west.

Commissioner Tammie Williamson is still determining the core. She likes different housing types within the same subdivision to ensure affordability, and the product in Big Sky Ranch but doesn't know if the City should have this product throughout. She also emphasized a mixture within a large subdivision is worthwhile.

Chair James stated that Texas Heritage Village supplied a niche for affordable type housing. $310-350K is not affordable.

Keenan Smith offered three density tools/considerations. The Comprehensive Plan is the primary guidance, and the Zoning and Subdivision Ordinances are the implementation regulations. Keenan likes the conservation development option and values the open space for environmental purposes and outside activity, but has concerns that there is not affordable housing types for workers in Dripping Springs. He expressed that density is enabled by the availability of infrastructure and that development should emphasize the natural environment in Dripping Springs. Keenan defines the Core as from Wallace Mountain to the Dripping Springs Middle School, and from 150 to Dripping Springs Ranch Park. Keenan also spoke about Planned Growth Advisory Group.

Chair James discussed the possibility of creating an advisory group and how that could contribute to the zoning and comprehensive plan updates.

4. Discuss and consider recommendation for a Municipal Utility District Policy.

Laura Mueller presented MUD issues to the Commission. Vice Chair James asked about debt and financing in relation to MUD and how improvements are treated after construction.

EXECUTIVE SESSION

The Planning and Zoning Commission for the City of Dripping Springs has the right to adjourn into executive session at any time during the course of this meeting to discuss any matter as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development). The Planning and Zoning Commission for the City of Dripping Springs may act on any item listed in Executive Session in Open Session or move any item from Executive Session to Open Session for action.

5. Consultation with City Attorney related to legal issues regarding Zoning Ordinance updates, Development Agreements, and density of development. *Consultation with City Attorney, 551.071*

6. Consultation with City Attorney related to legal issues regarding Municipal Utility Districts and a MUD Policy. *Consultation with City Attorney, 551.071*

The Commission did not meet in Executive Session.

UPCOMING MEETINGS

Planning & Zoning Commission Meetings
November 15, 2020 at 6:30 p.m.
December 16, 2020 at 6:30 p.m.

City Council & Board of Adjustment Meetings
November 10, 2020 at 6:00 p.m.
November 17, 2020 at 6:00 p.m.
December 8, 2020 at 6:00 p.m.

ADJOURN

A motion was made by Vice Chair Martin to adjourn the meeting. Commissioner Bourguignon seconded the motion which carried unanimously.

This regular meeting adjourned at 8:20 p.m.

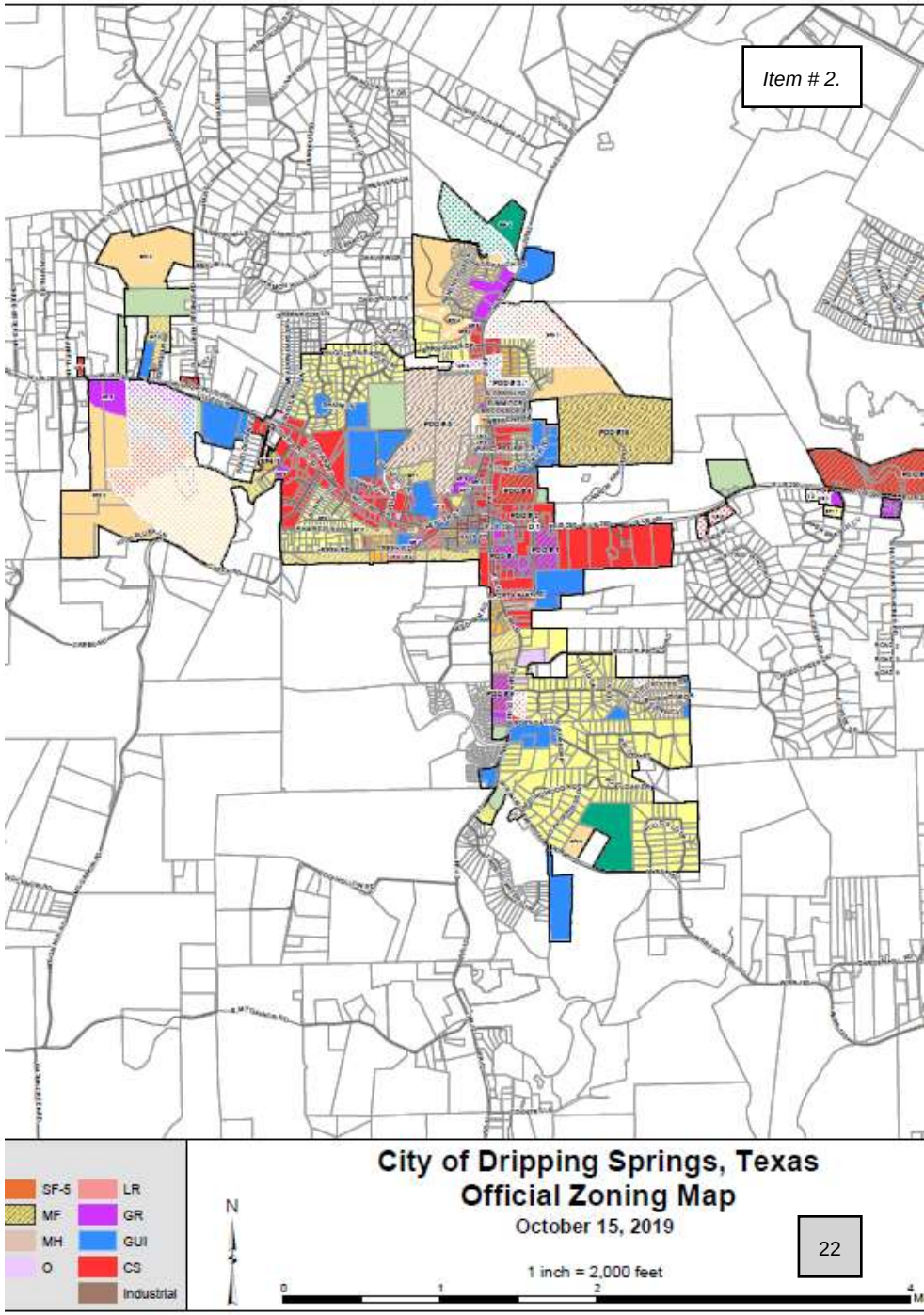
City of Dripping Springs Development Code Rewrite

Planning Department

Wednesday, November 18, 2020

The Zoning Ordinance

- Determines the appropriate uses for a given location
- Limits the operation of each type of use
- Regulates the layout and form of development
  - With standards such as Building height, Building Setbacks, Impervious Cover, etc
- Establishes processes to oversee the above



Current City Zoning Ordinance

- The first Zoning Ordinance that was enacted by the City of Dripping Springs was April 28, 1995.
- This Zoning Ordinance was based on the 1985 Comprehensive Plan.
- The City has done various amendments to the 1985 Zoning Ordinance, but never a complete rewrite
- Zoning has changed significantly from 1995 to 2020 through growth and various amendments.

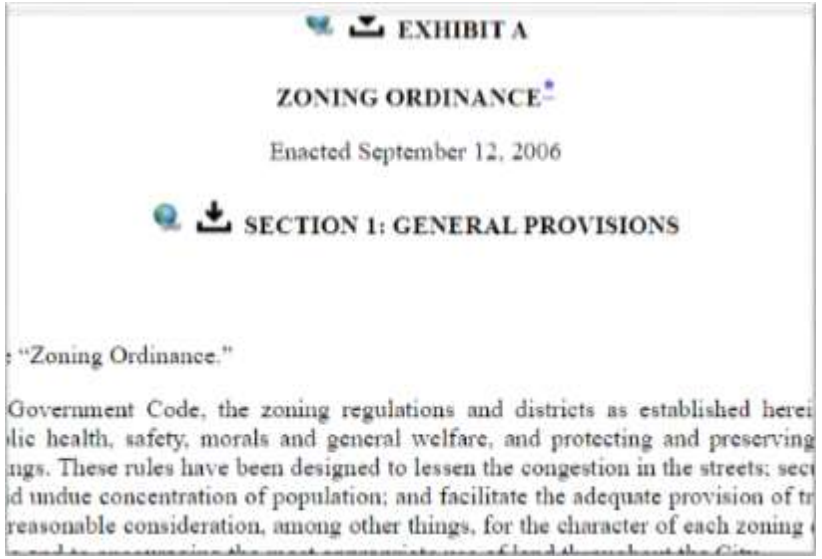


EXHIBIT A

ZONING ORDINANCE*

Enacted September 12, 2006

SECTION 1: GENERAL PROVISIONS

: "Zoning Ordinance."

Government Code, the zoning regulations and districts as established herei
lic health, safety, morals and general welfare, and protecting and preserving
ngs. These rules have been designed to lessen the congestion in the streets; sec
d undue concentration of population; and facilitate the adequate provision of tr
reasonable consideration, among other things, for the character of each zoning

Development Code Potential Schedule

Benchmark 1

- Research
- Evaluate Current Ordinance
- Public Outreach: Survey
- Early Spring 2021

Benchmark 2

- Comprehensive Plan and Zoning Assessment
- Start Draft Ordinance
- Potential Open House
- Fall 2021

Benchmark 3

- Drafting
- Planning and Zoning Commission and City Council Workshops
- Spring 2022

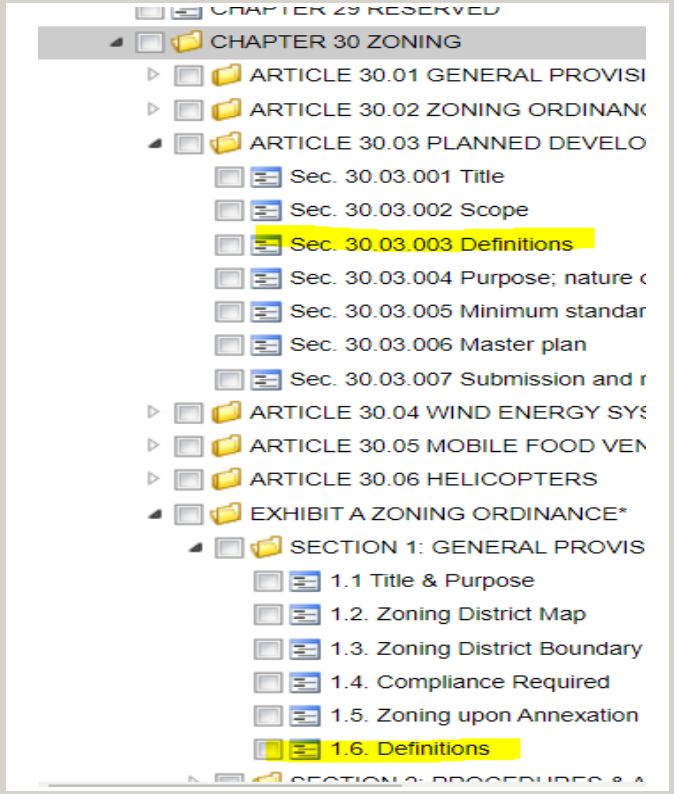
Benchmark 4

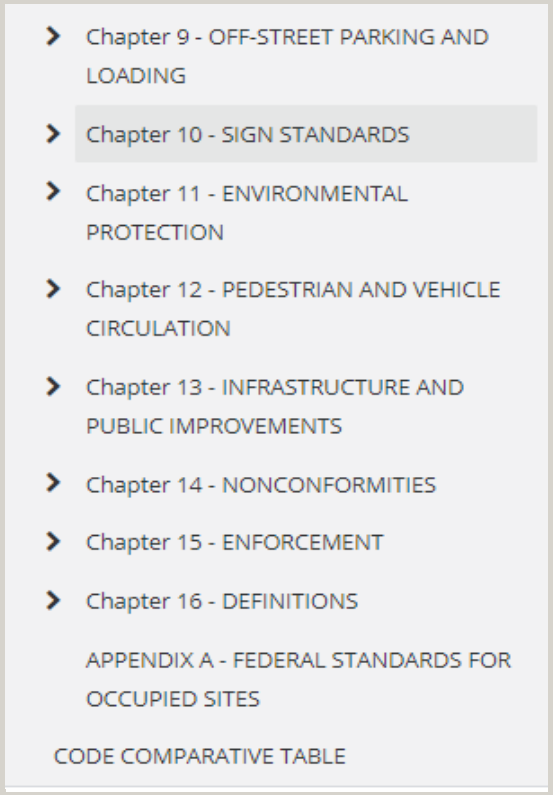
- Adoption of Zoning Ordinance
- Late Spring of 2022 / Summer 2022

Goals for Development Code Rewrite

1. Reorganize all Planning Code of Ordinances into a Unified Development Code
2. User Friendliness
3. Update zoning districts to support and protect the distinct character of the City
4. Modernize and Customize the Development Standards
5. Streamline Processes
6. Setting Clear Expectations

Reorganizing





Reorganize Planning Code of Ordinances into a Unified Development Code (UDC)

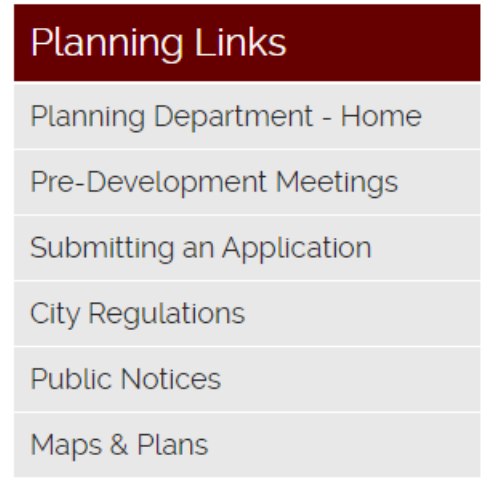
- A unified development code (UDC) will consolidate and update regulations and standards currently found in the Zoning ordinance.
- The UDC will also use more graphics and a common language that will avoid conflicts and confusing terminology.
- Would include every step in the development process prior to building permit including subdivision, zoning, signs, landscaping, and lighting.

User Friendly

Improve User Friendliness

- Promote development standards that are easier to enforce and understand
- Fix critical issues in the current Zoning Ordinance that impede staff review and applicant compliance
- Easy to read
- Re-organize the structure of the current ordinance
- Add more charts and figures
- Compiling development regulations into one location
- Ensure terms are defined and criteria are clear
  - Update definitions to stay consistent with the entire UDC
- Use "plain English"

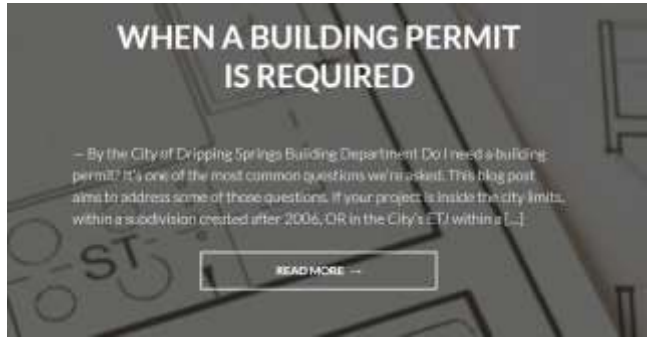
Planning & Development
THE CITY OF DRIPPING SPRINGS



Development Manual

We really want to help you through the development process with as much ease as possible. To that end, we've created the City's new Development Manual. This manual is designed to provide applicants with information, guidance, and the forms necessary to submit a complete application as required by the City's adopted ordinances. Click on the link below.

City of Dripping Springs Development Manual



Updating

Update Zoning Districts to support and protect the distinct character of the City

New development should fit the neighborhood and the character of the City

Standards should ensure development reflects the City's expectations, needs, and market conditions of Dripping Springs.

Reduce reliance on Planned Development Districts

Minimize variances, nonconformities

Modernize & Customize

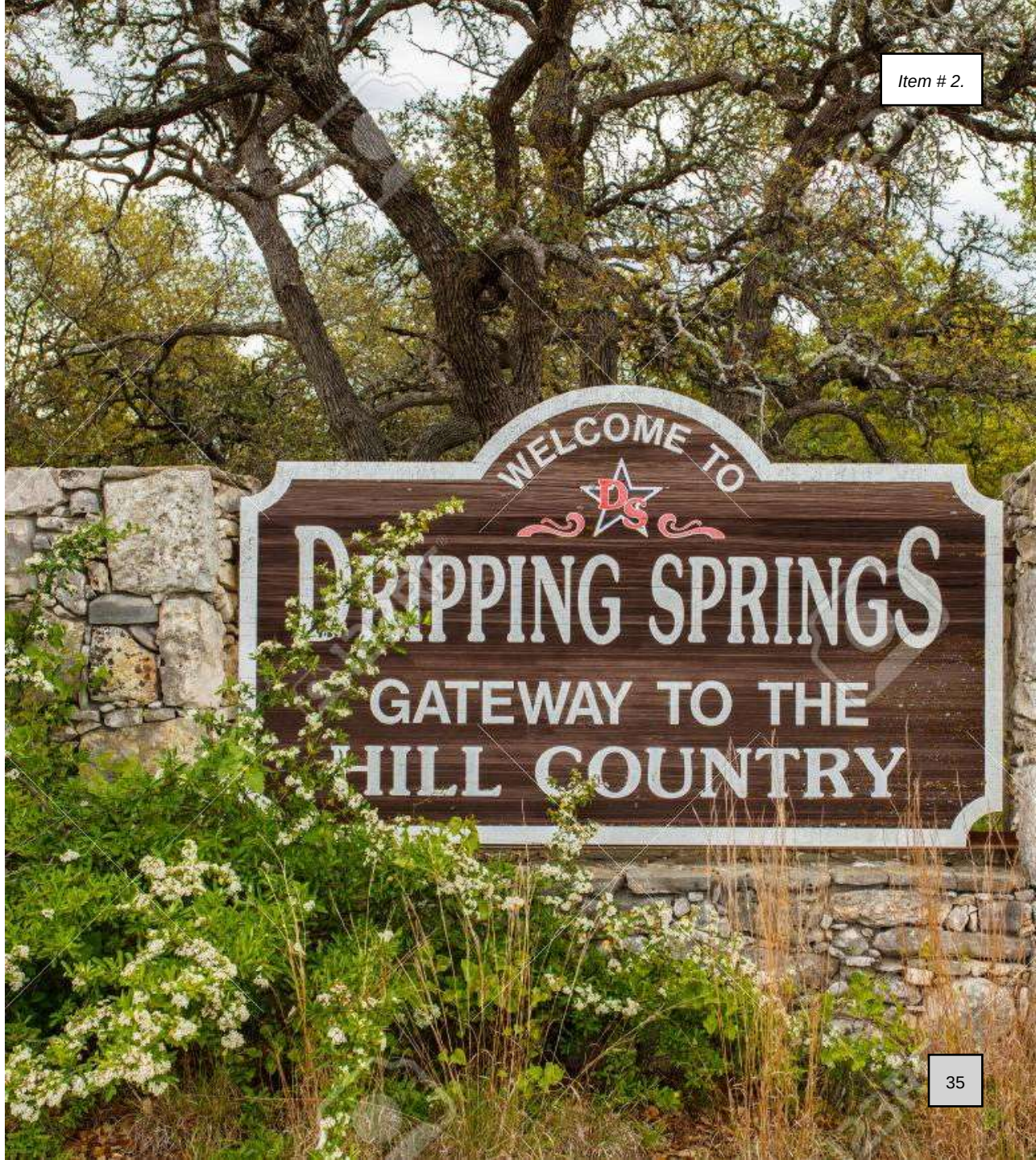
Modernize & Customize development standards

- Modernize and clarify the uses and the use regulations
  - Such as Accessory Structures and Accessory Dwelling Units
  - Add small scale and low dense multi-family standards
  - Parking Standards
- Update Sign Regulations in response to recent case law
- Ensure consistency with State and Federal Law
  - Change Single-Family districts to Residential districts (Federal law)
- Inclusion of Historic Districts as Overlays

Streamlined Processes

Streamlined Processes

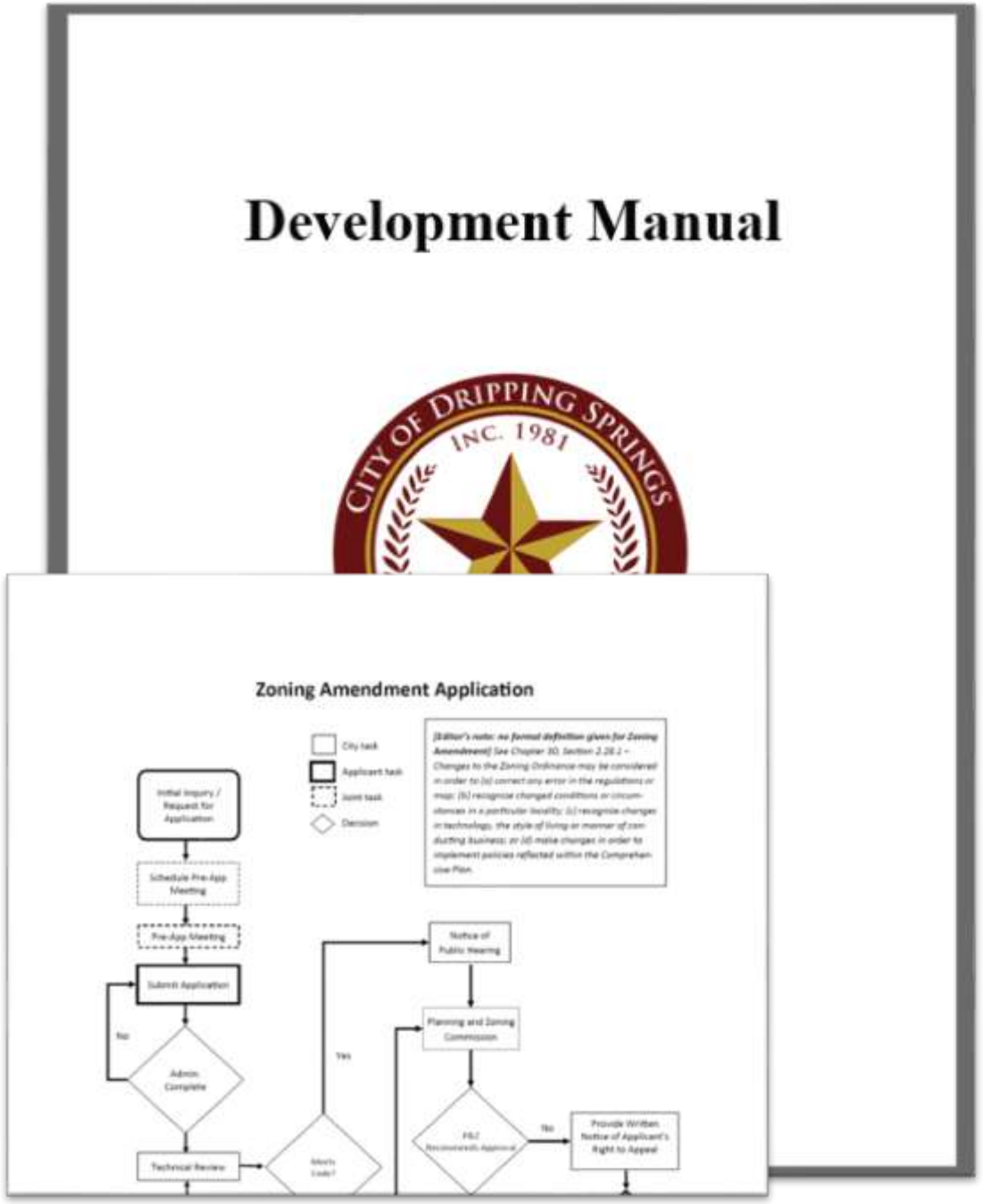
- Reevaluate the review process for various permits
- Expanding Administrative approvals
  - Such as shared parking
  - Lighting, landscaping, and signage approvals
  - Minor modifications



Setting Expectations

Setting clear expectations

- Improve the Development Manual
- Explaining each step of every process, including informal steps
  - Adding easier checklist
- Avoid unexpected surprises to applicants or neighborhoods



Future Goals

- Update Comprehensive Plan
- Update Future Land Use Map
- Update Applications

Development Code Committee

- The Committee members are:
  - 2 City Council Members
  - 2 Planning and Zoning Commissioners
  - City Administrator/Deputy City Administrator
  - City Engineer (when applicable)
  - City Attorney
  - Planning Department
  - Various Consultants (when applicable)

- Meetings with the Committee will be once or twice a month to review the drafted ordinance and discuss direction of the Zoning Ordinance

Questions to Consider

- Is the Zoning Ordinance easy to use? If not, why?
- Are there ways the Zoning Ordinance could be revised to be more user friendly?
- Are there comprehensive plan policies that are important to prioritize for code implementation?
- Are you concerned about any particular land uses in the City?
- Are you concerned about the quality of new development? The Costs of new development?
- How can zoning regulations respond to the needs of neighborhoods, the general public, and applicants?
- What are 3 aspects of high-quality design for new development or redevelopment?
- Is the process transparent? How can we better communicate with the public? With applicants?

Questions/Comments

CITY OF DRIPPING SPRINGS

RESOLUTION No. 2020-R___

A RESOLUTION OF THE CITY OF DRIPPING SPRINGS, TEXAS ("CITY"), ESTABLISHING AN AGENDA, MEETINGS AND MINUTES POLICY FOR THE CITY OF DRIPPING SPRINGS, TEXAS.

WHEREAS, on April 16, 2019 , the City of Dripping Springs City Council ("City Council") passed Resolution No. 2019-R18 adopting the Meeting Agenda Policy and Procedure ("Policy"); and

WHEREAS, since the adoption of Resolution No. 2019-R18, the City has implemented Municode Agenda software; and

WHEREAS, the City is conducting virtual public meetings due to Emergency Orders in response to COVID-19; and

WHEREAS, virtual publics meetings and the implementation Municode Agenda software has changed the City's process related to agendas, meetings and minutes requiring significant changes to the City's current Policy; and

WHEREAS, the City Council finds it necessary and proper to update the Policy to reflect changes in process and procedure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Dripping Springs, Texas, that:

1. The City Council hereby adopts the Policy attached as Attachment "A".

2. The Policy shall become effective immediately upon passage.

3. The City Secretary is hereby directed to distribute and make available the Policy to the City Council, City Commissions, Committees and Boards, and City Staff and Consultants.

4. City Staff, Officials and Consultants shall adhere to the Policy.

5. The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551.

PASSED & APPROVED, this the 15th day of December 2020.

CITY OF DRIPPING SPRINGS:

_____

Bill Foulds, Jr., Mayor

ATTEST:

_____

Andrea Cunningham, City Secretary

MEETINGS, AGENDAS & MINUTES POLICY & PROCEDURE

I. MEETINGS

A. POLICY

The city welcomes and encourages public participation in city council, board, commission and committee meetings. City council, board and commission meetings are required to be open to the public and posted pursuant to the Texas Open Meetings Act. While committee meetings do not have posting requirements, it is the city's policy to include these meetings on the city website calendar. In the event of an emergency, or the issuance of state, county, or municipal orders related to public meetings, the city ~~shall~~ will provide staff instruction on the conduct of public meetings.

B. MEETING CALENDAR

The city secretary ~~shall~~ will prepare the annual calendar for regular meetings of the city council, boards, commissions, and committees which shall be distributed to members and staff and added to the city website calendar. The city secretary shall secure meeting space and prepare calendar invites for distribution to all meeting bodies. Emergency and special meetings shall be coordinated with the city secretary to secure meeting space and ensure a quorum, when possible.

C. MEETING QUORUM

Meeting bodies subject to the Texas Open Meetings Act require a quorum of members pursuant to the City's Code of Ordinances to conduct the meeting. In the event a quorum of members cannot be convened, the meeting ~~shall~~ will be cancelled, and the city secretary will~~shall~~ reschedule the meeting in consultation with staff and the board. It is the responsibility of staff to inform the city secretary if staff believes a quorum of members may be convened outside of a regular, special, or emergency meeting of the city so that a quorum notification may be posted pursuant to the Texas Open Meetings Act.

D. MEETING ATTENDANCE & MANAGEMENT

The city secretary shall maintain member attendance of city council, board, commission, and committee meetings and ensure compliance with city code respective to those meeting bodies as they relate to attendance. I~~i~~n the event an attendance issue arises, the city secretary shall inform city administration and take action as directed.

City staff shall attend meetings as assigned by their supervisor. City administration will~~shall~~ assign a staff liaison to ~~certain~~ boards, commissions, and committees. Staff liaisons shall be responsible for coordinating the agenda, minutes, and audio/video with the meeting body chair and city secretary, and ensur~~e~~ing that meetings are conducted pursuant to the Texas Open Meetings Act. The city secretary shall serve as a backup in the absence of the staff liaison.

E. TRAINING

The city secretary and city attorney shall provide annual training for staff, city council members, and board, commission, and committee members regarding the Texas Open Meetings Act and the Texas Public Information Act. City staff, city council members, and board, commission, and committee members may also complete training via the Texas Attorney General website. It is the responsibility of staff (if directed by city administration), city council members, and board, commission, and committee members to provide Certificates of Completion for Open Meetings Act and Public Information Act training to the city secretary. ~~Staff liaisons, city council members, and board, commission and committee chairs will also receive annual training to be conducted by the city attorney and city secretary.~~ Audio/Video training shall be conducted by the city secretary and the information technology coordinator.

II. AGENDAS

A. POLICY

The city secretary shall post city council, board, commission, and committee meeting agendas in accordance with Texas Open Meetings Act and the City Code of Ordinances. In the event the city secretary is unable to post an agenda, the city administrator or deputy city administrator shall sign and post agendas. Agendas shall be posted at city hall and on-site where the meeting is to take place, and agenda and agenda packet shall be posted on the city's website. The city secretary shall distribute the meeting agenda and agenda packet to members of the meeting body the Friday before the scheduled meeting. In the event a special or emergency meeting is called, the city secretary shall post and distribute agendas and agenda packets pursuant the Texas Open Meetings Act and city code.

All staff shall use the provided agenda software for the creation, posting and distribution of meeting agendas, agenda packets and minutes. The city secretary shall provide staff support in the use and training on the current software provider.

B. AGENDA

1. **Meeting Agenda:** Meeting agendas shall be coordinated between the city secretary, city administration, department supervisors, staff, consultants and appointed/elected officials. The city secretary shall schedule agenda planning meetings for the first city council meeting of each month to include city administration, city attorney, directors, and department managers, and any other staff as designated by the city administrator.

    a. ***Agenda Items:*** Staff shall be responsible for submitting their agenda items in a timely manner for review. Department heads and city administration shall review agenda items for placement on the agenda, which shall be reviewed and approved by the mayor, or board, commission, or committee chair.

    b. ***Agenda Item Wording:*** Agenda captions shall contain a brief description of the item for discussion and reflect whether or not action is required by the meeting body. Agenda items requiring a Public Hearing shall include the Public Hearing in the ~~be reflected in the~~ caption, and listed as a subitem to the caption.

c. ***Agenda Item Sponsor:*** City council agenda items that are not statutory in nature or otherwise required require a sponsor from the city council. Staff shall coordinate these agenda items with their supervisor and the council member that is sponsoring the item.

d. ***Agenda Item Staff Report:*** All agenda items require a staff report. The city secretary shall maintain a general staff report template for use by all staff. Staff that requires a more in-depth staff report may use a specialized staff report template so long as all information in the general staff report template is included. with the approval of administration.[AC1]

e. ***Agenda Item Supporting Documentation:*** Agenda items that require an action by the meeting body that requires a signature from the mayor or meeting body chair shall be attached to the agenda item. If any issue arises with uploading documentation the individual's supervisor and city secretary shall be contacted in writing prior to the meeting. [AC2]Supporting documentation includes, but is not limited to, documents referenced in the agenda item staff report such as:

(1) **Agreement and Contracts:** Staff shall draft documents with their supervisor and the city attorney for final approval by city administration. Documents shall include exhibits, attachments and any other additional documents required by the agreement/contract, and approved signature block.

(2) **Ordinances and Resolutions:** Staff shall draft documents with their supervisor and the city attorney for final approval by city administration. Documents shall include exhibits, attachments and any other additional documents required by the ordinance/resolution.

(3) **Property Documents:** Staff shall provide the city secretary with the final documents related to plats, subdivisions, easements and deeds that require a signature by the mayor or meeting body chair.

(4) **Public Comment:** Public comment includes any written response from the public regarding an item for consideration on the posted agenda. Public comment must be provided in the form of written comment, and may include personal information. The city secretary shall review documents labeled public comment to ensure personal information has been redacted accordingly and in compliance with state statute.

f. ***Agenda Posting and Distribution:*** The city secretary shall post the final approved agenda and agenda packet, and distribute to the meeting body, appropriate staff, and members of the press that have provided written request. Agendas and agenda packets shall also be posted on the city website as provided by state statute.

2. Post Meeting

a. ***City Council:*** The city secretary shall schedule a city council wrap-up meeting following the first city council meeting of each month to include city administration and appropriate

staff. City administration shall assign post meeting tasks regarding city council agenda items.

b. ***Boards, Commissions, and Committees:*** Staff liaisons shall be responsible for any action required by the city following meetings of boards, commissions, and committees. This includes, but is not limited to, notifying the city secretary if a workshop or special meeting needs to be scheduled, moving tabled/postponed items to the appropriate agenda, coordinating follow up on certain items as instructed by the meeting body, etc.

IV. MINUTES

A. POLICY

Meeting bodies that are required by the Texas Open Meetings Act to post an agenda shall also be required to provide written minutes for each meeting. Minutes shall be filed with the city record and posted on the city website and in accordance with Texas Open Meetings Act and the City Code of Ordinances. Minutes shall be approved by the meeting body at the following meeting, with the exception of the city council whose minutes shall be approved at the first meeting of each month. Meeting bodies not required by the Texas Open Meetings Act to must agenda shall submit a monthly report to the city council for review at the first meeting of each month.

Staff liaisons, in coordination with the city secretary, shall coordinate minutes for their meeting body. The meeting body may appoint a secretary to take the minutes of each meeting. The city secretary shall serve as a backup in the event the meeting body secretary or assigned staff is unavailable. In the event that the city secretary is needed, the staff liaison shall provide a written request no less that ~~twenty-four (24~~seventy-two (72) hours prior to the scheduled meeting time except in the case of emergency. The city secretary and city attorney shall provide annual training on minutes for city staff and appointed and elected officials.

B. MINUTES

Minutes shall be taken in-meeting or produced from the audio/video recording. The city secretary shall provide the audio/video recording to staff or meeting body secretary by written request. Minutes are due to the city secretary ten (10) days after the meeting and the city secretary shall ensure that minutes are reviewed and prepared according to state statute and city code.

1. **Minutes Template*:*** Each meeting body requiring minutes shall be provided a template ~~from~~ by the city secretary.

2. **Audio/Video Recording:** The staff liaison, in coordination with the city secretary and information technology coordinator, shall be responsible for recording each meeting. The city secretary shall retain the audio and/or video recordings of meetings with the city record, which shall be destroyed upon approval of the meeting minutes by governing body [AC3]with the exception of City Council, Planning & Zoning Commission, TIRZ No. 1 & No. 2 Board, and the Historic Preservation Commission which shall be destroyed one year after approval of the written minutes or as otherwise directed through the city's record retention schedule. Should staff require a longer retention for audio and/or video recordings, a written request should~~must~~ be submitted to the city secretary to ensure that the recording is not destroyed.

3. **Minutes Approval:** The city secretary shall prepare final minutes for approval by the meeting body and shall submit the minutes to the meeting body for approval on their meeting agenda. Upon approval of minutes, the city secretary shall record the approved minutes with the city record and on the city website.

Exhibit "A"

City Council, Boards, Commissions & Committees

Meeting Body	Staff Liaison by Department	Agenda Required	No. of Members	Quorum
City Council	City Administration	✓	6	3~~*~~[1]
Board of Adjustment	City Administration	✓	6	5[2]
DSRP Board	PCS Director	✓	5	3
Economic Development Committee	City Administrator	X	12	NA
Emergency Management Commission	Emergency Management Coordinator	✓	12	7
Farmers Market Association Board	Farmers Market Manager	✓	8	5
Founders Day Commission	Events & Programs Coordinator	✓	14	8
Historic Preservation Commission	City ~~City Administrator~~Historic Preservation Officer	✓	7	4
Parks & Recreation Commission	PCS Director	✓	8	4[3]~~5~~
Planning & Zoning Commission	Senior Planner	✓	7	4
TIRZ No. 1 & No. 2 Board	City Administration~~or~~	✓	7	4
Transportation Committee	Deputy City Administrator	X	7	NA

[1] Regular Meetings-Tex. Loc. Gov't Code Sec. 22.039 (Mayor does not count). Special/Tax Meeting-Tex. Loc. Gov't Code Sec. 22.039 (Mayor does not count).
[2] Tex. Loc. Gov't Code Sec. 211.008.
[3] Code of Ordinances, Sec. 2.04.065.

Utility Commission	Deputy City Administrator	✓	5	3

Exhibit "B"

Texas Open Meetings Act Training

Members of a governmental body subject to the Open Meetings Act (OMA) are required to participate in education training sessions pursuant to section 551.005 of the Texas Government Code. The training requirement applies to all elected or appointed officials who participate in meetings subject to the OMA. However, it does not apply to public officials who do not conduct business in meetings subject to the OMA. For example, law enforcement officials, auditors, or county clerks are not required to complete training under the OMA.

The law requires that members subject to the OMA complete training within 90 days of taking the oath of office or otherwise assuming the responsibilities of office. The training must include information regarding the:

1. General background of the legal requirements for open meetings;
2. Applicability of the Open Meetings Act to governmental bodies;
3. Procedures and requirements regarding quorums, notice, and recordkeeping under the OMA;
4. Procedures and requirements for holding an open meeting and for holding a closed meeting under the OMA; and
5. Penalties and other consequences for failure to comply with the OMA.

The Office of the Attorney General's training video includes information on each of these elements and satisfies the requirements imposed by section 551.005 of the OMA. A public official may obtain a course completion certificate by following the directions at the end of the training video. The certificate must be maintained by the member's governmental body and made available for public inspection upon request.

Texas Open Meetings Act Training Video

STAFF REPORT

City of Dripping Springs

PO Box 384
511 Mercer Street
Dripping Springs, TX 78602

Submitted By: Kelly Schmidt, Parks & Community Services Director

City Council Meeting Date: December 15, 2020

Agenda Item Wording: **Discuss and consider approval of adding an Annual DSRP Use Pass as a City of Dripping Springs Employee Benefit.**

Agenda Item Requestor: Kelly Schmidt & Tina Adams

Summary/Background: The Parks and Community Services department has the ability to benefit both the community members of Dripping Springs (external customers) and City of Dripping Springs employees (internal customers). In early 2020 City Council approved adding Parks and Community Services program participation discounts as an employee benefit. These benefits included:

20% Off all Parks & Community Services Programs (Camp, Swim Lessons, etc.)
Monetary Value = Depends on program.

1 Complimentary room rental and 1 pavilion rental per year at DSRP and at Founders Memorial Park
Monetary Value = Varies depends on specific amenity rental details

1 Complimentary Season Pool Pass for employees and their immediate family (within the same household).
Monetary Value = $130 | Three (3) month season Memorial Day to Labor Day
---

It is the request of the PCS Director that we include an Annual DSRP Use Pass to the list of employee benefits. Not only will this be a valuable employee benefit should city staff choose to utilize it, it will incentivize employee familiarization with the City's park system and amenities (specifically, all that DSRP has to offer).

1 Complimentary Annual DSRP Pass per Employee (Does not include family membership)
Monetary Value = $200 (Per Fiscal year, October 1 - September 30)
An annual pass provides access to use the indoor and outdoor arenas for

horseback riding during designated pass holder times and to ride horses and/or mountain bikes on the park trails at no cost to the employee.

DSRP Board Recommendation: Unanimously approved recommendation as presented.

Staff Recommendation: Approve as recommended.

Next Steps/Schedule: Add to employee benefit package.

STAFF REPORT

City of Dripping Springs

PO Box 384
511 Mercer Street
Dripping Springs, TX 78602

Submitted By: Laura Mueller, City Attorney

Council Meeting Date: December 9, 2020

Agenda Item Wording: Discuss and consider approval of a Resolution regarding the Appointment of members to the Tax Increment Reinvestment Zone Boards No. 1 & No. 2 for one and two-year terms and determining place.

Agenda Item Requestor: Taline Manassian, Mayor Pro Tem

Summary/Background: The City Council approved a change to the TIRZ Board Ordinance creating a place system and staggered terms. This resolution appoints the 5 City Members and approves the County's appointments of two members. The School Board is considering its recommended appointment on December 14, 2020. The County is appointing its two members this month.

One city appointed member Mim James is not up for reappointment. His place needs to be filled. The appointment can be an elected official, appointed official, employee, or member of the public.

Commission Recommendations:

Recommended Council Actions: Approve appointments including appointing a new city appointed member.

Attachments: Resolution

Next Steps/Schedule: After appointment, the new members will begin their new terms in January 2021.

CITY OF DRIPPING SPRINGS

RESOLUTION No. 2019-R45

A RESOLUTION OF THE CITY OF DRIPPING SPRINGS, TEXAS, APPOINTING ALL MEMBERS TO THE CITY OF DRIPPING SPRINGS TAX INCREMENT REINVESTMENT ZONE NO. 1 AND TAX INCREMENT REINVESTMENT ZONE NO. 2 BOARD OF DIRECTORS.

WHEREAS, the City Council of the City of Dripping Springs, Texas (the "City"), desires to promote the development of a certain geographic area within its jurisdiction by the creation of a reinvestment zone, as authorized by the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (the "Act"), as amended; and

WHEREAS, Section 311.009 of the Act requires the City Council to appoint between 5 and 15 members to the Board of Directors; and

WHEREAS, the City created the Tax Increment Reinvestment Zones on November 29, 2016 by ordinance and set the number of board members at seven; and

WHEREAS, the term of all current TIRZ Board Members have been expired; and

WHEREAS, the City Council amended the Ordinance related to the TIRZ Boards to create places and staggered terms for the boardmembers; and

WHEREAS, it is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DRIPPING SPRINGS, TEXAS:

Section 1. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. The City Council hereby appoints:

Place 1: David Edwards for 2-year term.

Place 2: John McIntosh for 1-year term.

Place 5: Missy Atwood for 2-year term.

Place 6: School Appointee for 1-year term.

Place 7: City Appointee for 2-year term.

to the Board of Directors of the Tax Increment Reinvestment Zone 1 and 2 Boards of Directors. Places 3 and 4 will be appointed by the County and will include one individual with a one year term and one member with a two year term. The terms after the expiration of each of these terms will be two years on a staggered schedule.

Section 3. This Resolution shall take effect immediately from and after its passage in accordance with law and it is accordingly so resolved.

Section 4. This Resolution does not require the City Council to take future action or to adopt the final project plan and financing plan.

PASSED AND APPROVED this, the 15th day of December, 2020, by a vote of ____(ayes) to ____ (nays) to 0 (abstentions) of the City Council of Dripping Springs, Texas:

CITY OF DRIPPING SPRINGS:

_____

Bill Foulds, Jr., Mayor

ATTEST:

_____

Andrea Cunningham, City Secretary

TO: CITY OF DRIPPING SPRINGS
FROM: Kim Fernea
RE: ECONOMIC DEVELOPMENT COMMITTEE MONTHLY REPORT
DATE: December 10, 2020

Please accept this memo as the City of Dripping Springs Economic Development Committee's (the "Committee") monthly update to Council regarding projects and progress during the month of November, 2020.

The Committee convened via Zoom November 18th.

Agenda:

- Call to Order
- City Council Monthly Report – Mayor Pro Tem Taline Manassian
- GSMP Vision 2025 – Patrick Rose
- Planning & Development Monthly Report
    - Britt Benton, Oryx
- TIRZ Projects Monthly Report – Dave Edwards and/or Keenan Smith
- Community Activities Monthly Report

Committee members present: Susan Kimball, Dave Edwards, John Kroll, Mayor Pro Tem Taline Manassian, Whit Hanks, Andrea Nicholas, Patrick Rose, Robert Avera, Rex Baker, Melanie Fenelon, Kim Fernea
Chamber members present: Lucy Hansen, Denise Schroeder, Gigi McClaskey
City representatives present: Mayor Bill Foulds, Michelle Fischer, Andrea Cunningham
Citizen visitor: Becky Atkins, Jorge Marriott,
Presenter/Guest: Britt Benton, Jeff Smith

City County Monthly Report - Mayor Pro Tem Taline Manassian
The City has formed a MUD policy to go with PID policy.
In the future will present an ongoing list of activities before P&Z and beyond.

GSMP Vision 2025 - Patrick Rose

- The Strategy is the outcome of 10 months of work. Currently in the fundraising phase.
- Some focuses of the Strategy that will impact Dripping Springs:
    - Enhancing community appeal & Quality of place
        - Steering and technical advisory surfaced-how important downtown vibrancy of creating quality place and attracting talent then jobs follow
        - Goal 4-Downtown Vibrancy key to wholistic eco development to attract residents, business, visitors
        - TIRZ-Town Center
        - Major portion in 4th Goal-11th Strategic point-support emerging destination tourism
        - Much discussion to intentionally preserve history and create sense of place
    - Create jobs, stimulate eco vibrancy
        - Inviting areas serves purposes
        - Job centers-opportunities to work closer to home
        - Provide options-residents throughout region-including density-work/live/play

- GSMP has an 8 person team-full time team

- Partner with organizations-Chambers, Public government, local businesses, recruited business, lo education and job training providers
- Support Quality Employment Growth
- Optimize Local talent
- Accommodate quality growth
- Enhance community appeal

Planning & Development Monthly Report - Britt Benton

Cannon-58 acres-frontage of 290- Initial phase to get feedback-want to serve community and sees as an asset that fills a need

- Front door to DS-want to careful and pay attention to detail of aesthetics, set right tone nd create something that is viewed as community asset.
  - Positioning of directly above is 100 acres w/ Ashton Woods-363 homes
- Cannon East ~ 100 acres- w/ homes as well
- Britt would like to fill void of affordable housing-proposing to do so here
  - Mix of traditional MF
    - 2 true MF-Parcel 6 & 8 (232 units & 244)
    - Parcel 5-townhouse-single family for rent-7-8.5 units per acre
    - Parcel 1, 2, 3, 4-CRE
  - Cannon Ranch Rd- will connect with northern boundary between them and Ashton Woods site and going north an additional East/West coming out of HW and connecting with RR 12

Headwaters Commercial Frontage

- Phase II is starting to take shape-Music Friendly designation
  - Natural features for outdoor amphitheater-bowl - Have music venue looking
  - Boutique hotel operator-
    - 120-140 doors would do well
    - Ready to go as soon —at least year to deliver
    - Drivable market-destination tourism-see business really growing
    - Unique-region is insulated because it has been underserved for the amount of travel
  - Also looking at secondary hotel-Limited Service hotel-rooms w/out restaurant/bar
  - Several restaurant users that flank amphitheater

TIRZ Projects Monthly Report – David Edwards

- Plan was presented to ISD-they are proponents of the project, as is Library.
- Hays County Parks Bond project passed in November
  - 2 of the priority projects are part of the funding priorities
  - Town Center- Park
  - Fitzhugh-redevelopment of Old Fitzhugh Rd-trails along this road

- Still need funding for everything regarding road and drainage, water quality
- Old Fitzhugh Road project-for part not funded by Parks Bond-working with grant writers through Economic Development groups and TxDOT
- Downtown Parking is still a priority
- Triangle is on hold-waiting on flood plain maps

TEXAS Health and Human Services
Texas Department of State Health Services
John Hellerstedt, M.D.
Commissioner

☑ CHECKLIST FOR OFFICE-BASED EMPLOYERS

Employers may operate their offices with up to 75% of the total office occupancy, provided the individuals maintain appropriate social distancing. All employees and customers must wear a face covering (over the nose and mouth) wherever it is not feasible to maintain six feet of social distancing from another individual not in the same household.

The following are the minimum recommended health protocols for all office work employers choosing to operate in Texas. Office work employers may adopt additional protocols consistent with their specific needs and circumstances to help protect the health and safety of all employees, contractors, and customers.

The virus that causes COVID-19 can be spread to others by infected persons who have few or no symptoms. Even if an infected person is only mildly ill, the people they spread it to may become seriously ill or even die, especially if that person is 65 or older with pre-existing health conditions that place them at higher risk. Because of the hidden nature of this threat, everyone should rigorously follow the practices specified in these protocols, all of which facilitate a safe and measured reopening of Texas. The virus that causes COVID-19 is still circulating in our communities. We should continue to observe practices that protect everyone, including those who are most vulnerable.

Please note, public health guidance cannot anticipate every unique situation. Office work employers should stay informed and take actions based on common sense and wise judgment that will protect health and support economic revitalization. Employers should also be mindful of federal and state employment and disability laws, workplace safety standards, and accessibility standards to address the needs of both workers and customers.

Health protocols for your employees and contractors:

☐ Train all employees and contractors on appropriate cleaning and disinfection, hand hygiene, and respiratory etiquette.

☐ Screen employees and contractors before coming into the office:

- ☐ Send home any employee or contractor who has any of the following new or worsening signs or symptoms of possible COVID-19:
  - Cough
  - Shortness of breath or difficulty breathing
  - Chills
  - Repeated shaking with chills
  - Muscle pain
  - Headache
  - Sore throat
  - Loss of taste or smell
  - Diarrhea
  - Feeling feverish or a measured temperature greater than or equal to 100.0 degrees Fahrenheit
  - Known close contact with a person who is lab confirmed to have COVID-19

TEXAS Health and Human Services
Texas Department of State Health Services
John Hellerstedt, M.D.
Commissioner

OFFICE-BASED EMPLOYERS: Page 2 of 3

- ☐ Do not allow employees with new or worsening signs or symptoms listed above to return to work until:
  - In the case of an employee or contractor who was diagnosed with COVID-19, the individual may return to work when all three of the following criteria are met: at least 3 days (72 hours) have passed *since recovery* (resolution of fever without the use of fever-reducing medications); and the individual has *improvement* in symptoms (e.g., cough, shortness of breath); and at least 10 days have passed *since symptoms first appeared*; or
  - In the case of an employee or contractor who has symptoms that could be COVID-19 and does not get evaluated by a medical professional or tested for COVID-19, the individual is assumed to have COVID-19, and the individual may not return to work until the individual has completed the same three-step criteria listed above; or
  - If the employee or contractor has symptoms that could be COVID-19 and wants to return to work before completing the above self-isolation period, the individual must obtain a medical professional's note clearing the individual for return based on an alternative diagnosis.
- ☐ Do not allow an employee or contractor with known close contact to a person who is lab-confirmed to have COVID-19 to return to work until the end of the 14 day self-quarantine period from the last date of exposure (with an exception granted for healthcare workers and critical infrastructure workers).

☐ Have employees and contractors wash or sanitize their hands upon entering the office.

☐ Have employees and contractors maintain at least 6 feet separation from other individuals. If such distancing is not feasible, other measures such as hand hygiene, cough etiquette, cleanliness, and sanitation should be rigorously practiced.

☐ Consider implementing a staggered workforce, such as alternating days or weeks for different groups of employees and/or contractors coming into the workplace.

☐ Continue to encourage individuals to work remotely if possible.

☐ If an employer provides a meal for employees and/or contractors, the employer is recommended to have the meal individually packed for each individual.

Health protocols for your facilities:

☐ Regularly and frequently clean and disinfect any regularly touched surfaces, such as doorknobs, tables, chairs, and restrooms.

TEXAS Health and Human Services
Texas Department of State Health Services
John Hellerstedt, M.D.
Commissioner

OFFICE-BASED EMPLOYERS: Page 3 of 3

- ☐ **Limit the use of standard-size elevators to four individuals at a time, each located at a different corner of the elevator to avoid close contact. Masks should be worn in elevators. Utilize touchpoint cleaning and nanoseptic button covers if appropriate. For individuals not wishing to ride an elevator, ensure stairways are available for use. As appropriate, individuals subject to the Americans with Disabilities Act may ride the elevator alone or accompanied by the individual's caregiver.**
- ☐ Disinfect any items that come into contact with customers.
- ☐ Make hand sanitizer, disinfecting wipes, soap and water, or similar disinfectant readily available to employees, contractors, and customers.
- ☐ Consider placing readily visible signage at the office to remind everyone of best hygiene practices.
- ☐ For offices with more than 10 employees and/or contractors present at one time, consider having an individual wholly or partially dedicated to ensuring the health protocols adopted by the office are being successfully implemented and followed.

TEXAS Health and Human Services
Texas Department of State Health Services
John Hellerstedt, M.D.
Commissioner

☑ CHECKLIST FOR RODEO AND EQUESTRIAN EVENTS

Individuals may engage in, and sponsors may put on, rodeos and equestrian events. Spectators are allowed, provided that indoor venues limit the number of spectators to no more than 50% of the total listed occupancy of the venue, and outdoor venues may operate at up to 50% of the normal operating limits as determined by the facility owner. Six feet of separation between individuals not within the same household should be maintained to the extent feasible. To the extent the rodeo or equestrian event has spectators, the person sponsoring the event must ensure that ingress and egress from the venue allows for 6 feet of social distancing between individuals on entering and exiting the venue. All employees and customers must wear a face covering (over the nose and mouth) wherever it is not feasible to maintain six feet of social distancing from another individual not in the same household.

The following are the minimum recommended health protocols for all individuals engaging in, and sponsors putting on, rodeo and equestrian events in Texas. Individuals and sponsors may adopt additional protocols consistent with their specific needs and circumstances to help protect the health and safety of all employees, contractors, volunteers, and participants.

The virus that causes COVID-19 can be spread to others by infected persons who have few or no symptoms. Even if an infected person is only mildly ill, the people they spread it to may become seriously ill or even die, especially if that person is 65 or older with pre-existing health conditions that place them at higher risk. Because of the hidden nature of this threat, everyone should rigorously follow the practices specified in these protocols, all of which facilitate a safe and measured reopening of Texas. The virus that causes COVID-19 is still circulating in our communities. We should continue to observe practices that protect everyone, including those who are most vulnerable.

Please note, public health guidance cannot anticipate every unique situation. Participants and sponsors should stay informed and take actions based on common sense and wise judgment that will protect health and support economic revitalization. Participants and sponsors should also be mindful of federal and state employment and disability laws, workplace safety standards, and accessibility standards to address the needs of both workers and customers.

Health protocols for your spectators:

- ☐ Remote ticketing options are encouraged to help manage capacity limitations.
- ☐ Ensure proper spacing between patrons in the venue:
  - ☐ For venues that configure seating arrangements which are not in rows, ensure at least 6 feet of separation between other groups. No tables of more than 10 people.
  - ☐ For venues that configure seating arrangements in rows, maintain at least two empty seats (or six feet separation) between groups in any row, except as follows:
    - Two or more members of the same household can sit adjacent to one another, with two seats (or six feet separation) empty on either side.
    - Two individuals who are not members of the same household but who are attending together can sit adjacent to one another, with two seats (or six feet separation) empty on either side.
      - Alternate rows between patrons (every other row left empty), as appropriate.
  - ☐ Any other method to provide at least six feet of separation between groups of up to 10 individuals who attend the venue together. Disinfect seats and frequently touched areas before and after use.

TEXAS Health and Human Services
Texas Department of State Health Services
John Hellerstedt, M.D.
Commissioner

RODEO AND EQUESTRIAN EVENTS: Page 2 of 3

- ☐ For venues providing food service to patrons:
  - ☐ Do not leave condiments, silverware, flatware, glassware, or other traditional table top items on an unoccupied table.
  - ☐ Provide condiments only upon request, and in single use (non-reusable) portions or in reusable containers that are cleaned and disinfected after each use.
  - ☐ Clean and disinfect the area used for dining (table, etc.) after each group of customers depart the area.
  - ☐ Use disposable menus (new for each patron), or clean and disinfect reusable menus after each use.
  - ☐ If the venue allows customers to write down their food orders inside the venue, provide take-home pencils and notepads that cannot be used by other customers.
  - ☐ Have wait staff sanitize or wash hands between interactions with customers.
- ☐ For venues with counter food service for patrons:
  - ☐ Provide condiments or flatware only in single use, individually-wrapped items, and provide condiments only upon request.
  - ☐ Have employees and contractors follow proper food-handling protocols.
  - ☐ Disinfect any items that come into contact with customers.
- ☐ Contactless payment is encouraged. Where not available, contact should be minimized. Employees, contractors, and customers should sanitize their hands after the payment process.

Health protocols for your employees, contractors, volunteers, and participants:

- ☐ Individuals not currently competing should remain at least 6 feet away from other individuals. Remaining in vehicles before and after a race, or in separate areas during other events, is strongly recommended.
- ☐ Train all employees, contractors, volunteers, and participants on appropriate cleaning and disinfection, hand hygiene, and respiratory etiquette.
- ☐ Screen employees, contractors, volunteers, and participants before the sporting event:
  - ☐ Send home any employee, contractor, volunteer, or participant who has any of the following new or worsening signs or symptoms of possible COVID-19:
    - Cough
    - Shortness of breath or difficulty breathing
    - Chills
    - Repeated shaking with chills
    - Muscle pain
    - Headache
    - Sore throat
    - Loss of taste or smell
    - Diarrhea
    - Feeling feverish or a measured temperature greater than or equal to 100.0 degrees Fahrenheit
    - Known close contact with a person who is lab confirmed to have COVID-19
  - ☐ Do not allow employees, contractors, volunteers, or participants with new or worsening signs or symptoms listed above to return to work until:

RODEO AND EQUESTRIAN EVENTS: Page 3 of 3

- In the case of an individual who was diagnosed with COVID-19, the individual may return to work when all three of the following criteria are met: at least 3 days (72 hours) have passed *since recovery* (resolution of fever without the use of fever-reducing medications); and the individual has *improvement* in symptoms (e.g., cough, shortness of breath); and at least 10 days have passed *since symptoms first appeared*; or
- In the case of an individual who has symptoms that could be COVID-19 and does not get evaluated by a medical professional or tested for COVID-19, the individual is assumed to have COVID-19, and the individual may not return to work until the individual has completed the same three-step criteria listed above; or
- If the individual has symptoms that could be COVID-19 and wants to return to work before completing the above self-isolation period, the individual must obtain a medical professional's note clearing the individual for return based on an alternative diagnosis.

☐ Do not allow an individual with known close contact to a person who is lab-confirmed to have COVID-19 to return to the event until the end of the 14-day self-quarantine period from the last date of exposure (with an exception granted for healthcare workers and critical infrastructure workers).

☐ Have employees, contractors, volunteers, and participants wash or sanitize their hands upon entering the event venue.

☐ Have employees, contractors, volunteers, and participants maintain at least 6 feet of separation from other individuals. If such distancing is not feasible, other measures such as hand hygiene, cough etiquette, cleanliness, and sanitation should be rigorously practiced.

☐ If the event sponsor provides a meal for employees, contractors, volunteers, and/or participants, the sponsor is recommended to have the meal individually packed for each individual.

Health protocols for your facilities:

☐ If 6 feet of separation is not available between individuals at the event, consider the use of engineering controls, such as dividers between individuals, to minimize the chances of transmission of COVID-19.

☐ Regularly and frequently clean and disinfect any regularly touched surfaces, such as doorknobs, tables, chairs, and restrooms.

☐ Disinfect any items that come into contact with individuals, including sporting event equipment.

☐ Make hand sanitizer, disinfecting wipes, soap and water, or similar disinfectant readily available to employees, contractors, and customers.

☐ Consider placing readily visible signage at the venue to remind everyone of best hygiene practices.

☐ Consider having an individual wholly or partially dedicated to ensuring the health protocols adopted by the employer are being successfully implemented and followed.

INTERLOCAL AGREEMENT

This Interlocal Agreement (the "Agreement") is made and entered into as of the 14th day of April 2020, by and between the **City of Dripping Springs,** a general law city in Hays County, Texas (hereinafter the "City"), **Dripping Springs Independent School District** (hereinafter the "DSISD"), **Dripping Springs Community Library District** (the "Library"), and **Hays County** ("County"); (collectively the "Parties"), in connection with the development and construction of the Town Center Project.

WHEREAS, Dripping Springs was one of the five cities in Central Texas chosen to participate in the Sustainable Places Project, an ambitious regional planning initiative aimed at helping communities create the conditions for livable places; and

WHEREAS, Dripping Springs finalized its Sustainable Places Project (the "Project") on December 10, 2013; and

WHEREAS, the Project suggested a catalyst project which focuses on enhancing the existing town center and expanding it to the northwest; and

WHEREAS, the Project recognized that the City and the DSISD currently own, occupy, or control approximately fourteen point one (14.1) acres of land and ROW within the area proposed for the Town Center and adjacent space suitable for potential commercial development; and

WHEREAS, to continue with the Town Center Project, the City, the DSISD, the County, the Library, and TIRZ seek to complete the real estate and other transactions that are necessary to complete the project; and

WHEREAS, the concept to co-locate the City, DSISD, County, and Library is supported by the parties because shared facilities is a cost-effective way to design civic services; and

WHEREAS, the Parties desire to pursue joint planning and construction of the Town Center Project; and

WHEREAS, the City Council of the City of Dripping Springs and the Board of Trustees for the Dripping Springs Independent School District find that the appropriate real estate transactions related to completion of the Town Center Project provides a public benefit to the constituencies served by each of the entities and to the taxpayers of each entity; and

WHEREAS, this Interlocal Agreement is intended to facilitate completion of the planning and construction of infrastructure and related improvements of the Town Center Project; and

WHEREAS, the Parties entered into a Memorandum of Understanding to facilitate timely planning and assessment of the viability of the Town Center in September 2017; and

WHEREAS, timely commitments on the transfer of the City and DSISD properties is desired to plan for the Town Center, but both the City and DSISD desire additional time before vacating their current properties; and

WHEREAS, the Parties plan to acquire and sell or exchange real property, build, occupy, and share a building and complex on a single tract of land.

NOW, THEREFORE, the City, DSISD, Library, and County, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

ARTICLE I
TERM OF AGREEMENT

1.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall expire April 1, 2025.

ARTICLE II
AGREEMENTS

2.1 Conditions. The Parties recognize that certain conditions must be met for the development of Town Center. The City, DSISD, County, or Library, may end its involvement with the development of Town Center and its participation in this Agreement if the City, DSISD, Library, County, or TIRZ are unable to agree upon a site or obtain financing to fund the Town Center Project or replacement facilities related to the Project.

2.2 City Agreement. The City shall:

To advance and implement the development of the Dripping Springs Town Center, the City of Dripping Springs (City) shall:

(a) In accordance with Chapter 272, Texas Local Government Code, to commit to making the current City Hall Property and right of way located on the corner of Highway 290 and Mercer Street available for future purchase or transfer for the Town Center project and negotiate in good faith and enter into an agreement for the purchase of all or part of the City property within the Town Center Site with or without existing improvements, as agreed, on all or a part of the property located at 511 Mercer Street, Dripping Springs, Texas, including the right of way located on the corner of Highway 290 and Mercer Street to the extent allowed by law, that is required for development of Phases 1 and 1A, including property required for new City, Library, and County facilities, Town Square park, and new or expanded right-of-way in exchange for cash compensation and/or the exchange of property equal to fair market value, subject to final approval by the governing boards of each entity involved in the sale or exchange within six months from the date of

execution of this Agreement. The agreement shall include the part(ies) who will purchase or otherwise obtain the City property, the method(s) of transfer, and the date(s) on or around which the properties will be transferred. The final price or land exchange may be determined by the applicable parties at a time mutually agreeable to the parties who are purchasing and selling the property.

(b) Negotiate in good faith with the Library and County the terms of a cost-sharing agreement for eligible shared infrastructure improvements, including each entity's pro rata share of right-of-way, utility, and drainage improvements within six months of the execution of this Agreement based on service demands and to the extent these may be supported by each party's available financing resources, as well as any reimbursement agreements for costs the City may be able to incur that exceed its pro rata share (e.g., initially covering a portion of the Library or County pro-rata share subject to future funding allocations from those entities or the TIRZ);

(c) To the extent allowed by law, adopt a Plan of Finance for the Phase 1 and 1A infrastructure in cooperation with the TIRZ Board, DSISD, Library, and Hays County within twelve months of the execution of this Agreement and will engage a contractor for design of the improvements within six months after the adoption of the Plan of Finance by applicable parties;

(d) Within six months after approval of the Plan of Finance associated with this agreement is finalized as to the terms listed above and property dedicated to each entity by the DSISD and City as negotiated, initiate an application for Planned Development District zoning and promote its approval and provide for the entitlement process for the Town Center, including any required public outreach and engagement;

(e) Conduct space planning and design for the construction of a new City Hall and associated parking and utilities, with the express intent to restrict the land area required to the 1.2-acre site identified as "Civic Site 2" in the Town Center Plan as attached on **Exhibit "A"** (Fall 2019 version); and

(f) Within three months of adoption of the Plan of Finance by the City, the City shall present a cost reimbursement agreement to the TIRZ Board for recommendation whereby City-issued debt and other financing can provide initial funding for any Phase 1 and 1A infrastructure not otherwise funded by the Library or County, to reimburse the City on a pay-as-you-go basis and/or issue debt supported by TIRZ revenues to pay down the City's initial financing; and

(g) In addition, the City may, at its sole discretion:

(1) Engage the DSISD, Library, and/or Hays County to explore the potential for shared use of portions of the planned new City Hall building, including any cost-sharing agreements and scheduling parameters that may be mutually agreeable;

(2) Execute the acquisition of the new City Hall site through a transaction with DSISD;

(3) Negotiate in good faith for the disposition of the City's current City Hall property to an eventual end purchaser related to the Town Center Project;

(4) Complete fundraising for and construction of the new City Hall and associated on-site improvements; and

(5) Pursue funding for Town Center infrastructure and other improvements through other potential resources, including proceeds from cash-in-lieu fees, contributions from development agreements, disposition of public assets, State, County, or regional funding, or any other viable sources.

2.3 **DSISD Agreement.** DSISD shall:

(a) The DSISD shall permit the Parties in this Agreement to purchase and/or agree to the exchange of property, at an agreed value , sufficient land within the boundaries of the District Property, as more described below, to construct the Town Center project. The sale and/or exchange of property and purchase is subject to Chapter 272 of the Texas Local Government Code, Section 11.154 of the Texas Education Code, and subparagraph 2.3(b).

(b) The Parties agree to negotiate in good faith and enter into an agreement for the future sale of the property with the City of Dripping Springs, Library, and/or Hays County, with or without improvements, on approximately eleven point seven (11.7) acres generally located at 510 Mercer Street, Dripping Spring, Texas, excluding the Walnut Springs Elementary School track and field, as required for development of Phases 1 and 1A, but including property required for new City, Library, and County facilities, Town Square park, and new or expanded right-of-way in exchange for cash compensation and/or the exchange of property equal to fair market value, subject to final approval of the governing boards of each entity within six months from the date of execution of this Agreement. The agreement shall include the part(ies) who will purchase or acquire the DSISD property, the method(s) of transfer, and the date(s) on or around which the property will be sold or transferred but not later than July 1, 2022 or on the date agreed to by the DSISD and the buyer(s) of the property in the agreement referenced herein. The final price or land exchange may be determined by the applicable parties at a time in the future, as mutually agreeable to the parties who are purchasing and selling the property; and

(c) The responsibility for the demolition of the existing improvements at 510 Mercer Street shall be determined by the Board of Trustees during the real estate negotiations; and

(d) If the Town Center project is terminated and paragraph 2.3(a) and (b) is not exercised, then in accordance with the requirements of Chapter 272, Texas Local Government Code, DSISD will negotiate in good faith and enter into a real estate sales contract with the Library for property in the amount of acreage sufficient to build a 35,000 square foot building and additional acreage to support the infrastructure as set forth in the interlocal agreement between the Library and District.

(e) In addition, DSISD may, at its sole discretion:

(1) Engage the City, Library, and/or Hays County to explore the potential for shared use of portions of the planned new City Hall building or other Town Center facilities, including any cost-sharing agreements and scheduling parameters that may be mutually agreeable; and

(2) Engage the City in discussions regarding the potential swap of the current City Hall site and building or other City property, with or without improvements, for portions of the current DSISD property required for Phases 1 and 1A of the Town Center Plan, with each property owner receiving fair market value in such an exchange.

2.4 **Library.** The Library shall:

To advance and implement the development of the Dripping Springs Town Center, the Dripping Springs Community Library (Library) shall:

(a) In accordance with Chapter 272 Texas Local Government Code, negotiate in good faith and enter into an agreement to purchase all or part of the property from the DSISD for the property within the Town Center Site, with or without existing improvements, as agreed, on all or a part of approximately eleven point seven (11.7) acres generally located at 510 Mercer Street, Dripping Springs, Texas, excluding the Walnut Springs Elementary School track and field, that is required for development of Phases 1 and 1A, Town Square park, and new or expanded right-of-way in exchange for cash compensation and/or the exchange of property equal to fair market value, subject to final approval by the governing boards of each entity within six months from the date of execution of this Agreement. The agreement shall include the part(ies) who will purchase or obtain the DSISD property, the method(s) of transfer, and the date(s) on or around which the property will be sold or transferred but not later than July 1, 2022 or on the date agreed to by the DSISD and the buyer(s) of the property in the agreement referenced herein.. The final price or land exchange may be determined by the applicable parties at a time in the future, as mutually agreeable to the parties who are purchasing and selling the property; and

(b) Negotiate in good faith with the City and County the terms of a cost-sharing agreement for eligible shared infrastructure improvements, including each entity's pro rata share of right-of-way, utility, and drainage improvements within six months of the execution of this Agreement based on service demands and to the extent these may be supported by each party's available financing resources, as well as any reimbursement agreements for costs the Library may be able to incur that exceed its pro rata share (e.g., initially covering a portion of the City or County pro-rata share subject to future funding allocations from those entities or the TIRZ) and assist the City in the preparation for its Plan of Finance; and

(c) Conduct space planning, design, and site planning for the construction of a new Town Center Library and associated parking and utilities, with the express intent to restrict the land area required to the 1.8-acre site identified as "Civic Site 1" in the Town Center Plan as attached on **Exhibit "A"** (Fall 2019 version), accounting for Library parking that may be accommodated on-street in the public right-of-way.

(d) In addition, Library may, at its sole discretion:

(1) Engage the DSISD, City, and/or Hays County to explore the potential for shared use of portions of the planned Town Center Library building, including any cost-sharing agreements and scheduling parameters that may be mutually agreeable; and

(2) To the extent allowed by law, complete fundraising for and construction of the new Town Center Library and associated on-site improvements as well as any shared infrastructure that the Library's financing resources may be able to support.

(3) Acquire land suitable for the new Library facility.

2.5 Conditions of the County.

To advance and implement the development of the Dripping Springs Town Center, Hays County shall:

(a) In accordance with Section 272.001(b)(5), Texas Local Government Code, negotiate in good faith and enter into an agreement for the purchase of all or part of the property from the DSISD and/or the City for the acquisition of real property with or without improvements, as agreed, on all or part of approximately eleven point seven (11.7) acres generally located at 510 Mercer Street, Dripping Springs, Texas, excluding the Walnut Springs Elementary School track and field and/or the property at 511 Mercer Street with or without existing improvements, that is required for development of Phases 1 and 1A, including property required for new City, County, and Library facilities, Town Square park, and new or expanded right-of-way in exchange for cash compensation and/or the exchange of property equal to fair market value, subject to final approval by the governing board of each entity, for a County facility within six months from the date of execution of this agreement. The agreement shall include the part(ies) who will purchase or obtain the DSISD and/or City property, the method(s) of transfer, and the date(s) on or around which the property will be transferred in 2022, for DSISD property not later than July 1, 2022 or on the date agreed to by the DSISD and the buyer(s) of the property in the agreement referenced herein.. The final price or land exchange may be determined by the applicable parties at a time in the future as mutually agreeable to the parties who are purchasing and selling the property; and

(b) Negotiate in good faith with the Library and City the terms of a cost-sharing agreement for eligible shared infrastructure improvements, including each entity's pro rata share of right-of-way, utility, and drainage improvements within six months of execution of this Agreement based on service demands and to the extent these may be supported by each party's available financing resources, as well as any reimbursement agreements for costs the County may be able to incur that exceed its pro rata share (e.g., initially covering a portion of the Library or City pro-rata share subject to future funding allocations from those entities or the TIRZ) and assist the City in preparation of its Plan of Finance; and

(c) Conduct space planning and design for the construction of a new County facility by Spring 2022 and associated parking and utilities, with the express intent to restrict the land area required to a portion of the 1.2-acre site identified as "Civic Site 2" in the Town Center Plan as attached on **Exhibit "A"** (Fall 2019 version).

(d) In addition, the County may, at its sole discretion:

(1) Execute the acquisition of the new County site through a transaction with DSISD;

(2) Within three months of adoption of the Plan of Finance by the City, present to the TIRZ Board the terms of a cost reimbursement agreement whereby County resources can provide initial funding for any Phase 1 and 1A infrastructure not otherwise funded by the Library or City to reimburse the County on a pay-as-you-go basis and/or issue debt supported by TIRZ revenues to pay down the County's initial financing;.

(3) Engage the DSISD, City, and/or Library to explore the potential for shared use of portions of the planned new civic buildings instead of or in addition to constructing a new County facility, including any cost-sharing agreements and scheduling parameters that may be mutually agreeable;

(4) Complete fundraising for and construction of the new County facility and associated on-site improvements; and

(5) Pursue funding for Town Center infrastructure and other improvements through other potential resources, including proceeds from County parks and transportation bonds, contributions from development agreements, disposition of public assets, State or regional funding, or any other viable sources.

ARTICLE III
DEFAULT, REMEDIES, TERMINATION

3.1 **Defaults, Generally.** A default shall occur ("Default") hereunder if either the City, DSISD, Library, or County shall fail or refuse to perform any of its respective obligations under this Agreement and such Default shall continue for thirty (30) days after written notice from the non-defaulting parties to the defaulting party designating such Default (or for such longer period as may be reasonably required to cure such Default in the exercise of all due diligence but not in excess of ninety (90) days).

3.2 **Remedies after Default.** If a Default occurs, the non-defaulting party shall have all the remedies available to the non-defaulting party at law or in equity, including the right to bring an action for specific performance against the defaulting party.

3.3 **Notice of Default; Opportunity to Cure.** If this Agreement is breached, the party alleging the default or breach shall give the breaching party not less than thirty (30) days written notice, measured from the date of the certified mailing, specifying the nature of the alleged default, and when appropriate, the manner in which the alleged default may be satisfactorily cured. If the

nature of the alleged default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within the period.

3.4 Notice of Intent to Terminate on Default. At any time following the thirty-day cure period, the complaining party may institute legal proceedings and/or give written notice of intent to terminate the Agreement by certified mail. The written notice of intent to terminate shall specify the nature of the alleged grounds for termination.

3.5 Termination of Agreement. Each party shall be able to terminate this Agreement by giving a thirty (30) day written notice to each other Party if the party terminating the Agreement: (1) no longer can obtain funding for the Town Center Project; (2) no longer can allocate funding for the construction of replacement facilities affected by the Town Center Project; (3) there is a legal or budgetary impediment to the DSISD; or (4) a legal impediment to the City.

3.6 Cancellation of Agreement. Except as otherwise permitted herein, this Agreement may be cancelled, in whole or in part, only by mutual written consent of all of the Parties.

3.7 Time of Essence to Agreement. The Parties agree that time is of the essence to this Agreement.

ARTICLE IV
GENERAL PROVISIONS

4.1 Notice. Any notice or statement required or permitted to be delivered by one of the Parties to this Agreement to the other shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the address shown below, or at such other address (or addressees) provided by the parties to each other:

District:	Dripping Springs Independent School District c/o Superintendent 510 Mercer Street Dripping Springs, Texas 78720
With copy to:	Oscar G. Trevino Walsh, Gallegos, Trevino, Russo & Kyle P.C. 505 E. Huntland Dr. #600 Austin, Texas 78752
City:	City of Dripping Springs c/o Michelle Fischer 511 Mercer Street Dripping Springs, Texas 786201

With copy to:	Laura Mueller City Attorney 511 Mercer Street Dripping Springs, Texas 786201
Library:	Dripping Springs Community Library District c/o Missy Atwood 501 Sportsplex Drive Dripping Springs, Texas 78620
With copy to:	Kate Leverett GERMER PLLC 550 Fannin, Suite 400 Beaumont, Texas 77701
County:	Hays County c/o Hays County Judge 111 E. San Antonio St., Ste. 300 San Marcos, Texas 78666
With copy to:	Mark Kennedy County General Counsel 111 E. San Antonio St., Ste. 300 San Marcos, Texas 78666

4.2 **No Joint Venture; No Third-Party Beneficiaries.** It is acknowledged and agreed to by the Parties to this Agreement that the terms hereof are not intended to and shall not constitute a partnership or joint venture between the parties. The Parties, their officials, officers, and agents, do not assume any responsibility or liability to any third parties in connection with the design, construction, operation or maintenance of any structures or improvements associated with Town Center.

4.3 **Applicable Law and Venue.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas, and venue to enforce or interpret any aspect of this Agreement shall lie in Hays County, Texas.

4.4 **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein, and this instrument supersedes any prior agreements or understandings between the parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement.

EXECUTED on this the 15th day of April 2020 ("Effective Date").

[signature pages follow]

CITY OF DRIPPING SPRINGS, TEXAS

Todd Purcell, Mayor

Attest:

Andrea Cunningham, City Secretary

DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT

Dr. Mary Jane Hetrick
Vice-President, Board of Trustees

Attest:

Shannon O'Connor
Secretary, Board of Trustees

DRIPPING SPRINGS COMMUNITY LIBRARY DISTRICT

Missy Atwood, President

Attest:

Melva Codina, Treasurer

HAYS COUNTY

_____

Ruben Becerra, Hays County Judge

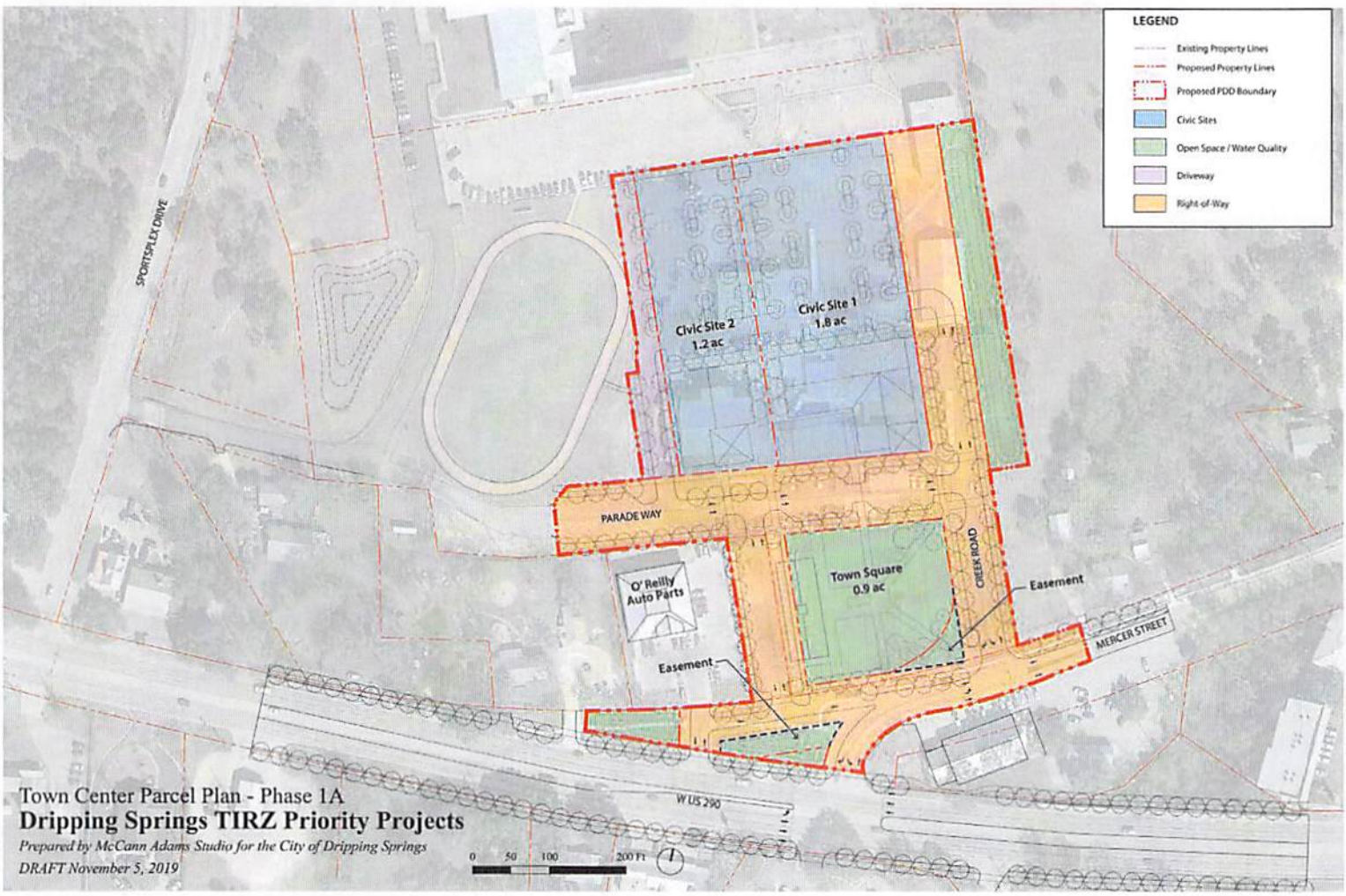
Attest:

_____

Elaine Cardenas, Hays County Clerk

Exhibit "A"

Town Center Plan
"Civic Site 2"



Cause No. D-1-GN-19-003030

SAVE OUR SPRINGS ALLIANCE, INC.,	§	**IN THE DISTRICT COURT OF**
Plaintiff	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	
Defendant	§	**345th JUDICIAL DISTRICT**
	§	

FINAL JUDGMENT REVERSING ORDER OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

On June 25, 2020, this Court heard argument in this case. Having considered the pleadings, administrative record, briefing, and argument of counsel, the Court has concluded that the Texas Commission on Environmental Quality's order under review in this case should be and hereby is **REVERSED** in all things.

IT IS ORDERED, ADJUDGED, AND DECREED that TCEQ's order is **REVERSED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the TCEQ and the City of Dripping Springs are enjoined from taking actions in reliance on the unlawful agency order.

This Judgment is final, disposes of all parties and claims, and is appealable.

SIGNED this 29th day of October, 2020.

JUDGE PRESIDING
MAYA GUERRA GAMBLE

MAYA GUERRA GAMBLE
Judge
(512) 854-9384

SAMUEL DENTON
Staff Attorney
(512) 854-9307
samuel.denton@traviscountytx.gov

LARISSA WALTON
Judicial Executive Assistant
(512) 854-9384
larissa.walton@travicountytx.gov

459TH DISTRICT COURT
HEMAN MARION SWEATT
TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767

October 29, 2020

ALICIA DUBOIS
Official Court Reporter
(512) 854- 9301
alicia.dubois@traviscountytx.gov

ADRIAN RODRIGUEZ
Court Clerk
(512) 854-5835

William G. Bunch
Kelly D. Davis
Save Our Springs
4701 Westgate Blvd., D-401
Austin, TX 78745
Via Email: *bill@sosalliance.org*
Via Email: *kelly@sosalliance.org*
Counsel for Save Our Springs

David Tuckfield
The AL Law Group PLLC
12400 W. Highway 71 STE 350-150
Bee Cave, TX 78738
Via email: *David@allawgp.com*
Counsel for City of Dripping Springs

Sara Ferris
Linda Secord
Assistant Attorney General
Administrative Law Division
Office of the Attorney General of Texas
PO Box 1548, MC-066
Austin, TX 78711-2548
Via Email: *Sara.Ferris@oag.texas.gov*
Via Email: *linda.secord@oag.texas.gov*
Counsel for TCEQ

Andrew N. Barrett
Andy Barrett & Associates
3300 Bee Cave Road, Suite 650 #189
Austin, TX 78746
Via email: Andy@thebarrettfirm.com
Counsel for City of Dripping Springs

Re: Cause No. D-1-GN-19-003030; *SOS v. TCEQ*; in the 459th Judicial District Court of Travis County, Texas

Dear All:

On June 25, 2020, this Court heard argument in this case. Plaintiff Save Our Springs Alliance ("SOS"), Defendant Texas Commission on Environmental Quality ("TCEQ," or "the Agency") and Intervenor City of Dripping Springs ("City"), appeared through counsel and announced ready for trial.

The Court, after hearing argument of counsel, considered and denied the motion of Defendants to strike the brief filed by Amici Curiae Stephanie Ryder Morris et al.

This case is an appeal of a final agency order and is governed by the Administrative Procedure Act (APA), Tex. Gov't Code §§ 2001.001-.903. TCEQ's final order, entered following a contested case hearing before the State Office of Administrative Hearings, granted the City a permit

authorizing the discharge of up to 822,500 gallons per day of treated municipal wastewater into Onion Creek in Hays County. Plaintiff timely appealed the order. This is a review based on the administrative record, which was entered into evidence at the hearing, in accordance with Tex. Gov't Code § 2001.175(d).

The Court, after reviewing the pleadings, administrative record, briefing, and argument of counsel, finds that the TCEQ's order approving the City of Dripping Springs's wastewater discharge permit is not supported by the law or substantial evidence and should be reversed. Specifically, the Court finds the following conclusions of TCEQ unsupported by substantial evidence: (1) that the proposed discharge complies with the Agency's "Tier 2" anti-degradation rule requiring that the City's discharge must not cause more than a *de minimis* lowering of water quality in Onion Creek unless there is a showing that such lowering of water quality is necessary for important economic or social development; (2) that the proposed discharge would not impair existing high quality aquatic life uses of Onion Creek; and (3) that the information in the public notices of the proposed wastewater discharge permit sufficiently identified the location of the proposed discharge point.

OVERVIEW OF THE CASE

TCEQ approved the City's wastewater discharge permit pursuant to provisions of the Texas Water Code and TCEQ's implementing rules. TCEQ's authority to issue the permit, while set out in Texas statutes, was also delegated to the Agency by the U.S. Environmental Protection Agency (EPA) pursuant to the federal Clean Water Act and EPA's implementing rules. TCEQ's actions, and its rules applicable in this case, must be interpreted in the context of the Clean Water Act, and must be consistent with, and at least as protective of water quality, as EPA's applicable rules. 33 U.S.C. § 1342(b); 40 C.F.R. § 123.25.

The Clean Water Act's stated objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Towards this objective, the Act establishes a national goal that discharges of pollutants into the Nation's waters be eliminated by 1985. *Id*. § 1251(a)(1). Where discharges are not fully eliminated, the Act sets a goal of achieving water quality "which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." *Id*. § 1251(a)(2). These two goals of the Act—to protect aquatic life and recreation "in and on the water," known as keeping our water "fishable" and "swimmable"—are met primarily through two types of regulations: water quality standards and discharge standards. Permitted discharges must ensure that water quality standards that maintain "fishable/ swimmable" are met. *Id*. §§ 1311, 1312(a). To that end, discharge permits must set sufficiently protective limits on total volume of the discharge and on concentrations and amounts of specific pollutants. *Id*. §§ 1311, 1312(a), 1342.

In order to qualify for delegation of Clean Water Act administration, Texas adopted the required legislation and rules. The Texas Water Code declares the State's policy "to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation or protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state… and to require the use of all reasonable methods to implement this policy." Tex. Water Code § 26.003. TCEQ "may refuse to issue a permit when the commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance

of the permit would interfere with the purpose of this chapter." Tex. Water Code § 26.027. It is against the backdrop of these statutory purposes that the permit at issue must be considered.

Plaintiff primarily challenges whether the permit approved by TCEQ violates a subset of Texas's water quality standards that apply to Onion Creek. TCEQ has designated the portion of Onion Creek that would receive the City's discharge as "high aquatic life use," along with other uses of primary contact recreation, water supply, and aquifer recharge. TCEQ Order, AR A Doc. 169, at 5 ¶30.

Because Onion Creek is designated as "high aquatic life use" it is subject to a two-tiered EPA-required "anti-degradation policy." Although titled as a "policy," it is a mandatory rule that must be interpreted consistent with both EPA's anti-degradation rule and the Clean Water Act. 40 C.F.R. § 131.12; 30 Tex. Admin. Code § 307.5.

Plaintiff's first claim is that TCEQ's final order approving the City's permit violates the more stringent of TCEQ's two-part anti-degradation rule, known as Tier 2 anti-degradation review, as a matter of law or as an abuse of discretion. Plaintiff's second claim is that TCEQ misapplied the less stringent "Tier 1" anti-degradation rule, which applies to all waters of the state, by considering improper factors, failing to consider required factors, and failing to make required underlying findings of fact that connect to the agency's ultimate conclusions, thereby demonstrating reasoned decisionmaking that is transparent and subject to judicial review.

Plaintiff's third claim is that the public notice given for the proposed permit failed to identify the location of the proposed discharge with sufficient accuracy to provide for public input and participation in the agency's decisionmaking process.

STANDARDS OF REVIEW

The Texas Administrative Procedure Act sets out the standards of review applicable in this case. This Court "shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) in violation of a constitutional or statutory provision;
(B) in excess of the agency's statutory authority;
(C) made through unlawful procedure;
(D) affected by other error of law;
(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Tex. Gov't Code § 2001.174(A)-(F). These grounds for reversal are collectively referenced, in shorthand, as the "substantial evidence rule."

Review of an agency's final decision or action under the substantial evidence rule involves the following two component inquiries:

(1) whether the agency made findings of underlying facts that logically support the ultimate facts and legal conclusions establishing the legal authority for the agency's decision or action and, in turn,
(2) whether the findings of underlying fact are reasonably supported by the evidence.

TCEQ v. Maverick Cnty., 2019 Tex. App. LEXIS 9981 at *7-8. The first inquiry may entail questions of law, while the second inquiry is highly deferential to the agency's determination. *Id*. at *8. An agency acts arbitrarily if it has not "genuinely engaged in reasoned decisionmaking" by making a decision without regard for the facts, relying on fact findings that are not supported by any evidence, or if there does not appear to be a rational connection between the facts and the decision. *Heritage on the San Gabriel Homeowners Ass'n v. TCEQ*, 393 S.W.3d 417, 423 (Tex. App.—Austin, 2012); *City of Waco v. TCEQ*, 346 S.W.3d 781, 819 (Tex. App.—Austin 2011), *rev'd on other grounds*, 413 S.W.3d 409 (Tex. 2012)(citations omitted).

Even if supported by substantial evidence, however, an agency order may be arbitrary and capricious if the agency has improperly based its decision on non-statutory criteria or failed to consider relevant factors. *Tex. Dep't of Ins. v. State Farm Lloyds*, 260 S.W.3d 233, 245 (Tex. App.—Austin 2008); *City of El Paso v. Pub. Util. Comm'n*, 883 S.W.2d 179, 184 (Tex. 1994).

Administrative rules are interpreted like statutes, under traditional principles of statutory construction. *Tex. Comm'n on Envtl. Quality v. Maverick Cnty.*, No. 03-17-00785-CV, 2019 Tex. App. LEXIS 9981 at *12 (Tex. App.—Austin Nov. 15, 2019, pet. filed). The "primary objective in both statutory and rule construction is to ascertain and give effect to the drafters' intent." *Id*. That intent is determined from the plain meaning of the words chosen when it is possible to do so. *Id*. "If there is vagueness, ambiguity, or room for policy determination in the regulation 'we normally defer to the agency's interpretation unless it is plainly erroneous or inconsistent' with the rule's language." *Id*. (quoting *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W. 3d 432, 438 (Tex. 2011)). However, "no deference is due where an agency's interpretation fails to follow the clear, unambiguous language of its own regulations." *Id*.

DISCUSSION

a. Plaintiff's Anti-Degradation Claims

TCEQ's Anti-degradation rule provides:
(1) Tier 1. Existing uses and water quality sufficient to protect those existing uses must be maintained. Categories of existing uses are the same as for designated uses, as defined in § 307.7 of this title (relating to Site-Specific Uses and Criteria).
(2) Tier 2. No activities subject to regulatory action that would cause degradation of waters that exceed fishable/swimmable quality are allowed unless it can be shown to the commission's satisfaction that the lowering of water quality is necessary for important economic or social development. Degradation is defined as a lowering of water quality by more than a *de minimis* extent, but not to the extent that an existing use is impaired. Water quality sufficient to protect existing uses must be maintained. Fishable/swimmable waters are defined as waters that have quality sufficient to support propagation of indigenous fish, shellfish, terrestrial life, and recreation in and on the water.

30 Tex. Admin. Code § 307.5 (emphasis added).

Thus, degradation is defined as "a lowering of water quality by more than a *de minimis* extent." *Id*.

Onion Creek has water quality exceeding the fishable and swimmable standard; therefore both a Tier 1 and Tier 2 anti-degradation review were required. In arguing that the permit violates the Tier 2 prohibition against lowering water quality by more than *a de minimis* amount, Plaintiff relies on the framework and evidence, which is undisputed in the record, as summarized here.

Compliance with water quality standards is measured at a critical low flow level, which for the stretch of Onion Creek that would receive the discharge is 0.12 cubic feet per second (cfs). The permit authorizes the City to discharge up to 822,500 gallons per day of treated wastewater, which equals 1.27 cfs. Thus, at the regulatory flow level and the permitted discharge, Onion Creek would consist of one parts background Onion Creek flow and ten parts treated sewage. The water quality conditions as of November 28, 1975 define baseline conditions that must be protected.

Total phosphorus is the primary limiting nutrient, meaning the primary control on algae growth, but nitrogen is also a recognized pollutant that threatens aquatic life and other uses and is therefore regulated by water quality and discharge standards. Onion Creek is a phosphorus limited stream, with very low naturally occurring concentrations of total phosphorus which are below the level of detection in TCEQ-certified labs.

Experts of Plaintiff, TCEQ, and the City agreed that the best estimate of baseline total phosphorus levels in Onion Creek is in the range of 2 to 9 micrograms per liter (µg/L). A report by the United States Geological Survey measured total phosphorus at 3 µg/L in Onion Creek. By contrast, TCEQ's final order approves wastewater discharge containing up to 150 µg/L total phosphorus. At the regulatory low flow level and the permitted discharge rate, total phosphorus in Onion Creek would increase to above 100 µg/L.

In 2001, EPA published a report, *Ambient Water Quality Criteria Recommendations [for] Rivers and Streams in Nutrient Ecoregion IV*. AR B Doc. 293 (Suppltl. AR). The Edwards Aquifer region, including Onion Creek where the discharge would occur, is within Ecoregion IV. The report summary explains that its recommended "ecoregional nutrient criteria address cultural eutrophication—the adverse effects of excess human-caused nutrient inputs." The report recommends nutrient limits at which stream changes occur in sensitive streams—25 micrograms per liter for Total Phosphorus and 700 micrograms per liter for Total Nitrogen. This 2001 EPA report placed Onion Creek in a group of streams with very low, naturally occurring phosphorus and nitrogen streams, known as "oligotrophic" streams. This description, and the nutrient limit recommendations in the report, were based on a statistical analysis of hundreds of streams across the country.

Since 2001, TCEQ has funded studies that would help Texas set specific phosphorus and nitrogen water quality standards, but TCEQ has so far not adopted numeric nutrient water quality standards. Several of these studies were introduced into the record. One such study from 2009, introduced by the City, concludes that there is "overwhelming evidence" of "consistent biological changes in streams with greater than 20 µg/L" total phosphorous. King & Winemiller, Development of Biological Indicators of Nutrient Enrichment for Application in Texas Streams, AR B Doc. 241, at

67. TCEQ procedures and TCEQ's final order make clear the agency must consider phosphorus and nitrogen when determining compliance with the anti-degradation water quality standards.

As to nitrogen, the permit allows discharged effluent to have up to 6.0 milligrams per liter (mg/L) of total nitrogen. The City's expert estimated that nitrate-nitrogen would increase from background levels in Onion Creek of 0.05 mg/L to almost 5 mg/L with the proposed discharge. This was not disputed by other evidence.

The City's expert estimated that phosphorus and nitrogen in the discharge would increase bottom-dwelling algae growth in Onion Creek tenfold, from less than 5 mg per square meter (m2) of chlorophyll-a to 30 to 50 mg/m2.

In addition to nutrients and algae growth, maintaining dissolved oxygen levels that protect aquatic life is also important. Baseline levels of Dissolved Oxygen (DO) in Onion Creek range from 6.89 mg/L to 8.42 mg/L, as measured by the City's expert. TCEQ's modelling found that the proposed discharge would cause DO levels in Onion Creek to drop down to at or near the 5.0 mg/L DO criterion assigned for its high-aquatic life use. The City's expert conducted modelling estimating a low of 4.87 mg/L DO resulting from the permitted discharge.

In applying the Tier 2 rule to this undisputed evidence, Plaintiff first notes, and the parties agree, that the City made no effort to show important social and economic development needs that would allow a discharge resulting in more than a *de minimis* lowering of water quality. Thus, the City, as applicant, bore the burden of showing that the permitted discharge would not lower water quality in Onion Creek more than a *de minimis* amount.

Plaintiff argues that the undisputed increases in nutrient pollution, lowered dissolved oxygen, increase in algae growth, and conversion of Onion Creek, at low-flow conditions to one part clean creek-water to ten parts treated sewage violates the no more than a *de minimis* lowering of water quality Tier 2 standard as a matter of law.

Plaintiff further argues that Defendants failed to interpret the Tier 2 standard correctly by: (a) requiring a showing of harm to existing uses, thereby collapsing the Tier 2 *de minimis* standard into the Tier 1 standard requiring that uses, not quality, must be maintained; (b) ignoring, and writing out of the rule, the provision that if there is to be more than *de minimis* lowering of water quality, a showing of important social and economic necessity must be made; and (c) considering, in both the Tier 2 and Tier 1 analyses, improper factors (primarily that "nutrient enrichment," increased biological productivity, species diversity, and stream flow "stabilization" from the discharge indicated a positive effect on the stream rather than pollution of the stream).

Defendants respond that TCEQ correctly applied the rule in this case, and that the Agency's findings that the anti-degradation standards were met and are supported by substantial evidence and reasoned decisionmaking. Defendants also argue the Court should defer to TCEQ's expertise and judgment on matters of conflicting expert opinion and evidence, among other points.

The Court agrees with Plaintiff that the evidence shows as a matter of law that the permitted discharge will lower water quality in Onion Creek more than a *de minimis* amount.

The EPA anti-degradation rule provides that TCEQ must adopt a rule that "at a minimum" is consistent with EPA's rule, which states in pertinent part that where "the quality of waters exceed levels necessary to support the protection and propagation" of aquatic life, "that quality shall be maintained and protected unless the State finds . . . that allowing lower water quality is necessary to accommodate important economic or social development." 40 C.F.R. § 131.12 (emphasis added).

TCEQ's rules, like EPA's, must also be interpreted consistent with the purposes of the Clean Water Act and the plain language of the rule. *See Cnty. of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462 (2020). The Clean Water Act's purpose, among others, is to "maintain" the "chemical" integrity of our Nation's waters, including Onion Creek. *See* 33 U.S.C. § 1251.

"*De minimis*" is defined in Black's Law Dictionary as "1. trifling, minimal; 2. (Of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case." There is no technical or other definition that would supplant or modify this plain language definition of *de minimis*.

Given the plain language of the TCEQ rule, the EPA rule, and the Clean Water Act, and the undisputed evidence, the Court declines to give deference to TCEQ's implied interpretation of the Tier 2 anti-degradation rule. That interpretation is implied because the Agency's final order avoids interpreting the *de minimis* lowering of water quality language in favor of more general findings that the rule has been met. As in the recent U.S. Supreme Court Clean Water Act case of *County of Maui v. Hawaii Wildlife Fund*, accepting TCEQ's position would conflict with the plain language of the rule and open a major loophole in the Act's mandate to protect and maintain the quality of our Nation's waters. *See* 140 S. Ct. 1462, 1474 (2020) ("But here, as we have explained, to follow EPA's reading would open a loophole allowing easy evasion of the statutory provision's basic purposes. Such an interpretation is neither persuasive nor reasonable.")

The limited case law on anti-degradation supports this conclusion. *See Ky. Waterways Alliance v. Johnson*, 540 F.3d 466, 483 (6th Cir. 2008); *Columbus & Franklin Cnty. Metro. Park Dist. v. Shank*, 600 N.E.2d 1042 (Ohio 1992); *Robertson Cnty.: Our Land, Our Lives v. TCEQ*, No. 03-12-00801-CV, 2014 WL 3562756 (Tex. App.—Austin July 17, 2014, no pet.); *Greater Yellowstone Coal. v. EPA*, 2013 U.S. Dist. LEXIS 59661 (D. Idaho 2012). The Sixth Circuit explains in *Kentucky Waterways Alliance*:

> This Tier II standard may also be described as protecting the water body's "assimilative capacity" which is the amount by which the water body exceeds the quality level necessary to support its designated uses. Under the regulation, a pollution increase that would decrease a water body's assimilative capacity would need to be justified by the necessity of the pollution for achieving important economic and social development.

540 F.3d 466, n 4. Defendants' positions ignore the necessity of protecting this buffering, or assimilative, capacity of Onion Creek while having no answer for how such enormous increases in the key nutrient pollutants would not lower water quality by more than a *de minimis* amount. The Agency's approach, as suggested by the final order's findings of fact, would require a showing of impairment to the designated uses of Onion Creek. The Tier 2 standard, unlike Tier 1, does not require a showing of impairment of uses; it requires that water quality not be lowered by more than a *de minimis* amount absent a showing of important social and economic development need. The City

chose not to attempt such showing and the undisputed evidence establishes that TCEQ's final order approving the permit violates the Tier 2 anti-degradation standard.

Under Tier 1 of the anti-degradation policy, existing uses, and water quality sufficient to protect those existing uses, must be maintained. 30 Tex. Admin. Code § 307.5. This includes maintaining water-quality levels sufficient to support existing, designated, presumed, and attainable aquatic life uses. 30 Tex. Admin. Code § 307.4(h).

Plaintiff argues, with support from Amici, that TCEQ's interpretation of the Tier 1 standard protecting existing uses is based on consideration of improper factors while ignoring the required factors that define "aquatic life use" and maintenance of that aquatic life. Plaintiff disputes TCEQ arguments that the anti-degradation rule (both Tier 1 and Tier 2) are met if the agency follows its anti-degradation review procedures and that anti-degradation compliance takes a "whole water" approach rather than a constituent-by-constituent approach. Plaintiff further argues that the absence of underlying findings of baseline chemical and biological conditions, resulting conditions triggered by the proposed discharge, and how these resulting conditions will assure that the high aquatic life use of Onion Creek will be maintained constitutes arbitrary and capricious decisionmaking.

The Court generally agrees with these arguments and would remand this case for reconsideration by the agency on the Tier 1 standard absent the above conclusion that the TCEQ-approved permit violates the Tier 2 antidegradation standard and is reversed for that reason.

Review of the TCEQ's final order and the Administrative Law Judge's Proposal for Decision on which it relies reveals several problems. In the Tier 1 protection of uses analysis, TCEQ only considered whether nutrient stimulation of algae growth would impair recreational uses. It did not consider whether the amount and kind of algae growth would harm aquatic life uses.

TCEQ's and EPA's anti-degradation rule sets out substantive standards: following TCEQ's checklist of procedures for anti-degradation review does not assure compliance with these substantive standards.

TCEQ's rules, its "Implementation Procedures" manual, or IP's, for implementing its water quality standards, and its final order make clear that nutrient pollutants and other specific pollutants are considered in the anti-degradation analysis individually and not on a "whole water" basis.

EPA guidance on anti-degradation explains:

> No activity is allowable under the antidegradation policy which would partially or completely eliminate any existing use whether or not that use is designated in a State's water quality standards. The aquatic protection use is a broad category requiring further explanation. *Non-aberrational resident species must be protected, even if not prevalent in number or importance. Water quality should be such that it results in no mortality and no significant growth or reproductive impairment of resident species. Any lowering of water quality below this full level of protection is not allowed.*

EPA, Water Quality Standards Handbook (2012) at § 4.4.2. (emphasis added).

In other words, avoiding impairment of aquatic life uses requires protecting the species assemblages that are present, as long as they are not an aberration. Plaintiff, and to some extent the

City and TCEQ, introduced evidence indicating that aquatic species adapted to the low-nutrient conditions of Onion Creek would be harmed by the proposed discharge. This evidence was disputed by TCEQ and the City's experts. However, this evidence was not considered as relevant to the Tier 1 inquiry.

The Proposal for Decision (PFD) provides the findings of fact, conclusions of law and underlying reasoning for those findings and conclusions incorporated into TCEQ's final order. The PFD's analysis leans heavily on a study by Jeff Mabe and others, quoting the study's finding that increasing nitrogen concentrations is associated with higher aquatic life diversity scores. PFD, AR A Doc. 162, at 16-17, 26-29. The Administrative Law Judge (ALJ) wrote:

> The [Mabe] report goes on to discuss the positive impact of waste- water on aquatic life in providing 'nutrient enrichment' and 'consistently stable streamflow,' which led to greater 'species richness.'

PFD at 16. This statement is made in the context of evaluating potential impacts to endangered species. *Id*. In analyzing the anti-degradation standard, the ALJ returns to this report, saying "as discussed previously, some studies have shown that wastewater can have a beneficial effect on low-flow, low-nutrient streams by bringing more regularity to the flow and by increasing nutrients that can benefit aquatic life." *Id*. at 24.

The ALJ concludes that "SOS's evidence regarding the impact of the proposed discharge on Onion Creek's assimilative capacity for TN and TP is not relevant to the anti-degradation analysis." *Id*. at 26. The ALJ then states that "SOS's assertions regarding the trophic state of Onion Creek to be irrelevant to the analyses required in this case" because the "rules and IPs do not address a streams trophic classification in the antidegradation policy." *Id*. at 27.

As Plaintiff and Amici argue, this approach converts municipal wastewater discharges into benefits that should be encouraged rather than, as the Clean Water Act provides, pollutants to be eliminated from our Nation's waters. While adding nutrient fertilizer in the form of municipal wastewater to Onion Creek would increase biological productivity (more algae growth) and would stabilize low flows, these results are either irrelevant or harmful to determining whether existing aquatic life uses will be maintained. Increased species richness (diversity) is also irrelevant. The rules call for protecting the assemblage of species that are found in the stream.

TCEQ rules define "high quality aquatic life uses", at 30 TAC § 307.7(b)(3)(A), Table 3, in relevant part, as having "species assemblages" that are "usual associations of regionally expected species," that "sensitive species" are present, and that the "trophic structure" is "balanced to slightly unbalanced." The species make up—not biological productivity, abundance, or species diversity—is what is important for protecting existing aquatic life. Consistent with the rule defining the high quality aquatic life use, the IPs make clear that "eutrophication," is to be avoided. *See, e.g.,* Implementation Procedures, AR B Doc. 257 at 27, 47.

By relying on the City's arguments that the wastewater discharge will "enrich" Onion Creek, making it more biologically productive, while deeming as irrelevant the effects of the discharge on native aquatic species adapted to the very low nutrient conditions of Onion Creek and other Hill Country streams, the Agency really has turned the Clean Water Act upside down. This approach allowed the ALJ and the Agency to ignore as irrelevant the multiple scientific studies introduced into

the record concluding that increasing phosphorus in Texas streams above 20 to 25 µg/L would lead to a displacement of native aquatic species by more nutrient-tolerant and lower dissolved oxygen tolerant species. As noted above, it is undisputed that the proposed discharge would increase background Onion Creek flows from 2 to 8 µg/L total phosphorus to over 100 µg/L under low flow conditions where compliance with the anti-degradation standard must be measured.

The Agency's final order reflects that it relied upon irrelevant factors while ignoring powerful evidence that the approved discharge would harm native aquatic life species in Onion Creek. The order also fails to make underlying findings of fact that support the ultimate conclusions of compliance with the Tier 1 and Tier 2 standards, thereby demonstrating the agency engaged in genuine, reasoned decisionmaking.

The Court recognizes that wastewater return flows can and often do benefit Texas stream flows in important ways. The Court also recognizes that TCEQ has not set numeric nutrient water quality standards. However, these facts do not relieve the agency from compliance with the Clean Water Act and the federally required antidegradation standards.

b. Plaintiff's Notice Claim

Plaintiff's third claim is that the notices of the proposed wastewater discharge application and permit provided to the public failed to adequate identify the location of the proposed point of discharge. Text of public notices for discharge permits must include, among other things, "a general description of the location of each existing or proposed discharge point and the name of the receiving water." 30 Tex. Admin. Code § 39.551(c)(4)(B). Identical mandatory language is found in the applicable federal regulation, 40 C.F.R. § 124.10(d)(1)(vii).

The public notices are in the administrative record, and their text is not disputed. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit stated: "The discharge route is from the plant site via pipe to Walnut Springs; thence to Onion Creek."
The Notice of Application and Preliminary Decision and the Notice of Hearing provided stated: "The treated effluent will be discharged to Walnut Springs; thence to Onion Creek in Segment No. 1427 of the Colorado River Basin."

While all of the notices provide the address of the existing wastewater treatment plant, which will be expanded under the approved permit and state that it is located in Hays County, there is no address, set of coordinates, or reference to nearby street crossings given for the discharge point despite the focus in the regulations on identifying the location of the where the pollutants will be released into public waters.

There is also no hint that this location is nowhere near the treatment plant.

TCEQ and the City contend that these notices meet the requirements because they identify Walnut Springs as the point of discharge, a small tributary that runs for less than half a mile before its confluence with Onion Creek.

The regulations do not state specifically how a proposed discharge point should be described, e.g., by coordinates, address, etc. But use of the conjunctive "and" in the regulation indicate that identifying the receiving waters is not enough—the notice must include both a description of the

proposed discharge point's location *and* the name of the receiving water. The public notices made no attempt to describe the location of the discharge point.

The proposed point of discharge is a long distance away from the identified location of the wastewater treatment facility. The wastewater will be piped to a point 1.5 miles away (as the crow flies), across a highway (RR 12) and beyond a couple of neighborhoods, to its point of discharge upstream of and nowhere near the treatment plant. Plaintiff presented evidence that staff with the federal U.S. Fish and Wildlife Service could not tell from the public notices where the discharge point would be. TCEQ responded with more specific information to the federal agency. AR B Doc. 278 (SOS Ex. 16). The public never had the benefit of that more specific information.

For these reasons TCEQ's conclusion that notice was legally adequate is not reasonably supported by substantial evidence considering the record as a whole, and is arbitrary and capricious and characterized by an abuse of discretion. *See* Tex. Gov't Code § 2001.174.

Therefore for all the above reasons and any other supporting reasons even if not listed here, in a separate order I do reverse the TCEQ order and enjoin Dripping Springs from taking actions in reliance on the unlawful agency order.

Very Truly Yours,

Maya Guerra Gamble
Judge, 459th District Court

Ms. Velva L. Price, Travis County District Clerk

D-1-GN-19-003030

SAVE OUR SPRINGS ALLIANCE, INC.	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS COMMISSION ON	§	
ENVIRONMMENTAL QUALITY	§	
Defendant.	§	**459th JUDICIAL DISTRICT**

THE CITY OF DRIPPING SPRINGS'
NOTICE OF APPEAL

Pursuant to Tex. R. App. P. 25.1 and 26.1, Intervenor, the City of Dripping Springs ("the City") files this notice that The City desires to appeal from the Final Judgment entered in this case in the 345th Judicial District Court of Travis County. The Final Judgment dated October 29, 2020 was signed by the Honorable Maya Guerra Gamble. The City appeals to the Third Court of Appeals at Austin. A copy of the Final Judgment from which the City appeals is attached as Exhibit A to this Notice.

Dated: November 12, 2020.

Respectfully submitted,

THE AL LAW GROUP, PLLC

/s/ *David J. Tuckfield*
David Tuckfield
State Bar No. 00795996
12400 Highway 71 West, Suite 350-150
Austin, TX 78738

Telephone 512.576.2481
Facsimile 512.366.9949
david@allawgp.com

Eric B. Storm
State Bar No. 24033244
11610 Bee Caves Rd., Suite 220A
Austin, TX 78738
Telephone: 512.593.1881
Facsimile: 512.276.6677
eric@allawgp.com

ANDY BARRETT & ASSOCIATES, PLLC
Andrew N. Barrett
State Bar Number: 01808900
3300 Bee Cave Road
Suite 650 # 189
Austin, Texas 78746
Telephone: 512-600-3800
Facsimile: 512-330-0499

ATTORNEYS FOR THE CITY OF DRIPPING SPRINGS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on this 12th day of November 2020 in accordance with the Texas Rules of Civil Procedure to the following:

Sara Ferris
Sara.Ferris@oag.texas.gov
Linda Secord
Linda.Secord@oag.texas.gov
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
Environmental Protection Division
P. O. Box 12548, MC-066
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0911
Attorneys for Defendant the Texas Commission on Environmental Quality

William G. Bunch
Kelly D. Davis
Save Our Springs Alliance
4701 Westgate Blvd., D-401
Austin, TX 78745
Tel: 512-477-2320
Fax: 512-477-6410
Attorneys for Plaintiff Save Our Springs Alliance

/s/ *David J. Tuckfield*
David J. Tuckfield

EXHIBIT A

Cause No. D-1-GN-19-003030

SAVE OUR SPRINGS ALLIANCE, INC.,	§	**IN THE DISTRICT COURT OF**
Plaintiff	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	
Defendant	§	**345th JUDICIAL DISTRICT**
	§	

FINAL JUDGMENT REVERSING ORDER OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

On June 25, 2020, this Court heard argument in this case. Having considered the pleadings, administrative record, briefing, and argument of counsel, the Court has concluded that the Texas Commission on Environmental Quality's order under review in this case should be and hereby is **REVERSED** in all things.

IT IS ORDERED, ADJUDGED, AND DECREED that TCEQ's order is **REVERSED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the TCEQ and the City of Dripping Springs are enjoined from taking actions in reliance on the unlawful agency order.

This Judgment is final, disposes of all parties and claims, and is appealable.

SIGNED this 29th day of October, 2020.

JUDGE PRESIDING
MAYA GUERRA GAMBLE

Cause No. D-1-GN-19-003030

SAVE OUR SPRINGS ALLIANCE, INC.,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
	§	**TRAVIS COUNTY, TEXAS**
v.	§	
	§	
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	**345th JUDICIAL DISTRICT**
	§	
Defendant.	§	

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S NOTICE OF APPEAL

Pursuant to Tex. R. App. P. 25.1 and 26.1, Defendant Texas Commission on Environmental Quality (TCEQ) files this notice that TCEQ desires to appeal from the Final Judgment entered in this case in the 345th Judicial District Court of Travis County. The Final Judgment dated October 29, 2020 was signed by the Honorable Maya Guerra Gamble. The TCEQ appeals to the Third Court of Appeals at Austin. A copy of the Final Judgment is attached as Exhibit A to this Notice. Pursuant to Tex. R. App. P. 25.1(e), a copy of this Notice is being provided to the court reporter responsible for preparing the Reporter's Record in this matter.

Dated: November 12, 2020.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

/s/ Sara J. Ferris
SARA J. FERRIS
Assistant Attorney General
State Bar No. 50511915
Sara.Ferris@oag.texas.gov

Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC 066
Austin, Texas 78711-2548
(512) 475-4026 | Fax: (512) 370-0911

Counsel for Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

On November 12, 2020, Texas Commission on Environmental Quality's Notice of Appeal was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Sara J. Ferris
SARA J. FERRIS

EXHIBIT A

Cause No. D-1-GN-19-003030

SAVE OUR SPRINGS ALLIANCE, INC.,	§	**IN THE DISTRICT COURT OF**
Plaintiff	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	
Defendant	§	**345th JUDICIAL DISTRICT**
	§	

FINAL JUDGMENT REVERSING ORDER OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

On June 25, 2020, this Court heard argument in this case. Having considered the pleadings, administrative record, briefing, and argument of counsel, the Court has concluded that the Texas Commission on Environmental Quality's order under review in this case should be and hereby is **REVERSED** in all things.

IT IS ORDERED, ADJUDGED, AND DECREED that TCEQ's order is **REVERSED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the TCEQ and the City of Dripping Springs are enjoined from taking actions in reliance on the unlawful agency order.

This Judgment is final, disposes of all parties and claims, and is appealable.

SIGNED this 29th day of October, 2020.

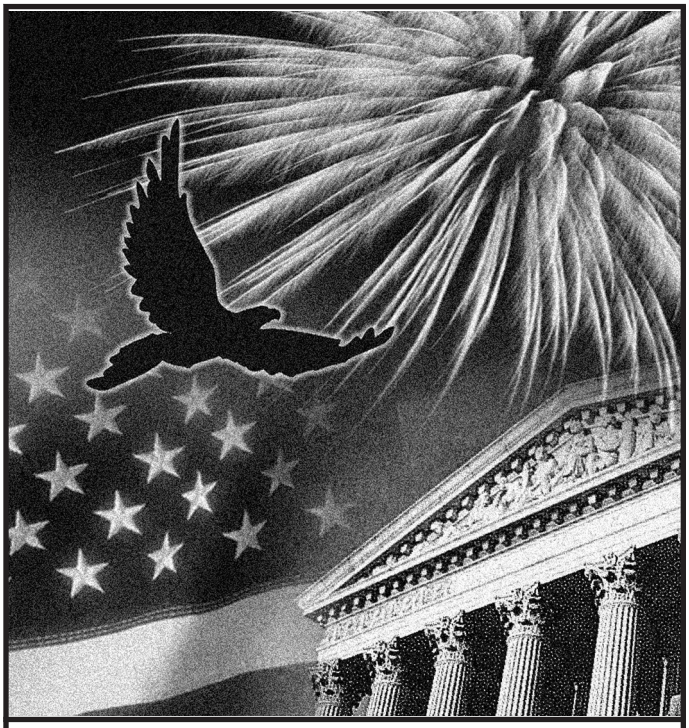
JUDGE PRESIDING
MAYA GUERRA GAMBLE

Department of the Treasury
Internal Revenue Service

Publication 15-B
Cat. No. 29744N

Employer's Tax Guide to Fringe Benefits

For use in **2020**



Get forms and other information faster and easier at:

- IRS.gov (English)
- IRS.gov/Spanish (Español)
- IRS.gov/Chinese (中文)
- IRS.gov/Korean (한국어)
- IRS.gov/Russian (Русский)
- IRS.gov/Vietnamese (TiếngViệt)

Contents

Future Developments

For the latest information about developments related to Pub. 15-B, such as legislation enacted after it was published, go to IRS.gov/Pub15B.

What's New

Cents-per-mile rule. The business mileage rate for 2020 is 57.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle

you provide to an employee. See *Cents-Per-Mile Rule* in section 3.

Qualified parking exclusion and commuter transportation benefit. For 2020, the monthly exclusion for qualified parking is $270 and the monthly exclusion for commuter highway vehicle transportation and transit passes is $270. See *Qualified Transportation Benefits* in section 2.

Contribution limit on a health flexible spending arrangement (FSA). For plan years beginning in 2020, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of $2,750. For more information, see *Cafeteria Plans* in section 1.

New Form 1099-NEC. There is a new Form 1099-NEC to report nonemployee compensation paid in 2020. The 2020 Form 1099-NEC will be due February 1, 2021. For nonemployee compensation paid in 2019, continue to use Form 1099-MISC, which is due January 31, 2020.

Reminders

Moving expense reimbursements. P.L. 115-97, Tax Cuts and Jobs Act, suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after 2017 and before 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order. The exclusion applies only to reimbursement of moving expenses that the member could deduct if he or she had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, Armed Forces' Tax Guide, for the definition of what constitutes a permanent change of station and to learn which moving expenses are deductible.

Bicycle commuting reimbursements. P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for tax years beginning after 2017 and before 2026. See *Transportation (Commuting) Benefits* in section 2.

Withholding on supplemental wages. P.L. 115-97 lowered the federal income tax withholding rates on supplemental wages for tax years beginning after 2017 and before 2026. See *Withholding and depositing taxes* in section 4 for the withholding rates.

Additional permitted election changes for health coverage under a cafeteria plan. Notice 2014-55, 2014-41 I.R.B. 672, available at *IRS.gov/irb/2014-41_IRB#NOT-2014-55*, expands the application of the permitted change rules for health coverage under a cafeteria plan and discusses two specific situations in which a cafeteria plan participant is permitted to revoke his or her election under a cafeteria plan during a period of coverage.

Definition of marriage. A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a [illegible] ship that is denominated as a marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

Notice 2014-1 discusses how certain rules for cafeteria plans, including health and dependent care FSAs, and health savings accounts (HSAs) apply to same-sex spouses participating in employee benefit plans. Notice 2014-1, 2014-2 I.R.B. 270, is available at *IRS.gov/irb/2014-02_IRB#NOT-2014-1*.

Ordering forms, instructions, and publications. Go to *IRS.gov/Forms* to download forms, instructions, and publications. Otherwise, you can go to *IRS.gov/OrderForms* to place an order and have them mailed to you. Your order should arrive within 10 business days.

Tax questions. If you have a tax question not answered by this publication, check IRS.gov and *How To Get Tax Help* at the end of this publication.

Photographs of missing children. The IRS is a proud partner with the *National Center for Missing & Exploited Children® (NCMEC)*. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication supplements Pub. 15, Employer's Tax Guide, and Pub. 15-A, Employer's Supplemental Tax Guide. It contains information for employers on the employment tax treatment of fringe benefits.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments from *IRS.gov/FormComments*.

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. We can't answer tax questions sent to the above address.

1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

Performance of services. A person who performs services for you doesn't have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

Provider of benefit. You're the provider of a fringe benefit if it is provided for services performed for you. You're considered the provider of a fringe benefit even if a third party, such as your client or customer, provides the benefit to your employee for services the employee performs for you. For example, if, in exchange for goods or services, your customer provides day care services as a fringe benefit to your employees for services they provide for you as their employer, then you're the provider of this fringe benefit even though the customer is actually providing the day care.

Recipient of benefit. The person who performs services for you is considered the recipient of a fringe benefit provided for those services. That person may be considered the recipient even if the benefit is provided to someone who didn't perform services for you. For example, your employee may be the recipient of a fringe benefit you provide to a member of the employee's family.

Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. Section 2 discusses the exclusions that apply to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

Including taxable benefits in pay. You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in section 3.

If the recipient of a taxable fringe benefit is your employee, the benefit is generally subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in section 4.

If the recipient of a taxable fringe benefit isn't your employee, the benefit isn't subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

If the recipient receives the benefit in 2020 as:	Use:
An independent contractor	Form 1099-NEC, Nonemployee Compensation
A partner	Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.

For more information, see the instructions for the forms listed above.

Cafeteria Plans

A cafeteria plan, including an FSA, provides participants an opportunity to receive qualified benefits on a pre-tax basis. It is a written plan that allows your employees to choose between receiving cash or taxable benefits, instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead won't make the qualified benefit taxable.

Generally, a cafeteria plan doesn't include any plan that offers a benefit that defers pay. However, a cafeteria plan can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

Qualified benefits. A cafeteria plan can include the following benefits discussed in section 2.

- Accident and health benefits (but not Archer medical savings accounts (Archer MSAs) or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that can't be excluded from wages).
- Health savings accounts (HSAs). Distributions from an HSA may be used to pay eligible long-term care insurance premiums or qualified long-term care services.

Benefits not allowed. A cafeteria plan can't include the following benefits discussed in section 2.

- Archer MSAs. See *Accident and Health Benefits* in section 2.
- Athletic facilities.
- De minimis (minimal) benefits.
- Educational assistance.
- Employee discounts.
- Employer-provided cell phones.

- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

It also can't include scholarships or fellowships (discussed in Pub. 970).

Contribution limit on a health FSA. For plan years beginning in 2020, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of $2,750.

A cafeteria plan that doesn't limit health FSA contributions to the dollar limit isn't a cafeteria plan and all benefits offered under the plan are includible in the employee's gross income.

For more information, see Notice 2012-40, 2012-26 I.R.B. 1046, available at *IRS.gov/irb/2012-26_IRB#NOT-2012-40*.

"Use-or-lose" rule for health FSAs. Instead of a grace period, you may, at your option, amend your cafeteria plan to allow up to $500 of an employee's unused contributions to carry over to the immediately following plan year. For more information, see Notice 2013-71, 2013-47 I.R.B. 532, available at *IRS.gov/irb/2013-47_IRB#NOT-2013-71*.

Employee. For these plans, treat the following individuals as employees.

- A current common-law employee. See section 2 in Pub. 15.
- A full-time life insurance agent who is a current statutory employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder for this purpose is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Plans that favor highly compensated employees. If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collective bargaining agreement doesn't favor highly compensated employees.

A highly compensated employee for this purpos of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

Plans that favor key employees. If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement doesn't favor key employees.

A key employee during 2020 is generally an employee who is either of the following.

1. An officer having annual pay of more than $185,000.
2. An employee who for 2020 is either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay is more than $150,000.

Simple Cafeteria Plans for Small Businesses

Eligible employers meeting contribution requirements and eligibility and participation requirements can establish a simple cafeteria plan. Simple cafeteria plans are treated as meeting the nondiscrimination requirements of a cafeteria plan and certain benefits under a cafeteria plan.

Eligible employer. You're an eligible employer if you employed an average of 100 or fewer employees during either of the 2 preceding years. If your business wasn't in existence throughout the preceding year, you're eligible if you reasonably expect to employ an average of 100 or fewer employees in the current year. If you establish a simple cafeteria plan in a year that you employ an average of 100 or fewer employees, you're considered an eligible employer for any subsequent year until the year after you employ an average of 200 or more employees.

Eligibility and participation requirements. These requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and each employee eligible to participate in the plan may elect any benefit available under the plan. You may elect to exclude from the plan employees who:

1. Are under age 21 before the close of the plan year,
2. Have less than 1 year of service with you as of any day during the plan year,

3. Are covered under a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good-faith bargaining, or
4. Are nonresident aliens working outside the United States whose income didn't come from a U.S. source.

Contribution requirements. You must make a contribution to provide qualified benefits on behalf of each qualified employee in an amount equal to:

1. A uniform percentage (not less than 2%) of the employee's compensation for the plan year; or
2. An amount that is at least 6% of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee, whichever is less.

If the contribution requirements are met using option (2), the rate of contribution to any salary reduction contribution of a highly compensated or key employee can't be greater than the rate of contribution to any other employee.

More information. For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

In most cases, the excluded benefits aren't subject to federal income tax withholding, social security, Medicare, federal unemployment (FUTA) tax, or Railroad Retirement Tax Act (RRTA) taxes and aren't reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Athletic facilities.
- De minimis (minimal) benefits.
- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Employer-provided cell phones.
- Group-term life insurance coverage.
- Health savings accounts (HSAs).
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See Table 2-1 for an overview of the employment tax treatment of these benefits.

Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance including qualified long-term care insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.
- Contributions to Archer MSAs or health savings accounts (discussed in Pub. 969).

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.
- Payments for specific permanent injuries (such as the loss of the use of an arm or leg). The payments must be figured without regard to the period the employee is absent from work.

Accident or health plan. This is an arrangement that provides benefits for your employees, their spouses, their dependents, and their children (under age 27 at the end of the tax year) in the event of personal injury or sickness. The plan may be insured or noninsured and doesn't need to be in writing.

Employee. For this exclusion, treat the following individuals as employees.

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.
- A former employee you maintain coverage for based on the employment relationship.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.
- For the exclusion of contributions to an accident or health plan, a leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Special rule for certain government plans. For certain government accident and health plans, payments

Table 2-1. Special Rules for Various Types of Fringe Benefits

(For more information, see the full discussion in this section.)

Type of Fringe Benefit	Treatment Under Employment Taxes: Income Tax Withholding	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)[1]	Federal Unemployment (FUTA)
Accident and health benefits	Exempt,[2] except for long-term care benefits provided through a flexible spending or similar arrangement.	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt[2] up to $1,600 for qualified plan awards ($400 for nonqualified awards).		
Adoption assistance	Exempt[2,3]	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children, and the facility is operated by the employer on premises owned or leased by the employer.		
De minimis (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt[3] up to certain limits, $5,000 ($2,500 for married employee filing separate return).		
Educational assistance	Exempt up to $5,250 of benefits each year. (See *Educational Assistance*, later in this section.)		
Employee discounts	Exempt[3] up to certain limits. (See *Employee Discounts*, later in this section.)		
Employee stock options	See *Employee Stock Options*, later in this section.		
Employer-provided cell phones	Exempt if provided primarily for noncompensatory business purposes.		
Group-term life insurance coverage	Exempt	Exempt[2,4,6] up to cost of $50,000 of coverage. (Special rules apply to former employees.)	Exempt
Health savings accounts (HSAs)	Exempt for qualified individuals up to the HSA contribution limits. (See *Health Savings Accounts*, later in this section.)		
Lodging on your business premises	Exempt[2] if furnished on your business premises, for your convenience, and as a condition of employment.		
Meals	Exempt[2] if furnished on your business premises for your convenience.		
	Exempt if de minimis.		
No-additional-cost services	Exempt[3]	Exempt[3]	Exempt[3]
Retirement planning services	Exempt[5]	Exempt[5]	Exempt[5]
Transportation (commuting) benefits	Exempt[2] up to certain limits if for rides in a commuter highway vehicle and/or transit passes ($270) or qualified parking ($270). (See *Transportation (Commuting) Benefits*, later in this section.)		
	Exempt if de minimis.		
Tuition reduction	Exempt[3] if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt

[1] Or other railroad retirement taxes, if applicable.

[2] Exemption doesn't apply to S corporation employees who are 2% shareholders.

[3] Exemption doesn't apply to certain highly compensated employees under a program that favors those employees.

[4] Exemption doesn't apply to certain key employees under a plan that favors those employees.

[5] Exemption doesn't apply to services for tax preparation, accounting, legal, or brokerage services.

[6] You must include in your employee's wages the cost of group-term life insurance beyond $50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

to a deceased employee's beneficiary may qualify for the exclusion from gross income if the other requirements for exclusion are met. See section 105(j) for details.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Exclusion from wages. You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

Exception for certain long-term care benefits. You can't exclude contributions to the cost of long-term care insurance from an employee's wages subject to federal income tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and FUTA taxes.

S corporation shareholders. Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses not made under a plan set up to benefit all employees or certain groups of employees) from the employee's wages subject to social security, Medicare, and FUTA taxes. See Announcement 92-16 for more information. You can find Announcement 92-16 on page 53 of Internal Revenue Bulletin 1992-5.

Exception for highly compensated employees. If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in box 1 of Form W-2. However, you can exclude these amounts (other than payments for specific injuries or illnesses not made under a plan set up to benefit all employees or certain groups of employees) from the employee's wages subject to income tax withholding, social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.
- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

COBRA premiums. The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a current or former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

Qualified small employer health reimbursement arrangements (QSEHRAs). QSEHRAs allow eligible small employers to pay or reimburse medical care expenses, including health insurance premiums, of eligible employees and their family members. A QSEHRA isn't a group health plan, and, therefore, isn't subject to group health plan requirements. Generally, payments from a QSEHRA to reimburse an eligible employee's medical expenses aren't includible in the employee's gross income if the employee has coverage that provides minimum essential coverage as defined in section 5000A(f) of the Internal Revenue Code. See the Instructions for Form 8965 for the types of plans and arrangements that are minimum essential coverage.

A QSEHRA is an arrangement that meets all the following requirements.

1. The arrangement is funded solely by you, and no salary reduction contributions may be made under the arrangement.
2. The arrangement provides, after the eligible employee provides proof of coverage, for the payment or reimbursement of the medical expenses incurred by the employee or the employee's family members.
3. The amount of payments and reimbursements don't exceed $5,250 ($10,600 for family coverage) for 2020.
4. The arrangement is generally provided on the same terms to all your eligible employees. However, your QSEHRA may exclude employees who haven't completed 90 days of service, employees who haven't attained age 25 before the beginning of the plan year, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits were the subject of good-faith bargaining, and employees who are nonresident aliens with no earned income from sources within the United States.

Eligible employer. To be an eligible employer, you must not be an applicable large employer, which is defined as an employer that generally employed at least 50 full-time employees, including full-time equivalent employees, in the prior calendar year. You must also not offer a group health plan (including a health reimbursement arrangement (HRA) or a health flexible spending arrangement (FSA)) to any of your employees. For more information about the Affordable Care Act and group health plan requirements, go to *IRS.gov/ACA*. For more information about QSEHRAs, including information about the requirement to give a written notice to each eligible employee, see Notice 2017-67, 2017-47 I.R.B. 517, available at *IRS.gov/irb/2017-47_IRB#NOT-2017-67*.

Reporting requirements. You must report in box 12 of Form W-2 using code "FF" the amount of payments and reimbursements that your employee is entitled to receive from the QSEHRA for the calendar year without regard to the amount of payments or reimbursements actually received. For example, if your QSEHRA provides a permitted benefit of $3,000 and your employee receives reimbursements of $2,000, on Form W-2, you would report a permitted benefit of $3,000 in box 12 using code "FF."

Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion doesn't apply to awards of cash, cash equivalents, gift cards, gift coupons, or gift certificates (other than arrangements granting only the right to select and receive tangible personal property from a limited assortment of items preselected or preapproved by you). The exclusion

also doesn't apply to vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Pub. 535.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Exclusion from wages. You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost isn't more than the amount you can deduct as a business expense for the year. The excludable annual amount is $1,600 ($400 for awards that aren't "qualified plan awards"). See chapter 2 of Pub. 535 for more information about the limit on deductions for employee achievement awards.

CAUTION *To determine for 2020 whether an achievement award is a "qualified plan award" under the deduction rules described in Pub. 535, treat any employee who received more than $125,000 in pay for 2019 as a highly compensated employee.*

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).
- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

Adoption Assistance

An adoption assistance program is a separate written plan of an employer that meets all of the following requirements.

1. It benefits employees who qualify under rules set by you, which don't favor highly compensated employees or their dependents. To determine whether your plan meets this test, don't consider employees excluded from your plan who are covered by a collective bargaining agreement if there is evidence that adoption assistance was a subject of good-faith bargaining.
2. It doesn't pay more than 5% of its payments during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
3. You give reasonable notice of the plan to eligible employees.
4. Employees provide reasonable substantiation that payments or reimbursements are for qualifying expenses.

For this exclusion, a highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you can't exclude these payments from wages subject to social security, Medicare, and FUTA taxes.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Report all amounts including those in excess of the $14,300 exclusion for 2020. Use code "T" to identify this amount.

Exception for S corporation shareholders. For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

More information. For more information on adoption benefits, see Notice 97-9, which is on page 35 of Internal Revenue Bulletin 1997-2 at IRS.gov/pub/irs-irbs/

irb97-02.pdf. Advise your employees to see the Instructions for Form 8839.

Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose, an employee's dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, hasn't attained the age of 25. The exclusion doesn't apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, or a similar arrangement.

On-premises facility. The athletic facility must be located on premises you own or lease and must be operated by you. It doesn't have to be located on your business premises. However, the exclusion doesn't apply to an athletic facility that is a facility for residential use, such as athletic facilities that are part of a resort.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

De Minimis (Minimal) Benefits

You can exclude the value of a de minimis benefit you provide to an employee from the employee's wages. A de minimis benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, gift certificates, gift cards, and the use of a charge card or credit card), no matter how little, are never excludable as a de minimis benefit. However, meal money and local transportation fare, if provided on an occasional basis and because of overtime work, may be excluded as discussed later.

Examples of de minimis benefits include the foll

- Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See *Employer-Provided Cell Phones*, later in this section, for details.
- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday or birthday gifts, other than cash, with a low fair market value. Also, flowers or fruit or similar items provided to employees under special circumstances (for example, on account of illness, a family crisis, or outstanding performance).
- Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount isn't more than $2,000.
- Certain meals. See *Meals*, later in this section, for details.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for theater or sporting events.
- Certain transportation fare. See *Transportation (Commuting) Benefits*, later in this section, for details.

Some examples of benefits that aren't excludable as de minimis fringe benefits are season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than 1 day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. If a benefit provided to an employee doesn't qualify as de minimis (for example, the frequency exceeds a limit described earlier), then generally the entire benefit must be included in income.

Employee. For this exclusion, treat any recipient of a de minimis benefit as an employee.

Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a written dependent care assistance program that covers only your employees. The services must be for a qualifying person's care and must be provided to allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the employee paid for the services. For more information, see *Can You Claim the Credit?* in Pub. 503.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if

the services are performed under your primary direction or control.

- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude the value of benefits you provide to an employee under a dependent care assistance program from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to $5,000 of benefits received under a dependent care assistance program each year. This limit is reduced to $2,500 for married employees filing separate returns.

However, the exclusion can't be more than the smaller of the earned income of either the employee or employee's spouse. Special rules apply to determine the earned income of a spouse who is either a student or not able to care for himself or herself. For more information on the earned income limit, see Pub. 503.

Exception for highly compensated employees. You can't exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program don't favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

For this exclusion, a highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Form W-2. Report the value of all dependent care assistance you provide to an employee under a dependent care assistance program in box 10 of the employee's Form W-2. Include any amounts you can't exclude from the employee's wages in boxes 1, 3, and 5. Report in box 10 both the nontaxable portion of assistance (up to $5,000) and any assistance above that amount that is taxable to the employee.

Example. Oak Co. provides a dependent care assistance FSA to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of Oak Co., had $4,500 deducted from her pay for the dependent care FSA. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was $700. Emily's Form W-2 should report $5,200 of dependent care assistance in box 10 ($4,500 FSA plus $700 on-site dependent care). Boxes 1, 3, and 5 should include $200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate-level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses don't include the cost of a course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

Education expenses don't include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation. Your employee must be able to provide substantiation to you that the educational assistance provided was used for qualifying education expenses.

Educational assistance program. An educational assistance program is a separate written plan that provides educational assistance only to your employees. The program qualifies only if all of the following tests are met.

- The program benefits employees who qualify under rules set up by you that don't favor highly compensated employees. To determine whether your program meets this test, don't consider employees excluded from your program who are covered by a collective bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.
- The program doesn't provide more than 5% of its benefits during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
- The program doesn't allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.
- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

For this exclusion, a highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.

2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude up to $5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

Assistance over $5,250. If you don't have an educational assistance plan, or you provide an employee with assistance exceeding $5,250, you must include the value of these benefits as wages, unless the benefits are working condition benefits. Working condition benefits may be excluded from wages. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been allowable as a business or depreciation expense. See *Working Condition Benefits*, later in this section.

Employee Discounts

This exclusion applies to a price reduction you give your employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. It applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced price. It also applies if the benefit is provided through a partial or total cash rebate.

The benefit may be provided either directly by you or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers the appliances for sale to customers.

Employee discounts don't apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds). They also don't include discounts on a line of business of the employer for which the employee doesn't provide substantial services, or discounts on property or services of a kind that aren't offered for sale to customers. Therefore, discounts on items sold in an employee store that aren't sold to customers, aren't excluded from employee income. Also, employee discounts provided by another employer through a reciprocal agreement aren't excluded.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

Treat discounts you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child means any son, stepson, daughter, stepdaughter, or eligible foster child who is a dependent of the employee, or both of whose parents have died and who hasn't reached age 25. Treat a child of divorced parents as a dependent of both parents.

Exclusion from wages. You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Generally, determine your gross profit percentage in the line of business based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property. Employers that are in their first year of existence may estimate their gross profit percentage based on its mark-up from cost or refer to an appropriate industry average. If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior year's gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee any part of the value of a discount that isn't

available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Employee Stock Options

There are three kinds of stock options—incentive stock options, employee stock purchase plan options, and nonstatutory (nonqualified) stock options.

Wages for social security, Medicare, and FUTA taxes don't include remuneration resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option.

Additionally, federal income tax withholding isn't required on the income resulting from a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option, or on income equal to the discount portion of stock acquired by the exercise of an employee stock purchase plan option resulting from any qualifying disposition of the stock. The employer must report as income in box 1 of Form W-2 (a) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon a qualifying disposition of the stock, and (b) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

An employer must report the excess of the fair market value of stock received upon exercise of a nonstatutory stock option over the amount paid for the stock option on Form W-2 in boxes 1, 3 (up to the social security wage base), 5, and in box 12 using the code "V." See Regulations section 1.83-7.

An employee who transfers his or her interest in nonstatutory stock options to the employee's former spouse incident to a divorce isn't required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Revenue Ruling 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at IRS.gov/pub/irs-irbs/irb02-19.pdf. Revenue Ruling 2004-60, 2004-24 I.R.B. 1051, is available at IRS.gov/irb/2004-24_IRB#RR-2004-60.

Employee stock options aren't subject to Railroad Retirement Tax. In *Wisconsin Central Ltd.* v. *United States*, 138 S. Ct. 2067, the U. S. Supreme Court ruled that employee stock options (whether statutory or nonstatutory) aren't "money remuneration" subject to the Railroad Retirement Tax Act (RRTA). If you're a railroad employer, don't withhold Tier 1 and Tier 2 taxes on compensation from railroad employees covered by the RRTA exercising such options. You must still withhold federal income tax on taxable compensation from railroad employees exercising their options.

Section 83(i) election to defer income on equity grants. Under section 83(i) of the Internal Revenue Code, qualified employees who are granted stock options or restricted stock units (RSUs) and who later receive stock upon exercise of the option or upon settlement of the RSU (qualified stock) may elect to defer the recognition of income for up to 5 years if the corporation's stock wasn't readily tradable on an established securities market during any prior calendar year, if the corporation has a written plan under which not less than 80% of all U.S. employees are granted options or RSUs with the same rights and privileges to receive qualified stock, and if certain other requirements are met. An election under section 83(i) applies only for federal income tax purposes. The election has no effect on the application of social security, Medicare, and unemployment taxes. For federal income tax purposes, the employer must withhold federal income tax at 37% in the tax year that the amount deferred is included in the employee's income. If a section 83(i) election is made for an option exercise, that option will not be considered an incentive stock option or an option granted pursuant to an employee stock purchase plan. These rules apply to stock attributable to options exercised, or RSUs settled, after December 31, 2017. For more information, see section 83(i) and Notice 2018-97, 2018-52 I.R.B. 1062, available at IRS.gov/irb/2018-52_IRB#NOT-2018-97.

Reporting requirements. For each employee, you must report in box 12 of Form W-2 using code "GG" the amount included in income in the calendar year from qualified equity grants under section 83(i). You must also report in box 12 using code "HH" the total amount of income deferred under section 83(i) determined as of the close of the calendar year.

More information. For more information about employee stock options, see sections 83, 421, 422, and 423 of the Internal Revenue Code and their related regulations.

Employer-Provided Cell Phones

The value of the business use of an employer-provided cell phone, provided primarily for noncompensatory

business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a de minimis fringe benefit. The term “cell phone” also includes other similar telecommunications equipment. For the rules relating to these types of benefits, see *De Minimis (Minimal) Benefits*, earlier in this section, and *Working Condition Benefits*, later in this section.

Noncompensatory business purposes. You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and
- Need to speak with clients located in other time zones at times outside the employee's normal workday.

Cell phones provided to promote goodwill, boost morale, or attract prospective employees. You can't exclude from an employee's wages the value of a cell phone provided to promote goodwill of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.

Additional information. For additional information on the tax treatment of employer-provided cell phones, see Notice 2011-72, 2011-38 I.R.B. 407, available at *IRS.gov/irb/2011-38_IRB#NOT-2011-72*.

Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that isn't included in income.
- You provide it to a group of employees. See *The 10-employee rule*, later.
- It provides an amount of insurance to each employee based on a formula that prevents individual selection. This formula must use factors such as the employee's age, years of service, pay, or position.
- You provide it under a policy you directly or indirectly carry. Even if you don't pay any of the policy's cost, you’re considered to carry it if you arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other employee more than, the cost of his or her insurance. Determine the cost of the insurance, for this purpose, as explained under *Coverage over the limit*, later.

Group-term life insurance doesn't include the f insurance.

- Insurance that doesn't provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a de minimis benefit. See *De Minimis (Minimal) Benefits*, earlier in this section.
- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash-surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

Employee. For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2).
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

The 10-employee rule. Generally, life insurance isn't group-term life insurance unless you provide it at some time during the calendar year to at least 10 full-time employees.

For this rule and the first exception discussed next, count employees who choose not to receive the insurance as if they do receive insurance, unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example, count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, don't count an employee who chooses not to receive insurance if the employee must pay part or all of the cost of permanent benefits in order to obtain group-term life insurance. A permanent benefit is an economic value extending beyond 1 policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

Exceptions. Even if you don't meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you don't have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a medical questionnaire (completed by the employee) that doesn't require a physical.
2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.
3. You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you don't have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who isn't related to you.
- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable doesn't affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, don't consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They haven't been employed for the waiting period given in the policy. This waiting period can't be more than 6 months.

Exclusion from wages. You can generally exclude the cost of up to $50,000 of group-term life insurance coverage from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you don't have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

Coverage over the limit. You must include in your employee's wages the cost of group-term life insurance beyond $50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code “C.” The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Figure the monthly cost of the insurance to include in the employee's wages by multiplying the number of thousands of dollars of all insurance coverage over $50,000 (figured to the nearest $100) by the cost shown in Table 2-2. For all coverage provided within the calendar year, use the employee's age on the last day of the employee's tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

Table 2-2. Cost Per $1,000 of Protection for 1 Month

Age	Cost
Under 25	$ 0.05
25 through 29	0.06
30 through 34	0.08
35 through 39	0.09
40 through 44	0.10
45 through 49	0.15
50 through 54	0.23
55 through 59	0.43
60 through 64	0.66
65 through 69	1.27
70 and older	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of months' coverage at that cost.

Example. Tom's employer provides him with group-term life insurance coverage of $200,000. Tom is 45 years old, isn't a key employee, and pays $100 per year toward the cost of the insurance. Tom's employer must include $170 in his wages. The $200,000 of insurance coverage is reduced by $50,000. The yearly cost of $150,000 of coverage is $270 ($0.15 x 150 x 12), and is reduced by the $100 Tom pays for the insurance. The employer includes $170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters $170 in box 12 with code “C.”

Coverage for dependents. Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a de minimis fringe benefit if the face amount isn't more than $2,000. If the face amount is greater than $2,000, the dependent coverage may be excludable from income as a de minimis fringe benefit if the excess (if any) of the cost of insurance over the amount the employee paid for it on an after-tax basis is so small that accounting for it is unreasonable or administratively impracticable.

Former employees. When group-term life insurance over $50,000 is provided to an employee (including retirees) after his or her termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with his or her tax return and isn't collected by the employer. You’re not required to collect those taxes. You must, however, pay the employer share of social security and Medicare taxes. Use the table above to determine the amount of additional income that is subject to social security and Medicare taxes for coverage provided after separation from service. Report the uncollected amounts separately in box 12 of

Form W-2 using codes “M” and “N.” See the General Instructions for Forms W-2 and W-3 and the Instructions for Form 941.

Exception for key employees. Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. This exception generally doesn't apply to church plans. When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance. See Regulations section 1.79-4T(Q&A 6) for more information.
- The cost you figure using Table 2-2.

For this exclusion, a key employee during 2020 is an employee or former employee who is one of the following individuals. See section 416(i) of the Internal Revenue Code for more information.

1. An officer having annual pay of more than $185,000.
2. An individual who for 2020 is either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay is more than $150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan doesn't favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.
- At least 85% of the participating employees aren't key employees.
- It benefits employees who qualify under a set of rules you set up that don't favor key employees.

Your plan meets this participation test if it is part of a cafeteria plan (discussed earlier in section 1) and it meets the participation test for those plans.

When applying this test, don't consider employees who:

- Have not completed 3 years of service;
- Are part time or seasonal;
- Are nonresident aliens who receive no U.S. source earned income from you; or
- Aren’t included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan doesn't favor key employees as to be all benefits available to participating key employees are also available to all other participating employees. Your plan doesn't favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

S corporation shareholders. Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2% shareholder in his or her wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

Health Savings Accounts

A health savings account (HSA) is an account owned by a qualified individual who is generally your employee or former employee. Any contributions that you make to an HSA become the employee's property and can't be withdrawn by you. Contributions to the account are used to pay current or future medical expenses of the account owner, his or her spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) won't give rise to a medical expense deduction on the individual's federal income tax return.

Eligibility. A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, or long-term care. For calendar year 2020, a qualifying HDHP must have a deductible of at least $1,400 for self-only coverage or $2,800 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to $6,900 for self-only coverage and $13,800 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

Exceptions. An individual isn't a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health FSA or health reimbursement arrangement (HRA) generally disqualifies the individual (and employer) from making contributions to his or her HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA. For more information, see *Other employee health plans* in Pub. 969.

Employer contributions. Up to specified dollar limits, cash contributions to the HSA of a qualified individual (determined monthly) are exempt from federal income tax

withholding, social security tax, Medicare tax, and FUTA tax if you reasonably believe that the employee can exclude the benefits from gross income. For 2020, you can contribute up to $3,550 for self-only coverage under an HDHP or $7,100 for family coverage under an HDHP to a qualified individual's HSA.

The contribution amounts listed above are increased by $1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are married to each other and who are each age 55 or older at any time during the year, each spouse's contribution limit is increased by $1,000 provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

Nondiscrimination rules. Your contribution amount to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount you contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee hasn't established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses, see Regulations section 54.4980G-4.

Exception. The Tax Relief and Health Care Act of 2006 allows employers to make larger HSA contributions for a nonhighly compensated employee than for a highly compensated employee. A highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Partnerships and S corporations. Partners and 2% shareholders of an S corporation aren't eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments as determined by the facts and circumstances. For more information, see Notice 2005-8, 2005-4 I.R.B. 368, available at *IRS.gov/irb/2005-04_IRB#NOT-2005-8*.

Cafeteria plans. You may contribute to an employee's HSA using a cafeteria plan and your contributions aren't subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs can't be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees aren't prohibited.

Reporting requirements. You must report your contributions to an employee's HSA in box 12 of Form W-2 using code "W." The trustee or custodian of the HSA, generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA.

Lodging on Your Business Premises

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

If you allow your employee to choose to receive additional pay instead of lodging, then the lodging, if chosen, isn't excluded. The exclusion also doesn't apply to cash allowances for lodging.

On your business premises. For this exclusion, your business premises is generally your employee's place of work. For example, if you're a household employer, then lodging furnished in your home to a household employee would be considered lodging furnished on your business premises. For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.

For your convenience. Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience isn't sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who couldn't perform their required duties without being furnished the lodging.

It doesn't matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example of qualifying lodging. You employ Sam at a construction project at a remote job site in Alaska. Due to the inaccessibility of facilities for the employees who are working at the job site to obtain lodging and the prevailing weather conditions, you furnish lodging to your employees at the construction site in order to carry on the construction project. You require that your employees

accept the lodging as a condition of their employment. You may exclude the lodging that you provide from Sam's wages. Additionally, since sufficient eating facilities aren't available near your place of employment, you may also exclude meals you provide to Sam from his wages, as discussed in *Proper meals not otherwise available* under *Meals on Your Business Premises*, later in this section.

Example of nonqualifying lodging. A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital can't exclude the value of the lodging from her wages because she isn't required to live at the hospital to properly perform the duties of her employment.

S corporation shareholders. For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Meals

This section discusses the exclusion rules that apply to de minimis meals and meals on your business premises.

De Minimis Meals

You can exclude any occasional meal you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to work overtime. However, the exclusion doesn't apply to meal money figured on the basis of hours worked (for example, $2.00 per hour for each hour over 8 hours), or meals or meal money provided on a regular or routine basis.
- Occasional parties or picnics for employees and their guests.

Employee. For this exclusion, treat any recipient of a de minimis meal as an employee.

Employer-operated eating facility for employees. The de minimis meals exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct operating costs of the facility. Direct operating costs include the cost of food, beverages, and labor costs (including employment taxes) of employees whose services relating to the facility are performed primarily on the premises of the eating facility. Therefore, for example, the labor costs attributable to cooks, waiters, and waitresses are included in direct operating costs, but the labor cost attributable to a manager of an eating facility whose services aren't primarily performed on the premises of the eating facility aren't included in direct operating costs.

For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages as explained under *Meals on Your Business Premises*, later. If you provide free or discounted meals to volunteers at a hospital and you can reasonably determine the number of meals you provide, then you may disregard these costs and revenues. If you charge nonemployees a greater amount than employees, then you must disregard all costs and revenues attributable to these nonemployees.

An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. You're considered to operate the eating facility if you have a contract with another to operate it.
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

Exclusion from wages. You can generally exclude the value of de minimis meals you provide to an employee from the employee's wages.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

TIP *Section 13304 of P.L. 115-97 changed the rules for the deduction of food or beverage expenses that are excludable from employee income as a de minimis fringe benefit. For amounts incurred or paid*

after 2017, the 50% limit on deductions for food or beverage expenses also applies to food or beverage expenses excludable from employee income as a de minimis fringe benefit. However, food or beverage expenses related to employee recreation, such as holiday parties or annual picnics, aren't subject to the 50% limit on deductions when made primarily for the benefit of your employees other than employees who are officers, shareholders or other owners who own a 10% or greater interest in your business, or other highly compensated employees. The new rules for the deduction limits on meals are discussed in chapter 2 of Pub. 535. While your business deduction may be limited, the fringe benefit exclusion rules still apply and the de minimis fringe benefits may be excluded from your employee's wages, as discussed earlier.

Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

If you allow your employee to choose to receive additional pay instead of meals, then the meals, if chosen, aren't excluded. The exclusion also doesn't apply to cash allowances for meals.

On your business premises. Generally, for this exclusion, the employee's place of work is your business premises.

For your convenience. Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience isn't sufficient.

Meals excluded for all employees if excluded for more than half. If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

Food service employees. Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitress works during the breakfast and lunch periods, you can exclude from her wages the value of the breakfast and lunch you furnish in your restaurant for each day she works.

Example. You operate a restaurant business. You furnish your employee, Carol, who is a waitress working 7 a.m. to 4 p.m., two meals during each workday. You encourage but don't require Carol to have her b on the business premises before starting work. She must have her lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude from her wages the value of her breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on her days off, you can't exclude the value of those meals from her wages.

Employees available for emergency calls. Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur, and that the calls have resulted, or will result, in you calling on your employees to perform their jobs during their meal period.

Example. A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called upon to perform services during the meal period. Although the hospital doesn't require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

Short meal periods. Meals you furnish during working hours are furnished for your convenience if the nature of your business (not merely a preference) restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee can't be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak workload occurs during the normal lunch hour. However, they don't qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

Example. Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes his lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit his lunch period to 30 minutes, since the bank's peak workload occurs during the normal lunch period. If Frank got his lunch elsewhere, it would take him much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

Proper meals not otherwise available. Meals you furnish during working hours are furnished for your convenience if the employee couldn't otherwise get proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment. For an example of this, see *Example of qualifying lodging*, earlier in this section.

Meals after work hours. Generally, meals furnished before or after the working hours of an employee aren't considered as furnished for your convenience. However, meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they weren't obtained during working hours.

Meals you furnish to promote goodwill, boost morale, or attract prospective employees. Meals you furnish to promote goodwill, boost morale, or attract prospective employees aren't considered furnished for your convenience. However, you may be able to exclude their value as discussed under *De Minimis Meals*, earlier.

Meals furnished on nonworkdays or with lodging. You generally can't exclude from an employee's wages the value of meals you furnish on a day when the employee isn't working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages. See *Lodging on Your Business Premises*, earlier in this section.

Meals with a charge. The fact that you charge for the meals and that your employees may accept or decline the meals isn't taken into account in determining whether or not meals are furnished for your convenience.

S corporation shareholder-employee. For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

No-Additional-Cost Services

This exclusion applies to a service you provide to an employee if it doesn't cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

No-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free, at a reduced price, or through a cash rebate to employees working in those lines of business. Services that aren't eligible for treatment as no-additional-cost services are non-excess capacity services, such as the facilitation by a stock brokerage firm of the purchase of stock by employees. These services may, however, be eligible for a qualified employee discount of up to 20% of the value of the service provided. See *Employee Discounts*, earlier.

Substantial additional costs. To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Don't reduce the costs you incur by any amount the employee pays for the service. You're considered to incur substantial additional costs if you or your employees spend a substantial amount of time in providing the service, even if the time spent would otherwise be idle or if the services are provided outside normal business hours.

Example. A commercial airline allows its employees to take personal flights on the airline at no charge and receive reserved seating. Because the employer gives up potential revenue by allowing the employees to reserve seats, employees receiving such free flights aren't eligible for the no-additional-cost exclusion.

Reciprocal agreements. A no-additional-cost service provided to your employee by an unrelated employer may qualify as a no-additional-cost service if all the following tests are met.

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer.
- Neither you nor the other employer incurs any substantial additional cost (including lost revenue) either in providing the service or because of the written agreement.

Employee. For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child means any son, stepson, daughter, stepdaughter, or eligible foster child who is a dependent of the employee, or both of whose parents have died and who hasn't reached age 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule doesn't apply to use by the parent of a person considered an employee because of item (3) or (4) above.

Exclusion from wages. You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee's wages.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee the value of a no-additional-cost service that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Retirement Planning Services

You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or his or her spouse if you maintain a qualified retirement plan. A qualified retirement plan includes a plan, contract, pension, or account described in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion doesn't apply to services for tax preparation, accounting, legal, or brokerage services. You can't exclude from the wages of a highly compensated employee retirement planning services that aren't available on the same terms to each member of a group of employees normally provided education and information about the employer's qualified retirement plan.

Transportation (Commuting) Benefits

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- De minimis transportation benefits.
- Qualified transportation benefits.

Special rules that apply to demonstrator cars and qualified nonpersonal use vehicles are discussed under *Working Condition Benefits*, later in this section.

De Minimis Transportation Benefits

You can exclude the value of any de minimis transportation benefit you provide to an employee from the employee's wages. A de minimis transportation benefit is any local transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional local transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and isn't based on hours worked. Local transportation fare provided on a regular or routine basis doesn't qualify for this exclusion.

A special rule allows you to exclude as a de minimis benefit public transit passes, tokens, or fare cards you provide at a discount to defray your employee's commuting costs on the public transit system if the discount doesn't exceed $21 in any month. Similarly, you may also provide a voucher or similar instrument that is exchangeable solely for tokens, fare cards, or other instruments that enable your employee to use the public transit system if the value of the vouchers and other instruments in any month doesn't exceed $21. You may also reimburse your employee to cover the cost of commuting on a public transit system, provided your employee doesn't receive more than $21 in reimbursements for commuting costs in any month. The reimbursement must be made under a bona fide reimbursement arrangement, where you establish appropriate procedures for verifying on a periodic basis that your employee's use of public transportation for commuting is consistent with the value of the benefit provided. The exclusion doesn't apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

Employee. For this exclusion, treat any recipient of a de minimis transportation benefit as an employee.

Qualified Transportation Benefits

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.

You may provide an employee with any one or more of these benefits at the same time.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. A bona fide reimbursement arrangement requires that the employee incur and substantiate expenses for qualified transportation benefits before reimbursement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass isn't readily available for direct distribution by you to your employee. A voucher is

readily available for direct distribution only if an employer can obtain it from a voucher provider that doesn't impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9(b)(Q&A 16–19) for more information.

Compensation reduction agreements. A compensation reduction agreement is a way to provide qualified transportation benefits on a pre-tax basis by offering your employees a choice between cash compensation and any qualified transportation benefit. A compensation reduction arrangement can be used with a bona fide reimbursement arrangement. For each month, the amount of the compensation reduction can't exceed the monthly limits for transportation benefits described in *Exclusion from wages*, later. For more information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q&A 11–15).

Commuter highway vehicle. A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and workplace with employees occupying at least one-half the vehicle's seats (not including the driver's).

Transit pass. A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following.

- On mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry. For guidance on the use of smart cards and debit cards to provide qualified transportation fringes, see Revenue Ruling 2014-32, 2014-50 I.R.B. 917, available at *IRS.gov/irb/2014-50_IRB#RR-2014-32*.

Qualified parking. Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It doesn't include parking at or near your employee's home.

CAUTION ***Qualified bicycle commuting reimbursement suspended.*** *Section 11047 of P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for any tax year beginning after 2017 and before 2026.*

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

A self-employed individual isn't an employee for qualified transportation benefit purposes.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Relation to other fringe benefits. You can't exclude a qualified transportation benefit you provide to an employee under the de minimis or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (de minimis, working condition, etc.).

Exclusion from wages. You can generally exclude the value of transportation benefits that you provide to an employee during 2020 from the employee's wages up to the following limits.

- $270 per month for combined commuter highway vehicle transportation and transit passes.
- $270 per month for qualified parking.

Benefits more than the limit. If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You can't exclude the excess from the employee's wages as a de minimis transportation benefit.

TIP ***Qualified transportation benefits aren't deductible.*** *Section 13304 of P.L. 115-97 provides that no deduction is allowed for qualified transportation benefits (whether provided directly by you, through a bona fide reimbursement arrangement, or through a compensation reduction agreement) incurred or paid after 2017. Also, no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement to your employee, in connection with travel between your employee's residence and place of employment, except as necessary for ensuring the safety of your employee or for qualified bicycle commuting reimbursements as described in section 132(f)(5)(F) (even though the exclusion for qualified bicycle commuting reimbursements is suspended, as discussed earlier). While you may no longer deduct payments for qualified transportation benefits, the fringe benefit exclusion rules still apply and the payments may be excluded from your employee's wages as discussed earlier. Although the value of a qualified transportation fringe benefit is relevant in*

determining the fringe benefit exclusion and whether the section 274(e)(2) exception for expenses treated as compensation applies, the deduction that is disallowed relates to the expense of providing a qualified transportation fringe, not its value.

More information. For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

Tuition Reduction

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see *Qualified Tuition Reduction* under *Other Types of Educational Assistance* in chapter 1 of Pub. 970.

Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform his or her job. It applies to the extent the cost of the property or services would be allowable as a business expense or depreciation expense deduction to the employee if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction. Examples of working condition benefits include an employee's use of a company car for business, an employer-provided cell phone provided primarily for noncompensatory business purposes (discussed earlier), and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity if such expenses would otherwise be allowable as a business expense or depreciation expense deduction to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

The exclusion doesn't apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the payment would be allowable as a deduction to the employee as an expense for a trade or business other than your trade or business. For more information, see Regulations section 1.132-5(a)(2).

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

Vehicle allocation rules. If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the car for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. See *Business use of your car* under *Personal Versus Business Expenses* in chapter 1 of Pub. 535. Also, see the special rules for certain demonstrator cars and qualified nonpersonal use vehicles discussed later.

Demonstrator cars. Generally, all of the use of a demonstrator car by your full-time auto salesperson in the sales area in which your sales office is located qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provides for you and there are substantial restrictions on personal use. For more information and the definition of "full-time auto salesperson," see Regulations section 1.132-5(o). For optional, simplified methods used to determine if full, partial, or no exclusion of income to the employee for personal use of a demonstrator car applies, see Revenue Procedure 2001-56. You can find Revenue Procedure 2001-56 on page 590 of Internal Revenue Bulletin 2001-51 at *IRS.gov/pub/irs-irbs/irb01-51.pdf*.

Qualified nonpersonal use vehicles. All of an employee's use of a qualified nonpersonal use vehicle is a working condition benefit. A qualified nonpersonal use vehicle is any vehicle the employee isn't likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles generally include all of the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety vehicles, provided that any

personal use of the vehicle (other than commuting) is prohibited by the governmental unit.

- Unmarked vehicles used by law enforcement officers if the use is officially authorized. Any personal use must be authorized by the employer, and must be related to law-enforcement functions, such as being able to report directly from home to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips can't qualify as an authorized use.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose and school buses. The working condition benefit is available only for the driver, not for any passengers.
- Tractors and other special-purpose farm vehicles.
- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flatbed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks.

See Regulations section 1.274-5(k) for the definition of qualified moving van and qualified specialized utility repair truck.

Pickup trucks. A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.
   a. A hydraulic lift gate.
   b. Permanent tanks or drums.
   c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
   d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
2. It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

Vans. A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

Education. Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid the expenses. Degree programs as a whole don't necessarily qualify as a working condition benefit. Each course in the program must be evaluated individually for qualification as a working condition benefit. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep his or her present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it isn't qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

Outplacement services. An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need, you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages, and the employee is seeking new employment in the same kind of trade or business in which the employee is presently working. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services don't qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

Product testing. The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by your employee outside your workplace, qualifies as a working condition benefit if all of the following conditions are met.

- Consumer testing and evaluation of the product is an ordinary and necessary business expense for you.
- Business reasons necessitate that the testing and evaluation must be performed off your business premises. For example, the testing and evaluation can't be carried out adequately in your office or in laboratory testing facilities.
- You provide the product to your employee for purposes of testing and evaluation.
- You provide the product to your employee for no longer than necessary to test and evaluate its performance, and (to the extent not finished) the product must be returned to you at completion of the testing and evaluation period.
- You impose limitations on your employee's use of the product that significantly reduce the value of any personal benefit to your employee. This includes limiting your employee's ability to select among different models or varieties of the consumer product, and prohibiting the use of the product by persons other than your employee.
- Your employee submits detailed reports to you on the testing and evaluation.

The program won't qualify if you don't use and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period. Additionally, existence of one or more of the following factors may also establish that the program isn't a bona fide product-testing program.

- The program is in essence a leasing program under which employees lease the consumer goods from you for a fee.
- The nature of the product and other considerations are insufficient to justify the testing program.
- The expense of the program outweighs the benefits to be gained from testing and evaluation.

The program must also not be limited to only certain classes of employees (such as highly compensated employees), unless you can show a business reason for providing the products only to specific employees. For example, an automobile manufacturer may limit providing automobiles for testing and evaluation to only their design engineers and supervisory mechanics, as they can properly evaluate the automobiles.

Exclusion from wages. You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

Exception for independent contractors who perform services for you. You can't exclude the use of consumer goods you provide in a product-testing program from the compensation you pay to an independent contractor. You can't exclude the value of parking as a working condition benefit, but you may be able to exclude it as a de minimis fringe benefit. Transit passes provided to independent contractors may be excluded as a working condition benefit if they meet the requirements of a working condition benefit described earlier. However, personal commuting expenses are not deductible as a business expense. Transit passes may also be excluded as a de minimis fringe benefit. For more information on de minimis transportation benefits, see *De Minimis Transportation Benefits*, earlier in this section.

Exception for company directors. You can't exclude the value of the use of consumer goods you provide in a product-testing program from the compensation you pay to a director.

3. Fringe Benefit Valuation Rules

This section discusses the rules you must use to determine the value of a fringe benefit you provide to an employee. You must determine the value of any benefit you can't exclude under the rules in section 2 or for which the amount you can exclude is limited. See *Including taxable benefits in pay* in section 1.

In most cases, you must use the general valuation rule to value a fringe benefit. However, you may be able to use a special valuation rule to determine the value of certain benefits.

This section doesn't discuss the special valuation rule used to value meals provided at an employer-operated eating facility for employees. For that rule, see Regulations section 1.61-21(j). This section also doesn't discuss the special valuation rules used to value the use of aircraft. For those rules, see Regulations sections 1.61-21(g) and (h). The aircraft fringe benefit valuation formulas are published in the Internal Revenue Bulletin as Revenue Rulings twice during the year. The formula applicable for the first half of the year is usually available at the end of March. The formula applicable for the second half of the year is usually available at the end of September.

General Valuation Rule

You must use the general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value.

Fair market value (FMV). The FMV of a fringe benefit is the amount an employee would have to pay a third party in an arm's-length transaction to buy or lease the benefit. Determine this amount on the basis of all the facts and circumstances.

Neither the amount the employee considers to be the value of the fringe benefit nor the cost you incur to provide the benefit determines its FMV.

Employer-provided vehicles. In general, the FMV of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Don't determine the FMV by multiplying a cents-per-mile rate times the number of miles driven unless the employee can prove the vehicle could have been leased on a cents-per-mile basis.

Cents-Per-Mile Rule

Under this rule, you determine the value of a vehicle you provide to an employee for personal use by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Personal use is any use of the vehicle other than use in your trade or business. This amount must be included in the employee's wages or reimbursed by the employee. For 2020, the standard mileage rate is 57.5 cents per mile.

You can use the cents-per-mile rule if either of the following requirements is met.

- You reasonably expect the vehicle to be regularly used in your trade or business throughout the calendar year (or for a shorter period during which you own or lease it).
- The vehicle meets the mileage test.

CAUTION ***Maximum automobile value.*** *You can't use the cents-per-mile rule for an automobile (including a truck or van) if its value when you first make it available to any employee for personal use in calendar year 2020 is more than $50,400. For information about a transition rule for 2018 and 2019 for vehicles that had an FMV in excess of the maximum permitted amount when placed into service before 2018, see Notice 2019-34, 2019-22 I.R.B. 1257, available at IRS.gov/irb/2019-22_IRB#NOT-2019-34. If you and the employee own or lease the automobile together, see Regulations sections 1.61-21(e)(1)(iii)(B) and (C).*

Vehicle. For the cents-per-mile rule, a vehicle is any motorized wheeled vehicle, including an automobile, manufactured primarily for use on public streets, roads, and highways.

Regular use in your trade or business. Whether a vehicle is regularly used in your trade or business is determined on the basis of all facts and circumstances. A vehicle is considered regularly used in your trade or business if one of the following safe harbor conditions is met.

- At least 50% of the vehicle's total annual mileage is for your trade or business.
- You sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.

Infrequent business use of the vehicle, such as casional trips to the airport or between your multiple business premises, isn't regular use of the vehicle in your trade or business.

Mileage test. A vehicle meets the mileage test for a calendar year if both of the following requirements are met.

- The vehicle is actually driven at least 10,000 miles during the year. If you own or lease the vehicle only part of the year, reduce the 10,000-mile requirement proportionately.
- The vehicle is used during the year primarily by employees. Consider the vehicle used primarily by employees if they use it consistently for commuting. Don't treat the use of the vehicle by another individual whose use would be taxed to the employee as use by the employee.

For example, if only one employee uses a vehicle during the calendar year and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage test even if all miles driven by the employee are personal.

Consistency requirements. If you use the cents-per-mile rule, the following requirements apply.

- You must begin using the cents-per-mile rule on the first day you make the vehicle available to any employee for personal use. However, if you use the commuting rule (discussed later) when you first make the vehicle available to any employee for personal use, you can change to the cents-per-mile rule on the first day for which you don't use the commuting rule.
- You must use the cents-per-mile rule for all later years in which you make the vehicle available to any employee and the vehicle qualifies, except that you can use the commuting rule for any year during which use of the vehicle qualifies under the commuting rules. However, if the vehicle doesn't qualify for the cents-per-mile rule during a later year, you can use for that year and thereafter any other rule for which the vehicle then qualifies.
- You must continue to use the cents-per-mile rule if you provide a replacement vehicle to the employee (and the vehicle qualifies for the use of this rule) and your primary reason for the replacement is to reduce federal taxes.

Items included in cents-per-mile rate. The cents-per-mile rate includes the value of maintenance and insurance for the vehicle. Don't reduce the rate by the value of any service included in the rate that you didn't provide. You can take into account the services actually provided for the vehicle by using the *General Valuation Rule*, earlier.

For miles driven in the United States, its territories and possessions, Canada, and Mexico, the cents-per-mile rate includes the value of fuel you provide. If you don't provide fuel, you can reduce the rate by no more than 5.5 cents.

For special rules that apply to fuel you provide for miles driven outside the United States, Canada, and Mexico, see Regulations section 1.61-21(e)(3)(ii)(B).

The value of any other service you provide for a vehicle isn't included in the cents-per-mile rate. Use the general valuation rule to value these services.

Commuting Rule

Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by $1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the commuting rule if all the following requirements are met.

- You provide the vehicle to an employee for use in your trade or business and, for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.
- You establish a written policy under which you don't allow the employee, nor any individual whose use would be taxable to the employee, to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home). Personal use of a vehicle is all use that isn't for your trade or business.
- The employee doesn't use the vehicle for personal purposes other than commuting and de minimis personal use.
- If this vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van), the employee who uses it for commuting isn't a control employee. See *Control employee*, later.

Vehicle. For this rule, a vehicle is any motorized wheeled vehicle (including an automobile) manufactured primarily for use on public streets, roads, and highways.

Control employee. A control employee of a nongovernment employer for 2020 is generally any of the following employees.

- A board or shareholder-appointed, confirmed, or elected officer whose pay is $115,000 or more.
- A director.
- An employee whose pay is $230,000 or more.
- An employee who owns a 1% or more equity, capital, or profits interest in your business.

A control employee for a government empl 2020 is either of the following.

- A government employee whose compensation is equal to or exceeds Federal Government Executive Level V. See the Office of Personnel Management website at *opm.gov/policy-data-oversight/pay-leave/salaries-wages* for 2020 compensation information.
- An elected official.

Highly compensated employee alternative. Instead of using the preceding definition, you can choose to define a control employee as any highly compensated employee. A highly compensated employee for 2020 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $125,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Lease Value Rule

Under this rule, you determine the value of an automobile you provide to an employee by using its annual lease value. For an automobile provided only part of the year, use either its prorated annual lease value or its daily lease value (discussed later).

If the automobile is used by the employee in your business, you generally reduce the lease value by the amount that is excluded from the employee's wages as a working condition benefit (discussed earlier in section 2). In order to do this, the employee must account to the employer for the business use. This is done by substantiating the usage (mileage, for example), the time and place of the travel, and the business purpose of the travel. Written records made at the time of each business use are the best evidence. Any use of a company-provided vehicle that isn't substantiated as business use is included in income. The working condition benefit is the amount that would be an allowable business expense deduction for the employee if the employee paid for the use of the vehicle.

Automobile. For this rule, an automobile is any four-wheeled vehicle (such as a car, pickup truck, or van) manufactured primarily for use on public streets, roads, and highways.

Consistency requirements. If you use the lease value rule, the following requirements apply.

1. You must begin using this rule on the first day you make the automobile available to any employee for personal use. However, the following exceptions apply.
   a. If you use the commuting rule (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you

can change to the lease value rule on the first day for which you don't use the commuting rule.

b. If you use the cents-per-mile rule (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day on which the automobile no longer qualifies for the cents-per-mile rule.

2. You must use this rule for all later years in which you make the automobile available to any employee, except that you can use the commuting rule for any year during which use of the automobile qualifies.

3. You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for the replacement is to reduce federal taxes.

Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

1. Determine the FMV of the automobile on the first date it is available to any employee for personal use.

2. Using Table 3-1, read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value.

3. Multiply the annual lease value by the percentage of personal miles out of total miles driven by the employee.

Table 3-1. Annual Lease Value Table

(1) Automobile FMV	(2) Annual Lease Value
$ 0 to 999	$ 600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

For automobiles with an FMV of more than $59,999, the annual lease value equals (0.25 × the FMV of the automobile) + $500.

FMV. The FMV of an automobile is the amount a person would pay to buy it from a third party in an arm's-length transaction in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(5)(v). If you and the employee own or lease the automobile together, see Regulations section 1.61-21(d)(2)(ii).

You don't have to include the value of a telephone or any specialized equipment added to, or carried in, the automobile if the equipment is necessary for your business. However, include the value of specialized equipment if the employee to whom the automobile is available uses the

specialized equipment in a trade or business other than yours.

Neither the amount the employee considers to be the value of the benefit nor your cost for either buying or leasing the automobile determines its FMV. However, see *Safe-harbor value* next.

Safe-harbor value. You may be able to use a safe-harbor value as the FMV.

For an automobile you bought at arm's length, the safe-harbor value is your cost, including sales tax, title, and other purchase expenses. This method isn't available for an automobile you manufactured.

For an automobile you lease, you can use any of the following as the safe-harbor value.

- The manufacturer's invoice price (including options) plus 4%.
- The manufacturer's suggested retail price minus 8% (including sales tax, title, and other expenses of purchase).
- The retail value of the automobile reported by a nationally recognized pricing source if that retail value is reasonable for the automobile.

Items included in annual lease value table. Each annual lease value in the table includes the value of maintenance and insurance for the automobile. Don't reduce the annual lease value by the value of any of these services that you didn't provide. For example, don't reduce the annual lease value by the value of a maintenance service contract or insurance you didn't provide. You can take into account the services actually provided for the automobile by using the general valuation rule discussed earlier.

Items not included. The annual lease value doesn't include the value of fuel you provide to an employee for personal use, regardless of whether you provide it, reimburse its cost, or have it charged to you. You must include the value of the fuel separately in the employee's wages. You can value fuel you provided at FMV or at 5.5 cents per mile for all miles driven by the employee. However, you can't value at 5.5 cents per mile fuel you provide for miles driven outside the United States (including its possessions and territories), Canada, and Mexico.

If you reimburse an employee for the cost of fuel, or have it charged to you, you generally value the fuel at the amount you reimburse, or the amount charged to you if it was bought at arm's length.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for an automobile, you must add the FMV of that service to the annual lease value of the automobile to figure the value of the benefit.

4-year lease term. The annual lease values in the table are based on a 4-year lease term. These values will generally stay the same for the period that begins with the first date you use this rule for the automobile and ends on December 31 of the fourth full calendar year following that date.

Figure the annual lease value for each later 4-year period by determining the FMV of the automobile on January 1 of the first year of the later 4-year period and selecting the amount in column (2) of the table that corresponds to the appropriate dollar range in column (1).

Using the special accounting rule. If you use the special accounting rule for fringe benefits discussed in section 4, you can figure the annual lease value for each later 4-year period at the beginning of the special accounting period that starts immediately before the January 1 date described in the previous paragraph.

For example, assume that you use the special accounting rule and that, beginning on November 1, 2019, the special accounting period is November 1 to October 31. You elected to use the lease value rule as of January 1, 2020. You can refigure the annual lease value on November 1, 2023, rather than on January 1, 2024.

Transferring an automobile from one employee to another. Unless the primary purpose of the transfer is to reduce federal taxes, you can refigure the annual lease value based on the FMV of the automobile on January 1 of the calendar year of transfer.

However, if you use the special accounting rule for fringe benefits discussed in section 4, you can refigure the annual lease value (based on the FMV of the automobile) at the beginning of the special accounting period in which the transfer occurs.

Prorated Annual Lease Value

If you provide an automobile to an employee for a continuous period of 30 or more days but less than an entire calendar year, you can prorate the annual lease value. Figure the prorated annual lease value by multiplying the annual lease value by a fraction, using the number of days of availability as the numerator and 365 as the denominator.

If you provide an automobile continuously for at least 30 days, but the period covers 2 calendar years (or 2 special accounting periods if you're using the special accounting rule for fringe benefits discussed in section 4), you can use the prorated annual lease value or the daily lease value.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(6).

If an automobile is unavailable to the employee because of his or her personal reasons (for example, if the employee is on vacation), you can't take into account the periods of unavailability when you use a prorated annual lease value.

You can't use a prorated annual lease value if the reduction of federal tax is the main reason the automobile is unavailable.

Daily Lease Value

If you provide an automobile to an employee for a continuous period of less than 30 days, use the daily lease value to figure its value. Figure the daily lease value by multiplying the annual lease value by a fraction, using four times the number of days of availability as the numerator and 365 as the denominator.

However, you can apply a prorated annual lease value for a period of continuous availability of less than 30 days by treating the automobile as if it had been available for 30 days. Use a prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

Unsafe Conditions Commuting Rule

Under this rule, the value of commuting transportation you provide to a qualified employee solely because of unsafe conditions is $1.50 for a one-way commute (that is, from home to work or from work to home). If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the unsafe conditions commuting rule for qualified employees if all of the following requirements are met.

- The employee would ordinarily walk or use public transportation for commuting.
- You have a written policy under which you don't provide the transportation for personal purposes other than commuting because of unsafe conditions.
- The employee doesn't use the transportation for personal purposes other than commuting because of unsafe conditions.

These requirements must be met on a trip-by-trip basis.

Commuting transportation. This is transportation to or from work using any motorized wheeled vehicle (including an automobile) manufactured for use on public streets, roads, and highways. You or the employee must buy the transportation from a party that isn't related to you. If the employee buys it, you must reimburse the employee for its cost (for example, cab fare) under a bona fide reimbursement arrangement.

Qualified employee. A qualified employee for 2020 is one who:

- Performs services during the year;
- Is paid on an hourly basis;
- Isn't claimed under section 213(a)(1) of the Fair Labor Standards Act (FLSA) of 1938 (as amended) to be exempt from the minimum wage and maximum hour provisions;
- Is within a classification for which you actually pay, or have specified in writing that you will pay, overtime pay of at least one and one-half times the regu provided in section 207 of FLSA; and
- Received pay of not more than $125,000 during 2019.

However, an employee isn't considered a qualified employee if you don't comply with the recordkeeping requirements concerning the employee's wages, hours, and other conditions and practices of employment under section 211(c) of FLSA and the related regulations.

Unsafe conditions. Unsafe conditions exist if, under the facts and circumstances, a reasonable person would consider it unsafe for the employee to walk or use public transportation at the time of day the employee must commute. One factor indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or home at the time of day the employee commutes.

4. Rules for Withholding, Depositing, and Reporting

Use the following guidelines for withholding, depositing, and reporting taxable noncash fringe benefits.

Valuation of taxable fringe benefits. Generally, you must determine the value of taxable noncash fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Choice of period for withholding, depositing, and reporting. For employment tax and withholding purposes, you can treat taxable noncash fringe benefits (including personal use of employer-provided highway motor vehicles) as paid on a pay period, quarter, semiannual, annual, or other basis. But the benefits must be treated as paid no less frequently than annually. You don't have to choose the same period for all employees. You can withhold more frequently for some employees than for others.

You can change the period as often as you like as long as you treat all of the benefits provided in a calendar year as paid no later than December 31 of the calendar year.

You can also treat the value of a single fringe benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if your employee receives a fringe benefit valued at $1,000 in one pay period during 2020, you can treat it as made in four payments of $250, each in a different pay period of 2020. You don't have to notify the IRS of the use of the periods discussed above.

Transfer of property. The above choice for reporting and withholding doesn't apply to a cash fringe benefit or a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property. For these kinds of fringe benefits, you must use the actual date the property was transferred to the employee.

Withholding and depositing taxes. You can add the value of taxable fringe benefits to regular wages for a payroll period and figure income tax withholding on the total. Or you can withhold federal income tax on the value of fringe benefits at the flat 22% rate that applies to supplemental wages. See section 7 in Pub. 15 for the flat rate (37%) when supplemental wage payments to an individual exceed $1 million during the year.

You must withhold the applicable income, social security, and Medicare taxes on the date or dates you chose to treat the benefits as paid. Deposit the amounts withheld as discussed in section 11 of Pub. 15.

Additional Medicare Tax withholding. In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of $200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of $200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the $200,000 withholding threshold.

For more information on what wages are subject to Medicare tax, see Table 2-1, earlier, and the chart, *Special Rules for Various Types of Services and Payments*, in section 15 of Pub. 15. For more information on Additional Medicare Tax, go to *IRS.gov/ADMT*.

Amount of deposit. To estimate the amount of income tax withholding and employment taxes and to deposit them on time, make a reasonable estimate of the value of the taxable fringe benefits provided on the date or dates you chose to treat the benefits as paid. Determine the estimated deposit by figuring the amount you would have had to deposit if you had paid cash wages equal to the estimated value of the fringe benefits and withheld taxes from those cash wages. Even if you don't know which employee will receive the fringe benefit on the date the deposit is due, you should follow this procedure.

If you underestimate the value of the fringe benefits and deposit less than the amount you would have had to deposit if the applicable taxes had been withheld, you may be subject to a penalty.

If you overestimate the value of the fringe benefit and overdeposit, you can either claim a refund or have the overpayment applied to your next Form 941, Employer's QUARTERLY Federal Tax Return. See the Instructions for Form 941.

If you paid the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on the employee's behalf and included on the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Paying your employee's share of social security and Medicare taxes. If you choose to pay your employee's social security and Medicare taxes on taxable fringe benefits without deducting them from his or her pay, you must include the amount of the payments in the employee's wages. Also, if your employee leaves your employment and you have unpaid and uncollected taxes for noncash benefits, you're still liable for those taxes. You must add the uncollected employee share of social security and Medicare tax to the employee's wages. Follow the procedure discussed under *Employee's Portion of Taxes Paid by Employer* in section 7 of Pub. 15-A. Don't use withheld federal income tax to pay the social security and Medicare tax.

Special accounting rule. You can treat the value of taxable noncash benefits as paid on a pay period, quarter, semiannual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually. You can treat the value of taxable noncash fringe benefits provided during the last 2 months of the calendar year, or any shorter period within the last 2 months, as paid in the next year. Thus, the value of taxable noncash benefits actually provided in the last 2 months of 2019 could be treated as provided in 2020 together with the value of benefits provided in the first 10 months of 2020. This doesn't mean that all benefits treated as paid during the last 2 months of a calendar year can be deferred until the next year. Only the value of benefits actually provided during the last 2 months of the calendar year can be treated as paid in the next calendar year.

Limitation. The special accounting rule can't be used, however, for a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property.

Conformity rules. Use of the special accounting rule is optional. You can use the rule for some fringe benefits but not others. The period of use need not be the same for each fringe benefit. However, if you use the rule for a particular fringe benefit, you must use it for all employees who receive that benefit.

If you use the special accounting rule, your employee must also use it for the same period you use it. But your employee can't use the special accounting rule unless you do.

You don't have to notify the IRS if you use the special accounting rule. You may also, for appropriate administrative reasons, change the period for which you use the rule without notifying the IRS. But you must report the income and deposit the withheld taxes as required for the changed period.

Special rules for highway motor vehicles. If an employee uses the employer's vehicle for personal purposes, the value of that use must be determined by the employer and included in the employee's wages. The value of the personal use must be based on the FMV or determined by using one of the following three special valuation rules previously discussed in section 3.

- The cents-per-mile rule.
- The commuting rule (for commuting use only).

- The lease value rule.

Election not to withhold income tax. You can choose not to withhold income tax on the value of an employee's personal use of a highway motor vehicle you provided. You don't have to make this choice for all employees. You can withhold income tax from the wages of some employees but not others. You must, however, withhold the applicable social security and Medicare taxes on such benefits.

You can choose not to withhold income tax on an employee's personal use of a highway motor vehicle by:

- Notifying the employee as described below that you choose not to withhold; and
- Including the value of the benefits in boxes 1, 3, 5, and 14 on a timely furnished Form W-2. For use of a separate statement in lieu of using box 14, see the General Instructions for Forms W-2 and W-3.

The notice must be in writing and must be provided to the employee by January 31 of the election year or within 30 days after a vehicle is first provided to the employee, whichever is later. This notice must be provided in a manner reasonably expected to come to the attention of the affected employee. For example, the notice may be mailed to the employee, included with a paycheck, or posted where the employee could reasonably be expected to see it. You can also change your election not to withhold at any time by notifying the employee in the same manner.

Amount to report on Forms 941 (or Form 944) and W-2. The actual value of fringe benefits provided during a calendar year (or other period as explained under *Special accounting rule*, earlier in this section) must be determined by January 31 of the following year. You must report the actual value on Forms 941 (or Form 944) and W-2. If you choose, you can use a separate Form W-2 for fringe benefits and any other benefit information.

Include the value of the fringe benefit in box 1 of Form W-2. Also include it in boxes 3 and 5, if applicable. You may show the total value of the fringe benefits provided in the calendar year or other period in box 14 of Form W-2. For additional information about reporting of fringe benefits on Form W-2, see the General Instructions for Forms W-2 and W-3.

If you use the special accounting rule, you must notify the affected employees of the period in which you used it. You must give this notice at or near the date you give the Form W-2, but not earlier than with the employee's last paycheck of the calendar year.

How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to IRS.gov and find resources that can help you right away.

Preparing and filing your tax return. Go to *IRS.gov/EmploymentEfile* for more information on filing your employment tax returns electronically.

Employers can register to use Business Services Online. The SSA offers online service for fast, free, and secure online Form W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Forms W-2, Wage and Tax Statement, and Forms W-2c, Corrected Wage and Tax Statement. Employers can go to *SSA.gov/employer* for more information.

Getting answers to your tax questions. On IRS.gov, get answers to your tax questions anytime, anywhere.

- Go to *IRS.gov/Help* for a variety of tools that will help you get answers to some of the most common tax questions.
- Go to *IRS.gov/Forms* to search for our forms, instructions, and publications. You will find details on 2019 tax changes and hundreds of interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Tax reform. Tax reform legislation affects individuals, businesses, and tax-exempt and government entities. Go to *IRS.gov/TaxReform* for information and updates on how this legislation affects your taxes.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are paramount. We use these tools to share public information with you. **Don't** post your social security number or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingua*.
- *Youtube.com/irsvideosASL*.

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Getting tax information in other languages. For taxpayers whose native language isn't English, we have the following resources available. Taxpayers can find information on IRS.gov in the following languages.

- *Spanish* (*IRS.gov/Spanish*).
- *Chinese* (*IRS.gov/Chinese*).
- *Korean* (*IRS.gov/Korean*).
- *Russian* (*IRS.gov/Russian*).

- *Vietnamese* (*IRS.gov/Vietnamese*).

The IRS Taxpayer Assistance Centers (TACs) provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print most of the forms, instructions, and publications you may need. You can also download and view popular tax publications and instructions (including Pub. 15-B) on mobile devices as an eBook at no charge at *IRS.gov/eBooks*. Or you can go to *IRS.gov/OrderForms* to place an order and have them mailed to you within 10 business days.

Getting a transcript or copy of a return. You can get a copy of your tax transcript or a copy of your return by calling 800-829-4933 or by mailing Form 4506-T (transcript request) or Form 4506 (copy of return) to the IRS.

Resolving tax-related identity theft issues.

- The IRS doesn't initiate contact with taxpayers by email or telephone to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.
- Go to *IRS.gov/IDProtection* for information.
- If your EIN has been lost or stolen or you suspect you're a victim of tax-related identity theft, visit *IRS.gov/IdentityTheft* to learn what steps you should take.

Making a tax payment. The IRS uses the latest encryption technology to ensure your electronic payments are safe and secure. You can make electronic payments online, by phone, and from a mobile device using the IRS2Go app. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to *IRS.gov/Payments* to make a payment using any of the following options.

- *Debit or Credit Card*: Choose an approved payment processor to pay online, by phone, and by mobile device.
- *Electronic Funds Withdrawal*: Offered only when filing your federal taxes using tax return preparation software or through a tax professional.
- *Electronic Federal Tax Payment System*: Best option for businesses. Enrollment is required.
- *Check or Money Order*: Mail your payment to the address listed on the notice or instructions.
- *Cash*: You may be able to pay your taxes with cash at a participating retail store.
- *Same-Day Wire*: You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and cut-off times.

What if I can't pay now? Go to *IRS.gov/Paym* more information about your options.

- Apply for an *online payment agreement* (*IRS.gov/OPA*) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the *Offer in Compromise Pre-Qualifier* to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to *IRS.gov/OIC*.

Understanding an IRS notice or letter. Go to *IRS.gov/Notices* to find additional information about responding to an IRS notice or letter.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS Taxpayer Assistance Center (TAC). Go to *IRS.gov/LetUsHelp* for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to *IRS.gov/TACLocator* to find the nearest TAC, check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is TAS?

TAS is an ***independent*** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to *TaxpayerAdvocate.IRS.gov* to help you understand *what these rights mean to you* and how they apply. These are ***your*** rights. Know them. Use them.

What Can TAS Do For You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do

everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them at 877-777-4778.

How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to them at *IRS.gov/SAMS*.

TAS also has a website, *Tax Reform Changes*, that shows you how the new tax law may change your future tax filings and helps you plan for these changes. The information is categorized by tax topic in the order of the IRS Form 1040 or 1040-SR. Go to *TaxChanges.us* for more information.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

Index

To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.