

NOTICE OF REGULAR MEETING

August 8, 2017

MONTGOMERY CITY COUNCIL

STATE OF TEXAS

AGENDA

COUNTY OF MONTGOMERY

CITY OF MONTGOMERY

NOTICE IS HEREBY GIVEN that a Regular Meeting of the Montgomery City Council will be held on Tuesday, August 8, 2017 at 6:00 p.m. at the City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas for the purpose of considering the following:

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO FLAGS

VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. City Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the Joint Workshop Meeting held on July 13, 2017 and Regular Meeting held on July 25, 2017.
2. Consideration and possible action approving a leave of absence for Council Member Jon Bickford.
3. Consideration and possible action regarding adoption of the following Resolution:
RESOLUTION APPROVING THE MONTGOMERY COUNTY EMERGENCY COMMUNICATION DISTRICT BUDGET FOR FISCAL YEAR 2018.

CONSIDERATION AND POSSIBLE ACTION:

4. Consideration and possible action regarding calling a Public Hearing regarding the City of Montgomery 2017-2018 Proposed Operating Budget.
5. Consideration and possible action to Accept the 2017 Effective and Rollback Tax Rates.
6. Consider and Discuss the Tax Rates Needed to Fund the 2017/2018 Budget for Maintenance and Operations and Debt Service.
7. Consider and Vote on a Proposed Tax Rate for 2017.

8. If the Tax Rate needed to fund the budget exceeds the lower of the 2017 Effective or Rollback Tax Rate Presented, Consider and approve two (2) Public Hearing dates.
9. Consideration and possible action regarding adoption of the Design Manual by the City of Montgomery, Texas for the Installation of Network Nodes and Node Support Poles pursuant to Texas Local Government Code, Chapter 284.
10. Consideration and possible action regarding approval of a Pole Attachment Agreement regarding wireless telecommunications.
11. Consideration and possible action regarding adoption of the following Ordinance:
A PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE BY THE CITY OF MONTGOMERY, TEXAS; AMENDING CHAPTER 74 OF THE CITY CODE OF ORDINANCES BY AMENDING SECTION 74.23 AND ADDING ARTICLE III TO CHAPTER 74; REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.
12. Consideration and possible action regarding Sponsorship Letter to Texas Department of Transportation for driveway adjacent to Monte West proposed Development on Liberty Street
13. Consideration and possible action regarding adoption of the following Resolution:
RESOLUTION SUBMITTING NOMINEE(S) AS CANDIDATES FOR THE ELECTION OF THE MONTGOMERY CENTRAL APPRAISAL DISTRICT'S BOARD OF DIRECTORS FOR THE 2018-2019 TERM.
14. Consideration and possible action regarding Change Order No. 1 for Flagship Boulevard Pavement Repair Project.
15. Report regarding Buffalo Springs Bridge.

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property),551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas. *(No items at this time)*

COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

ADJOURNMENT



Susan Hensley
Susan Hensley, City Secretary

I certify that the attached notice of meeting was posted on the bulletin board at City of Montgomery City Hall, 101 Old Plantersville Road, Montgomery, Texas, on the 4th day of August, 2017 at 2:25 o'clock p.m. I further certify that the following news media was notified of this meeting as stated above: The Courier

This facility is wheelchair accessible and accessible parking spaces are available. Please contact the City Secretary's office at 936-597-6434 for further information or for special accommodations.

MINUTES OF JOINT WORKSHOP MEETING

July 13, 2017

MONTGOMERY CITY COUNCIL and PLANNING AND ZONING COMMISSION

CALL TO ORDER

Mayor Kirk Jones declared a quorum was present for both City Council and the Planning and Zoning Commission, and called the meeting to order at 6:05 p.m.

City Council

Present:	Kirk Jones	Mayor
	T.J. Wilkerson	Position # 3
	Rebecca Huss	Position # 4
	Dave McCorquodale	Position # 5
Absent:	Jon Bickford	Position # 1
	John Champagne, Jr.	Position # 2

Montgomery Planning and Zoning Commission

Present:	Nelson Cox	Chairman
	William Simpson	Member
	Carol Langley	Member
Absent:	Arnette Easley	Member
	Jeffrey Waddell	Member
Also Present:	Jack Yates	City Administrator
	Ed Shackelford	City Engineer

WORKSHOP:

- ❖ Discussion of the following items related to the City of Montgomery:
 - Proposed Land Use Plan

Mr. Yates presented the information advising that a Land Use Plan is just a general plan of how you intend to use the land. Mr. Yates advised that the Land Use Plan is not zoning. Mr. Yates said that the Land Use Plan includes the ETJ (extra-territorial jurisdiction) area for long range planning purposes. Mr. Yates advised that the Planning Commission has been discussing this information for a couple months.

Mr. Yates said that part of the reason for this Plan is because a couple of times developers have come before the City Council and the Planning and Zoning Commission, asking for high density development. Mr. Yates said that City Council stated that they really needed to give some thought to where they wanted high density to be located rather than just acting on a request from one individual. Mr. Yates advised that high density is when there are more houses, per acre, in a development, and less density is 9,000 square foot lots.

Mr. Yates advised that the original map for the Plan started out with the Mayor, the Planning and Zoning Commission Chairman and himself, then it went to the Commission two or three times for review. Mr. Yates defined the color coded map, stating that yellow was low density, pink is high density, green along FM 1097 is commercial, and purple is light industrial. Mr. Yates said that along FM 149 he has it shown as commercial property and the goes to yellow, low density.

Mayor Jones said that recently there had been some interest in development, north of Chris Cheatham's property that will want higher density development. Mayor Jones asked, based on the way that the City is headed, would that property be okay for high density. Dave McCorquodale said that maybe there was no distinction between light industrial and commercial, but 10 years ago he thought the City talked about the Loop being industrial and not commercial. Dave McCorquodale said that he was fine with the commercial, but he thought that they were marketing them with a store in the front and a warehouse in the back. Mayor Jones said that it seems like, over the years, they have kind of gotten away from planning light industrial because not much has been showing up, although if the property is light industrial, they can still put commercial on that property. Rebecca Huss said that she thought that they got rid of all cumulative zoning in the City. Dave McCorquodale said that would make it so that they could not stack uses.

Mr. Yates advised that the blue color designated the schools. Mr. Yates said that there was an area, in pink, that was zoned as unknown because it was never zoned in the original zoning ordinance, or they can't find information on it. Mr. Yates said that the property is next to the cemetery by the railroad tracks. Carol Langley said that the property owner had a machine shop that was located there for three months then he shut it down. Mayor Jones said that the property had to be zoning something for that use, either commercial or industrial.

Mayor Jones said that there is talk that one day someone will connect Old Plantersville Road to FM 149, which might change the way they are thinking about the land use in that area. Rebecca Huss said that busier roads generally mean commercial.

Mr. Yates said that they will need to have a public hearing regarding the Land Use Plan. Rebecca Huss said that she felt they should talk to the people prior to having a public hearing. Mr. Yates said that he was thinking about having an informal public hearing before the start of the formal adoption process. Mayor Jones asked if they could do it simultaneously with the zoning changes. Mr. Yates said that what he had in mind for the zoning was three informal public hearings, because they have some multi-family zoning in the middle of the Rampy property, then they have an area at SH 149 where they are going from residential to commercial, with about 6 to 7 property owners. Mr. Yates said that they also have the same sort of issue of turning residential to commercial at FM 149, north of Martin Luther King, Jr., which is about 4 to six property owners. Mr. Yates said that he is thinking that they will have informal public hearings with those three groups, maybe one each month, over the next three months.

Carol Langley asked if they would call it a Community meeting at Town Hall instead of a public hearing. Carol Langley said that this was too confusing to have the two items, Land Use and Zoning, together as far as she was concerned. Rebecca Huss said that the people on FM 149 have concerns that the City is going to seize their property so they can build commercial development on it, so they need to be very careful and make people aware of what is involved and what is being done. Carol Langley said that the zoning is going to take longer for them to grasp it, but the Land Use can be

explained easier. Mr. Yates said that he thought that they could move forward with the Land Use Plan for the next two or three months and then tackle the Zoning.

Mr. Yates said that he remembered Carol Langley saying that the reason they zoned residential to begin with, especially closer to the downtown area, is the thought was discussed that they would zone that area commercial, but at that time the people did not want it zoned commercial because they felt like they would be losing their neighborhood, over time.

Rebecca Huss said that they need to be cognizant of the changes and the affect that it will have on the City.

Mayor Jones said that there were concerns by the residents that if their property use was changed to commercial, their property taxes would go up, but Mr. Yates spoke to the Tax Office and they advised that it does not matter what the property is zoned, it is how the property is used.

Dave McCorquodale asked if the property by the Ogorchock property should also be pink. Dave McCorquodale also commented on Terra Vista, and asked if they thought it should be pink, since it is existing and higher density. Mr. Yates said that would be defacto pink. Mayor Jones said that there was another piece with the Villas of Mia Lago, which should be changed to high density.

Mr. Yates asked how they suggested that he get the word out to the property owners. Mr. Yates said that they could get the map on an 8.5 x 11 inch page, but it is so small. Rebecca Huss said that she thought that would cause more problems. Rebecca Huss said they would need to decide what the public message is, so that they can explain everything at the public meetings. Mr. Ed Shackelford said that they could put the map on the web site and then refer people to the web page. Carol Langley said that they could put the information in the water bill, but some of the owners do not get a water bill. Rebecca Huss said that they need to talk to the large property owners in person. Mr. Yates said that only the large property owners are going to care about this.

Mr. Shackelford said that one of the concepts that they are suggesting is a southern loop, and asked if the City would want some sort of commercial buffer along that loop. Mr. Shackelford said that they would only have two crossings on the tracks, instead of multiple crossings like the way that Montgomery County's Plan shows. Dave McCorquodale said that looking at the County's Plan it does not really become a loop, it just cuts the City in half. Mr. Shackelford said that they would essentially come off of FM 2854, south of Stewart Lake, and then come across and line up with Lone Star Parkway. Mayor Jones asked if Mr. Shackelford thought they would do one leg at a time to connect FM 2854. Mr. Shackelford said that they could get it set up, so that if somebody comes in and wants to develop, it would set a corridor for them. Rebecca Huss said that would also give the schools an outlet on the backside instead of through the City.

- Proposed Zoning Changes; and

Mr. Yates reviewed the proposed changes, in the following areas:

- Zone Area 1 – which includes two remnants of multi-family zone along SH 105; 1A – McCoy's and 1B – Cliff Rampy.
- Zone Area 2 – Possibly will not need any action taken. Carol Langley advised that the property is up for sale, so they will remember that they got their property zoned. Spirit Industries is 2B and 2A is the Mann property, which were zoned industrial.
- Zone Area 3 – is the unknown corner property. Carol Langley said that this property is not located where she thought it was. Dave McCorquodale said that he was going to say that it was residential property at one time, just because it was the only thing there. Mayor Jones said that it was being used as residential. Carol Langley advised that either Mr. Kemer or his son owns that property. This property is shown as low density.
- Zone Area 4 – is the front 300-500 feet that would go back as far as McCoy's and would be squared off. Mr. Yates said that the zone would be whatever was shown on the map. Rebecca Huss said that it would match up with the lot line of the Baptist Church and go west to have a straight line across the back of both of those properties. This property is zoned commercial.

- Zone Area 5 – which Mr. Yates said that block 5H (Homecoming Park) and 5J (Easley property) will need to be taken off of the list. Rebecca Huss said that she might be in favor of skipping areas 5 and 6, because she does not necessarily trust the Appraisal District to not up the value of the property because it is commercial rather than residential, and if they have a Land Use Plan Map they will have that tool for future zoning. Mr. Yates said that they could have a neighborhood meeting to discuss the Land Use Plan for their area and discuss it with the Community prior to rezoning. Rebecca Huss said that she would love to see the City purchase land and help people to achieve the neighborhood plan, and then sell the property as a commercial strip, which would be fine with her. Rebecca Huss said that if the City and the Planning and Zoning Commission would like to see the downtown area expand north, she felt that they would need to do it collaboratively with the people that live in that neighborhood to achieve something better. T.J. Wilkerson said that would be a hard sell. Mayor Jones said that it will be a slow progression to commercial along FM 149. Mr. Yates said that he has talked with Grantworks, and they think that they can get the City a planning grant to come up with a Community Plan. Mr. Yates said that if they get into a Community Plan that would help plan for the neighborhoods in the City. T.J. Wilkerson said that a couple have already had offers made to buy their property. Mayor Jones said that it sounded like they were in agreement to not mess with the area on FM 149 north. Mayor Jones said that they might have a planning discussion, but not plan on changing the zoning at this time. T.J. Wilkerson advised that the house across from Jim's Hardware, a lot of people probably do not know that part of that is the old black school and to the person that owns that property, means a whole lot. Mr. Yates said that he has talked to the property owner about that property. Mayor Jones said that they need to work on getting identifying plaques for these places.

Mayor Jones said that he would like to recommend one more piece, which has to do with the slight expansion of the Historic District. Mayor Jones said that the piece of property that is in front of the Hodge Podge Lodge, the Maik Haik property should be in the Historic District. The goal of the Historic District is to maintain the ambiance and history, and being able to just put up a business, such as a Sonic, at that location, would not be good for the City, but if they at

least included it in the Historic District, the City would have a lot of say in whatever goes in there. Rebecca Huss said that she thought they could argue that when they bought the property, they thought it was part of the Hodge Podge Lodge, and in the Historic District, but it was not. Mayor Jones asked if they could include that area in the Historic District. Mr. Yates said that would take a separate action, but they could include that property.

- Joint Mobility Plan Draft Review – Mr. Ed Shackelford, City Engineer, introduced Colby Wright, Traffic Engineer with Jones and Carter, who has been the point person working on the Mobility Study. Mr. Shackelford advised that City Council has received the draft, which Mr. Wright is going to review this evening. Mr. Shackelford said that they have not met with the County Commissioners yet, so it will not have their feedback or information. Mr. Shackelford said that it does have some of the City Council feedback. Mr. Wright said that they generally gather all the comments and incorporate them into the Study. Rebecca Huss said that the Study did not match Jones and Carter's usual standards for including useful information.

Mr. Wright advised that the project goal of the Mobility Plan will evaluate the existing conditions and plan improvements, and recommend transportation improvements to improve the mobility within the City. Mr. Wright said that for existing conditions, they evaluated every traffic signal and multi-way stop or intersection inside the City limits. Rebecca Huss asked about the intersection peak hours. Mr. Wright advised that they did 7-9 a.m. and 4-6 p.m. for the study. Rebecca Huss said that information would be potentially useless, because the traffic that people are complaining about it is 2:45 - 3:30 p.m. Mr. Shackelford said that they would catch the tail end of the high school traffic at 4 p.m. Carol Langley advised that the high school gets out at 2:30 p. m. Rebecca Huss said that the elementary school gets out at 3:30 p.m., but the traffic situation from the elementary schools are not the same. Mr. Shackelford said that they can always get a couple more hours of data. Mr. Wright said that they have the 24-hours of data, so they can review that period of time to see when the peak occurs.

Rebecca Huss said that the biggest issue with the most complaints and the most dangerous delays is FM 149/SH 105 going east after high school. Rebecca Huss said that it is worse when it is Friday during the summer months. Carol Langley said that

she does not go to the Post Office or the bank anytime from 2-4 p.m., during the week when school is in session, because of traffic. Mr. Wright said that they would review that information and report back with the results for the peak hours.

Mr. Wright then reported on the daily volume of traffic on the roadways in a 24-hour period. Mayor Jones asked if he was interested in the intersection of Lone Star Parkway and FM 149, he would combine the two readings to get the total number. Mr. Wright said that was correct. Mayor Jones asked if these figures were an average over several 24-hour periods. Mr. Wright said that it was one count that they took on one day, during the week when school was in session. William Simpson asked how the Buffalo Springs Bridge being out affected the counts. Mr. Wright said that it affected the counts, and they figured the numbers back the best that they could.

Mr. Wright said that they used data that they collected, along with H-GAC, for projections out to 2035 to 2040, for SH 105 and FM 149, and determined the growth rates, and the average growth rate was 5.1 percent. Mr. Wright stated that they applied the 5.1 percent per year to the existing traffic volumes to get future projected volumes on every roadway. Mayor Jones said that if they are building a lot of subdivisions near the City or in the City, that number would be higher. Mr. Wright said that they also included some of the future developments that they knew were coming into the City in this to show the additional traffic. Mr. Wright advised that he would forward an updated traffic page, page 10, so that it can be forwarded to City Council and the Commission.

Mr. Wright said that they used the H-GAC data plus a little bit of our own to develop our future projected traffic, with ten-year projections for 2026, and projected volumes at the intersections, which is presented in the report.

Rebecca Huss said that it would be really useful if they could include a percent increase in each of the boxes on the drawing, so that they would not have to flip back and forth from the chart to the map.

Mr. Wright said that once they had the projected future volumes, they went into the capacity analysis. They did two things, intersection analysis and roadway analysis.

Mr. Wright said that the intersection analysis is based on the highway capacity manual, and they assign a level of service grade, which is based on the seconds of delay you will expect to occur at that particular intersection. Mr. Wright advised that the breakdown of the grades started with "A-C" is free flowing with no congestion on the road and it is pretty easy to get through, "D" is getting into delays, and then "E-F" have multiple vehicles and major delays. Mr. Wright reviewed the intersection analysis, which showed every intersection operating at an acceptable level of service, except FM 149 and SH 105. Rebecca Huss said that the analysis did not show whether the problem intersection was a continuous problem or just at that hour. Mr. Wright said that they picked the highest peak hour. Rebecca Huss said that if the next highest peak hour was 5 hours lower, and was still read, as opposed to only one hour that was red and in the morning it was acceptable. Mr. Wright said that they did not have the hourly data for the turn lanes, which was what was used to generate the intersections. Mr. Wright said if there was specific intersections and specific times of the day, he could look at the 24-hour data and pick out the peak hours, and then see if Council would like them to go out and collect additional data to evaluate that information.

Mr. Shackleford asked Mr. Wright, with his experience with TxDOT, if he went to them with a problem on the roadway, would it be 3-5 years before they actually moved on the problem. Mr. Wright said that was correct, because if the City asked TxDOT to install a signal, they are a year away from that being done. Mayor Jones said that for those of us that live here, and have our hands on funds, there are some things that can be done locally to help alleviate the problem. Mr. Shackleford said that the other thing would be if the City were willing to supplement their funds.

Rebecca Huss said that there were no non-infrastructure options for improvements in this report, so her theory is that the east/west traffic from the high school at different times of day or the other schools, is the main source of neighborhood traffic. Rebecca Huss said that $\frac{3}{4}$ of the complaints that they get are about speeders, and since they don't have enough officers to deal with them, you have to move traffic on SH105 so people will take the fast way, the short way. One way to do that is to increase the intersection time, but the City is not allowed to change the intersection time regardless of what the conditions are unless they get approval from TxDOT. Mayor Jones said that when the

police control the lights, that is only a temporary solution. Mr. Wright said that the intersection is supposed to have multiple timing plans.

Mr. Wright stated that FM 149 and SH 105 was the biggest problem and the City is really restricted, and the City needs to widen at least in order to have left turn lanes. Mr. Wright said that they could add more capacity to SH 105 by getting more capacity on side streets. Mayor Jones said that the problem is they do not have right or left turn lanes. Rebecca Huss said that would be relying on money that they do not have. Rebecca Huss said that they could work the signal and get a substantial improvement. Mayor Jones asked how they could make that happen. Mr. Wright said that there are two things, they could look at the equipment that is at SH 105, and get TxDOT to update the equipment and get a remote system to communicate from City Hall, if they would allow it to be done. Mayor Jones asked if this report shows enough concern. Mr. Wright said that the report does have information that shows that intersection is graded as a "D" today and is only going to get worse. Carol Langley asked whether the new high school would help with this intersection. Mr. Wright said that it would because it is going to take traffic that has to come through town. Mayor Jones said that could affect another intersection, by moving the problem along, because there are actually three schools on FM 2854.

Mr. Wright also reviewed the roadway capacity, which was a little more general than the intersection capacity. Mr. Wright said that they used H-GAC as the default volumes for capacity of two lane roadways and four lane roadways. Mr. Wright said that according to H-GAC, to have an accessible level of service on a two lane roadway, the capacity of the road is 16,000 vehicles per day, and on a four lane roadway the capacity is 33,000 vehicles per day. Mr. Wright said that when they applied that to the City's existing conditions, and the only roadway that was at capacity or near it was SH 105, basically on the west side of town where it is two lanes and it was right at the 16,000 vehicles. Mr. Wright said that the capacity on that same location on SH 105 in 2026 was estimated to be 27,000 vehicles per day, which would be over capacity for the two lane roadway. Mr. Wright said that SH 105 just west of that location also shows to reach capacity for two lanes.

Mayor Jones asked when the County would mobilize for Lone Star Parkway. Mr. Shackelford said that the earliest was July 17, 2017 and could be as late as July 24, 2017, subject to weather.

Mr. Wright commented on the TxDOT's Access Management Plan for SH 105, which is where they are going through and identifying roadway capacity improvements, but stated that it was still in the planning phases.

Rebecca Huss said if they were talking about where the City's challenges are, the money that TxDOT is looking at for the projects that they are doing don't address any of these issues. Mr. Shackelford said that some of that goes back to the things that TxDOT is getting ready to do, which have been planned for five years. Mr. Shackelford said that it would be worth scheduling a meeting with the area engineer to have a conversation. Rebecca Huss said that with the conclusion of identifying the gap between TxDOT projects that they are looking at in the near future, and needs and ways that they can improve the City's situation without a huge investment. Mr. Shackelford said that H-GAC does a call for projects annually and they are about to start the call for 2018, so there are some things that they might want to look at getting on the list for roads.

Mr. Shackelford said that he wanted Council to think about, which would be a long term deal, is Lone Star Parkway widening from two to four lanes from SH 105 to SH 105. Mr. Shackelford said that they could beef up the road so that it could be an official bypass roadway so they could try to get some of the trucks off of SH105. Rebecca Huss asked if the work the County was doing would qualify Lone Star Parkway as an official bypass road. Mr. Shackelford said that it would not in the State's point of view. Mr. Shackelford said that the State would not officially detour State Highway traffic onto a local road.

Mr. Wright said that all this information has led them to their recommended improvements (page 20 of the draft Joint Mobility Study), which they are concentrating mostly on the intersections, highlighting a few of the recommendations:

- Lone Star Parkway and SH 105 – they included an extra thru lane, which will be part of the TxDOT lighting project, and they recommended signalization that would be hopefully part of the TxDOT project.
- Old Dobbin Plantersville at SH 105 – where the County is going to put another lane in with the existing signal area.
- FM 149 and SH 105 – recommended north bound and south bound left and right turn lanes. Mayor Jones asked if Mr. Shackelford could check on a possible turn lane for that location. Mr. Shackelford said that he would check on that information with TxDOT.
- SH 105 and FM 2854 – which is mostly relative to the commercial development there, so they are recommending right turn lanes on every approach. Mr. Shackelford said that on the north corner, he asked if there was room to get that in between the bridge and the intersection. Dave McCorquodale said that he thought there was enough room.
- Buffalo Springs and Lone Star Parkway – at some point will need to be signalized and left turn lanes are believed to be part of the County project.
- SH 105 and Emma’s Way – is the TxDOT project for adding additional lanes.

Mr. Wright then reviewed the County’s Major Thoroughfare Plan, which they had made suggested revisions. Mr. Wright reviewed the changes to the County’s Major Thoroughfare Plan, which are detailed on the map in the Draft Joint Mobility Study dated May 2017. Mr. Wright stated that this was a work in progress.

Mayor Jones asked if they were showing Emma’s Way connecting all the way through. Mr. Shackelford said that was correct. Mr. Shackelford said that they would prefer to have roads “T” into other roads as opposed to coming in at an awkward angle. Mayor Jones said that Emma’s Way would be one of the projects that might be affordable, because there are numerous parties that might be willing to share the cost.

Mayor Jones said that there has been a discussion about a small connector between Lone Star Parkway and Martin Luther King, Jr. Mayor Jones said that there were property owners that have interest in that happening. Mr. Shackelford asked if that would occur about where the County Community Center is located. Mayor Jones

said that was pretty close, and it would probably come east of there, which they would get Lawson and Simonton that might feed into that road. Mayor Jones said it would be right at the entrance to what will be called Lincoln Elementary School on Martin Luther King, Jr., which would get people from there onto the Loop instead of FM 149. Mr. Shackelford said that there was a creek in there that is a pretty good size. Mayor Jones said that small projects like that would be good, where they could get an H-GAC matching grant, along with Emma's Way.

Rebecca Huss said, priority wise, she felt that they had other places that are more critical, that they might need to save for over a couple of years to make the project happen or borrow to alleviate real problems that they are having today. Mayor Jones said that he agreed, unless they had other people that are benefitting from it and they are willing to participate at this time.

Mr. Shackelford said that they can look at H-GAC who has funds for Congestion Mitigation Air Quality Projects, which he did not remember how much funds were there annually, but the goal of the project is to relieve congestion and improve air quality. Mr. Shackelford said that in the past, in some of his prior years with the County, he was getting from \$10-15 million dollars to do traffic signals and interconnects with the traffic signals to be able to do major corridors. Mr. Shackelford said that they need to research the projects.

Rebecca Huss asked if the City could restripe FM 2854 at SH 105 on their own, if we pay for it, where they were talking about making a turning lane on the shoulder of the road. Mr. Shackelford said that the City would have to get TxDOT to sign off on the project, and going on the right side of the white line on the shoulder of the road is a moving violation in Texas. Mr. Shackelford said that he would visit with TxDOT and see what they might be able to facilitate. Mayor Jones said that there are other places where that might work as a solution. Mr. Shackelford said that they might have to build a shoulder to the road to be able to move the white line. Mayor Jones said that turning lanes on FM 149 and SH 105 are on the list, and have been on the City's list for at least 12 years.

Carol Langley left the meeting at 8:18 p.m.

Mr. Shackelford asked for any questions or comments. Mayor Jones asked if the Martin Luther King, Jr. connector road that he spoke of earlier should be included on the list for the County. Mayor Jones said that there was also a potential desire to connect Old Plantersville with FM 149, but they did have some of that further south happening. Mr. Shackelford said the connection from Old Plantersville to FM 149 would be pretty expensive. Mayor Jones said that maybe a developer, one of these days, will cut a road through to FM 149.

Mr. Shackelford said that if City Council or the Commission has any comments or questions, please let him know and he will follow up with the County. Mr. Shackelford said that he had several reasons to go talk to the County, and will provide the revisions to the peak times in the potential areas that were identified during the meeting.

The Preliminary Montgomery Mobility Plan dated May 2017 is on file with the City.

ADJOURNMENT

Dave McCorquodale moved to adjourn the meeting at 8:20 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

Submitted by:  Date Approved: _____
Susan Hensley, City Secretary

Mayor Kirk Jones

MINUTES OF REGULAR MEETING

July 25, 2017

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Kirk Jones declared a quorum was present, and called the meeting to order at 6:00 p.m.

Present: Kirk Jones Mayor
 John Champagne, Jr. City Council Place # 2
 Rebecca Huss City Council Place # 4
 Dave McCorquodale City Council Place # 5

Absent: Jon Bickford City Council Place # 1
 T.J. Wilkerson City Council Place # 3

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

INVOCATION

John Champagne gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

Mr. John Tierney and Mr. Mace Puckett with Boy Scout Troop 491, and Mr. Kendal with Boy Scout Troop 1293, were present as part of their requirement to earn their Community Communication Badge.

Mr. Greg Parker, Candidate for Precinct 2 County Commissioner, introduced himself as a candidate for upcoming election. Mr. Parker spoke of the challenges that face Montgomery County, such as mobility, taxes and spending, roads and conflict of interest issues. Mr. Parker detailed his background and asked for the support in the upcoming election.

Mr. Lonnie Clover – asked where to go to get minutes of both this meeting and the Planning and Zoning Commission, because the last minutes on Planning and Zoning were March 27, 2017, and the last minutes from the City Council Meeting was June 27, 2017. Mr. Clover said that he knew that these minutes were approved at the next meeting and he did not understand why they could not be put out on the internet. Mr. Clover asked where he would go to get the minutes, does he come to City Hall to get a hard copy, and asked what he should do. Mr. Clover asked about drawings for projects and proposed projects, and whether they were available to the public and how would he go about looking at those just to see what is going on in the City because you can't always tell from what is in the minutes exactly what is going on,, such as a report on zoning amendments. Mr. Clover said that the minutes are pretty nebulous and you do not know what they are talking about. Mayor Jones asked City Staff to respond to the question.

City Secretary, Susan Hensley, advised that the minutes from the last meeting on June 27, 2017 are posted on the web site and tonight City Council is approving the July 11, 2017 Meeting minutes. Rebecca Huss confirmed that Ms. Hensley was stating that the minutes are only posted after they have been approved by City Council or the Commission to avoid having something posted that was incorrect. Ms. Hensley said that was correct. Ms. Hensley advised that the Planning and Zoning Commission minutes had a problem so they had to be rescanned in and reposted to the web site. Mr. Clover said that he had checked the web page and the July 11, 2017 Meeting minutes were not on the web site. Ms. Hensley advised that the July 11, 2017 minutes were being approved tonight and then they would be posted. Mayor Jones asked Mr. Clover to come by City Hall at his leisure and speak to the City Secretary she will get the information you need. Ms. Hensley said that she would be more than glad to assist Mr. Clover.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the July 11, 2017, Regular Meeting.

2. Consideration and possible action regarding acceptance of excess collections for 2016 Debt Service and Certification for Debt Service Collection Rate for 2017/2018.
3. Consideration and possible action regarding adoption of the following Resolution:
A RESOLUTON OF THE CITY OF MONTGOMERY, TEXAS AFFIRMING ITS ANNUAL REVIEW OF THE POLICY FOR INVESTMENT OF MUNICIPAL FUNDS AND THE INVESTMENT STRATEGIES CONTAINED THEREIN HAS BEEN CONDUCTED AS REQUIRED BY SECTION 2256.005(e) OF THE TEXAS GOVERNMENT CODE.

Dave McCorquodale moved to approve the Consent Agenda (Items 1 – 3) as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (3-0)

CONSIDERATION AND POSSIBLE ACTION:

4. Consideration and possible action on Department Reports.
 - A. Administrator's Report – Mr. Yates presented his report to City Council. Mr. Yates said that one item that was not included in his report, was the listing of the duties for the Assistant to the City Administrator position. Mr. Yates advised that currently this is a part time position and he is proposing to move it to full time, partially because the person that is filling the position is only working 5-6 hours per week. Mr. Yates said that he would like to get back to about 20 hours per week for him, and then 20 hours of additional help for City staff, particularly the front office with the billing clerk. Mr. Yates said that some of the duties that he has in mind for this position is the audit and budget preparation, invoice gathering, grant coordination, payables, sales tax rebate monitoring, coordinating office supplies, assist the City Secretary as needed, Gantt Charts on all projects so that City Council will know the status and schedule. John Champagne said that a few months back he had requested a timeline for the bridge project, and asked if he could get information based on the current information. Mr. Yates said that he would like to hire this position, noting that there are available funds in the current budget. Mr. Yates said that he was proposing to hire this person unless told to do otherwise. Rebecca Huss said that as long as Mr. Yates is actually delegating valuable work to this person, then she had no problem. John Champagne said that

according to the list of duties, he thought that Mr. Yates would be delegating quite a bit. Mayor Jones said that a lot of things that are listed are not being done at this time.

Dave McCorquodale asked about the communication with TxDOT regarding the FM 149 Project, and whether they have advised a better way of communicating with the residents and shop owners. Mr. Yates said that last week they received an email from TxDOT stating that they wanted to have a meeting at their office, and Mr. Yates suggested that was not the way to conduct a public meeting and said they needed to meet here in Montgomery. Mr. Yates said that he has not heard back from TxDOT. Mr. Yates said that they were still trying to work with TxDOT on trying to improve their planning coordination with the property owners. Mayor Jones said that there were a lot of property owners that have a lot of questions. Mr. Roznovsky, City Engineer, said that TxDOT did respond saying that they did agree to have a meeting out in Montgomery, but it has not been scheduled yet, but the meeting will be in the City in the evening so that the property owners can attend the meeting after work. Rebecca Huss said that in the meantime they are just continuing to repave and resurface the southern part and northern part, with no actual intention of alleviating any traffic issues that Montgomery has been experiencing. Mr. Roznovsky said that was correct.

- B. Public Works Report – Mr. Micha Muckleroy presented his report to City Council. Mr. Muckleroy advised that they had heavy trash weekend, painted speed humps and stop bars throughout the City, verified all idle water accounts were off and locked and assisted two customers with irrigation programming. Mr. Muckleroy advised that employee Ryan Thomas had obtained his Class D Water License last month. Mayor Jones asked what that meant. Mr. Muckleroy advised that it is a license that they are required to have in order to work on water mains and install water meters. Mr. Muckleroy said that they replaced the gas stove at the Community Center with an electric stove. They repaired a broken chlorine line at Well #2. Mr. Muckleroy said that they also started weekly barricade delivery for the Thursday Farmer's Market and they continue the weekly leak notifications to customers from the Beacon web site. Mr. Muckleroy advised that they had 13 water taps, 12 sewer taps, 9 water leaks and 0 sewer stoppages for the month. Mr. Muckleroy said that they replaced plants around the fountain at Cedar Brake Park, replaced both flags at Homecoming Park, and

installed an additional lock on the breaker box at Homecoming Park. The docents at Fernland reported 499 visitors for the month and they provided 45 tours.

Rebecca Huss asked for an update on the Entergy project from yesterday, and whether Well #2 was back on. Mr. Muckleroy advised that Entergy installed a second lead to the Well to hopefully cure the power balance issue, and when one of the wells was turned back on it immediately tripped. Rebecca Huss said that she was looking at Mr. Williams' report and there was a stunning amount of activity or lack thereof related to Well #2. Mr. Muckleroy said that every time the Well comes on it kicks back off. Mayor Jones said that he did not know much about electricity, but isn't there something like a voltage regulator that they can install. Mr. Roznovsky said that what Entergy was proposing, as their solution, to run a second line, essentially doubling the amount of flow that can go to the plant, but that did not solve the issue. Mr. Muckleroy said that the second line did not cost the City a dime to let them try. John Champagne asked if they still had issues on Well #4. Mr. Muckleroy said that was correct.

John Champagne asked if the City has any legal recourse since we have no options, and asked if a case could be made that this municipality is at risk because we can't get a reliable source of energy for these water wells. Mr. Foerster said that he supposed that a case could be made, but is this a need to the community or is it a broader problem? John Champagne said that he did not know, but he knows that they have no options, they have to settle for a mediocre service that puts our community in a position that they are paying not to be in, which to him, is unacceptable. John Champagne asked what incentive Entergy has to do anything, other than what they have done, because there is no competitive influence. Mr. Foerster asked if there was a consultant that could give them an opinion as to what the problem is so that they can reach out to Entergy, maybe with a formal resolution, even by City Council stating here is the problem and stating that we want it fixed. John Champagne advised Mr. Foerster to tell him what was appropriate, because so far it has not worked. Mr. Roznovsky said that Entergy first attempted to blame the power problem as a City issue, and they advised Entergy that it was not a City issue and nothing had been changed to the facilities, this is a supply issue. John Champagne asked if all this was a verbal exchange and nothing has been done in writing. Mr. Roznovsky said that was correct. Mr. Foerster said that he did not mind writing a letter, but at one time Entergy had a

representative that would work with the cities and he does not know who that person is now, but that used to be the person that would handle this information and attend the City Council Meetings. John Champagne said that once again the City is putting up with this and it has become the status quo. Rebecca Huss advised Mr. Foerster that if he is writing a letter, if Well #2 and Well #4 have issues, Well #3 is not capable of supplying the City with enough water, so this is kind of dire. Mr. Foerster asked Mr. Roznovsky to prepare him a report he will contact Entergy personally. Mr. Muckleroy advised that Mr. Roznovsky was in the process of preparing a letter to the Public Utility Commission and Entergy jumped on it at the last minute and wanted to try this possible solution, which did not work. Mr. Muckleroy said that they talked about getting the letter done this morning at their weekly meeting. Rebecca Huss said that for security purposes, the generators do work and can run the equipment if they need them to. Mr. Muckleroy said that the generator at Well #3 will only run Well #3 and it does not power the entire plant. Mr. Muckleroy said that the generator at Well #2 will power the entire plant. John Champagne said that to Rebecca Huss' point, they are in good shape. Mr. Shackelford said, to clarify, when they say Well #3, that is just Well #3, and remember that Well #3 and #4 are both at the same water plant. Mr. Muckleroy said that it will run Well #3 and the distribution pumps, and will not run Well #4 or the cooling tower. Rebecca Huss asked whether Wells #2 and #3 were capable of supplying the City needs. Mr. Shackelford said that would only work if you are in drought condition. Mr. Shackelford said that they could provide water, but they would have to restrict usage. Rebecca Huss said that there is no telling after Kroger comes on line. John Champagne asked if another generator has been considered and in the new budget. Mr. Shackelford said that it was in the project that is being funded by the GLO for Water Plant #3 Improvements. Mr. Roznovsky said that the earliest they could expect funds would be October. Mayor Jones asked if they needed generators at any of the lift stations. Mr. Roznovsky said that also on that list is looking at a generator for the sewer plant, because there currently is none there, so with the relocation of the lift station, they can combine and get one large generator to run the entire facility instead of two separate generators, and is also on the list for the GLO funds. John Champagne asked if they had a plan. Mr. Shackelford said that they have a plan regarding Entergy. Mr. Shackelford said that yes, they would get the information together and provide Mr. Foerster sufficient information for him to write a letter to

Entergy. John Champagne asked if all the information would be provided to Mr. Foerster next week. Mr. Roznovsky said that he has already been working on the language and he will have the information to Mr. Foerster tomorrow. Mayor Jones asked if there was a comment that they could include that not only talks about the inconvenience, but our costs incurred every time this problem occurs. John Champagne said that actually it is an inconvenience, but his concern is more than an inconvenience, it is a necessity. Mayor Jones said it is also the length of time that this problem has been occurring, with no resolution, and in his mind not a lot of effort for resolution. John Champagne said that if this was someone's private well on their property and this situation was going on, he would bet that 99 percent of the people out there would not stand for this kind of service, so why is the City dealing with this inadequate response. Mr. Foerster said that he feels that this is an internal staff issue that they can deal with, without a formal resolution by City Council.

- C. Police Department Report – Chief James Napolitano presented his report to City Council. Chief Napolitano said that he wanted to bring up a few things, during June they had some good training for the officers, Hernandez, Thompson, Carswell and Lt. Belmares. They attended different types of training that will increase their knowledge and ability to get their job done. John Champagne asked whether they had been making a lot of trips to Conroe. Chief Napolitano said that they had and they had 43 misdemeanor arrests and 5 felony arrests. Chief Napolitano advised that every time they make a misdemeanor arrest, that person has to be transported to Conroe and takes them out of service from 3-5 hours. John Champagne asked if there was ever a time when both officers are in Conroe. Chief Napolitano said yes. John Champagne said that would leave the supervisor here. Chief Napolitano said that sometimes it leaves no one here. John Champagne asked why it would leave no one there. Chief Napolitano said that the supervisor might not be on duty at that particular time. Chief Napolitano said that when they are gone, Montgomery County will pick up the call for them and vice versa, which is how they work to cover calls. Chief Napolitano said that they will pick up suspicious persons, welfare checks, etc. Chief Napolitano said that welfare checks are one of the most dangerous calls, because you do not know what you are going to be dealing with. Chief Napolitano said that he would love to see the Sheriff's Department put a little place out here on the west side to help Magnolia, Montgomery and District 5 to house a prisoner. John Champagne asked the Chief, in

his estimation, has the activity in regards to his responsibilities as far as this department increased. Chief Napolitano said that it has, and said that he pulled up a Spillman report today, regarding the two apartment complexes only, they have had 305 calls to the apartment complexes from late 2015 through current. The calls for this year are already over what they had last year, just for the two apartment complexes. Mayor Jones asked what the issues at those locations were. Chief Napolitano said that they range from trespassing in progress, suspicious vehicle, narcotics and medical calls. Chief Napolitano said that they have asked that when EMS is going to a medical call, then the Police Department will also respond, because sometimes they can turn out to be something more that needs the police. Chief Napolitano said that they have put over 1,000 extra people in the City between the two apartment complexes and they have issues. Rebecca Huss said that it is not really all that different, because she looked up the numbers from 2014 and they had about 100-175 calls per month, and you are reporting 116 calls for service last month. Chief Napolitano said that Rebecca Huss would have to understand that you are saying that it is the same as it was in 2014. Rebecca Huss said that she was saying that it is not an outlier compared to 2014, if you look at the numbers. Chief Napolitano said that they still have calls for service. Rebecca Huss said exactly, and she was saying in 2014 they had between 100-175 calls per month, and this month you are reporting 116, which is not an outlier if you are looking at the data from 2014. Chief Napolitano asked if she wanted one officer showing up or two. Rebecca Huss said that she was talking about the exact same thing, calls for service compared to two years ago, so it is the same issue. Chief Napolitano said that this is summertime and our slowest month. Rebecca Huss said that was why she gave a range of what they saw in 2014 as well. John Champagne asked about Lt. Belmares Dark Web Investigations. Chief Napolitano said that they have a lot of problems with fraud lately, they have numerous calls for service about people getting their credit card stolen and resold on the Dark Web. Chief Napolitano said that he sent Lt. Belmares for the training to help investigations in the City.

- D. Court Department Report – Rebecca Lehn-Kendall presented her report to City Council. Mrs. Kendall advised that this past month Deputy Court Clerk Kimberly Duckett took her Level One Certification test and all of the Court staff attended training.

- E. Utility/Development Report – Mr. Yates presented the report to City Council advising that they collected \$158,059 in utilities, \$23,813 for 43 permits and \$1,355 for rental of the Community Center. Mr. Yates advised that they have 588 active water accounts. Mr. Yates noted that on the City account consumption, the Buffalo Springs sewer and water consumption was down to 2,000 gallons per month from 120,000 gallons. Rebecca Huss said that consumption was closer to 200,000 gallons for a while. Mayor Jones said that was great. Rebecca Huss said that Cedar Brake Park was spelled incorrectly on the report.
- F. Water Report – Mr. Mike Williams, with Gulf Utilities, presented his report to City Council. Mr. Williams reviewed the district alerts, stating that 5 out of the 8 alerts were due to power imbalances. Mr. Williams said that one was for a power outage, which Entergy was on site repairing the issue when the operator arrived. The other two, included a leak reported at 661 Old Plantersville Road where the water was coming under the fence. The technician reported that the water was coming from 27 Power Circle and flowing downhill in the resident's yard. Rebecca Huss asked if that was from the trailer park. Mr. Williams said that it was from the trailer park. Rebecca Huss said the City is still responsible for the meters in the trailer park. Mr. Yates said that was correct. Mr. Williams advised that the leak was on the homeowner's side of the meter. Mr. Williams said that the other alert was Lift Station #3 and the operator reported high run time, the pump was pulled and cleaned and turned back to service. Mr. Williams advised that on the effluent report, the flow for the month of May was 4,591,000 gallons, daily peak flow was 329,000 gallons on May 23, 2017, which is 82% percent of the permitted value. The average daily flow was 130,000 gallons for 32% percent of the permitted value. Mr. Williams advised that the chart on page 5 of the report shows that the totalizer is working correctly, and the total monthly average was 98.02%. Mr. Williams advised that there were no excursions during the month. Mr. Williams stated that the City's current permit expired June 1, 2017, which the City Engineers are currently working on. TCEQ is in the review process for the permit, so the City is covered.

Mr. Williams advised that John Champagne had asked to have the permitted values and the remaining permit amount for 2017 included in the report, which is shown on page 7 of the report. Mr. Williams advised that Wells #2 and #3 together are permitted

for 47.551 million gallons and they are currently 40.6% remaining and 80.1% of Well #4 remaining. Mr. Williams said that was mainly due to the incoming power and mechanical issues that they have been experiencing. John Champagne asked if Mr. Williams saw a problem there. Mr. Williams said that he did and he would get it resolved as quickly as possible. Mr. Williams said that as soon as they get the Entergy imbalance fixed, they can ramp up the work and make sure that they are looking at the permitted values. Mr. Williams said that the total production this month was 9.226 million gallons, and they have a total of 203,000 gallons for flushing, and they sold 9,105,000 gallons bringing them to a 101% percent accountability, which indicates that they sold more water than they pumped. Mr. Williams advised that for Well #3 and Well #4 the peak day was May 18, which is at the very beginning of the cycle, so they might have pumped some of that water with the associated billing cycle of last month. Mr. Williams said that he did not expect any issues and they should see the information even out. Mayor Jones asked about the multi-family and whether it was the two apartments combined. Mr. Williams said that was correct, and it did include their irrigation meters. Mayor Jones asked how hard it would be to get the volume for each of those categories. Mr. Williams said that it should not be too difficult and he would get that information. Mayor Jones said that he was interested in what the schools and apartments use, and it might be good for planning purposes. Mr. Williams said that he would get that information.

Mr. Williams advised that this month they had a 50% percent return to the WWTP from water sold through the meters. Mayor Jones said that there was such a wide range in the return percentages, from 15% to 102%, and asked what would be expected as normal or can they say there is not a normal due to weather or other circumstances. Mr. Williams said that they can see a range due to irrigation, because anything that was used to irrigate will not go to the sewer plant. Rebecca Huss asked Mr. Williams to remind them again that the totalizer was replaced. Mr. Williams said that prior to the totalizer being replaced, the figure on 11/18/16 showed a 15% percent return to the WWTP, and after the replacement of the totalizer the return was at 81%. Mayor Jones said that they could say beginning in 12/18/16, that would be the norm with whatever variation that brings, and they know that the low numbers were wrong. Mr. Williams said that the numbers before 12/18/16 he would not use those to come up with any

conclusions. Rebecca Huss said that she was still not sure, because at 102% with only 4 inches of rain seems to be a little off. Rebecca Huss said that it was still a mess. Mayor Jones said that they have come a long way. Rebecca Huss said that was true and they have more data than they had before. Mr. Williams said that was the reason that they put the accuracy chart in the report so that they can show how they are checking on the accuracy of the readings. Rebecca Huss asked if they had just calibrated the totalizer. Mr. Williams said that was correct, they calibrate twice a year.

- G. Engineer's Report – Mr. Roznovsky presented his report to City Council. Mr. Roznovsky said that the Joint Mobility Study was presented at the Joint Council and Planning and Zoning Workshop Meeting on July 13, 2017, and since then they have met with Montgomery County Precinct 1, and they are working on scheduling the meeting with Precinct 2 to review the report. Mr. Roznovsky said that once they receive everyone's comments they will make the revised report. Mr. Roznovsky said that the City's permit was now in the hands of TCEQ, so there is nothing more for the City to do regarding the permit.

Mr. Roznovsky advised that the FEMA Flagship Boulevard Repair Project contractor has the contracts and expects to have them back this week, once they are signed they will be able to issue a Notice to Proceed. Mr. Roznovsky reported on the cleaning and televising project along FM 149, advising the contracts were received yesterday from the contractor, and they are doing a plan review and verifying the insurance, and then will be able to bring them to the City for execution and issuance of a Notice to Proceed.

Mr. Roznovsky reported on the General Land Office Disaster Relief funds, the documents have gone through approval from the County and now they are at the State for approval. Mr. Roznovsky said that the earliest that they have heard that the GLO funds would be made available for the City is October of this year. Mayor Jones asked about the list of projects that were presented in the beginning, and somebody, whether it was the County or whoever, said that it was a valid list. Mr. Roznovsky said that the first request was what the City would do with the funds, and the list of projects based on need. Mr. Roznovsky said the way that they based their distribution on the percent of low to moderate income households within the City and the amount of damage per

FEMA numbers that the City received. Mr. Roznovsky said that with the bridge and the high to low moderate income housing in the City, the City was ranked number two in poverty and number one in damage. Mayor Jones asked, when it comes time to distribute the funds, will it be done on an invoice basis or is there somebody that approves the project first. Mr. Roznovsky said that the County has told the State how they wanted to issue the funds, and then the State approves that distribution. Mr. Roznovsky said that they will then contact the municipalities and the cities will make an application directly to the State, with those projects, and then the State will approve it based on the list that the County gave them. Mayor Jones said that someone at the State will have to approve the project, and asked if they will have to approve the details of the project. Mr. Roznovsky said that they have been told that as long as the project falls within that category, and it meets the CDBG rules, which is low to moderate income households, that project will be approved. Mayor Jones said that they won't have to worry about the back and forth, government engineers, etc. Mr. Roznovsky said that this is a different system with disaster relief and not development, but you will still have to get approval of the contract documents, and have them release funds as invoices come in.

Mr. Roznovsky said that the TxDOT Meeting that was discussed earlier, TxDOT has agreed to conduct the meeting within the City limits, and during the evening hours so that the businesses and people can attend the meeting after work. Rebecca Huss asked what kind of person TxDOT would send to this meeting, would it be someone who legitimately has an authority to make changes to take the feedback or is it some intern. Mr. Roznovsky said that he did not know who they would be sending. Mr. Roznovsky said that they will have aerial drawings and drawings that they can pull up and put on a screen so that people can walk up and see the plans.

Mr. Roznovsky said that Buffalo Springs Public Water and Sewer construction is underway.

Mr. Roznovsky said that there was going to be a Change Order, which is going to take out some of the additional work. Mr. Roznovsky said that the contractor will close Flagship Boulevard on Wednesday after rush hour, have everything staged, tear out the

road and have it complete and back open on Monday. Mayor Jones asked if both lanes would be shut down. Mr. Shackelford said that the intersection would be closed completely. Mr. Roznovsky said that there were no damages in the contract, but the time frame was a stipulation in the contract. Mayor Jones said that it looks like it is more drying time than working time. Mr. Roznovsky said that was correct, and the contractor said that he had no issues with the amount of time to get the job done. Mr. Shackelford said that they were using a faster drying concrete mix instead of the usual type.

John Champagne asked to confirm that the police would coordinate and try to keep traffic moving as well as possible during this project. Mr. Yates said that was correct, and said that he has spoken to the Chief of Police regarding this project. Mayor Jones said that they would still allow traffic to go east bound. Mr. Roznovsky said that from the Brookshire Bros. driveway to SH 105, FM 149 will be closed, but the Brookshire Bros. driveway and apartment complex and everything going out to the east will be okay.

H. Financial Report – Mr. Yates presented the report to City Council. Mr. Yates advised that they have a summary report because Ms. Branco was working on the budget. Mr. Yates reported the following balances: General Fund - \$1,167,000, MEDC - \$783,000, Utility Fund - \$531,756, and said that all the accounts have revenue over expenses this year. Mayor Jones said that they were not busting the budget and doing all right.

Rebecca Huss moved to accept the Departmental Reports as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (3-0)

5. Consideration and possible action regarding scheduling a Public Hearing regarding an Alcohol Beverage Permit Application for the Cozy Grape Wine Bar and Bistro to change their existing Alcohol Beverage Permit to include mixed beverages as submitted by Tom Cronin.

Mr. Yates presented the information to City Council stating that the date that would need to be set for the Public Hearing would be August 22, 2017 at 6 p.m.

John Champagne moved to schedule the Public Hearing to be held on August 22, 2017 at 6 p.m. for consideration of the Alcohol Beverage Permit Application approval. Rebecca Huss seconded the motion.

Discussion: Rebecca Huss asked owner, Tom Cronin, if there was any limitation on the density of alcohol beverage permits in one square mile. Mr. Cronin said there were not, basically what he is doing is applying to move the existing mixed beverage permit, so it is a change of location and the other would be up to TABC. Mayor Jones asked Mr. Cronin if this would prevent him from selling beer and wine out the back door. Mr. Cronin said that he was going to check on that information, because he was not sure, he did not think so. Mr. Cronin said that he would not have mixed beverages outside, but with the wine and beer, people could walk around the Historic District in the area designated by the City's map.

The motion carried unanimously. (3-0)

6. Consideration and possible action regarding an Engagement Letter with Belt, Harris Pechacek C.P.A. firm to prepare Fiscal Year, 2016-2017 Audit.

Mr. Yates reported that the procurement process was structured so that the principal factor of the selection of an independent auditor is the auditor's ability to perform a quality audit. Price was not the sole criteria for the recommendation of the Review Committee. Mr. Yates advised that the RFP was sent to approximately 10 firms, including the previous auditor.

Mr. Yates advised that there were three submittals received by the City, as follows:

Belt Harris Pechacek, who has strong local government experience and their references were excellent. The quote received was \$14,500 for 2017, \$14,754 for 2018, \$15,012 for 2019 and \$15,275 for 2020. The second submittal was from Weaver and Associates, who also had strong local government experience. The references were not checked. Mr. Yates advised that the quote received from Weaver and Associates was o\$27,000 for 2017, \$28,000 for 2018, \$29,000 for 2019 and \$29,975 for 2020.

The final submittal was from McConnell Jones who also has strong local government experience. Their references were not checked. Their quote was as follows: \$29,100 for 2017, \$29,100 for 2018, \$29,100 for 2019 and \$29,975 for 2020.

Mr. Yates advised that due to the opinion that Belt Harris Pechacek was qualified, the Review Committee, consisting of Rebecca Huss, T.J. Wilkerson, Susan Hensley and himself, with Cathy Branco sitting in, decided to interview them in person, and unless they were unsatisfactory then, due to the extreme cost difference, the Committee did not see a reason to interview the other two submittals.

Mr. Yates said that the Committee conducted the interview with Stephanie Harris on July 13, 2017. Ms. Harris spoke well and her knowledge of accounting and auditing was well received by the Committee. The group discussed the process of the audit, document preparation by staff and auditor timing of completion of the audit, the City possibly trying to obtain a Government Accounting Financial Reporting (GAFR) at some point, not required but a recognition of excellent financial management. The group learned from Ms. Harris that Laura Ham would be the firm's contact/principal auditor so they asked for a resume of Ms. Ham, which has been provided.

Mr. Yates said that the Committee solidly recommends the firm of Belt Harris Pechacek for Auditor of the City.

Mr. Yates said that the Engagement Letter calls for four years as a standard set of terms, which the City Attorney has reviewed and approved. Rebecca Huss said that the Committee spoke to the partner that came out and she suggested that, if the City was happy, one of the ways to get around having to do this every three to four years, was to switch partners or the professional that deals with us get away from having the issue of too close of a relationship with your Auditor. You do not necessarily have to switch companies all together. Rebecca Huss said that most importantly they have a plan for providing a list of everything that they will require, we upload that information to their firm and then when they do their onsite visit, they have a specific list of things and it seems that they are much more efficient.

John Champagne said that he is constantly amazed with the disparity of the pricing. Dave McCorquodale said that it is significant. Rebecca Huss said that the Committee asked and they advised that unless something comes up that the City does not provide the information or there is a significant gap in what we tell them and how they find it, they are very confident that their proposal is accurate. Mayor Jones said that sometimes people price themselves out of a job on purpose. John Champagne said he understood that.

Rebecca Huss moved to approve the Engagement Letter with the Belt, Harris Pechacek C.P.A. firm to prepare Fiscal Year, 2016-2017 and beyond Audit, and authorize the Mayor to sign the letter. Dave McCorquodale seconded the motion, the motion carried unanimously. (3-0)

7. Report regarding Buffalo Springs Bridge Repair.

Mr. Roznovsky advised that since the last City Council Meeting, they had met with FEMA on July 19, 2017, when they provided them with a 16-page cost estimate for the City to review to confirm that all of our items that are included in the scope of work are included. Mr. Roznovsky said that they had completed that review, and they had some follow up questions to FEMA regarding this information and also request the write up from the Corp Review. Mr. Roznovsky said that as of today, they have completed all of the documentation that they have prepared, and they are okay with the information and that all the items in the scope of work are within their write up and cost estimate.

Mr. Roznovsky said that additionally, the Corp information will be submitted tomorrow, and all of the documentation is complete and executed and will be submitted for Corp review and permitting. Mr. Roznovsky said that they have worked with Congressman Brady's office and he has met with the Colonel with the Corp of Engineers to discuss this project, and as soon as this information is submitted to the Corp they will have a file number for the Corp and they will provide that number to the City and Congressman Brady's office.

Mr. Roznovsky said that Mr. Yates has gotten all the surrounding property owners to sign "hold harmless agreements" to allow the temporary construction access for the piping to be completed. They have also received an agreement from Mr. LeFevre to grant a permanent easement on the southwest corner of the bridge to complete the repairs and to do permanent improvements in that location.

Mr. Roznovsky said that all those items are what FEMA required to complete their write up, so all that will be sent to FEMA tomorrow, and he will have one final call in the morning, with FEMA, to confirm that everything is complete. Mr. Roznovsky advised that by the end of this week FEMA will have everything completed and written up internally, and will submit it to the additional internal review, which include the State level, then to Washington D.C. and the Office of Legislative Affairs. They will be working with Congressman Brady's office to make sure that this process goes smoothly. John Champagne said that Congressman Brady has been a lot of help with this project. Mr. Roznovsky said that their estimate in time is 2 to 2 ½ weeks from the end of this week for that project to be completed for obligation funds. Mayor Jones asked if there was a TCEQ approval in there somewhere. Mr. Roznovsky said that all the environmental reviews and permits have been completed, they are checking on the FEMA sign.

John Champagne asked if the bid packages are prepared and ready to go. Mr. Roznovsky said that they are finalizing the information so that they can solicit bids, and once they know that the funding is there they can bid the project.

Rebecca Huss asked how far the timeline has been pushed back from the May meeting that they had at the Community Center. Mr. Roznovsky said that where they were at that time, with the scope of work that they were proposing, there has only been one change and that is instead of a solid concrete bottom they changed to rip rap. Mr. Roznovsky said that this whole time has been a delay. Mr. Yates said that he thought where they took 2 ½ weeks for being able to bid, that was about what the estimate was and he thought that it was late August. Mr. Roznovsky said that it is close. Mr. Roznovsky said that one thing that has changed with the multiple FEMA reviewer is that at the Community Meeting in August they needed Corp approval documents prior to them obligating funds, now they just need a receipt that the documents have been submitted to the Corp of Engineers, then they can complete their process, obligate the funds and the funds will be released once the Corp permit is in hand. Mr. Roznovsky said that will all fall pretty well within the timeline of bidding and getting the contracts ready. John Champagne asked if Mr. Roznovsky had delegated any of this work to his team. Mr. Roznovsky said that they have had multiple engineers working on this, along with Katherine Ferry, and it has been a team effort.

8. Report regarding Buffalo Springs Bridge Repair Financing.

Mr. Yates advised that they have been discussing this information for several months, but did not know the precise figure. Mr. Yates said that they know the FEMA estimate of the bridge total cost is \$1,856,555. Mr. Yates said that FEMA will also pay us based upon the actual contract, so this might be the estimate, but they can go into it thinking that what FEMA has advised would actually be the amount, but will actually be the contract amount after the bid. Mr. Yates advised that the difference between the FEMA 75% contribution to the total cost of the bridge of \$1,856,555, in the amount of \$1,392,416, which will leave \$464,138 for the local share.

Rebecca Huss said that she knew that the City had to pay the 25% percent, but she thought that FEMA would pay 100% of the mitigation. Mr. Yates said that at their last meeting that information was incorrect, that as far as they know, the same person that told them several times that FEMA would pay 100% percent for the mitigation, but they were told that it is 75% percent of the total project. Mr. Yates said that the \$1,856,555 is the total mitigation figure. Mr. Yates said that will leave the City with \$464,138 of the City's share to the match. Mr. Yates said that he thinks that money will partially come from the CDBG-Disaster Relief Grant of approximately \$280,000. Mr. Yates said that as far as he knows, no one else has applied for those funds and they already have the application ready, as long as they can get the FEMA estimate and worksheet, they will be first in line to get the \$280,000 grant. Mr. Yates said that the grant itself is for \$310,000-\$315,000, but the Grant Administrator gets part of that money.

Mr. Yates said that the General Land Office Grant, if awarded, can pay the City's share with or without the CDBG Grant. Mr. Yates said that another way that they could come up with the balance for the grant would be to use fund balance from the City's General Fund, which they currently have \$1.1 million dollars, and this would be half of that balance. Mr. Yates said that another way would be to borrow funds as part of the larger purpose, such as, if they did not get the CDBG Grant and they had to borrow, they could tie those funds in with the street, water and sewer and other projects to get up to a million dollar financing, because projects under one million just cost so much for the issuance costs. Mr. Yates said that they could afford that with their debt fund, which they can discuss during budget preparation.

Mr. Yates said there was another method that he would suggest, is that they could get an interim loan that the City could borrow with pay estimates, with each one being roughly \$400,000. Mr. Yates said that they could borrow from the bank at 3 percent interest, as long as they paid it back in the same year. Mr. Yates said that if they put in their bids that they pay their bills within 30 days, that is what they are used to and they could include that in their project. Mr. Yates said that if they could not pay the contractor within 30 days they would be stuck with about 70-80 days of being assured of paying a person back. Rebecca Huss said that she was reading the 380 Agreement with Kroger, and there is actually a long leeway on when the City receives the sales tax funds and when the City owes the funds, so that might be another source of funds for timing the bills.

Mayor Jones said that one thing that Mr. Yates is suggesting, if the City has a line of credit with the bank, and we do not carry a balance for a very long period and the balance has to be paid to zero by the end of the fiscal year. Mr. Yates said that he thought the City will get the CDBG Grant, and they will also make up the difference of the funds with the GLO funds, and will actually come out ahead with the GLO grant. Mr. Yates said that he would proceed on the short term interim financing and will have the City Attorney prepare some documentation. Mayor Jones asked if Mr. Yates was going to shop interest rates, or was he going to stick with the City's bank. Mr. Yates said that he would advertise and offer it to our local banks, but they would discuss that at their next meeting. Rebecca Huss said that it would be done without using the financial advisor. Mr. Yates said that was correct, he would use the City Attorney and the City's accountant, because it is a really simple process. Mr. Yates explained how the cash flow process would work once they receive the invoice from the contractor, and how the funds would be processed.

9. Consideration and possible action regarding a Lease Agreement with Ramon Laughter regarding property north of Caroline Street at Liberty Street and McCown Street

Mr. Yates advised that on June 27, 2017 City Council approved a lease with Mr. Laughter for the property immediately north of Caroline Street. Mr. Yates said that in that lease was a paragraph regarding "first right of refusal" that allows 45 days for a decision by the City to make its choice of meeting a bona fide offer from another party to purchase the property. Mr. Yates said that when Mr. Laughter received the lease for his signature, upon further

consideration, he is now asking that the 45 days period be reduced to a 7-day period. The 7-day period would give the City that period of time to decide to purchase the property or not. Mr. Yates stated that the only thing that he could see with the 7-days would be if the owner required them to remove the paving and asked the City Attorney to comment. Mr. Foerster said that he was not concerned about that issue, he thought that the pavement would be an improvement that would be very attractive. Mr. Foerster said that he knew the Laughter family, and he represents them and he did not think that this is ever going to be a problem.

Rebecca Huss said that her only comment would be that she was not sure that 7 days would give the City enough time to have two meetings, assuming that MEDC would be involved, then City Council would have to approve the action. This would either require simultaneous meetings or, in order to have the required posting times for the approval, it would be a really short period of time for public meetings. Mr. Foerster said that he agreed with Rebecca Huss and said that the only thing that he could suggest, because this is an unforeseen circumstance, under the Texas Open Meetings Law, he thought this could be deemed an Emergency Meeting where you would only have to give a two-hour notice. Dave McCorquodale asked if they had to have everything done in 7-days or could they point a direction. Mr. Foerster said that in six months to a year, the family will probably be in a better position to evaluate what they want to do with the property.

Dave McCorquodale moved to approve the Amended Lease Agreement. John Champagne seconded the motion, the motion carried unanimously. (3-0)

10. Consideration and possible action regarding approval of paving downtown leased area for a parking lot.

Mr. Yates said that he had received the following three quotes regarding paving:

Laurel Paving	\$34,334.00
Facilities Sources	\$43,575.55
Mustang Concrete Solutions	\$76,250.00

Mr. Yates advised that Mr. Roznovsky as compared the quote for accuracy of meeting specification and he is recommending Laurel Paving.

Mr. Yates advised that the MEDC has approved up to \$38,000 for the paving contract. Mr. Yates said that their intention is to have the work completed before Wine Fest.

Rebecca Huss said that she thought that they had a meeting where the Engineer said that it was about the same cost for concrete as it was for asphalt. Rebecca Huss said that the City requires concrete without a variance. Rebecca Huss said that regarding the whole water issue, they are putting a hard surface down in an area where they already have issues with water runoff, and she had some concerns about that. Mr. Roznovsky advised that the water is going to be directed to an existing drain that is there, but yes, it would increase the runoff. Mayor Jones said that lot carries runoff that is coming down FM 149 and cuts into the parking lot and goes across, so when the curb and gutter on FM 149 occurs, it will improve that situation a little bit. Mayor Jones said that the lot was naturally sloped to carry the water straight to the drain. Mr. Yates said the reason that they were going with asphalt instead of concrete was because of the possibility of having to remove the surface. Rebecca Huss asked if it was more expensive to remove concrete versus asphalt. Mr. White said that the installation of asphalt is slightly cheaper than concrete, but the removal of the concrete is a little bit more expensive, by a \$1.00 per square foot. Mr. Yates said that asphalt is allowed. Mr. Roznovsky said that it is any hard surface, so concrete or asphalt would be okay, the variance would have been if they used crushed concrete.

John Champagne moved to approve Laurel Paving and approving the Montgomery EDC payment of up to \$38,000 for the paving of the parking lot south of the Cozy Grape Restaurant and north of Caroline Street, and to authorize the Mayor to sign the contract. Mr. Yates advised that the amount would need to be amended to \$38,615. John Champagne amended the amount of the contract to include \$38,615. Dave McCorquodale seconded the motion, the motion carried unanimously. (3-0)

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property),551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation

regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas.

11. Convene into Closed Executive Session as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code, in accordance with the authority contained in the following:

- a. 551.071 (confidential consultation with city attorney);
- b. 551.087 (deliberation regarding economic development negotiations for a possible Chapter 380 agreement concerning The Shoppes of Montgomery); and
- c. 551.087 (deliberation regarding economic development negotiations regarding commercial or financial information from a business prospect that the City Council seeks to locate, stay or expand in or near the City of Montgomery concerning Chris Cheatham.)

Mayor Jones convened into Closed Executive Session at 7:38 p.m.

12. Convene into Open Session.

Mayor Jones reconvened the Regular Meeting at 8:40 p.m.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

13. Consideration and possible action resulting from the item(s) listed under Executive Session.

No action was taken on this item.

COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

No comments were made.

ADJOURN

Dave McCorquodale moved to adjourn the meeting at 8:41 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (3-0)

Submitted by:  Date Approved: _____
Susan Hensley, City Secretary

Mayor Kirk Jones

ITEM# 12
Montgomery City Council
AGENDA REPORT

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits:
Date Prepared: August 3, 2017	

Subject

This is to consider approving a leave of absence for Council member Jon Bickford

Description

This was proposed by City Attorney, just for safety sake:
As the City Attorney wrote in a recent e-mail:

“As you know, TLGC Section 22.041 provides that the office of a council member who misses 3 consecutive meetings is automatically vacated.

Sec. 22.041. VACANCY ON GOVERNING BODY IS CREATED. (b) If a member of the governing body is absent for three regular consecutive meetings, the member's office is considered vacant unless the member is sick or has first obtained a leave of absence at a regular meeting.

Since Jon Bickford has missed two consecutive meetings due to his work, I suggest that the following agenda item be on your next meeting agenda unless we are confident Jon can be there:

- Consider approving a leave of absence for council member Jon Bickford.

This action will not be necessary if Mr. Bickford is at the Aug. 8th meeting.

ITEM# 3
Montgomery City Council
AGENDA REPORT

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
	Exhibits: Pages from District Budget Submission, Resolution approving budget
Prepared By: Jack Yates City Administrator	
Date Prepared: August 2, 2017	

Subject

Approval of Montgomery Emergency Communications District budget of 2018

Description

Attached is the budget information provided by the District.

The 2018 budget (\$829,000) is \$94,000 less than the 2017 budget (\$745,000). They have a \$4,518,600 Fund Reserve. The income for the 9-1-1 district comes from telephone landlines, wireless and VOIP fees. The city pays nothing for the services of emergency dispatch, maintaining an emergency Operations Center for communications, maintaining a GIS system that includes addressing of properties, early warning system.

Recommendation

Approval of Resolution as submitted.

Approved By



Montgomery County Emergency Communication District

July 19, 2017

Mayor Kirk Jones
City of Montgomery
Post Office Box 708
Montgomery, Texas 77356

Dear Mayor Jones:

The Montgomery County Emergency Communication District (MCECD) hereby submits a proposed budget in accordance with the Emergency Telephone Act of the Texas Health and Safety Code, Section 772.309. The budget was approved by the MCECD Board of Managers on July 19, 2017 for the fiscal year that begins on October 1st.

To be effective, the budget must be approved by a majority of the governing bodies of participating jurisdictions, such as your city, and by the Montgomery County Commissioners Court. The law allows sixty (60) days from the date of receipt to take action on this budget. If your governing body does not act within that time, your city's approval is granted automatically.

We request the opportunity to present MCECD's budget to your governing body in person so we can share information about our current operations and future plans. Please contact Terri Gill at 936 523-5911 or tgill@mc911.org with the date and time of the meeting at which that the District's budget will be considered. Additional budget details are available upon request.

I appreciate your continued support of the 9-1-1 system and your prompt attention to this matter.

Respectfully,

Chip VanSteenberg
Executive Director

CC: City Secretary
Enclosures



MEMORANDUM

TO: County and City Officials

FROM: Chip VanSteenberg, Executive Director

DATE: July 19, 2017

SUBJECT: MCECD Proposed Budget for Fiscal Year 2018

The Board of Managers for Montgomery County Emergency Communication District (MCECD) proposes the attached budget for the fiscal year that begins on October 1, 2017. This memo provides information about MCECD and the proposed budget.

MCECD INFORMATION

The Montgomery County Emergency Communication District (MCECD) is a special purpose district authorized and created under Chapter 772 of the State of Texas Health and Safety Code. MCECD is governed by a Board of Managers which consists of two members appointed by the Montgomery County Commissioner's Court, two members elected by the cities within the county and one member elected by the volunteer fire departments that operate in the county. The principal provider of telephone service in the county appoints a non-voting member to the board.

MCECD responsibilities are to:

- Provide and maintain the hardware, software and connections for a county-wide 9-1-1 system consisting of four public safety answering points (PSAPs) and a back-up facility at the county's Emergency Operations Center.
- Provide financial support to the two primary PSAPs which answer all 9-1-1 calls and route them to the appropriate agency depending upon location and the nature of the emergency.
- Maintain a Geographic Information System (GIS) and a comprehensive database of street center lines, street names, address ranges, service boundaries and other critical information.

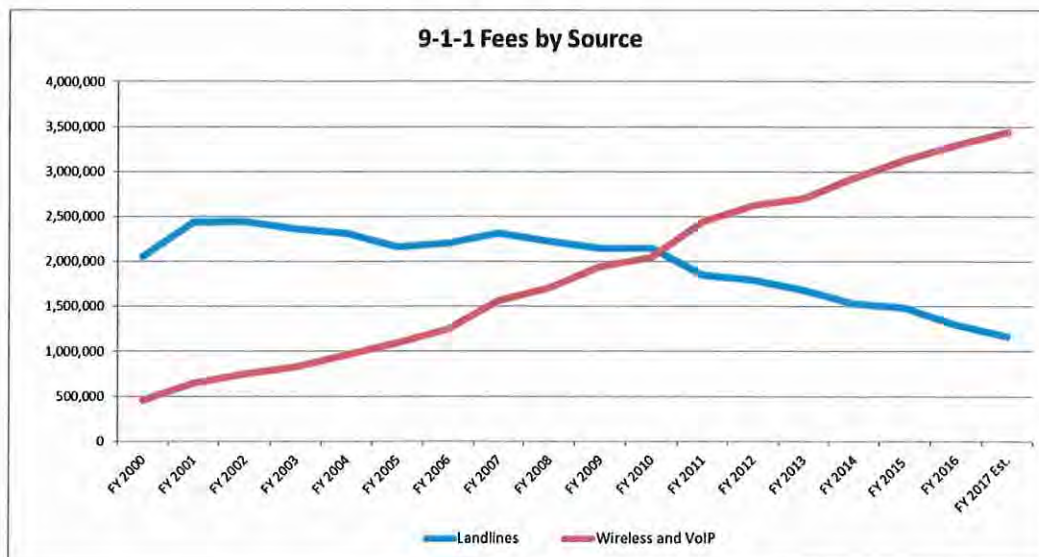
- Serve as the official addressor for the entire county
- Provide an early warning communication service
- Conduct public education on when and how to use the 9-1-1 system
- Assist PSAPs in training call-takers and dispatchers in the use of the 9-1-1 system

PROPOSED BUDGET - REVENUE

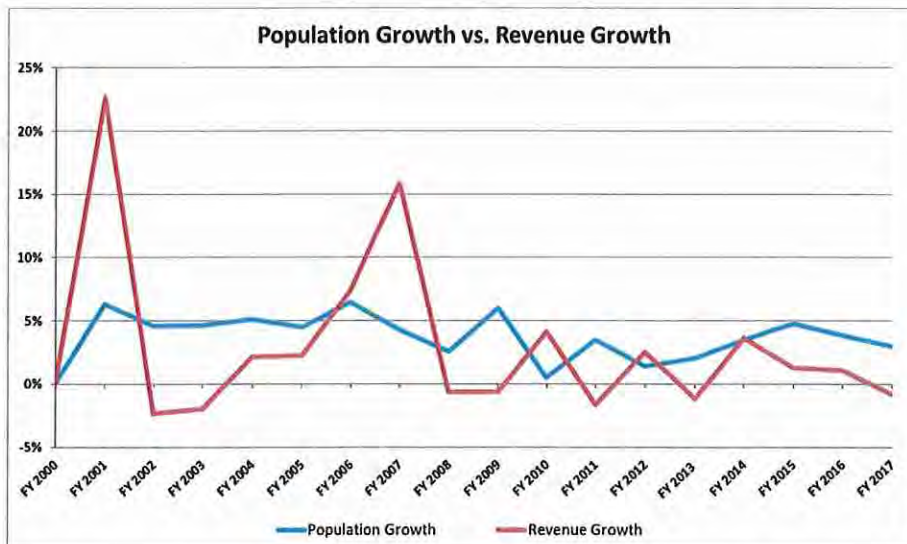
MCECD is funded primarily by fees assessed on telephone service; the amount of the fee varies by the type of service. The fee for local exchange access lines (commonly known as land lines) and for static Voice over Internet Protocol (VoIP) customers is 6% of the rate charged. The amount of the fee ranges from \$0.62 to \$1.66 per month for residential service. For business customers, the monthly fee starts at \$1.29 and goes up to \$2.23. Residents choosing telephone service provided over a device connected to the internet (known as Nomadic VoIP) pay \$0.50 per month. Landline and VoIP fees paid by Montgomery County customers are remitted directly to MCECD.

Mobile phone customers who contract for monthly service are assessed a fee of \$0.50 per month, per phone. Customers purchasing pre-paid wireless plans pay a 9-1-1 fee equal to 2% of the retail price for airtime. The wireless fees are collected by the service providers and paid directly to the State of Texas. The state then remits a proportional share of the revenue to emergency communication districts based on population.

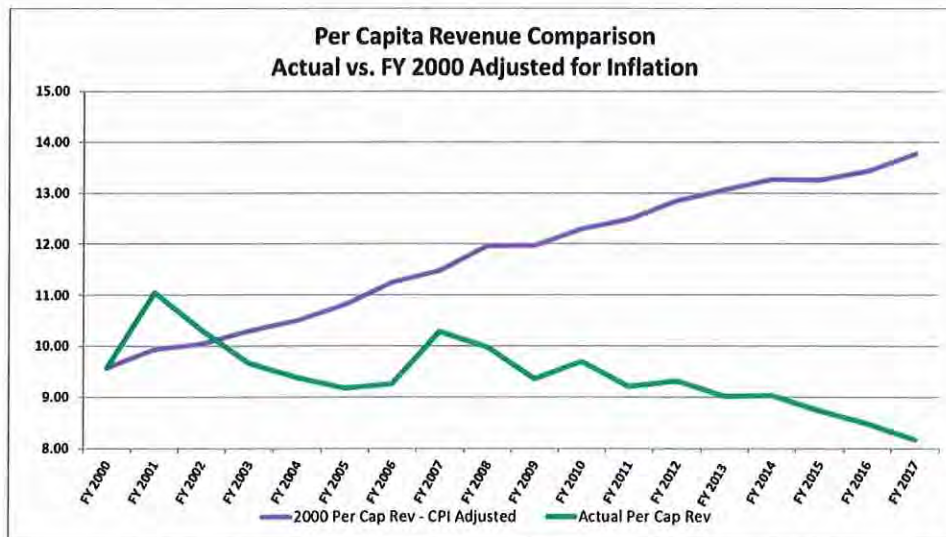
The long term trend shows phone customers replacing land lines with wireless phones and VoIP service. Therefore, revenue from wireless and VoIP providers is on the rise while land line revenue is still declining, as demonstrated here:



Overall, MCECD's revenue growth averaged 2.5% since Fiscal Year 2007. During that same time, the population growth has averaged 3.3% per year. This chart shows the annual change in revenue compared against the change in population.



Although revenue growth has kept up with the county's growing population, it has not kept pace with inflation. MCECD collected \$9.57 in 9-1-1 fees per person in 2000. That amount has fallen to \$8.49 per person, a decrease of \$1.08 per person. If adjusted for inflation, the 2000 amount equals \$13.77 in today's dollars. Therefore, MCECD is providing 9-1-1 service for 42% less than in Fiscal Year 2000.



MCECD expects to collect \$4,463,400 of revenue in FY 2018 which is 3.8% more than the budget for the current year. Due to conservative budgeting practices and prudent spending policies, the district is adequately funded, has no debt, and maintains adequate reserve balances for operations and capital purchases.

PROPOSED BUDGET - OPERATING EXPENDITURES

The proposed budget for expenses is \$4,374,900 which is 5.2% above the budget for FY 2017. Nearly half of the MCECD proposed operating budget is accounted for by two types of expenditures. The largest is \$1,540,000 for call taking services. MCECD contracts with the Montgomery County Sheriff's Office (MCSO) and the Conroe Police Department (CPD) to answer all 9-1-1 calls generated in the county. The other large set of expenditures is \$390,200 for the data and phone lines needed to operate the system and keep the 9-1-1 call centers connected. A new program to recruit, train, and hire 9-1-1 call-takers is included in the FY 2018 budget at an estimated cost of \$109,000. The program will assist MCSO and CPD maintain full staffing during periods of turnover.

PROPOSED BUDGET – CAPITAL EXPENSES

The largest planned capital is expense is \$490,000 for improvements within the PSAPs operated by the four partnering agencies. MCECD will contribute a maximum of \$100,000 toward a project that will improve the PSAP or the 9-1-1 call experience. Other anticipated capital expenses include replacing the district's computer servers and data storage system (\$150,000) and replacing an administrative vehicle (\$30,000).

RESOLUTION NO. _____

RESOLUTION APPROVING THE MONTGOMERY COUNTY
EMERGENCY COMMUNICATION DISTRICT BUDGET FOR
FISCAL YEAR 2018

WHEREAS, on July 19, 2017 the Board of Managers of the Montgomery County Emergency Communication District (MCECD) adopted a proposed budget for the fiscal year that begins on October 1, 2017; and

WHEREAS, the MCECD Board of Managers has submitted the proposed budget to City of Montgomery (Name of Participating Jurisdiction) for approval in accordance with the Emergency Telephone Act of the Texas Health and Safety Code, Section 772.309; and

WHEREAS, to be effective the budget must be approved by the Montgomery County Commissioners Court and by a majority of the governing bodies of the participating jurisdictions; and

WHEREAS, if the governing body of a participating jurisdiction does not approve or disapprove of MCECD's budget before the sixty first (61st) day after the date receipt, the budget is approved by that participating jurisdiction by operation of law; and

WHEREAS, the budget is satisfactory as submitted;

NOW, THEREFORE, BE IT RESOLVED BY THE City of Montgomery
(Governing Body of the Participating Jurisdiction) that the Montgomery County Emergency Communication District's Budget for Fiscal Year 2018 is approved.

Passed and approved this 8th day of August, 2017.

Kirk Jones
Title: Mayor

ATTEST: _____

Name: Susan Hensley

Title: City Secretary



Montgomery County Emergency Communication District Proposed Budget for Fiscal Year 2018

OPERATING REVENUES & EXPENSES	FY 2017 Budget	FY 2018 Budget
REVENUES		
9-1-1 Fees - Landlines	\$ 1,128,300	\$ 1,029,600
9-1-1 Fees: Wireless	2,456,800	2,580,600
9-1-1 Fees: Voip	693,000	804,000
Interest Earned	18,000	45,600
Other Income	3,600	3,600
Total Revenues	\$ 4,299,700	\$ 4,463,400
OPERATING EXPENSES		
Cost of Services	\$ 2,346,500	\$ 2,363,900
Personnel Costs	\$ 1,360,200	\$ 1,535,800
General & Administrative Costs	\$ 452,700	\$ 475,200
Total Expenditures	\$ 4,159,400	\$ 4,374,900
Surplus of Revenues over Expenditures	\$ 140,300	\$ 88,500
Emergency Allocation for Repairs and Replacements	\$ 500,000	\$ 500,000
CAPITAL OUTLAY	FY 2017 Budget	FY 2018 Budget
Estimated Project Costs		
9-1-1 System	\$ 200,000	\$ 75,000
PSAP Improvement Grants	400,000	490,000
Other Technology	42,000	150,000
Facilities	187,000	-
Vehicles	-	30,000
Total Estimated Project Costs	\$ 829,000	\$ 745,000



**Montgomery County Emergency
Communication District
Proposed Budget for Fiscal Year 2018**

Cash Flow Estimates

Operating Funds

Estimated Cash Balance on 10/1/2017	\$ 6,643,900
Surplus of Revenues over Expenditures	88,500
<u>Net Funds Available</u>	<u>6,732,400</u>
Operating Reserve (4 months of expenses)	1,406,900
Emergency Allocation for Repairs and Replacements	500,000
Capital Reserve	5,175,100
<u>Total for Restricted Reserves</u>	<u>6,582,000</u>
Unencumbered Reserves (est. on 9/30/2018)	\$ 150,400

Capital Outlay

Estimated Capital Reserve on 10/1/2016	\$ 5,175,100
Net Proceeds from Operations	88,500
<u>Available for Capital Outlay</u>	<u>5,263,600</u>
Capital Outlay Budget for FY 2017	745,000
Estimated Capital Reserve on 9/30/2017	\$ 4,518,600

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Budget calendar
Date Prepared: August 3, 2017	

Subject

Calling a public hearing for the 2017-2018 budget

Description

This is the calling of the required public hearing. To meet the time of publication and having the hearing requirements, it is recommended to call the Public Hearing for August 22nd, the second regular City Council meeting date.

Recommendation

Motion to set August 22nd for the public hearing date for the 2017-2018 budget..

Approved By

City Administrator	Jack Yates	Date: August 3, 2017
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2017 Budget Preparation Calendar

Date	Task	Responsible Party
3-Jul	Staff Budgets Due, Preliminary Tax Roll Estimate	Staff
18-Jul	Preliminary Budget to Council	Staff
20-Jul	Council Budget Workshop 6 pm	City Council, Administrator and Dept. Heads
27-Jul	Council Budget Workshop 6 pm	City Council and Administrator
25-Jul	Certification of Tax Roll	Mont. Central Appraisal District
28-Jul	Proposed budget filed with City Secretary (must be 30 days before tax levy)	Mayor
4-- Aug	Calculation of Effective Tax Rate	Mont. Central Appraisal District
8-- Aug	Call public hearings on Effective Tax Rate	City Council
8--Aug	Call Public Hearing on Budget	City Council
11-Aug	Publish notice of date of public hearing on proposed budget (must be 10-30 days before hearing)	City Secretary
17-Aug	Council Budget Workshop (6pm) (if needed)	City Council and Administrator
22-Aug	Public hearing on proposed budget (6pm) (must be at least 15 days after filing of proposed budget)	City Council
22-Aug	1st public hearing on Effective Tax Rate (two public hearings required)	City Council
29-Aug	2nd Public Hearing on Effective Tax Rate (two public hearings required)	City Council
12-Sep	Adopt budget for FY 2015 (7pm) (must be adopted before setting the tax rate)	City Council
12-Sep	Adopt tax rate	City Council
12-Sep	Set 2014 tax rate (7pm) (must be adopted by Sept. 15 to ensure Tax Statements are mailed as early as possible)	City Council

ITEM# 5
Montgomery City Council
AGENDA REPORT

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: 2017 Property Tax Rates In City of Montgomery Worksheet from County Treasurer
Date Prepared: August 3, 2017	

Subject

Calling a public hearing for exceeding the 2017 Effective Tax Rate for the 2017-2018 budget.

Description

This is the acknowledgement of the Effective Tax Rate and Rollback Rates as shown on the attached Worksheet from the County Treasurer. The Effective Tax Rate is .3660 and the Rollover Tax Rate is .5110.

The Effective Tax Rate is what the tax rate would be to collect the same amount of taxes as in 2016-2017. With the increase of approx. \$35,000,000 of taxable value the Effective Tax Rate (to being in the same \$691,112 as this year the tax rate would be .3660.

The Rollover Rate is the available Tax Rate that the City could collect legally based on the percentage of increase allowed each year in the law. The Council has decided that growth of the assessment is roughly equal to the growth in city services needed so the Council is keeping the same .4155 Tax Rate just as it has for at least the last six years.

However, the council in budget planning has decided to keep the same Tax Rate of .4155 in order to grow the budget with the equal increase in demand for services, believing that by keeping the tax rate the same that the growth in the budget is paid for by the new growth.

Montgomery City Council
AGENDA REPORT

The way it worked out this year is that the increase of approx.. \$35,000,000 in new growth of assessment--- that resulted in \$145,425 in total revenue for the city, further broken down by .2043 in General Fund Maintenance and Operation resulting in \$71,505 additional funds, and to Debt Service \$73,920.

Recommendation

(The Motion must read as follows):
Motion to acknowledge and accept the Effective Tax Rate and the Rollover Tax Rate calculations as presented in the City of Montgomery Worksheet from the County Treasurer.

Approved By

City Administrator

Jack Yates

Date: August 3, 2017

2017 Property Tax Rates in City of Montgomery

This notice concerns the 2017 property tax rates for City of Montgomery. It presents information about three tax rates. Last year's tax rate is the actual tax rate the taxing unit used to determine property taxes last year. This year's *effective* tax rate would impose the same total taxes as last year if you compare properties taxed in both years. This year's *rollback* tax rate is the highest tax rate the taxing unit can set before taxpayers start rollback procedures. In each case these rates are found by dividing the total amount of taxes by the tax base (the total value of taxable property) with adjustments as required by state law. The rates are given per \$100 of property value.

Last year's tax rate:

Last year's operating taxes	\$340,131
Last year's debt taxes	\$351,618
Last year's total taxes	\$691,749
Last year's tax base	\$166,485,921
Last year's total tax rate	\$0.4155/\$100

This year's effective tax rate:

Last year's adjusted taxes (after subtracting taxes on lost property)	\$691,112
÷ This year's adjusted tax base (after subtracting value of new property)	\$188,776,941
=This year's effective tax rate	\$0.3660/\$100

(Maximum rate unless unit publishes notices and holds hearings.)

This year's rollback tax rate:

Last year's adjusted operating taxes (after subtracting taxes on lost property and adjusting for any transferred function, tax increment financing, state criminal justice mandate, and/or enhanced indigent healthcare expenditures)	\$806,320
÷ This year's adjusted tax base	\$188,776,941
=This year's effective operating rate	\$0.4271/\$100
x 1.08=this year's maximum operating rate	\$0.4612/\$100
+ This year's debt rate	\$0.2814/\$100
= This year's total rollback rate	\$0.7426/\$100
-Sales tax adjustment rate	\$0.2316/\$100
=Rollback tax rate	\$0.5110/\$100

Statement of Increase/Decrease

If City of Montgomery adopts a 2017 tax rate equal to the effective tax rate of \$0.3660 per \$100 of value, taxes would increase compared to 2016 taxes by \$45,619.

Schedule A - Unencumbered Fund Balance

The following estimated balances will be left in the unit's property tax accounts at the end of the fiscal year. These balances are not encumbered by a corresponding debt obligation.

Type of Property Tax Fund	Balance
DEBT SERVICE FUND- I&S TAXES	197,328
GENERAL FUND- M&O TAXES	674,300

Schedule B - 2017 Debt Service

The unit plans to pay the following amounts for long-term debts that are secured by property taxes. These amounts will be paid from property tax revenues (or additional sales tax revenues, if applicable).

Description of Debt	Principal or Contract Payment to be Paid from Property Taxes	Interest to be Paid from Property Taxes	Other Amounts to be Paid	Total Payment
2012 GENERAL OBLIGATION	120,000	57,088	0	177,088
2012 TAX & REVENUE BOND	105,000	38,160	0	143,160
2015 GENERAL OBLIGATION	80,000	7,761	0	87,761
REFUNDING BOND				
2017 A&B TAX & REVENUE CERTIFICATE OF OBLIGATION	130,000	29,049	0	159,049

Total required for 2017 debt service	\$567,058
- Amount (if any) paid from Schedule A	\$0
- Amount (if any) paid from other resources	\$0
- Excess collections last year	\$0
= Total to be paid from taxes in 2017	\$567,058
+ Amount added in anticipation that the unit will collect only 100.00% of its taxes in 2017	\$0
= Total debt levy	\$567,058

Schedule C - Expected Revenue from Additional Sales Tax

In calculating its effective and rollback tax rates, the unit estimated that it will receive \$466,510 in additional sales and use tax revenues.

This notice contains a summary of actual effective and rollback tax rates' calculations. You can inspect a copy of the full calculations at 400 N. SAN JACINTO CONROE, TEXAS 77301
tammy.merae@mctx.org.

Name of person preparing this notice: Tammy McRae
Title: TAX ASSESSOR/COLLECTOR
Date Prepared: 07/26/2017

Meeting Date: <i>August 8, 2017</i>	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits:
Date Prepared: <i>August 3, 2017</i>	

Subject

Discussion of Tax Rates Needed to Fund the 2017-2018 Budget for Maintenance and Operations and Debt Service.

Description

This is a required item on the law for you to publicly discuss the M and O and Debt Service split of property taxes received.

Total property taxes at .4155 tax rate will bring in a total of \$818,414. The current split of the tax rate is ,2043 for M and O to General Fund and .2112 for Debt Service.

The increased amount from last year to this year for M and O in General Fund is \$71,505 and the increase to Debt Service fund is \$73,920. The Council felt, during budget discussions that keeping the current split allowed growth in each of those funds enough to allow for the related increase of services due to growth in the city. For the M and O property taxes and an increase in sales tax collections met the increase in the General fund Budget. For the Debt Service the increase allows an opportunity to set aside funds enough to borrow for long term needs should that need arise.

Recommendation

Have a brief discussion or simply agree with the rationale given above. No action required.

Montgomery City Council
AGENDA REPORT

Approved By		
City Administrator	Jack Yates	Date: August 3, 2017

ITEM# 7
Montgomery City Council
AGENDA REPORT

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
	Exhibits: Draft Notice of Public Hearing that is prepared and published by the County Treasurer
Prepared By: Jack Yates City Administrator	
Date Prepared: August 3, 2017	

Subject

Consideration on Proposed Tax Rate for 2017

Description

This is to establish a Proposed Tax Rate in order for the public hearings to have a basis of discussion. There has to be a public hearing (further on tonight's agenda) if the Council wants to exceed the Effective Tax Rate.

In order to know if that exceeding is going to happen the Council has to establish a Proposed Tax Rate before a notice can be published with a proposed tax rate,

In budget discussions the City Council is proposing keeping the tax rate at .4155 per hundred dollars of property valuation

Recommendation

(The Motion must read as follows):

Motion to Propose in the 2017-2018 budget a Property Tax Rate of .4155

Montgomery City Council
AGENDA REPORT

Approved By		
City Administrator	Jack Yates	Date: August 3, 2017

Notice of Public Hearing on Tax Increase

The City of Montgomery will hold two public hearings on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by -100.00 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code). Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

The first public hearing will be held on ~~it~~ ^{at} at 6:00 p.m. August 22, 2017 at 101 old Plantersville Road, Montgomery, Texas

The second public hearing will be held on ~~it~~ ^{at} at 6:00 p.m. August 29, 2017 at 101 old Plantersville Road, Montgomery, Texas

The members of the governing body voted on the proposal to consider the tax increase as follows:

FOR:

AGAINST:

PRESENT and not voting:

ABSENT:

\$236,373

The average taxable value of a residence homestead in City of Montgomery last year was \$0. Based on last year's tax rate of \$0.4155 per \$100 of taxable value, the amount of taxes imposed last year on the average home was \$0. ~~\$~~ 981.82

\$251,750

The average taxable value of a residence homestead in City of Montgomery this year is \$0. If the governing body adopts the effective tax rate for this year of \$0.3660 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be

~~\$~~ 921.40

If the governing body adopts the proposed tax rate of ~~\$0.0000~~ ^{0.4155} per \$100 of taxable value, the amount of taxes imposed this year on the average home would be ~~\$0.~~ \$1,070.95

Members of the public are encouraged to attend the hearings and express their views.

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Budget Calendar, 2017 Property Tax Rates In City of Montgomery Worksheet from County Treasurer
Date Prepared: August 3, 2017	

Subject

Calling a public hearing for exceeding the 2017 Effective Tax Rate for the 2017-2018 budget.

Description

This is the acknowledgement of the Effective Tax Rate and Rollback Rates as shown on the attached Worksheet from the County Treasurer. The Effective Tax Rate is .3660

The Effective Tax Rate is what the tax rate would be to collect the same amount of taxes as in 2016-2017. With the increase of approx.. \$35,000,000 of taxable value the Effective Tax Rate (to being in the same \$691,112 as this year the tax rate would be .3660.

However, the council in budget planning has decided to keep the same Tax Rate of .4155 in order to grow the budget with the equal increase in demand for services, believing that by keeping the tax rate the same that the growth in the budget is paid for by the new growth.

The way it worked out this year is that the increase of approx... \$35,000,000 in new growth of assessment--- that resulted in \$145,425 in total revenue for the city, further broken down by .2043 in General Fund Maintenance and Operation resulting in \$71,505 additional funds, and to Debt Service \$73,920.

Montgomery City Council
AGENDA REPORT

As further explanation of the options the Council has regarding the Tax Rate—The Rollover Rate is the available Tax Rate that the City could collect legally based on the accumulated percentage of increase allowed each year in the law. That rate is .5110. But the Council has decided that growth of the assessment is roughly equal to the growth in city services needed so the Council is keeping the same .4155 just as it has for at least the last six years.

Recommendation

(The Motion must read as follows):

Motion to set August 22nd and August 29th at 6:00 p.m. at City Hall, 101 Old Plantersville Road, Montgomery, Texas for the two public hearings regarding Exceeding the Effective Tax Rate for the 2017-2018 budget

Approved By

City Administrator

Jack Yates

Date: August 3, 2017

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This notice contains a summary of actual effective and rollback tax rates' calculations. You can inspect a copy of the full calculations at 400 N. SAN JACINTO CONROE, TEXAS 77301
tammy.merae@metx.org.

Name of person preparing this notice: Tammy McRae
Title: TAX ASSESSOR/COLLECTOR
Date Prepared: 07/26/2017

2017 Budget Preparation Calendar

Date	Task	Responsible Party
3-Jul	Staff Budgets Due, Preliminary Tax Roll Estimate	Staff
18-Jul	Preliminary Budget to Council	Staff
20-Jul	Council Budget Workshop 6 pm	City Council, Administrator and Dept. Heads
27-Jul	Council Budget Workshop 6 pm	City Council and Administrator
25-Jul	Certification of Tax Roll	Mont. Central Appraisal District
28-Jul	Proposed budget filed with City Secretary (must be 30 days before tax levy)	Mayor
4-- Aug	Calculation of Effective Tax Rate	Mont. Central Appraisal District
8-- Aug	Call public hearings on Effective Tax Rate	City Council
8--Aug	Call Public Hearing on Budget	City Council
11-Aug	Publish notice of date of public hearing on proposed budget (must be 10-30 days before hearing)	City Secretary
17-Aug	Council Budget Workshop (6pm) (if needed)	City Council and Administrator
22-Aug	Public hearing on proposed budget (6pm) (must be at least 15 days after filing of proposed budget)	City Council
22-Aug	1st public hearing on Effective Tax Rate (two public hearings required)	City Council
29-Aug	2nd Public Hearing on Effective Tax Rate (two public hearings required)	City Council
12-Sep	Adopt budget for FY 2015 (7pm) (must be adopted before setting the tax rate)	City Council
12-Sep	Adopt tax rate	City Council
12-Sep	Set 2014 tax rate (7pm) (must be adopted by Sept. 15 to ensure Tax Statements are mailed as early as possible)	City Council

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Design Manual for Installation of Network Nodes and Node Support Poles
Date Prepared: August 3, 2017	

Subject

Consideration of a Design Manual for providing guidance to placement of Network Nodes and Node Support Poles and other Node related facilities.

Description

This is a proposed Design Manual coming from the City Attorney, based on his review of the new Chapter 284 law regarding telecommunication towers.

I have highlighted in the attached Ordinance what I felt are the most important portions.

Purpose, p. 3 – States the purpose of the Design Manual is to cause compliance with the State Law Chapter 284 and to give guidance to the Network Provider and Council regarding Node Telecommunications.

Section 3 (A), Page 8—Prohibits Nodes in Parks, Historic Districts, 50' wide or less pavement areas, residential districts.

Section 3 (c), Page 9 --- gives most preferred locations as Industrial areas, Retail/commercial areas.

Section 3 (E), Page 9 – Allows Council discretion , if done fairly.

Section 3 (F), Page 10—Gives Order of Preference to Support Pole types of poles.

Section 4 (c), Page 12 gives location descriptions of pole/facilities to be within 2' of r-o-w edge, at least 8' above ground, and one Node per pole.

Section 4 (E), Page 13 – describes how ground equipment can be placed, not within 250' of an intersection, not within 250' of a Park. Also, describes proximity of Node facilities to water, sewer, storm drainage lines and streets.

Section 8, Page 17 – Node facilities must be moved for public projects at no cost to City.

Section 8 (c), Page 18 – Removal of Node facilities is requested by City, for justifiable reason.

Section 9 (B) , page 19-- Allows inspections by city with notice and right to be present

Section 11 (9.2), page 22 -- General conditions: mapping, courtesy of employees, Ownership of Nodes (No transfer of ownership responsibilities) , graffiti removal, restoration/repairs of r-o-w's, responsibilities of employees/agents with Provider.

Section 12, Page 22 – The Zoning Board of Adjustment serves as the Board of Appeals to conditions required in the Design Manual.

Recommendation

Receive the full report from the City Attorney and adopt the Design Manual as discussed/ with any amendments.

Approved By

City Administrator

Jack Yates

Date: July 21, 2017

Design Manual
by the City of Montgomery,
Texas

for the

*Installation of Network Nodes and Node Support Poles
pursuant to Tex. Loc. Gov. Code, Chapter 284.*

Table of Contents

SECTION 1. PURPOSE AND APPLICABILITY.....	3
SECTION 2. DEFINITIONS.....	3
SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.....	7
SECTION 4. GUIDELINES ON PLACEMENT.....	11
SECTION 5. GENERAL AESTHETIC REQUIREMENTS.....	15
SECTION 6. ELECTRICAL SUPPLY.....	16
SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.....	17
SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR.....	17
SECTION 9. INSTALLATION AND INSPECTIONS.....	19
SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.	19
SECTION 11. GENERAL PROVISIONS.....	20
SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION.....	22
SECTION 13-19 RESERVED.....	23
SECTION 20. DESIGN MANUAL - UPDATES.....	23

SECTION 1. PURPOSE AND APPLICABILITY.

The City of Montgomery, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

Purpose: Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles”.

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301¹, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

City Rights-of-Way Management Ordinance: A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

SECTION 2. DEFINITIONS.

The definitions as used in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.²

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means:

- (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Montgomery, Texas or its lawful successor.

City Administrator shall mean City Administrator or designee

City Council means the municipal governing body of the City of Montgomery, Texas.

Chapter 284 means Tex. Loc. Gov. Code, Chapter 284.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Disaster emergency or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

Distributed Antenna System or DAS shall be included as a type of "Network Node."

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law. The City of Montgomery has designated a historic preservation district within Chapter 98, "Zoning," of the City Code of Ordinances. All references to *Historic Districts* shall mean the historic preservation district which is described by the map attached as Exhibit "A" attached to and incorporated in this Design Manual.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City of Montgomery, Texas, or designee.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

MUTCD means Manual of Uniform Traffic Control Devices.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

- (B) does not include:
- (i) an electric generator;
 - (ii) a pole; or
 - (iii) a macro tower

Network provider means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (i) network nodes; or
 - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, municipally owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Public right-of-way management ordinance means an ordinance that complies with Chapter 284, Subchapter C.

SCADA or Supervisory Control and Data Acquisition systems means a category of software application programs and hardware used by the City for process control and gathering of data in real time from remote locations in order to monitor equipment and conditions of the City public water and wastewater utility facilities. These systems may utilize both cable and wireless communications.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;

- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Small cell shall be included as a type of “Network Node.”

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Underground Requirement Area shall ~~mean~~ mean an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

1. Municipal Parks and Residential Areas. In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

a. not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

b. adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

1.2 Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. Historic District and Design Districts. In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. A Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

B. Least preferable locations.

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1. In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

C. Most preferable locations

1. **Industrial areas** if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. **Highway Rights-of-Way** areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

D. Designated Areas.

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

3. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

E. Exceptions

The City by its discretionary consent and agreement may grant exceptions to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

3. *Municipal Service Poles:*

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

SECTION 4. GUIDELINES ON PLACEMENT.

A. Generally.

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the City's publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

B. General Requirements and Information:

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.³

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication or SCADA Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved

by the City Administrator and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

b. **Notice to Remove unauthorized facilities and relocate and penalty:** After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500.00 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

B. Underground Requirement Areas.

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Dig Tess must be called so that the area can be flagged for underground utilities.

C. Network Node facilities placement:

1. **Right-of-Way:** Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. **Height above ground.** Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

D. New Node Support Poles.

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- b. 55 feet above ground level.

E. Ground Equipment.

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. *Ground Equipment near Municipal Parks.* For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Administrator in writing.

3. *Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

4. *Water, Sewer and Storm Drainage Lines:*

Special precautions must be taken where underground fiber optic cable is installed in public street right-of-ways commonly used for utility corridors.

- a. Underground utilities and service connections must be identified prior to excavation. "Dig Alert," "One Call," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.
- b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.
- c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe of avoid future damage.
- d. *Existing Water Lines:* No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.
- e. *Existing Sewer Lines:* No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.
- f. *Existing Storm Drainage Lines:* No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

5. *Blocking streets, roads, alleys or lanes:*

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

F. Municipal Service Poles:

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

4. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- a. Be encased in a separate conduit than the traffic light electronics;
- b. Have a separate electric power connection than the traffic signal structure; and
- c. Have a separate access point than the traffic signal structure; and

5. *Installations on Street signage:* Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

- a. Be encased in a separate conduit than any City signage electronics;
- b. Have a separate electric power connection than the signage structure;
- c. Have a separate access point than the signage structure; and

6. *Restoration of City facilities and private property:* The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External

cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

4. The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

B. New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

D. Allowed Colors.

1. Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Colors in Historic Districts and Design Districts must be approved by the City Administrator from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

SECTION 6. ELECTRICAL SUPPLY

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Public Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.

A. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

B. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR

A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Administrator in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the City managing the public right-of-way

3. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

4. Network Provider shall, at the City Administrator's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Administrator reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the traveling public's use for travel and transportation.

5. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Administrator within 90 days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

6. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Administrator if the City Administrator reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

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2. If the City Administrator reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Administrator if the City Administrator reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network

Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Administrator reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.

4. The City Administrator shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

5. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. INSTALLATION AND INSPECTIONS

A. INSTALLATION.

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Administrator, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Administrator. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

B. INSPECTIONS.

1. The City Administrator, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. The City Administrator, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Administrator deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Administrator shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

1. Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Administrator in writing of such removal or Abandonment and shall file with the City Administrator the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Administrator may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

1. **As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

1.1 A Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

2. **Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2.1 A Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Administrator or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

3. DRUG POLICY. Drug policy of Network provider's personnel, and contractors in the public rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE. The City Council has currently appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under the law.

5. OWNERSHIP. Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable codes and ordinances, except to the extent not consistent with Chapter 284.

5.1 No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Administrator prior to any work in the Right-of-Way.

6. Tree Maintenance. Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, its tree preservation ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

6.1 A Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Administrator, Network Provider shall trim under the supervision and direction of the City Administrator. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

7. Signage. Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

7.1 Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the City Administrator.

7.2 Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

8. Graffiti Abatement. Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

8.1 As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

9. Restoration.

9.1 A Network Provider shall restore and repair of the public rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

9.2 A Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Administrator.

10. Network provider's responsibility.

10.1 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

10.2 A Network Provider shall be responsible and liable for the acts and omissions of the Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole, Transport Facility and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION

12.1 Should the Network Provider desire to deviate from any of the standards set forth in the Design Manual, the Network Provider may request an Administrative Hearing before a Board

of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption.

12.2 The process for an application, hearing and vote shall follow the process set out for a variance.

SECTION 13-19 RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole, Transport Facility, and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

¹ Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

² The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a

uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway,

street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.

³ Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:

(A) must be located inside an enclosure of not more than six cubic feet in volume;

(B) may not exceed a height of three feet above the existing structure or pole; and

(C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:

(A) must fit within an imaginary enclosure of not more than six cubic feet;

-
- (B) may not exceed a height of three feet above the existing structure or pole; and
 - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
- (A) be more than 28 cubic feet in volume; or
 - (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
- (4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
- (5) pole-mounted enclosures may not be taller than five feet.
- (b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):
- (1) electric meters;
 - (2) concealment elements;
 - (3) telecommunications demarcation boxes;
 - (4) grounding equipment;
 - (5) power transfer switches;
 - (6) cut-off switches; and
 - (7) vertical cable runs for the connection of power and other services.
- (c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- (d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Pole Attachment Agreement
Date Prepared: August 3, 2017	

Subject

Consideration of a Poles Attachment Agreement between the Network Provider and the City.

Description

This is a proposed Pole Attachment Agreement coming from the City Attorney, based on his review of the new Chapter 284 law regarding telecommunication towers.

I have highlighted in the attached proposed Agreement what I felt are the most important portions.

Section 1. Gives the locations of the Network Node locations applied for.

Section 2. The Network Provider agrees to the terms of the City Design Manual and right-of-Way Management Ordinance.

Section 6. gives the term of the Agreement is five (5) years with automatic one (1) year renewals unless either party gives sixty (60) days written notice of the intent to terminate the Agreement.

Sections 8 and 10 states that any proceeding at law, the venue is Montgomery county, Texas.

Montgomery City Council
AGENDA REPORT

Recommendation

Receive the full report from the City Attorney and adopt the Pole Attachment Agreement as discussed/ with any amendments.

Approved By

City Administrator	Jack Yates	Date: July 21, 2017
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TEXAS LOCAL GOVERNMENT CODE CHAPTER 284

POLE ATTACHMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

THIS AGREEMENT is made and entered into pursuant to Section 284.056, Section 284.201, and Section 284.301 of the Texas Local Government Code, effective this _____ day of _____ 20____, by and between the CITY OF MONTGOMERY, TEXAS, hereinafter called "the City", and _____, hereinafter called "the Network Provider," and is as follows:

WHEREAS, the Network Provider is a wireless telecommunications *network provider* as that term is defined in Section 284.002 of the Texas Local Government Code ("the Code"); and

WHEREAS, the City owns certain public rights-of-way with service and or utility poles within its municipal territorial limits; and

WHEREAS, the Network Provider desires to attach certain *Network Nodes*, as that term is defined in Section 284.002 of the Code, on City-owned service poles and/or utility poles; and

WHEREAS, the Network Provider and the City desire to enter into this Agreement to secure authority from the City for the Network Provider to install certain Network Nodes on such City poles, subject to the City's Design Manual for the Installation of Network Nodes and Node Support Poles ("the Design Manual") and the City's Right-of-Way Management Ordinance; and

WHEREAS, this Agreement is entered into pursuant to Chapter 284 of the Texas Local Government Code, in order to address the desires of the Network Provider and the procedures of the City; and

WHEREAS, the Network Provider and the City acknowledge that this Agreement is binding upon the City and the Network Provider and their respective successors and assigns for the term (defined below) of this Agreement; and

NOW, THEREFORE, BE IT MUTUALLY AGREED AS FOLLOWS:

1. **Location of the City Poles.** The Service and/or Utility Poles owned by the City on which the Network Nodes are to be attached by the Network Provider are generally described as:

2. The Network Provider acknowledges that it has received and reviewed the applicable provisions in the City Design Manual and the Right-of-Way Management Ordinance; and further acknowledges that this Pole Attachment Agreement is subject to the terms and regulations of each.

3. The Network Provider agrees to pay the City for collocation of its Network Nodes at the following annual rates:

- a. City Service Poles: \$200 per year per service pole.
- b. City Utility Poles: An annual pole attachment rate applied on a per-foot basis consistent with Section 54.024 of the Texas Utilities Code.

4. The City acknowledges that it will comply with the requirements of the Code and that it will allow the collocation of Network Nodes on the City service and utility poles on a non-exclusive, nondiscriminatory basis, subject to the Network Provider paying the applicable fees to the City and complying with the Design Manual and the Right-of-Way Management Ordinance.

5. Pursuant to Section 284.301 of the Texas Local Government Code, the Network Provider agrees that the City is authorized to enforce all of the City's regulations that do not materially interfere with the use of Network Nodes.

6. The primary term of this Agreement shall be five (5) years commencing upon the effective date first set forth above. This Agreement shall be automatically renewed and extended for subsequent one (1) year terms unless at least sixty (60) days prior to the expiration of the term either party shall give written notice to the other of the party's intent to terminate the Agreement at the end of the current term.

7. Any notice required or permitted under this Agreement shall be in writing and shall be delivered in hand or by registered or certified US mail. Notice to the Network Provider and the City may be addressed as follows:

Montgomery City Administrator
Montgomery City Hall
P.O. Box 708
Montgomery, Texas 77356

8. This Agreement may be enforced by Network Provider or City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the Agreement thereafter.

9. If any provision contained in this Agreement is held unconstitutional, invalid or unenforceable, then the remaining provisions shall be deemed severable and shall remain in full force and effect.

10. This Agreement shall be governed by the law of the State of Texas and construed in conformity with the provisions of Texas Local Government Code, Chapter 284. Venue shall lie in Montgomery, Montgomery County, Texas.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement effective as of the date first set forth above.

CITY OF MONTGOMERY, TEXAS

Mayor

Dated: _____

ATTEST:

City Secretary

NETWORK PROVIDER

Signature of Authorized Officer

Dated: _____

Title of Authorized Officer

Meeting Date: July 24, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Right -of-Way Management Ordinance
Date Prepared: August 3, 2017	

Subject

Consideration of a Right-of-Way Management ordinance to regulate the Use of City rights-of-way by Wireless Network Providers and establishing procedures for permits, restricting placement of Network Nodes in Parks, residential areas, historic districts and design districts, and providing an effective date.

Description

This is a proposed ordinance coming from the City Attorney, based on his review of the new Chapter 284 law regarding telecommunication towers.

I have highlighted in the attached Ordinance what I felt are the most important portions.

Section 74.57 (A) Requires a permit to install a Node, Pole or Transport facility.

Section 74.57 (C) allows one application to include up to 30 Node locations.

Section 74.58 Requires Council written consent before placing a Node in a Historic or Design District.

Section 74.60 Delegates the timeliness of review decisions, the basis for denials must be in writing and re submission times.

Section 75.59 requires Council written consent for placement in a Park, Historic district, a right-of-way less than 50 in width or a single-family used/zoned area.

Montgomery City Council
AGENDA REPORT

Section 75.62 Are the various fees including: \$75. Per application (one application can have up to 30 separate locations), an Annual Fee for each Node of \$250. Each and a pole fee of \$75 for an application.

There is an Indemnity Clause that removes any liability of the city from problems caused by a Node located in the right-of-way and has an effective date of September 1, 2017.

Recommendation

Receive the full report from the City Attorney and adopt the ordinance as discussed/ with any amendments.

Approved By

City Administrator

Jack Yates

Date: July 21, 2017

ORDINANCE NO. _____

A PUBLIC RIGHT-OF-WAY MANAGEMENT ORDINANCE BY THE CITY OF MONTGOMERY, TEXAS; AMENDING CHAPTER 74 OF THE CITY CODE OF ORDINANCES BY AMENDING SECTION 74.23 AND ADDING ARTICLE III TO CHAPTER 74; **REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS;** DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; **REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES** PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING **CITY PROCEDURES FOR APPLICATIONS FOR PERMITS;** ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; **PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES;** **PROVIDING RESTRICTIONS ON PLACEMENT** OF NETWORK NODES AND NODE SUPPORT POLES **IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS;** PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF SEPTEMBER 1, 2017.

WHEREAS, the City of Montgomery, Texas (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

WHEREAS, Chapter 284 of the Texas Local Government Code (“the Code”) allows certain wireless network providers to install in the City’s public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles;” and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City has enacted a *Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) in order to

meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Council desires to expand Chapter 74 of its City Code of Ordinances to regulate the installation of Network Nodes and Network Support Poles pursuant to Chapter 284 of the Code in a way that is fair, reasonable and nondiscriminatory.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MONTGOMERY, TEXAS THAT:

SECTION I
FINDINGS OF FACT

The forgoing recitals are incorporated into this Right-of-Way Management Ordinance as findings of fact.

SECTION II.
AMENDING CHAPTER 74 OF
THE CITY CODE OF ORDINANCES

The City Code of Ordinances, Chapter 74, entitled "Streets, Sidewalks and Other Public Places," is hereby revised by amending Article II, Section 74.23, entitled "Rental charge imposed," and adding Article III, "Use of Public Rights-of-Way," with the following sections:

Sec. 74-23. - Rental charge imposed.

Upon August 1 of each and every year, every person occupying or using the public streets, highways, easements and alleys in the city with poles, pipes, transmission lines and for other similar fixtures or purposes shall, as a condition to such further occupancy, pay to the city annually for such privileges, unless provided in a separate franchise agreement, a rental equal to two percent of the gross receipts received by such person from his business conducted in the corporate limits of the city for the preceding 12-month period ending June 30, which sums shall be paid to the city. This section is not applicable to wireless telecommunication network providers who will be regulated and charged as provided in Article III, "Use of Public Rights-of-Way," in this chapter.

ARTICLE III. USE OF PUBLIC RIGHTS-OF-WAY

§ 74.51 PURPOSE.

The purpose of this chapter is to:

(A) Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy and maintenance of its public rights-of-way by wireless network providers;

(B) Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and

(C) Assist the City in protecting the public health, safety, and welfare.

§ 74.52 GOVERNING LAW.

This chapter shall be construed in accordance with Chapter 284 of the Texas Local Government Code (“the Code”) to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

§ 74.53 DEFINITIONS.

For the purpose of this chapter, the definitions found in the *City Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) are hereby incorporated into this chapter and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this chapter:

Applicable codes means:

- (A) the City uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Montgomery, Texas or its lawful successor.

City Council means the municipal governing body of the City of Montgomery, Texas.

City Administrator shall mean City Administrator or designee of the City of Montgomery, Texas.

Chapter 284 means Texas Local Government Code, Chapter 284.

Code means the Texas Local Government Code.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a public right-of-way on or adjacent to a pole.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory City codes and ordinances.

Design District means an area that is zoned, or otherwise designated by municipal code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law. The City of Montgomery has designated a historic preservation district as part of its zoning plan found in Chapter 98, Article VI, of the City's Code of Ordinances.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City-approved and lawfully permitted location for the Network Node.

Micro network node means a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and

comparable equipment, regardless of technological configuration; and
(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

Network provider means:

- (A) a wireless service provider; or
- (B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (i) Network Nodes; or
 - (ii) Node Support Poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a Network Node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, City-owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as "Network Provider."

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two

parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A “Street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for network nodes.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node.

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code, Chapter 284.

§ 74.54 USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY.

Pursuant to this chapter and subject to the Design Manual and the Code, a wireless network provider has the nonexclusive right to use and occupy the public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless facilities.

The terms of this chapter shall apply to all wireless network providers’ facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later.

§ 74.55 COMPLIANCE WITH DESIGN MANUAL AND APPLICABLE CODES.

All wireless network providers shall comply with the terms of this right-of-way management ordinance, City applicable codes, and the terms and conditions of the City’s Design Manual.

§ 75.56 GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS.

A network provider shall construct and maintain Network Nodes and Network Support Poles described in the Code in a manner that does not:

- (A) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
 - (B) Obstruct the legal use of a public right-of-way by other utility providers;
 - (C) Violate nondiscriminatory applicable codes;
 - (D) Violate or conflict with the City's publicly disclosed public right-of-way design specifications;
- or
- (E) Violate the federal Americans with Disabilities Act of 1990 (ADA).

§ 74.57 PERMIT APPLICATIONS.

(A) Except as otherwise provided in Chapter 284 of the Code, a network provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public right-of-way.

(B) As required by Chapter 284 of the Code, the City shall not require a network provider to perform services for the City for which the permit is sought.

(C) A network provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.

(D) The network provider shall provide the following information in its permit applications:

- (1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's Design Manual and applicable codes;
- (2) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this chapter;
- (3) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the 60th day after the date of construction and final testing of each Network Node is completed.
- (4) A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage.

(E) **Exception:** As provided in Section 284.157 of the Code, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:

- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or
- (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code;
- (4) Notwithstanding Subdivision (D) above, the network provider or its contractors shall notify the City at least 24 hours in advance of work described in this Subdivision (D).

§ 74.58 INSTALLATION IN HISTORIC DISTRICTS OR DESIGN DISTRICTS

A network provider must obtain advance written consent from the City Council before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Design Manual. The City has the authority to designate new historic districts and design districts at a future date.

§ 75.59 INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS

A network provider may not install a new Node Support Pole in a public right-of-way without the City Council's discretionary, nondiscriminatory and written consent if the public right-of-way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
 - i. Not more than 50 feet wide; and
 - ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

- (3) In addition to the above, a network provider installing a Network Node or Node Support Pole in a public right-of way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.
- (4) The network provider shall be further required to comply with guidelines set out in the City's Design Manual.

§ 74.60 MUNICIPAL REVIEW PROCESS BY THE CTIY.

(A) **Determination of Application Completeness:** The City shall determine whether the permit application is complete and notify the applicant of that determination:

- (1) *For Network Nodes and Note Support Poles:* no later than 30 days after the date the City receives the permit application.
- (2) *For a Transport Facility:* no later than 10 days after the date the City receives the permit application.

(B) **Approval or Denial of Application:** The City shall approve or deny a completed application after the date it is submitted to the City:

- (1) *For Network Nodes:* No later than 60 days after the date the City receives the complete application.
- (2) *For Network Support Poles:* No later than 150 days after the date the City receives the complete application.
- (3) *For Transport Facilities:* No later than 21 days after the City receives the complete application.

(C) **Basis for Denial of Application:** If an application is denied by the City, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.

(D) **Resubmission of Denied Application:** The applicant may cure the deficiencies identified in the denial application.

- (1) The applicant has 30 days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the City.

- (2) The City shall approve or deny the revised completed application after a denial not later than the 90th day after the City receives the revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.

(E) **Nondiscriminatory Review:** Each completed application shall be processed by the City on a nondiscriminatory basis.

§ 74.61 TIME OF INSTALLATION.

A network provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. The City Administrator may in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

§ 75.62 APPLICABLE FEES AND RENTAL RATES TO THE CITY.

(A) As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.

(B) **Network Nodes:**

- (1) **Application Fee:** The application fee shall be \$75.00 for each Network Node for up to but not more than 30 Network Nodes.
- (2) **Annual Public Right-of-Way Rate Fee:** The annual public right-of-way rate shall be \$250.00 per Network Node installed in the City public rights-of-way.
- (3) **Public Right-of-Way Rate Adjustment:** As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice.

(C) Node Support Poles:

(1) The application fee for each Network Support Pole shall be \$75.00.

(D) Transfer Facilities:

(1) The application fee for each Transfer Facility shall be \$75.00.

(2) The annual Transfer Facility rental rate shall be \$28.00 monthly for each Network Node site located in a public right-of-way. However, no rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

(E) Micro Network Nodes:

(1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.

(F) Collocation of Network Nodes on Service Poles

(1) Subject to the City's Pole Service Agreement, the collocation of Network Nodes on City service poles shall be at a rate of \$200.00 per year per service pole.

(G) City-Owned Municipal Utility Poles:

(1) A network provider shall pay an annual pole attachment rate for the collocation of a Network Node supported by or installed on a City-owned utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

(H) The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of the public rights-of-way for use of the public rights-of-way.

§ 74.63 INDEMNITY.

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions ("claims") covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The

foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

§ 74.64 EFFECT ON OTHER UTILITIES AND TELECOMMUNICATION PROVIDERS. Nothing in this Ordinance shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

**SECTION III.
REPEALING ALL ORDINANCES IN CONFLICT**

All other ordinances or parts of ordinances inconsistent or in conflict herewith, or to the extent of such inconsistency or conflict are hereby repealed.

**SECTION IV.
SAVINGS CLAUSE**

This City Council of the City of Montgomery, Texas does hereby declare that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

**SECTION V.
COMPLIANCE WITH OPEN MEETINGS ACT**

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of

said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VI.
EFFECTIVE DATE.

This Ordinance shall become effective on September 1, 2017.

PASSED AND APPROVED ON THIS THE ____ DAY OF AUGUST 2017.

Kirk Jones, Mayor

ATTEST:

Susan Hensley, City Secretary

APPROVED AS TO FORM:

Larry L. Foerster, City Attorney

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Draft support letter to TxDOT, Survey of Mr. West Property showing the street
Date Prepared: August 3, 2017	

Subject

Consideration of sending a Support Letter to TxDOT for Pond Street tie-in to FM 149

Description

This is a proposed letter to TxDOT of City support of the Monte West intention to place a street access for his proposed development.

The City Engineer and I both think that the Support Letter is premature. However, I wanted to give Mr. West an opportunity to discuss this proposed Letter with you since he has missed a Planning Commission and City Council meeting where his development was discussed. Also, I think Mr. west wants to get the TxDOT approval known before he moves ahead with his development efforts.

Back to the street Support Letter – Even with the Council’s approval of the concept of the use of the Utility easement as an access, the plan has not been analyzed to determine the impact analyzed about the street’s placement in the fifteen feet wide easement that Mr. West intends to widen, but is there enough area to park as shown on the plan?

My suggestion is that you either approve the Support Letter with a statement to Mr. West that while sending the TxDOT letter does not mean that the City has or will approve the design of the street. OR

Montgomery City Council
AGENDA REPORT

In the alternative you could direct the City Engineer to perform more thought into the access question and report back at the next City Council meeting.

Recommendation

Select if you want to send the Letter or not, then approve that direction.

Approved By

City Administrator

Jack Yates

Date: August 3, 2017

TO BE PLACED ON CITY LETTERHEAD

August 8, 2017

Mr. Tim Conrad
Texas Department of Transportation
Permit Coordinator, Houston District
7600 Washington Ave.
Houston, Texas 77007

Re: Sponsorship of Proposed Pond Street Connection at FM-149
City of Montgomery

Mr. Conrad:

The City of Montgomery has received and reviewed a request from Cervantes Engineering, Inc. for City sponsorship of a public street tie-in at the proposed Pond Street and FM-149 intersection. The proposed tie-in is to be approximately 175 linear feet north of College Street on the west side of FM-149, within the City of Montgomery Corporate Limits.

This request was approved by the City of Montgomery City Council at our meeting held on August 8, 2017. Cervantes Engineering, Inc. will be submitting construction plans on behalf of the City of Montgomery for review and permitting. We request that a permit for the widening be issued with the City of Montgomery as the sponsor for this project.

If there are any questions or need for additional information, please contact Messrs. Chris Roznovsky or Ed Shackelford, both of Jones & Carter, Inc., at 281-363-4039.

Sincerely,

Jack Yates
City Administrator

EHS/cvr:

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Enclosures cc: Mr. Ed Shackelford, P.E. – City of Montgomery, City Engineer
Mr. Larry Foerster – City of Montgomery, City Attorney
Ms. Susan Hensley – City of Montgomery, City Secretary
Mr. Rafael Cervantes, PE – Cervantes Engineering

ITEM#13
Montgomery City Council
AGENDA REPORT

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Letter of Request for Nominations for Montgomery Central Appraisal District Board of Directors, Proposed resolution to use if Nomination is made
Date Prepared: August 3, 2017	

Subject

Consideration of nominating someone to stand for election to the Montgomery Central Appraisal District Board of Trustees. The actual election is in October, with selection by the entities that participate with the Appraisal District.

Description

This is a nomination only. Members of the Board are Ed Chance, Bruce Tough, Thomas Cox, Charlie Riley and Mike Meador. Other than Charlie Riley and Mike Meador I do not personally know the other people on the Board.

Sorry I am not much help on this

Recommendation

Take no action unless you want to nominate someone then if you do pass the Resolution giving the name of the Nominee.

Montgomery City Council
AGENDA REPORT

Approved By		
City Administrator	Jack Yates	Date: August 3, 2017



MONTGOMERY CENTRAL APPRAISAL DISTRICT

TONY BELINOSKI, RPA
CHIEF APPRAISER

July 20, 2017

City of Montgomery
City Administrator Jack Yates
PO BOX 708
Montgomery, Texas 77356-0708

Re: **REQUEST FOR NOMINATIONS FROM COUNTY, SCHOOL, AND CITY DISTRICTS FOR
Montgomery Central Appraisal District's Board of Directors Election, 2018-2019 Term**

In accordance with the provisions of Section 6.03 of the Texas Property Tax Code, each jurisdiction entitled to vote in the election of the Montgomery Central Appraisal District's Board of Directors may nominate a candidate for each of the five (5) positions to be filled.

To assist you in the nomination process, I am enclosing the eligibility requirements for a board member and a sample resolution. All nominations must be submitted to my attention **by resolution before October 15, 2017.**

Please include a brief biography with each nomination. These biographies will be sent with the Official Ballot to each voting jurisdiction to allow them to familiarize themselves with the qualifications and background of each candidate.

After the nomination period is closed, an Official Ballot will be mailed on or about **October 18, 2017**. Please schedule your agenda accordingly so you may participate in this election of the Board of Directors.

If you have any questions concerning the election, please contact me.

Sincerely,
Tony Belinoski, Chief Appraiser

Enclosures: Eligibility Requirements for Director
Resolution for Nomination

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QUALIFICATIONS FOR AN APPRAISAL DISTRICT DIRECTOR

[Texas Property Tax Code 6.03]

To be eligible to serve on the board of directors, an individual must be a resident of the district and must have resided in the district for at least two years immediately preceding the date the individual takes office.

An individual is **ineligible** to serve if the individual is:

- ◆ An employee of a taxing unit in the district [a person may be an elected official of a taxing unit].
- ◆ An appraisal district employee.
- ◆ A person (or spouse) or business entity that contracts with the appraisal district or with a taxing unit in the appraisal district.
- ◆ A person (or spouse) or business entity that is a participant in a current lawsuit with the district.
- ◆ A person or relative within the second degree by consanguinity or affinity who does business in the appraisal district as a paid property tax agent or fee appraiser whose work involves property taxes.

Board Member's Relatives	Prohibitions
<p>1st Degree by Consanguinity: Parents (by adoption) Children (by adoption) Brothers & Sisters</p> <p>1st Degree by Affinity (and their spouses): Spouse Spouse's Parents, Children, Brothers & Sisters Stepparents and Stepchildren</p> <p>2nd Degree by Consanguinity: Grandparents Grandchildren Aunts & Uncles First cousins Nieces & Nephews</p> <p>2nd Degree by Affinity Spouse's grandparents Spouse's first cousins Spouse's grandchildren Spouse's nieces & nephews: Spouse's aunts & uncles</p>	<p>May not work for the appraisal district. If any one of the listed relatives does business in the appraisal district as a paid property agent or as a fee appraiser whose work involves property taxes, the member is ineligible to serve.</p>
<p>3rd Degree by Consanguinity: Great grandparents Second cousins Great Grandchildren Great nieces & nephews Great aunt & uncles</p>	<p>May not work for the appraisal district</p>
<p>3rd Degree by Affinity:</p>	<p>No Prohibitions</p>

STATE OF TEXAS

§

COUNTY OF MONTGOMERY

§

§

RESOLUTION

RESOLUTION SUBMITTING NOMINEE(S) AS CANDIDATE(S) FOR THE ELECTION OF THE MONTGOMERY CENTRAL APPRAISAL DISTRICT'S BOARD OF DIRECTORS-2018-2019 TERM.

WHEREAS, the **City of Montgomery** of Montgomery County Texas has been certified by the Chief Appraiser of the Montgomery Central Appraisal District as being eligible and entitled to nominate candidates to be placed on the county-wide ballot for the Montgomery Central Appraisal District's Board of Directors; and

WHEREAS, the City Council has considered such candidates;

THEREFORE BE IT RESOLVED, that the City Council of the City of Montgomery hereby nominates to the Montgomery Central Appraisal District's Board of Directors the following candidate(s).

PASSED AND APPROVED this the _____, 2017.

s\ Title

ATTEST:

s\Title

ITEM# 14
Montgomery City Council
AGENDA REPORT

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: Memo from City Engineer
Date Prepared: August 3, 2017	

Subject

Consideration of Change Order #1 for Flagship Boulevard project

Description

As discussed previously, this Change Order removes the replacement of the existing concrete overflow (I am not sure what "overflow" means) and traffic striping from the contract, resulting in a \$12,615.00 reduction to the contract amount.

Recommendation

Approve Change Order #1 to the Flagship Boulevard Pavement Repairs Project contract.

Approved By

City Administrator

Jack Yates

Date: August 3, 2017



1575 Sawdust Road, Suite 400
The Woodlands, Texas 77380-3795
Tel: 281.363.4039
Fax: 281.363.3459
www.jonescarter.com

August 3, 2017

The Honorable Mayor and City Council
City of Montgomery
101 Old Plantersville Road
Montgomery, Texas 77316

Re: Change Order No. 1
Flagship Boulevard Pavement Repairs

Dear Mayor and Council:

We received and recommend approval of Change Order No. 1 to the Flagship Boulevard Pavement Repairs contract. As previously discussed, we recommend removing the bid items for the removal and replacement of the existing extreme event concrete overflow and traffic striping from the contract. These items can be completed by City of Montgomery Public Works outside of this contract at a later date. The change order will result in a \$12,615.00 reduction to the contract amount.

As always, should you have any questions or need any additional information, please do not hesitate to contact Chris Roznovsky or myself.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ed Shackelford'.

Ed Shackelford, PE
Engineer for the City

EHS/cvr

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Enc: N/A

cc: Mr. Jack Yates – City of Montgomery, City Administrator
Ms. Susan Hensley – City of Montgomery, City Secretary
Mr. Larry Foerster – Darden, Fowler & Creighton, LLP, City Attorney

Meeting Date: August 8, 2017	Budgeted Amount:
Department:	
Prepared By: Jack Yates City Administrator	Exhibits: GANT chart on Project, Other examples of GANT Charts – for example
Date Prepared: August 3, 2017	

Subject

Presentation from City Engineer and City Administrator on the status of the Buffalo springs Bridge.

Description

The Rights of Entry have been secured, FEMA and the Engineer and I have agreed on the cost estimate, the Corps of Engineers permit has been applied for. I think that we are now in to nearly getting a Project Worksheet from FEMA that will initiate the two week review period by FEMA and the Congressional Office of Legislative Affairs.



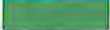




















Attached is a GANT schedule for the Bridge Repair and to show you other examples of the Project planning charts, I have included a GANT chart for The Buffalo Springs water line and for Flagship Boulevard. It is my intention to do a GANT chart on virtually every large planned project that the city has in progress and to attach them to the monthly city Administrator's Report. So, please let me know what you think about the charts.

Recommendation

Make comments/ask questions, give any direction you think necessary.

Montgomery City Council
AGENDA REPORT

Approved By		
City Administrator	Jack Yates	Date: August 3, 2017

PROJECT	ASSIGNED TO	AUGUST	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.
<u>BUFFALO SPRINGS BRIDGE WATER LINE</u>									
Plan Preparation for bidding	Chris Roznovsky								As Planned Completed
Bid documents prepared	Chris, Larry Foerster,								
Project approved for bidding	Chris Roznovsky, L. F.	Submitted							
Project Advertised for bidding	Chris Roznovskt, Susan Hensley		Approved						
Bids Received	S. Hensley, J. Yates, C. Roznovsky								
Bids Reviewed	L.F., C.R., J.Y.								
Bid Recommendation to C. Council	L.F., C.R., J.Y.								
Bid Awarded by City Council	J.Y., S.H.								
Contracts Executed	C.R., S.H., L.F., J.Y.								
Construction Begins	Contractor, C.R.								
Pay Estimates	Contractor, C.R., J.Y. Cathy Branco								
Construction Ends	Contractor, C.R., J.Y.								
Project Closeout	C.R., L.F., J.Y., C.B.								

PROJECT SCHEDULES

PROJECT	ASSIGNED TO	JULY	AUGUST	SEPTEMBER	OCTOBER	
<u>Flagship Boulevard Paving</u>						As Planned Completed
Bid Awarded by City Council	Chris Roznovsky, J. Yates	11-Jul				
Contract Signed, Ins. Provided	C.R., Susan Hensley	27-Jul				
Pre-Construction Meeting	C.R., Mike Muckleroy		1-Aug			
Construction Begins	Contractor, C.R., M. M.		August 9-13			
Construction Oversight	C.R., M. M.		August 9-13			
Construction Ends - Final Inspection	C.R., M. M., J.Y.		August 13-16			
Project Closeout - All paid	C.R., M.M., J.Y., Cathy Branco, S. H.			Before 9-30		