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BY: _____

Patrick W. Mizell pmizell@velaw.com
Tel 713.758.2932 Fax 713.615.5912

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Jack McKinley	713.266.1064	
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Vinson & Elkins LLP Attorneys at Law
Abu Dhabi Austin Beijing Dallas Dubai Hong Kong Houston
London Moscow New York Shanghai Tokyo Washington

First City Tower, 1001 Fannin Street, Suite 2500
Houston, TX 77002-6760
Tel 713.758.2222 Fax 713.758.2346 www.velaw.com

VO:Fax COMPANY:

NO. D-1-GV-09-000916

EX PARTE

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CITY OF FRIENDSWOOD

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

TRIAL BRIEF

The City of Friendswood hereby submits this trial brief in support of its request for an expedited declaratory judgment pursuant to Chapter 1205 of the Texas Government Code.

I. INTRODUCTION

The City filed this suit under the Expedited Declaratory Judgment Act, TEX. GOV'T CODE ANN. § 1205.001 *et seq.* (Vernon 2007), to validate the issuance of the certificates of obligation that the city proposed to issue for the purpose of funding certain construction, improvement, and land purchase projects. Five residents of Friendswood oppose the relief sought by the city and have purported to intervene in this lawsuit.

II. FACTUAL BACKGROUND

A. The City of Friendswood

The City is a political subdivision of the State of Texas located in Harris County and Galveston County. It was incorporated in 1960 and operates as a home-rule city under the laws of the State of Texas and a charter approved by the voters in 1971. *See* FRIENDSWOOD, TEX. CITY CHARTER § 2.01 (2008).¹ Home rule cities are larger cities (more than 5,000 inhabitants) in which citizens adopt a home rule charter to define the structure, power, duties, and authority of their local government. Tex. Const. art. XI, § 5.

¹ The relevant sections of the City Charter are attached as Exhibit A.

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The City is an "issuer" within the meaning of Section 1205.001 of the Expedited Declaratory Judgment Act, and the certificates of obligation are "public securities" within the meaning of that section. The City proposes to issue the certificates of obligation in the form more fully described below.

B. The Proposed Public Securities and Proposed Expenditures

The City intends to issue its Certificates of Obligation, Series 2009 (the "Proposed Public Securities") in the amount of approximately \$11 million. The Proposed Public Securities will be used to fund four projections: (1) necessary improvements to the City Animal Control Center; (2) necessary improvements to the City's Record Retention Center, (3) the construction and rehabilitation of City streets, and (4) the purchase of park land in Brazoria County for youth baseball and softball fields.²

The City's need for baseball and softball fields exceeds the capacity of the existing fields. Currently, children in Friendswood often play games at 10 p.m. because the fields are fully booked for earlier times. After an extensive search for suitable and affordable land, the City located the land at issue here, which is approximately 100 yards from the City's limits and close to the existing fields in the City. A map showing the location of the existing fields and the land to be purchased is attached as Exhibit B. The City chose this land because it was significantly less expensive than any available, appropriate parcel of land in either Galveston or Harris County, resulting in a significant savings for taxpayers. Although the land is in Brazoria County, it is closer to the City (and therefore more convenient for the citizens using the fields) than much of the land in Galveston County and Harris County.

² The City intends to purchase this land, not annex it. This property does not belong to the City of Alvin or to Brazoria County; it is unimproved land owned by a private citizen. Neither the City of Alvin nor Brazoria County have intervened or indicated opposition to this purchase.

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The City has already entered into an earnest money contract for this land to secure the land at the favorable price negotiated by the City.³ In an effort to ensure that the fields are ready as soon as possible to relieve the severe overcrowding at the City's existing fields, the City authorized the current owner of the land to begin land grading and field construction. If the City does not close on the purchase, the City will owe a penalty of over a million dollars.

III. THE CITY HAS COMPLIED WITH ALL REQUIREMENTS OF THE EXPEDITED DECLARATORY JUDGMENT ACT.

The City is entitled to seek validation of the Proposed Public Securities and associated expenditures pursuant to the Expedited Declaratory Judgment Act. As a municipality, the City is an "issuer" under Section 1205.001(1) of the Expedited Declaratory Judgment Act. Likewise, the Proposed Public Securities are "public securities" under Section 1205.001(2), which are defined as "interest-bearing obligation[s]," including certificates. The petition filed by the City on May 22, 2009, and the amended petition filed on June 4, 2009, meet the requirements of Section 1205.004. The Attorney General was served with a copy of the petition, and the attorney General filed an answer.⁴ See TEX. GOV'T CODE ANN. 1205.042 (Vernon 2007).

In accordance with Section 1205.041, the Court, upon receipt of the City's petition, immediately issued an order, in the form of a notice, informing all "interested parties," as defined by Section 1205.041(a), of their right to appear for trial at 10 a.m. on the first Monday after the 20th day after the date of the Court's Order (June 15, 2009), and to show cause why the prayers of this petition should not be granted and why the Proposed Public Securities and their authorization should not be validated and confirmed. Pursuant to Section 1205.043 a

³ Arguments concerning the voidability of this contract have nothing to do with the City's power to purchase this land. Moreover, even if a single council member had a conflict of interest, that is not relevant to the validity of the Proposed Public Securities or the proposed expenditures. The amicus fails to cite any evidence that any council member had any financial interest in any of the proposed expenditures.

⁴ A copy of the Attorney General's answer is attached as Exhibit C.

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“substantial copy of the order” was published in the *Austin-American Statesman*, a newspaper of general circulation, in Travis County, and in the *Houston Chronicle*, a newspaper of general circulation in Harris County and Galveston County, on May 29, 2009 and June 5, 2009.⁵ The City has territory in both Harris County and Galveston County.

IV. THE PROPOSED PUBLIC SECURITIES ARE LEGAL AND VALID.

The City has authority under Section 271.047(a) of the Certificate of Obligation Act, TEX. LOCAL GOV'T CODE § 271.047(a) (Vernon 2007), to issue the Proposed Public Securities, and the City has complied with all requirements of that Act. The purported intervenors have challenged the City's ability to issue the Proposed Public Securities without an election, but the Certificate of Obligation Act allows the City to issue the Proposed Public Securities without holding an election pursuant to § 8.05(f) of the City Charter.⁶ The only time an election is required under the Act is when the municipality's secretary receives, before authorization of the issuance of the certificates, a petition signed by at least five percent of the qualified voters of the municipality.⁷ In contrast, the City Charter provides that “the Council shall be prohibited from incurring debt not payable from then current revenues unless a proposition therefor has been approved by the voters at a Special Election held for such purpose.” FRIENDSWOOD, TEX., CITY CHARTER § 8.05(f) (2008).

⁵ See Affidavits of Publication attached as Exhibits D and E.

⁶ In addition to the Proposed Public Securities, the City had also proposed the issuance of other bonds to finance other public projects. Those bonds were defeated in a recent election. The proposed expenditures here were not included in the proposed expenditures for the defeated bonds. Even if the proposed expenditures overlapped, that would not affect the ability of the City to issue the Proposed Public Securities without an election. The statutes cited by the Americans for Prosperity Foundation in its amicus brief have nothing to do with this question. Texas Government Code Ann. § 1201.005 sets out the items that must be included in the authorization for public securities. Texas Government Code Ann. § 1202.003(c) concerns attorney general approval of the issuance of public securities. Texas Government Code Ann. § 1205.024 sets out the information that must be contained in the petition for a declaratory judgment.

⁷ TEX. LOCAL GOV'T CODE ANN. § 271.049(c) (Vernon 2007).

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Because there is an inconsistency, the Act controls, and the City may issue the Proposed Public Securities without an election without violating the Charter. The Texas Constitution provides that “. . . no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” Tex. Const. art. XI, §5. Accordingly, under the Texas Constitution, the general law enacted by the legislature (i.e., the Act) controls and no election is required.

The unambiguous language of the Act makes clear that it is independent authority for the issuance of certificates of obligation and controls when there is a conflict between the Act and a city charter: “A home rule municipality may use this subchapter regardless of any provision in the municipality’s charter to the contrary.” TEX. LOCAL GOV’T CODE ANN. § 271.044(b) (Vernon 2007).

If a statute is clear and unambiguous, extrinsic aids and rules of statutory construction are inappropriate. *Dallas Morning News Co. v. Bd. of Trustees of Dallas Indep. Sch. Dist.*, 861 S.W.2d 532, 535 (Tex. App.—Dallas 1993, writ denied). Where language in a statute is unambiguous, a court must seek the intent of the legislature as found in the plain and common meaning of the words and terms used. *Monsanto Co. v. Cornerstones Mun. Utility Dist.*, 865 S.W.2d 937, 939 (Tex. 1993). Words in statutes have their ordinary meaning unless the statute defines them or they are connected with and used with reference to a particular trade or subject matter or are a term of art. TEX. GOV’T CODE ANN. § 312.002 (Vernon 2007); *Dallas Morning News Co.*, 861 S.W.2d at 535. In construing a statute, regardless of whether the statute is considered ambiguous on its face, a court may consider the object sought to be attained and the consequences of any particular construction. TEX. GOV’T CODE ANN. § 311.023 (Vernon 2007); *City of Dallas v. Cornerstone Bank, N.A.*, 879 S.W.2d 264, 270 (Tex. App.—Dallas 1994, no

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writ). Furthermore, every word of a statute is presumed to have been used for a purpose, and the cardinal rule of statutory construction requires that each sentence, clause, phrase, and word be given effect if reasonably possible. *Reames v. Police Officers' Pension Bd.*, 928 S.W.2d 628, 632 (Tex. App.—Houston [14th Dist.] 1996, no writ).

A closer look at the plain language of the Act demonstrates that the object sought to be attained by the inclusion of Section 271.049(d) was to create *one specific instance* in which an election is required. This is evidence that the Legislature did not intend for an election to be required unless five percent of the municipality's qualified voters signed a petition protesting the issuance of the certificates. In other words, the legislature clearly contemplated the instances in which they would require elections under the Act, and the legislature made an affirmative decision not to require them absent a petition. Thus, Friendswood is not required to hold an election prior to the issuance of the Proposed Public Securities. Because provisions of a city's charter may not be inconsistent with or in conflict with general laws, the City does not violate its Charter when it acts in accordance with the Certificate of Obligation Act.

V. THE PROPOSED EXPENDITURES ARE LEGAL AND VALID.

A. The City's Home Rule Powers Allow It to Make These Expenditures.

Home rule cities derive their power from the Texas Constitution, not from any statute or charter. *See* Tex. Const. Art. XI, § 5; *City of Galveston v. State*, 217 S.W.3d 466, 469 (Tex. 2007); *Proctor v. Andrews*, 972 S.W.2d 729 (Tex. 1998); *see also* Tex. Att'y Gen. Op. GA-0130, at *2 (Dec. 15, 2003). Although the Legislature may limit the power of home rule cities, home rule cities do not need specific grants of power from the Legislature to act. *See, e.g.*, TEX. LOCAL GOV'T CODE ANN. § 51.972 (Vernon 2009) ("The municipality has full power of local self-government"); *Robinson v. City of Longview*, 936 S.W.2d 413, 416 (Tex. App.—Tyler 1996, no writ). Home rule cities may exercise any power that the state may exercise, unless such

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power is inconsistent with the Texas Constitution, a statute, or the city's charter. *See Galveston*, 217 S.W.3d at 469; *Proctor*, 972 S.W.2d at 733; *Robinson*, 936 S.W.2d at 416 (holding that a home-rule city has all the powers that the Legislature could have granted it); *City of Galveston v. Giles*, 902 S.W.2d 167, 170 (Tex. App.—Houston [1st Dist.] 1995, no writ) (describing home-rule city's power as "plenary" under the Texas Constitution). To limit the power of a home rule city, the Legislature must act with "unmistakable clarity." *Proctor*, 972 S.W.2d at 733; *see also Galveston*, 213 S.W.3d at 469; *Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

Accordingly, the City does not need a specific grant of power, from the Legislature or in the Charter, to purchase the park land in Alvin or to make the other proposed expenditures.⁸ The park land in question is located a short distance outside the City limits in Brazoria County. The land was chosen in part because of its proximity to the existing youth baseball and softball fields in the City, which are overcrowded.

1. No statute restricts the City's power to purchase the land.

The purported intervenors have argued that Texas Local Government Code Ann. § 331.001 prohibits the City from purchasing the park land because it is in Brazoria County. Section 331.001 expressly grants general-law counties and cities the right to purchase park land as long as that land is within the county in which the municipality is situated. This express statutory authority is essential for counties and for "general law" cities that must look to specific grants of legislative authority to act. However, home rule cities already possess broader power to acquire park land without regard to the location of the land, and this statute does not limit that power. In *City of College Station v. Turtle Rock Corporation*, 680 S.W.2d 802 (Tex. 1984), the

⁸ No party has challenged the power of the City to make the expenditures other than the park land. The purported Intervenor states that the City's 2009 Capital Improvement Plan is not precisely aligned with the proposed expenditures, but there is no allegation that this affects the validity of the proposed expenditures.

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Supreme Court found that this statute did not limit the power of home rule cities to acquire park land.⁹ The Court found that the statute “also applies to counties and general law cities, and thus serves as a grant of specific power to these non-home rule entities,” but that it does not “unmistakably” limit the power of home rule cities. *Id.* at 807-08. The scope of this grant of power does not limit or otherwise affect the power of home-rule cities, which is not derived from a statute.

Moreover, Texas Local Government Code Ann. § 51.072 states that powers granted to municipalities in the Local Government Code are in addition to, not in place of, the general powers of home rule cities. *See also* TEX. LOCAL GOV'T CODE ANN. § 315.001 (Vernon 2007) (stating that the powers granted in that title, which encompasses § 331.001, to municipalities to acquire parks outside municipal limits are in addition to powers granted by the municipal charter).

2. The Charter does not restrict the City's power to purchase the land.

The City's Charter states that “the City shall have all powers possible for a home rule City to have under the Constitution and laws of the State of Texas as fully and completely as though they were expressly enumerated in this Charter.” FRIENDSWOOD, TEX., CITY CHARTER § 2.01 (2008). This provision allows the City to carry on all the normal business of a municipality without the necessity of specifying each act that the City may take. The City undertakes many duties, such as providing police and fire protection, that are not specifically provided for in the Charter. The purchase of the park land is no different.

Contrary to the purported intervenors' arguments, nothing in the Charter contradicts this broad grant of power to prohibit the purchase of the park land. Section 2.04 of the Charter specifically grants the City the power to control and have jurisdiction of public lands, including

⁹ At the time, the statute was found at TEX. REV. CIV. STAT. ANN. art. 6081e.

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parks, in the City. FRIENDSWOOD, TEX., CITY CHARTER § 2.04 (2008). This section does not address the City's power to purchase land elsewhere; it simply clarifies what jurisdiction and power the City has over public lands within the City limits and does not concern the City's power to purchase land.

The reference in the City's Code of Ordinances to Chapter 331 of the Texas Local Government Code does not affect the City's power to purchase land. Chapter 58 of the City's Code of Ordinances is entitled "Parks," and the title includes a "state law reference" which states as follows: "Park to be open for public use under rules prescribed by local governing authority, V.T.C.A., Local Government Code § 331.007."¹⁰ Chapter 58 goes on to set out rules for park use. Neither that chapter of the City's Code nor Section 331.007 concern the City's (or any municipality's) ability to purchase park land, wherever located. Chapter 58 does not indicate any intent by the City to adopt the entirety of Chapter 331 of the Texas Local Government Code as part of its Charter or as part of its Code.

"We must interpret a city charter by reading it as a whole and harmonizing its various provisions as far as possible, considering every word, phrase, and expression as if each had been deliberately chosen and used for a purpose." *In re Saenz*, 990 S.W.2d 461, 464 (Tex. App.—Corpus Christi 1999). These provisions of the Charter are clear and unambiguous. Had the City intended to address geographical limits on the power to purchase land, or had the City intended to incorporate all of Chapter 331 into the Charter, the City would have chosen words that clearly indicated such an intention. The Court should not twist the language of the Charter and the City's Code to restrict the City's power to purchase needed land for ballparks.

¹⁰ Chapter 58 is attached hereto as Exhibit F.

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3. Other statutes confirm this power.

Although the City does not believe that it needs to point to a statute for the power to purchase the park land, several statutes appear to grant cities unlimited powers to purchase park land. For example, Texas Government Code Ann. § 1502.002 allows a city to “acquire, purchase, construct, improve, enlarge, equip, operate, or maintain any property . . . with respect to . . . a park.” Likewise, Texas Government Code Ann. § 1508.001 permits a city to “construct, purchase, or encumber” a park. Neither of these statutes places any geographical limitation on a city’s ability to purchase park land. Section 51.072 of the Local Government Code, which is specifically applicable to home-rule cities, provides a broad grant of power to cities to hold any kind of property: “The municipality may hold property, including any charitable or trust fund, that it receives by gift, deed, devise, or other manner.” Had the Legislature intended to restrict home-rule cities’ ability to purchase land, it could have done so in one or more of these statutes.

4. The purchase does not implicate any sovereignty issues.

The City does not propose to assert its sovereign jurisdiction over the park land. This is a purchase of land, not an attempted annexation. As noted above, neither the City of Alvin nor Brazoria County has intervened in this lawsuit or otherwise indicated disapproval of the proposed purchase of the land. In general, the City will have the same rights and duties with respect to the land as a private landowner. The City remains open to discussions with the City of Alvin concerning the provision of police and other services for the park land, but those arrangements do not affect the City’s ability to purchase the land.

Moreover, even if Section 331.001 of the Texas Local Government Code applied to the City, that law would not prohibit the City from purchasing land within the limits of another municipality. That section only prohibits general-law cities from purchasing land outside the county or counties in which they are located. Because Friendswood is located in Harris and

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Galveston counties, there is no question that Friendswood could purchase land in the City of Houston or the City of Galveston, for example. The purchase of land in the City of Alvin does not raise any different issues of municipal sovereignty than the purchase of land in the City of Houston. Therefore, municipal sovereignty has no effect on the City's ability to purchase the park land.

B. The Certificate of Obligation Act Permits These Expenditures.

The City is authorized by the Certificate of Obligation Act to issue certificates of obligation to provide funds to construct any public work; to purchase materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized purposes and needs; to pay for professional services, such as tax appraisal, legal services, and map making; to pay for an interest in and rights to water or sewer treatment capacity; constructing or equipping a jail; constructing, renovating, or improving a county building; constructing bridges; demolition of dangerous structures; and restoration of historic buildings. TEX. LOCAL GOV'T CODE §§ 271.041 *et seq.* (Vernon 2007). Accordingly, the City proposes to issue the Certificates to fund (1) necessary improvements to the City Animal Control Center and the City's Record Retention Center, (2) the construction and rehabilitation of City streets, and (3) the purchase of park land close to its city limits but located in Brazoria County, Texas. Each of the proposed expenditures is within the scope of the Certificate of Obligation Act.

VI. THE PURPORTED INTERVENORS DID NOT PROPERLY INTERVENE.

Any "interested party," as defined by Texas Government Code Ann. § 1205.041 (Vernon 2007), could become a named party to this action by filing an answer on or before the time set for hearing and trial, or thereafter by intervention with leave of court.¹¹ With the exception of the Attorney General, no party filed an answer on or before the time set for trial, which was June

¹¹ See Section 1205.062 of the Expedited Declaratory Judgment Act.

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15, 2009. The purported intervenors appeared at the trial and stated their names for the record, but they did not file an answer at that time. On June 15, the Court adjourned, but did not reset, the trial. The purported intervenors filed an answer on June 30, 2009, after the time set for trial and without seeking leave. The City requests that the Court strike the answer of the purported intervenors for failure to intervene in accordance with Section 1205.062 of the Expedited Declaratory Judgment Act.

VII. PRAYER

The City respectfully requests that the Court declare the issuance of the Proposed Public Securities, in the form and manner described herein and in the City's Amended Petition, as legal and valid under all applicable laws. The City also requests that the Court declare the proposed expenditures, including the purchase of the park land in Brazoria County, as legal and valid under all applicable laws. Finally, the City requests all other relief named in its Amended Petition and all other relief to which it may be entitled.

Respectfully submitted,

/s/ Patrick W. Mizell

Patrick W. Mizell
State Bar No. 14233980
Michael Marin
State Bar No. 00791174
Deborah C. Milner
State Bar No. 24065761
Vinson & Elkins L.L.P.
1001 Fannin Street, Suite 2300
Houston, Texas 77002
Telephone: 713.758.2932
Telecopy: 713.615.5912

ATTORNEYS FOR CITY OF FRIENDSWOOD

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the City of Friendswood's Trial Brief has been served upon all counsel of record on this the 10th day of July, 2009 by facsimile and electronic mail.

Leslie Brock
Adrian Henderson
Office of the Attorney General
Facsimile No. (512) 320-0106
leslie.brock@oag.state.tx.us
adrian.henderson@oag.state.tx.us

Jack McKinley
Facsimile No. 713-266-1064
JMM@ramey-chandler.com

/s/ Patrick W. Mizell
Patrick W. Mizell

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EXHIBIT A

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ARTICLE II. POWERS OF THE CITY*

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ARTICLE II. POWERS OF THE CITY*

*State law references: Home rule powers, V.T.C.A., Local Government Code § 51.071 et seq.

Sec. 2.01. General powers.

Except as otherwise specifically provided in this Charter, the City shall have all powers possible for a home rule City to have under the Constitution and laws of the State of Texas as fully and completely as though they were expressly enumerated in this Charter.

(Res. No. R2007-09, § 1, 3-5-2007, election 5-12-2007)

Sec. 2.02. Change of boundaries and annexation of territory.

The Council shall have the power by ordinance to fix the boundary limits of the City, and to provide by ordinance for the annexation of additional territory lying adjacent to the City with or without the consent of the inhabitants or owners of the territory to be annexed. The Council shall have the power to detach by ordinance any territory with or without the consent of the inhabitants or owners of such area to be detached. Such annexation or detachment of any such territory shall be in accordance with the provisions of Chapter 160, Page 447, Acts of 1963, 58th Legislature, as the same is now or may hereafter be amended, same being Article 970a, Revised Civil Statutes of Texas, [V.T.C.A., Local Government Code §§ 42.001 et seq., 43.001 et seq., 212.003] entitled the Municipal Annexation Act; and upon the final passage of any such ordinance, the corporate limits of the City shall thereafter include the territory so annexed; and when any additional territory has been so annexed, same shall be a part of the City and the property situated therein shall bear its pro rata part of the taxes levied by the City, and the inhabitants thereof shall be entitled to all the rights and privileges of all citizens, and shall be bound by the acts and ordinances, resolutions and regulations of the City.

In addition to the power to annex all additional property for all purposes, the City shall have the power by ordinance to fix, alter and extend the corporate boundary limits of the City for the limited purposes of planning and zoning and sanitation and health protection.

(Res. No. R3-82, § 1, 3-1-1982)

State law references: Annexation, V.T.C.A., Local Government Code § 43.001 et seq.

Sec. 2.03. Eminent domain.

(a) *General power.* Except as limited by Subsections (b) and (c) below, the City shall have the full right, power, and authority to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter, or by the Constitution or laws of the State of Texas. The City may also exercise the power of eminent domain in any other manner authorized or permitted by the Constitution and laws of this state, or in the manner and form that shall be provided by ordinance of the City Council of the City. The power of eminent domain hereby conferred shall include the right of the City to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes. The City shall have and possess this power for condemnation for any

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ARTICLE II. POWERS OF THE CITY*

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municipal or public purpose, even though not specifically enumerated herein or in this Article.

(b) Notwithstanding Subsection (a) above or any other provision of this Charter to the contrary, neither the City, nor any subdivision of or entity created by the City, shall be authorized to use the power of eminent domain for the purpose of taking private property to be used for economic development purposes without the consent of the owner of such private property. Provided further, private property acquired through eminent domain without the consent of the owner shall not be (1) dedicated, sold, leased in substantial part, or otherwise transferred to a private person, partnership, corporation, or any other entity for a period of ten (10) years following the acquisition of the property by the City, except that property may be transferred or leased (a) to private entities that are public utilities or common carriers and (b) to private entities that occupy an incidental area in a public project, or (2) used for any purpose other than as a public use facility. For the purposes of this Subsection, a "public use facility" shall mean a facility designed, constructed and maintained to serve members of the general public including, but not limited to, public streets, drainage ways, utilities, parks, libraries, public safety buildings for police and fire protection, City Halls, and other similar public uses.

(c) For the purposes of this subsection, the term "economic development" shall mean any activity designed to increase tax revenue, tax base, employment, or general economic health, but does not include activities that result in (1) the transfer of land to public ownership for public purposes, such as for roads, hospitals, or water or sanitary sewer facilities or, (2) the transfer of land to a private entity that is a common carrier or public utility.

(Ord. No. 214, § 1, 3-4-1974, election 4-6-1974; Res. No. R97-6, § 1, 2-17-1997, election 5-3-1997; Res. No. R2007-09, § 1, 3-5-2007, election 5-12-2007)

State law references: Eminent domain, V.T.C.A., Local Government Code § 251.001 et seq.

Sec. 2.04. Streets and public property.

The City shall have exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways within the corporate limits of the City, and in, upon, over, and under all public property of the City. With respect to each and every public street, sidewalk, alley, highway, public square, public park or other public way within the corporate limits of the City, the City shall have the power to establish, maintain, improve, alter, abandon, or vacate the same; to regulate the use thereof including but not limited to the right to erect traffic signals, lights and signs thereon; and to abate and remove in a summary manner any encroachment thereon. The conveyance or lease or authorization of the conveyance or lease of any lands of the City shall be by ordinance.

Sec. 2.05. Street development and improvements.

The City shall have the power to develop and improve, or cause to be developed and improved, any and all public streets or ways within the corporate limits of the City by laying out, opening, narrowing, widening, straightening, extending, lighting, and establishing building lines along the same; by purchasing, condemning, and taking property therefor; by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; and by constructing, reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvement authorized hereinabove, or any combination or parts thereof. The cost of such development and improvement may be paid partly by assessments levied as a lien against the property abutting thereon and against the owners thereof.

When the City undertakes developing, improving and paving any and all public streets, sidewalks, alleys, highways and other public ways within its corporate limits, the City shall have the power and authority to proceed in accordance with Chapter 106, Page 489, Acts 1927, 40th

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ARTICLE II. POWERS OF THE CITY*

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Legislature, First Call Session, as now or hereafter amended, the same being Vernon's Ann. Civ. St. art. 1105b.

(Ord. No. 214, § 1, 3-4-1974, election 4-6-1974; Res. No. R97-6, § 1, 2-17-1997, election 5-3-1997)

State law references: Use of streets and rights-of-way, Vernon's Ann. Civ. St. art. 1085c; street improvements and assessments, Vernon's Ann. Civ. St. art. 1105b.

Sec. 2.06. Tort liability.

Before the City shall be liable for damages for the death or personal injuries of any person or for damages to or destruction of property of any kind, which does not constitute a taking or damaging of property under article 1, § 17, constitution of the State of Texas [Tex. Const. art. 1, § 17], the person injured, if living, or his/her representatives, if deceased, or the owner, his/her agent or attorney of the property damaged or destroyed shall give the City Manager or City Secretary notice in writing of such death, injury, damage or destruction, duly verified by affidavit, within 90 days after same has been sustained, stating specifically in such written notice when, where, and how the death, injury, damage or destruction occurred, and the apparent extent of any such injury, the amount of damages sustained, the actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages. No action at law for damages shall be brought against the City for such death, injury, damage or destruction prior to the expiration of 90 days after the notice hereinbefore described has been filed with the City Manager or the City Secretary. After the expiration of the 90 days aforementioned, the complainant may then have two years in which to bring an action of law.

(Res. No. R97-6, § 1, 2-17-1997, election 5-3-1997)

State law references: Tort liability, V.T.C.A., Civil Practice and Remedies Code § 101.101 et seq.

Sec. 2.07. Zoning.

The Council shall have full power and authority to zone the City and to pass all necessary ordinances, rules and regulations governing the same under and by virtue of the authority given to cities and legislative bodies thereof by articles 1011a through 1011j of the 1925 Revised Civil Statutes of Texas as amended, being Acts of 1927, 40th Legislature, Chapter 283 [V.T.C.A., Local Government Code § 211.001 et seq.], and all amendments thereto and amendments which may hereafter be made thereto.

State law references: Zoning, V.T.C.A., Local Government Code § 211.001 et seq.

O:Fax COMPANY:

ARTICLE VIII. FINANCIAL ADMINISTRATION*

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ARTICLE VIII. FINANCIAL ADMINISTRATION*

***State law references:** Budgets, V.T.C.A., Local Government Code § 102.001 et seq.; fiscal powers, V.T.C.A., Local Government Code § 101.002.

Sec. 8.01. Fiscal year.

The fiscal year of the City shall begin on the first day of October and end on the last day of September.

State law references: Fiscal year, V.T.C.A., Tax Code § 1.05.

Sec. 8.02. Public record.

Copies of the budget as adopted shall be public records and shall be made available to the public upon request.

State law references: Public records, Vernon's Ann. Civ. St. art. 6252-17a.; budgets, V.T.C.A., Local Government Code § 102.001 et seq.

Sec. 8.03. Annual budget.

(a) Content: The budget shall provide a complete financial plan of all City funds and activities and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the Council may require. A budget message explaining the budget both in fiscal terms and in terms of the work programs shall be submitted with the budget. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes. It shall also summarize the City's debt position and include such other material as the manager deems desirable. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, the proposed property tax levy, and all proposed expenditures for the ensuing fiscal year, including debt service and an itemized estimate of the expense of conducting each Department of the City. The proposed budget expenditures shall not exceed the total of estimated income. The budget shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year, compared to the estimate for the budgeted year. It shall also include, in separate sections:

- (1) Tax levies, rates, and collections for the preceding five years.
- (2) The amount required for interest on the City's debts, for sinking fund and for maturing serial bonds.
- (3) The total amount of outstanding City debts, with a schedule of maturities on bond issues.
- (4) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or

O:Fax COMPANY:

ARTICLE VIII. FINANCIAL ADMINISTRATION*

Page 2 of 5

operated by the City and the proposed method of its disposition, subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget.

(5) A capital program, which may be revised and extended each year to indicate capital improvements pending or in process of construction or acquisition, and shall include the following items which shall be attached as appendices to the budget:

(a) A summary of proposed programs;

(b) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;

(c) Cost estimates, method of financing and recommended time schedules for each such improvement; and

(d) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

(6) Such other information as may be required by the Council.

(b) Submission: On or before the first day of August of each year, the City Manager shall submit to the Council a proposed budget and an accompanying message. The Council shall review the proposed budget and revise as deemed appropriate prior to general circulation for public hearing.

(c) Public notice and hearing: The Council shall post in the City Hall and publish in the official newspaper a general summary of their [its] proposed budget and a notice stating:

(1) The times and places where copies of the message and budget are available for inspection by the public; and

(2) The time and place, not less than ten nor more than 30 days after such publication, for a public hearing on the budget.

(d) Amendment before adoption: After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income plus funds available from prior years.

(e) Adoption: The Council shall adopt its annual budget by ordinance, on one reading, by the 15th day of September or as soon thereafter as practical. If the Council fails to adopt an annual budget before the start of the fiscal year to which it applies, appropriations of the last budget adopted shall be considered as adopted for the current fiscal year on a month to month, pro rata basis, until the annual budget is adopted. Adoption of the budget shall require an affirmative vote of at least a majority of all members of the Council. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

(Res. No. R88-15, § 3, 5-9-1988; Res. No. R2002-10, § 7, 2-18-2002, election 5-4-2002)

State law references: Budgets, V.T.C.A., Local Government Code § 102.001 et seq.

Sec. 8.04. Amendments after adoption.

(a) *Supplemental appropriations:* If during the fiscal year the manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriation for the year up to the amount of such excess.

O:Fax COMPANY:

ARTICLE VIII. FINANCIAL ADMINISTRATION*

Page 3 of 5

(b) *Emergency appropriations:* To meet public emergencies created by natural disasters or manmade calamities that affect life, health, property, or the public peace, the City Council may authorize (i) the re-appropriation of revenues previously budgeted for maintenance and operation expenses, (ii) the appropriation of unanticipated revenues, and/or (iii) the appropriation of restricted reserves. All such appropriations or re-appropriations shall be by emergency ordinance in accordance with the provisions of this Charter. If there are insufficient funds available for appropriation or re-appropriation for such purposes, the City Council may by emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time.

(c) *Reduction of appropriations:* If at any time during the fiscal year it appears probable to the City Manager that the revenues available will be insufficient to meet the amount appropriated, he/she shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him/her and his/her recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce one or more appropriations.

(d) *Transfer of appropriations:* At any time during the fiscal year the City Manager may transfer part or all of any unencumbered appropriation balance among programs within a Department, Division, or Office and, upon written request by the City Manager, the Council may by ordinance transfer part or all of any unencumbered appropriation balance from one Department, office or agency to another.

(e) *Limitations:* No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof.

(f) *Effective date:* The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption of the ordinance.

(Res. No. R88-15, § 3, 5-9-1988; Res. No. R2007-09, § 1, 3-5-2007, election 5-12-2007)

State law references: Budgets, V.T.C.A., Local Government Code § 102.001 et seq.

Sec. 8.05. Borrowing for capital improvements.

(a) *Borrowing:* The Council shall have the power, except as prohibited by law, to borrow money by whatever method it may deem to be in the public interest.

(b) *General obligation bonds:* The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the Constitution and Laws of the State of Texas and this Charter, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas.

(c) *Revenue bonds:* The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the constitution and laws of the State of Texas, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable from the properties, or interest therein pledged, or the income therefrom, or both. The holders of the revenue bonds shall never have the right to demand payment thereof out of monies raised or to be raised by taxation. All such bonds shall be issued in conformity with the laws of the State of Texas.

(d) *Bonds incontestable:* All bonds of the City having been issued and sold and having been

O:Fax COMPANY:

ARTICLE VIII. FINANCIAL ADMINISTRATION*

Page 4 of 5

delivered to the purchaser thereof shall thereafter be incontestable and all bonds issued to refund in exchange for outstanding bonds previously issued shall and after said exchange be incontestable.

(e) Addition of ordinance: The procedure for adoption of any ordinance relative to borrowing for capital improvements shall be:

(1) A copy of the proposed ordinance shall be furnished to each member of the City Council, the City Attorney and any citizen of the City upon request to the City Secretary, at least three days before the date of the meeting at which the ordinance is to be considered.

(2) Any ordinance relative to borrowing for capital improvements may be adopted and finally passed at the meeting at which it is introduced.

(f) Elections to authorize debt: Notwithstanding any other provision contained in this Section 8.05 to the contrary, the Council shall be prohibited from incurring debt not payable from then current revenues unless a proposition therefor has been approved by the voters at a Special Election held for such purpose; provided, however, the Council shall be authorized to incur debt without the necessity of a Special Election if necessary due to an emergency or urgent public necessity, which emergency or urgent public necessity shall be expressed in the ordinance or resolution authorizing such debt.

(Ord. No. 214, § 1, 3-4-1974, election 4-6-1974; Res. No. R97-6, § 1, 2-17-1997, election 5-3-1997)

State law references: Fiscal powers, V.T.C.A., Local Government Code § 101.002; bonds, Vernon's Ann. Civ. St. art. 707 et seq.

Sec. 8.06. Lapse of appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Sec. 8.07. Administration of budget.

(a) Payments and obligations prohibited: No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the City Manager or his/her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriations and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligations, and he/she shall also be liable to the City for any amount so paid. However, this prohibition shall not be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, or certificates of obligation, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

(b) Financial reports: The City Manager shall submit to the Council each month a report detailing the financial condition of the City by budget amount versus fiscal year to date amount. The financial records of the City shall be maintained in conformity with generally accepted

O:Fax COMPANY:

ARTICLE VIII. FINANCIAL ADMINISTRATION*

Page 5 of 5

accounting principles, as prescribed by the Governmental Accounting Standards Board.

(c) Independent audit: At the close of each fiscal year, and at such times as it may be deemed necessary, the Council shall cause an independent audit to be made of all accounts of the City by a certified public accountant. The certified public accountant so selected shall have no personal interest, directly or indirectly in the financial affairs of the City or any of its officers. Upon completion of the audit, the results thereof in a summary form shall be placed on file in the City Secretary's office as a public record and in the Friendswood Public Library for the public's information.

(Res. No. R88-15, § 3, 5-9-1988; Res. No. R97-6, § 1, 2-17-1997, election 5-3-1997)

Sec. 8.08. Purchasing.

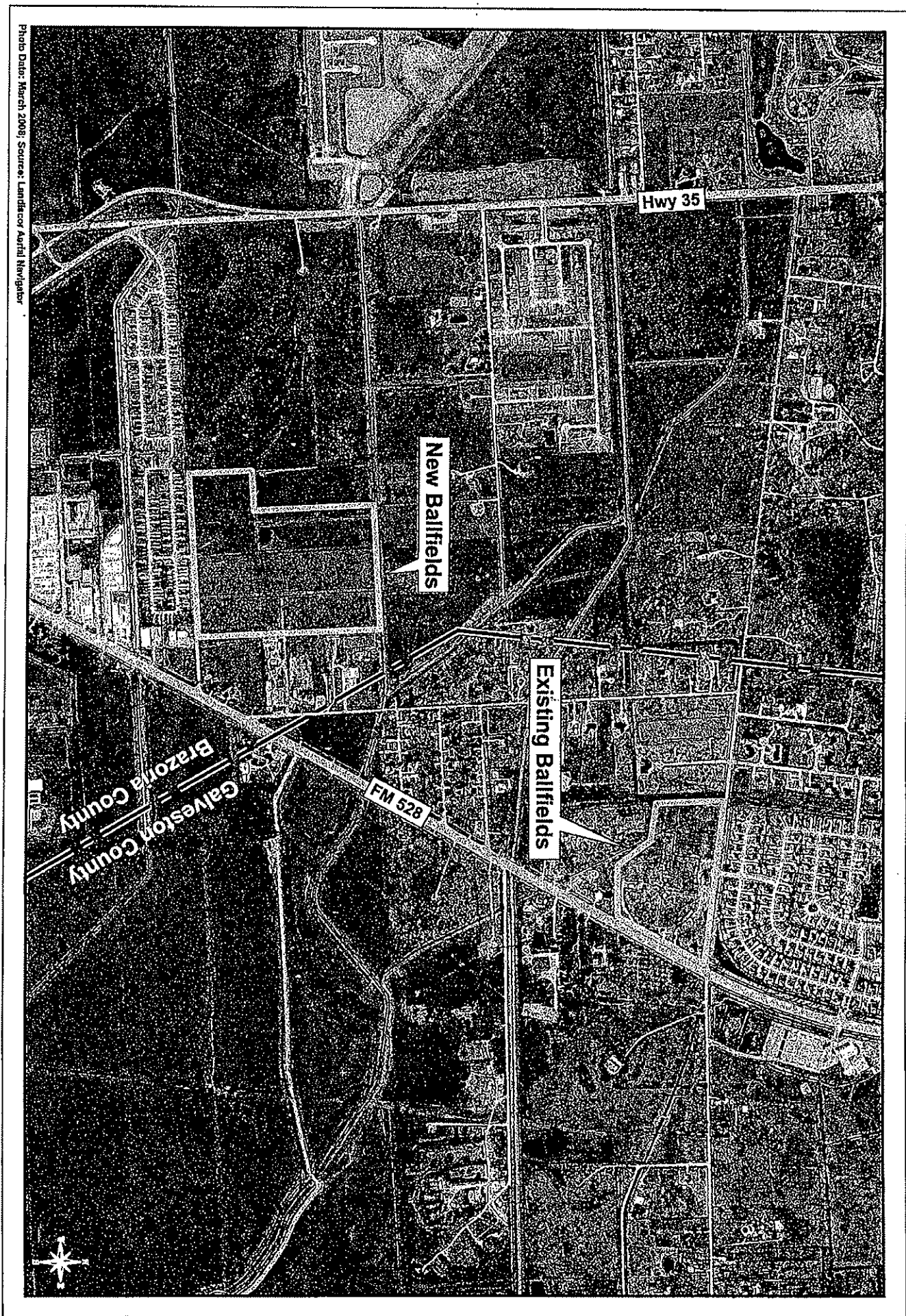
All purchases made and contracts executed by the City shall be made in accordance with the requirements of the constitution and statutes of the State of Texas.

State law references: Purchases, V.T.C.A., Local Government Code § 252.001 et seq.

'O:Fax COMPANY:

EXHIBIT B

VO:Fax COMPANY:



'O:Fax COMPANY:

EXHIBIT C

TO: Fax COMPANY:

CAUSE NO. D-1-GV-09-000916

EX PARTE	§	IN THE DISTRICT COURT OF
	§	
CITY OF FRIENDSWOOD, TEXAS	§	TRAVIS COUNTY, TEXAS
	§	
	§	419th JUDICIAL DISTRICT

ORIGINAL ANSWER OF
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Greg Abbott, Attorney General of Texas, a Respondent herein pursuant to chapter 1205 of the Texas Government Code, and in response to the First Amended Petition heretofore filed by Petitioner, the City of Friendswood, Texas, files this his Original Answer and would respectfully show the Court the following:

I.

The Attorney General neither admits nor denies the allegations made by Petitioner in this cause, but respectfully requests that this Honorable Court require the allegations of the First Amended Petition be properly proved and that this Honorable Court then act in such manner in the premises as the interest of all parties require, consonant with equity, justice, and the laws applicable to the facts as proved.

O:Fax COMPANY:

II.

Without admitting or denying the allegations made by Petitioner, in order to inform the Court, the Attorney General addresses two main issues raised in Petitioner's First Amended Petition.

The first main issue, addressed in section III B on pages 5 through 7 of the First Amended Petition, regards whether the provisions for a petition for an election set forth in the Certificate of Obligation Act control over provisions set forth in the city charter. The longstanding position of the Public Finance Division of the Office of the Attorney General in its review and approval of certificates of obligation pursuant to chapter 1202 of the Texas Government Code is that the notice and petition provisions of Section 271.049 of the Local Government Code, read in conjunction with Section 271.044 of the Local Government Code, establish that no election is required for the issuance of certificates of obligation unless a petition is filed in accordance with the requirements of the Certificates of Obligation Act, Tex. Loc. Gov't Code, §§ 271.041 through 271.065.

The second issue, addressed in section III C of pages 7 through 8 of the First Amended Petition, involves a question of law before the Court as to whether the City of Friendswood may issue certificates of obligation to purchase park land not only outside of its corporate limits, but outside of the county in which the city is situated. Petitioner is relying upon its home rule powers as authority to purchase the park land outside its boundaries. A home rule city possesses powers not denied by statute or the constitution so long as the city has incorporated those powers in its charter. *H. B. Zachry v. City of San Antonio*, 296 S.W.2d 299, 301 (Tex. Civ. App. - San

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Antonio 1956) (citing *Foster v. City of Waco*, 255 S.W. 1104 (Tex. 1923)), *aff'd on other grounds*, 305 S.W.2d 558 (Tex.1957). Therefore, a central legal question before the court is whether the city charter grants the City of Friendswood the power to purchase park land outside not only its corporate boundaries but outside the county in which it resides. Of the sections of the city charter attached to the First Amended Petition, only section 2.04 appears to directly address public parks and that provision discusses in part the power to establish, maintain, and improve public parks within the corporate limits of the City. In short, as part of its proof at the hearing, the Petitioner should demonstrate to the Court that the city charter or other law authorizes the city to purchase park land outside of the boundaries of the county in which the city resides.

III.

Upon proper proof being made by Petitioner herein of the allegations contained in the First Amended Petition, the Attorney General will have no objection to the relief requested by Petitioner being granted by this Court; provided, however, the Attorney General reserves the right to contest any and all relief requested by the Petitioner upon failure by the Petitioner to properly prove all allegations contained in the First Amended Petition, or in the event the Petitioner's First Amended Petition is further amended.

O:Fax COMPANY:

WHEREFORE, PREMISES CONSIDERED, the Attorney General respectfully prays that upon final judgment this Honorable Court enter such order as may be proper in the premises.

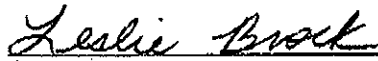
Respectfully submitted,

GREG ABBOTT
Attorney General

ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX
Assistant Attorney General
Chief, Financial Litigation Division



Leslie Brock
Assistant Attorney General
Public Finance Division
State Bar No. 00787883
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
512/475-2929 512/320-0106 (FAX)
Email: leslie.brock@oag.state.tx.us

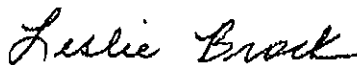
Adrian Henderson
Assistant Attorney General
Financial Litigation Division
State Bar No. 24025422
Email: adrian.henderson@oag.state.tx.us

O:Fax COMPANY:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by facsimile transmission this 12th day of June 2009 to:

Patrick W. Mizell
Michael Marin
Deborah C. Milner
Vinson & Elkins L.L.P.
1001 Fannin Street
Suite 2300
Houston, Texas 77002
(713) 615-5912 (Telecopy)



Leslie Brock
Assistant Attorney General
Public Finance Division

'O:Fax COMPANY:

EXHIBIT D

CO:Fax COMPANY:

Austin American-Statesman

PO#: FRIENDSWOOD

Ad ID#: 4030854

Acct#: 7137582222

Account Name: VINSON & ELKINS LLP

VINSON & ELKINS LLP
1001 FANNIN STE 2300
ATTN PRICILLA KWAN
HOUSTON, TX 77002

AFFIDAVIT OF PUBLICATION

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, a Notary Public in and for the County of Travis,
State of Texas, on this day personally appeared:

Shary Fowler

Advertising Agent of the Austin American-Statesman, a daily newspaper published in said
County and State that is generally circulated in Bastrop, Bell, Blanco, Brazos, Burleson,
Burnet, Caldwell, Colorado, Comal, Coryell, Fayette, Gillespie, Gonzales, Guadalupe, Hays,
Kerr, Lampasas, Lee, Llano, Milam, Nueces, San Saba, Travis, Washington, and Williamson
Counties, who being duly sworn by me, states that the attached advertisement was published
at the lowest published rate for Classified advertising in said newspaper on the following
date(s), to wit:

First Published: 5/29/2009

Last Published: 6/5/2009

Times Published: 2

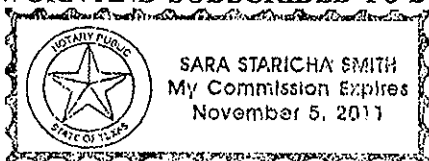
Classification: Legal Notices (9980)

Lines: 157

Cost: \$1,709.02

and that the attached is a true copy of said advertisement.

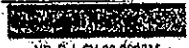
SWORN AND SUBSCRIBED TO BEFORE ME, this the 5 day of June 2009



[Signature]
Notary Public in and for
TRAVIS COUNTY, TEXAS

Austin American-Statesman
305 South Congress Ave., P.O. Box 670, Austin, Texas 78767-0670 512-445-3832

O:Fax COMPANY:



NO. D-1-GV-09-000916
EX PARTE
CITY OF FRIENDSWOOD

IN THE DISTRICT
COURT
TRAVIS COUNTY, TEXAS
419TH JUDICIAL
DISTRICT

**NOTICE OF PROCEEDINGS
AND ORDER**

The Court issues the following
Notice of Proceedings and Order
pursuant to Chapter 1205
of the Texas Government
Code.

NOTICE IS HEREBY GIVEN to all
persons who (i) reside in the
boundaries of the city of
Friendswood, (ii) own prop-
erty located within the bound-
aries of the city of Friends-
wood, or (iii) have a claim &
right, title, or interest in any
property or money to be affect-
ed by the proceedings de-
scribed below, the issuance of
the public securities described
below, including all actions or
expenditures of funds, taken
or made and/or proposed to
be taken or made in connec-
tion with or affecting the secu-
rities described below. For
purposes of this Notice of Pro-
ceedings and Order, the per-
sons named in sections (i), (ii),
and (iii) above shall be re-
ferred to as the "Interested
Parties."

The city of Friendswood has
filed an action for declaratory
judgment (the "Petition")
seeking, among other things, a
declaration by this Court:

- (a) that the City is authorized by
law to issue the Certificates;
- (b) that the Certificates, when
issued and executed pursuant
to the procedural require-
ments provided by law, in-
cluding approval by the At-
torney General of Texas, will
constitute lawful and valid ob-
ligations and contracts of the
City, enforceable according to
their respective terms, and
that all provisions for the pay-
ment of, and pledges, liens
and security provided for such
debt and the interest thereon
will constitute valid and bind-
ing obligations and contracts
of the City under the laws of
the State of Texas;
- (c) that the City has proposed
expenditures of the money
raised by issuance of the
Certificates, including the
purchase of parkland in
Brazoria County, are legal and
valid;
- (d) that the Certificates have
been confirmed and approved
by the Court;
- (e) that the City has authority
under the Certificates of
Incorporation Act to issue the
Certificates without holding an
election under § 2.05 of the
City Home Rule Charter; and
- (f) that the Court's judgment in
this lawsuit shall constitute a
permanent injunction against
the institution or prosecution
by any person or entity of any
new or existing action or
proceeding contesting the
validity of the Certificates; the
authorization of the
Certificates; the expenditure of
money relating to the
Certificates; the provisions
made for the payment of the
Certificates or of interest
thereon; the funds authorized
to pay for the certificates; any
matter adjudicated by the
Court's judgment in this
action; and any matter that
could have been raised in
these proceedings.

A full description of the lawsuit
and the relief sought is
contained in the City's Petition,
Ex Parte City of Friendswood,
Cause No. D-1-GV-09-000916,
filed in the 419th Judicial
District Court of Travis County,
Texas.

IT IS HEREBY ORDERED and
Notice is hereby given, that
any interested party (any of
the Interested Parties des-
cribed above) may become a
named party to these proce-
dings by pleading to the
Petition on or before June 15,
2009, and then appear for
hearing and trial in the
courtroom of the 419th
Judicial District Court of Travis
County, Texas at 10:00 a.m. on
Monday, June 15, 2009, it
being the first Monday after
the expiration of 20 days from
the date this Order is issued.
The actual location of the
hearing may be in a different
location in the Travis County
Court House; interested parties
should contact the court
administrator. After said date,
Interested Parties may become
named parties by intervention
on leave of court.

IT IS FURTHER ORDERED, that,
at such hearing and trial, any
interested Parties desiring to
do so may appear, and the
Attorney General of Texas shall
appear, and their cause why
the prayers of the Petition of
Friendswood filed in this
action and generally averred
above should not be granted.
BE SO ORDERED, that, at
such time, place, and date the
Court will proceed to rule and
hear testimony on the facts of
all matters and prayers within
the Petition of Orange.

SO ORDERED,
SIGNED this 22nd day of May,
2009.
/s/ Stephen Yermolov
JUDGE PRESIDING

O:Fax COMPANY:

Austin American-Statesman

PO#:

Ad ID#: 4027066

Acct#: 7137582222

Account Name: VINSON & ELKINS LLP

VINSON & ELKINS LLP
1001 FANNIN STE 2300
ATTN PRICILLA KWAN
HOUSTON, TX 77002

AFFIDAVIT OF PUBLICATION

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, a Notary Public in and for the County of Travis, State of Texas, on this day personally appeared:

Shary Fowler

Advertising Agent of the Austin American-Statesman, a daily newspaper published in said County and State that is generally circulated in Bastrop, Bell, Blanco, Brazos, Burleson, Burnet, Caldwell, Colorado, Comal, Coryell, Fayette, Gillespie, Gonzales, Guadalupe, Hays, Kerr, Lampasas, Lee, Llano, Milam, Nueces, San Saba, Travis, Washington, and Williamson Counties, who being duly sworn by me, states that the attached advertisement was published at the lowest published rate for Classified advertising in said newspaper on the following date(s), to wit:

First Published: 6/5/2009

Last Published: 6/5/2009

Times Published: 1

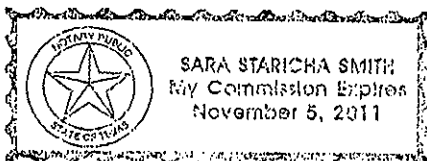
Classification: Legal Notices (9980)

Lines: 170

Cost: \$923.10

and that the attached is a true copy of said advertisement.

SWORN AND SUBSCRIBED TO BEFORE ME, this 5 day of June, 2009



[Signature]
Notary Public in and for
TRAVIS COUNTY, TEXAS

Austin American-Statesman
305 South Congress Ave., P.O. Box 670, Austin, Texas 78767-0670 512-445-3832

TO: Fax COMPANY:

NO. D-1-GV-09-000916

EX PARTE
CITY OF FRIENDSWOOD

IN THE DISTRICT COURT
TRAVIS COUNTY, TEXAS
419th JUDICIAL DISTRICT

NOTICE OF PROCEEDINGS
AND ORDER

The Court issues the following Notice of Proceedings and Order pursuant to Chapter 1205 of the Texas Government Code.

NOTICE IS HEREBY GIVEN to all persons who (i) reside in the boundaries of the city of Friendswood, or (ii) have or claim a right, title, or interest in any property or money to be affected by the proceedings described below, the issuance of the public securities described below, including all actions or expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities described below. For purposes of this Notice of Proceedings and Order, the person named (i) actions (ii), (iii), and (iii) above shall be referred to as the "Interested Parties."

The City of Friendswood has filed an action for declaratory judgment (the "Petition") seeking, among other things, a declaration by this Court: (a) that the City is authorized by law to issue the Certificates; (b) that the Certificates, when issued and executed pursuant to the procedural requirements provided by law, including approval by the Attorney General of Texas, will constitute lawful and valid obligations and contracts of the City, enforceable according to their respective terms, and that all provisions for the payment of, and pledge, lien and security provided for such debt and the interest thereon will constitute valid and binding obligations and contracts of the City under the laws of the State of Texas;

(c) that the proposed expenditures of the money raised by issuance of the Certificates, including the purchase of parkland in Brazoria County, are legal and valid;

(d) that the Certificates have been confirmed and approved by this Court;

(e) that the City has authority under the Certificates of Obligation Act to issue the Certificates without holding an election under § 8.05 of the City's Home Rule Charter; and

(f) that the court's judgment in this lawsuit shall constitute a permanent injunction against the institution or prosecution by any person or entity of any new or existing action or proceeding contesting the validity of the Certificates; the authorization of the Certificates; the expenditure of money relating to the Certificates; the provisions made for the payment of the Certificates or of interest thereon; the funds authorized to pay for the Certificates; any matter adjudicated by the Court's judgment in this action; and any matter that could have been raised in these proceedings.

A full description of the lawsuit and the relief sought is contained in the City's Petition, Ex Parte City of Friendswood, Cause No. D-1-GV-09-000916, filed in the 419th Judicial District Court of Travis County, Texas.

IT IS HEREBY ORDERED and Notice is hereby given, that any interested party (any of the Interested Parties described above) may become a named party to these proceedings by pleading to the Petition on or before June 15, 2009, and may appear for hearing and trial in the courtroom of the 419th Judicial District Court of Travis County, Texas at 10:00 a.m. on Monday, June 15, 2009, it being the first Monday after the expiration of 20 days from the date this Order is issued. The actual location of the hearing may be in a different location in the Travis County Courthouse. Interested parties should contact the court administrator. After said date, Interested Parties may become named parties by intervention on leave of court.

IT IS FURTHER ORDERED, that, at such hearing and trial, any interested Parties desiring to do so may appear, and the Attorney General of Texas shall appear, and show cause why the prayers of the Petition of Friendswood filed in this action and generally described above should not be granted. Be on further notice that, at such time, place, and date, the Court will proceed to full and final hearing on the merits of all matters and prayers within the Petition of Origin.

SO ORDERED.
SIGNED this 22nd day of May, 2009.

/s/ Stephen Yelenosky
JUDGE PRESIDING

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EXHIBIT E

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AFFIDAVIT OF PUBLICATION

STATE OF TEXAS:

COUNTY OF HARRIS:

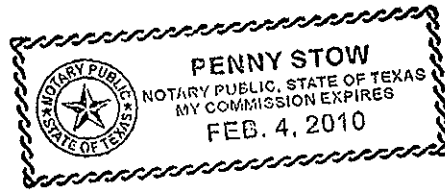
Before me, the undersigned authority, a Notary Public in and for the State of Texas, on the day personally appeared: GAIL FEAGINS, who after being duly sworn, says that she is the ACCOUNTS RECEIVABLE LEAD at the HOUSTON CHRONICLE, a daily newspaper published in Harris County, Texas, and that the publication, of which the annexed herein, or attached to, is a true and correct copy, was published to-wit:

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	hc	Jun 5 2009	1245.0	C_frilg_2

Gail Feagins

GAIL FEAGINS
ACCOUNTS RECEIVABLE LEAD

Sworn and subscribed to before me, this the 5th Day of June A.D. 2009



Penny Stow

Notary Public in and for the State of Texas

O:Fax COMPANY:

NO. D-1-GV-09-000916

IN THE DISTRICT COURT
TRAVIS COUNTY, TEXAS
419th JUDICIAL DISTRICT

EX PARTE

CITY OF FRIENDSWOOD

**NOTICE OF PROCEEDINGS
AND ORDER**

The Court issues the following Notice of Proceedings and Order pursuant to Chapter 1205 of the Texas Government Code.

NOTICE IS HEREBY GIVEN to all persons who (i) reside in the boundaries of the city of Friendswood, (ii) own property located within the boundaries of the city of Friendswood, or (iii) have or claim a right, title, or interest in any property or money to be affected by the proceedings described below, the issuance of the public securities described below, including all actions or expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities described below. For purposes of this Notice of Proceedings and Order, the persons named in sections (i), (ii), and (iii) above shall be referred to as the "Interested Parties."

The city of Friendswood has filed an action for declaratory judgment (the "Petition") seeking, among other things, a declaration by this Court:

(a) that the City is authorized by law to issue the Certificates;

(b) that the Certificates, when issued and executed pursuant to the procedural requirements provided by law, including approval by the Attorney General of Texas, will constitute lawful and valid obligations and contracts of the City, enforceable according to their respective terms, and that all provisions for the payment of, and pledges, liens and security provided for such debt and the interest thereon will constitute valid and binding obligations and contracts of the City under the laws of the State of Texas;

(c) that the proposed expenditures of the money raised by issuance of the Certificates, including the purchase of parkland in Brazoria County, are legal and valid;

(d) that the Certificates have been confirmed and approved by this Court;

(e) that the City has authority under the Certificates of Obligation Act to issue the Certificates without holding an election under § 8.05 of the City's Home Rule Charter; and

(f) that the Court's judgment in this lawsuit shall constitute a permanent injunction against the institution or prosecution by any person or entity of any new or existing action or proceeding contesting the validity of the Certificates; the authorization of the Certificates; the expenditure of money relating to the Certificates; the provisions made for the payment of the Certificates or of interest thereon; the funds authorized to pay for the Certificates; any

CO:Fax COMPANY:

ment of the certificates or of interest thereon; the funds authorized to pay for the Certificates; any matter adjudicated by the Court's judgment in this action; and any matter that could have been raised in these proceedings.

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IT IS FURTHER ORDERED, that, at such hearing and trial, any interested Parties desiring to do so may appear, and the Attorney General of Texas shall appear, and show cause why the prayers of the Petition of Friendswood filed in this action and generally described above should not be granted. Be on further notice that, at such time, place, and date the Court will proceed to full and final hearing on the merits of all matters and prayers within the Petition of Orange.

SO ORDERED.

SIGNED this 22nd day of May, 2009.

/s/ Stephen Yelenosky
JUDGE PRESIDING

O:Fax COMPANY:

EXHIBIT F

TO: Fax COMPANY:

ARTICLE I. IN GENERAL

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ARTICLE I. IN GENERAL

Sec. 58-1. Declaration of policy.

It is hereby declared to be the policy of the city to acquire, maintain and facilitate the use of properties to be utilized as public parks, squares and ways and other appropriate public facilities, giving due recognition to the social ideals of sports, recreation, the arts and the appreciation of beauty and ability.

(Code 1974, § 13-1; Code 1994, § 58-1)

Sec. 58-2. Possession or consumption of alcoholic beverages at public swimming pools prohibited.

It shall be unlawful for any person to possess or consume alcoholic beverages within the fenced boundaries of all swimming pools owned and/or operated by the city.

(Code 1974, § 13-56; Code 1994, § 58-2)

Cross references: Alcoholic beverages, ch. 6.

Secs. 58-3--58-22. Reserved.

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ARTICLE II. PARKS*

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ARTICLE II. PARKS*

***State law references:** Park to be open for public use under rules prescribed by local governing authority, V.T.C.A., Local Government Code § 331.007.

DIVISION 1. GENERALLY

Sec. 58-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Park means any property dedicated or used as a park or for public park purposes or that may be dedicated or used as a park or for public park purposes within the city, and which park includes land, the title to which is in the city.

(Code 1974, § 13-41; Code 1994, § 58-26)

Cross references: Definitions generally, § 1-2.

Secs. 58-24--58-49. Reserved.

DIVISION 2. PERMITS

Sec. 58-50. Required for certain use of parks and recreational areas.

(a) A permit shall be obtained for the following activities:

- (1) Use of any park or recreation facility of the city for functions or gatherings of a group of persons numbering more than 25;
- (2) Use of the park after posted hours;
- (3) Camping in areas designated by the director;
- (4) Building of fires in areas not designated for such activity or not in receptacles designated for fires;
- (5) Erection of signs; and
- (6) Solicitation or peddling of any nature.

(b) The form of permit required by this section and reasonable regulations concerning its acquisition will be determined by the director of parks and recreation and approved by the city council.

(Code 1974, §§ 13-42(a), 13-43, 13-47; Code 1994, § 58-36)

TO: Fax COMPANY:

ARTICLE II. PARKS*

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Sec. 58-51. Application.

The following information shall be provided on the application for a permit under this article:

- (1) The purpose and nature of the function or event;
- (2) The date, time and place where the function or event is scheduled; and
- (3) The estimated number of persons to be present.

(Code 1974, § 13-42(a); Code 1994, § 58-37)

Sec. 58-52. Approval.

All permits must be approved and signed by the director of parks and recreation and reviewed by city officials as deemed necessary.

(Code 1974, § 13-42(b); Code 1994, § 58-38)

Secs. 58-53--58-77. Reserved.

DIVISION 3. USE REGULATIONS

Sec. 58-78. Regulations for specific park areas.

The director of parks and recreation shall keep and maintain a listing of specific rules and regulations that apply to specific parks.

(Code 1974, § 13-58; Code 1994, § 58-51)

Sec. 58-79. Compliance with division.

Compliance with the provisions of this division is a condition to the use of the parks of the city.

(Code 1974, § 13-59; Code 1994, § 58-52)

Sec. 58-80. Park hours.

It shall be unlawful for any person to remain in a park after posted hours of use without a permit. Permits for the use of parks after posted hours may be obtained from the director of parks and recreation.

(Code 1974, § 13-43; Code 1994, § 58-53)

Sec. 58-81. Injuring, defacing, removing, etc., property generally.

It shall be unlawful for any person to remove, destroy, mutilate, mark, disfigure, injure or deface any structure, monument, statue, fountain, wall, fence, railing, vehicle, bench or other property in any

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ARTICLE II. PARKS*

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park. It shall likewise be unlawful for any person to destroy, damage, mark, cut, break or disfigure any tree, shrubbery, flower, or any other plant in or on any park.

(Code 1974, § 13-44; Code 1994, § 58-54)

Sec. 58-82. Climbing trees; walking, standing or sitting on fountains, railings, etc.

It shall be unlawful for any person to climb any tree in a park or to walk, stand or sit upon any fountain, railing, flowerbed, monument, vase, fence or upon any other property in a park which is not designated for or customarily used for such purposes.

(Code 1974, § 13-45; Code 1994, § 58-55)

Sec. 58-83. Littering.

It shall be unlawful for any person to litter any park or park waters. The term "littering," as used in this section, means the discarding of glass, paper, boxes, cans, dirt, rubbish, waste, garbage, and other forms of refuse in any place other than officially designated receptacles. Where receptacles are not so provided, all such rubbish or refuse shall be carried away from the park by the person responsible for its presence.

(Code 1974, § 13-46; Code 1994, § 58-56)

Sec. 58-84. Hunting, molesting, etc., animals, reptiles or birds.

It shall be unlawful for any person to hunt, molest, harm, frighten, kill, trap, chase, tease, shoot, injure or throw any stone, object or missile of any kind at any animal, reptile or bird in a park.

(Code 1974, § 13-47; Code 1994, § 58-57)

Sec. 58-85. Possession or discharge of weapons prohibited.

It shall be unlawful for any person to carry or possess any firearm of any description, air rifle, spring gun, bow and arrow, sling, or any other form of weapon potentially inimical to wildlife and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device within a park. Discharging any weapons into park areas from beyond park boundaries is unlawful and strictly prohibited.

(Code 1974, § 13-47; Code 1994, § 58-58)

Cross references: Offenses and miscellaneous provisions, ch. 54.

Sec. 58-86. Boats.

It shall be unlawful to place or operate any boat, raft or other watercraft, whether motor-powered or nonmotor-powered, upon any waters in any park unless such waters are specifically designated for the use of such craft.

(Code 1974, § 13-48; Code 1994, § 58-59)

Sec. 58-87. Swimming, bathing or wading.

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ARTICLE II. PARKS*

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No person shall swim, bathe or wade in any body of water located on park property unless specifically designated otherwise by signs or regulations applicable to the area.

(Code 1974, § 13-49; Code 1994, § 58-60)

Sec. 58-88. Picnicking.

Picnicking is allowed on park property except where specifically designated as not permitted by signs or regulations applicable to the area.

(Code 1974, § 13-50; Code 1994, § 58-61)

Sec. 58-89. Camping.

A permit from the director of parks and recreation for camping on park property is required.

(Code 1974, § 13-51; Code 1994, § 58-62)

Sec. 58-90. Fires.

(a) It shall be unlawful for any person to build or attempt to build a fire in a park in anything other than a specifically designated receptacle without a permit. Permits for the building of fires in areas not permitted or designated may be obtained from the director of parks and recreation pursuant to section 58-51.

(b) It is unlawful for any person to drop, throw or otherwise scatter lighted matches, burning cigarettes or cigars within any park.

(Code 1974, § 13-52; Code 1994, § 58-63)

Sec. 58-91. Solicitation.

It shall be unlawful for any person to be or act as or ply the vocation of a solicitor, agent, peddler, or any person selling goods, wares and merchandise in any park without a permit. Permits may be obtained from the director of parks and recreation pursuant to section 58-51.

(Code 1974, § 13-53; Code 1994, § 58-64)

Cross references: Peddlers, solicitors, canvassers, itinerant vendors, § 18-19 et seq.

Sec. 58-92. Operation of vehicles on park property.

It shall be unlawful for any person to operate or cause to be operated a motorized vehicle on park property except on roadways and other specifically designated areas. This section does not apply to vehicles used for emergency, police, and parks and recreation purposes.

(Code 1974, § 13-54; Code 1994, § 58-65)

Cross references: Traffic and vehicles, ch. 82.

Sec. 58-93. Horses and other large animals.

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ARTICLE II. PARKS*

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It shall be unlawful for any person to ride, lead or otherwise allow a horse, whether by action or inaction, upon any area of a park, except along and upon areas specifically designated therefor. Other large animals are prohibited in the area of a park unless a permit is obtained pursuant to section 58-51. Dogs and cats, if household pets are appropriately licensed and supervised, are permitted on park property, except in areas specifically designated otherwise.

(Code 1974, § 13-55; Code 1994, § 58-66)

Cross references: Animals, ch. 10.

Sec. 58-94. Possession or consumption of alcoholic beverages prohibited at certain athletic events.

It shall be unlawful for any person to possess or consume alcoholic beverages in a park while attending any athletic event or practice session specifically organized for the participation of minors.

(Code 1974, § 13-56; Code 1994, § 58-67)

Cross references: Alcoholic beverages, ch. 6.

Sec. 58-95. Glass bottles, containers prohibited.

(a) It shall be unlawful for any person to carry into any public park of the city, or have in his possession while within any such park, any glass beverage bottle or container.

(b) Beverages of any kind in glass containers are prohibited on park property.

(Code 1974, § 13-57; Code 1994, § 58-68)

Sec. 58-96. Exemptions from division.

The provisions of this division shall not be construed to apply to personnel while they are engaged in authorized maintenance or construction upon park property.

(Code 1974, § 13-60; Code 1994, § 58-69)