



**April 14, 2020**

**5:00 P.M.**

**CITY COUNCIL**

**MEETING AGENDA**





**NOTICE OF MEETING OF THE CITY COUNCIL OF  
THE CITY OF HARKER HEIGHTS, TEXAS  
VIA TELECONFERENCE**

*The City of Harker Heights*  
305 Miller's Crossing  
Harker Heights, Texas 76548  
Phone 254/953-5600  
Fax 254/953-5614

**Mayor**  
Spencer H. Smith

**Mayor Protem**  
Michael Blomquist

**City Council**  
Jennifer McCann  
Jackeline Soriano Fountain  
John Reider  
Jody Nicholas

Notice is hereby given that, beginning at 5:00 p.m. on Tuesday, April 14, 2020, and continuing from day to day thereafter if necessary, the City Council of the City of Harker Heights, Texas, will conduct a telephonic meeting to contain the spread of COVID-19 in accordance with Governor Abbott's declaration of the COVID-19 public health threat and action to temporarily suspend certain provisions of the Texas Open Meetings Act issued on March 16, 2020. The subjects to be discussed are listed in the following agenda:

**I. Roll Call:**

**II. Mayoral Proclamations and Presentations:**

1. Proclaim April 19-25, 2020, as "National Library Week".
2. Proclaim April 24, 2020, as "Arbor Day".

**III. Consent Items:**

1. Discuss and consider approving the minutes of the meeting held on March 24, 2020 and take the appropriate action.
2. Discuss and consider approving the minutes of the special called meeting held on April 7, 2020 and take the appropriate action.

**IV. Presentations by Citizens:**

Citizens who desire to address the Council on any matter may do so during this item. Please understand that while the Council appreciates hearing your comments, State law (Texas Gov't Code §551.042) prohibits them from: (1) engaging in discussion other than providing a statement of specific factual information or reciting existing City policy, and (2) taking action other than directing Staff to place the matter on a future agenda. Please state your name and address for the record and limit your comments to three minutes.

**V. Public Hearings:**

1. Conduct a public hearing to discuss and consider approving an ordinance amending Section 155.005 of the Harker Heights Code of Ordinances to allow minor setback variances by the Building Official over all zoning districts and take the appropriate action. (Planning and Development Director)

2. Conduct a public hearing to discuss and consider approving an ordinance of the City of Harker Heights, Texas, amending Sections 150.32, 150.33, 150.34, 150.36, and 155.050 of the Code of Ordinances of the City of Harker Heights, Texas, which pertain to fence height, materials and location and take appropriate action. (Planning and Development Director)
3. Conduct a public hearing to discuss and consider approving an ordinance of the City of Harker Heights, Texas, amending ordinance 2017-28, Section §155.0231 (G) (2) of the Code of Ordinance of the City of Harker Heights, Texas, to modify the R2-I Side Yard Setback Requirements for corner lots and take the appropriate action. (Planning and Development Director)
4. Conduct a public hearing to discuss and consider approving an ordinance of the City of Harker Heights, Texas, setting forth regulations for businesses not licensed or permitted to sell or serve alcoholic beverages which allow patrons to bring alcoholic beverages onto their premises for consumption (“BYOB Businesses”), providing a penalty clause, and providing for publication and an effective date, and take the appropriate action, and take the appropriate action. (Planning and Development Director)

**VI. Old Business:**

**VII. New Business:**

1. Discuss and consider approving an Ordinance authorizing the issuance and sale of City of Harker Heights, Texas, General Obligation Refunding Bonds, Series 2020, in an aggregate maximum principal amount not to exceed \$6,085,000; levying a tax in payment thereof; authorizing the execution and delivery of a Paying Agent/Registrar Agreement, and an Escrow Agreement; calling certain obligations for redemption or prepayment; awarding the purchase of the Certificates; finding and determining that the meeting at which this Ordinance is passed is open to the public as required by law; and enacting other provisions relating thereto and take the appropriate action. (Assistant Finance Director)

**VIII. Reports of Advisory Boards & Commissions:**

**IX. Items from Council:**

**X. Staff Reports:**

1. Receive and discuss the City Manager’s Report. (City Manager)

**XI. Announcements:**

## **XII. Adjournment:**

At 5:00 p.m. on Thursday the 9<sup>th</sup> day of April 2020, an original copy of this notice was posted at the Harker Heights Municipal Building.



Juliette Helsham  
City Secretary

**The public may participate remotely in this meeting by dialing-in using the toll-free number: (866) 899-4679 and use Access Code: 112-797-317.**

**The public will be permitted to offer public comments telephonically as provided by the agenda. Written questions or comments may be submitted two hours before the meeting to the City Secretary's Office. When submitting your written questions or comments, you must include your Name and Address. Agenda packet and recording of the telephonic meeting will posted on the City of Harker Heights website at [www.ci.harker-heights.tx.us](http://www.ci.harker-heights.tx.us).**

*"Assistive listening devices are available upon request for those with hearing impairments. Please contact the City Secretary 48 hours prior to meeting."*

*"Pursuant to Chapter 551 of the Government Code the City Council reserves the right to go into Closed Meeting on any item listed above if deemed necessary."*





## **Proclamation**

**WHEREAS**, today's libraries are less about what they have on the shelves and more about what they can do with and for their communities;

**WHEREAS**, libraries have long served as trusted and treasured institutions where people of all ages, interests and backgrounds can learn;

**WHEREAS**, libraries of all types are at the heart of their cities, towns, schools and campuses;

**WHEREAS**, libraries offer opportunities to explore new passions through technology, programs, and services both inside the Library building and through electronic resources and social media;

**WHEREAS**, libraries and librarians help patrons find tools to help improve the quality of their life;

**WHEREAS**, libraries strive to develop and maintain programs and collections that are as diverse as the populations they serve;

**WHEREAS**, libraries, librarians, library workers and supporters across America are celebrating National Library Week April 19-25, 2020.

**NOW, THEREFORE**, be it resolved that I, Spencer H. Smith, proclaim National Library Week, April 19-25, 2020. I encourage all residents to use Harker Heights' Virtual Library and to look forward to visiting the Library building in the future.

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Spencer H. Smith, Mayor



**TREE CITY USA®**

## **City of Harker Heights**

### **Proclamation**

**Whereas**, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

**Whereas**, the City of Harker Heights has been a Tree City USA member since 2011 and recently received our 9 years accreditation as such; and

**Whereas**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

**Whereas**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal.

**Now Therefore**, I, Spencer H. Smith, Mayor of the City of Harker Heights do hereby proclaim, April 24, 2020 to be

#### **“Arbor Day”**

in the City of Harker Heights, and urge all citizens celebrate Arbor Day by planting a tree to promote the well-being of this and future generations.

**In Witness Whereof**, I have set my hand and affixed the Seal of the City of Harker Heights, Texas, this 14<sup>th</sup> day of April 2020.

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Spencer H. Smith, Mayor

Minutes of the City Council Meeting held at 5:00 p.m. on Tuesday, March 24, 2020, in the Kitty Young Council Chamber at the Harker Heights City Hall at 305 Miller's Crossing, Harker Heights, Texas 76548:

<b>Roll Call:</b>	Spencer H. Smith	Mayor
	Michael Blomquist	Mayor Pro-tem
	Jennifer McCann	Councilmember Place 1
	Jackeline Soriano Fountain	Councilmember Place 3
	Jody Nicholas	Councilmember Place 5
	David Mitchell	City Manager
	Juliette Helsham	City Secretary
	Charlie Olson	City Attorney

**Absent:** John Reider Councilmember Place 4

**Consent Items:**

1. Council discussed and considered approving the minutes of the meeting held on March 10, 2020. McCann made the motion to approve. Seconded by Fountain. All in favor. Motion approved 4-0.

**Presentations by Citizens:**

1. Lynda Nash, 3006 Sun Dance Drive, Harker Heights, Texas 76548, gave a short presentation regarding allowing or finding an alternate location for the Conex container for the Harker Heights Food Pantry. No action taken.

**New Business:**

1. Council discussed and considered approving a resolution authorizing the City's Application for a grant in the amount of \$87,925.09 through the Criminal Justice Division Grant Program; for the purchase of 38 Pro Tech DT 206c Level 3 Plate Vests, Accessories, 5 RAM1 Swat Heavy Vests. Chief Gadd, Police Chief, made the presentation. Blomquist made the motion to approve the resolution authorizing the City's application for a grant through the Criminal Justice Division Grant Program in the amount of \$87,925.09 with no requirement for a cash or in-kind match, for the purchase of 38 Pro Tech DT 206c Level 3 Plate Vests, Accessories, 5 RAM1 Swat Heavy Vests. Seconded by Fountain. All in favor. Motion approved 4-0.
2. Council discussed and considered approving an ordinance of the City of Harker Heights, Texas, postponing Municipal Elections until November 3, 2020, Uniform Election Date pursuant to proclamation of Governor Greg Abbott. David Mitchell, City Manager, made the presentation.

Terry Delano, 514 Lobo Trail, Harker Heights, Texas 76548, gave a short presentation regarding postponing the Municipal Election until the November 3, 2020, Uniform Election Date.

Nicholas made the motion to approve. Seconded by McCann. All in favor. Motion approved 4-0.

3. Council discussed and considered approving an adjustment to the City of Harker Heights Council calendar by postponing all Council Workshops until May 31, 2020, as a prevention measure to COVID19. Juliette Helsham, City Secretary, made the presentation. Blomquist made the motion to approve. Seconded by Fountain. All in favor. Motion approved 4-0.

**Items from Council:**

Councilmember Fountain stated that she wanted to share the comments of the City for the handling of the pandemic and thanked City Manager David Mitchell and his team for executing their mission and providing them with the guidance that the City has a succession in place and most importantly for taking care of his Staff and making sure they were safe.

Mayor Pro-tem Blomquist concurred with Councilmember Fountain and thanked Chief Gadd and Chief Sims for doing an outstanding job during this stressful time.

**Announcements:**

Mayor Smith stated that he attended the following events:

- March 17<sup>th</sup> – Harker Heights City Council Workshop.
- March 18<sup>th</sup> – Killeen Temple Metropolitan Planning Organization (KTMPO) Transportation Policy Planning Board (TPPB) meeting in Belton.

**Adjournment:**

There being no further business the City of Harker Heights City Council Meeting was adjourned at 5:20 p.m.

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Spencer H. Smith, Mayor

ATTEST:

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Juliette Helsham, City Secretary

Minutes of the of the City Council meeting held at 3:30 p.m. on Tuesday, April 7, 2020 by a telephonic meeting to contain the spread of COVID-19 in accordance with Governor Abbott's declaration of the COVID-19 public health threat and action to temporarily suspend certain provisions of the Texas Open Meetings Act issued on March 16, 2020:

<b>Roll Call:</b>	Spencer H. Smith	Mayor
	Michael Blomquist	Mayor Pro-tem
	Jennifer McCann	Councilmember Place 1
	Jackeline Soriano Fountain	Councilmember Place 3
	John Reider	Councilmember Place 4
	Jody Nicholas	Councilmember Place 5
	David Mitchell	City Manager
	Juliette Helsham	City Secretary

**New Business:**

1. Council discussed and considered approving an ordinance of the City of Harker Heights, Texas, declaring a public health emergency; Providing that the declaration extends through April 30, 2020; Adopting, and providing authority to enforce, declarations and orders of the Governor, County Judge of Bell County and Bell County Commissioners' Court relating to COVID-19 pandemic; Authorizing the City to provide aid and assistance; Providing for a penalty; Providing an effective date; and directing the City Manager to post applicable orders on the City's website. David Mitchell, City Manager, made the presentation. Blomquist made the motion to approve. Seconded by Fountain. All in favor. Motion approved 5-0.

**Announcements:**

Councilmember McCann praised the City of Harker Heights community for coming together and supporting each other during the COVID-19 public health threat.

Mayor Pro-tem Blomquist echoed Councilmember McCann comments and encouraged everyone to stay safe, wash your hands and stated that we will get through this.

Councilmember Fountain thanked City Staff for their hard work.

**Adjournment.**

There being no further business the City of Harker Heights City Council Meeting was adjourned at 3:42 p.m.

ATTEST:

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Spencer H. Smith, Mayor

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Juliette Helsham, City Secretary





## COUNCIL MEMORANDUM

### AGENDA ITEM #V-1

FROM: THE OFFICE OF THE CITY MANAGER

DATE: APRIL 14, 2020

CONDUCT A PUBLIC HEARING TO DISCUSS AND CONSIDER APPROVING AN ORDINANCE AMENDING SECTION 155.005 OF THE HARKER HEIGHTS CODE OF ORDINANCES TO ALLOW MINOR SETBACK VARIANCES BY THE BUILDING OFFICIAL OVER ALL ZONING DISTRICTS AND TAKE THE APPROPRIATE ACTION.

#### **EXPLANATION:**

The planning and development department identified various sections of the Harker Heights Code of Ordinances that warranted edits to more correctly convey appropriate policies and provide additional guidance for land development. Those sections include the following in detail:

**Section 155.005** – Currently the Building Official may allow setback variances within the R-1(M) (One Family Manufactured Home Dwelling District) under section 155.020 (G) (5) which states, “The lot must meet all applicable requirements of Chapter 154, and shall comply with the area regulations in (D) of this section. Variance in setbacks may be given in inches not to exceed one foot at the Building Official’s discretion.” Staff has suggested that this section of code be relocated to Section 155.005 Conformance with District Regulations Required in order to allow setback variances to apply to all zoning districts. Changes will read as follows, “(G) All lots must meet all applicable requirements of Chapter 154, and shall comply with the area regulations in each respective zoning classification. Variance in setbacks may be given in inches not to exceed one foot at the Building Official’s discretion.”

Delegating this authority to the Building Official should help in situations where small measurement errors have occurred in the field by contractors or homeowners. These errors had previously required the contractor or homeowner to scrap the project, redesign around the error, or appeal to the Zoning Board of Adjustments, in which they would have difficulty establishing a true hardship. The proposed change leaves the decision to the Building Official so that it remains clear this is a remedy for an honest mistake and not a right to ignore required setbacks at will; the Building Official will take the circumstances as well as the past record of the contractor or homeowner into account when making a determination.

**STAFF RECOMMENDATION:**

Staff recommends approval of the following ordinances:

1. An ordinance amendment to Section 155.005 of the Harker Heights Code of Ordinances to allow minor setback variances by the Building Official over all zoning districts.

**ACTION BY CITY COUNCIL:**

1. Motion to Approve/Disapprove an ordinance amendment to Section 155.005 of the Harker Heights Code of Ordinances to allow minor setback variances by the Building Official over all zoning districts.
2. Any other action desired.

**ATTACHMENTS:**

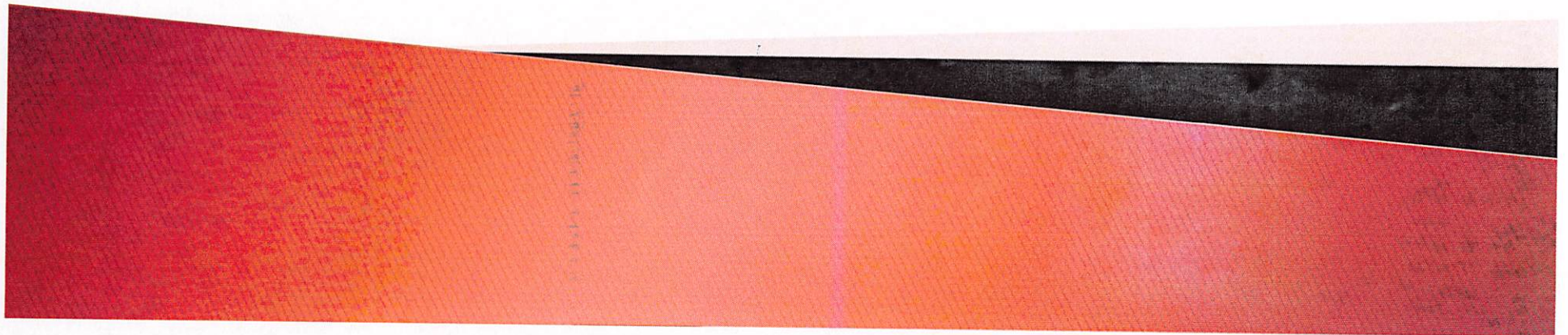
1. Redlined Code Excerpt – Section 155.005
2. Section 155.005 Amending Ordinance



# **AGENDA ITEM VII-1**

## **Public Hearing**

### **Setback Variance Ordinance**



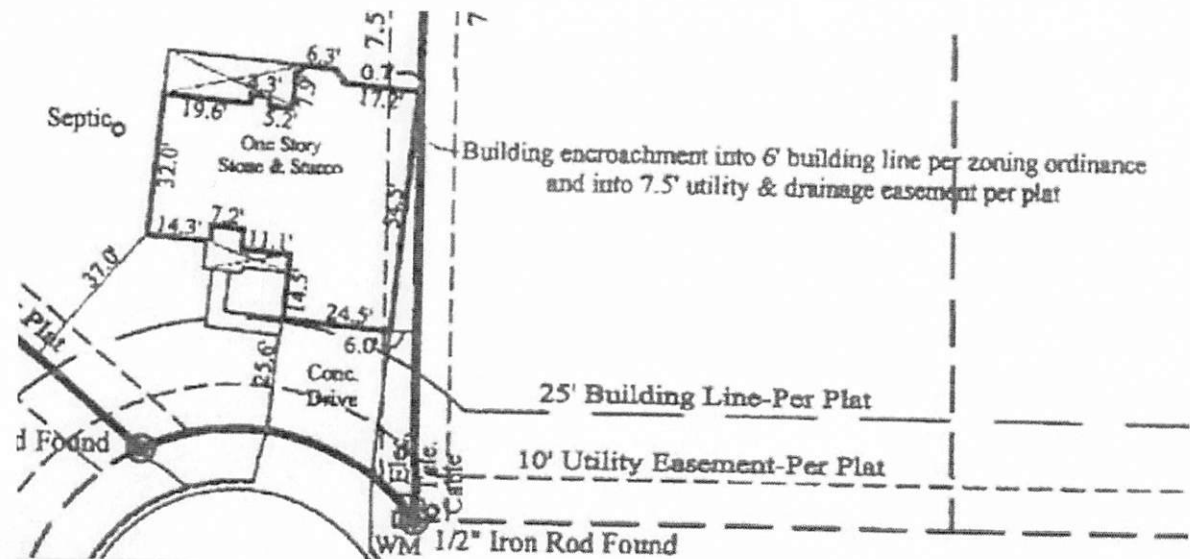


## Current Ordinance

1. Building Official initially believed the ability to allow setback variances existed in the R-1 Zoning District.
2. Later discovered this was only the case for R-1(M) Zoning District, § 155.050 (G)(5).
3. § 155.020 (G)(5) The lot must meet all applicable requirements of Chapter 154, and shall comply with the area regulations in (D) of this section. Variance in setbacks may be given in inches not to exceed one foot at the Building Official's discretion.

## Proposed Ordinance

1. Adds language to § 155.005.
2. This section covers all zoning districts.
3. § 155.005 (G) All lots must meet all applicable requirements of Chapter 154, and shall comply with the area regulations in each respective zoning classification. Variance in setbacks may be given in inches not to exceed one foot at the Building Official's discretion.



## **§ 155.005 CONFORMANCE WITH DISTRICT REGULATIONS REQUIRED.**

Except as hereinafter provided:

- A) No building shall be erected, converted, enlarged, reconstructed, or structurally altered, and no building or land shall be used for any purpose, that is not permitted in the district in which the building or land is situated.
- B) No building shall be erected, converted, enlarged, reconstructed, or structurally altered to exceed the height limit herein established for the district in which the building is situated.
- C) The minimum yards and other open spaces, including lot area per family, required by this chapter for each and every building existing at the time of the passage of this chapter, or for any building hereafter erected, shall not be encroached upon or considered as yard or open space requirements for any other building, nor shall any lot area be reduced to an area less than the district requirements of this chapter.
- D) Every building hereafter erected or structurally altered shall be on a lot as herein defined, and in no case shall there be more than one main building on one lot except as otherwise provided in this chapter.
- E) Non-HUD approved manufactured housing shall be prohibited from entering the corporate limits of the city for other than through transportation purposes. Additionally, non-HUD approved manufactured housing built prior to June 15, 1976, shall not be permitted to relocate within the city.
- F) Any building use that has been closed or abandoned for 12 months or more shall not be used thereafter unless it complies with current regulations, standards and requirements.
- G) All lots must meet all applicable requirements of Chapter 154, and shall comply with the area regulations in each respective zoning classification. Variance in setbacks may be given in inches not to exceed one foot by the Building Official if it is determined such variance is in harmony with the general purpose and intent of this chapter and will not impair the public health, safety, comfort, morals, and welfare of the city.

(Ord. 2001-36, passed 11-13-01; Am. Ord. 2006-40, passed 10-24-06)



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 155.005 TO ALLOW MINOR SETBACK VARIANCES BY THE BUILDING OFFICIAL OVER ALL ZONING DISTRICTS.**

**WHEREAS**, the City Council ("**Council**") of the City of Harker Heights ("**City**") finds that it is necessary and desirable to amend the Code of Harker Heights ("**Code**") as hereinafter provided in order to extend the authority of the Building Official to allow setback variances not to exceed one foot; and

**WHEREAS**, the meeting at which this Ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS:**

**SECTION 1:** The City Council officially finds and declares that the facts and recitations set forth in the preamble to this ordinance are true and correct.

**SECTION 2:** Section 150.005 of the Code of Harker Heights is hereby appended with the following:

**§155.005 Conformance with District Regulations Required**

- G) All lots must meet all applicable requirements of Chapter 154, and shall comply with the area regulations in each respective zoning classification. Variance in setbacks may be given in inches not to exceed one foot by the Building Official if it is determined such variance is in harmony with the general purpose and intent of this chapter and will not impair the public health, safety, comfort, morals, and welfare of the city.

**SECTION 3:** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

**SECTION 4:** All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any city official or employee charged with the enforcement of this ordinance, acting for the City of Harker Heights in the discharge of official duties, shall not thereby become personally liable, and is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

**SECTION 5:** This ordinance shall be effective from and after its passage, and the City Clerk shall publish the caption or title of hereof within ten days as required by law.

**PASSED AND APPROVED** by the City Council of the City of Harker Heights on April 14, 2020.

\_\_\_\_\_  
Spencer H. Smith, Mayor

**ATTEST:**

\_\_\_\_\_  
Juliette Helsham, City Secretary



## COUNCIL MEMORANDUM

### AGENDA ITEM #V-2

FROM: THE OFFICE OF THE CITY MANAGER

DATE: APRIL 14, 2020

CONDUCT A PUBLIC HEARING TO DISCUSS AND CONSIDER APPROVING AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, AMENDING SECTIONS 150.32, 150.33, 150.34, 150.36, AND 155.050 OF THE CODE OF ORDINANCES OF THE CITY OF HARKER HEIGHTS, TEXAS, WHICH PERTAIN TO FENCE HEIGHT, MATERIALS AND LOCATION AND TAKE APPROPRIATE ACTION.

#### **EXPLANATION:**

The Planning and Development Department identified various sections of the Harker Heights Code of Ordinances that warranted edits to more correctly convey appropriate policies and provide additional guidance for land development. Those sections include the following in detail:

**Sections 150.32, 150.33, 150.34, 150.36 and Section 155.050** – Staff has identified sections of code that pertain to fencing and screening height that currently allow for a maximum of six (6) foot fencing. In 2013, Ordinance 2013-11 raised the maximum fence height allowed in residential zoning districts to eight (8) feet, provided the fence was determined to be “superior” in design to traditional fences by the Planning and Development Director. As residential development has moved to the more topographically challenging areas of the city, it has become necessary to allow more fence height increases to eight (8) feet due to extreme elevation differences between adjacent residential lots or streets and sidewalks.

As such, staff has recommended that the maximum fence height in residential lots be raised to eight (8) feet by right, without the additional determination of the Planning and Development Director. However, staff further recommends that should the Building Official allow metal R and U panel fencing materials, as allowed at the Building Official’s discretion per §150.32 (B), these metal fences must remain of “superior” quality not to exceed six (6) feet, per the Director of Planning and Development.

Additionally, when the Code of Ordinances was amended in the past (possibly in 2004), the maximum height for fences in the front yard was raised from four (4) feet to five (5) feet, but this was not made clear to the previous Building Officials. To date, the original four-foot standard has been required, because it was believed to remain the standard, and it allows for better traffic safety by improving sight lines. Staff recommends changing the requirement for front yard fences to be a maximum of four (4) feet in height.

**STAFF RECOMMENDATION:**

Staff recommends approval of the following ordinance:

1. An ordinance amending sections 150.32, 150.33, 150.34, 150.36, and 155.050 of the Harker Heights Code of Ordinances which pertain to fence height, materials, and location.

**ACTION BY CITY COUNCIL:**

1. Motion to Approve/Disapprove an ordinance amending sections 150.32, 150.33, 150.34, 150.36, and 155.050 of the Harker Heights Code of Ordinances which pertain to fence height, materials, and location.
2. Any other action desired.

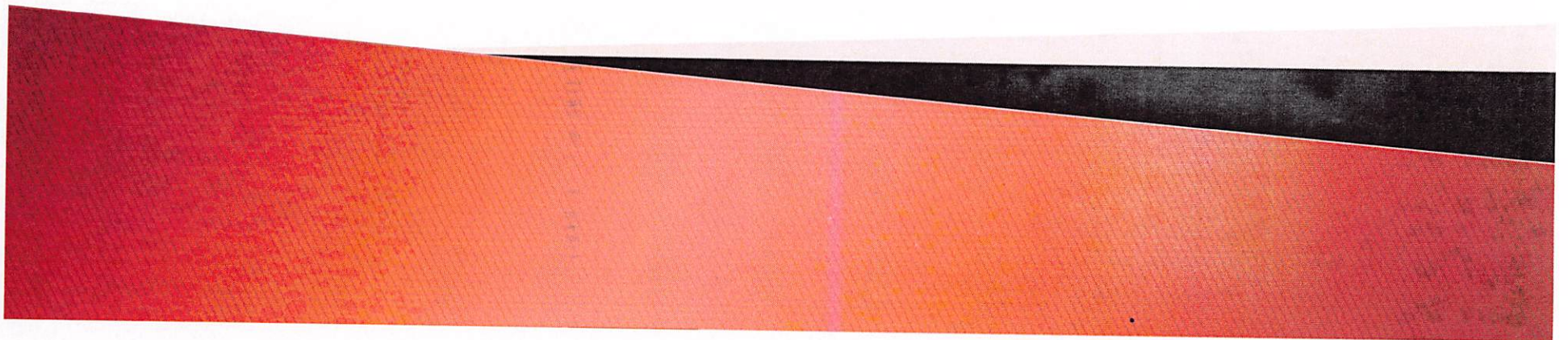
**ATTACHMENTS:**

1. Redline Code Excerpt – Sections 150.32, 150.33, 150.34, 150.36, 155.050.
2. Fence and Screening Requirements Amending Ordinance



# **AGENDA ITEM VII-2**

## **Public Hearing Fence Ordinance**



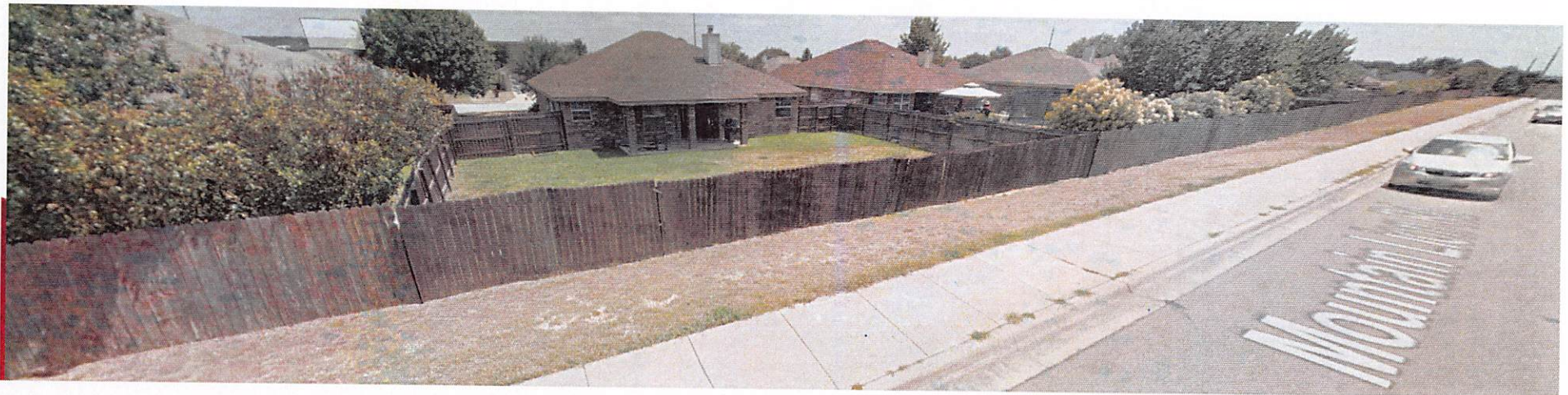


## Current Ordinance

1. Before 2013, residential side and rear fences could not exceed 6 feet in height.
2. Ordinance 2013-11 allowed residential fences to reach 8 feet in height provided they were determined to be of “superior” design by Planning Director.
3. Alternative fence materials (not wood privacy, chain-link, decorative iron, or masonry) require Building Official approval.
4. Building Officials initially believed front fence height was limited to 4 feet, but that appears to have changed to 5 feet in 2004.

## Proposed Ordinance

1. Recognized the extreme changes in local terrain and numerous requests for higher fences.
2. Rear and side fences allowed by right to reach 8 feet in height, without Planning Director approval (still requires building official permit approval).
3. Alternative fence materials require Building Official approval; also require Planning Director approval to exceed 6 feet in height.
4. Front fence height limited to 4 feet for enhanced traffic safety.





### §150.32 MATERIAL.

- A) Ranch style fencing typical for maintaining livestock and for predator control (such as a field fence, hours mesh fence, split rail, and ranch board) may be used on premises of three acres or more in size. In addition, barbed wire fencing may be used on premises upon which large farm animals are legally kept and maintained. Permits are not required for internal cross-sectioning of such premises for the control of animals, to enforce rotational grazing, or for the repair of ranch style fencing to the extent that it is a necessary part of normal maintenance.
- B) Except as provided in division (A), fences may be constructed only of masonry, cedar, redwood, treated lumber, chain link, or decorative iron, and no other materials are permitted unless approved in writing by the Building Official. Wooden fence material placed in contact with the earth shall be treated to protect the material from rot, decay, and termites.
- C) The use of any alternative fence materials must be approved by the Building Official. Such authorization shall be based on specific proposals that demonstrate superior craftsmanship, aesthetic harmony with and enhancement of the streetscape and the neighborhood, structural integrity, durability, safety, and overall design exceeding the standards under §150.36.
  - 1) Alternative fence materials exceeding six feet in height must be approved in writing by the Director of Planning and Development and the Building Official.
- D) All fences must be maintained in good order and repair.

(Ord. 87-20, passed 5-26-87; Am. Ord. 96-39, passed 7-23-96; Am. Ord. 2004-27, passed 8-10-04)

### § 150.33 PLACEMENT.

- A) Fences shall be built on property lines to avoid conflicts between property owners. In the event that there is a dispute between property owners of the location of a property line, it shall be the responsibility of the property owners to resolve the conflict without intervention by the city.
- B) Any fence built in or across utility easements shall remain the responsibility of the property owner. In the event that the fence is constructed on an easement and the fence is subsequently damaged or destroyed through the exercise of the rights of the owner of the easement, the repair or replacement of the fence shall be the sole responsibility of the property owner.
- C) On premises five acres or larger in size, fences may be greater than ~~four~~ five feet in height. Otherwise, fences and gates built in the front yard within the 25-foot building setback, where permitted, shall not exceed ~~four~~ five feet in height.
- D) Fences built on a side yard shall be placed on the property line.
  - 1) Fences built on a side yard facing a public street may be placed on the property line. When the side yard is adjacent to the adjoining property's front yard, the side yard fences may not exceed four feet in height unless they are set back to the adjoining properties front yard setback line.



- 2) Any fence in the rear yard of lots that contain a 25-foot building setback in the rear portion of the lot shall not exceed four feet in height.
- (Ord. 87-20, passed 5-26-87; Am. Ord. 88-07, passed 3-8-88; Am. Ord. 94-07, passed 6-14-94; Am. Ord. 2004-27, passed 8-10-04) [Penalty, see § 150.99](#)

#### **§150.34 FENCE HEIGHT.**

- A) ~~Except as provided in division (B) of this section,~~ Fences constructed in areas zoned "R" shall not exceed ~~eight six~~ eight feet in height measured from the finished grade. Fences constructed in all other zoned areas shall not exceed eight feet in height measured from the finished grade.
- ~~B) Notwithstanding any contrary provision in this chapter, the Director of Planning and Development may approve an overall fence height not to exceed eight feet above finished grade in areas zoned "R". Such authorization shall be based on specific proposals that demonstrate superior craftsmanship, aesthetic harmony with and enhancement of the streetscape and the neighborhood, structural integrity, durability, safety, and overall design exceeding the standards under § 150.36.~~

(Ord. 87-20, passed 5-26-87; Am. Ord. 2013-11, passed 4-30-13) [Penalty, see § 150.99](#)

#### **150.36 STANDARDS FOR SCREENING.**

Where screening is required, the following are the approved types of screening:

- A) *Screening alternate A.* Consists of a solid masonry or concrete wall, ~~eight six~~ eight feet in height measured from the average grade of the nearest property line of the property adjacent to that on which the screening is required.
- B) *Screening alternate B.* Consists of a chain link fence with redwood slats, ~~eight six~~ eight feet in height measured from the average grade of the nearest property line of the property adjacent to that on which the screening is required.
- C) *Screening alternate C.* Consists of a solid wood fence, ~~eight six~~ eight feet in height measured from the average grade of the nearest property line of the property adjacent to that on which screening is required.

(Ord. 87-20, passed 5-26-87) [Penalty, see § 150.99](#)

#### **§155.050 SCREENING REQUIREMENTS.**

- A) Screening shall be installed and maintained as provided in §§ [150.30](#) through [150.38](#), with the exception that perimeter fencing around subdivisions, or between zoning districts, may be increased to ~~eight six~~ eight seven feet in height
- B) Landscaping, fencing or other material shall be erected to a height not less than six feet, to provide a visual barrier from adjacent properties and streets. Such screening shall be permanently and adequately maintained by the owner of the property on which the screening is required. Except for the landscape buffer, no

screening fence or wall shall have more than 40 square inches of openings over any one square foot of fence or wall surface.

- C) **Screening fence** may consist of solid wood panel or a galvanized metal chain link fence with all-weather slats interwoven into the metal fabric. Such fencing shall be constructed on metal posts and placed in concrete footings with bracing.
- D) **Screening fence** may be constructed of native stone, brick, precast concrete panels with decorative finish, or decorative masonry units; constructed with the finish side out. In no case shall more than 25% of the area of the wall be erected with common smooth-faced masonry units.

(Ord. 2001-36, passed 11-13-01; Am. Ord. 2006-40, passed 10-24-06)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS AMENDING SECTIONS 150.32, 150.33, 150.34, 150.36 AND 155.050 OF THE CODE OF ORDINANCES OF THE CITY OF HARKER HEIGHTS, TEXAS, PERTAINING TO FENCE HEIGHT, MATERIALS, AND LOCATION.**

**WHEREAS**, the City Council ("**Council**") of the City of Harker Heights ("**City**") finds that it is necessary and desirable to amend the Code of Harker Heights ("**Code**") as hereinafter provided in order to increase fences heights and provide additional screening materials; and

**WHEREAS**, the meeting at which this Ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS:**

**SECTION 1:** The City Council officially finds and declares that the facts and recitations set forth in the preamble to this ordinance are true and correct.

**SECTION 2:** Sections 150.32, 150.33, 150.34, 150.36 of the Code of Harker Heights is hereby amended to read as follows:

**§150.32 Material**

- A) Ranch style fencing typical for maintaining livestock and for predator control (such as a field fence, hours mesh fence, split rail, and ranch board) may be used on premises of three acres or more in size. In addition, barbed wire fencing may be used on premises upon which large farm animals are legally kept and maintained. Permits are not required for internal cross-sectioning of such premises for the control of animals, to enforce rotational grazing, or for the repair of ranch style fencing to the extent that it is a necessary part of normal maintenance.
- B) Except as provided in division (A), fences may be constructed only of masonry, cedar, redwood, treated lumber, chain link, or decorative iron, and no other materials are permitted unless approved in writing by the Building Official. Wooden fence material placed in contact with the earth shall be treated to protect the material from rot, decay, and termites.
- C) The use of any alternative fence materials must be approved by the Building Official. Such authorization shall be based on specific proposals that demonstrate superior craftsmanship, aesthetic harmony with and enhancement of the streetscape and the neighborhood, structural integrity, durability, safety, and overall design exceeding the standards under §150.36.
  - 1) Alternative fence materials exceeding six feet in height must be approved in writing by the Director of Planning and Development and the Building Official.
- D) All fences must be maintained in good order and repair.

### §150.33 Placement

- A) Fences shall be built on property lines to avoid conflicts between property owners. In the event that there is a dispute between property owners of the location of a property line, it shall be the responsibility of the property owners to resolve the conflict without intervention by the city.
- B) Any fence built in or across utility easements shall remain the responsibility of the property owner. In the event that the fence is constructed on an easement and the fence is subsequently damaged or destroyed through the exercise of the rights of the owner of the easement, the repair or replacement of the fence shall be the sole responsibility of the property owner.
- C) On premises five acres or larger in size, fences may not be greater than four feet in height. Otherwise, fences and gates built in the front yard within the 25-foot building setback, where permitted, shall not exceed four feet in height.
- D) Fences built on a side yard shall be placed on the property line.
  - 1) Fences built on a side yard facing a public street may be placed on the property line. When the side yard is adjacent to the adjoining property's front yard, the side yard fences may not exceed four feet in height unless they are set back to the adjoining properties front yard setback line.
  - 2) Any fence in the rear yard of lots that contain a 25-foot building setback in the rear portion of the lot shall not exceed four feet in height.

### §150.34 Fence Height

- A) Fences constructed in areas zoned "R" shall not exceed eight feet in height measured from the finished grade. Fences constructed in all other zoned areas shall not exceed eight feet in height measured from the finished grade.

### §150.36 Standards for Screening

Where screening is required, the following are the approved types of screening:

- A) Screening alternate A. Consists of a solid masonry or concrete wall, eight feet in height measured from the average grade of the nearest property line of the property adjacent to that on which the screening is required.
- B) Screening alternate B. Consists of a chain link fence with redwood slats, eight feet in height measured from the average grade of the nearest property line of the property adjacent to that on which the screening is required.
- C) Screening alternate C. Consists of a solid wood fence, eight feet in height measured from the average grade of the nearest property line of the property adjacent to that on which screening is required.

**SECTION 3:** Section 155.050 of the Code of Harker Heights is hereby amended to read as follows:

### §155.050 Screening Requirements

- A) Screening shall be installed and maintained as provided in §150.30 through 150.38, with the exception that perimeter fencing around subdivisions, or between zoning districts, may be increased to eight feet in height.



- B) Landscaping, fencing or other material shall be erected to a height not less than six feet, to provide a visual barrier from adjacent properties and streets. Such screening shall be permanently and adequately maintained by the owner of the property on which the screening is required. Except for the landscape buffer, no screening fence or wall shall have more than 40 square inches of openings over any one square foot of fence or wall surface.
- C) Screening fence may consist of solid wood panel or a galvanized metal chain link fence with all-weather slats interwoven into the metal fabric. Such fencing shall be constructed on metal posts and placed in concrete footings with bracing.
- D) Screening fence may be constructed of native stone, brick, precast concrete panels with decorative finish, or decorative masonry units; constructed with the finish side out. In no case shall more than 25% of the area of the wall be erected with common smooth-faced masonry units.

**SECTION 4:** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

**SECTION 5:** All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any city official or employee charged with the enforcement of this ordinance, acting for the City of Harker Heights in the discharge of official duties, shall not thereby become personally liable, and is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

**SECTION 6:** This ordinance shall be effective from and after its passage, and the City Clerk shall publish the caption or title of hereof within ten days as required by law.

PASSED AND APPROVED by the City Council of the City of Harker Heights on April 14, 2020.

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Spencer H. Smith, Mayor

ATTEST:

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Juliette Helsham, City Secretary



## COUNCIL MEMORANDUM

### AGENDA ITEM # V-3

FROM: THE OFFICE OF THE CITY MANAGER

DATE: APRIL 14, 2020

CONDUCT A PUBLIC HEARING TO DISCUSS AND CONSIDER APPROVING AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, AMENDING ORDINANCE 2017-28, SECTION §155.0231 (G) (2) OF THE CODE OF ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, TO MODIFY THE R2-I SIDE YARD SETBACK REQUIREMENTS FOR CORNER LOTS AND TAKE THE APPROPRIATE ACTION.

#### **EXPLANATION:**

The Planning and Development Department identified various sections of the Harker Heights Code of Ordinances that warranted edits to more correctly convey appropriate policies and provide additional guidance for land development. One of those is Section 155.0231 (G), (2).

**Section 155.0231 (G), (2)** – Staff identified an error within the side yard setback for corner lots within the R2-I (Two Family Infill Dwelling District) zoning district. Current code reads: “The minimum side yard setback for any corner lot shall be six (6) feet.” Staff believes this was an unintentional error in the original draft ordinance and recommends amending this section to require a ten (10) foot side yard setback for any corner lot to be consistent with the requirements of the R1-I zoning district, and maintain a balance between allowing denser development and ensuring property sight triangle clearance along city streets.

#### **STAFF RECOMMENDATION:**

Staff recommends approval of the following ordinance:

1. An amendment to ordinance 2017-28, section 155.0231 (G) (2) of the Harker Heights Code of Ordinances to modify the R2-I side yard setback requirements for corner lots.

#### **ACTION BY CITY COUNCIL:**

1. Motion to Approve/Disapprove an amendment to ordinance 2017-28, section §155.0231 (G) (2) of the Harker Heights Code of Ordinances to modify the R2-I side yard setback requirements for corner lots.
2. Any other action desired.

#### **ATTACHMENTS:**

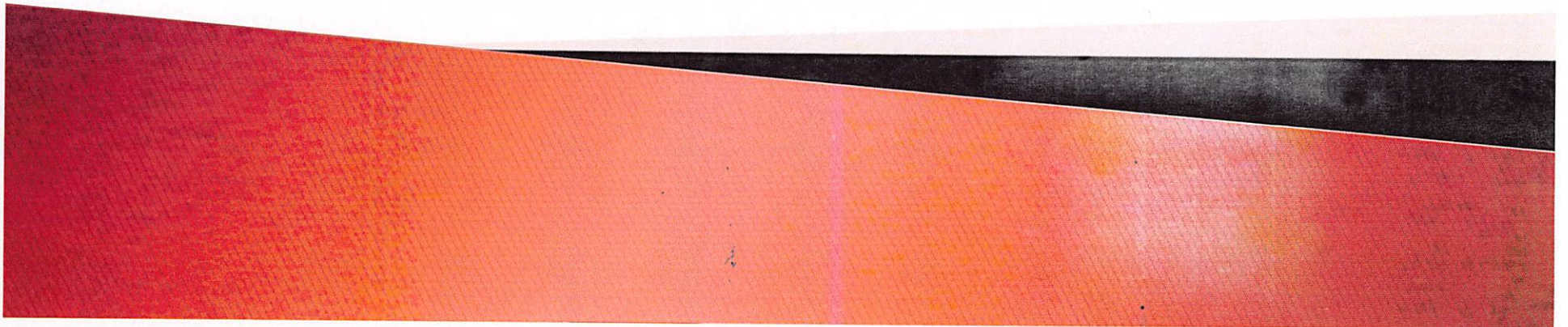
1. Redlined Code Excerpt – Section 155.0231 (G) (2)
2. Section 155.0231(G) (2) Amending Ordinance



# **AGENDA ITEM VII-3**

**Public Hearing**

**R2-I Amending Ordinance**



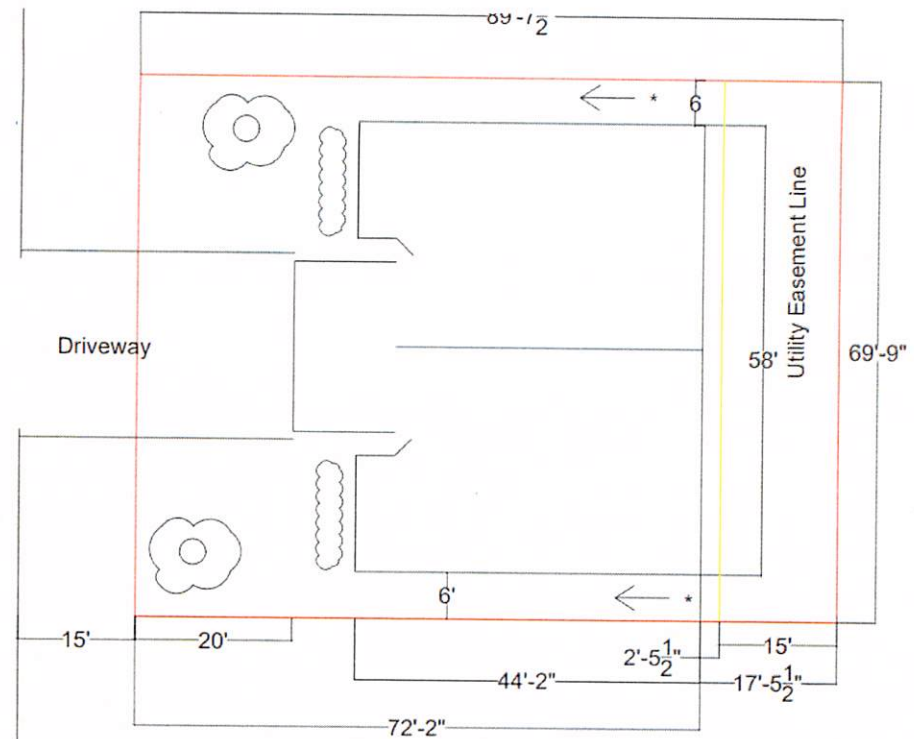


## Current Ordinance

1. R2-I Zoning District was created to promote duplex development of infill lots in older parts of the city, which are often smaller in area than the current requirement – 8,400 square feet.
  - a) R2-I reduces area requirement to 6,000 square feet.
  - b) R2-I reduces the side yard setbacks to 6 feet (R-2 requirement is 10 feet).
2. Unfortunately, an oversight allowed the side yard setback of corner lots to also be 6 feet.

## Proposed Ordinance Amendment

1. Proposed ordinance amendment increases R2-I side yard setbacks of corner lots to 10 feet.
2. This requirement matches the corner side yard setback requirement for the R1-I zoning district.



**§ 155.0231 R2-I TWO-FAMILY INFILL DWELLING DISTRICT.**

**G) Area regulations.**

- 1) *Front yard.* There shall be a front yard having a depth of not less than 20 feet if there is a garage in the front, or ten feet in all other circumstances. Where lots have double frontage running through from one street to another, the required front yard shall be provided on both streets.
- 2) *Side yard.* The minimum side yard setback for any corner lot shall be ~~ten~~ **six** feet. Other residences may be located such that one of the side yard will be zero; that is, the building may be constructed on the property line, provided that:
  - a) A five foot wide maintenance easement, shown on an approved subdivision plat, shall be provided across the full depth of the adjacent lot abutting the wall on the property line; and
  - b) There is a required minimum 12 foot separation between neighboring residences.
- 3) *Rear yard.* There shall be a rear yard having a depth of not less than ten feet.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS AMENDING ORDINANCE 2017-28, SECTION §155.0231(G), (2), OF THE CODE OF ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, TO MODIFY THE R2-I SIDE YARD SETBACK REQUIREMENTS FOR CORNER LOTS.**

**WHEREAS**, the City Council ("***Council***") of the City of Harker Heights ("***City***") finds that it is necessary and desirable to amend the Code of Harker Heights ("***Code***") as hereinafter provided in order to correct an error within the R2-I side yard setbacks along corner lots; and

**WHEREAS**, the meeting at which this Ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS:**

**SECTION 1:** The City Council officially finds and declares that the facts and recitations set forth in the preamble to this ordinance are true and correct.

**SECTION 2:** Section 155.0231 (G), (2), of the Code of Harker Heights is hereby amended to read as follows:

(G), (2) *Side yard.* The minimum side yard setback for any corner lot shall be ten (10) feet. Other residences may be located such that one of the side yard will be zero; that is, the building may be constructed on the property line, provided that:

- a) A five foot wide maintenance easement, shown on an approved subdivision plat, shall be provided across the full depth of the adjacent lot abutting the wall on the property line; and
- b) There is a required minimum 12 foot separation between neighboring residences.

**SECTION 3:** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

**SECTION 4:** All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any city official or employee charged with the enforcement of this ordinance, acting for the City of Harker Heights in the discharge of official duties, shall not thereby become personally liable, and is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

**SECTION 5:** This ordinance shall be effective from and after its passage, and the City Clerk shall publish the caption or title of hereof within ten days as required by law.

**PASSED AND APPROVED** by the City Council of the City of Harker Heights on April 14, 2020.

\_\_\_\_\_  
Spencer H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
Juliette Helsham, City Secretary





## COUNCIL MEMORANDUM

### AGENDA ITEM #V-4

FROM: THE OFFICE OF THE CITY MANAGER

DATE: April 14, 2020

**CONDUCT A PUBLIC HEARING TO DISCUSS AND CONSIDER APPROVING AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, SETTING FORTH REGULATIONS FOR BUSINESSES NOT LICENSED OR PERMITTED TO SELL OR SERVE ALCOHOLIC BEVERAGES WHICH ALLOW PATRONS TO BRING ALCOHOLIC BEVERAGES ONTO THEIR PREMISES FOR CONSUMPTION (“BYOB BUSINESSES”), PROVIDING A PENALTY CLAUSE, AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE, AND TAKE THE APPROPRIATE ACTION.**

**EXPLANATION:**

The Police and Planning and Development Departments have noticed an increase in establishments not licensed by the Texas Alcoholic Beverage Commission (TABC), known as a “Bring Your Own Bottle” (BYOB) businesses, operating in the City of Harker Heights. Such businesses include bars/clubs and game rooms. These establishments, while not regulated by TABC, have the same potential for law enforcement issues as TABC licensed establishments, including public intoxication, driving while under the influence, and physical assaults; many of these incidents have occurred recently.

In March 2017, Harker Heights Police responded to a BYOB establishment for a double homicide where after-hours alcohol consumption and illegal gambling had been occurring. Since January 1, 2020, the Harker Heights Police Department has responded to multiple disturbances and threats to the safety of the public at a BYOB establishment. Because of the lack of TABC regulation, there appears to be a greater propensity for violence and illegal activities.

On several occasions, Officers have entered a BYOB establishment and observed open bottles of alcohol and the constant smell of burnt marijuana. A military service member was severely injured from a stab wound to the neck while in attendance at a BYOB establishment. As a result of that incident, military personnel conducted an operation and observed various kinds of alcohol served and consumed by the patrons after 2:15 a.m. in violation of TABC Code 105.06. The military service members also observed several patrons with a green leafy substance they suspected was marijuana. The most recent disturbance at a BYOB establishment consisted of two victims being shot and one of the victims succumbed from his injury.

As it is currently written, the Code of Ordinances is not configured to effectively regulate these establishments and provide for appropriate penalties to the owners and operators. For example, the section of Code governing alcoholic beverages establishes hours of service and consumption of alcohol as:

**§ 112.03 HOURS OF OPERATION.**

It shall be unlawful for persons to consume or be served alcoholic beverages in any private club or tavern during the following hours:

- (A) On Sundays at any time between the hours of 2:00 a.m. and 12:00 noon.
  - (B) On any other day between the hours of 2:00 a.m. and 7:00 a.m.
- (Ord. 81-08, passed 10-13-81) Penalty, see § 112.99

For a BYOB business that operates and allows patrons to consume alcohol beyond 2:00 a.m., the wording of this section of the Code applies the violation and penalties to the patrons of the establishment and not to the establishment owners or its management. The proposed Code supplement establishes violations and penalties for the owners and operators of businesses that violate its requirements.

**ANALYSIS**

In summary, the attached ordinance acts to regulate BYOB businesses in the following manner:

1. Defining applicability and exceptions, such as residences, religious assemblies, restaurants, and others;
2. Requiring a permit for operation;
3. Providing permit application requirements and fees;
4. Outlining procedures for permit suspension, revocation, and appeal;
5. Establishing regulations for business operations including:
  - a. Requirement for a security plan;
  - b. Inspection consent;
  - c. Hours of operation;
  - d. Consumption area identification;
  - e. Insurance requirements; and
  - f. Crime prevention and reporting;
6. Establishing civil and criminal penalties for the owner/operator; and
7. Defining the powers of the city attorney.

As written, the ordinance provides necessary enforcement options for the regulation of BYOB businesses and allows the Police and Code Enforcement departments to apply violations of the Code to the owners and operators of the businesses, not just the customers.

**STAFF RECOMMENDATION:**

Staff recommends approval of an ordinance of the city of Harker Heights setting forth regulations for businesses not licensed or permitted to sell or serve alcoholic beverages which allow patrons to bring alcoholic beverages onto their premises for consumption (“BYOB businesses”), providing a penalty clause, and providing for publication and an effective date, based upon the following findings:

1. There is an immediate need to apply regulations for BYOB businesses;
2. The regulations outlined in the ordinance will allow BYOB businesses to remain in operation in the city; and
3. The ordinance provides a means of fairly applying regulations and penalties to the business owners.

**ACTION BY CITY COUNCIL:**

1. Motion to Approve/Disapprove an ordinance of the City of Harker Heights setting forth regulations for businesses not licensed or permitted to sell or serve alcoholic beverages which allow patrons to bring alcoholic beverages onto their premises for consumption (“BYOB businesses”), providing a penalty clause, and providing for publication and an effective date, based upon staff’s recommendation and findings.
2. Any other action desired.

**ATTACHMENTS:**

1. Ordinance



# **AGENDA ITEM VII-4**

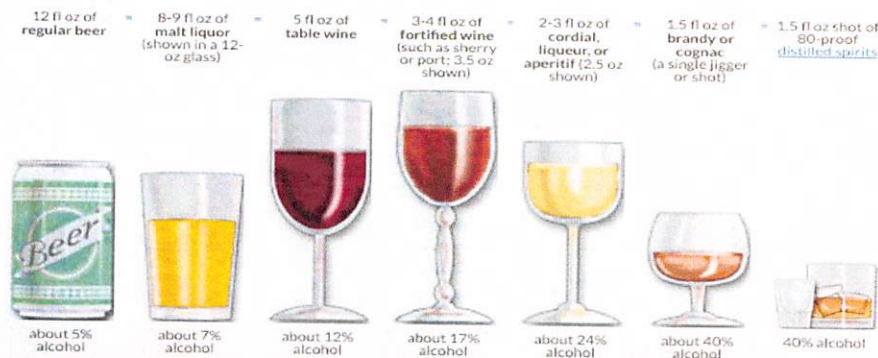
## **Public Hearing BYOB Ordinance**





## Current Code

1. BYOB establishments are not regulated by the city or TABC yet have potential for same issues associated with alcohol consumption.
2. BYOB establishments do not require T-Overlay zoning district; they are zoned based on underlying use (private club, game room, etc.).
3. § 112.03 establishes hours of alcohol service and consumption in private clubs and taverns.
4. Penalties for a violation of § 112.03 should be imposed on the customer, not the establishment.



## Proposed Ordinance

1. Creates the requirement for BYOB establishments to register with the city and obtain a BYOB permit.
2. Creates the permit submittal, approval, suspension, revocation, and appeals processes; permit applications reviewed by Planning and Police departments.
3. Creates BYOB regulations for operations:
  1. Requires security plan.
  2. Establishes hours of operation and location of consumption areas.
  3. Creates insurance requirements.
  4. Calls for crime prevention and reporting.
4. Places the responsibilities and penalties for violations upon the owner/operator of the BYOB establishment (customers can still be cited under § 112.03 if necessary).

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF HARKER HEIGHTS, TEXAS, SETTING FORTH REGULATIONS FOR BUSINESSES NOT LICENSED OR PERMITTED TO SELL OR SERVE ALCOHOLIC BEVERAGES WHICH ALLOW PATRONS TO BRING ALCOHOLIC BEVERAGES ONTO THEIR PREMISES FOR CONSUMPTION ("BYOB BUSINESSES"), PROVIDING A PENALTY CLAUSE, AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council ("***Council***") of the City of Harker Heights ("***City***") finds that it is necessary and desirable to amend the Code of Harker Heights ("***Code***") as hereinafter provided in order to further clarify the standards for establishments not licensed by the Texas Alcoholic Beverage Commission; and

**WHEREAS**, the meeting at which this Ordinance was passed was open to the public, and notice of the time, place and purpose of said meeting was given as required by law, all in strict accordance with the requirements of the Texas Open Meetings Act;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HARKER HEIGHTS, TEXAS:**

**SECTION 1:** The City Council officially finds and declares that the facts and recitations set forth in the preamble to this ordinance are true and correct.

**SECTION 2:** Title XI of the Code of Harker Heights is hereby supplemented by the addition of Chapter 125, to read as follows:

**CHAPTER 125: ESTABLISHMENTS NOT LICENSED BY THE TEXAS  
ALCOHOLIC BEVERAGE COMMISSION.**

**GENERAL PROVISIONS**

**§ 125.01 SHORT TITLE AND PURPOSE.**

- (A) This chapter may be known and cited as "BYOB Businesses Regulation."
- (B) The purpose of this chapter is to protect the welfare of the citizens of the City of Harker Heights by monitoring and regulating BYOB businesses. To this end, this chapter establishes a permit program for BYOB businesses, imposes regulations of business operations of BYOB businesses, and imposes civil and criminal penalties for violations of this Chapter by BYOB businesses.

**§ 125.02 DEFINITIONS.**

- (A) It is a common practice for an establishment not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages to allow its patrons to bring their own alcoholic beverages onto the premises for consumption. This practice is often referred to as "BYOB," an acronym for "bring your own bottle."

(B) In this chapter:

- (1) ***ALCOHOLIC BEVERAGE*** has the meaning assigned by the Texas Alcoholic Beverage Code.
- (2) **BYOB PERMIT** means a permit, issued pursuant to this Chapter, to operate a BYOB venue
- (3) ***BYOB VENUE*** means an establishment to which this chapter applies, as prescribed by § 125.03 (Applicability).
- (4) ***DEPARTMENT*** means the Planning and Development Department of the City of Harker Heights.
- (5) ***DIRECTOR*** means the Director of the Planning and Development Department.
- (6) ***PREMISES*** mean the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

**§ 125.03 APPLICABILITY.**

(A) Except as provided in Subsection (B), this chapter applies to an establishment that:

- (1) Is not licensed or permitted by the Texas Alcoholic Beverage Commission to sell or serve alcoholic beverages; and
- (2) Allows patrons to bring alcoholic beverages onto the premises for possession and consumption.

(B) This chapter does not apply to:

- (1) A residence;
- (2) An establishment operated by a governmental entity;
- (3) A private club, as defined by the Texas Alcoholic Beverage Code;
- (4) A fraternal or veteran's organization, as defined by the Texas Alcoholic Beverage Code;
- (5) A college and university use;
- (6) A religious assembly use;
- (7) A restaurant; or
- (8) A theater use.

**§ 125.04 NOTICE.**

- (A) Mailed notice is presumed received on the fifth day after it is mailed.
- (B) Notice to a permit holder may be delivered to the manager at the BYOB venue and is effective on delivery.

**§ 125.05 ADMINISTRATIVE RULES.**

The Director shall adopt administrative rules to implement, administer, and enforce this chapter.

**PERMITS****§ 125.06 PERMIT REQUIRED**

- (A) A person shall obtain a BYOB permit issued by the Department before the person may operate a BYOB venue.
- (B) A person must obtain a separate BYOB permit for each BYOB venue location.

**§ 125.07 QUALIFICATIONS.**

- (A) A person may not apply for or hold a permit under this chapter unless the person is at least 18 years of age.
- (B) A person may not hold a BYOB permit under this chapter or manage a BYOB venue if the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, and the conviction makes the person unfit to hold a permit or manage a BYOB venue.

**§ 125.08 PERMIT APPLICATION.**

- (A) A person who seeks a permit to operate a BYOB venue must submit an application to the Director on a form provided by the Director. The application must include:
  - (1) The names, addresses, and birth dates of all persons who have an ownership interest in, or who will manage, the proposed BYOB venue;
  - (2) Authorization for the City to conduct a criminal background check on each person described in Paragraph (1);
  - (3) The name of the BYOB venue and its physical address;
  - (4) A registration certificate for the establishment from the Secretary of State, if registration is required by law;
  - (5) Proof that the applicant has all other permits and approvals required to operate the establishment, including appropriate zoning;



- (6) A security plan that meets or exceeds the minimum standards established by administrative rule, as determined by the Police Chief;
  - (7) Scale drawings of the site, including:
    - (a) All site improvements;
    - (b) The floor plan of each building; and
    - (c) A designation of the areas where the consumption of alcohol is to be allowed;
  - (8) Information required by administrative rule;
  - (9) Proof that the applicant has a commercial general liability insurance policy providing minimum premises/operations coverage of \$500,000 per occurrence and \$1,000,000 in the aggregate on an occurrence basis; and
  - (10) Other information reasonably required by the Director.
- (B) An applicant shall pay the nonrefundable permit fee established by ordinance.
  - (C) A BYOB permit is void if the applicant obtains the BYOB permit by knowingly providing false information on the application.

**§ 125.09 PERMIT APPROVAL OR DENIAL.**

- (A) The Director shall approve a BYOB permit application if the Director determines that the applicant and the proposed BYOB venue meet the requirements of § 125.07 (Qualifications) and § 125.08 (Permit Application), and are not disqualified by Subsections (B) and (C) of this section.
- (B) The Director shall deny a BYOB permit application if the Director determines that:
  - (1) The applicant is under the age of 18 years;
  - (2) The BYOB venue as proposed would not comply with this chapter; or
  - (3) The applicant had a BYOB permit required by this chapter revoked within the preceding 12-month period.
- (C) The Director may deny a BYOB permit application if the Director determines that:
  - (1) The applicant provided incorrect or incomplete information on the application; or
  - (2) The person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a BYOB venue, and the conviction makes the person unfit to hold a permit.

- (D) If the Director does not approve or deny an application within 45 days of the date it is filed, the application is denied.
- (E) The Director shall give written notice of a denial of an application to the applicant.
- (F) An applicant may appeal to the City Council a denial of a BYOB permit application in accordance with § 125.16 (Appeal).

**§ 125.10 PERMIT NOT TRANSFERABLE.**

A BYOB permit issued under this chapter is not transferable to another person or venue.

**§ 125.11 PERMIT NOT A RIGHT.**

A BYOB permit issued under this chapter is a grant of a privilege and is not a property right.

**§ 125.12 PERMIT EXPIRATION; RENEWAL.**

A BYOB permit issued under this chapter expires one year after the date it is issued. A BYOB permit holder shall file an application for BYOB permit renewal not sooner than the 90th day and not later than the 45th day before the BYOB permit expires. An application that is not filed within the described time period is a new application.

**§ 125.13 REQUIREMENT TO SUPPLEMENT INFORMATION.**

While a BYOB permit application is pending or a BYOB permit is in effect, an applicant or permit holder shall immediately supplement the information provided to the Director in the BYOB permit application if the information is or becomes inaccurate, incomplete, or misleading.

**§ 125.14 PERMIT SUSPENSION.**

- (A) The Director may suspend a BYOB permit issued under this chapter without prior notice or hearing if the Director determines that:
  - (1) The BYOB permit holder, the manager, or an employee of the BYOB venue has violated a requirement of this chapter;
  - (2) The BYOB venue does not comply with this chapter; or
  - (3) The BYOB permit holder does not qualify for a permit under this chapter.
- (B) If the Director suspends a BYOB permit:
  - (1) The Director shall give written notice to the BYOB permit holder that:
    - (a) The BYOB permit is immediately suspended on receipt of the notice; and

- (b) The BYOB permit holder may file a written request for a hearing not later than the 10th day after the date of receipt of notice of suspension; and
- (2) The BYOB permit holder shall immediately close the BYOB venue.
- (3) Any BYOB permit which has been suspended under this chapter shall be surrendered upon demand to the Director. At the end of the period of suspension, in the absence of further violations, the surrendered BYOB permit shall be returned to the BYOB permit holder and shall be valid under the provisions of this code. If the period of suspension extends beyond the normal expiration date of the BYOB permit, the BYOB permit holder shall pay all BYOB permit fees without proration in order to receive a valid BYOB permit.
- (C) Suspension of a BYOB permit is effective on receipt of notice.
- (D) A BYOB permit holder may file with the Director a written request for a hearing on a BYOB permit suspension. The request must be filed not later than the 10th day after the date of receipt of notice of suspension.
- (E) If a BYOB permit holder timely files a hearing request:
  - (1) The Director shall hold a hearing on the permit suspension not later than the 14th day after the date the hearing request is filed. At such hearing, the BYOB permit holder may present information to the Director addressing the Director's suspension of a BYOB permit and reasons, if any, that the BYOB permit holder believes the suspension is not warranted; and
  - (2) A suspension is stayed pending the outcome of the hearing.
- (F) If a hearing request is not timely filed, a suspension continues in effect.
- (G) After hearing, the Director shall give written notice to the BYOB permit holder as to whether suspension is continued in effect after a hearing under Subsection (E).
- (H) The Director may reinstate a permit if the reason for suspension no longer exists.

#### **§ 125.15 PERMIT REVOCATION.**

- (A) The Director may revoke a BYOB permit issued under this chapter if the Director determines that:
  - (1) The permit holder, the manager, or an employee of the BYOB venue has engaged in serious or repeated violations of this chapter;
  - (2) The BYOB venue does not comply with this chapter; or
  - (3) The permit holder does not qualify for a permit under this chapter.

- (B) Before revoking a BYOB permit, the Director shall provide the BYOB permit holder with written notice of the pending permit revocation. The written notice shall include:
  - (1) The reason the BYOB permit is subject to revocation;
  - (2) The date on which the BYOB permit is scheduled to be revoked; and
  - (3) A statement that the BYOB permit will be revoked on the scheduled date unless the BYOB permit holder files a written request for a hearing with the Director not later than the 10th day after the date the notice is received.
- (C) A BYOB permit revocation becomes effective on expiration of the time period prescribed by the notice if the BYOB permit holder does not file a written request for hearing with the Director not later than the 10th day after the notice is received.
- (D) If a BYOB permit holder timely files a hearing request:
  - (1) The Director shall hold a hearing on the BYOB permit revocation not later than the 14th day after the date the hearing request is filed. At such hearing, the BYOB permit holder may present information to the Director addressing the Director's intent to revoke the BYOB permit and reasons, if any, that the BYOB permit holder believes the revocation is not warranted; and
  - (2) A revocation is stayed pending the outcome of the hearing.
- (E) The Director shall give written notice to the BYOB permit holder of a decision regarding the revocation of the BYOB permit or a revocation that becomes effective under Subsection (C).

#### **§ 125.16 APPEAL.**

- (A) An applicant or a permit holder may appeal to the Board of Adjustment a permit application denial, a permit suspension, or a permit revocation. To stay a suspension or revocation under this Chapter, appeal to the Board of Adjustment must be made within 10 days after the applicant/ BYOB permit holder receives written notice of the decision that it is appealing.
- (B) If the permit holder timely files a notice of appeal pursuant to §125.16 (A), a suspension or revocation is stayed.



## **REGULATIONS FOR OPERATION OF A BYOB ESTABLISHMENT**

### **§ 125.17 PUBLIC PLACE.**

A BYOB venue is a public place.

### **§ 125.18 PERMIT POSTING REQUIRED.**

A BYOB permit holder shall post the BYOB permit required by this chapter in a prominent public location at the BYOB venue.

### **§ 125.19 MANAGER REQUIRED ON PREMISES.**

A BYOB permit holder shall ensure that a qualified manager is continuously on the BYOB venue premises during the hours of operation. A BYOB permit holder may serve as the manager.

### **§ 125.20 SECURITY PLAN IMPLEMENTATION.**

- (A) A person may not operate a BYOB venue without an approved security plan.
- (B) A BYOB permit holder and a BYOB venue manager shall provide security for the BYOB venue in accordance with the security plan.

### **§ 125.21 MINIMUM AGE FOR ADMITTANCE AND ALCOHOL CONSUMPTION.**

- (A) A BYOB permit holder, a manager, or an employee of a BYOB venue may not allow a person under the age of 18 years on the premises.
- (B) A BYOB permit holder, a manager, or an employee of a BYOB venue may not allow a person under the age of 21 years to consume alcohol on the premises.

### **§ 125.22 DOORS TO REMAIN UNLOCKED.**

During the hours of operation, a person may not lock or obstruct:

- (1) An exterior entrance door that is designated or available for use by patrons; or
- (2) An interior door that provides access to a portion of the premises that is designated or available for use by patrons.

### **§ 125.23 CONSENT TO INSPECTION; IMMEDIATE ACCESS REQUIRED.**

- (A) By accepting a BYOB permit under this chapter, the permit holder consents that the Director, the Director's representative, law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel may enter the premises during the hours of operation to conduct an investigation or inspect the premises to determine compliance with this chapter.

- (B) A BYOB permit holder, a manager, and an employee of a BYOB venue shall provide the Director, the Director's representative, law enforcement personnel, code enforcement personnel, and other on-duty governmental personnel with immediate access to all portions of the premises.

#### **§ 125.24 HOURS OF OPERATION.**

- (A) A BYOB permit holder, a manager, or an employee of a BYOB venue shall close a BYOB venue between 2:00 a.m. and 7:00 a.m. each day except Sunday, and between 2:00 a.m. and noon on Sunday. A patron who is on the premises at 2:00 a.m. may remain until not later than 2:15 a.m.
- (B) A person may not consume an alcoholic beverage on the premises of a BYOB venue between 2:15 a.m. and 7:00 a.m. each day except Sunday, or between 2:15 a.m. and noon on Sunday.
- (C) A BYOB permit holder, a manager, or an employee of a BYOB venue may not allow a member of the public on its premises, including a parking area, between 2:30 a.m. and 7:00 a.m. each day except Sunday, or between 2:30 a.m. and noon on Sunday. This prohibition does not apply to a person who is providing a product or service directly to the BYOB venue.

#### **§ 125.25 ALCOHOLIC BEVERAGE CONSUMPTION AREAS.**

- (A) A permit holder shall designate, subject to the approval of the Director, the portions of the premises on which the consumption of alcoholic beverages is permitted. A designated area:
  - (1) Must be located and designed to minimize adverse effects on adjacent property;
  - (2) May include the interior of a building or a deck, patio, or garden; and
  - (3) Must exclude parking areas.
- (B) A person may not consume, and a permit holder, a manager, or an employee of a BYOB venue may not allow the consumption of an alcoholic beverage outside of a designated area.
- (C) The BYOB permit holder shall indicate the portions of the premises on which the consumption of alcoholic beverages is permitted on the floor plan provided with the BYOB permit application. If the BYOB permit holder desires to change or modify the area where alcoholic beverages may be consumed, it must first provide a revised floor plan to the Director.

#### **§ 125.26 PARKING AREA RESTRICTIONS.**

- (A) A BYOB permit holder, a manager, or an employee of a BYOB venue may not allow persons to congregate in a parking area.
- (B) A BYOB permit holder, a manager, or an employee of a BYOB venue may not allow a person to consume an alcoholic beverage in a parking area.

- (C) A BYOB permit holder shall post signs in each parking area stating that the consumption of an alcoholic beverage is prohibited.

#### **§ 125.27 SALE OF ALCOHOLIC BEVERAGES PROHIBITED.**

A person may not sell an alcoholic beverage at a BYOB venue.

#### **§ 125.28 RESTRICTION ON CONSUMPTION AND PURCHASE OF ALCOHOL BY PERMIT HOLDER AND EMPLOYEES.**

A BYOB permit holder, manager, or employee of a BYOB venue may not

- (1) Consume an alcoholic beverage while on duty;
- (2) Purchase or otherwise acquire an alcoholic beverage for a patron; or
- (3) Give an alcoholic beverage to a patron.

#### **§ 125.29 INSURANCE REQUIREMENT.**

A BYOB permit holder, a manager, or owner shall maintain a commercial general liability insurance policy providing minimum premises/operations coverage of \$500,000 per occurrence and \$1,000,000 in the aggregate on an occurrence basis. The policy must be provided by an insurer licensed by the Texas Department of Insurance, and must be endorsed to name as additional insured the city, its elected and appointed officials, and employees acting within the scope of their duties. Prior to opening for business the BYOB permit holder, manager, or owner shall deliver a certificate of insurance and copies of all endorsements for additional insured to the Director, and thereafter at least ten days prior to the expiration of such policies. The permit holder, manager, or owner shall prominently display a sign at the facility stating that the owner or operator has purchased liability insurance to cover activities at the facility.

#### **§ 125.30 COMPLIANCE WITH OTHER LAWS.**

A BYOB permit holder, a manager, and an employee of a BYOB venue shall comply with the Texas Alcoholic Beverage Code and all applicable criminal, zoning, health, and safety laws relating to the operation of the BYOB venue.

#### **§ 125.31 CRIME PREVENTION AND REPORTING.**

The BYOB permit holder, the manager, and the employees of a BYOB venue shall:

- (1) Take reasonable measures to prevent criminal activity on the premises; and
- (2) Immediately report to law enforcement personnel all suspected criminal activity on the premises or the surrounding areas that they observe or of which they otherwise become aware.

## **ENFORCEMENT**

### **§ 125.32 CRIMINAL PENALTY.**

- (A) A person commits a Class C misdemeanor if the person:
  - (1) Operates a BYOB venue without a permit required by this chapter; or
  - (2) Violates a provision of this chapter, other than § 125.27 (Sale of Alcoholic Beverages Prohibited) or § 125.30 (Compliance with Other Laws).
- (B) Proof of a culpable mental state is not required to prove an offense under this chapter, except for Section § 125.24(B) (Hours of Operation).
- (C) Each day that a violation occurs or continues is a separate offense.

### **§ 125.33 CIVIL REMEDIES.**

- (A) The City Council has determined that this chapter is necessary to protect health, life, and property and to preserve the good government, order, and security of the City and its inhabitants.
- (B) A person who continues to violate this chapter after being notified of the offense in writing by an authorized City representative is subject to a civil penalty not to exceed \$1,000 for each day or part of a day the violation occurs.
- (C) The City may file suit to enforce this chapter or collect a civil penalty.
- (D) The City may seek to enjoin violations of this chapter.

### **§ 125.34 CUMULATIVE REMEDIES.**

The remedies authorized under this article are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

### **§ 125.35 AUTHORITY OF CITY ATTORNEY.**

The City Attorney may, without further authorization of the City Council, undertake the enforcement of this chapter by all legal means appropriate or necessary, including but not limited to: enforcement in municipal court; filing of appropriate criminal or civil actions in courts of appropriate jurisdiction; and to defend the city from suit if suit is taken to appeal any action of the city.

**SECTION 3:** The City Fee Schedule is hereby supplemented by the addition of the following entry in the section entitled, "Examinations, Licenses, Permits, Special Inspections, and Administrative Fees:"

Application for BYOB Permit	\$50.00
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**SECTION 4:** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

**SECTION 5:** All regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this Ordinance, acting for the City in the discharge of official duties, shall not thereby become personally liable, and is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

**SECTION 6:** The change in the law made by this Ordinance applies only to an offense committed on or after the effective date of this Ordinance. For purposes of this section, an offense is committed on or after the effective date of this Ordinance if every element of the offense occurs on or after that date.

**SECTION 7:** An offense committed before the effective date of this Ordinance is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

**SECTION 8:** This Ordinance shall be effective from and after the tenth day after its passage, and the City Clerk shall publish the caption or title of hereof within ten days as required by law.

PASSED AND APPROVED by the City Council of the City of Harker Heights on April 14, 2020.

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Spencer H. Smith, Mayor

ATTEST:

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Juliette Helsham, City Secretary



## COUNCIL MEMORANDUM

# AGENDA ITEM # VII-1

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From: The Office of the City Manager

Date: April 14, 2020

**DISCUSS AND CONSIDER APPROVING AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF HARKER HEIGHTS, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$6,085,000; LEVYING A TAX IN PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT, AND AN ESCROW AGREEMENT; CALLING CERTAIN OBLIGATIONS FOR REDEMPTION OR PREPAYMENT; AWARDING THE PURCHASE OF THE CERTIFICATES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND ENACTING OTHER PROVISIONS RELATING THERETO AND TAKE THE APPROPRIATE ACTION.**

**EXPLANATION:** The Series 2020 General Obligation Refunding Bonds not to exceed \$6,085,000 will be used to refinance the Series 2011 Combination Tax and Revenue Certificates of Obligation.

**RECOMMENDATION:** Staff recommends approving the Series 2020 General Obligation Refunding Bonds.

**ACTION BY COUNCIL:**

1. Motion to approve/disapprove an ordinance authorizing the issuance and sale of City of Harker Heights, Texas, General Obligation Refunding Bonds, Series 2020, in an aggregate maximum principal amount not to exceed \$6,085,000; levying a tax in payment thereof; authorizing the execution and delivery of a paying agent/registrar agreement, and an escrow agreement; calling certain obligations for redemption or prepayment; awarding the purchase of the certificates; finding and determining that the meeting at which this ordinance is passed is open to the public as required by law; and enacting other provisions relating thereto.
2. Any other action desired.

**ATTACHMENTS:**

1. Ordinance.

## CERTIFICATE FOR ORDINANCE

STATE OF TEXAS §  
COUNTY OF BELL §

We, the undersigned officers of the City Council of the City of Harker Heights, Texas (the "City"), hereby certify as follows:

1. The City Council of the City convened in REGULAR MEETING ON THE 14<sup>TH</sup> DAY OF APRIL, 2020, at the Harker Heights City Hall (the "Meeting"), and the roll was called of the duly constituted officers and members of the City Council, to-wit:

Spender H. Smith	Mayor
Michael Blomquist	Mayor Pro Tem
Jackeline Soriano Fountain	Councilmember
Jennifer McCann	Councilmember
John Reider	Councilmember
Jody Nicholas	Councilmember

and all of the persons were present, except the following absentees: \_\_\_\_\_, thus constituting a quorum. Whereupon, among other business, the following was transacted at the Meeting: a written

ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF HARKER HEIGHTS, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$6,085,000; LEVYING A TAX IN PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT, AND AN ESCROW AGREEMENT; CALLING CERTAIN OBLIGATIONS FOR REDEMPTION OR PREPAYMENT; AWARDING THE PURCHASE OF THE CERTIFICATES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND ENACTING OTHER PROVISIONS RELATING THERETO.

was duly introduced for the consideration of the City Council. It was then duly moved and seconded that the Ordinance be passed; and, after due discussion, said motion carrying with it the passage of the Ordinance, prevailed and carried by the following vote:

AYES:

NOES:

ABSTENTIONS: \_\_\_\_\_

2. A true, full and correct copy of the Ordinance passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that the Ordinance has been duly recorded in the City Council's minutes of the Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from the City Council's minutes of the Meeting pertaining to the passage of the Ordinance; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the City Council as indicated therein; that each of the officers and members of the City Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the Meeting, and that the Ordinance would be introduced and considered for passage at the Meeting,

and that the Meeting was open to the public and public notice of the time, place and purpose of the meeting was given, all as required by Chapter 551, *Texas Government Code*.

3. The Mayor of the City has approved and hereby approves the Ordinance; that the Mayor and the City Secretary of the City have duly signed the Ordinance; and that the Mayor and the City Secretary of the City hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of the Ordinance for all purposes.

SIGNED AND SEALED as of the 14<sup>th</sup> day of April, 2020.

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City Secretary  
City of Harker Heights, Texas

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Mayor  
City of Harker Heights, Texas

(SEAL)



**ORDINANCE NO. 2020-**

**ORDINANCE NO. ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF HARKER HEIGHTS, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$6,085,000; LEVYING A TAX IN PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT, AND AN ESCROW AGREEMENT; CALLING CERTAIN OBLIGATIONS FOR REDEMPTION OR PREPAYMENT; AWARDING THE PURCHASE OF THE CERTIFICATES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND ENACTING OTHER PROVISIONS RELATING THERETO.**

WHEREAS, the City of Harker Heights, Texas (the "City") has heretofore incurred, issued, sold, and/or delivered, and there are currently outstanding, obligations totaling in outstanding principal amount of \$5,975,000 more particularly described as follows:

City of Harker Heights, Texas  
Combination Tax and Revenue  
Certificates of Obligation, Series 2011

<u>Amount</u>	<u>Maturity</u>	<u>Coupon</u>
\$265,000	8/15/2021	3.000%
\$280,000	8/15/2022	3.000%
\$290,000	8/15/2023	3.125%
\$555,000	8/15/2024	3.250%
\$575,000	8/15/2025	3.500%
\$605,000	8/15/2026	4.000%
\$625,000	8/15/2027	4.000%
\$655,000	8/15/2028	4.000%
\$680,000	8/15/2029	4.000%
\$705,000	8/15/2030	4.000%
\$740,000	8/15/2031	4.000%

(all such amounts together being the "Refunded Obligations"); and

WHEREAS, pursuant to the provisions of V.T.C.A., *Government Code*, Chapter 1207, as amended, the City Council is authorized to issue refunding bonds and deposit the proceeds of sale directly with the place of payment for the Refunded Obligations, and such deposit, when made in accordance with said statute and the Ordinance authorizing the issuance of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for their discharge and final payment; and

WHEREAS, the City hereby finds and determines that refunding bonds should be issued at this time to refund all or a portion of the Refunded Obligation Candidates, in order to provide a net present value debt service savings to the City of \$\_\_\_\_\_, and a gross savings of \$\_\_\_\_\_;

NOW, THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF HARKER HEIGHTS, TEXAS:

**SECTION 1: Authorization - Designation - Principal Amount - Purpose.** Refunding bonds of the City shall be and are hereby authorized to be issued in an aggregate maximum

principal amount not to exceed \$6,085,000, to be designated and bear the title "CITY OF HARKER HEIGHTS, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020" (hereinafter referred to as the "Bonds"), hereof for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City referred to above and to pay costs of issuance, in accordance with authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., *Government Code*, Chapter 1207.

**SECTION 2: Fully Registered Obligations - Bond Date - Authorized Denominations - Stated Maturities - Interest Rates.** The Bonds shall be issued as fully registered obligations only, shall be dated as set forth in the Pricing Certificate (the "Issue Date"), shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, and shall become due and payable (as the "Stated Maturities") and bear interest at the rate(s) per annum set forth below:

<u>Maturity</u> <u>(August 15)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>
2021	\$295,000	
2022	\$310,000	
2023	\$320,000	
2024	\$580,000	
2025	\$600,000	
2026	\$625,000	
2027	\$635,000	
2028	\$655,000	
2029	\$670,000	
2030	\$685,000	
2031	\$710,000	

The Bonds shall bear interest on their unpaid principal amounts from their date of delivery at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year of twelve 30-day months).

**SECTION 3: Terms of Payment - Paying Agent/Registrar.** The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the "Holder" or "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of \_\_\_\_\_, Dallas, Texas to serve as Paying Agent/Registrar for the Bonds is hereby approved and confirmed. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Bond Registrar, Paying Agency and Transfer Agency Agreement" (the "Paying Agent/Registrar Agreement"), applicable to the Bonds and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor and City Secretary are hereby authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged. The City retains the right to change the Paying Agent/Registrar. Any successor Paying Agent/Registrar shall be a commercial bank or trust company, organized under the laws of the State of Texas, or other entity duly qualified and legally authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be

sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturities, or earlier redemption date, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices in Dallas, Texas (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holders whose name appears in the Security Register at the close of business on the Record Date (being the close of business on the last business day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

**SECTION 4: Redemption.** The City reserves the right, at its option, to redeem Bonds, having stated maturities on and after August 15, \_\_\_\_\_, in whole or from time to time in part in principal amounts of \$5,000 or any integral multiple thereof, on August 15, \_\_\_\_\_, or any date thereafter, at the par value thereof plus accrued interest to the date of redemption. If less than all of the Bonds are to be redeemed, the City may select the series and maturities of Bonds to be redeemed. If less than all the Bonds of any series and maturity are to be redeemed, the Paying Agent/Registrar (or DTC while the Bonds are in Book Entry Only form) shall determine by lot or other customary random selection method the Bonds, or portions thereof, within such series and maturity to be redeemed. If a Bond (or any portion of the principal sum thereof) shall have been called for redemption and notice of such redemption shall have been given, such Bond (or the principal amount thereof to be redeemed) shall become due and payable on such redemption date and interest thereon shall cease to accrue from and after the redemption date, provided funds for the payment of the redemption price and accrued interest thereon are held by the Paying Agent/Registrar on the redemption date. Notice of redemption shall be given in the manner provided in the form of Bonds set forth herein.

With respect to any optional redemption of the Bonds, unless the prerequisites to such redemption required by the Ordinance have been met and money sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed will have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice will state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such money by the Paying Agent/Registrar on or prior to the date fixed for such redemption or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not fulfilled, such notice will be of no force and effect, the City will not redeem such Bonds, and the Paying

Agent/Registrar will give notice in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

**SECTION 5: Registration - Transfer - Exchange of Bonds-Predecessor Bonds.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Bonds issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Bond may be transferred or exchanged for Bonds of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar at the Designated Payment/Transfer Office for cancellation, accompanied by execution of any assignment form on the Bonds, or a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Bond (other than the single Initial Bond referenced in Section 8) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Bonds shall be registered and issued to the assignee or transferee of the previous Holder; such Bonds to be in authorized denominations, of like Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. To the extent possible, whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds to the Holder requesting the exchange, to the extent possible within three business days of receipt of the Bonds to be exchanged.

All Bonds issued in any transfer or exchange of Bonds shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class, postage prepaid to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to the provisions of Section 11 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

New Bonds issued in an exchange or transfer of Bonds will be delivered to the registered Holder or assignee of the registered Holder promptly after the receipt of the Bonds to be canceled, and the written instrument of transfer or request for exchange duly executed by the registered Holder or his duly authorized agent, in form satisfactory to the Paying Agent/Registrar. New



Bonds registered and delivered in an exchange or transfer shall be in any integral multiple of \$5,000 for any one series and maturity and for a like aggregate principal amount as the Bonds surrendered for exchange or transfer. Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bonds called for redemption, in whole or in part, within 45 days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the registered Holder of the uncalled balance of a Bond.

**SECTION 6: No DTC Registration.** The Bonds shall not be registered with the Depository Trust Company.

**SECTION 7: Execution - Registration.** The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Issue Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in the V.T.C.A., *Government Code*, Chapter 1201. The Paying Agent, acting as registrar of the Bonds, shall register the Bonds on its records on behalf of the City.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9C, manually executed by the Comptroller of Public Accounts of the State of Texas, or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9D, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

**SECTION 8: Initial Bond(s).** The Bonds herein authorized shall be initially issued either (i) as a single fully registered bond in the total principal amount shown in the Pricing Certificate in principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as multiple fully registered bonds, being one bond for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from R-1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial T-1 Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

**SECTION 9: Forms. A. Forms Generally.** The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of the Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and may have such letters, numbers, or other marks of identification (including identifying numbers and letters

of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond(s) shall be printed, lithographed, or engraved or typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

The form of Initial Bond No. T-1, to be submitted to the Attorney General of Texas and registered with the Comptroller of Public Accounts of the State of Texas, is attached hereto as Exhibit A.

**B. Form of Definitive Bond.**

The definitive Bonds shall be substantially in the following form, with such appropriate insertions, omissions, substitutions and variations as are permitted or required by this Ordinance.

REGISTERED  
NO.

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF HARKER HEIGHTS, TEXAS,  
GENERAL OBLIGATION REFUNDING BOND,  
SERIES 2020

Issue Date:  
\_\_\_\_\_

Interest Rate:  
\_\_\_\_\_ %

Stated Maturity:  
August 15, \_\_\_\_\_

Registered Owner:

Principal Amount: DOLLARS

The City of Harker Heights, Texas (hereinafter referred to as the "City"), a municipal corporation of the State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated, and to pay interest on the unpaid principal amount hereof from the date of delivery hereof at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months. Principal of this Bond is payable at its Stated Maturity to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Accrued interest on the unpaid principal amount hereof is payable on February 15 and August 15 in each year, commencing August 15, 2020, until maturity or earlier redemption, to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the close of business on the last business day of the month next preceding each interest payment date, and such interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall

be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City and to pay costs of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including V.T.C.A., *Government Code*, Chapter 1207, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

The City reserves the right, at its option, to redeem Bonds having stated maturities on and after August 15, \_\_\_\_\_, in whole or from time to time in part in principal amounts of \$5,000 or any integral multiple thereof, on August 15, \_\_\_\_\_, or any date thereafter, at the par value thereof plus accrued interest to the date of redemption. If less than all of the Bonds are to be redeemed, the City may select the series and maturities of Bonds to be redeemed. If less than all the Bonds of any series and maturity are to be redeemed, the Paying Agent/Registrar (or DTC while the Bonds are in Book Entry Only form) shall determine by lot or other customary random selection method the Bonds, or portions thereof, within such series and maturity to be redeemed. If a Bond (or any portion of the principal sum thereof) shall have been called for redemption and notice of such redemption shall have been given, such Bond (or the principal amount thereof to be redeemed) shall become due and payable on such redemption date and interest thereon shall cease to accrue from and after the redemption date, provided funds for the payment of the redemption price and accrued interest thereon are held by the Paying Agent/Registrar on the redemption date.

NOT LESS THAN 30 DAYS prior to a redemption date for the Bonds, the City shall cause a notice of redemption to be sent by United States mail, first class, postage prepaid, in the name of the City and at the City's expense, by the Paying Agent/Registrar to the registered owners of the Bonds to be redeemed, in whole or in part, at the address of the registered owner appearing on the registration books of the Paying Agent/Registrar at the close of business on the business day next preceding the date of mailing such notice.

ANY NOTICE SO MAILED WILL BE CONCLUSIVELY PRESUMED TO HAVE BEEN DULY GIVEN, WHETHER OR NOT THE REGISTERED OWNER RECEIVES SUCH NOTICE. NOTICE HAVING BEEN SO GIVEN, AND ANY CONDITIONS STATED IN THE NOTICE HAVING BEEN MET, THE BONDS CALLED FOR REDEMPTION WILL BECOME DUE AND PAYABLE ON THE SPECIFIED REDEMPTION DATE, AND NOTWITHSTANDING THAT ANY BOND OR PORTION THEREOF HAS NOT BEEN SURRENDERED FOR PAYMENT, INTEREST ON SUCH BOND OR PORTION THEREOF WILL CEASE TO ACCRUE. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for

the payment of the required redemption price for the Bonds or portions thereof which are to be so redeemed. If due provision for such payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed a substitute Bond having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Bond Ordinance.

The City reserves the right in the case of an optional redemption to give notice of its election or direction to redeem Bonds conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an Event of Default.

With respect to any optional redemption of the Bonds, unless the prerequisites to such redemption required by the Ordinance have been met and money sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed will have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice will state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such money by the Paying Agent/Registrar on or prior to the date fixed for such redemption or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not fulfilled, such notice will be of no force and effect, the City will not redeem such Bonds, and the Paying Agent/Registrar will give notice in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds maturing on \_\_\_\_\_, are subject to mandatory sinking fund redemption prior to maturity in part at random, by lot or other customary random selection method selected by the Paying Agent/Registrar, at par plus accrued interest to the redemption date, and without premium, with funds on deposit in the Interest and Sinking Fund. Such Bonds shall be redeemed by the Paying Agent/Registrar on \_\_\_\_\_ in each of the years and in the principal amounts, respectively, as are set forth in the following schedule:



Bonds Maturing

<u>Year</u>	<u>Principal</u>
(      )	<u>Amount</u>

(1) Final maturity of Bond.

The principal amount of the Bonds required to be redeemed pursuant to the operation of such mandatory sinking fund redemption shall be reduced, at the option of the City, by the principal amount of any Bonds which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been purchased by the City and delivered to the Paying Agent/Registrar for cancellation or (ii) redeemed pursuant to the optional redemption provision described above and not theretofore credited against a mandatory sinking fund requirement.

IF THE DATE for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the offices for payment of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest ("Special Payment Date", which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a municipal corporation duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by

the Constitution and laws of the State of Texas, and by the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as stated in the Ordinance. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City as of the Issue Date.

CITY OF HARKER HEIGHTS, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary

(SEAL)

C. \*Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond(s) only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	)	
	)	
OF PUBLIC ACCOUNTS	)	REGISTER NO.
	)	
THE STATE OF TEXAS	)	

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

\*NOTE TO PRINTER: Do not print on definitive bonds

(D) Form of Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney

General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in Dallas, Texas, is the Designated Payment/Transfer Office for this Bond.

BOKF, N.A.  
as Paying Agent/Registrar

Registration date:

By: \_\_\_\_\_  
Authorized Signature

(E) Form of Assignment.

#### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee: \_\_\_\_\_)  
(Social Security or other identifying number \_\_\_\_\_) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Signature guaranteed:

SECTION 10: Levy of Taxes. To provide for the payment of the "Debt Service Requirements" of the Bonds, being (i) each year's principal and interest on the Bonds and (ii) a sinking fund for their payment at maturity or redemption of 2% of the principal amount of the Bonds per annum (whichever amount is the greater), there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations prescribed by law, and such tax as hereby levied on each one hundred dollars' valuation of taxable property in the City for the Debt Service Requirements of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Bonds while Outstanding; full allowance being made for delinquencies and costs of collection; separate books and records relating to the receipt and disbursement of taxes levied, assessed and collected for and on account of the Bonds shall be kept and maintained by the City at all times while the Bonds are Outstanding, and the taxes collected for the payment of the Debt Service Requirements on the Bonds shall be deposited to the credit of a "Special 2020 Refunding Bond Account" (the "Interest and Sinking Fund") maintained on the records of the City and deposited in a special fund maintained at an official depository of the City's funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

Chapter 1208, *Government Code* applies to the issuance of the Bonds and the pledge of taxes granted by the City hereunder, and such pledge, therefore, is valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of taxes granted by the City hereunder is to be subject to the filing requirements of Chapter 9, *Texas Business and Commerce Code*, then in order to preserve to the registered Holders the perfection of the security interest in such pledge, the City agrees to take such measures as it

determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business and Commerce Code and enable a filing to perfect the security interest in such pledge to occur.

Proper officers of the City are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Bonds, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Bonds.

**SECTION 11: Mutilated - Destroyed - Lost and Stolen Bonds.** In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds.

**SECTION 12: Satisfaction of Obligation of City; Defeasance.** If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be deemed to have been paid and no longer outstanding within the meaning and with the effect expressed above in this Section when payment of principal of and interest on such Bonds to their stated maturity or redemption has been made or provided in any manner permitted by applicable law. Under current law, such payment may be accomplished by depositing with the Paying Agent, irrevocably and in trust, any combination of (1) money in an amount sufficient to make such payment and/or (2) Government Securities having such maturities and interest payment dates and bearing such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, be sufficient to make such payment. "Government Securities" means (A) direct, noncallable obligations of the United State of America, including obligations that are unconditionally guaranteed by the United States of America, (B) noncallable obligations of any agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent, and (C) noncallable obligations of a state or an agency or county, municipality, or

other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of such refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent. The foregoing obligations may be in book-entry form, and shall mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of the Bonds. If any of such Bonds are to be redeemed prior to their respective dates of maturity, provision must have been made for giving notice of redemption as provided in this Ordinance.

Upon such deposit as described above, the Bonds shall no longer be regarded to be outstanding or unpaid for purposes of applying any limitation or indebtedness. After firm banking and financial arrangements for the discharge and final payment of the Bonds have been made as described above, all rights of the City to initiate proceedings to call the Bonds for redemption or take any other action amending the terms of the Bonds are extinguished; provided, however, that the right to call the Bonds for redemption following their defeasance is not extinguished, if the City (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Bonds for redemption, (ii) gives notice of the reservation of that right to the owners of the Bonds immediately following the making of the firm banking and financial arrangements, and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity of the Bonds shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

**SECTION 13: Ordinance a Contract - Amendments - Outstanding Bonds.** This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Bonds then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Bonds, as the case may be, affected, no such amendment, addition, or rescission may (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, or the manner in which any such Bond or interest thereon is payable, or in any other way modify the terms of payment of the principal of or interest on any such Bond, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required for consent to any amendment, addition, or waiver.

The term "Outstanding" when used in this Ordinance with respect to Bonds means, as of the date of determination, all Bonds theretofore issued and delivered under this Ordinance, except:



(1) those Bonds cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Bonds which have been replaced with Bonds registered and delivered in lieu thereof as provided in Section 11 hereof.

**SECTION 14: Covenants to Maintain Tax-Exempt Status.** (a)Definitions. When used in this Section, the following terms shall have the following meanings:

*"Closing Date"* means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

*"Code"* means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

*"Computation Date"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Gross Proceeds"* means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

*"Investment"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Regulations"* means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

*"Yield"* of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public, or no payment is made directly or indirectly for such use in an amount exceeding 10% of the debt service on the Bonds; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes or water rates of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or refinance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby) (and particularly including amounts deposited into the Escrow Fund), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in Ordinance to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, City Manager, and Director of Finance, individually or jointly, to make elections permitted or required pursuant to the

provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(k) Bonds Not Hedge Bonds. (1) At the time the original bonds refunded by the Bonds were issued, the City reasonably expected to spend at least 85% of the spendable proceeds of such bonds within three years after such bonds were issued and (2) not more than 50% of the proceeds of the original bonds refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Bonds are issued exclusively to refund the Refunded Obligations. The Bonds will be issued less than 90 days before the redemption date of such Refunded Obligations, and therefore constitute a current refunding thereof.

(m) Qualified Tax Exempt Obligations. The City hereby designates the Bonds as qualified tax exempt obligations under Section 265(b) of the Code. Neither the City, nor any entities subordinate to, or acting on behalf of, the City anticipate issuing (nor shall they issue) more than \$10,000,000 of tax exempt obligations during calendar year 2020 (excluding private activity bonds which are not 501(c)(3) bonds).

(n) Tax Certificate. The City confirms and agrees to comply with the provisions of the No Arbitrage and Tax Certificate (or similar documents however titled) delivered in connection with the Bonds and the Refunded Obligations, all of which are incorporated herein by reference, and the provisions and representations in which remain true as of the date hereof.

**SECTION 15: Sale of Bonds.** The Bonds authorized by this Ordinance shall be sold by the City to \_\_\_\_\_ (herein referred to as the "Purchaser"). The Mayor and/or City Manager are hereby severally authorized and directed to execute the winning bid for and on behalf of the City and as the act and deed of this City Council and of the City. The City Council hereby finds that the terms of sale as stated in the winning bid shall be the most advantageous reasonably available.

The City hereby ratifies and approves the use of FHN Financial Capital Markets to serve as bidding agent for the solicitation of bids for the purchase of the Bonds.

**SECTION 16: [deleted]**

**SECTION 17: Control and Custody of Bonds.** The City Manager and Finance Director are each hereby severally authorized to take and have charge of all necessary records pending review of the Bonds by the Attorney General of the State of Texas, including the printing and supply of definitive Bonds, and shall take and have charge and control of the Initial Bond(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Mayor, City Manager, and Finance Director, any one or more of said officials, are hereby authorized and directed to furnish and execute such agreements, documents and certifications relating to the City and the issuance, sale and delivery of the Bonds, including certifications as to facts, estimates, circumstances and reasonable expectations pertaining to the use, expenditure and investment of the proceeds of the Bonds, as may be necessary for the approval of the Attorney General, the registration by the Comptroller of Public Accounts and the delivery of the Bonds to the Purchasers, and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the Purchasers and the initial exchange thereof for definitive Bonds.

**SECTION 18: Escrow Agreement; Defeasance of Refunded Obligations.** The City hereby approves the entry of an Escrow Agreement with \_\_\_\_\_ (the "Escrow Agreement"), and the deposit into the Escrow Fund of those amounts (or securities purchased therewith) and necessary to accomplish the refunding of the Refunded Obligations on August 15, 2020. It is the City's intention that upon deposit into the Escrow Fund established pursuant to the Escrow Agreement of such amounts (or securities purchased therewith), the Refunded Obligations shall be deemed defeased in accordance with the provisions of the Ordinance authorizing the issuance of the Refunded Obligations and that the same shall no longer be outstanding except for the right to be paid from the amount on deposit in the Escrow Fund.

**SECTION 19: [deleted]**

**SECTION 20: Notices to Holders - Waiver.** Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 21: Cancellation.** All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/ Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be returned to the City.

**SECTION 22: Market Opinion.** The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Naman, Howell, Smith & Lee, PLLC, Attorneys, Waco, Texas, approving such Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the definitive Bonds, but the absence of same shall not affect the validity of the Bonds.

**SECTION 23: CUSIP Numbers.** The Bonds shall not bear CUSIP numbers.

**SECTION 24: Benefits of Ordinance.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

**SECTION 25: Inconsistent Provisions.** All Ordinances or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to



the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 26: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 27: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 28: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 29: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 30: Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 31: No Continuing Disclosure Undertaking. The Bonds are being sold directly to the Purchaser in a private placement and not through an underwriter. Accordingly, the continuing disclosure requirements of Rule 15c2-12 of the Securities and Exchange Commission do not apply to the Bonds.

SECTION 32. Events of Default. The following shall constitute an Event of Default hereunder:

(a) The failure by the City to make payment of principal, interest or redemption price on the Bonds, or the failure by the City to make payment into any fund or funds established hereunder, as the same become due.

(b) Default by the City in the observance or performance of any of the other covenants, conditions or obligations of the City hereunder, the failure to perform which materially, adversely affects the rights of the Registered Holders, including but not limited to, their prospect or ability to be repaid as provided herein, and the continuation thereof for a period of 60 days after notice of such default is given by a Registered Holder to the City.

Upon and following any event of default, any Registered Holder is entitled to seek a writ of mandamus from a court of proper jurisdiction requiring that the City comply with its obligations under this Ordinance if there is no other available remedy at law to compel performance of the Bonds or this Ordinance and the City's obligations are not uncertain or disputed. The rights of the Registered Holders hereunder do not include the right to compel acceleration of the maturity of the Bonds.

SECTION 33: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by V.T.C.A., *Government Code*, Chapter 551, as amended.

**SECTION 34: Call for Redemption.** (a) The Refunded Obligations described in the preamble hereof as the City's Combination Tax and Revenue Certificates of Obligation, Series 2011 are hereby called for redemption on August 15, 2020, being the first available call date for the Refunded Obligations.

The City Manager and Director of Finance or their designees are hereby authorized to give such notices as are required to effectuate the redemptions referred to herein.

(b) The Mayor, the Authorized Officer and all other officers of the City are authorized to take such actions, to obtain such consents or approvals and to execute such documents, certificates and receipts as they may deem necessary and appropriate in order to consummate the delivery of the Bonds, to pay the costs of issuance of the Bonds, and to effectuate the terms and provisions of this Ordinance.

**SECTION 36: Purchase of United States Treasury or Other Obligations.** To assure the purchase of the Federal Securities or other obligations to be identified in the Escrow Agreement, the Authorized Officer is hereby authorized to subscribe for, agree to purchase, and purchase obligations of the United States of America, or other legally permissible obligations appropriate for a refunding escrow under Texas state law in such amounts and maturities and bearing interest at such rates as may be provided for in the Escrow Agreement, and to execute any and all subscriptions, purchase agreements, commitments, letters of authorization and other documents necessary to effectuate the foregoing, and any actions heretofore taken for such purpose are hereby ratified and approved.

**SECTION 37: Effective Date.** This Ordinance shall be in force and effect from and after its passage on the date shown below, pursuant to V.T.C.A., *Government Code*, Section 1201.028.

PASSED AND ADOPTED, this 14<sup>th</sup> day of April, 2020.

CITY OF HARKER HEIGHTS, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

[SEAL]

EXHIBIT A

REGISTERED  
NO. T-1

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF HARKER HEIGHTS, TEXAS,  
GENERAL OBLIGATION REFUNDING BOND,  
SERIES 2020  
Issue Date:  
\_\_\_\_\_, 2020

REGISTERED  
\$ \_\_\_\_\_

Registered Owner:

Principal Amount: \_\_\_\_\_ AND NO/100 DOLLARS

The City of Harker Heights, Texas (hereinafter referred to as the "City"), a municipal corporation of the State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on August 15 in each of the years and in principal installments in accordance with the following schedule:

<u>Maturity</u> <u>(August 15)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>
2021	\$295,000	
2022	\$310,000	
2023	\$320,000	
2024	\$580,000	
2025	\$600,000	
2026	\$625,000	
2027	\$635,000	
2028	\$655,000	
2029	\$670,000	
2030	\$685,000	
2031	\$710,000	

and to pay interest on the unpaid Principal Amount hereof from the date of delivery hereof at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months. Principal installments of this Bond are payable in the year of maturity, or earlier redemption date, to the registered owner hereof by \_\_\_\_\_ (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in Dallas, Texas ("the "Designated Payment/Transfer Office"). Accrued interest on the unpaid principal amount hereof is payable on February 15 and August 15 in each year, commencing August 15, 2020, until maturity or earlier redemption, to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the close of business on the last business day of the month next preceding each interest payment date, and such interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City and to pay costs of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Government Code, Chapter 1207, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Bonds are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

The City reserves the right, at its option, to redeem Bonds having stated maturities on and after August 15, \_\_\_\_\_, in whole or from time to time in part in principal amounts of \$5,000 or any integral multiple thereof, on August 15, \_\_\_\_\_, or any date thereafter, at the par value thereof plus accrued interest to the date of redemption. If less than all of the Bonds are to be redeemed, the City may select the series and maturities of Bonds to be redeemed. If less than all the Bonds of any series and maturity are to be redeemed, the Paying Agent/Registrar (or DTC while the Bonds are in Book Entry Only form) shall determine by lot or other customary random selection method the Bonds, or portions thereof, within such series and maturity to be redeemed. If a Bond (or any portion of the principal sum thereof) shall have been called for redemption and notice of such redemption shall have been given, such Bond (or the principal amount thereof to be redeemed) shall become due and payable on such redemption date and interest thereon shall cease to accrue from and after the redemption date, provided funds for the payment of the redemption price and accrued interest thereon are held by the Paying Agent/Registrar on the redemption date.

NOT LESS THAN 30 DAYS prior to a redemption date for the Bonds, the City shall cause a notice of redemption to be sent by United States mail, first class, postage prepaid, in the name of the City and at the City's expense, by the Paying Agent/Registrar, to the registered owners of the Bonds to be redeemed, in whole or in part, at the address of the registered owner appearing on the registration books of the Paying Agent/Registrar at the close of business on the business day next preceding the date of mailing such notice.

ANY NOTICE SO MAILED WILL BE CONCLUSIVELY PRESUMED TO HAVE BEEN DULY GIVEN, WHETHER OR NOT THE REGISTERED OWNER RECEIVES SUCH NOTICE. NOTICE HAVING BEEN SO GIVEN, AND ANY CONDITIONS STATED IN THE NOTICE HAVING BEEN MET, THE BONDS CALLED FOR REDEMPTION WILL BECOME DUE AND PAYABLE ON THE SPECIFIED REDEMPTION DATE, AND NOTWITHSTANDING THAT ANY BOND OR PORTION THEREOF HAS NOT BEEN SURRENDERED FOR PAYMENT, INTEREST ON SUCH BOND OR PORTION THEREOF WILL CEASE TO ACCRUE. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds or portions thereof which are to be so redeemed. If due provision for such payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed.



prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed a substitute Bond having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Bond Ordinance.

The City reserves the right in the case of an optional redemption to give notice of its election or direction to redeem Bonds conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an Event of Default.

With respect to any optional redemption of the Bonds, unless the prerequisites to such redemption required by the Ordinance have been met and money sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed will have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice will state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such money by the Paying Agent/Registrar on or prior to the date fixed for such redemption or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not fulfilled, such notice will be of no force and effect, the City will not redeem such Bonds, and the Paying Agent/Registrar will give notice in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds maturing on \_\_\_\_\_, are subject to mandatory redemption prior to maturity in part at random, by lot or other customary random selection method selected by the Paying Agent/Registrar, at par plus accrued interest to the redemption date, and without premium, with funds on deposit in the Interest and Sinking Fund. Such Bonds shall be redeemed by the Paying Agent/Registrar on February 1 in each of the years and in the principal amounts, respectively, as are set forth in the following schedule:

Bonds Maturing	
<u>Year</u>	<u>Principal</u>
<u>( )</u>	<u>Amount</u>

(1) Final maturity of Bond.

The principal amount of the Bonds required to be redeemed pursuant to the operation of such mandatory sinking fund redemption shall be reduced, at the option of the City, by the principal amount of any Bonds which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been purchased by the City and delivered to the Paying Agent/Registrar for cancellation or (ii) redeemed pursuant to the optional redemption provision described above and not theretofore credited against a mandatory sinking fund requirement.

IF THE DATE for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the offices for payment of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest ("Special Payment Date" which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a municipal corporation duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the Ordinance; that the Bonds do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as stated in the Ordinance. In case any provision in this Bond shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be duly executed under the official seal of the City as of the Issue Date.

CITY OF HARKER HEIGHTS, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary

(SEAL)

**REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER	)	
	)	
OF PUBLIC ACCOUNTS	)	REGISTER NO.
	)	
THE STATE OF TEXAS	)	

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

Signature guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.