



**AGENDA
REGULAR MEETING
FREEPORT CITY COUNCIL
MONDAY, OCTOBER 7, 2019 at 6:00 P.M.**

Mayor:
Troy Brimage

Council Members:
Ken Green
Brooks Bass
Sandra Loeza
Roy Yates

City Manager:
Timothy Kelty

THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, WILL MEET ON MONDAY, THE 7th DAY OF OCTOBER 2019, AT 6:00 P.M., AT THE FREEPORT POLICE DEPARTMENT, MUNICIPAL COURT ROOM, 430 NORTH BRAZOSPORT BOULEVARD, FREEPORT TEXAS FOR THE FOLLOWING PURPOSES:

CALL TO ORDER: *The Mayor will call the meeting to order, declare a quorum if present, and declare notices legally posted pursuant to Open Meetings Act.*

INVOCATION AND PLEDGE OF ALLEGIANCE: (Council Member)

CITIZENS' COMMENTS:

Members of the public are allowed to address the City Council at this time. *Note*, specific factual information or a recitation of existing policy may be furnished in response to an inquiry made, but any deliberation, discussion, or decision with respect to any subject about which the inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting for which notice is provided in compliance with the Texas Open meetings Act unless said notice appears herein. The public is reminded that there is a (4) minute time limit as approved by City Council on June 21, 2010.

PRESENTATIONS/ANNOUNCEMENTS: Announcements by Mayor, City Council and/or Staff

CONSENT AGENDA:

Consent Agenda items are considered to be routine in nature and may be acted upon in one motion. Any item requiring additional discussion may be withdrawn from the Consent Agenda by the Mayor, Councilmember or City Manager, and acted upon separately.

1. Consideration and possible action on the approval of City Council meeting minutes from September 16, 2019. **(Wells)**
2. Consideration of approving a request from Brazosport High School for road closures during the 2019-2020 Brazosport High School Homecoming Parade **(Garivey)**

COUNCIL BUSINESS – REGULAR SESSION:

3. **Public Hearing:** Public Hearing and possible action of a proposed replat. being a Plat Partition Survey of Lot 9 (Unrecorded Subdivision), situated in the William M. McDermott League, Abstract No. 341 in Brazoria County, Texas. **(Shoemaker)**
4. **Public Hearing:** Public Hearing and possible action of a proposed Plat of Lots 202 and 203, Block 1 of the amended plat of Lazy Oak Ranch Subdivision and a portion of a called 3.84-acre tract in Brazoria County, Texas. **(Shoemaker)**
5. **Public Hearing:** Conduct the second public hearing to review the Juvenile Curfew Ordinance of said City codified as Section 130.20 through 130.99 of said Code of Ordinances, for purpose of determining whether or not to abolish, continue or modify said ordinance.**(Garivey)**
6. Consideration and possible action approving Ordinance No. 2019-2584 re-adopting Juvenile Curfew Ordinance.**(Garivey)**
7. Consideration of approving Ordinance No. 2019-2585 creating standards for garage sale. **(Shoemaker)**
8. Consideration of approving Ordinance No. 2019-2586 Repeal and Replace Chapter 153, and adopting a new Chapter 153 Flood Damage Prevention Ordinance. **(Shoemaker)**
9. Consideration of approving Resolution No. 2019-2610 adopting the FEMA letter of map change (LOMC) process. **(Shoemaker)**

WORK SESSION:

10. The City Council may deliberate and make inquiry into any item listed in the Work Session.
 - A. Mayor Troy T. Brimage announcements and comments.
 - B. Councilman Green Ward A announcements and comments.
 - C. Councilman Bass Ward B announcements and comments.
 - D. Councilwoman Loeza Ward C announcements and comments.
 - E. Councilman Yates Ward D announcements and comments.
 - F. City Manager Tim Kelty announcement and comments
 - G. Updates on current infrastructure.
 - H. Update on reports / concerns from Department heads.

CLOSED SESSION:

11. Executive Session regarding economic development (Projects 2019-2 and 2019-3), and Attorney Consultation (Potential Litigation) in accordance with Vernon's Texas Government Code Annotated, Chapter 551, 551.087 and Chapter 551, 551.071

COUNCIL BUSINESS – REGULAR SESSION:

12. Consideration in open session of taking action on any matter discussed in closed executive session. (Kelty)

ADJOURNMENT:

13. Adjourn.

Items not necessarily discussed in the order they appear on the agenda. The Council at its discretion may take action on any or all of the items as listed. This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code).

The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

ACCESSIBILITY STATEMENT This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's Office at (979) 233-3526.

CERTIFICATE I certify the foregoing notice was posted in the official glass case at the rear door of the City Hall, with 24 hours a day public access, 200 West 2nd Street, Freeport Texas, before 6:00 p.m., in accordance with Open Meetings Act.



Betty Wells, City Secretary
City of Freeport, Texas

State of Texas

County of Brazoria

City of Freeport

BE IT REMEMBERED, that the City Council of Freeport, Texas met on Monday, September 16, 2019 at 6:00 p.m. at the Freeport Police Department, Municipal Court Room, 430 North Brazosport Boulevard, Freeport Texas for the purpose of considering the following agenda items:

City Council:

Mayor Troy Brimage-
Councilman Brooks Bass
Councilman Ken Green
Councilwoman Sandra Loeza
Councilman Roy E. Yates

Staff:

Tim Kelty, City Manager
Betty Wells, City Secretary
Chris Duncan, City Attorney
Stephanie Russell Assistant City Manager
Brenda Miller-Ferguson Human Resource Director
Nat Hickey, Property Manager
Chris Motley, Fire Chief
Courtland Holman, Economic Development Director
David Hoelewyn-Street Department Director
Donna Fisher-Accounts Payable and Human Resource Assitant
Clarisa Molina-Administrative Assistant
Laura Tolar-Special Projects Coordinator Assistant City Secretary
Danny Gillchriest-Police Captain
Billy Shoemaker-Building Department Director
Michael Praslicka-EMS Coordinator
Cody Chandler-Fire Fighter
Zach Armstrong-Fire Fighter
Brennon Malone-Probationary Fire Fighter

Visitors:	Melanie Oldham	Angie Williams
	Tommy Pearson	Kenny Hayes
	Edmeryl Williams	Manning Rollerson
	Sabrina Brimage	Breanna Brimage

Call to order.

Mayor Troy Brimage called the meeting to order at 6:00 p.m.

PRESENTATIONS/ANNOUNCEMENTS: Announcements by Mayor, City Council and/or Staff

City employee's Lieutenant Justin Davison and Clarisa Molina was presented with a certificate recognizing them as Employee of the Month for August 2019

Citizen's Comments

Manning Rollerson spoke to council regarding a spill team that was at the river; Mayor Brimage informed Mr. Rollerson that the spill team is a chemical company that conducts a practice training each quarter. Mr. Manning also spoke regarding the East End Park. He states that swapping the park without coming to the voters first is against the law.

REGULAR SESSION

Consideration and possible action on the approval of City Council meeting minutes from September 3, and September 9, 2019.

On a motion by Councilman Bass, seconded by Councilman Green, with all present voting "Aye", Council unanimously approved the City Council meeting minutes from September 3, and September 9, 2019.

Public Hearing: First Public Hearing Regarding the re-adoption of the Juvenile Curfew Ordinance of City of Freeport, Texas codified as Section 130.20 through 130.99 of Freeport's Code of Ordinances, for the purpose of determining whether or not to abolish, continue or modify said ordinance, the Public Hearing opened at 6:16 pm.

Manning Rollerson spoke to council at the Public Hearing in regards to the Juvenile Curfew Ordinance. He said that the age of juveniles was raised to the age of 21.

On a motion by Councilman Bass and seconded by Councilwoman Loeza with all present and voting "Aye" the Public Hearing was closed at 6:20.

Consideration and possible action regarding Ordinance No. 2019-2582 approving the Property Tax Rates for 2019 Tax Year.

Assistant City Manager Stephanie Russell presented Ordinance No. 2019-2582 to Council for approving the 2019-2020 Property Tax Rate \$0.628005.

Councilman Bass made a motion stating "I propose adopting a tax rate of \$0.628005 per \$100.00 valuation for the 2019 tax year, which effectively a 1.6 percent increase in the tax rate. The motion was seconded by Councilwoman Loeza. With all present voting 3 to 1, Council approved Ordinance No. 2019-2582 approving the Property Tax Rates for the 2019 Tax Year.

Councilman Yates voted no.

Ratification of the Fiscal Year 2019-2020 Adopted Budget

Assistant City Manager Stephanie Russell spoke to Council regarding Ratification of Fiscal Year 2019-2020 adopted budget. She said that is a house keeping item. She stated that any budget that raises revenue and property tax from one year to the other has to be ratified after you adopt your budget and your tax rate.

On a motion by Councilman Bass seconded by Councilman Green with all present and voting "Aye" the Ratification of the Fiscal Year 2019-2020 adopted budget was approved.

Consideration of Ordinance No. 2019-2583 adopting an amendment to the budget for the 2018-2019 fiscal year.

Assistant City Manager Stephanie Russell presented the proposed budget amendments to City Council. She spoke on the revenue impact of this budget amendment. The Freeport Golf Course budget amendment will have a net zero impact to the budget. The Golf Course has sold more merchandise this year, which means we had to buy more merchandise to sale; the merchandise expense budget will be raised to \$75,000.00. The cost of the City Hall elevator, which was approved in the last meeting, is included in this amendment as well. Also, as discussed at the strategic planning workshop, the lease purchase contracts estimated payoff is an estimated \$1.2 million, with estimated savings over \$90,000.00, in addition to eliminating the re-occurring annual cost of roughly \$300,000.00. Included in the budget amendment are Water and Sewer costs for: lift stations #5 and #13 rehab, the sewer line replacement, lift station risk base assessment, and the water facility assessment. The EDC Loan is a cleanup item. It was accounted for but was not transparent in the way it was handled going to an account that was not an expenditure account. This Budget Amendment is the recommendation of City Manager Tim Kelty and Assistant City Manager Stephanie Russell.

On a motion by Councilman Bass and seconded by Councilwoman Loeza with all present and voting "Aye" Council approved Ordinance No. 2019-2583 approving the adoption of Budget Amendment #5.

Consideration of approval of Resolution No. 2019-2606 the bid for Bank Depository services

Assistant City Manager Stephanie Russell presented to Council Resolution No. 2019-2606 Bank Depository Services. The City issued request for applications for the bank depository service in July. The four banks that submitted these were, Texas Gulf Bank, First National Bank of Lake Jackson, First State Bank of Clute, and Moody National Bank. Mr. Bill Cook with Valley View Consulting spoke to Council. Assistant City Manager Stephanie Russell and Bill Cook both recommend that the City stay with Texas Gulf Bank.

On a motion by Councilwoman Loeza and seconded by Councilman Bass with all present and voting "Aye" council approved Resolution No. 2019-2606 awarding Texas Gulf Bank for the Bank Depository Services.

Consideration of authorizing engagement letter to conduct audit for FY 2018-2019

Assistant City Manager Stephanie Russell spoke to council in regards to the engagement letter from Whitley Penn to conduct the audit for Fiscal Year 2018-2019; this was included in the 2019-2020 budget.

On a motion made by Councilman Bass and seconded by Councilman Green. With all present and voting "Aye" they approved the engagement letter to conduct the audit for FY-2018-2019."

Consideration of approving Resolution No. 2019-2607 regarding a rate increase of EMS Services.

Fire Chief Motley spoke to council in regards to Resolution No. 2019-2607 for a rate increase of EMS Services. The last fee schedule was in 2014. He stated that if this resolution is approved this will bring

the EMS billing service fee in alignment with Alvin EMS, and Santa Fe EMS. This will not impact the Medicaid or Medicare patients. City Manager Tim Kelty and staff recommend this Resolution.

On a motion by Councilman Bass and seconded by Councilman Yates with all present and voting "Aye," council approved Resolution No. 2019-2607 regarding a rate increase of EMS services.

Consideration to approve Resolution No. 2019-2608 approving BASF Firefighting & Emergency Support Services Agreement.

Fire Chief Motley presented to council Resolution No. 2019-2608. BASF Firefighting & Emergency Support Services Agreement. Councilman Bass inquired as to the expense that the City would acquire. Chief Motley responded that there will be no burden on the tax payers.

On a motion by Councilman Bass and seconded by Councilman Green with all present a voting "Aye" council approved Resolution No. 2019-2608 BASF Firefighting & Emergency Support Services Agreement.

Consideration to approve Resolution No. 2019-2609 approving the EDC Budget

EDC Director Courtland Holman presented Resolution No. 2019-2609 to council for approving and adopting a budget for the Freeport Economic Development Corporation for the Fiscal Year 2019-2020

Resident Melanie Oldham questioned the balloon payment that is due. Assistant City Manager Stephanie Russell recommends that the balloon payment be refinanced she also stated that she does not know the terms for a refinance at this time. Stephanie Russell does recommend this budget.

The Mayor asked if this was the last of the debt for EDC and Assistant City Manager answered with "yes".

On a motion by Councilwoman Loeza and seconded by Councilman Bass with all present and voting "Aye" council approved Resolution No. 2019-2609 approving the EDC Budget.

Consideration and possible action on Change order #4 to the contract with Sorrell Construction for the 2019 Concrete Street Repair Project.

Street Department Director David Hoelewyn spoke to council about the contract with Sorrell Construction for the approval of change order #4 for the 2019 Concrete Street Repair Project. This involves the two transitions, the one on Yaupon and on Pecan. The cost for these two transitions will be \$27,200.00 which is \$13,600.00 per transition. City Manager Tim Kelty asked the time frame on the completion of the job. David Hoelewyn is unable to answer positively due to the rain.

On a motion by Councilman Yates and seconded by Councilman Bass with all present and voting "Aye" Change Order #4 was approved.

WORK SESSION:

Mayor Troy Brimage asked what the status of the pumps are with the upcoming weather event. David Hoelewyn said that there are two pumps working and we are waiting on a part for Mystery Harbor pump. He said the pumps will run. Mayor Brimage asked council if they should rent a pump for Velasco. Mr. Hayes asked David Hoelewyn if they were going to get the lights on the pumps so that we

know that the pumps are running. Mayor Brimage said that we will have pumps there tomorrow. Mayor Brimage also spoke to Billy Shoemaker about the auto shop on Ave A and that they continue working on cars on the side of the road. Billy Shoemaker said that he will address the situation. Mayor Brimage also spoke on the dump truck on Ave A still parking in the yard. Billy Shoemaker said that there is no ordinance about parking on the side of the house. The Mayor's concern on the parking is the truck is driving over the sidewalk, and curbs.

Councilman Green asked David Hoelewyn about the intersection of 6th and Walnut. A resident said that her water line was repaired about six months ago and now when she comes out of her drive way there a slope and at the end of the slope there is a 6 inch pothole. There are about six families that have to go through this every day. David Hoelewyn said that he would get it taken care of.

Councilman Bass thanked the Mayor for the pumps. He inquired City Manager Tim Kelty the status from the September 3rd meeting on the entities that damage our lines who will be the one to repair the damage. He also asked if Veolia is aware to notify the City if contractor has not repaired in a timely manner. Mr. Kelty informed Councilman Bass that if there is a problem Veolia is aware to notify the City. If this happens then the contractor is responsible for the repair. If the repair is not completed timely manner then the City will do the repair and send an invoice to the entity that caused the damage. Councilman Bass thanked Tim Kelty for working on this, and he also stated that we need to make sure that our city employees know to inspect and make sure that the repair was done correctly.

Councilwoman Loeza asked if there was anything that the city could do to make a business repair their parking lots. Mayor Troy Brimage stated that there is no ordinance that states what kind of condition that private businesses must retain their parking lots. City Manager Tim Kelty said this is one of the areas that will probably be in the zoning update. Councilwoman Loeza spoke of a business that has rebar showing when you are leaving the parking lot. Billy Shoemaker stated that if it is safety issues like this then let him know and he will figure out who is responsible for this repair.

Councilman Yates had nothing to report.

City Manager Tim Kelty spoke about BISD the park and O. A. Fleming property they are working on a few things and they will let us know. He also spoke about the elevator and that the City went with ThyssenKrupp. The other company was significantly higher and that the elevator should be up and working the first week in November. He also introduced Brenda Ferguson as the City's new HR Director. He also reminded everyone that signed up for TML Conference coming up October 9th. Tim Kelty also spoke about Gass the FPD's K-9 passing away, and to keep Officer Wagner in our prayers.

Update on reports / concerns from Department heads

Chris Motley Fire Chief gave a weather update on system he said that they are having conference call at 12:00 noon on Tuesday. He said that Tuesday –Thursday would be the rain days, and that there is no circulation. This will be a rain event. Prepare because it can't be predicted.

Open session was closed at 7:11 pm and Council entered into Executive Session.

CLOSED SESSION:

Executive Session regarding economic development (Projects 2019-2 and 2019-3) and Attorney Consultation (Potential Litigation) in accordance with Vernon's Texas Government Code Annotated, Chapter 551, 551.087 and Chapter 551, 551.071.

REGULAR SESSION

Mayor Troy Brimage opened regular session at 7:39 pm

Consideration in open session of taking action on any matter discussed in closed executive session

No action taken.

Adjourn

On a motion by Councilman Bass, seconded by Councilwoman Loeza, with all present voting "Aye", Mayor Troy Brimage adjourned the meeting at 7:40 PM.

Mayor, Troy Brimage
City of Freeport, Texas

City Secretary, Betty Wells
City of Freeport, Texas



City Council Agenda Item #2

Title: Request for the road closure of West Second Street for 2019-2020 Brazosport High School Homecoming Parade

Date: 10/07/2019

From: Captain Danny Gillchriest

Staff Recommendation:

Brazosport High School Homecoming Parade Committee is requesting the complete closure of West 2nd street from the 900 block of West Second street 1800 Block of West Second street from 5:00pm till 6:30pm

Item Summary:

Annual Home coming and Bon-Fire Parade for the Brazosport High School

Background Information:

Brazosport High School has been having their Parade and Bon-Fire for 20 years. BISD Police Department is handling the parade the Freeport Police department will assist in blocking Intersections and traffic control.

Special Considerations

None

Financial Impact:

None

Board or 3rd Party recommendation:

None

Supporting Documentation:

The Brazosport High School is scheduled their Annual Home Coming Parade and Bon- Fire for Thursday, October 24,2019. The Parade route for start at 900 block of Second Street in front of On the River Restaurant and Beech street, traveling west bound down Second street to Exporter Drive in the 1600 block of West second street. The parade will be escorted by the Brazosport Independent School District Police Department. The Freeport Police Department will assist BISD on blocking the intersections on the parade route. The Parade will start staging at 5:00 PM and the promptly kick off at 5:30 PM. Chief Garivey has waived the fee for the Parade Permit.

2019-2020 BRAZOSPORT HS HOMECOMING PARADE ROUTE AND ROAD CLOSURE





City Council Agenda Item # 3

Title:

Discuss and consider approval of a proposed re-plat of a Partition Survey of Lot 9 (Unrecorded Subdivision), Situated in the William M. McDermott League, Abstract No. 341. Located in the ETJ of The City of Freeport, Brazoria County, Texas.

Date: October 7, 2019

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Approve the replat.

Item Summary:

Hold public hearing and upon closing of public hearing approve replat.

Background Information:

Replat requested based on a division of property within the family establishing two independent tracks.

Special Considerations:

This property is Located in the City's ETJ

Financial Impact:

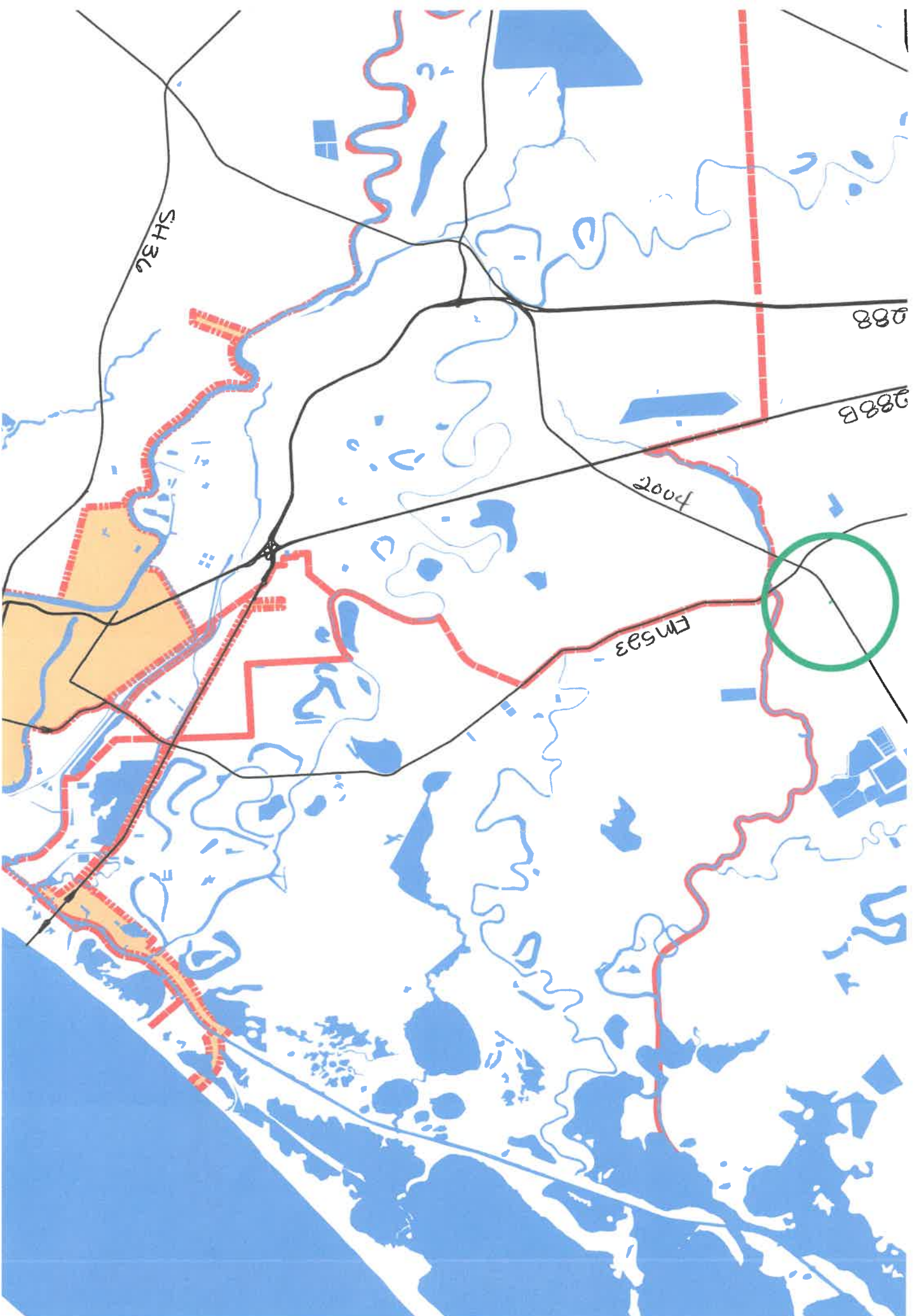
None

Board or 3rd Party recommendation:

Planning and Zoning held their public hearing and vote to approve the re-plat and forward this item to council for final approval.

Supporting Documentation:

Copy of plat and associated paperwork will be attached.





City Council Agenda Item # 4

Title:

Discuss and consider approval of a proposed re-plat of a Lots 202 and 203, Block 1 of the amended plat of Lazy Oak Ranch Subdivision and a portion of a called 3.84-acre tract. Located in the ETJ of The City of Freeport, Brazoria County, Texas.

Date: October 7, 2019

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Approve the replat.

Item Summary:

Hold public hearing and upon closing of public hearing approve replat.

Background Information:

Replat requested based on moving of property lines to cause a more function parcel of land.

Special Considerations:

This property is Located in the City's ETJ

Financial Impact:

None

Board or 3rd Party recommendation:

Planning and Zoning held their public hearing and vote to approve the re-plat and forward this item to council for final approval.

Supporting Documentation:

copy of plat and associated paperwork will be attached.



City Council Agenda Items 5 & 6

Title: Public Hearing and consideration and possible action on re-adoption of Juvenile Curfew ordinance.

Date: October 7, 2019

From: Ray Garivey, Chief of Police

Staff Recommendation: Staff recommends action on the adoption of Juvenile Curfew Ordinance from the second Public Hearing.

Item Summary: The Juvenile Curfew ordinance is for the conduct of minors on the streets or public places and private business, during normal school hours, at night and early morning hours in the city of Freeport. The ordinance is for the good of the minors in our city and to promote family responsibility and the safety and welfare of the city.

Background Information: The Curfew ordinance benefits the city and the minor's safety cutting down the criminal mischief and minors roaming through the streets and public places and Commercial recreational facilities are almost nonexistent. There is little or nothing for the minors to do outdoors, but roam the streets.

Special Considerations: There is no change to what was previously adopted, a second public hearing is required by law and will be on Oct. 7, 2019 before consideration on adoption.

Board or 3rd Party recommendation: None

Financial Impact: None

Supporting Documentation: Ordinance No. 2019-2584

ORDINANCE NO. 2019-2584

AN ORDINANCE OF THE CITY OF FREEPORT, TEXAS; CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW; DECLARING THE PRESENCE OF MINORS IN PUBLIC PLACES, IN THE PUBLIC STREETS, AND IN THE COMMERCIAL ESTABLISHMENTS OF SAID CITY DURING THE NOCTURNAL AND DAYLIGHT HOURS HEREINAFTER SPECIFIED TO BE A PUBLIC NUISANCE AND PROVIDING FOR THE ABATEMENT THEREOF AS THEREIN PROVIDED; AMENDING CHAPTER 130 OF THE CODE OF ORDINANCES OF SAID CITY, PROVIDING A CURFEW FOR MINORS, REGULATING THE USE OF STREETS BY MINORS DURING NOCTURNAL AND DAYLIGHT HOURS, AND PROVIDING FOR REGULATIONS AND DEFENSES, PROCEDURES AND PENALTIES, VOLUNTARY RESEARCH AND LOCAL RELATED MATTERS SUCH AS PERMITS, PARENTAL RESPONSIBILITIES, POLICE AS WELL AS IMPLEMENTATION THROUGH ACTION FOR THE PREVENTION OF JUVENILE DELINQUENCY; PROVIDING THAT ANY PERSON VIOLATING SAID CODE, AS AMENDED BY THIS ORDINANCE, SHALL BE GUILTY OF A MISDEMEANOR AND ASSESSED A FINE IN ACCORDANCE WITH THE PROVISIONS OF THIS ORDINANCE BUT NOT EXCEEDING FIVE HUNDRED (\$500.00) DOLLARS; PROVIDING THAT EACH DAY AND SUCH VIOLATION CONTINUES AND EACH PART OF ANY DAY DURING WHICH ANY SUCH VIOLATION SHALL OCCUR SHALL CONSTITUTE A SEPARATE OFFENSE; CONTAINING SAVINGS CLAUSES; PROVIDING FOR CONTINUED EVALUATION OF THIS CURFEW ORDINANCE BY CITY COUNCIL WITH PUBLIC HEARINGS TO BE HELD BEFORE THE THIRD ANNIVERSARY OF THE ADOPTION HEREOF; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE ON FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.

WHEREAS, the City of Freeport, Texas, is a "Home Rule City" and a "Home Rule Municipality" lying and situated in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

WHEREAS, Sections 51.072, 54.001, 54.004, 370.002 and 217.042 of the Local Government Code of Texas, Article 45.06 of the Code of Criminal Procedure of Texas and Sections 2.01 and 2.02 of the Home Rule Charter of the City of Freeport authorize the City Council thereof to adopt the provisions of this Ordinance; and,

WHEREAS, the City Council of the City of Freeport, Texas, is concerned about an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of 18 in the City of Freeport, Texas, resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, public drinking and littering, drug use, breaking and entering, and harassment of residents; and,

WHEREAS, the City Council has determined the many of these problems involving minors occur during normal school hours as well as at night and early morning hours; and,

WHEREAS, the City Council has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and,

WHEREAS, the City Council believes that a curfew imposed upon those persons of compulsory school age will encourage participation in educational activities and will promote the public good; and,

WHEREAS, the City Council believes that a curfew for those under the age of 18 will help to attain the foregoing objectives and will serve to diminish the undesirable impact of such conduct on the citizens of the City of Freeport, Texas, and will promote the public good, safety and welfare;

WHEREAS, the City Council conducted two (2) public hearings, one on September 16, 2019, and a second on October 7, 2019, on the need to continue this curfew ordinance and to consider amendments thereto; and

WHEREAS, the City Council has determined and does here now declare that the re-adoption of this ordinance, as amended, is necessary to the health, safety and general welfare of the inhabitants of the City of Freeport, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS:

First, Section 130.20 through 130.99 of the Code of Ordinances of the City of Freeport, Texas, added to said Code by Ordinance No. 1767, read, passed and adopted on the 20th day of June, 1994, and amended by Ordinance No. 1785, passed and adopted on the 19th day of June, 1995, and continued by Ordinance No. 2001-1957, read, passed and adopted on the 19th day of November, 2001, by Ordinance No. 2004-2069, read, passed and adopted on the 15th day of November, 2004, Ordinance No. 2007-2179, read, passed and adopted on the 5th day of November, 2007, Ordinance No. 2010-2264, read, passed and adopted on the 18th day of October, 2010, and Ordinance No. 2023-2049, read, passed and adopted on the 7th day of October, 2013, Ordinance No. 2016-2121, read, passed and adopted on the 3rd day of October, 2016 is hereby re-adopted in its entirety to read as follows:

"Sec. 130.20 SHORT TITLE

This subchapter shall be known and may be cited as 'the Curfew Ordinance of the City of Freeport, Texas.'

Sec. 130.21 PURPOSES; FINDINGS; CONCLUSIONS.

(A) This subchapter is enacted in accordance with the prevailing community standards and regulations for the conduct of minors on streets, in public places and in private businesses during normal school hours, at night, and during early morning hours for the good of minors in the City, to promote family responsibility, and for the public good, safety and welfare of the citizens of the City.

(B) The City Council finds that the curfew established by this Curfew Ordinance meets a very real local need and should, based on the published experiences of other local governments, be a significant factor in minimizing juvenile delinquency in the City in the years ahead. The community sense of the proper time for the cessation of all outdoor activities by minors on the streets, in public places and in private businesses, is reflected in the curfew hours declared by this subchapter which takes into consideration those hours when minors are normally in school as well as those dangerous nocturnal and early morning hours when the accumulation of minors poses a special risk due to their special susceptibility to peer pressure, their immaturity and their lack of experience, all tendencies normally associated with those of youthful years.

(C) The City Council finds that the City is not overcrowded. Local school facilities and adequate indoor living space permits minors in the City to healthfully occupy their time during daytime and nighttime hours. Commercial recreational facilities are almost nonexistent and there is little or nothing for minors to do outdoors, but roam the streets and frequent the commercial establishments of the City which are open after the curfew hours which this subchapter declares.

(D) The City Council finds that minors roaming the streets, public places and frequenting commercial establishments during the curfew hours which this Curfew Ordinance declares constitutes a public nuisance which should be abated as hereinafter provided.

(E) The City council finds that School hours should generally be used for educational activities by minors.

(F) Parental responsibility for the whereabouts of children is the norm. Legal sanctions to enforce such results have had a demonstrated effectiveness over the years. As parental control increases, the likelihood of juvenile delinquency decreases. There is a need for daytime and nighttime curfew hours for minors in order to achieve, under local conditions, the purposes hereinbefore stated.

Sec. 130.22 DEFINITIONS.

For the purpose of this subchapter, the following terms and phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present terms include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

CHIEF OF POLICE. "Chief of Police" means the Chief of Police of the City or his or her designated representative.

COMMERCIAL ESTABLISHMENT. “Commercial establishment” means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment, and includes the entire premises thereof and all adjacent parking areas under the control of the owner of the commercial establishment.

CUSTODY. “Custody” includes possession of a minor by a parent of such minor, possession by the guardian of the person of such minor, or possession by any other person to whom legal conservatorship or other legal custody of the minor has been given by order of a court of competent jurisdiction.

CURFEW HOURS. “Curfew hours” shall mean:

(1) For any minor 14 years of age or younger, on each day of the week from 10:00 p.m. until 5:00 a.m. of the following day;

(2) For any minor 15 years of age or older, on any Sunday, Monday, Tuesday, Wednesday, or Thursday, from 11:00 p.m. until 5:00 a.m. of the following day, and on any Friday or Saturday, from 12:00 midnight until 5:00 a.m. of the following day;

(3) For any minor, on any day when school is in session within the Brazosport Independent School District during the fall and spring semesters, from 7:30 a.m. through 3:30 p.m., unless a later arrival time or earlier dismissal time has been authorized at the school of appropriate attendance for such minor, in which event such earlier or later time shall apply.

DIRECT ROUTE. “Direct route” means the shortest path of travel through a public place to reach a final destination without detour or stops along the way.

MINOR. “Minor” means any person under the age of 18, or, in equivalent phrasing often herein employed, any person 17 or less years of age, provided, however, such definition shall not include any married person or any person who has had the disabilities of minority removed in accordance with the Texas Family Code.

PARENT. “Parent” means:

(1) The mother, a man presumed to be the biological father, a man who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father of a minor, but does not include any person whose parent-child relationship with a minor has been terminated by a court of competent jurisdiction.

(2) A person who stands in loco parentis to a minor.

(3) A person to whom guardianship, conservatorship or other legal custody of the minor has been given by order of a court of competent jurisdiction.

PUBLIC PLACE. “Public place” means a physical location which is owned by the public or by a political subdivision of the State of Texas or the federal government.

REMAIN. “Remain” means to stay behind, to tarry and to stay unnecessarily upon the streets, public places or the premises of commercial establishments including congregating in groups of minors (or the interacting of individual minors together) in which any minor included would not be using the streets for a purpose declared to be a defense in Section 130.24.

STREET. "Street" means a way or place of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term street includes legal right-of-way, including, but not limited to, the cartway or traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term street is implied irrespective of what it is called or formally named, whether alley, avenue, court, road or otherwise.

TIME OF NIGHT. "Time of night" as referred to herein is based upon the prevailing standard of time, whether Central Standard Time or Central Daylight Saving Time, generally observed at that hour by the public in the City. Proof that a particular time was observed by the City's Police Department on any calendar day shall be prima facie evidence in the Municipal Court of the conformity of such time to the then prevailing standard of time.

YEAR OF AGE. "Year of Age" continues from one birthday, such as the seventeenth to {but not including the day of) the next, such as the eighteenth birthday, making it clear that "17 or less years of age" is herein treated as equivalent to the phrase, "under 18 years of age".

Sec. 130.23 CURFEW FOR MINORS.

It shall be unlawful for a minor to be or remain in or upon the streets, public places or commercial establishments within the City during the curfew hours defined in Section 130.22 above.

Sec. 130.24 DEFENSES.

(A) It is a defense to prosecution of a minor under this subchapter for such minor being in or upon the streets, public places or commercial establishments within the City during the daytime or nighttime hours designated by this subchapter as times at which it is unlawful for such minor to remain in or upon such streets, public places or commercial establishments when such minor is:

(1) Accompanied by a parent having custody of such minor.

(2) Accompanied by an adult authorized by a parent of such minor having custody to take said parent's place in accompanying said minor for a designated period of time. For the purposes of this ordinance it shall be presumed that a step-parent of a minor who is accompanying such minor has been so authorized by a parent of a minor to take such parent's place in accompanying said minor.

(3) Exercising his or her rights under the First Amendment to the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly. Such minor shall evidence the bona fides of such exercise by first delivering to the Chief of Police, at the City's Police Department, a written communication, signed by such minor and countersigned if practicable by a parent of such minor having custody of such minor, stating the home address and telephone number of the minor and the parent, addressed to the Chief of Police and specifying when, where and in what manner said minor will be on the streets at night or during hours when this subchapter is otherwise applicable to said minor in the exercise of a First Amendment Right which right shall be specified in such communication. This written communication shall be delivered to the office of the Chief of Police at least one week prior to the time specified in such communication as being the time when the minor will be exercising his or her First Amendment Right there in specified.

(4) Involved in a case of reasonable necessity, but then only after a parent of a minor or an employee of a public or private school has communicated to the City's police dispatcher, orally or in writing, the facts establishing such reasonable necessity, relating the same to specified streets at a designated time and a described purpose, including points of origin and destination. A copy of such written communication, or of the police record of an oral communication, in either case, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of such parent and minor, shall be admissible in evidence in the Municipal Court of the City as prima facie proof of the truth of all facts set forth therein.

(5) On the residential property where such minor resides, or where a parent of such minor resides.

(6) A student enrolled in a private school who was in fact released from attending class on the hour charged due to an official school holiday or in-service day. Because of Court rulings requiring that students being home schooled receive equal protection of law with those in private schools, children who are being home schooled are also hereby placed under this defense.

(7) Engaged in an organized athletic activity sponsored by an official group or voluntary association comprised of adults and directly supervised by an adult or adults.

(8) Engaged in an out-of-school educational activity or an activity of a religious or other voluntary association attended by such minor. "Out-of-school educational activity" shall include organized trips for minors to parks, libraries, museums, recreation centers and other such private and public places so long as such trips are planned or permitted by a public school, a private school or by a group or association of home schoolers, and provided that such trips are directly supervised by an adult or adults.

(9) Returning home by a direct route from and within 30 minutes of release from school or from the excepted activities described in (A)(7) or (A)(S) of this Section.

(10) A student on his or her regular school lunch break.

(11) Authorized, by special permit from the Chief of Police, carried on the person of such minor thus authorized, as follows: When normal or necessary daytime or nighttime activities of a minor, particularly a minor well along the road to maturity, may be inadequately provided for by other provisions of this subchapter, then a request may be made to the Chief of Police, either for a regulation as provided in (A)(12) of this Section or for a special permit under this division (A)(11), as the circumstances warrant. Upon the Chief of Police's finding of necessity for the use of the streets to the extent warranted by a written application by a minor and by a parent of such minor, if feasible, stating (i) the home, age and address of such minor, (ii) the name, address and telephone number of a parent thereof, (iii) the height, weight, sex, color of eyes and hair and other physical characteristics of such minor, (iv) the reason or necessity which requires each minor to remain upon the streets during the curfew hours otherwise prohibited, (v) the street or route and the beginning and ending of the period of time involved by date and hour, and (vi) a photo of the minor and (vii) school attended, if any, and current grade enrolled in by this minor. The Chief of Police may grant a permit in writing for the use by such minor of such streets at such hours as in the Chief of Police's opinion may reasonably be necessary. In an emergency this may be handled by telephone, or other effective communication, with a corresponding record being made contemporaneously, either to the Chief of Police or, if unavailable, by a police officer authorized by the Chief of Police to act on his behalf in an emergency, at the police station. A special permit may also be issued to minors, ages 16 and 17 with a Texas driver's license, whereby the parent makes written application as set out above, except (iv) and (v) and where the parent assumes all responsibility and liability for the actions of the minor, releasing the City from any liability from non-enforcement of this curfew Ordinance as to that minor.

(12) Authorized, by regulation issued by the Chief of Police, in other similar cases for reasonable necessity, similarly handled, but adapted to normal or necessary daytime or nighttime activities of more minors than can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved not to extend more than 10 minutes beyond the time for termination of such activity as therein specified, the reason for such minors attending such activity and a showing that such regulation is reasonably necessary and is consistent with the public interest and the purposes of this Curfew Ordinance. An application for such a regulation shall be in writing, signed by the applicant and be delivered to the office of the Chief of Police at least one week prior to the activity.

(13) In possession of a certified card of employment, signed by the Chief of Police and identifying the minor as outlined in (A)(11) of this Section. Such card shall be renewable every two months when the current facts so warrant.

(14) With parental consent, in a motor vehicle. This contemplates normal travel. From excess of caution, this clearly exempts bona fide interstate movement through the City. This also exempts interstate travel beginning or ending in the City.

(B) Each of the foregoing defenses, and their several limitations, such as provisions for notification, shall be severable.

Sec. 130.25 PARENTAL AND COMMERCIAL ESTABLISHMENT RESPONSIBILITY.

(A) It shall be unlawful for a parent or other person having custody of a minor as defined in this subchapter to knowingly permit or by inefficient control to allow such minor to be or remain upon any City street in violation of Section 130.23, under circumstances not constituting a Defense under Section 130.24, or otherwise beyond the scope of this subchapter. The term 'knowingly' includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor. It shall be prima facie evidence of a violation of this division by a parent charged hereunder, if such parent having legal custody of a minor had no knowledge of such minor's whereabouts at the time when such minor was cited for the underlying violation of Section 130.23 that forms the basis of the charge against the parent.

(B) It shall be unlawful for the owner or operator of a commercial establishment to knowingly allow a minor to remain at such commercial establishment during the hours of curfew established in this ordinance beyond the time necessary to conduct and complete an expected activity associated with the normal business of that commercial establishment. It shall be no defense to this subdivision that a minor made a purchase, if the minor did not immediately make such purchase upon arrival and depart immediately thereafter. It shall be a defense to prosecution under this subdivision that the owner or operator of such commercial establishment has promptly notified the Police Department dispatcher that a minor or minors who are present on the premises after hours have refused to depart. A copy of the police record of such notification, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received, shall be admissible in evidence in the Municipal Court of the City as prima facie proof of the truth of all facts set forth therein.

Sec. 130.26 POLICE PROCEDURES.

(A) A police officer of the City, upon finding or having his or her attention called to any minor in public places, on the streets of the City or at any commercial establishment within the City who appears to be in prima facie violation of this subchapter and not clearly subject to any Section 130.24 defenses, shall, subject to divisions (B), (C), and (D) of this section, take such minor to the City's police station where a parent of such minor having custody shall immediately be notified to come for such minor. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the police supervisor then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records. In the absence of convincing evidence such as a birth certificate or a driver's license or other similar identification, a police officer on the street shall in the first instance use his or her best judgment in determining age. The officer may issue a notice to appear as provided in Section 33.11 of this code.

(B) Where a minor has been picked up pursuant to an apparent prima facie violation of the daytime curfew provisions of this subchapter the police officer having such minor in his custody shall, prior to transporting such minor to the police station, attempt to ascertain whether or not the minor is enrolled as a student at a public school. If it appears the minor is truant from attendance at a school at which he or she is enrolled, then the officer shall as a first alternative attempt to immediately transport such minor to the appropriate school where the minor is enrolled in attendance, and release the minor to a truant officer or other school official with the authority to take responsibility for such minor, if possible. If it is not possible the officer shall transport the minor to the police station and follow the procedure outlined in the other provisions of this section in handling such minor. In any event, the officer shall make or cause to be made a report to the appropriate school truant officer for the public school where the minor is enrolled in attendance. If it is determined that the minor is not enrolled in a public school, the police officer shall follow the procedure outlined in division (A) of this section, in handling such minor.

(C) Police procedures shall constantly be refined in the light of experience and may provide, inter alia, that the police officer may deliver to a parent thereof the minor under appropriate circumstances, as for example, a minor of tender age near his or her home and whose identity and address is already known to the officer or may readily be ascertained.

(D) In any event, when a minor is taken into custody by a police officer under this section, the officer shall, without unnecessary delay:

- (1) Release the minor to the minor's parent, guardian, custodian, or appropriate school official;
- (2) Take the minor to the minor before the municipal court to answer the charge; or
- (3) Take the minor to a place designated by the chief of Police as a juvenile curfew processing office.

(E) In any event, any police officer who has taken a minor into custody for a curfew violation under this subchapter, shall, within 24 hours, file a written report with the Chief of Police or shall participate (to the extent of the information for which he or she is responsible) in the preparation and filing of such a report by such supervisor within 24 hours.

(F) When a parent having custody has come to take charge of such minor and the appropriate information has been recorded, such minor shall immediately be released to the custody of such parent. If a parent having custody cannot be located, or fails to take charge of the minor within a reasonable time, then the minor shall be released to the juvenile authorities having jurisdiction over such minor (with referral by the municipal court judge of the City if required by the statutes applicable to such juvenile authorities) or them in or may temporarily be entrusted to another relative, neighbor or other person who will on behalf of a parent having custody assume the responsibility of caring for the minor pending the availability or arrival of such parent.

(G) To insure parental notice in the case of a first violation by a minor, the Chief of Police shall, by certified mail and return receipt requested, send to a parent having custody written notice of said violation with a warning that any subsequent violation will result in full enforcement of this subchapter against a parent of a minor in violation and of the applicable penalties.

(H) In the event a police officer of the City, upon finding or having his or her attention called to any minor remaining at a commercial establishment in apparent violation of Section 130.25(B), shall undertake action against such minor under this subchapter, such officer shall first ascertain from the Police Department dispatcher whether or not the owner or operator of such establishment has a defense as outlined above under Section 130.25(B) by virtue of having made a report to the police department dispatcher as therein provided. If no such report has been made then the officer shall issue a Municipal Court Misdemeanor Citation to such owner or operator charging a violation of Section 130.25(B).

Sec. 130.97 REPORTS OF VIOLATIONS AND TRANSFER OF CASES TO THE BRAZORIA COUNTY JUVENILE PROBATION DEPARTMENT.

(A) Any minor who has been twice convicted of a violation of any of the provisions of the subchapter and who stands charged with a third violation hereof shall be reported by the Chief of Police to the Brazoria County Juvenile Probation Department pursuant to the Texas Family Code.

(B) At the discretion of the Chief of Police, a similar report may be made to the Brazoria County Juvenile Probation Department concerning any other minor who has been taken into custody for a curfew violation, whenever the Chief deems it appropriate.

(C) The Municipal Court Judge may transfer to the Brazoria County Juvenile Probation Department any minor offender, whether for a first offense or subsequent offense, where such judge determines that there is a real need for supervision of said minor.

Sec. 130.98 PENALTY.

(A) Should any person, firm, or corporation, their agent, servant, or employee, charged with a violation of any provision of this subchapter, be convicted by a court of competent jurisdiction, such person, firm, or corporation, their agents, servants or employees, may be fined any sum not less than \$1 nor more than \$500 for each violation, provided however, that convictions of violations of Section 130.25(A) shall be subject to minimum fines for enhanced offenses as specified by Division (B) of this section.

(B) If, after a Section 130.26(G) notice of a first violation of Section 130.23 by a minor has been given to a parent or other person with custody of such minor as defined by this subchapter, such parent violates Section 130.25(A) (in connection with a second violation of Section 130.23 by such minor), such violation by such parent or other person having custody shall constitute a first offense of Section 130.25(A) by such parent or other person having custody and, upon conviction such parent or other person having custody shall be fined not less than \$25.00 for such first offense. If in the trial of a second offense under Section 130.25(A), enhanced, it is shown that the said parent or other person having custody has already been convicted of one previous violation of said Section, upon conviction the said parent or other person having custody shall be fined not less than \$50.00. If in the trial of a third or additional offense under Section 130.25(A), enhanced, it is shown that such parent or other person having custody has been convicted, respectively, of two or more violations of said Section as specified in the enhancement paragraph, such parent or other person having custody shall be fined not less than \$75.00 upon conviction of a third offense, enhanced, not less than \$100.00 for conviction of a fourth offense, enhanced, and so forth in increasing increments of \$25.00 for each subsequent conviction shown as alleged in the enhancement paragraph, up to a maximum of \$500.00. The judge presiding in a Municipal Court case filed under this subchapter, upon finding a parent or other person having custody guilty of a second or subsequent violation of Section 130.25(A), shall not only sentence such parent or other person having custody to pay such fine and the costs of prosecution but shall also assess any other punishment available to such judge under the laws of the State of Texas.

(C) Any person violating any of the provisions of this subchapter for which no penalty is otherwise provided shall be subject to the penalty set forth in Section 10.99.

Sec. 130.99 CONTINUING EVALUATION BY CITY COUNCIL

(A) Before the third anniversary of each re-adoption of this subchapter in its entirety, the City Council will hold public hearings to review and evaluate the provisions of this subchapter, and consider modifications of this subchapter to comply with Section 370.002 of the Local Government Code. Provided, however, such evaluation and consideration of updating may occur more often at the request of the Chief of Police.

(B) There shall be compiled and informally reported to the City Council through effective channels (such as the normal by-weekly distribution by the City Manager, to each member of the City Council, the Chief of Police and the City Attorney of noteworthy material) all exceptional cases hereunder of reasonable necessity, the notices of school and other activities, the special permits issued by the Chief of Police and the regulations adopted by the Chief of Police, as herein above authorized, for use by the City Council in connection with its evaluation and consideration of updating this subchapter.

(C) For the same reasons, as well as for the implementation beyond these legal aspects of the basic purposes hereof, the Chief of Police, City Manager and City Council, in coordinated efforts, shall work with existing, and may organize, voluntary groups and shall seek volunteer leadership in programs of research and of action dealing constructively on neighborhood and local bases, with juvenile delinquency and the prevention, control or containment thereof, in all its implications and with practicable steps toward attaining a better life for minors 17 or less years of age, and with the working of this Curfew Ordinance, community-wise and in individual cases, as one much needed legal goal toward that end, as well as for continuing present protection of minors and of other persons, and of property and other interests important to the welfare of the people of the City."

Second, each day any violation of this ordinance continues and each part of any day any such violation occurs shall constitute a separate offense.

Third, this ordinance is cumulative of and in addition to all other ordinances of the City of Freeport, Texas, on the same subject and all such ordinances are hereby expressly saved from repeal. Provided however, where this ordinance and another ordinance conflict or overlap, whichever imposes the more stringent regulations or penalties, as the case may be, shall prevail.

Fourth, no offense committed and no fine, forfeiture or penalty incurred prior to the effective date of this ordinance is to be affected by the adoption of this ordinance but the punishment for any offense committed and the recovery of any fines or forfeitures incurred prior to such date shall take place as if this ordinance had not been adopted.

Fifth, in the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

Sixth, this ordinance shall take effect from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts, the official newspaper of said City.

READ, PASSED AND ADOPTED this ____ day of _____, 2019.

Troy Brimage, Mayor,
City of Freeport, Texas

ATTEST:

Betty Wells, City Clerk,
City of Freeport, Texas



City Council Agenda Item # 7

Title: Consideration of approving Ordinance No. 2019-2585 creating chapter 109 of the City of Freeport Code of Ordinances by adding a new chapter to be entitled "regulation of garage / yard / estate sales,

Date: October 7, 2019

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Approve the adoption of the Garage Sale Ordinance

Item Summary:

The Planning and Zoning Board recommended the need for regulations of Garage Sales in the City. The recommended ordinance would establish a permitting process and various rules for hosting residential garage sales. No fee would be charged, but under the new ordinance, residents would be limited to no more than two garage sales each year.

Special Considerations:

Lack of regulation of garage, yard and estate sales on private properties within the city limits, and outside of conventional business structures, creates a problem of noncompliance with other city health, safety and regulatory ordinances

Financial Impact:

Minimal financial impact will be seen with the passage of this ordinance.

Board or 3rd Party recommendation:

The Planning and Zoning Board proposed the need for the development of a garage sale ordinance after a number of complaints over a number of year.

Supporting Documentation:

Attached. Ordinance No. 2019-2585

ORDINANCE NO. 2019-2585

AN ORDINANCE CREATING CHAPTER OF THE CITY OF FREEPORT CODE OF ORDINANCES BY ADDING A NEW CHAPTER TO BE ENTITLED "REGULATION OF GARAGE / YARD / ESTATE SALES," FOR PURPOSES OF ESTABLISHING PROVISIONS GOVERNING THE CONDUCT OF GARAGE SALES, YARD AND ESTATE SALES; CONTAINING A PREAMBLE AND FINDINGS OF FACT; MAKING IT AN OFFENSE FOR VIOLATION OF THIS ORDINANCE; CONTAINING A PENALTY CLAUSE AND THAT EACH AND EVERY OCCURRENCE SHALL CONSTITUTE A SEPARATE OFFENSE; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.

WHEREAS, the City Council finds that the lack of regulation of garage, yard and estate sales on private properties within the city limits, and outside of conventional business structures, creates a problem of noncompliance with other city health, safety and regulatory ordinances; and,

WHEREAS, the City Council of the City of Freeport has determined that it is in the best interests of the public and in support of the health, safety, morals and general welfare of the citizens of the City that the Code of Ordinance provisions, relative to the regulation of garage, yard and estate sales, be established as herein stated.

WHEREAS, the City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Local Government Code (the Open Meetings Act).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS:

FIRST, the findings and recitations set out in the preamble to this ordinance are found to be true and correct and they are hereby adopted by the City Council and made part hereof for all purposes.

SECOND, Chapter 109 of the City of Freeport Code of Ordinances is hereby created as follows:

Chapter 109
REGULATION OF GARAGE / YARD / ESTATE
SALES

Section 109.1:

a) Definition:

Garage sale, yard sale, or estate sale, shall mean the sale or offer of second-hand merchandise for sale on an occasional basis not exceeding four consecutive days nor on more than two separate occasions during a twelve month period in an area designated as Residential in the City of Freeport, Texas Comprehensive Zone Ordinance.

b) Permit Limitation:

Not more than two (2) permits shall be issued to the same person or for the same address within any twelve (12) month period and not more than one (1) permit shall be issued to the same person or for the same address within any one (1) quarter period.

c) Sign Display:

A sign no larger than two (2) square feet in area may be displayed on the premises announcing the sale during the permitted time of the sale. No sign advertising of the sale shall be posted on telephone poles, light standards, street signs, postal cluster mailboxes or City right-of-way. Not more than one (1) sign placed on the property's lawn shall be permitted and must be removed by the last day of the permitted sale. Reference Ordinance 113.07

Sec.109.2 Special Regulations and Requirements.

Garage, Yard, and Estate sale permits shall be issued subject to the following restrictions and regulations; every application for a garage, yard, or estate sale permit shall contain the following information:

1. All animal sales are strictly prohibited,
2. Permit holder must prominently display original permit.
3. Non-profit fundraisers must provide an EIN (Employer Identification Number)
4. Prior to issuance or renewal of a permit under this chapter, evidence of permission by the owner or lease holder of the premises proposed to be used by the vendor authorizing such use by the vendor, must be file with the Building Official. In instances where the vendor is the owner or tenant of the premises proposed to be used, proof of residency must be provided.
5. The address and phone numbers of the applicant.
6. The name, home address and phone number of any individuals who will engage in business under the permit in addition to the applicant.

Sec.109.3 Duration, fees.

1. The maximum time for which a permit may be issued shall be for a period not to exceed ninety six (96) hours.
2. Hours of sales are restricted to 7:00a.m to 7:00p.m.
3. Residents can obtain a one-time replacement permit within a twelve month period for a garage, yard or estate sale cancelled due to rain or inclement weather.

Sec. 109.4 Issuance of Permits.

The Building Official or his/her designee shall issue to any applicant therefore, who has complied with all the requirements of section 109-2 and 109-3, a permit authorizing the garage, yard, or estate sale to operate at the location specified in his/her application. Such permit is not transferable and shall only be applicable to the person or entity applying and receiving such permit.

Sec. 109.5 Enforcement.

The duly constituted authorities of the City, including the Police Department, Building/Code Department and others having the duty of enforcing the ordinances of the city, shall enforce the provisions of this chapter and allow no garage, yard, or estate sale to conduct his/her business without full compliance with the terms of this chapter.

Sec.109.6 Revocation of permit.

Any permit issued hereunder shall be revoked by the Building Official if the permit holder is observed by the city enforcement authorities of committing a violation of any of the provisions of this chapter or has knowingly made a false material statement in the application or otherwise becomes disqualified for the permit under the terms of this chapter.

Sec. 109.7 Penalty.

It is an offense for any person to violate any provision of Chapter 109 and shall upon conviction be punished by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred (\$500.00). Any violation that is committed, continued, or permitted each day or part of a day constitutes a separate offense.

THIRD, This Ordinance shall be cumulative of all provisions of ordinances of the City of Freeport, Texas as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances are hereby repealed. All rights and remedies of the City of Freeport, Texas are

expressly saved as to any and all violations of the provisions of this or any other ordinances affecting the issuance of permits and the payment of fees which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

FOURTH, If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidances or invalidity of another portion hereof, and all provisions of this ordinance are declared to be severable for that purpose.

FIFTH, This ordinance shall take effect and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this ____ day of _____, 2019.

Troy Brimage, Mayor,
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM ONLY:

Betty Wells, City Clerk,
City of Freeport, Texas

Christopher Duncan, City Attorney,
City of Freeport, Texas



City Council Agenda Item # 8

Title: Consideration of repealing chapter 153 and adopting a new chapter 153, flood damage prevention, of the code of ordinances of the city of Freeport

Date: October 7, 2019

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Repeal chapter 153 and adopt a new chapter 153, flood damage prevention, of the code of ordinances of the city of Freeport. The changes to pre-existing ordinances are in red.

Item Summary:

The City of Freeport had a Community Assistance Visit (CAV) on May 13, 2019 conducted by Lauren Fulton, Floodplain Management & Insurance Specialist and Angela Harrison, Floodplain Management & Insurance Specialist. During the visit, Ms. Fulton and Ms. Harrison met with Billywayne Shoemaker and Yvette Ruiz to discuss Freeport's participation in the NFIP. A CAV is a comprehensive study of a community's program and consists of a field review of the identified Special Flood Hazard Area (SFHA) and a meeting with local officials. Besides evaluating local compliance to the NFIP regulations at 44 CFR§ 60.3(d) and 60.3(e), a CAV is intended to identify the floodplain management technical assistance needs of the community. During this meeting, there were three items which must be addressed for completion of CAVs. The most significant deficiencies noted was the fact that our Flood Damage Prevention Ordinance (FDPO) was not compliant with current terminology and references FEMA documents that no longer exist.

Special Considerations:

Failure to address the deficiencies in a timely manner could jeopardize availability of NFIP policies within the City of Freeport.

Financial Impact:

A loss of availability to NFIP policies within the City would have a significant financial impact to our residence. There are currently 688 NFIP flood insurance policies in force within the City of Freeport, providing \$163,868,300.00 in coverage. Policyholders have filed 755 claims since 1978, resulting in claim payments of \$8,255,041.14.

Board or 3rd Party recommendation:

None

Supporting Documentation:

A copy of the proposed Ordinance No. 2019-2586.

ORDINANCE NO. 2019-2586

AN ORDINANCE REPEALING CHAPTER 153 AND ADOPTING A NEW CHAPTER 153, FLOOD DAMAGE PREVENTION, OF THE CODE OF ORDINANCES OF THE CITY OF FREEPORT, TEXAS; ESTABLISHING LEGAL REQUIREMENTS REGULATING FLOOD DAMAGE PREVENTION; CONTAINING A PREAMBLE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT; PROVIDING FOR ENFORCEMENT OF THIS ORDINANCE; MAKING IT AN OFFENSE FOR VIOLATION OF THIS ORDINANCE; CONTAINING A PENALTY; CONTAINING A SEVERANCE CLAUSE; CONTAINING A REPEALER CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.

WHEREAS, the City Council finds that flood hazards of areas of the City of Freeport, Texas are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the City Council finds the promulgation of sound regulations to reduce the risk to life and property caused by flood conditions in the City of Freeport is vital protect against catastrophic flood, tidal surge, and inundation; and

WHEREAS, establishing and enforcing standards related to flood control are necessary to protect the public health, safety, and general welfare; and

WHEREAS, the City Council of the City of Freeport has determined, based upon the findings stated above, that the regulations established by this Ordinance are necessary for the health, welfare and safety of the citizens and property owners of the City; and

WHEREAS, the City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Government Code (the Open Meetings Act); and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS:

First, Chapter 153 of the Code of Ordinances of the City is hereby repealed in its entirety and replaced with the following Chapter 153, which shall read as follows:

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CHAPTER 153: FLOOD DAMAGE PREVENTION CHAPTER

Section 1

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

153.01. STATUTORY AUTHORIZATION

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315 delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of City of Freeport Texas does ordain as follows:

153.02 JURISDICTION.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Freeport.

153.03. FINDINGS OF FACT

(1) The flood hazard areas of City of Freeport are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses

vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

153.04. STATEMENT OF PURPOSE

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

153.05. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this chapter uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 2

153.06. DEFINITIONS

Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter it's most reasonable application.

ALLUVIAL FAN FLOODING - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

APPEAL - A request for a review of the Flood Plain Administrator's interpretation of any provision of this chapter or a request for a variance.

APPURTENANT STRUCTURE – means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

AREA OF FUTURE CONDITIONS FLOOD HAZARD – means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

AREA OF SHALLOW FLOODING - means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

BASE FLOOD - means the flood having a 1 percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE) – The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

BASEMENT - means any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL – means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FEATURE - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT - means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING – means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

EXISTING CONSTRUCTION - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION STUDY – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM) - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) – see Flood Elevation Study

FLOODPLAIN OR FLOOD-PRONE AREA - means any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPLAIN MANAGEMENT - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS - means zoning chapters, subdivision regulations, building codes, health regulations, special purpose chapters (such as a floodplain chapter, grading chapter and erosion control chapter) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY – see Regulatory Floodway

FUNCTIONALLY DEPENDENT USE - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE - means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior or;

(b) Directly by the Secretary of the Interior in states without approved programs.

LEVEE - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

MANUFACTURED HOME - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

MANUFACTURED HOME PARK OR SUBDIVISION - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

PRIMARY FRONTAL DUNE - means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

RECREATIONAL VEHICLE - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

RIVERINE – means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SAND DUNES - mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

SPECIAL FLOOD HAZARD AREA – see Area of Special Flood Hazard

START OF CONSTRUCTION - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE – means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE - means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

VARIANCE – means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

VIOLATION - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION - means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

SECTION 3

GENERAL PROVISIONS

153.07 LANDS TO WHICH THIS CHAPTER APPLIES

The chapter shall apply to all areas of special flood hazard with the jurisdiction of City of Freeport.

153.07.01 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for The City of Freeport, Brazoria County, Texas," dated November 17, 1993 with accompanying Flood Insurance Rate Maps (FIRM) dated November 17, 1993 and any revisions thereto are hereby adopted by reference and declared to be a part of this Chapter.

153.08 ESTABLISHMENT OF DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this chapter.

153.09 COMPLIANCE

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

153.10 ABROGATION AND GREATER RESTRICTIONS

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

153.11 INTERPRETATION

In the interpretation and application of this chapter, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

153.12 WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

SECTION 4

ADMINISTRATION

153.25. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Building Official is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

153.26 DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter.

(2) Review permits application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review, approve or deny all applications for development permits required by adoption of this chapter.

(4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

(9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.

153.27 PERMIT PROCEDURES

(1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

(b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B (2);

(d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

(e) Maintain a record of all such information in accordance with Article 4, Section (B) (1);

(2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage;

(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(c) The danger that materials may be swept onto other lands to the injury of others;

(d) The compatibility of the proposed use with existing and anticipated development;

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(h) The necessity to the facility of a waterfront location, where applicable;

(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

153.28 VARIANCE PROCEDURES

(1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this chapter.

(2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully

considered. As the lot size increases beyond the 1/2 half acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (Article 1, Section C).

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

(c) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article 4, Section D (1)-(9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

SECTION 5

PROVISIONS FOR FLOOD HAZARD REDUCTION

153.40 GENERAL STANDARDS

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

153.41 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B (8), or (iii) Article 5, Section C (3), the following provisions are required:

(1) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C (1) a., is satisfied.

(2) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than 1 foot above grade.

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured Homes -

(a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Article 4, Section C (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

153.42 STANDARDS FOR SUBDIVISION PROPOSALS

(1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this chapter.

(2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this chapter.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B (8) of this chapter.

(4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

153.43 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified).

(2) All new construction and substantial improvements of non-residential structures;

(a) have the lowest floor (including basement) elevated to or above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or

(b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section C are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

153.44 FLOODWAYS

Floodways - located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If Article 5, Section E (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

153.45 COASTAL HIGH HAZARD AREAS

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as Coastal High Hazard Areas (Zones V1-30, VE, and/or V). These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, in addition to meeting all provisions outlined in this chapter, the following provisions must also apply:

(1) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement. The Floodplain Administrator shall maintain a record of all such information.

(2) All new construction shall be located landward of the reach of mean high tide.

(3) All new construction and substantial improvements shall be elevated on pilings and columns so that:

(i) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;

(ii) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local Building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (3)(i) and (ii) of this Section.

(4) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

(ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

(5) Prohibit the use of fill for structural support of buildings.

(6) Prohibit man-made alteration of sand dunes and mangrove stands that increase potential flood damage.

(7) Manufactured Homes -

Require that manufactured homes placed or substantially improved within Zone V1-30, V, and VE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, meet the standards of paragraphs (1) through (6) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones V1-30, V, and VE on the community's FIRM meet the requirements of Article 5, Section B(4) of this chapter.

(8) Recreational Vehicles -

Require that recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the requirements in Article 3, Section C of this chapter and paragraphs (1) through (6) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

ARTICLE IV. – ALTERATION OF LEVEES OR LEVEE SYSTEM

Sec. 153.50 – Velasco Drainage District Standards and Regulations

The Velasco Drainage District Standards and Regulations for maintenance and alteration of levees and levee systems, together with all amendments thereto, save and except such portions as are inconsistent with the provisions of this subchapter, is hereby adopted and incorporated and made a part of this chapter as if fully set forth herein. One copy of such standards and regulations shall be maintained at all times in the office of the Building and Code Enforcement office.

153.51 – Permit Required

- (a) It shall be unlawful for any person to make any alteration to a levee or levee system without first making application for and secured a permit to make such alteration from the City Manager or his designee.
- (b) Permit applications are not "received" by the City unless submitted with all required documents, engineering studies, drawings and other required documents established by written policy of the City and payment of the permit fee, as established and updated by the City.

- (c) Any permit application requesting an alteration outside the guidelines of the Velasco Drainage District Standards and Regulations, may be approved upon presentation of documents from a licensed engineer showing the proposed alteration does not compromise the integrity of the levee or levee system.

153.52 – Violation

It shall be unlawful for any person to make any alteration to a levee or levee system that violates the standards and requirements of a validly issued permit under this Article - Alteration of Levees or Levee System.

153 SEVERABILITY

If any section, clause, sentence, or phrase of this Chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Chapter.

153.99 PENALTIES

A person who violates a provision this Chapter, is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$2000.00. Nothing herein contained shall prevent City from taking such other lawful action as is necessary to prevent or remedy any violation.

Second, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgement or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Third, all Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Fourth, this ordinance shall take effect and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this ____ day of _____, 2019.

Troy Brimage, Mayor,
City of Freeport, Texas

ATTEST:

APPROVED AS TO FORM ONLY:

Betty Wells, City Clerk,
City of Freeport, Texas

Christopher Duncan, City Attorney,
City of Freeport, Texas



City Council Agenda Item # 9

Title: Consideration of adopting the federal emergency management administration (FEMA) letter of map change (LOMC) process for structures and properties in Freeport.

Date: October 7, 2019

From: Billywayne Shoemaker Building Official

Staff Recommendation:

Adopt the federal emergency management administration (FEMA) letter of map change (LOMC) process for structures and properties in Freeport.

Item Summary:

The City of Freeport had a Community Assistance Visit (CAV) on May 13, 2019 conducted by Lauren Fulton, Floodplain Management & Insurance Specialist and Angela Harrison, Floodplain Management & Insurance Specialist. During the visit, Ms. Fulton and Ms. Harrison met with Billywayne Shoemaker and Yvette Ruiz to discuss Freeport's participation in the NFIP. A CAV is a comprehensive study of a community's program and consists of a field review of the identified Special Flood Hazard Area (SFHA) and a meeting with local officials. Besides evaluating local compliance to the NFIP regulations at 44 CFR§ 60.3(d) and 60.3(e), a CAV is intended to identify the floodplain management technical assistance needs of the community. During this meeting, there were three items which must be addressed for completion of CAVs. The City of Freeport is not involved in the letter of map change (LOMC) process for structures and properties in the community. In order to remedy this, an actionable standard operating procedure (SOP) will be put in place to address the community's role in the LOMC request process. The adoption of this resolution will assert that the City will participate in the (LOMC) process.

Special Considerations:

The adoption of this Ordinance will help to assure the continued availability of NFIP policies within the City of Freeport.

Financial Impact:

A loss of availability to NFIP policies within the City would have a significant financial impact to our residence. There are currently 688 NFIP flood insurance policies in force within the City of Freeport, providing \$163,868,300.00 in coverage. Policyholders have filed 755 claims since 1978, resulting in claim payments of \$8,255,041.14.

Board or 3rd Party recommendation:

THE CITY OF

200 West Second St • Freeport, TX 77541



FREEPORT

979.233.3526 • Fax 979.233.8867

None

Supporting Documentation:

A copy of the proposed Resolution No. 2019-2610 attached.

RESOLUTION NO. 2019-2610

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS ADOPTING THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION (FEMA) LETTER OF MAP CHANGE (LOMC) PROCESS FOR STRUCTURES AND PROPERTIES IN FREEPORT, TEXAS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR A FINDING OF PROPER MEETING AND NOTICE.

WHEREAS, the City Council of the City of Freeport, Texas ("City") seeks to provide the citizens of Freeport, Texas the highest available assistance and remedies from FEMA and the National Flood Insurance Program (NFIP); and

WHEREAS, the City Council finds that adoption of the LOMC improves flood and floodplain management on behalf of citizens; and

WHEREAS, the City Council has determined that the public welfare would be best served by adoption of the LOMC;

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

SECTION 1. The City Council of the City of Freeport, Texas hereby adopts the Letter of Map Change Process promulgated by FEMA attached in its current form together with all future amendments, unless explicitly repealed at a future date.

SECTION 2. EFFECTIVE DATE. That this adoption shall take effect and be in full force and effect upon passage by the City Council and executed by the Mayor and City Secretary below.

SECTION 3. PROPER NOTICE AND MEETING. It is hereby found and determined that the meeting at which this resolution was passed was attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

Read, passed and adopted the _____ day of _____, 2019.

Troy T. Brimage, Mayor
City of Freeport, Texas

ATTEST:

Betty Wells, City Secretary
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

Christopher Duncan, City Attorney
City of Freeport, Texas