

City Council  
Agenda Memo



City Council  
Meeting Date: 11/04/2010

**TO:** Larry D. Gilley, City Manager

**FROM:** Jon James, AICP  
Director of Planning and Development Services

**SUBJECT:** Final reading and public hearing on an Ordinance for Case No. CUP-2010-02, a request from NTCH NM, LLC, for a Conditional Use Permit to allow for a Commercial Antenna Tower, located at 1002 Elm St.

**GENERAL INFORMATION**

Currently the property is zoned HC. The properties to the north, south and west are developed as commercial uses. The property to the east is the Travis School, which is still owned by AISD and is in use as a school for secondary students. Across Elm St. approximately 100 feet to the south of the subject lot are residential uses.

The Future Land Use section of the Comprehensive Plan designates this general area as existing commercial. The commercial antenna tower requires approval of a site plan and must obtain a building permit from the City of Abilene to make sure that all requirements are met.

**STAFF RECOMMENDATION**

Staff recommends approval as requested.

**BOARD OR COMMISSION RECOMMENDATION**

The Planning and Zoning Commission recommended approval as requested without any additional conditions by a vote of seven (7) in favor (Glenn, Bixby, Campos, McClarty, Rosenbaum, Famble, and Todd) to none (0) opposed.

**ATTACHMENTS**

Ordinance  
Staff Report with Maps

Prepared by:

Name: Matt Jones

Title: Planner II

October 21, 2010

Item No. 7.1

Disposition by City Council

Approved      Ord/Res# \_\_\_\_\_

Denied

Other

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

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

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, PROVIDING FOR THE APPROVAL OF A CONDITIONAL USE PERMIT AS PROVIDED FOR IN CHAPTER 23, SUBPART B, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH CONDITIONAL USE PERMIT; CALLING A PUBLIC HEARING; AND PROVIDING A PENALTY AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That the following Conditional Use Permit, as described on Exhibit "A," attached hereto and made a part of this ordinance for all purposes, be approved subject to conditions as stated in Exhibit "A."

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 26<sup>th</sup> day of October A.D. 2010.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 15<sup>th</sup> day of September, 2010, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 4<sup>th</sup> day of November, 2010 to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 4<sup>th</sup> day of November, A.D. 2010.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

  
\_\_\_\_\_  
CITY ATTORNEY

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

|EXHIBIT "A"|

Approve a Conditional Use Permit for a 'Commercial Antenna Tower'.

Location:

1002 Elm Street

Legal Description:

JALONICK 2ND, BLOCK C, LOT L1 & N5' E50 L2 & N9.5 W90 LT2

With the following conditions:

1. None.

-END-

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# ZONING CASE CUP-2010-02

## STAFF REPORT



### APPLICANT INFORMATION:

NTCH NM, LLC

### HEARING DATES:

Planning & Zoning Commission: October 4, 2010

City Council 1<sup>st</sup> Reading: October 26, 2010

City Council 2<sup>nd</sup> Reading: November 4, 2010

### LOCATION:

1002 Elm Street

### REQUESTED ACTION:

Conditional Use Permit to allow for a Commercial Antenna Tower.



### SITE CHARACTERISTICS:

The subject property totals approximately 0.20 acres and is zoned HC (Heavy Commercial). The lot is fenced in by a chain-link fence with barbed wire along the top and is largely covered with concrete. There is a gate large enough to allow large vehicles to enter the site.

### ZONING HISTORY:

The area was annexed in 1895 and was zoned AO sometime after it was annexed. It was then later zoned to HC. The Board of Adjustment approved a Special Exception to allow a Communications Antenna in July of 2006. The Special Exception expired because a building permit was not acquired to build the tower within 180 days of approval.

### ANALYSIS:

- Current Planning Analysis

Currently the property is zoned HC. The properties to the north, south and west are developed as commercial uses. The property to the east is the Travis School, which is still owned by AISD and is in use as a school for secondary students. Across Elm St. approximately 100 feet to the south of the subject lot are residential uses.

- Comprehensive Planning Analysis

The Future Land Use section of the Comprehensive Plan designates this general area as existing commercial. The commercial antenna tower requires approval of a site plan and must obtain a building permit from the City of Abilene to make sure that all requirements are met.

## CONDITIONAL USE PERMIT:

Section 1.4.3.5 in the Land Development Code outlines the criteria for approval:

- Factors. When considering an application for a Conditional Use Permit, the Planning and Zoning Commission shall evaluate the impact of the proposed conditional use on and its compatibility with surrounding properties and residential areas to ensure the appropriateness of the use at the particular location, and shall consider the extent to which:
  - (1) The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan;
  - (2) The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
  - (3) The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods;
  - (4) The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood;
  - (5) The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets;
  - (6) The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties; and
  - (7) The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.
  
- Conditions. The Planning and Zoning Commission or City Council may require such modifications in the proposed use and attach such conditions to the Conditional Use Permit as these bodies deem necessary to mitigate adverse effects of the proposed use and to carry out the spirit and intent of this section. Conditions and modifications may include:
  - (1) Limitation of building size or height,
  - (2) Increased open space,
  - (3) Limitations on impervious surfaces,
  - (4) Enhanced loading and parking requirements,
  - (5) Additional landscaping,
  - (6) Curbing,
  - (7) Sidewalk,
  - (8) Vehicular access and parking improvements,
  - (9) Placement or orientation of buildings and entryways,
  - (10) Buffer yards,
  - (11) Landscaping and screening,
  - (12) Signage restrictions and design,
  - (13) Maintenance of buildings and outdoor areas,
  - (14) Duration of the permit and hours of operation.

**PLANNING STAFF RECOMMENDATION:**

Staff recommends approval of the Conditional Use Permit for a commercial antenna tower.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:**

The Planning and Zoning Commission recommended approval as requested without any additional conditions by a vote of seven (7) in favor (Glenn, Bixby, Campos, McClarty, Rosenbaum, Famble, and Todd) to none (0) opposed.

**NOTIFICATION:**

Property owners within a 200-foot radius were notified of the request.

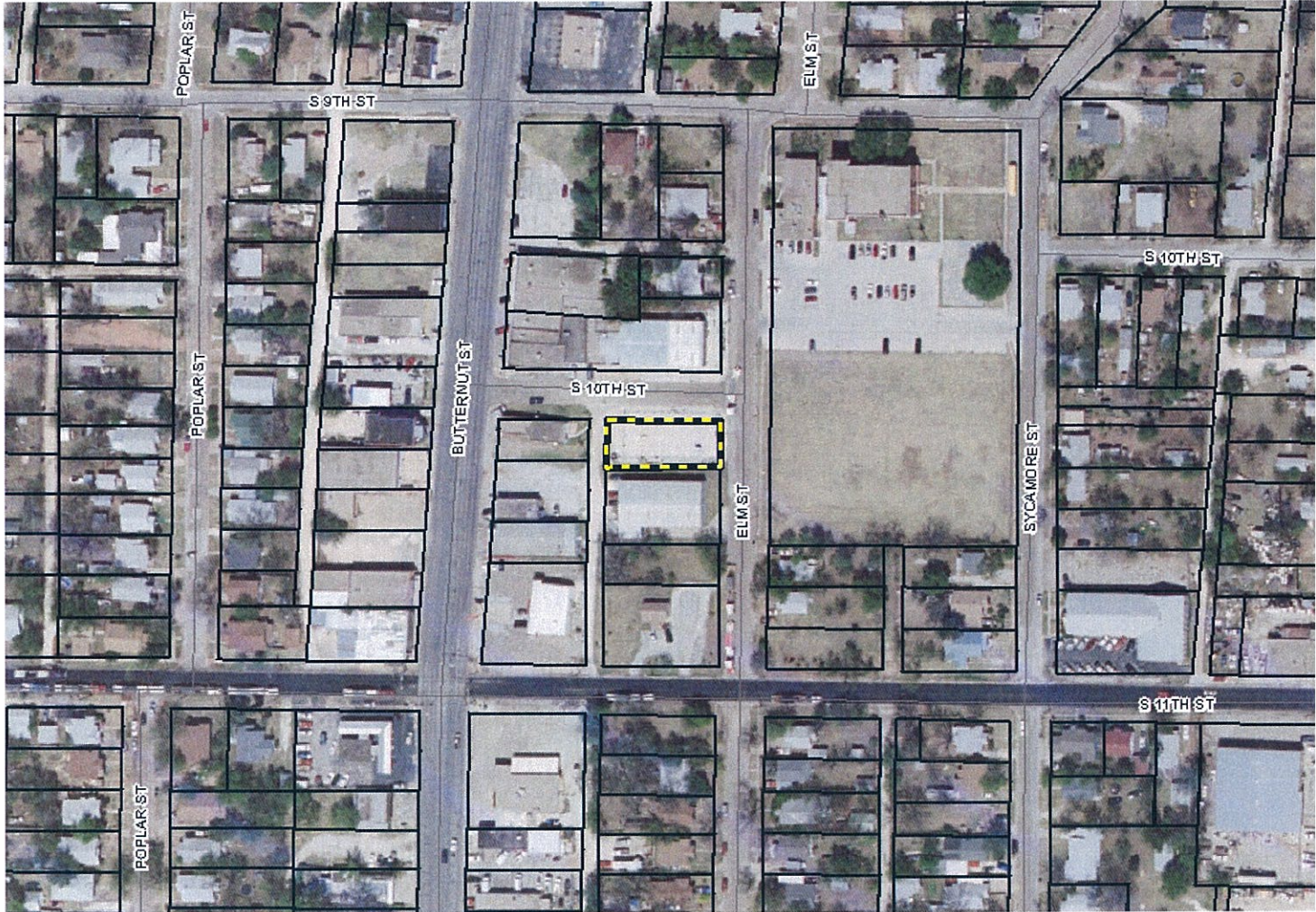
OWNER	ADDRESS	RESPONSE
DOUBLE T INVESTMENTS	1002 ELM ST	
DOUBLE T INVESTMENTS	1001 BUTTERNUT ST	
CHAMBERLAIN JACK D	1017 BUTTERNUT ST	
NIETO MAC & MARIA	1025 ELM ST	
LOPEZ ROEL & CECILIA	1210 S 11TH ST	
PEREZ FELIX JR	1037 ELM ST	
MONSIVAIZ ANNA MARIE	918 ELM ST	
BASIC INVESTMENTS	1013 BUTTERNUT ST	
CHAMBERLAIN JACK D	1041 BUTTERNUT ST	
CHAMBERLAIN JACK D	1026 ELM ST	
ABILENE IND SCHOOL DIST	1101 S 9TH ST	
FIRST FIN TR & ASST MGMT CO	929 BUTTERNUT ST	
DOUBLE T INVESTMENTS	945 BUTTERNUT ST	
CHAMBERLAIN JACK D	1010 ELM ST	

0 in Favor- **Y**  
0 Opposed- **N**



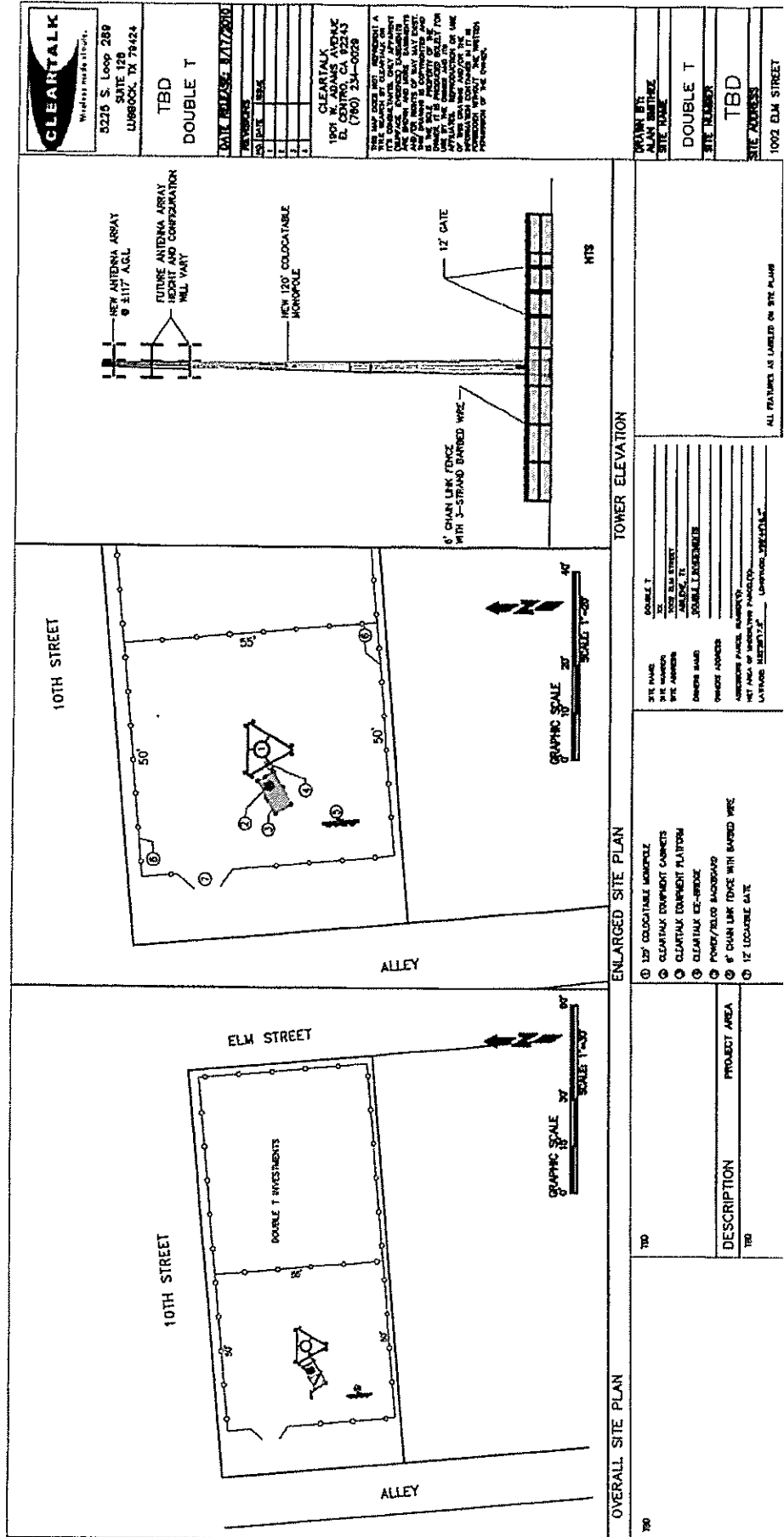








# SITE LAYOUT



Case # CUP-2010-02  
 Updated: October 15, 2010

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City Council  
Agenda Memo



City Council  
Meeting Date: 11/04/2010

**TO:** Larry D. Gilley, City Manager

**FROM:** Jon James, AICP  
Director of Planning and Development Services

**SUBJECT:** Final reading and public hearing on an ordinance to amend the Land Development Code, Section 2.4.2.1 (Land Use Matrix) and Section 2.4.3 (Requirements Applicable to Specific Land Uses), regarding Petroleum or Gas Wells.

**GENERAL INFORMATION**

At the Planning & Zoning Commission on September 7, 2010, the Commission was presented with a discussion item concerning the need for a Conditional Use Permit for Petroleum or Gas Wells. Staff indicated to the Commission that an item would be added on the next agenda for potential changes to the Land Development Code (LDC). The Commission agreed that approval of a Conditional Use Permit is not needed. The following sections are proposed to be amended:

- Section 2.4.2.1 Land Use Matrix
- Section 2.4.3 Requirements Applicable to Specific Land Uses

Staff is proposing to allow Petroleum or Gas Wells as a permitted use by right where a Conditional Use Permit is currently required. Additionally, staff is proposing that a condition be added to the Land Development Code stating that a drilling permit approved by City Council shall be required.

There are several requirements that have to be reviewed and signed by multiple departments when reviewing a drilling permit. All of the City's requirements for the Oil and Gas Permit are in addition to those that the Railroad Commission requires. There is a public hearing and a notification area with City Council for the Oil and Gas Permits as well. This has been the past practice and has worked well. The City Council has complete discretion in approving or denying drilling permits. The requirement for a Conditional Use Permit only adds another layer of review to the approval process and does not add any additional zoning controls. This action would also void the only such Conditional Use Permit since it would no longer be necessary.

**STAFF RECOMMENDATION**

Staff recommends approval of the proposed amendments for Sections 2.4.2.1 and 2.4.3.

**BOARD OR COMMISSION RECOMMENDATION**

The Planning and Zoning Commission recommended approval of the amendments to Sections 2.4.2.1 and 2.4.3 with a modification that the use be permitted in all districts by a vote of six (6) in favor (Bixby, Famble, Glenn, Rosenbaum, Todd, and McClarty) to one (1) opposed (Campos).

Another motion failed (3-4) proposing that approval of a Conditional Use Permit would be required in zoning districts where wells are not allowed currently. The majority felt that the use should be permitted in all districts, subject to approval of the Oil & Gas Permit by City Council.

**ATTACHMENTS**

Ordinance

Prepared by:

Name: Ben Bryner, AICP

Title: Planning Services Manager

October 21, 2010

Item No. 7.2

Disposition by City Council

- Approved Ord/Res# \_\_\_\_\_
- Denied \_\_\_\_\_
- Other \_\_\_\_\_

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

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART B, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 23, Subpart B, "Land Development Code," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: That CUP-2010-01 is hereby voided.

PASSED ON FIRST READING this 26<sup>th</sup> day of October A.D. 2010.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 16<sup>th</sup> day of September, 2010, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 4<sup>th</sup> day of November, 2010, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 4<sup>th</sup> day of November, A.D. 2010.

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

\_\_\_\_\_  
MAYOR

APPROVED:

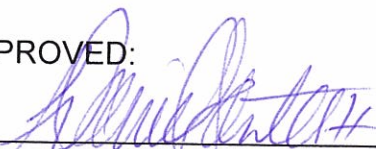
  
\_\_\_\_\_  
CITY ATTORNEY

EXHIBIT "A"

**AMEND:** Section 2.4.2.1 Land Use Matrix

**DELETE:** Existing Chart for Petroleum or Gas Wells

LEGEND: P-Permitted, Blank-Not Permitted, C-Conditional Use Permit, TP-Requires a Temporary Permit, M-Conditions Apply See Ch.2 Art.5 Div.3

Permitted Uses	Agricultural Open Space	Rural Residential RR-5 & RR1	Residential Single-Family	Residential Single-Family Patio Home	Residential Townhouse	Residential Medium Density	Residential Multi-Family	Manufactured/Mobile Home	College & University	Neighborhood Office	Office	Neighborhood Retail	General Retail	Medical Use	Central Business	Mixed Use	General Commercial	Heavy Commercial	Light Industrial	Heavy Industrial	Parking Requirements (also refer to Chapter 4, Article 2, Division 1)
	AO	RR	RS	PH	TH	MD	MF	MH	CU	NO	O	NR	GR	MU	CB	MX	GC	HC	LI	HI	
Petroleum or Gas Well <input checked="" type="checkbox"/>	C								C								C	C	C	C	

**ADD:** Proposed Chart for Petroleum or Gas Wells

LEGEND: P-Permitted, Blank-Not Permitted, C-Conditional Use Permit, TP-Requires a Temporary Permit, M-Conditions Apply See Ch.2 Art.5 Div.3

Permitted Uses	Agricultural Open Space	Rural Residential RR-5 & RR1	Residential Single-Family	Residential Single-Family Patio Home	Residential Townhouse	Residential Medium Density	Residential Multi-Family	Manufactured/Mobile Home	College & University	Neighborhood Office	Office	Neighborhood Retail	General Retail	Medical Use	Central Business	Mixed Use	General Commercial	Heavy Commercial	Light Industrial	Heavy Industrial	Parking Requirements (also refer to Chapter 4, Article 2, Division 1)
	AO	RR	RS	PH	TH	MD	MF	MH	CU	NO	O	NR	GR	MU	CB	MX	GC	HC	LI	HI	
Petroleum or Gas Well <input checked="" type="checkbox"/>	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

**AMEND:** 2.4.3 Requirements Applicable to Specific Land Uses

**CHANGE:** Add conditions for Petroleum or Gas Wells:

Petroleum or Gas Well

No oil or gas well may be drilled within the City limits of the City of Abilene without first obtaining a permit from the City Council in accordance with Article II, Chapter 21, of the Abilene Municipal Code, as amended.

-END-

City Council  
Agenda Memo



City Council  
Meeting Date: Nov 4, 2010

**TO:** Larry D. Gilley, City Manager  
**FROM:** Danette Dunlap, City Secretary  
**SUBJECT:** Ordinance – (Final Reading & Public Hearing) Adopting and Enacting a New Code of Ordinances.

**GENERAL INFORMATION**

In May of this year, after the passing of the new Land Development Code (LDC), the City was contacted by Municode for the cost of including the LDC into the current Code. The estimated cost for Municode to republish (re-type) the City Code of Ordinances (Code) was \$10,935.00.

Staff reviewed the contract with Municode and decided that it would be beneficial in the current financial climate the City is in, that it was time for review and to get other quotes from other companies that handle Codification Services.

Staff contacted Franklin Legal Services and they provided the City with a quote for republication. The republication consisted of consolidating chapters to eliminate blanks, wasted white space, etc. The Code was repaginated and tables of contents were revised to reflect any new pagination. The cost for republication from Franklin Legal was \$4,500.00.

The City entered into a Professional Services Agreement with Franklin Legal in May 2010. The City has now received a hard copy of the Code and after the approval of this Ordinance will have the City website updated with the new link to Franklin Legal.

This Ordinance updates the current Code as published by Franklin Legal

**STAFF RECOMMENDATION**

Staff recommends approval.

**ATTACHMENTS**

Ordinance

Prepared by:

Name: Danette Dunlap

Title: City Secretary

Item No. 73

Disposition by City Council

Approved      Ord/Res#

Denied      \_\_\_\_\_

Other

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

ORDINANCE No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, ADOPTING AND ENACTING A NEW CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE AMENDMENT OF SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.**

**WHEREAS**, The City of Abilene currently has a Code of Ordinances ("Code") published by Municode; and

**WHEREAS**, the City Secretary has determined it is beneficial for the City of Abilene to have the Code republished by Franklin Legal;

**WHEREAS**, in May, 2010 the City entered into a Professional Services Agreement with Franklin Legal for the republication of the Code; and

**WHEREAS**, Franklin Legal has completed the republication of the Code with any and all ordinances passed on or before June 24, 2010 as requested by the City Secretary; and

**WHEREAS**, this ordinance approves and enacts the Code as republished by Franklin Legal.

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

Section 1: That the Code of Ordinances of the City of Abilene, Texas, consisting of chapter 1 through 32, each inclusive, and Appendices, as published by Franklin Legal is hereby adopted and enacted which shall supersede all other general and permanent ordinances of the City passed on or before June 24, 2010.

Section 2: All ordinances of a general and permanent nature enacted on or before June 24, 2010, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3: The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4: Unless a differing penalty is expressly provided for within the Code, every person convicted of a general violation of any provision of the Code or any rule, ordinance, or police regulation of the City shall be punished by a fine not to exceed \$2,000.00 for violations of all such rules, ordinances and police regulations that govern fire safety, zoning, or public health and sanitation, including dumping of refuse, and not exceeding \$500.00 for all other violations. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.



Section 5: Additions or amendments to the Code when passed in such form as to indicate the intention of the City Council to make same a part of the Code shall be deemed to be incorporated into the Code, so that reference to the Code includes the additions and amendments.

Section 6: Ordinances adopted after June 24, 2010, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

Section 7: This ordinance and the Code adopted hereby shall become effective upon final passage of this ordinance.

PASSED ON FIRST READING this the 26<sup>th</sup> day of October, 2010.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 24<sup>th</sup> day of October, 2010 the same being more than twenty four (24) hours prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 4<sup>th</sup> day of November, 2010 to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

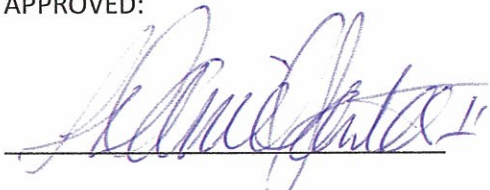
PASSED ON SECOND AND FINAL READING THIS 4<sup>th</sup> day of November, A.D.2010.

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED:

  
\_\_\_\_\_  
City Attorney

7.3 PG. 3