

**ABILENE CITY COMMISSION - STUDY SESSION AGENDA**  
**DWIGHT D. EISENHOWER MEMORIAL BUILDING - 419 N. BROADWAY AVENUE**  
**November 22, 2016 - 4:00 pm**

1. **PUBLIC COMMENTS**. Persons who wish to address the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.
  
2. **ITEMS FOR PRESENTATION AND DISCUSSION**
  - a. Dickinson County Justice Center
  
  - b. Downtown Alley Encroachments
  
3. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
  - a. Meeting Minutes: November 14, 2016 regular meeting
  
4. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
  - a. Consideration of a Resolution approving a Certified Local Government Agreement with the Kansas State Historical Society.
  
5. **REPORTS**
  - a. City Manager's Report
  
6. **MEETINGS OF NOTE** (*Meetings at Abilene Public Library unless otherwise provided*)
  - CITY HALL CLOSED: November 24 and 25 (Thanksgiving)
  - City Commission Meeting, November 28 at 4:00 pm
  - Airport Advisory Board, (as needed) December 5 at 5:00 pm
  - Library Board, December 5 at 4:00 pm
  - Commission Study Session, December 6 at 4:00 pm (City Hall)
  - Sister City, December 8 at 7:00 pm
  - City Commission Meeting, December 12 at 4:00 pm
  - Planning Commission, December 13 at 4:30 pm
  - Heritage Commission, December 15 at 4:00 pm



**Abilene City Commission Minutes**  
**Abilene Public Library**  
**November 14, 2016 @ 4:00 p.m.**  
**Abilene, Kansas**

**1. Call to Order**

**2. Roll Call** – City Commission Present: Mayor Marshall, Commissioners Dale, Payne, Weishaar and Shafer.

Staff Present: City Manager Dillner, Deputy City Clerk Mohr, City Attorney Martin, Finance Director Rothchild, Public Works Director Schrader, Police Chief Mohn, Assistant Police Chief Wilkins and Fire Chief Sims.

Others Present: Mike Heronemus, Michael Hook and Anthony Perez, Faulk & Foster.

**3. Pledge of Allegiance** - Mayor Marshall led the Pledge of Allegiance.

**Consent Agenda**

4. Agenda Approval for the November 14, 2016 City Commission Meeting
5. Meeting Minutes: October 24, 2016, Regular Meeting
6. Appointment of Michael Hook to the Heritage Commission to fill an unexpired term ending in May 2017
7. Approval of a Letter or Support concerning the Jacob Engle House's nomination to National Register of Historic Places
8. Approval of an official City letter to be used for fundraising efforts for the 2017 Trails, Rails and Tales event
9. Approval of \$9,041.73 for final payment for the Hotel Feasibility Study prepared by CBRE and authorized by Resolution No. 042516-5

Motion by Commissioner Weishaar, seconded by Commissioner Dale to approve the Consent Agenda as presented. Motion carried unanimously 5-0.

**Public Comments and Communications**

**10. Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.

Mayor Marshall asked for any comments or communications from the public that are not on the agenda.

There were no public comments or communications.

**11. Declaration.** At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

There were no declarations.

### **Proclamations and Recognition**

12. There were no proclamations or recognitions.

### **Public Hearings**

13. There were no public hearings.

### **Old Business**

14. There was no old business.

### **New Business**

#### **15. Consideration of a Resolution stating the intention of the City of Abilene to participate in a Justice Center proposed by Dickinson County Kansas.**

City Manager Dillner presented information regarding Resolution No. 111416-1 which states that the City desires to continue discussions with Dickinson County and participate in a Justice Center proposed by the County. It should be stated however, that the resolution is non-binding so in the future, as negotiations continue, if something comes up and the City desires to change its mind, this resolution would not bind the City Commission to take any actions at that point in time.

City Manager Dillner said the resolution does state that the governing body hereby finds that it is in the City's best interests to participate in the development of the Project to include the Abilene Police Department and the Abilene Municipal Court. The governing body hereby declares that it will continue to discuss the Project with Dickinson County with the intent of negotiating a pay structure for participation and identification of a revenue source to pay the City's share of the Project.

Commissioner Shafer said he just wanted to clarify that this resolution does not commit the City to any financial obligations?

City Manager Dillner said no, financial obligations would still need to be approved by the City Commission in the future. In the event that the Commission votes yes on this and we proceed with negotiations and it is determined that we lease space or own space, the revenue source would have to be voted on at that point in time by the commission and/or the public.

Motion by Commissioner Shafer, seconded by Commissioner Shafer to approve Resolution No. 111416-1 **A RESOLUTION STATING THE INTENTION OF THE CITY OF ABILENE TO PARTICIPATE IN A JUSTICE CENTER PROPOSED BY DICKINSON COUNTY, KANSAS.** Motion carried 3-2, Commissioner Payne and Weishaar voting no.

#### **16. Consideration of an Ordinance approving a Conditional Use Permit for 1706 N. Buckeye Avenue for the construction and placement of an Electronic Message Center.**

City Manager Dillner presented information regarding a Conditional Use for an electronic message center at Gibbs Liquor, 1706 N. Buckeye. The Planning Commission held a Public Hearing on October 11, 2016 and there were no comments for or against the request. The Planning Commission recommends approval of the Conditional Use Permit with the following conditions being met:

1. The proposed sign be less than the maximum gross square footage surface area, which is 100 square feet per side, for on-site advertising signage in the "C-4 General Commercial District" as provided in Table 27-2 of the Zoning Regulations.
2. The proposed electronic message center must comply with required local setbacks for signs within Commercial, Industrial, and Public Use Districts, as provided in Section 27-604(c) which states that required setbacks are "thirty feet from the center of the right-of-way, except that no sign shall be located in the right-of-way, and except that advertising signs shall maintain the same setback that is required for principal structures."
3. The proposed electronic message center must comply with required state setbacks for signs located adjacent to state highway right-of-way. The City would require documentation from the Kansas Department of Transportation that this requirement is met to the satisfaction of KDOT prior to issuance of the permit.
4. The proposed electronic message center must comply with Section 27-401 (h) with respect to metal and illuminated signs that have internal wiring or attached electrically-wired accessory fixtures. This sign must maintain a free clearance to a grade of nine feet. No metal sign shall be located within eight feet vertically and four feet horizontally of electric wires or conductors in free air carrying more than forty-eight volts, whether or not such wires or conductors are insulated or otherwise protected, and all such signs conform with the City's adopted Electric Code (2002 National Electric Code).
5. Only one electronic message center will be allowed on the subject property.
6. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
7. The message change shall occur no less than fifteen seconds.
8. A dimming device or means of glare reduction must be installed and implemented after sundown.

Motion by Commissioner Dale, seconded by Commissioner Shafer to adopt Ordinance No. 3311 **AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR 1706 N. BUCKEYE AVENUE FOR THE CONSTRUCTION AND PLACEMENT OF AN ELECTRONIC MESSAGE CENTER.** Motion carried unanimously 5-0.

**17. Consideration of an Ordinance approving a Conditional Use Permit authorizing a cellular communications tower at a location generally described as 409 NW 3<sup>rd</sup> Street.**

City Manager Dillner presented information regarding a Conditional Use Permit authorizing the installation of a cellular communications tower by US Cellular to be placed on the roof of the Sunflower Building, 409 NW 3<sup>rd</sup> Street. The Planning Commission held a Public Hearing on October 11, 2016 and there were no comments for or against the request. The Planning Commission recommends approval of the request with the following conditions being met:

1. The location of antenna tower in nonresidential areas and minimize the appearance of the tower;
2. Encourage users of tower and antennas to co-locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
3. Minimize adverse visual and aesthetic effects of tower through careful design, the new structure is a prefabricated 10' tall equipment building and is set back from adjacent property line 60 feet.

4. Avoid potential damage to adjacent properties and personal injury from tower failure and falling ice and debris through engineering, careful siting of tower structures, and other requirements;
5. Ensure compliance with applicable City of Abilene, State of Kansas, federal statutes and regulations;
6. Comply with all necessary and relevant requirements of the Telecommunications Tower in Article 24 as amended.
7. The telecommunication antenna tower was reviewed and recommended by a 4-0 vote by the Historic Preservation Commission that the proposed design and location meet their concerns with regard to the Historic Sunflower Hotel site and location.
8. Towers shall not be artificially lighted, unless required by the Federal Aviation Administration, Federal Communications Commission or other applicable authority. If lighting is required, such lighting shall be the minimum applicable standards so as to minimize the disturbance to the surrounding views.
9. The main telecommunication antennas and equipment will be entirely enclosed by a security access door on the roof top of the Sunflower Hotel. This requirement shall not apply to alternative tower structures provided equivalent alternative security measures are installed.
10. Telecommunications towers and antennas shall be constructed to the minimum height necessary to accomplish their required telecommunications purpose.
11. The environmental effects of radio frequency emissions shall not serve as a basis to approve, deny or otherwise regulate a telecommunications tower or antenna to the extent said emissions comply with Federal Communications Commission regulations concerning said emissions.

Motion by Commissioner Payne, seconded by Commissioner Shafer to adopt Ordinance No. 3312 **AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AUTHORIZING A CELLULAR COMMUNICATIONS TOWER AT A LOCATION GENERALLY DESCRIBED AS 409 NW 3<sup>RD</sup> STREET IN THE CITY OF ABILENE, KANSAS.** Motion carried unanimously 5-0.

**18. Consideration of a Resolution approving a proposal from Olsson Associates concerning an Aquifer Delineation/Hydrogeologic Evaluation for Future Water Supply.**

City Manager Dillner presented information regarding a proposal from Olsson Associates to conduct an Aquifer Delineation/Hydrogeologic Evaluation to obtain a model to guide current and future water supply decisions. This study will give a data driven analysis of our current aquifers and locations around Abilene for possible future water sources.

Motion by Commissioner Payne, seconded by Commissioner Shafer to approve Resolution No. 111416-2 **A RESOLUTION APPROVING A PROPOSAL FROM OLSSON ASSOCIATES CONCERNING AN AQUIFER DELINEATION/HYDROGEOLOGICAL EVALUATION FOR FUTURE WATER SUPPLY.** Motion carried unanimously 5-0.

**19. Consideration of a motion authorizing \$58,800 from the Water Equipment Reserve Fund for the purchase of a replacement Reverse Osmosis Skid for the Water Treatment Plant.**

City Manager Dillner presented information regarding the purchase of a Reverse Osmosis Skid for the Water Treatment Plant. The cost is \$58,800 to replace. This is a budgeted item and we have been very fortunate to have our RO Skids be used to a life greater than what was originally planned and so we need to start preparing for their replacement. This purchase will be paid for from the Water Equipment Reserve Fund.

Motion by Commissioner Payne, seconded by Commissioner Dale to authorize the use of \$58,800 from the Water Equipment Reserve Fund for the purchase of a replacement Reserve Osmosis Skid for the Water Treatment Plant. Motion carried unanimously 5-0.

**Reports**

**20. City Manager's Report**

The Dickinson County Heritage Center's annual business meeting is Thursday, November 17<sup>th</sup> at 6:00 p.m.

**Adjournment**

**21. Consideration of a motion to adjourn the November 14, 2016 City Commission meeting.**

Motion by Commissioner Weishaar, seconded by Commissioner Payne to adjourn at 4:15 p.m. Motion carried unanimously 5-0.

(Seal)

\_\_\_\_\_  
Dee Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Shayla L. Mohr  
Deputy City Clerk



## MEMORANDUM

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Justice Center Plan  
**DATE:** November 18, 2016

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The City Manager has prepared a plan for the City Commission's review and discussion concerning the City's participation in the Dickinson County Justice Center.

1. Detailed Floor Plan. A detailed floor plan needs to be prepared by the County's consultant, in collaboration with the City, in order to arrive at a more thorough cost estimate for the project.
2. Cost Estimate. A refined cost estimate is prepared based on the more detailed floor plan and construction drawings. These exhibits will also be helpful to determine the annual operating cost for the facility as well as life cycle costs that need to be factored into a long-term maintenance plan.
3. Cost Allocation and Maintenance Negotiations. The City and County will use the refined cost estimate to negotiate a framework for an interlocal agreement that would define the terms and conditions for participation in construction and ongoing maintenance costs.
4. Formal Identification of Revenue Source. Once the City has a firm hold on construction and ongoing maintenance costs for its portion of the project, it can determine an appropriate revenue source to pay for its agreed portion of these costs. Presently, staff has identified two sources of funding that would be available to fund the City's portion of the project. Both sources would require a vote of the public.
  - a. **Sales Tax** - The City Commission could elect to have a sales tax ballot question placed on the August 1, 2017 primary ballot. As previously mentioned, the 0.35% sales tax authorized for the Library/Pool project will sunset in 2018. This sales tax could be reauthorized by voters at this rate or at a slightly lower rate as discussed below.
  - b. **Property Tax** - Another option is to fund its portion of the project using property taxes. The recent property tax lid legislation would also require a vote of the public if a property tax is proposed to fund the project. A property tax ballot question could also be prepared for the primary election if so desired by the City Commission. Additional information on this option is also provided below.
5. Interlocal Agreement. An interlocal agreement could be prepared using the negotiated framework previously developed by both parties. The interlocal agreement would legally define the terms and conditions for the construction and ongoing maintenance costs, as well as roles and responsibilities of each party and various procedures that may be necessary in a successful facility partnership. The

interlocal agreement could be prepared in advance of the election, provided it was conditioned on an affirmative vote. Alternatively, the agreement could be held for approval by both parties until the results of the election are known.

6. Ballot Question. Whichever funding source is identified, the City Commission would have to adopt a resolution authorizing the ballot question for the primary election. The resolution will have to be adopted and provided to the Dickinson County Clerk by May 1, 2017 in order to be placed on the August 1, 2017 primary ballot. If this deadline cannot be met, the City would still have the ability to place a funding source question on the general election ballot in November.
7. Public Forums. The City would want to host several public forums to educate the public on the project and the proposed funding source question between May and July. Additionally, forums could be held in advance of the City Commission determining a funding source to help the governing body decide an appropriate funding mechanism if desired by the City Commission.
8. Primary Election. The primary election would be held on August 1, 2017. The partnership is consummated and implemented once the results of the election are known and the interlocal agreements become effective.

Based on direction from the City Commission, the City Manager has included in this plan a framework for addressing facility issues in the existing City Hall building assuming that the Abilene Police Department and Municipal Court move to the Dickinson County Justice Center. The Abilene Fire Department and Administration would remain in City Hall for the foreseeable future. Several improvements to the facility are perhaps warranted to extend the life of structure and make it more operationally efficient.

The City would solicit an architect to determine an appropriate and prioritized list of improvements to City Hall given a minimum amount of available resources. The scope of this analysis would be to identify improvements that are most needed to enhance operational efficiency and extend the life of the building. Floor plans and eventually construction drawings and specifications would be prepared along with a detailed cost estimate. This information would also be used to inform the public on the merits of a funding source.

### **Revenue Sources**

As previously mentioned, staff has identified two primary revenue sources to fund the City's portion of the Justice Center as well as appropriate improvement to the existing City Hall building. The City Manager's plan would not require the issuance of new debt as it would be entirely pay-as-you-go.

1. 0.35% Sales Tax. Extension of the existing sales tax rate authorized by voters for Library/Pool improvements. A ten-year general sales tax is estimated to generate approximately \$4.5 million over the life of the sales tax.
2. 0.25% Sales Tax. Reduced sales tax rate from the rate authorized by voters for Library/Pool improvements. A ten-year general sales tax is estimated to generate approximately \$3.2 million over the life of the sales tax.
3. Property Tax. Presently, a mill is worth about \$52,000. The amount of funds that may be generated by a property tax increase over a ten-year period would require a mill levy. This memorandum will provide an example of what this may look like compared to the funds that may be generated by the aforementioned sales tax rates.

**Allocation of Revenue** *(These figures are approximations and subject to change; Examples are intended to be illustrative. Additional analysis and stress testing would be required to obtain a more accurate reflection of revenue.)*

Option A - 0.35% Sales Tax *(Option would require an equivalent of about 8.6 mills if done by property tax.)*

- \$4.5 million generated by sales tax receipts
- 2.5 million estimated amount of City's participation in Justice Center
- 2.0 million balance after Justice Center**
- + 0.4 million funds presently reserved in Capital Improvement Fund
- 2.4 million est. funds remaining for further facility investments at City Hall and/or other priorities**

Remaining funds could allocated to improvements for the Fire Department, City Hall, or other priorities on a pay-as-you-go basis as follows:

- Phase I - \$0.4 million *(available anytime)*
- Phase II - \$1.0 million *(five years after effective date of sales tax)*
- Phase III - \$1.0 million *(five years after Phase II)*

Option B - 0.25% Sales Tax *(Option would require an equivalent of about 6.2 mills if done by property tax.)*

- \$3.2 million generated by sales tax receipts
- 2.5 million estimated amount of City's participation in Justice Center
- 0.7 million balance after Justice Center**
- + 0.4 million funds presently reserved in Capital Improvement Fund
- 1.1 million est. funds remaining for further facility investment at City Hall and/or other priorities**

Remaining funds could allocated to improvements for the Fire Department, City Hall, or other priorities on a pay-as-you-go basis as follows:

- Phase I - \$0.4 million *(available anytime)*
- Phase II - \$0.35 million *(five years after effective date of sales tax)*
- Phase III - \$0.35 million *(five years after Phase II)*



## MEMORANDUM

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Downtown Alley Encroachments  
**DATE:** November 16, 2016

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### **ISSUE:**

The City Commission is asked to review the existing policy concerning alley encroachments occurring within the downtown business district.

### **BACKGROUND:**

On November 16, 2016, the City Manager received a complaint concerning encroachments occurring within the alleys in downtown Abilene. The encroachments identified included the placement and storage of trash bins and the construction of permanent improvements to existing buildings (i.e., stairways to rear doors).

Section 6-511 of the City Code states as follows: *"It shall be unlawful, except as hereinafter provided, for any person, firm or corporation to erect, construct, install, place, maintain or allow to remain or to permit the erection, construction, installation, placing, maintenance or remaining of any encroachment upon or above the rights-of-way or any portion thereof of the city connecting link of the Kansas State Highway System, which is Buckeye Avenue from the South City Limits to the centerline of North Fourteenth Street."*

The alleys in downtown Abilene are defined as public rights-of-way, and so encroaching in the aforementioned manner would be considered illegal. According to Section 6-512 of the City Code, encroachments must be removed by the owner unless otherwise defined by exception. The aforementioned encroachments are not presently defined as exceptions. Several utilities have infrastructure located within the alleys in downtown.

Incidentally, Chapter 4, Article 7 of the City Code, concerning Solid Waste, does not regulate the placement of trash bins. Consequently, City Code does not prohibit the placement of trash bins in alleys except as otherwise defined as an encroachment as previously discussed.

### **COMMISSION DIRECTION:**

The City Manager is requesting direction from the City Commission concerning this issue. While the issues identified are illegal according to City Code, enforcing the existing regulations may pose a hardship on businesses that require a permanent structure to access a rear entrance or to store trash receptacles in a location that does not create odor or other related issues inside the business.

1. Should the aforementioned encroachments be allowed to continue to exist?
2. If so, are there any restrictions or regulations that need to be considered to protect the public's interest?
3. Does the City require the alleys to remain as public rights-of-way, or would another viable option be to define downtown alleys as utility easements?

## **RECOMMENDATION**

The City Manager recommends reviewing the existing regulations governing the right-of-way and revising the regulations as may be necessary to allow certain encroachments that may not necessarily infringe upon the public interest. In addition, provisions could be drafted to address permanent structures that must be removed by a utility for maintenance or emergency repairs.

The City Manager further recommends that the existing encroachments be allowed to remain in place until such time as a revised regulatory framework may be developed with input from the adjacent property owners and utility companies.

## **ATTACHMENTS**

- Chapter 6, Article 4 of the City Code (Streets and Alleys)
- Chapter 6, Article 5 of the City Code (Right-of-Way)

#### ARTICLE 4. STREETS AND ALLEYS

6-401 **DEFINITIONS.** For the purposes of this article, the following words and phrases shall mean:

(a) *Street* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

(b) *Alley* means a street intended to provide access to the rear or side of lots or buildings, and not intended for the purpose of through vehicular traffic.

6-402 **OPENING AND IMPROVING.** The Governing Body shall have the power to open, widen, extend, or otherwise improve any street or alley, whenever deemed expedient, pursuant to the authority granted by Kansas law.

6-403 **VACATING.** The provisions of K. S. A. 12-504 *et seq.* are incorporated by reference with relation to the vacation of streets and alleys.

6-404 **LIGHTING.** The Governing Body shall have the authority to construct, install and maintain, or to cause to be constructed, installed and maintained, a system of street lights with the location of such street lights to be designated by ordinance.

6-405 **DUTIES DURING IMPROVEMENT OR REPAIR.** The provisions of K. S. A. 68-2101 *et seq.* are incorporated by reference with relation to the duties and liabilities of the city and contractors during the improvement or repair of streets and alleys.

6-406 **EXCAVATION PERMIT.** No person, firm or corporation shall make an excavation in any street, alley or other public grounds in the city for any purpose, without first obtaining a permit from the Director of Public Works authorizing the same.

6-407 **BOND.** All applications for permit required under the provisions of this article shall be accompanied by a good and sufficient corporate surety bond in the amount of Five Hundred Dollars (\$500.00) executed to the City of Abilene by the applicant for such permit, and conditioned that the principal on such bond will save the city harmless from any damage to persons or property resulting from any opening or excavation made by such principal, agents, servants or employees under such permit, and further that said principal shall pay any and all loss or damage occasioned by the principal, agents, servants or employees and will comply with all ordinances of the city.

6-408 **BACKFILL AND REPLACEMENT OF PAVEMENT.** Any person, firm or corporation making excavations in any of the streets, alleys or public grounds in the city shall backfill all trenches or ditches or excavations, whenever deemed necessary by the Director of Public Works. Such person, firm or corporation making such excavations shall follow the directions of any person directed by the city to supervise said work. The work of replacing all pavement cut or damaged, operating under a permit issued pursuant to the provisions of this article, shall be at the permit holder's expense and shall be done in accordance with the following specifications; (*Ord 3012 9/04*)

- (a) All asphalt or concrete shall be cut as squarely as possible;
- (b) Backfill shall be flowable fill to within 8 inches of the surface;
- (c) For an asphalt street, six inches of poured cement shall be placed on top of the flowable fill followed by two inches of hot asphalt;
- (d) For a concrete street, eight inches of poured concrete shall be placed on top of the flowable fill;
- (e) The replacement of paving or hard surfacing shall be done by the permit holder or contractor at their expense.

6-409 **DESIGNATION OF MAIN TRAFFICWAY STREETS.** Pursuant to K.S.A. 12-685 through 12-690, the Governing Body of the City of Abilene, Kansas, hereby designates the following streets within the corporate limits of the City of Abilene, Kansas, as main trafficways, the primary function of which is the movement of through traffic between areas of concentrated activity within the City or between such areas and traffic facilities outside the City performing the function of major trafficways.

- (a) Buckeye (K-15), from the North City limits to the South City limits.
- (b) East First Street, from Buckeye to the East City limits.
- (c) NE 14<sup>th</sup> Street, from Buckeye to the East City limits.
- (d) NW 14<sup>th</sup> Street, from Buckeye to the West City Limits.
- (e) Cedar Street, from NW 14<sup>th</sup> Street to NW 3<sup>rd</sup> Street.
- (f) NW 3<sup>rd</sup> Street, from Buckeye to Van Buren Street.
- (g) Van Buren Street, from the North City limits to the South City limits.
- (h) West First Street, from Buckeye to Van Buren.
- (i) Elm Street, from West First Street to NW 3<sup>rd</sup> Street.
- (j) Washington Street, from West First Street to the North City limits.
- (k) NW 7<sup>th</sup> and 8<sup>th</sup> Street, from Buckeye to Washington street.
- (l) Brady Street, from East First Street to NE 21<sup>st</sup> Street.
- (m) NE 21<sup>st</sup> Street, from Buckeye to Brady Street.
- (n) NW 21<sup>st</sup> Street, from Buckeye to Mulberry street.
- (o) Mulberry Street, from NW 14<sup>th</sup> Street to NW 21<sup>st</sup> Street.
- (p) Vine Street, from NW 7<sup>th</sup> Street to NW 14<sup>th</sup> street.
- (q) NE 10<sup>th</sup> Street, from Buckeye to Brady Street.
- (r) NW 10<sup>th</sup> Street, from Buckeye to Vine Street.
- (s) Cedar Street, from NW 3<sup>rd</sup> Street to SW 2<sup>nd</sup> Street.
- (t) SW 4<sup>th</sup> Street, from Buckeye to Cedar Street.

## ARTICLE 5. RIGHTS-OF-WAY

6-501 **DEFINITIONS.** For the purposes of this article, the following words and phrases shall mean: (Ord.# 3012-9/2004)

(a) *Driveway* means a place on private property for the operation of automobiles and other vehicles.

(b) *Driveway approach* means an area, construction or facility between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to private property. A driveway approach must provide access to something definite on private property such as a parking area, driveway, or a door at least seven (7) feet wide, intended and used for the entrance of vehicles.

(c) *Outside sidewalk line* means a line parallel to the property line lying along the edge of the sidewalk nearest the street roadway or curb; or where no sidewalk exists, a line in the street right of way parallel to and four (4) feet from the line of the private property.

(d) *Corner* means the point of intersection of the lines of two (2) street curb faces extended into the street intersection.

(e) *Curb parking space* means a length of curb equal to twenty (20) feet, where an automobile or other vehicle can park.

(f) *Parcel of land* means a lot or lots, or a tract officially registered under one (1) ownership.

(g) *Curb return* means that portion of a curb next to a driveway approach which includes the radius of curvature, or the ramp-type lug on commercial or industrial type pavements and which connects the driveway approach to the street curb.

(h) *Private entrance culvert* means any structure erected for the purpose of providing entrance for pedestrians or vehicles to private property from a public street or alley when said street or alley is not curbed and guttered.

(j) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

(k) "Occupant" means any person, firm, corporation, association, utility, or entity, which enters upon the right-of-way of the City, or in any manner establishes a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic

wires, cables, pipes, pipelines, poles, towers, vaults or appliances, or related facilities or appurtenances thereto.

6-502 **DRIVEWAY PERMIT.** It shall be unlawful for any person to cut or remove any curb along a street or alley, except after making application to and receiving a permit from the City Clerk, the fee for which shall be ten dollars (\$10.00), to so construct a service driveway in accordance with the plans and specifications filed with and approved by the City Engineer.

6-503 **CONSTRUCTION STANDARDS.** All driveway approaches shall be constructed according to the following standards:

(a) Driveway approaches shall be constructed of permanent, dust-free, hard-type surfacing, not less than six (6) inches thick.

(b) The existing concrete curb and gutter shall be removed and reconstructed of concrete for the full width of the driveway approach and curb returns.

(c) No driveway approach shall exceed thirty (30) feet in width, as measured along the outside sidewalk line, except that on streets marked as permanent state or federal highway routes, a driveway approach may be constructed with a maximum width of forty (40) feet upon approval of the City Manager.

(d) Where more than one (1) driveway approach on a street front serves a single parcel of land, there shall be at least one (1) curb parking space between driveway approaches.

(e) The sides, edges or curbs of driveway approaches shall be at right angles to the street curb.

(f) No curb cut, opening or section removed for the purpose of constructing a driveway approach shall exceed fifty-two (52) feet in width.

(g) No portion of a driveway approach, except the curb return, shall be constructed within eighteen (18) feet of a corner, and in no case closer than two (2) feet to the property line extended.

(h) The radius of curvature of the curb return shall not exceed the distance between the curb and the outside sidewalk line.

(i) No driveway approach shall be constructed so as to interfere with municipal facilities such as street lighting poles, traffic signal standards, signs, catch basins, hydrants, crosswalks, bus loading platforms, utility poles, fire alarm supports, underground pipes or ducts or other necessary street structures. The City Manager is authorized to order and effect the removal or reconstruction of any driveway approach which now conflicts with street structures or which will conflict with street structures in the future. The cost of removing or reconstructing or relocating such driveway approaches shall be at the expense of the abutting property owner.

- 6-504 **VARIANCES.** The City Manager may grant in writing variances from the strict application of the provisions of this article, provided that the following conditions are present:
- (a) The variance arises from peculiar physical conditions not ordinarily existing in similar districts in the city or is due to the nature of the business or operation on the abutting property.
  - (b) The variance will not adversely affect the public interest, safety, convenience and general welfare or the rights of adjacent property owners or tenants.
  - (c) The strict application of the terms of this article will result in an unnecessary hardship on the property owner or tenant.
- 6-505 **PROHIBITED PRACTICE.** It shall be unlawful for any person to construct, alter or extend, or permit or cause to be constructed, altered or extended any driveway approach which can be used only as a parking space or area between the curb and private property.
- 6-506 **CULVERTS.** It shall be the responsibility of the interested property owner to provide and maintain any private entrance culvert deemed necessary between the private property and the public street or alley.
- 6-507 **COSTS.** The City Engineer shall prepare and keep on file with the City Clerk at all times a schedule of charges for private entrance culverts of various sizes and materials. Said charges shall be substantially equal to and not less than the cost of materials exclusive of installation labor.
- 6-508 **CONSTRUCTION.** Upon the payment in advance of the charges specified in section 6-606 by any property owner, the city shall construct a private entrance culvert for said property owner.
- 6-509 **GRADE.** No private entrance culvert shall be constructed or existing private entrance culvert reconstructed by any person without first obtaining from the City Engineer the grade at which said private entrance culvert shall be set and the minimum size of opening required.
- 6-510 **STATUTORY AUTHORITY.** Nothing in this article shall be construed to affect the authority of the Governing Body to exercise the provisions of K. S. A. 12-2301, *et seq.*, with respect to culverts at private entrance driveways.
- 6-511 **ENCROACHMENT.** It shall be unlawful, except as hereinafter provided, for any person, firm or corporation to erect, construct, install, place, maintain or allow to remain or to permit the erection, construction, installation, placing, maintenance or remaining of any encroachment upon or above the rights-of-way or any portion thereof of the city connecting link of the Kansas State Highway System, which is Buckeye Avenue from the South City Limits to the center line of North Fourteenth Street.

6-512 **REMOVAL.** Any encroachment shall be removed by the owner or persons permitting the erection, construction, installation, placing or maintenance of the same, provided that in established business districts on said streets where the buildings are at the property line and are continuous or very closely spaced, overhang encroachments are permitted under the following conditions:

(a) Awnings, canopies, marquees and similar installations supported wholly from the face of the building shall be permitted, provided that the edge of such encroachment be not less than three (3) feet back of the face of the curb and in conformance with all other provisions of this ordinance. Replacement or new installation of such items may be made upon approval or proper permit by the city.

(b) Advertising or other similar signs supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete.

(c) Replacement of obsolete or installation of new advertising or other similar signs attached to the building will be permitted provided that such signs are parallel to the building and the overhang does not exceed one (1) foot.

(d) In the event the encroachments referred to in (a), (b) and (c) above, by reason of color or placement, obscure or in any way detract from the effectiveness of the highway signs or traffic signals, the city may cause the removal of such encroachments in the manner hereinafter provided for the removal of encroachments in violation of this article.

(e) The provisions of (a) and (b) above permitting certain encroachments shall not apply to business or commercial buildings in outlying areas.

6-513 **GROUND-SUPPORTED ENCROACHMENT REMOVAL.** All encroachments, as heretofore defined, supported from the ground within the business district on said streets shall be removed as hereinbefore provided.

6-514 **LEASING PROHIBITED.** Lease of the right-of-way by owners or lessees of abutting property for the storage of vehicles, placement of portable signs or other private use is hereby prohibited.

6-515 **OBSTRUCTING SIDEWALKS PROHIBITED.** It shall be unlawful for any person, firm or corporation to leave or allow to be left any merchandise, goods, equipment, trash receptacles or similar personal property displays on any sidewalk or street right-of-way for a period of time longer than necessary for the loading or unloading of the same, provided that the City Manager may grant a permit for such uses as follows: (*Ord 2887 7/99*)

(a) A permit may be granted when such use of a sidewalk or street right-of-way is for the purpose generally used by merchants on any planned programmed sale day entered into by a majority of the merchants by and through the Chamber of

Commerce or other established trade promotional organizations. Said event shall not extend for a period of more than two (2) days.

(b) A permit may be granted when such use is by an individual merchant for special promotional events, and grand openings. Said event shall not extend longer than one (1) day, and shall not be granted to the same business more than one (1) time per year.

(c) Said permits shall require that the sidewalk or street right-of-way shall not be totally obstructed and shall provide for safe passage of pedestrian and handicap traffic.

(d) Privately-owned outdoor furniture and limited, incidental merchandise displays shall be allowed on public sidewalks abutting buildings with zero-foot setbacks in the B-5 (Central Business) District when in compliance with the following:

(1) Outdoor furniture shall include only tables, benches, chairs, umbrellas and planters which enhance the appearance of the downtown.

(2) Outdoor furniture and merchandise may be placed on public sidewalks adjacent to the owner's business, provided that a minimum unobstructed walkway space of six feet in width shall be preserved for pedestrian use and to comply with provisions of the Americans with Disabilities Act.

(3) Outdoor furniture and merchandise may be displayed only during business hours of the subject business, with the exception of planters and benches.

(4) The owner of said outdoor furniture and merchandise shall indemnify the city from any liability resulting from the location of this private property on the public sidewalk.

(5) No outdoor furniture or merchandise shall obstruct the vision or mobility of pedestrians or motorists on adjacent streets, and shall be subject to removal by the city.

(6) Outdoor furniture shall be for customer and/or public use.

(7) No alcoholic liquor or cereal malt beverage shall be served or consumed on the public sidewalks.

(e) Privately-owned free-standing moveable signs shall be permitted on public sidewalks adjacent to buildings with zero-foot setbacks within the B-5 (Central Business) District, without a sign permit, when in compliance with the following:

(1) The sign face and frame shall be no more than three feet wide or more than four feet high.

(2) Signs may be placed on public sidewalks, provided that a minimum unobstructed walkway of six feet in width shall be preserved for pedestrian use.

(3) Only one moveable sign shall be displayed on any business frontage abutting a public street.

(4) Signs may only be displayed during business hours of the subject business and shall be removed at other times.

(5) Signs shall not be illuminated.

(6) Signs shall only occupy public areas abutting the owner's business location.

(7) No off-premises signs are permitted.

(8) No sign shall obstruct the vision or mobility of pedestrians or motorists on adjacent streets, and shall be subject to removal by the city.

(9) The owner of any private sign displayed on a public sidewalk shall indemnify the city from any liability resulting from the location of a sign on the sidewalk.

(10) The City Building Code Official or other designee may be empowered by the City Manager to enforce the provisions of this policy.

6-516 **REMOVAL NOTICE.** Whenever any encroachment exists, in violation of the provisions of this article, the City Clerk shall forthwith issue notice requiring removal of such encroachment within the time specified in such notice. If the owner of such encroachment or an agent is known, such notice shall be a written notice, served in person or by mail upon such owner or agent. If the owner or agent is unknown, such notice shall be published once in the official city newspaper. If the owner or his agent shall fail or refuse to remove the encroachment within the time fixed in the notice, the city shall cause the encroachment to be removed.

6-517 **PENALTY PROVISION.** Any person, firm, corporation, association, utility, or entity, or agent, contractor or subcontractor thereof, violating any provision of this article, shall be guilty of a municipal offense, and shall upon conviction be subject to a maximum fine of \$500.00. Each day of violation shall constitute a separate and distinct offense.

6-518 **RULES FOR RIGHT-OF-WAY MANAGEMENT AND USE.** (*Ord. 3012-9/04*)

(a) Authorization From City Required.

(1) No person, firm, corporation, association, utility, or entity, shall enter upon the right-of-way of the City, or in any manner establish a physical presence on, upon, in or over the right-of-way of the City, for the purpose of installing, construction, maintaining or operating lines, conduits, wires, fiber optic wires, cables, pipes, pipelines, poles, towers, vaults, or appliances, or related facilities or appurtenances thereto, without the express written permission of the City. The permission of the City may be granted by a franchise agreement pursuant to the provisions of K.S.A. 12-2001 et seq. or by such other agreement as the governing body determines best protects the public interest in the right-of-way.

(2) Nothing in this ordinance shall be interpreted as granting an occupant the authority to construct, maintain, or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(3) The City shall process each valid and administratively complete application for use of the right-of-way within 30 days.

(b) Health, Safety, and Welfare Regulations. The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the City.

(1) If the City denies a request to use or occupy a specific portion of the public right-of-way, the requester shall be served a notice of such denial by first class mail. The notice shall indicate that the requester shall have 10 days from the date of the receipt of the notice to request a public hearing by the City governing body concerning the denial. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the denial before the governing body. The hearing shall be held by the governing body within 30 days after the filing of the request therefore, and the potential occupant shall be advised by the City of the time and place of the hearing. Following the public hearing, if the City governing body denies a potential occupant's request to use or occupy a specific portion of the public right-of-way, such determination may be appealed to district court.

(c) Compliance With Manual of Uniform Traffic Control Devices. Any occupant of the public right-of-way shall comply with the provisions of Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), published by the U.S. Department of Transportation, Federal Highway Administration, 1988 Edition, Revision 3, dated September 3, 1993, which is incorporated herein by reference as if fully set forth herein.

(d) Emergencies. If there is an emergency necessitating response work or repair, any person, firm, corporation, association, utility, or entity which has been granted permission to occupy the public right-of-way may begin that repair or emergency response work or take any action required under the circumstances, provided that the person, firm, corporation, association, utility, or entity notifies the City promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

(e) Repair. Any occupant of the public right-of-way is hereby required to repair all damage to a public right-of-way caused by the activities of that occupant, or of any agent affiliate, employee, or subcontractor of that occupant, while occupying, installing, repairing, or maintaining facilities in a public right-of-way and to return the right-of-way to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the city. If the occupant fails to make the repairs required by the city, the city may effect those repairs and charge the occupant the cost of those repairs.

(f). Relocation. Whenever requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an occupant promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of such occupant's failure to timely relocate or adjust its facilities shall be borne by such occupant.

(g) Fees. The following fees shall be assessed against occupants of the public right-of-way:

(1) A permit fee of \$10.00;

(2) An inspection fee of \$25.00;

(3) Repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, and/or subcontractors in the right-of-way; and

(4) A performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(h). Indemnity.

(1) Occupants shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the occupant, any agent, officer, director, representative, employee, affiliate, or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

(2) The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If an occupant and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law.

(3) This section is solely for the benefit of the City and occupant and does not create or grant any rights, contractual, or otherwise, to any other person or entity.

(i). Claim Notification. An occupant shall promptly advise the other in writing of any known claim or demand against the provider or the City related to or arising out of the occupant's activities in a public right-of-way.

**Agreement between the Kansas State Historic Preservation Officer  
and City of Abilene, Kansas:  
Performance of project reviews under K.S.A. 75-2724, as amended**

Under subsection (e) of K.S.A. 75-2724, as amended, the State Historic Preservation Officer may enter into an agreement authorizing a city or county to make recommendations or to perform certain statutory responsibilities of the State Historic Preservation Officer if the State Historic Preservation Officer determines that the a city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission, and is actively engaged in a local historic preservation program.

Whereas the City of Abilene, Kansas, hereinafter referred to as the "City," has requested that the State Historic Preservation Officer enter into such an agreement, and whereas the State Historic Preservation Officer has determined that the City meets the requirements of K.S.A. 75-2724 (e), therefore the City and the State Historic Preservation Officer hereby agree to the following terms:

1. The City's historic preservation board, known as the Heritage Commission, hereafter referred to as "Board," shall perform all responsibilities of the State Historic Preservation Officer under K.S.A. 75-2724 (a), (b) and (c) , as amended. For all projects within the City that are required by said statute to be sent to the State Historic Preservation Officer, the Board shall review and make a determination. If a particular professional discipline such as archeology, architecture or history is not represented on the Board, it shall seek professional advice from the State Historic Preservation Officer or locally as needed in that area when reviewing projects under K.S.A. 75-2724 (a). The State Historic Preservation Officer retains the responsibility to review projects affecting or directly involving historic properties owned by the state of Kansas included in the National Register of Historic Places or the Register of Historic Kansas Places.
2. The City shall develop a list of project types proposed for administrative review by the City's preservation planning staff to address minor projects that do not warrant full review by the Board. The City shall submit the list, along with the name(s) of staff designated to perform the reviews, to the State Historic Preservation Officer for approval prior to its adoption. City staff shall not be granted the authority to make the determination that a proposed project will damage or destroy any historic property included on the National Register of Historic Places or the Register of Historic Kansas Places. When such a determination is likely to be made under an administrative review, that project shall be submitted to the Board which shall make the official determination.
3. The Board and City staff shall utilize the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for Rehabilitating Historic Buildings and supplemental guidelines, as needed, as the basis for reviewing all projects. The State Historic Preservation Officer shall approve in advance all other supplemental guidelines utilized. To ensure consistent use and understanding of these Standards and Guidelines, preservation planning staff and preservation Board members shall attend training annually that further their understanding of preservation-related topics and issues. Training may be provided by staff of the State Historic Preservation Office from time to time.
4. The Board or City staff may request the technical assistance of the State Historic Preservation Office for complex projects. The State Historic Preservation Office shall respond with written comments to the Board or City staff upon such request.
5. The Board shall forward its findings and decisions to the State Historic Preservation Officer on a monthly basis or at the time of submission of the minutes of each meeting of the Board, whichever is applicable. If the Board determines that a proposed project will damage or destroy any historic property included on the National Register of Historic Places or the Register of Historic Kansas

Places, the Board shall advise the State Historic Preservation Officer, in writing, of such finding through regularly submitted minutes.

6. Determinations by the Board that a project will damage or destroy any historic property may proceed if appealed by the applicant to the City Commission, for action as provided under subsection (a) of K.S.A. 75-2724. In those instances where the decision of the City Commission is contrary to the findings of the Board, the project shall not proceed until: (1) the City Commission has made a determination that there is no feasible and prudent alternative to the proposal and that the project includes all possible planning to minimize harm to such historic property resulting from such use and (2) five days' notice of such determination has been given to the State Historic Preservation Officer as required by K.S.A. 75-2724 (a).
7. This agreement shall be in effect for five years from the date of execution by both parties and shall be renewable for additional five-year terms at the option of both parties.
8. Amendments to this agreement will be in effect upon their signed acceptance by the City and the State Historic Preservation Officer.
9. Either party may terminate this agreement for good cause upon ninety days written notice to the other party.
10. As provided in K.S.A. 75-2724 (e), the State Historic Preservation Officer shall retain final authority to implement the provisions of K.S.A. 75-2724 et seq., as amended. Nothing in this agreement shall be construed as limiting the authority of the State Historic Preservation Officer to investigate, comment, and make determinations otherwise permitted by K.S.A 75-2724.

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Date

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Dee Marshall, Mayor  
City of Abilene

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Date

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State Historic Preservation Officer