

**ABILENE CITY COMMISSION - STUDY SESSION AGENDA**  
**DWIGHT D. EISENHOWER MEMORIAL BUILDING - 419 N. BROADWAY AVENUE**  
**January 3, 2017 - 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. **Truck Parking and Idling**
3. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
  - a. **Meeting Minutes: December 27, 2016 regular meeting**
4. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
  - a. **Consideration of an Ordinance amending Section 1-810 of the City Code of the City of Abilene, Kansas, concerning the Board of Zoning Appeals.**
  - b. **Consideration of an Ordinance approving a Text Amendment to Article 25, Sections 1 and 2 of the Zoning Regulations of the City of Abilene, Kansas, concerning the Planning Commission and Board of Zoning Appeals.**
  - c. **Consideration of an Ordinance approving a Text Amendment to Article 20, Section 12 of the Zoning Regulations of the City of Abilene, Kansas, concerning home occupations.**
  - d. **Consideration of an Ordinance rezoning certain property, generally described as 2324 Fair Road, from "R-S, Residential Suburban District" to "C-3, General Commercial District" and amending the Zoning Map of the City of Abilene, Kansas.**
  - e. **Consideration of a motion to authorize the City Manager to file a petition with the City Clerk, as required by state law, to vacate the public right-of-way commonly described as the 200 block of S. Elm Street.**
  - f. **Consideration of an Ordinance exempting certain real property located at 401 Cottage Avenue from ad valorem taxation for economic development purposes.**
5. **REPORTS**
  - a. **City Manager's Report**
  - b. **December 2016 Sales Tax Report**
6. **MEETINGS OF NOTE** *(Meetings at Abilene Public Library unless otherwise provided)*
  - **City Commission, January 9 at 4:00 pm**
  - **Planning Commission, January 10 at 4:30 pm**
  - **Economic Development Council, January 18 at 4:00 pm**
  - **City Commission, January 23 at 4:00 pm**
  - **Convention and Visitors Bureau, January 24 at 2:00 pm (Civic Center)**
  - **Airport Board, January 25 at 5:00 pm**



## MEMORANDUM

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Truck Parking and Idling  
**DATE:** December 30, 2016

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### **ISSUE:**

The City has received a noise complaint from a resident concerning the operation of a semi-truck's auxiliary powering unit (APU). Staff reviewed various sections of City Code and opined that Section 5-412 could be used to address the situation, at least temporarily until a permanent resolution may be determined. There have been some interpretation issues with respect to the aforementioned section of City Code, and so at a minimum the City Commission should clarify the intent of this provision so staff has a clear idea of how to enforce it.

### **BACKGROUND:**

Presently, City Code states the following with respect to this issue:

5-410 No person shall operate a truck-trailer or semitrailer in excess of a rated capacity of twelve tons on any public street within the corporate limits of the City of Abilene, except on the following streets:

- A. First Street from Buckeye Avenue to the east city limits;
- B. Buckeye Avenue from north to south city limits;
- C. Fourteenth Street from the east city limits to Fair Road, to include only those portions inside the city limits;
- D. North Washington Street from Northwest Eighth Street north to the city limits;
- E. North Van Buren Street and South Van Buren Street;
- F. Brady Street from First Street to Northeast Twenty-first Street;
- G. Northeast Twenty-first Street;
- H. Northwest Eighth Street from Vine Street to Washington Street;
- I. West First Street from Buckeye Avenue to Elm Street;
- J. except that vehicles with gross weights less than twenty-seven tons shall be permitted on the 100 and 200 blocks of North Elm Street; Northwest Third Street from Buckeye Avenue to Van Buren Street; and Washington Street from Eighth Street south to the city limits.

5-411 The provisions of Section 5-410 shall not apply to:

- A. Emergency vehicles, including ambulances and fire trucks;
- B. Street, sewer, water, gas, electric and other utility, repair and maintenance vehicles;
- C. Vehicles providing local deliveries of merchandise, goods or mail;
- D. Vehicles used for the purpose of trash and refuse collecting;
- E. Vehicles en route to parking on privately-owned property.

5-412 No person shall park any truck, trailer or semitrailer as described in Section 5-410 above on any public street in the City of Abilene, Kansas, other than those designated in Section 5-410 above, for a period of more than two hours. This section does not preclude parking of said vehicles on privately-owned property.

**ADVISORY BOARD RECOMMENDATION:**

Not applicable

**STAFF RECOMMENDATION:**

The City Manager recommends reviewing the language in the aforementioned sections of City Code to update them to existing conditions and to the will of the public as it relates to truck traffic and parking. As an aside, the City Manager believes that there may be a solution to the complaint issue that originated this discussion that would better suit the specific situation. The City Manager will present more about this possible option at the study session.

**FISCAL NOTE:**

These items have no fiscal impact on the City's budget.

**ATTACHMENTS:**

- None



**Abilene City Commission Minutes  
Abilene Public Library  
December 27, 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, Human Resources Director/City Clerk Soukup, City Attorney Martin, Finance Director Rothchild, Public Works Director Schrader, Parks & Recreation Director Foltz and Convention and Visitors Bureau Director Roller.

Others Present: Mike Heronemus, Michael Hook, Steve Schwarting and Dale Jones.

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

**Consent Agenda**

**4. Agenda Approval for the December 27, 2016 City Commission Meeting**

**5. Meeting Minutes: December 12, 2016, Regular Meeting**

**6. Authorization to donate Convention and Visitors Bureau trolley to the Abilene and Smoky Valley Railroad Association and rescinding previous approval to publicly sell the trolley on Purple Wave.**

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

**Public Comments and Communications**

**7. 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.

**8. 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.

Commissioner Dale and Commissioner Shafer both declared they would recuse themselves from voting on the matters regarding the property at 401 Cottage Avenue because both are members of the Great Plains Theater Board.

## **Proclamations and Recognition**

9. There were no proclamations or recognitions.

## **Public Hearings**

**10. A Public Hearing to hear objections from taxing entities and the general public with respect to a proposed constitutional ad valorem property tax abatement for real property located at 401 Cottage Avenue in Abilene, Kansas.**

City Manager Dillner gave an overview of the proposed tax abatement for TSB Enterprises, LLC. Staff recommends approval of a constitutional tax abatement to the company for a ten year period using the following schedule of abatement: **Year 1: 98% abatement; Year 2: 88% abatement; Year 3: 78% abatement; Year 4: 68% abatement; Year 5: 58% abatement; Year 6: 48% abatement; Year 7: 38% abatement; Year 8: 28% abatement; Year 9: 18% abatement; Year 10: 8% abatement.** The 2% removed from the abatement represents the portion of the real property that is not eligible for abatement due to ineligible uses.

Mayor Marshall opened the public hearing at 4:09 p.m.

There were comments.

Mayor Marshall closed the public hearing at 4:10 p.m.

Motion by Commissioner Weishaar, seconded by Commissioner Payne to recess into executive session at 4:10 p.m. for fifteen minutes to include the Governing Body, City Attorney and City Manager. Motion carried unanimously 5-0.

Motion by Commissioner Weishaar, seconded by Commissioner Shafer to return to regular session at 4:25 p.m. Motion carried unanimously 5-0.

Motion by Commissioner Weishaar, seconded by Commissioner Payne to return to executive session at 4:26 p.m. for ten minutes. Motion carried unanimously 5-0.

Motion by Commissioner Weishaar, seconded by Commissioner Payne to return to regular session at 4:36 p.m. Motion carried unanimously 5-0.

## **Old Business**

11. There was no old business.

## **New Business**

**12. Consideration of an Ordinance exempting certain real property located at 401 Cottage Avenue from ad valorem taxation for economic development purposes.**

City Attorney Martin stated in regards to the reference to conflicts of interest earlier, the statutory conflict of interest requirements exclude boards members from 503c organizations and the applicant is not the Great Plains

Theater so based on the directorship status and the fact that the theatre is not the applicant for this tax exemption, he does not believe that Commissioners Shafer and Dale would not be required to recues themselves from the item.

City Attorney Martin stated under state law in order to exempt a property on the basis of economic development, an ordinance must be passed by the governing body which makes certain findings and contains certain recitals. One of the statutory requirements requires additional information that we do not have present today and it is his recommendation that the actual ordinance approving the economic development tax exemption be table to January 9<sup>th</sup> to allow himself and city staff to track down additional information and make sure that we absolutely comply with statutory requirements. You would not be required to have an additional public hearing.

City Manager Dillner stated item No. 13 regarding rescinding Resolution No. 041116-1 can be tabled until the January 9<sup>th</sup> meeting as well as it is a continuation of this matter.

Motion by Commissioner Payne, seconded by Commissioner Shafer to table the exemption from ad valorem tax for the property at 401 Cottage Avenue and the rescinding of Resolution No. 041116-1 until the January 9, 2017 City Commission meeting. Motion carried unanimously 5-0.

**13. Consideration of a motion to rescind Resolution No. 041116-1 concerning an economic development agreement with Thunderstruck Bumpers, Inc.**

This item is a part of item 12 and will be on the agenda again at the same time as item 12.

**Reports**

**14. City Manager's Report**

The City offices and non-essential services will be closed on January 2, 2017 for the New Year's holiday.

**Adjournment**

**15. Consideration of a motion to adjourn the December 27, 2016 City Commission meeting.**

Motion by Commissioner Weishaar, seconded by Commissioner Dale to adjourn at 5:39 p.m. Motion carried unanimously 5-0.

(Seal)

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

ATTEST:

\_\_\_\_\_  
Penny L. Soukup, CMC  
City Clerk



## MEMORANDUM

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Organization of the Board of Zoning Appeals  
**DATE:** December 30, 2016

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### **ISSUE:**

The City Commission is asked to consider an amendment to Section 1-810 of the City Code and a text amendment to Article 25, Sections 1 and 2 of the Zoning Regulations concerning the membership of the Board of Zoning Appeals. The changes would establish the Planning Commission as the Board of Zoning Appeals.

### **BACKGROUND:**

The City has had a difficult time finding enough individuals to serve on the Board of Zoning Appeals in order for the body to have a quorum when it meets. The Board of Zoning Appeals hears appeals concerning administrative decisions with respect to variances or exceptions to the Zoning Regulations.

If approved, the Planning Commission would serve in the capacity of the Board of Zoning Appeals when an appeals to an administrative decision is sought. The Planning Commission would not have a conflict to serve in this capacity since the body is not presently involved in administrative decisions in the implementation of the Zoning Regulations. Several communities in Kansas have a similar arrangement.

### **ADVISORY BOARD RECOMMENDATION:**

The Planning Commission conducted a public hearing on the proposed text amendment on December 13, 2016, and no comments were received from the public either in support or opposition to the request. Consequently, the Planning Commission unanimously recommended approval of the text amendment.

### **STAFF RECOMMENDATION:**

The City Manager concurs with the Planning Commission's recommendation and supports the proposal for a text amendment to establish the Planning Commission and the Board of Zoning Appeals.

### **FISCAL NOTE:**

These items have no fiscal impact on the City's budget.

### **ATTACHMENTS:**

- Proposed ordinance amending Section 1-810 of the City Code
- Proposed ordinance amending Article 25, Sections 1 and 2 of the Zoning Regulations

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE APPROVING A TEXT AMENDMENT TO ARTICLE 25, SECTIONS 1 AND 2 OF THE ZONING REGULATIONS OF THE CITY OF ABILENE, KANSAS CONCERNING THE PLANNING COMMISSION AND BOARD OF ZONING APPEALS**

**WHEREAS**, the Planning Commission conducted a public hearing on a proposed text amendment to Article 25, Section 1 and 2 of the Zoning Regulations of the City of Abilene, Kansas on December 13, 2016;

**WHEREAS**, no public comments were provided in opposition to the proposed text amendment and the Planning Commission recommended approval of the proposed amendment; and

**WHEREAS**, the City Code needs to be amended to reflect the changes made to the aforementioned section of the Zoning Regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

**SECTION ONE. Findings of Fact.** That the governing body hereby concurs with the Planning Commission's recommended Findings of Fact that the proposed text amendment is in the best interests of the City and is not anticipated to produce any affects that would diminish the well-being of its citizens.

**SECTION TWO. Amendment.** That Section 25-1 of the Zoning Regulations of the City of Abilene, Kansas, is hereby amended to include the following:

**25-101.**

- a. The City of Abilene Planning Commission is created in accordance with K.S.A. 12-741 *et seq.*, and amendments thereto and in accordance with the Abilene City Code. ~~All members of the Planning Commission shall be residents of the City. The membership of the Commission shall include two members who shall reside outside of the City but within three miles of the City limits.~~ The full membership of the Commission shall consist of seven members.
- b. Members of the Planning Commission shall be appointed by the Mayor by and with the consent of the City Commission. Members shall serve terms of three years. Vacancies shall be filled by appointment only for the unexpired term. Commission members shall serve without compensation. Any commission member may be removed from the Commission for repeated absences from Commission meetings or malfeasance in the duties of the office by a majority vote of a quorum of the City Commission.
- c. The Planning Commission shall establish a monthly regular meeting date and shall meet as necessary to consider the business before it. They shall select one of their number as a chair and one as vice-chair who shall serve one year and until their successor has been selected. Special meetings may be called at any time by the chair or in the chair's absence by the vice-chair. A

majority of the Commission shall constitute a quorum for the transaction of business. The Commission shall keep a proper record of its proceedings. No Commission member shall vote or act on any matter in which the Commission member has a direct or indirect personal or financial interest.

**25-102. Powers and duties.**

- a. The Planning Commission shall recommend approval of plans and maps of the whole or in any portion of the City and of any land outside of the City, which in its opinion bears relation to the planning of the City, and make changes in such plans or maps when it deems the same advisable. Such plans or maps shall show the Commission's recommendation for new streets, alleys, ways, viaducts, bridges, parks, parkways, playgrounds, or any other public grounds or public improvements, and the removal, relocation, widening or extension of such public works then existing with a view to the systematic planning of the City.
- b. The Commission may make recommendations to the City Commission concerning the location of the streets, transportation and communication facilities, public buildings, and grounds.
- c. The Commission shall serve as the Board of Zoning Appeals, and shall have and exercise all powers conferred to said Board by local ordinance or state law.

**25-103. Budget.** In compliance with budgeting deadlines set for all city departments, the Planning Commission shall submit to the City Commission a budget of expenditures for the next fiscal year itemizing the expenses, the amount and purpose. The City Commission shall consider the submitted budget, determine an appropriate budget for the Planning Commission, and add it to the general budget of the City.

**SECTION TWO. Amendment.** That Section 25-2 of the Zoning Regulations of the City of Abilene, Kansas, is hereby amended to include the following:

**25-201. Membership and Meetings.** ~~The Board of Zoning Appeals shall consist of five (5) members, all of whom shall be residents of the City, to be appointed by the Mayor by and with the consent of the City Commission. None of the members shall hold any other public office of the City except that one (1) member may be a member of the Planning Commission. The members first appointed shall serve respectively for terms of one (1), two (2), and three (3) years, divided equally or as nearly equally as possible between the members. Thereafter, members shall be appointed for terms of three (3) years each. The Board of Zoning Appeals shall consist of the seven members of the Planning Commission, all of whom shall be appointed by the Mayor by and with the consent of the City Commission. None of the members shall hold any other public office of the City except as members of the Planning Commission. The members shall serve their terms simultaneously with their terms on the Planning Commission.~~ Vacancies shall be filled by appointment for the unexpired term. The members shall serve without compensation. The Board shall annually elect one of its members as Chair, one as vice-chair, and shall appoint a Secretary who may be an officer or an employee of the City. The Board shall also adopt rules

in accordance with the provisions of the City Code. Meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official action of the Board shall be filed in the office of the City Clerk and shall be a public record.

**SECTION THREE. Effective Date.** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND ADOPTED** by the Governing Body of the City of Abilene, Kansas this \_\_\_<sup>th</sup> day of January, 2016.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dee Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron O. Martin, City Attorney

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE AMENDING SECTION 1-810 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS CONCERNING THE BOARD OF ZONING APPEALS**

**WHEREAS**, the Planning Commission conducted a public hearing on a proposed text amendment to Section 25-2 of the Zoning Regulations of the City of Abilene, Kansas on December 13, 2016;

**WHEREAS**, no public comments were provided in opposition to the proposed text amendment and the Planning Commission recommended approval of the proposed amendment; and

**WHEREAS**, the City Code needs to be amended to reflect the changes made to the aforementioned section of the Zoning Regulations.

**BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

**SECTION ONE.** That Section 1-810 of the City Code of the City of Abilene, Kansas is hereby amended as follows:

**1-810. BOARD OF ZONING APPEALS.** The Board of Zoning Appeals shall ~~be organized as provided in Chapter 25 of the Zoning Regulations of the City of Abilene, Kansas. be consist of seven (7) members, who shall be appointed by the Governing Body for three (3) year terms commencing on the first day of May, pursuant to K. S. A. 12-759. The Zoning Administrator shall serve as the Secretary of the Board of Zoning Appeals.~~ The Board of Zoning Appeals shall be organized in the manner and have the powers and duties provided by K. S. A. 12-741 et seq, and the ~~Abilene~~ Zoning ~~Regulations of the City of Abilene, Kansas Code, as adopted herein.~~

**SECTION TWO. Effective Date.** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dee Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron O. Martin, City Attorney



**MEMORANDUM**

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** Text Amendment concerning Home Occupations  
**DATE:** December 30, 2016

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**ISSUE:**

The City Commission is asked to consider a text amendment to Article 20, Section 12 of the Zoning Regulations concerning home occupations. Presently, home occupations are allowed in the following districts: "A, Agricultural District"; "CS, Countryside District"; "MHS, Manufactured Home Subdivision District"; "R-1, Low Density Residential District"; and "R-2, Medium Density Residential District." The requested amendment would allow home occupations in the "R-3, High Density Residential District."

**BACKGROUND:**

Linda Mason Reynolds, of 624 E. First Street, requested a text amendment to the aforementioned section of the Zoning Regulations. She previously operated an alterations business at 107 N. Cedar Street. Due to various reasons, she elected to close her operation on Cedar Street and desires to reopen at her residence on First Street. The proposed use is an allowed home occupation under Section 20-1203(b), although home occupations are presently not allowed in an "R-3, High Density Residential District" which is the zoning district Ms. Reynold's residence is located in.

**ADVISORY BOARD RECOMMENDATION:**

The Planning Commission conducted a public hearing on the proposed text amendment on December 13, 2016, and no comments were received from the public either in support or opposition to the request. Consequently, the Planning Commission unanimously recommended approval of the text amendment.

**STAFF RECOMMENDATION:**

The City Manager concurs with the Planning Commission's recommendation and supports the request for a text amendment to allow home occupations in an "R-3, High Density Residential District."

**FISCAL NOTE:**

These items have no fiscal impact on the City's budget.

**ATTACHMENTS:**

- Proposed ordinance amending Article 20, Section 12 of the Zoning Regulations

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE APPROVING A TEXT AMENDMENT TO ARTICLE 20, SECTION 12 OF THE ZONING REGULATIONS OF THE CITY OF ABILENE, KANSAS CONCERNING HOME OCCUPATIONS**

**WHEREAS**, the Planning Commission conducted a public hearing on a proposed text amendment to Article 20, Section 12 of the Zoning Regulations of the City of Abilene, Kansas on December 13, 2016;

**WHEREAS**, no public comments were provided in opposition to the proposed text amendment and the Planning Commission recommended approval of the proposed amendment; and

**WHEREAS**, the City Code needs to be amended to reflect the changes made to the aforementioned section of the Zoning Regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

**SECTION ONE.** Findings of Fact. That the governing body hereby concurs with the Planning Commission's recommended Findings of Fact that the proposed text amendment is in the best interests of the City and is not anticipated to produce any affects that would diminish the well-being of its citizens.

**SECTION TWO.** Amendment. That Section 20-12 of the Zoning Regulations of the City of Abilene, Kansas, is hereby amended to include the following:

**20-1201.** Home occupations, as defined in Article 2 of these regulations, shall be permitted in the A District, and the CS, MHS, R-1, R-2, **and R-3** residential districts, subject to the following:

**a. Restrictions and Limitations; All Home Occupations.** The following shall apply to any home occupation in existence at the time of, or commenced after, the effective date of these Regulations:

1. No exterior alterations or other construction shall be made to the dwelling which changes the character or appearance from its primary residential use.
2. No equipment or material shall be used which creates any noise, vibration, smoke or odors perceptible at the boundary lines of the property, which would be in excess of that ordinarily created by a single-family residential dwelling. **If in an R-2 or R-3 residential district, this requirement shall be interpreted so as not to interfere with an adjoining property owner's reasonable expectation of enjoyment of their property.**
3. No merchandise shall be displayed or sold on the premises to members of the general public, except craft or articles made by the person operating the home occupation. In no instance shall there be any outside display of such articles in connection with the home occupation. "Members of the general public" shall not include persons who have prior

individualized invitation.

~~4.—The area of an accessory structure devoted to home occupations shall be limited to nine hundred (900) square feet.~~

**SECTION THREE.** Effective Date. This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND ADOPTED** by the Governing Body of the City of Abilene, Kansas this \_\_\_<sup>th</sup> day of January, 2016.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dee Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron O. Martin, City Attorney

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE REZONING CERTAIN PROPERTY, GENERALLY DESCRIBED AS 2324 FAIR ROAD, FROM "R-S, RESIDENTIAL SUBURBAN DISTRICT" TO "C-3, GENERAL COMMERCIAL DISTRICT" AND AMENDING THE ZONING MAP OF THE CITY OF ABILENE, KANSAS**

WHEREAS, the property owners of record have requested the City consider rezoning certain property more commonly described as 2324 Fair Road, and as legally described herein, from "R-S, Residential Suburban District" to "C-3, General Commercial District";

WHEREAS, the Planning Commission conducted a public hearing on December 13, 2016, and comments were received from the public both in support of the proposed rezoning; and

WHEREAS, the Planning Commission recommended the Governing Body approve the rezoning of the above referenced property.

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

**SECTION ONE. Property Rezoned.** That property legally described as follows is hereby rezoned from "R-S, Residential Suburban District" to "C-3, General Commercial District":

*The Southwest Quarter of Section Seven, Township Thirteen South, Range Two East of the Sixth P.M., subject to the highway right-of-way acquired for interstate 70 and EXCEPT a tract described as follows, to-wit: Beginning at the West Quarter corner of Section Seven, Township Thirteen South, Range Two East, of the Sixth Principal Meridian; thence East along said Quarter Section line a distance of one quarter mile, the same being a road right-of-way, being one-half forty feet in width established twenty feet south side of said Quarter Section line, all in Dickinson County, Kansas; ALSO EXCEPT two tracts conveyed to The City of Abilene, Kansas, by Warranty Deed dated July 23, 1993, and recorded July 23, 1993, in Deed Book 215, Pages 378-379, in the Office of the Register of Deeds of Dickinson County, Kansas, as follows:*

*Tract No. 1: A tract of land in the Southwest Quarter of Section Seven, Township Thirteen South, Range Two East of the 6th P.M., Dickinson County, Kansas, described as follows: Beginning at the Southeast corner of said Southwest Quarter; thence Northerly along the East line of said Southwest Quarter on an assumed bearing of North 00°26'13" East a distance of 2,572.09 feet to a non tangent curve to the left, said curve having a chord bearing South 82°23'09" West a distance of 1,047.83 feet and a radius of 5,599.65*

*feet; thence Westerly along the arc of said curve a distance of 1,049.36 feet to a non tangent line; thence South 00°26'13" West a distance of 2,433.07 feet to the South line of said Southwest Quarter; thence South 89°59'25" East along said South line a distance of 1,037.53 feet to the point of beginning.*

*Trace No. 2: A tract of land in the Southwest Quarter of Section seven, Township Thirteen South, Range Two East of the 6th P.M., Dickinson County, Kansas, described as follows: Beginning at the Southwest corner of said Southwest Quarter; thence Northerly along the West line of said Southwest Quarter on an assumed bearing of North 00°30'14" East a distance of 1,100.00 feet to the POINT OF BEGINNING; thence continuing on said West line on a bearing of North 00°30'14" East a distance of 254.88 feet; thence South 89°29'46" East a distance of 40.00 feet; thence North 11°48'42" East a distance of 229.50 feet; thence North 48°40'21" East a distance of 826.60 feet; thence North 68°59'49" East a distance of 634.69 feet to a non tangent curve to the right with a chord bearing North 75°24'46" East a distance of 313.37 feet, said curve having a radius of 5,599.65 feet; thence Easterly along the arc of said curve a distance of 313.41 feet to a non tangent line; thence South 00°26'13" West a distance of 102.86 feet to a non tangent curve to the left with a chord bearing South 75°18'36" West a distance of 279.73 feet, said curve having a radius of 5,499.65 feet; thence Westerly along the arc of said curve a distance of 279.76 feet to a non tangent line; thence South 68°59'49" West a distance of 612.55 feet; thence South 48°40'21" West a distance of 678.74 feet; thence South 00°30'14" West a distance of 493.41 feet; thence North 89°29'46" West a distance of 250.00 feet to the point of beginning.*

**SECTION TWO. Zoning Map; Amended.** That the Zoning Map of the City of Abilene, Kansas, as adopted by Ordinance No. 2796, and amendments thereto, is hereby amended to be consistent with the amendments described herein.

**SECTION THREE. Effective Date.** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**[REMAINDER OF PAGE LEFT BLANK]**

**PASSED AND ADOPTED** by the Governing Body of the City of Abilene, Kansas this 9<sup>th</sup> day of January, 2017.

**CITY OF ABILENE, KANSAS**

By: \_\_\_\_\_  
Dee Marshall, Mayor

ATTEST:

\_\_\_\_\_  
Penny Soukup, CMC

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron O. Martin, City Attorney

**EXHIBIT A**

**Rezoning Map and Application**

**for**

**2324 Fair Road**

**January 9, 2017**

## STAFF REPORT

### ***PC 16-11 Rezoning of 2324 Fair Road from "R-S, Residential Suburban District" to "C-3, General Commercial District" at the request of David and Melinda Weaver***

<b>Date:</b>	December 9, 2016
<b>Owner:</b>	David and Melinda Weaver
<b>Applicant:</b>	David and Melinda Weaver
<b>Requested Action:</b>	Amend the zoning of the property to "C-3, General Commercial" District.
<b>Purpose:</b>	To develop a truck stop/convenience store
<b>Location address:</b>	2324 Fair Road, Abilene Kansas
<b>Comprehensive Plan:</b>	The Future Land Use Map shows the property's future use as both commercial and industrial.
<b>Sites Existing Zoning:</b>	"R-S, Residential Suburban District"
<b>Surrounding Zoning and Land Use:</b>	North: Agricultural (unincorporated) South: "C-3, General Commercial District," "I-2, Heavy Commercial District," and Agricultural (unincorporated) East: "I-2, Heavy Industrial District" West: "C-3, General Commercial District" and Agricultural (unincorporated)
<b>Land Area:</b>	Contains 65.5 acres, more or less
<b>Notice Date:</b>	This project was published and noticed by mail as required by the Zoning Regulations on November 22, 2016.

### **COMMENTS & FINDINGS**

1. The property is presently used for agricultural purposes, although the Future Land Use Map suggests that the future intent of the property is both commercial and industrial uses. The portion of the property that is closest to Fair Road is shown as commercial, and the remaining portion of the property being shown as industrial.
2. The City has anticipated the development of a industrial/business park in the area from Interstate 70 and Fourteenth Street and from Fair Road to the west boundary of the Highlands subdivision, to include the subject property.
3. The Comprehensive Plan states the following with respect to the subject property and adjacent properties: *"Within the existing City limits there is approximately 200 acres of vacant land zoned for industrial uses. Most of the vacant land is located in the northwest portion of the city and in general there is a full range of services available. However, in some situations infrastructure extensions may be required. This industrial area consists of mostly vacant cultivated land with scattered industrial operations (Russell Stover, [former] ALCO/Duckwall warehouse, Abilene Concrete Plant, fueling station, etc.). With quick [un]congested access to Interstate 70 at Exit 272, this area has a strong potential for warehousing, transportation, manufacturing and industrial support businesses. To date the area has not been platted, improved or marketed as an industrial park."* **Emphasis added.**
4. A proposed truck stop/convenience store would be a compatible use for an industrial/business park in this location.

### **Recommendation and Findings:**

Staff is recommending *approval* of the rezoning request with the following findings as outlined in Article 26-110:

- a) **Consistency with intent and purpose of the zoning regulations** – In general, this proposal is consistent with the intent and purpose as outlined in Article 1 of the regulations.
- b) **Compatibility of proposed use with surrounding uses** – The property is surrounded by land that is mostly undeveloped or developed with industrial or commercial uses that would complement the proposed use. For example, Russell Stover Chocolates has a 219,000 square foot food processing facility located to the east of the subject property. Robson Oil has a fueling station and office located to the south of the subject property. Midwest Concrete Materials, Inc. also has a base of operations south of the subject property. None of these uses would be incompatible with the proposed rezoning.
- c) **Public infrastructure** – The site has adequate infrastructure to serve the site in its present use and should have sufficient access to public infrastructure for any future use in the proposed district. The public infrastructure in the area will have to be extended to serve portions of the property once development occurs, although it is unlikely that development of the entire tract will occur in a short period of time following a rezoning of the property. Development will likely occur in phases, at which time public infrastructure may be extended to serve various sections of the tract. It will be important for public infrastructure to be adequately sized to accommodate future development that may not necessarily occur in Phase I.
- d) **Necessity of the proposal due to changes in the affected area** – The area has not changed greatly over the last decade, although there is an expectation that it will change to a higher use in the future. As previously discussed, the location of the property makes it likely that future development will occur bringing a higher, more intensive use to the primarily agricultural area. The development anticipated to occur in the area is a mix of commercial and industrial.
- e) **Length of time the property has remained vacant** – The property has been undeveloped from time eternal and has been cultivated for agricultural purposes.
- f) **Compatibility of the subject property for the proposed use** – At 65.5 acres, the subject property has the potential to serve several uses within the anticipated commercial and industrial use categories. As shown on the Future Land Use Map, the portion of the tract located closest to Fair Road is anticipated to develop as a commercial use as proposed. Commercial uses are generally located near interstate interchanges and some industrial areas to provide services and businesses that cater to a transient population that uses these facilities. Truck traffic that loads and unloads in industrial areas would also find certain commercial uses, especially those that are allowed in the “C-3, General Commercial District” to be advantageous.
- g) **Whether the Comprehensive Plan is furthered and supported by this proposal** – The Future Land Use Map shows the subject property as both commercial and industrial. The Comprehensive Plan envisions most of the area the subject property is included in to develop as an industrial use, such as an industrial/business park. Therefore, the proposed use is determined to be furthered and supported by the proposed rezoning.

- h) **Adverse impacts on adjacent properties if all conditions placed upon the request are met** – The City would not be able to impose conditions on the property since the request is to rezone the property to a district where the current use would be permitted by right. Even so, the City does not anticipate any adverse impacts on adjacent properties. The City does anticipate additional development may follow the initial development of the property and lead to further development of the surrounding area.
  
- i) **Solid Waste disposal facilities** – Not Applicable
  
- j) **Other items for consideration** – None

**Planning Commission Options:**

1. Recommend approval of the rezoning request.
2. Recommend denial of the rezoning request, with findings justifying the recommended denial; or
3. Table for further information. The Planning Commission will need to specify the information they require to aid in their decision making process.



## MEMORANDUM

**TO:** City Commission  
**FROM:** David Dillner, City Manager  
**SUBJ:** City-Initiated Petition to Vacate the 200 Block of S. Elm Street  
**DATE:** December 30, 2016

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### **ISSUE:**

The City Commission is asked to consider a motion to authorize the City Manager to file a petition with the City Clerk, as required by state law, to vacate the public right-of-way commonly described as the 200 block of S. Elm Street.

### **BACKGROUND:**

Flint Hills Grain, LLC had previously requested a license to use a specified portion of the public right-of-way dedicated for S. Elm Street to construct and operate a fall protection system for its grain elevator operation located at 109 S. Elm Street. The governing body approved Resolution No. 092616-1 approving a license agreement for use of the public right-of-way for the fall protection system.

The governing body conducted a site visit prior to the approval of the aforementioned resolution and discussed the potential of vacating the 200 block of S. Elm Street. Flint Hills Grain, LLC owns property on both sides of the street, and presently uses this section of public right-of-way for its operations. Therefore, vacation of the public right-of-way would revert the property to Flint Hills Grain, LLC as the adjacent private owners of property.

If authorized, the City Manager would file a petition with the City Clerk requesting a vacation of the public right-of-way of the 200 block of S. Elm Street. A Notice of Public Hearing would be published once at a public hearing would be held by the governing body at the first meeting twenty days following publication. The adjacent property owners and the general public would have the opportunity to provide public comment to the governing body for consideration. The governing body would then consider an order to vacate the public right-of-way.

### **STAFF RECOMMENDATION:**

The City Manager recommends authorization of a City-initiated petition to vacate the 200 block of S. Elm Street pursuant to K.S.A. 12-504 *et seq.*, since there is little potential for S. Elm Street to be improved to the south.

### **FISCAL NOTE:**

Vacating this section of public right-of-way would nominally reduce the City's maintenance liabilities for S. Elm Street as these responsibilities would revert to the adjacent property owners.

### **ATTACHMENTS:**

- None



STATE OF KANSAS  
**Ron Estes**  
 TREASURER

900 SW Jackson St. Suite 201  
 Topeka, Kansas 66612-1235

TELEPHONE  
 (785) 296-4151

KARLA EFURD  
 419 N BROADWAY  
 P O BOX 519  
 ABILENE, KS 67410

**December 23, 2016**

Dear Ms Efurd

This is notice of a distribution from the State Treasurer for Abilene, City Of. Our system sends email notices as soon as a distribution has been completed. You may have the emails sent to as many contacts as you like. Please call Lucinda at 785.296.4151 to add or modify email addresses for your notifications.

You will receive an EFT to settle 12/29/2016. The details are as follows:

Detail Description	County	Amount
<b>Dec 2016 Compensating Use Tax</b>		
City Tax File	Dickinson	8,309.50
City Share From County Tax	Dickinson	5,449.71
<b>Total for Dec 2016 Compensating Use Tax:</b>		<b>\$13,759.21</b>
<b>Dec 2016 Sales Tax</b>		
City Tax File	Dickinson	103,718.30
City Share From County Tax	Dickinson	40,407.19
<b>Total for Dec 2016 Sales Tax:</b>		<b>\$144,125.49</b>
<b>Grand Total Amount:</b>		<b>\$157,884.70</b>

Additional information can be found at <http://kansasstatetreasurer.com/prodweb/dist> or contact Lucinda Anstaett at 785.296.4151 or [lucinda@treasurer.state.ks.us](mailto:lucinda@treasurer.state.ks.us).

Sincerely,

Lucinda Anstaett  
 Director Of Cash Management

SALES TAX WORKSHEET 2016									
	SALES (CITY)	SALES (CITY SHARE OF COUNTY)	COMPENSATION USE TAX (CITY)	COMPENSATION USE TAX (CITY SHARE OF COUNTY)					TOTAL
TOTAL	\$ 103,718.30	\$ 40,407.19	\$ 8,309.50	\$ 5,449.71	\$	\$	\$	\$	\$ 157,884.70
GENERAL FUND (58.82% OF CITY SALES AND CITY CU TAX) 001 430070	45.45% \$ 47,139.97	\$ 40,407.19	\$ 3,776.67	\$ 5,449.71	\$	\$	\$	\$	\$ 96,773.54
GENERAL FUND STREET (22.73% OF CITY SALES AND CITY CU TAX) 037 430070	22.73% \$ 23,575.17		\$ 1,888.75		\$	\$	\$	\$	\$ 25,463.92
LIBRARY/POOL PROJECT (41.18% OF CITY SALES AND CITY CU TAX) 036 430070	31.82% \$ 33,003.16		\$ 2,644.08		\$	\$	\$	\$	\$ 35,647.25
	\$ 103,718.30	\$ 40,407.19	\$ 8,309.50	\$ 5,449.71	\$	\$	\$	\$	\$ 157,884.70
					\$	\$	\$	\$	\$ 157,884.70

**CITY OF ABILENE**

**SALES TAX COLLECTIONS**

**CITY OF ABILENE**

**SALES TAX COLLECTIONS**

2016

City - .50 (June, 1983)		County - 1.25 (Jan., 1996) County - 1.00 (July, 1997)										
2016	MONTH COLLECT	2016	2016	2016	2016	2015	2015	2015	2015	2015	2015	%
DATE REC'D		CITY	COUNTY	MONTHLY TOTAL	CURRENT YEAR TOTALS	CITY	COUNTY	MONTHLY TOTAL	YEAR TOTALS	OF PRIOR YEAR		
1/29	November	\$51,284.07	\$45,526.97	\$96,811.04	\$96,811.04	\$60,857.27	\$52,035.89	\$112,893.16	\$112,893.16	85.755%		
2/26	December	\$53,828.47	\$46,430.59	\$100,259.06	\$197,070.10	\$59,875.33	\$55,012.64	\$114,887.97	\$227,781.13	86.517%		
3/30	January	\$50,654.04	\$42,776.26	\$93,430.30	\$290,500.40	\$62,510.21	\$56,671.89	\$119,182.10	\$346,963.23	83.727%		
4/28	February	\$49,518.38	\$44,484.83	\$94,003.21	\$384,503.61	\$49,345.79	\$47,599.04	\$96,944.83	\$443,908.06	86.618%		
5/27	March	\$56,458.58	\$50,388.56	\$106,847.14	\$491,350.75	\$53,272.61	\$49,968.67	\$103,241.28	\$547,149.34	89.802%		
6/29	April	\$56,187.20	\$50,064.17	\$106,251.37	\$597,602.12	\$61,141.76	\$50,841.00	\$111,982.76	\$659,132.10	90.665%		
7/28	May	\$57,048.75	\$50,112.52	\$107,161.27	\$704,763.39	\$56,880.26	\$50,696.57	\$107,576.83	\$766,708.93	91.921%		
8/30	June	\$58,458.07	\$50,111.30	\$108,569.37	\$813,332.76	\$57,610.46	\$50,595.16	\$108,205.62	\$874,914.55	92.961%		
9/29	July	\$58,264.69	\$52,877.24	\$111,141.93	\$924,474.69	\$55,973.57	\$52,487.09	\$108,460.66	\$983,375.21	94.010%		
10/28	August	\$55,338.53	\$49,208.73	\$104,547.26	\$1,029,021.95	\$53,441.79	\$49,312.35	\$102,754.14	\$1,086,129.35	94.742%		
11/29	September	\$52,335.97	\$50,600.68	\$102,936.65	\$1,131,958.60	\$58,605.32	\$54,334.74	\$112,940.06	\$1,199,069.41	94.403%		
12/29	October	\$50,916.64	\$45,856.90	\$96,773.54	\$1,228,732.14	\$56,373.39	\$51,561.83	\$107,935.22	\$1,307,004.63	94.011%		
	<b>TOTALS</b>	<b>\$650,293.39</b>	<b>\$578,438.75</b>	<b>\$1,228,732.14</b>		<b>\$685,887.76</b>	<b>\$621,116.87</b>	<b>\$1,307,004.63</b>				
								\$1,307,004.63				
	<b>ANNUAL BUDGET</b>			<b>\$1,303,000.00</b>				<b>\$1,240,000.00</b>				
	<b>PERCENTAGE OF BUDGET RECEIVED</b>			<b>94.300%</b>				<b>105.404%</b>				
	<b>PERCENTAGE OF BUDGET YEAR</b>			<b>100.000%</b>								

NOTE: Sales tax collections and distributions lag behind by 2 months. Businesses have until the 25th of the following month to send in the sales tax report and money. The Kansas Department of Revenue has until the following month to distribute the money.

CITY OF ABILENE  
SALES TAX COLLECTIONS  
POOL & LIBRARY PROJECTS  
2016

.35% SALES TAX (PASSED NOV 2007) COLLECTIONS STARTED APRIL 1, 2008 (Sunsets in 2018)

2016 DATE REC'D	MONTH COLLECTED FOR	2015		DATE REC'D	2015		2015 YEAR TOTALS	2015 YEAR TOTALS	% OF PRIOR YEAR
		AMOUNT COLLECTED	AMOUNT COLLECTED		AMOUNT COLLECTED	AMOUNT COLLECTED			
1/29	November	\$ 35,904.49	\$ 35,904.49	1/30	\$ 42,606.78	\$ 42,606.78	42,606.78	42,606.78	84.27%
2/26	December	\$ 37,685.85	\$ 73,590.34	2/27	\$ 41,919.32	\$ 84,526.10	84,526.10	84,526.10	87.06%
3/30	January	\$ 35,463.40	\$ 109,053.74	3/30	\$ 43,764.02	\$ 128,290.12	128,290.12	128,290.12	85.01%
4/28	February	\$ 34,668.32	\$ 143,722.06	4/29	\$ 34,547.48	\$ 162,837.60	162,837.60	162,837.60	88.26%
5/27	March	\$ 39,527.22	\$ 183,249.28	5/28	\$ 37,296.68	\$ 200,134.28	200,134.28	200,134.28	91.56%
6/29	April	\$ 39,337.22	\$ 222,586.50	6/29	\$ 42,805.96	\$ 242,940.24	242,940.24	242,940.24	91.62%
7/28	May	\$ 39,940.41	\$ 262,526.91	7/30	\$ 39,822.44	\$ 282,762.68	282,762.68	282,762.68	92.84%
8/30	June	\$ 40,927.08	\$ 303,453.99	8/28	\$ 40,333.66	\$ 323,096.34	323,096.34	323,096.34	93.92%
9/29	July	\$ 40,791.70	\$ 344,245.69	9/29	\$ 39,187.66	\$ 362,284.00	362,284.00	362,284.00	95.02%
10/28	August	\$ 38,743.06	\$ 382,988.75	10/29	\$ 37,415.13	\$ 399,699.13	399,699.13	399,699.13	95.82%
11/29	September	\$ 36,640.93	\$ 419,629.68	11/30	\$ 41,030.17	\$ 440,729.30	440,729.30	440,729.30	95.21%
12/29	October	\$ 35,647.25	\$ 455,276.93	12/28/	\$ 39,467.57	\$ 480,196.87	480,196.87	480,196.87	94.81%
	<b>TOTALS</b>	<b>\$ 455,276.93</b>			<b>\$ 480,196.87</b>				

<b>ANNUAL BUDGET</b>	<b>\$ 414,615.00</b>
<b>PERCENTAGE OF BUDGET RECEIVED</b>	<b>109.81%</b>
<b>PERCENTAGE OF BUDGET YEAR</b>	<b>100.00%</b>

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**CITY OF ABILENE  
SALES TAX COLLECTIONS SPECIAL STREET PROGRAM**

2016

April 2013 .25-Street (Sunsets in 2023)

2016 DATE	MONTH COLLECT	2016 CITY	CURRENT YEAR TOTALS	2015 CITY	2015 YEAR TOTALS	% OF PRIOR YEAR
1/29	November	\$25,647.68	\$25,647.68	\$30,435.33	\$30,435.33	84.269%
2/26	December	\$24,401.51	\$50,049.19	\$29,944.25	\$60,379.58	82.891%
3/30	January	\$25,332.59	\$75,381.78	\$31,261.98	\$91,641.56	82.257%
4/28	February	\$24,764.64	\$100,146.42	\$24,678.32	\$116,319.88	86.096%
5/27	March	\$28,235.50	\$128,381.92	\$26,642.16	\$142,962.04	89.801%
6/29	April	\$28,099.78	\$156,481.70	\$30,577.61	\$173,539.65	90.171%
7/28	May	\$28,530.66	\$185,012.36	\$28,446.39	\$201,986.04	91.597%
8/30	June	\$29,235.47	\$214,247.83	\$28,811.57	\$230,797.61	92.829%
9/29	July	\$29,138.76	\$243,386.59	\$27,992.94	\$258,790.55	94.048%
10/28	August	\$27,675.35	\$271,061.94	\$26,726.78	\$285,517.33	94.937%
11/29	September	\$26,173.74	\$297,235.68	\$29,309.11	\$314,826.44	94.413%
12/29	October	\$25,463.92	\$322,699.60	\$28,192.90	\$343,019.34	94.076%
	<b>TOTALS</b>	<b><u>\$322,699.60</u></b>		<b><u>\$343,019.34</u></b>		
	<b>ANNUAL BUDGET</b>		<b>\$ 297,000</b>			
	<b>PERCENTAGE OF BUDGET RECEIVED</b>		<b>108.65%</b>			
	<b>PERCENTAGE OF BUDGET YEAR</b>		<b>100.00%</b>			

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