

ABILENE CITY COMMISSION - STUDY SESSION AGENDA
DWIGHT D. EISENHOWER MEMORIAL BUILDING - 419 N. BROADWAY AVENUE
March 7, 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. **Economic Development Council Membership**

 - b. **Blight Plan Discussion**

3. **ITEMS PROPOSED FOR THE CONSENT AGENDA**
 - a. **Meeting Minutes: February 27, 2017 regular meeting**

 - b. **Designation of a 1991 Henderson Spreader as surplus property and authorizing its sale and disposition**

4. **ITEMS TO BE PLACED ON THE REGULAR AGENDA**
 - a. **Consideration of a Resolution approving a Professional Services Agreement with Allen and Carter, LLC for prosecution services for the Municipal Court.**

 - b. **Consideration of a Resolution approving a Farm Lease Agreement with Dusty Kuntz concerning the farming of a portion of the Abilene Highlands subdivision.**

 - c. **Consideration of a motion to accept a bid of \$_____ from _____ concerning a dump truck for the Public Works Department contingent on approval of financing for said vehicle. (*Bid opening scheduled for March 10th.*)**

 - d. **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.**

 - e. **Consideration of an Ordinance approving a Conditional Use Permit for 207 Eagle Drive for the construction and placement of an electronic message center.**

5. **REPORTS**
 - a. **City Manager's Report**

6. **MEETINGS OF NOTE** (*Meetings at Abilene Public Library unless otherwise provided*)
 - **City Commission Meeting, March 13 at 4:00 pm**
 - **Planning Commission, March 14 at 4:30 pm**
 - **Economic Development, March 15 at 4:00 pm**
 - **Commission Study Session, March 21 at 4:00 pm (City Hall)**



**Abilene City Commission Minutes
Abilene Public Library
February 27, 2017 @ 4:00 p.m.
Abilene, Kansas**

1. Call to Order

2. Roll Call – City Commission Present: Mayor Marshall, Commissioners Dale, Weishaar and Shafer. Absent: Commissioner Bowers.

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, Community Development Director Holland, Convention and Visitors Bureau Director Roller and Fire Chief Sims.

Others Present: Mike Heronemus and Jenny Dillner.

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

Consent Agenda

4. Agenda Approval for the February 27, 2017 City Commission Meeting
5. Meeting Minutes: February 13, 2017, Regular Meeting and February 21, 2017 Special Meeting
6. Authorization to pay \$276,223.26 as principal and interest for Water Pollution Control Revolving Loan Project No. C20 1657-01
7. Authorization to pay \$41,372.30 as an annual lease payment for the Air Pack Lease Agreement

Motion by Commissioner Weishaar, seconded by Commissioner Shafer to approve the Consent Agenda as presented. Motion carried 4-0.

Public Comments and Communications

8. 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.

9. 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

10. City Manager Farewell Address

The previous six years working for the City of Abilene and serving its citizens has truly been an honor and a pleasure. Before parting, I wish to take a few moments to reflect on accomplishments of the City during my tenure as well as to impart some thoughts for the future. Such accomplishments include:

- Construction of \$3 million of public improvements on E. First Street;
- Construction of \$565,000 of public improvements on NW 11th Street;
- Construction of over \$3 million of public improvements to the runway and taxiway at the Abilene Municipal Airport;
- Construction of public infrastructure for the Dawson Cottage Addition;
- Financing of \$17 million of Memorial Health System improvements;
- Construction of nearly \$800,000 in improvements to the First and Buckeye intersection;
- Financed the acquisition of an aerial ladder truck for the Abilene Fire Department as well as replaced numerous other vehicles and equipment used by various departments;
- Conducted a supervisory training course with front-line and up-and-coming supervisors;
- Implementation of the KLINK resurfacing program for Buckeye Avenue;
- Development of Well No. 22, adding approximately 65 MGY to the City's water supply;
- Successful election of a ten-year, 0.25% sales tax to fund the Local Street Improvement Program that has invested nearly \$750,000 in local street improvements to date;
- Establishment of the Abilene Land Bank and successful negotiation of the Abilene Highlands into the Land Bank for future disposition;
- Negotiation of a Land Exchange Agreement that may eventually lead to development of a portion of the Abilene Highlands;
- Implemented a two-year, \$100,000 Business Investment Grant Program that created a catalyst for over \$650,000 in economic development activity in Abilene;
- Completion of first update to the Zoning Regulations since 2006;
- Increased investment in water and sewer infrastructure maintenance;
- Preservation of the City's "AA+, stable" credit rating from Standard & Poor's;
- Recruitment and selection of Finance Director, Police Chief, Convention and Visitors Bureau Director and Community Development Director;
- Establishment of a community garden in Eisenhower Park;
- Conceptual planning for Phase I of the Abilene Cowboy Trail;
- Planning and coordination for the 2016 Trails, Rails and Tales event celebrating the Chisholm Trail;

These accomplishments, and many others not mentioned, have been completed through the hard work and effort of the City's Department Directors and employees who labor everyday to make Abilene a better place for its citizen. Management has a role to play in any organization's success, but credit should go to where it is due. City employees never ceased to amaze me in the daily application of services provided to the public and they were always ready to respond to any challenge put before them. Their work should be commended because without them, the equality of life in Abilene would be much different.

As a human, I have made my share of mistakes and several projects and initiatives were unsuccessful or not able to reach conclusion during my time in Abilene. The challenge for any manager is to reduce mistakes and

potential risk as much as reasonably possible. It is also imperative that mistakes be considered as opportunities that can refine one's future thinking and actions. The learning opportunities I have experienced in Abilene have allowed me to develop as a city manager and will better prepare me for future endeavors. I pray that such decisions do not infringe upon Abilene's future progress. If this is not the case, I take full responsibility for actions that have occurred during my watch that may negatively affect Abilene in the present or in the future.

There are many things that I leave still in progress that will require continued focus and effort in order to complete. I encourage the governing body and management to continue these efforts so as to continue to improve upon the quality of life in Abilene. Such efforts include:

- Developing a practical and affordable plan to address the long-term public facility needs
- Updating the Parks Master Plan to include a vision for investing in Abilene's recreation infrastructure with special emphasis on bike and pedestrian mobility;
- Determining and implementing strategies to capitalize on the National Bio and Agri-Defense Facility under construction in Manhattan;
- Facilitating a long-term vision for tourism-related amenities that will continue to make Abilene relevant for travelers; and
- Developing a plan to build housing at the Abilene Highlands and reduce the present burden of the development on the taxpayers.

I wish Abilene only the best as it addresses these and other challenges. The future is uncertain and it will be imperative for the City to work together with local and regional partners to make a vision for the community a reality.

It is reasonable to assume that there will be debate and disagreement on many issues in the future, but such discourse is both healthy and necessary in order for a community to find its way among a plethora of possibilities. I encourage the City to remain open to public discourse and to welcome it as a means of procuring the "will of the people." The commission-manager form of government is a representative democracy, and the ultimate decision rests with the governing body. Even so, public engagement should be sought out and used as much as possible when making public decisions, especially those that have great potential to affect the community.

I wish to express my deepest and sincere appreciation for all those who have been supportive of the City and its efforts during my tenure. It takes many to build and sustain a community and the citizens of Abilene have demonstrated time and again that they are up to the challenge. A list of names supporting the City's efforts would be long and I fear I would inadvertently leave someone out who is worthy of recognition so I will refrain from doing so today. Instead, I hope that those who have been supportive will know that I am appreciative for their encouragement and friendship.

To those citizens who have served on appointed boards and commissions, you have provided a much needed connection between the governing body and citizens. Your efforts have shaped Abilene for the better. It has been a pleasure to work with you on the areas of concern under which each of the boards and commissions focus.

I am especially appreciative of the governing body, as presently seated and prior members who have served for granting me the opportunity to serve Abilene and for continued support through the years.

Those Commissioners I have had the pleasure of serving include: Dee Marshall, Tim Shafer, Bruce Dale, Kari Bowers, and Dennis Weishaar, as well as Nesha Bailey Mason, Diane Miller, Lynn Peterson, Brenda Finn Bowers, Angie Casteel and John Ray.

I have learned much from each of you and am truly grateful for the opportunity you have given me in Abilene. I encourage you to refrain from anything that would serve to divide you as a governing body. Debate and discuss, but always stay civil and do not take the job too personally. Stay committed to the commission-manager form of government and all it represents. The future of Abilene rests on your shoulders as a body so you will need to speak with one voice.

To employees of the City, I cannot say enough about how much I have been impressed with your dedication to public service and your steadfast commitment to the community. Your continued efforts have made Abilene a great place to live. Local government is often touted as the level of government "where the rubber hits the road," as it is the level of government closest to the people. The daily actions of the City of Abilene's employees ensure that the services provided directly to citizens are of a high quality. Employees keep citizens safe, care for critical infrastructure, and provide the means for a quality of life unsurpassed by few communities in Kansas.

I am especially proud of the opportunity I have had to work with the Department Directors of the City of Abilene: Jane Foltz, Lon Schrader, Bob Sims, Penny Soukup, Marcus Rothchild, Mike Mohn, Julie Roller and James Holland. As well as others who have served in senior management positions: Mark Heimer, Glenda Purkis, Tim Hamilton and Daniel Shea. I also have the privilege of working with Mark Guilfoyle and Aaron Martin. The administrative staff of Darlene Provance, Shayla Mohr, Karla Efurd, and Jennie Hiatt made the City easier to manage. Without their assistance, I would most assuredly not been able to accomplish anything of great importance.

Each of these folks taught me something that enabled me to become a better manager and each contributed something that made working with the City enjoyable. I only hope that I was able to do the same if even only in a small way for each of them. I am forever indebted to them and wish them well in their endeavors with the City and beyond.

As I depart on another adventure, I wish to reflect on a poem by Robert Frost that I referred to during a Chamber banquet shortly after arriving;

Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth;

Then took the other, as just as fair,
And having perhaps the better claim,
Because it was grassy and wanted wear;
Though as for that the passing there
Had worn them really about the same,

And both that morning equally lay
In leaves no step had trodden black.

Oh, I kept the first for another day!
Yet knowing how way leads on to way,
I doubted if I should ever come back.

I shall be telling this with a sigh
Somewhere ages and ages hence;
Two roads diverged in a wood, and I-
I took the one less traveled by,
And that has made all the difference.

I will miss Abilene even as I continue my professional journey in another community. As I reflect on the past six years and the people that have impacted this segment of my lives' voyage, I know that the road I chose only a few years ago has made all the difference. I am sure to return to Abilene in the future to see the progress the community has made on the matters before it today. I wish you all the best and thank you again for the great opportunity you have provided.

Public Hearings

11. There were no public hearings.

Old Business

12. There was no old business.

New Business

13. Consideration of a motion to accept a bid of \$139,474.00 from Layne Inliner for the 2017 Cure-In-Place Pipe Contract for the City of Abilene, Kansas.

City Manager Dillner presented information regarding the low bid received from Layne Inliner for the 2017 Cure-In-Place Pipe Contract for the City of Abilene.

Public Works Director Schrader stated that \$100,000.00 was budgeted in 2017 and there is an encumbered balance of \$50,000.00 from 2016 for this project.

Motion by Commissioner Shafer, seconded by Commissioner Weishaar to accept the low bid from Layne Inliner in the amount of \$139,474.00 for the 2017 Cure-In-Place Pipe Contract for the City of Abilene. Motion carried unanimously 4-0.

14. Consideration of a Resolution approving a Professional Services Agreement with Allen and Carter, LLC for prosecution services for the Municipal Court of the City of Abilene, Kansas.

City Manager asked that this item be tabled so further information can be obtained.

Motion by Commissioner Shafer, seconded by Commissioner Weishaar to table the approval of a Professional Services Agreement with Allen and Carter, LLC for prosecution services until further information is obtained. Motion carried unanimously 4-0.

15. Consideration of a Resolution approving a Professional Services Agreement with Jay Newton, Jr. to serve as interim City Manager.

City Manager Dillner presented information regarding a Professional Service Agreement with Jay Newton, Jr. The agreement starts on April 1, 2017. Penny Soukup, City Clerk, will serve as interim City Manager from 5:00 p.m. on March 3, 2017 until Jay Newton, Jr. is able to fulfill the duties and responsibilities as provided in the agreement.

Motion by Commissioner Dale, seconded by Commissioner Shafer to approve Resolution No. 022717-2 A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH JAY NEWTON, JR. TO SERVE AS INTERIM CITY MANAGER. Motion carried unanimously 4-0.

16. Consideration of a Resolution approving a Professional Services Agreement with rjs Organization Consultants concerning the recruitment of a city manager.

City Manager Dillner presented information regarding a Professional Services Agreement with Robert Saunders, rjs Organization Consultants, for the recruitment of a new city manager.

Motion by Commissioner Weishaar, seconded by Commissioner Dale to approve Resolution No. 022717-3 A RESOLUTION APPROVING A LETTER OF AGREEMENT WITH RJS ORGANIZATION CONSULTANTS CONCERNING THE RECRUITMENT OF A CITY MANAGER. Motion carried unanimously 4-0.

17. Consideration of a motion to recess into executive session for fifteen minutes for the purposes of discussing attorney-client privileged information to include the City Attorney and City Manager.

Motion by Commissioner Weishaar, seconded by Commissioner Dale to recess into executive session at 4:21 p.m. for fifteen minutes to include the City Attorney and City Manager. Motion carried unanimously 4-0.

18. Consideration of a motion to return from executive session with no action being taken.

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

Reports

19. City Manager's Report

City Manager Dillner said there has been a sales tax spike – 8% above this time last year.

David's last day with the City is Friday, March 3rd. There is a farewell for him on Wednesday from 2:00 p.m. to 4:00 p.m. at the Civic Center.

Commissioner Weishaar thanked City Manager Dillner for his service to the City of Abilene.

Adjournment

20. Consideration of a motion to adjourn the February 27, 2017 City Commission meeting.

Motion by Commissioner Weishaar, seconded by Commissioner Dale to adjourn at 4:40 p.m. Motion carried unanimously 4-0.

(Seal)

Dee Marshall, Mayor

ATTEST:

Penny L. Soukup, CMC
City Clerk



KANSAS

P.O. Box 519

419 N. Broadway

Abilene, Kansas 67410-0519

Phone: 785-263-2550

Fax: 785-263-2552

www.abilenecityhall.com

February 24, 2017

Surplus equipment,

As we are currently inviting bids for a new dump truck, equipped with a new material spreader, the Public Works Department would like to designate a 1991 Henderson spreader as surplus and prepare to sell it as is. The new unit will replace it but we would not sell it until the winter season is over.

Lon

RESOLUTION NO. 031317-1

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ALLEN AND CARTER LLC FOR PROSECUTION SERVICES FOR THE MUNICIPAL COURT OF THE CITY OF ABILENE, KANSAS

WHEREAS, the City of Abilene desires to enter into a Professional Services Agreement with Allen and Carter, LLC ("Prosecutor") to provide prosecution of City violations to the Municipal Court.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Professional Services Agreement. That a Professional Services Agreement with Prosecutor is hereby adopted as attached hereto as **Exhibit A**.

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 27th day of February, 2017.

CITY OF ABILENE, KANSAS

By: _____
Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

EXHIBIT A

Professional Services Agreement

February 13, 2017

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered on this ___ day of February, 2017, between Allen & Carter, LLC ("Prosecutor") and the City of Abilene, Kansas, a Kansas municipal corporation, ("City") with respect to the facts and objectives set forth below.

RECITALS

- A. The City requires a City Prosecutor to provide legal services related to the prosecution of violations of the City Code of the City of Abilene.
- B. Allen & Carter, LLC desires to serve as City Prosecutor ("Prosecutor") and to provide services related to the prosecution of violations of City Code and other applicable local ordinances and regulations and as otherwise provided in this Agreement.

NOW, THEREFORE, in accordance of the mutual promises and the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree to the following terms and conditions:

1. City Prosecutor. Allen & Carter, LLC is hereby appointed to serve as City Prosecutor of the City of Abilene, Kansas, by and through its licensed attorneys and legal assistants of the firm as designated by the lead attorney, Wade Carter. The Prosecutor will ensure that an attorney licensed to practice in the State of Kansas is available to prosecute Municipal Court every Monday beginning at 1:00 pm, except on Mondays designated as holidays by the City or when court is otherwise cancelled by the Municipal Judge. The Prosecutor will also prosecute cases appealed to the District Court at an hourly rate of \$80 per hour on a case-by-case basis upon guidance from the City Manager. The City will also provide a cell phone for use by the Prosecutor for the discharge of official duties of the position.
2. Independent Contractor. The Prosecutor shall be considered an independent contractor, and as such the City shall not be responsible for paying any withholding taxes, workman's compensation insurance, health insurance, or any other insurance or benefits for the Prosecutor. No person employed by the Prosecutor shall be deemed an employee of City. The City shall neither have nor exercise any control or direction over the methods by which the Prosecutor performs legal services hereunder. The sole interest and responsibility of the City is to see that the services covered by this Agreement are performed and rendered in a competent, efficient, and satisfactory manner.
3. Term. The term of this Agreement shall begin on April 10, 2017, and shall continue unless otherwise terminated by either party as provided herein. The parties agree to review the Agreement annually during preparation of the annual budget to determine if the contractual amount for services should be adjusted.
4. Termination for Convenience. Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) days written notice of its intention to terminate the professional relationship.
5. Termination by City for Cause. If Prosecutor fails to fulfill in a timely manner and proper manner its obligations under the Agreement, or if Prosecutor shall violate any of the terms, covenants, conditions, or stipulations of the Agreement, the City have may terminate the Agreement by promptly giving written notice to Prosecutor of such termination and specifying the reasons for the termination and the effective date thereof.

6. Contract Amount. The City agrees to pay the Prosecutor the annual sum of \$35,000, to be paid in equal monthly increments, pro rated as necessary, during the term of this Agreement, for prosecution services for the Municipal Court as defined in this Agreement. The City shall provide payment to the Prosecutor for services rendered by the 15th of the month following the provision of said services.
7. Office and Supplies. The Prosecutor shall provide office, office equipment and supplies as well as office staff to perform the duties specified in this Agreement.
8. Municipal Court Operations. The Prosecutor shall work with the Municipal Judge to establish court hours and days mutually convenient to both parties. The Prosecutor agrees to establish office hours in Abilene to provide time to meet with defendants, attorneys, and police officers. The Prosecutor shall be responsible for completing journal entries, waivers of counsel, witness subpoenas and complaints for Failure to Appear or Comply. The Prosecutor shall also be responsible for the dissemination of reports to defense counsel. The Court Clerk, who is an employee of the City, shall be responsible for preparation of Bench Warrants, for obtaining certified driving records and for service of complaints and/or subpoenas. The Police Clerk, who is an employee of the City, shall be responsible for providing Prosecutor with complete court reports following a "not guilty" plea at first appearance.
9. Conflict of Interest. In the event that a conflict of interest is identified that would prevent the Prosecutor from fulfilling prosecution duties, the Prosecutor will notify the City Attorney to arrange temporary assignment of responsibility to the City Attorney. The Prosecutor shall notify the City Manager when such reassignment is facilitated.
10. Public Funds. The Prosecutor may not obligate City for any monies or purchases, provided that City may agree to reimburse the Prosecutor for forms and software to produce court forms with prior approval by the City Manager.
11. Court Procedures and Policies. The Prosecutor agrees to provide the City Manager with a copy of written policies and procedures related to the prosecution of City violations within ninety days of the effective date of this Agreement. The Prosecutor agrees to supply the City Manager with any amendments to said policies and procedures prior to the implementation of said proposed changes. The City Manager shall have the authority to review and approve all policies and procedures prior to implementation, and reserves the right to consult with the City Attorney, Municipal Judge, Municipal Court Clerk, and Police Chief on any proposed changes to the policies and procedures prior to implementation by the Prosecutor.
12. Delegation of the City's Sovereign Authority. By entering into this Agreement for legal services, the City makes a limited delegation of its sovereign powers to the Prosecutor to the extent necessary to perform the legal services required hereunder pursuant to K.S.A. 12-4110, as amended.
13. Performance and Reports. The City Prosecutor agrees to provide quarterly reports to the City Manager showing aggregate data concerning such metrics as convictions, plea bargains, continuances, etc., in order for the City Manager to understand how the Prosecutor is performing. The City Manager will conduct an annual evaluation of the Prosecutor, to be completed by December 1st.
14. Subcontracting and Assignment. The Prosecutor shall not subcontract any of the Services nor assign any interest or obligation under this Agreement.
15. Cash-Basis Requirements. This Agreement must comply with the applicable provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et. seq., as amended. The City is only obligated to make

payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Agreement during the City's current budget year. Notwithstanding any other provision of this Agreement, in the event that the City does not budget and appropriate funds for any future calendar year, for any reason in its sole discretion, the parties agree that they shall be relieved of all obligations under this Agreement without penalty. To the extent that the City does budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

16. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and supersedes all previous communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement. This Agreement shall be governed by the laws of the State of Kansas. It shall not be modified without the written consent of both of the parties to this agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers or representatives in multiple counterpart copies, each of which shall be deemed an original but constitute one and the same instrument, effective as of the date first set forth above.

CITY OF ABILENE, KANSAS

By: _____
Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

ALLEN & CARTER, LLC

By: _____
Wade Carter

FARM LEASE AGREEMENT

This agreement is entered on the 13th day of March, 2017, by and between the City of Abilene, Kansas, a municipal corporation, "City", and Dusty Kuntz, "Tenant." The terms of the agreement are as follows:

1. **Leasehold.** City hereby leases to Tenant the farm real estate as outlined on attached map as exhibit A:

Said tract consists of (30) acres, more or less, located in Dickinson County, Kansas. At any time that the city sells or transfers ownership of the land for development purposes, all or any portion of the leased premises required by City or its transferee for such development may be removed immediately from this lease agreement with proper payment for investment in existing crops and *pro rata* adjustment in cash rental payment schedule.

2. **Term.** This lease shall be for a term of (5) years commencing on the 1st day of March, 2017, and ending on the 31st day of December, 2021. At the end of this lease, Tenant shall deliver the leased premises to City without further notice, unless extended in writing by the parties.

3. **Consideration.** Tenant shall pay City cash rental of forty dollars (\$40.00) per acre per year in the following manner:

One-half (1/2) due December 1 and One-half (1/2) due July 1 each year with the first payment being due July 1, 2017.

4. **Possession.** Tenant agrees that at the expiration of this lease he will give peaceful possession of said premises to City in equivalent condition, not make or allow any waste thereon, or not make or allow any alteration, specifically with regard to drainage, thereon without the prior written consent of City.

5. **Assignment.** Tenant shall not assign this lease or any interest in the leasehold without the prior written consent of City.

6. **Permitted Uses.** Tenant shall have the right to use the said leased premises for crop farming purposes and may bring farm machinery onto the land temporarily as necessary to carry out the farming tasks.

7. **Prohibited Uses.** Tenant will not any time during the terms of this lease permit any livestock to be grazed upon any portion of the leased premises. Tenant will not erect, maintain or allow any buildings, structures, or objects to remain or be placed upon the leased premises. Tenant further agrees not to use or allow the leased premises to be used by any assembly of persons or in such a manner as might attract or bring together an assembly of persons thereon.

8. **Entry.** City shall have a right of entry upon the leased premises for the purpose of removing and preventing the construction or erection of any building, structures or facilities and the growth of any trees or other objects upon the land, other than those herein expressly reserved to Tenant.

9. **Breach.** Upon the default in the payment of the rent as provided herein, or the violation of any of the preceding covenants or provisions, City, at its election, may either take court action for said rent due or declare this lease at an end and recover the same as if held by forcible detainer. It is further understood and agreed that any crops growing upon the premises upon the election of City declaring this lease at an end shall become the property of the City. It is further agreed that, in the event City makes said election, that, in addition to the provisions in this paragraph, City will be entitled to one year's rent as liquidated damages for the default in said lease agreement in addition to the growing crop becoming the property of City.

10. **Effect.** This lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, trustees, successors and assigns of the parties hereto.

11. **Integration.** This lease contains all of the terms of the agreement between the parties, and any additions or modifications shall be in writing and executed in the same manner as this lease.

In Witness Whereof, the parties have executed this lease agreement on the dates indicated below.

THE CITY OF ABILENE, KANSAS
By: Dee Marshall, Mayor

Dusty Kuntz

Attest:

Penny Soukup, City Clerk

Dated: _____

Dated: _____



40

70

40

70

2300 AVE

2300 AVE

NW 47th St

Broadfoot Dr

Flag Rd

Flag Rd

Bowling Dr

Par Dr

Google

© 2017

Imagery © 2017 Google, Map data © 2017

Great Life Golf & Fitness



MEMORANDUM

TO: City Commission
FROM: James D. Holland, Community Development Director
SUBJ: PC 16-10: Zoning text amendment to Section 20-1201 regarding home occupations
DATE: February 27, 2017

ISSUE:

This request seeks to allow home occupations as a Conditional Use in the R-3, Heavy Residential District.

BACKGROUND:

Currently home occupations are allowed by right in the R-1 and R-2 zoning districts. However, they are prohibited in the R-3 district, which encompasses a significant area of residential development. The previous ordinance presented to the City Commission would have allowed home occupations by right, but due to concerns regarding high-density residential developments such as apartment complexes, it was remanded to the Planning Commission for further consideration.

The amended ordinance, which is attached, includes a provision that reads, "... and shall be permitted as a conditional use in the "R-3" Heavy Density Residential District", subject to the following:." This text addresses the concerns previously raised by the Governing Body. On February 10, 2017, the Planning Commission reviewed this proposed amendment and recommended approval (5-0) with the following conditions:

RECOMMENDATION:

Staff recommends approval of the text amendment as presented in Ordinance 3318 in accordance with the finds of the Planning Commission.

FISCAL NOTE:

Approval of the application does not have a direct fiscal impact on the community. However, removing barriers to starting a business allows people to create businesses that may contribute to the tax and employment base in the future.

ATTACHMENTS:

- Ordinance No. 3318.

ORDINANCE NO. 3318

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 by right in the "A, Agricultural" District, and the "CS, Countryside" District, "MHS, Mobile Home Subdivision" District, the "R-1, Low Residential" and "R-2, Medium Density" Residential Districts and shall be permitted as a conditional use in the "R-3, Heavy Density Residential District", 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, Medium Density" or "R-3, Heavy Density" 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.



MEMORANDUM

TO: City Commission
FROM: James D. Holland, Community Development Director
SUBJ: PC 16-13: Conditional Use Permit to allow an Electronic Message Center in the C-3 zoning district
DATE: February 27, 2017

ISSUE:

The applicant wishes to install an Electronic Message Center (EMC) in the C-3 – General Commercial District, pursuant to Section 27-401(c), which requires the issuance of a conditional use permit.

BACKGROUND:

Astra Bank plans to install an EMC on it's property located at 207 Eagle Drive for the purposes of identifying the bank and displaying information on the services they offer.

On February 10, 2017, the Planning Commission held a public hearing on the CUP application and recommended approval (5-0) with the following conditions:

1. The proposed sign be less than the maximum gross square footage surface area, which is 100 square feet per side, for on-site adverting signage in the "C-3, 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 th 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 Section 27-401(h) with respect to metal and illuminated signs that have internal wiring or attached electrically-wired accessory fixtures. The sign must maintain a free clearance to 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 shall conform with the City's adopted Electric Code (2002 National Electric Code).
4. Only one electronic message center will be allowed on the subject property.

5. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
6. The message change shall occur no less than fifteen seconds.
7. A dimming device or means of glare reduction must be installed and implemented at dusk after sundown.
8. The property owner shall landscape the area and provide such plantings as may be necessary to reduce glare and off-site impacts.

There were three citizens who expressed concerns about the EMC being located near the residential development to the south.

RECOMMENDATION:

Staff recommends approval in accordance with the finds of the Planning Commission and the conditions as stated above.

FISCAL NOTE:

Approval of the application does allow for structural investment on property, which directly enhances the tax base. More importantly, approval would allow a new business location to use a basic on-site advertising structure to promote business.

ATTACHMENTS:

- Ordinance No. 3321;
- Staff memo to the Planning Commission.

ORDINANCE NO. 3321

AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT FOR 207 EAGLE DRIVE FOR THE CONSTRUCTION OF AN ELECTRONIC MESSAGE CENTER

WHEREAS, the Planning Commission reviewed an application submitted by Joe Leiker, of Baudy Enterprise, dba Commercial Sign co. as agent to Astra Bank, concerning the issuance of a Conditional Use Permit for the construction of an electronic message center (“sign”) in a “C-3, General Commercial District” at property addressed as 207 Eagle Drive, Abilene, Kansas (“property”);

WHEREAS, the Planning Commission conducted a Public Hearing per Article 26 of the Zoning Regulations of the City of Abilene, Kansas, on February 10, 2017, and following public comment recommended approval of a Conditional Use Permit allowing the construction of the Sign on the above referenced Property.

NOW, THEREFORE BE IT ORDAINED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Conditional Use Permit. That a Conditional Use Permit (“Permit”) is hereby approved for the construction of a Sign to Astra Bank subject to the conditions provided in this Ordinance and all supporting and supplementary documentation as provided in **Exhibit A**, attached hereto.

SECTION TWO. Legal Description of Property. The Permit shall apply to property legally described as:

Lot 1, Block 1, Astra Bank Addition to the City of Abilene.

And more generally described as 207 Eagle Drive in the City of Abilene, Kansas.

SECTION THREE. Permit Conditions: Approval. Per Section 26-110 of the Zoning Regulations, the Planning Commission may impose, and the City Commission may approve, reasonable conditions on the approval of a Conditional Use Permit. The following conditions are incorporated into the Conditional Use Permit, and the applicant must demonstrate compliance with all conditions during the effective period of the Conditional Use Permit:

1. The proposed sign be less than the maximum gross square footage surface area, which is 100 square feet per side, for on-site adverting signage in the “C-3, 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 th 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 Section 27-401(h) with respect to metal and illuminated signs that have internal wiring or attached electrically-wired accessory fixtures. The sign must maintain a free clearance to 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 shall conform with the City's adopted Electric Code (2002 National Electric Code).

4. Only one electronic message center will be allowed on the subject property.
5. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
6. The message change shall occur no less than fifteen seconds.
7. A dimming device or means of glare reduction must be installed and implemented at dusk after sundown.
8. The property owner shall landscape the area and provide such plantings as may be necessary to reduce glare and off-site impacts.

SECTION FOUR. Implementation. The Zoning Administrator, or designee, is hereby authorized to issue a Conditional Use Permit upon receiving sufficient evidence that all conditions designated for prior approval have been reasonably met.

SECTION FIVE. 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 13th day of March, 2017.

CITY OF ABILENE, KANSAS

By: _____
S. Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

APPROVED AS TO FORM:

Aaron O. Martin, City Attorney

STAFF REPORT

PC 16-13 Conditional Use Permit, at the request of the Joe Leiker, agent to property owner Astra Bank, for the placement of an electronic message center in a "C-3, General Commercial District"

Date:	February 10, 2017
Owner:	Astra Bank
Applicant:	Joe Leiker, of Baudy Enterprises dba Commercial Sign Co. as agent to property owner
Requested Action:	Conditional Use Permit
Purpose:	Placement of an electronic message center for on-site advertising
Location address:	207 Eagle Drive, Abilene, Kansas
Comprehensive Plan:	Key Issue 3 – Lack of coordinated marketing efforts to promote economic and cultural activities; Goal B – Market Abilene to Abilenians
Sites Existing Zoning:	"C-3 General Commercial District"
Surrounding Zoning and Land Use:	North: "C-3, General Commercial District" with South: "R-1, Low Density Residential District" East: "C-3, General Commercial District" West: "C-3, General Commercial District"
Land Area:	1.5 acres, more or less
Notice Date:	Notice of the Public Hearing was published in the Abilene Reflector-Chronicle on January 24, 2017 and by mail as required by the Section 26-102 of the Zoning Regulations.

COMMENTS

1. Astra Bank requests a conditional use permit to construct an electronic message center for the purposes of onsite-advertising. Astra Bank is constructing a new building at 207 Eagle Drive, which is the subject property.
2. Section 27-401(c) of the Zoning Regulations was recently amended with the adoption of Ordinance No. 3292 and states the following with respect to electronic message centers:

"Electronic message centers shall be permitted in Commercial, Industrial, and Public Use Districts only upon issuance of a conditional use permit in accordance with Article 26. In considering a conditional use permit application, the Planning Commission and Governing Body may impose requirements related to size, maximum illumination (including incorporating automatic dimmer controls), transition and hours of operation, or other conditions as deemed necessary and appropriate by the Planning Commission and Governing Body."

3. The City has received comments from Maureen Dawson and Stew Etherington in opposition to the proposed electronic sign due to its potential impact to residential properties.

RECOMMENDATION AND FINDINGS

Staff recommends approval of a conditional use permit for an electronic message center to be located at the subject property based on the following considerations outlined in Article 26-108 and 26-110:

1. **Whether the change in classification would be consistent with the intent and purpose of these regulations.** Article 27 of the Zoning Regulations provides regulations for signage so as to "preserve, protect and promote the public health, safety, and general welfare." The Article further states the intentions of "encouraging the reasonable, orderly and effective display of signs; enhance the physical appearance of the city; reduce visual clutter; prevent blighting influences; protect property values; provide minimum standards to safeguard life, health, and property by regulating and controlling the size, height, design, quality of materials, construction, location, electrification and maintenance of all signs and sign structures; and authorize the use of signs which are compatible with their surroundings." Staff has no evidence that the proposed use would be inconsistent with the aforementioned intent and purpose of Article 27.
2. **The character and condition of the surrounding neighborhood and its effect on the proposed change.** The subject property is located in an area of the community that is a mix of commercial and residential. Presently, the properties located south of the subject property is zoned residential and contains two units. The sign is proposed to be located in the northwest corner of the site, and will still be visible from the residential properties located to the south of the site. As such, the proposed sign may have a negative effect on the adjacent properties depending on alignment, brightness, and hours of operation, etc.
3. **Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and if so, the nature of such changed or changing conditions.** The catalyst for the proposed Conditional Use permit is not necessitated by a change of the conditions to the area. Astra Bank is constructing a new building on the site and desires to provide advertising for its offerings in a location that is more readily accessible for the traveling public. The area has had a commercial development pattern over the years, although residential development began in the Dawson Cottage Addition a few years ago. The electronic message center should balance the commercial use with the adjacent residential use, if at all possible.
4. **The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such change in classification.** As previously mentioned, the subject property is in an area that has a mix of land uses.
5. **Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity.** The subject property is presently zoned as "C-3 General Commercial District" The subject matter of the request is whether to allow an electronic message center on the property. If the Conditional Use Permit is approved, it may diminish the uses that are currently allowed on the property by right or conditionally. Residential units to the south of the proposed location may be negatively affected by the placement of the sign. Actions to mitigate the off-site effects should be considered so as to minimize any potential negative impacts on adjacent properties.

6. The suitability of the applicant's property for the uses to which it has been restricted. The property has been rezoned for commercial use and Astra Bank is presently developing a bank facility on the site. The proposed electronic message center is allowed by conditional use permit, but as previously mentioned, may have a negative impact on adjacent properties. If the Planning Commission elects to recommend approval of the conditional use permit, it may wish to impose restrictions that would mitigate the off-site impacts as much as possible.
7. The length of time the subject property has remained vacant or undeveloped as zoned. An electronic message center has never been located on the site. The site has had commercial development on it for at least a few decades. The Eagles Lodge used to be located on the site prior to the development of the bank building.
8. Whether adequate sewer and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on the property if it were reclassified. This point is not applicable to the proposed request.
9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development. This point is not applicable to the proposed request.
10. The recommendations of professional staff and advisors. Staff recommendations are discussed below.
11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan. Key Issue 3 in the Comprehensive Plan identifies the "lack of coordinated marketing efforts to promote economic and cultural activities." Goal B of Key Issue 3 establishes the goal of "marketing Abilene to Abilenians." Staff is of the opinion that the proposed electronic message center aligns with these two points in the Comprehensive Plan, and will allow the Astra Bank to market its offerings, as an economic activity, to the general public.
12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification. The hardship created if the sign is not approved may be the potential loss of revenue by property owner if they do not have the ability to market their business offerings. It would be difficult to determine if a loss of revenue resulted from a lack of electronic message signage as the bank would have other means of advertising its products and has a pre-established customer base.
13. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application.

Staff recommends approval of a conditional use permit for an electronic message center to be located at the subject property based on the following considerations outlined in Article 26-110:

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations. Please refer to Item 1 in the aforementioned section.
2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood. Astra Bank should take actions to mitigate the impact of the electronic message center on the adjacent residential properties to the south. Such actions may include aligning the sign north and south so the sign faces east and west, placing the sign as far from the residential uses and the property will allow, planting natural landscaping to reduce the effects of glare on off-site properties, dimming the sign after dusk, and turning the sign off after 9:00 or 10:00 pm.
3. Whether the proposed use places an undue burden on the existing public infrastructure in the area affected, and if so, whether additional infrastructure can be provided. Electric service in the area is provided by Westar Energy and is adequate to accommodate the proposed use. Therefore, staff does not believe that an undue burden is placed on existing infrastructure.
4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected. Please refer to Item 3 in the aforementioned section.

Recommended Conditions

Staff recommends approval of a conditional use permit for an electronic message center to be located at the subject property with the following conditions:

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-3 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 Section 27-401(h) with respect to metal and illuminated signs that have internal wiring or attached electrically-wired accessory fixtures. The sign must maintain a free clearance to 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 shall conform with the City's adopted Electric Code (2002 National Electric Code).
4. Only one electronic message center will be allowed on the subject property.
5. The electronic message center shall only display static, non-animated messages and images. Videos or other dynamic images or messages are not permitted.
6. The message change shall occur no less than fifteen seconds.

7. A dimming device or means of glare reduction must be installed and implemented at dusk after sundown and the sign will be turned off for advertising purposes after 10:00 pm.
8. The property owner shall align the sign north and south so that the face shows east and west, and shall landscape the area and provide such plantings as may be necessary to reduce glare and off-site impacts.

Planning Commission Action

Per Section 26-104(a) of the Zoning Regulations, the Planning Commission has the following options with respect to this item:

1. Recommend to the governing body approval of the proposed ordinance that would permit the conditional use of an electronic message center on the subject property subject to the conditions recommended by the Planning Commission.
2. Recommend to the governing body partial approval of the proposed ordinance that would permit the conditional use of an electronic message center on the subject property subject to the conditions recommended by the Planning Commission. The Planning Commission would need to specify the parts of the proposed ordinance that are recommended for approval and which are not recommended for approval.
3. Recommend to the governing body denial of the proposed ordinance that would permit the conditional use of an electronic message center on the subject property subject to the conditions recommended by the Planning Commission.

All options will require the Planning Commission to include with its recommendation reasons for such recommendation to the governing body. If a motion for approval fails to gain approval for any reason, the application is deemed to have been denied and will be submitted to the governing body.

Dickinson County Property Data - 0211120904001009000

