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**Mayor**  
Ben White  
**Mayor Pro Tem**  
Dave Ruesink  
**City Manager**  
Glenn Brown

**Councilmembers**  
John Crompton  
James Massey  
Dennis Maloney  
Katy-Marie Lyles  
Lawrence Stewart

**Agenda**  
**College Station City Council**  
**Workshop Meeting**  
**Thursday, March 11, 2010 3:00 p.m.**  
**City Hall Council Chambers, 1101 Texas Avenue**  
**College Station, Texas**

1. Presentation, possible action, and discussion on items listed on the consent agenda.
2. Presentation, possible action, and discussion regarding a request for consent to incorporate submitted to the Council by “Citizens for Wellborn”, including consideration of pros and cons for the City should consent be granted and a discussion of alternative (to incorporation) means of addressing objectives stated by “Citizens for Wellborn” and consideration of Resolutions for and against the granting of consent for incorporation.
3. Presentation, possible action, and discussion regarding modifications to Chapter 7 Health & Sanitation, Section 1 through 3 of the City of College Station Code of Ordinances as it relates to noise and nuisance.
4. Presentation, possible action, and discussion regarding the adoption of the Wolf Pen Creek Water Feature and Festival Area Master Plan as an element of the Wolf Pen Creek Master Plan.
5. Presentation, possible action, and discussion regarding a possible City response to the Google Fiber Request for Information (RFI).
6. Council Calendar
  - March 12 "Green" Mini Seminar at Public Works Office - 2nd Floor of CS Municipal Court (300 Krenek Tap) at 6:00 p.m.
  - March 16 Transportation Committee Meeting in Council Chambers, 4:30 p.m.
  - March 18 Planning & Zoning Workshop/Regular Meeting in Council Chambers at 6:00 p.m.
  - March 22 2010 Citizens University at Public Works, 5:30 p.m.
  - March 22 2010 Spring Girls Opening Ceremonies at Stephen C. Beachy Central Park - Softball Fields, 6:00 p.m.
  - March 25 Council Workshop/Regular Meeting in Council Chamber at 3:00 p.m. and 7:00 p.m.
  - March 26 Grand Opening - TTI State Headquarters & Research Building at 2935 Research Parkway, 2:00 p.m.
7. Presentation, possible action, and discussion on future agenda items: A Council Member may inquire about a subject for which notice has not been given. A statement of specific factual information or the

## City Council Workshop Meeting

Thursday, March 11, 2010

recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

8. Discussion, review and possible action regarding the following meetings: Arts Council of the Brazos Valley, Audit Committee, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Wide Area Communications Task Force, Cemetery Committee, Code Review Committee, Design Review Board, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Committee, Metropolitan Planning Organization, National League of Cities, Outside Agency Funding Review, Parks and Recreation Board, Planning and Zoning Commission, Sister City Association, TAMU Student Senate, Research Valley Partnership, Regional Transportation Committee for Council of Governments, Texas Municipal League, Transportation Committee, Wolf Pen Creek Oversight Committee, Wolf Pen Creek TIF Board, Zoning Board of Adjustments, BVSWM, Signature Event Task Force, (Notice of Agendas posted on City Hall bulletin board).
  
9. Executive Session will immediately follow the workshop meeting in the Administrative Conference Room.
 

Consultation with Attorney {Gov't Code Section 551.071}; possible action. The City Council may seek advice from its attorney regarding a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. Litigation is an ongoing process and questions may arise as to a litigation tactic or settlement offer, which needs to be discussed with the City Council. Upon occasion the City Council may need information from its attorney as to the status of a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed:

  - a. City of Bryan's application with TCEQ for water & sewer permits in Westside/Highway 60 area, near Brushy Water Supply Corporation to decertify City of College and certify City of Bryan
  - b. Discussion of Legal Issues Regarding: Wellborn Incorporation Request
  - c. Water CCN / 2002 Annexation / Wellborn Water Supply Corporation
  - d. Sewer CCN permit requests for Brushy & Wellborn Services Areas
  - e. Water CCN permit requests for Brushy & Wellborn Services Areas
  - f. Legal aspects of Water Well, permits and possible purchase of or lease of water well sites
  - g. TMPA v. PUC (College Station filed Intervention)
  - h. City of Bryan suit filed against College Station, Legal issues and advise on Brazos Valley Solid Waste Management Agency contract, on proposed methane gas contract
  - i. Update on legal proceedings for Grimes County Landfill site and contracts for development of Grimes County site
  - j. Weingarten Realty Investors v. College Station, Ron Silvia, David Ruesink, Lynn McIlhaney, and Ben White
  - k. Chavers et al v. Tyrone Morrows, Michael Ikner, City of Bryan, City of College Station, et al
  - l. Rogers Sheridan v. Barbara Schob & Greg Abbott
  - m. Clancey v. College Station, Glenn Brown, and Kathy Merrill
  - n. Verizon v. City of College Station
  - o. Legal Aspects of Brazos Valley Convention & Visitors Bureau Articles of Incorporation and Bylaws
  - p. Contemplate Litigation, Legal remedies available to abate weeds, rubbish, brush and other unsanitary matter from a lot in the College Hills residential area.

City Council Workshop Meeting

Thursday, March 11, 2010

Personnel {Gov't Code Section 551.074}; possible action

The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session discussion, any final action or vote taken will be in public. The following public officer(s) may be discussed:

- a. City Secretary

Economic Incentive Negotiations {Gov't Code Section 551.087}; possible action

The City Council may deliberate on commercial or financial information that the City Council has received from a business prospect that the City Council seeks to have locate, stay or expand in or near the city with which the City Council in conducting economic development negotiations may deliberate on an offer of financial or other incentives for a business prospect. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed:

- a. Proposed Area Bio-Technology Corridor
- b. Spring Creek Business Park, location of Education Prospect

10. Action on executive session, or any workshop agenda item not completed or discussed in today's workshop meeting may be discussed in tonight's Regular Meeting if necessary.

11. Adjourn.

APPROVED:

\_\_\_\_\_  
City Manager

Notice is hereby given that a Workshop Meeting of the City Council of the City of College Station, Texas will be held on the 11<sup>th</sup> day of March, 2010 at 3:00 pm in the City Hall Council Chambers, 1101 Texas Avenue, College Station, Texas. The following subjects will be discussed, to wit: See Agenda

Posted this 8<sup>th</sup> day of March, 2010 at 2:00 pm



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

I, the undersigned, do hereby certify that the above Notice of Meeting of the Governing Body of the City of College Station, Texas, is a true and correct copy of said Notice and that I posted a true and correct copy of said notice on the bulletin board at City Hall, 1101 Texas Avenue, in College Station, Texas, and the City's website, [www.cstx.gov](http://www.cstx.gov) . The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on March 8, 2010 at 2:00 pm and remained so posted continuously for at least 72 hours proceeding the scheduled time of said meeting.

This public notice was removed from the official board at the College Station City Hall on the following date and time: \_\_\_\_\_ by \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF COLLEGE STATION, TEXAS

By \_\_\_\_\_

City Council Workshop Meeting  
Thursday, March 11, 2010

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ Notary Public – Brazos County, Texas My commission expires: \_\_\_\_\_

This building is wheelchair accessible. Handicap parking spaces are available. Any request for sign interpretive service must be made 48 hours before the meeting. To make arrangements call (979) 764-3517 or (TDD) 1-800-735-2989. Agendas may be viewed on [www.cstx.gov](http://www.cstx.gov). Council meetings are broadcast live on Cable Access Channel 19.

**March 11, 2010**  
**Workshop Agenda Item No. 2**  
**Wellborn Request for Consent to Incorporate**

**To:** City Council

**From:** Glenn Brown, City Manager

**Agenda Caption:** Presentation, possible action, and discussion regarding a request for consent to incorporate submitted to the Council by "Citizens for Wellborn", including consideration of pros and cons for the City should consent be granted and a discussion of alternative (to incorporation) means of addressing objectives stated by "Citizens for Wellborn" and consideration of Resolutions for and against the granting of consent for incorporation.

**Recommendation:** Staff recommends against the granting of Consent to Incorporate and that Council provides further direction relative to the application and pursuit of alternatives to incorporation.

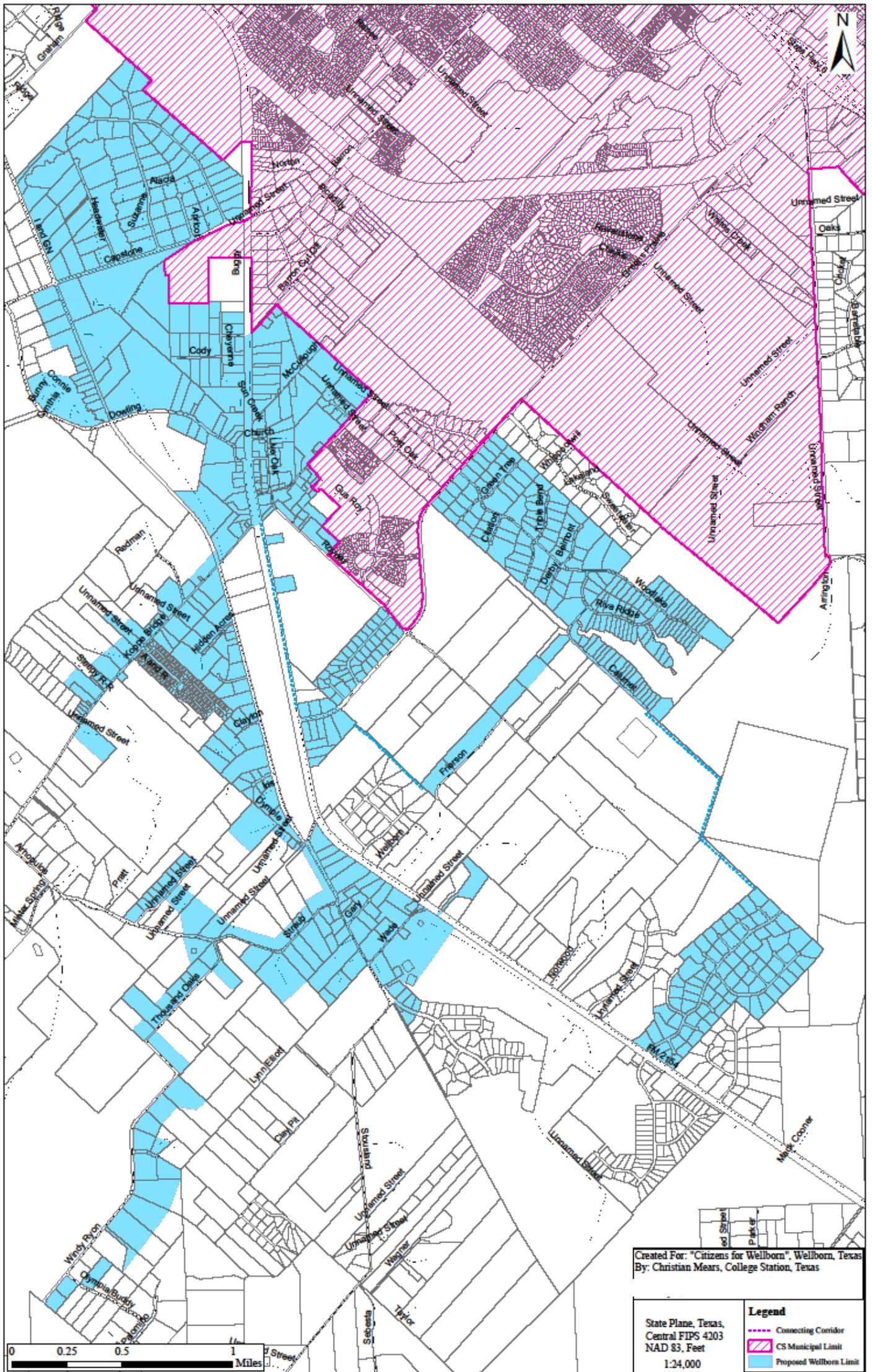
**Summary:** On February 2, 2010 residents of the Wellborn area presented a request to the City Council for Consent to Incorporate an area adjacent to College Station. At their February 11<sup>th</sup> meeting the Council directed staff to prepare a workshop item for March 11<sup>th</sup> detailing the pros and cons to the City of incorporation of the area identified in the request and further to provide information regarding alternative means (alternative to incorporation) to address the objectives for incorporation as stated by the Wellborn area residents. Council has further indicated that they may consider conducting a public hearing on the request at a later Council meeting.

Staff has met with representatives of the Citizens for Wellborn Executive Committee. On February 19<sup>th</sup> staff requested further information from the Executive Committee relative to the pros and cons of incorporation and the Committee's stated objectives. Staff has met with developers/builders working near the area identified in the request for consent. Staff has discussed the request for Consent to Incorporate with a number of property owners in the ETJ (both within the proposed incorporated area and outside of the area). Further, the various City departments responsible for delivery of public services have met and discussed the requested action. The information contained within the presentation is the combination of the results of these discussions and other analyses performed by staff.

**Budget & Financial Summary:** Varies – Detailed information will be provided at the Council workshop

**Attachments:**

1. Citizens for Wellborn Coversheet accompanying the Application Seeking Consent for Incorporation of Wellborn
2. Citizens for Wellborn "Filer's Certification" of the Application Seeking Consent for Incorporation of Wellborn
3. Citizens for Wellborn informational document "Exploring the Incorporation of Wellborn, Texas"
4. Map representing the area proposed for incorporation
5. Copy of LCG 42.041
6. Copy of State of Texas ex rel. WD Needham et al v. Jess Wilbanks et al – Supreme Court of Texas (1980)
7. Resolution granting consent to incorporate
8. Resolution denying consent to incorporate



President Jane W. Cohen  
Citizens for Wellborn  
690-3500  
j-cohen@aggienetwork.com

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Vice Pres. A. P. Boyd & Cindy Robinson  
Secretary Karen Severn  
Treasurer Robert S. Cohen  
P.O. Box 422, Wellborn, TX 77881

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February 2, 2010  
Connie Hooks  
College Station City Secretary  
1101 Texas Avenue, P.O. Box 9960  
College Station, TX 77842

Dear Ms. Hooks:

The Citizens for Wellborn respectfully submit the attached application and petition seeking consent from the City of College Station for the incorporation of Wellborn as a municipality. As required by Texas Local Government Code, Section 42.041, the residents of Wellborn seek consent from College Station to release Wellborn from its extra-territorial jurisdiction.

The residents of Wellborn wish to have an election on the issue of incorporation as a municipality at the next uniform election date of May 8, 2010; therefore, your prompt attention to the application and petition are greatly appreciated so that we can meet the required deadlines imposed by State law for such an election. We request placement of this issue, including the application and petition for approval and acceptance on the February 25, 2010 College Station Council Agenda.

If you have any questions, please feel free to contact me (979-690-3500) or our legal counsel, Alan J. Bojorquez (512) 250-0411.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Jane W. Cohen'.

Jane W. Cohen

STATE OF TEXAS

COUNTY OF BRAZOS

FILER'S CERTIFICATION

The document entitled, "Application Seeking Consent for Incorporation of Wellborn", was personally submitted by me to the Office of the City Secretary for the City of College Station, Brazos County, Texas, on this, the 2nd day of February 2010.

Jane W. Cohen
Signature of Person Filing Application

Jane W. Cohen
Printed Name of Person Filing Application

NOTARIZATION

BEFORE ME, the undersigned authority, on this day personally appeared Jane W. Cohen [printed name of Filer], who acknowledged to me and by oath stated that the facts herein stated above are true and correct.

GIVEN UNDER MY HAND & SEAL of office this, the 2nd day of February, 2010.

Connie Hooks
Signature of Notary Public

CONNIE HOOKS
Printed Name of Notary Public

Commission expires: 2-18-2010



# Exploring the Incorporation of Wellborn, Texas

Submitted to the College Station City Council

2/2/2010

Citizens for Wellborn

A non-profit organization

## **Exploring the Incorporation of Wellborn, Texas**

Prepared by Karen W. Severn, Secretary, Citizens for Wellborn

Submitted to

The City of College Station City Mayor and Council Members

### **Background.**

The town of Wellborn began as a construction camp for the Houston and Texas Central Railroad. On the 1867 Brazos County map drawn by C.C. Stremme, the town of ‘Wellburn’ is shown as one of four towns in Brazos County.<sup>1</sup> During its early existence, Wellborn was a railroad town and a cattle shipping point. In the past, Wellborn maintained its own schools and served as the last stop before the “College.” In the mid 20<sup>th</sup> century, Wellborn dwindled to a small population. Today, the town boasts several small businesses (including a woman-owned historically underserved business), the Precinct 1 Fire Station, churches, cemeteries, dining establishments, and the Wellborn Community Center. The estimated population included in the proposed city limits of Wellborn exceeds 2170.<sup>ii</sup>

Wellborn provides rural living for residents of the county that is conveniently located near medical, educational, and retail opportunities, but allows for agricultural pursuits and a slower pace than the larger cities of College Station and Bryan. Many families have lived in Wellborn for decades, passing down traditions and land. Beginning in the 1970s, several rural subdivisions were developed, including Woodlake (formerly Woodlake and Equestrian Estates), Quarter Horse Ranch, and Saddle Creek. These new neighborhoods complemented the lifestyle of many Wellborn residents because of the acceptability of keeping horses and other livestock ‘at home.’

Wellborn exists in a mutually beneficial relationship with College Station, Bryan, and Texas A&M University. The availability of rural living is attractive to many businesses and possible employees. Additionally, Wellborn is already a destination. The Wellborn Community Center is a sought-after site for office gatherings and retreats, wedding receptions, social events, and university-related activities. Visitors also enjoy great food and BBQ, live music, and the friendliest small US Post Office in the country.

Beginning in the 21<sup>st</sup> Century, residents of Wellborn became increasingly concerned that their rural lifestyle was in jeopardy. Encroaching developments of tract housing caused residents to become more proactive in staying informed of College Station development plans. The City of College Station is conscientious in staying ahead of development and ensuring that their annexation plan remains current.

In 2008, community meetings were held and speakers have included Charlie Stone from the Office of Rural Community Affairs, our State Representative Fred Brown, and County Commissioner Lloyd Wasserman, among others. The idea of incorporating as a small rural town began to take root. Interested residents began exploring laws and regulations and shared their findings with the community. Because Wellborn exists in the ETJ of College Station, we will need to have permission from the City of College Station before we can vote on the issue of incorporation. We are now asking that residents of Wellborn be allowed to vote.

## Assessment.

In 2009, Citizens for Wellborn was officially created to serve as an interest group for the residents of Wellborn. The CS Comprehensive Plan of 2009 showed that annexation was proposed in 0-3 years for some parts of the area, and 3-10 years in other parts. While residents of Wellborn recognize that change and growth are inevitable, we want the privilege and the responsibility to govern our development. Like College Station residents, we also enjoy a quiet orderly life, but we want to pursue the lifestyle we have chosen.

Pursuing incorporation has not been entered into lightly or on a whim. Citizens for Wellborn has held several fundraisers to obtain the moneys necessary to explore the possibility. To that end, we have engaged the legal services of Alan Bojorquez in Austin, Texas, to guide us through the procedure. We have also used the manual created by Charlie of ORCA to answer the vital questions on whether incorporation is our best path.<sup>iii</sup>

To gauge resident interest in various projects, during the January 23, 2010, Chili Supper at the Wellborn Community Center, an informal brainstorming session was held. Questions such as “What does Wellborn Like to Do?” and “What does Wellborn do Well?” were written on posterboard sized paper around the room. The results are compiled in Appendix A and illustrate the unique character of our community. Thus, Wellborn is beginning purposefully, not blindly.

During our research, we also found the City of Austin Policy for Extraterritorial Jurisdiction (ETJ) Adjustments<sup>iv</sup>. On reading their policy, we found that the Guiding Principles they espouse have some applicability in the case. In particular, principles one and two speak to our request:

1. The City of Austin should have not long-term annexation potential. The requesting jurisdiction should be in a better position than the City of Austin to annex and serve the property in the short term.
2. The release should serve the general public interest and convey benefits to all parties, either through the extension of services, enhanced environmental protection, or through mutual exchange of ETJ.
4. The release should not create a competitive disadvantage for similar development situated nearby within Austin’s jurisdiction.<sup>v</sup>

We believe that Wellborn is better positioned to provide services desired by the community, such as a senior center and outdoor related projects, in the short-term than would the City of College Station. We have a track record of doing projects as a community, from building and maintaining the Wellborn Community Center and the Wellborn Cemetery, to raising thousands of dollars for Citizens for Wellborn. Developing Wellborn as a rural town will serve the general public interest of citizens throughout Brazos County. Wellborn will provide venues not currently available in College Station, such as rural settings for events, a senior center to which all seniors will be welcomed, and a short-term destination for visitors to College Station, in much the same way as the Bush Library and Messina Hof Winery currently function.

### Current and Future Services for Wellborn Residents

| <b>Service</b>   | <b>Current Provider</b>                         | <b>Impact of Incorporation</b> |
|------------------|---|--------------------------------|
| Electricity      | BTU   | None                           |
| Water            | Wellborn SUD                                    | None                           |
| Solid Waste      | BAGS or drop off in Millican or BVSWMA landfill | None                           |
| Public Schools   | CSISD   | None                           |
| Fire Services    | Pct 1 South Brazos VFD                          | None                           |
| Cable Service    | Satellite or over the air                       | None                           |
| Telephone        | Verizon   | None                           |
| Law Enforcement  | Brazos County Sheriff                           | None                           |
| Road Maintenance | Brazos Co. Road & Bridge                        | Additional costs               |

Should Wellborn incorporate, future services for Wellborn residents will be determined by the citizens of Wellborn. These may include a senior center, parks, trails, horse-related activities and events, arts & crafts venues and more.

We have examined several small cities, including Onalaska, Wixon Valley, Kurten, Union Valley and others, to see the type of services provided by a small town and the associated expenses.

### **Benefits of Incorporation:**

- We will set our own rules and regulations. Residents have strongly voiced that they are interested in determining their own future and in having a government that is closer to them by virtue of being a smaller unit
- We control the use of land. Wellborn will be able to control the planning & zoning of our area for purposes which the citizens desire.
- Availability of grants for small and/or rural communities. A distinct advantage of incorporation is the possibility of obtaining various grants from the state and federal governments. These are not available to larger cities.
- Establish our own tax program. Residents will be able to determine the level of taxation that is appropriate for our goals.
- Control Building Construction. Currently, residents of Wellborn have no input on the style or type of buildings in our area. We want to control our growth for reasons similar to those of College Station.

### **Disadvantages of Incorporation:**

- We will need to find sources of revenue. Taxes will have to be levied, grants sought and implemented, and other sources of income will have to be pursued. If incorporation is approved by the voters, the soonest that property taxes can be received from the County Tax Assessors/Collector will be January 2012. Sales tax could be collected as currently only state and county sales taxes are collected.
- We will need to provide road and bridge maintenance. As noted, after incorporation, roads which are within the city limits of Wellborn will be maintained by Wellborn. In consultation with Brazos Road and Bridge Department, we learned that we can contract with the county to continue the services they are currently providing. Wixon Valley has a similar arrangement and notes that the costs are not excessive.
- Wellborn may be liable for damages. The board of directors of Citizens for Wellborn voted to purchase coverage for its officers, realizing that holding public events and representing others creates a potential liability area. Onalaska, Texas, located east of Huntsville in Polk County, is a similar size town. An examination of their 2009-10 budget<sup>vi</sup> indicated that they spent a total of \$5192 for general liability, errors & omissions, building insurance, and a blanket policy. NOTE: Onalaska is located on Lake Livingston and operates a senior center, city hall, library, full-time police force, and a volunteer fire department. Thus our initial insurance needs should not exceed theirs as we do not yet have all of these assets.
- Wellborn will be the Point of Responsibility. When people live in a municipality, they may feel that City Hall can and will solve their problems Citizens for Wellborn feel that residents of Wellborn are currently living without a municipal government and that they will not immediately lose their independence and self-determination. As Wellborn matures, Citizens for Wellborn recognize that this may change and that the expectation of residents will increase.
- Funds may come with strings attached. Most grants include various requirements and are not usually outright gifts. Citizens for Wellborn recognizes the knowledge and expertise of its residents, many of whom are professors and extension agents. These professionals are accustomed to applying for and administering all types of grants. The City of Wellborn may choose to create a citizen input board comprised of various experts who can assist the city

council in selecting and applying for grants. Please see Appendix B for grants uncovered during our research.

## **Conclusion.**

Overall, we believe that the residents of Wellborn, if given the right to vote by the City of College Station, will be able to determine what is best for their community. We have spoken with many of the members of the City Council and appreciate your willingness to listen to our concerns and our plans for the future.

The Members of the College Station City Council are the only persons who will decide whether residents of Wellborn are allowed to vote in the upcoming election. We are happy to speak with members of the Council to provide additional information.

Karen W. Severn, MPA  
Secretary, 229-2136, [ksevern@gmail.com](mailto:ksevern@gmail.com)

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<sup>i</sup> Frantz, J., and M. Cox. 1988. *The Lure of the Land*. Texas A&M University Press: College Station, Texas.

<sup>ii</sup> Through tax appraisal records and by driving through the proposed incorporation area, Citizens for Wellborn counted at least 775 homes and residences. Using a home size of 2.8 persons per residence, the estimated population is at least 2170.

<sup>iii</sup> [http://www.tdra.state.tx.us/pdfs/Incorp\\_Manual.pdf](http://www.tdra.state.tx.us/pdfs/Incorp_Manual.pdf)

<sup>iv</sup> <http://www.cityofaustin.org>

<sup>v</sup> <http://www.ci.austin.tx.us/annexation/extraterritorial.htm>

<sup>vi</sup> 2009-10 Onalaska Approved Budget, '<http://cityofonalaska.us>. Included in Appendix C

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**EXTRATERRITORIAL JURISDICTION**  
Ch. 42

**§ 42.041**

**Library References**

Municipal Corporations ¶57.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 104, 106 to  
108, 110 to 115, 117 to 118, 122, 137 to  
138, 143, 145 to 146.

**Research References**

**Encyclopedias**

TX Jur. 3d Municipalities § 289, Increase and  
Reduction in Extraterritorial Jurisdiction.

[Sections 42.027 to 42.040 reserved for expansion]

**SUBCHAPTER C. CREATION OR EXPANSION OF GOVERNMENTAL  
ENTITIES IN EXTRATERRITORIAL JURISDICTION**

*Acts 2007, 80th Leg., ch. 703, § 1 amended the Subchapter C heading.*

**§ 42.041. Municipal Incorporation in Extraterritorial Jurisdiction General-  
ly**

(a) A municipality may not be incorporated in the extraterritorial jurisdiction of an existing municipality unless the governing body of the existing municipality gives its written consent by ordinance or resolution.

(b) If the governing body of the existing municipality refuses to give its consent, a majority of the qualified voters of the area of the proposed municipality and the owners of at least 50 percent of the land in the proposed municipality may petition the governing body to annex the area. If the governing body fails or refuses to annex the area within six months after the date it receives the petition, that failure or refusal constitutes the governing body's consent to the incorporation of the proposed municipality.

(c) The consent to the incorporation of the proposed municipality is only an authorization to initiate incorporation proceedings as provided by law.

(d) If the consent to initiate incorporation proceedings is obtained, the incorporation must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent.

(e) This section applies only to the proposed municipality's area located in the extraterritorial jurisdiction of the existing municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 2005, 79th Leg., ch. 287, § 1, eff. June 16, 2005.

**Revisor's Note**

The revised law requires the written consent of a municipality to be given "by ordinance or resolution." The revised law also refers to "qualified voters" instead of only "voters." The references to "by ordinance or resolution" and to "qualified voters" are derived from the definitions of "written consent" and

Cite as, Tex., 595 S.W.2d 849

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*Weatherford v. Aetna Ins. Co.*, *supra*, at 382.

*Snyder v. Allstate Insurance Co.*, 485 S.W.2d 769 (Tex.1972), relied on by Mrs. Bobo and Mrs. Lambert, is inapplicable here. In *Snyder* the court recognized that under a change in the prescribed policy provisions, actual ownership was immaterial to the question whether the named insured had an insurable interest in a vehicle. Although an insurable interest is not dependent on ownership, it does not follow that the named insured no longer needs to have control over the use of the vehicle before he can grant permission to drive it. In *Snyder* the named insured parent retained control over his minor daughter's use of the car. His power to control the use of the vehicle was created by the parent-child relationship and was recognized by his daughter.

*Gulf Ins. Co. v. Winn*, 545 S.W.2d 526 (Tex.Civ.App.—San Antonio 1976, writ ref'd n. r. e.), is also distinguishable. The issue in *Winn* was whether the named insured had to actually own the insured vehicle. The court held that as long as the named insured might incur liability because of the use of the vehicle he had an insurable interest and did not have to own the vehicle. In *Winn* the driver was operating the vehicle under the named insured's authority and was driving with his permission. Therefore, the driver was covered by the policy's omnibus clause.

In this case Avett had neither the right nor the power to control Havens' use of the pickup truck. A buyer of a vehicle does not become an additional insured under the seller's policy merely because of the conditional nature of the sales transaction. Thus, Mrs. Bobo and Mrs. Lambert are not entitled to recover under Avett's policy with Gulf because Havens was not an additional insured under the policy.

Under the stipulations in the record, however, Mrs. Bobo and Mrs. Lambert are entitled to judgment under Mrs. Lambert's uninsured motorist policy with Commercial Standard. Therefore, the judgment of the court of civil appeals is reversed, and judgment is rendered that Mrs. Bobo and Mrs. Lambert are entitled to recover damages according to the policy terms of the Commercial Standard policy and the stipulations of record.



The STATE of Texas ex rel. W. D.  
NEEDHAM et al.

v.

Mrs. Jess WILBANKS et al.

No. B-8723.

Supreme Court of Texas.

Feb. 20, 1980.

Rehearing Denied April 16, 1980.

State petitioned for review of a decision of the Waco Court of Civil Appeals, Tenth Supreme Judicial District, 583 S.W.2d 914, McDonald, J., affirming judgment of the District Court No. 19, McLennan County, Logue, J., upholding validity of city's incorporation. The Supreme Court, Spears, J., held that: (1) community, which had no compact center or nucleus of population around which town had developed, the area of which was rural in character and appearance, and was not capable of receiving municipal services on any reasonable basis, was a "rural community" immediately prior to incorporation and did not constitute a "city" or "town" so as to be authorized to be incorporated, and (2) legislation which validated incorporation proceedings of all cities and towns incorporated or attempted to be incorporated before such

statute's effective date did not validate incorporation of community which was not a city or town.

Reversed and rendered.

### 1. Municipal Corporations ⇐11

Purpose of incorporation statutes is not to create towns and villages, but to allow those already in existence to incorporate. Vernon's Ann.Civ.St. art. 966; Vernon's Ann.St.Const. art. 11, § 4.

### 2. Municipal Corporations ⇐5

Community which had no compact center or nucleus of population around which town had developed, the area of which was rural in character and appearance, and was not capable of receiving municipal services on any reasonable basis, was a "rural community" immediately prior to incorporation and did not constitute a "city" or "town" so as to be authorized to be incorporated. Vernon's Ann.Civ.St. art. 966; Vernon's Ann.St.Const. art. 11, § 4.

See publication Words and Phrases for other judicial constructions and definitions.

### 3. Municipal Corporations ⇐15

Only a city or town in existence may be incorporated, and legislation which validated incorporation proceedings of all cities and towns incorporated or attempted to be incorporated before such statute's effective date did not validate incorporation of community which was not a city or town. Vernon's Ann.Civ.St. arts. 966, 974d-21, § 4; Vernon's Ann.St.Const. art. 11, § 4.

Felipe Reyna, Dist. Atty., Wilson, Olson, Stern & Farr, Lyndon Olson, Sr., Waco, for petitioners.

Sheehy, Lovelace & Mayfield, J. Robert Sheehy, Waco, for respondents.

SPEARS, Justice.

This is a quo-warranto action brought by Petitioner, the State of Texas, acting through the district attorney of McLennan County on relation of W. D. Needham and others, seeking to declare the incorporation of the City of Hallsburg invalid. After a jury trial, the trial court rendered judgment for defendants upholding the validity of the incorporation, and the court of civil appeals has affirmed. 583 S.W.2d 914. We reverse the judgment of the court of civil appeals and render judgment for the State.

The community of Hallsburg has existed since 1901, and is situated east of the City of Waco and west of the City of Mart in what witnesses characterized as a basically rural area of McLennan County. Although in years past, Hallsburg included a railroad station, a cotton gin, and two stores, all of these had been abandoned by the mid-1960's. At the time of incorporation in December of 1973, the community cluster included five residences, a church, and a school; however, the church, the school, and two of the residences were not included in the incorporated city limits.

The configuration of the incorporated area is rather unusual, consisting of strips 200 to 500 feet in width running along county and state roads for a distance of over 31 miles.<sup>1</sup> The western edge of the area consists of a thirty foot strip of land contiguous to the five mile extraterritorial jurisdiction boundary of the City of Waco. This strip has no road or physical characteristics that would enable it to be found on the ground. The proponents of incorporation testified that the Hallsburg community includes the entire area covered by the incorporated limits of the City of Hallsburg, but admitted that, as incorporated, it was not possible to drive from the northern part to the southern part of the city without leaving the city limits.

Within the corporate limits there are a total of seventy-eight residences, one school, three businesses, and two churches. There

1. Attached to this opinion is a reduced copy of a map admitted as an exhibit in the trial court that shows the incorporated area.

are forty-three residences immediately outside the corporate lines. None of the businesses and neither of the churches is located in the cluster of buildings known as Hallsburg. One store is located in the community of Elk; one is on the western end of Trading House Creek Lake; and one is near the intersection of State Highways 164 and 6. There are no public buildings in the incorporated area. A Texas Power and Light Generating Station on Trading House Creek Lake is included in the incorporation, but there are no residences on that property. Except for the small clusters at Hallsburg and at Elk, over 5½ miles away, there is no unity of proximity between residences, with a distance between residences of as much as 3¼ miles in two instances and more than a mile in several others. Only two-thirds of the Elk community was included in the incorporated area.

The incorporation in dispute was ordered on December 6, 1973, by the county judge of McLennan County pursuant to a petition filed by residents of the Hallsburg area and an affirmative vote of seventy-four to eighteen in an election called by him. This action to set aside the incorporation was filed on December 28, 1973.

Petitioners contend that the area sought to be incorporated as the City of Hallsburg did not, and still does not, possess the characteristics of a city or town at the time of the incorporation and therefore could not as a matter of law be incorporated under the provisions of the Texas Constitution and the statutes. Respondents argue that the community of Hallsburg has existed since 1901 and that the required minimum of 600 people lived within a two square mile area. They justify the unique configuration of the incorporated city limits as an attempt to exclude agricultural lands as required by the statute.

The issues presented are: (1) whether the State established, as a matter of law, that the area incorporated as the City of Hallsburg did not previously constitute a city or

town, and (2) whether the incorporation of Hallsburg was validated by Tex.Rev.Civ. Stat., Ann. art. 974d-21.<sup>2</sup> The jury found that Hallsburg was an existing town prior to its incorporation, and the court of civil appeals held that there was sufficient evidence to support the jury's finding. We cannot agree and hold that as a matter of law Hallsburg did not constitute a city or town and lacked the status required to utilize the incorporation statutes.

[1] Article XI, § 4 of the Texas Constitution provides that "*Cities and towns* having a population of five thousand or less may be chartered alone by general law." (emphasis added). The Constitution does not define a city or town. The enabling legislation, article 966, provides:

Any *city or town* containing six hundred inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Chapter 11 of this title for incorporating towns and villages . . . (emphasis added).

The purpose of the incorporation statutes is not to create towns and villages, but to allow those already in existence to incorporate. Incorporation contemplates the existence of an actual village, town, or city. *Ewing v. State ex rel. Pollard*, 81 Tex. 172, 16 S.W. 872, 873-74 (1891); *Rogers v. Raines*, 512 S.W.2d 725, 728 (Tex.Civ.App.—Tyler 1974, writ ref'd n. r. e.); *Harang v. State ex rel. City of West Columbia*, 466 S.W.2d 8, 11 (Tex.Civ.App.—Houston [14th Dist.] 1971, no writ).

[2] In *State ex rel. Taylor v. Eidson*, 76 Tex. 302, 13 S.W. 263, 264 (1890), this court set out certain criteria that would establish the existence, or nonexistence, of a town:

No definition of the word 'town' is given, and it follows that we must take the word on its ordinary signification—a collection of inhabited houses. The term

2. All statutory references are to Vernon's Texas Civil Statutes Annotated.

carries with it the idea of a considerable aggregation of people living in close proximity. A town population is distinguished from a rural population, which is understood to signify a people scattered over the country, and engaged in agricultural pursuits, or some similar avocations, requiring a considerable area of territory for its support. A section of country so inhabited cannot be called a town, nor treated as part of a town, without doing violence to the meaning ordinarily attached to that word. (emphasis added).

In *Harang, supra*, at 11 the court said:

There should be some degree of unity and proximity between the habitations so assembled to constitute a town or village. To be entitled to incorporate, the area of the town or village should be susceptible of receiving some municipal services. *Id.* at 11.

In *Rogers, supra*, at 730, the court said that there should exist a compact center or nucleus of population around which a town has developed. *Id.* at 730.

The residents of Hallsburg testified that they did not lack any utility or governmental services; however, those services were being furnished by government or private entities other than the city. The city did not in 1973, or in 1978 at the time of trial, furnish police or fire protection, garbage pick-up, street maintenance, sewer, water, electricity, or natural gas. It had no paid employees, no city streets, no city hall, and no *ad valorem* taxes, and it provided no municipal services. The only municipally related acts performed by the City of Hallsburg have been assisting the volunteer fire department purchase a surplus truck from the United States Forest Service, levying a one percent sales tax, enlisting a private concern, the mayor's son, to pick up garbage, and holding monthly city council meetings in the school building.

In brief, if the city were not in existence, the residents of the area would have no fewer services available to them than they have with the city in existence. The area

covered by the incorporation receives electricity from rural electric cooperatives, water from four water supply corporations financed under the Farmer's Home Administration program for rural areas, and telephone service from the telephone company in Waco. Gas and garbage pick-up are furnished directly to individual residents by private contractors. Fire protection is furnished by a volunteer fire department which covers an area much larger than the incorporated limits, and police protection is provided by the regular employees of the McLennan County sheriff's office. The children in the area attend schools in three different school districts.

W. F. Soules, an engineer who specializes in municipal development, testified without contradiction that because of the terrain and the configuration of the city, the City of Hallsburg is not capable of furnishing municipal services on any reasonable basis. He testified that since the city is located in four different water sheds, a city sewage disposal system would require four separate treatment plants. He also testified that there is no way to design a city plan, a traffic circulation plan, or a plan for police, fire, garbage, water or electrical services because of the small narrow strips in the service area and the necessity of leaving the city limits in driving from one part of town to the other.

In *Harang v. State ex rel. City of West Columbia, supra*, 466 S.W.2d 8, the court held that the Wild Peach community did not, as a matter of law, constitute a village, and thus, the attempted incorporation of the community was invalid. In *Harang*, the incorporated village had an unusual configuration in that the area incorporated lay adjacent to about fifteen miles of county roads. Along these roads, there were some very compact clusters of homes that were separated in some instances by as much as one mile from the other clusters. There were 100 habitations in the incorporated area, and one church and one business. The court found "as a matter of law that the

area sought to be incorporated did not constitute a town or village within the meanings of those words as defined in *State ex rel. Taylor v. Eidson* . . . .” *Id.* at 12.

In another case that was factually similar to the present one, *Rogers v. Raines, supra*, 512 S.W.2d 725, the court invalidated the incorporation of the town of Tucker. The incorporation covered an area of unusual configuration in a basically rural area. The corporate limits in that case were drawn adjacent to the public highways in the immediate vicinity. The distance covered by the boundaries exceeded twenty miles in length. There were 105 residences and ten businesses in the incorporated area. The “town” did not operate the water system in the area. There was no garbage service, no sewer system, no taxes collected, no city employees, no fire department (volunteer fire department), no police department, and no established municipal streets within the corporate limits. The court found that there was no unity of proximity between residences, with a distance of two miles separating neighboring homes in one instance. The court could not find a compact nucleus of population around which a town developed. Based upon those facts, the court held that, as a matter of law, “the area sought to be incorporated does not constitute a town or village.” *Id.* at 730.

Hallsburg is not a collection of inhabited houses in close proximity, and there is no compact center or nucleus of population around which a town has developed. Residences are widely scattered, with only occasional clusters. The area is rural in character and appearance, and it is not capable of receiving municipal services on any reasonable basis. The mayor and each of the original city council members who testified acknowledged that the property on which their homes were located was used for agricultural purposes. The evidence establishes as a matter of law that Hallsburg was a rural community immediately prior to incorporation and did not constitute a city or town as those terms are used in the consti-

tutional provision authorizing incorporation. Therefore, Hallsburg was not validly incorporated.

Respondents contend that despite any flaws existing in the incorporation of the City of Hallsburg, the legislature has validated the proceedings with the passage of article 974d-21, effective September 1, 1975. This validating statute reads in part:

Section 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Sec. 4. The provisions of this Act shall not apply to any city or town now involved in litigation questioning any of the acts or proceedings, other than incorporation proceedings or boundary extensions, hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

Respondents point to the language of section 4 which provides that matters then involved in litigation are exempted from validation by the statute except for “incorporation proceedings.” Since this suit was filed in December of 1973, they contend that the “incorporation proceedings” involved here have been validated by section 1 of the act, citing *Perkins v. State*, 367 S.W.2d 140 (Tex.1963).

[3] Under Article XI, § 4 of the Texas Constitution and the enabling legislation,

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only a city or town in existence may be incorporated. *Ewing v. State ex rel. Polard, supra*, at 873-74. By its express terms, the validating act applies only to "cities and towns." The act does not define what constitutes a city or town, but "only refers to and affects the *status* of towns and cities proper." (original emphasis). *Matthews v. State*, 82 Tex. 577, 18 S.W. 711, 712 (1891). Since Hallsburg does not constitute a city or town, the validating act does not apply. *Rogers v. Raines, supra*, 512

S.W.2d at 731. Respondents' reliance on *Perkins, supra*, is misplaced. There the town of Impact, as incorporated, met the test of being an existing city or town, and the validating act was applicable.

The judgment of the court of civil appeals is reversed, and judgment is rendered that the incorporation of the City of Hallsburg is invalid.

Appendix to follow.

STATE EX REL. NEEDHAM v. WILBANKS

Tex. 855

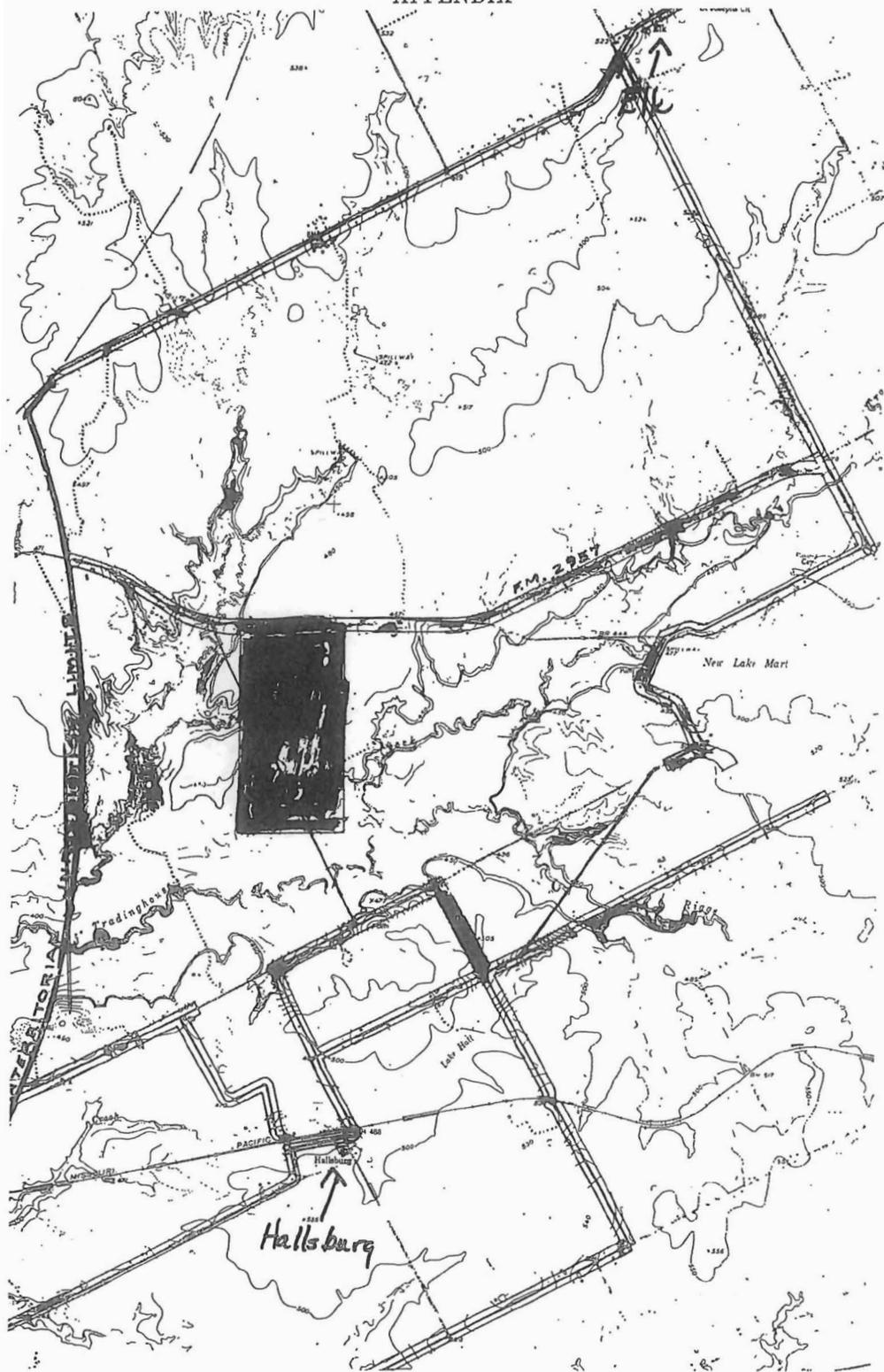
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APPENDIX

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION,  
TEXAS, GIVING ITS CONSENT TO THE INCORPORATION OF WELLBORN.**

WHEREAS, the City of College Station, Texas, has received a request to give its consent to Wellborn to incorporate as provided by Texas Local Government Code Section 42.041(a); and

WHEREAS, The City of College Station, Texas, has reviewed the application and believes it is in the best interest of the citizens of College Station, Texas, to give its consent for Wellborn to incorporate; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLE STATION, TEXAS:

PART 1: That the City Council of College Station, hereby gives its consent to Wellborn to incorporate, for the area set out on the attached map, submitted by Jane W. Cohen on February 2, 2010.

PART 2: That this Resolution shall take effect immediately from and after its passage.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2010.

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

APPROVED:

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

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION,  
TEXAS, NOT GIVING ITS CONSENT TO THE INCORPORATION OF WELLBORN.**

WHEREAS, the City of College Station, Texas, has received a request to give its consent to Wellborn to incorporate as provided by Texas Local Government Code Section 42.041(a); and

WHEREAS, The City of College Station, Texas, has no present plans to annex Wellborn; and

WHEREAS, The City of College Station, Texas, has reviewed the application and believes it is not in the best interest of the citizens of College Station, Texas, to give its consent for Wellborn to incorporate; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION,  
TEXAS:

PART 1: That the City Council of College Station, hereby finds that it is not in the best interest of the citizens of College Station to give its consent to the proposed City of Wellborn to incorporate, for the area set out on the attached map, submitted by Jane W. Cohen on February 2, 2010.

PART 2: That additionally, the City Council of College Station believes the Wellborn request is not for an existing, compact, contiguous urban area of homes that legally can constitute a town, and that the configuration is not consistent with providing municipal services (595 SW 2nd 849), and therefore, cannot be given consent for or be legally incorporated.

PART 3: That the City Council of College Station remains willing to negotiate non-annexation agreements or other solutions with Wellborn to give assurances that College Station not annex its property as provided by the non-agreements and remains willing to help preserve Wellborn's rural lifestyle.

PART 4: That the City Council of College Station, being mindful of its obligation to the citizens of College Station, feels it cannot give its consent, because if it does, the consent can never be taken back, and believes, that in 5-10-15 years, College Station may need to consider annexing in the Wellborn area for future growth. The proposed Wellborn incorporation will impede or block off College Station from future annexations and the Council feels it needs to preserve this option for the future citizens of College Station.

PART 5: That this Resolution shall take effect immediately from and after its passage.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2010.

ATTEST:

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

APPROVED:

*Harvey Cargill J*  
\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Mayor

**March 11, 2010  
Workshop Agenda Item No. 3  
Noise Ordinance**

**To:** Glenn Brown, City Manager

**From:** Jeff Capps, Chief of Police

**Agenda Caption:** Presentation, possible action, and discussion regarding modifications to Chapter 7 Health & Sanitation, Sections 1 through 3 of the City of College Station Code of Ordinances as it relates to noise and nuisance.

**Recommendation(s):** None

**Summary:** This item is a follow up to Council initiated discussion and a previous workshop item on nuisance noise presented in February 2009.

Noise is a reoccurring issue in College Station. While great strides have been made to address loud party scenarios in a timely manner, there are other nuisance noise concerns that arise from time to time. During our review of the City's ordinance as it pertains to noise, it was determined that the ordinance was dated, conflicting and created prosecutorial difficulties. As such, the legal department has created a draft of the ordinance to address these issues.

Staff seeks Council direction on the draft ordinance.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Memorandum from Senior Assistant City Attorney, Adam Falco
2. Old ordinance with noted modifications
3. Draft ordinance



## MEMORANDUM

**TO: Chief Capps and Assistant Chief McCollum**  
**FROM: Adam C. Falco, Senior Assistant City Attorney**  
**DATE: March 4, 2010**  
**RE: New City Ordinance on Noise and Nuisances – Chapter 7 §§1-3**

---

The Legal Department has reviewed Chapter 7 Health and Sanitation §§ 1-3 and has made changes to it for a more efficient prosecution of noise and nuisance violations in the City. The main change is to the noise section of the ordinance. The City's noise ordinance was drafted over 15 years ago and there are several problems with the old ordinance. The following reasons are why the ordinance will not make an effective prosecution of a noise violation and why a new ordinance was drafted.

The main problem with the old ordinance is it uses a great deal of language to express a simple offense. In §2 (B) "Prohibited Generally", the ordinance describes "loud noise" with too many unnecessary descriptors. These descriptors for loud noise include: volume, level, duration and character. Evidence must be presented to prove each one of those descriptors for an offense. The new ordinance requires only proof of "unreasonable noise" and the plain meaning of the words are used for prosecution. A prosecution under the new ordinance will be more efficient because the use of "unreasonable noise" takes into consideration if the noise was at night or during the day or the time, place, and manner the noise is created by the use of unreasonable along with the decibel readings for noise.

The City's old ordinance also limits the places that the loud noise can be heard. These limits include: driveways, occupied residential units, and schools and public buildings in use. These limitations would be another element of the offense to prove. The only limitations in the new ordinance are for construction and property maintenance between 7 A.M. and 10 P.M. and use of properly maintained air conditioners. Also, another issue with the old ordinance is in §2 (B) (2) and (3), the mental state "willfully" is omitted, showing inconsistencies, and in (B) (3) "clearly audible" is an added term to describe noise and this would be another element to prove.

The old ordinance also contained two separate and different definitions of public nuisance – noise. In Chapter 7 §2 “Noise” (C) “Nuisances” is different from Chapter 7 §3 “Public Nuisance” (B) (2) “Nuisance Specifically Defined”. There should not be different language for the same offense. This creates notice problems and enforcement problems. In § 2(C) “Nuisances” there is language regarding motor vehicles that is also covered by the Penal Code §42.01 and by the Transportation Code §547.604 for motor vehicle muffler noise. This was corrected by eliminating the inconsistencies and just having one meaning of unreasonable noise.

The noise and nuisance sections of the old ordinance were combined in the new ordinance in §2, so in Chapter 7 there will not be a §3 of the new ordinance. Some other changes in the new ordinance were made to reflect state law and other minor changes to style and form. In §1(C) of Chapter 7 the notice requirements were modified to conform to Texas Health and Safety Code §342.006. The State law provides for a one year limit on notice and the old ordinance provided just a six month limit on notice for nuisance violations. The notice time pertains to the time, when after proper notice has been given, the City can abate a nuisance without giving a new notice. All the changes to Chapter 7 will make for a more efficient application and enforcement of the health and safety ordinances.

**CHAPTER 7  
HEALTH & SANITATION**

SECTION 1: STAGNANT WATER, TRASH, GRASS, ETC.

A. **PROHIBITED CONDITIONS DESIGNATED - STAGNANT WATER**

It shall be unlawful for any person who owns or occupies any lot in the City to permit or allow holes or places where water may accumulate and become stagnant to be or to remain on such lot or to permit or allow the accumulation of stagnant water thereon or to permit the same to remain thereon.

B. **PROHIBITED CONDITIONS DESIGNATED - ACCUMULATION OF TRASH, CARRION, FILTH, ETC.**

It shall be unlawful for any person who owns or occupies any house, building, establishment, lot, or yard in the City to permit or allow any trash, rubbish, carrion, filth, or other impure or unwholesome matter to accumulate or remain thereon or therein.

C. **PROHIBITED CONDITIONS DESIGNATED - WEEDS AND OTHER UNSIGHTLY VEGETATION**

It shall be unlawful for any person owning, claiming, occupying, or having supervision or control of any real property within the City to permit weeds, brush, or any objectionable or unsightly vegetation to grow due to lack of vegetation management upon any such real property. It shall be the duty of such person to keep the area from the line of his property to the curb line adjacent to it free and clear of matter referred to above. Objectionable or unsightly vegetation includes all weeds and grasses that exceed twelve inches (12") in height.

Exempted from the provisions of this subsection are the following:

**Comment [ACF1]:** These sections were modified, but the substance did not change.

- (1) State highway rights-of-way.
- (2) Agricultural areas, agricultural meaning crop production and/or grazing.
- (3) Heavily wooded areas filled with uncultivated underbrush.
- (4) The cultivation of concentrated wildflowers from March 1 until June 15 of each year in areas where grasses and weeds do not exceed eighteen inches (18") in height.
- (5) Areas that are zoned A-0 or A-OR.

Notice. In the event that any person owning, claiming, occupying, or having supervision or control of any real property permits any condition to exist thereon in violation of this section, the City may notify the owner and occupant of such property of the failure to comply with this section and direct the owner and occupant to correct, remedy, or remove such condition within seven (7) days after such notice is received. Such notice shall be sent to the occupant at the post office address of the property and to the owner at the post office address as recorded with the Brazos County Appraisal District by United States Mail. If personal service cannot be obtained notice may be given by: publication at least once; by posting the notice on or near the front door of each building on the property to which the violation relates; or by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

If the City mails a notice to the owner or occupant in accordance with this section and the

United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected and the notice is considered delivered.

The City in said notice of a violation may inform the owner and occupant by regular mail and posting notice on the property, or by personally delivering the notice, that if another violation of the same kind or nature that poses a danger to the public health and safety occurs within six (6) calendar months of the date of the notice, the City without further notice may correct the violation at the owner's expense and assess the expenses against the property.

If a violation covered by a notice under this subsection occurs within the six (6) month period, and the City has not been informed in writing of an ownership change, then the City may take any action permitted under this section and assess its expenses as provided herein. If, however, the City is informed in writing of a change of ownership within the six (6) month period and a violation of this section occurs, the City shall notify the new property owner of the violation and take such other steps as are provided in this section.

**Comment [ACF2]:** This section was modified to conform to TX Health and Safety Code 342.006 because it deals with notice requirements.

D. **OBSTRUCTION OF VIEW OF TRAFFIC BY TREES, SHRUBS, ETC.**

Trees, shrubs, bushes, plants, grass, or weeds growing at or near intersections in such manner as to obstruct the view of approaching traffic from the right or left are hereby declared to be a nuisance, and the City Manager is hereby authorized to remove the same.

**Comment [ACF3]:** This section was modified, but the substance did not change

E. **CORRECTION OR REMOVAL OF CONDITION BY CITY**

If any person notified as provided in subsection C fails or refuses to correct, remedy, or remove the condition specified in such notice within seven (7) days after the date of notice by letter or within seven (7) days after the date of publication of notice in the newspaper, the posting of the notice on or near the front door of each building on the property to which the violation relates, or the posting of the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, the City may go upon the property and do such work or make such improvements as are necessary to correct, remedy, or remove such condition. The expense incurred pursuant to this subsection in correcting the condition of such property, and the cost of notification shall be paid by the City and charged to the owner of such property. In the event that the owner fails or refuses to pay such expense within thirty (30) days after the first (1st) day of the month following the one in which the work was done, the City shall file with the Brazos County Clerk a statement of the expenses incurred. Such statement shall state the name of the owner, if known, and a legal description of the property. From the date the statement is filed, the City shall have a privileged lien on such property, second only to tax liens and liens for street improvements, to secure the payment of the amount so expended. Such amount shall bear interest at the rate of ten percent (10%) from the date the City incurs the expense. For any such expense and interest, suit may be instituted and recovery and foreclosure had by the City. The statement of expense filed with the County Clerk or a certified copy thereof shall be prima facie proof of the amount expended in such work, all as more particularly specified in Chapter 342, Vernon's Annotated Texas Civil Statutes, which is hereby adopted.

**Comment [ACF4]:** This section is removed in its entirety because it is governed by state law in TX Health and Safety Code 342.006

**(Ordinance No. 2592 of November 21, 2002)**

**SECTION 2: NOISE**

**Comment [ACF5]:** The contents of Section 2 Noise should be deleted in its entirety and be renamed Section 2 "Unlawful Conduct Related to Health and Safety. See attached memo with explanation.

**A. DEFINITIONS**

- (1) dBA - means the abbreviation of the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or one-third (1/3) octave band.
- (2) Decibel (dB) - means a unit of measure on a logarithmic scale, or the ratio of a

particular sound pressure squared to a standard reference pressure squared. For the purpose of this ordinance, twenty (20) micropascals shall be the standard reference pressure.

- (3) Motor vehicle - means any and all self-propelled vehicles as defined by the Texas Traffic Code, including all motor vehicles subject to identification under such code and all motor vehicles exempted under such code.
- (4) Noise - means the intensity, frequency, duration and character of sound, including sound and vibration of subaudible frequencies.
- (5) Noise level - means the maximum continuous sound level or repetitive peak level produced by a source or group of sources.
- (6) Sound amplifier - means any radio receiving set, microphone, musical instrument, phonograph, speaker(s) or other machine or device for the producing or reproducing of sound.
- (7) Sound level - means in decibels the weighted sound- pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI S1.4, 1971, Specifications for Sound-Level Meters.
- (8) Sound-Pressure level - means in decibels twenty (20) times the logarithm to the base of ten (10) of the ratio of a sound pressure to the reference sound pressure of twenty (20) micropascals.

#### B. PROHIBITED GENERALLY

- (1) It shall be unlawful for any person to willfully make or cause or allow to be made or allow to be continued any "loud noise" which term shall mean any sound that because of its volume level, duration or character annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. Quieter standards shall prevail during the night-time hours of 10:00 p.m. to 7:00 a.m.

The term shall be limited to loud noise heard:

- (a) in any occupied residential unit which is not the source of the noise or upon the yard, or;
  - (b) in the driveway of such residential unit;
  - (c) in a school or public building or upon the ground thereof while in use, upon any parking lot open to members of the public as invitees or licensees, and in any event from a location not less than less than fifty feet (50) from the source of the noise measured in a straight line from the source.
- (2) No person in possession and present in any premises shall make or cause or allow to be made or allow to be continued any loud noise, including the loud noise that results from a gathering of people, which term shall mean any sound that because of its volume level, character or duration, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. Quieter standards shall prevail during the night-time hours of 10:00 p.m. to 7:00 a.m.

The term shall be limited to loud noise heard:

- (a) in any occupied residential unit which is not the source of the noise or upon the yard, or;
  - (b) in the driveway of such residential unit;
  - (c) in a school or public building or upon the ground thereof while in use, upon any parking lot open to members of the public as invitees or licensees, and in any event from a location not less than less than fifty feet (50) from the source of the noise measured in a straight line from the source.
- (3) No person shall make any loud noise or operate a sound amplifier so as to be clearly audible to any occupant of a neighboring property at any point on the boundary line separating the two (2) properties at a level higher than sixty-five (65) dBA during the day (from 7:00 a.m. to 10:00 p.m.) or fifty-five (55) dBA during the night (from 10:00 p.m. to 7:00 a.m.). If the properties are not contiguous, then the sound shall be measured from the source in a straight line.

#### C. NUISANCES

The following acts are declared to be public nuisances:

- (1) The using, operating or permitting to be played, used, or operated by any radio, amplifier, musical instrument, tape player, compact disc, compact tape or phonograph or other device for the producing or reproducing of sound in such manner as to cause loud noise. This definition of nuisance shall also include noise generated from a motor vehicle which is either standing or moving.
- (2) Yelling, shouting, whistling or singing or any prolonged sounds made by people at any time or place so as to create a loud noise between the hours of 10 p.m. and 7:00 a.m. of any day.

#### D. EXEMPTIONS

The term loud noise does not include noise or sound generated by the following:

- (1) Cries for emergency assistance and warning calls.
- (2) Radios, sirens, horns and bells on police, fire and other emergency response vehicles.
- (3) School athletic events in school facilities, provided that such activities have been authorized by the owner or agent of such facilities.
- (4) Fire alarms and burglar alarms prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.
- (5) Necessary construction or property maintenance, including the use of lawnmowers, during the hours of 7:00 a.m. to 10:00 p.m.
- (6) A permit is sought and obtained from the building Official, and the Building Official concludes that because of the construction operations involved, such as the placement of concrete or other construction work, requires work to begin before

**Comment [ACF6]:** This section is in the new ordinance because we do not want the use of lawn equipment to be illegal.

7:00 a.m. or end later than 10:00 p.m.

- (7) Construction work in public rights-of-way and/or easements by the City or the Texas Department of Transportation.

**Comment [ACF7]:** This section will be in the new ordinance to help with construction noise.

**(Ordinance No. 2780 of January 27, 2005)**

#### **E. PARKS BOARD TO SET AMPHITHEATER NOISE LEVEL STANDARDS**

- (1) The College Station Parks and Recreation Board after a public hearing may, from time to time, set the level of noise that may be generated or produced at the College Station Amphitheater. Such standards shall be provided to users of the amphitheater and shall be strictly adhered to by said users. Failure to adhere to the standards shall be a criminal offense under this chapter.
- (2) The College Station Parks and Recreation Board may after a public hearing at which the alleged violating user may present evidence ban said user who has violated the standards from future use of the amphitheater. The standard of review of the decision of the College Station Parks and Recreation Board shall be the substantial evidence rule.

**Comment [ACF8]:** This section will be in the new ordinance because of Wolf Pen Creek Amphitheater.

#### **F. ENFORCEMENT**

Any person aggrieved by loud noise or the operation of amplification device or similar equipment that produces loud noise in violation of this ordinance may complain to the College Station Police Department who shall enforce this ordinance. The police are also hereby authorized to enforce said sections without any such complaint. Nor shall the police be required to verify the decibel level by use of a sound level meter.

#### **G. SEVERABILITY**

It is the intent of the City Council that this Ordinance be construed to secure for the people freedom from unwanted loud noise as described herein without violating any of the rights secured by the Constitution to the people. In the event that any provision contained herein should ever be determined to be invalid for any reason, it is the intent of the City Council that the remaining provisions continue in effect to the extent that they can be enforced notwithstanding such determination and therefore the provisions of this ordinance are declared severable.

#### **H. PENALTY PROVISION**

- (1) The City is hereby authorized to seek court action to abate any noise nuisance in lieu of or in addition to any other enforcement remedies that may be available.
- (2) The general penalty provision of Chapter 1 of the College Station Code of Ordinances shall apply to violations of this ordinance.

**(Ordinance No. 1996 of February 11, 1993)**

### **SECTION 3: PUBLIC NUISANCES**

**Comment [ACF9]:** Section 3 will be deleted in its entirety and be renumbered as Section 2 "Unlawful Conduct Related to Health and Safety."

#### **A. DEFINITIONS**

- (1) A public nuisance is a thing, act, occupation, or use of the property which shall annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of persons; shall offend the public decency; or shall in any way render any

considerable number of persons insecure in life or in use of property.

- (2) The term person shall mean and include any natural person, association of persons, partnership, corporation, agent or officer, and shall also include all warehousemen, common and private carriers, bailees, trustees, receivers, executors, administrators.

## B NUISANCE SPECIFICALLY DEFINED

The following specific acts, places, conditions, and things are hereby declared to be nuisances within the corporate limits of the City or outside the limits of the City for a distance of five thousand feet (5,000):

- (1) Accumulations of manure or rubbish which are breeding places for flies, mosquitoes, or vermin.
- (2) All loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities.
- (3) All hanging signs, awnings, and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety.
- (4) Filthy, littered, or trash-covered cellars, house yards, factory yards, vacant areas in rear of stores, vacant lots, houses, buildings, or premises containing trash, litter, rags, accumulation of empty barrels, boxes, crates, packing cases, lumber or firewood not neatly piled, scrap iron, tin, and other metal not neatly piled, or anything whatsoever in which flies or rats may breed or multiply or which may be a fire danger.
- (5) Any unsightly building, pre-empted, or other structure, or any old, abandoned, or partially destroyed building or structure, or any building or structure commenced and left unfinished, or any abandoned well or excavation not properly protected and which may attract children and endanger them in the course of play.
- (6) All places used or maintained as junk yards, or dumping grounds, or for the wrecking or disassembling of automobiles, trucks, or machinery of any kind, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others.
- (7) The keeping of any lot or piece of ground on which there is located a pool or pond of unwholesome, impure, stagnated or offensive water.
- (8) Fireworks
  - (a) The possession, storage, use, manufacture, assembling, selling, handling, transporting, receiving, offering for sale, or having in one's possession with the intent to offer for sale, use, discharge, ignite, detonate, fire or otherwise set into action, any fireworks as that term is defined by Section 202 of the Fire Prevention Code.
  - (b) Exemptions. This section shall not apply to:
    - (i) the possession or use of signaling devices used by railroads, or others requiring the same, nor to signal flares or rockets for military or police use;

**Comment [ACF10]:** See attached memo for explanation.

**Comment [ACF11]:** The code of ordinances adopted the International Fire Code (2006 edition) in Chapter 6 of the code of ordinances. Fireworks are covered in Chapter 33 of the IFC in §3301.13. It needs to be here to cover nuisances 5000 feet outside the city limits.

- (ii) the supervised public displays of fireworks provided that a permit for such fireworks display has been obtained from the State Fire Marshall or his designated representative; and
- (iii) the transportation of Class C Common Fireworks, as defined in Article 5.43, Vernon's Annotated Texas Insurance Code, by motor vehicles which meet the Department of Transportation requirements for transporting Class C Common Fireworks. It shall further be lawful for bona fide fireworks dealers to transport Class C Common Fireworks.

**(Ordinance No. 1988 of November 12, 1992)**

- (9) Open storage of commodities and materials for sale, lease, inventory or private use shall not be permitted in residential areas. Such materials shall not be located between the front of the structure and the street. Such materials shall be screened by a solid fence and shall not be visible from a public right-of-way. Commodities are defined as, but not limited to: appliances, automotive parts, building materials, firewood, furniture (excluding patio and lawn furniture), and landscape materials. Firewood stored in rear or side yards, and A-0, A-OR, and A-OX zoning districts are exempt from the screening requirements

**(Ordinance No. 2302 of February 12, 1998)**

**C. PENALTY**

Any person who shall knowingly cause or create any public nuisance, or permit any public nuisance to be created or to be placed upon or to remain upon any premises occupied by him or them shall, upon conviction thereof, be punished by being subject to a fine as provided in Chapter 1, Section 5 of this Code of Ordinances, as amended from time to time.

**D. ABATEMENT OF NUISANCES**

Notwithstanding any penal provision herein, the City Attorney is authorized to file suit on behalf of the city for such injunctive relief as may be necessary to abate such nuisance whenever any nuisance as herein defined is found in any place within the City or in any area outside the city limits for a distance of five thousand feet (5,000).

**Comment [ACF12]:** Authority comes from LGC 217.042 and AG Opinion JC 0025.

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

**AN ORDINANCE AMENDING CHAPTER 7, "HEALTH AND SANITATION", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:**

**PART 1:** That Chapter 7, "Health and Sanitation", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit "A"**, attached hereto and made a part of this ordinance for all purposes.

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

**PART 3:** That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) or more than Two Thousand Dollars (\$2000.00) if the ordinance governs fire safety, sanitation, (not including vegetation and litter violations), public health, rezoning, or as the Legislature may amend from time to time. Each day any such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinances, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

**PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2010.**

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
**MAYOR**

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

**APPROVED:**

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

### Exhibit A

That Chapter 7 “Health and Sanitation” is hereby amended by amending Sections 1 and 2 of the Code of Ordinances of the City of College, Station Texas and to delete Section 3 in its entirety and is to read as follows:

#### CHAPTER 7 HEALTH & SANITATION

##### SECTION 1: STAGNANT WATER, TRASH, WEEDS, & OTHER VEGETATION PROHIBITED

- (A) **Stagnant Water Prohibited:** It shall be unlawful for any person who owns or occupies any house, building, establishment, lot, or yard in the City to permit or allow holes, places, or containers where water may accumulate and become stagnant.
- (B) **Accumulation of Trash, Carrion, & Filth Prohibited:** It shall be unlawful for any person who owns or occupies any house, building, establishment, lot, or yard in the City to permit or allow any trash, rubbish, carrion, filth, or other impure or unwholesome matter to accumulate or remain thereon or therein.
- (C) **Weeds and Other Unsightly Vegetation Prohibited:** It shall be unlawful for any person owning, claiming, occupying, or having supervision or control of any real property within the City to permit weeds, brush, or any objectionable or unsightly vegetation to grow due to lack of vegetation management upon any such real property. It shall be the duty of such person to keep the area from the line of his property to the curb line adjacent to it free and clear of matter referred to above. Objectionable or unsightly vegetation includes all weeds and grasses that exceed twelve inches (12") in height.
- (1) **Exemptions:**
- (a) State highway rights-of-way.
  - (b) Agricultural areas, agricultural meaning crop production and/or grazing.
  - (c) Heavily wooded areas filled with uncultivated underbrush.
  - (d) The cultivation of concentrated wildflowers from March 1 until June 15 of each year in areas where grasses and weeds do not exceed eighteen inches (18") in height.
  - (e) Areas that are zoned A-O or A-OR.
- (D) **View of Traffic Obstructed by Trees, Shrubs, & Vegetation:** Trees, shrubs, bushes, plants, grass, weeds, or any other vegetation growing at or near intersections in such manner as to obstruct the view of approaching traffic from the right or left are hereby declared to be a

nuisance, and the City Manager is hereby authorized to remove the vegetation.

**(E) Work or Improvements Done by the City and Notice Requirements:**

- (1) If the owner of property in the City does not comply with an ordinance under this chapter within seven days of notice of a violation, the City may:
  - (a) do the work or make the improvements required; and
  - (b) pay for the work done or improvements made and charge the expenses to the owner of the property.
- (2) The notice must be given:
  - (a) personally to the owner in writing;
  - (b) by letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
  - (c) if personal service cannot be obtained:
    - (1) by publication at least once;
    - (2) by posting the notice on or near the front door of each building on the property to which the violation relates; or
    - (3) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (3) If the City mails a notice to a property owner in accordance with Subsection (2), and the United States Postal Service returns the notice as “refused” or “unclaimed,” the validity of the notice is not affected, and the notice is considered as delivered.
- (4) In a notice provided under this section, the City may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the City without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted by Subsections (1)(a) and (b) and assess its expenses as provided by Texas Health and Safety Code §342.007 as it may be amended from time to time.

- (F) The term “person” shall mean and include any natural person, business entity, or association of people in this Chapter.

## **SECTION 2: UNLAWFUL CONDUCT RELATED TO HEALTH AND SAFETY**

**(A) A person commits an offense if he:**

- (1) uses property in a way that annoys, injures, or endangers the health, safety, comfort, or repose of any person,
- (2) uses property in a way that accumulates manure or rubbish or debris,
- (3) creates or allows any sign, awning, and other similar structure over the streets or sidewalks so situated or constructed as to endanger health, safety, comfort, or repose of any person,
- (4) makes filthy, littered, or trash-covered cellars, house yards, factory yards, vacant areas in rear of stores, vacant lots, houses, buildings, or premises containing trash, litter, rags, accumulation of empty barrels, boxes, crates, packing cases, lumber or firewood not neatly piled, scrap iron, tin, and other metal not neatly piled, or anything whatsoever in which flies or rats may breed or multiply or which may be a fire danger,
- (5) makes any unsightly building, pre-empted, or other structure, or any old, abandoned, or partially destroyed building or structure, or any building or structure commenced and left unfinished, or any abandoned well or excavation not properly protected and which may attract children and endanger them in the course of play,
- (6) creates places used or maintained as junk yards, or dumping grounds, or for the wrecking or disassembling of automobiles, trucks, or machinery of any kind, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others,
- (7) allows the keeping of any lot or piece of ground where a pool or pond is located that holds unwholesome, impure, stagnated, or offensive water,
- (8) allows the open storage of commodities and materials for sale, lease, inventory or private use in areas zoned as residential. Such materials shall be screened by a solid fence and shall not be visible from a public right-of-way. Commodities are defined as, but not limited to: appliances, automotive parts, building materials, firewood, furniture (excluding patio and lawn furniture), and landscape materials. Firewood stored in rear or side yards, and A – O and A –

OR zoning districts are exempt from the screening requirements,

- (9) possesses, manufactures, stores, sells, handles, or uses fireworks,
- (a) **Exemption:** a supervised public display of fireworks provided that a permit for such fireworks display has been obtained from the State Fire Marshall or his designated representative.
- (10) allows or maintains an unreasonable noise:
- (a) **Day Time Noise**
- (1) during the hours of 7:00 A. M. to 10:00 P.M. that when measured from the property line of a residence located in residential zoned property exceeds 63 decibels and would disturb or annoy a person of ordinary sensibilities, or
- (2) during the hours of 7:00 A. M. to 10:00 P.M. that when measured from a contiguous interior wall of a residence that is a multiunit residence located in residential zoned property exceeds 55 decibels and would disturb or annoy a person of ordinary sensibilities.
- (b) **Night Time Noise**
- (1) during the hours of 10:01 P.M to. 6:59 A. M. that when measured from the property line of a residence located in residential zoned property exceeds 56 decibels and would disturb or annoy a person of ordinary sensibilities, or
- (2) during the hours of 10:01 P.M to. 6:59 A. M. that when measured from a contiguous interior wall of a residence that is a multiunit residence located in residential zoned property exceeds 50 decibels and would disturb or annoy a person of ordinary sensibilities.
- (c) **Exemptions**
- (1) Necessary construction or property maintenance, including the use of lawnmowers, during the hours of 7:00 A.M. to 10:00 P.M.,
- (a) For a person to perform construction work before 7:00 A.M. or end later than 10:00 P.M. a permit must be sought and obtained from the building City Building Official, and if the Building Official concludes that



**March 11, 2010**  
**Workshop Agenda Item No. 4**  
**Wolf Pen Creek Water Feature and Festival Area**  
**Master Plan Adoption**

**To:** Glenn Brown, City Manager

**From:** Chuck Gilman, Director of Capital Projects

**Agenda Caption:** Presentation, possible action, and discussion regarding the adoption of the Wolf Pen Creek Water Feature and Festival Area Master Plan as an element of the Wolf Pen Creek Master Plan.

**Recommendation(s):** Staff recommends Council approval of the adoption of the Wolf Pen Creek Water Feature and Festival Area Master Plan as an element of the Wolf Pen Creek Master Plan.

**Summary:** On October 8, 2009 City Council approved a contract with Clark Condon Associates for the Wolf Pen Creek Water Feature and Festival Area Master Plan. The master plan has identified the key elements of the project and narrowed and defined the scope of work for the project in order to proceed with a design contract. The master plan was developed with input from the Wolf Pen Creek Oversight Committee and the Wolf Pen Creek TIF Board.

On October 29, 2009 a joint meeting of the Wolf Pen Creek Oversight Committee and the Wolf Pen Creek TIF Board was held at the Conference Center. A brief presentation was given by the Capital Projects Department outlining the project approach, then an introduction of Clark Condon Associates, followed by general discussion of the group regarding the master plan.

On December 14, 2009 a joint meeting of the Wolf Pen Creek Oversight Committee and the Wolf Pen Creek TIF Board was held at the Carter Creek WWTP. The Committee and Board reviewed and discussed six different site plans and layouts for the festival area and water feature. The six concepts presented were narrowed from six to three. Direction was received to proceed with an interactive water feature design.

On January 26, 2010 a meeting of the Wolf Pen Creek Oversight Committee was held at the Carter Creek WWTP. This meeting resulted in further refinement of the site plan and layout for the festival area and water feature design, and included general review and discussion of the cost estimate. The Committee narrowed the options from three to one, by taking elements, features, and ideas from all three to create a preferred site layout.

On March 9, 2010 the Wolf Pen Creek Oversight Committee met to review and recommend adoption of the Wolf Pen Creek Water Feature and Festival Area Master Plan as an element of the Wolf Pen Creek Master Plan. The design consultant will address all of the comments received during this meeting and finalize Wolf Pen Creek Water Feature and Festival Area Master Plan.

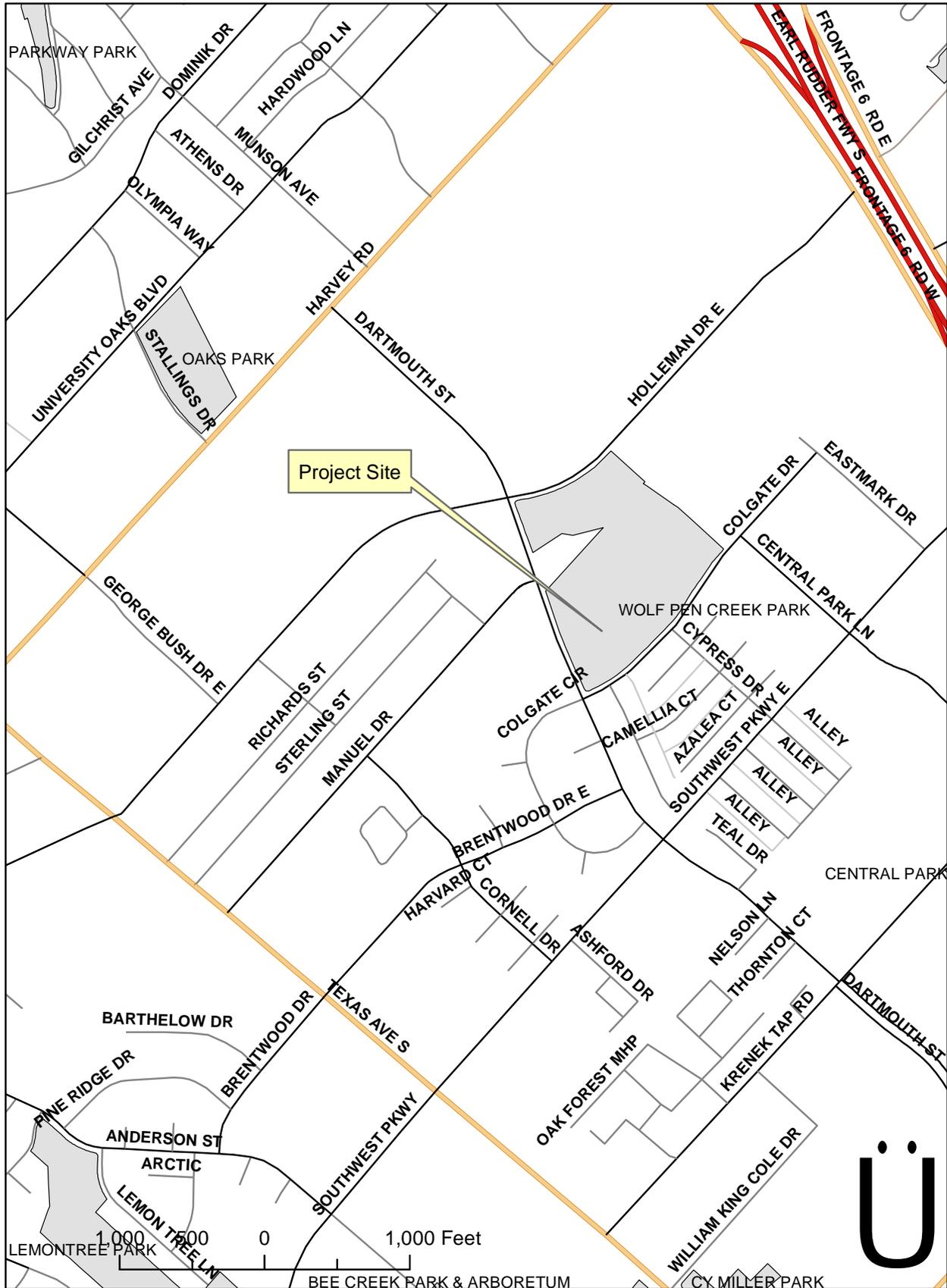
The next phase of this project will be the detailed design of the improvements identified master plan, and to proceed with construction.

**Budget & Financial Summary:** This project is funded from the Wolf Pen Creek TIF Fund in the amount of \$3,500,000.00. As part of a development agreement, \$1,200,000.00 is obligated for the design and construction of a water feature.

**Attachments:**

1. Wolf Pen Creek Water Feature and Festival Area Master Plan
2. Project Location Map

# Wolf Pen Creek Water Feature and Festival Area



**March 11, 2010**  
**Workshop Agenda Item No. 5**  
**Google Fiber RFI**

**To:** Glenn Brown, City Manager

**From:** Ben Roper, IT Director

**Agenda Caption:** Presentation, possible action, and discussion regarding a possible City response to the Google Fiber Request for Information (RFI).

**Recommendation(s):** Staff recommends the City submit a response to the Google Fiber RFI.

**Summary:** On February 10, 2010, Google released a RFI and announced plans to launch an experimental trial to bring high speed Internet to the home in a select community/communities. The stated goal is to provide fiber to the home connections that would provide at least a Gigabit per second of throughput, compared to traditional high bandwidth connections that deliver from approximately 1 – 3 Megabits per second throughput. (Note: Data throughput or transfer rate is generally measured as the number of bits, characters, or blocks transferred per unit of time. This is typically measured as the number of *bits per second*. One megabit per second equates to 1,000,000 bits per second. One gigabit per second equates to 1,000,000,000 bits per second)

Responses to the RFI must be submitted online and are due to Google by March 26, 2010. Some Pros and Cons of replying to the RFI are listed below:

**Pros:**

- Google is viewed as a very progressive and cutting edge company. They are generally admired by the public for their stand on various issues and are often seen as fighting the status quo. They are perhaps most admired for taking on Microsoft in a number of areas.
- Replying to the RFI as an interested community would most likely resonate with most citizens.
- High-speed broadband would undoubtedly spur some development and serve as a catalyst for innovative use.

**Cons:**

- There is very little detailed information from Google. They clearly state that this is an experiment/trial. What happens when the trial is over?
- There is no mention of providing this connectivity to business or commercial users.
- Section 5 of the RFI asks for input about community and resources including willingness to enter into a master pole attachment agreement with Google and a master right of way agreement, etc.
- High likelihood of alienating local providers such as Verizon and Suddenlink
- If selected by Google, negotiation of blanket agreements for pole attachment and right of way will most likely be a lengthy process

**Budget & Financial Summary:** There are no known direct costs to the city, other than staff time to respond to the RFI, and negotiate with Google if selected. Indirect costs such as providing pole attachment and right-of-way agreements are implied by the RFI for the selected communities.

**Attachments:**  
Google RFI



1600 Amphitheatre Parkway

Mountain View, CA 94043

**Google Inc.**

**Request for Information**

**Google Fiber for Communities**

February 10th 2010

## **Google Fiber for Communities**

Google is planning to launch an experiment that we hope will make Internet access better and faster for everyone. We plan to test ultra-high speed broadband networks in one or more trial locations across the country. Our networks will deliver Internet speeds more than 100 times faster than what most Americans have access to today over 1 gigabit per second, fiber-to-the-home connections. We'll offer service at a competitive price to at least 50,000 and potentially up to 500,000 people.

From now until March 26th, we're asking interested municipalities to provide us with information about their communities through a Request for Information (RFI), which we'll use to determine where to build our network.

### **Request for information**

Google is asking local governments and residents to express their interest in our fiber optic trial and to provide information about their respective communities by completing our request for information.

#### **For local government (Exhibit A)**

Tell us how much your community would like to join the trial and about existing facilities and resources in the community.

#### **For residents and community groups (Exhibit B)**

If you'd like a Google fiber optic trial in your community, complete this section of the request for information.

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## 1. Introduction

### What is Google doing, and what does it seek to achieve?

Imagine sitting in a rural health clinic, streaming three-dimensional medical imaging over the web and discussing a unique condition with a specialist in New York. Or downloading a high-definition, full-length feature film in less than five minutes. Or collaborating with classmates around the world while watching live 3-D video of a university lecture. Universal, ultra high-speed Internet access will make all this and more possible. We've urged the FCC to look at new and creative ways to get there in its National Broadband Plan – and now we're announcing an experiment of our own.

Google is planning to build and test ultra-high speed broadband networks in a small number of trial locations across the country. We'll deliver Internet speeds more than 100 times faster than what most Americans have access to today with 1 gigabit per second, fiber-to-the-home connections. We'll offer service at a competitive price to at least 50,000 and potentially up to 500,000 people.

As a first step, we're putting out a request for information (RFI) to help identify interested communities. We welcome responses from local government, as well as members of the public.

Our goal is to experiment with new ways to help make Internet access better and faster for everyone. Here are some specific things that we have in mind:

**Next generation apps:** We want to see what developers and users can do with ultra high-speeds, whether it's creating new bandwidth-intensive "killer apps" and services, or other uses we can't yet imagine.

**New deployment techniques:** We'll test new ways to build fiber networks, and to help inform and support deployments elsewhere, we'll share key lessons learned with the world.

**Openness and choice:** We'll operate an "open access" network, giving users the choice of multiple service providers. And consistent with our past advocacy, we'll manage our network in an open, non-discriminatory, and transparent way.

Like our WiFi network in Mountain View, the purpose of this project is to experiment and learn. Network providers are making real progress to expand and improve high-speed Internet access, but there's still more to be done. We don't think we have all the answers – but through our trial, we hope to make a meaningful contribution to the shared goal of delivering faster and better Internet for everyone.

#### Key Events & Projected Dates:

- Issuance of request for information: February 10, 2010
- Response Deadline: March 26, 2010

Google reserves the right to modify any of these dates. Any changes will be published on this website.

## **2. Legal Statements**

### **Confidential Information Notice**

Google does not seek any proprietary or confidential information as part of your response. Accordingly, please do not submit any information that you do not want to become publicly available. Google will not be under any obligation to treat submissions as confidential and Google may disclose submissions to third parties as part of the evaluation process. All information and data contained in your response should be submitted on an unrestricted basis.

Disclaimers

### **Legal Status**

This RFI does not constitute, and should not be interpreted as, a contract between Google and any entity or person for the performance of any obligation. Instead, the RFI seeks to identify required information from communities and to establish a common framework within which an agreement for a fiber trial may be reached.

The submission of a response to the RFI, and subsequent evaluation of that response by Google, also does not constitute a contract or any type of agreement between Google and any respondent for the performance of any obligation. Only the execution by Google of a written contract will obligate Google in accordance with the terms and conditions contained in any such contract. All responses to this RFI become the property of Google.

Responses to this RFI may not be made by employees of, consultants to or other persons connected with Google. By submitting a response to either portion of this RFI, each respondent certifies that no employee of, consultant to, or other person connected to Google who has been or is associated with the respondent has participated in preparation of the response.

Any personal information Google receives as part of the RFI will be used by Google only for purposes of planning and running the services. Google will only share this information with third parties where necessary for planning and running the services.

### **Cost of RFI**

This RFI does not commit Google to pay any expense incurred by you in the preparation of your response.

### 3. Instructions to Respondents

All responses to this RFI should be submitted through the interactive response forms found on the website: <http://www.google.com/appserve/fiberrfi>. In order to respond to this RFI, you will have one of two options:

- Full community response by a local government interested in having its community serve as a trial location
- Other interested parties and non-governmental respondents, explaining why the trial should be held in the respondent's community.

If any item in the Local Government RFI is unclear, a written request for clarification may be sent to Google. Such requests must be sent only through the website by selecting the contact link in your response.

An FAQ can be found here: <http://www.google.com/appserve/fiberrfi/public/faq>

The completed response to the RFI (local government or by other interested parties) must be submitted through the website. The interactive response forms are designed to allow you to begin your response, and then save it and come back to it for further work. The response will only be finally complete when you have clicked the "Save and continue" button for the response. Once you have submitted your response, it can no longer be edited.

All responses must be submitted no later than 5:00 pm (PT) on the Response Deadline date. Any submission submitted after the deadline will not be accepted; however, Google may make exceptions at its sole discretion.

Responses will be evaluated and ranked by a selection team designated by Google for that purpose. Google may make a decision on how to proceed with respect to responses at any time without further notice. Upon completion of Google's evaluation, Google will provide information about the responses and next steps. As one possible outcome of the RFI, a short list of responding communities may be asked to provide further information, though this will only occur at Google's discretion.

All communications to Google regarding the Local Government RFI must be made solely through the website, please use the contact link in your response.

## 4. FAQ

### **What is Google planning to build?**

Google is planning to build and test ultra-high speed broadband networks in one or more trial locations across the country. We'll deliver Internet speeds more than 100 times faster than what most Americans have access to today over 1 gigabit per second, fiber-to-the-home connections. We'll offer service at a competitive price to at least 50,000 and potentially up to 500,000 people.

### **Why is Google doing this?**

Our goal is to experiment with new ways to help make Internet access better and faster for everyone.

### **What criteria will Google use to select the communities for this project?**

Above all, we're interested in deploying our network efficiently and quickly, and are hoping to identify interested communities that will work with us to achieve this goal. We also want to want to work with a community where we can bring significant benefits to residents and develop useful proofs-of-concept that can have a broader impact. For example, we're looking for opportunities to experiment with deployment techniques that can inform and accelerate broadband deployment elsewhere as well.

To that end, we'll use our RFI to identify interested communities and to assess local factors that will impact the efficiency and speed of our deployment, such as the level of community support, local resources, weather conditions, approved construction methods and local regulatory issues. We will also take into account broadband availability and speeds that are already offered to users within a community. The RFI is a first step – we plan to consult with local government organizations, as well as conduct site visits and meet with local officials, before announcing our final decisions.

### **When does Google expect to announce a target community?**

We plan to announce a target community or target communities this year.

### **How much will the services cost?**

The final price has not yet been determined, but we intend to offer service at a competitive price.

### **Why would consumers need 1 Gbps connections?**

In the same way that the transition from dial-up to broadband made possible the emergence of online video and countless other applications, ultra high-speed bandwidth will drive more innovation – in high-

# For local government (Exhibit A)

## 1. General information

\* Required fields

Name of governing body: \* \_\_\_\_\_

You can create a name for each response. Name of this response:

\_\_\_\_\_

List communities included in your response:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

These may be autonomous units of government contained within the boundaries of the responding entity (such as towns within a county), districts or neighborhoods within a town, or adjacent units of government responding together (such as a joint response of multiple counties or towns).

### ***Contact person:***

Name: \* \_\_\_\_\_

Title: \_\_\_\_\_

Address: \* \_\_\_\_\_

State: \* \_\_\_\_\_

ZIP (5 Digit): \* \_\_\_\_\_

Phone number: \_\_\_\_\_

Email: \* \_\_\_\_\_

Contact person has authority to provide these answers as the official position of the responding local government?

\_\_\_\_\_

If not, please provide contact information for the local government official who does have such authority:

\_\_\_\_\_

## 2. Background information about your community

Population (2008): \* \_\_\_\_\_

Populated area in square miles: \* \_\_\_\_\_

Please describe how the population is distributed

\_\_\_\_\_

\_\_\_\_\_

Median household income (\$ per annum)" \* \_\_\_\_\_

Number of housing units: \* \_\_\_\_\_

Number of single family homes: \_\_\_\_\_

Number of multi-family homes: \_\_\_\_\_

Number of apartment complexes: \_\_\_\_\_

Average number of units per apartment complex: \_\_\_\_\_

Number of gated communities: \_\_\_\_\_

Average number of housing units per gated community:

\_\_\_\_\_

Approximate percentage of households in entire community with access to broadband Internet service (%):

\_\_\_\_\_

Approximate percentage of the households in entire community that are currently subscribing to broadband Internet service (%):

\_\_\_\_\_

***Terrain:***

Overall description of terrain:

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Percentage of plains (%): \_\_\_\_\_

Percentage of rolling hills (%): \_\_\_\_\_

Percentage of mountains (%): \_\_\_\_\_

Percentage other terrain (%): \_\_\_\_\_

***Climate:***

Average annual highest temperature (°F): \_\_\_\_\_

Average annual temperature (°F): \_\_\_\_\_

Average annual lowest temperature (°F): \_\_\_\_\_

Average amount of snowfall per year (inches): \_\_\_\_\_

Average amount of rainfall per year (inches): \_\_\_\_\_

Average amount of hurricane or tornado activity in a year (days):

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***Local government:***

Form of local government (city, town, county, etc.): \*

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Local government rule: Home Rule - Limited Rule - Other

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Source of government decision making (city manager, city council, mayor, etc.):

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**Utilities:**

Please list largest utilities and the approximate percentage of the community covered by each provider:

|          | Provider Name | Coverage (%) |
|----------|---------------|--------------|
| Electric | _____         | _____        |
| Gas      | _____         | _____        |
| Water    | _____         | _____        |
| Sewer    | _____         | _____        |
| Cable    | _____         | _____        |
| Phone    | _____         | _____        |

**Local economy mix (if available):**

Number of high tech jobs: \_\_\_\_\_

Number of manufacturing jobs: \_\_\_\_\_

Number of education services jobs: \_\_\_\_\_

Number of other service sector jobs: \_\_\_\_\_

Colleges and universities (List names and average number of students enrolled at each, if available):

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Major hospitals/health care facilities (List names):

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Current providers of high speed Internet service (Company; DSL, Cable modem, wireless, fiber, etc.):

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Other significant features of your community that could be relevant for this project:

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### 3. Collaborating on a Google fiber trial

In this section, we ask you to share how your community would work with Google to enable us to proceed quickly and effectively.

Are you, the local government, willing to appoint an individual to serve as a single point of contact (1)? \*  
Yes/No \_\_\_\_\_

(1) A single point of contact to coordinate the local government and community's interactions with Google, to obtain as promptly as possible whatever information Google may require, and to resolve any problems that may arise as quickly and effectively as possible.

If so, please describe the responsibilities and authority that this individual will have:

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Describe any current or planned programs in your community to accelerate and expand adoption and use of broadband Internet access:

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Additional reasons you believe that Google should select your community for this project:

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Please provide a web link to any additional information you wish us to consider. Submissions using Google Maps or YouTube are encouraged:

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Google is interested in working with communities in which it can rapidly install fiber-optic facilities and offer ultra-high speed Internet access services. Google respects the legitimate responsibility of local governments to preserve and protect community assets, minimize disruption, ensure the safety of the public, address aesthetic concerns and property values, and obtain reasonable compensation for the use of public assets.

#### **4. Your community's support**

Have you performed any outreach, study or analysis regarding support in your community for this type of trial? \*  
Yes/No \_\_\_\_\_

Describe how you ascertained or plan to ascertain the level of community support for this project (e.g., surveys, public hearings, meetings with community groups, etc.):

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If possible, describe your community's level of support for this project:

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Please briefly summarize any additional comments or suggestions you would like to make to Google on behalf of your community:

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## 5. Facilities and resources

Deployment of a community-wide fiber network will require Google to work closely with local government entities and other organizations. Google seeks to identify resources owned by the community that may assist in the rapid, smooth deployment of a residential fiber optic network. In this section, we ask you to share information about particular facilities and assets within the community that may be used or affected as part of such a facilities deployment, particularly those owned by the local government.

Please respond as completely and accurately as possible.

### *Pole Attachments:*

***Please identify the entities, including units of the local government, that own or control utility poles in your community:***

Entity Name: \_\_\_\_\_

Number of poles owned or controlled: \_\_\_\_\_

Annual rate per pole for pole attachment:

- by telecommunications carriers (\$): \_\_\_\_\_

- by cable system operators (\$) \_\_\_\_\_

- Internet access providers (\$): \_\_\_\_\_

Entity Name: \_\_\_\_\_

Number of poles owned or controlled: \_\_\_\_\_

Annual rate per pole for pole attachment:

- by telecommunications carriers (\$): \_\_\_\_\_

- by cable system operators (\$) \_\_\_\_\_

- Internet access providers (\$): \_\_\_\_\_

Entity Name: \_\_\_\_\_

Number of poles owned or controlled: \_\_\_\_\_

Annual rate per pole for pole attachment:

- by telecommunications carriers (\$): \_\_\_\_\_

- by cable system operators (\$) \_\_\_\_\_

- Internet access providers (\$): \_\_\_\_\_

***If the local government will make its own poles available for attachments by Google, please estimate the number of days to complete the following steps, assuming full cooperation from Google:***

Negotiation of a master pole attachment agreement: \_\_\_\_\_

Issuance of permits for individual attachments: \_\_\_\_\_

Developing specifications for make-ready work: \_\_\_\_\_

Completing make ready work: \_\_\_\_\_

***If a unit of your local government has access to poles owned or controlled by third parties that it could make available to Google, please provide the following information:***

Number of poles: \_\_\_\_\_

Entity or entities that own or control the poles: \_\_\_\_\_

Rate that you would charge Google (\$) per pole per year: \_\_\_\_\_

Describe any restrictions on your right to make such poles available to Google:

\_\_\_\_\_

\_\_\_\_\_

Please identify any state or local laws, ordinances, rules or other legal measures that govern access and rates for attachment:

\_\_\_\_\_

\_\_\_\_\_

Please provide contact information for any entities named above:

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**Conduits:**

***Please identify the entities, including units of local government, that own or control utility conduits in your community:***

Entity Name: \_\_\_\_\_

Linear feet of conduit owned or controlled: \_\_\_\_\_

Annual rate per foot for conduit use (\$):

- by telecommunications carriers (\$): \_\_\_\_\_

- by cable system operators (\$) \_\_\_\_\_

- Internet access providers (\$): \_\_\_\_\_

Entity Name: \_\_\_\_\_

Linear feet of conduit owned or controlled: \_\_\_\_\_

Annual rate per foot for conduit use (\$):

- by telecommunications carriers (\$): \_\_\_\_\_

- by cable system operators (\$) \_\_\_\_\_

- Internet access providers (\$): \_\_\_\_\_

Entity Name: \_\_\_\_\_

Linear feet of conduit owned or controlled: \_\_\_\_\_

Annual rate per foot for conduit use (\$):

- by telecommunications carriers (\$): \_\_\_\_\_

- by cable system operators (\$) \_\_\_\_\_

- Internet access providers (\$): \_\_\_\_\_

***If the local government will make its own conduits available for use by Google, please estimate the number of days to complete the following steps, assuming full cooperation from Google:***

Negotiation of a master conduit agreement: \_\_\_\_\_

Issuance of permits: \_\_\_\_\_

***If a unit of your local government has access to conduit owned or controlled by third parties that it could make available to Google, please provide the following information:***

Linear feet: \_\_\_\_\_

Entity or entities that own or control the conduit:

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Rate that you would charge Google (\$) per linear foot per year: \_\_\_\_\_

Describe any restrictions on your right to make such conduit available to Google:

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Please identify local laws, ordinances, rules or other legal measures that govern access rights and rates for conduit use:

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Please provide contact information for any entity named above:

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***Public Rights of Way:***

Does your local government directly control and administer the use of all public rights of way within its jurisdiction? \_\_\_\_\_

Describe any other entities that control and administer the use of the public rights of way in your community:

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***With respect to your process for managing access to public rights-of-way, please estimate the number of days to complete the following steps, assuming full cooperation from Google:***

Negotiation, approval, and issuance of a master right-of-way agreement: \_\_\_\_\_

Issuance of construction permits: \_\_\_\_\_

Post-construction inspections and approvals: \_\_\_\_\_

***Please indicate the amount or method of calculating all fees and charges for use of the public rights-of-way, including the following (if applicable):***

Application fees: \_\_\_\_\_

Linear foot (or other) usage fees: \_\_\_\_\_

Inspection fees: \_\_\_\_\_

Other fees or charges: \_\_\_\_\_

***Community sensitivities and policies:***

Please describe any historical districts or other culturally or environmentally sensitive areas: \*

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Please describe your under-grounding plans and policies, if any: \*

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Please identify unique ordinances, rules, policy statements, and other legal measures specific to your community that Google would have to comply in developing a fiber project:

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## 6. Construction methods

*Has your community worked with, studied or evaluated the following types of construction methods for fiber to the home networks:*

Aerial \_\_\_\_\_

Trenching \_\_\_\_\_

Boring \_\_\_\_\_

Micro-trenching \_\_\_\_\_

Plow \_\_\_\_\_

Rock Saw \_\_\_\_\_

*Check approved methods of construction for your community: \**

Aerial \_\_\_\_\_

Trenching \_\_\_\_\_

Boring \_\_\_\_\_

Micro-trenching \_\_\_\_\_

Plow \_\_\_\_\_

Rock Saw \_\_\_\_\_

None/Other \_\_\_\_\_

Are there other construction methods that are approved for use in construction of fiber to the home or other telecommunications networks in your community? If so, please list them below:

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**7. Regulatory issues**

Please describe the local regulatory obligations, if any, that would apply to Google if this project went forward in your community:\*

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Please describe local business obligations and taxes/fees, if any, that would apply to Google if this project went forward in your community:

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## For residents and community groups (Exhibit B)

\* Required fields

Your name: \* \_\_\_\_\_

Your organization or community group: \_\_\_\_\_

If you are responding on behalf of an organization or community group, please describe it:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City: \* \_\_\_\_\_

State: \* \_\_\_\_\_

Why should Google build a fiber to the home network where you live? \*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Web link to supporting material (YouTube videos and other creative submissions are encouraged!):

\_\_\_\_\_

### Additional Information

Check any/all that apply.

What kind of Internet services are available where you live?

Dial-up \_\_\_\_\_

DSL \_\_\_\_\_

Cable modem \_\_\_\_\_

Fiber to the home \_\_\_\_\_

Wireless \_\_\_\_\_

Other \_\_\_\_\_

None \_\_\_\_\_

Don't know \_\_\_\_\_

What kind of Internet service do you primarily use at home?

None \_\_\_\_\_

Dial-up \_\_\_\_\_

DSL \_\_\_\_\_

Cable modem \_\_\_\_\_

Fiber to the home \_\_\_\_\_

Wireless \_\_\_\_\_

Other \_\_\_\_\_

Don't know \_\_\_\_\_

What company provides your home Internet service?

- AT&T, SBC \_\_\_\_\_

- Verizon \_\_\_\_\_

- Qwest \_\_\_\_\_

- Comcast \_\_\_\_\_

- Road Runner, Time Warner \_\_\_\_\_

- Charter \_\_\_\_\_

- Cox \_\_\_\_\_

- Cablevision \_\_\_\_\_

- AOL \_\_\_\_\_

- EarthLink \_\_\_\_\_

- NetZero, Juno, BlueLight \_\_\_\_\_

- CenturyLink, CenturyTel, Embarq \_\_\_\_\_

- Other \_\_\_\_\_

What is the advertised speed of your home Internet service? Please round to the nearest megabit per second (Mbps).

"Less than 1 Mbps" \_\_\_\_\_

"1-5 Mbps" \_\_\_\_\_

"5-10 Mbps" \_\_\_\_\_

"10 Mbps or faster" \_\_\_\_\_

"Don't know" \_\_\_\_\_

What is your actual download speed during the evening?

You can use a third-party website like [Speedtest.net](http://Speedtest.net) or [Bandwidthplace.com](http://Bandwidthplace.com), or other tools at [Measurement Lab](http://Measurement Lab), to measure your actual download and upload speeds.

"Less than 1 Mbps" \_\_\_\_\_

"1-5 Mbps" \_\_\_\_\_

"5-10 Mbps" \_\_\_\_\_

"10 Mbps or faster" \_\_\_\_\_

"Don't know" \_\_\_\_\_

What is your actual upload speed during the evening?

You can use a third-party website like [Speedtest.net](http://Speedtest.net) or [Bandwidthplace.com](http://Bandwidthplace.com), or other tools at [Measurement Lab](http://Measurement Lab), to measure your actual download and upload speeds."

"Less than 1 Mbps" \_\_\_\_\_

"1-5 Mbps" \_\_\_\_\_

"5-10 Mbps" \_\_\_\_\_

"10 Mbps or faster" \_\_\_\_\_

"Don't know" \_\_\_\_\_

How much does your Internet service cost per month?

"Free" \_\_\_\_\_

" Less then \$10" \_\_\_\_\_

"\$10-20" \_\_\_\_\_

"\$20-40" \_\_\_\_\_

"\$40-60" \_\_\_\_\_

"\$60-\$80" \_\_\_\_\_

"\$80-\$100" \_\_\_\_\_

"\$100 or more" \_\_\_\_\_

Is your Internet service "bundled" with other services like TV and phone?

- Yes \_\_\_\_\_

- No \_\_\_\_\_

How many times in the last month did your high-speed Internet service not work correctly, slow down or frustrate you?

"Never it's great!" \_\_\_\_\_

"1 to 5 times" \_\_\_\_\_

"6 to 10 times" \_\_\_\_\_

"More than 10. Boo!" \_\_\_\_\_

Describe the quality of your home Internet service customer support:

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What would you like to see improved about your current service? Check all that apply.

Lower price \_\_\_\_\_

Faster speed \_\_\_\_\_

Higher reliability \_\_\_\_\_

Better customer support \_\_\_\_\_