

# AGENDA

#### BOARD OF MAYOR AND ALDERMEN WORK SESSION

#### Monday, August 6, 2018, 4:30 p.m. City Hall, 225 W. Center St., Council Room, 2<sup>nd</sup> Floor

#### **Board of Mayor and Aldermen**

Mayor John Clark, Presiding Vice Mayor Mike McIntire Alderman Jennifer Adler Alderman Joe Begley

Alderman Betsy Cooper Alderman Colette George Alderman Tommy Olterman

#### Leadership Team

Jeff Fleming, City Manager Chris McCartt, Assistant City Manager for Administration Ryan McReynolds, Assistant City Manager for Operations J. Michael Billingsley, City Attorney Jim Demming, City Recorder/Chief Financial Officer David Quillin, Police Chief

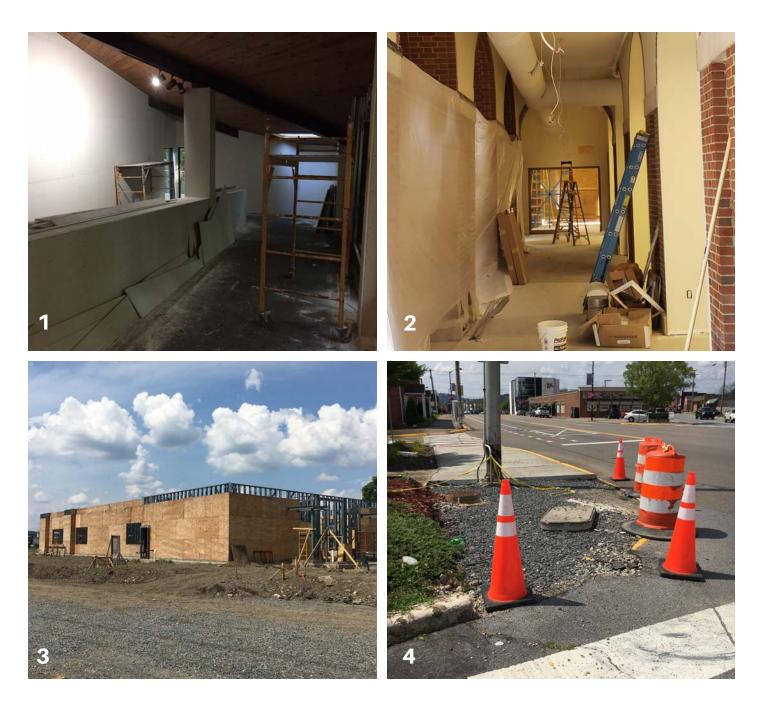
Scott Boyd, Fire Chief Lynn Tully, Development Services Director George DeCroes, Human Resources Director Heather Cook, Marketing and Public Relations Director

- 1. Call to Order
- 2. Roll Call
- 3. Kingsport Center for Higher Education Jeff McCord
- Added 8/3/18 4. Main Street Redevelopment/AEP Ryan McReynolds
  - 5. Review of Items on August 7, 2018 Business Meeting Agenda
  - 6. Adjourn

Next Work Session, August 20: MeadowView Annual Update, Aquatic Center, PETWORKS

Citizens wishing to comment on agenda items please come to the podium and state your name and address. Please limit your comments to five minutes. Thank you.

# **City of Kingsport** Project Status in Pictures



#### **1** Bays Mountain Updates

The Nature Center ramp leading from the top level to the lower level is under construction.

#### 2 Library Colonnade Expansion

The crew is finishing up with the drywall and cleaning the area up for the incoming painters.

#### **3 KATS Transit Center**

Building plumbing components for bathrooms and downspouts are being installed.

#### **4** Center Street Sidewalks

Demolition and replacement of sidewalk and ramps continue, with current work being completed on E Sullivan St and E Center St.

Status Up	odates on A	ctive Projec	cts sorted by Cost			
Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$7,500,000.00	Ryan McReynolds	Thompson, Michael	SR 347 (Rock Springs Road) [State &MTPO funded]	No City Funds	12/31/2020	Preliminary design plans are near completeion. A public design meeting is being planned for late Summer 2018.
\$6,600,000.00	Niki Ensor	Niki Ensor	Water & Wastewater Facilities SCADA/Telemetry Project	WA1700/ SW1700/ SW1603	4/1/2019	Working to complete Radio Pathway study for remote water sites.
\$4,400,000.00	Niki Ensor	Niki Ensor	WWTP Electrical Improvements	SW1800	9/1/2019	Working towards 90% desgin.
\$4,186,000.00	Chris McCartt	Melton, Dawn	New KATS Transit Center	GP1718	1/18/2019	Finish Grade work for the plaza and bus drive being done
\$3,867,000.00	Chad Austin	Hank Clabaugh	Border Regions Sewer Extensions		2/17/2020	Prelminary survey has started.
\$3,750,000.00	Niki Ensor	Niki Ensor	Chemical Feed Design	WA1403	4/1/2019	90% desgin complete. Project is on hold until funding becomes available.
\$3,740,000.00	Niki Ensor	Niki Ensor	West Kingsport Forcemain and Pump Station Improvements	SW1708	6/1/2019	Three easements remain - Miller, Byrd, Micheli.
\$3,300,000.00	Michael Thompson	Thompson, Michael	Indian Trail Drive Extension	GP1615	6/30/2019	Still awaiting RPAI (East Stone Commons Owner) coordination with designer on access needs.
\$1,700,000.00	Michael Thompson	Thompson, Michael	Main Street Rebuild [City & MTPO Funded]	GP1516	4/1/2021	Preliminary plans comments returned from TDOT and addressed. Work continues towards Right of Way Plans submission (70%).
\$1,405,205.65	Public Works	Clabaugh, Hank	2018 Contracted Paving - Area 10: West Lynn Garden		11/16/2018	Paving expected to begin in mid August.
\$1,300,000.00	Chad Austin	Pamela Gilmer	Phase 4 Water Improvements		4/26/2019	Survey to be completed next week.
\$961,140.00	Michael Thompson	Elsea, Tim	Stone Drive - Phase 2 (SR 1, US 11W) Sidewalk Improvements from Stonebrook Place Pvt. Dr. to Lynn Garden Drive [95% State Funded 5% City]	GP1725	8/31/2020	Request sent to TDOT for a design variance to new multimodal design requirements put in place April of 2018. Request is to go from the required 12 foot buffer between sidewalk and travel way to a 7 foot buffer.
\$940,000.00	Kitty Frazier	Clabaugh, Hank	Kingsport Greenbelt - Eastern Extension - Phase 1 [Fed. Grant & City funded]	GP1529	11/1/2019	The City was issued orders of possession on remaining tracts at hearings on June 19. Information submitted and TDOT is in the process of certifying the ROW, which will allow the obligation of federal funds for the construction phase of this project.
\$697,475.00	Michael Thompson	Thompson, Michael	Stone Drive - Phase 1 (SR 1, US 11W) Sidewalk Improvements from Stonebrook Place Pvt. Dr. to American Way [95% State Funded 5% City]	GP1623	12/7/2019	Value Engineering underway to meet funding availability.
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Text in blue denotes changes in the past two weeks. Red box denotes past due, yellow box denotes due within 30 days, green denotes due more than 30 days

Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$668,835.40	Public Works	Clabaugh, Hank	2018 Contracted Paving - Main Roads: Ridgefields, Ft Robinson, Rivermont		11/16/2018	Contract is working its way through the signature phase.
\$619,720.46	Michael Thompson	Thompson, Michael	Signalization of the SR 126 (Memorial Blvd.) at Island Road Intersection [State & MTPO Funded]	MPO15A	11/12/2018	Contractor is grading, installing storm drainage, and working on the signal footers/conduit.
\$577,000.00	Niki Ensor	Sam Chase	Tri-County Tank Replacement Project	WA1705	11/30/2018	Awaiting contracts to be signed. Should have returned this week.
\$420,000.00	Rob Cole	Harris, David	Bays Mountain Dam Rehabilitation (2017- C28)	GP1711	12/22/2018	Grouting and repointing and Butress repair work continues.
\$415,000.00	Chad Austin	Chris Alley	SR 93- Fall Branch section (TDOT)		12/31/2020	Project moved to 2019; "B Date" package due 9/26/2018; TDOT Letting Date: December 2018
\$397,700.00	Chad Austin	Hank Clabaugh	Border Regions Area 3 Water Upgrades	WA1806	12/30/2018	Contract is approved. Awaiting preconstruction conference date from contractor.
\$352,000.00	Chad Austin	Chris Alley	SR 93- Horse Creek/Derby Drive Section (TDOT)		12/31/2021	Project moved to 2020; "B Date" package due 9/25/2019; TDOT Letting Date: December 2019
\$350,000.00	Rob Cole	Austin, Chad	Bays Mountain Septic System Upgrades	GP1704	4/26/2019	Working with consultant on alternatives to upgrade sewer system.
\$288,000.00	Chris McCartt	Hickman, Mike	Carousel Park		10/31/2018	All concrete work complete. Contractor finishing subgrade.
\$246,225.00	Tim Elsea	Elsea, Tim	Lynn Garden Signal System [MTPO & City funded]	MPO15C	10/31/2018	Work is wrapping up on the conduit installation as well as the aerial span wire. Once this infrastructure is completed the contractor can begin installing fiber.
\$230,000.00	Chris McCart	Hickman, Mike	Library Colonnade Expansion	GP1807	8/19/2018	Storefront windows to be installed next week.
\$150,000.00	Steve Robbins	Steve Robbins	Bloomington Culvert Replacement		11/30/2018	90% design plans and cost estimate received from Mattern & Craig.
\$128,747.00		Clabaugh, Hank	Center Street Sidewalk Improvements - Phase 1		9/2/2018	Demoliton and replacement of sidewalk and ramps continues.
\$50,000.00	David Edwards	David Edwards	Main St. & Sullivan St. System Upgrades		8/17/2018	Construction underway.
	Tim Elsea	Gilmer, Pamela	Indian Trail Drive at Stone Drive Intersectio Improvements			Bid opening schedule for 7/25/18.

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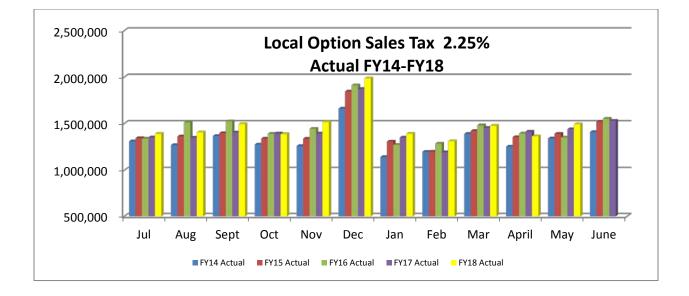
# BMA Report, August 6, 2018

# Financial Comments – Judy Smith



#### Local Option Sales Tax 2.25% - Five Year History

						Adopted	Va	riance	% of Gr	owth
	FY14	FY15	FY16	FY17	FY18	FY18	FY18 Over/	FY18 Over/Under	FY18 Over/Under	FY18 Over/
	Actual	Actual	Actual	Actual	Actual	Budget	Under Budget	Prev. Year Actual	Prev. Year Actual	Under Budget
Jul	1,312,286	1,346,896	\$1,341,027	\$1,354,948	\$1,392,147	\$1,369,430	22,717	37,199	2.75%	1.66%
Aug	1,271,614	1,365,262	1,513,366	1,351,703	1,408,119	\$1,365,406	42,713	56,416	4.17%	3.13%
Sept	1,369,878	1,401,017	1,523,474	1,407,707	1,493,952	\$1,406,960	86,992	86,245	6.13%	6.18%
Oct	1,278,027	1,342,308	1,392,699	1,397,511	1,389,451	\$1,377,506	11,945	(8,060)	-0.58%	0.87%
Nov	1,261,963	1,340,457	1,446,687	1,396,643	1,515,210	\$1,394,595	120,615	118,567	8.49%	8.65%
Dec	1,661,378	1,845,794	1,911,650	1,873,531	1,985,601	\$1,845,939	139,662	112,070	5.98%	7.57%
Jan	1,143,685	1,309,305	1,274,292	1,353,575	1,392,917	\$1,343,079	49,838	39,342	2.91%	3.71%
Feb	1,198,993	1,201,182	1,287,536	1,194,890	1,312,713	\$1,201,182	111,531	117,823	9.86%	9.29%
Mar	1,392,759	1,424,090	1,481,645	1,457,518	1,477,699	\$1,424,090	53,609	20,181	1.38%	3.76%
April	1,255,243	1,357,635	1,396,651	1,416,452	1,366,099	\$1,366,651	(552)	(50,353)	-3.55%	-0.04%
May	1,343,786	1,393,582	1,353,162	1,442,890	1,492,028	\$1,363,162	128,866	49,138	3.41%	9.45%
June	1,411,977	1,520,599	1,552,713	1,529,681		\$1,530,600				
Total	15,901,589	16,848,127	17,474,902	17,177,049	16,225,936	16,988,600	\$ 767,936	\$ 578,569	3.72%	4.93%



Revised 8/7/18



# AGENDA

# **BOARD OF MAYOR AND ALDERMEN**

# **BUSINESS MEETING**

Tuesday, August 7, 2018, 7:00 p.m. City Hall, 225 W. Center St., Courtroom, 2<sup>nd</sup> Floor

#### **Board of Mayor and Aldermen**

Mayor John Clark, Presiding Vice Mayor Mike McIntire Alderman Jennifer Adler Alderman Joe Begley Alderman Betsy Cooper Alderman Colette George Alderman Tommy Olterman

#### **City Administration**

Jeff Fleming, City Manager Chris McCartt, Assistant City Manager for Administration Ryan McReynolds, Assistant City Manager of Operations J. Michael Billingsley, City Attorney James Demming, City Recorder/Chief Financial Officer David Quillin, Police Chief Scott Boyd, Fire Chief Lynn Tully, Development Services Director George DeCroes, Human Resources Director Heather Cook, Marketing and Public Relations Director

#### I. CALL TO ORDER

- II.A. PLEDGE OF ALLEGIANCE TO THE FLAG
- Revised 8/7/18 II.B. INVOCATION Vice Mayor McIntire
  - III. ROLL CALL

#### **IV.A. RECOGNITIONS & PRESENTATIONS**

Revised 8/7/18

- 1. Healthy Kingsport Platinum Partner (Mayor Clark)
- 2. Cartegraph High Performance Award (Vice Mayor McIntire)
- 3. Farmers Market Week Proclamation (Mayor Clark)

#### IV.B. APPOINTMENTS None

#### V. APPROVAL OF MINUTES

- 1. Work Session July 16, 2018
- 2. Business Meeting July 17, 2018

#### VI. COMMUNITY INTEREST ITEMS

#### A. PUBLIC HEARINGS

- 1. Vacate a Permanent Utility Easement on Eastman Property (AF: 183-2018) (Jessica Harmon)
  - Public Hearing
  - Ordinance First Reading
- 2. Amend Zoning of 1210 and 1214 Conway Drive (AF: 187-2018) (Ken Weems)
  - Public Hearing
  - Ordinance First Reading
- 3. Amend Zoning of 1700 North John B Dennis Highway (AF: 188-2018) (Ken Weems)
  - Public Hearing
  - Ordinance First Reading

#### COMMENT

Citizens may speak on agenda items. When you come to the podium, please state your name and address and sign the register that is provided. You are encouraged to keep your comments non-personal in nature, and they should be limited to five minutes. A total of thirty minutes is allocated for public comment during this part of the agenda.

#### B. BUSINESS MATTERS REQUIRING FIRST READING

- 1. Ordinance to Appropriate Partnership Support Grant from Tennessee Arts Commission (AF: 175-2018) (Chris McCartt)
  - Ordinance First Reading
- 2. Receive a Grant from the State of Tennessee for the Kingsport Senior Center and Appropriate the Funds (AF: 122-2018) (Shirley Buchanan)
  - Resolution
  - Ordinance First Reading
- 3. Appropriate Funds from the USDOJ / Bureau of Justice Assistance Grant FY 2017 Local Solicitation (AF: 177-2018) (David Quillin)
  - Ordinance First Reading
- 4. Budget Adjustment Ordinance for FY18 (AF: 179-2018) (Chris McCartt)
  - Ordinance First Reading

- 5. Amend City Code Section 98-62- Operators to Exercise Care, Maintain Lookout (AF: 186-2018) (David Quillin)
  - Ordinance First Reading
- 6. Amending the Code of Ordinance by Adding Sections Regulating the Operation of Pedal Carriages and Amending Sections 6-1 through 6-3 Pertaining to Open Containers and Public Display or Consumption (AF: 189-2018) (Ken Weems)
  - Ordinance First Reading

# C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

- 1. Amend Zoning Code Pertaining to Development Guidelines in the Gateway District Overlay (AF: 165-2018) (Jessica Harmon)
  - Ordinance Second Reading & Final Adoption
- 2. Vacate a Portion of an Access Easement on the Pierce Property (AF: 166-2018) (Jessica Harmon)
  - Ordinance Second Reading & Final Adoption
- 3. Amend Construction Contract and Budget Ordinance for Reedy Creek Trunkline Project (AF: 171-2018) (Ryan McReynolds)
  - Ordinance Second Reading & Final Adoption
- 4. Ordinance Amending Kingsport City Code Section 90-159 Elimination of the Sidewalk Board (AF: 164-2018) (Ryan McReynolds)
  - Ordinance Second Reading & Final Adoption

# D. OTHER BUSINESS

- Apply for and Receive a Grant from the Department of Justice Edward Byrne Memorial Justice Assistance Program (JAG) FY 2018 Local Solicitation (AF: 178-2018) (David Quillin)
  - Resolution
- 2. Great Urban Parks Grant Application (AF: 176-2018) (Chris McCartt)
  - Resolution
- 3. Agreement with National IPA for Cooperative Purchasing (AF: 192-2018) (Chris McCartt)
  - Resolution
- 4. Highway Entrance Permit with TDOT for Meadowview Roadway Extension (AF: 195-2018) (Ryan McReynolds)
  - Resolution

Withdrawn 8/3/18

- 5. Memorandum of Understanding Engineering and Design Agreement with Kingsport Power Company (dba AEP) for Relocation of the Existing Line Associated with Main Street Redevelopment (AF: 184-2018) (Ryan McReynolds)
  - Resolution

- 6. Issue a Purchase Order to Southern Lighting & Traffic Systems for Traffic Signal Cabinets (AF: 190-2018) (Ryan McReynolds)
  - Resolution
- 7. Purchase of Heart Monitors from Physio Controls, Inc. (AF: 185-2018) (Scott Boyd)
  - Resolution

Added 8/3/18

- 8. Accepting Donation from Eastman Chemical Company of Real Property and a Permanent Utility Easement to Extend Meadowview Parkway to Wilcox Drive (AF: 197-2018) (Lynn Tully)
  - Resolution

#### VII. CONSENT AGENDA

Revised 8/2/18

- 1. Approval of Easements and Right-of-Way for Meadowview Road Extension (AF: 191-2018) (Ryan McReynolds)
  - Resolution Approval of Offer

#### VIII. COMMUNICATIONS

- A. City Manager
- B. Mayor and Board Members
- C. Visitors

Citizens may speak on issue-oriented items. When you come to the podium, please state your name and address and sign the register that is provided. You are encouraged to keep your comments non-personal in nature, and they should be limited to five minutes.

#### IX. ADJOURN

Minutes of the <u>Regular Work Session</u> of the Board of Mayor and Aldermen, City of Kingsport, Tennessee Monday, July 16, 2018, 4:30 PM Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor John Clark Vice-Mayor Mike McIntire Alderman Jennifer Adler Alderman Joe Begley

Alderman Betsy Cooper Alderman Colette George Alderman Tommy Olterman

<u>City Administration</u> Jeff Fleming, City Manager Joseph E. May, Interim City Attorney James H. Demming, City Recorder

1. CALL TO ORDER: 4:30 p.m. by Mayor Clark.

2. ROLL CALL: By Deputy City Recorder Angie Marshall.

**3. KINGSPORT BALLET UPDATE.** Bertina Dew, Executive Director, presented and update on the ballet and answered questions from the board.

4. BORDEN PARK UPDATE. Jennifer Salyer gave a presentation on past projects as well as recent developments that have been made at the park by members of the Rotary Club.

5. SALES TAX, WELLNESS CLINIC & SAFETY. City Manager Fleming discussed this item.

6. REVIEW OF AGENDA ITEMS ON THE JULY 17, 2018 REGULAR BUSINESS MEETING AGENDA. City Manager Fleming and members of staff gave a summary or presentation for each item on the proposed agenda. The following items were discussed at greater length or received specific questions or concerns.

VI.A.1 Adopt 2018 International Building, Fire and Related Codes, 2017 National Electric Code (AF: 154-2018). Keith Bruner, Building Official provided details on this item and answered questions from the board.

VI.D.1 Agreement between U.S. Department of the Army BAE Systems Ordnance Systems, Inc. and the City of Kingsport Fire Department (AF: 153-2018). Fire Chief Scott Boyd provided details on this item.

VI.D.3 2018 Soccer Agreement with Tri-Cities United (AF: 130-2018) Assistant City Manager Chris McCartt discussed this item, noting FC Dallas Tri has been rebranded as Tri-Cities United and thanked them for all that they do. Minutes of the Regular Work Session of the Board of Mayor and Aldermen of Kingsport, Tennessee, Monday, July 16, 2018

VI.D.8 Apply for and Accept Section 5339b Bus and Bus Facilities Federal Transit Administration Grant (FTA-2018-005-TPM-BUS) from the U.S. Department of Transportation (AF: 169-2018). Assistant City Manager Chris McCartt presented this item.

Alderman George commented on Funfest.

**7. ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Clark adjourned the meeting at 5:58 p.m.

ANGELA MARSHALL Deputy City Recorder JOHN CLARK Mayor Minutes of the <u>Regular Business Meeting</u> of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee Tuesday, July 17, 2018, 7:00 PM Large Court Room – City Hall

PRESENT: <u>Board of Mayor and Aldermen</u> Mayor John Clark, Presiding Vice Mayor Mike McIntire Alderman Jennifer Adler Alderman Joe Begley

Alderman Betsy Cooper Alderman Colette George Alderman Tommy Olterman

<u>City Administration</u> Jeff Fleming, City Manager J. Michael Billingsley, City Attorney James Demming, City Recorder/Chief Financial Officer

- I. CALL TO ORDER: 7:00 p.m., by Mayor John Clark.
- **II.A. PLEDGE OF ALLEGIANCE TO THE FLAG**: Kirby and Jennifer Walker.
- **II.B. INVOCATION**: Alderman Jennifer Adler.
- **III. ROLL CALL:** By City Recorder Demming. All Present.

#### IV.A. RECOGNITIONS AND PRESENTATIONS.

- 1. Keep Kingsport Beautiful Beautification Awards (Robin Cleary)
- 2. Kirby Walker Murphy Snoderly Award (Mayor Clark, Ryan McReynolds)
- 3. Darrell Hayes EFO Certification (Chief Boyd)

# IV.B. APPOINTMENTS/REAPPOINTMENTS.

**1.** Reappointments and Appointment to the Kingsport Tree Advisory Board (AF: 173-2018) (Mayor Clark).

Motion/Second: George/Adler, to approve:

REAPPOINTMENT OF MR. DAN WERNICK, MR. DAVID WILLIAMS & DR. TIMOTHY R. MARTIN AND APPOINTMENT OF MS. DENISE ISAACS TO SERVE A TWO-YEAR TERM ON THE *KINGSPORT TREE ADVISORY BOARD.* ALL REAPPOINTMENTS/ APPOINTMENT ARE EFFECTIVE IMMEDIATELY & WILL EXPIRE ON JULY 31, 2020. <u>Passed</u>: All present voting "aye."

# V. APPROVAL OF MINUTES.

Motion/Second: McIntire/Cooper, to approve minutes for the following meetings:

- A. July 2, 2018 Regular Work Session
- B. July 3, 2018 Regular Business Meeting

<u>Approved</u>: All present voting "aye." VI. COMMUNITY INTEREST ITEMS.

# A. PUBLIC HEARINGS.

1. Amend Zoning Code Pertaining to Developmental Guidelines in the Gateway District Overlay (AF: 165-2018) (Jessica Harmon).

PUBLIC COMMENT ON ITEM VI.A.1. None.

Motion/Second: McIntire/Cooper, to pass:

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 114-421 PERTAINING TO THE GATEWAY DISTIRCT OVERLAY BY DELETING SECTION 114-421 AND REPLACING IT WITH THE LANGUAGE HEREIN BELOW AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye" except Adler voting "nay."

**2.** Vacate a Portion of an Access Easement on the Pierce Property (AF: 166-2018) (Jessica Harmon).

#### PUBLIC COMMENT ON ITEM VI.A.2. None.

Motion/Second: McIntire/Begley, to pass:

AN ORDINANCE TO VACATE A PORTION OF AN ACCESS EASEMENT LOCATED ON THE PIERCE PROPERTY AT 1000 JERICHO DRIVE SITUATED IN THE CITY, SEVENTH CIVIL DISTRICT OF SULLIVAN COUNTY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

**PUBLIC COMMENT.** Mayor Clark invited citizens in attendance to speak about any of the remaining agenda items. There being no one coming forward to speak, the Mayor closed the public comment segment.

# B. BUSINESS MATTERS REQUIRING FIRST READING.

**1.** Amend Construction Contract and Budget Ordinance for the Reedy Creek Trunkline Project (AF: 171-2018) (Ryan McReynolds).

Motion/Second: McIntire/Adler, to pass:

**Resolution No. 2019-007**, A RESOLUTION APPROVING CHANGE ORDER NO. 3 TO THE CONTRACT WITH GARNEY COMPANIES, INC. FOR THE REEDY CREEK SEWER TRUNKLINE PROJECT; AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER NUMBER 3 TO THE CONTRACT WITH GARNEY COMPANIES, INC. FOR THE REEDY CREEK SEWER TRUNKLINE CONSTRUCTION; AND ALL OTHER

DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE CHANGE ORDER OR THIS RESOLUTION <u>Passed</u>: All present voting "aye."

Motion/Second: McIntire/Cooper, to pass: AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE Passed on first reading: All present voting "aye."

2. Amend Kingsport City Code Section 90-159 Elimination of the Sidewalk Board (AF: 164-2018) (Ryan McReynolds).

Motion/Second: George/Begley, to pass:

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 90-159 PERTAINING TO THE SIDEWALK BOARD BY DELETING SECTION 90-159 AND REPEALING ORDINANCE NUMBERS 2786 AND 6179 PERTAINING TO THE CREATION OF THE SIDEWALK BOARD AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

# C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

1. Amend Zoning of 1629 Virginia Avenue (AF: 151-2018) (Ken Weems).

Motion/Second: McIntire/George, to pass:

**ORDINANCE NO. 6739**, AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG MCCOY STREET FROM R-1B, RESIDENTIAL DISTRICT TO R-2, TWO-FAMILY RESIDENTIAL DISTRICT IN THE 11<sup>TH</sup> CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

<u>Passed on second reading in a roll call vote</u>: Clark, Adler, Cooper, George, McIntire and Olterman voting "aye" and Begley "abstaining."

2. Amend City Code Section 98-407 Pertaining to Penalties for Violations of Seat Belt Usage (AF: 150-2018) (David Quillin).

Motion/Second: George/Begley, to pass:

**ORDINANCE NO. 6740**, AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 98-406 RELATING TO USE OF SAFETY BELTS IN PASSENGER VEHICLES; SECTION 98-407 RELATING TO PENALTIES FOR VIOLATION OF USE OF SAFETY BELTS; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

<u>Passed on second reading in a roll call vote</u>: Clark, Adler, Begley, Cooper, George, McIntire and Olterman voting "aye."

3. Adopt the 2018 International Building, Fire and Related Codes and 2017 National Electric Code (AF: 154-2018) (Lynn Tully)

Motion/Second: McIntire/George, to pass:

**ORDINANCE NO. 6741**, AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTIONS 22-96, 22-121,22-391, 22-411, 22-522 and 42-46 RELATING TO ADOPTION BY REFERENCE OF VARIOUS INTERNATIONAL CODES PERTAINING TO PROPERTY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

<u>Passed on second reading in a roll call vote</u>: Clark, Adler, Begley, Cooper, George, McIntire and Olterman voting "aye."

4. Amend Code of Ordinance Sections 38-19, 38-34 and 62-126 of the Code of Ordinances Clarifying that Certain Storage of Inoperable Vehicles on Property a Nuisance (AF: 157-2018) (Mike Billingsley)

Motion/Second: Olterman/Begley, to pass:

**ORDINANCE NO. 6742**, AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 38-19 TO INCLUDE A DEFINITION OF INOPERABLE VEHICLE; SECTION 38-34 TO INCLUDE THE STORAGE OF AN INOPERABLE VEHICLE ON PRIVATE PROPERTY AS A NUISANCE; SECTION 62-126 TO INCLUDE THE STORAGE OF AN INOPERABLE VEHICLE ON PRIVATE PROPERTY IN THE LISTING OF NUISANCES; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

<u>Passed on second reading in a roll call vote</u>: Clark, Adler, Begley, Cooper, George, McIntire and Olterman voting "aye."

# 5. Budget Adjustment Ordinance for FY18 (AF: 156-2018) (Jeff F.)

Motion/Second: McIntire/George, to pass:

**ORDINANCE NO. 6743**, AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR THE YEAR ENDING JUNE 30, 2018; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

<u>Passed on second reading in a roll call vote</u>: Clark, Adler, Begley, Cooper, George, McIntire and Olterman voting "aye."

# 6. Budget Adjustment Ordinance for FY19 (AF: 162-2018) (Jeff F.)

Motion/Second: McIntire/Adler, to pass:

**ORDINANCE NO. 6744**, AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

<u>Passed on second reading in a roll call vote</u>: Clark, Adler, Begley, Cooper, George, McIntire and Olterman voting "aye."

# D. OTHER BUSINESS.

1.Agreement between U.S. Department of the Army BAE SystemsOrdnance Systems, Inc. and the City of Kingsport Fire Department(AF: 153-2018) (Scott Boyd).(AF: 153-

Motion/Second: George/Begley, to pass:

**Resolution No. 2019-008**, A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING FOR MUTUAL AID WITH THE U.S. DEPARTMENT OF THE ARMY BAE SYSTEMS ORDNANCE SYSTEMS, INC. AND AUTHORIZING THE MAYOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE MEMORANDUM OF UNDERSTANDING Passed: All present voting "ave."

2. Signature Authority Form Allowing the Chief of Police or His Designee to Complete Grant Reports as Required by the U.S. Department of Justice (AF: 161-2018) (David Quillin).

Motion/Second: George/Adler, to pass:

**Resolution No. 2019-009**, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SIGNATURE AUTHORITY CONSENT FORM AND OTHER DOCUMENTS NECESSARY AND PROPER TO THE UNITED STATES DEPARTMENT OF JUSTICE AND TO DESIGNATE THE CHIEF OF POLICE AS HIS DESIGNEE TO EXECUTE GRANT REPORTS AND OTHER DOCUMENTS REQUIRED BY THE GRANTS FROM THE UNITED STATES DEPARTMENT OF JUSTICE Passed: All present voting "aye."

rassed. All present voting aye.

**3. 2018 Soccer Agreement with Tri-Cities United** (AF: 130-2018) (Chris McCartt).

Motion/Second: George/Cooper, to pass:

**Resolution No. 2019-010**, A RESOLUTION APPROVING AGREEMENTS WITH TRI-CITIES UNITED SOCCER CLUB, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT <u>Passed</u>: All present voting "aye."

**4.** Reject All Bids for Bays Mountain Park Sewer System (AF: 172-2018) (Chris McCartt).

Motion/Second: McIntire/Olterman, to pass: **Resolution No. 2019-011**, A RESOLUTION REJECTING ALL BIDS RELATED TO THE BAYS MOUNTAIN PARK SEWER SYSTEM <u>Passed</u>: All present voting "aye."

**5.** Agreement with MedFit Center for a Physical Wellness Program (AF: 159-2018) (Chad Austin).

Motion/Second: McIntire/George, to pass:

**Resolution No. 2019-012**, A RESOLUTION APPROVING THE PROPOSAL OF MEDFIT, LLC FOR A PHYSICAL WELLNESS PROGRAM AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT <u>Passed</u>: All present voting "aye."

6. Contractual Agreement with the Tennessee Department of Transportation for Reimbursement of Annual Operation Expenses for FY18-19 (AF: 167-2018) (Chris McCartt).

Motion/Second: McIntire/Olterman, to pass:

**Resolution No. 2019-013**, A RESOLUTION APPROVING A REIMBURSEMENT CONTRACT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE CITY'S TRANSIT SYSTEM OPERATING EXPENDITURES FOR FISCAL YEAR 2018-2019; AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE CONTRACT

Passed: All present voting "aye."

**7.** Apply for and Accept Section 5307 Funds through the Tennessee Department of Transportation and the Federal Transit Administration Grant (AF: 168-2018) (Chris McCartt).

Motion/Second: McIntire/Adler, to pass:

**Resolution No. 2019-014**, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE SECTION 5307 FUNDS THROUGH THE TENNESSEE DEPARTMENT OF TRANSPORTATION AND THE FEDERAL TRANSIT ADMINISTRATION GRANT <u>Passed</u>: All present voting "aye."

8. Apply for and Accept Section 5339b Bus and Bus Facilities Federal Transit Administration Grant (FTA-2018-005-TPM-BUS) from the U.S. Department of Transportation (AF: 169-2018) (Chris McCartt).

Motion/Second: McIntire/Cooper, to pass:

**Resolution No. 2019-015**, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE SECTION 5339b BUS AND BUS FACILITIES FEDERAL TRANSIT ADMINISTRATION GRANT (FTA-2018-005-TPM-BUS) FROM THE UNITED STATES DEPARTMENT OF TRANSPORTATION

Passed: All present voting "aye."

**9.** Bid Award to W-L Construction for 2018 Main Road Contracted Paving (AF: 163-2018) (Ryan McReynolds).

Motion/Second: George/Adler, to pass:

**Resolution No. 2019-016**, A RESOLUTION AWARDING THE BID FOR THE 2018 MAIN ROAD CONTRACTED PAVING PROJECT TO W-L CONSTRUCTION & PAVING AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting "aye."

**10.** Bid Award to Summers-Taylor, Inc. for Meadowview Roadway Improvements (AF: 174-2018) (Ryan McReynolds).

Motion/Second: Olterman/Cooper, to pass:

**Resolution No. 2019-017**, A RESOLUTION AWARDING THE BID FOR THE MEADOWVIEW ROADWAY IMPROVEMENT PROJECT TO SUMMERS-TAYLOR, INC. AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting "aye."

#### VII. CONSENT AGENDA.

1. Approval of Participating Institutions to Offer Higher Education Programs/Courses in the Kingsport Center for Higher Education and Approval for Northeast State Community College to Enter into Sub-lease Agreements with Participating Institutions (AF: 170-2018) (Chris McCartt).

Motion/Second: Adler/Olterman, to adopt:

**Resolution No. 2019-018**, A RESOLUTION APPROVING AGREEMENTS WITH EAST TENNESSEE STATE UNIVERSITY AND LINCOLN MEMORIAL UNIVERSITY PROVIDING CLASSES AT THE KINGSPORT CENTER FOR HIGHER EDUCATION; APPROVING SUBLEASES TO SAID ENTITIES BY NORTHEAST STATE COMMUNITY COLLEGE; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENTS OR THIS RESOLUTION

<u>Passed in a roll call vote</u>: Clark, Adler, Begley, Cooper, George, McIntire and Olterman voting "aye."

#### VIII. COMMUNICATIONS.

- A. <u>CITY MANAGER</u>. Mr. Fleming stated that Funfest was in full swing and recognized all the city employees who work to make it successful as well as the many facilities that are impacted.
- B. <u>MAYOR AND BOARD MEMBERS</u>. All of the Aldermen commented on Funfest and encouraged citizens to attend the many activities and events that are scheduled. Alderman Adler mentioned the Levi's Legacy water guardian tags program to prevent children from drowning. Alderman Cooper stated summer was winding down with back to school in two weeks. Vice-Mayor McIntire pointed out early voting had started for the general election. Alderman George noted Tennessee has one of the lowest percentage of voters. Mayor Clark recognized the comprehensive list of items voted on tonight by the board to improve the quality of life in Kingsport.
- C. VISITORS. None.

**IX. ADJOURN.** Seeing no other business for consideration at this meeting, Mayor Clark adjourned the meeting at 8:16 p.m.

ANGELA MARSHALL Deputy City Recorder JOHN CLARK Mayor



# AGENDA ACTION FORM

# Vacate a Permanent Utility Easement on Eastman Property

To: Board of Mayor and Aldermer From: Jeff Fleming, City Manager

Action Form No.:AF-183-2018Work Session:August 6, 2018First Reading:August 7, 2018

Final Adoption:August 21, 2018Staff Work By:Jessica HarmonPresentation By:Jessica Harmon

#### Recommendation:

- Hold public hearing
- Approve ordinance vacating a portion a permanent utility easement on Eastman property

#### **Executive Summary:**

This is a request to vacate a permanent utility easement located on Tax Map 76 Parcel 6.90 owned by Eastman Chemical Company. The easement contained a waterline that served the bathrooms located off the 16<sup>th</sup> tee of the Golf Course. Eastman has had the waterlines relocated from the area of the permanent utility easement to another area which better serves their needs. Since the waterline has been relocate, City staff sees no need to retain the permanent utility easement. An easement for the relocated waterline has been obtained. During their August 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation for the vacating to the Board of Mayor and Aldermen. The Notice of Public Hearing was published on July 23, 2018. In order to fully release the easement, the Mayor will need to execute the Release of Easement Document.

#### Attachments:

- 1. Notice of Public Hearing
- 2. Ordinance
- 3. Staff Report
- 4. Release

	<u>Y</u>	N	0
Adler	_	_	_
Begley			_
Cooper	_	_	
George	_	-	-
McIntire	_	-	_
Olterman			
Clark		_	_

#### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on Tuesday, August 7, 2018, to consider the vacating of a utility easement located Tax Map 76 Parcel 6.90. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for vacating is generally described as follows:

BEGINNING at a point on the northwesterly sideline of the City of Kingsport property, said point being 129.05 feet northwest of the southeast corner; thence with the centerline of a permanent utility easement described by the following calls: N 37°54′28″ E, 42.89 feet, N 42°39′53″ E, 70.26 feet, N 40°01′01″ E 108.15 feet, N 68°38′08″ E 63.92 feet, N 13°08′52″ W 52.32 feet, N 75°52′04″ 194.93 feet, S 59°27′35 E″ 167.50 feet, S 52°49′10 E″ 233.67 feet, S 48°56′37 E″ 139.88 feet, S 57°28′33 E″ 399.45 feet, S 55°09′47 E″ 133.30 feet; thence S 84°57′25 E″ 68.98 feet to a point on the edge of Wilcox Drive, said point being the terminus of said easement and containing approximately 16,752.30 square feet, more or less.

All interested persons are invited to attend this meeting and public hearing. A detailed map and description is on file in the offices of the City Manager, Kingsport Library, and Planning Office for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-343-9783.

CITY OF KINGSPORT Angie Marshall, Deputy City Clerk P1T: 07/23/18

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

AN ORDINANCE TO VACATE A PERMANENT UTILITY EASEMENT LOCATED ON TAX MAP 76 PARCEL 6.90 SITUATED IN THE CITY, THIRTEETH CIVIL DISTRICT OF SULLIVAN COUNTY; TO APPROVE A RELEASE OF EASEMENT WITH EASTMAN CHEMICAL COMPANY- AND AUTHORIZING THE MAYOR TO EXECUTE THE RELEASE AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE RELEASE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE;

PRE-FILE

CITY RECORDER

WHEREAS, after due investigation and careful consideration at meeting held on July 26, 2018, the Kingsport Regional Planning Commission has determined that the public interest of the city is best served and warrants vacating the easement described herein, nor can any future use of the same for right-of-way purposes be reasonably anticipated; and

WHEREAS, the easement has been declared surplus; and

WHEREAS, as a result of its action at the meeting held on July 28, 2018, the Kingsport Regional Planning Commission recommends to the board of mayor and aldermen to vacate for the easement described herein; and

WHEREAS, the owner of the fee of the property has requested that the city approve and execute a Release of Easement document.

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. The city hereby vacates and closes to public use all of the permanent utility easement located on Tax Map 76 parcel 6.90 within the City of Kingsport, 13<sup>th</sup> Civil District of Sullivan County, Tennessee, which for purposes of this vacation is further described as follows:

BEGINNING at a point on the northwesterly sideline of the City of Kingsport property, said point being 129.05 feet northwest of the southeast corner; thence with the centerline of a permanent utility easement described by the following calls: N 37°54'28" E, 42.89 feet, N 42°39'53" E, 70.26 feet, N 40°01'01" E 108.15 feet, N 68°38'08" E 63.92 feet, N 13°08'52" W 52.32 feet, N 75°52'04" 194.93 feet, S 59°27'35 E" 167.50 feet, S 52°49'10 E" 233.67 feet, S 48°56'37 E" 139.88 feet, S 57°28'33 E" 399.45 feet, S 55°09'47 E" 133.30 feet; thence S 84°57'25 E" 68.98 feet to a point on the edge of Wilcox Drive, said point being the terminus of said easement and containing approximately 16,752.30 square feet, more or less.

All as shown on a sketch titled "PROPOSED PERMANENT UTILITY EASEMENT ACROSS THE EASTMAN CHEMICAL CO., INC. PROPERTY LOCATED IN THE  $13^{TH}$  CIVIL DISTRICT OF SULLIVAN CO. TN, OFFICE OF THE CITY ENGINEER, KINGSPORT, TENNESSEE DATE: JUNE, 1997, SCALE: 1" = 200'.

Being the same easement conveyed to the city by Deed of Permanent Utility Easement dated December 30, 1997, and recorded in deed book 1281C, page 226 in the Register of Deeds Office of Sullivan County, Tennessee, at Blountville to which reference is hereby made.

SECTION II. That a Release of Easement with Eastman Chemical Company vacating a permanent utility easement is approved.

SECTION III. That the mayor, or in his absence, incapacity, or failure to act, the vicemayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Release of Easement with Eastman Chemical Company and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the release, said release being as follows:

#### RELEASE OF EASEMENT

The CITY OF KINGSPORT, TENNESSEE, a Tennessee municipal corporation, in consideration of \$1.00 and other good and valuable consideration the receipt of which is hereby acknowledged, does hereby release and quitclaim unto EASTMAN CHEMICAL COMPANY, a Delaware Corporation, and its successors and assigns, all the right, title, and interest vested in it by virtue of the grant to the City of Kingsport, by Eastman Chemical Company, contained in the Permanent Utility Easement agreement dated December 30, 1997, and recorded in the Register of Deeds Office of Sullivan County, Tennessee Deed Book 1281C, page 226.

IN WITNESS WHEREOF, the City of Kingsport, Tennessee has caused its corporate name and seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_\_, 2018.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION IV. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the release set out herein that do not substantially alter the material provisions of the release, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION V. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION VI. That this ordinance shall take effect from and after its date of passage as the law directs, the welfare of the City of Kingsport, Tennessee, requiring it.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

PASSED ON 1ST READING:\_\_\_\_\_\_ PASSED ON 2ND READING:\_\_\_\_\_\_

Property Information	Utility Easement Reloc	Utility Easement Relocation – Eastman Chemical Company			
Address	Wilcox Drive				
Tax Map, Group, Parcel	Easement located on TM 76 Parcel 6.90				
Civil District	13 <sup>th</sup> Civil District				
Overlay District	Gateway				
Land Use Designation	Industrial				
Acres	+/38 acres				
Applicant #1 Information		Intent			
Name: Eastman Chemical Company		Intent:			
Address: PO Box 511		To vacate the existing permanent utility easement and			
		locate a new easement along the new waterline.			
City: Kingsport					
City: Kingsport State: TN	<b>Zip Code:</b> 37662				

#### (Approve, Deny, or Defer)

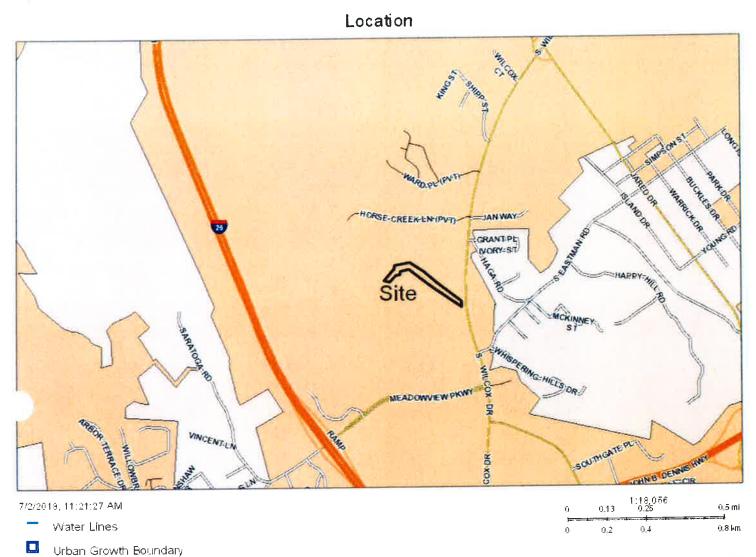
The Kingsport Planning Division recommends vacating the permanent utility easement located along Tax Map 77 Parcel 6.90 and relocate it to the location of the new waterline.

- Request reviewed by all city departments
- Waterline has been relocated. Easement no longer needed or used.

#### **Staff Field Notes and General Comments:**

The permanent utility easement runs from Wilcox Drive along a driveway up to the golf course property and provides water to the restrooms located off the 16<sup>th</sup> tee. The waterline has been relocated per Eastman's request so this section of easement is no longer needed. A new easement has been prepared to cover the new waterline.

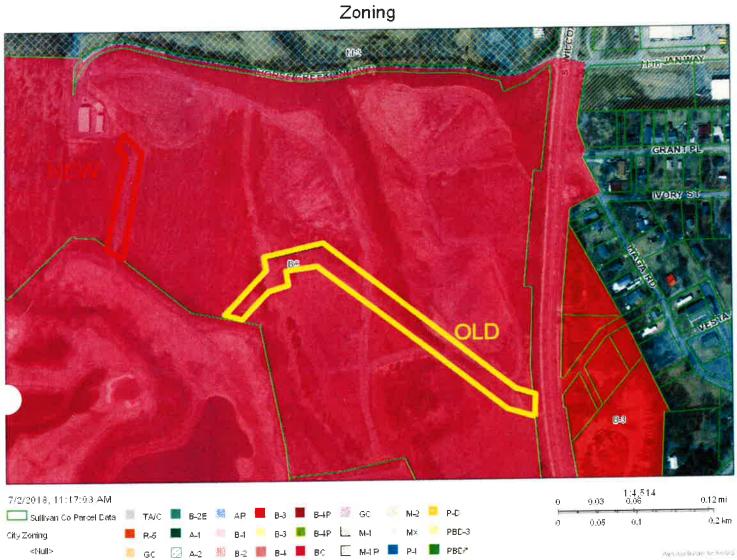
Planner:	Harmon	Date: 7/13/18	
Planning Comm	nission Action	Meeting Date:	July 26, 2018
Approval:			1
Denial:		Reason for Denial:	
Deferred:		Reason for Deferral:	



Well AlloGuide 18 AUGIO

# Kingsport Regional Planning Commission

#### **Alley Closing Report** File Number 18-401-00004



AND A CLARKER COLD

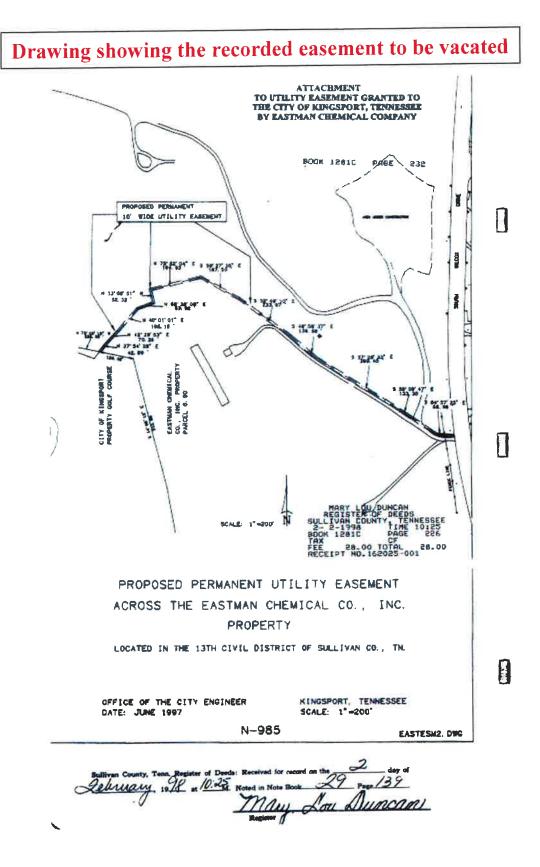
**Kingsport Regional Planning Commission** 

# Alley Closing Report File Number 18-401-00004

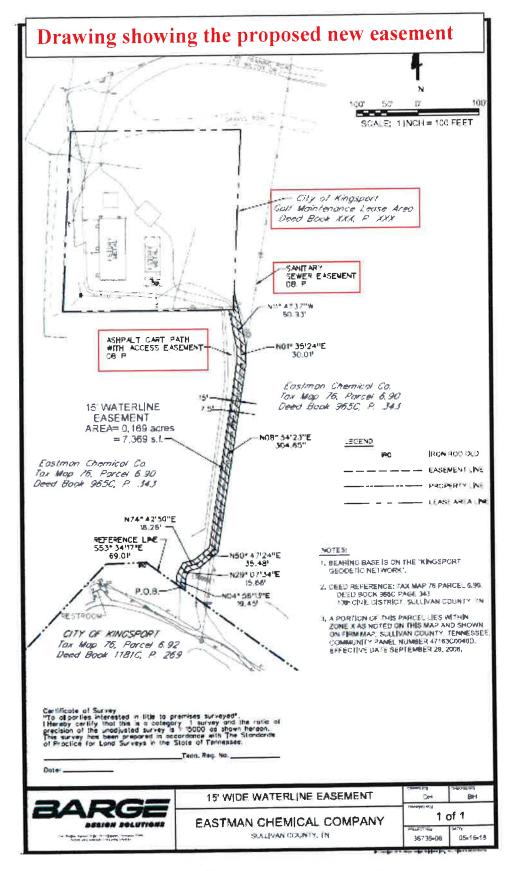


Aerial Old & New

WOALDER M. 17 1800



Prepared by Kingsport Planning Department for the Kingsport Regional Planning Commission Meeting on July 26, 2018



Prepared by Kingsport Planning Department for the Kingsport Regional Planning Commission Meeting on July 26, 2018

#### **RECOMMENDATION:**

Staff recommends sending a favorable recommendation to the Board of Mayor and Alderman for the vacating of the permanent utility easement located on Tax Map 76 Parcel 6.90 and the new easement to be located on along the new waterline.

#### THIS INSTRUMENT PREPARED BY: Wilson Worley PC 2021 Meadowview Lane 2<sup>nd</sup> Floor, P.O. Box 88 Kingsport, Tennessee 37662

#### **RELEASE OF EASEMENT**

The CITY OF KINGSPORT, TENNESSEE, a Tennessee municipal corporation, in consideration of \$1.00 and other good and valuable consideration the receipt of which is hereby acknowledged, does hereby release and quitclaim unto EASTMAN CHEMICAL COMPANY, a Delaware Corporation, and its successors and assigns, all the right, title, and interest vested in it by virtue of the grant to the City of Kingsport, by Eastman Chemical Company, contained in the Permanent Utility Easement agreement dated December 30, 1997, and recorded in the Register of Deeds Office of Sullivan County, Tennessee Deed Book 1281C, page 226.

IN WITNESS WHEREOF, the City of Kingsport, Tennessee has caused its corporate name and

seal to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2018.

**APPROVED AS TO FORM:** 

**CITY OF KINGSPORT, TENNESSEE** 

J. MICHAEL BILLINGSLEY CITY ATTORNEY By:\_\_\_\_\_ Print Name: John Clark Title: Mayor

STATE OF TENNESSEE ) ) SS COUNTY OF SULLIVAN )

Personally appeared before me, \_\_\_\_\_\_, a Notary Public in and for the aforesaid state and county, John Clark, with whom I am personally acquainted and who, upon oath, acknowledged himself to be Mayor of the City of Kingsport, Tennessee, the within-named bargainor, a municipal corporation, and that as such, John Clark, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Notary Public

My commission expires:



#### AGENDA ACTION FORM

#### Amend Zoning of 1210 and 1214 Conway Drive

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manage

Action Form No.:AF-187-2018Work Session:August 6, 2018First Reading:August 7, 2018

Final Adoption:August 21, 2018Staff Work By:Ken WeemsPresentation By:Ken Weems

#### Recommendation:

- Hold public hearing
- Approve ordinance amending the zoning ordinance to rezone the parcel containing both 1210 and 1214 Conway Drive from R-1B, Residential District to PD, Planned Development District.

#### Executive Summary:

This is an owner-requested rezoning of approximately 8 acres located on a parcel that contains both 1210 and 1214 Conway Drive from R-1B to PD. The purpose of the rezoning is to accommodate construction of 38 single family homes on the property. A total of 7 people spoke against the rezoning request during the public hearing portion of rezoning. The primary concern of those speaking in opposition is that the existing neighborhood streets are not suited for added traffic. During their July 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation in support of the rezoning to the Board of Mayor and Aldermen. The notice of public hearing was published on July 23, 2018.

#### Attachments:

- 1. Notice of Public Hearing
- 2. Zoning Ordinance
- 3. Staff Report

	_Y	N	0
Adler	-	_	
Begley	—	_	-
Cooper	_	-	_
George	_	—	—
McIntire	-		_
Olterman		_	_
Clark	_		_

#### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on August 7, 2018 to consider the rezoning for parcel 1 along Hillcrest Drive from R-1B District to PD District. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for rezoning is generally described as follows:

BEGINNING at a point, said point being the southern corner of parcel 11, Tax Map 62I; thence in a southeasterly direction, approximately 324 feet to a point, said point being the southern corner of parcel 1 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, following the northern right-of-way of North John B. Dennis Highway, approximately 1,145 feet to a point, said point being the eastern corner of parcel 1 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northwesterly direction, approximately 310 feet to a point, said point being the northern corner of parcel 1 in common with the southern right-of-way of Hillcrest Drive; thence in a southwesterly direction, approximately 1,210 feet to the point of BEGINNING, and being all of parcel 1, Tax Maps 62G, 62J, and 62I as shown on the December 2016 Sullivan County Tax Maps.

All interested persons are invited to attend this meeting and public hearing. A detailed map and description is on file in the offices of the City Manager, Kingsport Library, and Planning Manager for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-229-9485.

CITY OF KINGSPORT Angie Marshall, Deputy City Clerk PIT: 7/23/18 ORDINANCE NO.\_

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG CONWAY DRIVE FROM R-1B, RESIDENTIAL DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT IN THE 11<sup>TH</sup> CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. That the zoning code, text, and map, be and the same is hereby further amended to rezone property located along Conway Drive from R-1B, Residential District to PD, Planned Development District in the 11<sup>th</sup> Civil District of Sullivan County; said area to be rezoned being further and more particularly described as follows:

BEGINNING at a point, said point being the southern corner of parcel 11, Tax Map 62I; thence in a southeasterly direction, approximately 324 feet to a point, said point being the southern corner of parcel 1 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, following the northern right-of-way of North John B. Dennis Highway, approximately 1,145 feet to a point, said point being the eastern corner of parcel 1 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northwesterly direction, approximately 310 feet to a point, said point being the eastern corner of parcel 1 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northwesterly direction, approximately 310 feet to a point, said point being the northern corner of parcel 1 in common with the southern right-of-way of Hillcrest Drive; thence in a southwesterly direction, approximately 1,210 feet to the point of BEGINNING, and being all of parcel 1, Tax Maps 62G, 62J, and 62I as shown on the December 2016 Sullivan County Tax Maps.

SECTION II. Any person violating any provisions of this ordinance shall be guilty of an offense and upon conviction shall pay a penalty of FIFTY DOLLARS (\$50.00) for each offense. Each occurrence shall constitute a separate offense.

SECTION III. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL	. BILL	INGSLEY,	City	Attorney
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PASSED ON 1ST READING\_\_\_\_\_ PASSED ON 2ND READING\_\_\_\_\_

# Kingsport Regional Planning Commission

**Rezoning Report** 

File Number 18-101-00008

1

## **Conway Drive Rezoning**

Property Information						
Address	1210 and 1214 Conway	1210 and 1214 Conway Drive				
Tax Map, Group, Parcel	Map 62G, Parcel 26	Map 62G, Parcel 26				
Civil District	11	11				
Overlay District	n/a					
Land Use Designation	Single Family Residentia	al				
Acres	8 +/-					
Existing Use	vacant	Existing Zoning	R-1B			
Proposed Use	Single Family Residential	Proposed Zoning	PD			
Owner /Applicant Inform	nation					
Name: Vic Davis		Intent: To rezone from	m R-1B (Residential District) to PD			
Address: 1300 Jan Way		(Planned Developmen land use.	nt District) for future single family			
City: Kingsport		lana use.				
State: TN	Zip Code: 37660					
Phone: (423) 817-7300						
and the second						
Planning Department Re The Kingsport Planning I	Division recommends sending	a POSITIVE recommenda	ation to the Kingsport Board of			
Mayor and Aldermen for			zono for cingle family use			
The proposed Pl	D zone conforms to the land us	e plan as an appropriate .	zone jor single junniy use.			
Staff Field Notes and Ge						
Street is already	v buffered to an extent due to n	nature trees located in th				
proposal. All of proposed. The property abuts	the residents were concerned	that either low-income he ed so far is from Mr. & Mi de). The Hess Family is op	partment in regard to the rezoning ousing or apartments were being rs. Hess, 3307 Hillcrest Drive (their oposed to the future street ffic in their opinion.			
Planner: Ke	en Weems	Date:	July 9, 2018			
Planning Commission A	ction	Meeting Date:	July 26, 2018			
Approval:						
Denial:		Reason for Denial:				
Deferred:		Reason for Deferral				

PROPERTY INFORMA	TION	
ADDRESS		1210 and 1214 Conway Drive.
DISTRICT		11
OVERLAY DIS	TRICT	n/a
EXISTING ZON	ING	R-1B (Residential District)
PROPOSED ZC	ONING	PD (Planned Development)
ACRES	8.5 +/-	
EXISTING USE	vacant land	
PROPOSED USE	Single family	residential

## INTENT

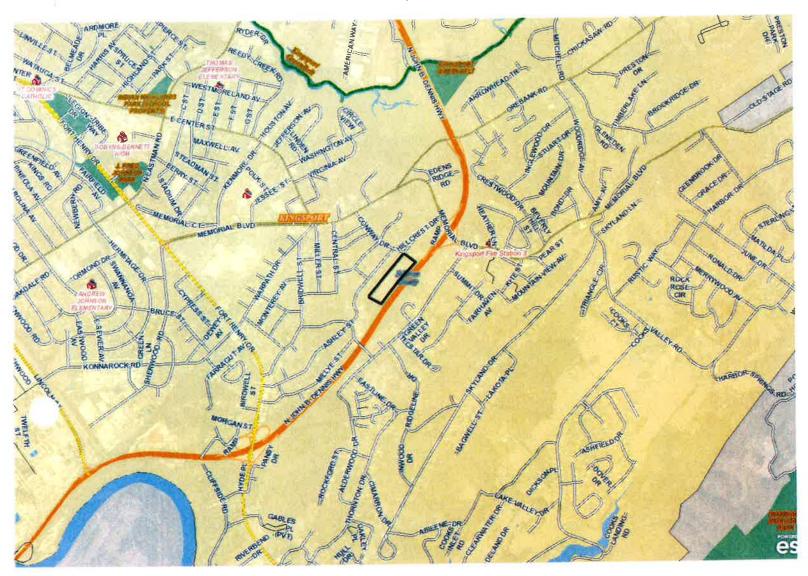
*To rezone from R-1B (Residential District) to PD (Planned Development District) for future single family land use.* 

## **Kingsport Regional Planning Commission**

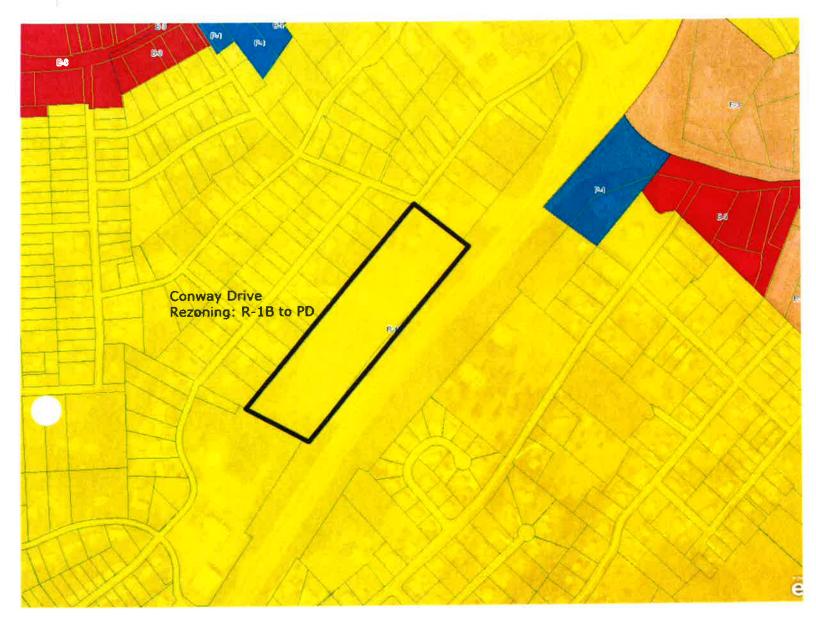
**Rezoning Report** 

File Number 18-101-00008

## Vicinity Map



## Surrounding Zoning Map



## Future Land Use Plan 2030 Designation: Single Family



## File Number 18-101-00008

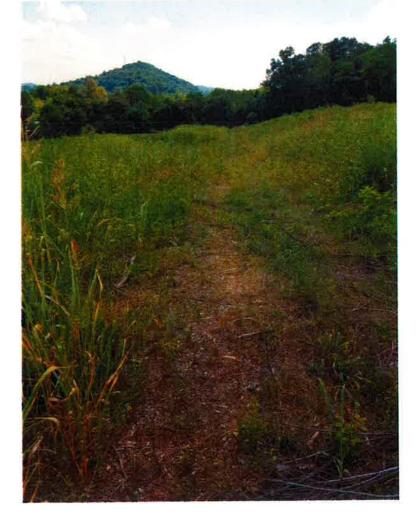
Aerial

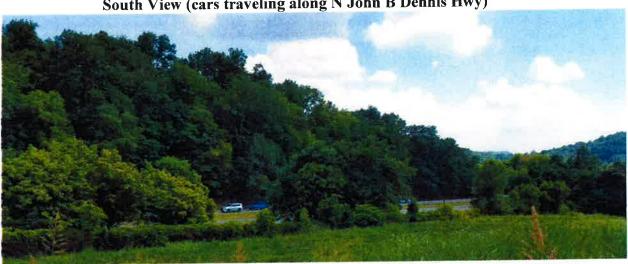






West View (Toward MeadowView Area)





South View (cars traveling along N John B Dennis Hwy)

East View (Future Public Street Entrance off Conway Dr.)



## **Kingsport Regional Planning Commission**

**Rezoning Report** 

Location	Parcel / Zoning Petition	Zoning / Use	History Zoning Action Variance Action
North, East,	1	Zone: City R-1B	n/a
Northwest		Use: existing single family	
Further	2	Zone: City R-1B	n/a
North and		Use: existing single family	
Northwest			
East	3	Zone: City R-1B	n/a
		Use: existing single family	
Further	4	Zone: City R-1B	n/a
East		Use: N John B Dennis right-of-way	
Southeast	5	Zone: City R-1B	n/a
and South		Use: N John B Dennis right-of-way	
Further	6	Zone: City R-1B	n/a
South		Use: bank	
West	7	Zone: City R-1B	n/a
		Use: existing single family	

## Existing Zoning/ Land Use Table

**Existing Uses Location Map** 



## Standards of Review

Planning Staff shall, with respect to each zoning application, investigate and make a recommendation with respect to factors 1 through 9, below, as well as any other factors it may find relevant.

- 1. Whether or not the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property? The proposal will permit uses that are suitable for this area that has already been developed as single family. The PD zone requires planning commission approval of development plans which will control development and provide for public input for all phases of development.
- 2. Whether or not the proposal will adversely affect the existing use or usability of adjacent or nearby property? The adjacent and nearby property will not be adversely affected by the proposal.
- 3. Whether the property to be affected by the proposal has a reasonable economic use as currently zoned? The property to be affected by the proposal has a reasonable economic use as currently zoned. The same reasonable economic use is acknowledged for the proposed PD zone as well.
- 4. Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools? The proposal of will not cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.
- 5. Whether the proposal is in conformity with the policies and intent of the land use plan? The land use plan addresses the rezoning site as appropriate for single family use

Proposed use: single family

The Future Land Use Plan Map recommends single family

6. Whether there are other existing or changed conditions affecting the use and development of the property which gives supporting grounds for either approval or disapproval of the proposal? The existing conditions of the property present an opportunity for relatively secluded single family development. The topography of the site will make it visible to traffic along N John B Dennis Hwy, yet difficult to see from the majority of surrounding homes.

### **Kingsport Regional Planning Commission**

#### **Rezoning Report**

- 7. Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of the City of Kingsport? There are no adverse uses proposed.
- 8. Whether the change will create an isolated district unrelated to similar districts: The proposed rezoning is will be an isolated district similar to how most PD zones are inside the city. The land use plan designation restricts the use of the property to single family use only.
- 9. Whether the present district boundaries are illogically drawn in relation to existing conditions? The present district boundaries are logically drawn in relation to the existing conditions. The PD zone will provide the same type of single family land use as realized on all surrounding private property.

#### CONCLUSION

Staff recommends sending a POSITIVE recommendation to rezone from R-1B to PD. The rationale for this recommendation is based upon conformance with the future land use plan as appropriate for single family development.



## AGENDA ACTION FORM

## Amend Zoning of 1700 North John B Dennis Highway

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manage

Action Form No.:AF-188-2018Work Session:August 6, 2018First Reading:August 7, 2018

Final Adoption:August 21, 2018Staff Work By:Ken WeemsPresentation By:Ken Weems

### Recommendation:

- Hold public hearing
- Approve ordinance amending the zoning ordinance to rezone the parcel containing 1700 North John B Dennis Highway from M-1, Light Manufacturing District to M-2, General Manufacturing District.

#### **Executive Summary:**

This is a city-owned property rezoning of approximately 1 acre located at 1700 North John B Dennis Highway from M-1 to M-2. The purpose of the rezoning is to accommodate a facility for repackaging of base materials used for specialized dog training (to include a stable form of explosives). No public comment has been received about this item. During their July 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation in support of the rezoning to the Board of Mayor and Aldermen. The notice of public hearing was published on July 23, 2018.

#### Attachments:

- 1. Notice of Public Hearing
- 2. Zoning Ordinance
- 3. Staff Report

	Y	N	0
Adler	-	_	_
Begley		_	
Cooper		_	
George			
McIntire	_	_	_
Olterman		_	
Clark			_

#### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on August 7, 2018 to consider the rezoning for parcel 26 along North John B Dennis Highway from M-1 District to M-2 District. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for rezoning is generally described as follows:

BEGINNING at a point, said point being the eastern corner of parcel 26, Tax Map 61M; thence in a northwesterly direction, approximately 182 feet to a point, said point being the northern corner of parcel 26; thence in a southwesterly direction, approximately 381 feet to a point, said point being the southwestern corner of parcel 26 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, following the northern rightof-way of North John B. Dennis Highway, approximately 210 feet to a point, said point being a southern corner of parcel 26 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, approximately 195 feet to the point of BEGINNING, and being all of parcel 26, Tax Maps 61M and 76D as shown on the December 2016 Sullivan County Tax Maps.

All interested persons are invited to attend this meeting and public hearing. A detailed map and description is on file in the offices of the City Manager, Kingsport Library, and Planning Manager for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-229-9485.

CITY OF KINGSPORT Angie Marshall, Deputy City Clerk PIT: 7/23/18

#### ORDINANCE NO.

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG NORTH JOHN B DENNIS HIGHWAY FROM M-1, LIGHT MANUFACTURING DISTRICT TO M-2, GENERAL MANUFACTURING DISTRICT IN THE 11<sup>TH</sup> CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILE

CITY RECORDER

## BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. That the zoning code, text, and map, be and the same is hereby further amended to rezone property located along North John B Dennis Highway from M-1, Light Manufacturing District to M-2, General Manufacturing District in the 11<sup>th</sup> Civil District of Sullivan County; said area to be rezoned being further and more particularly described as follows:

BEGINNING at a point, said point being the eastern corner of parcel 26, Tax Map 61M; thence in a northwesterly direction, approximately 182 feet to a point, said point being the northern corner of parcel 26; thence in a southwesterly direction, approximately 381 feet to a point, said point being the southwestern corner of parcel 26 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, following the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly approximately 210 feet to a point, said point being a southern corner of parcel 26 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, approximately 210 feet to a point, said point being a southern corner of parcel 26 in common with the northern right-of-way of North John B. Dennis Highway; thence in a northeasterly direction, approximately 195 feet to the point of BEGINNING, and being all of parcel 26, Tax Maps 61M and 76D as shown on the December 2016 Sullivan County Tax Maps.

SECTION II. Any person violating any provisions of this ordinance shall be guilty of an offense and upon conviction shall pay a penalty of FIFTY DOLLARS (\$50.00) for each offense. Each occurrence shall constitute a separate offense.

SECTION III. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

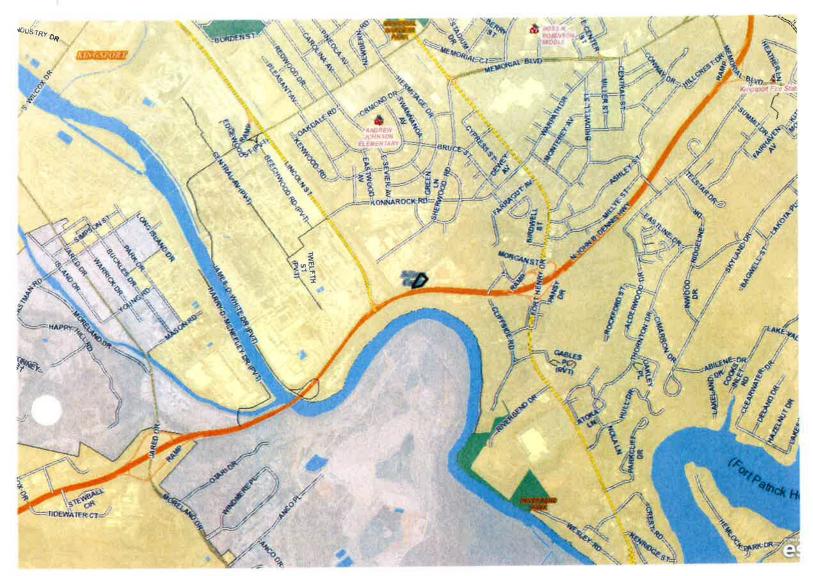
PASSED ON 1ST READING\_\_\_\_\_ PASSED ON 2ND READING\_\_\_\_\_

## Kingsport Regional Planning Commission File Number 18-101-00009

## 1700 N John B Dennis Rezoning

Property Information						
Address	1700 N John B Dennis Highway					
Tax Map, Group, Parcel	Map 61M, A, 26					
Civil District	11	11				
Overlay District	n/a					
Land Use Designation	Utilities					
Acres	1 +/-					
	Former Tennessee	Existing Zoning	M-1			
Existing Use	Electric Company site					
Proposed Use	Facility for repackaging of base materials used for specialized dog training (to include a stable form of explosive material)	Proposed Zoning	M-2			
Owner /Applicant Inform	nation	the second second				
Name: City of Kingsport		Intent: To rezone from M-1 (Light Manufacturing District) to M-2 (General Manufacturing District) to accommodate a facility for repackaging of base materials used for specialized dog training (to include stable form of explosives)				
Address: 225 W Center S City: Kingsport State: TN	st. Zip Code: 37660	accommodate a facilit materials used for spe	y for repackaging of base cialized dog training (to include c			
Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo	Zip Code: 37660 commendation Division recommends sending a F r the following reason:	accommodate a facilit materials used for spe stable form of explosion POSITIVE recommendat	y for repackaging of base cialized dog training (to include a ves) ion to the Kingsport Board of			
Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed M	Zip Code: 37660 commendation Division recommends sending a F r the following reason: 1-2 zone for the area will provide of	accommodate a facilit materials used for spe stable form of explosi POSITIVE recommendat	y for repackaging of base cialized dog training (to include a yes) ion to the Kingsport Board of proposed use. The site itself is			
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Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed N challenging to a Staff Field Notes and Ge	Zip Code: 37660 commendation Division recommends sending a R r the following reason: 1-2 zone for the area will provide of access at any point other than the	accommodate a facilit materials used for spe stable form of explosi POSITIVE recommendat a secluded area for the driveway entrance, wh	y for repackaging of base cialized dog training (to include a ves) ion to the Kingsport Board of proposed use. The site itself is ich also boosts security of the site.			
Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed N challenging to a Staff Field Notes and Ge The rezoning sit	Zip Code: 37660 ecommendation Division recommends sending a F r the following reason: 1-2 zone for the area will provide of access at any point other than the eneral Comments:	accommodate a facilit materials used for spe stable form of explosion POSITIVE recommendate a secluded area for the driveway entrance, wh y in June of 2017. The p	y for repackaging of base cialized dog training (to include a yes) ion to the Kingsport Board of proposed use. The site itself is ich also boosts security of the site. roperty has yet to be sold.			
Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed N challenging to d Staff Field Notes and Ge The rezoning sit The rezoning sit property. To date, no call	Zip Code: 37660 ecommendation Division recommends sending a F r the following reason: 1-2 zone for the area will provide of access at any point other than the eneral Comments: the was declared surplus by the City the contains an approximate 5,000 is or comments have been received	accommodate a facilit materials used for spe stable form of explosion POSITIVE recommendate a secluded area for the driveway entrance, wh y in June of 2017. The p +/- sq ft building and go d about the rezoning pr	y for repackaging of base cialized dog training (to include a yes) ion to the Kingsport Board of proposed use. The site itself is ich also boosts security of the site. roperty has yet to be sold. ated yard in the rear of the pposal.			
Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed N challenging to a Staff Field Notes and Ge The rezoning sit The rezoning sit property. To date, no call. The City's raw v	Zip Code: 37660 commendation Division recommends sending a F r the following reason: 1-2 zone for the area will provide of access at any point other than the seneral Comments: The was declared surplus by the City the contains an approximate 5,000	accommodate a facilit materials used for spe stable form of explosion POSITIVE recommendate a secluded area for the driveway entrance, wh y in June of 2017. The p +/- sq ft building and go d about the rezoning pr	y for repackaging of base cialized dog training (to include a yes) ion to the Kingsport Board of proposed use. The site itself is ich also boosts security of the site. roperty has yet to be sold. ated yard in the rear of the pposal.			
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Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed N challenging to d Staff Field Notes and Ge The rezoning sit The rezoning sit property. To date, no call The City's raw v Planner: Ke	Zip Code: 37660 Ecommendation Division recommends sending a F r the following reason: 1-2 zone for the area will provide of access at any point other than the eneral Comments: The was declared surplus by the City the contains an approximate 5,000 is or comments have been received water tunnel is located under this en Weems	accommodate a facilit materials used for spe stable form of explosion POSITIVE recommendate a secluded area for the driveway entrance, whi y in June of 2017. The p +/- sq ft building and g d about the rezoning pr property and contained Date: Meeting Date:	y for repackaging of base cialized dog training (to include a ves) ion to the Kingsport Board of oroposed use. The site itself is ich also boosts security of the site. roperty has yet to be sold. ated yard in the rear of the oposal. within an easement. July 9, 2018			
Address: 225 W Center S City: Kingsport State: TN Phone: (423) 229-9368 Planning Department Re The Kingsport Planning I Mayor and Aldermen fo The proposed N challenging to d Staff Field Notes and Ge The rezoning sit The rezoning sit property. To date, no call The City's raw v Planner: Ke	Zip Code: 37660 Ecommendation Division recommends sending a F r the following reason: 1-2 zone for the area will provide of access at any point other than the eneral Comments: The was declared surplus by the City the contains an approximate 5,000 is or comments have been received water tunnel is located under this en Weems	accommodate a facilit materials used for spe stable form of explosion POSITIVE recommendate a secluded area for the driveway entrance, whi y in June of 2017. The p +/- sq ft building and g d about the rezoning pr property and contained Date:	y for repackaging of base cialized dog training (to include a ves) ion to the Kingsport Board of oroposed use. The site itself is ich also boosts security of the site. roperty has yet to be sold. ated yard in the rear of the oposal. within an easement. July 9, 2018			

## Vicinity Map



## Surrounding Zoning Map



## Future Land Use Plan 2030 Designation: Utilities



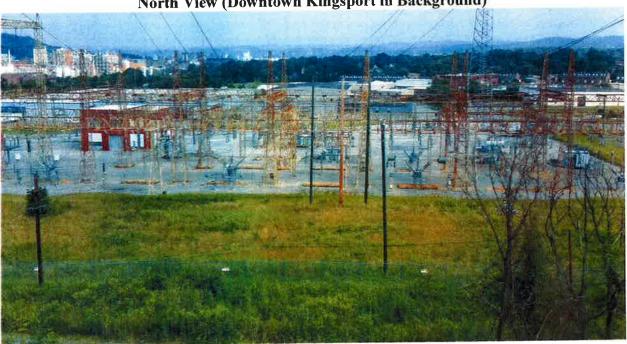
# Kingsport Regional Planning Commission

**Rezoning Report** 

File Number 18-101-00009

Aerial





North View (Downtown Kingsport in Background)

East View (With Rear of Building in View)





# South View (Toward N John B Dennis Hwy)

**Building View from Front** 



## Kingsport Regional Planning Commission

**Rezoning Report** 

Location	Parcel / Zoning Petition	Zoning / Use	History Zoning Action Variance Action
North, East, Northwest	1	Zone: City M-1 Use: power station	n/a
Further North and Northwest	2	Zone: City M-1 Use: power station	n/a
East	3	Zone: City B-3 Use: building material storage	n/a
Further East	4	Zone: City R-3 Use: apartments	n/a
Southeast and South	5	Zone: City R-3 Use: vacant	n/a
Further South	6	Zone: City R-3 Use: raw water intake	n/a
West	7	Zone: City M-1 Use: vacant, difficult terrain	n/a

## Existing Zoning/ Land Use Table

## **Existing Uses Location Map**



## **Standards of Review**

Planning Staff shall, with respect to each zoning application, investigate and make a recommendation with respect to factors 1 through 9, below, as well as any other factors it may find relevant.

- 1. Whether or not the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property? The proposal will permit uses that are suitable for this area which has contained industrial and utility uses for many decades.
- 2. Whether or not the proposal will adversely affect the existing use or usability of adjacent or nearby property? The adjacent and nearby property will not be adversely affected by the proposal. This is primarily due to the topography of the site. The existing building and lot sits on a bench of a slope between the neighboring private property to east and all other surrounding property which is owned by the City of Kingsport.
- 3. Whether the property to be affected by the proposal has a reasonable economic use as currently zoned? The property to be affected by the proposal has a reasonable economic use as currently zoned. The same reasonable economic use is acknowledged for the proposed M-2 zone as well.
- 4. Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools? The proposal of will not cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools. The advantage of the site is its controlled access and industrial/utility natured surrounding uses.
- 5. Whether the proposal is in conformity with the policies and intent of the land use plan? The land use plan addresses the rezoning site as appropriate for utility use

Proposed use: general manufacturing

The Future Land Use Plan Map recommends utility use.

6. Whether there are other existing or changed conditions affecting the use and development of the property which gives supporting grounds for either approval or disapproval of the proposal? The existing conditions of the property present supporting grounds for the zoning change due to the topography of the site and surrounding industrial/utility uses.

#### **Kingsport Regional Planning Commission**

#### **Rezoning Report**

- 7. Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of the City of Kingsport? The element of handling explosives can be considered adverse in nature, but only when improperly handled out of accordance with material safey data guidelines.
- 8. Whether the change will create an isolated district unrelated to similar districts: The proposed rezoning is similar in nature to the existing surrounding light manufacturing zones. The largest existing M-2 zone in the city, which contains Eastman, is approximately 300 feet from the rezoning area.
- 9. Whether the present district boundaries are illogically drawn in relation to existing conditions? The present district boundaries are logically drawn in relation to the existing conditions. The M-2 is considered appropriate for this site due to the unique topography of the rezoning area and adjacent manufacturing/utility land uses.

### CONCLUSION

Staff recommends sending a POSITIVE recommendation to rezone from M-1 to M-2. The rationale for this recommendation is based upon conformance with adjacent existing land uses and the topography of the site which allows for a controlled environment to better contain M-2 uses.



## AGENDA ACTION FORM

# Ordinance to Appropriate Partnership Support Grant from Tennessee Arts Commission

To: Board of Mayor and Aldermen, Jeff Fleming, City Manager From:

Action Form No.: AF-175-2018 Work Session: August 6, 2018 August 7, 2018 First Reading:

August 21, 2018 Final Adoption: Staff Work By: B. Macdonald Presentation By: C. McCartt

### **Recommendation:**

Approve the Ordinance.

#### **Executive Summary:**

The Tennessee Arts Commission has awarded the City of Kingsport for the Office of Cultural Arts a partnership grant of \$6,000 for FY19 which will be used for public art initiatives and community engagement through Sculpture Walk Workshops and Exhibition.

Grant dollars should be appropriated to FY19 general operating support 110-4505-471.20-20 for artistic contract employment. Local match is included in our FY19 budget.

## Attachments:

1. Ordinance

Funding source appropriate and funds are available

	Y	N	0
Adler			
Begley			_
Cooper	_	_	
George	_	_	_
McIntire	_		
Olterman	—	_	
Clark		_	_

## ORDINANCE NO.

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM THE TENNESSEE ARTS COMMISSION FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILED

CITY RECORDER

## BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Fund Cultural Arts operating budget be amended by appropriating grant funds received from the Tennessee Arts Commission in the amount of \$6,000 for public art initiatives and community engagement through Sculpture Walk Workshops and Exhibitions. The grant requires a 1:1 match and is provided for in the operating budget.

Account Number/Description:	<u>B</u>	udget	Incr	/ <decr></decr>	Nev	v Budget
Fund 110: General Fund Revenues:	\$		\$		\$	0.000
110-0000-332-3200 TN. Arts Commission <i>Totals:</i>		0		6,000 <b>6,000</b>		6,000 <b>6,000</b>
Expenditures: 110-4505-471-2020 Professional Consultant	\$	23,000	\$	6,000	\$	29,000
Totals:		23,000		6,000	_	29,000

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

ANGIE MARSHALL Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_\_ PASSED ON 2ND READING: \_\_\_\_\_

City of Kingsport, Tennessee, Ordinance No. \_\_\_\_\_, Page 1 of 1



## AGENDA ACTION FORM

# Receive a Grant from the State of Tennessee for the Kingsport Senior Center and Appropriate the Funds

To: Board of Mayor and Aldermer From: Jeff Fleming, City Manager

Action Form No.:AF-122-2018Work Session:August 6, 2018First Reading:August 7, 2018

Final Adoption:August 21, 2018Staff Work By:S. BuchananPresentation By:S. Buchanan

## Recommendation:

Approve the Resolution and Ordinance.

#### **Executive Summary:**

Funds were appropriated in the State budget beginning in July, 2018. \$50,000 is being awarded to each of the eight accredited Senior Centers across the State of Tennessee. This grant award is a result of the initial request to the State. The funds will be used for replacement of exercise equipment, staff training, and cafeteria furniture replacement.

#### Attachments:

- 1. Resolution
- 2. Ordinance

Funding source appropriate and funds are available

ailable:	D	
_	0	

	<u>Y</u>	N	0
Adler	_	_	_
Begley		_	—
Cooper	_		
George		—	—
McIntire			_
Olterman	_		
Clark			_

### RESOLUTION NO.

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A GRANT FROM THE STATE OF TENNESSEE COMMISSION ON AGING AND DISABILITY FOR THE SENIOR CENTER

WHEREAS, the State of Tennessee, through its Commission on Aging and Disability has offered grant funds for accredited senior centers; and

WHEREAS, the grant funds will be used at the Kingsport Senior Center and will be for the replacement of exercise equipment, staff training, and cafeteria furniture replacement; and

WHEREAS, the maximum amount of the grant award is \$50,000.00, and the grant requires no match.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive grant funds from the State of Tennessee Commission on Aging and Disability in the amount of \$50,000.00 for the Kingsport Senior Center, which will require no match.

SECTION II. That the mayor is authorized and directed to execute any and all documents including those necessary and proper to demonstrate the city's compliance with the grant requirements or its provisions necessary to effectuate the purpose of the grant or this resolution.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 7th day of August, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

## ORDINANCE NO.

AN ORDINANCE TO AMEND THE GENERAL PROJECT-SPECIAL REVENUE FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM FIFTYFORWARD FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILED

CITY RECORDER

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Projects-Special Revenue Fund budget be amended by appropriating grant funds received from FiftyForward in the amount of \$50,000 for operations and programs to the FiftyForward project (NC1901).

Account Number/Description: Fund 111: General Projects-Special Rev Fund	Bud	lget	Inc	r/ <decr></decr>	Nev	v Budget
FiftyForward Grant (NC1901)						
Revenues:	\$		\$		\$	
111-0000-332-4810 FiftyForward		0		50,000		50,000
Totals:		0		50,000		50,000
Expenditures:           111-0000-601-2020         Professional Consultant           111-0000-601-2040         Travel           111-0000-601-2041         Registration           111-0000-601-3012         Food           111-0000-601-3020         Operating Supplies & Tools           Totals:         Totals:	\$	0 0 0 0 0	\$	20,000 5,500 1,500 4,000 19,000 <b>50,000</b>	\$	20,000 5,500 1,500 4,000 19,000 <b>50,000</b>

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

ANGIE MARSHALL Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_\_ PASSED ON 2ND READING: \_\_\_\_\_

City of Kingsport, Tennessee, Ordinance No. \_\_\_\_\_, Page 1 of 1



## AGENDA ACTION FORM

## Appropriate Funds from the USDOJ / Bureau of Justice Assistance Grant FY 2017 Local Solicitation

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.:AF-177-2018Work Session:August 6, 2018First Reading:August 7, 2018

Final Adoption:August 21, 2018Staff Work By:Captain GorePresentation By:Chief Quillin

### Recommendation:

Approve the Budget Ordinance.

#### **Executive Summary:**

On August 15, 2017, via Action Form 220, the Board of Mayor and Aldermen approved the Mayor executing any and all documents necessary to apply for and receive a US DOJ Bureau of Justice Assistance Grant. We have been notified that we were approved for \$21,030.00 which will be utilized to purchase equipment and/or technology improvements.

There are no matching fund requirements.

### Attachments:

1. Budget Ordinance

Funding source appropriate and funds are available

	<u> </u>	<u>N O</u>
Adler		
Begley		
Cooper	_	
George	_	
McIntire	_	
Olterman		
Clark	_	

## ORDINANCE NO.

AN ORDINANCE TO AMEND THE JUSTICE ASSISTANT GRANT FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM THE STATE OF TENNESSEE OFFICE OF CRIMINAL JUSTICE PROGRAMS FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILE

TY RECORDER

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the Justice Assistant Grant Fund budget be amended by appropriating grant funds received from the Department of Justice Edward Byrne Memorial Justice Assistance Program (JAG) in the amount of \$21,030 to the Justice Assistant Grant project (JG1900) to purchase equipment and /or technology improvements. No matching funds are required.

Account Number/Description:	Budg	get <u>Inc</u>	cr/ <decr></decr>	New Budget
Fund 134: Justice Assist Grant Fund Local Law Enforcement Equip (JG1900) Revenues:	\$	\$		\$
134-0000-331-4537 Bureau of Justice/JAG <i>Totals:</i>		0	21,030 <b>21,030</b>	21,030 <b>21,030</b>
Expenditures: 134-3030-443-9006 Purchases Over \$5,000 <i>Totals:</i>	3	0	21,030 <b>21,030</b>	21,030 <b>21,030</b>

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

ATTEST

JOHN CLARK, Mayor

JAMES H. DEMMING City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING:

PASSED ON 2ND READING: \_\_\_\_\_



## AGENDA ACTION FORM

## **Budget Adjustment Ordinance for FY18**

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-179-2018 Work Session: August 6, 2018 First Reading: August 7, 2018 Final Adoption:August 21, 2018Staff Work By:Judy SmithPresentation By:Chris McCartt

### Recommendation:

Approve the Ordinance.

#### **Executive Summary:**

The City of Kingsport received a letter July 3, 2017 notifying the City that the Tennessee General Assembly passed legislation revising the Public Library Laws of the state. In order to comply with the changes the General Assembly made, the Library budget was separated from the General Fund and set up in a separate Fund for FY19.

As part of the legislative change, revenue received for the Library such as Library Contributions, Library Fees, books sales, copier revenue and Overdue book fines have to be held separately for the library. Previously, these revenues have been included in the General Fund.

This ordinance will transfer \$47,908 from the General Fund operating budget to the Library Governing Board operating budget to capture the revenue that was received for fines and fees in FY18.

Attachments:

1. Ordinance

Funding source appropriate and funds are available:

	Y	N	0
Adler	_	_	
Begley	_		
Cooper	_	_	
George		_	
McIntire	_	_	
Olterman	_	_	
Clark			_

# ORDINANCE NO. \_\_\_\_\_CITY RECORDER

AN ORDINANCE TO AMEND THE GENERAL FUND AND THE LIBRARY GOVERNING BOARD FUND FOR THE YEAR ENDING JUNE 30, 2018; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILED

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Fund budget and the Library Governing Board budget be amended by transferring \$47,908 from the General Fund operating budget to the Library Governing Board operating budget.

Account Number/Description: Fund 110: General Fund	Ē	<u>Budget</u>	Inc	r/ <decr></decr>	Nev	w Budget
Expenditures:	\$		\$		\$	
110-4540-474-3010 Office Supplies	•	38,969		(13,806)		25,163
110-4540-474-3014 Computer Supplies		24,820		(650)		24,170
110-4540-474-3020 Operating Supplies & Tools		2,677		(2,677)		0
110-4032-463-3020 Operating Supplies & Tools		29,289		(11,775)		17,514
110-4504-471-3020 Operating Supplies & Tools		54,020		(19,000)		35,020
110-4804-481-7087 Library Governing Board		0		47,908		47,908
Totals:		149,775		0		149,775
Fund 137:         Library Governing Board           Revenues:         137-0000-333-2600         Contributions Library           137-0000-341-4010         Library Fees         137-0000-341-4020           137-0000-341-4020         Book Sales         137-0000-341-4030           137-0000-341-4030         Copier Revenue         137-0000-352-1000           Overdue Book Fines         Totals:	\$	0 0 0 0 <b>0</b> <b>0</b>	\$	15,000 59 362 9,150 23,337 <b>47,908</b>	\$	15,000 59 362 9,150 23,337 <b>47,908</b>
Expenditures:	\$		\$		\$	
137-4540-474-2005 Appropriations-L Materials	,	0		47,908		47,908
Totals:		0		47,908		47,908

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

City of Kingsport, Tennessee, Ordinance No. \_\_\_\_\_, Page 1 of 2

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: PASSED ON 2ND READING:



## AGENDA ACTION FORM

## Amend City Code Section 98-62- Operators to Exercise Care, Maintain Lookout

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.:AF-186-2018Work Session:August 6, 2018First Reading:August 7, 2018

Final Adoption:August 21, 2018Staff Work By:Captain GorePresentation By:Chief Quillin

### **Recommendation:**

Approve the Ordinance.

#### **Executive Summary:**

The City of Kingsport's Code of Ordinances, specifically traffic related laws, frequently mirror those defined in the Tennessee Code Annotated (T.C.A). After a review and comparison of City Code Sec. 98-62- Operators to exercise care, maintain lookout with T.C.A. 55-8-136-Drivers to exercise due care it is recommended to amend Sec. 98-62 to mirror T.C.A. 55-8-136. This amendment would enhance clarity and efficiency in the enforcement of Sec. 98-62.

#### T.C.A. 55-8-136. Drivers to exercise due care (section b).

(b) Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, <u>every</u> driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

#### Current City Code Sec. 98-62- Operators to exercise care, maintain lookout.

It shall be unlawful to operate a motor vehicle in such manner as shall indicate a failure to keep a proper lookout or an absence of due care, having regard to actual and potential hazards, or when special hazards exist with respect to pedestrians or other traffic or because of weather or street conditions, and in any event, speed and operation shall be so controlled as shall be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the street or highway in compliance with legal requirements and the duty of all persons to use due care.

#### Attachments:

1. Ordinance

	Y	N	0
Adler	_	_	_
Begley		_	_
Cooper	_	_	
George	_	_	_
McIntire		_	—
Olterman	_		
Clark	_	_	_

#### ORDINANCE NO.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 98-62 RELATING TO USE OF OPERATORS TO EXERCISE CARE, MAINTAIN LOOKOUT; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILFI

CITY RECORDER

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That Section 98-62 of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended to read as follows:

Sec. 98-62. Drivers to exercise due care.

Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

SECTION II. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY City Attorney

PASSED ON 1ST READING \_\_\_\_\_\_ PASSED ON 2ND READING \_\_\_\_\_\_



# AGENDA ACTION FORM

# Amending the Code of Ordinance by Adding Sections Regulating the Operation of Pedal Carriages and Amending Sections 6-1 through 6-3 Pertaining to Open Containers and Public Display or Consumption

Board of Mayor and Aldermen To: Jeff Fleming, City Manager From

Action Form No.: AF-189-2018 August 6, 2018 Work Session: August 7, 2018 First Reading:

Final Adoption: Staff Work By: Presentation By: Ken Weems

August 21, 2018 Weems and Billingsley

### **Recommendation:**

Approve the Ordinance.

### **Executive Summary:**

This ordinance creates regulations for pedal carriage operation on certain streets at certain times in the downtown area. Staff worked with city resident Mr. Rod Monroe to develop these regulations since late 2017. The pedal carriage route map shows precisely the streets and times at which the pedal carriage is allowed to operate. As written, the ordinance allows beer to be consumed while the pedal carriage is being operated. When beer is present on the pedal carriage, all riders must be a minimum of 16 years old. The planning and legal department staff worked with the public works department and police department to develop these regulations.

### Attachments:

- Ordinance 1.
- Tracked Changes to Existing Code Sections 2.
- 3. Pedal Carriage Route Map

	_ <u>Y</u>	<u>N O</u>
Adler	_	
Begley		
Cooper	_	
George	_	
MoIntire		
Olterman		
Clark		

ORDINANCE NO.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, BY ADDING NEW SECTIONS 26-155 THROUGH 26-174 REGARDING PEDAL CARRIAGES; AMENDING SECTION 6-1 RELATING TO THE DEFINITION OF THE TERMS ALCOHOLIC BEVERAGE OR BEVERAGE, BEER, CONTAINER, OPEN, PUBLIC PLACE, AND UNSEALED; SECTION 6-2 RELATING TO POSSESSION OF OPEN CONTAINERS IN MOTOR VEHICLES OR ON PUBLIC PROPERTY; SECTION 6-3 RELATING TO PUBLIC DISPLAY OR CONSUMPTION OF BEER, WINE OR OTHER ALCOHOLIC BEVERAGES; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILED

CITY RECORDER

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That Section 26 of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended to add the following:

#### Sec. 26-155. Definitions.

The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Beer means beverages as defined at T.C.A. § 57-5-101(b), and amendments thereto.

*Commercial pedal carriage* means a pedal carriage for hire or operated as part of a for profit or not-for-profit business or enterprise.

Commercial pedal carriage business means the business of operating one (1) or more commercial pedal carriages for profit or not-for profit.

*Container* means any bottle, can, vessel, device, or other receptacle used for holding or containing any amount of liquid.

*Driver* means any person who drives, steers, or operates a pedal carriage on the streets of the city for a commercial pedal carriage business.

For hire means transporting a person or persons for a fare.

*Open* means any opening or breach through which the contents of any can, bottle, or container may pass in order to be consumed by any person.

*Owner* means a person who holds the legal title to the pedal carriage or who is the lessee of the pedal carriage from the owner.

Pedal carriage (also known as "quadricycle") means a bicycle with four (4) or more wheels that is human powered and operated by one (1) or more persons for the purpose of, or capable of, transporting additional passengers in seats or on a platform made a part of or otherwise attached to the pedal carriage. Pedal carriage does not include a

bicycle with trainer or beginner wheels affixed thereto, nor does it include a wheelchair or other vehicle with the purpose of operation by or for the transportation of the disabled person. A pedal carriage may include a motor to assist the pedal carriage during emergencies or when necessary to propel uphill, and any pedal carriage so equipped will comply with the motor vehicle registration laws of the State of Tennessee.

Sealed means a container that is not open.

#### Sec. 26-156. Purpose.

It is the purpose of this article to regulate commercial pedal carriage businesses to ensure that such businesses are not operated to the detriment of the safety of the public, and to minimize the effect of commercial pedal carriages on traffic and congestion by limiting the time and place of operation.

#### Sec. 26 157. Permit required.

Any person engaged in the commercial pedal carriage business in the city must have a valid permit issued pursuant to this article, and the failure to engage in such business without a valid permit that is not suspended, revoked, or expired is an offense.

# Sec. 26-158. Application for commercial pedal carriage business permit, application fee, renewal, expiration; appeal of denial.

(a) An application for a commercial pedal carriage business permit must be made on forms provided by the city manager or designee and application must contain the following:

(1) The name and address of the applicant;

(2) Designate whether the applicant is a natural person, partnership, corporation, limited liability company, unincorporated association, or other entity;

(3) The names and addresses of any partners, if a partnership, of all officers and directors, if a corporation, the members, managing members, or directors and president of a limited liability company, or agent for an unincorporated association.

(4) The names of all parties having a ten (10) percent or greater financial interest in the business;

(5) The names and addresses of all persons authorized to operate a commercial pedal carriage on behalf of the business;

(6) A list of all pedal carriages owned, leased, or controlled by such applicant that will be used in the city as a commercial pedal carriage, each of which will be uniquely identified;

(7) The seating capacity set forth in the manufacturer's specifications for each pedal carriage;

(8) Locations of passenger loading and unloading zones and staging areas;

(9) Proof of liability insurance required by this article;

(10) Proof that the driver of the commercial pedal carriage has met the requirements for a driver set out in this section and an affirmative statement that such driver is knowledgeable of and will comply with all state traffic laws; and

(11) Such further information as the city manager or designee may require establishing the applicant's eligibility for a commercial pedal carriage business permit.

Additionally, every applicant will affirm in the application that it will only use drivers that meet and maintain the following requirements:

(1) Possess a valid Tennessee driver license with applicable "for hire" endorsement;

(2) Is at least twenty-one (21) years old;

(3) Has not been convicted of, or pled guilty or *nolo contendre* to a felony, within the past five (5) years;

(4) Has no more than three (3) moving violations within the past three (3) years;

(5) Has not have been convicted of careless driving, reckless driving, or driving while impaired or intoxicated within the past three (3) years;

(6) Has not have been convicted of a misdemeanor for offenses against persons as defined by T.C.A. § 39-13-101 within the past three (3) years;

(7) Has not have been convicted of disorderly conduct or public intoxication within the past twelve (12) months;

(8) Has not have been convicted of a misdemeanor offense for any drug or drug-related charge within the past three (3) years; and

(9) Has not have been found guilty of violating any provision of this article within the past six (6) months.

(b) All applicants for a commercial pedal carriage business permit must acknowledge in the application that the provisions of this article have been reviewed, and that its drivers understand the responsibilities and restrictions contained in this article.

(c) Each application will be signed by the owner(s) or duly authorized officer of a business, which will be deemed to be a certification that the information on the application is accurate. Any material misrepresentation made on an application will be grounds for denial or revocation of the permit.

(d) The city manager or designee will review the application and investigate or cause to be investigated each applicant for a commercial pedal carriage business permit to determine the accuracy of the information in the application and whether the applicant is qualified. Based upon the application and the investigation the city manager or designee will make a determination whether to issue the permit for the business.

(e) A nonrefundable fee for the permit must be paid at the time of the submission of the application. To cover the expense involved in the reviewing and investigation of the application a fee for the initial application and each renewal application for each commercial pedal carriage business permit will be established by the board of mayor and aldermen in the fee resolution.

(f) Each permit will expire on December 1 of each year at midnight. Renewal of the permit may be made up to one month before its expiration date, upon submission of an application and payment of the fee established for such application by the board of mayor and aldermen in the fee resolution.

(g) The permit is not transferable. The city manager or designee may promulgate rules as to whether, and the extent to which, any commercial pedal carriage business permit remains valid after any change in the beneficial ownership of a pedal carriage business, including, without limitation, any such change resulting from a direct or indirect, voluntary or involuntary, sale or transfer of a beneficial ownership interest.

(h) If a commercial pedal carriage business permit is denied, suspended, or revoked the city manager or designee will provide notice and an opportunity to be heard as provided for in section 26-168.

(i) It will be unlawful for a pedal carriage business to operate or authorize the operation of, or for a driver to operate, a commercial pedal carriage that does not comply with the requirements of this section.

# Sec. 26-159. Vehicle safety and equipment standards.

(a) No commercial pedal carriage business or driver will operate or allow the operation of a commercial pedal carriage on any street unless the commercial pedal carriage meets the following equipment and safety standards:

(1) Seating for all passengers in accordance with the rated seating capacity of the pedal carriage set forth in the manufacturer's specifications for the pedal carriage.

(2) Tires will be of a size appropriate for the commercial pedal carriage with no mismatched tires. There will be no cuts to the tire, localized worn spots that expose the ply, or visible tread wear indicators.

(3) A fully operational horn, bell, or other audible signaling device.

(4) Front and rear braking system must be capable of being manipulated by the permitted driver from the normal position of operation and is capable of causing a commercial pedal carriage with a loaded passenger compartment to come to a complete stop in a linear path of motion. The braking system controlling the rear wheels will be hydraulic or mechanical disc or drum brakes, which are unaffected by rain or wet conditions.

(5) A secondary or emergency brake system.

(6) Headlights, tail lights, mirrors, tum signals and other requirements. Each commercial pedal carriage will be equipped with the operational equipment set forth in the subsections below:

a. Battery-operated headlights capable of projecting a beam of white light visible five hundred (500) feet from the front of the pedal carriage under ordinary atmospheric conditions and must be illuminated at all times when an operation.

b. Battery-operated taillights, including a red light and brake light affixed to the rear of the pedal carriage capable of displaying a light visible five hundred (500) feet from the rear of the pedal carriage vehicle under ordinary atmospheric conditions and must be illuminated at all times during operation. Tum signals must be affixed to the front and rear of the pedal carriage.

c. Reflectors on the front of the pedal carriage frame, and a red reflector mounted on each side of the rear of the pedal carriage, at least one (1) inch from the outer edge and centered.

d. Reflectors on the spokes of the wheels of the pedal carriage.

e. Reflective tape on the sides of the pedal carriage frame.

(7) A mirror affixed to the pedal carriage to reflect to the pedal carriage driver a view of the street from a distance of at least two hundred (200) feet from the rear of the pedal carriage.

(8) A sign attached to the interior of the pedal carriage within view of passengers indicating the name and telephone number of the pedal carriage business, the pedal carriage registration number contained on the permit for the pedal carriage, and a telephone number that can be used to direct consumer complaints about such pedal carriage to the police department.

(9) Has equipment that complies with the requirements in state law, including T.C.A. section 55-9-401.

(b) The maximum width of a commercial pedal carriage will be sixty-five (65) inches and the maximum length will be seventeen (17) feet.

(c) It is unlawful for a pedal carriage business to operate or authorize the operation of, or for a driver to operate, a commercial pedal carriage that does not comply with the requirements of this section.

# Sec. 26-160. Commercial pedal carriage business permit display on pedal carriage.

The commercial pedal carriage business permit must be displayed on the pedal carriage to be operated by the holder of the permit so as to be in clear view of the passengers at all times when the pedal carriage is in operation.

### Sec. 26-161. Alteration of permit and driver's permit prohibited.

It is unlawful for any person willfully to alter, deface, obliterate, or destroy a commercial pedal carriage business permit or cause or allow the same to occur.

### Sec. 26-162. Limitation on location and hours of operation.

(a) No person will operate a commercial pedal carriage except on permitted streets shown in the boundary of the Pedal Carriage Route Map maintained by the police department, and a commercial pedal carriage is prohibited from transporting passengers on any other streets, unless so directed by a police officer, or when a street on the Pedal Carriage Route Map is closed to vehicular traffic.

(b) No person will operate a commercial pedal carriage on Center or Clinchfield Streets, except to cross such streets at intersections controlled by a traffic light.

(c) No person will operate a commercial pedal carriage on a public street except between 5:30 p.m. to 10:00 p.m. Monday through Friday and 2:00 p.m. to 10:00 p.m. on Saturday and Sunday.

#### Sec. 26-163. Copy of Route Map displayed.

A copy of the Pedal Carriage Route Map must be displayed on each commercial pedal carriage, where the map will be in clear view of the passengers at all times when the commercial pedal carriage is in operation.

### Sec. 26-164. Compliance with federal, state and local traffic laws.

Every commercial pedal carriage will be operated in compliance with all applicable federal, state, and local traffic laws, and in a manner so as to assure the safety of persons and property. Except as provided in this article, a commercial pedal carriage is subject to all provisions of state and local law governing the operation of a bicycle, which include, but are not limited to, provisions of the vehicle and traffic law.

#### Sec. 26-165. Operating restrictions and conditions.

(a) A commercial pedal carriage business or driver will not:

(1) Operate a commercial pedal carriage to transport a greater number of passengers than the rated seating capacity set forth in the pedal carriage manufacturer's specifications;

(2) Operate a commercial pedal carriage in motion while a passenger is standing in such commercial pedal carriage;

(3) Operate a commercial pedal carriage in any bicycle lane;

(4) Operate, block, stand, or park on a public sidewalk at any time, except as needed to move for an emergency vehicle;

(5) Drive or operate a commercial pedal carriage on Center or Clinchfield Streets except to cross such streets at intersections controlled by a traffic light;

(6) Block, stand or park within intersections, crosswalks, parking spaces designated for persons with disabilities, including but not limited to, loading and unloading passengers;

(7) Permit a commercial pedal carriage to be steered simultaneously by anyone in addition to the driver;

(8) Operate a commercial pedal carriage while consuming alcohol, within ten (10) hours of the consumption of alcohol, or while such pedal carriage driver's ability to operate such pedal carriage is impaired by the consumption of alcohol, the use of any drug, or by any other means or while such pedal carriage driver is in an intoxicated condition;

(9) Operate a commercial pedal carriage without a currently valid Tennessee driver license with applicable "for hire" endorsement;

(10) Solicit passengers verbally or by gesture, directly or indirectly, upon the streets or other areas of the city;

(11) Use any public street or other public property as a waiting area unless such area is a legal motor vehicle parking area;

(12) Drive or operate the commercial pedal carriage if it is boarded by any person who is not a paid passenger;

(13) Wash or cause to be washed any commercial pedal carriage on any street or sidewalk in the city; or

(14) Allow sound, music, loudspeaker, public address system, radio, sound amplifier, or similar device to be used or played, or yelling or conversation be conducted, in such a manner that the sound carries to points of habitation or adjacent properties and is audible above the level of conversational speech at a distance of fifty (50) feet or more from the point of origin of the sound, or use any bell, siren, horn, loudspeaker, or any similar device to be used to attract the attention of possible customers nor use any such device to attract attention.

(b) A commercial pedal carriage business and driver are responsible for ensuring Ensure the safe operation of the pedal carriage, including loading and unloading passengers.

(c) A driver will not willfully impede the normal flow of traffic on any street at any time. A commercial pedal carriage is required to pull immediately to the nearest curb area when one (1) or more vehicles are unable to safely pass or continue in normal traffic flow.

(d) All commercial pedal carriage businesses must provide one (1) off-street parking space for every four (4) passenger spaces, as determined by the maximum seating capacity of a commercial pedal carriage. Off street parking may be dedicated, shared, or provided by agreement with another commercial establishment. At the beginning and end of each tour, passengers may only board and disembark the pedal carriage in the location of the commercial pedal carriage business's off-street parking.

(e) The driver will not collect fares, make change, or take on or discharge passengers while the commercial pedal carriage is in motion.

(f) No owner, operator, servant, agent, driver, or other employees of the commercial pedal carriage business will provide or serve alcoholic beverages or beer to passengers.

(g) No alcoholic beverages except beer will be open or consumed by a commercial pedal carriage passenger nor may alcoholic beverages, except beer be transported on a commercial pedal carriage. Beer lawfully purchased for consumption may be open or consumed by a commercial pedal carriage passenger under the following conditions:

(1) Beer transported to or brought on the commercial pedal carriage must be in a sealed container, but the container will in no event by glass.

(2) Beer may be consumed from cans or plastic or foam cups

(3) Beer may be consumed only when the pedal carriage passenger is seated on a pedal carriage, and open containers of beer are only allowed while the passenger is on aboard the pedal carriage. No open container of beer may be removed from the commercial pedal carriage.

(4) The commercial pedal carriage business and driver must not allow consumption of beer by passengers under the age of twenty-one (21). If beer is present on a commercial pedal carriage, all passengers must be at least sixteen (16) years of age.

(5) If beer is allowed to be consumed on a commercial pedal carriage the following notice will be in full display on the commercial pedal carriage:

a. When beer is present on this pedal carriage, no persons under the age of sixteen (16) will be allowed on the pedal carriage.

b. Each passenger is asked to drink responsibly.

c. No passenger is able to take any open container of beer with them when they exit the pedal carriage.

(6) A driver will not serve beer to anyone, will not operate a commercial pedal carriage while under the influence of alcoholic beverages, and will not consume alcoholic beverages while operating a commercial pedal carriage;

(7) At the conclusion of the trip, any open container of beer must remain with the driver to be disposed of in a container provided by the driver.

(8) No beer will be served or brought on the commercial pedal carriage by the driver or any owner, operator, servant, agent, driver, or other employee of the commercial pedal carrier business.

(9) Any violations of this section may be enforced as set out in sections 26-172 and 173.

(i) No glassware of any kind, including, but not limited, to bottles, receptacles or drinking glasses are allowed on a commercial pedal carriage.

(j) Drivers will require all passengers under age sixteen (16) to wear helmets and will offer helmets for all other passengers, regardless of age, at no cost.

(k) Drivers will remain with the commercial pedal carriage at all times while the pedal carriage is operating a tour, including during any planned or unplanned stops during the tour.

(I) If there are exigent circumstances and a police officer or other authorized officer or employee of the city directs a driver to move the commercial pedal carriage from any street, avenue or other location, such driver will comply with the direction and will not operate the commercial pedal carriage on such street or location for the duration of such exigent circumstances. For the purposes of this subsection, exigent circumstances will include, but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space, an accident, fire or other emergency, a parade, demonstration or other such event at or near such location.

(m) If there are exceptional circumstances, the police chief or designee is authorized to restrict or prohibit any driver from operating any commercial pedal carriage on any street or other location for a specified period of time. For the purposes of this subsection, exceptional circumstances will include, but not be limited to, unusually heavy pedestrian

or vehicular traffic, existence of any obstructions in the public space, a parade, or other such event or occurrence at or near such location.

# Sec. 26-166. Seating capacity to be displayed on pedal carriage.

The manufacturer's rated seating capacity as stated in the approved commercial pedal carriage business permit will be displayed on the pedal carriage, so that the seating capacity will be in clear view of the passengers at all times.

### Sec. 26-167. Refusal to carry orderly passengers prohibited.

A commercial pedal carriage will be operated so that the boarding of new passengers is at no place other than a single fixed point at the beginning of a route.

# Sec. 26-168. Hearing upon denial of permit of renewal, suspension and revocation.

The city manager or designee may deny, revoke, or suspend a commercial pedal carriage business permit for a violation of this article, after notice and an opportunity to be heard upon the occurrence of any one (1) or more of the following conditions:

(1) The occurrence of fraud, misrepresentation, or false statements contained in the application for such permit;

(2) The operation of a pedal carriage, owned by the pedal carriage business, by a pedal carriage driver who does not have in full force and effect a valid Tennessee driver license with a "for hire" endorsement;

(3) Violation by a pedal carriage business of any of the provisions of this article, rules promulgated pursuant to this article, or any other law applicable to the operation of a pedal carriage;

(4) The insurance required by section 26-171(b) has lapsed or is not enforce;

(5) A violation by a driver of any provision of this article; or

(6) A continued possession by a pedal carriage business of a permit or use of a driver would pose an exigent danger to the public.

# Sec. 26-169. Appeal by holder of a pedal carriage business permit.

The decision of the city manager or designee to deny, revoke, or suspend a commercial pedal carriage business permit will be final, provided upon receipt of notice that a commercial pedal carriage business permit has been denied, suspended, or revoked, by the city manager or designee, the applicant or permit holder may appeal the decision by petition for common law writ of certiorari set out in T.C.A. § 27-8-101. Any denial, suspension, or revocation of a permit will be effective during such appeal unless otherwise stayed by a court of competent jurisdiction. No judicial review will be available until all administrative remedies have been exhausted.

#### Sec. 26-170. Operating after suspension or revocation.

It is unlawful for any person to operate a commercial pedal carriage during any period in which the commercial pedal carriage business's permit is expired, suspended, or revoked.

#### Sec. 26-171. Indemnity for benefit of city; insurance.

(a) Any commercial pedal carriage business operating under this article will hold the city harmless against any and all liability, loss, costs, damages, or expense which may accrue to the city by reason of the negligence, default, or misconduct of the business, its owner, operator, servants, agents, drivers, or other employees, in connection with the

rights granted to such business under this article. Nothing in this article will be considered to make the city liable for damages because of any negligent act or omission or commission by any commercial pedal carriage business, its owner, operator, servants, agents, drivers, or other employees, during the operation of a commercial pedal carriage business or service, either with respect to injuries to persons or damage to property that may be sustained.

(b) Any commercial pedal carriage business desiring a permit to do business will give and maintain a policy of comprehensive general liability insurance from an insurance company authorized to do business in the State of Tennessee for each commercial pedal carriage in use, with minimum general liability coverage of \$2,000,000.00 per commercial pedal carriage, known as combined single limit insurance coverage. Such insurance will inure to the benefit of any person who will be injured or will sustain damage to property caused by the negligence or misconduct of a commercial pedal carriage business, its servants or agents. Certified copies of such insurance policies will be filed with the city manager. Any insurance policy issued pursuant to this section will provide that the same may not be canceled or not renewed without at least thirty (30) days' written notice to be sent by registered or certified mail, return receipt requested, to the city manager, except that cancellation for non-payment of premium shall require no more than fourteen (14) days, properly mailed, written notice of cancellation. Additionally, the commercial pedal carriage business will notify the city manager of any modification, amendment, cancellation or substitution of any insurance policy required under this section within fourteen (14) days of the date of the notice to the pedal carriage business of such modification, amendment, cancellation or substitution.

(c) Any insurance policy issued pursuant to this section shall further provide that the insolvency or bankruptcy of the insured shall not relieve the company from the payment of damages for injuries or death sustained or loss occasioned within the provisions of the policy and that the prepayment of any judgment that may be recovered against the insured upon any claim covered by such policy shall not be a condition precedent to any right of action against the company upon the policy, but that the company shall be bound to the extent of its liability under the policy and shall pay and satisfy such judgment, and that action may be maintained upon such judgment by the injured person or his or her heirs, or personal representatives, as the case may be, to enforce the liability of the company as therein set forth.

(d) If the policy of insurance required by this section lapses for any reason, the commercial pedal carrier business permit issued will become void for such commercial pedal carriage business, subject to notice and a prompt hearing as provided in section 26-168.

#### Sec. 26-172. Enforcement.

All police officers of the police department will have the power to enforce any provision of this article or any rule or regulation promulgated pursuant to this article.

#### Sec. 26-173. Penalties.

Any violation of this article will subject the responsible person or entity to a penalty of \$50.00, and court costs, for each day of violation. Each day of violation may constitute a separate violation. Additionally, the failure to comply with this article may result in the denial, suspension, or revocation of a commercial pedal carriage business permit.

#### Sec. 26-174. Severability.

The provisions of this article will be deemed to be severable. If any provision of this article is determined to be unconstitutional or otherwise Invalid, such determination will not affect the validity of other provisions of this article.

SECTION II. That Section 6-1 of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended to read as follows:

#### Sec. 6-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverage or beverage means and includes alcohol, spirits, liquor, wine high alcohol content beer, and every liquid containing alcohol, spirits, wine and high alcohol content beer and capable of being consumed by a human being, other than patent medicine, or beer. Notwithstanding any section to the contrary in this chapter, except for beer, the term *alcoholic beverage* or *beverage* also includes any liquid product containing distilled alcohol capable of being consumed by a human being, manufactured or made with distilled alcohol regardless of alcoholic content. Liquid products intended for beverage purposes containing alcohol that do not meet the definition of beer shall also be alcoholic beverages. Notwithstanding the provisions of this definition, products or beverages containing less than one-half of one percent alcohol by volume, other than wine as defined in this section, shall not be considered to be alcoholic beverages.

Applicant means the person applying for a certificate of good moral character or a license.

Application means the form an applicant is required to file in order to obtain a certificate of good moral character or a license.

Beer means beverages as defined at T.C.A. section 57-5-101(b) and amendments thereto.

Bottle means any container, vessel or other receptacle used for holding any alcoholic beverage.

Certificate of good moral character means the certificate provided for in T.C.A. § 57-3-208 in connection with the prescribed procedure for obtaining a state liquor retailer's license.

*Container* means any bottle, can, vessel, device, or other receptacle used for holding or containing any amount of wine, beer, or alcoholic beverage.

*Distiller* means any person who owns, occupies, carries on, works, conducts or operates any distillery, either by himself or by his agent.

*Distillery* means any place or premises wherein any liquors are manufactured for sale. *Federal statutes* means the statutes of the United States in effect or as they may be changed.

Inspection fee means the monthly fee a licensee is required by this chapter to pay, the amount of which is determined by a percentage of the gross sales of a licensee.

*License* means a license issued by the state under this chapter for the purpose of authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail in the city.

License fee means the annual fee a licensee is required by this chapter to pay at or prior to the time of the issuance of a license.

Licensee means the holder of a license.

*Liquor district* means the geographical area within the corporate limits of the city for each of the six separate areas designated as districts I through VI, inclusive, all as shown on a map, dated August 5, 1969, entitled "Liquor Store District Map of the City of Kingsport," including any future amendments to the map.

*Liquor store* means the building or the part of a building where a licensee conducts any business authorized by his license.

*Manufacture* means distilling, rectifying and operating a winery or any device for the production of alcoholic beverages.

*Manufacturer* means a distiller, vintner and rectifier of alcoholic beverages. *Open* means any opening or breach through which the contents of any can, bottle, or container may pass in order to be consumed by any person.

*Public place* means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places also includes the premises of any shopping center, manufactured housing complex, apartment house complex, or any other premises frequented by the public at large, but does not include premises used solely as a private residence, whether permanent or temporary in nature.

*Rectifier* means any person who rectifies, purifies or refines any alcoholic beverage by any process other than as provided for on distillery premises, and also any person who, without rectifying, purifying or refining an alcoholic beverage, shall, by mixing an alcoholic beverage with any other material, thereby manufacture any imitation thereof, or who compounds an alcoholic beverage for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters or any other name.

Retail sale or sale at retail means a sale of an alcoholic beverage to a consumer or to any person for any purpose other than for resale.

Sale or sell means the exchange or barter of an alcoholic beverage, and also any delivery made otherwise than gratuitously of an alcoholic beverage; the soliciting or receiving of an order for an alcoholic beverage; the keeping, offering or exposing an alcoholic beverage for sale.

*State alcoholic beverage commission* means the Tennessee Alcoholic Beverage Commission, provision for which is made in the state statutes.

State liquor retailer's license means a license issued under the state statutes, including the provisions contained in T.C.A. § 57-3-101 et seq., for the purpose of authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail.

State rules and regulations means all applicable rules and regulations of the state applicable to alcoholic beverages in effect or as they may be changed, including without limitation the local option liquor rules and regulations of the state alcoholic beverage commission.

State statutes means the statutes of the state in effect or as they may be changed.

Unsealed means the original seal, cork, cap, or other enclosing device is broken or removed or on which the federal revenue strip stamp has been broken.

*Vintner* means any person who owns, occupies, carries on, works, conducts or operates any winery, either by himself or by his agent.

Wholesale sale or sale at wholesale means a sale to any person for purposes of resale.

Wholesaler means any person who sells at wholesale any alcoholic beverage for which a license is required under T.C.A. § 57-3-101 et seq.

Wine means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed 21 percent by volume. No other product shall be called wine unless designated by appropriate prefixes descriptive of the fruit or other product from which the product was predominantly produced or unless designated as an artificial or imitation wine.

*Winery* means any place or premises wherein wines are manufactured from any fruit or brandies are distilled as the byproduct of wine or other fruit, or where cordials are compounded; and also includes a winery for the manufacture of wine.

SECTION III. That Section 6-2 of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended to read as follows:

# Sec. 6-2. Possession of open containers in motor vehicles or on public property.

(a) It shall be unlawful for any person to possess open or unsealed cans, bottles or containers of beer, wine, or alcoholic beverage in or upon any motor vehicle while traveling or parked upon the public streets, alleys or highways of the city or while upon the premises of any public parking area, public park, playground, auditorium, theater, stadium, school, school grounds, or any public place.

(b) This section shall not apply to motorized carts designed for use upon golf courses, provided that the cart is being used for the purpose of playing golf on an established golf course or to passengers while on a commercial pedal carriage operated pursuant to the requirements and restrictions in section 26-155 *et seq*.

SECTION IV. That Section 6-3 of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended to read as follows:

# Sec. 6-3. Public display or consumption of beer, wine or other alcoholic beverages.

(a) It shall be unlawful for any person to drink or consume beer, wine or alcoholic beverage or to display, exhibit or show openly any open or unsealed container of beer, wine, or alcoholic beverage upon any public street or sidewalk or in any public parking area, public park, playground, auditorium, theater, stadium, school, school grounds, or any public place.

(b) This section shall not apply to the following:

(1) Patrons of premises licensed for on-premises consumption while the patrons are in or upon such premises;

(2) Patrons of premises occupied by lease or license for private purposes and not open to the general public;

(3) Patrons of premises licensed for on-premises consumption where attendance may be controlled by the lessee;

(4) Patrons of premises that have been granted special permission by the city beverage board or the state alcoholic beverage commission, whichever is applicable, for such consumption;

(5) When granted a permit by the beverage board for a temporary outdoor service permit;

(6) When granted a special permit for outdoor service areas or a permit for sidewalk cafe dining facilities; or

(7) When granted a special event permit and otherwise complying with the rules established by the board of mayor and aldermen and of the beverage board relating to the service of beer outdoors or pursuant to a special event or temporary permit issued pursuant to section 6-213(f)(2),(3),(4) or (6).

(c) Subsection (b) of this section may include outdoor areas.

SECTION V. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY City Attorney

PASSED ON 1ST READING \_\_\_\_\_\_ PASSED ON 2ND READING \_\_\_\_\_\_ Sec. 6-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverage or beverage means and includes alcohol, spirits, liquor, wine high alcohol content beer, and every liquid containing alcohol, spirits, wine and high alcohol content beer and capable of being consumed by a human being, other than patent medicine, or beer. where the latter contains an alcoholic content of five percent by weight or less. Notwithstanding any section to the contrary in this chapter, except for beer, the term "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol capable of being consumed by a human being, manufactured or made with distilled alcohol regardlessirrespective of alcoholic content. Liquid products intended for beverage purposes containing alcohol that do not meet the definition, products or beverages containing less than one-half of one percent alcohol by volume, other than wine as defined in this section, shall not be considered to be alcoholic beverages.

Applicant means the person applying for a certificate of good moral character or a license.

Application means the form an applicant is required to file in order to obtain a certificate of good moral character or a license.

Beer means beverages as defined at T.C.A. section 57-5-101(b) and amendments thereto.

Bottle means any container, vessel or other receptacle used for holding any alcoholic beverage.

*Certificate of good moral character* means the certificate provided for in T.C.A. § 57-3-208 in connection with the prescribed procedure for obtaining a state liquor retailer's license.

Container means any bottle, can, vessel, device, or other receptacle used for holding or containing any amount of wine, beer, or alcoholic beverage.

*Distiller* means any person who owns, occupies, carries on, works, conducts or operates any distillery, either by himself or by his agent.

Distillery means any place or premises wherein any liquors are manufactured for sale.

Federal statutes means the statutes of the United States in effect or as they may be changed.

Inspection fee means the monthly fee a licensee is required by this chapter to pay, the amount of which is determined by a percentage of the gross sales of a licensee.

*License* means a license issued by the state under this chapter for the purpose of authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail in the city.

*License fee* means the annual fee a licensee is required by this chapter to pay at or prior to the time of the issuance of a license.

Licensee means the holder of a license.

*Liquor district* means the geographical area within the corporate limits of the city for each of the six separate areas designated as districts I through VI, inclusive, all as shown on a map, dated August 5, 1969, entitled "Liquor Store District Map of the City of Kingsport," including any future amendments to the map.

*Liquor store* means the building or the part of a building where a licensee conducts any business authorized by his license.

*Manufacture* means distilling, rectifying and operating a winery or any device for the production of alcoholic beverages.

Manufacturer means a distiller, vintner and rectifier of alcoholic beverages.

Open means any opening or breach through which the contents of any can, bottle, or container may pass in order to be consumed by any person.

*Public place* means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places also includes the premises of any shopping center, manufactured housing complex, apartment house complex, or any other premises frequented by the public at large, but does not include premises used solely as a private residence, whether permanent or temporary in nature.

*Rectifier* means any person who rectifies, purifies or refines any alcoholic beverage by any process other than as provided for on distillery premises, and also any person who, without rectifying, purifying or refining an alcoholic beverage, shall, by mixing an alcoholic beverage with any other material, thereby manufacture any imitation thereof, or who compounds an alcoholic beverage for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters or any other name.

*Retail sale or sale at retail* means a sale of an alcoholic beverage to a consumer or to any person for any purpose other than for resale.

Sale or sell means the exchange or barter of an alcoholic beverage, and also any delivery made otherwise than gratuitously of an alcoholic beverage; the soliciting or receiving of an order for an alcoholic beverage; the keeping, offering or exposing an alcoholic beverage for sale.

*State alcoholic beverage commission* means the Tennessee Alcoholic Beverage Commission, provision for which is made in the state statutes.

State liquor retailer's license means a license issued under the state statutes, including the provisions contained in T.C.A. § 57-3-101 et seq., for the purpose of authorizing the holder thereof to engage in the business of selling alcoholic beverages at retail.

*State rules and regulations* means all applicable rules and regulations of the state applicable to alcoholic beverages in effect or as they may be changed, including without limitation the local option liquor rules and regulations of the state alcoholic beverage commission.

State statutes means the statutes of the state in effect or as they may be changed.

Unsealed bottle means the a bottle with the original seal, cork, cap, or other enclosing device is either broken or removed or on which the federal revenue strip stamp has been broken.

*Vintner* means any person who owns, occupies, carries on, works, conducts or operates any winery, either by himself or by his agent.

Wholesale sale or sale at wholesale means a sale to any person for purposes of resale.

Wholesaler means any person who sells at wholesale any alcoholic beverage for which a license is required under T.C.A. § 57-3-101 et seq.

*Wine* means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed 21 percent by volume. No other product shall be called wine unless designated by appropriate prefixes descriptive of the fruit or other product from which the product was predominantly produced or unless designated as an artificial or imitation wine.

*Winery* means any place or premises wherein wines are manufactured from any fruit or brandies are distilled as the byproduct of wine or other fruit, or where cordials are compounded; and also includes a winery for the manufacture of wine.

Sec. 6-2. - Possession of open containers in motor vehicles or on public property.

(a) It shall be unlawful for any person to possess open or unsealed cans, bottles or containers of beer, wine, or other alcoholic beverage in or upon any motor vehicle while traveling or parked upon the public streets, alleys or highways of the city or while upon the premises of any <u>public parking area</u>, <u>public park</u>, <u>playground</u>, <u>auditorium</u>, theater, stadium, school, school grounds, or any public place.public park, shopping center, trailer park or apartment complex or any other premises which is generally frequented by the public at large.

(b) This section shall not apply to motorized carts designed for use upon golf courses, provided that the cart is being used for the purpose of playing golf on an established golf course or to passengers while on a commercial pedal carriage operated pursuant to the requirements and restrictions in section 26-159 et seq.

(c) It is not a violation of this section if any person possesses open containers of beer while upon any public street, alleys or highways of the city, public parks or any other premises which is generally frequented by the public at large, if possessed pursuant to a temporary permit issued pursuant to section 6-213(e)(2), a special occasion license issued pursuant to section 6-213(e)(3), a special permit for outdoor service areas or a permit for sidewalk cafe dining facilities, and as otherwise permitted by the rules and regulations of the beverage board or the board of mayor and aldermen.

Sec. 6-3. - Public display or consumption of beer, wine or other alcoholic beverages.

(a) It shall be unlawful for any person to drink or consume beer, wine or any other alcoholic beverage or to display, exhibit or show openly any open or unsealed container of beer, wine, or any other alcoholic beverage upon any public street or sidewalk or in any <u>public parking area</u>, public park, playground, auditorium, theater, stadium, school<sub>3</sub>-or school grounds, or any public place. or public parking areas in any public place.

(b) This section shall not apply to the following:

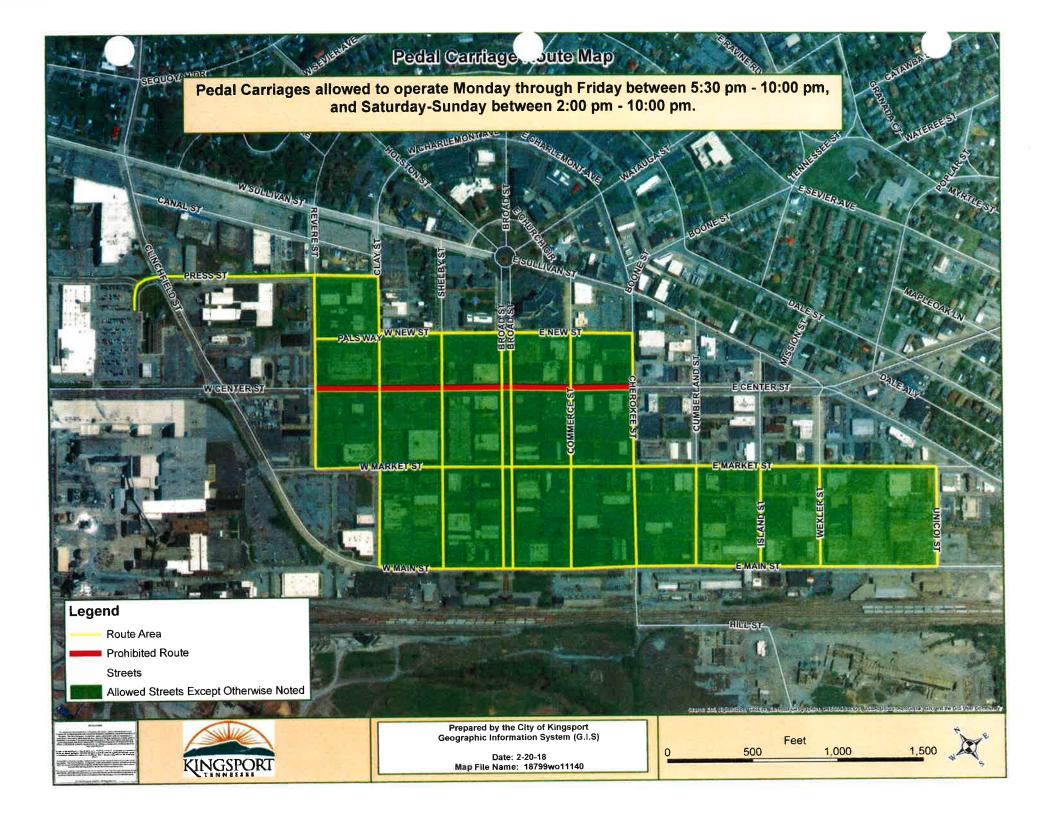
(1) Patrons of premises licensed for on-premises consumption while the patrons are in or upon such premises;

(2) Patrons of premises occupied by lease or license for private purposes and not open to the general public;

(3) Patrons of premises licensed for on-premises consumption where attendance may be controlled by the lessee;









# AGENDA ACTION FORM

# Amend Zoning Code Pertaining to Development Guidelines in the Gateway District Overlay

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-165-2018 Work Session: July 16, 2018 First Reading: July 17, 2018 Final Adoption:August 7, 2018Staff Work By:Jessica HarmonPresentation By:Jessica Harmon

# Recommendation:

- Hold public hearing
- Approve ordinance amending the zoning ordinance pertaining to the Gateway District Overlay

### **Executive Summary:**

The Gateway Review Commission has seen recent requests that show changes in development trends from when the regulations for the Overlay District were initially adopted. The Commission feels that the proposed text amendment will help to support those new trends while supporting the intent of the Gateway District Overlay. The Gateway Review Commission strives to preserve and protect the character of our environment and residential areas while providing for the creation and expansion of employment opportunities through high quality design. Major changes proposed in this amendment include establishing maximum signage heights for commercial districts – while maintaining the signage allowances for the TA/C district, landscaping incentives, and fencing types and locations.

During their June 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation in support of the text amendment to the Board of Mayor and Aldermen. The notice of public hearing was published on July 2, 2018.

#### Attachments:

- 1. Notice of Public Hearing
- 2. Zoning Ordinance
- 3. Staff Report

	Y	N	0
Adler	_		
Begley	_	_	_
Cooper	_	_	
George			_
McIntire		—	
Olterman			
Clark		_	



# AGENDA ACTION FORM

# Amend Zoning Code Pertaining to Development Guidelines in the Gateway District Overlay

То:	Board of Mayor and Aldermen
From	Board of Mayor and Aldermen Jeff Fleming, City Manager

Action Form No.: AF-165-2018 Work Session: July 16, 2018 First Reading: July 17, 2018 Final Adoption:August 7, 2018Staff Work By:Jessica HarmonPresentation By:Jessica Harmon

### Recommendation:

- Hold public hearing
- Approve ordinance amending the zoning ordinance pertaining to the Gateway District Overlay

### Executive Summary:

The Gateway Review Commission has seen recent requests that show changes in development trends from when the regulations for the Overlay District were initially adopted. The Commission feels that the proposed text amendment will help to support those new trends while supporting the intent of the Gateway District Overlay. The Gateway Review Commission strives to preserve and protect the character of our environment and residential areas while providing for the creation and expansion of employment opportunities through high quality design. Major changes proposed in this amendment include establishing maximum signage heights for commercial districts – while maintaining the signage allowances for the TA/C district, landscaping incentives, and fencing types and locations.

During their June 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation in support of the text amendment to the Board of Mayor and Aldermen. The notice of public hearing was published on July 2, 2018.

### Attachments:

- 1. Notice of Public Hearing
- 2. Zoning Ordinance
- 3. Staff Report

	Y	N	0
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Begley		$\rightarrow$	
Cooper		_	-
George		-	_
McIntire		-	_
Olterman		-	_
Clark		_	_

### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on Tuesday July 17, 2018 to consider amending the Code of Ordinances Chapter 114, Section 114-421 as it pertains to the Development Guidelines in the Gateway District Overlay. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

All interested persons are invited to attend this meeting and public hearing. A detailed description of the zoning text amendment is on file in the offices of the City Manager, City Library, and Planning Manager for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-229-9485.

CITY OF KINGSPORT Angie Marshall, Deputy City Clerk P1T: 7/2/18 ORDINANCE NO.\_\_

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 114-421 PERTAINING TO THE GATEWAY DISTIRCT OVERLAY BY DELETING SECTION 114-421 AND REPLACING IT WITH THE LANGUAGE HEREIN BELOW AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

CITY

BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. That Section 114-421 of the Code of Ordinances, City of Kingsport, Tennessee is hereby deleted in its entirety and replaced with the following:

(a) Generally. All businesses, commercial, manufacturing, and industrial development and changes to existing developments located in the Gateway District Overlay shall be reviewed by the gateway review commission, or their designee, except for residential structures or agricultural uses and structures. Such new and existing businesses, commercial, manufacturing and industrial developments shall receive a gateway review commission's approval by issuance of a certificate of appropriateness before receiving an erosion control, grading, building permit or certificate of occupancy.

(b) Design strategies for development within P-1, B-1, B-3, B-4P and BC districts. The following shall apply to P-1, B-1, B-3, B-4P and BC zoning districts within the Gateway District Overlay:

(1) Grading plan. Improvements on the site should be developed to minimize changes in existing topography and the loss of existing mature vegetation. Incentives are provided to retain healthy existing trees. If existing trees are to be counted towards landscaping credit (as explained in Section 114-421(b)(7)(b)), then they shall be identified and shown on the grading plan and approved by the Landscaping Specialist. Smooth topographic transition should be provided at the edges of property. Minimum changes in topography are recommended with no slopes exceeding 1:3 ratio (one-foot rise to a three-foot run). All grading plans require approval by the engineering department. All grading plans over one-acre require approval by the state department of environment and conservation before a grading permit can be issued. See the erosion control provisions of this Code for additional requirements.

(2) Site plan. Where the need exists for retaining an open image, protecting views, creating a high quality image, and maintaining natural edges along the roadway's borders, a wider setback may be required above that which is required in the underlying zoning district. Developments are encouraged to be located and configures in a visually harmonious manner with surrounding developments, existing terrain, and not to impede scenic views within the corridor. Additional district setback information is in this chapter. For details regarding the required information for development plan submittals, see the zoning development plan, parking and landscaping provisions of this chapter.

(3) Drainage plan. To minimize runoff and provide adequate green space, impervious surfaces such as roofs and pavement should not cover more than 75 percent of the site area. Undeveloped right-of-way immediately adjoining the site may be used in calculation of the pervious area, provided it is not more than 15 percent of the overall calculation and is maintained by the occupant. Stormwater entry and exit points must be protected to avoid erosion. An open space system of ridges, steep slopes, drainage corridors, periphery yards, buffers and landscaped areas provide natural stormwater absorption and filtration zones avoiding the need for large scale piping and retention systems. When such designs are not possible, stormwater areas will be landscaped to blend with natural features of the site. Retention or detention ponds, if needed, are encouraged to be graded gradually enough not to require fencing. Appropriate stormwater and drainage calculations shall be provided by a licensed professional, as permitted by the state, and approved by the city engineer.

(4) Landscape plan. The property owners shall maintain all plant material within the right-ofway, when used as a credit for pervious area, and on the property for the lifetime of the proposed use. For any new use, this maintenance responsibility must continue. Visual buffers used to soften the appearance of structures and parking lots from interior streets are recommended. Options for landscaping are made available for developers who create dedicated open public spaces, walkways, or other creative, resourceful, land uses in the landscape and buffer provisions of this division. For additional requirements of landscape plans, see the article VII of this chapter, landscaping.

(5) Architectural design. A compatible relationship for proposed developments in the Gateway District Overlay is of critical public concern for any building or site improvements. The intent of the design review is not to stifle innovative architecture but to ensure respect while reducing incompatible and adverse impacts on the visual experience from the roadways. The commission may alter corporate colors or architectural designs within the district to create a compatible visual image. To accomplish this, the gateway review commission shall exercise the following guidelines for review of such proposed developments:

a. Materials. Selection and use of building materials should respect the climate and heritage of the area.

1. Exterior building materials, which are encouraged include: brick, stone and stone veneers, plate glass, precast concrete panels, architectural block, glass block, and EIFS (commonly known as Dryvit).

2. Materials considered unacceptable include: plywood or plywood-based products, preengineered metal, painted or natural concrete block, composite building panels, and vinyl siding. Designers are encouraged to vary materials from building to building while limiting the number of different materials to three on any individual structure.

b. Colors. In general, neutral or muted tones should be used. A maximum of three predominant colors should be used. Painted or factory-finished metal should have a matte finish.

c. Accessory buildings. Metal buildings shall be an accessory to the principal structure without public access, typically used for storage and must be concealed from view. Large areas of exposed concrete are discouraged.

d. Architectural elements. All development designs are to be consistent or compatible within a development in terms of architectural design, exterior building materials, colors and/or arrangement of buildings.

1. Rooflines shall be strongly defined. Canopies and other architectural elements, such as brick or rockwork details, which define the roof, are encouraged. All mechanical/electrical equipment and rooftop- or ground-mounted equipment and protrusions are to be screened from view from entrances and pedestrian pathways as viewed from on-site ground level. Roof-mounted equipment must be screened on all sides. Sloped roofs may be used in combination with flat roofs to enliven the building profile and to provide screening.

2. Large blank walls shall be avoided. Recessed or articulated wall surfaces, columns and beams are encouraged to visually segment exterior wall surfaces. Windows and other openings should reflect the character and style of the building.

3. Service areas, including storage, special equipment, maintenance and loading area, shall be completely screened so as not to be visible from the interstate, expressway or arterial highway.

4. Refuse collection areas shall be visually screened using materials and colors compatible with those of the primary structure and shall be roofed if the contents are visible from any public street, interstate, expressway or arterial street.

(6) Signs. Although signs occupy little space, they have a major impact on the image of the Gateway District Overlay. For this reason, signage systems must be designed to create a consistent quality image throughout the district. Specific requirements can be found in article IV of this chapter, signs, additional requirements are set forth in this document that also apply within the Gateway District Overlay. The intent is to create a cohesive image and to consistently decrease the amount of clutter and visual disturbance within the district.

a. Permanent signs will be reduced by 50 percent of the square footage allowed in the underlying zoning district by the gateway review commission, and are limited to one freestanding sign and two wall mounted signs.

b. On parcels adjacent to an interstate right-of-way, one free standing monument sign is permitted with a maximum height of 15 feet above the average ground level. On parcels not adjacent to the interstate, one freestanding monument sign is permitted with a maximum height of such sign shall be 8 feet above the average ground level. Signs should be internally illuminated block letters mounted on a raceway. Backlit letters and indirectly illuminated signs are also acceptable. A three-color maximum is allowed for signs with up to two font styles. Ground-mounted building identification signs shall have fully enclosed solid bases utilizing the same materials as the principal structure, mounted at the ground plane. No supporting structural members are to be exposed. Specific underlying zoning requirements for signs can be found in Article I – Definitions and article IV – Signs of this chapter.

c. The following signs are prohibited: A-frame signs; roof-mounted signs or portico-mounted signs; bench signs; off-premises signage; captive balloon signs; inflatable signs; portable signs and portable signs converted to permanent locations; lollipop signs; paper, cloth, plastic streamers and canvas; painted signs on primary walls; pendants; traffic sign replicas; high-rise signs; permanent come-on signs (sale today, stop, look, etc.). Strings with continuous flags shall not be permitted.

d. Changeable copy signs are allowed for automobile service stations, theaters, and conference centers. Electronic message board signs may be considered with the review of the commission if they are allowed by the underlying zoning district.

e. Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.

f. Interim signs. While signs of a nonpermanent nature are generally not permitted, any sign that is not permanent in nature and fails to meet permanent sign requirements must meet the following respective specifications:

1. For sale and for lease signs shall be limited to two per parcel. The size shall be limited to one square foot of sign for every four feet of lot road frontage up to a maximum of 64 square feet for one surface, or 32 square feet per side with two faces maximum. Real estate signs shall have a maximum height of six feet, measured from the ground level (average grade).

2. Temporary signs for construction sites shall not exceed 64 square feet total and shall be removed upon completion of construction activity and before occupancy of the building.

g. Special event signs must be removed following the event and are permitted only on the premises during the event, but in no case longer than 15 days. See section 114-528(2)d for size allowances.

(7) Landscaping and screening. The landscape guidelines are designed to maintain overall visual continuity within the Gateway District Overlay. The intent is to reflect the traditional character of the area with informal groupings of plants amidst green lawns and woodlands. Landscape design should complement this image.

a. A performance bond is required for a period of one-year, with extensions granted when necessary, for landscaping not installed at the time of issuance of a certificate of occupancy. Landscaping must be maintained for the lifetime of the intended use. Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.

b. Healthy existing trees should be retained whenever possible and may be counted as credit (two trees for every saved tree) for other required landscaping. Grading and construction shall avoid the disturbance of such trees. Larger trees or up to double the amount of required

number of trees and vegetation may be required by the commission if it is shown the site was clear cut within three years prior to submittal of a development plan.

c. Landscape incentives may be utilized to encourage the preservation of existing healthy vegetation and innovative site design. Existing healthy vegetation and the area of land used to maintain the vegetation may be counted towards meeting performance criteria for buffers, streetscapes, open space, and interior parking areas.

1. A reduction of one parking space for every 1,000 square feet of land containing existing healthy trees in an undisturbed natural condition may be granted, not to exceed ten percent of the total required parking.

2. Substitutions for both trees and shrubbery amounts and locations may be considered by the commission with a recommendation from the landscape specialist.

d. Fencing and screening. Long fences (50 feet or more) should be broken up by landscaping. When necessary to secure outdoor equipment and storage, chain link fencing may be permitted on a case by case basis as long as it is black vinyl coated and screened with landscaping on all portions visible from the right-of-way. Unfinished wood fences are not allowed.

1. Fencing and screening shall not be placed within 25 feet of any street corner. Fencing and screening shall not block access to aboveground, pad-mounted transformers and should provide 15 feet of clear access to the transformer doors.

2. Fencing and screening shall not impede or divert the flow of water in any drainageway.

3. The maximum height of fences should generally be six feet, except for tennis courts, storage screening, and similar uses which may be up to 12 feet in height. Fencing is not allowed in the front yard and is only permitted in the side and rear yard.

4. The Gateway District Overlay approved standard for right-of-way border fencing or frontal fencing is required along interstate, expressways or arterial highways.

(8) Lighting and utilities. Lighting should be used as a landscape element and for security purposes and should be designed to reduce impacts on adjacent sites. Consistency in style and design of fixtures shall be maintained throughout a site.

a. Lighting levels should be as even as possible. For all private roadways, parking lots and entrances, the lighting system should provide a minimum ratio of 4:1 uniformity or better, or with the current Institute of Electrical Standards (IES) recommendations for office and mixed-use developments. General parking lot lighting shall not exceed an average of 2½ footcandles overall. All lighted canopies shall have recessed, indirect lights within the canopy.

b. Lights placement must avoid glare on-site or light spillage onto adjacent sites. Where necessary, cutoff boxes should be specified to reduce throw on adjacent sites.

c. Neon lighting is not encouraged; however, soft and/or muted colors may be allowed.

d. Light poles are to be neutral, preferably dark in color and not made of wood. All parking and security lights are to be cutoff luminaries. The height of light fixtures should be in proportion to the building mass, preferably no taller than the building height. Lighting for pedestrian areas should be 12 to 15 feet in height. Ground-oriented pedestrian scale lighting should be considered as an alternative to pole-mounted fixtures along pedestrian walkways at three to four feet in height.

e. Outside speakers shall not be permitted for use as paging or public address systems. Outside speakers may only be used under certain conditions, with the commission's approval, for special/cultural or public events.

f. All utility lines, including but not limited to electric, telephone and TV cable shall be placed underground.

(9) Parking. The desire of the gateway review committee is to visually shield parking areas from public streets and residential areas.

a. All parking lots and drives shall be hard surfaced with concrete or asphalt, unless an acceptable alternative is approved by the commission, and shall have concrete extruded curbs. Special paving or marking is required for accent areas such as: entrance dropoff zones and pedestrian walkways.

b. Innovative design concepts to improve parking area appearance are encouraged. All parking areas shall be visually screened from roadways with plantings or earth mounding (berms) 2<sup>1</sup>/<sub>2</sub>- to three-feet high. Where planting material is used exclusively, 60 percent opacity must be achieved in the winter and 80 percent in the summer.

c. A landscaped area with a minimum of ten feet shall be provided between parking and internal roadways and entry drives.

d. Large parking areas shall be broken into smaller sections, using berms and landscape medians for separation. On wooded sites, preservation of groups of trees is encouraged to frame smaller parking cells and to screen the parked cars.

e. Outdoor display areas may require up to 50 percent greater landscape requirements as established by these provisions.

f. On-street parking is not permitted.

g. Parking lots of contiguous developments should, where possible, interconnect among the differing developments to encourage continuous movement of traffic among developments to reduce traffic flow on public streets and to minimize the need for excessive curb cuts.

(10) Business needs that lie outside of these regulations may be considered on a case by case basis by the Gateway Review Commission

(c) Design strategies for development within the TA/C district. The following shall apply to the TA/C zoning districts within the Gateway District Overlay:

(1) Grading plan. Improvements on the site should be developed to minimize changes in existing topography and the loss of existing mature vegetation. Incentives are provided to retain healthy existing trees. If existing trees are to be counted towards landscaping credit (as explained in Section 114-421(b)(7)(b)), then they shall be identified and shown on the grading plan and approved by the Landscaping Specialist. Smooth topographic transition should be provided at the edges of property. Minimum changes in topography are recommended with no slopes exceeding 1:3 ratio (one-foot rise to a three-foot run). All grading plans require approval by the engineering department. All grading plans over one-acre require approval by the state department of environment and conservation before a grading permit can be issued. See the erosion control provisions of this Code for additional requirements.

(2) Site plan. Where the need exists for retaining an open image, protecting views, creating a high quality image, and maintaining natural edges along the roadway's borders, a wider setback may be required above that which is required in the underlying zoning district. Developments are encouraged to be located and configures in a visually harmonious manner with surrounding developments, existing terrain, and not to impede scenic views within the corridor. Additional district setback information is in this chapter. For details regarding the required information for development plan submittals, see the zoning development plan, parking and landscaping provisions of this chapter.

(3) Drainage plan. To minimize runoff and provide adequate green space, impervious surfaces such as roofs and pavement should not cover more than 75 percent of the site area. Undeveloped right-of-way immediately adjoining the site may be used in calculation of the pervious area, provided it is not more than 15 percent of the overall calculation and is maintained by the occupant. Stormwater entry and exit points must be protected to avoid erosion. An open space system of ridges, steep slopes, drainage corridors, periphery yards, buffers and landscaped areas provide natural stormwater absorption and filtration zones avoiding the need for large scale piping

and retention systems. When such designs are not possible, stormwater areas will be landscaped to blend with natural features of the site. Retention or detention ponds, if needed, are encouraged to be graded gradually enough not to require fencing. Appropriate stormwater and drainage calculations shall be provided by a licensed professional, as permitted by the state, and approved by the city engineer.

(4) Landscape plan. The property owners shall maintain all plant material within the right-ofway, when used as a credit for pervious area, and on the property for the lifetime of the proposed use. For any new use, this maintenance responsibility must continue. Visual buffers used to soften the appearance of structures and parking lots from interior streets are recommended. Options for landscaping are made available for developers who create dedicated open public spaces, walkways, or other creative, resourceful, land uses in the landscape and buffer provisions of this division. For additional requirements of landscape plans, see the article VII of this chapter, landscaping.

(5) Architectural design. A compatible relationship for proposed developments in the Gateway District Overlay is of critical public concern for any building or site improvements. The intent of the design review is not to stifle innovative architecture but to ensure respect while reducing incompatible and adverse impacts on the visual experience from the roadways. The commission may alter corporate colors or architectural designs within the district to create a compatible visual image. To accomplish this, the gateway review commission shall exercise the following guidelines for review of such proposed developments:

a. Materials. Selection and use of building materials should respect the climate and heritage of the area.

1. Exterior building materials, which are encouraged include: brick, stone and stone veneers, plate glass, precast concrete panels, architectural block, glass block, and EIFS (commonly known as Dryvit).

2. Materials considered unacceptable include: plywood or plywood-based products, preengineered metal, painted or natural concrete block, and composite building parcels, and vinyl siding.

Designers are encouraged to vary materials from building to building while limiting the number of different materials to three on any individual structure.

b. Colors. In general, neutral or muted tones should be used. A maximum of three predominant colors should be used. Painted or factory-finished metal should have a matte finish.

c. Accessory buildings. Metal buildings shall be an accessory to the principal structure without public access, typically used for storage and must be concealed from view. Large areas of exposed concrete are discouraged.

d. Architectural elements. All development designs are to be consistent or compatible within a development in terms of architectural design, exterior building materials, colors and/or arrangement of buildings.

1. Rooflines shall be strongly defined. Canopies and other architectural elements, such as brick or rockwork details, which define the roof, are encouraged. All mechanical/electrical equipment and rooftop- or ground-mounted equipment and protrusions are to be screened from view from entrances and pedestrian pathways as viewed from on-site ground level. Roof-mounted equipment must be screened on all sides. Sloped roofs may be used in combination with flat roofs to enliven the building profile and to provide screening.

2. Large blank walls shall be avoided. Recessed or articulated wall surfaces, columns and beams are encouraged to visually segment exterior wall surfaces. Windows and other openings should reflect the character and style of the building.

3. Service areas, including storage, special equipment, maintenance and loading area, shall be completely screened so as not to be visible from the interstate, expressway or arterial highway.

4. Refuse collection areas shall be visually screened using materials and colors compatible with those of the primary structure and shall be roofed if the contents are visible from any public street, interstate, expressway or arterial street.

(6) Signs. Although signs occupy little space, they have a major impact on the image of the Gateway District Overlay. For this reason, signage systems must be designed to create a consistent quality image throughout the district. Specific requirements can be found in article IV of this chapter, signs, additional requirements are set forth in this document that also apply within the Gateway District Overlay. The intent is to create a cohesive image and to consistently decrease the amount of clutter and visual disturbance within the district. Any appeals to the following standards must be presented to the gateway review commission:

a. Permanent signs will be reduced by 50 percent of the square footage allowed in the underlying zoning district by the gateway review commission.

b. All monument signs shall have a fully enclosed solid base utilizing the same building materials as the principal structure, mounted at the ground plane.

c. The following signs are prohibited: A-frame signs; roof-mounted signs or portico-mounted signs; bench signs; off-premises signage; captive balloon signs; inflatable signs; portable signs and portable signs converted to permanent locations; lollipop signs; paper, cloth, plastic streamers and canvas; painted signs on primary walls; pendants; traffic sign replicas; high-rise signs; permanent come-on signs (sale today, stop, look, etc.). Strings with continuous flags shall not be permitted.

d. Changeable copy signs are allowed for automobile service stations, theaters, and conference centers. Electronic message board signs may be considered with the review of the commission if they are allowed by the underlying zoning district.

e. Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.

f. Interim signs. While signs of a nonpermanent nature are generally not permitted, any sign that is not permanent in nature and fails to meet permanent sign requirements must meet the following respective specifications:

1. For sale and for lease signs shall be limited to two per parcel. The size shall be limited to one square foot of sign for every four feet of lot road frontage up to a maximum of 64 square feet for one surface, or 32 square feet per side with two faces maximum. Real estate signs shall have a maximum height of six feet, measured from the ground level (average grade).

2. Temporary signs for construction sites shall not exceed 64 square feet total and shall be removed upon completion of construction activity and before occupancy of the building.

g. Special event signs must be removed following the event and are permitted only on the premises during the event, but in no case longer than 15 days. See section 114-528(2)d for size allowances.

h. All other regulations pertaining to signs can be found in Article 1 – Definitions and Article IV – Signs of this chapter.

(7) Landscaping and screening. The landscape guidelines are designed to maintain overall visual continuity within the Gateway District Overlay. The intent is to reflect the traditional character of the area with informal groupings of plants amidst green lawns and woodlands. Landscape design should complement this image.

a. A performance bond is required for a period of one-year, with extensions granted when necessary, for landscaping not installed at the time of issuance of a certificate of occupancy. Landscaping must be maintained for the lifetime of the intended use. Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.

b. Healthy existing trees should be retained whenever possible and may be counted as credit (two trees for every saved tree) for other required landscaping. Grading and construction shall avoid the disturbance of such trees. Larger trees or up to double the amount of required number of trees and vegetation may be required by the commission if it is shown the site was clear cut within three years prior to submittal of a development plan.

c. Landscape incentives may be utilized to encourage the preservation of existing healthy vegetation and innovative site design. Existing healthy vegetation and the area of land used to maintain the vegetation may be counted towards meeting performance criteria for buffers, streetscapes, open space, and interior parking areas.

1. A reduction of one parking space for every 1,000 square feet of land containing existing healthy trees in an undisturbed natural condition may be granted, not to exceed ten percent of the total required parking.

2. Substitutions for both trees and shrubbery amounts and locations may be considered by the commission with a recommendation from the landscape specialist.

d. Fencing and screening. Long fences (50 feet or more) should be broken up by landscaping. When necessary to secure outdoor equipment and storage, chain link fencing may be permitted on a case by case basis as long as it is black vinyl coated and screened with landscaping on all portions visible from the right-of-way. Unfinished wood fences are not allowed.

1. Fencing and screening shall not be placed within 25 feet of any street corner. Fencing and screening shall not block access to aboveground, pad-mounted transformers and should provide 15 feet of clear access to the transformer doors.

2. Fencing and screening shall not impede or divert the flow of water in any drainageway.

3. The maximum height of fences should generally be six feet, except for tennis courts, storage screening, and similar uses which may be up to 12 feet in height. Fencing is not allowed in the front yard and is only permitted in the side and rear yard.

4. The Gateway District Overlay approved standard for right-of-way border fencing or frontal fencing is required along interstate, expressways or arterial highways.

(8) Lighting and utilities. Lighting should be used as a landscape element and for security purposes and should be designed to reduce impacts on adjacent sites. Consistency in style and design of fixtures shall be maintained throughout a site.

a. Lighting levels should be as even as possible. For all private roadways, parking lots and entrances, the lighting system should provide a minimum ratio of 4:1 uniformity or better, or with the current Institute of Electrical Standards (IES) recommendations for office and mixed-use developments. General parking lot lighting shall not exceed an average of 2½ footcandles overall. All lighted canopies shall have recessed, indirect lights within the canopy.

b. Lights placement must avoid glare on-site or light spillage onto adjacent sites. Where necessary, cutoff boxes should be specified to reduce throw on adjacent sites.

c. Neon lighting is not encouraged; however, soft and/or muted colors may be allowed.

d. Light poles are to be neutral, preferably dark in color and not made of wood. All parking and security lights are to be cutoff luminaries. The height of light fixtures should be in proportion to the building mass, preferably no taller than the building height. Lighting for pedestrian areas should be 12 to 15 feet in height. Ground-oriented pedestrian scale lighting should be considered as an alternative to pole-mounted fixtures along pedestrian walkways at three to four feet in height.

e. Outside speakers shall not be permitted for use as paging or public address systems. Outside speakers may only be used under certain conditions, with the commission's approval, for special/cultural or public events.

f. All utility lines, including but not limited to electric, telephone and TV cable shall be placed underground.

(9) Parking. The desire of the gateway review committee is to visually shield parking areas from public streets and residential areas.

a. All parking lots and drives shall be hard surfaced with concrete or asphalt, unless an acceptable alternative is approved by the commission, and shall have concrete extruded curbs. Special paving or marking is required for accent areas such as: entrance dropoff zones and pedestrian walkways.

b. Innovative design concepts to improve parking area appearance are encouraged. All parking areas shall be visually screened from roadways with plantings or earth mounding (berms) 2<sup>1</sup>/<sub>2</sub>- to three-feet high. Where planting material is used exclusively, 60 percent opacity must be achieved in the winter and 80 percent in the summer.

c. A landscaped area with a minimum of ten feet shall be provided between parking and internal roadways and entry drives.

d. Large parking areas shall be broken into smaller sections, using berms and landscape medians for separation. On wooded sites, preservation of groups of trees is encouraged to frame smaller parking cells and to screen the parked cars.

e. Outdoor display areas may require up to 50 percent greater landscape requirements as established by these provisions.

f. On-street parking is not permitted.

g. Parking lots of contiguous developments should, where possible, interconnect among the differing developments to encourage continuous movement of traffic among developments to reduce traffic flow on public streets and to minimize the need for excessive curb cuts.

(10) Business needs that lie outside of these regulations may be considered on a case by case basis by the Gateway Review Commission

(d) Design strategies for development within M-1, M-1R and M-2 districts. The following shall apply to all M-1, M-1R and M-2 zoning districts within the Gateway District Overlay:

(1) Grading plan. Improvements on the site should be developed to minimize changes in existing topography and the loss of existing mature vegetation. Incentives are provided to retain healthy existing trees. If existing trees are to be counted towards landscaping credit (as explained in Section 114-421(b)(7)(b)), then they shall be identified and shown on the grading plan and approved by the Landscaping Specialist. Smooth topographic transition should be provided at the edges of property. Minimum changes in topography are recommended with no slopes exceeding 1:3 ratio (one-foot rise to a three-foot run). All grading plans require approval by the engineering department. All grading plans over one-acre require approval by the state department of environment and conservation before a grading permit can be issued. See the erosion control provisions of this Code for additional requirements.

(2) Site plan. The purpose of the gateway regulations in industrial areas is to minimize impacts on adjacent properties by providing adequate green space, buffering, and screening around the area proposed for development. A combination of opaque fencing, topography, berming or informal plantings, as recommended by the landscape specialist, is encouraged to be used. The site plans must meet all city requirements for grading, erosion control, and stormwater management.

(3) Architectural design and materials. Permanence in quality should be evident in both the building design and construction materials. Permanence implies that buildings should age without deteriorating, given a minimum level of maintenance. This can be achieved through the use of guality building materials and methods of construction.

a. The building facade shall be finished with brick, precast or cast in place concrete textured panels, glass, prefinished architectural panels (without exposed fasteners), stone or other materials acceptable to the committee.

b. No building shall be constructed of exposed concrete block unless it is split face, fluted, or such blocks are covered with stucco, Dryvit or equivalent.

c. The use of metal buildings is acceptable provided the facade shall be finished with acceptable materials listed in subsection (b)(5)a of this section.

d. Dumpsters shall be screened or fenced. Loading docks will be permitted on the main elevation of a building that faces the street. Landscaping and screening should be provided to soften the visual impact.

e. All HVAC or other equipment located on the roof of any building, or other equipment affixed to, or located on the ground, shall be landscaped or screened from public view.

(4) Landscape plan. Plans and specifications for any building or structure to be constructed on any lot shall include a detailed landscape plan indicating the location, size, type and height of each planting. The area between the lot property line and the street curbline shall be grassed except for areas covered by pavement, sidewalks, and landscaping. All landscaping required on any lot shall be completed within 60 days of substantial completion of construction, or within schedules set forth in the approved plans.

(5) Parking areas. Off-street parking will be determined by the underlying zoning district with review by the commission as part of the overall site plan review process. Parking shall be provided on the lot to accommodate all parking needs of employees, visitors, and company vehicles. All parking areas will be paved, curbed and appropriately marked.

(6) Signage. Signage shall be determined by the underlying zoning district subject to commission review as part of the overall site plan review process.

(7) Lighting and utilities. Plans and specifications for any building or structure to be constructed on any lot shall include a detailed lighting plan indicating the location, type and footcandle strength of the lights. Lighting may be used as a landscape element and for security purposes. Light placement must avoid glare on site or light spillage onto adjacent sites or roadways. Where necessary, cutoff boxes should be specified to reduce throw onto adjacent sites. All utilities from the service lines to the improvements on each lot shall be underground.

(e) Design strategies for development within the MX district. The following shall apply within MX districts:

(1) Site plan. The planning commission and the gateway review commission shall approve a master site plan for the entire district. The district allows flexibility in the development of compatible mixed uses with areas of light manufacturing, professional office, and commercial uses, and to do so by developing a self-contained campus-like atmosphere that protects adjacent uses.

(2) Grading plan. A master-grading plan shall be submitted which incorporates design features described in this article. The plan shall be designed to meet the erosion control provisions of the subdivision regulations (on file in the clerk's office) and this chapter and shall have the approval of the state department of environment and conservation, and the city engineering department prior to being submitted to the gateway review commission.

(3) Landscape plan. The master plan shall address the MX district as viewed from the surrounding road network and adjacent land uses. It is important that an image be presented that complements the sites natural setting. In order to achieve a natural edge, landscape treatments should be designed within the setback buffers and the periphery yard and aimed at providing an entry statement into the park. Earth contours and landscape plantings are to be organized to shield large buildings, parking areas, and lay down yards, which may be visible from adjacent areas.

(4) Architectural design. Within the MX district, architectural design is not specified; however, the materials, colors, architectural elements, and treatment of accessory buildings shall be provided

on the master plan. It is encouraged that previous sections of this article be used in designing these elements.

(5) Signs. The number and size of signs shall be as permitted with the underlying zoning ordinance. Signs within the district shall be monument style and landscaped.

(6) Landscaping and screening. Where land uses change within the district, a densely planted strip of 15 to 25 feet in width, depending on the use, shall be created to screen areas from each other. Interstates, expressways, or arterial highways shall be screened with landscaping or architectural elements so that service areas including special equipment, maintenance, and loading areas are obscured from view. Where landscaping is used exclusively for this purpose it must achieve 60 percent opacity in the winter and 80 percent opacity in the summer.

(7) Lighting and utilities. Lighting should be used as a landscape element and for security purposes and should be designed to reduce impacts on adjacent sites. Consistency in style and design of fixtures shall be maintained throughout the site. All utility lines shall be underground.

(8) Parking. Parking areas shall be designed and landscaped as required by the MX district parking provisions. The use of berms and landscaping is encouraged to shield parking areas from public streets and residential areas.

Brewpub - A type of eating or drinking establishment that includes as an accessory use the production of malt liquors, regardless of alcohol content by volume, for consumption on the premises; except that sales for off-premises consumption, if not prohibited by other local ordinance or state or federal law, shall be allowed in specialty containers holding no more than one U.S. gallon (128 U.S. fluid ounces), commonly referred to as growlers. The area of the establishment devoted to the production of malt liquors shall not exceed (5,000) square feet.

SECTION II. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

> JOHN CLARK Mayor

ATTEST:

JAMES H. DEMMING City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY City Attorney

PASSED ON 1ST READING\_\_\_\_\_ PASSED ON 2ND READING\_\_\_\_\_

Sec. 114-421 Gatewa	y Overlay	District Tex	t Amendment
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Property Information	Gateway District			
Address				
Tax Map, Group, Parcel				
Civil District				
<b>Overlay District</b>				
Land Use Designation				
Acres				
Existing Use		Existing Zoning		
Proposed Use		Proposed Zoning		
Owner /Applicant Infor	mation			
Name: Kingsport Gatew	ay Review Commission	Intent: To amend Chapter 114, Section 114-421 of		
Address:		Kingsport's Zoning Code as it relates to various sections of the Development Guidelines within the Gateway Overlay District.		
City:				
State:	Zip Code:			
Email:				
Phone Number:				
Planning Department R	ecommendation			
(Approve, Deny, or Defe				
•••				
The Kingsport Plann	ing Division recommend	IS APPROVAL		
Planner: Je	essica Harmon	Date:	6/1/18	
Planning Commissi	ion Action	Meeting Date:	6/21/18	
Approval:				
Denial:		Reason for		
		Denial:		
Deferred:		Reason for		
		Deferral:		

# INTENT

To amend Chapter 114, Section 114-421 of Kingsport's Zoning Code as it relates to the various sections of the Development Guidelines within the Gateway Overlay District.

# Introduction:

At the request of the Kingsport Gateway Review Commission, staff proposes a text amendment to Division 10 Section 114-421 – Gateway District Overlay - Development Guidelines of the Zoning Code. The Gateway District Overlay was established in 1997 and the regulations have been amended twice. The Gateway Review Commission has seen recent requests that show changes in development trends from when the regulations were originally adopted and feel that the proposed text amendment will help to support those new trends while supporting the intent of the Gateway District Overlay. The Gateway Review Commission strives to preserve and protect the character of our environment and residential areas while providing for the creation and expansion of employment opportunities through high qualify design.

### Summary:

The proposed changes include some major changes with the sign allowances, landscaping provisions and fencing, but they also include some minor housekeeping changes as well.

One of the main changes proposed is dealing with signage height allowances within the Commercial Zoning Districts. Currently, the Gateway District Overlay does not restrict the height of freestanding signage in commercial zoning districts. All freestanding signs must be monument style signs but can be as tall as the underlying zoning allows, so long as it is in scale with the building. The Gateway Review Commission has expressed interest in seeing a uniform look throughout the district when dealing with signage. Therefore, they have modeled the sign height requirements after the Business Conference Center District – which is in the Gateway District Overlay and includes Meadowview and the surrounding area. The proposed change would allow parcels adjacent to the interstate one freestanding monument sign not to exceed 15 feet in height and parcels not adjacent to the interstate one freestanding monument sign not to exceed 8 feet in height.

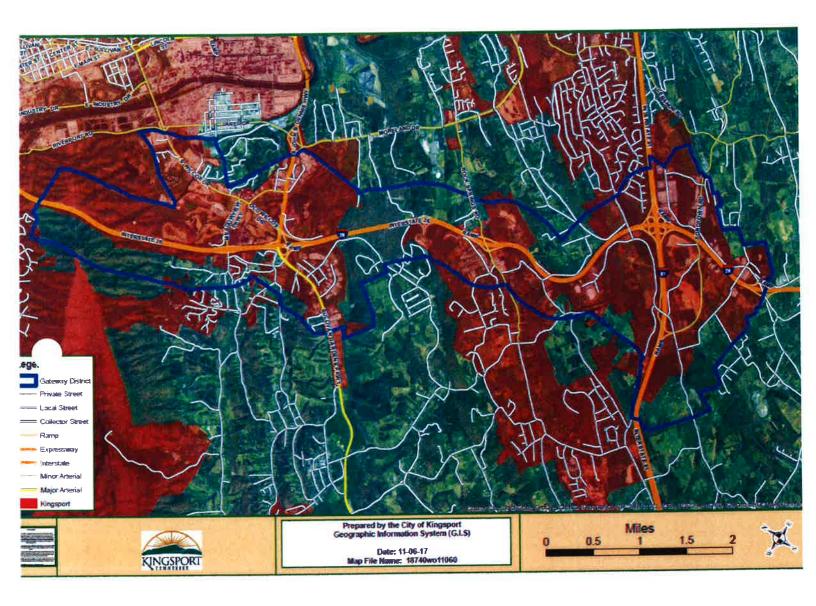
A second major chain is the creation of a subsection for Design Standards within the Tourist Accommodation/Commerce Zoning District. Currently, this zoning designation is addressed with all of the other Commercial Districts. The Gateway Review Commission felt that it was important to keep the TA/C signage allowances intact and not further restrict them with the Gateway Regulations so they created a separate subsection for those design standards. All other standards in this subsection match that of the other Commercial Districts.

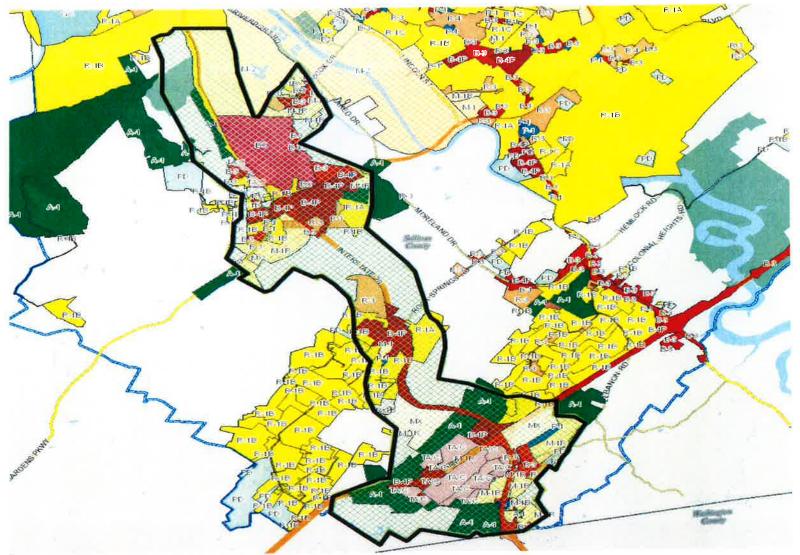
A third change includes fencing and landscaping. Recent requests for security fencing (chain link) have been submitted to the Gateway Review Commission. These requests have been demonstrated as necessary security features for the sites. The Review Commission felt that the fencing was appropriate so long as it was not located in the front yard, black vinyl coated and screened with landscaping. Additionally, the Commission reviewed the current landscaping credits sections with the City Landscaping Specialist. Most of the sections that dealt with landscape credits were unclear and hard to interpret. The Gateway Review Commission with

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the recommendation from the Landscaping Specialist felt it was necessary to clarify these sections with some specific criteria for allowing credits.

# **Gateway Overlay District**





**Gateway District with Zoning** 

Changes are shown as follows:

# Bold and strikethrough - delete

### Red – addition

#### Division 10. – Gateway District Overlay (GDO)

#### Sec. 114-421. - Development guidelines.

- (a) Generally. All businesses, commercial, manufacturing, and industrial development and changes to existing developments located in the Gateway District Overlay shall be reviewed by the gateway review commission, or their designee, except for residential structures or agricultural uses and structures. Such new and existing businesses, commercial, manufacturing and industrial developments shall receive a gateway review commission's approval by issuance of a certificate of appropriateness before receiving an erosion control, grading, building permit or certificate of occupancy.
- (b) *Design strategies for development within P-1, TA, B-1, B-3, B-4P and BC districts.* The following shall apply to P-1, TA, B-1, B-3, B-4P and BC zoning districts within the Gateway District Overlay:
  - (1) Grading plan. Improvements on the site should be developed to minimize changes in existing topography and the loss of existing mature vegetation. All existing trees with trunks over 12 inches in diameter measured four feet above the lowest grade should be shown on the grading plans. Incentives are provided to retain healthy existing trees. If existing trees are to be counted towards landscaping credit (as explained in Section 114-421(b)(7)(b)), then they shall be identified and shown on the grading plan and approved by the Landscaping Specialist. Smooth topographic transition should be provided at the edges of property. Minimum changes in topography are recommended with no slopes exceeding 1:3 ratio (one-foot rise to a three-foot run). All grading plans require approval by the state department of environment and conservation before a grading permit can be issued. See the erosion control provisions of this Code for additional requirements.
  - (2) Site plan. A building setback of a minimum of 50 feet from the right-of-way shall be maintained for all buildings locating adjacent to any interstate, expressway or principal arterial street. Where the need exists for retaining an open image, protecting views, creating a high quality image, and maintaining natural edges along the roadway's borders, a wider setback may be requested required above that which is required in the underlying zoning district. Developments are encouraged to be located and configures in a visually harmonious manner with surrounding developments, existing terrain, and not to

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impede scenic views within the corridor. Additional district setback information is in this chapter. For details regarding the required information for development plan submittals, see the zoning development plan, parking and landscaping provisions of this chapter.

- (3) Drainage plan. To minimize runoff and provide adequate green space, impervious surfaces such as roofs and pavement should not cover more than 75 percent of the site area. Undeveloped right-of-way immediately adjoining the site may be used in calculation of the **impervious** pervious area, provided it is not more than 15 percent of the overall calculation and is maintained by the occupant. Stormwater entry and exit points must be protected to avoid erosion. An open space system of ridges, steep slopes, drainage corridors, periphery yards, buffers and landscaped areas provide natural stormwater absorption and filtration zones avoiding the need for large scale piping and retention systems. When such designs are not possible, stormwater areas will be landscaped to blend with natural features of the site. Retention or detention ponds, if needed, are encouraged to be graded gradually enough not to require fencing. Appropriate stormwater and drainage calculations shall be provided by a licensed professional, as permitted by the state, and approved by the city engineer.
- (4) Landscape plan. Visual buffers shall be provided along interstates, expressways or major arterial streets by using a combination of opaque fencing, natural vegetation, berming, and/or informal plantings as recommended by the landscape specialist. The property owners shall maintain all plant material within the right-of-way, when used as a credit for pervious area, and on the property for the lifetime of the proposed use. For any new use, this maintenance responsibility must continue. Visual buffers used to soften the appearance of structures and parking lots from interior streets are recommended. Options for landscaping are made available for developers who create dedicated open public spaces, walkways, or other creative, resourceful, land uses in the landscape and buffer provisions of this division. For additional requirements of landscape plans, see the article VII of this chapter, landscaping.
- (5) Architectural design. A compatible relationship for proposed developments in the Gateway District Overlay is of critical public concern for any building or site improvements. The intent of the design review is not to stifle innovative architecture but to ensure respect while reducing incompatible and adverse impacts on the visual experience from the roadways. The commission may alter corporate colors or architectural designs within the district to create a compatible visual image. To accomplish this, the gateway review commission shall exercise the following guidelines for review of such proposed developments:
  - a. *Materials.* Selection and use of building materials should respect the climate and heritage of the area.

- Exterior building materials, which are encouraged include: brick, stone and stone veneers, plate glass, precast concrete panels, architectural block, glass block, and EIFS (commonly known as Dryvit).
- Materials considered unacceptable include: plywood or plywoodbased products, pre-engineered metal, painted or natural concrete block, and composite building parcels panels, and vinyl siding.

Designers are encouraged to vary materials from building to building while limiting the number of different materials to three on any individual structure.

- Colors. In general, neutral or muted tones should be used. A maximum of three predominant colors should be used. Painted or factory-finished metal should be used only in dark colors with have a matte finish.
- c. Accessory buildings. Metal buildings shall be an accessory to the principal structure without public access, typically used for storage and must be concealed from view. Large areas of exposed concrete are discouraged.
- d. *Architectural elements.* All development designs are to be consistent or compatible within a development in terms of architectural design, exterior building materials, colors and/or arrangement of buildings.
  - 1. Rooflines shall be strongly defined. Canopies and other architectural elements, such as brick or rockwork details, which define the roof, are encouraged. All mechanical/electrical equipment and rooftop- or ground-mounted equipment and protrusions are to be screened from view from entrances and pedestrian pathways as viewed from on-site ground level. Roofmounted equipment must be screened on all sides. Sloped roofs may be used in combination with flat roofs to enliven the building profile and to provide screening.
  - Large blank walls shall be avoided. Recessed or articulated wall surfaces, columns and beams are encouraged to visually segment exterior wall surfaces. Windows and other openings should reflect the character and style of the building.
  - Service areas, including storage, special equipment, maintenance and loading area, shall be completely screened so as not to be visible from the interstate, expressway or arterial highway.
  - 4. Refuse collection areas shall be visually screened using materials and colors compatible with those of the primary

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structure and shall be roofed if the contents are visible from any public street, interstate, expressway or arterial street.

- (6) Signs. Although signs occupy little space, they have a major impact on the image of the Gateway District Overlay. For this reason, signage systems must be designed to create a consistent quality image throughout the district. Specific requirements can be found in article IV of this chapter, signs, additional requirements are set forth in this document that also apply within the Gateway District Overlay. The intent is to create a cohesive image and to consistently decrease the amount of clutter and visual disturbance within the district. Any appeals to the following standards must be presented to the gateway review commission:
  - a. Permanent signs will be reduced by up to 50 percent of the square footage allowed in the underlying zoning district by the gateway review commission, and are limited to one freestanding sign and one two walk mounted signs.
  - On parcels adjacent to an interstate right-of-way, one free standing b. monument sign is permitted with a maximum height of 15 feet above the average ground level. On parcels not adjacent to the interstate, one freestanding monument sign is permitted with a maximum height of such sign shall be 8 feet above the average ground level. Monument style signs are required with the signs height and square footage being in scale with the building or site. Signs are required to should be internally illuminated block letters mounted on a raceway. Backlit letters and indirectly illuminated signs are also acceptable. A three-color maximum is allowed for signs with up to two font styles. Ground-mounted building identification signs shall have fully enclosed solid bases utilizing the same materials as the principal structure, of either brick or stone, mounted at the ground plane. No supporting structural members are to be exposed. Specific underlying zoning requirements for signs can be found in Article I - Definitions and article IV - Signs of this chapter.

c. The following signs are prohibited: A-frame signs; roof-mounted signs or portico-mounted signs; bench signs; off-premises signage; captive balloon signs; inflatable signs; portable signs and portable signs converted to permanent locations; lollipop signs; paper, cloth, plastic streamers and canvas; painted signs on primary walls; pendants; traffic sign replicas; high-rise signs; permanent come-on signs (sale today, stop, look, etc.). Strings with continuous flags shall not be permitted.

Changeable copy signs are allowed for automobile service stations, theaters, and conference centers. Electronic message board signs may

Prepared by Kingsport Planning Department for the Kingsport Regional Planning Commission Meeting on June 21, 2018

d.

be considered with the review of the commission if they are allowed by the underlying zoning district.

- Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.
- f. Interim signs. While signs of a nonpermanent nature are generally not permitted, any sign that is not permanent in nature and fails to meet permanent sign requirements must meet the following respective specifications:
  - For sale and for lease signs shall be limited to two per parcel. The size shall be limited to one square foot of sign for every four feet of lot road frontage up to a maximum of 64 square feet for one surface, or 32 square feet per side with two faces maximum. Real estate signs shall have a maximum height of six feet, measured from the ground level (average grade).
  - Temporary signs for construction sites shall not exceed 64 square feet total and shall be removed upon completion of construction activity and before occupancy of the building.
- g. Special event signs must be removed following the event and are permitted only on the premises during the event, but in no case longer than 15 days. See <u>section 114-528(2)</u>d for size allowances.
- (7) *Landscaping and screening.* The landscape guidelines are designed to maintain overall visual continuity within the Gateway District Overlay. The intent is to reflect the traditional character of the area with informal groupings of plants amidst green lawns and woodlands. Landscape design should complement this image.
  - a. A performance bond is required for a period of one-year, with extensions granted when necessary, for landscaping not installed at the time of issuance of a certificate of occupancy. Landscaping must be maintained for the lifetime of the intended use. Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.
  - b. Healthy existing trees should be retained whenever possible and may be counted as credit (two trees for every saved tree) for other required landscaping. Grading and construction shall avoid the disturbance of such trees. Larger trees or up to double the amount of required number of trees and vegetation may be required by the commission if it is shown

the site was clear cut within three years prior to submittal of a development plan.

- c. Landscape incentives may be utilized to encourage the preservation of existing healthy vegetation and innovative site design. Existing healthy vegetation and the area of land used to maintain the vegetation may be counted towards meeting performance criteria for buffers, streetscapes, open space, and interior parking areas.
  - A five to 20 percent reduction in the number of parking spaces required on the site may be allowed to the extent that the reduction in the amount of pavement will preserve existing healthy trees in an undisturbed natural condition. A reduction of one parking space for every 1,000 square feet of land containing existing healthy trees in an undisturbed natural condition may be granted, not to exceed ten percent of the total required parking.
  - A ten percent reduction in the amount of pervious area is required on the site if public art/space in a compatible manner is included in the development.
  - 3. A reduction in required landscaping may be considered if the development includes innovative site/building design concepts, substantial redevelopment of a site, or if natural constraints exist.
  - 4. The area used for preservation of existing healthy vegetation in the interior parking area may be used as credits for other landscaping.
  - **5.2**. Substitutions for both trees and shrubbery amounts and locations may be considered by the commission with a recommendation from the landscape specialist.
- d. Fencing and screening. Long fences (50 feet or more) should be broken up by landscaping **or undulation in the fence line**. When necessary to secure outdoor equipment and storage, chain link fencing may be permitted on a case by case basis as long as it is black vinyl coated and screened with landscaping on all portions visible from the right-of-way. **and** Unfinished wood fences are not allowed.
  - Fencing and screening shall not be placed within 25 feet of any street corner. Fencing and screening shall not block access to aboveground, pad-mounted transformers and should provide 15 feet of clear access to the transformer doors.
  - 2. Fencing and screening shall not impede or divert the flow of water in any drainageway.

- 3. The maximum height of fences should generally be six feet, except for tennis courts, storage screening, and similar uses which may be up to 12 feet in height. No fences over two feet six inches shall be placed in any front yard. Fencing is not allowed in the front yard and is only permitted in the side and rear yard.
- The Gateway District Overlay approved standard for right-of-way border fencing or frontal fencing is required along interstate, expressways or arterial highways.
- (8) Lighting and utilities. Lighting should be used as a landscape element and for security purposes and should be designed to reduce impacts on adjacent sites.
   Consistency in style and design of fixtures shall be maintained throughout a site.
  - a. Lighting levels should be as even as possible. For all private roadways, parking lots and entrances, the lighting system should provide a minimum ratio of 4:1 uniformity or better, or with the current Institute of Electrical Standards (IES) recommendations for office and mixed-use developments. General parking lot lighting shall not exceed an average of 2½ footcandles overall. All lighted canopies shall have recessed, indirect lights within the canopy.
  - Lights placement must avoid glare on-site or light spillage onto adjacent sites. Where necessary, cutoff boxes should be specified to reduce throw on adjacent sites.
  - c. Neon lighting is not encouraged; however, soft and/or muted colors may be allowed.
  - d. Light poles are to be neutral, preferably dark in color and not made of wood. All parking and security lights are to be cutoff luminaries. The height of light fixtures should be in proportion to the building mass, preferably no taller than the building height. Lighting for pedestrian areas should be 12 to 15 feet in height. Ground-oriented pedestrian scale lighting should be considered as an alternative to pole-mounted fixtures along pedestrian walkways at three to four feet in height.
  - e. Outside speakers shall not be permitted for use as paging or public address systems. Outside speakers may only be used under certain conditions, with the commission's approval, for special/cultural or public events.
  - f. All utility lines, including but not limited to electric, telephone and TV cable shall be placed underground.
- (9) *Parking*. The desire of the gateway review committee is to visually shield parking areas from public streets and residential areas.

- All parking lots and drives shall be hard surfaced with concrete or asphalt, unless an acceptable alternative is approved by the commission, and shall have concrete extruded curbs. Special paving or marking is required for accent areas such as: entrance dropoff zones and pedestrian walkways.
- Innovative design concepts to improve parking area appearance are encouraged. All parking areas shall be visually screened from roadways with plantings or earth mounding (berms) 2½- to three-feet high. Where planting material is used exclusively, 60 percent opacity must be achieved in the winter and 80 percent in the summer.
- c. A landscaped area with a minimum of ten feet shall be provided between parking and internal roadways and entry drives.
- d. Large parking areas shall be broken into smaller sections, using berms and landscape medians for separation. On wooded sites, preservation of groups of trees is encouraged to frame smaller parking cells and to screen the parked cars.
- e. Outdoor display areas may require up to 50 percent greater landscape requirements as established by these provisions.
- f. On-street parking is not permitted.
- g. Parking lots of contiguous developments should, where possible, interconnect among the differing developments to encourage continuous movement of traffic among developments to reduce traffic flow on public streets and to minimize the need for excessive curb cuts.
- (10) Business needs that lie outside of these regulations may be considered on a case by case basis by the Gateway Review Commission
- (c) Design strategies for development within the TA/C district. The following shall apply to the TA/C zoning districts within the Gateway District Overlay:
  - (1) Grading plan. Improvements on the site should be developed to minimize changes in existing topography and the loss of existing mature vegetation. Incentives are provided to retain healthy existing trees. If existing trees are to be counted towards landscaping credit (as explained in Section 114-421(b)(7)(b)), then they shall be identified and shown on the grading plan and approved by the Landscaping Specialist.. Smooth topographic transition should be provided at the edges of property. Minimum changes in topography are recommended with no slopes exceeding 1:3 ratio (one-foot rise to a three-foot run). All grading plans require approval by the engineering department. All grading plans over one-acre require approval by the state department of environment and conservation before a grading permit can be issued. See the erosion control provisions of this Code for additional requirements.

- (2) *Site plan.* Where the need exists for retaining an open image, protecting views, creating a high quality image, and maintaining natural edges along the roadway's borders, a wider setback may be required above that which is required in the underlying zoning district. Developments are encouraged to be located and configures in a visually harmonious manner with surrounding developments, existing terrain, and not to impede scenic views within the corridor. Additional district setback information is in this chapter. For details regarding the required information for development plan submittals, see the zoning development plan, parking and landscaping provisions of this chapter.
- (3) Drainage plan. To minimize runoff and provide adequate green space, impervious surfaces such as roofs and pavement should not cover more than 75 percent of the site area. Undeveloped right-of-way immediately adjoining the site may be used in calculation of the pervious area, provided it is not more than 15 percent of the overall calculation and is maintained by the occupant. Stormwater entry and exit points must be protected to avoid erosion. An open space system of ridges, steep slopes, drainage corridors, periphery yards, buffers and landscaped areas provide natural stormwater absorption and filtration zones avoiding the need for large scale piping and retention systems. When such designs are not possible, stormwater areas will be landscaped to blend with natural features of the site. Retention or detention ponds, if needed, are encouraged to be graded gradually enough not to require fencing. Appropriate stormwater and drainage calculations shall be provided by a licensed professional, as permitted by the state, and approved by the city engineer.
- (4) Landscape plan. The property owners shall maintain all plant material within the right-of-way, when used as a credit for pervious area, and on the property for the lifetime of the proposed use. For any new use, this maintenance responsibility must continue. Visual buffers used to soften the appearance of structures and parking lots from interior streets are recommended. Options for landscaping are made available for developers who create dedicated open public spaces, walkways, or other creative, resourceful, land uses in the landscape and buffer provisions of this division. For additional requirements of landscape plans, see the article VII of this chapter, landscaping.
- (5) Architectural design. A compatible relationship for proposed developments in the Gateway District Overlay is of critical public concern for any building or site improvements. The intent of the design review is not to stifle innovative architecture but to ensure respect while reducing incompatible and adverse impacts on the visual experience from the roadways. The commission may alter corporate colors or architectural designs within the district to create a compatible visual image. To accomplish this, the gateway review commission shall exercise the following guidelines for review of such proposed developments:

- a. *Materials*. Selection and use of building materials should respect the climate and heritage of the area.
  - Exterior building materials, which are encouraged include: brick, stone and stone veneers, plate glass, precast concrete panels, architectural block, glass block, and EIFS (commonly known as Dryvit).
  - Materials considered unacceptable include: plywood or plywoodbased products, pre-engineered metal, painted or natural concrete block, and composite building parcels, and vinyl siding. Designers are encouraged to vary materials from building to building while limiting the number of different materials to three on any individual structure.
- b. Colors. In general, neutral or muted tones should be used. A maximum of three predominant colors should be used. Painted or factory-finished metal should have a matte finish.
- c. Accessory buildings. Metal buildings shall be an accessory to the principal structure without public access, typically used for storage and must be concealed from view. Large areas of exposed concrete are discouraged.
- d. *Architectural elements.* All development designs are to be consistent or compatible within a development in terms of architectural design, exterior building materials, colors and/or arrangement of buildings.
  - 1. Rooflines shall be strongly defined. Canopies and other architectural elements, such as brick or rockwork details, which define the roof, are encouraged. All mechanical/electrical equipment and rooftop- or ground-mounted equipment and protrusions are to be screened from view from entrances and pedestrian pathways as viewed from on-site ground level. Roofmounted equipment must be screened on all sides. Sloped roofs may be used in combination with flat roofs to enliven the building profile and to provide screening.
  - Large blank walls shall be avoided. Recessed or articulated wall surfaces, columns and beams are encouraged to visually segment exterior wall surfaces. Windows and other openings should reflect the character and style of the building.
  - Service areas, including storage, special equipment, maintenance and loading area, shall be completely screened so as not to be visible from the interstate, expressway or arterial highway.

- Refuse collection areas shall be visually screened using materials and colors compatible with those of the primary structure and shall be roofed if the contents are visible from any public street, interstate, expressway or arterial street.
- (6) Signs. Although signs occupy little space, they have a major impact on the image of the Gateway District Overlay. For this reason, signage systems must be designed to create a consistent quality image throughout the district. Specific requirements can be found in article IV of this chapter, signs, additional requirements are set forth in this document that also apply within the Gateway District Overlay. The intent is to create a cohesive image and to consistently decrease the amount of clutter and visual disturbance within the district. Any appeals to the following standards must be presented to the gateway review commission:
  - a. Permanent signs will be reduced by 50 percent of the square footage allowed in the underlying zoning district by the gateway review commission.
  - b. All monument signs shall have a fully enclosed solid base utilizing the same building materials as the principal structure, mounted at the ground plane.
  - c. The following signs are prohibited: A-frame signs; roof-mounted signs or portico-mounted signs; bench signs; off-premises signage; captive balloon signs; inflatable signs; portable signs and portable signs converted to permanent locations; lollipop signs; paper, cloth, plastic streamers and canvas; painted signs on primary walls; pendants; traffic sign replicas; high-rise signs; permanent come-on signs (sale today, stop, look, etc.). Strings with continuous flags shall not be permitted.
  - d. Changeable copy signs are allowed for automobile service stations, theaters, and conference centers. Electronic message board signs may be considered with the review of the commission if they are allowed by the underlying zoning district.
  - Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.
  - f. Interim signs. While signs of a nonpermanent nature are generally not permitted, any sign that is not permanent in nature and fails to meet permanent sign requirements must meet the following respective specifications:
    - For sale and for lease signs shall be limited to two per parcel.
       The size shall be limited to one square foot of sign for every four

# Zoning Text Amendment Report File Number 18-801-00001

feet of lot road frontage up to a maximum of 64 square feet for one surface, or 32 square feet per side with two faces maximum. Real estate signs shall have a maximum height of six feet, measured from the ground level (average grade).

- Temporary signs for construction sites shall not exceed 64 square feet total and shall be removed upon completion of construction activity and before occupancy of the building.
- g. Special event signs must be removed following the event and are permitted only on the premises during the event, but in no case longer than 15 days. See <u>section 114-528(2)</u>d for size allowances.
- h. All other regulations pertaining to signs can be found in Article 1 Definitions and Article IV Signs of this chapter.
- (7) *Landscaping and screening.* The landscape guidelines are designed to maintain overall visual continuity within the Gateway District Overlay. The intent is to reflect the traditional character of the area with informal groupings of plants amidst green lawns and woodlands. Landscape design should complement this image.
  - a. A performance bond is required for a period of one-year, with extensions granted when necessary, for landscaping not installed at the time of issuance of a certificate of occupancy. Landscaping must be maintained for the lifetime of the intended use. Landscaped areas are required around the base of signs. The minimum landscaped area shall not be less than the square footage of the sign. The landscaped area must be protected from vehicular traffic and approved by the city landscape specialist.
  - b. Healthy existing trees should be retained whenever possible and may be counted as credit (two trees for every saved tree) for other required landscaping. Grading and construction shall avoid the disturbance of such trees. Larger trees or up to double the amount of required number of trees and vegetation may be required by the commission if it is shown the site was clear cut within three years prior to submittal of a development plan.
  - c. Landscape incentives may be utilized to encourage the preservation of existing healthy vegetation and innovative site design. Existing healthy vegetation and the area of land used to maintain the vegetation may be counted towards meeting performance criteria for buffers, streetscapes, open space, and interior parking areas.
    - 1. A reduction of one parking space for every 1,000 square feet of land containing existing healthy trees in an undisturbed natural

condition may be granted, not to exceed ten percent of the total required parking.

- 2. Substitutions for both trees and shrubbery amounts and locations may be considered by the commission with a recommendation from the landscape specialist.
- d. Fencing and screening. Long fences (50 feet or more) should be broken up by landscaping. When necessary to secure outdoor equipment and storage, chain link fencing may be permitted on a case by case basis as long as it is black vinyl coated and screened with landscaping on all portions visible from the right-of-way. Unfinished wood fences are not allowed.
  - Fencing and screening shall not be placed within 25 feet of any street corner. Fencing and screening shall not block access to aboveground, pad-mounted transformers and should provide 15 feet of clear access to the transformer doors.
  - 2. Fencing and screening shall not impede or divert the flow of water in any drainageway.
  - 3. The maximum height of fences should generally be six feet, except for tennis courts, storage screening, and similar uses which may be up to 12 feet in height. Fencing is not allowed in the front yard and is only permitted in the side and rear yard.
  - The Gateway District Overlay approved standard for right-of-way border fencing or frontal fencing is required along interstate, expressways or arterial highways.
- Lighting and utilities. Lighting should be used as a landscape element and for security purposes and should be designed to reduce impacts on adjacent sites.
   Consistency in style and design of fixtures shall be maintained throughout a site.
  - a. Lighting levels should be as even as possible. For all private roadways, parking lots and entrances, the lighting system should provide a minimum ratio of 4:1 uniformity or better, or with the current Institute of Electrical Standards (IES) recommendations for office and mixed-use developments. General parking lot lighting shall not exceed an average of 2½ footcandles overall. All lighted canopies shall have recessed, indirect lights within the canopy.
  - Lights placement must avoid glare on-site or light spillage onto adjacent sites. Where necessary, cutoff boxes should be specified to reduce throw on adjacent sites.
  - c. Neon lighting is not encouraged; however, soft and/or muted colors may be allowed.

- Light poles are to be neutral, preferably dark in color and not made of wood. All parking and security lights are to be cutoff luminaries. The height of light fixtures should be in proportion to the building mass, preferably no taller than the building height. Lighting for pedestrian areas should be 12 to 15 feet in height. Ground-oriented pedestrian scale lighting should be considered as an alternative to pole-mounted fixtures along pedestrian walkways at three to four feet in height.
- e. Outside speakers shall not be permitted for use as paging or public address systems. Outside speakers may only be used under certain conditions, with the commission's approval, for special/cultural or public events.
- f. All utility lines, including but not limited to electric, telephone and TV cable shall be placed underground.
- (9) *Parking.* The desire of the gateway review committee is to visually shield parking areas from public streets and residential areas.
  - All parking lots and drives shall be hard surfaced with concrete or asphalt, unless an acceptable alternative is approved by the commission, and shall have concrete extruded curbs. Special paving or marking is required for accent areas such as: entrance dropoff zones and pedestrian walkways.
  - b. Innovative design concepts to improve parking area appearance are encouraged. All parking areas shall be visually screened from roadways with plantings or earth mounding (berms) 2½- to three-feet high. Where planting material is used exclusively, 60 percent opacity must be achieved in the winter and 80 percent in the summer.
  - c. A landscaped area with a minimum of ten feet shall be provided between parking and internal roadways and entry drives.
  - d. Large parking areas shall be broken into smaller sections, using berms and landscape medians for separation. On wooded sites, preservation of groups of trees is encouraged to frame smaller parking cells and to screen the parked cars.
  - e. Outdoor display areas may require up to 50 percent greater landscape requirements as established by these provisions.
  - f. On-street parking is not permitted.
  - g. Parking lots of contiguous developments should, where possible,
     interconnect among the differing developments to encourage continuous
     movement of traffic among developments to reduce traffic flow on public
     streets and to minimize the need for excessive curb cuts.
- (10) Business needs that lie outside of these regulations may be considered on a case by case basis by the Gateway Review Commission

- (c) (d) Design strategies for development within M-1, M-1R and M-2 districts. The following shall apply to all M-1, M-1R and M-2 zoning districts within the Gateway District Overlay:
  - (1) Grading plan. Improvements on the site should be developed to minimize changes in existing topography and the loss of existing mature vegetation. All existing trees with trunks over 12 inches in diameter measured four feet above the lowest grade should be shown on the grading plans. Incentives are provided to retain healthy existing trees. If existing trees are to be counted towards landscaping credit (as explained in Section 114-421(b)(7)(b)), then they shall be identified and shown on the grading plan and approved by the Landscaping Specialist. Smooth topographic transition should be provided at the edges of property. Minimum changes in topography are recommended with no slopes exceeding 1:3 ratio (one-foot rise to a three-foot run). All grading plans require approval by the engineering department. All grading plans over one-acre require approval by the state department of environment and conservation before a grading permit can be issued. See the erosion control provisions of this Code for additional requirements.
  - (2) Site plan. The purpose of the gateway regulations in industrial areas is to minimize impacts on adjacent properties by providing adequate green space, buffering, and screening around the area proposed for development. A combination of opaque fencing, topography, berming or informal plantings, as recommended by the landscape specialist, is encouraged to be used. The site plans must meet all city requirements for grading, erosion control, and stormwater management.
  - (3) Architectural design and materials. Permanence in quality should be evident in both the building design and construction materials. Permanence implies that buildings should age without deteriorating, given a minimum level of maintenance. This can be achieved through the use of quality building materials and methods of construction.
    - a. The building facade shall be finished with brick, precast or cast in place concrete textured panels, glass, prefinished architectural panels (without exposed fasteners), stone or other materials acceptable to the committee.
    - No building shall be constructed of exposed concrete block unless it is split face, fluted, or such blocks are covered with stucco, Dryvit or equivalent.
    - c. The use of metal buildings is acceptable provided the facade shall be finished with acceptable materials listed in subsection (b)(5)a of this section.

- Dumpsters shall be screened or fenced. Loading docks will be permitted on the main elevation of a building that faces the street. Landscaping and screening should be provided to soften the visual impact.
- e. All HVAC or other equipment located on the roof of any building, or other equipment affixed to, or located on the ground, shall be landscaped or screened from public view.
- (4) Landscape plan. Plans and specifications for any building or structure to be constructed on any lot shall include a detailed landscape plan indicating the location, size, type and height of each planting. The area between the lot property line and the street curbline shall be grassed except for areas covered by pavement, sidewalks, and landscaping. All landscaping required on any lot shall be completed within 60 days of substantial completion of construction, or within schedules set forth in the approved plans.
- (5) *Parking areas.* Off-street parking will be determined by the underlying zoning district with review by the commission as part of the overall site plan review process. Parking shall be provided on the lot to accommodate all parking needs of employees, visitors, and company vehicles. All parking areas will be paved, curbed and appropriately marked.
- (6) *Signage.* Signage shall be determined by the underlying zoning district subject to commission review as part of the overall site plan review process.
- (7) Lighting and utilities. Plans and specifications for any building or structure to be constructed on any lot shall include a detailed lighting plan indicating the location, type and footcandle strength of the lights. Lighting may be used as a landscape element and for security purposes. Light placement must avoid glare on site or light spillage onto adjacent sites or roadways. Where necessary, cutoff boxes should be specified to reduce throw onto adjacent sites. All utilities from the service lines to the improvements on each lot shall be underground.
- (d)(e) Design strategies for development within the MX district. The following shall apply within MX districts:
  - (1) Site plan. The planning commission and the gateway review commission shall approve a master site plan for the entire district. The district allows flexibility in the development of compatible mixed uses with areas of light manufacturing, professional office, and commercial uses, and to do so by developing a selfcontained campus-like atmosphere that protects adjacent uses.
  - (2) *Grading plan.* A master-grading plan shall be submitted which incorporates design features described in this article. The plan shall be designed to meet the erosion control provisions of the subdivision regulations (on file in the clerk's office) and this chapter and shall have the approval of the state department of environment and conservation, and the city engineering department prior to being submitted to the gateway review commission.

- (3) Landscape plan. The master plan shall address the MX district as viewed from the surrounding road network and adjacent land uses. It is important that an image be presented that complements the sites natural setting. In order to achieve a natural edge, landscape treatments should be designed within the setback buffers and the periphery yard and aimed at providing an entry statement into the park. Earth contours and landscape plantings are to be organized to shield large buildings, parking areas, and lay down yards, which may be visible from adjacent areas.
- (4) Architectural design. Within the MX district, architectural design is not specified; however, the materials, colors, architectural elements, and treatment of accessory buildings shall be provided on the master plan. It is encouraged that previous sections of this article be used in designing these elements.
- (5) Signs. The number and size of signs shall be as permitted with the underlying zoning ordinance. Signs within the district shall be monument style and landscaped.
- (6) Landscaping and screening. Where land uses change within the district, a densely planted strip of 15 to 25 feet in width, depending on the use, shall be created to screen areas from each other. Interstates, expressways, or arterial highways shall be screened with landscaping or architectural elements so that service areas including special equipment, maintenance, and loading areas are obscured from view. Where landscaping is used exclusively for this purpose it must achieve 60 percent opacity in the winter and 80 percent opacity in the summer.
- (7) Lighting and utilities. Lighting should be used as a landscape element and for security purposes and should be designed to reduce impacts on adjacent sites. Consistency in style and design of fixtures shall be maintained throughout the site. All utility lines shall be underground.
- (8) *Parking.* Parking areas shall be designed and landscaped as required by the MX district parking provisions. The use of berms and landscaping is encouraged to shield parking areas from public streets and residential areas.



# AGENDA ACTION FORM

# Vacate a Portion of an Access Easement on the Pierce Property

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-166-2018 Work Session: July 16, 2018 First Reading: July 17, 2018 Final Adoption:August 7, 2018Staff Work By:Jessica HarmonPresentation By:Jessica Harmon

# Recommendation:

- Hold public hearing
- Approve ordinance vacating a portion of access easement on Pierce Property

#### **Executive Summary:**

This is a request to vacate a portion of an existing access easement located on the Pierce property located at 1000 Jericho Drive. The owners of this property have been discussing potential subdivision options with the Water/Sewer Division. During those discussions, all utilities and various associated easements were located. It was determined that this portion of the access easement was not needed. During their June 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation for the vacating to the Board of Mayor and Aldermen. The Notice of Public Hearing was published on July 2, 2018.

#### Attachments:

- 1. Notice of Public Hearing
- 2. Ordinance
- 3. Legal Description
- 4. Staff Report

	Y	<u>N</u>	0
Adler		-	
Begley		_	
Cooper	_	_	—
George		-	-
McIntire	—	—	-
Olterman	_	-	-
Clark	—	-	-



# AGENDA ACTION FORM

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	<u>Y</u>	<u>N</u>	0
Adler	_	_	
Begley			_
Cooper	_	_	-
George		-	_
McIntire	-		_
Olterman	-	_	
Clark	-	_	_

# NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on Tuesday, July 17, 2018, to consider the vacating of a portion of an access easement located on property at 1000 Jericho Drive. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for vacating is generally described as follows:

To find the point of BEGINNING, start at the northwest corner of Lot 1 of the Pierce-Harvest Subdivision; thence N 74°19'54" E a distance of 211.12' to the Point of Beginning; thence S 86°16'15" E a distance of 44.84'; thence S 23°33'51" E a distance of 91.39'; thence S 23°53'36" E a distance of 299.67'; thence S 87°50'25" W a distance of 11.14'; thence N 24°27'06" W a distance of 380.79'; thence N 66°54'19" W a distance of 36.85' to the point of BEGINNING.

All interested persons are invited to attend this meeting and public hearing. A detailed map and description is on file in the offices of the City Manager, Kingsport Library, and Planning Office for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-343-9783.

CITY OF KINGSPORT Angie Marshall, Deputy City Clerk P1T: 07/02/18 ORDINANCE NO. \_\_\_\_ CITY RECORDER

## AN ORDINANCE TO VACATE A PORTION OF AN ACCESS EASEMENT LOCATED ON THE PIERCE PROPERTY AT 1000 JERICHO DRIVE SITUATED IN THE CITY, SEVENTH CIVIL DISTRICT OF SULLIVAN COUNTY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILE

WHEREAS, after due investigation and careful consideration at its meeting held on June 21, 2018 the Kingsport Regional Planning Commission has determined that the public interest of the city is best served and warrants vacating that portion of easement described herein, and that no future use of the same for right-of-way purposes be reasonably anticipated; and,

WHEREAS, as a result of its action at the meeting held on June 21, 2018, the Kingsport Regional Planning Commission recommends to the board of mayor and aldermen to vacate for that portion of easement described herein.

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. The city hereby vacates and closes to public use all of a portion of an access easement located on the Pierce Property at 1000 Jericho Drive within the City of Kingsport, 7<sup>th</sup> Civil District of Sullivan County, Tennessee, which for purposes of this vacation is further described as follows:

Following is a description of a portion of an existing Ingress/Egress Easement (Deed Book 1598C, Page 492) to be abandoned and across Lot 1 of the Pierce-Harvest Subdivision (Plat Book 55, Page 631), to wit:

Portion of Easement to be Abandoned:

To find the Point of Beginning, start at the northwest corner of Lot 1 of the Pierce-Harvest Subdivison; thence N 74°19'54" E a distance of 211.12' to the Point of Beginning; thence S 86°16'15" E a distance of 44.84'; thence S 23°33'51" E a distance of 91.39'; thence S 23°53'36" E a distance of 299.67'; thence S 87°50'25" W a distance of 11.14'; thence N 24°27'06" W a distance of 380.79'; thence N 66°54'19" W a distance of 36.85' to the Point of Beginning.

SECTION II. That this ordinance shall take effect from and after its date of passage as the law directs, the welfare of the City of Kingsport, Tennessee, requiring it.

ATTEST:

JOHN CLARK Mayor

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY

JAMES H. DEMMING City Recorder

City Attorney

PASSED ON 1ST READING:\_\_\_\_\_\_ PASSED ON 2ND READING:\_\_\_\_\_\_ Following is a description of a portion of an existing Ingress/Egress Easement (Deed Book 1598C, Page 492) to be abandoned and across Lot 1 of the Pierce-Harvest Subdivision (Plat Book 55, Page 631), to wit:

#### Portion of Easement to be Abandoned:

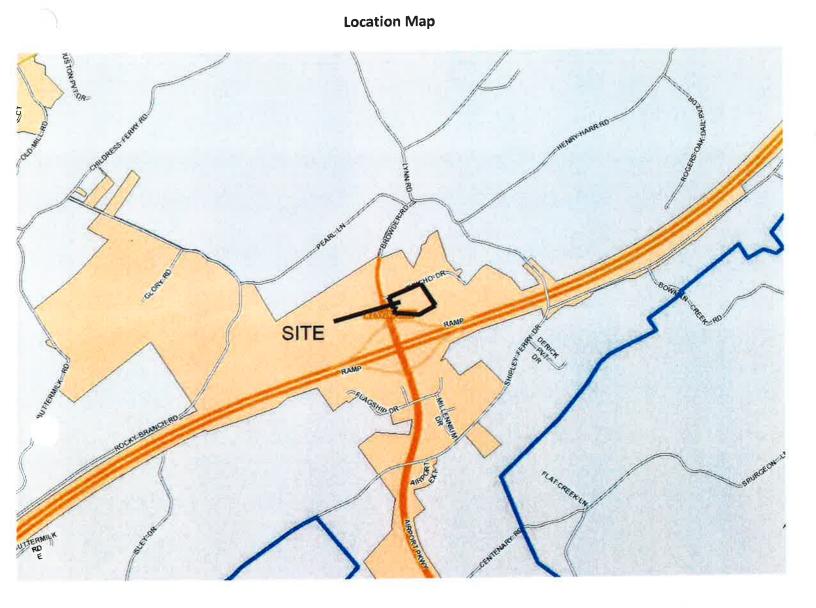
To find the Point of Beginning, start at the northwest corner of Lot 1 of the Pierce-Harvest Subdivison; thence N 74°19'54" E a distance of 211.12' to the Point of Beginning; thence S 86°16'15" E a distance of 44.84'; thence S 23°33'51" E a distance of 91.39'; thence S 23°53'36" E a distance of 299.67'; thence S 87°50'25" W a distance of 11.14'; thence N 24°27'06" W a distance of 380.79'; thence N 66°54'19" W a distance of 36.85' to the Point of Beginning.



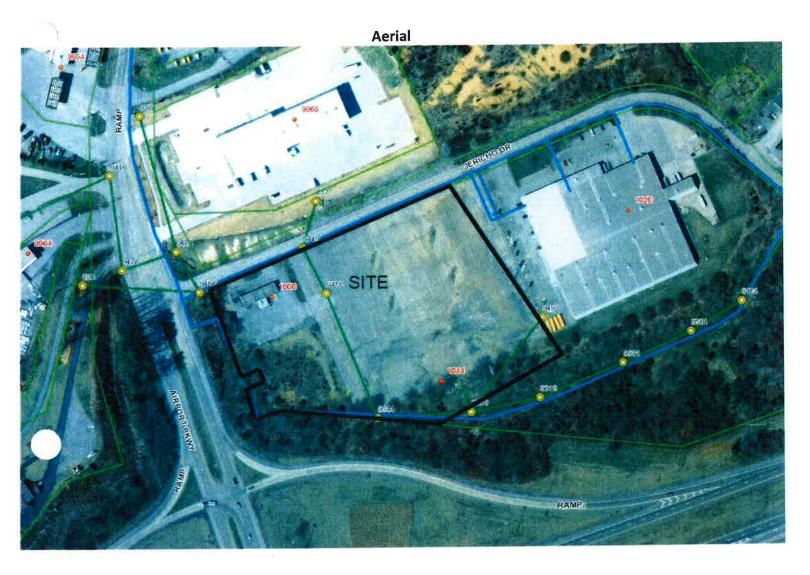
Property Information	Access Easement Vacation – Pierce Property				
Address	1000 Jericho Drive				
Tax Map, Group, Parcel	Easement located on TM 78 Parcel 98.52				
Civil District	7 <sup>th</sup> Civil District				
Overlay District	N/A				
Land Use Designation	Retail/Commercial				
Acres	+/02 acres				
Applicant #1 Information		Intent			
Name: City of Kingsport	lame: City of Kingsport – Water/Sewer Division				
Address: 1213 Konnaroc	k Road	To vacate a portion of a deeded access easement			
City: Kingsport		located on property kn	own as 1000 Jericho Drive.		
State: TN	Zip Code: 37660				
Phone Number: (423) 22	4-2546				
Planning Department Re	commendation				
(Approve, Deny, or Defe	.)				
The Kingsport Planning D Jericho Drive:	livision recommends vacati	ng a portion of a deeded acc	cess easement located on 1000		
Request reviewe	ed by all city departments				
• Easements were	reviewed with surveyor and	d found this portion to not b	e necessary		
Staff Field Notes and Ge	neral Comments:				
	d as a parking area and has s otential subdivision of this lo		on the property. Owners of the		
Planner: Ha	rmon	Date: 6/1/18			
Planning Commission Ac	tion	Meeting Date:	June 21, 2018		

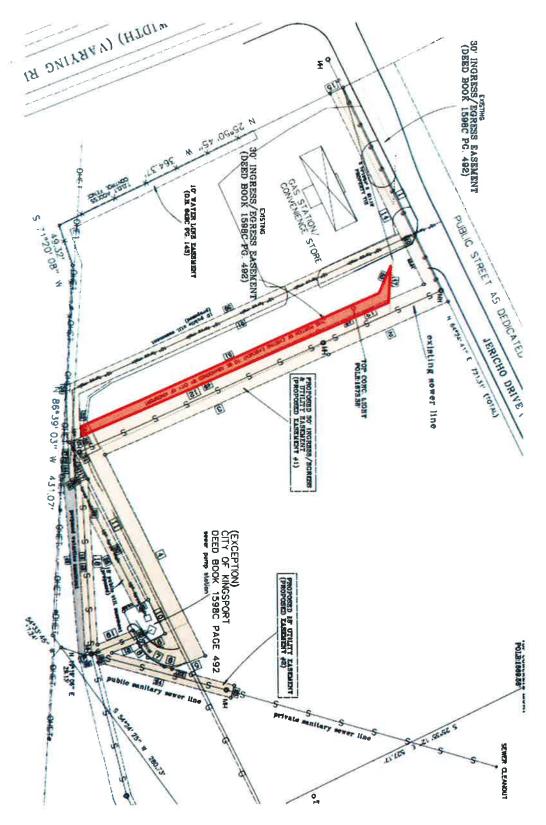
ridificit	riannen		
Planning Comm	ission Action	Meeting Date:	June 21, 2018
Approval:			
Denial:		Reason for Denial:	
Deferred:		Reason for Deferral	

# Alley Closing Report File Number 18-401-00002









# Area in red proposed to be vacated.

Alley Closing Report File Number 18-401-00002

# View from Jericho Drive



# **RECOMMENDATION:**

Staff recommends sending a favorable recommendation to the Board of Mayor and Alderman for the vacating of a portion of an access easement located at 1000 Jericho Drive.



# AGENDA ACTION FORM

# Amend Construction Contract and Budget Ordinance for Reedy Creek Trunkline Project

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-171-2018 Work Session: July 16, 2018 First Reading: N/A Final Adoption:August 7, 2018Staff Work By:Chad AustinPresentation By:Ryan McReynolds

## **Recommendation:**

Approve the Resolution and Budget Ordinance.

#### **Executive Summary:**

As part of the Wastewater Master Plan, the original sewer trunkline that was built in the 1940's from the wastewater plant to Sullivan St needs to be replaced and the lift station at that location eliminated. The new 48" sewer trunkline will replace an existing 30" sewer trunkline. This will allow for more capacity through the Reedy Creek sewer basin. It will also eliminate the need for the existing lift station, as this provides gravity sewer to the location of the existing station.

Garney Companies, Inc. was awarded the contract to replace this sewer trunkline in August 2016. During construction of the trunkline the subsurface conditions encountered in many areas were unsuitable for construction beyond reasonable expectations. The areas were filled with construction debris, including concrete with rebar, trash such as washers/dryers, car parts, etc. This caused the trench width to double or triple in size. Garney had to spend a lot of extra time and materials to take care of these trenches. This also caused a lot of extra paving to be done. All of these items are included in the request.

This action will allow for amendment of our contract with Garney Companies in the amount of \$159,898.02. A budget ordinance is included to fund the amendment.

Attachments:

- 1. Resolution
- 2. Ordinance
- 3. Construction Change Order
- 4. Location Map

Funding source appropriate and funds are available:

	Y	N
Adler	_	_
Begley	_	
Cooper	_	
George	_	_
McIntire		-
Olterman		_
Clark	24-11-2	



# AGENDA ACTION FORM

# Amend Construction Contract and Budget Ordinance for Reedy Creek Trunkline Project

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-171-2018 Work Session: July 16, 2018 First Reading: N/A Final Adoption:August 7, 2018Staff Work By:Chad AustinPresentation By:Ryan McReynolds

## Recommendation:

Approve the Resolution and Budget Ordinance.

#### **Executive Summary:**

As part of the Wastewater Master Plan, the original sewer trunkline that was built in the 1940's from the wastewater plant to Sullivan St needs to be replaced and the lift station at that location eliminated. The new 48" sewer trunkline will replace an existing 30" sewer trunkline. This will allow for more capacity through the Reedy Creek sewer basin. It will also eliminate the need for the existing lift station, as this provides gravity sewer to the location of the existing station.

Garney Companies, Inc. was awarded the contract to replace this sewer trunkline in August 2016. During construction of the trunkline the subsurface conditions encountered in many areas were unsuitable for construction beyond reasonable expectations. The areas were filled with construction debris, including concrete with rebar, trash such as washers/dryers, car parts, etc. This caused the trench width to double or triple in size. Garney had to spend a lot of extra time and materials to take care of these trenches. This also caused a lot of extra paving to be done. All of these items are included in the request.

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- 1. Resolution
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- 4. Location Map

Funding source appropriate and funds are available

	Y	N	0
Adler	_	_	_
Begley	_		
Cooper		_	
George		_	_
McIntire		_	
Olterman		_	_
Clark		_	_

#### RESOLUTION NO.

A RESOLUTION APPROVING CHANGE ORDER NO. 3 TO THE CONTRACT WITH GARNEY COMPANIES, INC. FOR THE REEDY CREEK SEWER TRUNKLINE PROJECT; AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER NUMBER 3 TO THE CONTRACT WITH GARNEY COMPANIES, INC. FOR THE REEDY CREEK SEWER TRUNKLINE CONSTRUCTION; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE CHANGE ORDER OR THIS RESOLUTION

WHEREAS, the construction of the Reedy Creek Trunkline Project was awarded to Garney Companies, Inc. in August, 2016; and

WHEREAS, since that time, subsurface conditions encountered in many areas were unsuitable for construction beyond reasonable expectations, areas were filled with construction debris, including concrete with rebar, trash such as washers and dryers, and car parts, which caused the trench width to double or triple in size; and

WHEREAS, Garney had to spend a lot of extra time and materials to take care of these trenches, and which caused a lot of extra paving to be done; and

WHEREAS, change order no. 3 allows for additional construction time and the additional amount of \$159,898.02 to the contract for the construction of the Reedy Creek Trunk Line with Garney Companies, Inc., for a total construction cost of \$6,870,893.12.

WHEREAS, funds to cover the costs of the services in the change order will be available project SW1706-Reedy Creek Trunk Sewer.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That Change Order No.3 to the contract with Garney Companies, Inc. for the construction of the Reedy Creek Sewer Trunk Line project the amount of \$159,898.02, is approved.

SECTION II. That the mayor is authorized and directed to execute Change Order No. 3 to the contract to for the Reedy Creek Sewer Trunk Line project and all other documents necessary and proper to effectuate the purpose of the contract.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 17th day of July, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

# ORDINANCE NO. CITY RECORDER

# AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILED

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the Sewer Project Fund be amended by transferring \$160,000 from the WWTP Equalization Basin project (SW1707) to the Reedy Creek Trunk Line project (SW1706).

Account Number/Description: Fund 452: Sewer Project Fund	Bu	idget	Inc	cr/ <decr></decr>	<u>Ne</u>	w Budget
WWTP Equalization Basin (SW1707)	\$		\$		\$	
<u>Revenues:</u> 452-0000-391-0545 Series 2016 GO (Nov 4)	Ŧ	572,000	•	(160,000)	•	412,000
Totals:		572,000		(160,000)		412,000
Expenditures:	\$		\$		\$	
452-0000-606-2023 Arch/Eng/Landscaping		72,000		0		72,000
452-0000-606-9003 Improvements		500,000		(160,000)		340,000
Totals:	į	572,000		(160,000)		412,000
Fund 452:         Sewer Project Fund           Reedy Creek Trunk Line (SW1706)           Revenues:           452-0000-391-0529           452-0000-391-0529           Series 2013 B BO Pub Imp           452-0000-391-0531           Series 2014 B GO Bonds           452-0000-391-0540           Series 2015A (Oct) GO PI           452-0000-391-0545           Series 2016 GO (Nov 4)           452-0000-391-4200           From the Sewer Fund           Totals:	1,:	613,619 810,000 133,899 205,300 237,745 <b>000,563</b>	\$	0 0 160,000 0 <b>160,000</b>		4,613,619 810,000 133,899 365,300 1,237,745 <b>7,160,563</b>
Expenditures:	\$	000 500	\$	160.000	\$	7 160 562
452-0000-606-9003 Improvements		000,563	-	160,000 <b>160,000</b>		7,160,563 <b>7,160,563</b>
Totals:		000,563		100,000	-	7,100,000

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

# JOHN CLARK, Mayor

ATTEST:

City of Kingsport, Tennessee, Ordinance No. \_\_\_\_\_, Page 1 of 2

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: PASSED ON 2ND READING:



May 29, 2018

Mr. Chad Austin Distribution & Collection Manager City of Kingsport, TN 1113 Konnarock Road Kingsport, TN 37664

### Subject: Reedy Creek Trunk Sewer Improvements Project – Change in Subsurface Conditions

Mr. Austin,

The intent of this letter is to inform you of the continuing issues with our ability to maintain maximum trench width per the project specifications due to soil conditions encountered beyond reasonable expectations. Due to the unsuitable fill (trash/misc. debris) materials encountered Garney has incurred additional cost to over excavate, haul-off and dispose of the unsuitable materials, import crushed stone/suitable fill material for backfill, and install additional asphalt paving. This additional cost could not have been reasonably anticipated prior to construction and therefore should be considered a change in conditions. Garney is therefore requesting reimbursement for this additional cost based on the information provided below.

While the geotechnical report does call out fill (or possible) fill material, it does not call out the possibility of encountering trash/debris. The excavation of trash/debris creates voids outside the trench zone when removed and creates unstable conditions. When items such as trees, timbers, concrete slabs, and rebar are pulled out of the side walls of a trench it leaves a void for the remaining materials to settle and therefore slough off into the trench. This additional sloughing of the trench walls due to trash/debris could not have been reasonable expected prior to construction. Post bid, but prior to construction beginning Garney excavated 3 test pits (approximate B-6 bore location, upstream of the twin 54-inch storm sewer line, and the upstream side of tunnel 3 at W Sullivan St) in which no trash was encountered and the trench walls remained vertical. This lead to us believing the trenching operations would perform similarly.

The geotechnical report also refers to other potential shoring options, such as temporary sheet pile walls, soil nail walls, and in-situ stabilization such as deep mixing, but it recognizes that soil nail walls and deep mixing are not a cost effective alternative. The issues with the temporary sheet pile walls includes not being able to toe the sheets due to competent rock therefore requiring an expensive whaler and strut system to support the sheets and the side effects of the vibrations required to install the sheets. The hammers required to install and remove temporary sheet piles send vibrations through the sheets and into the ground in order to install them. This in turn disturbs the ground and can cause unexpected settlement and certain types of soil to liquefy. It is for these reasons that temporary sheet pile walls was not considered an economical/viable option for shoring. The sheets would also not have been able to be driven through the trash/unsuitable materials as they would have reacted the same as if they had hit refusal.

It should be noted that the wedge shown on the details provided below are there to represent the average overrun and do not represent the actual angle of trench slope.

#### Pizza Plus Parking Lot and Lynn Garden Drive

Soil conditions encountered during construction of the proposed 48-inch and 24-inch gravity sewer lines in the area of Pizza Plus on Lynn Garden Drive have been significantly different than described in the provided geotechnical report. Boring B-5 (approximate Station 29+00) describes encountering material "interpreted as fill (or possible fill)" and that "The consistency of the fill soils is considered firm to stiff". Material actually encountered/excavated in this has been

large debris/trash including large pieces of concrete with rebar, tangled webs of rebar, bricks, large pieces of asphalt, and large boulders. The voids created when this type of unsuitable material is originally placed is the root cause for the additional sloughing and undermining. This type of unsuitable soils could not have been reasonable inferred prior to construction and therefore was not taken into account in original pricing. The unsuitable material has caused Garney to incur additional cost to excavate, haul-off, backfill with suitable fill material/crushed stone (depending on whether it is considered in-roadway or out of roadway), and additional asphalt restoration. See attached Exhibit B for a trench detail showing dimension of the additional sloughing, calculations of additional costs incurred for this area, and pictures of actual trench conditions encountered in the field.

The total additional costs incurred for Line 1 in this section of work is \$88,963.44 and the total additional cost incurred for Line 3 in this section of work is \$47,450.46. A detailed breakdown of these additional costs is attached at the end of this letter including several photographs depicting the conditions encountered.

The root cause of the additional costs incurred to Garney in all three of the areas described above is the trash/misc. debris unsuitable fill material that has been encountered. This type of fill material was not described in the provided geotechnical report and creates very unstable conditions for trenching by creating voids further back into the trench walls and allowing the material above to go unsupported. This instability causes uncontrollable sloughing of the trench walls, which in turn undermines the existing asphalt/ground and creates additional work to excavate the trench and then restore the area. It would not have been reasonable for a bidder to assume these were the fill material conditions described in the geotechnical report provided and therefore this additional cost should not be the burden of the contractor.

In addition to the cost, handling of the unsuitable materials has increased the amount of time needed to complete the work. We estimate that to date handling these materials has slowed production by approximately 14 calendar days (91 crew hours / 10 crew hours per day + weekends). We would request that this time be added to the contract's existing substantial completion date.

Please feel free to contact me concerning this matter should you have any questions or require any further information.

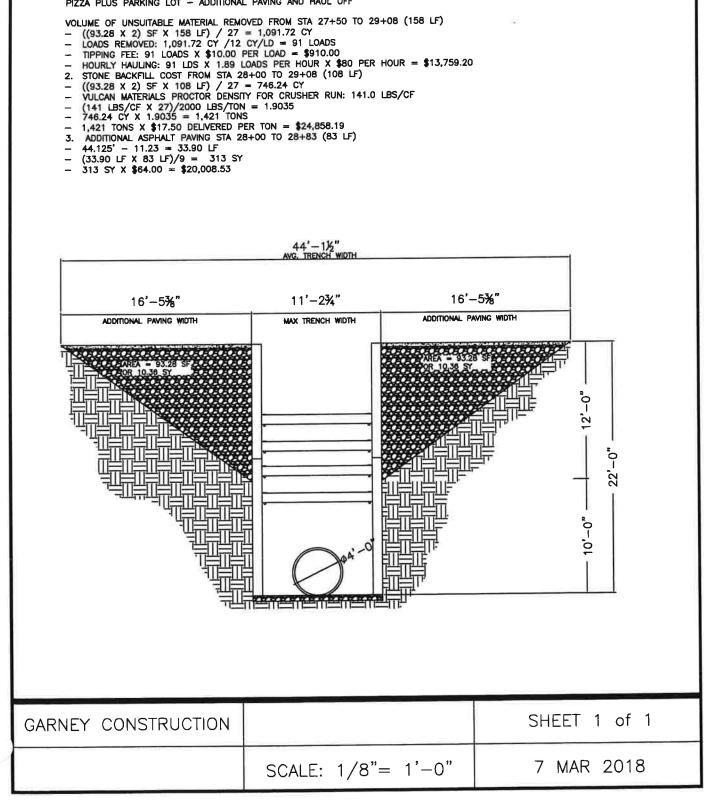
Sincerely,

Zack Bloomfield Project Manager Garney Companies, Inc. Reedy Creek Trunk Sewer Improvements City of Kingsport Kingsport, TN Gamey Project No. 3237

Item No.	Description	Quantity	Units	Price Per		Amount
item NO.	Exhibit B - Additional Costs - Line 1	1.00	LS	\$ 88,963.44	\$	88,963.44
	Item 12 - Asphalt Pavement Repair (Base, Tack, Binder, Surface, Striping)	312.63	SY	\$ 58.18	\$	18,189.57
0	Exhibit B - Additional Costs - Line 3	1.00	LS	\$ 47,450.46	\$	47,450.46
2	Exmolt B - Additional Cosis - Line S Item 12 - Asphalt Pavement Repair (Base, Tack, Binder, Surface, Striping)	91.00	SY	\$ 58.18	s	5,294.55
	Tem 12 - Asphalt Pavement Repair (Base, Tack, Binder, Sunace, Surping)	otal of Changes		1	\$	159,898.02

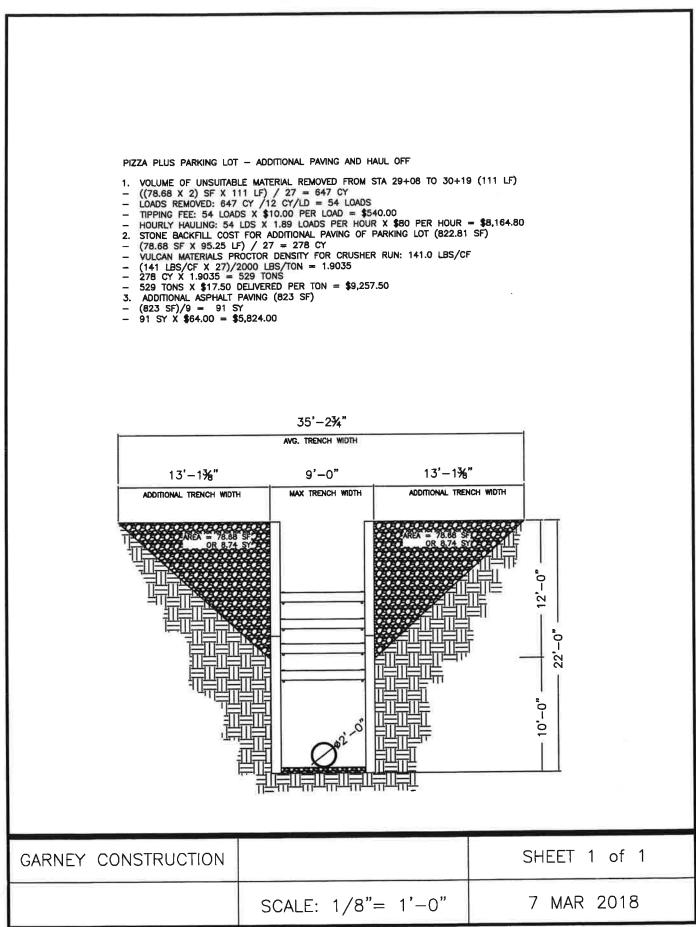
Page 1

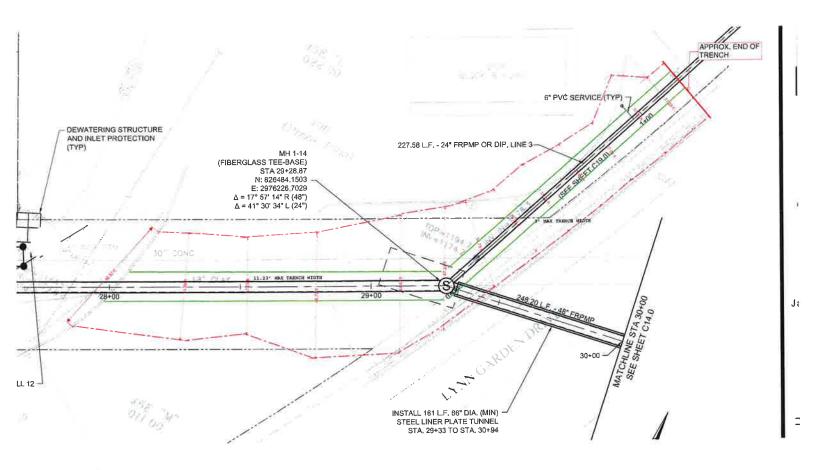
Summary

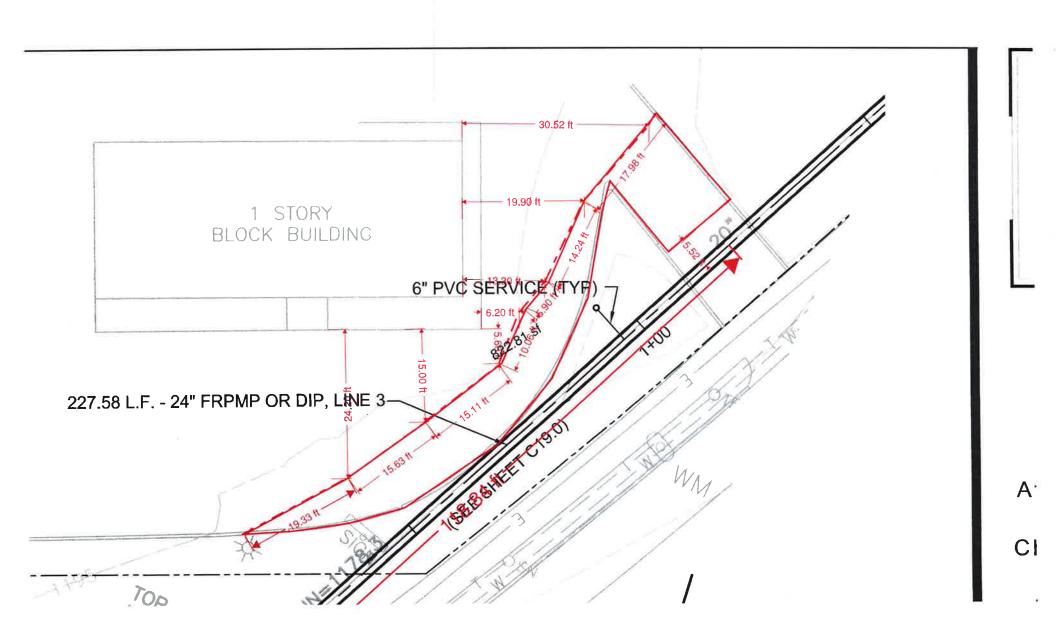


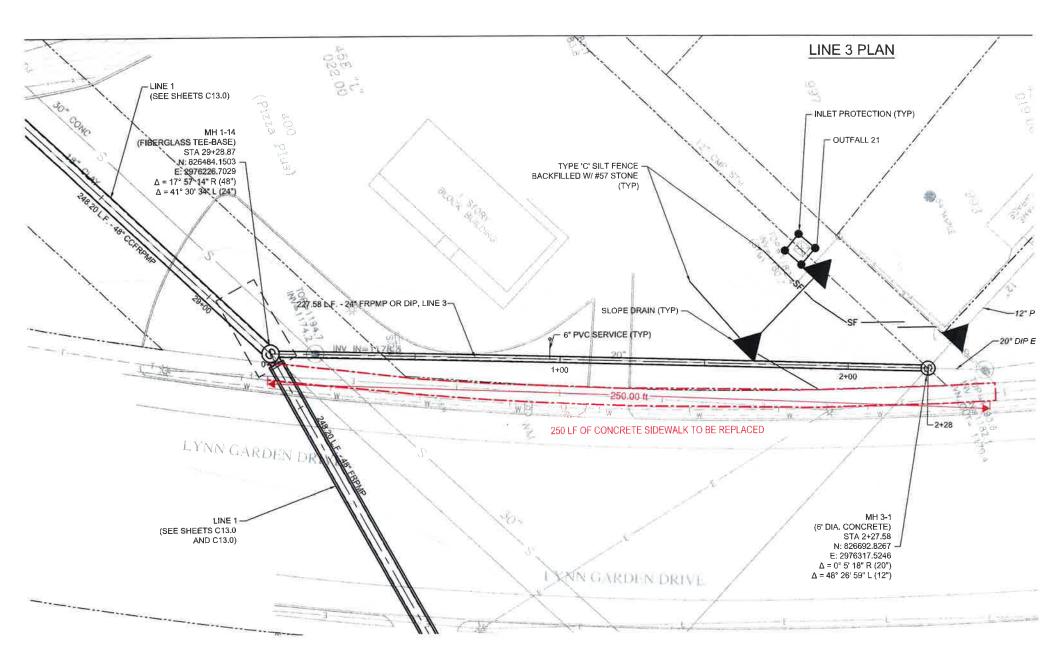
PIZZA PLUS PARKING LOT - ADDITIONAL PAVING AND HAUL OFF

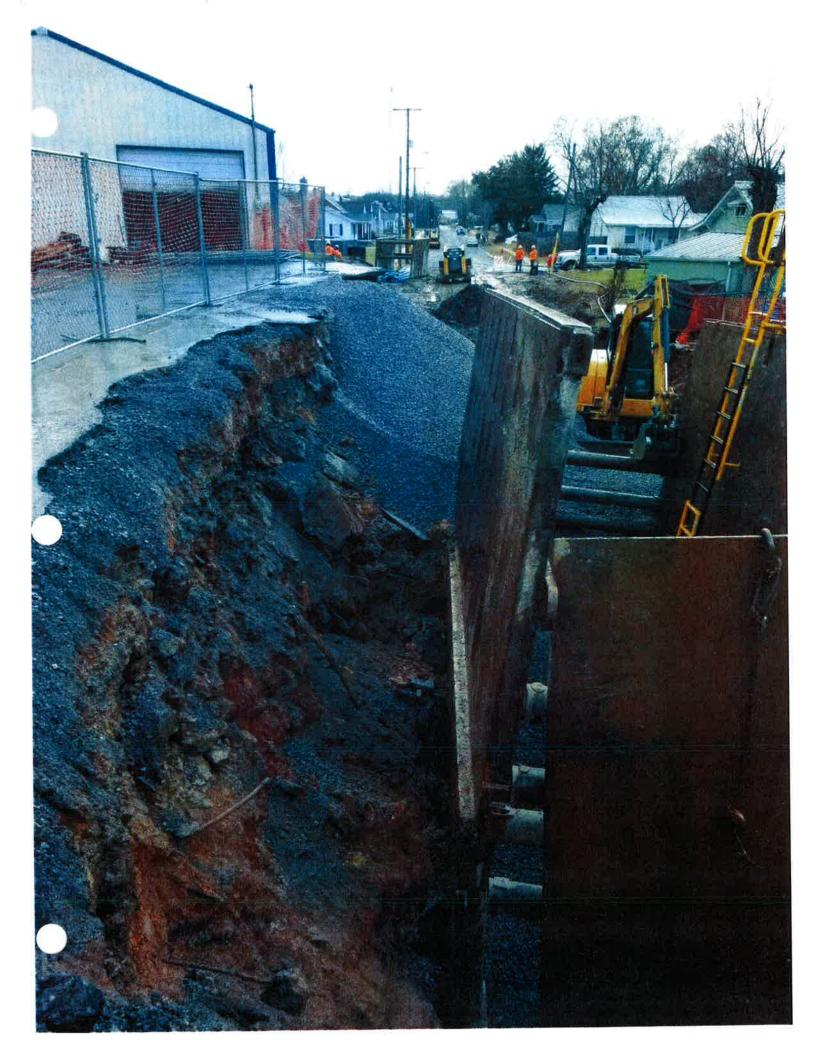
**EXHIBIT B - LINE 3** 



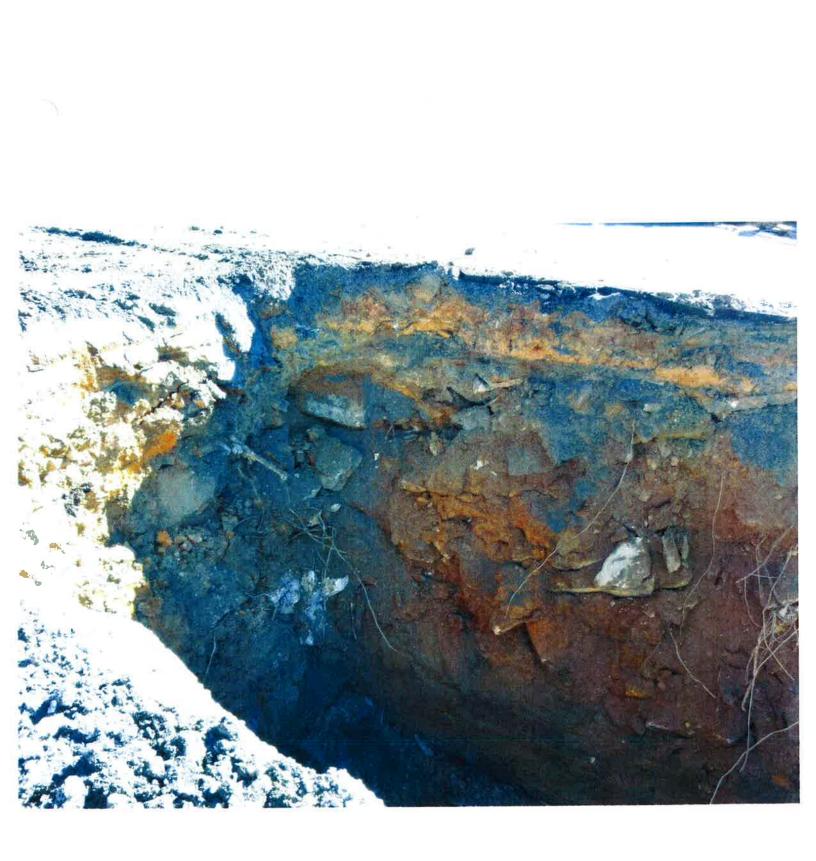


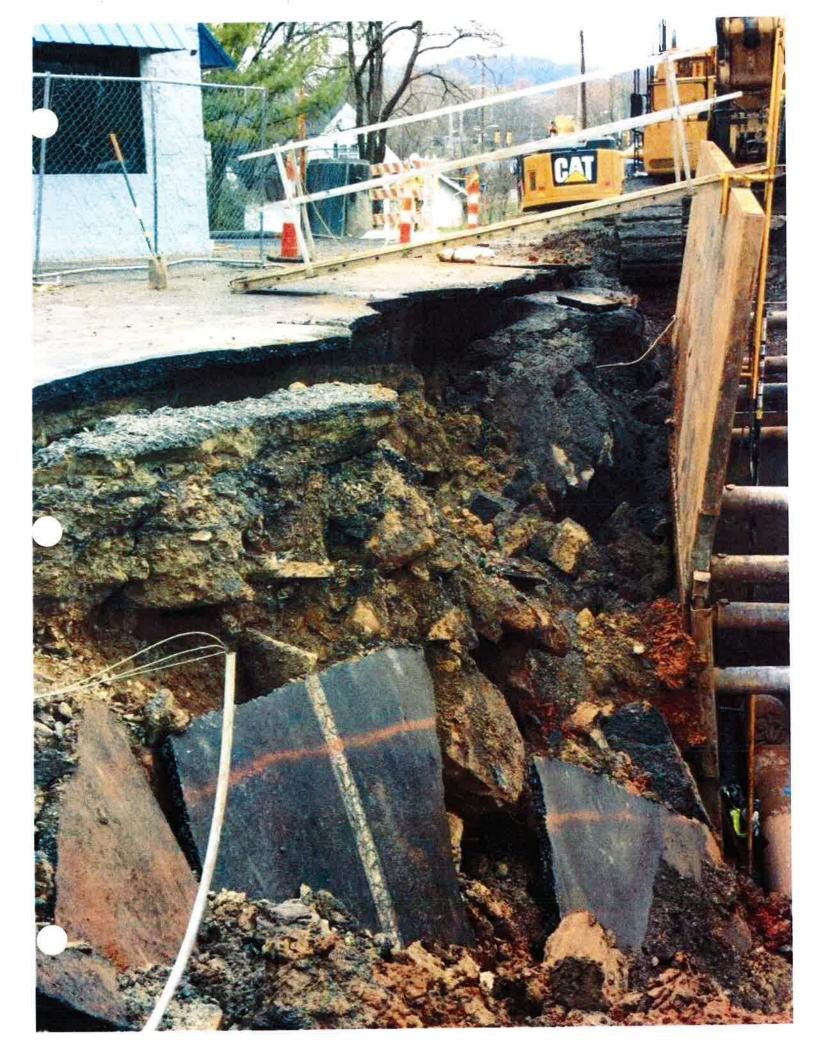


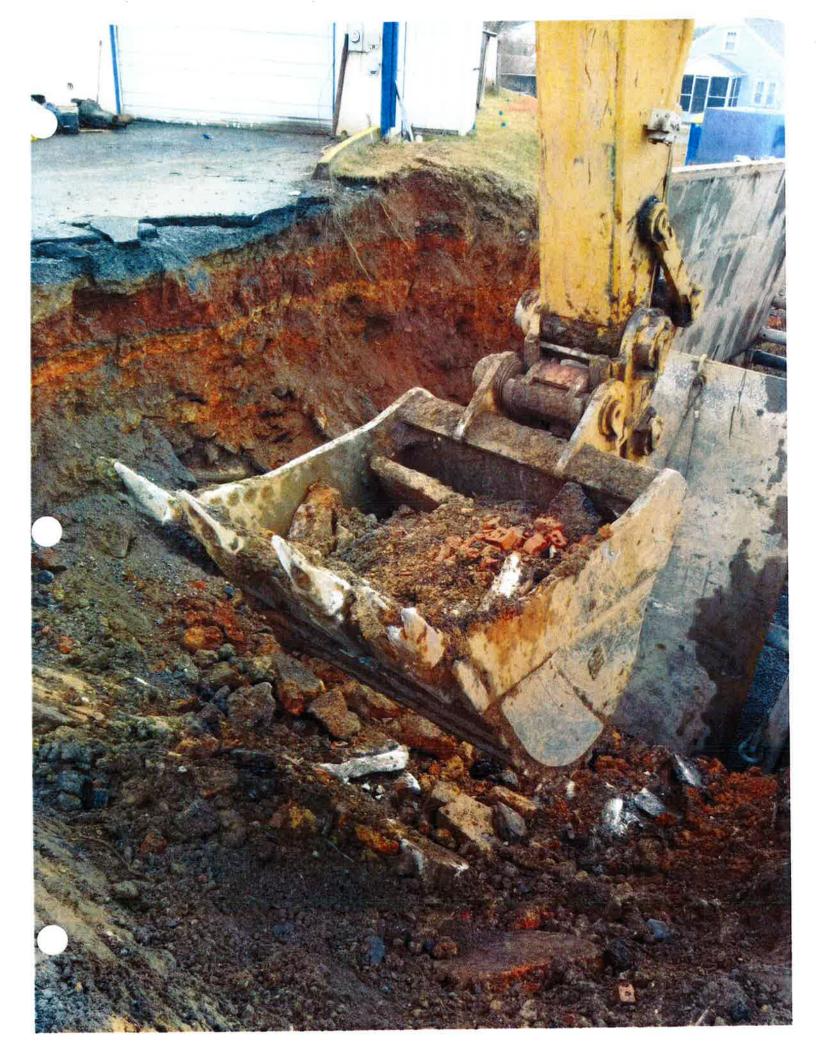




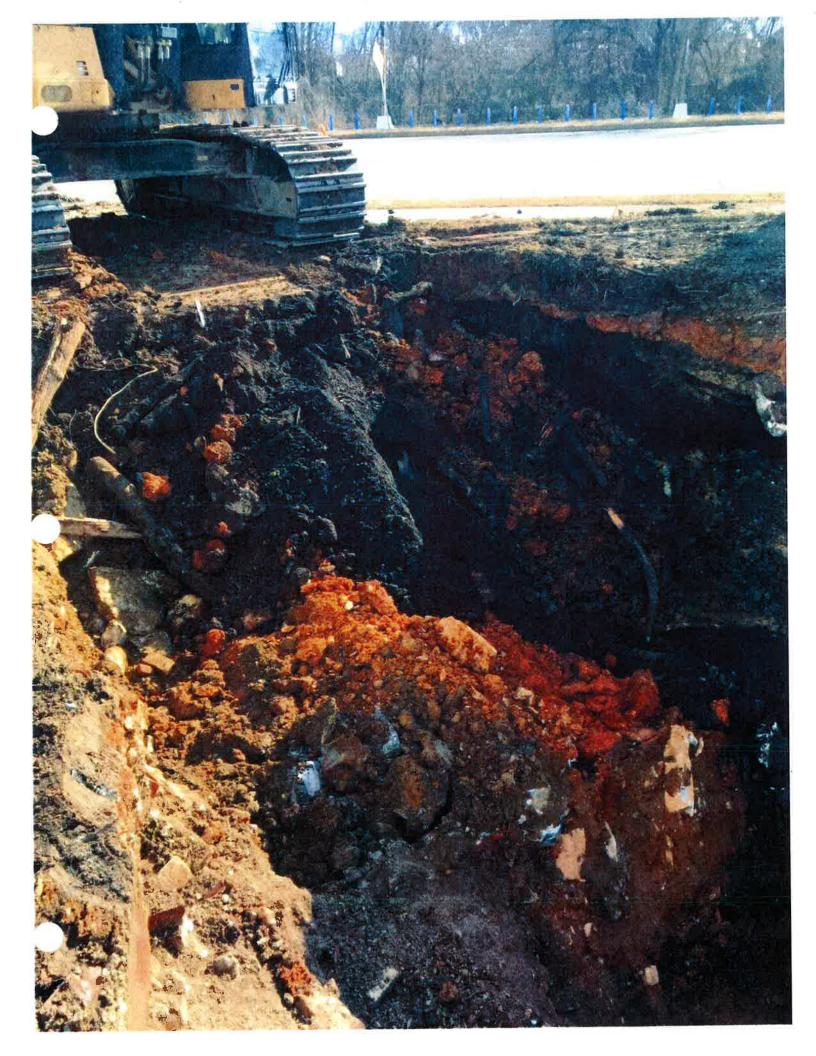
















Date \_\_\_\_\_

Garney Project No

	Н	ourly Rate	w/FRINGE		Hours			Subtotal	Totals
Craft / Name	Re	gular	Overtime		Regular	Overtime	Labor		101010
Sr Project Manager	\$	112.45	\$	168.67			\$	-	
Project Manager	\$	79.51	\$	119.26			\$	(#)	
Superintendent	\$	85.31	\$	127.96	57.0		\$	4,862.44	
Project Engineer	\$	60,11	\$	90,16	57.0		\$	3,426.04	
Occupies Maisling Eventuator	\$	42.65	\$	63.97	57.0		\$	2,430.88	
Operator - Loader	\$	37.81	\$	56.72	57.0		\$	2,155.27	
Operator - Loader Operator - Backfill Excavator	\$	31,99	\$	47.98			\$		
Pipelayer	S	32.98	\$	49.46	57.0		\$	1,879,66	
Laborer	\$	29.11	\$	43.66	57.0		\$	1,659.04	
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Description	Hours	FHWA Hrly Cost	Subtotal Equipment
Pickup - Gasoline	57,00	\$ 27.70	\$ 1,578.90
Pickup - Diesel	57,00	\$ 26,08	\$ 1,486.56
Caterpillar 374 Excavator	57.00	\$ 278,54	\$ 15,876.78
Caterpillar 336 Excavator	57.00	\$ 146.86	\$ 8,371.02
John Deere 624K Wheel Loader	57,00	\$ 71.06	\$ 4,050.42
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Subcontract Description	Quantity	Unit	Rate	Subtotal Subcontract
Hourly Trucking	171.99	HR	\$ 80.00	\$ 13,759.20
Tipping Fee	91.00	LD	\$ 10.00	\$ 910.00
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-	Description	Quantity	Unit		Rate		Тах		Subtotal Material		
	Crusher Run	1420,47	TN	\$	17.50	\$		\$	24,858.19		
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				TOT	AL					\$	00,963.44

Date:



Garney Project No

Description Exhibit B - Additional Costs - Line 3

	Hourly Rate w/FRINGE			RINGE	Ho	NIFS		Subtotal	Totals
Craft / Name	Regular		C	Overtime	Regular	Overtime	Labor		
Sr Project Manager	\$	112.45	\$	168,67			\$	-	
Project Manager	\$	79.51	\$	119,26			\$	-	
Superintendent	\$	85_31	\$	127,96	34.0		\$	2,900.40	
Project Engineer	\$	60_11	\$	90,16	34.0		\$	2,043.60	
O-sector Maioline Executor	\$	42.65	\$	63.97	34.0		\$	1,450.00	
Operator - Loader Operator - Loader Operator - Backfill Excavator	\$	37.81	\$	56.72	34.0		\$	1,285,60	
Operator - Backfill Excavator	\$	31,99	\$	47,98			\$	-	
Pipelayer	\$	32,98	\$	49,46	34.0		\$	1,121.20	
Laborer	\$	29,11	\$	43,66	34.0		\$	989.60	
Laborer	S	29.11	\$	43.66	34.0		\$	989,60	
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0	\$		\$	-			\$	- Total Labor	\$ 10,780

Description	Hours	FHWA Hrly Cost	Subtotal Equipment	
Pickup - Gasoline	34.00	\$ 27,70	\$ 941.80	2
Pickup - Diesel	34.00	\$ 26.08	\$ 886.72	
Caterpillar 374 Excavator	34.00	\$ 278.54	 \$ 9,470,36	
Caterpillar 336 Excavator	34.00	\$ 146.86	 \$ 4,993,24	
John Deere 624K Wheel Loader	34.00	\$ 71.06	 \$ 2,416.04	×
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Subcontract Descrip	ption Quantity	Unit	Rate	Subtotal Subcontract
Hourly Trucking	102.06	HR	\$ 80.00	\$ 8,164.80
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	Description	Quantity	Unit	Rate		Tax		Subtotal Material		
	Crusher Run	529.00	TN	S	17.50	\$	100	\$	9,257.50	
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)riginal to Headquarters Materials and Tests copies to Regional Materials and Tests Project Supervisor



#### STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION DIVISION OF MATERIALS AND TESTS 6601 CENTENNIAL BLVD. NASHVILLE, TENNESSEE 37243-0360

#### PROCTOR DENSITY REPORT

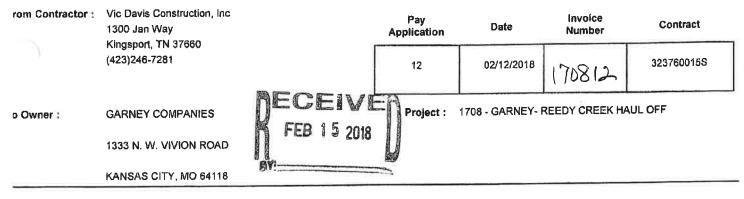
Project Re	ference No.	County	Region 1
Project No		Contract No.	
Material	BASE STONE	Project Supervisor	
Report No		Date Sampled	
Serial No.	R-23(17)1	Date Reported	11-Mar-17
Contractor		Sampled By	
Producer	Vulcan-Kingsport	Sampled From BELT	

		GRADATION - TO	AL PERCENT PASS	SING	
Sample No	1				
Station					
Depth, ft					
Location, ft					
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1"	99				
3/4"	91	"Proctor Only"			
3/8"	63				
No 4	43				
No 10					
No. 16	21				
No. 40					
No. 100	15				
No 200					
Silt and Clay					
Clay					
		SOIL	CONSTANTS		
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Plastic Limit					
Plasticity Index					
Calculated PI					
Туре					
Group					
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Optimum Moisture	6.5	1			
95 % Density	134 0				
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Moisture Range Below Subgrade				7.	1. 10
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			T	OOT Technician Supervis Regional Materials and Tests	sor

Form DT-0332 English (Rev. 10-02)

Approved for Information Only

Engineer of Matanals and Tests



em	Description	UOM	Estimated Quantity	Previous Quantity	Current Quantity	To Date Quantity	Unit Price	Current Amount	To Date Amount
1	LOW BOY PER HOUR SHOP	HRS	30.00	28.50	2.75	31,25	125.00	343.75	3,906.25
2	TO SHOP DUMP TRUCKS PER HOUR	HRS	5,200.00	3,678.50	719.75	4,398.25	80.00	57,580.00	351,860.00
3	SHOP TO SHOP DUMPING FEE	LOADS	4,450.00	2,048.00	366.00	2,414.00	10.00	3,660.00	24,140.00
			Total B	ase Contract			1	61,583,75	379,906.25
							-	(1 593 75)	170 006 25

**Total Contract and Change Orders** 

61,583.75) 379,906.25

Billing Sun	nmary for Contract 1708	
	Current	To Date
Total Completed:	61,583.75	379,906.25
Stored Material To Date:	0.00	0.00
Sales Tax:	0.00	0.00
Less Retainage:	0.00	0.00
Balance:	61,583.75	379,906.25
Less Previous Payments:		236,500.00
Less Back Charges:		
Total Due This Invoice:	61,583.75	143,406,25



INVOICE

SHIP TO: Reedy Creek Sewer Rehab 325 Reedy Creek Sewer Rehab KINGSPORT, TN 37660

SOLD TO: GARNEY COMPANIES 1333 N VIVION ROAD KANSAS CITY, MO 64118-0000

To ensure proper credit, please include remittance or list invoice numbers on your check remittance and send to Vulcan Construction Materials,LLC PO Box 849131 Dallas, TX 75284-9131, US Phone: 1-800-777-8752 or help@vmcmail.com

17794-28934 CUSTOMER NO: 31601315 INVOICE NO: 01/30/2018 INVOICE DATE: 57,247.57 INVOICE AMT: ORDER: 3332990 02/15/2018 DUE DATE:

Financ ncluding bi	e Charge ut not limit	cording to our or Customer sha ed to a reasona r otherwise in cr	I pay all cos ble attorney	of collections fee for se	on irvices	3:	PER	CENT: A	MOUN	IT SALE	ES TAX: S:	0_00	TOTAL F			7, <b>069.00</b> 10,178.57	Pay this	AMOUNT:
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INVOICE	E#	NVOICE DATE	CUSTOMER	NUMBER	LOCATION		LOCATION	ORDER			BILL OF L	ADING			FOB		shi	pment
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	6238624	D05	STA	NDARD	15441		GRADE D BASE PUG		т	24.24	14 25	т	24.24	3,25				424.2
	6238628	D05	STA	NDARD	15441		GRADE D BASE PUG		т	23.97	14.25	т	23.97	3 25				419.4
	6238637	D05	STA	NDARD	15441		GRADE D BASE PUG		т	23.75	14.25	т	23,75	3.25				415.6
	6238644	D05	STA	NDARD	15441		GRADE D BASE PUG		т	22,10	14.25	т	22.10	3.25				386.
	6238650	D05	STA	NDARD	15441		GRADE D BASE PUG		т	22.81	14.25	т	22,81	3.25			1 0	399
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	6238661	D05	STA	NDARD	15441		GRADE D BASE PUG		т	23.53	14.25	т	23,53	3,25				411
	6238665	D05	STA	NDARD	15441		GRADE D BASE PUG		т	24,23	14 25	т	24 23	3.25				424
	6238674	D05	STA	NDARD	15441		GRADE D BASE PUG		т	23,81	14.25	т	23 81	3.25				416.6
	6238679	D05	STA	NDARD	15441		GRADE D BASE PUG		т	24,05	14,25	т	24 05	3 25				420.0
	6238684	D05	STA	NDARD	15441		GRADE D BASE PUG		т	23.58	14,25	т	23.58	3.25				412.0
	6238687	D05	STA	NDARD	15441		GRADE D BASE PUG		т	23.13	14.25	т	23,13	3 25				404
	6238691	D05	STA	NDARD	15441		GRADE D BASE PUG		т	22 86	14.25	т –	22 86 329.92	3 25				400 0

VULCAN MATERIALS COMPANY AND SUBSIDIARIES

VULCAN CONSTRUCTION MATERIALS,LLC Page 1 of 6

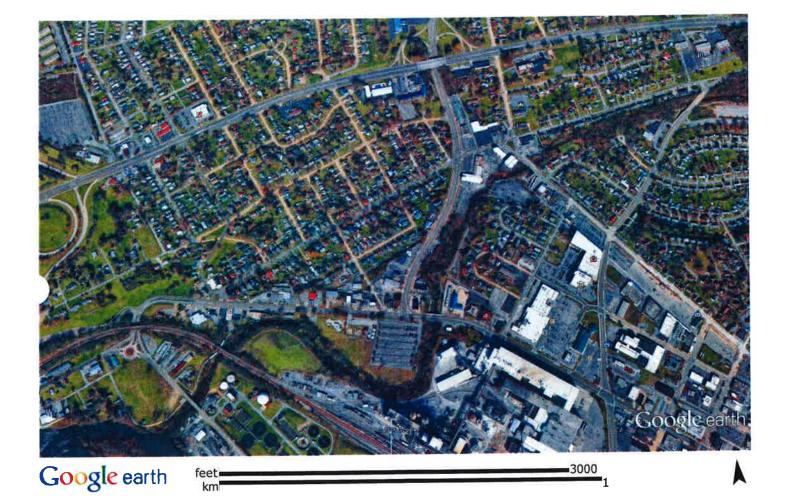
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Materials Co	ompany		3.	601315	01/30	0/2018	17	794-28934								_			
				, i	ICKET DE						PRODUC			FREIGHT			ADDED CHA		AMOUNT
SHIP DATE 01/24/2018	TICKET 6238698	VEH D03	ICLE	CLASS		PROD CODE		DESCRIPT DE D BASE PUG	TON	UOM	QTY 26.39	PRICE 14.25	MOU	QTY 26.39	PRICE 3.25	UOM	QTY	PRICE	461.83
01724/2010	6238707	D03		STANDARD		15441		DE D BASE PUG		τ	25 91	14.25	т	25 91	3,25				453.43
	6238710	D05		STANDARD		15441	GRAD	DE D BASE PUG		т	23 74	14.25	т	23 74	3,25				415.46
	6238713	D03		STANDARD	1	15441	GRAD	DE D BASÉ PUG		т	25 59	14,25	т	25_59	3 25				447 83
	6238725	D05		STANDARD	1.	5441	GRAD	DE D BASE PUG		т	23 75	14 25	т	23 75	3 25				415,63
	6238726	D03		STANDARD	1	5441	GRAD	DE D BASE PUG		т	26,20	14 25	т	26.20	3,25				458,50
	6238735	D05		STANDARD	1	15441	GRAD	DE D BASE PUG		т	23.19	14.25	т	23 19	3 25				405,83
	6238736	D03		STANDARD	1	5441	GRAD	DE D BASE PUG		т	25.87	14,25	т	25 87	3 25				452.73
	6238738	D05		STANDARD	1	15441	GRAD	DE D BASE PUG		т	23 37	14,25	т	23 37	3,25				408 97
	6238745	D03		STANDARD	1:	5441	GRAD	DE D BASE PUG		т	26,04	14 25	т	26 04	3.25				455.70
	6238748	D05		STANDARD	1	15441	GRAD	DE D BASE PUG		т	23.53	14 25	т	23 53	3,25				411.77
	6238757	D05		STANDARD	1	15441	GRAD	DE D BASE PUG		т	23 79	14,25	т	23.79	3 25				416.33
	6238758	D03		STANDARD	1:	15441	GRAD	DE D BASE PUG		т	26 16	14 25	т	26_16	3 25				457 80
	6238763	D03		STANDARD	1:	15441	GRAD	DE D BASE PUG		т	26 24	14.25	т	26 24	3 25				459.20
- E	6238766	D05		STANDARD	1	5441	GRAD	DE D BASE PUG		т	24.07	14 25	т	24.07	3.25				421 23
	6238772	D03		STANDARD	1:	5441	GRAD	DE D BASE PUG		т	25 34	14 25	т	25 34	3.25				443,46
	6238773	D05		STANDARD	1:	15441	GRAD	DE D BASE PUG		т	23,89	14 25	т	23.89	3 25				418.0
	6238782	D05		STANDARD	1:	15441	GRAD	DE D BASE PUG		Т	23.98	14.25	т	23.98	3 25				419.66
	6238783	D03		STANDARD	1:	15441	GRAD	DE D BASE PUG		т	25,75	14 25	т	25.75	3 25				450.63
	6238789	D05		STANDARD	1	15441	GRAI	DE D BASE PUG		т	22,42	14 25	т	22.42	3,25				392.36
	6238790	D03		STANDARD	1	15441	GRAD	DE D BASE PUG		т	<u>25 58</u> 520,80	14 25	Т	<u>25.58</u> 520.80	3.25				<u>447.66</u> 9,114.08
01/25/2018	6238793	D03		STANDARD	1	5441	GRA	DE D BASE PUG		т	26,50	14.25	т	26 50	3 25				463.76
	6238800	D03		STANDARD	1	15441	GRA	DE D BASE PUG		т	26.16	14.25	т	26,16	3 25				457 8
	6236808	D03		STANDARD	1	15441	GRA	DE D BASE PUG		т	25,92	14.25	т	25.92	3.25				453,6
	6238621	D03		STANDARD	1	15441	GRA	DE D BASE PUG		т	25.76	14.25	т	25.76	3.25				450.84
	6238031	D03		STANDARD	1	15441	GRA	DE D BASE PUG		т	26.23	14.25	т	26.23	3 25				459.0
	6238845	D03		STANDARD	1	15441	GRAI	DE D BASE PUG		т	25.93	14.25	т	25.93	3.25				453.7
	6238849	D05		STANDARD	1	15441	GRAI	DE D BASE PUG		т	22.38	14.25	т	22 38	3 25				391.66

VULCAN MATERIALS COMPANY AND SUBSIDIARIES VULCAN CONSTRUCTION MATERIALS,LLC CONTINUED ON NEXT PAGE Page 2 of 6

i in de	0100		INVOICE #	NVOICE DATE	CUSTOMER NUMBER										
Materials C	ompany		31601315	01/30/2018	17794-28934										
			TICK	ET DETAIL			PRODUC	т		FREIGH			ADDED CHA		AMOUNT
SHIP DATE	TICKET	VEHICLE	CLASS	PROD CODE	DESCRIPTI		QTY	PRICE	UOM	QTY	PRICE	UOM	QTY	PRICE	454.8
1/25/2018	6238853	D03	STANDARD	15441	GRADE D BASE PUG	Т	25,99	14 25	T	25 99	3 25				434,0
	6238854	D05	STANDARD	15441	GRADE D BASE PUG	т	23 69	14,25	т	23,69	3_25				414.5
	6238861	D05	STANDARD	15441	GRADE D BASE PUG	т	23 41	14 25	т	23,41	3_25				409.6
	6236665	D03	STANDARD	15441	GRADE D BASE PUG	т	25.28	14 25	т	25.28	3 25				442
	6238870	D05	STANDARD	15441	GRADE D BASE PUG	τ	24,24	14 25	т	24,24	3 25				424.
	6238871	D03	STANDARD	15441	GRADE D BASE PUG	т	25,37	14,25	т	25,37	3 25				443
	6238875	D05	STANDARD	15441	GRADE D BASE PUG	т	24,04	14.25	Т	24.04	3 25				420
	6238887	D03	STANDARD	15441	GRADE D BASE PUG	т	25,20	14 25	т	26,20	3.25				458
	6236688	D05	STANDARD	15441	GRADE D BASE PUG	т	23,90	14,25	т	23,90	3 25				418
	6238906	D03	STANDARD	15441	GRADE D BASE PUG	т	25,38	14,25	т	25,38	3 25				444
	6238907	D05	STANDARD	15441	GRADE D BASE PUG	т	23,79	14 25	т	23.79	3_25				416
	6238914	D03	STANDARD	15441	GRADE D BASE PUG	т	26,16	14.25	т	26 16	3 25				457
	6238915	D05	STANDARD	15441	GRADE D BASE PUG	т	24 21	14 25	т	24 21	3 25				423
	6238919	D03	STANDARD	15441	GRADE D BASE PUG	т	25,52	14,25	т	25 52	3 25				440
	6238921	D05	STANDARD	15441	GRADE D BASE PUG	т	24.19	14 25	т	24.19	3 25				423
							550.25			550.25					5,025
1/26/2018	6238922	D03	STANDARD	15441	GRADE D BASE PUG	т	26,46	14.25	т	26,46	3 25				463
	6238928	D03	STANDARD	15441	GRADE D BASE PUG	т	25.10	14 25	т	25 10	3 25				439
	6238929	D05	STANDARD	15441	GRADE D BASE PUG	т	23.22	14,25	т	23,22	3 25				406
	6238944	D03	STANDARD	15441	GRADE D BASE PUG	т	25,47	14,25	т	25.47	3.25				445
	6238945	D05	STANDARD	15441	GRADE D BASE PUG	т	24.08	14.25	т	24.08	3.25				421
	6238951	D03	STANDARD	15441	GRADE D BASE PUG	т	25.10	14.25	т	25.10	3,25				439
	6238952	D05	STANDARD	15441	GRADE D BASE PUG	т	23.51	14.25	т	23.51	3,25				41
	6238964	D03	STANDARD	15441	GRADE D BASE PUG	т	25,43	14 25	т	25 43	3 25				44
	6238970	D05	STANDARD	15441	GRADE D BASE PUG	т	22 79	14.25	т	22 79	3.25				39
	6238972	D03	STANDARD	15441	GRADE D BASE PUG	т	25 36	14.25	т	25.36	3.25				44
	6238981	D03	STANDARD	15441	GRADE D BASE PUG	т	25.26	14.25	т	25 26	3.25				44
	6238982	D05	STANDARD	15441	GRADE D BASE PUG	т	23.99	14 25	т	23.99	3 25				41
	6238987	D03	STANDARD	15441	GRADE D BASE PUG	т	26.15	14.25	т	26.15	3 25				45

VULCAN MATERIALS COMPANY AND SUBSIDIARIES VULCAN CONSTRUCTION MATERIALS,LLC CONTINUED ON NEXT PAGE Page 3 of 6





# AGENDA ACTION FORM

# Ordinance Amending Kingsport City Code Section 90-159 Elimination of the Sidewalk Board

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-164-2018 Work Session: July 16, 2018 First Reading: July 17, 2018 Final Adoption:August 7, 2018Staff Work By:StaffPresentation By:Ryan McReynolds

#### **Recommendation:**

Approve the Ordinance.

#### **Executive Summary:**

In 1986 the city created the sidewalk board for the purpose to plan, set priorities and determine areas of city sidewalks that require repair or replacement. This board consists of six (6) members to include the city engineer, the director of planning, the director of community services, the director of transportation, and two (2) members of the public at large who are appointed by the Mayor, with the advice and consent of the board of mayor and aldermen. Since the inception of the sidewalk board positive changes have occurred, to include but not limited to changes to subdivision regulations in the mid-1990's requiring sidewalks in new residential developments, and also the Bike-Ped plan in 2012 encouraging the expansion of bicycle and pedestrian facilities.

After review and discussion of the purpose and function of the sidewalk board it is recommended to eliminate this board. City staff are now better positioned to move forward with the implementation, and installation of new sidewalks, or repairs/improvements to existing sidewalks. ADA compliance is also being met as well for new and existing sidewalks.

It is recommended to amend Kingsport City Code Section 90-159 by deleting this section in its entirety, therefore eliminating the sidewalk board.

#### Attachments:

1. Ordinance

	Y	Ν	<u>0</u>
Adler			_
Begley		_	_
Cooper	-	_	_
George			_
VicIntire	-	-	_
Olterman	_	_	
Clark	_	_	_



# AGENDA ACTION FORM

# Ordinance Amending Kingsport City Code Section 90-159 Elimination of the Sidewalk Board

To: Board of Mayor and Aldermon From: Jeff Fleming, City Manager

Action Form No.: AF-164-2018 Work Session: July 16, 2018 First Reading: July 17, 2018 Final Adoption:August 7, 2018Staff Work By:StaffPresentation By:Ryan McReynolds

#### Recommendation:

Approve the Ordinance.

#### **Executive Summary:**

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After review and discussion of the purpose and function of the sidewalk board it is recommended to eliminate this board. City staff are now better positioned to move forward with the implementation, and installation of new sidewalks, or repairs/improvements to existing sidewalks. ADA compliance is also being met as well for new and existing sidewalks.

It is recommended to amend Kingsport City Code Section 90-159 by deleting this section in its entirety, therefore eliminating the sidewalk board.

#### Attachments:

1. Ordinance

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 Olterman
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### ORDINANCE NO.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 90-159 PERTAINING TO THE SIDEWALK BOARD BY DELETING SECTION 90-159 AND REPEALING ORDINANCE NUMBERS 2786 AND 6179 PERTAINING TO THE CREATION OF THE SIDEWALK BOARD AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

PRE-FILED

CITY RECORDER

BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. That Section 90-159 of the Code of Ordinances, City of Kingsport, Tennessee is hereby deleted in its entirety and Ordinance Numbers 2786 and 6179 are repealed in their entirety.

SECTION II. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK Mayor

ATTEST:

JAMES H. DEMMING City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY City Attorney

PASSED ON 1ST READING\_\_\_\_\_ PASSED ON 2ND READING\_\_\_\_\_



# **AGENDA ACTION FORM**

# Apply for and Receive a Grant from the Department of Justice Edward Byrne Memorial Justice Assistance Program (JAG) FY 2018 Local Solicitation

Board of Mayor and Aldermen To: Jeff Fleming, City Manager From:

Action Form No.: AF-178-2018 August 6, 2018 Work Session: N/A First Reading:

Final Adoption: August 7, 2018 Capt. Gore Staff Work By: Presentation By: Chief Quillin

#### **Recommendation:**

Approve the Resolution.

#### **Executive Summary:**

The Kingsport Police Department has ongoing grant opportunities with the Department of Justice/Bureau of Justice Assistance, Justice Assistance Grants (JAG). We have been notified that we are eligible for \$23,284.00 in grant funds for the upcoming fiscal year. The grant will be utilized to purchase equipment and/or technology improvements.

There are no matching fund requirements.

#### Attachments:

- Resolution 1.
- Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2018 Local Solicitation 2.

	Y	<u>N 0</u>
Adler	_	_
Begley		
Cooper	_	
George		
McIntire		
Olterman		
Clark	_	

#### RESOLUTION NO.

A RESOLUTION APPROVING AN APPLICATION FOR AND RECEIPT OF A FISCAL YEAR 2018 LOCAL SOLICITATION GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF JUSTICE ASSISTANCE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER FOR SUCH APPLICATION AND RECEIPT OF GRANT FUNDS

WHEREAS, the city would like to apply for the Fiscal Year 2018 Local Solicitation Grant from the United States Department of Justice Edward Byrne Memorial Justice Assistance Grant Program to purchase equipment and technology for the Kingsport Police Department; and

WHEREAS, the grant funds would be in the amount up to \$23,284.00 and there is no local match; and

WHEREAS, certain documents must be completed and executed to apply for and receive the grant funds.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That application for and receipt of a Fiscal Year 2018 Local Solicitation Grant from the United States Department of Justice Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant Program in the amount of up to \$23,284.00 to purchase equipment and technology for the Kingsport Police Department is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive a Fiscal Year 2018 Local Solicitation Grant from the United States Department of Justice Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant Program and any and all documents necessary and proper for such application and receipt of funds.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 7th day of August, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

OMB No. 1121-0329 Approval Expires 11/30/2020

**U.S. Department of Justice** Office of Justice Programs *Bureau of Justice Assistance* 



The <u>U.S. Department of Justice</u> (DOJ), <u>Office of Justice Programs</u> (OJP), <u>Bureau of Justice</u> <u>Assistance</u> (BJA) is seeking applications for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. This program furthers the Department's mission by assisting state, local, and tribal efforts to prevent or reduce crime and violence.

# Edward Byrne Memorial Justice Assistance Grant (JAG) Program

# FY 2018 Local Solicitation

# Applications Due: August 22, 2018

# Eligibility

Only units of local government may apply under this solicitation. By law, for purposes of the JAG Program, the term "units of local government" includes a town, township, village, parish, city, county, borough, or other general purpose political subdivision of a state; or, it may be a federally recognized Indian tribal government that performs law enforcement functions (as determined by the Secretary of the Interior). A unit of local government also may be any law enforcement district or judicial enforcement district established under applicable state law with authority to independently establish a budget and impose taxes; for example, in Louisiana, a unit of local government means a district attorney or parish sheriff.

A JAG application is not complete, and a unit of local government may not access award funds, unless the chief executive of the applicant unit of local government (e.g., a mayor) properly executes, and the unit of local government submits, the "Certifications and Assurances by Chief Executive of Applicant Government" attached to this solicitation as <u>Appendix A</u>.

In addition, as discussed further <u>below</u>, in order to validly accept a Fiscal Year (FY) 2018 JAG award, the chief legal officer of the applicant unit of local government must properly execute, and the unit of local government must submit, the specific certifications regarding compliance with certain federal laws attached to this solicitation as <u>Appendix B</u> and <u>Appendix C</u>. (Note: this requirement does not apply to Indian tribal governments.) (The text of the relevant federal laws appears in <u>Appendix D</u>.)

Eligible allocations under JAG are posted annually on the JAG web page.

All recipients and subrecipients (including any for-profit organization) must forgo any profit or management fee.

### Deadline

Applicants must register in the OJP Grants Management System (GMS) at <u>https://grants.oip.usdoj.gov/</u> prior to submitting an application under this solicitation. All applicants must register, even those that previously registered in GMS. Select the "Apply Online" button associated with the solicitation title. All registrations and applications are due by 5 p.m. eastern time on August 22, 2018.

For additional information, see <u>How to Apply</u> in <u>Section D. Application and Submission</u> Information.

### **Contact Information**

For technical assistance with submitting an application, contact the Grants Management System Support Hotline at 888–549–9901, option 3, or via email at <u>GMS.HelpDesk@usdoj.gov</u>. The GMS Support Hotline operates 24 hours a day, 7 days a week, including on federal holidays.

An applicant that experiences unforeseen GMS technical issues beyond its control that prevent it from submitting its application by the deadline must email the National Criminal Justice Reference Service (NCJRS) Response Center at <u>grants@ncjrs.gov</u> within 24 hours after the application deadline in order to request approval to submit its application. Additional information on reporting technical issues appears under "Experiencing Unforeseen GMS Technical Issues" in <u>How to Apply</u> in <u>Section D. Application and Submission Information</u>.

For assistance with any other requirement of this solicitation, applicants may contact the NCJRS Response Center by telephone at 1–800–851–3420; via TTY at 301–240–6310 (hearing impaired only); by email at grants@ncjrs.gov; by fax to 301–240–5830, or by web chat at <u>https://webcontact.ncjrs.gov/ncjchat/chat.jsp</u>. The NCJRS Response Center hours of operation are 10:00 a.m. to 6:00 p.m. eastern time, Monday through Friday, and 10:00 a.m. to 8:00 p.m. eastern time on the solicitation close date. Applicants also may contact the appropriate BJA State Policy Advisor.

Release date: July 20, 2018

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# Edward Byrne Memorial Justice Assistance (JAG) Grant Program FY 2018 Local Solicitation CFDA #16.738

### A. Program Description

#### Overview

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to states and units of local government. BJA will award JAG Program funds to eligible units of local government under this FY 2018 JAG Program Local Solicitation. (A separate solicitation will be issued for applications to BJA directly from states.)

**Statutory Authority:** The JAG Program statute is Subpart I of Part E of Title I of the Omnibus Crime Control and Safe Streets Act of 1968. Title I of Pub. L. No. 90-351 (generally codified at 34 U.S.C. 10151-10158), including subpart 1 of part E (codified at 34 U.S.C. 10151 - 10158); see also 28 U.S.C. 530C(a).

#### Program-specific Information

#### Permissible uses of JAG Funds – In general

In general, JAG funds awarded to a unit of local government under this FY 2018 solicitation may be used to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for **criminal justice**, including any one or more of the following:

- Law enforcement programs
- Prosecution and court programs
- Prevention and education programs
- Corrections and community corrections programs
- Drug treatment and enforcement programs
- Planning, evaluation, and technology improvement programs
- Crime victim and witness programs (other than compensation)
- Mental health programs and related law enforcement and corrections programs, including behavioral programs and crisis intervention teams

Additionally, JAG funds awarded to a unit of local government under this FY 2018 solicitation may be used for any purpose indicated in <u>Appendix F</u>.

In connection with all of the above purposes (including those indicated in the appendix), it should be noted that the statute defines "criminal justice" as "activities pertaining to crime

5 BJA-2018-13626 prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency."

Under the JAG Program, units of local government may also use award funds for broadband deployment and adoption activities as they relate to criminal justice activities.

#### Limitations on the use of JAG funds

*Prohibited uses of funds* – JAG funds may not be used (whether directly or indirectly) for any purpose prohibited by federal statute or regulation, including those purposes specifically prohibited by the JAG Program statute as set out at 34 U.S.C. § 10152.

JAG funds may not be used (directly or indirectly) for security enhancements or equipment for nongovernmental entities not engaged in criminal justice or public safety. Additionally, JAG funds may not be used (directly or indirectly) to pay for any of the following items unless the BJA Director certifies that extraordinary and exigent circumstances exist, making them essential to the maintenance of public safety and good order:

- Vehicles, vessels, or aircraft\*
- Luxury items
- Real estate
- Construction projects (other than penal or correctional institutions)
- Any similar items

# \*Police cruisers, police boats, and police helicopters are allowable vehicles under JAG and do not require BJA certification.

For information related to requesting a waiver to obtain BJA certification for a listed prohibited item, or for examples of allowable vehicles that do not require BJA certification, refer to the <u>JAG</u> FAQs.

*Cap on use of JAG award funds for administrative costs* – Up to 10 percent of a JAG award, including up to 10 percent of any earned interest, may be used for costs associated with administering the award.

*Prohibition of supplanting; no use of JAG funds as match* – JAG funds may not be used to supplant state or local funds but must be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities. See the <u>JAG FAQs</u> for examples of supplanting.

Although supplanting is prohibited, as discussed under <u>What An Application Should Include</u>, the leveraging of federal funding is encouraged.

Absent specific federal statutory authority to do so, JAG award funds may not be used as a match for the purposes of other federal awards.

Other restrictions on use of funds – If a unit of local government chooses to use its FY 2018 JAG funds for particular, defined types of expenditures, it must satisfy certain preconditions:

## Body-Worn Cameras (BWC)

A unit of local government that proposes to use FY 2018 JAG award funds to purchase BWC equipment, or to implement or enhance BWC programs, must provide OJP with a certification(s) that each unit of local government law enforcement agency receiving the equipment or implementing the program has policies and procedures in place related to BWC equipment usage, data storage and access, privacy considerations, and training. The certification form related to BWC policies and procedures can be found at: https://www.bja.gov/Funding/BodyWornCameraCert.pdf.

A unit of local government that proposes to use JAG funds for BWC-related expenses will have funds withheld until the required certification is submitted and approved by OJP. If the unit of local government proposes to change project activities to utilize JAG funds for BWC-related expenses after the award is accepted, the unit of local government must submit the signed certification to OJP at that time.

Further, before making any subaward for BWC-related expenses, the unit of local government JAG recipient must collect a completed BWC certification from the proposed subrecipient. Any such certifications must be maintained by the unit of local government JAG recipient, and made available to OJP upon request.

# The BJA <u>BWC Toolkit</u> provides model BWC policies and best practices to assist departments in implementing BWC programs.

Apart from the JAG Program, BJA provides funds under the Body-Worn Camera Policy and Implementation Program (BWC Program). The BWC Program allows jurisdictions to develop and implement policies and practices required for effective program adoption and address program factors, including the purchase, deployment, and maintenance of camera systems and equipment; data storage and access; and privacy considerations. Interested units of local government may wish to refer to the <u>BWC web page</u> for more information. Units of local government should note, however, that JAG funds may not be used as any part of the 50 percent match required by the BWC Program.

Body Armor

Body armor purchased with FY 2018 JAG funds may be purchased at any threat level designation, make, or model from any distributor or manufacturer, as long as the body armor has been tested and found to comply with the latest applicable <u>National Institute</u> of Justice (NIJ) ballistic or stab standards. Further, body armor purchased with FY 2018 JAG funds must be made in the United States, and must be "uniquely fitted." See 34 U.S.C. § 10202(c)(1)(A). For a definition of "uniquely fitted" and more information about requirements associated with body armor purchases, see the JAG FAQs.

A unit of local government that proposes to use FY 2018 JAG award funds to purchase body armor must provide OJP with a certification(s) that each unit of local government law enforcement agency receiving body armor has a written "mandatory wear" policy in effect. See 34 U.S.C. § 10202(c). The certification form related to mandatory wear can be found at: www.bja.gov/Funding/BodyArmorMandatoryWearCert.pdf. A unit of local government that proposes to use JAG funds to purchase body armor will have funds withheld until the required certification is submitted and approved by OJP. If the unit of local government proposes to change project activities to utilize JAG funds to purchase body armor after the award is accepted, the unit of local government must submit the signed certification to OJP at that time.

Further, before making any subaward for the purchase of body armor, the unit of local government JAG recipient must collect a completed mandatory wear certification from the proposed subrecipient. Any such certifications must be maintained by the unit of local government JAG recipient, and made available to OJP upon request.

A mandatory wear concept and issues paper and a model policy are available at the BVP Customer Support Center, at vests@usdoj.gov or toll free at 1--877--758--3787. Additional information and FAQs related to the mandatory wear policy and certifications can be found at <u>https://www.bja.gov/Funding/JAGFAQ.pdf</u>.

Apart from the JAG program, BJA provides funds under the Bulletproof Vest Partnership (BVP) Program. The BVP Program is designed to provide a critical resource to state and local law enforcement agencies for the purchase of ballistic-resistant and stab-resistant body armor. For more information on the BVP Program, including eligibility and application, refer to the <u>BVP web page</u>. Units of local government should note, however, that JAG funds may not be used as any part of the 50 percent match required by the BVP Program. *It is also important to note that eligibility for the BVP Program is impacted by a local jurisdiction's use of funds under a local JAG award to purchase body armor.* For additional information on the BVP Program, and eligibility restrictions related to receipt of JAG funding, review the <u>BVP FAQs</u>.

#### Interoperable Communications

Units of local government (and subrecipients) that use FY 2018 JAG funds to support emergency communications activities (including the purchase of interoperable communications equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission Waiver Order) should review FY 2018 SAFECOM Guidance. The SAFECOM Guidance is updated annually to provide current information on emergency communications policies, eligible costs, best practices, and technical standards for state, local, tribal, and territorial grantees investing federal funds in emergency communications projects. Additionally, emergency communications projects funded with FY 2018 JAG funds should support the Statewide Communication Interoperability Plan (SCIP) and be coordinated with the fulltime Statewide Interoperability Coordinator (SWIC) in the state of the project. As the central coordination point for their state's interoperability effort, the SWIC plays a critical role, and can serve as a valuable resource. SWICs are responsible for the implementation of SCIP through coordination and collaboration with the emergency response community. The U.S. Department of Homeland Security Office of Emergency Communications maintains a list of SWICs for each of the states and territories. Contact OEC@hq.dhs.gov. All communications equipment purchased with FY 2018 JAG Program funding should be identified during quarterly performance metrics reporting.

Further, information sharing projects funded with FY 2018 JAG funds must comply with DOJ's <u>Global Justice Information Sharing Initiative</u> guidelines, as applicable, in order to

promote information sharing and enable interoperability among disparate systems across the justice and public safety community. Recipients (and subrecipients) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: <u>https://www.it.ojp.gov/gsp\_grantcondition</u>. Recipients (and subrecipients) will be required to document planned approaches to information sharing and describe compliance to the GSP and an appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

For JAG applicants considering implementing communications technology projects, it is worthwhile to consider the First Responder Network Authority (FirstNet) program. The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. §§ 1401 et seq.) established FirstNet as an independent authority within the National Telecommunications and Information Administration. FirstNet's statutory mission is to take all actions necessary to ensure the establishment of a nationwide public safety broadband network (NPSBN). The NPSBN will use the 700 MHz D block spectrum to provide Long-Term Evolution (LTE)-based broadband services and applications to public safety entities. The network is based on a single, national network architecture that will evolve with technological advances and initially consist of a core network and radio access network. While mission critical voice communications will continue to occur on land mobile radio, in time, FirstNet is expected to provide the public safety entities with mission critical broadband data capabilities and services including, but not limited to: messaging; image sharing; video streaming; group text; voice; data storage; applications; location-based services; and quality of service, priority, and preemption. This reliable, highly secure, interoperable, and innovative public safety communications platform will bring 21st century tools to public safety agencies and first responders, allowing them to get more information quickly and helping them to make faster and better decisions. For more information on FirstNet services, the unique value of the FirstNet network to public safety, and how to subscribe for the FirstNet service once your state or territory opts in, visit www.FirstNet.gov. To learn about FirstNet's programs and activities, including its consultation and outreach with public safety, the state plan's process, FirstNet's history and promise, and how it plans to ensure the FirstNet network meets the needs of public safety-every day and in every emergencyvisit www.FirstNet.gov or contact info@firstnet.gov.

 <u>DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database</u> If JAG Program funds will be used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System (CODIS, the national DNA database operated by the FBI) by a government DNA lab with access to CODIS. No profiles generated with JAG funding may be entered into any other nongovernmental DNA database without prior express written approval from BJA.

In addition, funds may not be used for purchase of DNA equipment and supplies when the resulting DNA profiles from such technology are not acceptable for entry into CODIS.

#### Entry of Records into State Repositories

As appropriate and to the extent consistent with law, a condition may be imposed that would require the following: With respect to any "program or activity" that receives federal financial assistance under this solicitation that is likely to generate or upgrade court dispositions or other records that are relevant to National Instant Background Check System (NICS) determinations, a system must be in place to ensure that all such

NICS-relevant dispositions or records that are generated or upgraded are made available in timely fashion to state repositories/databases that are accessed by NICS.

#### Requirements specific to "disparate" jurisdictions

According to the JAG program statute, a "disparity" may exist between the funding eligibility of a county and its associated municipalities. See 34 U.S.C. § 10156(d)(4). Three different types of disparities may exist:

- The first type is a zero-county disparity. This situation exists when one or more
  municipalities within a county are eligible for a direct award but the county is not; yet the
  county is responsible for providing criminal justice services (such as prosecution and
  incarceration) for the municipality. In this case, the county is entitled to part of the
  municipality's award because it shares the cost of criminal justice operations, although it
  may not report crime data to the FBI. This is the most common type of disparity.
- A second type of disparity exists when both a county and a municipality within that county qualify for a direct award, but the award amount for the municipality exceeds 150 percent of the county's award amount.
- The third type of disparity occurs when a county and multiple municipalities within that county are all eligible for direct awards, but the sum of the awards for the individual municipalities exceeds 400 percent of the county's award amount.

Jurisdictions identified by BJA as disparate must identify a fiscal agent that will submit a joint application for the aggregate eligible allocation to all disparate municipalities. The joint application must determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. A memorandum of understanding (MOU) that identifies which jurisdiction will serve as the applicant or fiscal agent for joint funds must be completed and signed by the authorized representative for each participating jurisdiction. The signed MOU should be attached to the application. For a sample MOU, go to: www.bja.gov/Funding/JAGMOU.pdf.

Once an award is made, the fiscal agent will be responsible for distributing award funds to the other jurisdictions in the disparate group through subawards that include all appropriate award conditions. Unless specified differently, any reference in this solicitation to "applicant" or "recipient" includes each fiscal agent applying on behalf of a disparate group. Further, "subrecipients" includes those disparate jurisdictions that receive award funding from the fiscal agent, rather than directly from OJP.

#### Required compliance with applicable federal laws

By law, the chief executive (e.g., the mayor) of each unit of local government that applies for an FY 2018 JAG award must certify that the unit of local government will "comply with all provisions of [the JAG Program statute] and all other applicable Federal laws." To satisfy this requirement, each unit of local government applicant must submit three properly executed certifications using the forms shown in Appendices A, B, and C.

All applicants should understand that OJP awards, including certifications provided in connection with such awards, are subject to review by DOJ, including by OJP and by the DOJ Office of the Inspector General. Applicants also should understand that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in a

certification submitted to OJP in support of an application may be the subject of criminal prosecution, and also may result in civil penalties and administrative remedies for false claims or otherwise. Administrative remedies that may be available to OJP with respect to an FY 2018 award include suspension or termination of the award, placement on the DOJ high risk grantee list, disallowance of costs, and suspension or debarment of the recipient.

# National Incident-Based Reporting System (NIBRS) 3 percent set-aside

In FY 2016, the Federal Bureau of Investigation (FBI) formally announced its intention to sunset the Uniform Crime Reporting (UCR) Program's traditional Summary Reporting System (SRS) and replace it with the UCR Program's National Incident-Based Reporting System (NIBRS). By January 1, 2021, the FBI intends for NIBRS to be the law enforcement crime data reporting standard for the nation.

By statute, JAG Program awards are calculated using summary Part 1 violent crime data from the FBI's UCR Program. See 34 U.S.C. § 10156. Once SRS has been replaced by NIBRS, JAG award amounts will be calculated using NIBRS data. In preparation for the FBI's 2021 NIBRS compliance deadline, beginning in FY 2018, BJA is requiring, through the application of a special condition, that direct JAG award recipients not certified by their state (or, as applicable, the FBI) as NIBRS compliant to dedicate 3 percent of their JAG award toward achieving full compliance with the FBI's NIBRS data submission requirements under the UCR Program. The 3 percent requirement will assist state and local jurisdictions in working toward compliance to ensure they continue to have critical criminal justice funding available through JAG when SRS is replaced by NIBRS in FY 2021.

The requirement for a NIBRS set-aside will be applicable to all jurisdictions in a disparate group, but will not otherwise be applied to subawards. That is, the unit of local government serving as fiscal agent for a disparate group will be required by special condition to require each of the other jurisdictions in the disparate group to set aside 3 percent of FY 2018 JAG funds received by that jurisdiction to be used for NIBRS compliance activities, unless that jurisdiction receives a waiver from the BJA Director, as described below. Units of local government must clearly indicate in their application narratives and budgets what projects will be supported with this 3 percent set-aside.

The following are examples of costs and projects that relate to NIBRS implementation at the state or local level that could be funded under the JAG Program: software, hardware, and labor that directly support or enhance a state or agency's technical capacity for collecting, processing, and analyzing data reported by local law enforcement (LE) agencies and then submitting NIBRS data to the FBI; training personnel responsible for the state's Incident Based Reporting (IBR) program on receiving, processing, analyzing, and validating incident-based data from local LE agencies in their state; training local agencies in how to collect and submit NIBRS data; and technical assistance for LE agency personnel responsible for (1) managing the agency's crime incident data, (2) processing and validating the data, and (3) extracting and submitting IBR data to the state UCR Program, according to the states, and/or directly to the FBI, according to the NIBRS standard.

Units of local government that have been certified as NIBRS compliant by their state, or directly by the FBI, may submit a waiver to the BJA Director requesting an exemption from the 3 percent set-aside requirement. The waiver request from an appropriate local official must clearly state that the unit of local government has been certified as NIBRS compliant by their state, or directly by the FBI, and should be submitted with the application, or, as appropriate, through request for a Grant Adjustment Notice after an award is made. In any instance in which a waiver 11

request is submitted, the unit of local government must retain documentation on file that demonstrates the state or FBI certification of NIBRS-compliance. Such documentation must be made available for BJA review, upon request. The BJA Director will review all requests for waivers. If approved, states will not be subject to the 3 percent set-aside requirement.

Note: U.S. Territories and tribal jurisdictions will not be subject to the 3 percent set-aside for NIBRS-compliance until FY 2019. Tribal jurisdictions and the five U.S. territories are strongly encouraged to dedicate a portion of JAG funding to NIBRS conversion; however, this is not a requirement for FY 2018 JAG funding. Utilizing this phased-in approach will allow the territories and tribal jurisdictions to plan for the change in funding direction and provide BJA with time to coordinate or provide any necessary technical assistance surrounding this topic.

#### **BJA Areas of Emphasis**

BJA recognizes that many state and local criminal justice systems currently face challenging fiscal environments, and that an important, cost-effective way to relieve those pressures is to share or leverage resources through cooperation between federal, state, and local law enforcement. BJA intends to focus much of its work on the areas of emphasis described below, and encourages each recipient of an FY 2018 JAG award to join federal law enforcement agencies in addressing these challenges.

<u>Reducing Violent Crime</u> – Recognizing that crime problems, including felonious possession and use of a firearm and/or gang violence, illegal drug sales and distribution, human trafficking, and other related violent crime, vary from community to community, BJA encourages states to tailor their programs to the local crime issues, and to be data-informed in their work. States should consider investing JAG funds in programs to combat gun violence, and to improve the process for ensuring that persons prohibited from purchasing guns (see, e.g., 18 U.S.C. § 922(g)) are prevented from doing so, by utilizing technology such as eTrace and NIBIN to analyze evidence as well as by enhancing complete, accurate, and timely reporting to the FBI's NICS. States are also encouraged to coordinate with United States Attorneys Offices and Project Safe Neighborhood (PSN) grantees in order to leverage funding for violence reduction projects, and to coordinate their law enforcement activities with those of federal law enforcement agencies, such as the FBI, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration, and the Department of Homeland Security.

<u>Officer Safety and Wellness</u> – The issue of law enforcement safety and wellness is an important priority for BJA and DOJ. According to the *Preliminary 2017 Law Enforcement Officer Fatalities Report*, released by the National Law Enforcement Officers Memorial Fund (NLEOMF), as of December 28, 2017, there were 128 law enforcement line-of-duty deaths nationwide in 2017. Firearms-related deaths were the second leading cause of law enforcement deaths (44) in 2017, according to the NLEOMF report. Of those deaths, the leading circumstance was officers shot while responding to a domestic disturbance (7), followed by traffic enforcement, investigative activities, and dealing with a suspicious person or vehicle—6 instances in each circumstance. Additionally, deaths due to circumstances other than firearms- or traffic-related deaths increased by 61 percent in 2017, with 37 deaths compared to 23 in 2016. Sixteen of those deaths were due to job-related illnesses, including 10 due to heart attacks.

Based on the latest reports (2016 and 2015) from the FBI's *Law Enforcement Officers Killed and Assaulted* (LEOKA) data, there appeared to be a continuing increase in assaults between 2015 and 2016. There were 57,180 assaults in 2016 versus 50,212 in 2015. Of those, 16,535 resulted in officer injuries in 2016 compared to 14,281 in 2015. The 2016 LEOKA reports that

there were 17 officers killed in ambush situations, which is an increase from 2015 when 4 officers were killed in ambush situations.

BJA sees a vital need to focus not only on tactical officer safety concerns, but also on health and wellness as they affect officer performance and safety. It is important for law enforcement to have the tactical skills necessary, and also be physically and mentally well, to perform, survive, and be resilient in the face of the demanding duties of the profession. BJA encourages states to use JAG funds to address these needs by providing training, and paying for tuition and travel expenses related to attending trainings such as those available through the <u>BJA VALOR</u> Initiative, as well as funding for health and wellness programs for law enforcement officers.

<u>Border Security</u> – Securing U.S. borders (and internationally accessible waterways and -airports) is critically important to the reduction and prevention of transnational drugtrafficking networks and combating all forms of human trafficking within the United States (including sex and labor trafficking of foreign nationals and U.S. citizens of all sexes and ages). Smuggling and trafficking operations to, from and within the United States contribute to a significant increase in violent crime and U.S. deaths. BJA encourages units of local government to enhance border, waterway, and port security by using JAG funds to support law enforcement hiring, training, and technology enhancement, as well as cooperation and coordination among federal, state, local, and tribal law enforcement agencies.

<u>Collaborative Prosecution and Law Enforcement</u> – BJA supports strong partnerships between prosecutors and law enforcement, at all levels of government, in order to help take violent offenders off the street. BJA strongly encourages state and local law enforcement agencies to foster strong partnerships with federal law enforcement agencies, and with their own prosecutors, as well as federal prosecutors, to adopt new, cost-effective, collaborative strategies to reduce crime, particularly violent crime. (BJA's Innovative Prosecution Solutions Initiative is a related effort to promote partnerships between prosecutors and researchers to develop and deliver effective, data-driven, evidence-based strategies to solve chronic problems and fight crime.)

#### **Objectives and Deliverables**

In general, the FY 2018 JAG Program is designed to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice. Although the JAG Program provides assistance directly to states, through pass-through (and similar) requirements, the JAG Program also is designed to assist units of local government with respect to criminal justice.

As discussed in more detail in the <u>General Information about Post-federal Award Reporting</u> <u>Requirements</u> discussion, a state that receives an FY 2018 JAG award will be required to produce various types of reports and to submit data related to performance measures and accountability. The objectives and deliverables are directly related to the JAG Program accountability measures at <u>https://bjapmt.ojp.gov/help/jagdocs.html</u>.

#### **Evidence-based Programs or Practices**

OJP strongly emphasizes the use of data and evidence in policy making and program development in criminal justice, juvenile justice, and crime victim services. OJP is committed to:

Improving the quantity and quality of evidence OJP generates.

- Integrating evidence into program, practice, and policy decisions within OJP and the field.
- Improving the translation of evidence into practice.

OJP considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence, generally obtained through one or more outcome evaluations. Causal evidence documents a relationship between an activity or intervention (including technology) and its intended outcome, including measuring the direction and size of a change, and the extent to which a change may be attributed to the activity or intervention. Causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change. The strength of causal evidence, based on the factors described above, will influence the degree to which OJP considers a program or practice to be evidence-based. The OJP CrimeSolutions.gov website at <a href="https://www.crimesolutions.gov/">https://www.crimesolutions.gov/</a> is one resource that applicants may use to find information about evidence-based programs in criminal justice, juvenile justice, and crime victim services.

A useful matrix of evidence-based policing programs and strategies is available through BJA's Matrix Demonstration Project. BJA offers a number of program models designed to effectively implement promising and evidence-based strategies through the BJA "Innovation Suite" of programs including Innovations in Policing, Prosecution, Supervision, Reentry, and others (see <a href="https://www.bja.gov/Programs/CRPPE/innovationssuite.html">https://www.bja.gov/Programs/CRPPE/innovationssuite.html</a>). BJA encourages states to use JAG funds to support these "crime innovation" strategies, including effective partnerships with universities and research partners and with non-traditional criminal justice partners.

# Information Regarding Potential Evaluation of Programs and Activities

The Department of Justice has prioritized the use of evidence-based programming and deems it critical to continue to build and expand the evidence informing criminal and juvenile justice programs and crime victim services to reach the highest level of rigor possible. Therefore, applicants should note that OJP may conduct or support an evaluation of the programs and activities funded under this solicitation. Recipients and subrecipients will be expected to cooperate with program-related assessments or evaluation efforts, including through the collection and provision of information or data requested by OJP (or its designee) for the assessment or evaluation of any activities and/or outcomes of those activities funded under this solicitation. The information or data requested may be in addition to any other financial or performance data already required under this program.

#### **BJA Success Stories**

The BJA-sponsored <u>Success Stories</u> web page features projects that have demonstrated success or shown promise in reducing crime and positively impacting communities. This web page is a valuable resource for states, localities, territories, tribes, and criminal justice professionals who seek to identify and learn about JAG and other successful BJA-funded projects linked to innovation, crime reduction, and evidence-based practices. **BJA strongly encourages the recipient to submit success stories annually (or more frequently).** 

If a state has a success story it would like to submit, it may be submitted through <u>My BJA</u> <u>account</u>, using "add a Success Story" and the Success Story Submission form. Register for a My BJA account using this <u>registration</u> link.

# **B. Federal Award Information**

BJA estimates that it will make up to 1,147 local awards totaling an estimated \$84,500,000.

Awards of at least \$25,000 are 4 years in length, and performance periods will be from October 1, 2017 through September 30, 2021. Extensions beyond this period may be made on a caseby-case basis at the discretion of BJA and must be requested via GMS no fewer than 30 days prior to the grant end date.

Awards of less than \$25,000 are 2 years in length, and performance periods will be from October 1, 2017 through September 30, 2019. Extensions of up to 2 years can be requested for these awards via GMS no fewer than 30 days prior to the grant end date, and will be automatically granted upon request.

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by statute.

#### Type of Award

BJA expects that any award under this solicitation will be in the form of a grant. See <u>Statutory</u> and <u>Regulatory Requirements; Award Conditions</u>, under <u>Section F. Federal Award</u> <u>Administration Information</u>, for a brief discussion of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants.

JAG awards are based on a statutory formula as described below:

Once each fiscal year's overall JAG Program funding level is determined, BJA works with the Bureau of Justice Statistics (BJS) to begin a four-step grant award calculation process, which, in general, consists of:

- (1) Computing an initial JAG allocation for each state, based on its share of violent crime and population (weighted equally).
- (2) Reviewing the initial JAG allocation amount to determine if the state allocation is less than the minimum award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the state is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG funds. Each of the remaining states receives the minimum award plus an additional amount based on its share of violent crime and population.
- (3) Dividing each state's final award amount (except for the territories and District of Columbia) between the state and its units of local governments at a rate of 60 and 40 percent, respectively.
- (4) Determining unit of local government award allocations, which are based on their proportion of the state's 3-year violent crime average. If the "eligible award amount" for a particular unit of local government, as determined on this basis, is \$10,000 or more, then the unit of local government is eligible to apply directly to OJP (under the JAG Local solicitation) for a JAG award. If the "eligible award amount" to a particular unit of local government, as determined on this basis, is less than \$10,000, however, the funds are not made available for a direct award to that particular unit of local government, but 15

instead are added to the amount that otherwise would have been awarded to the state. (Additional requirements related to "disparate" jurisdictions are summarized <u>above</u>).

#### **Financial Management and System of Internal Controls**

Award recipients and subrecipients (including recipients or subrecipients that are pass-through entities<sup>1</sup>) must, as described in the Part 200 Uniform Requirements<sup>2</sup> as set out at 2 C.F.R. 200.303:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that [the recipient (and any subrecipient)] is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor [the recipient's (and any subrecipient's)] compliance with statutes, regulations, and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or [the recipient (or any subrecipient)] considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality.

To help ensure that applicants understand the administrative requirements and cost principles, OJP encourages prospective applicants to enroll, at no charge, in the DOJ Grants Financial Management Online Training, available at <u>https://ojpfgm.webfirst.com/</u>. (This training is required for all OJP award recipients.)

Also, applicants should be aware that OJP collects information from applicants on their financial management and systems of internal controls (among other information) which is used to make award decisions. Under <u>Section D. Application and Submission Information</u>, applicants may access and review the OJP Financial Management and System of Internal Controls Questionnaire (<u>https://ojp.gov/funding/Apply/Resources/FinancialCapability.pdf</u>) that OJP requires **all** applicants (other than an individual applying in his/her personal capacity) to download, complete, and submit as part of the application.

<sup>&</sup>lt;sup>1</sup> For purposes of this solicitation, the phrase "pass-through entity" includes any recipient or subrecipient that provides a subaward ("subgrant") to carry out part of the funded award or program.

<sup>&</sup>lt;sup>2</sup> The "Part 200 Uniform Requirements" refers to the DOJ regulation at 2 C.F.R Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

#### **Budget and Financial Information**

<u>Trust Fund</u> – Units of local government may draw down JAG funds either in advance or on a reimbursement basis. Non-federal entities must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 CFR 200.305(b)(8)). Subrecipients that draw down JAG funds in advance are subject to the same requirement and must first establish an interest-bearing account.

<u>Tracking and reporting regarding JAG funds used for administrative costs</u> – As indicated earlier, up to 10 percent of a JAG award, including up to 10 percent of any earned interest, may be used for costs associated with administering the award. Administrative costs (when utilized) must be tracked separately; a recipient must report in separate financial status reports (SF-425) those expenditures that specifically relate to each particular JAG award during any particular reporting period.

<u>No commingling</u> – Both the unit of local government recipient and all subrecipients of JAG funds are prohibited from commingling funds on a program-by-program or project-by-project basis. For this purpose, use of the administrative JAG funds to perform work across all active awards in any one year is not considered commingling.

#### Cost Sharing or Match Requirement

The JAG Program does not require a match. However, if a successful application proposes a voluntary match amount, and OJP approves the budget, the total match amount incorporated into the approved budget becomes mandatory and subject to audit.

For additional cost sharing and match information, see the DOJ Grants Financial Guide at https://ojp.gov/financialguide/DOJ/index.htm.

## Pre-agreement Costs (also known as Pre-award Costs)

Pre-agreement costs are costs incurred by the applicant prior to the start date of the period of performance of the grant award.

OJP does **not** typically approve pre-agreement costs. An applicant must request and obtain the prior written approval of OJP for any such costs. All such costs incurred prior to award and prior to approval of the costs are incurred *at the sole risk* of the applicant. (Generally, no applicant should incur project costs *before* submitting an application requesting federal funding for those costs.)

Should there be extenuating circumstances that make it appropriate for OJP to consider approving pre-agreement costs, the applicant may contact the point of contact listed on the title page of this solicitation for the requirements concerning written requests for approval. If approved in advance by OJP, award funds may be used for pre-agreement costs, consistent with the recipient's approved budget and applicable cost principles. See the section on Costs Requiring Prior Approval in the DOJ Grants Financial Guide at https://ojp.gov/financialguide/DOJ/index.htm for more information.

# Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs

OJP strongly encourages every applicant that proposes to use award funds for any conference-, meeting-, or training-related activity (or similar event) to review carefully—before submitting an application—the OJP and DOJ policy and guidance on approval, planning, and reporting of such

## events, available at:

https://www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm. OJP policy and guidance (1) encourage minimization of conference, meeting, and training costs; (2) require prior written approval (which may affect project timelines) of most conference, meeting, and training costs for cooperative agreement recipients, as well as some conference, meeting, and training costs for grant recipients; and (3) set cost limits, which include a general prohibition of all food and beverage costs.

#### Costs Associated with Language Assistance (if applicable)

If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services or benefits for individuals with limited English proficiency may be allowable. Reasonable steps to provide meaningful access to services or benefits may include interpretation or translation services, where appropriate.

For additional information, see the "Civil Rights Compliance" section under "<u>Overview of Legal</u> <u>Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2018</u> <u>Awards</u>" in the OJP Funding Resource Center at <u>https://ojp.gov/funding/index.htm</u>.

## C. Eligibility Information

For information on eligibility, see the title page.

Note that, as discussed in more detail below, the certifications regarding compliance with certain federal laws. (See Appendices B and C) must be executed and submitted before a unit of local government (other than an Indian tribal government) can make a valid award acceptance. Also, a unit of local government may not access award funds (and its award will include a condition that withholds funds) until it submits a properly executed "Certifications and Assurances by Chief Executive of Applicant Government." (See Appendix A).

## **D.** Application and Submission Information

#### What an Application Should Include

This section describes in detail what an application should include. An applicant should anticipate that if it fails to submit an application that contains all of the specified elements, it may negatively affect the review of its application; and, should a decision be made to make an award, it may result in the inclusion of award conditions that preclude the recipient from accessing or using award funds until the recipient satisfies the conditions and OJP makes the funds available.

NOTE: OJP has combined the Budget Detail Worksheet and Budget Narrative in a single document collectively referred to as the Budget Detail Worksheet. See "Budget Information and Associated Documentation" below for more information about the Budget Detail Worksheet and where it can be accessed.

OJP strongly recommends that applicants use appropriately descriptive file names (e.g., "Program Narrative," "Budget Detail Worksheet," "Timelines," "Memoranda of Understanding,"

"Résumés") for all attachments. Also, OJP recommends that applicants include résumés in a single file.

Please review the "Note on File Names and File Types" under <u>How to Apply</u> to be sure applications are submitted in permitted formats.

In general, if a unit of local government fails to submit required information or documents, OJP either will return the unit of local government's application in the Grants Management System (GMS) for submission of the missing information or documents, or will attach a condition to the award that will withhold award funds until the necessary information and documents are submitted. (As discussed elsewhere in this solicitation, the certification regarding compliance with certain federal laws—which are set out at <u>Appendix B</u> and <u>Appendix C</u>—will be handled differently. Unless and until those certifications are submitted, the unit of local government (other than an Indian tribal government) will be unable to make a valid acceptance of the award.)

1. Information to Complete the Application for Federal Assistance (SF-424) The SF-424 is a required standard form used as a cover sheet for submission of preapplications, applications, and related information. GMS takes information from the applicant's profile to populate the fields on this form.

To avoid processing delays, an applicant must include an accurate legal name on its SF-424. Current OJP award recipients, when completing the field for "Legal Name," should use the same legal name that appears on the prior year award document, which is also the legal name stored in OJP's financial system. On the SF-424, enter the Legal Name in box 5 and Employer Identification Number (EIN) in box 6 exactly as it appears on the prior year award document. An applicant with a current, active award(s) must ensure that its GMS profile is current. If the profile is not current, the applicant should submit a Grant Adjustment Notice updating the information on its GMS profile prior to applying under this solicitation.

A new applicant entity should enter its official legal name, its address, its EIN, and its Data Universal Numbering System (DUNS). A new applicant entity should attach official legal documents to its application (e.g., articles of incorporation, 501(c)(3) status documentation, organizational letterhead) to confirm the legal name, address, and EIN entered into the SF-424. OJP will use the System for Award Management (SAM) to confirm the legal name and DUNS number entered in the SF-424; therefore, an applicant should ensure that the information entered in the SF-424 matches its current registration in SAM. See the How to Apply section for more information on SAM and DUNS numbers.

#### Intergovernmental Review:

This solicitation ("funding opportunity") is subject to <u>Executive Order 12372</u>. An applicant may find the names and addresses of State Single Points of Contact (SPOCs) at the following website: https://www.whitehouse.gov/wp-

content/uploads/2017/11/Intergovernmental -Review- SPOC 01 2018 OFFM.pdf. If the state appears on the SPOC list, the applicant must contact the state SPOC to find out about, and comply with, the state's process under E.O. 12372. In completing the SF-424, an applicant whose state appears on the SPOC list is to make the appropriate selection in response to question 16 once the applicant has complied with its State E.O. 12372 process. (An applicant whose state does not appear on the SPOC list should answer question 16 by

selecting the response that the "Program is subject to E.O. 12372 but has not been selected by the State for review.")

#### 2. Project Identifiers

Applications should identify at least three and no more than ten project identifiers that would be associated with proposed project activities. The list of identifiers can be found at www.bja.gov/funding/JAGIdentifiers.pdf.

#### 3. Program Narrative

The following sections should be included as part of the program narrative<sup>3</sup>:

- a. <u>Description of the Issues</u> Identify the unit of local government's strategy/funding priorities for the FY 2018 JAG funds, the subgrant award process and timeline, and a description of the programs to be funded over the grant period. Units of local government are strongly encouraged to prioritize the funding on evidence-based projects.
- b. <u>Project Design and Implementation</u> Describe the unit of local government's strategic planning process, if any, that guides its priorities and funding strategy. This should include a description of how the local community is engaged in the planning process and the data and analysis utilized to support the plan; it should identify the stakeholders currently participating in the strategic planning process, the gaps in the needed resources for criminal justice purposes, and how JAG funds will be coordinated with state and related justice funds.
- c. <u>Capabilities and Competencies</u> Describe any additional strategic planning/coordination efforts in which the units of local government participates with other criminal justice criminal/juvenile justice agencies in the state.
- d. <u>Plan for Collecting the Data Required for this Solicitation's Performance Measures</u> OJP will require each successful applicant to submit specific performance measures that demonstrate the results of the work carried out under the award (see "<u>General</u> <u>Information about Post-Federal Award Reporting Requirements</u>" in <u>Section F. Federal</u> <u>Award Administration Information</u>). The performance measures data directly relate to the objectives and deliverables identified under <u>Objectives and Deliverables</u> in <u>Section A.</u> <u>Program Description</u>.

Applicants should visit OJP's performance measurement page at <u>www.ojp.gov/performance</u> for an overview of performance measurement activities at OJP.

Post award, recipients will be required to submit quarterly performance metrics through BJA's Performance Measurement Tool (PMT), located at: <u>https://bjapmt.ojp.gov</u>. The application should describe the applicant's plan for collection of all of the performance measures data listed in the JAG Program accountability measures at: <u>https://bjapmt.ojp.gov/help/jagdocs.html</u>.

<sup>&</sup>lt;sup>3</sup> For information on subawards (including the details on proposed subawards that should be included in the application), see "Budget and Associated Documentation" under <u>Section D. Application and Submission Information</u>. 20

The application should demonstrate the applicant's understanding of the performance data reporting requirements for this grant program and detail how the applicant will gather the required data should it receive funding.

Please note that applicants are **not** required to submit performance data with the application. Performance measures information is included as an alert that successful applicants will be required to submit performance data as part of the reporting requirements under an award.

#### **Note on Project Evaluations**

An applicant that proposes to use award funds through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute "research" for purposes of applicable DOJ human subjects protection regulations. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP's performance measure data reporting requirements, likely do not constitute "research." Each applicant should provide sufficient information for OJP to determine whether the particular project it proposes would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research that appears at 28 C.F.R. Part 46 ("Protection of Human Subjects").

Research, for the purposes of human subjects protection for OJP-funded programs, is defined as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." 28 C.F.R. 46.102(d).

For additional information on determining whether a proposed activity would constitute research for purposes of human subjects protection, applicants should consult the decision tree in the "Research and the Protection of Human Subjects" section of the "Requirements related to Research" web page of the "<u>Overview of Legal Requirements Generally</u> <u>Applicable to OJP Grants and Cooperative Agreements - FY 2018 Awards</u>" available through the OJP Funding Resource Center at <u>https://ojp.gov/funding/index.htm</u>. Every prospective applicant whose application may propose a research or statistical component also should review the "Data Privacy and Confidentiality Requirements" section on that web page.

## 4. Budget and Associated Documentation

The Budget Detail Worksheet and the Budget Narrative are now combined in a single document collectively referred to as the Budget Detail Worksheet. The Budget Detail Worksheet is a user-friendly, fillable, Microsoft Excel-based document designed to calculate totals. Additionally, the Excel workbook contains worksheets for multiple budget years that can be completed as necessary. All applicants should use the Excel version when completing the proposed budget in an application, except in cases where the applicant does not have access to Microsoft Excel or experiences technical difficulties. If an applicant does not have access to Microsoft Excel or experiences technical accessible Adobe Portable Document Format (PDF) version.

Both versions of the Budget Detail Worksheet can be accessed at https://ojp.gov/funding/Apply/Forms/BudgetDetailWorksheet.htm.

#### a. Budget Detail Worksheet

The Budget Detail Worksheet should provide the detailed computation for each budget line item, listing the total cost of each and showing how it was calculated by the applicant. For example, costs for personnel should show the annual salary rate and the percentage of time devoted to the project for each employee paid with grant funds. The Budget Detail Worksheet should present a complete itemization of all proposed costs.

For questions pertaining to budget and examples of allowable and unallowable costs, see the DOJ Grants Financial Guide at <a href="https://ojp.gov/financialguide/DOJ/index.htm">https://ojp.gov/financialguide/DOJ/index.htm</a>.

#### b. Budget Narrative

The budget narrative should thoroughly and clearly describe <u>every</u> category of expense listed in the proposed budget detail worksheet. OJP expects proposed budgets to be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities). This narrative should include a full description of all costs, including funds set aside for NIBRS project(s) and administrative costs (if applicable).

An applicant should demonstrate in its budget narrative how it will maximize cost effectiveness of award expenditures. Budget narratives should generally describe cost effectiveness in relation to potential alternatives and the objectives of the project. For example, a budget narrative should detail why planned in-person meetings are necessary, or how technology and collaboration with outside organizations could be used to reduce costs, without compromising quality.

The budget narrative should be mathematically sound and correspond clearly with the information and figures provided in the Budget Detail Worksheet. The narrative should explain how the applicant estimated and calculated all costs, and how those costs are necessary to the completion of the proposed project. The narrative may include tables for clarification purposes, but need not be in a spreadsheet format. As with the Budget Detail Worksheet, the budget narrative should describe costs by year

## c. Information on Proposed Subawards (if any), as well as on Proposed Procurement Contracts (if any)

Applicants for OJP awards typically may propose to make "subawards." Applicants also may propose to enter into procurement "contracts" under the award.

Whether an action—for federal grants administrative purposes—is a subaward or procurement contract is a critical distinction as significantly different rules apply to subawards and procurement contracts. If a recipient enters into an agreement that is a subaward of an OJP award, specific rules apply—many of which are set by federal statutes and DOJ regulations; others by award conditions. These rules place particular responsibilities on an OJP recipient for any subawards the OJP recipient may make. The rules determine much of what the written subaward agreement itself must require or provide. The rules also determine much of what an OJP recipient must do both before and after it makes a subaward. If a recipient enters into an agreement that is a

procurement contract under an OJP award, a substantially different set of federal rules applies.

OJP has developed the following guidance documents to help clarify the differences between subawards and procurement contracts under an OJP award and outline the compliance and reporting requirements for each. This information can be accessed online at https://ojp.gov/training/training.htm.

- <u>Subawards under OJP Awards and Procurement Contracts under Awards: A</u> Toolkit for OJP Recipients.
- Checklist to Determine Subrecipient or Contractor Classification.
- Sole Source Justification Fact Sheet and Sole Source Review Checklist.

In general, the central question is the relationship between what the third-party will do under its agreement with the recipient and what the recipient has committed (to OJP) to do under its award to further a public purpose (e.g., services the recipient will provide, products it will develop or modify, research or evaluation it will conduct). If a third party will provide some of the services the recipient has committed (to OJP) to provide, will develop or modify all or part of a product the recipient has committed (to OJP) to develop or modify, or conduct part of the research or evaluation the recipient has committed (to OJP) to conduct, OJP will consider the agreement with the third party a subaward for purposes of federal grants administrative requirements.

This will be true **even** if the recipient, for internal or other non-federal purposes, labels or treats its agreement as a procurement, a contract, or a procurement contract. Neither the title nor the structure of an agreement determines whether the agreement–for purposes of federal grants administrative requirements–is a "subaward" or is instead a procurement "contract" under an award. The substance of the relationship should be given greater consideration than the form of agreement between the recipient and the outside entity.

# 1. Information on proposed subawards and required certifications regarding certain federal laws from certain subrecipients

<u>General requirement for federal authorization of any subaward; statutory</u> <u>authorizations of subawards under the JAG Program statute.</u> Generally, a recipient of an OJP award may not make subawards ("subgrants") unless the recipient has specific federal authorization to do so. Unless an applicable statute or DOJ regulation specifically authorizes (or requires) particular subawards, a recipient must have authorization from OJP before it may make a subaward.

JAG subawards that are required or specifically authorized by statute (see 34 U.S.C. § 10152(a) and 34 U.S.C. § 10156) do not require prior approval to authorize subawards. This includes subawards made by units of local government under the JAG Program.

A particular subaward may be authorized by OJP because the recipient included a sufficiently detailed description and justification of the proposed subaward in the application as approved by OJP. If, however, a particular subaward is not authorized by federal statute or regulation and is not sufficiently described and justified in the

application as approved by OJP, the recipient will be required, post award, to request and obtain written authorization from OJP before it may make the subaward.

If an applicant proposes to make one or more subawards to carry out the federal award and program, and those subawards are not specifically authorized (or required) by statute or regulation, the applicant should: (1) identify (if known) the proposed subrecipient(s), (2) describe in detail what each subrecipient will do to carry out the federal award and federal program, and (3) provide a justification for the subaward(s), with details on pertinent matters such as special qualifications and areas of expertise. Pertinent information on subawards should appear not only in the Program Narrative, but also in the Budget Detail Worksheet and Budget Narrative.

Required certifications, generally relating to various federal statutes, from any proposed subrecipient that is a state or local government entity. Before a unit of local government may subaward FY 2018 award funds to another unit of local government or to a public institution of higher education, it will be required (by specific award condition, the terms of which will govern) to obtain a properly executed certification, generally relating to various specific federal laws, from the proposed subrecipient. (This requirement regarding these federal laws will not apply to subawards to Indian tribes). The specific certification the unit of local government must require from another unit of local government will vary somewhat from the specific certification it must require from a public institution of higher education. The forms will be posted and available for download at: <a href="https://ojp.gov/funding/Explore/SampleCertifications-BUSC1373.htm">https://ojp.gov/funding/Explore/SampleCertifications-BUSC1373.htm</a>.

# 2. Information on proposed procurement contracts (with specific justification for proposed noncompetitive contracts over \$150,000)

Unlike a recipient contemplating a subaward, a recipient of an OJP award generally does not need specific prior federal authorization to enter into an agreement that—for purposes of federal grants administrative requirements—is considered a procurement contract, **provided that** (1) the recipient uses its own documented procurement procedures and (2) those procedures conform to applicable federal law, including the Procurement Standards of the (DOJ) Part 200 Uniform Requirements (as set out at 2 C.F.R. 200.317 - 200.326). The Budget Detail Worksheet and budget narrative should identify proposed procurement contracts. (As discussed above, subawards must be identified and described separately from procurement contracts.)

The Procurement Standards in the Part 200 Uniform Requirements, however, reflect a general expectation that agreements that (for purposes of federal grants administrative requirements) constitute procurement "contracts" under awards will be entered into on the basis of full and open competition. All noncompetitive (sole source) procurement contracts must meet the OJP requirements outlined at <u>https://ojp.gov/training/subawards-procurement.htm</u>. If a proposed procurement contract would exceed the simplified acquisition threshold—currently, \$150,000—a recipient of an OJP award may not proceed without competition unless and until the recipient receives specific advance authorization from OJP to use a non-competitive approach for the procurement. An applicant that (at the time of its application) intends—without competition—to enter into a procurement contract that would exceed \$150,000 should include a detailed justification that explains to OJP why, in the particular circumstances, it is appropriate to proceed without competition.

If the applicant receives an award, sole source procurements that do not exceed the Simplified Acquisition Threshold (currently \$150,000) must have written justification for the noncompetitive procurement action maintained in the procurement file. If a procurement file does not have the documentation that meets the criteria outlined in 2 C.F.R. 200, the procurement expenditures may not be allowable. Sole source procurement over the \$150,000 Simplified Acquisition Threshold must have prior approval from OJP using a Sole Source Grant Adjustment Notice (GAN). Written documentation justifying the noncompetitive procurement must be submitted with the GAN and maintained in the procurement file.

#### d. Pre-Agreement Costs

For information on pre-agreement costs, see Section B. Federal Award Information.

### 5. Indirect Cost Rate Agreement (if applicable)

Indirect costs may be charged to an award only if:

- (a) The recipient has a current (unexpired), federally approved indirect cost rate; or
- (b) The recipient is eligible to use, and elects to use, the "de minimis" indirect cost rate described in the (DOJ) Part 200 Uniform Requirements, as set out at 2 C.F.R. 200.414(f).

**Note**: This rule does not eliminate or alter the JAG-specific restriction in federal law that charges for administrative costs may not exceed 10 percent of the award amount, regardless of the approved indirect cost rate.

An applicant with a current (unexpired) federally approved indirect cost rate is to attach a copy of the indirect cost rate agreement to the application. An applicant that does not have a current federally approved rate may request one through its cognizant federal agency, which will review all documentation and approve a rate for the applicant entity, or, if the applicant's accounting system permits, applicants may propose to allocate costs in the direct cost categories.

For assistance with identifying the appropriate cognizant federal agency for indirect costs, please contact the OCFO Customer Service Center at 1–800–458–0786 or at <u>ask.ocfo@usdoi.gov</u>. If DOJ is the cognizant federal agency, applicants may obtain information needed to submit an indirect cost rate proposal at: <u>www.ojp.gov/funding/Apply/Resources/IndirectCosts.pdf</u>.

Certain OJP recipients have the option of electing to use the "de minimis" indirect cost rate. An applicant that is eligible to use the "de minimis" rate that wishes to use the "de minimis" rate should attach written documentation to the application that advises OJP of both-- (1) the applicant's eligibility to use the "de minimis" rate, and (2) its election to do so. If an eligible applicant elects the "de minimis" rate, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. The "de minimis" rate may no longer be used once an approved federally-negotiated indirect cost rate is eligible to use the "de minimis" rate.) For the "de minimis" rate requirements (including additional information on eligibility to elect to use the rate), see Part 200 Uniform Requirements, at <u>2 C.F.R. 200.414(f)</u>.

#### 6. Tribal Authorizing Resolution

A tribe, tribal organization, or third party that proposes to provide direct services or assistance to residents on tribal lands should include in its application a resolution, letter, affidavit, or other documentation, as appropriate, that demonstrates (as a legal matter) that the applicant has the requisite authorization from the tribe(s) to implement the proposed project on tribal lands. In those instances when an organization or consortium of tribes applies for an award on behalf of a tribe or multiple specific tribes, the application should include appropriate legal documentation, as described above, from all tribes that would receive services or assistance under the award. A consortium of tribes for which existing consortium bylaws allow action without support from all tribes in the consortium (i.e., without an authorizing resolution or comparable legal documentation from each tribal governing body) may submit, instead, a copy of its consortium bylaws with the application.

# 7. Financial Management and System of Internal Controls Questionnaire (including applicant disclosure of high risk status)

Every OJP applicant is to download, complete, and submit the OJP Financial Management and System of Internal Controls Questionnaire (Questionnaire) located at <u>https://ojp.gov/funding/Apply/Resources/FinancialCapability.pdf</u> as part of its application. The Questionnaire helps OJP assess the financial management and internal control systems, and the associated potential risks of an applicant as part of the pre-award risk assessment process.

The Questionnaire should only be completed by financial staff most familiar with the applicant's systems, policies, and procedures in order to ensure that the correct responses are recorded and submitted to OJP. The responses on the Questionnaire directly impact the pre-award risk assessment and should accurately reflect the applicant's financial management and internal control system at the time of the application. The pre-award risk assessment is only one of multiple factors and criteria used in determining funding. However, a pre-award risk assessment that indicates that an applicant poses a higher risk to OJP may affect the funding decision and/or result in additional reporting requirements, monitoring, special conditions, withholding of award funds, or other additional award requirements.

Among other things, the form requires each applicant to disclose whether it currently is designated "high risk" by a federal grant-making agency outside of DOJ. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the applicant's past performance, or other programmatic or financial concerns with the applicant. If an applicant is designated high risk by another federal awarding agency, the applicant must provide the following information:

- The federal awarding agency that currently designates the applicant high risk.
- The date the applicant was designated high risk.
- The high risk point of contact at that federal awarding agency (name, phone number, and email address).
- The reasons for the high risk status, as set out by the federal awarding agency.

OJP seeks this information to help ensure appropriate federal oversight of OJP awards. An applicant that is considered "high risk" by another federal awarding agency is not automatically disqualified from receiving an OJP award. OJP may, however, consider the 26

information in award decisions, and may impose additional OJP oversight of any award under this solicitation (including through the conditions that accompany the award document).

#### 8. Disclosure of Lobbying Activities

Each applicant must complete and submit a <u>Disclosure of Lobbying Activities form (SF-LLL)</u>. An applicant that expends any funds for lobbying activities is to provide all of the information requested on the form. An applicant that does not expend any funds for lobbying activities is to enter "N/A" in the text boxes for item 10 ("a. Name and Address of Lobbying Registrant" and "b. Individuals Performing Services").

## 9. Certifications and Assurances by the Chief Executive of the Applicant Government A JAG application is not complete, and a unit of local government may not access award funds, unless the chief executive of the applicant unit of local government (e.g., the mayor) properly executes, and the unit of local government submits, the "Certifications and Assurances by the Chief Executive of the Applicant Government" attached to this solicitation as Appendix A.

OJP will not deny an application for an FY 2018 award for failure to submit these "Certifications and Assurances by the Chief Executive of the Applicant Government" by the application deadline, but a unit of local government will not be able to access award funds (and its award will include a condition that withholds funds) until it submits these certifications and assurances, properly executed by the chief executive of the unit of local government (e.g., the mayor).

# 10. Certifications by the Chief Legal Officer of the Applicant Government

The chief legal officer of an applicant unit of local government (e.g., the City Attorney) is to carefully review the two certifications attached to this solicitation as <u>Appendix B</u> and <u>Appendix C</u>. If the chief legal officer determines that he or she may execute the certifications, the unit of local government is to submit the certification as part of its application. (Note: this requirement does not apply to Indian tribal governments.)

As discussed further in the <u>Federal Award Notices</u> section, a unit of local government (other than an Indian tribal government) applicant will be **unable to make a valid award acceptance** of an FY 2018 JAG award unless and until both properly executed certifications by its chief legal officer are received by OJP on or before the day the unit of local government submits an executed award document.

## **11. Additional Attachments**

a. Information regarding Communication with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE)

Each applicant must provide responses to the following questions as an attachment to the application:

- (1) Does your jurisdiction have any laws, policies, or practices related to whether, when, or how employees may communicate with DHS or ICE?
- (2) Is your jurisdiction subject to any laws from a superior political entity (e.g., a state law that binds a city) that meet the description in question 1?
- (3) If yes to either:
  - Please provide a copy of each law or policy;

- Please describe each practice; and
- Please explain how the law, policy, or practice complies with section 1373.

See Appendix E for a template that applicants may use to prepare this attachment.

Note: Responses to these questions must be provided by the applicant as part of the JAG application. Further, the requirement to provide this information applies to all tiers of JAG funding, for all subawards made to state or local government entities, including public institutions of higher education. All subrecipient responses must be collected and maintained by the direct recipient of JAG funding and must be made available to DOJ upon request. Responses to these questions are not required from subrecipients that are either a tribal government/organization, a nonprofit organization, or a private institution of higher education.

OJP will not deny an application for an FY 2018 award for failure to submit these required responses by the application deadline, but a unit of local government will not be able to access award funds (and its award will include a condition that withholds funds) until it submits these responses.

#### b. Applicant Disclosure of Pending Applications

Each applicant is to disclose whether it has (or is proposed as a subrecipient under) any pending applications for federally funded grants or cooperative agreements that (1) include requests for funding to support the same project being proposed in the application under this solicitation and (2) would cover identical cost items outlined in the budget submitted to OJP as part of the application under this solicitation. The applicant is to disclose applications made directly to federal awarding agencies, and also applications for subawards of federal funds (e.g., applications to state agencies that will subaward ("subgrant") federal funds).

OJP seeks this information to help avoid any inappropriate duplication of funding. Leveraging multiple funding sources in a complementary manner to implement comprehensive programs or projects is encouraged and is not seen as inappropriate duplication.

Each applicant that has one or more pending applications as described above is to provide the following information about pending applications submitted within the last 12 months:

- The federal or state funding agency
- The solicitation name/project name
- The point of contact information at the applicable federal or state funding agency

Federal or State Funding Agency	Solicitation Name/Project Name	Name/Phone/Email for Point of Contact at Federal or State Funding Agency
DOJ/Office of	COPS Hiring	Jane Doe, 202/000-0000; jane.doe@usdoj.gov
Community Oriented Policing	Program	
Services (COPS)		
Health & Human	Drug-Free	John Doe, 202/000-0000; john.doe@hhs.gov
Services/	Communities	
Substance Abuse	Mentoring	
and Mental Health	Program/ North	
Services	County Youth	
Administration	Mentoring	
	Program	

Each applicant should include the table as a separate attachment to its application. The file should be named "Disclosure of Pending Applications." The applicant Legal Name on the application must match the entity named on the disclosure of pending applications statement.

Any applicant that does not have any pending applications as described above is to submit, as a separate attachment, a statement to this effect: "[Applicant Name on SF-424] does not have (and is not proposed as a subrecipient under) any pending applications submitted within the last 12 months for federally funded grants or cooperative agreements (or for subawards under federal grants or cooperative agreements) that request funding to support the same project being proposed in this application to OJP and that would cover identical cost items outlined in the budget submitted as part of this application."

# c. Research and Evaluation Independence and Integrity (if applicable)

If an application involves research (including research and development) and/or evaluation, the applicant must demonstrate research/evaluation independence and integrity, including appropriate safeguards, before it may receive award funds. The applicant must demonstrate independence and integrity regarding both this proposed research and/or evaluation, and any current or prior related projects.

Each application should include an attachment that addresses both i. and ii. below.

- For purposes of this solicitation, each applicant is to document research and evaluation independence and integrity by including one of the following two items:
  - a. A specific assurance that the applicant has reviewed its application to identify any actual or potential apparent conflicts of interest (including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients), and that the applicant has identified no such conflicts of interest—whether personal or financial or organizational (including on the part of the applicant entity or on the part of staff, investigators, or subrecipients)—that could affect the

independence or integrity of the research, including the design, conduct, and reporting of the research.

#### OR

- b. A specific description of actual or potential apparent conflicts of interest that the applicant has identified-including through review of pertinent information on the principal investigator, any co-principal investigators, and any subrecipients-that could affect the independence or integrity of the research, including the design, conduct, or reporting of the research. These conflicts may be personal (e.g., on the part of investigators or other staff), financial, or organizational (related to the applicant or any subrecipient entity). Some examples of potential investigator (or other personal) conflict situations are those in which an investigator would be in a position to evaluate a spouse's work product (actual conflict), or an investigator would be in a position to evaluate the work of a former or current colleague (potential apparent conflict). With regard to potential organizational conflicts of interest, as one example, generally an organization would not be given an award to evaluate a project, if that organization had itself provided substantial prior technical assistance to that specific project or a location implementing the project (whether funded by OJP or other sources), because the organization in such an instance might appear to be evaluating the effectiveness of its own prior work. The key is whether a reasonable person understanding all of the facts would be able to have confidence that the results of any research or evaluation project are objective and reliable. Any outside personal or financial interest that casts doubt on that objectivity and reliability of an evaluation or research product is a problem and must be disclosed.
- ii. In addition, for purposes of this solicitation, each applicant is to address possible mitigation of research integrity concerns by including, at a minimum, one of the following two items:
  - a. If an applicant reasonably believes that no actual or potential apparent conflicts of interest (personal, financial, or organizational) exist, then the applicant should provide a brief narrative explanation of how and why it reached that conclusion. The applicant also is to include an explanation of the specific processes and procedures that the applicant has in place, or will put in place, to identify and prevent (or, at the very least, mitigate) any such conflicts of interest pertinent to the funded project during the period of performance. Documentation that may be helpful in this regard may include organizational codes of ethics/conduct and policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

### OR

b. If the applicant has identified actual or potential apparent conflicts of interest (personal, financial, or organizational) that could affect the independence and integrity of the research, including the design, conduct,

or reporting of the research, the applicant is to provide a specific and robust mitigation plan to address each of those conflicts. At a minimum, the applicant is expected to explain the specific processes and procedures that the applicant has in place, or will put in place, to identify and eliminate (or, at the very least, mitigate) any such conflicts of interest pertinent to the funded project during the period of performance. Documentation that may be helpful in this regard may include organizational codes of ethics/conduct and policies regarding organizational, personal, and financial conflicts of interest. There is no guarantee that the plan, if any, will be accepted as proposed.

OJP will assess research and evaluation independence and integrity based on considerations such as the adequacy of the applicant's efforts to identify factors that could affect the objectivity or integrity of the proposed staff and/or the applicant entity (and any subrecipients) in carrying out the research, development, or evaluation activity; and the adequacy of the applicant's existing or proposed remedies to control any such factors.

#### d. Local Governing Body Review

Applicants must submit information via the Certification and Assurances by the Chief Executive (See <u>Appendix A</u>) which documents that the JAG application was made available for review by the governing body of the unit of local government, or by an organization designated by that governing body, for a period that was not less than 30 days before the application was submitted to BJA. The same Chief Executive Certification will also specify that an opportunity to comment on this application was provided to citizens prior to the application submission to the extent applicable law or established procedures make such opportunity available. In the past, this has been accomplished via submission of specific review dates; now, OJP will only accept a chief executive's certification to attest to these facts. Units of local government may continue to submit actual dates of review, should they wish to do so, in addition to the submission of the Chief Executive Certification.

#### How to Apply

An applicant must submit its application through the <u>Grants Management System (GMS)</u>, which provides support for the application, award, and management of awards at OJP. Each applicant entity **must register in GMS for each specific funding opportunity** and should **register promptly** to meet the GMS registration deadline for this funding opportunity, especially if this is the first time the applicant is using the system. Find complete instructions on how to register and submit an application in GMS at <u>www.oip.gov/gmscbt/</u>. An applicant that experiences technical difficulties during this process should email <u>GMS.HelpDesk@usdoj.gov</u> or call 888–549–9901 (option 3), available 24 hours a day, 7 days a week, including on federal holidays. OJP recommends that each applicant **register promptly** to prevent delays in submitting an application package by the deadline.

Note on File Types: GMS does not accept executable file types as application attachments. These disallowed file types include, but are not limited to, the following extensions: ".com," ".bat," ".exe," ".vbs," ".cfg," ".dat," ".db," ".dbf," ".dll," ".ini," ".log," ".ora," ".sys," and ".zip." GMS may reject applications with files that use these extensions. It is important to allow time to change the type of file(s) if the application is rejected.

Unique Entity Identifier (DUNS Number) and System for Award Management (SAM) Every applicant entity must comply with all applicable System for Award Management (SAM) and unique entity identifier (currently, a Data Universal Numbering System [DUNS] number) requirements. SAM is the repository for certain standard information about federal financial assistance applicants, recipients, and subrecipients. A DUNS number is a unique nine-digit identification number provided by the commercial company Dun and Bradstreet. More detailed information about SAM and the DUNS number is in the numbered sections below.

If an applicant entity has not fully complied with the applicable SAM and unique identifier requirements by the time OJP makes award decisions, OJP may determine that the applicant is not qualified to receive an award and may use that determination as a basis for making the award to a different applicant.

If the applicant entity already has an Employer Identification Number (EIN), the SAM registration will take **up to two weeks to process**. If the entity does not have an EIN, then **the applicant should allow two to five weeks for obtaining the information from IRS when requesting the EIN via phone, fax, mail or Internet**. For more information about EIN, visit https://www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin.

#### **Registration and Submission Steps**

All applicants should complete the following steps:

1. Acquire a unique entity identifier (DUNS number). In general, the Office of Management and Budget requires every applicant for a federal award (other than an individual) to include a "unique entity identifier" in each application, including an application for a supplemental award. Currently, a DUNS number is the required unique entity identifier.

This unique entity identifier is used for tracking purposes, and to validate address and point of contact information for applicants, recipients, and subrecipients. It will be used throughout the life cycle of an OJP award. Obtaining a DUNS number is a free, one-time activity. Call Dun and Bradstreet at 866–705–5711 to obtain a DUNS number or apply online at www.dnb.com/. A DUNS number is usually received within 2 business days.

2. Acquire or maintain registration with SAM. Any applicant for an OJP award creating a new entity registration (or updating or renewing a registration) in SAM.gov must submit an original, signed notarized letter appointing the authorized Entity Administrator within thirty (30) days of the registration activation. Notarized letters must be submitted via U.S. Postal Service Mail. Read the Alert at www.sam.gov to learn more about what is required in the notarized letter, and read the Frequently Asked Questions (FAQs) at www.gsa.gov/samupdate to learn more about this process change.

All applicants for OJP awards (other than individuals) must maintain current registrations in the SAM database. Applicants will need the authorizing official of the organization and an Employer Identification Number (EIN).

Information about SAM registration procedures can be accessed at https://www.sam.gov/.

3. Acquire a GMS username and password. New users must create a GMS profile by selecting the "First Time User" link under the sign-in box of the <u>GMS</u> home page. For more information on how to register in GMS, go to <u>www.ojp.gov/gmscbt</u>. Previously registered

applicants should ensure, prior to applying, that the user profile information is up-to-date in GMS (including, but not limited to, address, legal name of agency and authorized representative) as this information is populated in any new application.

- 4. Verify the SAM (formerly CCR) registration in GMS. OJP requires each applicant to verify its SAM registration in GMS. Once logged into GMS, click the "CCR Claim" link on the left side of the default screen. Click the submit button to verify the SAM (formerly CCR) registration.
- 5. Search for the funding opportunity on GMS. After logging into GMS or completing the GMS profile for username and password, go to the "Funding Opportunities" link on the left side of the page. Select "BJA" and "FY 18 Edward Byrne Memorial Local Justice Assistance Grant (JAG) Program."
- 6. Register by selecting the "Apply Online" button associated with the funding opportunity title. The search results from step 5 will display the "funding opportunity" (solicitation) title along with the registration and application deadlines for this solicitation. Select the "Apply Online" button in the "Action" column to register for this solicitation and create an application in the system.
- 7. Follow the directions in GMS to submit an application consistent with this solicitation. Once the application is submitted, GMS will display a confirmation screen stating the submission was successful. <u>Important:</u> In some instances, applicants must wait for GMS approval before submitting an application. OJP urges each applicant to submit its application at least 72 hours prior to the application due date.

#### Note: Application Versions

If an applicant submits multiple versions of the same application, OJP will review **only** the most recent system-validated version submitted.

## Experiencing Unforeseen GMS Technical Issues

An applicant that experiences unforeseen GMS technical issues beyond its control that prevent it from submitting its application by the deadline may contact the <u>GMS Help Desk</u> or the SAM Help Desk (Federal Service Desk) at <u>https://www.fsd.gov/fsd-gov/home.do</u> to report the technical issue and receive a tracking number. The applicant must email the NCJRS Response Center identified in the Contact Information section on the title page **within 24 hours after the application deadline** to request approval to submit its application after the deadline. The applicant's email must describe the technical difficulties, and must include a timeline of the applicant's submission efforts, the complete grant application, the applicant's DUNS number, and any GMS Help Desk or SAM tracking number(s).

**Note: OJP does not automatically approve requests to submit a late application.** After OJP reviews the applicant's request, and contacts the GMS Help Desk to verify the reported technical issues, OJP will inform the applicant whether the request to submit a late application has been approved or denied. If OJP determines that the untimely application submission was due to the applicant's failure to follow all required procedures, OJP will deny the applicant's request to submit its application.

The following conditions generally are insufficient to justify late submissions to OJP solicitations:

- Failure to register in SAM or GMS in sufficient time (SAM registration and renewal can take as long as 10 business days to complete.)
- Failure to follow GMS instructions on how to register and apply as posted on the GMS website
- Failure to follow each instruction in the OJP solicitation
- Technical issues with the applicant's computer or information technology environment such as issues with firewalls

# E. Application Review Information

#### **Review Process**

OJP is committed to ensuring a fair and open process for making awards. BJA reviews the application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with the solicitation. BJA will also review applications to help ensure that JAG program-statute requirements have been met.

Pursuant to the Part 200 Uniform Requirements, before award decisions are made, OJP also reviews information related to the degree of risk posed by applicants. Among other things, to help assess whether an applicant that has one or more prior federal awards has a satisfactory record with respect to performance, integrity, and business ethics, OJP checks whether the applicant is listed in SAM as excluded from receiving a federal award.

In addition, if OJP anticipates that an award will exceed \$150,000 in federal funds, OJP also must review and consider any information about the applicant that appears in the non-public segment of the integrity and performance system accessible through SAM (currently, the Federal Awardee Performance and Integrity Information System; "FAPIIS").

**Important note on FAPIIS:** An applicant, at its option, may review and comment on any information about itself that currently appears in FAPIIS and was entered by a federal awarding agency. OJP will consider any such comments by the applicant, in addition to the other information in FAPIIS, in its assessment of the risk posed by the applicant. The evaluation of risks goes beyond information in SAM, however. OJP itself has in place a framework for evaluating risks posed by applicants. OJP takes into account information pertinent to matters such as:

- (1) Applicant financial stability and fiscal integrity
- (2) Quality of the management systems of the applicant, and the applicant's ability to meet prescribed management standards, including those outlined in the DOJ Grants Financial Guide
- (3) Applicant's history of performance under OJP and other DOJ awards (including compliance with reporting requirements and award conditions), as well as awards from other federal agencies
- (4) Reports and findings from audits of the applicant, including audits under the (DOJ) Part 200 Uniform Requirements
- (5) Applicant's ability to comply with statutory and regulatory requirements, and to effectively implement other award requirements

Absent explicit statutory authorization or written delegation of authority to the contrary, the Assistant Attorney General will make all final award decisions.

# F. Federal Award Administration Information

#### **Federal Award Notices**

Award notifications are expected to be made by September 30, 2018. OJP sends award notifications by email through GMS to the individuals listed in the application as the point of contact and the authorizing official. The email notification includes detailed instructions on how to access and view the award documents, and steps to take in GMS to start the award acceptance process. GMS automatically issues the notifications at 9:00 p.m. eastern time on the award date.

**NOTE:** In order to validly accept an award under the FY 2018 JAG Program, a unit of local government (other than an Indian tribal government) must submit to GMS the certification by its chief legal officer regarding compliance with certain federal laws, executed using the forms that appear in <u>Appendices B and C</u>. (The forms also may be downloaded at <u>https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm</u>.) Unless the executed certifications either (1) are submitted to OJP together with the signed award document or (2) are uploaded in GMS no later than the day the signed award document is submitted, **OJP will reject as invalid** any submission by a unit of local government (other than an Indian tribal government) that purports to accept an award under this solicitation.

Rejection of an initial submission as an invalid award acceptance is not a denial of the award. Consistent with award requirements, once the unit of local government **does** submit the necessary certification regarding compliance with certain federal laws, the unit of local government **will** be permitted to submit an award document executed by the unit of local government on or after the date of those certifications.

Also, in order for an applicant validly to accept an award under the FY 2018 JAG program, an individual with the necessary authority to bind the applicant will be required to log in; execute a set of legal certifications and a set of legal assurances; designate a financial point of contact; thoroughly review the award, including **all** award conditions; and sign and accept the award. The award acceptance process requires physical signature of the award document by the authorized representative and the scanning of the fully-executed award document (along with the required certifications regarding compliance with certain federal laws, if not already uploaded in GMS) to OJP.

# Statutory and Regulatory Requirements; Award Conditions

If selected for funding, in addition to implementing the funded project consistent with the OJPapproved application, the recipient must comply with award conditions, as well as all applicable requirements of federal statutes and regulations (including applicable requirements referred to in the assurances and certifications executed at the time of award acceptance). OJP strongly encourages prospective applicants to review information on post-award legal requirements and common OJP award conditions **prior** to submitting an application.

Applicants should consult the "<u>Overview of Legal Requirements Generally Applicable to OJP</u> <u>Grants and Cooperative Agreements - FY 2018 Awards</u>," available in the OJP Funding Resource Center at <u>https://ojp.gov/funding/index.htm</u>. In addition, applicants should examine the 35

following two legal documents, as each successful applicant must execute both documents in GMS before it may receive any award funds. (An applicant is not required to submit these documents as part of an application.)

- <u>Certifications Regarding Lobbying</u>; <u>Debarment</u>, <u>Suspension and Other Responsibility</u> Matters; and <u>Drug-Free Workplace Requirements</u>
- Certified Standard Assurances

The web pages accessible through the "<u>Overview of Legal Requirements Generally Applicable</u> to OJP Grants and Cooperative Agreements - FY 2018 Awards" are intended to give applicants for OJP awards a general overview of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants and cooperative agreements awarded in FY 2018. Individual OJP awards typically also will include additional award conditions. Those additional conditions may relate to the particular statute, program, or solicitation under which the award is made; to the substance of the funded application; to the recipient's performance under other federal awards; to the recipient's legal status (e.g., as a for-profit entity); or to other pertinent considerations.

Individual FY 2018 awards made pursuant to this solicitation will, as appropriate and to the extent consistent with law, include conditions that will require the recipient (and any subrecipient) that accepts the award to do various things, with respect to the "program or activity" that would receive federal financial assistance thereunder. Although the specific terms of each of those conditions are what will govern the awards, included among such conditions will be some that, generally speaking, will require the recipient (and any subrecipient) that accepts the award to do some or all of the following:

- Not to violate 8 U.S.C. § 1373 (prohibiting restrictions on—

   (1) communication to/from the Department of Homeland Security ("DHS") of information regarding the citizenship or immigration status of any individual; and
   (2) maintaining, or exchanging with any government entity, information regarding the immigration status of any individual).
- Not to violate 8 U.S.C. § 1644 (prohibiting restrictions on communication to/from DHS of information regarding the immigration status of an alien).
- Not to violate, or aid or abet any violation of, 8 U.S.C. § 1324(a) (forbidding any "person," in "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law," to "conceal, harbor, or shield from detection, or attempt to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation" or to "engage in any conspiracy to commit any of the preceding acts ... "or aid or abet the commission of any of the preceding acts").
- Not to impede the exercise of the authority of the federal government under 8 U.S.C. § 1266(a) & (c) (authorizing arrest and detention of certain aliens and providing that the federal government "shall take into custody" certain criminal aliens "when the alien is released") and 8 U.S.C. § 1231(a)(4) (relating to removal from the United States of aliens after detention/confinement at the federal, state, and local level), specifically by requiring such recipients to provide (where feasible) at least 48 hours' advance notice to DHS regarding the

scheduled release date and time of an alien in the recipient's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act.

Not to impede the exercise by DHS agents, "anywhere in or outside the United States" (8 C.F.R. § 287.5(a)(1)), of their authority under 8 U.S.C. § 1357(a)(1) to "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States," specifically by requiring such recipients to permit DHS agents to have access to any correctional facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his right to be or remain in the United States.

The reasonable costs (to the extent not reimbursed under any other federal program) of complying with these conditions, including honoring any duly authorized requests from DHS that is encompassed by these conditions, will be allowable costs under the award.

## General Information about Post-federal Award Reporting Requirements

In addition to the deliverables described in <u>Section A. Program Description</u>, any recipient of an award under this solicitation will be required to submit the following reports and data.

<u>Required reports</u>. Recipients typically must submit quarterly financial status reports, semiannual progress reports, final financial and progress reports, and, if applicable, an annual audit report in accordance with the Part 200 Uniform Requirements or specific award conditions. Future awards and fund drawdowns may be withheld if reports are delinquent. (In appropriate cases, OJP may require additional reports.)

Awards that exceed \$500,000 will include an additional condition that, under specific circumstances, will require the recipient to report (to FAPIIS) information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either the OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Additional information on this reporting requirement appears in the text of the award condition posted on the OJP website at: <a href="https://ojp.gov/funding/FAPIIS.htm">https://ojp.gov/funding/FAPIIS.htm</a>.

Data on performance measures. In addition to required reports, each award recipient also must provide data that measure the results of the work done under the award. To demonstrate program progress and success, as well as to assist DOJ with fulfilling its responsibilities under the Government Performance and Results Act of 1993 (GPRA), Public Law 103-62, and the GPRA Modernization Act of 2010, Public Law 111–352, OJP will require any award recipient, post award, to provide accountability metrics data as part of regular progress reporting. Accountability metrics data must be submitted through BJA's Performance Measurement Tool (PMT), available at <u>https://bjapmt.ojp.gov</u>. The accountability measures are available at: <u>https://bjapmt.ojp.gov/help/jagdocs.html</u>. (Note: if a law enforcement agency receives JAG funds from a state, the state must submit quarterly accountability metrics data related to training that officers have received on use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.) Successful applicants will be required to access OJP's performance measurement page at <u>www.ojp.gov/performance</u> for an overview of performance measurement activities at OJP.

OJP may restrict access to award funds if a recipient of an OJP award fails to report the required accountability metrics data in a timely manner.

# G. Federal Awarding Agency Contact(s)

For OJP contact(s), see the title page.

For contact information for GMS, see the title page.

# H. Other Information

**Freedom of Information Act and Privacy Act (5 U.S.C. § 552 and 5 U.S.C. § 552a)** All applications submitted to OJP (including all attachments to applications) are subject to the federal Freedom of Information Act (FOIA) and to the Privacy Act. By law, DOJ may withhold information that is responsive to a request pursuant to FOIA if DOJ determines that the responsive information either is protected under the Privacy Act or falls within the scope of one of nine statutory exemptions under FOIA. DOJ cannot agree in advance of a request pursuant to FOIA not to release some or all portions of an application.

In its review of records that are responsive to a FOIA request, OJP will withhold information in those records that plainly falls within the scope of the Privacy Act or one of the statutory exemptions under FOIA. (Some examples include certain types of information in budgets, and names and contact information for project staff other than certain key personnel.) In appropriate circumstances, OJP will request the views of the applicant/recipient that submitted a responsive document.

For example, if OJP receives a request pursuant to FOIA for an application submitted by a nonprofit or for-profit organization or an institution of higher education, or for an application that involves research, OJP typically will contact the applicant/recipient that submitted the application and ask it to identify—quite precisely—any particular information in the application that applicant/recipient believes falls under a FOIA exemption, the specific exemption it believes applies, and why. After considering the submission by the applicant/recipient, OJP makes an independent assessment regarding withholding information. OJP generally follows a similar process for requests pursuant to FOIA for applications that may contain law-enforcement sensitive information.

## Provide Feedback to OJP

To assist OJP in improving its application and award processes, OJP encourages applicants to provide feedback on this solicitation, the application submission process, and/or the application review process. Provide feedback to <u>OJPSolicitationFeedback@usdoj.gov</u>.

**IMPORTANT:** This email is for feedback and suggestions only. OJP does **not** reply to messages it receives in this mailbox. A prospective applicant that has specific questions on any program or technical aspect of the solicitation **must** use the appropriate telephone number or email listed on the front of this solicitation document to obtain information. These contacts are provided to help ensure that prospective applicants can directly reach an individual who can address specific questions in a timely manner.

If you are interested in being a reviewer for other OJP grant applications, please email your résumé to <u>ojpprsupport@usdoj.gov</u>. (Do not send your résumé to the OJP Solicitation Feedback email account.) **Note:** Neither you nor anyone else from your organization or entity can be a

peer reviewer in a competition in which you or your organization/entity has submitted an application.

## Appendix A

# Certifications and Assurances by the Chief Executive of the Applicant Government

Template for use by chief executive of the unit of local government (e.g., the mayor)

Visit <u>https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm</u> to download the most up-to-date version.

**Note:** By law, for purposes of the JAG Program, the term "unit of local government " includes a town, township, village, parish, city, county, borough, or other general purpose political subdivision of a state; or, it may be a federally recognized Indian tribal government that performs law enforcement functions (as determined by the Secretary of the Interior). A unit of local government may be any law enforcement district or judicial enforcement district established under applicable state law with authority to independently establish a budget and impose taxes; for example, in Louisiana, a unit of local government means a district attorney or parish sheriff.

#### U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS

## Edward Byrne Justice Assistance Grant Program FY 2018 Local Solicitation

#### Certifications and Assurances by the Chief Executive of the Applicant Government

On behalf of the applicant unit of local government named below in support of that locality's application for an award under the FY 2018 Edward Byrne Justice Assistance Grant ("JAG") Program, and further to 34 U S C § 10153(a). I certify under penalty of perjury to the Office of Justice Programs ("OJP"), U.S. Department of Justice ("USDOJ"), that all of the following are true and correct:

1 I am the chief executive of the applicant unit of local government named below, and I have the authority to make the following representations on my own behalf and on behalf of the applicant unit of local government. I understand that these representations will be relied upon as material in any CJP decision to make an award, under the application described above, to the applicant unit of local government.

2 I certify that no federal funds made available by the award (if any) that OJP makes based on the application described above will be used to supplant local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.

3. I assure that the application described above (and any amendment to that application) was submitted for review to the governing body of the unit of local government (e.g., city council or county commission), or to an organization designated by that governing body, not less than 30 days before the date of this certification.

4 I assure that, before the date of this certification— (a) the application described above (and any amendment to that application) was made public; and (b) an opportunity to comment on that application (or amendment) was provided to citizens and to neighborhood or community-based organizations, to the extent applicable law or established procedure made such an opportunity available

5 I assure that, for each fiscal year of the award (if any) that OJP makes based on the application described above, the applicant unit of local government will maintain and report such data, records, and information (programmatic and financial), as OJP may reasonably require.

6 I certify that— (a) the programs to be funded by the award (if any) that OJP makes based on the application described above meet all the requirements of the JAG Program statute (34 U S C §§ 10151-10158); (b) all the information contained in that application is correct. (c) in connection with that application, there has been appropriate coordination with affected agencies, and (d) in connection with that award (if any) the applicant unit of local government will comply with all provisions of the JAG Program statute and all other applicable federal laws.

7 I have examined certification entitled 'State or Local Government: FY 2018 Certification of Compliance with 8 U.S.C. §§ 1373 & 1644' executed by the chief legal officer of the applicant government with respect to the FY 2018 JAG program and submitted in support of the application described above, and I hereby adopt that certification as my own on behalf of that government. (This provision is not applicable to Indian tribal government applicants.)

8. I have examined certification entitled "State or Local Government: FY 2018 Certification Relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a)(4), 1357(a), & 1366(1) & (3)" executed by the chief legal officer of the applicant government with respect to the FY 2018 JAG program and submitted in support of the application described above, and I hereby adopt that certification as my own on behalf of that government. (This provision is not applicable to Indian tribal government applicants.)

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant unit of local government to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and §§ 3801-3812). I also acknowledge that OJP awards, including certifications provided in connection with such awards, are subject to review by USDOJ, including by OJP and by the USDOJ Office of the Inspector General.

Signature of Chief Executive of the Applicant Unit of Local Government

Date of Certification

Printed Name of Chief Executive

Title of Chief Executive

Name of Applicant Unit of Local Government

# Appendix B

State or Local Government:

# Certification of Compliance with 8 U.S.C. §§ 1373 and 1644

Template for use by the chief legal officer of the unit of local government (e.g., the city attorney)

Visit <u>https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm</u> to download the most up-to-date version.

Note: This Certification is not required by Indian tribal government applicants.

#### U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS

## Local Government: FY 2018 Certification of Compliance with 8 U.S.C. §§ 1373 & 1644

On behalf of the applicant government entity named below, and in support of its application, I certify under penalty of perjury to the Office of Justice Programs ("OJP"), U.S. Department of Justice ("USDOJ"), that all of the following are true and correct:

(1) I am the chief legal officer of the State or local government of which the applicant entity named below is a part ("the jurisdiction"), and I have the authority to make this certification on behalf of the jurisdiction and the applicant entity (that is, the entity applying directly to OJP). I understand that OJP will rely upon this certification as a material representation in any decision to make an award to the applicant entity.

(2) I have carefully reviewed 8 U.S.C. §§ 1373(a) & (b), and 1644, including the prohibitions on certain actions by State and local government entities, -agencies, and -officials regarding information on citizenship and immigration status. I also have reviewed the provisions set out at (or referenced in) 8 U.S.C. § 1551 note ("Abolition ... and Transfer of Functions"), pursuant to which references to the "Immigration and Naturalization Service" in 8 U.S.C. §§ 1373 & 1644 are to be read, as a legal matter, as references to particular components of the U.S. Department of Homeland Security.

(3) I (and also the applicant entity) understand that the U.S. Department of Justice will require States and local governments (and agencies or other entities thereof) to comply with 8 U.S.C. §§ 1373 & 1644, with respect to any "program or activity" funded in whole or in part with the federal financial assistance provided through the FY 2018 OJP program under which this certification is being submitted (the "FY 2018 OJP Program" identified below), specifically including any such "program or activity" of a governmental entity or -agency that is a subrecipient (at any tier) of funds under the FY 2018 OJP Program.

(4) I (and also the applicant entity) understand that, for purposes of this certification, "program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. § 2000d-4a), and that terms used in this certification that are defined in 8 U.S.C. § 1101 mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (cf. 34 U.S.C. § 10251(a)(2)). Also, I understand that, for purposes of this certification, neither a "public" institution of higher education (*i.e.*, one that is owned, controlled, or directly funded by a State or local government) nor an Indian tribe is considered a State or local government entity or -agency.

(5) I have conducted (or caused to be conducted for me) a diligent inquiry and review concerning both-

- (a) the "program or activity" to be funded (in whole or in part) with the federal financial assistance sought by the applicant entity under this FY 2018 OJP Program; and
- (b) any prohibitions or restrictions potentially applicable to the "program or activity" sought to be funded under the FY 2018 OJP Program that deal with sending to, requesting or receiving from, maintaining, or exchanging information of the types described in 8 U.S.C. §§ 1373(a) & (b), and 1644, whether imposed by a State or local government entity, -agency, or -official.

(6) As of the date of this certification, neither the jurisdiction nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any prohibition or any restriction that would apply to the "program or activity" to be funded in whole or in part under the FY 2018 OJP Program (which, for the specific purpose of this paragraph 6, shall not be understood to include any such "program or activity" of any subrecipient at any tier), and that deals with either— (1) a government entity or -official sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. §§ 1373(a) & 1644; or (2) a government entity or -agency sending to, requesting or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b).

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. § 10271-10273), and also may subject me and the applicant entity to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and §§ 3801-3812). I also acknowledge that OJP awards, including certifications provided in connection with such awards, are subject to review by USDOJ, including by OJP and by the USDOJ Office of the Inspector General.

Signature of Chief Legal Officer of the Jurisdiction

Printed Name of Chief Legal Officer

Date of Certification

Title of Chief Legal Officer of the Jurisdiction

Name of Applicant Government Entity (i.e., the applicant to the FY 2018 OJP Program identified below)

#### FY 2018 OJP Program: Byrne Justice Assistance Grant (JAG) Program: Local

#### Appendix C

State or Local Government:

Certification of Compliance with 8 U.S.C. §§ 1226(a) & (c), 1231(a)(4), 1324(a), 1357(a),

and 1366(1) & (3)

Template for use by chief legal officer of the unit of local government (e.g., the city attorney)

Visit <u>https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm</u> to download the most up-to-date version.

Note: This Certification is not required by Indian tribal government applicants.

#### U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS

#### Local Government: FY 2018 Certification Relating to 8 U.S.C. §§ 1226(a) & (c), 1231(a)(4), 1324(a), 1357(a), & 1366(1) & (3)

On behalf of the applicant government entity named below, and in support of its application. I certify under penalty of perjury to the Office of Justice Programs ("OJP"). U.S. Department of Justice ("USDOJ"), that all of the following are true and correct

1 I am the chief legal officer of the unit of local government of which the applicant entity named below is a part ("the jurisdiction"), and I have the authority to make this certification on behalf of the jurisdiction and the applicant entity (that is, the entity applying directly to OJP). I understand that OJP will rely upon this certification as a material representation in any decision to make an award to the applicant entity.

2. Thave carefully reviewed each of the following sections of title 8. United States Code

- § 1226(a) & (c) (authorizing arrest and detention of certain aliens and providing that the federal government "shall take into custody" certain criminal aliens "when the alien is released");
- b § 1231(a)(4) (federal government may not "remove an alien who is sentenced to imprisonment until the alien is released from imprisonment");
- c. § 1324(a) (forbidding any "person," in "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law " to "conceal[, harbor[] or shield[] from detection, or attempt[] to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation" or to "engage in any conspiracy to commit any of the preceding acts \_\_\_\_\_\_ or aid[] or abet[] the commission of any of the preceding acts".
- d § 1357(a) (authorizing immigration officers, 'anywhere in or outside the United States' (see 8 C F R § 287 5(a)), to 'interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States') and
- e § 1366(1) & (3) (requiring the Attorney General annually to submit to Congress 'a report detailing (1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense, [and] (3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal").

3. I (and also the applicant entity) understand that USDOJ will require States and local governments (including State and local government entities, -agencies, and -officials), with respect to any "program or activity" funded in whole or in part with the federal financial assistance provided through the FY 2018 OJP program under which this certification is being submitted (the "FY 2018 OJP Program" identified below), specifically including any such "program or activity" of a governmental entity or -agency that is a subrecipient (at any tier) of funds under the FY 2018 OJP Program, not to violate or to aid or abet any violation of, 8 U S C § 1324(a), and not to impede the exercise by federal officers of authority under 8 U.S.C. § 1357(a) or relating to 8 U.S.C. § 1366(1) & (3) or 8 U.S.C. § 1226(a) & (c)

4. I (and also the applicant entity) understand that, for purposes of this certification, "program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U S C § 2000d-4a), and that terms used in this certification that are defined in 8 U S C § 1101 mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (cf 34 U S C § 10251(a)(2)). Also, I understand that, for purposes of this certification, neither a 'public" institution of higher education (r.e., one that is owned, controlled, or directly funded by a State or local government) nor an Indian tribe is considered a State or local government entity or -agency

- 5 I have conducted (or caused to be conducted for me) a diligent inquiry and review concerning both-
  - a. the "program or activity" to be funded (in whole or in part) with the federal financial assistance sought by the applicant entity under this FY 2018 OJP Program; and
  - b any laws, rules, policies, or practices potentially applicable to the 'program or activity' sought to be funded under the FY 2018 OJP Program that implicate any of the requirements relating to 6 U S C §§ 1226(a) & (c), 1324(a), 1357(a), & 1366(1) & (3) that are described in ¶ 3 of this certification, whether imposed by a State or local government entity, -agency, or -official.

6. As of the date of this certification, neither the jurisdiction nor any entity, agency, or official of the jurisdiction has in effect, purports to have in effect, or is subject to or bound by, any law, rule, policy, or practice that would apply to the "program or activity" to be funded in whole or in part under the FY 2018 OJP Program (which, for the specific purpose of this paragraph 6, shall not be understood to include any such "program or activity" of any subrecipient at any tier), and that would or does—(1) violate, or aid or abet any violation of, 8 U S C § 1324(a); (2) impede the exercise by federal officers of authority under 8 U S C § 1357(a), (3) impede the exercise by federal officers of authority relating to 8 U S C § 1366(1) & (3), or (4) impede the exercise by federal officers of authority relating to 8 U S C § 1226(a) & (c)

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant entity to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and §§ 3801-3812). I also acknowledge that OJP awards, including associated certifications, are subject to review by USDOJ, including by OJP and the USDOJ Office of the Inspector General.

Signature of Chief Legal Officer of the Jurisdiction

Printed Name of Chief Legal Officer

Date of Certification

Title of Chief Legal Officer of the Jurisdiction

Name of Applicant Government Entity (i.e., the applicant to the FY 2018 OJP Program identified below

#### FY 2018 OJP Program: Byrne Justice Assistance Grant (JAG) Program: Local

#### Appendix D

#### Certain relevant federal laws, as in effect on June 7, 2018

#### 8 U.S.C. § 1373

# Communication between government agencies and the Immigration and Naturalization Service

#### (a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

#### (b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

#### (c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

#### 8 U.S.C. § 1644

# Communication between State and local government agencies and Immigration and Naturalization Service

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

#### 8 U.S.C. § 1226(a) & (c)

#### Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on---
  - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
  - (B) conditional parole; but
- (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

\*\*\*

#### (c) Detention of criminal aliens

#### (1) Custody

The Attorney General shall take into custody any alien who--

- (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,
- (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,
- (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence1 to a term of imprisonment of at least 1 year, or
- (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

#### (2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of Title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

#### 8 U.S.C. § 1231(a)(4)

(a) Detention, release, and removal of aliens ordered removed

#### 4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

#### (A) In general

Except as provided in section 259(a) of title 42 and paragraph (2), the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

# (B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment-

- i. in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title and (II) the removal of the alien is appropriate and in the best interest of the United States; or
- ii. in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

#### (C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

#### (D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

#### 8 U.S.C. § 1324(a)

#### Bringing in and harboring certain aliens

#### (a) Criminal penalties

(1)(A) Any person who-

- i. knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;
- ii. knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;
- iii. knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

- iv. encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or
- v. (v)(I) engages in any conspiracy to commit any of the preceding acts, or
- vi. (II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).
- (B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—
  - in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both;
  - II. in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;
  - III. in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and
  - IV. in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.
- (C) It is not a violation of clauses (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs-

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of-

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of

subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18 or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who-

- (i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and
- (ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if-

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

- (C)(i) aliens were transported in a manner that endangered their lives; or
- (ii) the aliens presented a life-threatening health risk to people in the United States.

#### 8 U.S.C. § 1357(a)

#### Powers of immigration officers and employees

(a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

- (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;
- (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;
- (3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;
- (4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and
- (5) to make arrests-
- (6) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

- (7) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,
- (8) if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

#### 8 U.S.C. § 1366(1) & (3)

#### Annual report on criminal aliens

Not later than 12 months after September 30, 1996, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report detailing—

- (1) the number of illegal aliens incarcerated in Federal and State prisons for having committed felonies, stating the number incarcerated for each type of offense;
- \*\*\*
- (3) programs and plans underway in the Department of Justice to ensure the prompt removal from the United States of criminal aliens subject to removal;
- \*\*\*

#### Appendix E

# Information regarding Communication with the Department of Homeland Security (DHS) and/or Immigration and Customs Enforcement (ICE)

Each applicant must provide responses to the following questions as an attachment to the application:

- (1) Does your jurisdiction have any laws, policies, or practices related to whether, when, or how employees may communicate with DHS or ICE?
- (2) Is your jurisdiction subject to any laws from a superior political entity (e.g., a state law that binds a city) that meet the description in question 1?
- (3) If yes to either:
  - Please provide a copy of each law or policy;
  - Please describe each practice; and
  - Please explain how the law, policy, or practice complies with section 1373.

Note: Responses to these questions must be provided by the applicant to BJA as part of the JAG application. Further, the requirement to provide this information applies to all tiers of JAG funding, for all subawards made to state or local government entities, including public institutions of higher education. All subrecipient responses must be collected and maintained by the direct recipient of JAG funding and must be made available to DOJ upon request. Responses to these questions are not required from subrecipients that are either a tribal government/organization, a nonprofit organization, or a private institution of higher education.

#### Appendix F

# Additional purposes for which JAG funds awarded to a state under this FY 2018 solicitation may be used:

(a) To enforce state and local laws that establish offenses similar to offenses established in 21 U.S.C. § 801 et seq., to improve the functioning of the **criminal justice** system, with emphasis on violent crime and serious offenders, by means including providing additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including---

(1) demand-reduction education programs in which law enforcement officers participate;

(2) multi-jurisdictional task-force programs that integrate federal, state, and local drug-law-enforcement agencies and prosecutors for the purpose of enhancing inter-agency co-ordination and intelligence, and facilitating multijurisdictional investigations;

(3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations;

(4) providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

(5) disrupting illicit commerce in stolen goods and property;

(6) improving the investigation and prosecution of white-collar crime, organized crime, public-corruption crimes, and fraud against the government, with priority attention to cases involving drug-related official corruption;

(7)(A) improving the operational effectiveness of law enforcement through the use of crime-analysis techniques, street-sales enforcement, schoolyard-violator programs, and gang-related and low-income-housing drugcontrol programs; and

(B) developing and implementing anti-terrorism plans for deepdraft ports, international airports, and other important facilities;

(8) career-criminal prosecution programs, including the development of proposed model drug-control legislation;

(9) financial investigative programs that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information-sharing systems;

(10) improving the operational effectiveness of the court process, by expanding prosecutorial, defender, and judicial resources, and implementing court-delay-reduction programs;'

(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive-supervision programs, and long-range corrections and sentencing strategies;

(12) providing prison-industry projects designed to place inmates in a realistic working and training environment that will enable them to acquire

marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(13) providing programs that identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(14) developing and implementing programs that provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(15)(A) developing programs to improve drug-control technology, such as pretrial drug-testing programs, programs that provide for the identification, assessment, referral to treatment, case-management and monitoring of drug-dependent offenders, and enhancement of state and local forensic laboratories; and

(B) developing programs to improve **criminal justice** information systems (including automated fingerprint identification systems) to assist law enforcement, prosecution, courts, and corrections organizations;

(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(17) addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;

(18) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly;

(19) drug-control evaluation programs that the state and units of local government may utilize to evaluate programs and projects directed at state drug-control activities;

(20) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community;

(21) programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales;

(22) programs for the prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles;

(23) programs that address the need for effective bindover systems for the prosecution of violent 16- and 17-year-old juveniles, in courts with jurisdiction over adults, for the crimes of—

- (A) murder in the first degree;
- (B) murder in the second degree;
- (C) attempted murder;
- (D) armed robbery when armed with a firearm;
- (E) aggravated battery or assault when armed with a firearm;
- (F) criminal sexual penetration when armed with a firearm; and
- (G) drive-by shootings as described 18 U.S.C. § 36;

(24) law-enforcement and prevention programs relating to gangs or to youth who are involved or at risk of involvement in gangs;

(25) developing or improving, in a forensic laboratory, a capability to analyze DNA for identification purposes; and

(26) developing and implementing anti-terrorism training programs and procuring equipment for use by local law-enforcement authorities; and

(b) To reduce crime and improve public safety, including but not limited to, the following:

(1)(A) hiring, training, and employing on a continuing basis new, additional law enforcement officers and necessary support personnel;

(B) paying overtime to presently-employed law enforcement officers and necessary support personnel for the purpose of increasing the number of hours worked by such personnel; and

(C) procuring equipment, technology, and other material directly related to basic law-enforcement functions;

(2) enhancing security measures—

(A) in and around schools; and

(B) in and around any other facility or location that is considered by the unit of local government to have a special risk for incidents of crime;

(3) establishing crime-prevention programs that may, though not exclusively, involve law-enforcement officials and that are intended to discourage, disrupt, or interfere with the commission of criminal activity, including neighborhood-watch and citizen-patrol programs, sexual-assault and domesticviolence programs, and programs intended to prevent juvenile crime;

(4) establishing or supporting drug courts;

(5) establishing early-intervention and -prevention programs for juveniles, in order to reduce or eliminate crime;

(6) enhancing the adjudication process of cases involving violent offenders, including violent juvenile offenders;

(7) enhancing programs under (a), above;

(8) establishing co-operative task forces between adjoining units of local government to work co-operatively to prevent and combat criminal activity, particularly criminal activity that is exacerbated by drug- or gang-related involvement; and

(9) establishing a multi-jurisdictional task force, particularly in rural areas, composed of law-enforcement officials representing units of local government, that works with Federal law-enforcement officials to prevent and control crime.

#### Appendix G Application Checklist

#### Edward Byrne Memorial Justice Assistance Grant (JAG) Program:

#### FY 2018 Local Solicitation

This application checklist has been created as an aid in developing an application.

#### What an Applicant Should Do:

Prior to Registering in GMS: Acquire a DUNS Number Acquire or renew registration with SAM To Register with GMS:	(see page 31) (see page 32)
For new users, acquire a GMS username and password*	(see page 32)
For existing users, check GMS username and password* to ensure account	unt access
	(see page 32)
Verify SAM registration in GMS	(see page 32)
Search for correct funding opportunity in GMS	(see page 32)
Select correct funding opportunity in GMS	(see page 32)
Register by selecting the "Apply Online" button associated with the fundi	ng opportunity
title	(see page 32)
Read OJP policy and guidance on conference approval, planning, and re available at <u>ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.h</u>	eporting
	(see page 17)
If experiencing technical difficulties in GMS, contact the NCJRS Respons	e Center
(see p	pages 2 and 33)

\*Password Reset Notice – GMS users are reminded that while password reset capabilities exist, this function is only associated with points of contact designated within GMS at the time the account was established. Neither OJP nor the GMS Help Desk will initiate a password reset unless requested by the authorized official or a designated point of contact associated with an award or application.

#### **Overview of Post-Award Legal Requirements:**

Review the "Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2018 Awards" in the OJP Funding Resource Center at https://ojp.gov/funding/index.htm.

#### **Scope Requirement:**

\_\_\_\_\_ The federal amount requested is within the allowable limit(s) of the FY 2018 JAG Allocations List as listed on BJA's <u>JAG web page</u>.

**Eligibility Requirement:** Only units of local government may apply under this solicitation. By law, for purposes of the JAG Program, the term "units of local government" includes a town, township, village, parish, city, county, borough, or other general purpose political subdivision of

a state; or, it may be a federally recognized Indian tribal government that performs law enforcement functions (as determined by the Secretary of the Interior). A unit of local government also may be any law enforcement district or judicial enforcement district established under applicable state law with authority to independently establish a budget and impose taxes.

#### What an Application Should Include:

Application for Federal Assistance (SF-424)	(see page 19)
Intergovernmental Review	(see page 19)
Project Identifiers	(see page 19)
Program Narrative	(see page 20)
Budget Detail Worksheet	(see page 21)
Budget Narrative	(see page 22)
Indirect Cost Rate Agreement (if applicable)	(see page 25)
Tribal Authorizing Resolution (if applicable)	(see page 26)
Financial Management and System of Internal Controls Questionnaire	e (see page 26)
Disclosure of Lobbying Activities (SF-LLL) (if applicable)	(see page 27)
Certifications and Assurances by Chief Executive	(see page 27)
Certification of Compliance with 8 U.S.C. § 1373 by Chief Legal Office	er (Note: this
requirement does not apply to Indian tribal governments.)	(see page 27)
OJP Certified Standard Assurances	(see pages 39-44)
Additional Attachments	
Applicant Disclosure of Pending Applications	(see page 28)
Research and Evaluation Independence and Integrity (if applicable)	(see page 29)



# AGENDA ACTION FORM

## Great Urban Parks Grant Application

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-176-2018 Work Session: August 6, 2018 First Reading: N/A

Final Adoption: Staff Work By:

August 7, 2018 K. Frazier/D. Edwards Presentation By: Chris McCartt

#### **Recommendation:**

Approve the Resolution.

#### **Executive Summary:**

The Great Urban Parks campaign is accepting grant applications for 2018. This campaign supports funding for green stormwater infrastructure projects that improve environmental quality, increase access to high quality park and recreation space within underserved communities and engage the local community. The City of Kingsport application will allow for the creation of a park near Clinchfield street and adjacent to the Greenbelt. This park will provide both active and passive recreation while also improving stormwater systems in the area. The Kingsport grant request is for \$300,000 and does not require any matching funds. The Parks and Recreation Advisory Committee endorses this application.

#### Attachments:

1. Resolution 2. Map

	Y	Ν	0
Adler	—		-
Begley			
Cooper George			_
McIntire	_		
Olterman	_	-	_
Clark			_

#### RESOLUTION NO.

#### A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A GREAT URBAN PARKS GRANT FROM THE NATIONAL RECREATION AND PARK ASSOCIATION

WHEREAS, the city, through the parks and recreation department, would like to apply for a Great Urban Parks grant through the National Recreation and Park Association, which will provide funds to allow for the creation of a park near Clinchfield Street and adjacent to the Greenbelt; and

WHEREAS, the maximum amount of the grant award is \$300,000.00, and the grant requires no match.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive Great Urban Parks grant funds from the National Recreation and Park Association in the amount of \$300,000.00 to allow for the creation of a park near Clinchfield Street and adjacent to the Greenbelt, which will require no match.

SECTION II. That the mayor is authorized and directed to execute any and all documents including those necessary and proper to demonstrate the city's compliance with the grant requirements or its provisions necessary to effectuate the purpose of the grant or this resolution.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 7<sup>th</sup> day of August, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY





# AGENDA ACTION FORM

# Agreement with National IPA for Cooperative Purchasing

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manage

Action Form No.: AF-192-2018 Work Session: August 6, 2018 First Reading: N/A Final Adoption:August 7, 2018Staff Work By:CommitteePresentation By:Chris McCartt

#### **Recommendation:**

Approve the Resolution recommending that the City sign the National IPA Master Intergovernmental Cooperative Purchasing Agreement.

#### **Executive Summary:**

After a competitive solicitation and selection process by principal procurement agencies, a number of suppliers have entered into master agreements to provide a variety of goods, products and services to the applicable principal procurement agency and participating public agencies. The City benefits by being able to make purchases utilizing the National IPA Purchasing Cooperative with the confidence we are receiving competitive pricing knowing the products and services awarded have already been through the procurement process of the principal procurement agency. Utilizing cooperative purchasing agreements often leads to increased efficiency by decreasing the amount of time it takes from requisition entry to product/service receipt.

"TCPN" or "The Cooperative Purchasing Network" has been acquired by National IPA. Any "TCPN" referenced contracts are now a part of National IPA.

#### Attachments:

1. Resolution

	<u>Y</u>	N	<u>0</u>
Adler	_	_	_
Begley		-	-
Cooper	-	_	_
George			
McIntire			
Olterman	_	-	-
Clark	_		_

#### RESOLUTION NO.

#### A RESOLUTION APPROVING AN AGREEMENT WITH THE NATIONAL INTERGOVERNMENTAL PURCHASING ALLIANCE COMPANY FOR COOPERATIVE PURCHASING AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city benefits by being able use cooperative purchasing with the confidence that we are receiving competitive pricing knowing the products and services awarded have already been through the procurement process of the principal procurement agency; and

WHEREAS, the city would like to enter into an agreement with National Intergovernmental Purchasing Alliance Company (National IPA) for cooperative purchasing.

#### Now therefore,

## BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an agreement with National Intergovernmental Purchasing Alliance Company (National IPA), is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vicemayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with National Intergovernmental Purchasing Alliance Company (National IPA) and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

## MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Master Intergovernmental Cooperative Purchasing Agreement (this "Agreement") is entered into by and between those certain government agencies that execute a Principal Procurement Agency Certificate ("<u>Principal Procurement Agencies</u>") with National Intergovernmental Purchasing Alliance Company ("<u>National IPA</u>") to be appended and made a part hereof and such other public agencies ("<u>Participating Public Agencies</u>") who register to participate in the cooperative purchasing programs administered by National IPA and its affiliates and subsidiaries (collectively, the "<u>National IPA</u> <u>Parties</u>") by either registering on a National IPA Party website (such as <u>www.nationalipa.org</u>), or by executing a copy of this Agreement.

#### RECITALS

WHEREAS, after a competitive solicitation and selection process by Principal Procurement Agencies, a number of suppliers have entered into "<u>Master Agreements</u>" (herein so called) to provide a variety of goods, products and services ("<u>Products</u>") to the applicable Principal Procurement Agency and the Participating Public Agencies;

WHEREAS, Master Agreements are made available by Principal Procurement Agencies through the National IPA Parties and provide that Participating Public Agencies may purchase Products on the same terms, conditions and pricing as the Principal Procurement Agency, subject to any applicable federal and/or local purchasing ordinances and the laws of the State of purchase; and

WHEREAS, in addition to Master Agreements, the National IPA Parties may from time to time offer Participating Public Agencies the opportunity to acquire Products through other group purchasing agreements.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties hereby agree as follows:

- 1. Each party will facilitate the cooperative procurement of Products.
- 2. The Participating Public Agencies shall procure Products in accordance with and subject to

the relevant federal, state and local statutes, ordinances, rules and regulations that govern Participating Public Agency's procurement practices. The Participating Public Agencies hereby acknowledge and agree that it is the intent of the parties that all provisions of this Agreement and that Principal Procurement Agencies' participation in the program described herein comply with all applicable laws, including but not limited to the requirements of 42 C.F.R. § 1001.952(h), as may be amended from time to time. The Participating Public Agencies further acknowledge and agree that they are solely responsible for their compliance with all applicable "safe harbor" regulations, including but not limited to any and all obligations to fully and accurately report discounts and incentives.

3. The Participating Public Agency represents and warrants that the Participating Public Agency is not a hospital and is not purchasing Products on behalf of a hospital.

4. The cooperative use of Master Agreements shall be in accordance with the terms and conditions of the Master Agreements, except as modification of those terms and conditions is otherwise required by applicable federal, state or local law.

5. The Principal Procurement Agencies will make available, upon reasonable request, Master Agreement information which may assist in improving the procurement of Products by the Participating Public Agencies.

6. The Participating Public Agency agrees the National IPA Parties may provide access to group purchasing organization ("<u>GPO</u>") agreements directly or indirectly by enrolling the Participating Public Agency in another GPO's purchasing program, including but not limited to Vizient Source, LLC, Provista, Inc. and other National IPA affiliates and subsidiaries; provided the purchase of Products through a National IPA Party or any other GPO shall be at the Participating Public Agency's sole discretion.

7. The Participating Public Agencies (each a "Procuring Party") that procure Products through any Master Agreement or GPO Product supply agreement (each a "GPO Contract") will make timely payments to the distributor, manufacturer or other vendor (collectively, "Supplier") for Products received in accordance with the terms and conditions of the Master Agreement or GPO Contract, as applicable. Payment for Products and inspections and acceptance of Products ordered by the Procuring Party shall be the exclusive obligation of such Procuring Party. Disputes between Procuring Party and any Supplier shall be resolved in accordance with the law and venue rules of the State of purchase unless otherwise agreed to by the Procuring Party and Supplier.

8. The Procuring Party shall not use this Agreement as a method for obtaining additional concessions or reduced prices for similar products or services.

9. The Procuring Party shall be responsible for the ordering of Products under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a Procuring Party, and, to the extent permitted by applicable law, the Procuring Party shall hold non-procuring party harmless from any liability that may arise from the acts or omissions of the Procuring Party.

10. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE NATIONAL IPA PARTIES EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING ANY PRODUCT, MASTER AGREEMENT AND GPO CONTRACT. THE NATIONAL IPA PARTIES SHALL NOT BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES, EVEN IF THE NATIONAL IPA PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE PROCURING PARTY ACKNOWLEDGES AND AGREES THAT THE NATIONAL IPA PARTIES SHALL HAVE NO LIABILITY FOR ANY ACT OR OMISSION BY A SUPPLIER OR OTHER PARTY UNDER A MASTER AGREEMENT OR GPO CONTRACT.

11. This Agreement shall remain in effect until termination by a party giving thirty (30) days' written notice to the other party. The provisions of Paragraphs 6 - 10 hereof shall survive any such termination.

12. This Agreement shall take effect upon (i) execution of the Principal Procurement Agency Certificate, or (ii) the registration on a National IPA Party website or the execution of this Agreement by a Participating Public Agency, as applicable.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 8th day of August, 2018.

ATTEST:

JOHN CLARK, MAYOR

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



# AGENDA ACTION FORM

# Highway Entrance Permit with TDOT for Meadowview Roadway Extension

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-195-2018 Work Session: August 6, 2018 First Reading: N/A Final Adoption:August 7, 2018Staff Work By:Tim ElseaPresentation By:Ryan McReynolds

#### Recommendation:

Approve the Resolution.

#### **Executive Summary:**

The new roadway providing connectivity between Wilcox Drive and Meadowview Parkway includes construction of a highway entrance from Wilcox Drive into the Meadowview Business Park Development. In order to proceed with the entrance TDOT requires request access and permission to construct a highway entrance onto State right-of-way.

Authorization to accept TDOT's permit for this project within highway right-of-way is requested.

#### Attachments:

1. Resolution

2. Highway Entrance Permit (2 pages)

	Y	N_	0
Adler	_	_	_
Begley			
Cooper	_		
George		_	—
McIntire	_		_
Olterman	_	—	
Clark			

#### RESOLUTION NO.

#### A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE PERMITS WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION, AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE PERMIT

WHEREAS, the city has been working on providing a roadway between Wilcox Drive and Meadowview Parkway, which includes construction of a highway entrance from Wilcox Drive; and

WHEREAS, to proceed with this construction, the Tennessee Department of Transportation (TDOT) requires the city execute both TDOT Highway Entrance Application and Permit for State Agency or Local Government and a TDOT Standard Form Permit – Work on ROW to work within the highway right-of-way

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vicemayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the permits and other documents required by TDOT for the construction of a highway entrance from Wilcox Drive to connect to the road from Meadowview Parkway that leads to the Aquatic Center and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the permits or this resolution.

SECTION II. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION III. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 7th day of August, 2018.

JOHN CLARK, MAYOR

ATTEST

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

TENNESSEE DEPARTMENT OF HIGHWAY ENTRANCE APPLICATION AND PERMIT FOR	
APPLICATION IDENTIFICATION (F	OR OFFICE USE ONLY)
County: City (if applicable): State Route: Log Mile: Effective Date:	
Exact Distance:       Miles       Feet       N       S       E         from the intersection of Route       and Route       towards         Temporary Traffic Control required?       Yes       No	□W (city/town)
Property is is not located with city zoning area LOCATION INFORMATION (to be com	pleted by property owner)
Property Owner Name: Property Address:	Property will be used for:
	Commercial
Development Name (if any):	Sidewalk present
Property is is not located with city zoning area	
AGREEMEN Permittee, the undersigned property owner, requests acces	
<ol> <li>onto State right-of-way at the above-described location and I</li> <li>The entire cost of constructing and maintaining an approve fulfilling the conditions of this Permit will be borne solely by F</li> <li>Permittee will construct and maintain the driveway(s) or strin conformance with the current <i>Manual for Constructing Dr</i> the Tennessee Department of Transportation (TDOT).</li> <li>No signs or objects will be placed on or over State right-of-w</li> <li>The driveway(s) or street entrance(s) shall be constructed as</li> <li>This Permit becomes <u>void</u> if construction of the driveway (date).</li> <li>If required by TDOT as indicated above, Permittee will prosigns, signal lights, flaggers and other warning devices for the signed state.</li> </ol>	ed driveway access or private street connection and Permittee and its grantees, successors, and assigns. eet entrance(s) and adjoining sidewalk (if applicable) <i>riveway Entrances on State Highways</i> as adopted by ray without written approval from TDOT. s shown on the attached plans. vay(s) or street entrances(s) is not completed by ovide, both during and following construction, proper
<ul> <li>Manual on Uniform Traffic Control Devices for Streets and Information as to the above rules and regulations may be ob</li> <li>Permittee agrees to assume all liability for claims arising ou would be liable under the Tennessee Claims Commission Tennessee Governmental Tort Liability Act, Tenn. Code And to the limits for which it can be held liable for such conduct u</li> <li>Permittee agrees to require that any contractor that perfor Permit, including any installation, maintenance, or opera adequate and appropriate general liability insurance provid million dollars per occurrence and \$300,000 per claimant insured.</li> </ul>	<i>Highways</i> and amendments or supplements thereto. tained from the Regional Traffic Engineer. at of conduct on the part of the Permittee for which it Act, Tenn. Code Ann. §§ 9-8-301, et. seq., or the n. §§ 29-20-101, et seq., whichever is applicable, up under that act, arising from its use of the right-of-way. forms any work on the right-of-way pursuant to this ation of any improvements, shall provide proof of ling liability coverage in an amount not less than \$1
9. Permittee agrees to require that any contractor who performed. 9. Permit, including any installation, maintenance, or operation harmless the State, its officers, agents and employees whatsoever, including without limitation for damages, arising entrance(s) under this Permit.	ion of any improvements, shall indemnify and hold from all suits, actions or claims of any character
10. This Permit may be revoked by the TDOT Commissioner a requires such revocation, without any liability on the part of t shall not in any way impair any rights of ingress and egress law.	the State. Permittee understands that such revocation to the highway in which Permittee may be vested by
11. This Permit does not become effective unless and until it is f	uny executed by both parties.

12.	Permittee acknowledges and agrees that this Permit authorizes access to the State Highway System for
	driveway and/or field entrance access use only. TDOT does not review, approve or otherwise investigate
	the proposed driveway for any purposes other than compliance with TDOT standards for driveway and/or
	field entrances. TDOT does not review the proposed driveway for compliance with other state or federal
	regulation requirements. This Permit does not authorize alteration to any stream, aquatic resource, or
	waters of the State. It is the responsibility of the Permittee to ensure that all water quality requirements are
	met and permits required for driveway construction across streams or wetlands are obtained, including but
	not limited to Tennessee Department of Environment and Conservation ARAP permits, U.S. Army Corps of
	Engineers 404 permits or any permits required by federal state or local governments are obtained. Failure
	to obtain all such applicable permits shall void this Permit.

Permittee agrees to notify the Regional Traffic Engineer or their designee when the proposed work is completed.

#### SIGNATURE(S) OF PERMITTEE

CIGINAT	ORE(0) OF TERMITTEE
INSERT NAME OF LOCAL GOVERNMENT	r -
BY PRINT NAME	
TITLE:	
PHONE	
DATE	
<b>CONTRACTOR</b> (to be signed only when certificate of general liability insurance is furnished by Contractor)	f
SIGNATURE	
DATE	
FOR	OFFICE USE ONLY
APPLICATION RECEIVED BY REGIONAL TRAFFIC	OFFICE/DISTRICT MAINTENANCE OFFICE
BY	DATE:
APPLICATION APPROVED BY TDOT	
BY:	
Regional Director or Designee	
COMPLETION OF SATISFACTORY FINAL INSPEC	TION BY TDOT
BY:	DATE:
TITLE:	
TDOT COMMENTS:	

1



# AGENDA ACTION FORM

# Issue a Purchase Order to Southern Lighting & Traffic Systems for Traffic Signal Cabinets

Board of Mayor and Aldermen To: Jeff Fleming, City Manager From

Action Form No.: AF-190-2018 August 6, 2018 Work Session: First Reading: N/A

August 7, 2018 Final Adoption: Tim Elsea Staff Work By: Presentation By: Ryan McReynolds

#### **Recommendation:**

Approve the Resolution.

#### **Executive Summary:**

The Traffic Division has been working to upgrade aging signal components over the course of the last five years. Throughout the budget process with City Management, and budget approval by the Board of Mayor and Alderman, funding to move forward with various improvements has been provided.

There are limited brands / manufacturers of traffic signal equipment. In the past the City has purchased Econolite cabinets and components. Over time Econolite has proven to offer the best service, compatibility, and functionality which allows the City to provide the most effective and efficient management of our transportation network.

Previous traffic signal cabinets were purchased directly from Econolite Control Product, Inc., however they now distribute thru Southern Lighting & Traffic Systems. In order to maintain consistency purposes (keeping the signal components uniform and consistent with past signal equipment purchases) it is recommended to enter into a one source contract with Southern Lighting & Traffic Systems in the amount of \$67,400.00 for traffic signal cabinets.

Funding is available and identified in GP1917 line item 311 0000 601 9003.

#### Attachments:

- 1. Resolution 2. Memo
- 3. Southern Lighting & Traffic Systems Quote

Funding source appropriate and funds are available

	Y	N	0
Adler		1	-
Begley		_	_
Cooper			-
George		_	_
McIntire			_
Olterman	_	-	-
Clark	-	_	_

#### RESOLUTION NO.

#### A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR TRAFFIC SIGNAL CABINETS TO SOUTHERN LIGHTING & TRAFFIC SYSTEMS

WHEREAS, the traffic division has been working to upgrade aging signal components; and

WHEREAS, in the past, the city has purchased traffic signal cabinets from Southern Lighting & Traffic Systems; and

WHEREAS, to be consistent with prior purchases it is recommended to enter into a sole source contract with Southern Lighting & Traffic Systems as the Econolite vendor; and

WHEREAS, in order to purchase Econolite traffic signal cabinets, a purchase order needs to be executed to Southern Lighting & Traffic Systems in the amount of \$67,400.00; and

WHEREAS, funding for is available in GP1917 line item 311 0000 601 9003.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the city manager is authorized to execute a purchase order to Southern Lighting & Traffic Systems for the purchase of Econolite traffic signal cabinets in the amount of \$67,400.00.

SECTION II. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION III. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 7th day of August, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

## J. MICHAEL BILLINGSLEY, CITY ATTORNEY

#### Memorandum

TO:	Jeff Fleming, City Manager
FROM:	Tim Elsea, Traffic Engineering Manager
DATE:	August 7, 2018
RE:	Traffic Signal Cabinets

The Traffic Division has been working to upgrade aging signal components over the course of the last five years. Throughout the budget process with City Management, and budget approval by the Board of Mayor and Alderman, funding to move forward with various improvements has been provided.

In an attempt to keep the signal components uniform and consistent with signal equipment purchases in the past, staff recommends entering into a one source contract with Southern Lighting and Traffic Systems as the Econolite vendor for traffic signal cabinets.

City Code Section 2-599 permits the City Manager to enter in to a one source contract when it is determined to be in the best interest of the City of Kingsport. It is my opinion that this present situation warrants such action due to the history and consistency of our traffic signal components with Econolite.

If you are in agreement with this recommendation please sign below for file documentation. Should you have any questions feel free to contact me.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_



# Southern Lighting & Traffic Systems 113 Industrial Park Drive Cumming, GA 30040

# Quote

Date	Quote #
7/27/2018	3934

#### Project Details

City of Kingsport

Cabinet Quote

			Project Number		
Qty	ltem	Descri	otion	Unit Cost	Total
6 1	CAB16497 CAB#17412 Kingsport	Kingsport P 44 Cabinet designed to TS2 Type 1 M52 Kingsport Pole M	house UPS - Empty Cabine		58,050 00 9,350 00
				Sales Tax (0.0% Total	<b>&gt;) \$0.</b> ( \$67,400.)

Customer

City of Kingsport Finance-Accounts Payable 225 W Center Street Kingsport, TN 37660



# AGENDA ACTION FORM

### Purchase of Heart Monitors from Physio Controls, Inc.

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-185-2018 Work Session: August 6, 2018 First Reading: N/A Final Adoption:August 7, 2Staff Work By:Deputy ChiefPresentation By:Chief Boyd

August 7, 2018 Deputy Chief Everhart, Chief Boyd Chief Boyd

#### Recommendation:

Approve the Resolution.

#### **Executive Summary:**

In late 2014, the Fire Department's Medical Operations Committee recommended replacement of the nine (9) cardiac/heart monitors that were purchased in 2008 using grant funds received through the Department of Homeland Security. The need for much better transmission capabilities of information from the engine companies to the medical facilities was a primary factor since this does greatly impact the health and safety of the Citizens we serve. The Medical operations Committee did research on units from three (3) different manufacturers and found that the Physio Control Lifepack 15 monitor did completely meet the needs regarding the transmission capabilities, the technology integration as well as the transfer plug in. In April 2015, two (2) units were purchased from Physio Controls, Inc. In 2016, four (4) more units were purchased from Physio Controls, Inc. In Physio Controls, Inc. In 2016, four controls three (3) more units from Physio Controls, Inc. In FY2019, budget monies have been provided to purchase three (3) more units from Physio Controls, Inc. as a one source product since the Physio Control Lifepack 15 does provide interconnectivity/technology integration and the transfer plug in capabilities. The total amount to purchase these three (3) units is \$94,627.40 which will represent replacement of a total of nine (9) units.

#### Attachments:

1. Resolution

2. Memorandum approval from City Manager

Funding source appropriate and funds are available:

	Y	<u>N O</u>
Adler	-	
Begley	-	
Cooper	_	
George	-	
McIntire		
Olterman	_	
Clark	_	

#### RESOLUTION NO.

#### A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THREE LIFEPACK 15 HEART MONITORS FROM PHYSIO CONTROL, INC.

WHEREAS, Physio Control, Inc. provides Life Pack 15 heart monitors that meet the city's need for better transmission of information from fire department engine companies to the medical facilities, which will impact the health and safety of the citizens; and

WHEREAS, the city has previously purchased six (6) Life Pack 15 heart monitors for the fire department from Physio Control, Inc.; and

WHEREAS, it is critical to have equipment continuity in the fire department; and

WHEREAS, to ensure continuity, Physio Control, Inc. has been deemed as a sole source by the city manager;

WHEREAS, the city would like to execute a purchase order for three (3) Lifepack 15 heart monitor's from Physio Control, Inc. in the amount of \$94,627.40; and

WHEREAS, funding is identified in GP1804, 311-0000-601-9006 and GP1719, 311-0000-601-6006.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the city manager is authorized to execute a one source purchase order to Physio Control, Inc., for the purchase of three (3) Lifepack 15 heart monitor's from Physio Control, Inc. in the amount of \$94,627.40.

SECTION II. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION III, That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 7th day of August, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

# Memo

To: Jeff Fleming, City ManagerFrom: Jim Everhart, Assistant ChiefDate: July 26, 2018RE: Cardiac Monitors

As you are aware, the Kingsport Fire Department recently purchase six LIFEPAK 15 Monitors/Defibs from Physio-Controls, Inc. This equipment was purchased in 2015 and 2016.

As we continue to move forward on the purchase of additional LIFEPAK 15 Monitors/Defibs, it is critical to have equipment continuity across the department. Additionally, LIFEPAK 15 Monitors/Defibs provides technology integration with the transfer plug-in capability.

The Kingsport Fire Department is requesting that we continue to utilize the vendor relationship with Physio-Controls, Inc. through a one source contract.

City Code Section 2-599 permits the City Manager to enter in to a one source contract when it is determined to be in the best interest of the City of Kingsport. It is my opinion that this present situation warrants such simply because of the history Physio Controls, Inc. has with the City of Kingsport Fire Department with our current LIFEPAK 15 Monitors/Defibs and maintaining this continuity.

If you are in agreement with this recommendation I would ask that you sign below in order to have documentation in the file. Should you have any questions please feel free to contact me.

\_\_\_ Date: \_\_7 [31] 18 Approved:



# AGENDA ACTION FORM

# Accepting Donation from Eastman Chemical Company of Real Property and a Permanent Utility Easement to Extend Meadowview Parkway to Wilcox Drive

To: Board of Mayor and Aldermen From: Jeff Fleming, City Manager

Action Form No.: AF-197-2018 Work Session: August 6, 2018 First Reading: N/A Final Adoption:August 7, 2018Staff Work By:Lynn Tully, AICPPresentation By:Lynn Tully, AICP

#### Recommendation:

Approve the Resolution as proposed.

#### Executive Summary:

When the Aquatic Center was planned, the city had future plans to extend the road going into the Aquatic Center from Meadowview Parkway so it would connect with Wilcox Drive. At that time the city acquired some of the right-of-way needed for the extension, but not all of it. The city is now in the process of completing that extension.

Eastman Chemical Company has agreed to donate the remaining property needed to construct the public roadway and to extend appropriate utilities for storm water and sanitary sewer services.

The property donated for the roadway is located at an intersection with Wilcox Drive and extends to the property line adjoining the property owned by Ballad Health.

#### Attachments:

- Resolution
   Survey of Location of Easement
- 3. Plat of Donated Property

Funding source appropriate and funds are available:

	<u> </u>	<u>N</u>	_0
Adler	_	_	_
Begley			<u></u>
Cooper	-		_
George		_	_
McIntire	1000		<u></u>
Olterman			
Clark			

V N

0

#### RESOLUTION NO.

A RESOLUTION ACCEPTING A DONATION FROM EASTMAN CHEMICAL COMPANY OF REAL PROPERTY AND A DONATION OF A PERMANENT UTILITY EASEMENT, APPROVING A QUITCLAIM DEED OF GIFT AND DEED OF PERMANENT UTILITY EASEMENT, FROM EASTMAN CHEMICAL COMPANY; AND AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE DONATION

WHEREAS, when the Aquatic Center was planned, the city had future plans to extend the road going into the Aquatic Center from Meadowview Parkway so it would connect with Wilcox Drive, and had acquired some of the right-of-way needed for the extension, but not all of it; and

WHEREAS, the city is now in the process of completing that extension; and

WHEREAS, the roadway will cross property owned by Eastman Chemical Company; and

WHEREAS, Eastman Chemical Company has agreed to donate the property for the rightof-way for the road project, and the property for the stormwater and wastewater utility easement; and

WHEREAS, to finalize the donation, certain documents are required to be executed, including a Quitclaim Deed of Gift and Deed of Permanent Utility Easement.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the donation of real property from Eastman Chemical Company is accepted.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vicemayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Quitclaim Deed of Gift with Eastman Chemical Company and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said Quitclaim Deed of Gift being as follows:

#### QUITCLAIM DEED OF GIFT

THIS QUITCLAIM DEED OF GIFT, made this \_\_\_\_\_\_ day of August, 2018, by and between, EASTMAN CHEMICAL COMPANY, a Delaware corporation authorized to do business in the State of Tennessee, hereinafter referred to as Grantor, and CITY OF KINGSPORT, a municipal corporation of the State of Tennessee, hereinafter referred to as Grantee. WITNESSETH:

That for and in consideration of the interest which Grantor has in enhancing the community, the Grantor hereby gives and conveys unto the Grantee certain land situated in the 13th Civil District of Sullivan County, Tennessee, containing 1.82 acres, more or less, more particularly described in Attachment "A" affixed hereto and incorporated herein by reference (the "Property"), together with Grantor's right, title and interest, if any, in and to all rights of way, open or proposed streets (public or private), alleys, easements, strips or gores of land adjacent thereto, and to the extent assignable,

all licenses, permits, approvals, certificates of occupancy, dedications, subdivision maps and entitlements issued, approved or granted by any governmental or quasi-governmental body or agency having jurisdiction.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, in fee simple, subject to the following:

1. **Reversionary Interest.** This conveyance is subject to Grantee's construction of and use of the Property as a public road. Grantor may, in its discretion, reenter and retake the Property conveyed herein if the Grantee fails to complete the public road proposed for the Property or the Property ceases to be used as a public road once construction is complete. Grantee shall be deemed to have failed to complete the public road if construction on the Property does not begin within one hundred eighty (180) days following the date of this Deed of Gift, or if construction of the public road on the Property begins after the date of the Deed of Gift but such construction ceases for ninety (90) or more consecutive days prior to completion. Grantor shall notify Grantee in writing that it is exercising the right of reentry and retaking. If Grantor exercises its right to reenter and retake the Property hereunder, Grantee shall promptly convey the Property to Grantor by Quitclaim Deed, free from all liens or encumbrances, including mechanics or materialman's liens. Nothing herein shall prohibit Grantee from locating utility pipes, lines, cables or fixtures on the Property.

2. **Transfer Prohibited.** The Grantee shall not transfer the Property or any portion thereof to a third party unless Grantor, in its sole discretion, agrees otherwise in writing.

3. Taxes. Real estate and personal property ad valorem taxes not yet assessed or payable.

4. **Matters of Record.** All covenants, conditions, restrictions, easements, rights of way and other encumbrances affecting the Property that are of record.

5. Adverse Matters. Any adverse matters affecting the title that would be disclosed by an accurate and complete land survey of the Property.

6. Easements. Easements or claims of easements not shown by the public records.

The Grantee acknowledges that the Grantor does not warrant, either expressly or impliedly, the condition of the Property conveyed hereby, the title thereto, or compliance of the Property with governmental regulations; and the Grantee assumes the risk of any adverse matters including but not limited to, adverse, physical and environmental conditions that could exist on the Property and the Property is conveyed and transferred to Grantee in its present condition, "as is" and "where is" with all faults. Grantee acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property, by Grantor, any agent of Grantor, or any third party.

Grantor is hereby released from all responsibility and liability to Grantee, and Grantee hereby waives any and all objections to or complaints under any federal, state or common law or any private right of action regarding any conditions at the Property (including its physical condition and its compliance with applicable laws, and the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled an/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), the valuation, salability or utility of the Property, or its suitability for any purpose whatsoever.

For purposes of this Deed, "Hazardous Materials" shall mean any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), that are regulated or identified in any Environmental Laws (excluding solvents, cleaning fluids and other lawful substances used in the ordinary operation and maintenance of the Property, to the extent in closed containing written policies, ordinances and regulations issued by any governmental or quasi-governmental body or agency having jurisdiction over Granter, the Property or any portion thereof and in effect as of the date of this Deed with respect to or which otherwise pertain to or affect the Property or any portion thereof, the use, ownership, occupancy or operation of the Property, or any portion thereof, the roperty, and as same have been amended, modified or supplemented from time to time prior to the date of this Deed.

WITNESS the execution hereof by both the Grantor and the Grantee as of the date first above written. [Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the deed set out herein that do not substantially alter the material provisions of the deed and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the donation of Deed of Permanent Utility Easement for storm water and sanitary sewer services from Eastman Chemical Company is accepted.

SECTION V. That the mayor, or in his absence, incapacity, or failure to act, the vicemayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Deed of Permanent Utility Easement with Eastman Chemical Company and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

This DEED OF PERMANENT UTILITY EASEMENT, made this \_day of \_\_\_\_\_\_, 2018 by and between EASTMAN CHEMICAL COMPANY, a Delaware corporationauthorized to do business in Tennessee, Party of the First Part, and CITY OF KINGSPORT, TENNESSEE, a municipal corporation of the State of Tennessee, Party of the Second Part.

That for and in consideration of the sum of ONE DOLLAR AND 00/IOOth's (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the Party of the First Part has this day granted unto the Party of the Second Part, its successors and assigns, the permanent right-of-way and non-exlcusive easement without any warranty, on, over and through the herein described property, for the purpose of installing, maintaining, and using storm water and sanitary sewer pipes, lines or fixtures, as may be necessary or convenient for said purposes, said non-exclusive easement being located in the City of Kingsport, 13th Civil District of Sullivan County, Tennessee, and being more particularly described and bounded as follows and as also shown on Exhibit A\_attached hereto:

Being a strip of land lying within Eastman Chemical Company property, Map 76 Parcel No. 6.90, situate in the 13th Civil District of Sullivan County, Tennessee, and being more particularly described as follows:

Starting at an iron rod old located in the south westerly property line of Eastman Chemical Company, comer to City of Kingsport Aquatic Center property and being the Point of Beginning;

Thence with the divisional line of said property south 75°50'32" west 264.61 feet to an iron rod old;

Thence south 82°24'16" west 219.78 feet to an iron rod old in the easterly property line of Parcel 6.92, City of Kingsport Meadowview Golf Course property;

Thence along said line north 08°55'24" west 20.01 feet to a point;

Thence leaving said property line with the new line of easement north 82°'24" east 219.10 feet to a point;

Thence north 75°50'32" east 371.57 feet to a point in the westerly right-of-way line of Park Meadow Place;

Thence along said right-of-way line south 13°30'49" east 35.00 feet to a point;

Thence leaving said right-of way line south 75°50'32" west 104.06 feet to a point in the westerly line of City of Kingsport Aquatic Center property;

Thence along said line north 27°44'16" west 15.43 feet to the Point of Beginning.

Containing 0.308 acres, or 13,418 square feet, more or less, as shown on this exhibit by Barge Design Solutions, signed by Brian Hill, Tennessee Registered Land Surveyor #2634 dated 07-03-18 bearing Project No. 36735-06, and titled "Storm & Sanitary Sewer Easement". The bearings of this description are based on Kingsport Geodetic Reference Network

Together with the non-exclusive right to enter upon said land and to remove any property or structure and remove any trees, or branches of trees, on said land which may endanger the safety of said services or interfere with the construction thereof.

TO HAVE AND TO HOLD unto the City of Kingsport, Tennessee, its successors and assigns, for a permanent right-of-way and easement to install, maintain, and use storm waterand sanitary sewer pipes, lines or fixtures as may be necessary or convenient for said purposes subject, however, to the following conditions:

(1) The right and easement hereby conveyed to the City are for the sole purposes of providing an easement for storm water and sanitary sewer services operated by the City of Kingsport, Tennessee; and if the City shall not complete installation of these services within one year of the date of this Deed of Easement, all rights conveyed herein to the City shall automatically terminate and revert to Eastman, it successors or assigns.

(2) The City, its successors and assigns, will, to the extent permitted by state law, indemnify, defend, and save harmless Eastman, its successors and assigns, from any and all liability, loss, damages, or expense, or claims thereof, on account of injuries to property, including the property of the parties hereto, and on account of injuries to persons, including death, growing out of or caused in any way by the exercise of the rights hereby granted to the City.

(3) If the exercise of the rights hereby granted shall interfere with any use which Eastman may desire to make of its property, Eastman may give the City ninety (90) days written notice to change the location of said services, specifying in said notice the new location; and the City will, within said ninety (90) day period, at the cost and expense of Eastman, move said services to the new location as designated in said notice. Upon any relocation or relocations as aforesaid, all of the City's rights applicable to the land formerly occupied by said services shall terminate; and the City shall have the same rights, which are hereby granted to be effective from the time of such relocation or relocations, upon the land newly occupied, subject to all the conditions and provisions of this Deed of Easement, including provisions of Paragraphs 3, 4 and 5 hereof.

In the exercise of the right and easement granted and conveyed herein, the City shall comply (4) with all applicable federal, state and local environmental laws, regulations, and ordinances; and shall carry out its operations thereon to prevent the release, threatened release, leak, discharge, spill, disposal or emission of any hazardous material (including those designated as "oil" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. paragraph 1251, et seq. or defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. paragraph 9601, et seq. onto, under (including to the groundwater) or from the property (including groundwater). To the extent permitted by state law the City, its successors and assigns, will indemnify, defend, and save harmless Eastman, its successors and assigns, from any and all liability, loss, damage, or expense, or claims thereof resulting from the failure of the City to comply with its undertakings hereunder or any negligence or intentional misconduct of its employees, agents, representatives or subcontractors; or in connection with the release, threat of release, or suspected release of any hazardous materials (as previously described herein) by the City, its employees, agents, contractors, or subcontractors, to the air, soil, ground water or surface water at, on, about, under or within the parcel of land that is the subject of their Deed of Easement. Without limiting the generality of the foregoing, the indemnification provided by this paragraph shall specifically cover costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any cleanup, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivisions or performed by any non-governmental entity or person pursuant to Section 107(a) (42 U.S.C. section 9607(a)) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.), or Sections 311 (f) or (g) (33 U.S.C. section 1321 (f) or (g)) of the Clean Water Act (33 U.S.C. section 1251 et seq.), or Section 7003 (42 U.S.C. section 6973) of the Resource Conservation and Recovery Act (42 U.S.C. section 6901, etseq.)., and like applicable statutes or ordinances of any state or local government, or rules issued thereunder.

(5) This conveyance is subject to such easements as now remain in effect for railroads, streets, sewers, waterlines, powerlines, and other similar rights, which have been granted orhave been made by, or have by eminent domain or adverse possession been taken, from Eastman or its predecessors in title, if any.

(6) Eastman reserves the right fully to use and enjoy the strip of land hereinbefore described and all adjacent land of Eastman and to grant others the right to do so, either alone or jointly with Eastman, said rights so reserved including, but not being limited to, the construction, use and maintenance of lines, pipes, cable and fixtures for utilities of any type and to take all means which Eastman finds convenient for all said purposes, provided Eastman's or others actions or activities do not unreasonably interfere with the exercise by the City of the right and easement hereby reserved.

(7) Upon termination of the rights hereby conveyed to the City as to the land hereinbefore

described, or any part of the same, the City at its sole expense shall remove its property from said land, or from the part or parts thereof to which the termination applies, and shall fully remove all the said property and restore the land to the reasonable satisfaction of Eastman. Upon failure of the City to do so, Eastman shall have the right at its option to remove the said property and to restore the land, at the expense of the City, to be payable to Eastman on demand.

(8) No waiver or failure to exercise any right of Eastman hereunder shall constitute a waiver of said right or of any other right then or subsequently occurring for breach of contract or any other accounthereof.

(9) Any notice to the City by Eastman shall be considered given on the date it is mailed by registered or certified mail, with request for return receipt, addressed to the City of Kingsport, Att: City Manager's last known address.

(10) All references herein to the parties hereto include, and all provisions, covenants, and conditions herein shall inure to the benefit of and bind the parties hereto and their respective successors and assigns.

WITNESS the signature of the Party of the First Part on this the day and year first above written herein.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION VI. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION VII. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION VIII. That the mayor is authorized and directed to take such acts as necessary, to effectuate the purpose of the donation of property from Eastman Chemical Company, the approved agreements listed herein, IRS Documents, and any and all documents necessary and proper to effectuate the donation and this resolution.

SECTION IX. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION X. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

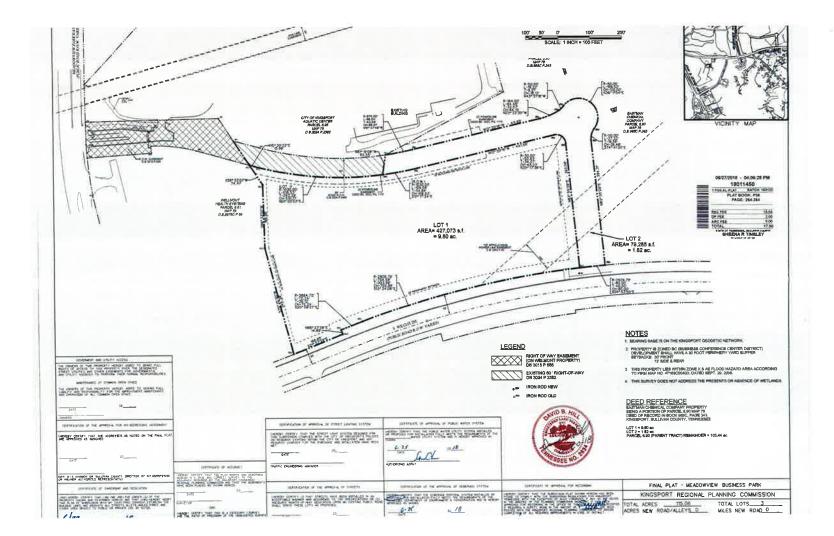
ADOPTED this the 7th day of August, 2018.

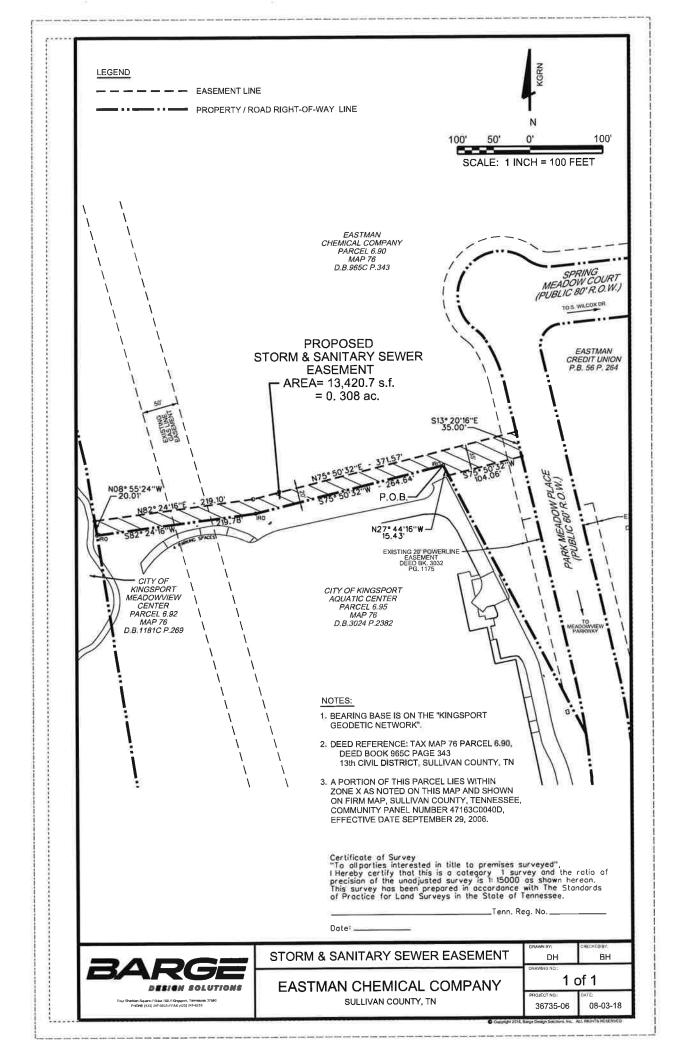
JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY







# **AGENDA ACTION FORM**

# Approval of Easements and Right-of-Way for Meadowview Road Extension

Board of Mayor and Aldermen To: Jeff Fleming, City Manager From:

Action Form No.: AF-191-2018 August 6, 2018 Work Session: August 7, 2018 First Reading:

Final Adoption: Staff Work By: Presentation By: R. McReynolds

August 7, 2018 R. Trent; T. Elsea

#### **Recommendation:**

Approve the offer.

#### **Executive Summary:**

The city needs to acquire two easements from Ballad Health to facilitate in constructing and maintaining a portion of new roadway connector from Meadowview Parkway to Wilcox Drive. The temporary construction easement provides the contractor a buffer in which to operate during construction, while the permanent drainage easement allows perpetual access to maintain our drainage infrastructure. An appraisal has been prepared in accordance with the City of Kingsport's Real Property Acquisition Policies & Procedures and indicates the fair market values as per the below property owner.

Tax Map/Parcel	Property Owner	ROW/Easement Area	Appraised Value
#076; 006.91	Ballad Health 400 N. State of Franklin Johnson City, TN 37604	Perm. 689.6 sq. ft. Temp. 1,782.4 sq. ft.	\$885.00 \$1,717.00

This project will be funded under #GP1800.

#### Attachment:

1. Project Location Map

Funding source appropriate and funds are available:

	Y	<u>N</u>	0
Adler	_	_	_
Begley	=		_
Cooper	_	-	_
George	=		
McIntire	_	-	_
Olterman		_	
Clark		_	-

