Notice of Study Session

ABILENE PUBLIC LIBRARY

209 NW FOURTH STREET

December 6, 2021 - 4:00 pm

VIEW THIS CITY COMMISSION STUDY SESSION VIRTUALLY AT

www.abilenecityhall.com/watchlive

PURPOSE

The City Commission's study sessions are for the purpose of providing the commission the opportunity to study items in more detail.

OPEN FORUM

This is an opportunity to bring up items to be informally addressed. The Mayor may impose a time limit on open forum.

STUDY ITEMS

1. Hidden Meadow Townhomes – Request for dedication of public alley
2. Ordinance amending CUP allowing 1st floor dwelling downtown
3. Opioid Settlement Resolution
4. Vicious Dog Ordinance discussion
5. Airport Rescue Grant Agreement

☆☆☆☆☆

Dwight D. Eisenhower Municipal Building
419 N. Broadway Street, PO Box 519
Abilene, KS 67410

(785) 263-2550
www.abilenecityhall.com

ABILENE KANSAS

City of Abilene

Item for City Commission Agenda

Meeting Date: 12/6/21

Originating Department	Prepared By:	Approved for Agenda By: *(Office Use Only)*
Planning & Zoning	Kari Zook	

AGENDA ITEM HEADING:

Petition from Hidden Meadows Townhomes property owners regarding the private property/alley located between NW 5th St. and NW 4th St. off Washington St.

BACKGROUND:

A petition was received by city staff on October 5, 2021, regarding the property to the south of the Hidden Meadows Townhomes. It is currently private property, owned by four property owners that reside in the townhomes, and accessible to all property owners in this vicinity.

Attached is a copy of the petition, aerial photo, letter sent to property owners with options moving forward, and a copy of the order vacating that alley on November 13, 2001.

Residents will be in attendance today to discuss their concerns and how to proceed following commission guidance.

The City is under no obligation to establish a formal alley. If an alley is established, the property owners abutting either side of the center line of the alley would be responsible for maintaining the trees and weeds from property line to the centerline of the alley (City Code 4-601 & 6-704).

FISCAL NOTE:

N/A

COMMISSION ACTION:

Advise city staff on how to proceed with this property.

TO: Abilene Planning and Zoning, City Manager, and City Commissioners

FROM: Linda M. Shirk
1217 NW 5th Street
Abilene, KS 67410
785-393-4158

RE: Request that you re-instate property as a city alley

DATE: October 5, 2021

We ask that you officially declare the southern piece of our property as a city alley.

The back part of our property was a city alley for years, and many people think it still is and use it as one. It is the only way most of our neighbors facing NW 4th Street are able to access their back yards. They have been driving on our property in order to park cars, trucks, and travel trailers in their back yards. They have been driving on our property to clear trees and debris, such as remained after the recent storm. Going over our property is also the only way the utility companies, including the City water/sewer company, can access their lines. They all need access through an alley, not through our private property.

As you can see from the enclosed photos, the property line is filled with utility poles, trees, and fences. If we move our fences back to the north side of our 10' utility easement area, our neighbors would not be able to get through to their back yards and the utility companies would not be able to access their lines.

We have revised our HOA Agreement, had the property surveyed, and have gotten a petition signed by every one of the 12 property owners adjacent to the property. We have removed the dumpster that was out back. We found documentation that the alley was vacated in 2001 and ask that the decision be reversed. We ask you to declare this area once again be a city-owned public alley.

This will be a win-win for all of us!

If you have any questions for me or if I can be of further assistance, please do not hesitate to contact me.

ATTACHMENTS: New HOA Agreement
Petition signed by all property owners
Survey completed October 2, 2021
Plat dated May, 2005
Order Vacating Street and Alley dated November 13, 2001
Photos of area

Petition for the City of Abilene to Assume Ownership of the Alley

We, the undersigned Owners of property located between NW 4th Street and NW 5th Street, Abilene, Dickinson County, Kansas, hereby request that the City of Abilene, Kansas, assume ownership of the property described in the attached site plan and declare it a public alley.

9-6-21

Robbi Travelute — Date
1202 NW 4th St.
Abilene, KS 67410

Theresa Travelute 9/6/21

Teresa Travelute — Date
1202 NW 4th St.
Abilene, KS 67410

9-20-21

Cristopher Cease — Date
1206 NW 4th St.
Abilene, KS 67410

9-20-21

Jewila Mitchell — Date
1206 NW 4th St.
Abilene, KS 67410

9-24-21

Russell Cossell — Date
1210 NW 4th St.
Abilene, KS 67410

Deceased *

Gregory Dawson — Date
1214 NW 4th St.
Abilene, KS 67410

Theresa Dawson 8/7/2021

Teresa Dawson — Date
1214 NW 4th St.
Abilene, KS 67410

Philip Watson 9-6-21

Phillip K. Watson — Date
1218 NW 4th St.
Abilene, KS 67410

* Deceased

Jane Watson — Date
1218 NW 4th St.
Abilene, KS 67410

9-5-21

Clay Coyle — Date
1222 NW 4th St.
Abilene, KS 67410

Peggy S Coyle 9-14-21

Peggy Coyle — Date
1222 NW 4th St.
Abilene, KS 67410

Brandi Lee Issitt — Date
1226 NW 4th St.
Abilene, KS 67410

Jeff Elliott 9-20-21

~~Melvin Adee~~ Jeff Elliott — Date
1230 NW 4th St.
Abilene, KS 67410
Buying it on Contact

Ricki Elliott 9-20-21

~~Cheryl Adee~~ Ricki Elliott — Date
1230 NW 4th St.
Abilene, KS 67410

Petition for the City of Abilene to Assume Ownership of the Alley

We, the undersigned Owners of property located between NW 4th Street and NW 5th Street, Abilene, Dickinson County, Kansas, hereby request that the City of Abilene, Kansas, assume ownership of the property described in the attached site plan and declare it a public alley.

[signature] 9/16/21
AFK Properties LLC — Date
1205 NW 5th Street
Abilene, KS 67410

Dean Rehm 9-28-21
Dean Rehm — Date
1211 NW 5th St.
Abilene, KS 67410

Vicki Rehm 9-28-21
Vicki Rehm — Date
1211 NW 5th St.
Abilene, KS 67410

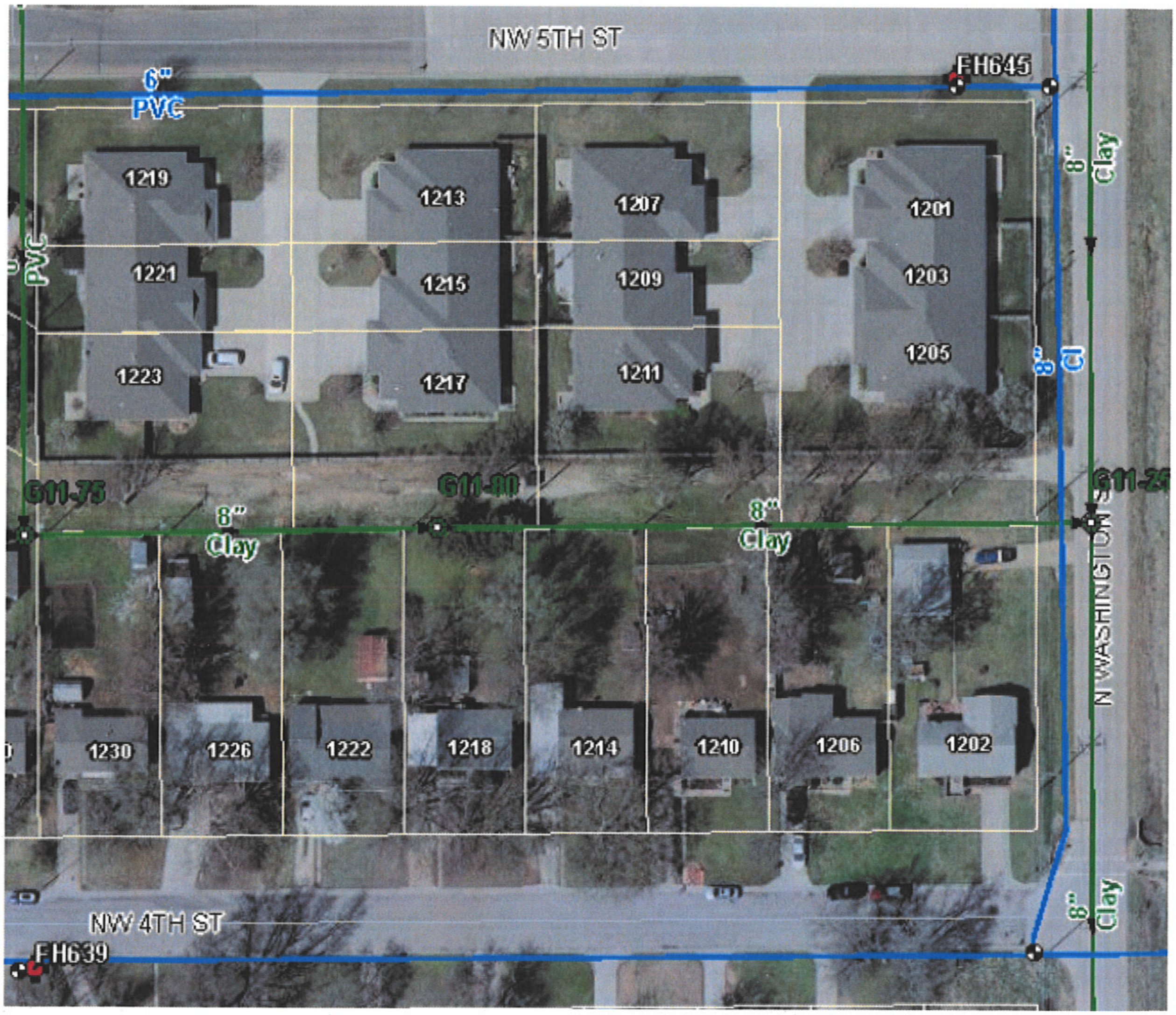
Linda M Shirk 9-21-2021
Linda M. Shirk — Date
1217 NW 5th St.
Abilene, KS 67410

Dwight Greenough
Dwight Greenough 9-24-2021 Date
1223 NW 5th St.
Abilene, KS 67410

Sharolyn Greenough 9-24-2021
Sharolyn Greenough — Date
1223 NW 5th St.
Abilene, KS 67410

Melvin Adee 9/23/21
Melvin Adee — Date
1230 NW 4th St.
Abilene, KS 67410

Cheryl Adee 9-23-21
Cheryl Adee — DATE
1230 NW 4th St.
Abilene, KS 67410


NW 5TH ST
6" PVC
FH645
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1210
1206
1202
NW 4TH ST
FH639
8" Clay

ABILENE
KANSAS

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www.abilenecityhall.com
Phone: (785) 263-2550
Fax: (785) 263-2552

November 16, 2021

Re: Hidden Meadows Townhomes Addition Alley

Dear Property Owners,

On November 15, 2021, a meeting was held at Abilene City Hall regarding the petition for dedication of an alleyway that is located to the south of the Hidden Meadows Townhomes on NW 5th St. and Washington St. and north of the properties located in that vicinity on NW 4th St. Currently, that alleyway is private and owned by four of the Hidden Meadows Townhomes property owners. The petition for dedication of public alley was signed by all property owners affected and received on October 5, 2021. City staff that were present were Aaron Martin, City Attorney; Ron Marsh, City Manager; Lon Schrader, Public Works Director; Joe Hawk, Public Works; Kari Zook, Planning & Zoning Administrator; and Travis Steerman, City Inspector.

City Attorney Martin presented information on the history of this property. On November 13, 2001, there was an order vacating a street and alley approved by the Governing Body of the City of Abilene. That is attached to this letter for your reference. City Attorney Martin then presented options for moving forward with the petition. The first being all landowners can collectively grant this property back to the City of Abilene, upon approval and acceptance of the City Commission. After discussion amongst city staff, there may be conditions proposed to the City Commission before acceptance of the right-of-way deed. We would recommend tree and stump removal of selected trees identified by city staff prior to acceptance and the continual maintenance of the alleyway by the property owners. The other option presented would be for all property owners affected by this alleyway to have a private easement agreement between landowners. Property owners would share in the maintenance as the City of Abilene would not be responsible for providing any maintenance.

This petition will tentatively go before the City Commission at their study session scheduled on December 6, 2021, at 4:00 p.m. at the Abilene Public Library. If you have any questions, please contact me at 785-263-2550 or email to kari@abilenecityhall.com.

Sincerely,

Kari Zook

Kari Zook
Planning & Zoning Administrator

Mike Wilson owns all of vacated alley per Ray Wyatt 11-20-01.

BEFORE THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS

In the Matter of the Application for the)
Vacation of a Certain Portion of a Street)
and a Certain Portion of an Alley)
in the City of Abilene, Kansas.)

ORDER VACATING STREET AND ALLEY

On this 13th day of November, 2001, the above-entitled matter comes before the Governing Body of the City of Abilene, Kansas, on the petition for vacation of a certain portion of a street and a certain portion of an alley.

WHEREUPON, evidence is presented on the petition.

WHEREUPON, the Governing Body, having heard the testimony and reviewed the petition and other papers filed herein, finds that due and legal notice has been given by publication as required by law, that no private rights will be injured or endangered by the requested vacation, that the public will suffer no loss or inconvenience thereby, and that in justice to the petition the request ought to be granted pursuant to K.S.A. 12-504 *et seq.*

IT IS THEREFORE ORDERED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS, that the following-described portion of a street and alley within the City of Abilene, Kansas, be vacated pursuant to K.S.A. 12-504 *et seq*, to-wit:

> Adams Street from the North line of Northwest Third Street to the South line of Northwest Fifth Street, all of original Fifth Street lying South of Fifth Street as reopened by City of Abilene in Ordinance No. 2327 from the West line of Washington Street to the East line of Jefferson Street, and all of the alley in Block 20, which is owned by petitioner as set forth in a deed recorded at Deed Book 136, Pages 201-202, Fairview Addition to the City of Abilene, Kansas.

that there be reserved to the city and the owners of lesser property rights for public utilities, rights-of-way, and easements for public service facilities in said street right-of-way for present uses; and that the City Clerk certify a copy of this order to the Dickinson County Register of Deeds for appropriate action pursuant to K.S.A. 12-505.

Passed on this 13th day of November, 2001.

CITY OF ABILENE STATE OF KANSAS

John R. Zutavern
JOHN R. ZUTAVERN
Mayor

Attest:

Doris M. Arneson
DORIS M. ARNESON
City Clerk

CERTIFICATION

I hereby certify that the foregoing order was duly passed and approved by the Governing Body of the City of Abilene, Kansas, in regular meeting on the 13th day of November, 2001.

Doris M. Arneson
DORIS M. ARNESON
City Clerk

STATE OF KANSAS
Dickinson County } ss. 003643
Filed for record this
NOV 16 2001
at 2 33 o'clock P M. and recorded
in book 248 page 696
Register of Deeds
Deputy

REGISTER OF DEEDS SEAL DICKINSON COUNTY, KANSAS

11-19-01
MK

ABILENE KANSAS

City of Abilene

Item for City Commission Agenda

Meeting Date: 12/6/21

Approved for Agenda By:
(Office Use Only)

Originating Department	Prepared By:
Planning & Zoning	Kari Zook

AGENDA ITEM HEADING:

Proposed ordinance to amend Section 9-3 and the embedded Table 9-1 of the zoning regulations to remove the option of a Conditional Use Permit for a first-floor dwelling in the C-4 district.

BACKGROUND:

A request was received to evaluate the current zoning regulations regarding first floor dwellings in the C-4 district with an issuance of a Conditional Use Permit, as stated in Table 9-1 of Section 9-3:

TABLE 9-1

P = Indicates Permitted Uses **C** = Indicates Conditional Uses

	USE	C-1	C-2	C-3	C-4
12.	Dwellings: When dwelling unit(s) located on other than ground floor of commercial structure.	P	P	P	P(7)

(7) Allowed on 1st floor with the issuance of a Conditional Use Permit pursuant to Section 26- 2.

The option would be to amend the code and remove the (7) and continue to only allow residential dwellings on any level other than the ground floor of the commercial structure.

In order to advance this item, it would be necessary for the Planning Commission or City Commission to formally initiate and request the amendment (see Section 26-101(b)). Then, the Planning Commission should hold a public hearing to consider the change (following publication of a notice of hearing in the newspaper). If the amendment is approved by the Planning Commission, it should advance to the City Commission for final approval.

FISCAL NOTE:

N/A

COMMISSION ACTION:

Advise city staff on whether to proceed with this amendment to the zoning regulations.

ORDINANCE NO. ________

AN ORDINANCE AMENDING SECTION 9-301 OF THE ZONING REGULATIONS FOR THE CITY OF ABILENE, KANSAS CONCERNING PERMITTED AND CONDITIONAL USES WITHIN COMMERCIAL ZONED DISTRICTS, TO DISALLOW RESIDENTIAL USES ON THE GROUND FLOOR OF COMMERCIAL STRUCTURES IN THE C-4 CENTRAL BUSINESS DISTRICT.

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

SECTION ONE. Section 9-301 of the Zoning Regulations for the City of Abilene, Kansas is hereby amended to read as follows:

SECTION 9-3 PERMITTED AND CONDITIONAL USES

9-301. In the commercial zoning districts the uses listed in Table 9-1 within the designated zoning districts are permitted uses or conditional uses when so designated. Conditional uses require the issuance of a Conditional Use Permit in accordance with the provisions of Article 26.

No building or land shall be used and no building or structure shall be erected, altered or enlarged, which is arranged, intended or designed for other than one of the uses indicated in the following Table 9-1.

TABLE 9-1

P = Indicates Permitted Uses **C** = Indicates Conditional Uses

USE		C-1	C-2	C-3	C-4
1.	Ambulance service.			P	P
2.	Amusement places, indoor.			P	P
3.	Animal hospitals.			P(1)	P(1)
4.	Any public building or land use by any department of the City, county, state or federal government.	C	C	C	P
5.	Artists, authors, composers, studios and galleries	P	P	P	P
6.	Auditoriums, exhibition halls, fairgrounds, stadiums and similar uses.			P	P
7.	Automobile and truck wash services.			P	C
8.	Churches, similar places of worship.	P	P	P	P(2)
9.	Convenience stores.		P(3)	P	P
10.	Day care facilities: child care centers, day care homes, family day care homes, group day care homes and preschools.	P	P	P	P
11.	Dry cleaners-laundries, including self-service.			P	P

12.	Dwellings: When dwelling unit(s) located on other than ground floor of commercial structure.	P	P	P	P~~(7)~~
13.	Electric-telephone substations and similar public utility uses.		P	P	P
14.	Food catering service, lockers-storage.			P	P
15.	Fraternal-civic-social organizations.	P	P	P	P
16.	Funeral, crematory and mortuary services		P	P	P
17.	Furniture repair, upholstering			P	P
18.	Garden supplies – nurseries, greenhouses.			P	P
19.	Golf driving ranges.			C	C
20.	Health and exercise spas, gymnasiums.	P	P	P	P
21.	Hospitals, clinics, laboratories.	P	P	P	P
22.	Hotels and motels.		C	P	P
23.	Industrial laundry and linen supply services.			C	C
24.	Kennels-boarding and breeding.			C	C
25.	Miniature golf, outdoor.		P	P	C
26.	Mini-storage, self-storage.		C	C	C
27.	Manufactured home sales.			P	P
28.	Monument engraving and sales.			P	P
29.	Motor vehicle repair and body shops, provided all work shall be performed and all materials shall be stored within an enclosed building.			C	C
30.	Nursing homes, rest homes, convalescent homes and similar facilities.	P	P	P	P
31.	Offices: professional-business-educational-industrial-religious-philanthropic-public.	P	P	P	P
32.	Package liquor store.		C	C	C
33.	Printing, including newspaper publishing.			P	P
34.	Private clubs.			P(4)	P(4)
35.	Race track and courses – vehicle and animal.			C	C
36.	Radio and television broadcasting studios (without transmission towers).	P	P	P	P
37.	Radio or television broadcasting studios (with transmission towers).		P	P	P
38.	Radio, television or telephone transmitting station or towers, subject to further regulations set out in Article 23.		C	C	C
39.	Recreation centers.			P	P
40.	Recreational vehicles – trailers, equipment sales.			P	P

41.	Restaurants.	C	P	P	P
42.	Retail sales and rental of goods and merchandise including, but not limited to: antiques; apparel; appliances; bakeries; bicycles; books and stationery; building materials; carpet and other floor coverings; cigarettes; clocks; farm machinery and supplies; florists; food and groceries; furniture; hardware; heating, plumbing, and air conditioning equipment; jewelry; musical instruments; motor vehicles, parts and supplies; pet shops; pharmacies; photographic supplies and cameras; office equipment and supplies; service stations; and storage sheds.	P/ C(5)	P	P	P
43.	Retail sales of services including, but not limited to: banks, barber and beauty shops; building contractors, including air-conditioning, heating, plumbing and electrical; cleaning and repair; interior decorating; lawn care and landscaping; locksmith; message service; outdoor advertising; pet grooming; photocopying and blueprinting; and stenographic, duplicating and mailing services.	P	P	P	P
44.	Schools: a. Public and private elementary schools b. Public and private secondary schools c. Postsecondary educational institutions d. Business and training/vocational schools	C C P C	C C P C	C C P P	C C P P
45.	Storage or warehousing, except for products of a highly explosive, combustible or volatile nature.			C	C
46.	Taverns, bars and drinking establishments.			P(4)	C(4)
47.	Theaters, indoor.		P	P	P
48.	Theaters, outdoor.			C	C
49.	Travel trailer parks.			C(6)	
50.	Wholesale establishment.			C	C

Permitted and conditional uses footnotes:

(1) Providing all services, runs and pens are within an enclosed building.
(2) Parsonages and similar uses when located in the C-4 District must comply with the same floor area regulations as set out in Item 12 (Dwellings) of Table 9-1.
(3) Including the self-service dispensing of gasoline and related petroleum products, providing there is no motor vehicle repair or service.
(4) Provided not located within 200 feet of: a church, a school or a hospital.
(5) If display area exceeds 2,000 sq. ft., regardless of number of stories.
(6) Subject to requirements set out in Section 9-11.
~~(7) Allowed on 1st floor with the issuance of a Conditional Use Permit pursuant to Section 26-2.~~

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SECTION TWO. Existing Section 9-301 of the Zoning Regulations of the City of

Abilene, Kansas is hereby repealed.

SECTION THREE. This ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper by the following summary:

Ordinance No. _____Summary

> On ______________, 2021, the City Commission passed Ordinance No. ________. The ordinance amends Section 9-301 of the Zoning Regulations for the City of Abilene, Kansas concerning permitted and conditional uses within commercial zoned districts within the City of Abilene, Kansas, to disallow residential uses on the ground floor of commercial structures in the C-4 Central Business District. A complete copy of the ordinance is available online at www.abilenecityhall.com or in the office of the City Clerk, 419 N. Broadway Street in Abilene, Kansas, free of charge. This summary is certified by the City's legal counsel.

APPROVED AND PASSED by the Governing Body of the City of Abilene, Kansas, this _____ day of _________________, 2021.

____
Brandon Rein, Mayor

Attest:

____
Shayla Mohr, City Clerk

The publication summary set forth above is certified this _____ day of ____________, 2021.

____
Aaron O. Martin, City Attorney

ORDINANCE NO. 3325

AN ORDINANCE APPROVING A TEXT AMENDMENT TO SECTION 9-3, TABLE 9-1, OF THE ZONING REGULATIONS OF THE CITY OF ABILENE, KANSAS CONCERNING RESIDENTIAL USES ON THE 1ST FLOOR OF COMMERCIAL BUILDINGS IN THE "C-4, CENTRAL BUSINESS DISTRICT".

WHEREAS, the Planning Commission conducted public hearings on a proposed text amendment to Section 9-3, Table 9-1 of the Zoning Regulations of the City of Abilene, Kansas on April 11, 2017 and May 9, 2017;

WHEREAS, the Planning Commission made a recommendation (4-0) to approve the text amendment providing for the use of 1st floors in the C-4 district by right with a condition that the property maintain a commercial appearance;

WHEREAS, the City Commission finds that allowing the use by right is not appropriate for the maintenance of the C-4 district as downtown commercial in nature and that residential uses on the 1st floor are more appropriately evaluated through the Conditional Use Permit process on an individual and context-sensitive basis.

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

SECTION ONE. Findings of Fact. That the governing body hereby finds that residential uses on the 1st floor would be appropriately evaluated through the Conditional Use Permit process on an individual and context-sensitive basis in order to maintain the commercial integrity of the downtown commercial district.

SECTION TWO. Amendment. That Section 9-3, Table 9-1 of the Zoning Regulations of the City of Abilene, Kansas, is hereby amended as follows:

BOLD = Added Text
~~Strike-Through~~ = Deleted Text

Table 9-1

Use		C-1	C-2	C-3	C-4
13.	Dwelling: When dwelling unit(s) located on other than ground floor of commercial structure.	P	P	P	**P(8)**

(8) Allowed on 1st floor with the issuance of a Conditional Use Permit pursuant to Section 26-2.

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

PASSED AND ADOPTED by the Governing Body of the City of Abilene, Kansas this 22nd day of May, 2017.

CITY OF ABILENE, KANSAS

By: S. Dee Marshall, Mayor
S. Dee Marshall, Mayor

THE CITY OF ABILENE STATE OF KANSAS

ATTEST:

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

APPROVED AS TO FORM:

Aaron O. Martin, City Attorney

CITY OF ABILENE

Item for City Commission Agenda

Meeting Date: 12/6/21 12/13/21

Originating Department	Prepared By:	Approved For Agenda By: *(Office Use Only)*
Admin	Ron Marsh	

AGENDA ITEM HEADING:

Opioid Settlement Resolution

BACKGROUND:

The attached opioid settlement informational sheet explains the background and reason for this resolution.

Also attached is the 2019 memo from the City Attorney regarding the city's invitation to opt out or remain in the class action. The city chose to remain in the class action.

The resolution needs to be adopted before the end of the year and the League prepared a sample resolution for municipalities, and the City Attorney has revised it to fit Abilene.

FISCAL NOTE:

Revenue from settlement

COMMISSION ACTION:

Discuss and direct staff

TO: Abilene City Commission

FROM: Aaron Martin, Legal Counsel
Clark, Mize & Linville, Chartered

DATE: November 15, 2019

RE: Opiate Litigation – Negotiation Class Action

Background:

Municipalities across the country have sued manufacturers, distributors, and retailers of prescription opiate drugs seeking, among other things, reimbursement for monies spent addressing the opioid crisis. All federal actions have been centralized into one court in Ohio and are entitled, *In re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio).

The court has certified a voluntary "Negotiation Class" ("Class"). The Class is defined as all counties, parishes, and boroughs; and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities. The Class includes all counties and cities, whether they have filed a lawsuit or not. The City of Abilene has received notice that it is included in the Class, along with an opportunity to exclude itself from participation in the Class. A copy of the Notice is attached to this memo.

The purpose of the Class is solely to negotiate settlements with 13 sets of defendants. A representative group of members of the Class will attempt to negotiate with the defendants. If a settlement is reached with any one or more of the defendants, it will be presented to the Class for a vote. If a particular settlement is approved by 75% of the members of the Class and the court, it will be binding on all members of the Class. Settlement proceeds will be distributed at the county level, if a settlement is reached. According to the notice, the purposes of the Class are (a) to unify cities and counties into a single negotiating entity to maximize their bargaining power and (b) to provide finality to opioids litigation for any settling defendant.

The enclosed Notice addresses numerous frequently asked questions related to the Class proceedings. The Notice also directs recipients to a website that provides some projected allocation numbers, assuming a $1 billion global settlement approved by the Class members and the court. Those hypothetical numbers indicate that Dickinson County could receive approximately $22,000 in total, and Abilene's suggested portion of that recovery is approximately $6,300. That's not to say that a settlement will actually be reached, that the potential settlement won't be more or less than $1 billion, or that there aren't other ways of dividing settlement distributions in Dickinson County, but that information gives a very rough idea of what the City of Abilene *may* be entitled to in the event of a settlement if it stays in the negotiation class.

This Class is unique in that it requires the City to opt out rather than opt in. If the City wishes to opt out, it must submit an Exclusion Request Form by no later than November 22, 2019. If the City wishes to remain a member of the Class, no action is necessary. It is not likely that there will be another opportunity to exclude the City from the Class.

Considerations related to staying in the Class, or opting out, are as follows:

1. If the City does not opt out of the Class proceedings by November 22, 2019, the City will be bound to any final settlement between the Class and any of the 13 defendants. In order for a settlement to be "final," the settlement must be approved by 75% of the Class members and the court. Presently, there are no proposed settlements.

2. A final settlement against any one or more of the 13 defendants in the Class proceeding would bar the City from initiating or continuing any litigation against the defendants that are the subject of the negotiated settlement(s). Accordingly, by remaining in the Class, the City risks foregoing its own lawsuit against a defendant if a class settlement has been reached and approved with respect to that particular defendant.

3. Prior to a final settlement in the class proceedings, the City's membership in the Class would <u>not</u> preclude the City from initiating or continuing its own lawsuit(s) against any one or more of the 13 defendants in the Class proceedings. In other words, the City does not need to opt out of the Class in order to preserve its rights to file, continue to prosecute, or settle its own lawsuits against the 13 defendants.

4. If the City files its own lawsuit against one of the Class defendants, the City may keep any settlement or judgment it obtains, so long as the settlement or judgment is obtained and collected prior to final approval of the Class settlement with respect to that defendant.

5. If the City files its own lawsuit and obtains and collects on a judgment or settlement with a defendant before the Class settlement is finalized, the City will not receive additional compensation through any later Class settlement. In other words, if the City pursues its own lawsuit and collects on an individual settlement or judgment against one of the 13 defendants, the City may not participate in any subsequent Class settlement fund as to that particular defendant. Because there are 13 separate defendants, however, the City could participate in Class settlements as to other defendants.

<u>**Conclusion/Recommendation**</u>:

Participating in the Class proceedings, and not opting out, appears to provide the City with the most flexibility. Accordingly, City staff recommend participating in the proceedings. If the City stays in the class proceedings, it may still initiate its own litigation against any or all of the 13 defendants. If the City were to initiate its own litigation against one or more of the 13 defendants, the decision to stay in the Class proceedings would only have a potential prejudicial effect on the City if the Class reaches a final settlement with one or more of the same defendants before the City obtains and collects on a judgment or settlement in the City-initiated lawsuit.

In that case, the City would be bound by the Class settlement as to the particular defendant, and the City could not continue its own lawsuit against the same defendant. While staying in the Class proceedings creates a potential risk to the City of foregoing a more favorable recovery from a defendant in a City-initiated lawsuit, it is important to remember that any settlement in the class proceedings requires 75% approval of all Class members, so it is unlikely that a settlement would be on terms that are unfavorable to the City and similarly-situated municipal entities.

CLASS ACTION NOTICE AND FREQUENTLY ASKED QUESTIONS ("FAQs")

To: All U.S. Counties, Cities, and Local Governments as listed at www.OpioidsNegotiationClass.info

A court authorized this notice. This is not a solicitation from a lawyer.

- Counties and cities across the country have sued manufacturers, distributors, and retailers of prescription opiate drugs seeking, among other things, reimbursement for monies spent addressing the opioid crisis. All federal actions have been centralized into one court in Ohio and are entitled, In re: National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio). Additional cases are pending in state courts.

- The Court in In re: National Prescription Opiate Litigation has certified a voluntary "Negotiation Class" ("Class"). The Class is defined as: **all counties, parishes, and boroughs (collectively, "counties"); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively "cities").** The Class includes all counties and cities, whether they have filed a lawsuit or not. The complete current list of Class Members is available at the Class website: www.OpioidsNegotiationClass.info. This list may be updated as the Court may order.

- **NO SETTLEMENT HAS BEEN REACHED. HOWEVER, IF YOUR COUNTY OR CITY STAYS IN THE CLASS**, it will be bound if a Class settlement is approved in the future. Your county or city will likely **NOT** be provided another opportunity to be excluded from this Class action, so you should read this notice carefully and consult with your counsel regarding your county or city's rights.

- The Court has certified two Racketeer Influenced and Corrupt Organizations Act ("RICO") claims under Rule 23(b)(3) and two Controlled Substances Act ("CSA") issues under Rule 23(c)(4). (see FAQ 7). The Class is certified solely to consider and vote on any future settlement offers made to the Class by one or more of 13 defendants (see FAQ 5). The purposes of the Class are (a) to unify cities and counties into a single negotiating entity to maximize their bargaining power and (b) to provide finality to opioids litigation for any settling Defendant.

- This Negotiation Class will not decide any claims or defenses in opioids litigation on the merits. It is certified as a Negotiation Class only, to facilitate Class Members' approval or rejection of proposed settlements. There are no proposed settlements at this time, and no guarantee that there will be in the future. **However, your legal rights are affected and it is recommended that you consult with counsel regarding the choice you have to make now.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
STAY IN THE CLASS **REQUIRES NO ACTION**	**Stay in the Class. Await the negotiation outcome, but retain the right to pursue your own lawsuit in the meantime. Give up certain rights if a Class settlement is reached and approved by the Class and Court, but get a share of any Class settlement.** By taking no action in response to this Notice, you remain in the Class. As a Class Member, you will still retain your right to pursue your own case unless and until any possible Class settlement is approved by the Court. As a Class Member, you have the right to vote on any settlement proposed to the Negotiation Class. A settlement will not be accepted unless supported by 75% of the voting Class Members, counted by number, population, and allocation, for both litigating and non-litigating entities, and approved by the Court. Settlement funds will be distributed at the county level and each county's share – and city's suggested share – can be viewed now by utilizing the Allocation Map at the Class website, **www.OpioidsNegotiationClass.info**. If the Court approves any settlement, that judgment will prohibit Class Members from suing the settling Defendant(s) about the claims and issues in the litigation.
REMOVE YOURSELF FROM THE CLASS **REQUIRES ACTION BY NOVEMBER 22, 2019**	**Get out of the Class. Get no portion of any settlement. Keep rights.** Those who exclude themselves from the Class cannot vote on, will not have the right to be paid under, and will not be bound by, any Class settlement. You keep any rights to negotiate separately about the same legal claims in this lawsuit, even if the Court approves a settlement for the Class. Class Members may exclude themselves from ("opt out" of) the Class by having an authorized officer or employee complete and sign the Exclusion Request Form enclosed here and submit it on or before **November 22, 2019** by email or mail in accordance with the instructions in FAQ 26 below.

- Class representatives and Class counsel will represent the Class in negotiations with Defendants who choose to do so. You may enter an appearance through an attorney (at your own expense) if you desire, but it is not required. Class Membership does not eliminate existing agreements with individual counsel. The procedure for payment of Class/common benefit attorneys' fees/costs in connection with any Class settlement must be approved by the Court. Details of the proposed options and procedures for fees and costs are posted on the Class website.

- For complete information on the Class, the settlement allocation formulas, the Class certification motion and Order, the list of included Class Members, the voting process to be used by the Class in accepting or rejecting any Class settlement offer, and an Allocation Map determining your allocation of any proposed settlement, go to **www.OpioidsNegotiationClass.info**. Important information on the Opioids-related litigation, including all pertinent Orders and Schedules, and Frequently Asked Questions, will be available on the Class website on an ongoing and current basis.

Your rights and options are further explained below.
Any questions? Read on and visit www.OpioidsNegotiationClass.info.

DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION

FREQUENTLY ASKED QUESTIONS ("FAQS")

BASIC INFORMATION

1. Why is a Negotiation Class being formed? What is its purpose?

The purpose of the Negotiation Class is to create a cohesive group of cities and counties to negotiate Classwide settlements, on a voluntary basis, with Defendants who make, distribute, or sell opioids nationwide. Class Representatives and Class Counsel will represent the Negotiation Class. Class Members will vote on any Class settlement proposal. If 75% of those Class Members who vote (as described in FAQ 18 and 19 below) support a proposed Settlement, Class Counsel will ask the Court to approve it. The ultimate purpose of the Negotiation Class is to make settlement easier to obtain.

2. Is this the first Negotiation Class Action?

Yes. This is a new use of the Class action mechanism under Federal Rule of Civil Procedure 23, reflecting the unique nature of the national opioids litigation. Unlike any mass litigation before, thousands of cities and counties nationwide are pursuing claims against major defendants. The goal is to recover money to help fight the opioids epidemic, provide prevention and treatment services going forward, and change Defendants' practices.

3. Why use a Class mechanism?

Joining all cities and counties together as a Negotiation Class gives them maximum negotiating power, makes the negotiation of comprehensive settlements a more practical process, enables Defendants to know the group with which they are negotiating, and enables Class Members to vote on resulting settlement offers.

4. Who are the Class Representatives?

The Court has authorized the following 49 counties and cities to serve as the Negotiation Class's Class Representatives: (1) County of Albany, New York; (2) City of Atlanta, Georgia; (3) Bergen County, New Jersey; (4) City of Baton Rouge/East Baton Rouge Parish, Louisiana; (5) Broward County, Florida; (6) Camden County, New Jersey; (7) Cass County, North Dakota; (8) City of Chicago, Illinois; (9) Cobb County, Georgia; (10) City of Concord, New Hampshire; (11) Cumberland County, Maine; (12) City of Delray Beach, Florida; (13) Denver, Colorado; (14) Escambia County, Florida; (15) Essex County, New Jersey; (16) County of Fannin, Georgia; (17) Franklin County, Ohio; (18) Galveston County, Texas; (19) County of Gooding, Idaho; (20) City of Grand Forks, North Dakota; (21) County of Hennepin, Minnesota; (22) City of Indianapolis, Indiana; (23) County of Jefferson, Alabama; (24) Jefferson County/City of Louisville, Kentucky; (25) Jersey City, New Jersey; (26) Kanawha County, West Virginia; (27) King County, Washington; (28) City of Lakewood, Ohio; (29) City of Los Angeles, California; (30) City of Lowell, Massachusetts; (31) City of Manchester, New Hampshire; (32) Maricopa County, Arizona; (33) Mecklenburg County, North Carolina; (34) The Metropolitan Government of Nashville and Davidson County, Tennessee; (35) Milwaukee County, Wisconsin; (36) Monterey County, California; (37) City of Norwalk, Connecticut; (38) County of Palm Beach, Florida; (39) Paterson City, New Jersey; (40) City of Phoenix, Arizona; (41) Prince George's County, Maryland; (42) Riverside County, California; (43) City of Saint Paul, Minnesota; (44) City of Roanoke, Virginia; (45) County of Rockland, New York; (46) City and County of San Francisco, California; (47) County of Smith, Texas; (48) County of Tulsa, Oklahoma; and (49) Wayne County, Michigan.

5. Who are the Defendants?

The Court has authorized the Negotiation Class to negotiate with 13 Defendants (including their affiliates): (1) Purdue, (2) Cephalon, (3) Endo, (4) Mallinckrodt, (5) Actavis, (6) Janssen, (7) McKesson, (8) Cardinal, (9) AmerisourceBergen, (10) CVS Rx Services, Inc., (11) Rite-Aid Corporation, (12) Walgreens, and (13) Wal-Mart. The Negotiation Class is authorized to negotiate settlements with any of these 13 Defendants, on any of the claims or issues identified below in FAQ 7, or other claims or issues arising out of the same factual predicate. If Class Counsel seek to negotiate for the Class with any other defendants, they can file a motion asking the Court to amend the Class certification order.

6. Has a Class settlement been reached with Defendants yet?

No. No Class settlement has been reached yet with any Defendant. But the existence of a Negotiation Class makes the possibility of Class settlement more feasible because a Defendant will know the group with which it is negotiating. There is no guarantee, however, that there will be a Class settlement and it is possible that there will be settlements that do not encompass the Class, such as settlements between one or more Class Members and one or more Defendants.

THE CLASS CLAIMS AND ISSUES

7. What claims and issues are certified for the Negotiation Class?

In this Negotiation Class, the Court certified two federal Racketeer Influenced and Corrupt Organizations Act ("RICO") claims and two federal Controlled Substances Act ("CSA") issues. The RICO claims and the issues related to the CSA are similar across the country and the Class. The first RICO claim alleges that five Defendants misled physicians and the public about the need for and addictiveness of prescription opioids, all in an effort to increase sales. The second RICO claim alleges that eight Defendants ignored their responsibilities to report and halt suspicious opioid sales, all in an effort to artificially sustain and increase federally-set limits (quotas) on opioid sales. The CSA issues allege that the CSA required Defendants to create systems to identify, suspend, and report unlawful opioid sales, and that Defendants failed to meet those obligations. As noted in FAQ 5, above, the Negotiation Class is authorized to negotiate Class settlements concerning these claims and issues or other claims or issues arising out of the same factual predicate. **However, this Negotiation Class does not involve claims by State governments against the Defendants and no Class settlement will release or otherwise interfere with any State government's current or future litigation**. **This Negotiation Class concerns claims only of counties and cities.** You can read more about these claims and issues in the Court's Memorandum Opinion certifying this Class, which is posted at www.OpioidsNegotiationClass.info.

8. Has the Court decided any claims or issues?

No. The Court has not decided any Classwide claims or defenses on the merits and the Court will not render any Classwide decisions on the merits of any claims asserted by the Class or individual Members of it. By establishing this Negotiation Class and issuing this notice, the Court is not suggesting the Class would win or lose this case. This Class has been certified for negotiation purposes only.

WHO IS IN THE CLASS

9. What entities are included in the Negotiation Class?

The Negotiation Class is defined as:

All counties, parishes, and boroughs (collectively, "counties"); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively "cities").

A complete current list of Class Members is available at www.OpioidsNegotiationClass.info. The list may be updated as the Court may order.

The terms "counties" and "cities" are used only as shorthand. The Class includes political subdivisions with other names, such as parishes, villages, towns, townships, etc. The list of Class Members was devised primarily from the U.S. Census Bureau lists of governmental entities that provide services to their residents. Check the Cities and Counties lists posted on the Class website to confirm whether you are a Negotiation Class Member.

10. Are counties and cities with state court-filed actions considered part of the Negotiation Class?

Yes. Counties and cities that sue in state court are Members of this Negotiation Class, with the option to opt out. However, nothing about Membership in the Negotiation Class interferes with the rights of any federal or state court plaintiffs to proceed with their own cases for litigation, trial, or individual settlement. Only if and when a Class settlement has been reached, has been approved by 75% of the voting Class Members as described in FAQ 19, and has been approved by the Court, would Class Members lose their ability to proceed on their own, in exchange for the settlement benefits that they would receive.

11. Will the Negotiation Class end the opioid litigation that my County or City has filed?

Not now and only if a Class settlement is later reached and approved. Your county's or city's Membership in the Negotiation Class will not immediately affect any opioid suit it has filed, whether in federal or state court. It also will not stop your county or city from filing or pursuing a lawsuit, and it will not affect any scheduled hearings or trials in any lawsuit. However, if there is a final Class settlement, approved by the required 75% of the voting Class Members and by the Court, the final settlement will likely end all other opioids-related litigation brought by Class Members. In the meantime, you do not need to opt out of the Class to file, continue to prosecute, or settle your own case, and you may keep any settlement or judgment you obtain. If any county or city obtains a judgment or settlement with a Defendant before the Negotiation Class does, however, it will not receive additional compensation through any later Negotiation Class settlement. But by remaining in the Class, your county or city does risk foregoing its own lawsuit (although it would obtain money from a Class settlement) if a Class settlement is reached and approved.

12. How does the Negotiation Class affect other types of opioid plaintiffs that are not counties or cities?

The Negotiation Class does not directly affect the litigation or settlement of the claims of other types of plaintiffs, such as Indian Tribes, third party payors, and others, that are proceeding in federal or state courts. These plaintiffs can organize themselves as groups or propose their own Classes, for trial or settlement purposes.

The Negotiation Class Process

13. Now that the Court has approved this process, what will happen next?

The creation of the Negotiation Class has these next steps:

- On **September 11, 2019**, Judge Polster, the federal judge overseeing all of the national opioids litigation, certified the Negotiation Class to go forward.
- On or before **September 20, 2019**, Class Action Notice will be sent via First-Class mail and posted to the Class website **www.OpioidsNegotiationClass.info** to all Class Members.
- Class Members have until **November 22, 2019** to decide whether to participate or to opt out of the Class. This is the "opt-out period." All Class Members are automatically included in the Class. If a Class Member wants to participate, it does not need to do anything at this point. Only Class Members that wish to exclude themselves ("opt out") and not participate in the Class must act: they must submit a copy of the enclosed Exclusion Request Form on or before **November 22, 2019**, using the instructions in FAQ 26.
- After the close of the opt-out period, the Court will enter an order confirming the Membership of the Class, saying who is in and who is out of the Class.
- After that, the Class will operate if, and only if, one or more of the Defendants wishes to negotiate with the Class as a whole through the Negotiation Class mechanism.
- If a proposed Class settlement is reached, the proposal will be submitted to the entire Class Membership for its approval or rejection in accordance with the voting formula (described in FAQ 18 and 19 below). If no proposed settlement is reached, the Class will not vote and will have no other role.

14. If my County or City chooses to participate in the Negotiation Class, how will it know when there is a proposed Class settlement?

All Negotiation Class Members will be given advance notice of any Class settlement offer, including details on its terms and conditions, and they will have an opportunity to vote on each settlement offer. Class Members will be able to cast their vote securely, through the Class website, which will establish a voting identity and portal for each Class Member. Only Class settlements achieving 75% approval votes, by number, by allocation, and by population, of the litigating and non-litigating Class Members that vote (as described in FAQ 19) will be submitted to the Court, which will make the final determination of whether to approve the settlement.

15. If there is a proposed Class settlement, does the Court still have to approve it?

Yes. If there is a proposed settlement that is approved by 75% of the voting Class Members, as described in FAQ 18 and 19, the Court will review and decide whether to approve it, under the Class action settlement approval process set forth in Federal Rule of Civil Procedure 23(e). Generally, the Court will assess whether any settlement is fair, reasonable, and adequate. All applications for fees and costs also require court approval under Rule 23 procedures. (See https://www.law.cornell.edu/rules/frcp/rule_23.)

16. If there is a proposed settlement and my County or City is included in the Negotiation Class, but it disapproves of the settlement terms, can my County or City object to the settlement?

Yes. As a Negotiation Class Member, you will be entitled under Rule 23(e) to object to any settlement, even if it has received approval from the Class. However, as described in FAQ 27, you will likely not be able to exclude yourself from the Class at that time. An objection explains your concerns to the Court for its consideration but does not remove you from the Class.

17. How long will the Negotiation Class last?

The Negotiation Class will last for 5 years from the date it is certified by the Court. The Court certified the Class on September 11, 2019 and the Negotiation Class will last until September 11, 2024. After that date, the Class will not exist as an entity with which a Defendant can negotiate. However, the Negotiation Class will continue to exist with regard to: (1) any Class settlements presented to the Negotiation Class for a vote before that date, to carry out the voting and approval process; and (2) any Class settlements reached before that date, to complete settlement administration and enforcement.

VOTING

18. If there is a proposed Class settlement, how will the voting be done?

Each Class Member will vote only once on any particular Class settlement proposal. The vote will simply be yes-or-no, in favor of or against the proposed settlement. Class Members that do not vote will not be counted as either yes or no votes; as with an election for government office in the United States, the only votes that are counted are those of the voters who actually cast votes. Class Members' votes will be tabulated mechanically within each applicable voting pool, to make sure that 75% of each pool is in favor of the proposed settlement before it is presented to the Court. The voting pools are described in FAQ 19. Voting tabulation does not require any effort by the Class Members. The requirement of 75% support of voting Class Members across the different voting pools ensures that no settlement will go forward without a wide cross-section of support from cities and counties of all sizes and interests.

19. If there is a proposed Class settlement, how many votes are needed to approve it?

The agreement to be bound by a supermajority vote means that no settlement can be reached that would bind the Negotiation Class without the approval of 75% of the voting Class Members, defined in several ways. To be binding, 75% of those voting in <u>each</u> of the following six categories must approve a proposed settlement:

- 75% of the total number of voting Class Members that had filed suit as of June 14, 2019 ("litigating entities"). This number is based on all individual Class Members who had suits on file regardless of size, so that each voting entity has one vote;
- 75% of the total number of voting Class Members that had not filed suit as of June 14, 2019 ("non-litigating entities"). This number is based on all individual Class Members who had not filed suit, regardless of size, so that each voting entity has one vote;
- 75% of the total population of all voting Class Members that had filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes yes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. The population for each County or City will be based on current census data. The current data is presented on the Class website, **www.OpioidsNegotiationClass.info**. Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;

- 75% of the total population of all voting Class Members that had not filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. Again, the population for each County or City will be based on current census data. The current data is presented on the Class website, **www.OpioidsNegotiationClass.info**. Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;
- 75% of the litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted at opioidsnegotiationclass.info; and
- 75% of the non-litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted at opioidsnegotiationclass.info.

For purposes of counting votes, only votes cast will be considered. In order for a proposed settlement to be binding on the Negotiation Class, 75% of those Class Members who cast votes in **each** of these six categories must be in favor. No settlement will be submitted to the Court for final approval unless 75% of those voting in **each** of the six categories are in favor. No county or city that is not a Class Member as of the deadline for a vote on a proposal will be allowed to vote on that proposal.

ALLOCATION OF CLASS SETTLEMENT FUNDS

20. If there is a Class settlement, how will my County or City's share of the settlement be determined?

Any Class settlement funds will be distributed in three steps:

Step 1: Each county's share of the settlement will be distributed in accordance with an "allocation model." The allocation model uses three factors, based on reliable, detailed, and objective national data, to determine the share of a settlement fund that each ***county*** will receive. These factors address the most critical causes and effects of the opioids crisis, and are each weighted equally (1/3-1/3-1/3): (1) the amount of opioids distributed within the county, (2) the number of opioid deaths that occurred in the county; and (3) the number of people who suffer opioid use disorder in the county. This model is designed not to favor either small or large counties based solely on population. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused actual harm.

Step 2: Counties and their constituent cities, towns, and boroughs may distribute the funds allocated to the county among all of the jurisdictions in any manner they choose. If the county and cities cannot agree on how to allocate the funds, the Class website reflects a default allocation that will apply. The default allocation formula uses historical federal data showing how the specific county and the cities within it have made opioids-related expenditures in the past. Any of the affected jurisdictions may ask a Special Master to apply a different formula.

Step 3: If the default allocation is used and a city's share is less than $500, then that amount will instead be distributed to the county in which the city lies to allow practical application of the abatement remedy. Affected cities could seek recovery through intra-county allocation described in Step 2, or from the Class Members' Special Needs Fund (see FAQ 24). In the rare circumstance that a city with a share of less than $500 lies in a county that does not have a county government, the amount would instead go to the Class Members' Special Needs Fund, and Class members could seek recovery from that Fund.

Further information about the allocation formulas and their data sources are available at the Class website.

21. What happens if a county and its constituent cities make different decisions about staying in the Class?

- If a county and all of its constituent cities remain in the Class, each entity's share will be determined as explained in FAQ 20.
- If a county remains in the Class, but one or more cities within the County are not in the Class, there are a variety of ways that a Class settlement might address that situation, but it is possible that a Class settlement would require that the County's allocation be reduced.
- If a county is not in the Class, but cities within that county remain in the Class, there are a variety of ways a Class settlement might address that situation. One possibility is that a city would receive no direct monetary allocation because its county has opted out, but that it could seek monetary relief through the Special Needs Fund (see FAQ 24). If a settlement provides a city no possibility of monetary relief because its county has opted out, Class Counsel anticipates the city would not be required to release its claims against the settling Defendant.

22. If there is a settlement between a Defendant and a State or States, what impact will this Negotiation Class have on the division of monies between a State and the cities and counties within the State?

The Negotiation Class process does not interfere with a Defendant's ability to settle directly with one or more States. If a Defendant reaches a settlement directly with a State, nothing about this Negotiation Class process would affect the distribution of those settlement funds between the State and its own cities or counties. The Court has explicitly ordered that the Class's lawyers not involve themselves or the Class in the process of allocating monies secured by States between themselves and their counties and cities.

23. Will Negotiation Class Representatives receive anything more than other Class Members?

Negotiation Class Representatives do not receive preferential treatment under any settlement simply for serving as Class Representatives. Their allocation will be calculated in precisely the same manner as every other Class Member's. However, they can apply to the Court for reimbursement of costs and expenses incurred by reason of serving as Class Representatives. Also, courts often award a modest amount to Class Representatives, called an incentive or service award, so as to encourage Class Representatives to step forward on behalf of others. Any such awards are subject to Class notice and Court approval.

24. What is the Special Needs Fund?

Fifteen percent (15%) of any Class settlement fund will be put into the "Special Needs Fund." Any Class Member may apply for a distribution from the Special Needs Fund: (1) to recover its costs of litigating its own opioids lawsuit, if that case was filed before June 14, 2019; and/or (2) to obtain additional relief for any local impact of the opioids crisis that is not captured by the Class Member's allocation. Applications will be made to and approved by a court-appointed Special Master, on a case-by-case basis. Any unawarded amount remaining in this Special Needs Fund would revert to the Class.

YOUR RIGHTS AND OPTIONS

25. Can my county or city exclude itself from the Negotiation Class?

Yes. You have a **one-time** opportunity to exclude your county or city from the Class and you must do so before November 22, 2019. You must follow the procedure set forth in FAQ 26 below to exclude your county or city. As explained in FAQ 27, you will likely **not** be given a second opportunity to exclude your county or city from the Class if a settlement is later reached and you should not count on such an opportunity being available at that time.

26. How does my county or city exclude itself from the Negotiation Class?

You may exclude your county or city ("opt out") by signing and sending, either by email or by first-class U.S. mail, the enclosed Exclusion Request Form.

- If submitted by email, the form must be sent to info@OpioidsNegotiationClass.info on or before **November 22, 2019**.
- If submitted by mail, the form must be postmarked on or before **November 22, 2019** and sent by first-class U.S. mail to:

NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

The Exclusion Request Form must be signed by an **authorized** official or employee of the county or city itself, under penalty of perjury pursuant to 28 U.S.C. § 1746, and is subject to verification by the Court. If you exclude your county or city from the Negotiation Class, your county or city will not be bound by any Orders or Judgments regarding the Class, and it will have no right to share in any settlement reached by the Class.

27. If my county or city stays in the Negotiation Class, can it exclude itself later if it doesn't like a proposed settlement?

Not under the current Court Order. The Court's Order certifying the Negotiation Class provides only one opportunity for a county or city to exclude itself from the Class. The exclusion deadline ends on November 22, 2019. If a settlement is reached and proposed to the Class for its approval, Class Members who do not support the settlement may (1) vote against it and/or, (2) if the settlement is nonetheless approved by the Class votes, file objections with the Court. Rule 23 permits a court to offer a second opportunity for Class Members to opt out when a settlement is proposed, but the Rule does not require the Court to give Class Members a second opportunity to opt out. In this case, it is anticipated that the Court will not give Class Members a second opportunity to opt out. Therefore, Class Members should not rely on that possibility. Class Members should expect that there will be no opportunity to opt out of the Class after **November 22, 2019**.

THE LAWYERS REPRESENTING THE CLASS

28. Who are the Class Counsel?

The Court has authorized the following six lawyers to jointly represent the Negotiation Class: Jayne Conroy and Christopher A. Seeger are Co-Lead Negotiation Class Counsel and Gerard Stranch, Louise Renne, Mark Flessner, and Zachary Carter are Negotiation Class Counsel. Each of these six lawyers represents only cities or counties in Opioids-related litigation.

29. How do Class Counsel get paid?

Class Counsel will apply to the Court for approval of fees and costs under Rule 23(h). As a Class Member, you will receive notice and have an opportunity to object to any such application. The Court may appoint fee committees to make recommendations of any fee awards, to avoid duplication of payment, and to ensure appropriate compensation of those whose efforts provided a common benefit. The Court will make the final decision about all fees paid out of the Class's recovery to any lawyer.

30. Under this proposal, what happens to my County or City's current fee agreement with outside counsel?

The current fee agreement that a county or city has with its outside counsel remains in effect. Membership in the Negotiation Class does not change that. In the event of any settlement that achieves Class and Court approval, there would be a "Private Attorneys Fund" from which outside counsel for Class Members that had signed retainer agreements for opioid epidemic-related litigation before June 14, 2019 could apply for fees and costs in lieu of any current fee agreement. That would be a voluntary decision between the county or city and its outside counsel. A total of up to 10% (maximum) of any approved Class settlement amount will be held in the Private Attorneys Fund. Any unawarded amount remaining in this Fund would revert to the Class. The Court must approve all payments from this Fund.

GETTING MORE INFORMATION

31. How can my County or City keep up with what's going on in this case?

Pertinent news and information will be posted at the Class website, **www.OpioidsNegotiationClass.info** on an ongoing basis. As a Class Member, you also will have the opportunity to sign up, through the Class website, for email notices alerting you to the fact that new information has been posted to the Class website.

DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION

DATE: September 11, 2019.

THE LEAGUE OF KANSAS MUNICIPALITIES

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Opioid Settlement Informational Sheet

Kansas is part of the multi-state litigation aimed at holding the producers and distributors of opioids accountable for the negative effects that their drugs have had on the American public. In 2021, the State Legislature passed HB 2079 to govern the distribution of settlement funds. The bill requires 75% of settlement funds to go to the state and 25% of these funds to be split between municipal governments. Pursuant to this legislation, the League, the Kansas Association of Counties, and the Attorney General's office are finalizing a required Memorandum of Understanding (MOU) governing how the local funds will be split and used.

In order to receive settlement funds, your city will need to certify previous or expected costs to the city of at least $500, agree to spend any settlement funds for lawful purposes, and waive any remaining claims related to the opioid litigation. **It is important to note** that any city not having already filed a lawsuit on their own is barred from doing so by HB 2079. So, if your city is a non-litigating city, meaning that you have not filed opioid litigation on your own independent of the state, then going through these steps will be the only way that your city can receive settlement funds.

Certifying Costs and Agreeing to Spend Funds on Lawful Purposes

Your city will be required to certify, **by resolution**, that the city has had or will have at least $500 in costs related to opioid abuse or addiction mitigation and that the city is able to utilize any settlement funds on purposes approved in the MOU and the various settlements. The League's sample resolution will, among other things, certify costs and the ability to spend on lawful purposes as required.

- **Question 1: What are approved purposes?**
    - Approved purposes will likely include projects and activities, including law enforcement, that prevent, reduce, treat, or mitigate the effects of substance abuse and addiction. Language in the various settlements and the finalized MOU will offer more clarity on this. Cities will be able to partner with non-profit entities or pool money with other municipalities to use the settlement funds on projects well suited to address the problems brought on by opioid addiction and abuse.

- **Question 2: What can be included as we calculate costs?**
    - Generally any public funds spent on opioid abuse mitigation and treatment can be included when calculating if your city meets that $500 threshold. Examples we have heard from cities have been the cost of Narcan kits and the personnel costs to emergency agencies (Fire, EMS, and Police) in responding to overdose calls.

Waiving Claims

Your city will also be required to enter various agreements waiving any future claims that the city may have against various producers and distributors arising from conduct covered by the state settlement. All cities wishing to receive settlement funds will be required to enter the MOU. In addition to the MOU, cities wishing to receive funds will need to enter agreements with other entities (as of now Johnson & Johnson and a collection of distributors). Where you can find this release and how it will be submitted will vary by city population:

- **Cities with population of 10,000 or more.**
    - You should have received a notice from the National Opioids Settlement Administrator. This notice will include directions on how to register for the national settlement site and will include a code unique to your city allowing you to register for the site. Once registered, you will be sent the settlement release forms for the distributor's settlement and the J&J settlement that can be signed online by anyone with authorization to do so. If you have not received this notice, send an email to jgoodyear@lkm.org.
- **Cities with population of less than 10,000**
    - You will still need to sign these releases in order to have access to funds, but you will not be able to do so online. Instead, you will have access to a PDF called Exhibit K that will need to be filled out, signed, and returned. Once this form is made available, it should be on the Attorney General's Opioid webpage. Once that is up, we will modify this document to include a link, link the exhibits on our website, and send it out on the listservs.

- **Question 1: Who can sign the MOU and these settlement releases and agreements on behalf of the city?**
    - Release of these claims will require action by the governing body. Some cities have begun passing resolutions releasing claims and authorizing city personnel or a city official (ex: city manager or administrator, or mayor) to enter the agreements necessary to effectuate that waiver. The League has developed a sample resolution doing just that. While you will not be required to pass such a resolution, it may be

easier for the city to do so; authorizing one official to act on the city's behalf instead of waiting until all agreements are ready and finalized to hold a special meeting of the governing body to take up each agreement.

Sample Resolution

The League, in consult with some city attorneys, has drafted a sample resolution to certify city costs, affirm that the city will only spend the funds on permissible purposes, and authorize a city official to execute any agreements that are necessary for the city to receive settlement funds. We urge you to work with your city attorney as you make modifications to the resolution to make it fit your city.

More Questions? Contact jgoodyear@lkm.org

RESOLUTION NO. ______

A RESOLUTION OF THE CITY OF ABILENE, KANSAS, APPROVING THE EXECUTION AND DELIVERY OF AN AGREEMENT TO RELEASE AND ASSIGN THE CITY'S OPIOID CLAIMS TO THE KANSAS ATTORNEY GENERAL AND CERTIFYING COSTS ATTRIBUTABLE TO SUBSTANCE ABUSE AND ADDICTION MITIGATION IN EXCESS OF $500.

WHEREAS, in 2021, the Kansas Legislature enacted HB 2079, the Kansas Fights Addiction Act (the "Act"), authorizing municipalities such as the City of Abilene to access opioid litigation settlement funds and become eligible for certain state grants by entering an agreement releasing the city's opioid litigation claims to the Attorney General and assigning any future opioid litigation claims to the Attorney General (the "Agreement"); and

WHEREAS, the City of Abilene sustained damages related to the opioid epidemic; and

WHEREAS, the City of Abilene desires to enter an Agreement releasing and assigning its Claims to the Attorney General in order to access opioid litigation settlement funds and become eligible for certain state grants;

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

Section 1. Authorization of the Agreement. The Governing Body hereby authorizes the release of its legal claims arising from covered conduct to the Attorney General, and the assignment of any future legal claims arising from covered conduct to the Attorney General, pursuant to the Agreement by and between the Attorney General and the City in substantially the form developed by the League of Kansas Municipalities, the Kansas Association of Counties, and the Attorney General pursuant to the Act (a copy of the final document shall be on file in the records of the City), with such changes therein as shall be reviewed by the City Attorney and the officials of the City executing such documents.

Section 2. Execution of the Agreement. The Mayor, City Manager, City Attorney and City Clerk are hereby authorized and directed to execute, seal, attest and deliver the Agreement and such other settlement agreements, documents, certificates and instruments as may be necessary and desirable to carry out and comply with the intent of this Resolution, for and on behalf of the City.

Section 3. Certification of Costs and Expenses. The City hereby certifies that it has incurred costs and expenses related to substance abuse or addiction mitigation in excess of $500 and the City can utilize the opioid litigation settlement funds for the lawful purposes established in the Kansas Fights Addiction Act and the settlement agreements. The Mayor, City Manager, City Clerk, and City Attorney are hereby authorized to execute, seal, attest and deliver such other documents, certificates and instruments as may be necessary and desirable to certify these costs and expenses or similar costs and expenses, for and on behalf of the City.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its adoption.

Passed and approved by the Governing Body of the City of Abilene, Kansas, on this ____ day of December 2021.

____
Brandon Rein, Mayor

ATTEST:

____
Shayla Mohr, City Clerk

REVIEWED AND APPROVED AS TO FORM:

____
Aaron O. Martin, City Attorney

CITY OF ABILENE
Item for City Commission Agenda

Meeting Date: 11/15/21
11/22/21

Originating Department: Admin

Prepared By: Ron Marsh

Approved For Agenda By:
(Office Use Only)

AGENDA ITEM HEADING:

Consider amending breed specific dog ordinance

BACKGROUND:

Recently, Commissioners received an email asking the city to reconsider its breed specific ordinance banning pit bulls (city code 4-117).

Nationally, there is a trend against breed discrimination because of the numerous problems and deficiencies associated with these provisions that lead to extended litigation. One of the jobs of the city is to provide for public safety; breed discrimination fails to adequately enhance public safety. It would be far more comprehensive to enact a breed neutral dangerous dog and reckless owner ordinance, and the community would be protected from any vicious dog/animal, regardless of breed. While the city defines a pit bull in city code 4-101(q), studies show it is difficult to determine the heritage of a mixed breed dog, putting the burden of proof on the city.

Attached in your packet is a sample dangerous dog ordinance from the International Municipal Lawyers Association. Both the City Attorney and the City's animal control officer have reviewed the document, with the animal control officers input also attached. Cleaning up the definition section of the ordinance by defining vicious/dangerous animal to include dogs and cats and removing the breed specific section (4-117) would allow the city to continue as they have operated but be less ambiguous.

An additional revision would be defining a "reckless dog owner", with penalties, in an effort to reinforce responsible dog ownership.

FISCAL NOTE:

No fiscal considerations

COMMISSION ACTION:

Review and direct staff

4-101. Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(a) Abandon means the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

(b) Animals means all vertebrate and invertebrate animals such as, but not limited to bovine cattle, horses and other equines, hogs, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or captivated.

(c) Animal Shelter means the facility or facilities operated by the city or its authorized agents for the purpose of impoundment or caring for animals under the authority of this chapter or state law.

(d) At-large means to be outside of a fence or other enclosure which restrains the animals to a particular premise or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be "at-large."

(e) Bite means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(f) Cat means any member of the species felis catus, regardless of sex.

(g) Dog means any member of the species canis familiaris, regardless of sex.

(h) Fowl means all animals that are included in the zoological class aves.

(i) Harbor means any person who shall allow any animals to habitually remain or lodge or to be fed within his or her home, store, yard, enclosure or place of business or any other premises where he or she resides or controls.

(j) Humane Live Animal Trap means any cage trap that upon activation encloses an animal without placing any physical restraint upon any part of the body of such animal.

(k) Humanely Euthanasia means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any other method approved by the American Veterinary Medical Association or the American Humane Society.

(l) Immediate Control means the regulation and supervision by a competent person so that an animal is unable to run or get loose at will.

(m) Kennel means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one (1) location only, five (5) or more dogs.

(n) Livestock includes, but is not limited to cattle, horses, goats, sheep or other animals, commonly regarded as farm or ranch animals.

(o) Neutered means any male or female cat or dog that has been permanently rendered sterile.

(p) Own means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal, including, but not limited to cats, dogs, exotic animals, fowl and livestock. If a minor owns any such animal subject to the provisions of this chapter, the head of the household of which such minor is a member shall be deemed to own such animal for the purposes of this chapter.

(q) Pit Bull Dog means:

(1) The bull terrier breed of dog

(2) The Staffordshire bull terrier breed of dog

(3) The American pit bull terrier breed of dog

(4) The American Staffordshire terrier breed of dog

(5) Dogs of mixed breed or of other breeds than listed which breed or mixed breed is known as pit bulls, pit bull dogs or pit bull terriers

(6) Any dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American pit bull terrier, American Staffordshire terrier, any other breed commonly known as pit bulls, pit bull dogs or pit bull terriers, or a combination of any of these breeds

(r) Owner means the one who owns, an employee, agent, or other competent person into whose charge the actual owner has placed an animal described in Subsection (p) above.

(s) Vaccination means an injection of a vaccine, approved by the State Board of Public Health and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.

(t) Veterinarian means a doctor of veterinary medicine licensed by the State of Kansas.

(u) Vicious animal means:

(1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals

(2) Any animal which attacks a human being or domestic animal without provocation

(3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting

(4) Any animal which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such animal to attack, any Law Enforcement Officer or Animal Control Officer while such officer is engaged in the performance of official duty.

4-116. Vicious animals.

It shall be unlawful to keep, harbor, own or in any way possess a vicious animal. The following provisions shall be applicable to vicious animals:

(a) The impoundment of any animal whose owner has been cited for violation of this section shall be in the discretion of the Law Enforcement Officer or Animal Control Officer.

(b) Any animal whose owner has been cited for violation of this section, which has not been impounded, shall be muzzled and secured in such as manner as to prevent such animal from biting any person or other animal until such time as a determination has been made by the municipal court as to whether such animal is vicious, as defined by this chapter.

(c) Nothing in this chapter shall be construed to prevent a Law Enforcement Officer or Animal Control Officer from taking such action deemed reasonably necessary to protect such person or members of the public from injury or danger, including the immediate destruction of any vicious animal without notice to the owner.

(d) Upon a finding that an animal is a vicious animal as defined by this chapter, the Municipal Court may order such animal to be destroyed in a humane manner.

(e) Surrender of an animal by the owner to a Law Enforcement Officer or Animal Control Officer shall not relieve the owner from responsibility for fees and fines which may result from the violation of this section.

4-117. Prohibited animals.

It shall be unlawful to keep, harbor, own or in any way possess:

(a) Any domestic livestock or fowl, including but not limited to cattle, swine, horses, mules, sheep, goats, chickens, ducks, geese and turkeys, except that:

(1) Registered purebred miniature Vietnamese pot-bellied pigs and other similar registered purebred miniature pigs may be maintained within the city limits, subject to the conditions stated in Section 4-123 below; and

(2) Permitted chickens may be maintained within the city limits, subject to the conditions stated in Section 4-124 below.

(b) Any warm-blooded, carnivorous, or omnivorous, wild or exotic animals (including, but not limited to nonhuman primates, raccoons, skunks, foxes and wild and exotic cats but excluding fowl, ferrets and small rodents or varieties used for laboratory purposes).

(c) Any animal having poisonous bites.

(d) Any pit bull dog.

4-118. Exceptions.

The provisions of this article are not applicable to owners, keepers or harborers of pit bull dogs registered with the city on the effective date of this article. The keeping of such dogs, however, shall be subject to the following standards:

(a) Leash and Muzzle. No person shall permit a registered pit bull dog to go outside its kennel or pen unless such dog is securely controlled with a leash no longer than four (4) feet in length. No person shall permit a pit bull dog to be kept on a chain, rope or other type of leash outside its kennel or pen unless a person is in physical control of the leash. Such dogs may not be secured by leash to inanimate objects such as trees, posts, buildings, etc. In addition, all pit bull dogs on a leash outside the animal's kennel must be muzzled by a

(b) Confinement. All registered pit bull dogs shall be securely confined indoors or in a securely enclosed and locked pen or kennel, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine registered pit bull dogs must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom or floor attached to the sides of the pen or the sides of the pen must be embedded in the ground no less than two (2) feet. All structures erected to house pit bull dogs must comply with all zoning and building regulations of the city. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(c) Confinement Indoors. No pit bull dog may be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the dog from exiting the structure.

(d) Signs. All owners, keepers or harborers registered pit bull dogs within the city shall within ten (10) days of the effective date of this article display in a prominent place on their premises a sign easily readable by the public using the words "BEWARE OF DOG." In addition, a similar sign is required to be posted on the kennel or pen of such an animal.

(e) Insurance. All owners, keepers or harborers of registered pit bull dogs must within ten (10) days of the effective date of this article provided proof to the City Clerk of public liability insurance in a single incident amount of fifty thousand dollars ($50,000.00) for bodily injury to or death of any person or persons or for damage to property owned by any persons which may result from the ownership, keeping or maintenance of such animal. Such insurance policy shall provide that no cancellation of the policy will be made unless ten (10) days' written notice is first given to the City Clerk.

(f) Identification Photographs. All owners, keepers or harborers of registered pit bull dogs must within ten (10) days of the effective date of this article provide to the City Clerk two color photographs of the registered animal clearly showing the color and approximate size of the animal.

(g) Reporting Requirements. All owners, keepers or harborers of registered pit bull dogs must within ten (10) days of the incident, report in writing to the City Clerk the removal from the city or death of a registered pit bull dog; the birth of offspring of a registered pit bull dog; or the new address of a registered pit bull dog owner should the owner move within the corporate city limits.

(h) Sale or Transfer of Ownership Prohibited. No person shall sell, barter or in any other way dispose of a pit bull dog registered with the city, unless the recipient person resides permanently within the same household and on the same premises as the registered owner of such dog, provided that the registered owner of a pit bull dog may sell or otherwise dispose of a registered dog or the offspring of such dog to persons who do not reside within the city.

(i) Animals Born of Registered Dogs. All offspring born of pit bull dogs registered with the city must be removed from the city within six (6) weeks of the birth of such animal.

(j) Irrebuttable Presumption. There shall be an irrebuttable presumption that any dog registered with the city as a pit bull dog or any of those breeds prohibited by this section is in fact a dog subject to the requirements of this section.

(k) Failure to Comply. It shall be unlawful for the owner, keeper or harborer of a pit bull dog registered with the city to fail to comply with the requirements and conditions set forth in this article. Any dog found to be the subject of a violation of this article shall be subject to immediate seizure and impoundment. In addition, failure to comply will result in the revocation of the license of such animal resulting in the immediate removal of the animal from the city.

(Ord. 3339)

Breed Ban Purpose

Designed as a method of preemption to protect the general public and property from the notion that pit bull dogs and mixes thereof are inherently a threat. Though, city code only states the prohibition of pit bull and the like, it does not classify them as dangerous or vicious (though it could be considered implied).

Breed Specific Legislation

City level ordinance being passed in many jurisdictions across the nation has generally been triggered by some event (a pit bull attack that was particularly vicious resulting in great injury or death), negative media coverage, and stigmas. Case law has been very specific that you do have the right to ban particular breeds.

What is a Pit Bull?

According to Abilene City Code Chapter IV 101-definitions, this includes: Bull terrier, Staffordshire bull terrier, American Pit Bull, American Staffordshire, mixed breed or other breeds or mixed breed that is known as pit bulls, pit bull dogs or pit bull terriers, any dog which has the appearance and characteristics of being predominantly of the breeds of bull terrier, Staffordshire bull terrier, American pit bull terrier, American Staffordshire terrier, any other breed commonly known as pit bulls, pit bull dogs or pit bull terriers, or a combination of any of these breeds.

How we currently make this determination

Initially visual confirmation is used based on previous experience with the breed. The pet owner is asked about the breed and asked to provide veterinary paperwork (preferably dated before our interaction) that would typically indicate the breed (rabies vaccination, etc.). In the case that an owner has identified their dog as any of the above, or their paperwork indicates the same, the owner is charged with prohibited animal. When the animal owner is unable/unwilling to provide the information, and the dog overwhelmingly has traits of those listed previously, the owner is charged with prohibited animal.

How the Municipal Court handles prohibited animals in regard to Pit bulls

If found guilty, the owner is fined and required to either remove the dog from City limits or be euthanized within a prescribed time period.

Challenges with breed determination

Several pure breeds (not listed within ordinance) look similar, have similar traits, characteristics and colorations. The same can be said for mixed breeds that can be mistaken for pit bulls. Labrador/Boxer mixes, American Bulldog mixes, Mastiff mixes and many other variations fit in this category. This makes determination more difficult, it also is creates a situation where owners can manipulate the system. A veterinary visit, will easily result in paperwork that identifies the breed as one of the non-banned, if the owner presents them in that manner to the veterinarian. Asking the veterinarian to provide an opinion on a client's breed is a conflict of interest. If the idea is to identify by DNA, which companies and products do you trust? Is it the responsibility of the owner to provide test results? Or is it the responsibility of the animal owner? If it is the responsibility of the City to prove breed determination, and the requirement of providing a DNA sample with an unwilling owner would make a search warrant necessary.

Are Pit Bulls more likely to bite or attack?

Abilene averages 21 reported animal bites (including cats) per year (over the last 5 years). There has not been a trend towards any specific breed during this time. Nationally, through the CDC the numbers of bites are not specifically clear, as it tracks fatalities and that information is dated. Overwhelmingly in the aspect of numbers that are available in a range of years, pit bulls were the most prevalent in fatalities, though the caveat would be many breeds and mixed were lumped into that one breed category. Additionally, you could hypothetically say that a Chihuahua is more likely to bite 100 fold, yet the degree of damage inflicted (or reported) will always steer closer to larger breeds. If you go online to research, you will find any number of points and counter points in equal degree to champion whichever philosophy you support.

Pit Bull History and today's temperament

This becomes a question and argument of nature vs. nurture and with it, probably falls someplace in between. Originally bred in the 1800s in England for blood sports of bear and bull baiting, and after those being banned on to ratting and dog fighting. During these periods, the breed was also used and bred to be a companion, livestock herder/flock protector, and guardian of a household. Will some of these pit bulls (and mixes thereof) still have the genes to engage in combat even though watered down by generations? I believe that a percentage will, yet, with responsible ownership this is not an issue. Most arguments about the breed will remain anecdotal as to the pros and cons of ownership.

Consequences of lifting the ban

Unknown, as there are no statistics available in regards to issues before the ban was enacted. We already have Pit bulls in Abilene now, whether they are misrepresented as another breed or mix, or they are not represented at all and kept behind privacy fences and indoors and not licensed or reported. Lifting the ban would theoretically give the City more insight as to the breeds that populate our town, as more people would be willing to license and be more sincere in what they own. Junction City recently lifted their ban in 2020 (albeit with a special licensing requirement (neutering, background checks, and micro-chip)). According to their records department, they have not seen an increase in bites since this took effect. The problem they have had, is in regards to the actual licensing. Their Pit bull population has increased and many owners are not following the process.

Dangerous/Vicious Dog ordinance & classification

To classify any dog breed potentially dangerous, dangerous, or vicious based on a particular set of circumstances that have already occurred and have pre-defined rules and labels in dealing with said circumstances.

How we administer this now

Abilene City Code already has 2 ordinances (4-107 Prohibited Animal Activities, 4-116 Vicious Animals) that deal with the circumstances of both the idea of a dangerous animal (implied) and a vicious animal. These are handled by the Municipal Court. In the event an owner is charged with vicious animal, and it is believed the dog is an imminent threat to the community that cannot be neutralized at that moment, will be impounded until the court sees fit to release.

How the Municipal Court handles these cases and potential outcomes.

Currently, if someone is charged with Vicious Animal (an unprovoked bite of significance), the owner of the animal may (based upon circumstances) work with the prosecutor to plea to the lesser charge of Prohibited Animal Activities. To achieve that plea, the owner may be required to attend qualified dog training classes, or erecting a fence that is more suitable to the canine, essentially allowing a tailored fit to prevent further issues. The bite victim has input as well as city staff involved in enforcing. These pleas and requirements are ultimately either accepted or denied by the Municipal Court Judge and are followed up by a review process. Dogs that are not subject to that process, or have subsequently not completed the requirements, or have been involved in another bite, with a finding of guilt are fined, and given the option of removing the dog from the city limits or being euthanized within a prescribed amount of time. Owners that are initially charged with Prohibited Animal Activities (generally a minor unprovoked bite) are assessed a fine with rarely any additional requirements.

Is there a need for a classification system?

With the current procedures in place, any new classification system (based on the materials and sample ordinance provided at a previous commission meeting) could potentially lead to the possibility of more "dangerous" dogs allowed within the City of Abilene based on the criteria set forth. If potentially dangerous, dangerous, and vicious is to be determined and also allowed to be appealed before an actual Municipal Court appearance, it would then require the adoption of an Animal Board that could react accordingly. I believe the City already has the tools it needs to enforce adequately.

Reckless Dog Owner

As was included in your initial information packet for review. City Code currently does not include this reference or a direction for dealing with the dog owner who consistently has varying issues. As set forth currently, many charges within a calendar year upon a 2nd and 3rd offense increase fine amounts each time. However, an owner with several different charges throughout the course of a year are treated no differently than the owner with only one issue. Adding Reckless Dog Owner and a defining criteria could add another option to eliminate repeat offenders.

ARTICLE 4-2: IMLA MODEL ORDINANCE REGULATING DANGEROUS DOGS

Section

A public safety ordinance providing for responsible ownership of and licensing and keeping of potentially dangerous dogs, dangerous dogs, and vicious dogs within the corporate limits of the City of _______, authorizing impoundment and disposition of certain dogs, and repealing all ordinances in conflict therewith.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF __________:

SECTION 4-201. Authorization.

This Ordinance is enacted pursuant to the general police power, the authorities granted to cities and towns by the ____________ State Constitution, and Sections _______ through _________ of the _____________ State Code.

SECTION 4-202. Purpose and Intent.

The purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the City of ____________.

SECTION 4-203. Definitions.

When used in this Ordinance, words have their common meaning and in addition the following words, terms, and phrases, and their derivations have the following meaning:

(a) *Animal control officer* means any person employed or appointed by the City who is authorized to investigate and enforce violations relating to animal control or cruelty under the provision of this Ordinance.

(b) *At large* means a dog that is not on its owner’s property and not leashed.

(c) *Bite injury* means any contact between an animal's mouth and teeth and the skin of a bite victim which causes visible trauma, such as a puncture wound, laceration, or other piercing of the skin.

(d) *Dangerous dog* means any dog that has caused a bite injury and is not a vicious dog.

(e) *Director* means the Director of the Department of Animal Control.

(f) *Domestic animal* means an animal of a tamed species commonly kept as pets and includes livestock

(g) *Enclosure* means a fenced or walled area having a fence or wall height of at least six (6) feet suitable to prevent the entry of young children and suitable to confine a dog.

(h) *Impoundment* means seizing and confining a dog by any police officer, animal control officer or any other public officer under the provisions of this Ordinance.

(i) *Muzzle* means a device constructed of strong, soft material or of metal, designed to fasten over the mouth of a dog that prevents the dog from biting any person or other animal and that does not interfere with its respiration.

(j) *Potentially dangerous dog* means a dog that while *at large*: (1) behaves in a manner that a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to a person or *domestic animal*, or (2) causes injury to a *domestic animal.*

(k) *Provocation* means any action or activity, whether intentional or unintentional, which would be reasonably expected to cause a normal dog in similar circumstances to react in a manner similar to that shown by the evidence.

(l) *Owner* means any person, partnership, or corporation having a right of property in an animal, or who keeps or harbors a dog, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her.

(m) *Sanitary condition* means a condition of good order and cleanliness to minimize the possibility of disease transmission.

(n) *Serious physical injury* means disfigurement, protracted impairment of health, or impairment of the function of any bodily organ.

(o) *Vicious dog* means a dog that without provocation or justification bites or attacks a person and causes serious physical injury or death or is declared vicious under this title.

SECTION 4-204. Determination of Status.

(a) The animal control officer may find and declare a dog potentially dangerous, dangerous, or vicious if the officer has probable cause to believe that the dog falls within the definition of “vicious dog”, “dangerous dog” or “potentially dangerous dog”. The finding must be based upon:

(i) The written complaint of a person who is willing to testify that the animal has acted in a manner which causes it to fall within the definition of “vicious dog”, “dangerous dog” or “potentially dangerous dog”; or

(ii) Dog bite reports filed with the animal control officer as required by city ordinance or state law; or

(iii) Actions of the dog witnessed by any animal control officer or law enforcement officer; or

(iv) Other substantial evidence admissible in court.

(b) The declaration shall be in writing, and shall be served by the animal control officer:

(i) On the owner if known using one of the following methods:

1. Regular mail to the owner’s last known address, or by certified mail directed to the owner at the owner’s last known address; or

2. Personally; or

3. If the owner cannot be located by one of the first two methods, by publication in a newspaper of general circulation and posting a notice on the property of the owner;

(ii) Where the owner is not known publication in a newspaper of general circulation.

(c) The declaration shall contain the following information:

(i) Name and address of the owner of the dog if known and if not known that fact.

(ii) A description of the dog.

(iii) Whereabouts of the dog.

(iv) Facts upon which the declaration is based.

(v) Restrictions placed upon the dog and when the owner is not known the intended disposition of the dog.

(vi) Penalties for violation of the restrictions, including possibility of destruction of the animal and fine and imprisonment of owner.

(vii) Availability of a hearing to contest the declaration by submitting a written request to the Board of Appeals within fifteen days of receipt of the declaration or if notice is given by publication or posting within 15 days of the earlier of the date the notice first appears in the newspaper or the property is posted.

(d) A dog may be declared dangerous under this section if the dog has within a twelve-month period attacked and killed a domestic animal on more than one occasion. For purposes of this subsection only, a domestic animal does not include any feral animal or does not apply where the attack was upon a domestic animal that was at large or upon a domestic animal that was tormenting or attacking the dog.

(e) Dogs shall not be declared dangerous, potentially dangerous or vicious if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, provoking or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, provoked or assaulted the dog or was committing or attempting to commit a crime.

(f) *Notice*. When notice is given by regular mail to the owner's last known address, notice is effective on the third day after the notice was placed in the mail, postage prepaid, to the owner's last known address. When notice is given by certified mail, notice is effective when received; provided however, if certified mail delivery has been refused, notice is effective by publication or posting and whenever notice is accomplished by publication or posting the notice is effective and deemed received on the earlier of the day the property is posted or the newspaper is published.

SECTION 4-205. Potentially Dangerous Dogs.

(a) No person shall maintain a potentially dangerous dog without a license or otherwise in violation of this section.

(b) No person owning, harboring or having the care or custody of a potentially dangerous dog shall permit the dog to go at large or leave the owner's property unless the dog is securely leashed and muzzled.

(c) *Spaying/Neutering*. All owners of potentially dangerous dogs must spay or neuter the dog and provide proof of sterilization to the Director of Animal Control within 14 days of the animal control officer declaring the dog potentially dangerous.

(d) In addition to any other penalty for a violation of this section, a court may revoke the authority of a person to keep a potentially dangerous dog within the city.

(e) The owner of a potentially dangerous dog may apply to the Director of Animal Control to have the declaration waived after two (2) years upon meeting the following conditions:

(i) The owner and offending dog has no subsequent violations of this Chapter of the Code; and

(ii) The owner of the dog has complied with all the provisions of this act for a period of two (2) years; and

(iii) The owner provides proof to the Director of Animal Control of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist, certified through the American College of Veterinary Behaviorists (ACVB) or equivalent training.

If the Director finds sufficient evidence that the dog owner has complied with all conditions in this subsection, the application shall be forwarded to the Court to rescind the potentially dangerous dog declaration.

SECTION 4-206. Dangerous Dogs.

(a) No person shall maintain a dangerous dog in violation of this section.

(b) *Keeping of a Dangerous Dog*. Once a dog has been declared dangerous, it shall be kept in a secure enclosure subject to the following requirements:

(i) *Leash.* No person having charge, custody, control or possession of a dangerous dog shall allow the dog to exit its enclosure unless such dog is securely attached to a leash not more than four (4) feet in length and walked by a person who is both over the age of eighteen and who has the physical ability to restrain the dog at all times. No owner shall keep or permit a dangerous dog to be kept on a chain, rope or other type of leash outside its enclosure unless a person capable of controlling the dog is in physical control of the leash.

(ii) *Muzzle*. It shall be unlawful for any owner or keeper of a dangerous dog to allow the dog to be outside of its proper enclosure unless it is necessary for the dog to receive veterinary care or exercise. In such cases, the dog shall wear a properly fitted muzzle to prevent it from biting humans or other animals. Such muzzle shall not interfere with the dog's breathing or vision.

(iii) *Confinement.* Except when leashed and muzzled as provided in this Section, a dangerous dog shall be securely confined in a residence or confined in a locked pen or other secure enclosure that is suitable to prevent the entry of children and is designed to prevent the dog from escaping. The enclosure shall include shelter and protection from the elements and shall provide adequate exercise room, light, and ventilation. The enclosed structure shall be kept in a clean and sanitary condition and shall meet the following requirements:

(1) The structure must have secure sides and a secure top, or all sides must be at least six (6) feet high;

(2) The structure must have a bottom permanently attached to the sides or the sides must be embedded not less than one (1) foot into the ground; and

(3) The structure must be of such material and closed in such a manner that the dog cannot exit the enclosure on its own.

(iv) *Indoor Confinement.* No dangerous dog shall be kept on a porch, patio or in any part of a house or structure that would allow the dog to exit such building on its own volition. In addition, no such dog shall be kept in a house or structure when the windows or screen doors are the only obstacle preventing the dog from exiting the structure.

(v) *Signs*. All owners, keepers or harborers of dangerous dogs shall display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog."

(vi) *Liability Insurance, Surety Bond*. Subject to judicial discretion, the owner of a dangerous dog may be required to present to the Department of Animal Control proof that he has procured liability insurance or a surety bond in the amount of not less than one hundred thousand dollars ($100,000) covering any damage or injury that may be caused by such dangerous dog. The policy shall contain a provision requiring that the City be notified immediately by the agent issuing it if the insurance policy is canceled, terminated or expires. The liability insurance or surety bond shall be obtained prior to the issuing of a permit to keep a dangerous dog. The dog owner shall sign a statement attesting that he shall maintain and not voluntarily cancel the liability insurance policy during the twelve (12) month period for which a permit is sought, unless he ceases to own or keep the dog prior to the expiration date of the permit period.

(vii) *Identification Photographs*. All owners, keepers, or harborers of dangerous dogs must within ten (10) days of determination provide to the Animal Control two color photographs of the registered dog clearly showing the color and approximate size of the dog.

(viii) *Microchip*. All owners, keepers or harborers of dangerous dogs must within ten (10) days of determination microchip the dog and provide microchip information to the Director of Animal Control to register the dog as dangerous.

(ix) *Spaying/Neutering*. All owners, keepers or harborers of dangerous dogs must within ten (10) days of determination spay or neuter the dog and provide proof of sterilization to the Director of Animal Control.

(x) *Sale or Transfer of Ownership Prohibited*. Sale - No person shall sell, barter or in any other way dispose of a dangerous dog registered with the City to any person within the city unless the recipient person resides permanently in the same household and on the same premises as the owner of such dog, provided that the owner of a dangerous dog may sell or otherwise dispose of a registered dog to persons who do not reside within the city. Owner must disclose dog's status as a dangerous dog to anyone to whom the owner transfers custody or care of the dog.

(xi) *Notification of Escape*. The owner or keeper of a dangerous dog shall notify the Department of Animal Control immediately if such dog escapes from its enclosure or restraint and is at large. Such immediate notification shall also be required if the dog bites or attacks a person or domestic animal.

(xii) *Failure to Comply*. It shall be a separate offense to fail to comply with the restrictions in this section. Any dog found to be in violation of this Section shall be subject to immediate seizure and impoundment pursuant to 4-208. In addition, failure to comply with the requirements and conditions set forth in this Ordinance shall result in the revocation of the dog's license and the permit providing for the keeping of such dog.

(c) A dangerous dog owner may apply to the Director of Animal Control to have the declaration waived after three (3) years upon meeting the following conditions:

(i) The owner and offending dog has no subsequent violations of this Chapter of the Code; and

(ii) The owner of the dog has complied with all the provisions of this act for a period of three (3) years; and

(iii) The owner provides proof to the Director of Animal Control of successful completion of a behavior modification program administered by a Certified Pet Dog Trainer (CPDT), Certified Dog Behavior Consultant (CDBC), or Veterinary Behaviorist, certified through the American College of Veterinary Behaviorists (ACVB) or equivalent training.

If the Director finds sufficient evidence that the dog has complied with all conditions in this subsection, and has sufficient evidence that the dog's behavior has changed, the application shall be forwarded to the Court to rescind the dangerous dog declaration.

SECTION 4-207. Vicious Dogs.

It shall be unlawful to keep, possess, or harbor a vicious dog within the city limits.

(a) The provisions of this article shall not apply to a police dog being used to assist one or more Law Enforcement Officers acting in an official capacity

(b) The Director of Animal Control may order a dog euthanized that has been declared vicious.

(c) The owner of a dog that the Director declares to be vicious may appeal that determination to the Board of Appeals within 15 days of the declaration. If an appeal is timely filed, the order to destroy the animal is suspended pending the final determination of the Board except when the Director declares that public health and safety require the immediate destruction of the animal as in the case of rabies.

(d) The owner of a vicious dog shall be liable for and shall pay all costs associated with impoundment, removal, or euthanasia of said animal. The owner shall pay any other associated costs incurred.

SECTION 4-208. Immediate Impoundment.

(a) A dog suspected of being dangerous or vicious may be immediately impounded when the Director of Animal Control or the Director's designee determines such immediate impoundment is necessary for the protection of public health or safety.

(b) If the owner of the dog impounded under subsection (a) of this section is not reasonably ascertainable at the time of impoundment, the Director shall immediately notify the owner by mail sent to the owner's last known address postage prepaid which upon the passage of three days be deemed complete or by personal service within five (5) business days after the dog's impoundment.

(c) The notice of impoundment shall inform the owner of the dog that the owner may request, in writing, a hearing to contest the impoundment. Upon receipt of the notice of impoundment either through personal service or by mail (receipt is complete three days after mailing to the last known address of owner postage prepaid), the owner has 5 business days to request a hearing by serving on the Director of Animal Control a written request for the hearing.

(d) Upon request by the owner of the dog for a hearing under subsection (c), a hearing must be held within ten (10) business days after receipt of the request. Notice of the date, time and location of the hearing shall be provided by regular mail to the dog owner requesting the hearing. The impoundment hearing shall determine if the dog poses a risk to public health and safety **[insert here the appropriate standard: preponderance of the evidence; clear and convincing evidence; or beyond a reasonable doubt]** or if the dog could be released. If the trier of fact determines the dog does not pose a risk to public health and safety, the dog shall be immediately released back to the owner pending further proceedings either administrative or judicial.

(e) The owner must pay all of the cost of the impoundment and upon request must post sufficient funds to cover the anticipated costs for continued impoundment. In the alternative, the owner may propose a suitable facility where the dog could be contained and maintained at the sole cost of the owner and upon approval of the Director the dog may be impounded at that facility under the terms and conditions set by the director. Failure to post funds sufficient to pay for the costs of impoundment constitutes a waiver of any rights the owner may have to a hearing under this Section.

(f) If the owner timely appeals an impoundment or seizure, the owner may also seek review of the Director's determination of boarding costs by filing an appeal with the Board of Appeals within 5 days after the Director issues a demand for prepayment. The Board or a designee, must review the Director's decision within 2 business days after receiving the appeal. The owner must provide the Board with information sufficient to show that requiring prepayment of boarding costs would be a serious financial hardship on the owner. The Board may ask the owner to provide additional information at an informal hearing conducted in person or by telephone. The Director must not require the owner to prepay any boarding costs pending the Board's decision. The Board may make any decision the Director could have made such as requiring the owner to prepay boarding costs retroactive to the initial boarding date of the animal, posting a bond, or placing the animal in a suitable facility at the owner's sole expense. The owner may ask the Board to review the Director's decision regarding prepayment of boarding costs as part of its review of the underlying appeal.

(g) If the owner is successful in appealing the decision to impound the dog, the Director must refund to the owner any costs paid for the impoundment.

SECTION 4-209. Continuation of Dangerous Dog Declaration.

Any dog that has been declared dangerous or vicious by any agency or department of this City, another municipality, county, or state shall be subject to the provisions of this Ordinance. The person owning or having custody of any dog designated as potentially dangerous or dangerous by any municipality, county, or state government shall notify the Department of Animal Control of the dog's address and conditions of maintenance within ten (10) days of moving the animal into the City of _________. The restrictions and conditions of maintenance of any dog declared dangerous by this City, another municipality, county, or state shall remain in force while the dog remains in the City. No dog declared a potentially dangerous, dangerous, or vicious dog by any other designation agency or department of another municipality, county, or state based solely on size, breed, mix of breeds, or appearance shall be subject to this Section.

SECTION 4-210. Reckless Dog Owner.

(a) Any person convicted of:

(i) a violation of the City of ____ Code of Ordinances Chapter on Animals three (3) or more times in a 24 (twenty-four) month period; or

(ii) a violation of this Article two (2) or more times in any five-year period, shall be declared a reckless dog owner.

(b) The Director of Animal Control shall issue a notification of the declaration of Reckless Dog Owner to the person with the following:

(i) name and address of the person subject to the declaration, and;

(ii) the description, violation, and conviction that led to the declaration, and;

(iii) the name, description, and license number of all dogs subject to the effects of the declaration, and:

(iv) instructions on appealing the declaration to the Board of Appeals.

(c) Once declared a reckless dog owner, the city licenses of all dogs owned by the person shall be revoked, and the person shall not own, keep, possess, or harbor a dog for a period of 5 (five) full years from the date of the declaration.

(d) A person declared to be a reckless dog owner may apply to the Director of Animal Control to have the declaration waived after two (2) years upon meeting the following conditions:

(i) The person has no subsequent violations of this Chapter of the Code; and

(ii) The person has complied with all the provisions of this act for a period of two (2) years; and

(iii) The person provides proof to the Director of Animal Control of successful completion of a program designed to improve the person's understanding of dog ownership responsibilities and based upon an interview with the Director of Animal Control establishes that understanding.

If the Director finds sufficient evidence that the person has complied with all conditions in this subsection, the Director may rescind the reckless owner declaration subject to conditions that can help to ensure no future violations. If the Director declines to remove the declaration, the person aggrieved may appeal to the Board of Appeals within 30 days of that decision. Upon appeal, the person must provide clear and convincing proof that ownership of a dog in the future will be handled responsibly and not in violation of any law or ordinance.

SECTION 4-211. Penalties.

(a) Any person violating this Article shall, upon conviction, be punished by a fine of not less than $500.00 nor more than $1,000.00, by imprisonment in the county jail for a term not to exceed 180 days, or by both such fine and imprisonment. [Note: In some jurisdictions this may be labelled a civil fine, in others a misdemeanor and in others the jurisdiction may choose to make violations both a civil offense as well as a criminal offense. See optional provisions below.]

(b) Upon conviction of a violation of this Article, the court may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.

SECTION 4-212. Appeals.

(a) Any person aggrieved by a decision of the Director of Animal Control to declare a dog potentially dangerous, dangerous or vicious, or to declare a person a reckless dog owner, or to impound a dog, or to have a dog euthanized may appeal the decision to the Board of Appeals within 30 days of the decision unless a different period is provided under this Title. A person aggrieved by a decision of the Board of Appeals may appeal that decision to the courts in accordance with and pursuant to state law and the rules of court.

(b) If the Director of Animal Control orders a dog to be euthanized for public health or safety reasons other than for rabies, the owner may immediately appeal that decision to the courts and upon a showing of good cause the court may suspend the order to euthanize the dog until the appeal is finally resolved.

SECTION 4-213. Conflicting Ordinances.

All other ordinances of the City of __________ that conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4-214. Severability.

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part

DANGEROUS DOGS: EDITOR'S COMMENTARY

I. Introduction

This IMLA Model Ordinance is intended to assist local government attorneys involved in drafting legislation aimed at regulating, but not prohibiting, the ownership and care of dogs that are viewed as either a nuisance or dogs that pose an extraordinary risk of danger to persons and property if not properly controlled. Because it is aspirational, it may contain provisions that are difficult if not impossible to implement within certain jurisdictions. Therefore, the drafters encourage any attorney using this ordinance for reference to also check applicable local and state laws.

In preparing this Model and its accompanying commentary we consulted numerous sources, including sample ordinances that IMLA has received from several member cities and counties. Language and provisions included in the IMLA Model were borrowed from ordinances and statutes reviewed from the States of Idaho and Illinois; Roeland Park, Kansas: Skokie, Illinois; South Bend, Indiana; Montgomery County, Maryland, and Fairfax County, Virginia.

II. Drafting Overview

There are several general guidelines to keep in mind when drafting an ordinance to regulate or prohibit the keeping of dangerous or vicious dogs:

- Define what is meant by a “potentially dangerous”, “vicious” or “dangerous” dog, depending on what categories you choose to use.
- Establish procedures by which a dog comes to be classified as such.
- Establish the actions/hearings that satisfy the due process clause that a pet owner may take to contest the designation of his or her dog.
- State the burden of proof in the ordinance. If there are criminal penalties, the burden of proof must be beyond a reasonable doubt for each element.
- Specify the actions that a dog owner must take if the dog is finally declared dangerous at the end of an administrative hearing or court proceeding.
- Describe the penalties that the local government will impose if the dog owner does not comply with the established requirements.
- Consider a registration and mapping of dangerous or vicious dogs in your city.

III. The Police Power to Regulate Dangerous Dogs

Property rights in dogs are of an imperfect or qualified nature. As a rule, governmental bodies may be powerless to enact a general ban on the ownership of dogs.[1] At the same time, however, it is well established that ordinances regulating the keeping of animals within the jurisdictional limits of a particular

[1] *See In re Ackerman*, 6 Cal. App. 5, 13 (1907).

local governmental entity are a valid exercise of the police power delegated from the state provided that the ordinance is reasonable. In *Sentell v. New Orleans & Carrolton R.R.*, the constitutionality of a New Orleans ordinance requiring pet owners to obtain license tags for their dogs and a Louisiana state statute requiring all dogs to be registered was contested.[2] In upholding both the state law and city ordinance, the United States Supreme Court concluded that dogs are subject to the full force of the police power and may be destroyed or otherwise regulated in whatever manner the legislature deems reasonable for the protection of citizens.[3]

Many state courts have since held that a legislative body has broad police powers to control all dogs as means of guarding against public nuisances that endanger people, such as those posed by vicious dogs. Typical of such cases is *Thiele v. Denver*, in which the Colorado Supreme Court stated unequivocally that a dog, like all other property, is held by its owner subject to the inherent police power of the state and cannot be used or held in such way as to injure others or their property.[4] In *King v. Arlington County*, the Virginia Supreme Court held that a county law making it illegal to keep a dog known to be vicious or which has evidenced a disposition to attack human beings was a valid exercise of the county's police power.[5] However, evidence considered in evaluating "known propensity" for dangerousness is generally contested, so it is more effective to list specific behaviors over general terms.[6]

More recently, courts have held that although in the eyes of the law, dogs are property, they are much more than an "inanimate object like, say, a toaster."[7] To justify the state's assertion of its authority on behalf of the public, it must appear that the interests of the public require such interference. Also, the means chosen must be reasonably necessary to accomplish the government's purpose and not unduly oppressive upon individuals.

IV. Breed-Specific/Discriminatory Regulations

Because local governments enjoy such broad discretion when regulating the keeping of dogs, ordinances aimed at dangerous dogs and their owners that apply to all breeds usually do not raise questions about whether a city or county has overstepped its legal bounds. More controversial, however, is the use of breed descriptions to automatically characterize a dog as vicious or dangerous or in some other way restrict ownership of that breed. Nowhere is this more common than in legislation pertaining to alleged pit bull terrier dogs. At least twenty-one states currently prohibit breed discriminatory measures.[8] Note that the 2005 version of this model ordinance contains breed-specific language that has subsequently been removed. Rather than attempt to regulate certain specific breeds, the current 2018 ordinance contains a strong general vicious dog category which is broadly applicable to all dangerous and vicious dogs. Unlike general vicious dog ordinances, breed-specific/discriminatory laws are not

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[2] *See Sentell v. New Orleans & Carrolton R.R.*, 166 U.S. 698 (1897)
[3] *See Id*. at 704.
[4] *See Thiele v. Denver*, 312 P.2d 786, 789 (Colo. 1957)
[5] *See King v. Arlington County*, 81 S.E.2d 587, 589 (Va. 1954)
[6] *See e.g*. *State v. Hanson*, No. 90,372 (Kan. 2004).
[7] *See Lira v. Greater Houston German Shepherd Dog Rescue, Inc*. (No. 14,0964) (Tex. 2016) (regarding the transfer of ownership of a stray dog from a municipality to a dog rescue).
[8] For a list of states banning this type of legislation, please see BEST FRIENDS ANIMAL SOCIETY, *Anti-Breed-Specific Legislation By State* https://bestfriends.org/resources/anti-breed-specific-legislation-state (last accessed Aug. 1, 2018).

automatically accepted as valid and have faced numerous court challenges from both dog owners and breed or humane organizations.[9] The challenges that such laws face are usually based on allegations of overinclusiveness, underinclusiveness, vagueness, violating equal protection, and lacking a rational basis.

The vast majority of local governments have addressed public safety by passing comprehensive breed neutral vicious dog ordinances that apply to dogs of all breeds.[10] These ordinances focus on the behavior of the owner and the behavior of the dog. Like other animal control ordinances, comprehensive breed-neutral ordinances are usually considered legitimate exercises of the local police power and are much less controversial than attempting to correctly identify and regulate an entire breed, especially if criminal penalties are involved and the municipality must prove the dog to be of the alleged breed beyond a reasonable doubt.

Additionally, keep in mind that even in cities with breed specific/discriminatory prohibitions, there must always be exceptions for service dogs under Title II of the Americans with Disabilities Act. The United States Department of Justice states in its guidance that it "does not believe it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs based on local concerns that these breeds may have a history of unprovoked aggression or attacks."[11]

A. *Commentary from Best Friends Animal Society on Breed-Specific Legislation:*

Thirty years ago, municipalities used breed specific/discriminatory ordinances in an attempt to regulate dangerous dogs based on faulty media reports not backed by science. Today, dog behavior has been scientifically studied and reported in peer reviewed journals such as the Journal of the American Veterinary Medical Association. Ordinances that attempt to target specific breeds have shown to be ineffective at enhancing public safety, expensive to enforce, and an interference with dog owner's property rights.[12] The Centers for Disease Control and Prevention recommends against ordinances targeting breeds of dogs, and the American Bar Association House of Delegates passed a resolution in 2012 urging local governments to repeal breed specific ordinances and enact comprehensive breed neutral dangerous dog ordinances with due process protections for dog owners.

> *"Resolved, that the American Bar Association urges all state, territorial, and local legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous*

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[9] *See e.g.* Plaintiff's Complaint, *Nelson v. Town of New Llano*, No. 2:14-cv-00803 (W.D. LA May 26, 2014); Plaintiff's Motion for Preliminary Injunction, *Nelson v. Town of New Llano*, No. 2:14-cv-00803 (W.D. LA May 26, 2014); Plaintiff's Memorandum in Support of Motion for Preliminary Injunction, *Nelson v. Town of New Llano*, No. 2:14-cv-00803 (W.D. LA May 26, 2014); *Schreiner v. City of Clay*, No. CV2013-903036.00, (Ala.Cir.Ct. Sept. 14, 2014)

[10] *See* ANIMAL FARM FOUNDATION, INC., *Breed Specific Legislation Map*, https://animalfarmfoundation.org/community-advocates/bsl-map/ (last visited Aug. 20, 2018).

[11] 28 C.F.R. § 35.136 Supp. 81 (2010); *see also Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026, 1033 (ND Iowa 2011)

[12] *See e.g.* City of Topeka, Proposed Ordinance on Animal Cruelty and Dangerous Dogs, https://www.pitbullinfo.org/uploads/7/8/9/7/7897520/topeka_kansas_against_bsl.pdf (last visited Aug. 20, 2018); PRINCE GEORGE'S COUNTY, *Report of the Vicious Animal Legislation Task Force* (2003); PRINCE GEORGE'S COUNTY, *Report of the Vicious Animal Legislation Task Force: Appendices* (2003)

> *dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both dog owners and dogs, and to repeal any breed-discriminatory or breed-specific provisions."*

Breed specific/discriminatory ordinances make the presumption that behavioral traits are dominated by genetics, not by environment, even though there is no clear scientific basis for this presumption. Repeated studies using animal welfare professionals including veterinarians and municipal animal control officers have shown that visual breed identification of dogs is highly unreliable when compared to the actual genetic breed ancestry of the dog.[13]

V. Due Process Challenges

The most common constitutional challenge to a dangerous dog ordinance is procedural due process. Many drafters make the mistake of not allowing for a fair hearing before declaring a dog dangerous.[14] A defendant requires notice and fair opportunity to be heard.[15]

The imposition of restrictions on dog ownership creates a meaningful interference with the owner's possessory interest in that property, such that it acts as a constitutional deprivation of property. The restrictions act to effectively limit the ability of the owner to engage in previously allowed activities, such as letting the dog run off-leash, playing ball without a muzzle on one's own property, and these restrictions often apply for the life time of the dog. (IMLA's model ordinance allows for an application to appeal the lifetime regulations).

As personal property, a dog owner has a constitutionally protected property right in his dog which may not be deprived except in accordance with due process of law. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."[16] The determination of what due process protections apply requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest.[17] Regarding the private interest affected, a Washington court has held that "the private interest involved is the owner's interest in keeping their pets…is greater than a mere economic interest, for pets are not fungible. So, the private interest at stake is great."[18]

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[13] *See* Victoria L. Voith, *Shelter Medicine: A Comparison of Visual and DNA Identification of Breeds of Dogs;* Kimberly L. Olson, *Pit Bull Identification in Animal Shelters*, University of Florida, 2012; Kathleen C. Croy, et al., What kind or [sic] dog is that? Accuracy of dog breed assessment by canine stakeholders, Abstract online; and Victoria L. Voith, et al., *Comparison of Visual and DNA Breed Identification of Dogs and Inter-Observer Reliability*, 3 Am. J. of Sociological Research 17 (2013)

[14] *See County of Pasco v. Riehl*, 635 So.2d 17 (1994)

[15] *See Coe v. Armour Fertilizer Works*, 237 US 413, 424-425 (1915)

[16] *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

[17] *See Id.* at 335

[18] *See Rhoades v. City of Battleground*, 115 Wash.App. 752, 766 (2003)

Dangerous dog ordinances can have civil or criminal components. Most state statutes establish the burden of proof for the municipality as either a preponderance of the evidence or clear and convincing evidence if the penalty is civil, and beyond a reasonable doubt if the penalty is criminal.[19] The court in C*ity of Pierre v. Blackwell*, held that because the City of Pierre's ordinance had a criminal penalty for keeping a dangerous dog, the City needed to prove the dangerousness of the dog beyond a reasonable doubt.[20] Moreover, because the court relied solely on the animal control officer's decision as to the dangerousness of the dog, and there was no independent assessment of the evidence presented by both sides, procedural due process was not satisfied.

VIII. Reference Materials

Additional information on animal control and regulating dangerous dogs may be obtained by contacting:

- American Bar Association, Tort, Trial & Insurance Practice Section, Animal Law Committee: https://apps.americanbar.org/dch/committee.cfm?com=IL201050
- American Veterinary Medical Association: https://www.avma.org
- National Animal Care and Control Association: http://www.nacanet.org/
- National Canine Research Council: http://www.nationalcanineresearchcouncil.com/
- American Bar Association Resolution 100, Aug. 6-7, 2012, *available at* https://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/Resolution_100.authcheckdam.pdf

IX. Optional Provisions

A. *Guard Dog Provisions*

This section is provided as an option as some may believe the jurisdiction should allow owners to use their dogs as security even though the dogs are potentially dangerous or dangerous. Although we do not endorse it, this option provides some suggested language if the local jurisdiction prefers to use it:

[Optional*] Guard dogs.

The owner of a potentially dangerous or dangerous dog may apply to the Director to put the dog into service as a guard dog. The owner must describe in a written application how the dogs will be used and how the use may differ from any condition required for maintaining a potentially dangerous or dangerous dog. The Director must review the application and either approve the proposed use and terms of use, deny the use or terms of use and may issue an order authorizing the use under terms established by the Director.

B. *Alternative Penalty Provisions*

[19] *See In re Winship*, 397 U.S. 358, 364 (1970)

[20] *See City of Pierre v. Blackwell*, 635 N.W.2d 581 (SCt. S.D. 2001)

*** We do not endorse this view**

Dangerous Dogs - Editor's Commentary

This section offers options for different penalty provisions:

[Optional] Civil Penalties.

(a) Any person violating this Article is guilty of a civil violation and must pay a fine of $500.00.

(b) If a court finds that a person has violated this Article, in addition to any fine imposed the court may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.

[Optional] Criminal Penalties.

(a) A violation of this Article is a misdemeanor punishable upon conviction by a fine of up to $1000 or imprisonment of up to six months in jail or both such fine and imprisonment.

(b) Upon conviction for a violation of this Article, the court in addition to any penalty imposed, may order abatement of the violation and order restitution be paid to any person injured as a result of the violation up to the maximum amount allowed by law.

ABILENE KANSAS

CITY OF ABILENE
Item for City Commission Agenda

Meeting Date: 12/3/2021

Originating Department	Prepared By:	Approved For Agenda By: *(Office Use Only)*
Airport	Marcus Rothchild	

AGENDA ITEM HEADING:

Airport Rescue Grant Agreement

BACKGROUND:

The Abilene Municipal Airport has qualified for an additional Airport Rescue Grant from the Federal Aviation Administration. This grant will be for $32,000. The airport can use these funds for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. After acceptance of the grant, the City will have four years to drawdown and expend the funds.

FISCAL NOTE:

Maximum obligation payable under this grant is $32,000.

COMMISSION ACTION:

Provide authority to execute the grant to the City Manager or Finance Director as the City's authorized representatives for the Abilene Municipal Airport.

U.S. Department
of Transportation
**Federal Aviation
Administration**

Airports Division
Central Region
Iowa, Kansas, Missouri, Nebraska

FAA ACE-600
901 Locust
Kansas City, MO 64106

Airport Rescue Grant Transmittal Letter

November 9, 2021

Mr. Marcus Rothchild
Finance Director
City of Abilene
419 N. Broadway St.
Abilene, KS 67410

Dear Mr. Rothchild:

Please find the following electronic Airport Rescue Grant Offer, Grant No. 3-20-0001-015-2022 for Abilene Municipal Airport. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

a. The governing body must provide authority to execute the grant to the individual signing the grant; **i.e., the sponsor's authorized representative.**

b. **The sponsor's authorized representative must execute the grant, followed by the attorney's** certification, **no later than January 15,** in order for the grant to be valid.

c. You may not make any modification to the text, terms or conditions of the grant offer.

d. **The grant offer must be digitally signed by the sponsor's legal signatory authority and then the** grant offer will be routed via email to the **sponsor's attorney. Once the attorney has digitally** attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR § 200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System. The terms and conditions of this agreement require you draw down and expend these funds within four years.

An airport sponsor may use these funds for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Please refer to the Airport Rescue Grants Frequently Asked Questions for further information.

With each payment request you are required to upload an invoice summary directly to Delphi. The invoice summary should include enough detail to permit FAA to verify compliance with the American Rescue Plan Act (Public Law 117-2). Additional details or invoices may be requested by FAA during the review of your payment requests.

As part of your final payment request, you are required to include in Delphi:

- A signed SF-425, *Federal Financial Report*
- A signed closeout report (a sample report is available here).

Until the grant is completed and closed, you are responsible for submitting a signed and dated SF-425 annually, due 90 days after the end of each Federal fiscal year in which this grant is open (due December 31 of each year this grant is open).

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend $750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

I am readily available to assist you and your designated representative with the requirements stated herein. The FAA sincerely values your cooperation in these efforts.

Sincerely,

Jason Knipp
Kansas State Planner

U.S. Department
of Transportation
Federal Aviation
Administration

AIRPORT RESCUE GRANT

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date November 9, 2021

Airport/Planning Area **Abilene Municipal**

Airport Rescue Grant No. **3-20-0001-015-2022**

Unique Entity Identifier **043753672**

TO: **City of Abilene**
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA an Airports Rescue Grant Application dated **July 27, 2021**, for a grant of Federal funds at or associated with the **Abilene Municipal Airport**, which is included as part of this Airport Rescue Grant Agreement;

WHEREAS, the Sponsor has accepted the terms of FAA's Airport Rescue Grant offer;

WHEREAS, in consideration of the promises, representations and assurances provided by the Sponsor, the FAA has approved the Airport Rescue Grant Application for the **Abilene Municipal Airport**, (herein **called the "Grant"** or "Airport Rescue **Grant") consisting of** the following:

WHEREAS, this Airport Rescue Grant is provided in accordance with the American Rescue Plan Act ("ARP Act", or "the Act"), Public Law 117-2, as described below, to provide eligible Sponsors with funding for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Airport Rescue Grant amounts to specific airports are derived by legislative formula (See Section 7102 of the Act).

WHEREAS, the purpose of this Airport Rescue Grant is to prevent, prepare for, and respond to the coronavirus pandemic. Funds provided under this Airport Rescue Grant Agreement must be used only for purposes directly related to the airport. Such purposes can include the reimbursement of an airport's operational expenses or debt service payments in accordance with the limitations prescribed in the Act. Airport Rescue Grants may be used to reimburse airport operational expenses directly related to **Abilene Municipal Airport** incurred no earlier than January 20, 2020.

Airport Rescue Grants also may be used to reimburse a Sponsor's payment of debt service where such payments occur on or after March 11, 2021. Funds provided under this Airport Rescue Grant Agreement will be governed by the same principles that govern "airport revenue." New airport development projects not directly related to combating the spread of pathogens may not be funded with this Grant. Funding under this Grant for airport development projects to combat the spread of pathogens will be reallocated using an addendum to this Agreement for identified and approved projects.

NOW THEREFORE, in accordance with the applicable provisions of the ARP Act, Public Law 117-2, the representations contained in the Grant Application, and in consideration of (a) the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant and in compliance with the conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **$32,000,** allocated as follows:

    $32,000 ARPA General [KW]

2. **Grant Performance.** This Airport Rescue Grant Agreement is subject to the following Federal award requirements:

    a. The Period of Performance:

        1. Shall start on the date the Sponsor formally accepts this agreement, and is the date signed by the last Sponsor signatory to the agreement. The end date of the period of performance is 4 years (1,460 calendar days) from the date of acceptance. The period of performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
        2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. (2 Code of Federal Regulations (CFR) § 200.1)

    b. The Budget Period:

        1. For this Airport Rescue Grant is 4 years (1,460 calendar days). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the budget period.
        2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to §200.308.

c. Close out and Termination.

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the Grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344)

2. The FAA may terminate this Airport Rescue Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.

3. **Unallowable Costs.** The Sponsor shall not seek reimbursement for any costs that the FAA has determined to be unallowable under the ARP Act.

4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the Grant Application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages only.

5. **Final Federal Share of Costs. The United States' share of allowable Grant costs is 100%.**

6. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the Grant without undue delays and in accordance with this Airport Rescue Grant Agreement, the ARP Act, and the regulations, policies, standards, and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from funding eligible expenses under the Grant that exceeds three months or a 25 percent reduction in time devoted to the Grant, and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this agreement and any addendum that may be attached hereto at a later date by mutual consent.

7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs unless this offer has been accepted by the Sponsor on or before **January 15**, or such subsequent date as may be prescribed in writing by the FAA.

9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Airport Rescue Grant Agreement, the ARP Act, or other provision of applicable law. For the purposes of this Airport Rescue Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or relate to this Airport Rescue Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Airport Rescue Grant Agreement.

11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

    a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

    b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at https://sam.gov/SAM/pages/public/index.jsf.

12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Agreement.

14. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

15. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 United States Code (U.S.C.) § 50101 the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

16. **Audits for Sponsors.**

    PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/ . Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

17. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

    a. Verify the non-Federal entity is eligible to participate in this Federal program by:

        1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or

2. Collecting a certification statement from the non-Federal entity attesting the entity is not excluded or disqualified from participating; or
3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.

b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. subcontracts).

c. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debars a contractor, person, or entity.

18. **Ban on Texting While Driving.**

a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Airport Rescue Grant or subgrant funded by this Grant.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

A. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

B. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded by this Airport Rescue Grant.

19. **Trafficking in Persons.**

a. You as the recipient, your employees, subrecipients under this Airport Rescue Grant, and subrecipients' employees may not –

1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
2. Procure a commercial sex act during the period of time that the award is in effect; or
3. Use forced labor in the performance of the award or subawards under the Airport Rescue Grant.

b. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

1. Is determined to have violated a prohibition in paragraph a. of this Airport Rescue Grant Agreement term; or
2. Has an employee who is determined by the agency official authorized to terminate the Airport Rescue Grant Agreement to have violated a prohibition in paragraph a. of this Airport Rescue Grant term through conduct that is either –

A. Associated with performance under this Airport Rescue Grant; or

B. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),"as implemented by the FAA at 2 CFR Part 1200.

c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this Grant condition during this Airport Rescue Grant Agreement.

d. Our right to terminate unilaterally that is described in paragraph a. of this Grant condition:

1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

2. Is in addition to all other remedies for noncompliance that are available to the FAA under this Airport Rescue Grant.

20. **Employee Protection from Reprisal.**

a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) of this Grant condition, information that the employee reasonably believes is evidence of:

a. Gross mismanagement of a Federal grant;
b. Gross waste of Federal funds;
c. An abuse of authority relating to implementation or use of Federal funds;
d. A substantial and specific danger to public health or safety; or
e. A violation of law, rule, or regulation related to a Federal grant.

2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:

a. A member of Congress or a representative of a committee of Congress;
b. An Inspector General;
c. The Government Accountability Office;
d. A Federal employee responsible for oversight or management of a grant program at the relevant agency;
e. A court or grand jury;
f. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
g. An authorized official of the Department of Justice or other law enforcement agency.

3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a. of this Airport Rescue Grant Agreement may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.

4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

21. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Airport Rescue Grant Agreement.

22. **Face Coverings Policy.** The sponsor agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the airport property, except to the extent exempted under those requirements. This special condition requires the airport sponsor continue to require masks until Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel, is no longer effective.

SPECIAL CONDITIONS FOR USE OF AIRPORT RESCUE GRANT FUNDS

CONDITIONS FOR EQUIPMENT -

1. **Equipment or Vehicle Replacement.** The Sponsor agrees that when using funds provided by this Grant to replace equipment, the proceeds from the trade-in or sale of such replaced equipment shall be classified and used as airport revenue.
2. **Equipment Acquisition.** The Sponsor agrees that for any equipment acquired with funds provided by this Grant, such equipment shall be used solely for purposes directly related to combating the spread of pathogens at the airport.
3. **Low Emission Systems.** The Sponsor agrees that vehicles and equipment acquired with funds provided in this Grant:
   a. Will be maintained and used at the airport for which they were purchased; and
   b. Will not be transferred, relocated, or used at another airport without the advance consent of the FAA.

   The Sponsor further agrees that it will maintain annual records on individual vehicles and equipment, project expenditures, cost effectiveness, and emission reductions.

CONDITIONS FOR UTILITIES AND LAND -

4. **Utilities Proration.** For purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.
5. **Utility Relocation in Grant.** The Sponsor understands and agrees that:

a. The United States will not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs;

b. FAA participation is limited to those utilities located on-airport or off-airport only where the Sponsor has an easement for the utility; and

c. The utilities must serve a purpose directly related to the Airport.

The Sponsor's acceptance of this Offer and ratification and adoption of the Airport Rescue Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor. The Offer and Acceptance shall comprise an Airport Rescue Grant Agreement, as provided by the ARP Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to this Grant. The effective date of this Airport Rescue Grant Agreement is the date of the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated November 9, 2021

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

Jim A. Johnson

(Signature)

Jim A. Johnson

(Typed Name)

Director, Central Region Airports Division

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Airport Rescue Grant Application and incorporated materials referred to in the foregoing Offer under Part I of this Airport Rescue Grant Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Airport Rescue Grant Application and all applicable terms and conditions provided for in the ARP Act and other applicable provisions of Federal law.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct. [1]

Dated November 29, 2021

City of Abilene
(Name of Sponsor)

(Signature of Sponsor's Designative Official/Representative)

By: Marcus Rothchild
(Type Name of Sponsor's Designative Official/Representative)

Title: Finance Director
(Title of Sponsor's Designative Official/Representative)

[1] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, , acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Kansas. Further, I have examined the foregoing Grant Agreement and the **actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that** the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the ARP Act. The Sponsor understands funding made available under this Grant Agreement may only be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, and combating the spread of pathogens at the airport incurred on or after January 20, 2020, or for debt service payments that are due on or after March 11, 2021. Further, it is my opinion the foregoing Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated at

By:

(Signature of Sponsor's Attorney)

AIRPORT RESCUE GRANT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These Airport Rescue Grant Assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the American Rescue Plan Act of 2021 **("ARP Act," or "the Act"), Public Law** 117-2. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Airport Rescue Grant offer by the sponsor, these assurances are incorporated into and become part of this Airport Rescue Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Airport Rescue Grant that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Airport Rescue Grant including but not limited to the following:

FEDERAL LEGISLATION

a. 49 U.S.C. Chapter 471, as applicable

b. Davis-Bacon Act — 40 U.S.C. 276(a), et. seq.

c. Federal Fair Labor Standards Act — 29 U.S.C. 201, et. seq.

d. Hatch Act — 5 U.S.C. 1501, et. seq.[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq.

f. National Historic Preservation Act of 1966 — Section 106 — 16 U.S.C. 470(f).

g. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.

h. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et. seq.

i. Clean Air Act, P.L. 90-148, as amended.

j. Coastal Zone Management Act, P.L. 93-205, as amended.

k. Flood Disaster Protection Act of 1973 — Section 102(a) — 42 U.S.C. 4012a.

l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).

m. Rehabilitation Act of 1973 — 29 U.S.C. 794.

n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).

o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).

p. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et. seq.

q. American Indian Religious Freedom Act, P.L. 95-341, as amended.

r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et. seq.

s. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.

t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et. seq.

u. Copeland Anti-kickback Act — 18 U.S.C. 874.1.

v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et. seq.

w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.

x. Single Audit Act of 1984 — 31 U.S.C. 7501, et. seq.[2]

y. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

a. Executive Order 11246 – Equal Employment Opportunity
b. Executive Order 11990 – Protection of Wetlands
c. Executive Order 11998 – Flood Plain Management
d. Executive Order 12372 – Intergovernmental Review of Federal Programs
e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
f. Executive Order 12898 – Environmental Justice
g. Executive Order 14005 – Ensuring the Future Is Made in All of America by All of America's Workers.

FEDERAL REGULATIONS

a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.[3, 4]

c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.

d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.

e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.

f. 29 CFR Part 1 – Procedures for predetermination of wage rates.[1]

g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States. [1]

h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]

i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).[1]

j. 49 CFR Part 20 – New restrictions on lobbying.

k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

l. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program.

n. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]

o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.

p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

q. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

r. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).

s. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

FOOTNOTES TO AIRPORT RESCUE GRANT ASSURANCE B

[1] These laws do not apply to airport planning sponsors.
[2] These laws do not apply to private sponsors.
[3] Cost principles established in 2 CFR Part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses
[4] Audit requirements established in 2 CFR Part 200 subpart F are the guidelines for audits.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. **Purpose Directly Related to the Airport**

   It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. **Responsibility and Authority of the Sponsor.**

   a. Public Agency Sponsor:

      It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; **that an official decision has been made by the applicant's governing body authoriz**ing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

   b. Private Sponsor:

      It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Good Title.**

   It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. **Preserving Rights and Powers.**

   a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

   b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.

   c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. **Consistency with Local Plans.**

   Any project undertaken by this Grant Agreement is reasonably consistent with plans (existing at the time of submission of the Airport Rescue Grant application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

6. **Consideration of Local Interest.**

   It has given fair consideration to the interest of communities in or near where any project undertaken by this Grant Agreement may be located.

7. **Consultation with Users.**

   In making a decision to undertake any airport development project undertaken by this Grant Agreement, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

8. **Pavement Preventative Maintenance.**

   With respect to a project undertaken by this Grant Agreement for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport, including Airport Rescue Grant funds provided under this Grant Agreement. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

9. **Accounting System, Audit, and Record Keeping Requirements.**

   a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

   b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

10. **Minimum Wage Rates.**

    It shall include, in all contracts in excess of $2,000 for work on the airport funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

11. **Veteran's Preference.**

    It shall include in all contracts for work on any airport development project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

12. Operation and Maintenance.

a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

    1. Operating the airport's aeronautical facilities whenever required;
    2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
    3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

13. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

14. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

15. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

16. Airport Revenues.

a. This Grant shall be available for any purpose for which airport revenues may lawfully be used to prevent, prepare for, and respond to coronavirus. Funds provided under this Airport Rescue Grant Agreement will only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s) subject to this agreement and all applicable addendums for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments as prescribed in the Act

b. For airport development, 49 U.S.C. § 47133 applies.

17. Reports and Inspections.

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

   1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

   2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

18. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

19. Airport Layout Plan.

a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:

   1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

20. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.

b. Applicability

1. Programs and Activities. If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities
2. Facilities. Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language

It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **City of Abilene**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT Acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
   A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and
   B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.

C. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

D. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

21. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

22. Policies, Standards and Specifications.

It will carry out any project funded under an Airport Rescue Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects, as of July 27, 2021.

23. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

24. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

25. Acquisition Thresholds.

The FAA deems equipment to mean tangible personal property having a useful life greater than one year and a per-unit acquisition cost equal to or greater than $5,000. Procurements by micro-purchase means the acquisition of goods or services for which the aggregate dollar amount does not exceed \$10,000, unless authorized in accordance with 2 CFR § 200.320. Procurement by small purchase procedures means those relatively simple and informal procurement methods for securing goods or services that do not exceed the \$250,000 threshold for simplified acquisitions.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current Series 150 Advisory Circulars (ACs) for Airport Projects at
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars