

City of Freeport

NOTICE OF PUBLIC MEETING
THE FREEPORT CITY COUNCIL
TUESDAY, FEBRUARY 17, 2009 6:00 P.M.
MUNICIPAL COURT ROOM
FREEPORT POLICE DEPARTMENT, 430 N. BRAZOSPORT BLVD.
FREEPORT, TEXAS 77541

AGENDA FORMAL SESSION

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Consideration of the approval of the February 2, 2009 Council Minutes.
Pg. 86-89
5. Attending Citizens and Their Business.
6. Consideration of the approval of Resolution No. 2009- 2216 authorizing the Mayor and the City Secretary of said City to execute and attest, a Joint Election Agreement and Contract for Election Services with the County Clerk of Brazoria, Texas, for the May 9, 2009, regular election. Pg. 90-100
7. Consideration of the approval of revising the Consent to Use of Easements for the installation of a natural gas line for its tenants previously granted to Port Freeport by deleting the easements on Lots 8 & 9, Block 8 of the Freeport Townsite and all of the Terminal Street right of way. Pg. 101-109
8. Consideration of the approval of authorizing the City Manager to advertise for bids for an easement to install a natural gas pipeline to serve Port Freeport tenants in the existing easements on Lots 8 & 9, Block 8 of the Freeport Townsite and all of the Terminal Street right of way; and setting a bid date therefore. Pg. 110-112
9. Consideration of the approval of a request from Veolia Water to purchase a belt press and required components (conveyor for transportation sludge from the belt press to a dumpster, building cover, and electrical work need) for the City's wastewater facility. Pg. 113-120

10. Consideration of the approval of Change Order No. 1, "Installation of metal guard rail along Dezavala Street Drainage Ditch" to the Velasco Blvd Pavement and Drainage project.

Elected Official Report

Work Session

Administration Report

- A. Rene Damian of Damian & Associates reviews the Scope of Work for Central Lift Station Rehabilitation and authorizes the commencement of the design engineering.
- B. Discussion regarding a no smoking ordinance. Pg. 121-129

Adjourn

NOTE: ITEMS NOT NECESSARILY DISCUSSED IN THE ORDER THEY APPEAR ON THE AGENDA. THE COUNCIL, AT ITS DISCRETION, MAY TAKE ACTION ON ANY OR ALL OF THE ITEMS AS LISTED.

This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code)

In compliance with the American with Disabilities Act, the City of Freeport will provide for reasonable accommodations for persons attending City Council Meetings. Request should be received 48 hours prior to the meetings. Please contact the City Secretary office at 979.233.3526.

I, Delia Muñoz, City Secretary, City of Freeport, Texas, hereby certify that this agenda was posted on the official bulletin board/glass door of City Hall, facing the rear parking lot of the building, with 24 hour a day public access, 200 W. 2nd Street, Freeport, Texas, on February 11, 2009, at or before 5:00 p.m.

Delia Muñoz
City Secretary

State of Texas

Brazoria County

City of Freeport

BE IT REMEMBERED, that the City of Freeport, met on Monday, February 2, 2009, at 6:00 p.m. at the Freeport Police Department, Municipal Court Room, 430 North Brazosport Boulevard, Freeport Texas, for the purpose of considering the following agenda:

City Council: Larry L. McDonald - Absent
Clan Cameron
Jim Saccomanno
Ron Wise
Norma M. Garcia – Absent

Staff: Acting City Manager, Jeff Pynes
City Attorney, Wallace Shaw
Delia Munoz, City Secretary
Nat Hickey, Property Manager
Bob Welch, Finance Director
Mary Stotler, Main Street Director
Larry Ellis, Building Inspector

Visitors: Larry Shaefer Judy Shaefer
Jim Pirrung Dorothy Pirrung
Annette Sanford Lila Lloyd
Louie Jones Jerry Meeks
Jason Montier Manning Rollerson
Susie Wise Bobby Casale
Wright Gore, III Patrick Gore
Brenda Laird Edna Allan
A. J. Cisneros Cele Damian
Rene Damian

Call to Order

Jim Saccomanno, Mayor Pro Tem opened the meeting at 6:03 p.m.

Invocation.

Wallace Shaw offered the invocation

Pledge of Allegiance.

Jim Saccomanno, Mayor Pro Tem led the Pledge of Allegiance.

Consideration of the approval of the January 20, 2009 Council Minutes.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, Council unanimously approved the January 20, 2009 Council Minutes.

Attending Citizens and Their Business.

Bobby Casale brought up the subject of citizens bringing issues to the Council, and Council’s non response policy. He presented a letter he wrote to the District Attorney’s office regarding the Open Meeting Act, and passed out a letter of response. He thought there was some wiggle room in the District Attorney’s response. He also asked that a “no smoking” discussion be placed on a work session for the next meeting.

Wright Gore, III concurred with Mr. Bobby Casale’s concern, and that this council was not a problem, but the previous council was a problem. In the past, citizens came forward to address issues, ask questions or grievances and have been shut down. He asked Council to give them a venue to have their voices heard and let the audience know as well.

Larry Shaefer has had the same problem, that questions and answers from council are limited.

Consideration of the approval of Ordinance No. 2009-2215 amending Ordinance No. 2009-2214 calling the annual general election for the City of Freeport for May 9th, 2009 to correct the locations given for voting on the day of the election.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, Council unanimously approved Ordinance No. 2009-2215 amending Ordinance No. 2009-2214 calling the annual general election for the City of Freeport for May 9, 2009 to correct the locations listed for voting on the day of the election.

Consideration of the approval of rescheduling February 16th, 2009 council meeting to February 17th, 2009 due to Presidents Day holiday.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, Council unanimously approved rescheduling February 16th, 2009 council meeting to February 17th, due to Presidents Day holiday.

Consideration of the approval of a request for a variance by Rodney W. Griggs of the First St. Emanuel Baptist Church, 2023 Skinner Street, to install a 5’ x 8’ sign.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, Council approved a request for a variance by Rodney W. Griggs of the First St. Emanuel Baptist Church, 2023 Skinner Street, to install a 5’x 8’ sign.

Consideration of the approval of revising the Consent to Use of Easements for the installation of a natural gas line for its tenants previously granted to Port Freeport by deleting the easements on Lots 8 & 9, Block 8 of the Freeport Townsite and all of the Terminal Street right of way.

On a motion by Councilman Wise, seconded by Councilman Cameron, with all present voting “aye”, Council tabled this item.

Consideration of the approval of authorizing the City Manager to advertise for bids for an easement to install a natural gas pipeline to serve Port Freeport tenants in the existing easements on Lots 8 & 9, Block 8 of the Freeport Townsite and all of the Terminal Street right of way; and setting a bid date therefore.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, Council tabled this item.

Consideration of the approval of a request from Port Freeport to install and maintain an antenna and a repeater on the FM1495 Water Tower of the City.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, Council unanimously approved Jeff Pynes’ recommendation to install and maintain an antenna and a repeater on the FM 1495 Water Tower of the City for a better radio signal.

Consideration of the approval any action to be taken as result of closed executive session.

Reconvened the formal session.

No action taken.

Elected Official Report

Councilman Cameron reported that one section of the road on Velasco Blvd. has concrete.

Mayor Pro Tem, Jim Saccomanno opened the Work Session at 6:42 p.m.

Work Session

Administration Report

None

Rene Damian of Damian & Associates presents a preliminary Scope of Work on the Central Lift Station.

Mr. Rene Damian of Damian & Associates requested more time to report to Council on the Scope of Work on the Central Lift Station. Collecting accurate information, cost data, odor control, and photos will be presented at the next meeting.

Bob Welch, Finance Director reviewed financials for the quarter ending December 31, 2008.

Mr. Welch provided Council with a PowerPoint presentation on the financials for the quarter ending December 31, 2008.

Mayor Pro Tem, Jim Saccomanno opened the Executive Session at 7:10 p.m.

Executive Session

Section 551.074, Government Code:

Deliberations concerning the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee, to wit:

Acting City Manager – Jeff Pynes

(No action taken)

Mayor Pro Tem, Jim Saccomanno closed the Executive Session and Reconvened the formal session at 7:38 p.m. for item 12 on the agenda.

Adjourn

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting “aye”, the meeting was adjourned at 7:39 p.m.

Delia Munoz
City Secretary

Larry L. McDonald
Mayor

RESOLUTION NO. 2009-2216

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, CONTAINING A PREAMBLE; PROVIDING THAT THE ANNUAL ELECTION CALLED BY THE CITY COUNCIL OF SAID CITY FOR THE 9th DAY OF MAY, 2009, FOR THE ELECTION OF A MAYOR AND COUNCIL MEMBERS FOR COUNCIL POSITIONS B and D, BE HELD JOINTLY WITH ELECTIONS CALLED FOR THE SAME DAY BY OTHER POLITICAL SUBDIVISION LOCATED IN BRAZORIA COUNTY, TEXAS; AUTHORIZING THE MAYOR AND THE CITY SECRETARY OF SAID CITY TO EXECUTE AND ATTEST, RESPECTIVELY, THE JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A", WHICH SPECIFIES IN ATTACHMENT "A" THERETO THE LOCATION OF THE COMMON POLLING PLACE AND WHICH AGREEMENT MAKES PROVISION FOR THE OFFICERS OF SAID JOINT ELECTION AND THEIR COMPENSATION, ALLOCATES THE EXPENSES OF SUCH JOINT ELECTION AND MAKES PROVISIONS FOR EARLY VOTING, THE BALLOT, BALLOT BOXES, ELECTION FORMS AND RECORDS AND THE CUSTODIAN THEREOF; PROVIDING THAT THIS RESOLUTION SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION; AND PROVIDING THAT THE ORIGINAL OF THIS RESOLUTION SHALL BE MAINTAINED BY THE CITY SECRETARY IN THE PERMANENT RECORDS OF SAID CITY AND A CERTIFIED COPY THEREOF AND THE EXECUTED AND ATTESTED AGREEMENT HEREBY AUTHORIZED BE SENT TO THE COUNTY CLERK OF BRAZORIA COUNTY, TEXAS.

WHEREAS, Chapter 271 of the Texas Election Code, authorizes two or more political subdivision of this state located in the same county to hold jointly elections which are held on the same day;; and,

WHEREAS, the City Council of the City has called an election for May 9, 2009, for the election of a Mayor and Council Members for Council Positions B and D on the City Council of the City; and,

WHEREAS, the County Clerk of Brazoria County, Texas, the county in which the City is located, has requested that the City hold such election jointly with other political subdivisions in said county being held on the same day under the terms and conditions of the agreement and contract a copy of which is attached hereto as Exhibit "A"; and,

WHEREAS, the City Council of the City has determined and does here now declare that the adoption of this resolution and the execution of such agreement and contract is necessary to the health, safety and general welfare of the inhabitants of the City and will facilitate the holding of such election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS:

First, that the election called by the City Council of the City for May 9, 2009, be held jointly with the elections called by other political subdivision in Brazoria County, Texas, for the same day, and the Mayor and City Secretary of the City are hereby authorized to execute and attest, respectively, the Joint Election Agreement and Contract for Election Services, a copy of which, marked Exhibit "A", is attached hereto and made a part hereof.

Second, that the locations of the common polling places and the officers of said election and their compensation be designated and fixed, the expenses of such joint election be allocated and the provisions for early voting, ballots, ballot boxes, election forms and records and the custodian thereof be made all as provided in Exhibit "A".

Third, early voting in such joint election as well as voting on the day of such joint election shall be conducted jointly by the County Clerk of said county and the City Secretary of the City and the comparable election officer of all of the other political subdivisions participating in such joint election as provided in Exhibit "A".

Fourth, this resolution shall take effect and be in force from and after its passage and adoption.

Fifth, the original of this resolution, after execution and attestation, shall be maintained by the City Secretary in the permanent records of the City and a certified copy hereof, and the executed and attested agreement hereby authorized, be sent to the County Clerk of Brazoria County, Texas.

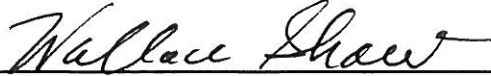
READ, PASSED AND ADOPTED this _____ day of _____, 2009.

Larry McDonald, Sr., Mayor,
City of Freeport, Texas

ATTEST:

Delia Muñoz, City Secretary,
City of Freeport, Texas

APPROVED AS TO FORM ONLY:



Wallace Shaw, City Attorney,
City of Freeport, Texas

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JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES

THIS CONTRACT by and between CITY OF FREEPORT, acting by and through the governing body of hereinafter referred to as "Political Subdivision", and Joyce Hudman, County Clerk of Brazoria County, Texas, hereinafter referred to as "County Clerk", and by authority of section 31.092(a), Texas Election Code, for the conduct and supervision of the Political Subdivisions election to be held on May 9, 2009.

RECITALS

Political Subdivision is holding a Municipal Election (at the expense of Political Subdivision) on May 9, 2009.

The County owns an electronic voting system, the Hart InterCivic eSlate Voting System (Version 6.1), which has been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122 as amended, and is compliant with the accessibility requirements set forth by Texas Election Code Section 61.012. Political Subdivision desires to use the County's electronic voting system and to compensate the County for such use and to share in certain other expenses connected with joint elections in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Election Code, as amended.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the parties, IT IS AGREED as follows:

I. ADMINISTRATION

The parties agree to hold a "Joint Election" in accordance with Chapter 271 of the Texas Election Code and this agreement. The County Clerk of Brazoria County shall coordinate, supervise, and handle all aspects of administering the Joint Election as provided in this agreement. Political Subdivision agrees to pay Brazoria County for equipment, supplies, services, and administrative costs as provided in this agreement. The County Clerk shall serve as the administrator for the Joint Election; however, the Political Subdivision shall remain responsible for the decisions and actions of its officers necessary for the lawful conduct of its election. The County Clerk shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of the Political Subdivision.

It is understood that other political subdivisions may wish to participate in the use of the County's electronic voting system and polling places, and it is agreed that Brazoria County and the County Clerk may enter into other joint election agreements and contracts for election services for those purposes on terms and conditions generally similar to those set forth in this contract. Political Subdivision agrees that Brazoria County may enter into joint election agreements with other political subdivisions that may have territory located partially or wholly within the boundaries of Political Subdivision, and in such case all parties sharing common territory shall share a joint ballot

on the county's electronic voting system at the applicable polling places. In such cases, costs shall be divided among the participants.

At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap.

II. LEGAL DOCUMENTS

Political Subdivision shall be responsible for the preparation, adoption, and publication of all required election orders, resolutions, notices, and any other pertinent documents required by the Texas Election Code and/or Political Subdivision's governing body, charter, or ordinances. With reference to publications, the "County Clerk" will publish the "Notice of Tabulation Testing", but the "Political Subdivision" will publish the "Notice of Election."

Preparation of the necessary materials for notices and the official ballot shall be the responsibility of each participating authority, including translation to languages other than English. Each participating authority shall provide a copy of their respective election orders and notices to the County Clerk Elections Office. The County Clerk's Election Office, with the assistance of the Civil District Attorney's Office, shall prepare a submission to the United States Department of Justice for preclearance of the joint election procedures and polling places, pursuant to the Voting Rights Act of 1965, as amended. This submission to the Department of Justice shall be made on behalf of all political subdivisions participating in joint elections on May 9, 2009. Each Political Subdivision shall provide necessary documentation for preclearance.

III. VOTING LOCATIONS

The County Clerk's Election Office shall select and arrange for the use of and payment for all election day voting locations. Voting locations will be, whenever possible, the usual voting location for each election precinct in elections conducted by the county. The proposed voting locations are listed in Attachment A of this agreement. In the event a voting location is not available, the Elections Department will arrange for use of an alternate location with the approval of the Political Subdivision. The Elections Department shall notify the Political Subdivision of any changes from the locations listed in Attachment A.

If polling places for the May 9, 2009 joint election are different from the polling place(s) used by Political Subdivision in its most recent election, Political Subdivision agrees to post a notice no later than May 8, 2009 at the entrance to any previous polling places in the jurisdiction stating that the polling location has changed and stating the political subdivision's polling place names and addresses in effect for the May 9, 2009 election.

IV. ELECTION JUDGES, CLERKS, AND OTHER ELECTION PERSONNEL

Brazoria County shall be responsible for the appointment of the presiding judge and alternate judge for each polling location in accordance with Chapter 32 of the Texas Election Code. The County Clerk shall make emergency appointments of election officials if necessary. Upon request by the County Clerk, Political Subdivision agrees to assist in recruiting polling place officials who are bilingual (fluent in both English and Spanish).

The Elections Department shall notify all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that all election judges appointed for the Joint Election are eligible to serve.

The County Clerk shall arrange for the training and compensation of all election judges and clerks. The Elections Department shall arrange for the date, time, and place for presiding election judges to pick up their election supplies. Each presiding election judge will be sent a letter from the Elections Department notifying him of his appointment, the time and location of training and distribution of election supplies, and the number of election clerks that the presiding judge may appoint.

Each election judge will receive compensation at an hourly rates of \$12.00. Each election clerk will receive compensation at an hourly rate of \$10.00. The election judge will receive an additional sum of \$25.00 for picking up the election supplies prior to election day and for returning the supplies and equipment to the central counting station after the polls close. All judges and clerks will receive \$30.00 for attending training.

It is agreed by all parties that at all times and for all purposes hereunder, all election judges, clerks, and all other personnel involved in this election are independent contractors and are not employees or agents of the County or Political Subdivision. No statement contained in this Agreement shall be construed so as to find any judge, clerk, or any other election personnel an employee or agent of the County or Political Subdivision, and no election personnel shall be entitled to the rights, privileges, or benefits of County or Political Subdivision employees except as otherwise stated herein, nor shall any election personnel hold himself out as an employee or agent of the County or Political Subdivision, unless considered a county employee as determined by the Brazoria County Human Resources Department.

V. PREPARATION OF SUPPLIES AND VOTING EQUIPMENT

The Elections Department shall arrange for all election supplies and voting equipment including, but not limited to official ballots, sample ballots, voter registration lists, and all forms, signs and other materials used by the election judges at the voting locations. At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap. The Elections Department shall provide the necessary voter registration information, instructions, and other information needed to enable the election judges in the voting locations that have more than one ballot style to conduct a proper election. If special maps are needed for a particular Political

Subdivision, the Election Department will order the maps and pass that charge on to that particular Political Subdivision.

Political Subdivision shall furnish the County Clerk a list of candidates and/or propositions showing the order and the exact manner in which the candidate names and/or proposition(s) are to appear on the official ballot (including titles and text in each language in which the authority's ballot is to be printed). This list shall be delivered to the Elections Department as soon as possible after ballot positions have been determined by each of the participating authorities. Each participating authority shall be responsible for proofreading and approving the ballot insofar as it pertains to that authority's candidates and/or propositions.

VI. EARLY VOTING

The participating authorities agree to conduct joint early voting and to appoint the County Clerk as the Early Voting Clerk in accordance with Sections 31.097 and 271.006 of the Texas Election Code. Political Subdivision agrees to appoint the County Clerk's permanent county employees as deputy early voting clerks. The participating authorities further agree that each Early Voting Location will have an "Officer in Charge" that will receive compensation at an hourly rate of \$12.00. The clerks at each location will receive compensation at an hourly rate of \$10.00.. Early Voting by personal appearance will be held at the locations, dates, and times listed in Attachment "B" of this document. Any qualified voter of the Joint Election may vote early by personal appearance at any one of the joint early voting locations.

As Early Voting Clerk, the County Clerk shall receive applications for early voting ballots to be voted by mail in accordance with Chapters 31 and 86 of the Texas Election Code. Any requests for early voting ballots to be voted by mail received by the Political Subdivision shall be forwarded immediately by fax or courier to the Elections Department for processing.

The Elections Department shall, upon request, provide the Political Subdivision a copy of the early voting report on a daily basis and a cumulative final early voting report following the election.

VII. EARLY VOTING BALLOT BOARD

Brazoria County shall appoint an Early Voting Ballot Board (EVBB) to process early voting results from the Joint Election. The Presiding Judge, with the assistance of the Elections Department, shall appoint two or more additional members to constitute the EVBB. The Elections Department shall determine the number of EVBB members required to efficiently process the early voting ballots.

VIII. CENTRAL COUNTING STATION AND ELECTION RETURNS

The County Clerk shall be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

The participating authorities hereby, in accordance with Section 127.002, 127.003, and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Counting Station Manager:	Gina Anderson
Alternate Counting Station Manager:	Brandy Pena
Tabulation Supervisor:	Janice Evans
Alternate Tabulation Supervisor:	Susan Cloudt
Presiding Judge:	Murphy Rankin
Alternate Presiding Judge:	Patricia DeVille

The Elections Department will prepare the unofficial canvass reports after all precincts have been counted, and will deliver a copy of the unofficial canvass to the Political Subdivision as soon as possible after all returns have been tabulated. All participating authorities shall be responsible for the official canvass of their respective elections.

The Elections Department shall be responsible for conducting the post-election manual recount required by Section 127.201 of the Texas Election Code unless a waiver is granted by the Secretary of State. Notification and copies of the recount, if waiver is denied, will be provided to each participating authority and the Secretary of State's Office.

The Elections Department shall submit all Political Subdivision's precinct by precinct returns to the Texas Secretary of State's Office electronically.

IX. ELECTION EXPENSES AND ALLOCATION OF COSTS

The participating authorities agree to share the costs of administering the Joint Election. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared according to a formula which is based on the cost per polling place. Costs for polling places shared by County, Political Subdivision, and other political subdivisions shall be divided equally among the participants utilizing that polling place.

It is agreed that the normal rental rate charged for the County's voting equipment used on election day shall be divided equally among the participants utilizing each polling location.

Costs for Early Voting by Personal Appearance will be divided by all Political Subdivisions as follows: Total cost of all 10 locations will be divided by all Political Subdivisions holding elections on May 9, 2009. Cost will be based on registered voters.

X. WITHDRAWAL FROM CONTRACT DUE TO CANCELLATION OF ELECTION

Political Subdivision may withdraw from this agreement and the Joint Election should it cancel its election in accordance with Sections 2.051 - 2.053 of the Texas Election Code, or should it be later ruled that the election is not needed. Political Subdivision is fully liable for any expenses incurred by Brazoria County on behalf of Political Subdivision. Any monies deposited with the county by the withdrawing authority shall be refunded, minus the aforementioned expenses.

XI. RECORDS OF THE ELECTION

The County Clerk is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

Access to the election records shall be available to each participating authority as well as to the public in accordance with applicable provisions of the Texas Election Code and the Texas Public Information Act. The election records shall be stored at the offices of the County Clerk or at an alternate facility used for storage of county records. The Elections Department shall ensure that the records are maintained in an orderly manner so that the records are clearly identifiable and retrievable.

Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, the County Clerk shall maintain the records until final resolution or until final judgment, whichever is applicable. It is the responsibility of each participating authority to bring to the attention of the County Clerk any notice of pending election contest, investigation, litigation or open records request which may be filed with the participating authority.

XII. RECOUNTS

A recount may be obtained as provided by Title 13 of the Texas Election Code. Political Subdivision agrees that any recount shall take place at the offices of the County Clerk, and that the County Clerk shall serve as Recount Supervisor and the Political Subdivision's official or employee who performs the duties of a secretary under the Texas Election Code shall serve as Recount Coordinator.

The Elections Department agrees to provide advisory services to the District as necessary to conduct a proper recount and cost of the recount depends on the size of the election and number of precincts to be recounted.

XIII. MISCELLANEOUS PROVISIONS

1. It is understood that to the extent space is available, that other districts and political subdivisions may wish to participate in the use of the County's election equipment and voting places, and it is agreed that the County Clerk may contract with such other districts or political subdivisions for such purposes and that in such event there may be an adjustment of the pro-rata share to be paid to the County by the participating authorities.

2. The County clerk shall file copies of this document with the Brazoria County Treasurer and the Brazoria County Auditor in accordance with Section 31.099 of the Texas Election Code.

3. In the event that legal action is filed contesting Political Subdivision's election under Title 14 of the Texas Election Code, Political Subdivision shall choose and provide, at its own expense, legal counsel for the County, the County Clerk, and additional election personnel as necessary.

4. Nothing in this contract prevents any party from taking appropriate legal action against any other party and/or other election personnel for a breach of this contract or a violation of the Texas Election Code.

5. The parties agree that under the Constitution and laws of the State of Texas, neither Brazoria County nor Political Subdivision can enter into an agreement whereby either party agrees to indemnify or hold harmless another party; therefore, all references of any kind, if any, to indemnifying or holding or saving harmless for any reason are hereby deleted.

6. This agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazoria County, Texas.

7. In the event of one of more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8. All parties shall comply with all applicable laws, ordinances, and codes of the State of Texas, all local governments, and any other entities with local jurisdiction.

9. The waiver by any party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.

10. Any amendments of this agreement shall be of no effect unless in writing and signed by all parties hereto.

XIV. COST ESTIMATES AND DEPOSIT OF FUNDS

It is estimated that Political Subdivision's obligation under the terms of this agreement shall be \$2,169.48. Political Subdivision agrees to pay to Brazoria County a deposit of \$1,084.74, which is approximately fifty (50) percent of the total estimated obligation of Political Subdivision to the County under this agreement. This deposit shall be paid to Brazoria County within 10 days after the final candidate filing deadline. The final candidate filing deadline is March 9, 2009. Therefore, deposit is due by March 19, 2009. The exact amount of the Political Subdivision's obligation under the terms of this agreement shall be calculated after the May 9, 2009 election and if the amount of the Political Subdivision's obligation exceeds the amount deposited, the Political Subdivision shall pay to Brazoria County the balance due within thirty (30) days after receipt of the final invoice from the County Clerk's Election Department. However, if the amount of the Political Subdivision's obligation is less than the amount deposited, Brazoria County shall refund to the Political Subdivision the excess amount paid within thirty (30) days after final costs are calculated.

IN TESTIMONY HEREOF, this agreement, its multiple originals all of equal force, has been executed on behalf of the parties hereto as follows, to-wit:

(1) It has on the _____ day of _____, 2009 been executed on behalf of Brazoria County by the County Judge or the County Clerk pursuant to the Texas Election Code so authorizing;

(2) It has on the _____ day of _____, 2009 been executed on behalf of the Political Subdivision by its Presiding Officer or authorized representative, pursuant to an action of the Political Subdivision so authorizing;

BRAZORIA COUNTY

By _____
Joyce Hudman, County Clerk

ATTEST:

POLITICAL SUBDIVISION

_____ By _____
Presiding Officer or Authorized Representative
CITY OF FREEPORT

Approved 12/15/08

THE STATE OF TEXAS X
COUNTY OF BRAZORIA X

CONSENT TO USE OF EASEMENTS

The CITY OF FREEPORT, TEXAS (a municipal corporation lying and situated in Brazoria County, Texas, herein called "the City"), hereby consents to PORT FREEPORT (a body corporate and politic also lying and situated in Brazoria County, Texas, herein called "the Port"), granting the following rights-of-way for the installation of a natural gas pipeline (hereinafter "the Pipeline") providing natural gas service to American Rice, Inc., a Delaware corporation, its assigns, or the best high bidder on such easements ("Easement Holder"):

First Parcel

A strip within five feet of the southerly line of the 1855 foot by 20 foot sewer easement that is adjacent to the south line of Blocks 8, 9, 23 and 24 of the Freeport Townsite of the City granted by the Freeport Sulphur Co. to the City by the instrument dated September 9, 1947, recorded in Volume 412, page 402 of the Deed Records of Brazoria County, Texas.

Second Parcel

A strip five off of the easterly line of and within the Terminal Street right-of-way, between East 8th St. and East 5th St., as shown on the plat of the Freeport Townsite of the City recorded in Volume 2, page 95 of the Plat Records of Brazoria County, Texas.

under the following terms and conditions:

First, the Port will specify in the easements that after the installation of the line, the Easement Holder, at its expense, will restore the above easements to a condition that is the same or better than the condition the same are in on the date the easement is granted by the Port.

Second, the Port will specify in the easements that the Easement Holder will maintain the line so as to prevent it from becoming a hazard to the safety of the citizens of the City or the customers and tenants of the Port; and, if it becomes necessary for the Easement Holder to excavate in connection with such maintenance, the Easement Holder will, at its expense, restore the above easements to a condition that is the same or better than the condition the same are in on the date the easement is granted by the Port.

Third, the rights granted to the Port by this consent shall not be used to extend the line north of East 5th St., without the express written consent of the City.

Approved 12/15/08

Approved 12/15/08

Fourth, as used herein, the term "Indemnified Parties" means the Port and the City of Freeport, and their respective officers, directors, employees, agents, successors and assigns. To the fullest extent permitted by law and regardless of any degree of fault, omission or negligence, strict liability, strict statutory liability, strict products liability or negligence per se of the Indemnified Parties, any easements granted to the Easement Holder shall require the Easement Holder to assume all liability for, and agree to defend, indemnify and hold the Indemnified Parties harmless from all claims, fines, damages, liabilities, losses, costs, expenses (including without limitation reasonable attorneys' fees and court costs), penalties, assessments, environmental response costs, and/or injunctive obligations, which may be suffered or incurred at any time by the Indemnified Parties, on account of injuries to or death of any persons, damage to or destruction of any property, and/or any violation of any applicable law, rule, regulation, or order of any governmental entity, caused by, resulting from, or arising out of the construction, operation, maintenance (and failure to maintain), repair (and failure to repair), replacement, removal and use of the Pipeline and/or any related equipment and appurtenances, or the rights granted herein.

Fifth, the Easement Holder will be required to place and maintain an above ground marker locating each line installed at each intersection, i.e. the intersections of Poplar, Spruce and Terminal with East 8th St., East 7th St., East 6th St. and East 5th St.

GRANTED this _____ day of _____, 2008.

THE CITY OF FREEPORT, TEXAS

By _____
Larry McDonald, Sr., Mayor

ATTESTED: _____
Delia Munoz, City Secretary

Approved 12/15/08

Approved 12/15/08

AGREED AND ACCEPTED the ____ day of _____, 2008.

PORT FREEPORT

By _____
James F. Brown, Jr., Chairman
Port Commission

ATTESTED: _____
Ravi K. Singhania, Secretary
Port Commission

THE STATE OF TEXAS X

COUNTY OF BRAZORIA X

This instrument was acknowledged before me on the ____ day of _____, 2008, by LARRY
McDONALD, SR., as the Mayor of the City of Freeport.

Notary Public, State of Texas

THE STATE OF TEXAS X

COUNTY OF BRAZORIA X

This instrument was acknowledged before me on the ____ day of _____, 2008, by JAMES F.
BROWN, JR., as Chairman of the Port Commission.

Notary Public, State of Texas

Port Freeport/American Rise/Pipeline Easement
City of Freeport Consent to Use of Easement.08 12.01 4D

Approved 12/15/08

THE STATE OF TEXAS X
 X
COUNTY OF BRAZORIA X

CONSENT TO USE OF EASEMENTS

The CITY OF FREEPORT, TEXAS (a municipal corporation lying and situated in Brazoria County, Texas, herein called "the City"), hereby consents to PORT FREEPORT (a body corporate and politic also lying and situated in Brazoria County, Texas, herein called "the Port"), granting the following rights-of-way for the installation of a natural gas pipeline (hereinafter "the Pipeline") providing natural gas service to American Rice, Inc., a Delaware corporation, its assigns, or the best high bidder on such easements ("Easement Holder"):

Deleted: First Parcel

A 5 foot wide strip, being 2.5 feet left and 2.5 feet right of the herein described centerline, being a portion of the 20-foot wide easement granted to the City of Freeport by instrument dated September 9, 1947, recorded in Volume 412, Page 502 of the Deed Records of Brazoria County, Texas, being out of a 2.41 acre tract described by deed on June 25, 1956 from Freeport Sulphur Company to Brazos River Harbor Navigation District, as recorded in Volume 658, Page 174 of the Brazoria County Deed Records as follows:

Deleted: A five foot wide strip along the southerly line of the 1855 foot by 20 foot sewer easement that is adjacent to the south line of Blocks 8, 9, 23 and 24 of the Freeport Townsite of the City granted by the Freeport Sulphur Co to the City by the instrument dated September 9, 1947, recorded in Volume 412, page 402 of the Deed Records of Brazoria County, Texas.

Commencing at a point in the northern boundary line of said Brazos River Harbor Navigation District (B.R.H.N.D.) called 2.41 acre tract, and the northern boundary line of said 20-foot wide easement, said point being the southeastern corner of Lot 8, Block 8, of the City of Freeport Original Townsite according to the map or plat thereof recorded in Volume 2, page 95, B.C.D.R.:

Thence North 76°07'57" West, along the northern boundary line of said B.R.H.N.D. called 2.41 acre tract, also being the northern boundary line of said 20-foot easement and the southern boundary line of said Freeport Original Townsite, a distance of 28.53 feet to the Point of Beginning at the horizontal intersection of the herein described centerline;

Thence South 79°41'41" West, a distance of 34.79 feet to an angle point, located 15 feet south measured at right angle to the northern boundary line of said B.R.H.N.D. called 2.41 acre tract also being the northern boundary line of said 20-foot easement ;

Thence North 74°45'48" West, 15 feet south measured at right angle to the northern boundary line of said B.R.H.N.D. called 2.41 acre tract, also being the northern boundary line of said 20-foot easement, a distance of 1047.50 feet to an angle point;

Thence North 15°13'12" East, a distance of 15.00 feet to the Point of Terminus located in the northern boundary line of said B.R.H.N.D. called 2.41 acre tract, also being the northern boundary line of said 20-foot easement, same being the southern boundary line of all that certain called 2.4391 acre tract of land conveyed by deed on November 24, 1999 from Freeport Welding and Fabrication, Inc. to Brazos River Harbor Navigation District, as recorded in Clerk's File No. 99-053095 of the Brazoria County Official Records.

Being a total length of 66.50 rods (1097.3 feet).

under the following terms and conditions:

First, the Port will specify in the easements that after the installation of the line, the Easement Holder, at its expense, will restore the above easements to a condition that is the same or better than the condition the same are in on the date the easement is granted by the Port

Second, the Port will specify in the easements that the Easement Holder will maintain the line so as to prevent it from becoming a hazard to the safety of the citizens of the City or the customers and tenants of the Port; and, if it becomes necessary for the Easement Holder to excavate in connection with such maintenance, the Easement Holder will, at its expense, restore the above easements to a condition that is the same or better than the condition the same are in on the date the easement is granted by the Port.

Third, the rights granted to the Port by this consent shall not be used to extend the line north of East 5th St., without the express written consent of the City.

AGREED AND ACCEPTED the ____ day of _____, 2009.

PORT FREEPORT

By _____
James F. Brown, Jr., Chairman
Port Commission

ATTESTED. _____
Ravi K. Singhania, Secretary
Port Commission

THE STATE OF TEXAS X

COUNTY OF BRAZORIA X

This instrument was acknowledged before me on the ____ day of _____, 2009, by LARRY
McDONALD, SR., as the Mayor of the City of Freeport.

Notary Public, State of Texas

THE STATE OF TEXAS X

COUNTY OF BRAZORIA X

This instrument was acknowledged before me on the ____ day of _____, 2009, by JAMES F.
BROWN, JR., as Chairman of the Port Commission.

Notary Public, State of Texas

THE STATE OF TEXAS X
 X
COUNTY OF BRAZORIA X

CONSENT TO USE OF EASEMENTS

The CITY OF FREEPORT, TEXAS (a municipal corporation lying and situated in Brazoria County, Texas, herein called "the City"), hereby consents to PORT FREEPORT (a body corporate and politic also lying and situated in Brazoria County, Texas, herein called "the Port"), granting the following rights-of-way for the installation of a natural gas pipeline (hereinafter "the Pipeline") providing natural gas service to American Rice, Inc., a Delaware corporation, its assigns, or the best high bidder on such easements ("Easement Holder"):

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Commencing at a point in the northern boundary line of said Brazos River Harbor Navigation District (B.R.H.N.D.) called 2.41 acre tract, and the northern boundary line of said 20-foot wide easement, said point being the southeastern corner of Lot 8, Block 8, of the City of Freeport Original Townsite according to the map or plat thereof recorded in Volume 2, page 95, B.C.D.R.;

Thence North 76°07'57" West, along the northern boundary line of said B.R.H.N.D. called 2.41 acre tract, also being the northern boundary line of said 20-foot easement and the southern boundary line of said Freeport Original Townsite, a distance of 28.53 feet to the Point of Beginning at the horizontal intersection of the herein described centerline;

Thence South 79°41'41" West, a distance of 34.79 feet to an angle point, located 15 feet south measured at right angle to the northern boundary line of said B.R.H.N.D. called 2.41 acre tract also being the northern boundary line of said 20-foot easement ;

Thence North 74°45'48" West, 15 feet south measured at right angle to the northern boundary line of said B.R.H.N.D. called 2.41 acre tract, also being the northern boundary line of said 20-foot easement, a distance of 1047.50 feet to an angle point;

Thence North 15°13'12" East, a distance of 15.00 feet to the Point of Terminus located in the northern boundary line of said B.R.H.N.D. called 2.41 acre tract, also being the northern boundary line of said 20-foot easement, same being the southern boundary line of all that certain called 2.4391 acre tract of land conveyed by deed on November 24, 1999 from Freeport Welding and Fabrication, Inc. to Brazos River Harbor Navigation District, as recorded in Clerk's File No. 99-053095 of the Brazoria County Official Records.

Being a total length of 66.50 rods (1097.3 feet).

under the following terms and conditions:

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Fourth, as used herein, the term "Indemnified Parties" means the Port and the City of Freeport, and their respective officers, directors, employees, agents, successors and assigns. To the fullest extent permitted by law and regardless of any degree of fault, omission or negligence, strict liability, strict statutory liability, strict products liability or negligence per se of the Indemnified Parties, any easements granted to the Easement Holder shall require the Easement Holder to assume all liability for, and agree to defend, indemnify and hold the Indemnified Parties harmless from all claims, fines, damages, liabilities, losses, costs, expenses (including without limitation reasonable attorneys' fees and court costs), penalties, assessments, environmental response costs, and/or injunctive obligations, which may be suffered or incurred at any time by the Indemnified Parties, on account of injuries to or death of any persons, damage to or destruction of any property, and/or any violation of any applicable law, rule, regulation, or order of any governmental entity, caused by, resulting from, or arising out of the construction, operation, maintenance (and failure to maintain), repair (and failure to repair), replacement, removal and use of the Pipeline and/or any related equipment and appurtenances, or the rights granted herein.

GRANTED this _____ day of _____, 2009.

THE CITY OF FREEPORT, TEXAS

By _____
Larry McDonald, Sr., Mayor

ATTESTED: _____
Delia Munoz, City Secretary

AGREED AND ACCEPTED the _____ day of _____, 2009.

PORT FREEPORT

By _____
James F. Brown, Jr., Chairman
Port Commission

ATTESTED: _____
Ravi K. Singhania, Secretary
Port Commission

THE STATE OF TEXAS X

COUNTY OF BRAZORIA X

This instrument was acknowledged before me on the ____ day of _____, 2009, by LARRY McDONALD, SR., as the Mayor of the City of Freeport.

Notary Public, State of Texas

THE STATE OF TEXAS X

COUNTY OF BRAZORIA X

This instrument was acknowledged before me on the ____ day of _____, 2009, by JAMES F. BROWN, JR., as Chairman of the Port Commission.

Notary Public, State of Texas

Port Freeport/American Rice/Pipeline Easement
City of Freeport.Consent to Use of Easements.09.01.26.5D

**PROPOSED ARI GAS PIPELINE EASEMENT
ROD CALCULATIONS**

Leg	Length, feet	Property Owner						City 20' San. Sewer Easement
		Terminal Street R.O.W.	Lots 8 & 9	Port	H.B.V.R.R.	TxDot		
1	1,617.55	1,617.55						
2	176.39	59.00	117.39					
3	34.79			34.79				
4	1,165.08						1,165.08	
5	149.98			134.98			15.00	
6	540.00			540.00				
7	203.35			203.35				
8	113.65				113.65			
9	554.52			554.52				
10	97.80			97.80				
11	916.27			751.47	164.80			
12	20.01			20.01				
13	628.32			628.32				
14	359.16			209.16		150.00		
15	1,203.97			1,203.97				
TOTAL, FEET	7,780.84	1,676.55	117.39	4,378.37	278.45	150.00	1,180.08	
TOTAL, RODS	471.57	101.61	7.11	265.36	16.88	9.09	71.52	

Remarks

City of Freeport, within Terminal Street Right of Way
Block 9, Lot 9, within City of Freeport drainage easement
Block 9, Lot 8, within City of Freeport drainage easement
Port Freeport, within 20' City of Freeport Sanitary Sewer Easement
Port Freeport, within the Freeport Welding Tract
H.B.V.R.R. 100-foot strip
Port Freeport, between H.B.V.R.R. 100-foot strip & H.B.V.R.R. 135-foot strip
H.B.V.R.R. 135-foot strip
Port Freeport, between H.B.V.R.R. 135-foot strip & F.M. 1495 Right of Way
F.M. 1495 Right of Way
Port Freeport, between F.M. 1495 Right of Way & Houston Pipeline 50-foot easement

Tract No.	Length	
	Feet	Rods
1	1,059.90	64.24
	84.80	5.14
	31.60	1.92
2	1,097.30	66.50
3	885.10	53.64
	100.00	6.06
4	690.80	41.87
	164.85	9.99
5	1,267.00	76.79
	150.00	9.09
6	1,697.60	102.88
Total	<u>7,228.95</u>	<u>438.12</u>

Summary

Port Freeport	275.18
City of Freeport	137.79
H.B.V.R.R.	16.05
TxDot	<u>9.09</u>
Total	438.12



February 10, 2009

Jeff Pynes
Acting City Manager
City of Freeport
200 West Second Street
Freeport, Texas 77541

Re: Beltpress

Dear Mr. Pynes:

I am requesting to be placed on the city council meeting agenda on Tuesday, February 17, 2009 to discuss/approve purchase of a beltpress and required components (conveyor for transporting sludge from the beltpress to a dumpster, a building cover, and electrical work needed) for the city's wastewater facility. The council placed in the current budget \$325,000.00 from bond funds for the purchase and installation of a beltpress for the wastewater facility. We have come across a good used skid mounted beltpress for \$190,000.00 from Aspen a local company which rents out and refurbishes beltresses. The conveyor I am estimating about \$4,000.00, the building and electrical work I am still working on.

Enclosed are seven (7) copies of a equipment detail with purchase cost of the beltpress and a group of photos of the beltpress.

If you have any questions please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Meeks", written over a white background.

Jerry Meeks
Project Manager, Veolia Water

Encl:

EQUIPMENT DETAILS

The belt press is a Parkson skid mounted press, which has also been completely refurbished. The belt press is skid mounted complete with an automated flash blending polymer unit, sludge feed pump, electronic controls and a sludge discharge auger which comes off at 3.5 feet high and 3.5 feet out from the unit. The press will require a 480 three phase, 100 amp breaker power supply. Water requirements are fresh water at 100 gpm and 35 and up psi. BP3100 is shown on the "Equipment Photos" section of the web site. (aspen-rentals.com)

Purchase Costs

The price for the purchase of the above listed equipment is as follows:

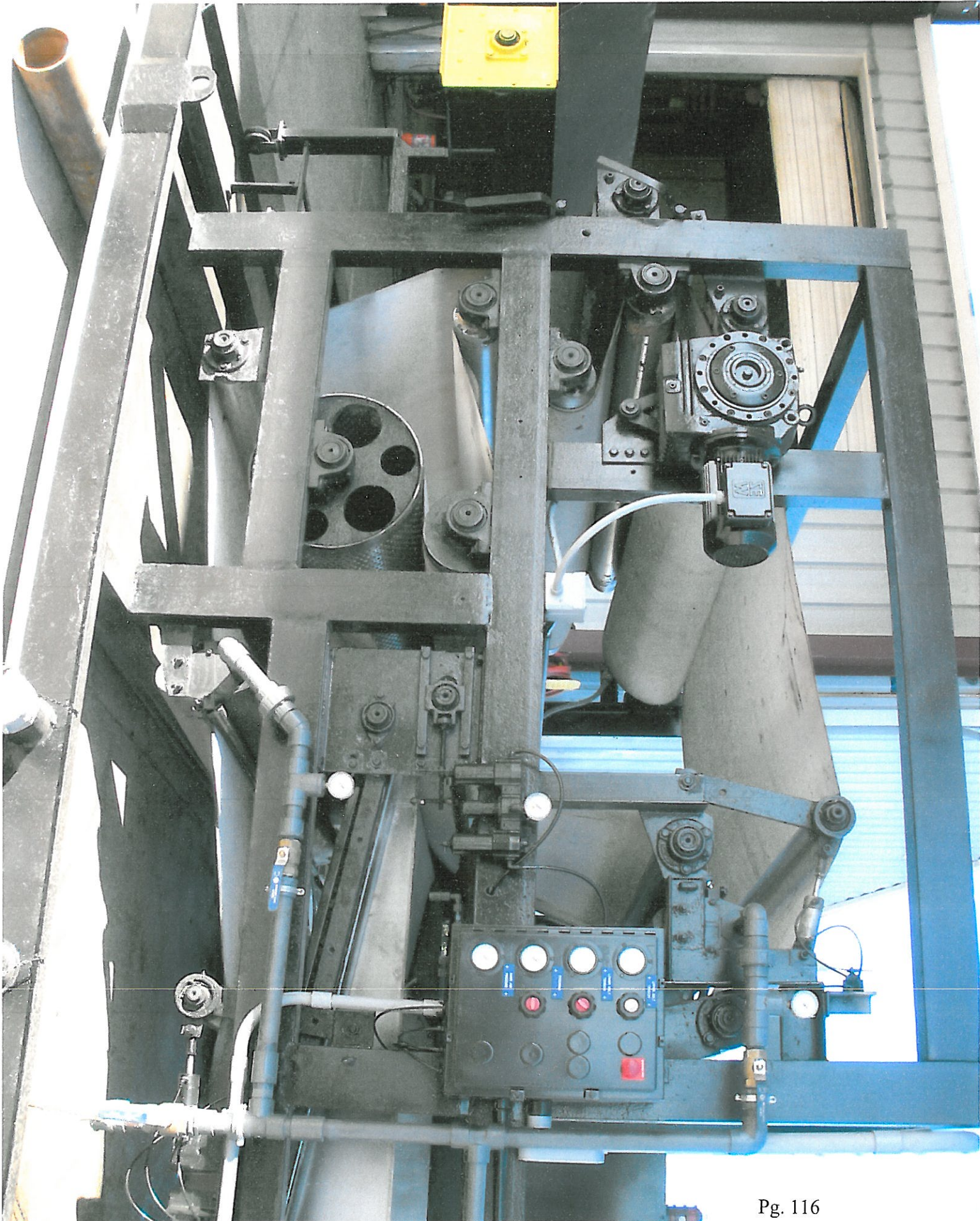
1. 2.0 meter skid belt press \$190,000.00

Price includes:

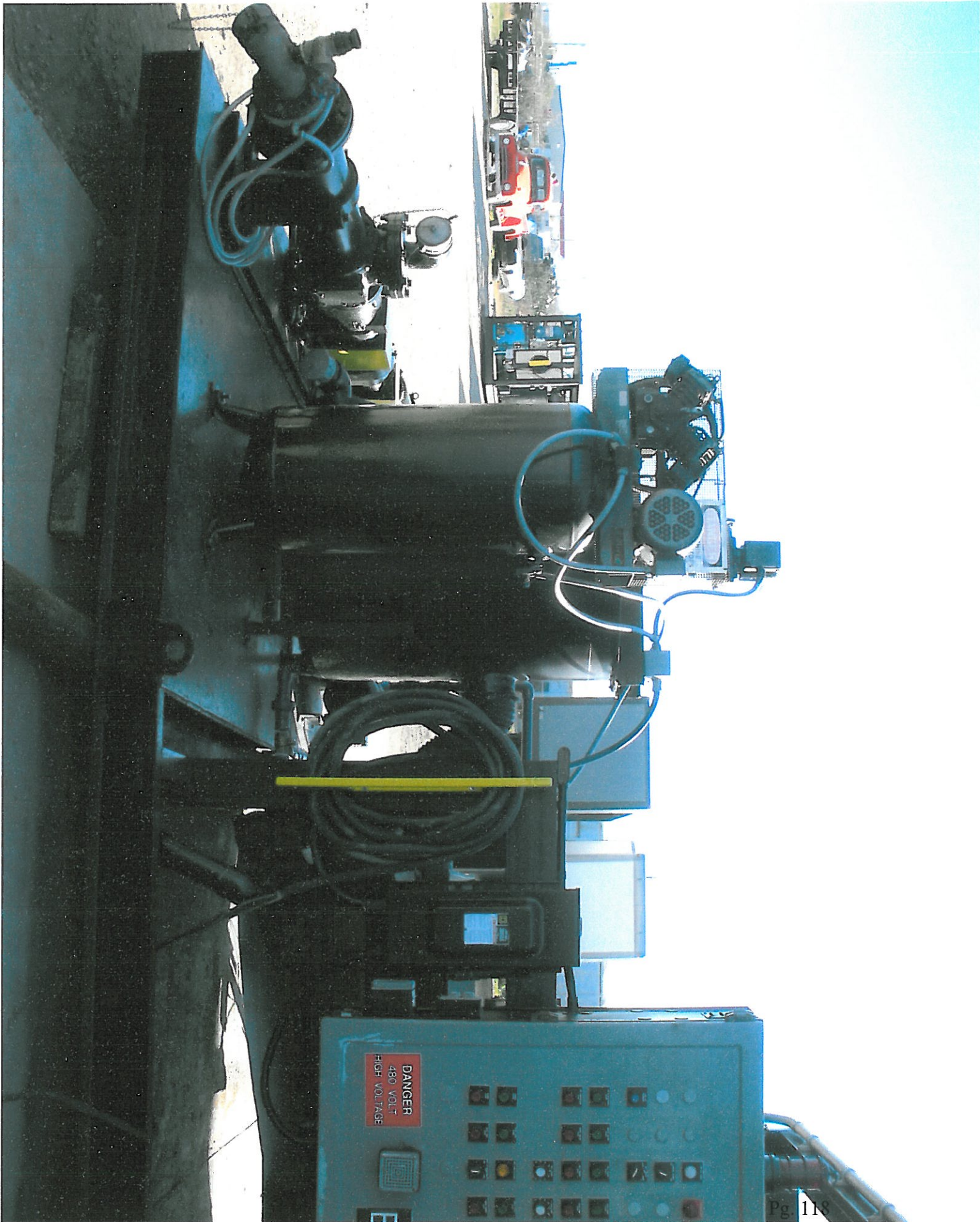
- A. 90 day parts and labor warranty
- B. Reverse conveyor
- C. New set of belts
- D. Supply of parts for press to be purchased from Aspen if needed
- E. 2 days of free set up and training
- F. Free crane to set press

2. Mobilization No Charge

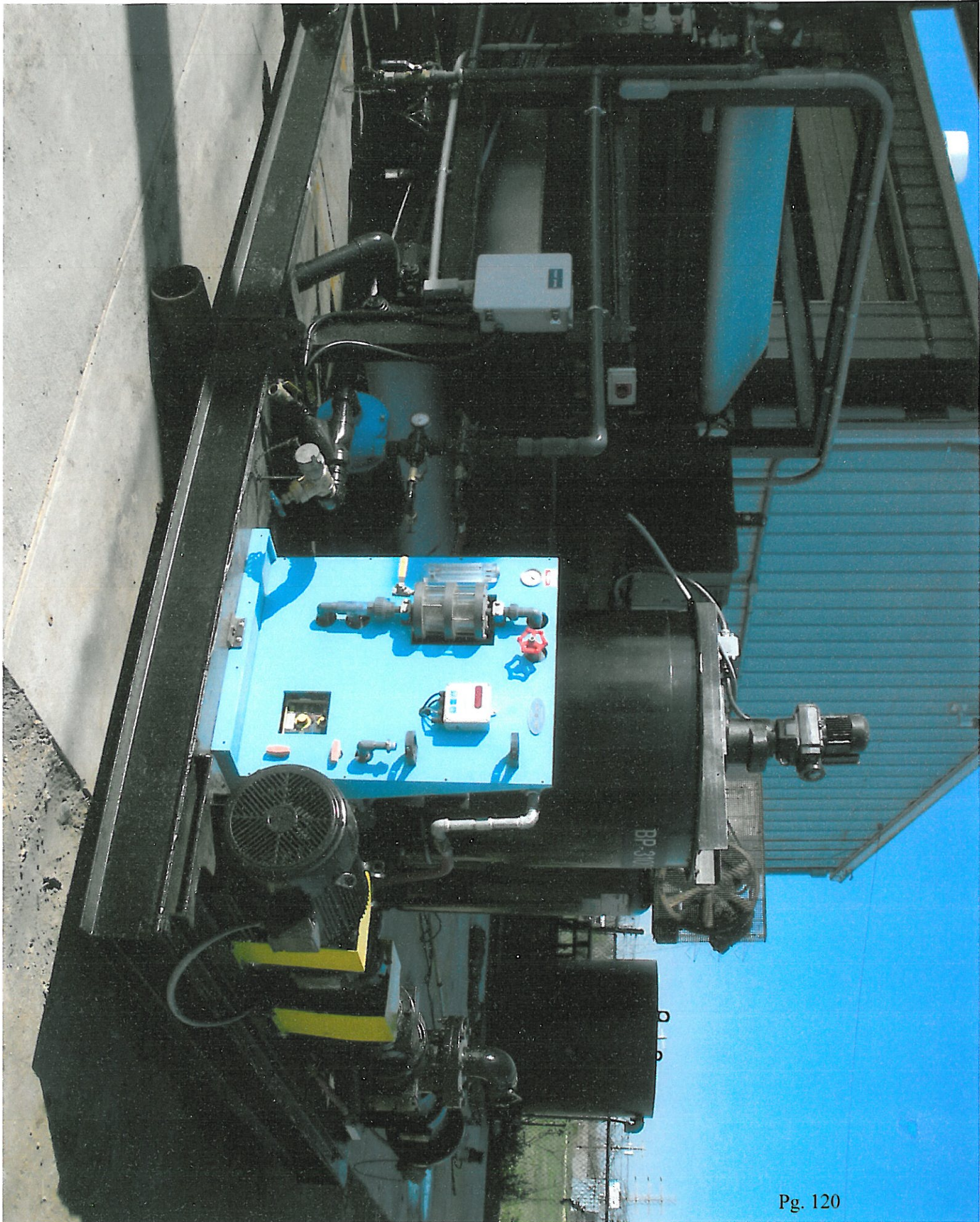












ORDINANCE NO. 05-1799

AN ORDINANCE OF THE CITY OF LAKE JACKSON, TEXAS, AMENDING CHAPTER 38, ARTICLE I, OF THE CODE OF ORDINANCES BY ADDING SECTIONS 38-1 ET SEQ PROHIBITING SMOKING IN CERTAIN PUBLIC FACILITIES IN THE CITY, INCLUDING RESTAURANTS, SHOPPING MALLS, AND HOTEL AND MOTEL LOBBIES; PROVIDING FOR A PENALTY AS FOLLOWS: A PERSON WHO SMOKES IN AN AREA WHERE SMOKING IS PROHIBITED BY THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF AN INFRACTION, PUNISHABLE BY A FINE NOT EXCEEDING FIFTY DOLLARS (\$50); A PERSON WHO OWNS, MANAGES, OPERATES, OR OTHERWISE CONTROLS A PUBLIC PLACE OR PLACE OF EMPLOYMENT AND WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF AN INFRACTION, PUNISHABLE BY: A FINE NOT EXCEEDING ONE HUNDRED DOLLARS (\$100) FOR A FIRST VIOLATION; A FINE NOT EXCEEDING TWO HUNDRED DOLLARS (\$200) FOR A SECOND VIOLATION WITHIN ONE YEAR; A FINE NOT EXCEEDING FIVE HUNDRED DOLLARS (\$500) FOR EACH ADDITIONAL VIOLATION WITHIN ONE (1) YEAR; EACH DAY ON WHICH A VIOLATION OF THIS ARTICLE OCCURS SHALL BE CONSIDERED A SEPARATE AND DISTINCT VIOLATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES TO THE EXTENT OF THE CONFLICT ONLY; PROVIDING A SAVINGS CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE ON MAY 1, 2006, AND FIVE DAYS AFTER ITS DESCRIPTIVE CAPTION IS PUBLISHED WITHIN TEN DAYS OF FINAL PASSAGE IN THE BRAZOSPORT FACTS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKE JACKSON, TEXAS:

SECTION 1: That Chapter 38 of the Code of Ordinances is hereby amended by adding Sections 38-1 et seq to read as follows:

Article I

This article shall be known as the City of Lake Jackson, Texas Smokefree Air Act of 2005.

Sec. 38-1 Findings and Intent

The City Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing second hand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental protections Agency. Smoking and Tobacco Control Monograph 10, " Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens, " U.S. Department of Health and Human Services (DHHS), Public health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003 2005.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sarget, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)

The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particular matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," Washington, D.C.: *Environmental Protection Agency (EPA)*, June 1989.)

The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 23, 2004.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decreased in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzias, P., "Association between exposure to environmental tobacco smoke and development of acute coronary syndromes: The CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Giantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87: 1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unity, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August, 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 38-2 Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Billiard or Pool Hall" shall mean premises used primarily for any of several games played on an oblong table by driving small balls against one another or into pockets with a cue and wherein at least 50 percent of the area accessible to the public, excluding restrooms, hallways, and entries, has to be occupied by pool tables.
- C. "Bingo Facility" shall mean premises used primarily for the purpose of conducting games of chance.
- D. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- E. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- F. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- G. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid smoke impermeable walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- H. "Health Care Facility" means an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentist, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- I. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
- J. "Private Club" means organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used

exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established by laws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. A Private Club in this ordinance is not a private club as defined by the Texas Alcoholic Beverage Code or Beverage Commission.

- K. "Private Office" shall mean a space for an officer or employee sequestered or withdrawn from public areas; not intended primarily for general public use or entry.
- L. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurant, retail food production and marketing establishments, retail service establishment, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.
- M. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- N. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of their products is merely incidental.
- O. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- P. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- Q. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or in any form.
- R. "Sports Arena" means sports pavilions, stadiums, gymnasium, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 38-3. Reserved

Sec. 38-4. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in the following enclosed public places within in the City of Lake Jackson:

- A. Aquariums, galleries, libraries, and museums.

- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including banks, laundromats, hotels, and motels.
- C. City facilities that are enclosed, including buildings, owned, leased or operated by the City of Lake Jackson.
- D. Convention facilities.
- E. Educational facilities, both public and private.
- F. Elevators.
- G. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- H. Hotel and motel lobbies, and hallways.
- I. Licensed childcare and adult day care facilities.
- J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple unit residential facilities.
- K. Polling places.
- L. Restaurants.
- M. Restrooms, lobbies, reception areas, and other common use areas.
- N. Retail stores.
- O. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- P. Service lines.
- Q. Shopping malls.
- R. Sports arenas, including enclosed places in outdoor arenas, excluding bowling alleys.

Sec. 38-5. Enclosed areas require solid wall isolation and separate isolated ventilation systems

- A. Permitted smoking areas may be created within an enclosed area. However, the permitted smoking area created within an enclosed area shall be no larger than 30% of the total public accessible floor space of the entire facility, and shall be separate from the other areas, by demarcated solid wall isolation and separate ventilation systems.

Sec. 38-6. Prohibition of Smoking in Outdoor Arenas and Stadiums

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheatres.

Sec. 38-7. Reasonable Distance

Smoking is prohibited within the reasonable distance of fifteen (15) feet radius from any exterior door and operable windows outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means. Enclosed

public places where smoking is prohibited may establish smoking areas outside of the building as long as placement does not violate this article.

Sec. 38-8. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 38-4 and 38-5:

- A. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; providing, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Retail tobacco stores; providing that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- D. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- E. Private clubs as defined under Section 38-2H.
- F. Outdoor areas of places of employment except those covered by the provisions of Sections 38-6, 38-7.
- G. Bars
- H. Billiard or Pool Halls
- I. Bingo Facilities
- J. Private Offices
- K. Public transportation facilities, including buses and taxicabs, under the authority of the City of Lake Jackson, and ticket, boarding, and waiting areas of public transit depots.

Sec 38-9. Declaration of Establishment as Nonsmoking

Notwithstanding any other provisions of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 38-10(A) is posted.

Sec. 38-10. Posting of Signs

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted between four (4) and six (6) feet above the ground or floor on the entry door in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

- B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign posted between four (4) and six (6) feet above the ground or floor on the entry door, clearly stating that smoking is prohibited.
- C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Sec. 38-11. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 38-12. Enforcement

- A. This Article shall be enforced by the City Manager or an authorized designee.
- B. Notice of the provisions of the Article shall be given to all applicants for a business license in the City of Lake Jackson.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager.
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 38-13. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Manager by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 38-14. Public Education

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance within. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 38-15. Governmental Agency Cooperation

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 38-16. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 38-17. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

SECTION 3: Any person, firm, corporation, association or other entity that violates any provision of this ordinances shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished as follows:

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one year.

3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

SECTION 4: If any part or portion of this ordinance shall be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any remaining portions or provisions of this ordinance.

SECTION 5: The City Secretary shall publish the caption of this ordinance within ten days of final passage in the official newspaper of the City. This ordinance shall take effect on May 1, 2006, and be in force five days after publication in accordance with Section 3-15 of the Charter of the City of Lake Jackson, Texas.

PASSED AND APPROVED on the first reading this 7th day of November, 2005

PASSED AND ADOPTED on this second and final reading this 21st day of November 2005.

Shane W. Pirtle
Mayor

ATTEST:

Alice A. Rodgers
City Secretary