

CITY OF WHITESBORO BOARD OF ADJUSTMENT MEETING
111 W. MAIN ST, WHITEBORO TEXAS
WEDNESDAY, MARCH 27, 2024 4:00 PM P.M.

1. PLEDGE OF ALLEGIANCE AND INVOCATION
2. ROLL CALL
3. CITIZEN PRESENTATION
4. APPROVAL OF MINUTES FROM JANUARY 10, 2024.
5. DISCUSS, CONSIDER AND POSSIBLE ACTION ON THE APPOINTMENT OF A CHAIRMAN AND VICE CHAIRMAN OF THE BOARD.
6. NEW MEMBER TRAINING AND GOVERNANCE POLICY
7. ADJOURN

Persons with disabilities who plan to attend this meeting and who may need assistance or interpretation should contact the office of the City Secretary at 903-564-4000 two (2) days prior to the meeting so that appropriate arrangements can be made.

Las personas con discapacidades que pretenden asistir a esta reunion o que necesiten ayuda o interpretacion deben contactarse con la oficina de la Secretaria de la ciudad al 903-564-4000, 2 dias antes de la reunion para que se puedan hacer los arreglos apropiados.

Attest:

I, Julie Arrington, City Administrator of the City of Whitesboro, Texas, do hereby certify that the above notice of meeting was posted on the City Hall bulletin board, 111 W. Main St. Whitesboro, TX 76273, being a place convenient and readily accessible to the general public at all times and said notice was posted by the following date and time: 4:00 p.m., Friday, March 22, 2024, and remains so posted at least 72 hours preceding the scheduled time of said meeting.


Julie Arrington, City Administrator

Board of Adjustment Meeting Minutes
January 10, 2024

The Board of Adjustment Board met in regular session in the Conference Room of City Hall, 111 W. Main St., Whitesboro, Texas, 76263 at 4:30pm. The matters discussed were as follows:

Meeting opened at 4:31pm.

1. **Pledge of Allegiance:** Suzanne Greear led the group in the Pledge of Allegiance.

2. **ROLL CALL:**

Present: Suzanne Greear
Steve Pinkston
Chris Dobbs
Susan Vardell

Julie Arrington
Dalton Fallaw
Dave Blaylock

3. **Public Hearing:** The Board of Adjustment will hear testimony on a request for a variance to the City Code of Ordinances, 154.026(F), which states *Sign regulations. In the (B) Business District, no sign shall be constructed, erected, altered, painted or improved which exceeds 60 square feet in area or which contains flashing lights, animated parts or which advertises an activity other than that on the lot placed. No sign or lettering shall be placed on the ground, rocks, trees, tree stump or other natural objects.* This property is generally located at 542 Hwy 377 N.

Mr. Butts spoke regarding the sign he is wanting to put up at the bank at 542 Hwy 377 N., Whitesboro, Texas. He discussed that it will be on a pole that is either 50' tall or 70' tall depending on what the Board will allow. He stated that sign itself will be 288 square feet (140" x 56").

4. **Discussion regarding the request for a variance to the City Code of Ordinances, 154.026(F) which states *Sign regulations:***

Dalton Fallaw started the discussion saying that there is no limit to the pole height but that it is the square footage of the sign that requires the variance. Mr. Butts said that if the pole is 60' tall the sign can be seen from Hwy 82 which will help those driving on Hwy 82 to see it. He also said that he has a couple of developers wanting to come in for businesses and a restaurant on the additional 4 acres to the south of the bank. He has discussed with TxDOT about getting a center turn lane and reducing the speed to 45mph from the bridge (just to the south of Bois D'Arc) all the way to Cripple Creek Ranch Décor (owned by Toni Pryor). He stated that he is working with Tim Ferguson of Dennard's on this project.

Boardmember Vardell brought up the issue of brightness of the sign and Mr. Butts stated that the majority of the sign will be black to help ease the brightness of it and that he is cognizant of making sure that it is not obnoxious or a safety hazard.

Boardmember Pinkston asked if the sign is engineered, to which Mr. Butts answered yes. Chairman Greear and Boardmember Dobbs commented that they are good with it as long as there is no obstruction of view, it's not too bright, etc.

Boardmember Pinkston made a motion to accept the variance for the First State Bank sign; Chairman Greear seconded the motion; all in favor. No one opposed.

Meeting adjourned at 4:50pm.

Chairperson

Dee Cooper, P & Z Clerk

§ 154.118 COMPOSITION, TERM AND VACANCIES OF THE BOARD OF ADJUSTMENT.

(A) The City Council shall appoint a Board of Adjustment who, in appropriate cases and subject to appropriate conditions and safeguards, may make special exceptions to the terms of this chapter that are consistent with the general purpose and intent of the chapter and in accordance with any applicable rules contained in this chapter. The Board shall consist of five members who are residents and/or taxpayers of the city. The members shall be appointed to two-year terms and shall serve until their successors are appointed and qualified.

(B) Members of the Board of Adjustment shall actively participate in the Board's activities, and any member who is absent for three consecutive meetings without valid excuse, as determined by the Board, shall automatically be dismissed from membership. The membership shall at once notify the Council that a vacancy exists. Any vacancy on the Board, for any reason, shall be filled for the unexpired term by Council appointment within 30 days of vacancy.

(Ord. 927, passed 4-12-05)

§ 154.119 POWERS, DUTIES AND RESPONSIBILITIES OF THE BOARD.

(A) Appeals. The Board may hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official of the city in the enforcement of this chapter.

(B) Variances. The Board may permit variances or modifications to height, yard, area, coverage and parking regulations.

(C) Special exceptions. The Board may hear and decide special exceptions to the terms of this chapter which are limited in scope and apply to the following:

- (1) Reconstruction of nonconforming buildings.
- (2) Expansion of nonconforming buildings.
- (3) Discontinuance of nonconforming uses.

(D) Signs. The Board may permit such variances or modifications of sign regulations as may be necessary.

(Ord. 927, passed 4-12-05)

§ 154.120 MEETINGS OF THE BOARD.

All meetings of the Board shall be open to the public. Four members of the Board of Adjustment shall constitute a quorum for the transaction of business. The Board shall keep a record of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The Board shall keep records of its examinations and other official actions. The records shall be filed immediately in the office of the City Secretary and are public records.

(Ord. 927, passed 4-12-05)

§ 154.121 VARIANCE FINDINGS FLOWCHART.

To guide the Board of Adjustment in their deliberations, the following is a variance findings flowchart:

FINDINGS – VARIANCES

<i>Inquiry</i>		<i>Findings</i>
Is the request for a variance owing to special condition inherent in the property itself? If yes, CONTINUE ↓ If no, STOP	⇒	The property is/has... (e.g., odd-shaped, unusual topo, and the like)
Is the condition one unique to the property requesting the variance? If yes, CONTINUE ↓ If no, STOP	⇒	The condition is unique to this property.
Will a literal enforcement of this chapter result in an unnecessary hardship? If yes, CONTINUE ↓ If no, STOP	⇒	Strict enforcement of this chapter would impose a hardship above that suffered by the general public.
Will the hardship prevent any reasonable use whatsoever? If yes, CONTINUE ↓ If no, STOP	⇒	Without the grant of the requested variance, the property owner would be deprived of the right to use his or her property. Financial considerations alone cannot satisfy this requirement.
Would the grant of the variance be contrary to public interest? If yes, STOP If no, PROCEED ↓		
Is the request within the spirit of the chapter, and does it further substantial justice? If yes, CONTINUE If no, STOP		

(Ord. 927, passed 4-12-05)

§ 154.999 PENALTY.

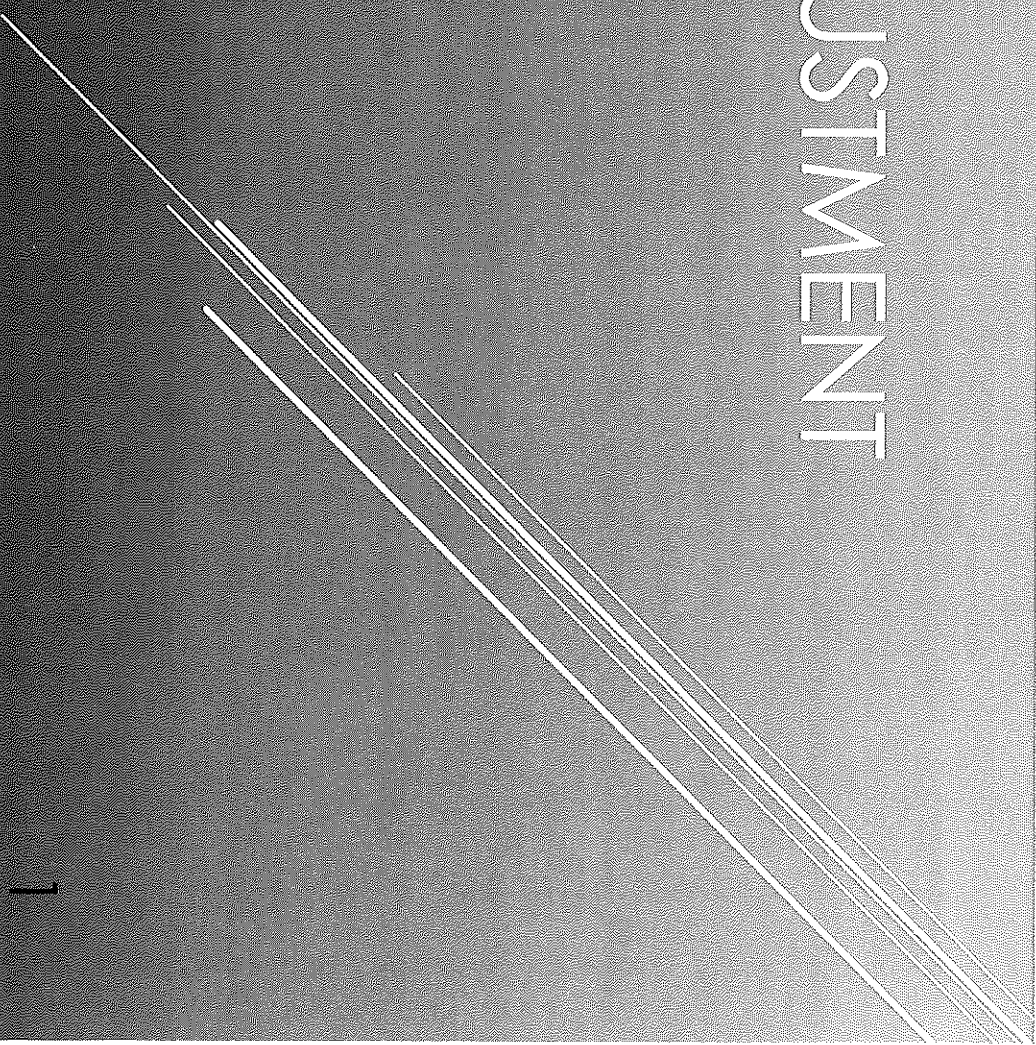
Any person or corporation who shall violate any of the provisions of this chapter or fail to comply therewith or with any of the requirements thereof, or who shall build or alter any building or use in violation of any detailed statement or plan submitted and

approved hereunder, shall be guilty of a misdemeanor and shall be liable to a fine of not more than \$500, and each day that such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises or part thereof, where anything in violation of this chapter shall be placed or shall exist, any architect, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of any such violations shall be guilty of a separate offense and upon conviction shall be fined as herein provided.

(Ord. 927, passed 4-12-05)

BOARD OF ADJUSTMENT

Training 2024



WHAT IS AN ORDINANCE

- ▶ A city ordinance is a type of **authoritative law, rule, or regulation made by a city government**, as opposed to a law made by a state, province, or national government. It is intended to address issues of local concern, and typically applies to people subject to the city's jurisdiction.

POWER OF AN ORDINANCE

- ▶ Ordinances are usually enacted by City Council in order to grant formal approval of certain policies or to establish regulations. It is usually required to regulate people and property and is required to pass a regulation under which violators can be punished.
- ▶ Some state statutes require a city to adopt an ordinance for situations such as setting the tax rate, adopting the annual budget, and requiring appropriate action to correct substandard buildings.

POWER OF AN ORDINANCE

Presumption of Validity – An ordinance is presumed valid unless it is clearly arbitrary and unreasonable.

The City Council may pass, publish, amend, codify, or repeal any ordinance, rule, or police regulation, not contrary to the constitution or state law, that is for the good government, peace or order of the municipality, and is necessary or proper for carrying out a power granted to the municipality or to an officer of the municipality. Type A may adopt ordinances necessary for the government, interest, welfare, or good order of the municipality as a body politic.

BOARD OF ADJUSTMENT - PURPOSE

The Board of Adjustment is one of the two citizen-staffed bodies that are legally required for municipal zoning.

The Board of Adjustment is an action agency which oversees the permitting process by hearing appeals from zoning decisions of administrative officials and authorizing variances when strict application of setback, yard, area, and height limits would cause individual property owners' unnecessary hardship. Both bodies are authorized and required by the comprehensive zoning ordinance and Chapter 211 of the Texas Local Government Code.

BOARD OF ADJUSTMENT - POWER

The Board reviews administrative decisions of the building official as to interpretations of the zoning ordinance. The Board may hear and decide appeals when error is alleged in any order, requirement, decision, or determination by an administrative official in enforcement of the Local Government Code or the zoning ordinance. The permit officer has no discretionary power and must issue or deny permits solely on the basis of compliance or non-compliance with the ordinance.

On appeal, the only question for the Board is whether the permit officer (building official) correctly applied the ordinance.

WHAT IS A VARIANCE

A “variance” is defined as permission to depart from the literal requirements of a zoning ordinance by virtue of unique and unnecessary hardship due to special circumstances regarding a person's property. It is a “relaxation” of the strict requirements of the zoning ordinance. An administrative official of a City cannot approve a variance.

The theory behind variances is to relax the strict requirements of the zoning ordinance in situations in which, because of an unusual feature of the property not common to other properties in the area, strict application of zoning regulations will result in unnecessary hardship. Variances relate to technical zoning matters such as area, setback, and height regulations.

WHAT IS A VARIANCE

Current Texas zoning law holds that no matter how much hardship a use regulation creates, the Board of Adjustment has no power to relax it. Only the City Council can change or relax the uses that are allowed in the various zoning districts.

HARDSHIP

Variances are permissible only if strict application of the zoning ordinance would cause unnecessary hardship. When considering applications for variances, the Board should require some evidence of hardship. The applicant has the burden of proving a property hardship and that the granting of the variance will not be contrary to the public interest. A variance is not authorized merely to accommodate the highest and best use of the property, but when the zoning ordinance does not permit any reasonable use of the lot.

When determining whether or not a hardship exists, the Board should consider the following factors:

1. whether the hardship is self-imposed by the owner or a predecessor in title to the property;
2. whether the hardship is unique to the property;
3. whether the hardship is financial in nature; and
4. whether the hardship is nothing more than a claim that the property cannot be used for its highest and best use or is merely a frustrated development objective.

HARDSHIP

In addition to those factors, recent legislation amends Texas law to now allow for consideration of financial circumstances and nonconformity under the hardship standard. The Board has discretion to find that a hardship variance may be granted if:

- the cost to modify a structure in order to achieve compliance with zoning is more than 50% of the value of the structure;
- compliance with zoning would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
- compliance with a zoning regulation would cause a structure to be violation of another city code;
- compliance would result in an unreasonable encroachment on an adjacent property or easement; or
- the City considers the structure as a nonconforming structure.

MEMBERSHIP AND VOTING PROCEDURES

A Board of Adjustment consists of five members, each appointed for a term of two years.

A quorum is four members; all cases must be heard by a minimum of four members (75% of the members). The concurring vote of at least four members is required to reverse administrative decisions, grant special exceptions, authorize variances, or grant any other affirmative relief authorized by the ordinance.

The voting requirements are mandatory and jurisdictional. A variance authorized by a vote of only three members of the Board is invalid and subject to collateral attack after expiration of the time for regular appeal.

MEETINGS

A Board of Adjustment consists of five members, each appointed for a term of two years.

A quorum is four members; all cases must be heard by a minimum of four members (75% of the members). The concurring vote of at least four members is required to reverse administrative decisions, grant special exceptions, authorize variances, or grant any other affirmative relief authorized by the ordinance.

The voting requirements are mandatory and jurisdictional. A variance authorized by a vote of only three members of the Board is invalid and subject to collateral attack after expiration of the time for regular appeal.

Meetings are held at the call of the Chairperson or as the Board determines. The Chairperson can administer oaths and compel attendance of witnesses. All meetings must be open to the public, except for confidential and privileged communication with the Board's attorney. The Board must keep minutes of its proceedings, showing the vote of each member on official actions and maintain the minutes as a public record in the City Secretary's or the Board's office.

OMA AND PIA

The State of Texas requires all elected and appointed officials to watch a training video supplied by the Texas Attorney General's Office at www.texasattorneygeneral.gov click on the Menu and select Open Government. The Open Meetings Act and the Public Information Act icons will take you to the videos to watch. Make sure you obtain the certification of completion. This will need to be filed with the City Secretary. The State allows 90 days from the date of your appointment and recommends refreshers every two years.

RESOURCES

The City Council of the City of Whitesboro has adopted a Governance Policy that discusses the expectations of Council for themselves and their Boards and Commissions. A copy has been provided to you along with a copy of the City Ordinance addressing the Board of Adjustments. I suggest you read them and learn them.

City Staff is here to help guide you through the legalities of this board. We are trained routinely on the state laws and procedures for Boards and Commissions.

Additional Sources:

[Texas Local Government Code Title 7 as it relates to the BoA](#)

[www.tml.org](#) or their Texas Cities and Counties Monthly Magazine

[www.whitesboro.org](#) read through the ordinances and the agendas and minutes of the BoA.

QUESTIONS?



CITY OF WHITESBORO HANDBOOK for BOARDS, COMMISSIONS, and CITY COUNCIL

March 2024

PASSED and **APPROVED** by the Whitesboro City Council on March 5, 2024.

Table of Contents

City of Whitesboro Council and Board Member Policy	7
Introduction.....	7
Governance Policy	7
Whitesboro	8
Office of the Mayor	9
City Council Overview	9
City Manager/Administrator Overview	9
City Secretary Overview.....	9
City Attorney Overview.....	10
Ethics.....	10
Ethical Expectations:	10
Conducting Meeting and Hearings	11
Roberts Rules of Order	11
The Chair.	11
Discussion, Motions, Seconds and Votes.	11
Tabling Items.	12
Streamlining the Meeting.....	12
Public Testimony.	12
Consent Agendas.	13
Work Sessions.....	13
Public Hearings.....	13
Procedures for the Establishment of Council and Board Members.....	14
Council.....	14
Qualifications for Council.....	14
Board Membership.....	14
Board Appointments	14
Duties of the Board Chair and Vice Chair	15
Requirements of Council and all Board, Commissions, and Committees	15
Absences	15
Removal	15

Working with Staff	15
Parliamentary Procedure	15
City Council	16
Introduction to Whitesboro City Council	16
Powers of the City	16
Councilmen: Number, Qualifications	17
Council: Powers	17
Mayor and Mayor Pro-Tem	18
Veto Power of the Mayor	18
Council Meetings	18
City Manager/Administrator	18
Elections of Mayor and Councilmembers and Terms	19
Council Member Agenda Items	19
Sources for Information	19
Whitesboro Board of Adjustments	19
Administrative Decisions	19
Variances	20
Determination of Nonconforming Use Status	20
Board Membership and Voting Procedures	21
Required Formalities for Board Proceedings	21
Standing Required	22
Procedure for Appeals	22
Board's Lack of Authority to Reverse Planning Commission Actions	22
Judicial Review of Board Decisions	22
Enforcement, Penalty, Remedies	23
Conflict with Other Laws and Exceptions	23
Sources for Information	23
Whitesboro Planning and Zoning Commission	24
Zoning	24
The Comprehensive Plan	24
The Comprehensive Zoning Ordinance	24
Members	25

Powers and Duties.....	25
Procedures for Adoption/Amendment of Zoning Ordinances	26
Notices and Public Hearings.....	26
Protests.....	27
Joint Hearings	27
Zoning Techniques.....	27
Frequently Asked Questions About Zoning	28
Subdivision Plat and Site Plan Approval	29
Frequently Asked Questions.....	29
Whitesboro Park Board.....	30
Purpose.....	30
Composition & Members.....	30
Chairman and Vice-Chairman	30
Duties	30
Meetings.....	31
City of Whitesboro Parks.....	31
Whitesboro Library Board	31
Purpose.....	31
Members	31
Powers and Duties.....	31
Duties of Chair and Vice Chair.....	31
Meetings.....	32
Penalty.....	32
Whitesboro Preservation Board	32
Purpose.....	32
Members	32
Powers and Duties.....	32
Duties of the Chair and Vice Chair.....	33
Whitesboro Industrial Development Corporation.....	33
Purpose.....	34
Creation and Operation	34
Formation.....	34

Board of Directors.....	34
Officers	34
Funding	35
Membership	35
Powers and Duties.....	35
Meetings.....	37
Laws and Ethics	37
Whitesboro Economic Development Corporation.....	37
Purpose.....	37
Creation and Operation	37
Formation	38
Board of Directors.....	38
Officers	38
Funding	38
Membership	38
Powers and Duties.....	39
Meetings.....	40
Laws and Ethics	40
Conduct Governed by State Law	40
Code of Conduct	40
Texas Public Information Act.....	41
Texas Open Meetings Act.....	43
Conflicts of Interest.....	45
The Appearance of Impropriety	46
Conflicts Disclosure.....	46
Nepotism	47
Social Media	47
Vested Rights	48
Golden Rules For Boards and Commissions	49
Appendix A: Organizational Chart	51
Appendix B: Conflict of Interest Statement.....	52
Appendix C: Roberts Rule of Order	53

Appendix D: Social Media Policy	55
A. Policy/Purpose	55
B. General Provisions	55
C. Employee Guidance for Participating in Social Networking	56
Definitions.....	57
Appendix E: Carver Governance Model.....	58

City of Whitesboro Council and Board Member Policy

Introduction

There are two types of cities in the State of Texas; general law and home rule. A general law city can only operate through the authorizations given by the laws of the State of Texas. A home rule city is governed by its charter. Whitesboro is a General Law Type A city. The Texas Government Code and the Texas Local Government Code outline a set of laws that are authorized by the State of Texas Legislature. These laws provide procedures and information on how to conduct elections, public hearings, council and board meetings, terms of office and outlines laws regarding open meetings, public information, record retention and zoning. The formation, creation, and function of any board, commission, or committee is outlined in the Local Government Code. Ordinance amendments require a majority vote of the council. When an ordinance conflicts with the State law the state law prevails.

It is recommended all new members read the municipal code of ordinances immediately upon their election or appointment to office. The Whitesboro Code of Ordinance can be found on the Code of Ordinance page located on the city website at www.whitesboro.org. The components of a typical Code of Ordinance will include the following:

- The city's form of government and its legislative and judicial powers;
- The administrative structure and the means for financing its operations;
- Procedures of the council and boards, assessing and collecting taxes, and annexations;
- Controls over government; such as elections, referenda, initiatives, and recalls.

Governance Policy

Council, Boards, and Committees act as the informed voice and agent of the citizens and are accountable for the success of the municipality. Council is the highest link in the chain of command for a municipality. This means for all other boards to be held accountable to the citizens they must advise council and be an active part in the chain of command link. The board speaks as one, not as individual board members. The opinions of the board members need to reflect the opinion of the board. Individual board members do not have authority to instruct staff, unless they are expressing the interest of the entire board.

Council, Boards, and Committees define their expectations regarding the operations of the municipality through written policy. The policies examine these expectations by outlining the intended results to be produced, the intended recipients, and the intended worth of the effects. All decisions made are written to define the measurable results, practices, delegation styles, and discipline to meet these expectations. However, the policies are written to define the limitations of the municipality instead of the means for success, allowing for the city manager/administrator to decide the best way to accomplish the expected results. This is done through utilizing descending levels of detail until the Council, Board, or Committee has reached the end level where any reasonable interpretation of expected results would be acceptable. Policies are written in regards to the expected results of the positions and not for the expected results of the person or the incumbent.

Council-Manager/Administrator form of Government is similar to that of a private corporation where the stockholders elect a board of directors which then hires a president to run the company. Under the council-manager/administrator form of government the voters elect the council which then hires the city manager/administrator to administer the city's day-to-day affairs. The council, board, and committees advise the city manager/administrator of their expectations for accountability to the citizens. The city manager/administrator has the ability and expertise to utilize any reasonable interpretation of the applicable policy without over lapping expectations or ambiguity. The council, board, or committee will monitor the performance of the city manager/administrator to ensure limitations and expectations of the council are being met.

The city manager/administrator is the highest link in the chain of command for staff and acts as the liaison between staff and the council, boards, or committees. The city manager/administrator is extremely resourceful and has a great deal of information that could be advantageous during policymaking and the building of a successful and accountable organization. They will advise their staff on the expected results, goals, policies, and strategies and will utilize their expertise to find ways to best achieve the anticipated outcome. Governance requires a team effort to be successful the entire team must be working to achieve the same outcomes and understand how all the links in the chain of command fit together. The ability to be successful relies on the clarity of expectations. Any overlapping or duplication of delegation can cause confusion, competing interpretations, and create a mix of unintended outcomes. All direction from council, boards, or committees shall be done through the city manager/administrator who will delegate the resources of his/her staff.

City council, boards and committees are not involved in the administration or operation of the city or its departments. Members may not direct administrative staff to initiate programs nor conduct major studies or establish official policy without the approval of the city manager/administrator. Members are encouraged to work with city staff and with the appropriate department assigned to them by the city manager/administrator for general assistance; including, but not limited to, the preparation and posting of agenda and packet materials in consultation with the mayor or chair, posting of meeting minutes, preparation of annual reports of attendance, records retention and more. In an effort to avoid an open meetings violation, members are encouraged to send an e-mail to their assigned city staff for distribution to the entire board rather than to communicate directly with other members outside of the posted meetings. A member is regarded as rogue when they contradict or add to the instructions given by the council or board, even when done with good intentions. This interrupts the chain of command and jeopardizes accountability. The city manager/administrator is accountable to meeting the board's expectations and not the individual board member's expectations.

Whitesboro

Whitesboro is the third largest municipality in Grayson County located at the intersection of U.S. Highway 82 and U. S. Highway 377 centrally located between Sherman and Gainesville in North Central Texas. It has an estimated population of 4,074 with an average household income of \$72,100. Whitesboro has remained a center for horse and cattle ranch activities. Whitesboro was first known as "The City of the Divide" due to the watershed characteristics. Rain that falls on the north side of Main Street drains into the Red River. Rain that falls on the south side of Main Street drains into the Trinity River. The area was also nicknamed the "Wolf Path" due to a grove of trees and the sandy loam that favored the rich grass production that attracted the buffalo, which in turn attracted the wolves. Native Americans were known to hunt in the area because of the plentiful buffalo herds and the grove of mesquite trees from which they could hide and ambush their prey.

The settlement of the area began with the arrival of Ambrose B. White and his family in 1848. Mr. White later became the first Mayor of Whitesboro. The Butterfield Overland Mail route used White's Westview Inn as the "Diamond Station" on its train from the Mississippi River to the Pacific Coast from 1858 to 1861. A post office, under the name "Whitesborough", began operations there in 1860. In 1865, the White Colony was raided by Native Americans so often that it became necessary for the muster roll of Company D of Border Regiment of Texas Calvary to be called to service with Captain A. B. White in command. Headquartered in Gainesville, Cooke County, Texas, there were 77 men under Captain White. Company D was active from January 1, 1865 until February 28, 1865. There were only a few families settled in the area at that time, but as time passed and the country "settled up" things began to change. Churches and schools were built and people began to enjoy a better and more secure life.

After the Civil War, Whitesborough grew into a frontier City where female residents were prohibited from leaving their homes on Saturday nights because shootings were common and prevalent. By 1879, it had a bank, a newspaper, and train service from Denison on a line from the Missouri, Kansas and Texas Railroad. Whitesborough had a population of 500 people with saloons, several stores and other businesses when it was incorporated on June 2, 1873. In 1887, it altered the spelling of its name to “Whitesboro” in honor of Captain A.B. White.

Office of the Mayor

The mayor holds the highest elected office in municipal government. This position is expected to provide leadership to council, boards, committees, staff, and citizens. The mayor presides over the council meetings, ceremonial events, disasters, and is the governmental head of the city. There are few state laws that prescribe powers to the mayor. The majority of the mayoral power is provided through the Texas Local Government Code, ordinances, or resolutions. One of the most important duties is to carry out the legislative responsibilities shared with other councilmembers. The mayor rules on questions of procedure at council meetings and can influence the flow of debate through the power to recognize councilmembers for motions or statements. They have limited appointive powers in council-manager/administrator municipalities since the city manager/administrator appoints all or most administrative employees and the full council appoints the members of the advisory boards and commissions. The mayor is required to sign a variety of documents for official legal effect; including, but not limited to, bonds, certificates of obligation, warrants, evidence of debt, ordinances, resolutions, contracts, and proclamations.

The Mayor Pro-Tem is a member of council who was elected by the council to perform the mayor’s duties during the mayor’s absence or incapacity. The term for the Mayor Pro-Tem is typically one to two years.

City Council Overview

Council is the city legislative body and is primarily responsible for policymaking. This includes identifying the needs of the citizens, devising programs to meet the expectations of the citizens, and a plan to measure the desired affects. Each council member is entitled to vote or abstain on every item discussed at a council meeting; including making motions on those items.

Council has many functions in the area of regulations, financing, employment, and purchasing. Council exercises regulatory powers over the conduct and property of its citizens by implementing ordinances that declare laws requiring licensing of businesses, criminal conduct, and property uses. Council is responsible for sound fiscal liability by levying taxes, assessing fees and charges, and selling bonds in order to finance many functions of government. Employees look to council to ensure they are compensated for the work they perform and have decent working conditions.

City Manager/Administrator Overview

The City Manager/Administrator is appointed by council and is responsible for overseeing all the city’s operations on a continuing basis and for reporting to the council on behalf of the various departments. The City Manager/Administrator is the highest link in the chain of command for staff and acts as the liaison between staff and council, boards, or committees. All delegation of responsibilities from council will go through the City Manager/Administrator and vice versa. Centralizing council’s authority and accountability will simplify the council’s job. The responsibilities and control afforded to the City Manager/Administrator needs to be delicately placed; too much authority will create a barrier between citizens and their elected officials.

City Secretary Overview

The City Secretary is appointed by council or hired by the City Manager/Administrator depending on the municipal organization. The Whitesboro City Secretary is appointed by Council. They are responsible for

the historical preservation of municipal records, conducting lawful elections, ensuring compliance with the state Open Meetings Act and Public Information Act, and working with the City Manager/Administrator or City Attorney to ensure the proper passing of the ordinances and resolutions. Some city secretaries are responsible for conducting special events and ensuring parliamentary procedures are followed by council and all boards and committees. They work closely with the City Manager/Administrator and the City Attorney to ensure compliance of all laws and procedures are followed by council and all boards and committees.

The responsibilities for the position of City Secretary will differ depending on the size of the city, the number of boards, and the form of government used. All city secretaries perform duties for Council to include, but not limited to, their meeting preparations and record retentions. However, some boards have their own secretary that performs the same duties as the city secretary does for council. The term city secretary used throughout this policy shall also refer to the secretaries of other boards as well.

City Attorney Overview

The city attorney is chosen by council. The purpose of the city attorney is to ensure the city is following all the guidelines of the state and federal laws for municipal governments. They approve all procedures of law, ordinances, and policies prior to council's review. The city attorney works closely with the city manager/administrator to stay informed on the direction council wishes to take with their policymaking. They also offer legal direction and litigation practices under the attorney-client privilege.

Ethics

City officials and staff are called upon to make difficult decisions that affect various groups and individuals; therefore, elected and appointed officials and staff are expected to uphold the highest standards of ethics. The City of Whitesboro believes adhering to an ethical standard and policy shall affirm the City's responsibility to develop the spirit of responsible professionalism and increase awareness and commitment to ethical principles and standards. Ethics are the rules that define moral conduct and are important for professionalism, ensuring city officials and staff maintains the utmost standards of personal integrity, truthfulness, honesty, and fairness in carrying out their public duties by avoiding any improprieties and complying with all applicable laws. Council members and board members should never use their city position or powers improperly or for personal gain. The professionalism and integrity promoted by the use of an ethical code creates an atmosphere of trust and reassures the community their officials are working with their best interests in mind.

Ethical Expectations:

- a. City Officials are expected to conduct themselves in a manner that fosters public trust.
- b. City Officials are charged with performing their public duties in a way that projects their own personal integrity and upholds the integrity of the organization.
- c. City Officials must avoid behavior that calls their motives into question and erodes public confidence.
- d. City Officials shall place the municipality's interest and the concerns of those the city serves above personal, individual interests.
- e. Those who serve the city are expected to value honesty, trustworthiness, diligence, objectivity, fairness, due process, efficiency and prudence as values the city professes.
- f. City Officials must balance transparency with the duty to protect personal privacy and preserve the confidential information with which the city has been entrusted.

Conducting Meeting and Hearings

Roberts Rules of Order

Roberts Rules of Order establish an orderly protocol by which meetings can be conducted. The intent is to insure an orderly and dignified proceeding in which collective decisions can be made efficiently and fairly. Robert's Rules are not law; a deviation from the rules will not invalidate a decision. State law suggests that so long as a quorum is present, the meeting was properly posted and conducted as an open meeting, and the minutes clearly reflect that a majority voted in favor of or against a specific issue, then that vote will typically stand. However, virtually all councils, boards and commissions follow at least the rudiments described in the rules. The following is a summary of the basic precepts as well as general advice on the proper conduct of a meeting.

The Chair.

The chairperson, as presiding officer, has the primary responsibility for maintaining the dignity of the meeting and seeing to it that the rules of procedure are followed. The chairperson calls the meeting to order and confines the discussion to the agreed order of business. He or she recognizes members for motions and discussions and allows audience participation at appropriate times. The chairperson sees to it that speakers limit their remarks to the item being considered and, as necessary, calls down people who are out of order.

Presiding effectively at a meeting is an art that no book or person can fully teach. The tactful presiding officer knows how to courteously discourage members who talk too much or too often, and how to encourage shy members who are hesitant to speak at all. He or she can also properly regulate the manner and duration in which citizens speak during citizens comment and public hearings. Time limits can be imposed or disregarded where appropriate and verbally aggressive speakers can be calmed.

Discussion, Motions, Seconds and Votes.

The basic process for decision-making is straightforward and involves a motion, a second, and a vote, with discussion occurring either before a motion or after a motion has been seconded. The chair should only entertain or call for a motion and should not make a motion him/herself. The chair then calls for a second if one is not volunteered. If no second is made, the motion dies for lack of a second and the chair then calls for another motion. If none is made, then the chair should entertain additional discussion on the matter. If no further motion is made, then the chair simply moves on to the next agenda item. Once a motion and a second have been made, the chair then calls the question and the members then vote.

Discussion of a matter under Robert's Rules occurs only after a motion has been made and seconded. However, this is often impractical. Often a member will make a motion only to enable the board to advance to discussion. Members may not see the wisdom in making a motion until the issue has been thoroughly discussed and, thus, discussion often occurs before a motion is made. However, whether discussion should occur before or after the motion/second is a matter of procedure that the chairperson or the board as a whole determines. However, there should be no discussion of the topic after a motion has been made and before a second has been registered, except where necessary to seek clarification of the motion or to request an amendment of the motion.

Once a motion has been made and before a member seconds the motion, a member can request that the motion be amended. If the movant (the member who made the motion) accepts the requested amendment, then it is regarded as friendly amendment and if seconded, the chair should call the question or entertain further discussion. If the movant refuses to accept the amendment, the member requesting the amendment can request a vote by the entire board on whether the main motion should be so amended. A motion to amend a main motion is a privileged motion; there should be no discussion on the motion to amend. If the motion to amend is seconded, the chair calls the question and the board votes. If a majority is in favor, then

the main motion is accordingly amended, the chair calls for a second on the main motion, and if seconded, the vote is then taken.

Calling the question means nothing more than asking for the members to vote. After a motion has been seconded and following any discussion, the chair calls the question by asking those in favor of the motion to vote, counting those votes, then asking those against to vote, and counting those votes. If a motion is lengthy or complicated, it is good practice for the chair to recite the specific motion (stating exactly what the board is voting on) before calling the question. The minutes of the meeting must accurately reflect the motion and must identify those members who voted in favor of and those who voted against.

The vote of each member must be obvious. Apart from Robert's Rules, state law requires that the minutes of the meeting accurately reflect the vote of each individual member. And the votes must be observable by those in attendance. Thus, voting can be accomplished by a show of hands, a voice vote, or an electronic display that identifies the vote of each member. Secret ballots are prohibited. Voting cannot be done, for example, by paper ballots that are turned in to the chair for tallying, unless the chair reads each member's name and vote out loud.

Tabling Items.¹

Tabling an item means nothing more than postponing deliberations to a later date. A motion to table is regarded as a privileged motion and the chair should not entertain discussion on a motion to table. There is no such thing as tabling an item "indefinitely;" the members should expect to see the item reappear on a future agenda. As a general rule, tabling should be avoided because it is a disservice to the applicant and the public to delay a final decision. Tabling is only appropriate when additional, vital information is needed or where an applicant has requested it. It is important to note that an applicant's request to table an item does not compel the board to do so, and the matter may be considered over an applicant's objection. Tabling should always be avoided when considering plat applications and site plans.

Streamlining the Meeting

Even the best planned meetings can deteriorate into endurance contests. Too much talking is the most common cause of lengthy meetings. Talking can assume a variety of forms—bickering, tiresome exchanges of personal opinions among members, endless speeches by citizens, or unnecessarily long and detailed reports by staff. All of these problems can be overcome by tactful action on the part of the chairperson, who has the responsibility to balance effective public participation with efficiency.

There is no substitute for preparation. The simple rule is do your homework. Agenda packets are usually prepared and made available in advance of the meeting. Members who fail to review the packet in advance will be uninformed. An uninformed discussion, as well as asking questions of staff or citizens that could have been answered if the member had simply read the packet, will prolong a meeting and can cause frustration among other members.

Public Testimony.

Historically, the Open Meetings Act gave the public the right to attend and observe, not participate. However, recent amendments to the Act now impose a requirement for public input on all items. All councils, boards and commissions governed by the Open Meetings Act must allow each member of the public who desires to address the body regarding an item on an agenda to address the body regarding the item at the meeting before or during the body's consideration of the item. This has been regarded as not applying to work sessions, but it clearly applies to all action items.

¹ Technically, "tabling" an item means placing it on the table for discussion and vote. Common practice, however, uses the term as referring to the removal of an item from consideration.

A board may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. This requirement does not apply to public criticism that is otherwise prohibited by law.

The board may adopt reasonable rules regarding the public's right to address the body under this law, including rules that limit the total amount of time that a member of the public may address the body on a given item. Typically, this means a three-minute time limit.

Consent Agendas.

Agendas need not be cluttered with noncontroversial, recurring items that are included because they require formal approval. Examples include approval of the minutes of previous meetings or plats which do not require a public hearing. These items generate little discussion, but each requires time by requiring a separate motion to approve, a second and a vote. This problem can be overcome by establishing a "consent" agenda category which includes routine items, all of which are approved by a single motion and a vote, without debate.

If a member objects to a consent item -- or requests that it be pulled from the consent agenda -- it is removed from the list and added to the regular agenda at the appropriate spot. If a member questions a consent item, but not so strongly as to require that it be removed from the list, his or her "no" vote or abstention can be entered in the minutes when the consent vote is taken.

Work Sessions.

Informal work sessions may be needed from time to time to study certain matters in detail. Regular meetings may not provide enough time. Work sessions are useful when policy questions must be decided, or when a complicated issue comes before the board. However, a "meeting" is defined by the Open Meetings Act as any deliberation among a quorum. Work sessions are in fact meetings, for which an agenda must be posted, even if no formal action will be taken.

Public Hearings.

The purpose of a public hearing is to allow any interested person to appear and address the board. It is a means by which citizens can have a fair opportunity to express their opinions so that their views may be considered. The proper conduct of a public hearing is no less important than for a regular meeting. Each should begin promptly and be conducted in an orderly manner in conformance with established rules of procedure.

The chair should always announce that a public hearing is open, and once all testimony is taken, should clearly state that the public hearing is closed. At the start of the hearing, the chairperson should clearly state the subject to be discussed.

Remember that numbers don't always count. There are some topics which naturally draw large, emotionally charged crowds. Vocal minorities often fill public hearings to show widespread support. The size of the crowd does not indicate that the cause is just. The board is appointed to serve all the citizens, and a member must look at the overall picture, not just the view presented by one partisan group.

When a decision is announced, the board need not give the reasons why the decision was reached, although a brief explanation will help prevent the feeling that the outcome of the hearing was decided in advance, and that they wasted their time.

Procedures for the Establishment of Council and Board Members

Council

Each general election shall be held on the First Saturday in May. (T.E.C. §41.001) The Council is made up of one Mayor and five (5) council members. The members are elected in staggered two-year terms and each member is at-large representing the entire city. Each member of Council is at least 18 years of age and has resided within the city limits of Whitesboro for the past six (6) months and twelve (12) months for the mayor. (T.E.C. Chapter)

The mayor shall preside at meetings of the Council and be recognized as the head of the city government for all ceremonial purposes, receiving of civil process, and for the purposes of military law.

The Mayor Pro-Tem shall be appointed by his fellow council members at the first practical meeting after the election date. The Mayor Pro-Tem shall serve for one year and shall perform the duties of Mayor during the absence, disability, or suspension of the mayor until the Mayor returns to duty. If a vacancy occurs in the office of Mayor, the Mayor Pro Tem may serve as the Mayor until the Mayoral term expires, someone else is appointed, or a special election is held. This decision lies with the City Council.

Qualifications for Council

Each council member for the City of Whitesboro must meet the following qualifications:

- 1) Be a United States citizen;
- 2) Have been a resident of Texas for at least twelve (12) months as of the deadline for filing for the office and have resided in the city for at least six (6) months, or twelve (12) months for the mayor;
- 3) Be a registered voter;
- 4) Be 18 years of age or older;
- 5) Not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities; and
- 6) Not have been deemed mentally incompetent by a final judgment of a court.

Board Membership

Each board has different and unique requirements for the number of members and membership requirements of their boards. These unique differences are outlined within their respective board policies. However, in addition to the unique differences, each board member for the City of Whitesboro must meet the following qualifications:

- 1) Be a United States citizen;
- 2) Have been a resident of Texas for at least 12 months as of the deadline for filing for the office and have resided in the city for at least six months;
- 3) Be a registered voter;
- 4) Be 18 years of age or older;
- 5) Not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities; and
- 6) Not have been deemed mentally incompetent by a final judgment of a court.

Board Appointments

The City Secretary, or their designee, shall review all applications for board appointments verifying all qualifications are met for the board they wish to apply. The Council will interview all qualified applications and make recommendations for appointment. All vacancies shall be filled for the unexpired term in the same manner as provided for original appointments, unless the board or committee has alternative members who will be promoted to an active member and the alternative position will then be filled by appointment.

The board members shall appoint their Chairperson and Vice Chairperson annually at the first meeting after the annual appointments of all other members. All members shall serve without compensation.

Duties of the Board Chair and Vice Chair

The Chair and Vice Chair are the leaders of the Boards. They are to ensure the Board achieves the tasks as outlined herein and follows proper Parliamentary Procedures. The Chairperson shall preside over all meetings and decide on all points of order. They are allowed to vote on all issues before their board, unless otherwise noted.

Requirements of Council and all Board, Commissions, and Committees

Absences

Conscientious attendance is a fundamental responsibility, as irregular attendance lessens one's ability to study all aspects of items under consideration. In order to ensure a productive board or committee, the Council has established a mandatory attendance policy as allowed by law. (T.L.G.C. Section 22.041) The city secretary will record the attendance of the members and report poor attendance to the City Manager/Administrator for review. A board member may be removed by Council and their position declared vacant if any member misses three (3) unexcused consecutive meetings.

Removal

The procedures followed by the City of Whitesboro for removing the mayor or a councilmember from office are outlined in Chapter 21 of the Local Government Code. Resignations of any council or board member shall be submitted in writing to the City Secretary. Members serve at the will of the City Council and may be removed by the council at any time.

A Council member or board member who moves and no longer meets the requirements to be placed on the Council, Board, or Committee during their term of office shall immediately forfeit their office. Notice of these changes shall be submitted in writing to the City Secretary as soon as possible.

Working with Staff

The City Manager/Administrator, City Secretary, or a designee, will serve as the board staff liaison. The staff will lend their expertise in fact finding and be a source of communication to the remaining city staff to promote coordination of all city boards, commission, or committees related activities. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the City Manager/Administrator, and neither the council nor any member thereof may give orders on administrative matters to any subordinate of the City Manager/Administrator either publicly or privately.

Parliamentary Procedure

Roberts Rules of Order is offered as a reference guide to aid in Parliamentary procedures, conducting meetings and providing the exchange of ideas. Motions are statements that describe a proposed action or decision based on the discussion at hand for each agenda item. A reference guide to Robert's Rules of Order is located in Appendix C. The meeting cannot move to the next agenda item until the Chair has closed the current item by receiving a vote on a motion or declared no action taken. Although the formality of Robert's Rules can seem cumbersome, the process of making motions ensures that no decision is accepted or enacted without the opportunity for discussion and a vote on each agenda item. Any abstention shall be noted for

the record. An abstention due to conflict shall be submitted via a written statement to the City Secretary in accordance with the Conflict-of-Interest policy.

Any Council or Board member wishing to address the Council or Board shall do so when recognized by the Mayor or the Chair and shall keep all comments, remarks, statements, and discussion to the matter under consideration. Unless logic and practical considerations allow similar topics to be combined, only one agenda item may be discussed at a time.

Any visitor wishing to address the Council or Board on an agenda item, not designated as a public hearing item, shall be allowed to do so after submitting a request in writing to the City Secretary and called upon by the Mayor or Chair.

Any visitor wishing to address the Council or Board on a subject that is not on the agenda and is not subject to the public hearing, shall be allowed to do so after submitting a request in writing to the City Secretary and called upon by the Mayor or Chair during public comments outlined on the agenda.

City Council

Introduction to Whitesboro City Council

City officials who are elected must have a basic understanding of city government and the duties, authority, and limitations of an elected body. The City of Whitesboro is a General Law Type A city that is governed by the laws of the State of Texas. It is the policy of the Whitesboro City Council to uphold the proper operations of a democratic government and requires public officials to be independent, impartial and responsible to the residents of Whitesboro. Government decisions and policies are to be made using the proper channels of the governmental structure and are not to be used for personal gain in an effort to maintain that the public have confidence in the integrity of its government. Elected officials have many responsibilities; policymaker, legislator, ambassador, and employer. As a policymaker, council is responsible for identifying the needs of the residents; formulate a plan to meet those needs, and measuring the effectiveness of ongoing municipal services. Residents look to city council to take action on their authority to preserve and promote their health, safety, and welfare. Council may execute ordinances and resolutions and use their governmental powers for the good of the public. As a councilmember there are invitations to civil activities, these will help them to learn more of what residents expect from their city government. An understanding of the role as an elected official is important for their relationship with the city staff. Trust and respect are important just like with any employer-employee relationship; a great deal can be learned from a city employee.

The City of Whitesboro utilizes the Council-Manager form of municipal government. Under this structure the mayor and council members have no administrative duties, except as provided for in Chapter 22 of the Texas Local Government Code. The mayor is the ceremonial head of government and presides over council meetings. The Council sets policy and hires and fires the Manager/Administrator, City Secretary, City Attorney, Police Chief, Emergency Management Coordinator, Fire Chief, and Municipal Judge. The City Manager/Administrator has a broad administrative authority and is responsible for directing the workforce programs of the city in accordance with ordinances, rules, and regulations adopted by the council.

Powers of the City

The city shall have full power of local self-government and all other powers possible for a city operating under general law type A to have under the constitution and general laws of this state fully and completely.

Texas State law specifically defines and list certain activities as either governmental or proprietary functions in the Texas Tort Claims Act. Without limitation of the foregoing generally granted powers, the following powers among others may be exercised by the city are hereby enumerated for greater certainty:

- 1) To adopt a corporate seal and to alter it at pleasure;
- 2) To sue and to be sued;
- 3) To make contracts;
- 4) To acquire property of all kinds as allowed by Texas Law within or outside its corporate limits;
- 5) To raise revenue and to make appropriations;
- 6) To borrow money and to issue general obligation and revenue bonds evidencing the indebtedness;
- 7) To adopt and to enforce municipal legislation for the proper organization and functioning of the city government, for the preservation and enforcement of good government and order, for the protection and enhancement of health, life, morals, property, and welfare of the city and its inhabitants, and for all other purposes within the power of the city to legislate;
- 8) To define, prohibit, and abate nuisances within and without the city as authorized by law;
- 9) To own, operate, and regulate public utilities and public services, and to grant, renew, and extend franchises; and
- 10) To accept property in trust for the use and benefit of the city and its inhabitants and to administer such trusts.

Councilmen: Number, Qualifications

There shall be a council of six (6) members, which shall consist of the Mayor and five councilmembers, who are elected at-large in staggered terms. Only qualified voters of the city who are at least eighteen (18) years of age and who have resided within the city at least six (6) months preceding their election or appointment to fill a vacancy shall be qualified for the offices of the Mayor and Councilmember. Neither the Mayor nor any other Councilmember may hold any office or position in the city government by appointment of the City Manager/Administrator or by any subordinate of the City Manager/Administrator. If the mayor or any other councilmember is convicted of a felony, his office shall become vacant immediately when the case is finally determined.

Council: Powers

- 1) To appoint and remove the city manager/administrator, city secretary, city attorney, police chief, fire chief, emergency management coordinator, and municipal judge.
- 2) By ordinance to enact municipal legislation.
- 3) To adopt the budget, raise revenue, and make appropriations; and to regulate, levy, assess and collect taxes, set salaries and other compensation of officers and employees, and all other fiscal and business affairs of the city.
- 4) To inquire the conduct of any office, department, or agency of the city government, and investigate municipal affairs; and for this purpose, to subpoena witness, take testimony, and require the production of evidence.
- 5) To appoint or elect and remove all non-administrative officers and employees of the city, now or when and if established, or to prescribe the method of appointing or electing and removing them.
- 6) To create, change, and abolish all offices, departments, and agencies of the city government other than the offices, departments, and agencies created by the charter; and to assign additional powers and duties consistent with the charter to offices, departments, and agencies created by the charter.
- 7) Each councilmember is entitled to vote or abstain on every question decided at a council meeting, and has full parliamentary privileges, including the right to speak and make motions; and the right to introduce new ordinances and amendments to existing ones.

Mayor and Mayor Pro-Tem

The mayor holds the highest elected office in municipal government. The mayor is the Chief Governance Officer and is responsible for the effective governing role of the city council. He/She is expected to provide the leadership necessary for the Council and organizations to keep it moving in the right direction. Most of the powers exercised by the mayor are created through ordinances and resolutions adopted by the city council. The powers of the mayor shall include presiding at meetings of the council; being recognized as the head of city government for all ceremonial purposes; for the purpose of receiving service of civil process, and by the governor for purposes of military law. They shall have no regular administrative duties except that he shall sign such written obligations of the city as the council may require. As a councilmember, they shall have all powers rights, privileges, duties, and responsibilities of a councilman, except the mayor only has the right to vote in regards to breaking a tie vote of the City Council.

At the first meeting after the time prescribed for the beginning of the terms of newly elected councilmembers, or as soon thereafter as practicable, shall elect from its membership a Mayor Pro Tem. The Mayor Pro Tem is selected by a majority vote of the council and their term is one year. The Mayor Pro Tem shall act as Mayor during the absence, disability, or suspension of the Mayor until the Mayor returns to duty. If a vacancy occurs in the office of Mayor, the Mayor Pro Tem may serve as the Mayor until the Mayoral term expires, someone else is appointed, or a special election is held. This decision lies with the City Council. If the office of Mayor Pro Tem becomes vacant, the council shall elect from its membership another Mayor Pro Tem for completion of the unexpired term.

Veto Power of the Mayor

(A) Every ordinance or resolution passed by the Council must be filed with the Municipal Secretary. The Mayor may either sign or refuse to sign the ordinance or resolution.

(B) If the Mayor does not sign the ordinance or resolution, his or her objections must be set forth in writing and submitted to the Municipal Secretary within three days of the time the ordinance or resolution was filed. If the Mayor's statement of objections is not filed within three days, the ordinance or resolution goes into effect without his or her signature.

(C) If the Mayor timely files a statement of objections to the ordinance or resolution, the Council shall reconsider the vote by which the ordinance or resolution was adopted. If a majority of the total number of council members approves the ordinance or resolution on reconsideration, with the vote of each council member entered in the minutes of the meeting at which the vote was taken, the ordinance or resolution shall take effect.

Council Meetings

The council shall hold two regular meetings every month on the first and third Tuesday of each month or as prescribe by ordinance. Special meetings will be called as needed by the Mayor or any three councilmembers. All meetings of the council except as authorize by law shall be open to the public and the minutes of its proceedings shall be open to public for inspection.

City Manager/Administrator

There shall be a City Manager/Administrator appointed for an infinite term by a majority vote of council. They shall choose him/her solely on the basis of his/her executive and administrative qualifications. Neither the Mayor nor any other councilmember may be appointed as the City Manager/Administrator or acting City Manager/Administrator during their term, or within two years after the expiration of their term.

The Council may suspend or remove the City Manager/Administrator at any time by a majority vote of Council held in an executive session of a Council meeting and shall upon the City Manager/Administrator's request provide the opportunity to be heard in an open public meeting as prescribed in Chapter 551 the

Open Meetings Act of the Texas Government Code. Council shall provide him/her with a written statement of the reason for the proposed removal. The decision of the council shall be final.

Elections of Mayor and Councilmembers and Terms

- (a) The city shall hold a regular general election every year on the first Saturday of May as allowed by Chapter 41 of the Texas Election Code.
- (b) Five councilmembers are elected at-large with staggered terms. The Mayor is elected at-large on elections held in the odd year. The Mayor and Council shall serve for a two-year term and until their respective successors are elected and qualify. If a Mayor-elect or other Councilmember-elect fails to qualify within one month after the beginning of his/her term, his/her office shall become vacant, and the vacancy shall be filled as other vacancies in the council are filled.
- (c) Elections shall be nonpartisan, and no party designation or emblem shall be placed on the ballots.

Council Member Agenda Items

The City Manager/Administrator and/or the City Secretary determines the regular items to be placed on the agendas of council and boards as needed to conduct regular business of the city. It is the policy of the City of Whitesboro that either the Mayor or three City Councilmembers may request the City Manager/Administrator to have an item placed on the Council agenda in accordance with the Open Meetings Act.

Sources for Information

As a new Councilmember one may wish to review the following resources:

- Review previous Council meeting minutes, copies are available at www.whitesboro.org.
- Review and study the Municipal budgets, especially the current budget available at www.whitesboro.org.
- Read the Texas Municipal League Handbook for Council and Board members
- Familiarize yourself with the city website and the Texas Municipal League website, www.tml.org.
- Have a meeting with the city manager/administrator to be brought up to speed on all outstanding discussions and issues.

Whitesboro Board of Adjustments

The Board of Adjustment is one of the two citizen-staffed bodies that are legally required for municipal zoning. The other body is the planning and zoning commission. These two zoning entities perform separate and distinctly different functions. The zoning commission performs primarily an advisory function, making recommendations on zoning cases, approving subdivision plats and developing the original comprehensive zoning plan. The Board of Adjustment is an action agency which oversees the permitting process by hearing appeals from zoning decisions of administrative officials and authorizing variances when strict application of setback, yard, area, and height limits would cause individual property owners' unnecessary hardship. Both bodies are authorized and required by the comprehensive zoning ordinance and Chapter 211 of the Texas Local Government Code.

Administrative Decisions.

The Board reviews administrative decisions of the building official as to interpretations of the zoning ordinance. The Board may hear and decide appeals when error is alleged in any order, requirement, decision, or determination by an administrative official in enforcement of the Local Government Code or the zoning ordinance. The permit officer has no discretionary power and must issue or deny permits solely on the basis of compliance or non-compliance with the ordinance.

Without the Board, persons complaining about the denial or issuance of permits would have to appeal to the City Council or to the court. The City Council would be tempted to grant relief by ordinance and thereby amend the basic zoning in an ad hoc manner. On appeal, the only question for the Board is whether the permit officer (building official) correctly applied the ordinance.

Variances.

A “variance” is defined as permission to depart from the literal requirements of a zoning ordinance by virtue of unique and unnecessary hardship due to special circumstances regarding a person's property. It is a “relaxation” of the strict requirements of the zoning ordinance. An administrative official of a City cannot approve a variance.

The theory behind variances is to relax the strict requirements of the zoning ordinance in situations in which, because of an unusual feature of the property not common to other properties in the area, strict application of zoning regulations will result in unnecessary hardship. Variances relate to technical zoning matters such as area, setback, and height regulations. Variances are restricted to relaxation of these technical regulations.

Current Texas zoning law holds that no matter how much hardship a use regulation creates, the Board of Adjustment has no power to relax it. Only the City Council can change or relax the uses that are allowed in the various zoning districts. An illegal use variance is void. Accordingly, a contestant can attack it collaterally and need not appeal by certiorari.

Variances are permissible only if strict application of the zoning ordinance would cause unnecessary hardship. When considering applications for variances, the Board should require some evidence of hardship. The applicant has the burden of proving a property hardship and that the granting of the variance will not be contrary to the public interest. A variance is not authorized merely to accommodate the highest and best use of the property, but when the zoning ordinance does not permit any reasonable use of the lot. “Special conditions” means that the property is not suitable for development strictly according to the zoning regulations.

When determining whether or not a hardship exists, the Board should consider the following factors:

1. whether the hardship is self-imposed by the owner or a predecessor in title to the property;
2. whether the hardship is unique to the property (size, shape, topography of lot or tract);
3. whether the hardship is financial in nature; and
4. whether the hardship is nothing more than a claim that the property cannot be used for its highest and best use or is merely a frustrated development objective.

In addition to those factors, recent legislation amends Texas law to now allow for consideration of financial circumstances and nonconformity under the hardship standard. The Board has discretion to find that a hardship variance may be granted if:

- the cost to modify a structure in order to achieve compliance with zoning is more than 50% of the value of the structure;
- compliance with zoning would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
- compliance with a zoning regulation would cause a structure to be violation of another city code;
- compliance would result in an unreasonable encroachment on an adjacent property or easement; or
- the City considers the structure as a nonconforming structure.

Determination of Nonconforming Use Status.

Applicants may claim that a nonconforming use or structure existed before the regulations were adopted, and that the use or structure is entitled to continue, either by constitutional right or applicable ordinance exemptions. Municipalities can allow nonconforming uses simply to continue without formal action, or they can require that such uses be identified and registered for inventory and possible termination under an amortization program.

Nonconforming-use claimants must secure permits when they rebuild, expand, remodel or change use under circumstances that require permitting under customary ordinance provisions. The permit officer then determines entitlement. If the officer grants the permit, neighbors can contest entitlement and appeal to the Board. If the officer denies the permit, the applicant can appeal to the Board. In either case, the Board must determine nonconforming-use status to decide the appeal. The applicant has the burden of proving his nonconforming status.

The building inspector is entitled to make the initial determination of nonconforming use. The decision can be appealed to the Board, and the Board's decision is reviewed on writ of certiorari and affirmed unless an abuse of discretion is shown.

Board Membership and Voting Procedures.

A Board of Adjustment consists of five members, each appointed for a term of two years. Alternate members may also be appointed to serve when one or more regular members are absent or disqualified or when there is a vacancy. Members may be removed for cause, on written charges, after hearing; vacancies will be filled for the unexpired term of the member who has vacated his office. A quorum is four members; all cases must be heard by a minimum of four members (75% of the members). The concurring vote of at least four members is required to reverse administrative decisions, grant special exceptions, authorize variances, or grant any other affirmative relief authorized by the ordinance. Each member must be a registered voter of Whitesboro and/or taxpayers of the city. The board members are appointed by Council for two-year staggered terms and shall serve until their successors are appointed and qualified. (Whitesboro Code of Ordinance Section 154.119) The governing body must provide the procedure for appointment.

The voting requirements are mandatory and jurisdictional. A variance authorized by a vote of only three members of the Board is invalid and subject to collateral attack after expiration of the time for regular appeal.

Required Formalities for Board Proceedings.

Meetings are held at the call of the Chairperson or as the Board determines. At least four members must hear the case. The Chairperson can administer oaths and compel attendance of witnesses. All meetings must be open to the public, except for confidential and privileged communication with the Board's attorney. The Board must keep minutes of its proceedings, showing the vote of each member on official actions and maintain the minutes as a public record in the Board's office. When deciding appeals, the Board must fix a reasonable time for hearing, give notice to the public and the parties, and decide the appealed matter within a reasonable time. Parties can appear in person or by agent or attorney.

The concurring vote of at least four members (75%) is required to reverse any administrative action or to decide in favor of any applicant or grant a variance. The Board can reverse, affirm (wholly or partly) or modify the administrative determination. The Board has power to act in the stead of the officer from whose action the appeal was taken.

State law does not establish a formal procedure for the Board to follow. The Board, however, should give public notice of hearings on variances and appeals from the permit officer's ministerial denial of a permit, in a manner similar to that given in other zoning cases.

Standing Required.

The Act allows appeal to the Board by any person aggrieved, or by any officer, department, Board, or bureau of the City affected, by any decision of the administrative officer. Nearby landowners are "persons aggrieved." Cities are proper parties to take appeals, even though their own official granted a contested permit.

Procedure for Appeals.

An appeal is accomplished by filing a notice with the administrative officer from whose decision appeal is taken and with the Board of Adjustment. The notice must state the grounds for the appeal. When notice is filed, the administrative officer must immediately transmit to the Board all papers constituting the record on which the Action appealed from was taken.

The appeal stays all proceedings unless the administrative officer whose decision has been appealed certifies after notice of appeal that a stay would in his opinion cause imminent peril to life or property. If this written statement is filed, then the administrative proceedings can be stayed only by a restraining order granted by the Board or by a court.

If appeal is not taken to the Board of Adjustment, the permit officer's decision to issue or deny a permit becomes incontestable as to matter within the officer's jurisdiction.

The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make it as it ought to be made. The Board has all of the powers of the officer from whom the appeal is taken to accomplish that proper end.

Board's Lack of Authority to Reverse Planning Commission Actions.

The planning and zoning commission does not overlap the Board of Adjustment's delegated authority. It is an agency that acts on zoning ordinance amendments and subdivision plats, not zoning variances and appeals.

Subdivision regulation differs from zoning, but the two can overlap. Zoning ordinances can set minimum lot sizes and impose setbacks. A landowner who proposes to build on a lot that does not meet the zoning requirements for size can appeal to the Board of Adjustment for a variance. The Board does not, however, have jurisdiction over subdivision regulations to grant variances, unless an ordinance clearly allows it. The Board of Adjustment has no authority to take appeals from planning commission decisions on subdivision plat approvals.

Judicial Review of Board Decisions

Any of the following persons may present to a district court a verified petition stating that the decision of the Board of Adjustment is illegal in whole or in part and specifying the grounds of the illegality: a person aggrieved by a decision of the board; a taxpayer; or an officer, department, board, or bureau of the municipality. The petition must be presented within ten (10) days after the date the decision is filed in the board's office.

On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

The court may not apply a different standard of review to a decision of a Board of Adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a Board of Adjustment that does not contain members of the governing body of a municipality.

Enforcement, Penalty, Remedies

The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to: prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate the violation; prevent the occupancy of the building, structure, or land; or prevent any illegal act, conduct, business, or use on or about the premises.

Conflict with Other Laws and Exceptions

If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local ordinance or regulation, the regulation adopted under this subchapter controls. If the other statute or local ordinance or regulation imposes higher standards, that statute, ordinance, or regulation controls. The Board is not authorized to require the removal or destruction of property that exists at the time the governing body implements this ordinance and that it is actually and necessarily used in a public service business. This ordinance does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency. This ordinance applies to a privately owned building or other structure and privately owned land when leased to a state agency.

Sources for Information

As a new board one may wish to review the following sources of information:

- 1) Review previous Board of Adjustment meeting minutes. Copies are available through the City of Whitesboro website under Board of Adjustments/agendas and minutes.
- 2) Study the Texas Local Government Code Title 7 as it relates to the Planning & Zoning Commission and the Board of Adjustments.
- 3) Texas Municipal League's Monthly News Magazine: "Texas Citys and Cities".

Whitesboro Planning and Zoning Commission

Zoning

Zoning is generally defined as the division of a jurisdiction into districts (zones) within which permissible uses are prescribed and restrictions on building height, bulk, layout and other requirements are defined. A municipality's constitutional police power is the legal source from which the municipality may enact zoning ordinances for the protection and preservation of the community.

A zoning ordinance must bear a substantial relationship to the public health, safety, morals or general welfare and must not be arbitrary or unreasonable. The Texas Supreme Court, in *Pharr v. Tippet*, 616 S.W.2d 173 (Tex. 1981), set forth four basic criteria that should be used in reviewing zoning ordinances: 1) respect for the approved comprehensive plan, 2) the nature and degree of adverse impact on neighboring properties, 3) the suitability of the tract as presently zoned, and 4) the existence of a substantial relationship between the amendatory ordinance and the public health, safety, morals or general welfare. It has been written that "[t]he concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

The Comprehensive Plan.

Zoning decisions are guided by the city's comprehensive plan. Comprehensive plans, created and adopted in accordance with Chapter 213 of the Local Government Code, are intended to establish long-range development goals for the city and should contain provisions relating to land use, transportation and public facilities. A comprehensive plan generally establishes the overall long-range development strategy of a city. It does not establish or contain zoning regulations, nor does it establish zoning district boundaries. A comprehensive plan may be amended following public hearing and planning commission review.

The Comprehensive Zoning Ordinance.

A city's complete set of zoning regulations is typically referred to as the city's "comprehensive zoning ordinance." The comprehensive zoning ordinance provides regulations within specified categories of uses, including agricultural, residential (generally, single-family residential), multi-family (including structures intended for habitation that range from duplex dwellings to apartment complexes), retail, commercial, industrial or manufacturing, and limited mixed-use districts referred to as planned developments. It is common for a comprehensive zoning ordinance to specify the particular uses to which land within each category may be put. Rather than being prohibitive in nature (i.e., "thou shalt not. . ."), a use by right within a specified zoning district is specifically enumerated (i.e., "within this district, land may only be used for the following purposes. . .")

The regulations contained in a comprehensive zoning ordinance include an enumeration of uses by right permissible within zoning districts, minimum lot sizes, front, side and rear yard set-back requirements, minimum square footage of primary structures, height restrictions, accessory structure limitations, and floor area ratio (FAR) limitations. An enumeration of the requirements and available uses for special use permits are also established. Provisions that create and empower a planning commission and a board of adjustment

are also contained within the comprehensive zoning ordinance. The process for property owners to apply for zoning changes should be described. Provisions for addressing nonconforming uses and structures should also be set forth.

The Planning and Zoning Commission is an advisory board that deals with matters primarily related to the physical development and land use of property within the city. The Planning and Zoning Commission formulates zoning regulations including changes to the official Zoning Map of the City consistent with the City's Comprehensive Plan and applicable laws, considers revisions to the City's Comprehensive Plan, considered subdivision and plats, and makes recommendations to the City Council on all cases that move forward to Council. The complete Zoning Ordinance can be found in the Code of Ordinances on the City of Whitesboro's website www.whitesboro.org.

Members

The Planning and Zoning Commission is comprised of five (5) members who must be residents and/or ad valorem tax payers of Whitesboro and meet the requirements outlined by State law. Members serve a two (2) year term and must serve until their successors are appointed and qualified. (City of Whitesboro Code of Ordinance Section 154.115) The positions are separated into staggered terms allowing half the board to be appointed each year. A quorum of members is comprised of the majority of regular members and for the Planning & Zoning Commission a quorum equals three (3) members. A quorum must be present for the Commission to hold a meeting. If a quorum is not reached, the meeting and any associated public hearings will be required to be re-scheduled.

There are many available resources to help one understand their role as a board member. It is suggested for new board members to review the following sources of information:

- 1) Review previous Planning and Zoning Commission meeting minutes. Copies are available through the City Website under Planning and Zoning Commission/Agendas and Minutes;
- 2) Study the current Zoning Ordinance and Subdivision Ordinance;
- 3) Texas Municipal League's Monthly News Magazine: "Texas Citys and Cities".

Powers and Duties

The Planning and Zoning Commission shall have the power to make rules, regulations, and bylaws for its own governance in accordance with Chapter 154 Zoning of the City of Whitesboro Code of Ordinances and Title 7 of the Texas Local Government Code as outlined below:

(a) The governing body of a municipality may regulate:

- 1) the height, number of stories, and size of buildings and other structures;
- 2) the percentage of a lot that may be occupied;
- 3) the size of yards, courts, and other open spaces;
- 4) population density;
- 5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- 6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c) The governing body of a home-rule municipality may also regulate the bulk of buildings by limiting the size of the lots and the placement of buildings on those lots; as well as architectural

design and regulating that the design is architecturally compatible with existing buildings in the area. Bulk regulations are typically concerned with the floor-area ratio, minimum floor space, minimum lot size, and set back requirements from the lot boundaries.

(d) The Commission shall make, amend, extend, and add to the comprehensive plan for the physical development of the city and recommend the comprehensive plan to the City Council for approval.

(e) The Commission shall make a zoning plan, recommend it to the City Council for adoption and recommend for approval or disapproval proposed changes to the plan.

(f) The Commission shall approve or disapprove plats of proposed subdivisions submitted to the city. In considering plats, the Commission shall require the proposed subdivision to meet requirements set out in the subdivision code. The Commission shall submit copies of all approved plats to the City Council for its approval before the plats are released for recording.

The Commission shall keep record of its resolutions, transactions, findings and determinations, which shall become items of public record. The City Administrator, or their designee, shall attend Planning and Zoning Commission meetings and shall serve as liaison between the commission and the City Council. The agendas and minutes for the Commission shall be posted in accordance with the Open Meeting Act (T.G.C. Chapter 551). Special scheduled meetings may be set and properly noticed in coordination with the City Secretary and staff liaison.

Procedures for Adoption/Amendment of Zoning Ordinances

Planning and zoning commissions participate in the development of comprehensive plans, recommend zoning changes to the governing body, and review plat applications. A home rule city must have a zoning commission. A general law city may but need not create one. A planning and zoning commission typically possesses the authority to recommend that a rezoning application be approved or denied and to recommend adoption or amendment of zoning regulations. The governing body has the ultimate authority to adopt, amend, grant or deny zoning changes. Even though a commission may only have the authority to recommend matters to the governing body, the provisions of the Texas Open Meetings Act apply. (See, Chapter 551, Tex.Gov't Code).

Notices and Public Hearings

The basic process for the adoption of a zoning ordinance involves mailing of notices of a public hearing before the planning commission and the publication of a notice of a public hearing before the council. Notice of the public hearing before the commission must be sent to the property owners of the property that is subject to the zoning change and to all owners of real property within 200 feet of the property subject to the zoning change. The identity and address of the owners should be obtained from the city's tax rolls. The 200-foot radius includes streets and public rights-of-way. This notice must be sent at least eleven (11) days before the public hearing (Section 211.007(c) requires the notice to be sent "before the 10th day before the hearing date," thus, at least 11 days). Mailing by regular first-class mail is sufficient, certified or registered mailing will comply but is not required. Notice is deemed complete when deposited in the mail.

Following the public hearing by the commission, the commission must make a report to the council as to whether a zoning change application or regulation should be approved or denied. The council may not hold a hearing until the commission's recommendation is made. A public hearing must then be held by the council. Notice of the council's public hearing must be published in the city's official newspaper or in a newspaper of general circulation in the area at least 16 days before the hearing (Section 211.006(a) states that the notice must be published "before the 15th day before the date of the hearing," thus, at least 16 days).

Since the Open Meetings Act applies to both the commission and the council, the public hearings must be posted on the agenda at least 72 hours before the date of the hearing. Typically, an agenda should identify the public hearing as a specific item preceding a consideration and action item on the zoning matter. Since public hearings involve administrative expense and overhead, commissions and councils should avoid tabling a public hearing. If the hearing is not officially closed, then notice of the rescheduled hearing must then either be sent or published, as appropriate. If the process was properly followed and if additional time for consideration is needed, it is advisable to open the public hearing, receive testimony, and formally close the hearing. The action item on the agenda may then be tabled to a later meeting without incurring the burden of mailing or publishing additional notices.

Protests.

Section 211.006(d) of the Local Government Code provides a means by which property owners may protest a zoning change. If a written protest is signed by at least 20% of the owners of either 1) the property covered by the proposed change, or 2) the land within 200 feet of the subject property, then a supermajority requirement for approval will apply. If a proper protest is submitted, then the zoning change must be approved by at least a $\frac{3}{4}$'s majority vote of all members of the council. (Note that the requirement is $\frac{3}{4}$'s of "all members," not $\frac{3}{4}$'s of those present at the meeting). The statutes provide no deadline on which the protest must be filed. Assuming a protest is filed at or on the day of the public hearing, little time is afforded the city to verify the validity of the petition. Presumably, in the absence of an ordinance specifying such a deadline, the public hearing may still be opened and closed, and the council may then table the consideration and action item to a later date to enable verification of the signatures. This would avoid the administrative burden of republishing notice of the hearing as well as avoiding the possibility that approval of the zoning change by less than a supermajority would be later invalidated.

Joint Hearings

A commission and council may also hold a joint public hearing on a zoning change application. Generally, mailing and publication of notices of the hearing are still required and the commission must act and vote on the application before the council may act. However, a home rule city may by ordinance adopted by a $\frac{2}{3}$'s majority vote, prescribe the type of notices to be given of the time and place of the joint public hearing.

Zoning Techniques.

A number of different categories of zoning types or techniques exist that can be used for specific situations where appropriate. Also, there are certain words or phrases unique to zoning that may not be readily understood by a lay person.

1. Use by right: land uses that are automatically allowed in a district.
2. Specific/Special Use Permit: allows a use in a district under certain conditions. Usually includes site plan approval. The SUP runs with the land and is not personal to the owner or applicant. Conditions must be written, i.e., hours of operation, screening, outside noise.
3. Planned development: special or unique district with its own ordinance/regulations and requirements to reflect a mixed use or one planned. It allows creative development and architectural uniqueness, or a subdistrict that has distinct differences from the district in which located. Planned development zoning allows developers to obtain site-specific approval for developments that may not fit standard area and use zoning categories and that require specific negotiations to ensure that community interests are protected.
4. Spot zoning: awarding a use classification to an isolated parcel of land which is detrimental or incompatible with the uses of the surrounding area.

5. Strip zoning: the elongation of marginal retail and commercial uses along traffic arterials.
6. Down zoning or back zoning: a change in zoning classification to a less intensive or less dense zoning classification (one that is more restrictive such as multi-family to single-family or industrial to commercial).

In determining the constitutionality of a zoning ordinance, a court is guided by the rational basis test under both the due process and equal protection clauses of the United States Constitution. Zoning legislation may be held unconstitutional only if shown to bear no possible relationship to the state's interest in securing the health, safety, morals or general welfare of the public and are clearly arbitrary and capricious. The City Council is afforded considerable discretion in its zoning decisions. It will not be judged according to whether its zoning decision was necessarily the best course for the community. The appropriate inquiry is whether there was a conceivable or even hypothesized factual basis for the specific zoning decision made. This is not to suggest, however, that a zoning decision can be justified merely by mouthing an irrational basis for an otherwise arbitrary decision. Mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible.

Frequently Asked Questions About Zoning

1. Can the area subject to a zoning change be increased once notices have been published and sent?

No. For a zoning change to occur, there must be public notice of the proposed change in zoning. Since the public notice contains a description of the property for which a zoning change is sought, there would be inadequate notice of a change in the increased area.

2. Can the area subject to a zoning change be reduced?

Yes. Since there has been public notice of the portion of land subject to a zoning change, decreasing the amount of land included in a zoning change would not violate the public notice requirements.

3. Can the area subject to a zoning change be zoned to a more intense use than advertised?

No. In such a situation there would not have been adequate public notice. For example, if the public notice stated that there was an application to change land zoning agricultural to residential with lots of 10,000 square feet, you may not zone the land residential with lots of 5,000 square feet since there was not adequate public notice since the use is more intense than advertised.

4. Can the area subject to a zoning change be zoned to a less intense use than advertised?

Yes. There is adequate public notice. If the public notice stated that there was an application to change land zoned agricultural to residential with lots of 5,000 square feet, you may zone the land residential with lots of 10,000 square feet since there was adequate public notice and the use is less intense than advertised.

5. What is contract zoning?

Contract zoning is an unlawful activity whereby a property owner or developer agrees to develop or use property in a certain way in exchange for receiving a particular zoning classification from a City. This is an area of the law that must be scrutinized if a City attempts to settle zoning/land use litigation by entering into a written settlement agreement.

Subdivision Plat and Site Plan Approval

Chapter 212, Local Government Code, is the source of authority for plats and the plat review and approval process. The following are the basic rules:

(a) The law encompasses “plans” (defined to include a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan) and “plats” (defined to include a preliminary plat, general plan, final plat, and replat).

(b) Section 212.009 Approval Procedure.

(1) Must act (approve, approve with conditions, or disapprove) on an application within 30 days after the date an application is filed (the “shot clock”).

(2) If City requires plat to be also approved by the governing body, then governing body must act within 30 days after approval by plan commission. A plat is approved unless disapproved within that period.

(3) Approval must be endorsed on plat.

(4) If fail to act within 30 days, must issue certificate if requested.

(5) Must maintain record of each application and action taken. On request of owner, shall certify the reasons for the action taken on the application

(c) Disapproval or conditional approval has certain specific requirements. The City (either the Planning Commission or Council) must:

1. provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval;
2. Each condition or reason specified in the written statement must be directly related to a specific requirement under Chapter 212 of the Local Government Code, and must include a citation to the law, whether state law or City ordinance, that serves as the basis for the conditional approval or disapproval, and may not be arbitrary.

(d) The scope of discretionary authority in platting matters is limited by state law. Section 212.010 of the Local Government Code provides the standards for plat approval. The approval of plans and plats is mandatory as long as the conditions enumerated in Section 212.010(a) are met. If a plat meets all applicable standards and regulations, the inclusion of new standards or guidelines, not mandated by the zoning ordinance and subdivision regulations, prior to approval of the plat may operate as a denial of the applicant's state and federal due process rights absent compelling health, safety or welfare concerns. There may exist, however, valid health, safety or welfare concerns for rejecting a plat that complies with all applicable regulations. A general rule local government is not granted wide latitude in considering platting issues.

Frequently Asked Questions

1. Can a plat be tabled?

No. A plat is approved by operation of law if it is not disapproved within thirty (30) days, as referenced above in § 212.009 of the Tex. Loc. Gov't Code; however, developers, in attempting to resolve differences and avoiding a vote to disapprove or deny a plat, often agree on the record to a continuance. This is beneficial to the developer because he/she is not required to file a new plat and pay a new filing fee. There is no reported case law that approves this procedure.

2. Can a plat be approved subject to the staff working out certain problems?

No. A plat must be approved or disapproved with specific conditions set out. As a practical matter, if the plat is acceptable except for some very minor condition (e.g., no indication of north on the plat, an adjacent road name is improperly labeled, etc.), the plat may be approved subject to it being corrected and the motion to approve the plat should specifically state the necessary addition or modification. It is not advisable, however, to approve a plat subject to a major condition or modification. It is not advisable, however, to approve a plat subject to a major condition or modification (the number of lots will be reduced or increased, easements will be added or removed, etc.). In those situations, problems invariably arise, and it is unclear whether there is an approved plat or not.

3. If a plat conforms to all applicable ordinances, must the City council approve the plat?

Yes.

Whitesboro Park Board

Purpose

The Park Board of the City will advise the City Council and the City Manager/Administrator in regards to the development, improvement and maintenance of the city's current parks, public playgrounds, recreation areas, and the municipal swimming pool. The board will seek to develop recreational programs and partnerships to enrich the quality of life in the City of Whitesboro. The Park Board is established by Section 96.20 of the Whitesboro Code of Ordinance.

Composition & Members

The Park Board of the City shall be composed of five (5) members. Members shall be residents of the municipality and shall be appointed by the Council. Members shall serve for two-year staggered terms and until their successors are duly appointed and qualified. Members of the Board shall serve without pay. An individual board member may not act in an official capacity except through the action of the board. No member of the Parks and Recreation Board shall hold any other office or position with the municipality.

Chairman and Vice-Chairman

The board shall elect a chairman and vice-chairman and such other officers as it may deem advisable. The chairman will preside at board meetings, appoint all committees, represent the board at ceremonial functions and approve each final meeting agenda. In the absence of the chairman, the vice-chairman shall perform all the duties of the chairman.

Duties

The duties of the board shall be to recommend policies and procedures for the proper administration of the parks and recreation program of the municipality subject to the approval of Council; encourage and facilitate the establishment and maintenance of parks, playgrounds, play fields, centers, swimming pools, and other park and recreational facilities of the properties owned and controlled by the municipality or on private or public properties with the consent of the owners and managers thereof; encourage the

establishment of a supervised recreation program for all ages, on properties owned and controlled by the municipality or on private or public properties with the consent of the owners and managers thereof; recommend acquisition by the municipality of such land and buildings as are deemed necessary for a parks and recreation program and subject to location approval by the Planning and Zoning Commission; study and submit recommendations for improvement and expansion of the parks and recreation facilities and programs of the municipality; cooperate with all agencies, groups, and clubs concerned with recreation in the municipality; and make such studies concerning parks and recreation as may be requested by the Council. The Parks and Recreation Board shall have no power to obligate the city in any manner whatsoever; its finances shall be handled in the same manner as any division of the city government.

Meetings

The board may provide for regular and special meetings and adopt such rules and regulations for its own operation as deemed advisable by its members.

City of Whitesboro Parks

- (1) Godwin Park
- (2) Trollinger Park
- (3) Whitecotten Park
- (4) Tot Lot Park
- (5) Municipal swimming pool
- (6) Whitesboro Recreation Building

Whitesboro Library Board

Purpose

The Library Board will advise the City Council and the City Administrator in regards to the operations and development of an adequate library facility that promotes education, public and community relations, technology access and education. The Board will seek to develop literacy programs, community outreach and job boards, and events and programs for all ages to enjoy.

Members

The Whitesboro Library Board shall be composed of five (5) members appointed by Council for two-year staggered terms; 3 one year and two the next. Four members constitute a quorum.

Powers and Duties

The Library Board is an advisory board to the Library Director in all manners pertaining to the library. They shall encourage the development of adequate library facilities for the residents of the city and follow the rules and regulations prescribed by the City Council for the conduct of its business. The Board may solicit for city gifts, revenues, bequests, or endowments of money or property as donations or grants from persons, firms, or corporations. All gifts, revenues, bequests, or endowments of money or property as donations or grants from persons, firms, or corporations are subject to the approval and acceptance by the City Council. (Whitesboro Code of Ordinance Section 33.03)

Duties of Chair and Vice Chair

A majority of the Board members will select a Chairman and Vice Chairman. The Chairman is elected at the first meeting held after new appointments to the board are made after each council election in May. The Library Director, or his/her designee, is the secretary of the Board and will attend and keep the minutes of

all meetings except the meetings where another representative is designated by the Board. The Secretary acts only in an advisory role and does not have a vote on subject matters.

Meetings

The Board meets at regular intervals with advance notice posted in accordance with the Texas Open Meeting Act. Meetings may be called upon the request of the Chairman, or upon written request of three members, or upon notice from the Library Director that a matter required the consideration of the Board.

Penalty

The Library Board sets penalties for the actions of visitors to the library who damage library property; remove with intent not to return property of the library, or falsification of library records. (City of Whitesboro Code of Ordinance Section 33.03)

Whitesboro Preservation Board

Purpose

Established in 1996, the Whitesboro Preservation Board shall lead the City of Whitesboro in remembering and retaining its heritage, without impeding the community's continued growth. It will do this by guiding the use, restoration, improvements, and maintenance of the Whitesboro historical sites in the city. This includes offering support to City Council on related projects and decisions, as well as support to staff when relevant matters require the committee's guidance. The purpose of the Whitesboro Preservation Board is to promote community pride, combat community deterioration; preserve, rehabilitate, maintain, manage and promote the use of buildings of historic and/or architecturally significant; educate the public to the cultural, historical and economic benefits to the community for the protection and perpetuation of buildings which reflect elements of the area's culture, social, economic, and architectural history; and to advise the city as to the most advantageous use of and best operation of the property received by the city from the estate of Mona Sullivan and to make recommendations to the City Council as to the administration of the Sullivan Property, including formulating such rules as it may deem necessary for the orderly use of the Sullivan property. (City of Whitesboro Code of Ordinance Section 33.02)

Members

The Whitesboro Preservation Board is composed of seven (7) members appointed by the City Council with one appointee from each of the following five civic organizations which have expressed interest in the Board; Contemporary Women's Club, History Club; Kiwanis Club of Whitesboro; Lion's Club of Whitesboro; and the PEO Chapter A. If these organizations are unavailable to furnish a representative to the Board, the City Council may designate a representative from a similar interested civic organization or any resident of the City. At least two (2) members of the Board shall be residents of the City. The City Administrator or designee shall be a nonvoting ex officio member.

The members of the Board shall serve staggered two-year terms of office, and serve at the pleasure of the Council. Vacancies in office shall be filled by appointment by the Council for the remainder of the unexpired term(s) of office. (City of Whitesboro Code of Ordinance Section 33.02)

Powers and Duties

The Whitesboro Preservation Board shall elect a President, Vice-President, and secretary for a term of one year. The committee shall adopt an annual budget for restoration, improvements and maintenance of the Sullivan Property and other historical sites in the city. The proposed budget shall be presented to the city council for consideration and approval as part of the city's annual budget. The Board shall be

responsible for and shall establish procedures for the use and rental of the Sullivan property, subject to Council approval, which procedures shall not discriminate against any person, organization or entity because of race, color, religion, sex, handicap, familial status, or national origin. The Board shall do and perform such other acts and duties as it may be called upon to perform by the city manager/administrator or the city council. (City of Whitesboro Code of Ordinance Section 33.02)

The committee shall assist and participate in the establishment and maintenance of the City's status as a Certified Local Government (CLG) with the Texas Historical Commission by, among other activities, making recommendations to the City's governing body as to the development and maintenance of a successful preservation plan. This must include adherence to appropriate legislation for the designation and protection of historic properties, developing public participation in preservation efforts, and utilizing a systematic approach to the survey of local historic properties. For further information on this program, see <http://www.thc.texas.gov/>.

The Board is purely advisory in nature and shall function in an advisory capacity to the Council. Nevertheless, the Board may do and perform such administrative functions as may be delegated by the Council.

Duties of the Chair and Vice Chair

The President and Vice President are the leaders of the Board. They are to ensure the Board achieves the tasks as outlined herein and follows proper Parliamentary Procedures. The President shall preside over all meetings and decide on all points of order. They are allowed to vote on all issues before the Board, unless otherwise noted. All records of the Board shall be kept and maintained by the City Secretary in accordance with the City's adopted records retention schedule.

Financial Matters.

The Board shall recommend to the Council an annual budget for restoration, improvements and maintenance of the Sullivan Property and other historical sites in the City. The Board's proposed budget shall be presented to the Council for consideration and approval as part of the City's annual budget. The Board shall also have authority to seek gifts, donations and grants to the City for the purpose of acquiring, restoring, maintaining and operating such buildings or other properties as the Board may identify as being of historic, economic, cultural or social importance to the City. Any such funds or services actually received by the City shall be designated as restricted funds to be used only for the purposes provided in this section.

Meetings and Rules of Procedure of Board.

A quorum of the Preservation Board shall be a majority of the appointed membership. The Board shall meet at least quarterly or more often as necessary in order to satisfy the purposes of this section. The President shall preside at all meetings of the Board, and in the absence of the President, the Vice-President shall preside. The Board shall adopt such rules of procedure as are consistent with the orderly conduct of business. All meetings of the Board shall be conducted in compliance with the Texas Open Meetings Act, as amended.

Whitesboro Industrial Development Corporation

Central to a healthy community life is a strong city government. To ensure the well-being of residents and to build a sustainable platform for development, a city government must make sure the different parts are properly guided. One such part is the Industrial Development Corporation (WIDC).

Purpose

The mission of the Whitesboro Industrial Development Corporation (WIDC) is to build a thriving small-City community by improving economic opportunity in Whitesboro, Texas. WIDC seeks to keep area employers healthy and growing, while also targeting domestic and international business recruitment efforts to provide maximum benefit to the community and its residents.

As a nonprofit establishment and Type-A Economic Development Corporation, WIDC has the latitude to pursue a comprehensive agenda. On September 13, 2011, the City Council approved WIDC and WEDC to work in conjunction with each other on projects giving them statutory leeway to undertake both Type-A and B projects. Under the State provisions, 4A powers include industrial development projects such as business infrastructure, manufacturing, research and development, military realignment, job training classes, and public transportation. 4B powers include retail stores and restaurants, parking lots, parks, streets, water and sewer facilities, and affordable housing.

Creation and Operation

The Texas legislature passed the Development Corporation Act in 1979 to enable municipalities to create a development corporation that will promote existing businesses and create new ones. This corporation will run as a nonprofit and independent of the municipality under which it was formed. For details on specific provisions, please refer to Chapter 501 through Chapter 504 of the Texas Local Government codes (T.L.G.C.).

Formation

Chapter 504 of the T.L.G.C authorizes municipalities to establish a Type A economic development corporation. All municipalities to which Chapter 504 applies can create a Type-A corporation to boost its economic prospect. According to Chapter 505.004 of the T.L.G.C., the certificate of formation must state that the corporation is governed by Chapter 504 of the T.L.G.C and may include in the corporation's name any word and phrase the authorizing municipality specifies. A corporation is a nonmember, Nonstock Corporation.

Board of Directors

- 1) All of the powers of a corporation are vested in a board of directors consisting of a five-member board appointed by the governing body of the corporation's authorizing unit.
- 2) There are no qualifying criteria for a person to serve as a director.
- 3) Up to four ex-officio members may be appointed by the Council, who do not have the power to vote.
- 4) Directors are appointed for staggered three-year terms.
- 5) ~~No director shall serve more than two consecutive terms (six years), regardless of the length of the term.~~
- 6) The governing body of the corporation's authorizing unit may remove a director for cause or at will.
- 7) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of the director's duties under this subtitle.

Officers

- 1) A corporation will have the following officers:
 - a. The president
 - b. At least one vice president
 - c. A Treasurer
 - d. Other officers or assistant officers considered necessary

- 2) A person may hold more than one office, except that the same person may not hold the offices of president and secretary .

Funding

The T.L.G.C. – Chapter 504 provides that the governing body of the authorizing municipality by ordinance may adopt a Sales and Use Tax for the benefit of a Type A and Type-B corporation if the tax is approved by a majority of the voters of the municipality. An election must be held for that purpose in accordance with Chapter 321 of the T.L.G.C. – Tax Codes. The sales tax adopted under Sec. 251 is imposed on the receipt from the sales at retail of taxable items within the municipality at the rate approved at the election. While the WIDC will rely on sales tax receipts for a bulk of its revenue, other legal funding sources can be exploited. Some of these alternative sources may include grants, loan financing and issuance of bonds; interest generated from project loans, users and admission fees, and real estate profits.

Membership

General Membership: Whitesboro City Council must appoint a board of five directors to serve three-year staggered terms. A director may be removed by the city council at any time without any cause. An ex-officio member of the Board of Directors, serving as an advisory capacity, shall be the City Administrator. (Whitesboro Code of Ordinance Section 33.04)

Appointments: Directors shall appoint various officers within the corporation as the city council considers necessary. The President, Vice President, and Secretary of the board are appointed by the governing body of the authorized municipality. Each serves a term of one year.

Quorum: As provided by Chapter 504 Sec. 053 of the T.L.G.C., the majority of the entire membership of the board of directors will be a quorum.

Powers and Duties

T.L.G.C. enumerate the powers granted to Type-A Corporations. They are briefly highlighted below. For a detailed outline, please refer to Chapter 504 Subchapter C of the T.L.G.C.

Contract with Other Private Corporations: WIDC may contract with another private corporation to do the following:

- 1) Carry out an industrial development program or objective; or
- 2) Assist with the development or operation of an economic development program or objective consistent with the purpose and duties specified by Chapter 504 Subchapter C of the T.L.G.C.

Use of Revenue for Promotional Purpose: WIDC may spend no more than 10 percent of the corporate revenues for promotional purposes. WIDC may not spend more than 25 percent of the corporate revenue on two promotional purposes if the authorizing municipality has a population of less than 24,250 according to the 1990 federal census.

Bond Repayment: The proceeds of the sales and use tax imposed under this chapter may be used to pay the principal of, interest on, and other costs relating to the Type A corporation's bonds, but the bonds or any instrument related to the bonds may not give a bondholder a right to demand payment from tax proceeds in excess of the proceeds collected from the tax imposed under this chapter. (TLGC Section 504.303)

Non-Authorized Projects:

- 1) Transportation Facility.
- 2) A solid waste disposal facility

- 3) A sewage facility
- 4) A facility for furnishing water to the general public; or
- 5) An air or water pollution control facility

Authorized Projects:

- 1) A facility to benefit property acquired for a project that has another primary purpose;
- 2) A general aviation business service airport that is an integral part of an industrial park;
- 3) A port-related facility to support waterborne commerce; or
- 4) An airport related facility, if the authorizing municipality:
 - a. Is wholly or partly located within 25 miles of an international border; and
 - b. Has at the time of the project is approved by the corporation as providing under this subtitle:
 - i. A population of less than 50,000; or
 - ii. An average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period for which data is available that precedes the date the project is approved.
- 5) Land, buildings, equipment and other expenses to help develop, retain or expand companies with the following types of projects:
 - a. Manufacturing
 - b. Industrial
 - c. Research and development
 - d. Recycling
 - e. Warehouses
 - f. Distribution centers
 - g. Regional/national corp. headquarters
 - h. Closed/realigned military bases
 - i. Primary job training facilities by higher education institutions

A Type A economic development corporation also can spend money on things that don't create primary jobs, such as:

- j. Job training classes and career centers
- k. Business airport and port facilities
- l. Infrastructure, retail/commercial projects
- m. Infrastructure, retail/commercial projects
- n. Business-related sewer utilities and site improvements
- o. Projects to attract new military missions
- p. Light/commuter rail or buses

Payment for Cleanup of Contaminated Property; Election.

- (a) The economic development office, with the assistance of the Texas Commission on Environmental Quality, may encourage a Type A corporation to use proceeds from the sales and use tax imposed under this chapter for the cleanup of contaminated property.
- (b) A Type A corporation may use proceeds from the sales and use tax for the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the voters of the authorizing municipality voting at an election held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against

the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

Meetings

Except prior arrangement was agreed upon, WIDC meetings shall be held every first Wednesday of the month at 8:00 a.m. Meetings shall be held in the City Council Chamber at the City Hall. The agenda will be available prior to meetings in accordance with the Open Meetings Act (T.G.C. Chapter 551) and minutes will be available following approval. A majority of the entire membership of the board of directors of the corporation will be a quorum. Any other arrangement must draw on the T.L.G.C. as follow:

- 1) Except as provided by (2) below, the board of directors of the corporation shall conduct all meetings within the boundaries of Whitesboro.
- 2) State law does permit meetings to be held anywhere in Grayson County.
- 3) All meetings of the WIDC must conform to the Texas Open Meetings Act.

Laws and Ethics

Majority of the items under laws and ethics are identical to those of other boards and commissions, which are addressed in other areas of this handbook. The WIDC may consider economic development projects in executive session and portions of the business's discussions are exempt from public record. The information below on *Open Meetings and Public Information Act* has been directly extracted from Texas Municipal League Economic Development Handbook.

Whitesboro Economic Development Corporation

Central to a healthy community life is a strong city government. To ensure the well-being of residents and to build a sustainable platform for development, a city government must make sure the different parts are properly guided. One such part is the Economic Development Corporation (WEDC).

Purpose

The mission of the Whitesboro Economic Development Corporation (WEDC) is to build a thriving small-City community by improving economic opportunity in Whitesboro, Texas. WEDC seeks to keep area employers healthy and growing, while also targeting domestic and international business recruitment efforts to provide maximum benefit to the community and its residents.

As a nonprofit establishment and Type-B Corporation, WEDC has the latitude to pursue a comprehensive agenda. As a Type-B corporation, WEDC has a statutory leeway to undertake both Type-A and B projects. Under the State provisions, Type A powers include industrial development projects such as business infrastructure, manufacturing, research and development, military realignment, job training classes, and public transportation. Type B powers include retail stores and restaurants, parking lots, parks, streets, water and sewer facilities, and affordable housing.

Creation and Operation

The Texas legislature passed the Development Corporation Act in 1979 to enable municipalities to create a development corporation that will promote existing businesses and create new ones. This corporation will run as a nonprofit and independent of the municipality under which it was formed. For details on specific provisions, please refer to Chapter 501 through Chapter 505 of the Texas Local Government codes (T.L.G.C.).

Formation

Chapter 505 of the T.L.G.C. authorizes municipalities to establish a planning and development corporation. All municipalities to which Chapter 504 applies can create a Type-B corporation to boost its economic prospect. According to Chapter 505.004 of the T.L.G.C., the certificate of formation must state that the corporation is governed by Chapter 505 of the T.L.G.C and may include in the corporation's name any word and phrase the authorizing municipality specifies. A corporation is a nonmember, Nonstock Corporation.

Board of Directors

- 1) All of the powers of a corporation are vested in a board of directors consisting of a seven-member board appointed by the city council.
- 2) All members shall be residents of the city
- 3) No more than four directors may be elected city officials or city employees.
- 4) A director serves two-year terms.
- 5) The governing body of the corporation's authorizing unit may remove a director for cause or at will.
- 6) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of the director's duties under this subtitle.

Officers

- 1) A corporation will have the following officers:
 - e. The president
 - f. At least one vice president
 - g. A Treasurer
 - h. Other officers or assistant officers considered necessary
- 2) An officer's term may not exceed three years.
- 3) A person may hold more than one office, except that the same person may not hold the offices of president and secretary.

Funding

The T.L.G.C. – Chapter 505 Sec. 505.251 provides that the governing body of the authorizing municipality by ordinance may adopt a Sales and Use Tax for the benefit of a Type-B corporation if the tax is approved by a majority of the voters of the municipality. An Election must be held for that purpose in accordance with Chapter 321 of the Tax Code. The sales tax adopted under Sec. 505.251 is imposed on the receipt from the sales at retail of taxable items within the municipality at the rate approved at the election. While the WEDC will rely on sales tax receipts for a bulk of its revenue, other legal funding sources can be exploited. Some of these alternative sources may include grants, loan financing and issuance of bonds; interest generated from project loans, users and admission fees, and real estate profits.

Membership

General Membership: Under Sec. 505.051 of the T.L.G.C., Whitesboro City Council must appoint a board of seven directors. Up to four of these can be employees of the city, or city council members. Each member of the board will serve a two-year term. A director maybe removed by the city council at any time without any cause. An ex-officio member of the Board of Directors, serving in an advisory capacity, shall be the City Administrator.

Restriction on Membership: For cities with fewer than 20,000 residents, directors must be residents of the county where the majority of the city is located or reside within 10 miles of the city and in a county that borders the county where a majority of the city is located. WEDC requires all members to be a resident of the City of Whitesboro. (Code of Ordinances Section 33.05)

Appointments: Directors shall appoint various officers within the corporation as the city council considers necessary. The President, Vice President, and Secretary of the board are appointed by the governing body. Each serves a term of one year.

Quorum: As provided by Section 505.054 of the T.L.G.C., the majority of the entire membership of the board of directors will be a quorum.

Powers and Duties

T.L.G.C. enumerate the powers granted to Type-B Corporations. They are briefly highlighted below. For a detailed outline, please refer to Chapter 505 Subchapter C of the T.L.G.C.

Contract with Other Private Corporations: WEDC may contract with another private corporation to do the following:

- 1) Carry out an industrial development program or objective.
- 2) Assist with the development or operation of an economic development program or objective consistent with the purpose and duties specified by Chapter 505 Subchapter C of the T.L.G.C.

Use of Revenue for Promotional Purpose: WEDC may spend no more than 10 percent of the corporate revenues for promotional purposes.

Bond Repayment: Bonds or other obligations that mature in 30 years or less and that are issued to pay the costs of projects authorized by Subchapter D of Chapter 505 of the T.L.G.C. may be made payable from any source of funds available to the Type B corporation, including the proceeds of a sales and use tax imposed under this chapter. In this Chapter, "Project means lands, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvement."

Authorized Projects:

- 1) For the creation or retention of primary jobs.
- 2) Found by the board of directors to be required or suitable for the development, retention, or expansion of the following:
 - a) manufacturing and industrial facilities
 - b) Research and development facilities
 - c) Military facilities, including closed or realigned military bases
 - d) Transportation facilities, including airports, hangars, rail ports, rail switching facilities, maintenance and repair facilities, cargo facilities, related infrastructure located on or adjacent to an airport or rail port facility, marine ports, inland ports, mass commuting facilities, and parking facilities.
 - e) Sewage or solid waste disposal facilities
 - f) Recycling facilities
 - g) Air or water pollution control facilities
 - h) Facilities for furnishing water to the public
 - i) Distribution centers
 - j) Small warehouse facilities capable of serving as decentralized storage and distribution centers
 - k) Primary job training facilities for use by institutions of higher education
 - l) Regional or national corporate headquarters facilities
- 3) Projects related to certain job training
- 4) Certain infrastructure improvement projects. This means expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to

- a) Streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements
 - b) Telecommunications and Internet improvements
- 5) Projects related to certain military bases and missions. Project in this subtitle includes the infrastructure, improvements, land acquisition, buildings, or expenditures that:
 - a. Are for the creation or retention of primary jobs or jobs that are included in North American Industry Classification System (NAICS) sector number 926120, Regulation and Administration of Transportation Programs, for the corresponding index entry for Coast Guard (except the Coast Guard Academy); and
 - b. Are found by the board of directors to be required or suitable for:
 - i. Promoting or supporting a military base in active use to prevent the possible future closure or realignment of the base;
 - ii. Attracting new military missions to a military base in active use; or
 - iii. Redeveloping a military base that has been closed or realigned, including a military base closed or realigned according to the recommendation of the Defense Base Closure and Realignment Commission under the Defense Base Closure and Realignment Act of 1990
- 6) Career center projects outside of junior college.

Meetings

Except prior arrangement was agreed upon, WEDC meetings shall be held every first Tuesday of the month at 8:00 a.m. Meetings shall be held in the City Council Chamber at the City Hall. The agenda will be available prior to meetings in accordance with the Open Meetings Act (T.G.C. Chapter 551) and minutes will be available following approval. A majority of the entire membership of the board of directors of the corporation will be a quorum. Any other arrangement must draw on the T.L.G.C. as follow:

- 1) Except as provided by (2) below, the board of directors of the corporation shall conduct all meetings within the boundaries of Whitesboro.
- 2) State law does permit meetings to be held anywhere in Grayson County.
- 3) All meetings of the WEDC must conform to the Texas Open Meetings Act.

Laws and Ethics

Majority of the items under laws and ethics are identical to those of other boards and commissions, which are addressed in other areas of this handbook. The WEDC may consider economic development projects in executive session and portions of the business's discussions are exempt from public record. The information below on *Open Meetings and Public Information Act* has been directly extracted from Texas Municipal League Economic Development Handbook.

Conduct Governed by State Law

Code of Conduct

Council and Board members are agents of public purpose and hold office for the benefit of the public. Council is elected by the residents. Board members are appointed by Council and therefore, should present views and recommendations of the board as an entity not an individual to Council and staff. As members discuss and express their views, care should be given to distinguish between personal views and board views. At no time should a council or board member infer or give the impression that their personal view is the view of the council or board or a promise that may be construed as binding on the Council, Board,

the City, or staff. Board members should routinely remind citizens or attendees their actions are recommendations and that final action will be taken by the City Council.

The following is the expected conduct of each and every council or board member:

- Uphold the constitutional government, laws of this state and the laws of the municipality fostering respect for all government;
- Conduct public and private life as to be an example to fellow citizens and board members;
- Discharge faithfully the duties of office regardless of personal considerations and never disclose confidential information gained by reason of a position nor use such information for personal gain;
- Recognize that the public interest must be a primary concern, attend each meeting as it pertains to the member's respective board and diligently prepare for the issues to be undertaken;
- Government decisions and policy will be made using proper procedures and public office will not be used for personal gain. Be ever mindful of neutrality and impartiality, rendering equal service to all and to extend the same treatment you wish to receive;
- All elected and appointed officials will conduct themselves with the highest ethical standard and convey standards of quality and integrity while conducting the affairs of your position and be above reproach and to merit public confidence in our community;
- Show respect, consideration, and honesty towards fellow council and board members, staff, and all other persons involved in conducting business with the council and board;
- Allow others the necessary time to fully present their views before making comments;
- Avoid the walking quorum at all costs by refraining from discussing political and city business outside of a scheduled meeting with any other council or board member.

Texas Public Information Act

The Texas Public Information Act, originally referred to as the Open Records Act, was first adopted in 1973 and is now codified in chapter 552 of the Texas Government Code. With limited categories of exceptions, the Act requires the disclosure of virtually all information collected, assembled or maintained by or for governmental bodies.

The definition of governmental body under the Act includes county commissioner's courts, school district boards of trustees, city councils, governing boards of special districts, political subdivisions of counties and cities, as well as boards, commissions, agencies and departments of the state of Texas that are directed by one or more elected or appointed members. The Act also applies to entities that are supported in whole or in part by public funds or that spend public funds. This includes a chamber of commerce, volunteer fire departments, housing finance corporations, and economic development corporations. It should be noted that the Act does not apply to records or information kept or maintained by the judicial branch of government; records maintained by the judiciary are, however, subject to disclosure under Rule 12 of the Texas Rules of Judicial Administration.

The Public Information Act applies to recorded information in virtually any medium including paper; film; any magnetic, optical, or solid-state device that can store an electronic signal; tape; mylar; linen; silk; and vellum. It includes books, papers, letters, documents, photographs, computer printouts, film, tape, sound recordings, maps and drawings, microfilm and microfiche, and voice, data or video representations held in computer memory. Disclosure is not required for tangible items which do not constitute "information" and some limited exceptions to disclosure exist with regard to personal notes of public officials.

Electronic information maintained in a personal or privately-owned electronic device is not exempt from disclosure simply because it is kept in a personal device. All city officials and employees are designated

as temporary records custodians under the Act and are required to either 1) transfer the information to the City's designated records custodian or 2) maintain the information - and disclose it when asked - throughout the duration of the city's records retention periods.

Section 552.022 of the Act enumerates by example eighteen different categories of information deemed to be public by statute. This enumeration includes completed reports, audits and investigations made by or for governmental bodies, broad categories of information contained within personnel files of public employees, information in accounts, vouchers and contracts relating to the receipt or expenditure of public funds, final voting records of members of a governmental body, or working papers, research material and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, rules and statements of policy, administrative staff manuals, and settlement agreements.

The Act sets forth a series of exceptions and describes certain categories of documents or information which may be withheld from public disclosure. Generally, these exceptions include personnel information in which would violate an employee's right to privacy, information relating to settlement negotiations or litigation, information relating to the location or price of property, information determined to be subject to the attorney-client privilege, and certain law enforcement records.

The procedures for disclosure are fairly strict. Any person may request that records be made available for inspection and review or may compel the public entity to produce copies. Public entities are required to designate an officer for public information, and, in the absence of such designation, the chief administrative officer becomes by default the person responsible for ensuring disclosure. Typically, this would include city managers, mayors, and department heads. A request for public information need only be in writing and specifically identify the documents or categories of documents sought to be reviewed. The officer for public information is required to "promptly produce public information for inspection, duplication, or both on application by any person to the officer."

The person seeking the inspection or copies of public documents need not explain or give any reason why he/she seeks disclosure. An officer for public information may only make an inquiry of the requestor to establish proper identification or to clarify the request. As noted, the requested information must be made available for inspection and copying promptly unless the information is in active use or in storage. If the information cannot be produced promptly, then the public entity is required to provide written certification of its active use or storage and must identify a date and hour within a reasonable time when the information will be made available.

If the public entity believes that the requested information fits within an exempted category, it must forward a copy of the request, a statement of the reasons why the public entity believes the documents are exempt, and copies of the actual documents sought to be disclosed, to the Texas Attorney General's Office for review. The Attorney General has statutory authority to review the information submitted and to rule on whether the information must be disclosed or may be withheld from production. If the public entity fails to forward this information to the Attorney General within 10 working days of the receipt of the request, then the information is deemed to be public and must be disclosed. If the Attorney General renders an opinion that certain records are public and must be disclosed, the only remedy available to public entities to contest this ruling is to file suit in Travis County within ten days of the opinion, seeking a judicial declaration that the records are not public. And even if the Attorney General renders an opinion that determines that certain records may be withheld, this determination does not prevent a requestor from filing suit in a local county seeking a writ of mandamus to compel the public entity to disclose the records. Although Attorney General opinions are persuasive, they are not controlling or binding on courts.

It is a criminal offense to withhold disclosure of public information. An officer for public information, or the officer's agent, commits an offense if, with criminal negligence, the officer or the officer's agent fails or

refuses to give access to, or to permit or provide copying of, public information to a requestor as provided by the Act. The scope of this prohibition includes temporary records custodians (all city officials) who keep or maintain public information on personal electronic devices. The violation is a class B misdemeanor and constitutes official misconduct. There are several affirmative defenses that generally require acting in reliance on a judicial opinion, an attorney general's opinion, or a written instruction of the city's public information officer to withhold the records.

If a public entity fails to provide the disclosures required by the Public Information Act, the person making the request may sue for mandamus relief to compel the production of the information. Attorney's fees may be awarded to the prevailing party in such a suit.

Texas Open Meetings Act

The essence of the Texas Open Meetings Act² is to require governmental bodies to provide advance notice to the general public of the subject of and topics to be discussed at an impending meeting and to grant to the public the right to attend and observe. The fundamental concept behind the Act is to make government, as an instrument of the people, accessible and to make open the workings of government. Every regular, special or called meeting of the governmental body must be open to the public and a notice of the meeting (identifying the topics) must be conspicuously posted not less than 72 hours in advance of the meeting.

A "meeting" under the Act is defined broadly to include virtually any deliberation relating to public business or public policy over which a governmental body has supervision or control. A quorum of the membership of the governing body must be present throughout the duration of the meeting. A quorum is a majority of the membership, unless some rule of law establishes a different amount. In the event that members of a governmental body leave before the meeting is formally ended, leaving less than a quorum of the members present, then the meeting must immediately end.

A "deliberation" is defined as any verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body. Rulings by the Attorney General indicate that a deliberation among a quorum of a council need not occur in one location or at one point in time. In instances where one member of a council discusses an item of city business with another member, who in turn, communicates the same information to a third, this practice may be regarded as an illegal meeting if this daisy chain of communication occurs among a sufficient number of members so as to constitute a quorum. Members who knowingly conspire to gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum can violate the Act. See, Tex.Op. Atty Gen. GA-326 (May 18, 2005)

It is a criminal offense under the Act to engage in communications that occur outside of an open meeting in certain circumstances. A member commits an offense if he/she engages in at least one communication among a series of communications that each occur outside of an open meeting. If a member engages in a communication among less than a quorum of the board's members but knows that the communication is in a series that will involve a quorum, the offense is a class B misdemeanor.³

² Chapter 551, Tex. Gov't Code.

³ It is punishable by a fine of not less than \$100 or more than \$500; confinement in the county jail for not less than one month or more than six months; or both. Sec. 551.143, Tex. Gov't Code.

The agenda must be posted at least 72 hours in advance of the meeting in a conspicuous place that identifies the topics to be discussed at the meeting. With few exceptions, all meetings are open to the general public. One need not be a resident of the city nor meet any special criteria for attending. Any person present may record or videotape the conduct of the meeting so long as this activity does not unduly disrupt the progress of the meeting.

The Act does not simply confer a right on the general public to attend the meeting and observe the proceedings of government. It requires public input on any agenda item before or during consideration of the item. This requirement can be satisfied in one of two ways: 1) the board can include a citizens input agenda item at the beginning of each agenda and receive input on any agenda item at the commencement of the meeting; or 2) the board may allow public testimony on each agenda item as the board reaches that item on the agenda. It is proper to impose time limits on public input. The board, however, cannot restrict citizen criticism except where the speaker violates the law.

Discussions and deliberations between members of a governmental body must be limited to the items enumerated on the posted agenda. This rule does not apply to a statement of specific factual information given in response to an inquiry by a member of the public or of the governmental body, or a recitation of existing policy in response to the inquiry. In other words, a member of the public may make an inquiry during an open meeting about any subject which is not on the posted agenda. However, the response given, if any, must be limited to a statement of specific factual information or a statement of existing policy. Any discussion or deliberation regarding the subject of the inquiry must be limited to a proposal to place that subject on a future agenda for a future meeting. It must be noted that this provision is inherently vague; all too often, the "discussion" becomes more than merely a recitation of specific factual information. Because of the vague nature of this provision and the difficulty in literal compliance, the standard advice is simply to prohibit any discussion of matters not on a posted agenda, except to the extent that discussion relates to placing the matter on a future agenda.

Governmental bodies may conduct closed meetings (also termed "executive sessions") under certain limited circumstances. A governmental body may deliberate in private during a closed meeting to conduct a private consultation with its attorney but only when the governmental body is seeking the advice of counsel relating to pending or contemplated litigation, a settlement offer, or on a matter in which the attorney-client privileged may be invoked.

Executive sessions are also authorized when deliberating on the appointment, evaluation, duties or discipline of public officers or employees as well as to hear complaints or charges against an officer or employee of the political subdivision. Thus, for example, a city council may interview a job applicant in closed session and may discuss the terms and conditions of the appointment in closed session. However, any vote must be conducted in open session. The opportunity to conduct deliberations in closed session only applies to public officers and employees. The Act does not allow a political subdivision to discuss or deliberate in closed session on the hiring of independent contractors. Contract negotiations and deliberations between the governing body and the successful bidder must be conducted in open session where any member of the general public may attend and observe.

Governmental bodies may also deliberate in closed session to discuss the purchase, exchange, lease or value of real property if an open meeting may have a detrimental effect on a position of the governmental body in negotiations with a third person.

The Act also allows governmental bodies to conduct closed sessions to deliberate on commercial or financial information received from business prospects that the governmental body seeks to have locate, remain or expand in or near the jurisdiction of the political subdivision and with which the governmental body is conducting economic development negotiations. A political subdivision may also deliberate on the

offer of a financial or other incentive to a business prospect when conducting economic development negotiations. Economic development corporations, non-profit corporations created by municipalities which are charged with the mission of promoting economic, industrial and commercial development within cities, are subject to the provisions of the Open Meetings Act.

If a closed meeting is permitted under the Act, a governmental body must first convene in open session, announce that a closed meeting will be held, and identify which section or provision of the Act under which the closed meeting is held. A tape recording or certified agenda must be made of the proceedings of the closed meeting. Governing bodies are required to preserve the agenda or recording for at least two years following the meeting. However, the content of the agenda or recording is not available for public inspection and must be held in confidence.

Compliance with the provisions of the Act is important for public officials for a variety of reasons. First and foremost, violations of certain provisions of the Act may give rise to criminal prosecution. Criminal penalties can be imposed if: 1) a member of a governmental body engages in a prohibited series of communications; 2) a member of a governmental body participates in a closed meeting where no certified agenda or tape recording is being kept of the meeting; or, 3) if any person discloses the certified agenda or tape recording of the closed meeting to any person other than a current member of the governing body. The Act also provides that any action taken by a governmental body in violation of the Open Meetings Act is voidable. The provisions of the Act may also be enforced by mandamus and injunctive relief.

The effect of the Open Meetings Act is that political subdivisions can rarely conduct negotiations or perform decision-making functions in private or in confidence. Briefing sessions and work sessions conducted between the governing body and the staff of the public entity must be open to the public. The Act only applies to the deliberations of the governing body and not the conduct of its staff.

Conflicts of Interest

All Council and Board members are expected to avoid involvements that put their own personal interests at cross purposes with those of the public. There are state laws governing the behavior of City Officials and they need to be aware of them in order to avoid violations. A conflict of interest exists when a public official is presented with a matter for consideration in which the official has some personal interest that has the potential of influencing the official in the exercise of independent judgment.

Conflicts of interest may be divided into two categories, statutory and common law. The first involves conflicts that are defined by statute; the second are conflicts that have been defined by court decision. The purpose of Chapter 171 is to prevent public officials of local government from using their positions for hidden personal financial gain. Whenever an official has a substantial interest in any matter pending before the body of which he is a member, the official must: (1) prior to any discussion or vote in the matter, file a sworn affidavit disclosing the nature of his interest, and (2) abstain from participating in the discussion and vote on the matter, if a special economic benefit will result.

Anticipating that potential conflicts of interest will inevitably arise at the local level, while acknowledging the practical impossibility of flatly prohibiting such conflicts Chapter 171 requires the public disclosure of conflicts between the public interest and a Board member's private interests. A copy of the Disclosure of Conflicts statement is located in Appendix B. The law requires the filing of this form by any Board member whose private financial interests – or those of relatives – would be affected by an action of the Board member. If a Board member has a question as to whether or not he/she has a conflict of interest, he/she should contact the City Manager/Administrator. If necessary, the City Attorney will then be consulted.

A person has a substantial interest in a business entity if:

(1) The person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(2) Funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity has a substantial interest under this section.

1st Degree by
Consanguinity:

Parents
Children
Brothers & Sisters

1st Degree by
Affinity:

Spouse
Spouse's Parents
Spouse's Children
Spouses' Brothers &
Sisters
Stepparents
Stepchildren

Examples

1. Plan Commissioner who is employed by or receives more than 10% of his or her gross income from a business entity has a statutory conflict if a contract with the business entity is considered by the Council.
2. Plan Commissioner who is employed by or receives more than 10% of his or her gross income from a business entity or who owns 10% or more of the stock or \$15,000 more of the value of a business entity may not deliberate and/or participate in a vote affecting that entity.
3. A Plan Commissioner who received a campaign contribution from a developer who seeks a zoning change or plat approval does not have a conflict.

The Appearance of Impropriety.

There are many circumstances that do not meet the definition of a conflict of interest under Chapter 171 but nevertheless may convey an appearance of impropriety. For example, participation in discussion and voting on a matter that involves a close friend, a business associate, a business competitor, or a neighbor will convey an appearance that the member is not being fair. Although all officials have a duty to participate and a duty to vote, there are times when common sense and respect for the City outweighs this obligation. If a member believes that his/her participation may convey an appearance of impropriety, the member should exercise good judgment and should abstain from participation and voting.

Conflicts Disclosure

Local Government Code Chapter 176 requires that Mayors, Council, City Manager/Administrators, and certain other city officials must file a "conflicts disclosure statement" with a city's records administrator within seven (7) days of becoming aware of the following situations:

- 1) A city officer or the officer's family member has an employment or business relationship that results in taxable income of more than \$2,500 with a person who has contracted with the city or with whom the city is considering doing business.
- 2) A city officer or the officer's family member receives and accepts one or more gifts with an aggregate value of \$250 in the preceding 12 months from a person who conducts business or is being considered for business with the officer's city.

The chapter also requires a vendor who wishes to conduct business or be considered for business with a city to file a "Conflict of Interest Questionnaire" if the vendor has a business relationship with the city and employment or other relationship with an officer or officer's family member, or gives a gift to either. An officer who knowingly fails to file the statement commits a Class C misdemeanor, which is punishable by a fine up to \$500. To obtain a Conflict-of-Interest Form, please contact the City Secretary.

Nepotism

"Nepotism" is the award of employment or appointment on the basis of kinship. The practice is contrary to sound public policy, which is why prohibitions against nepotism are common in all states, including Texas. The Texas Nepotism Statute, Chapter 573 of the Government Code, forbids the City Council from hiring or appointing any person who is related to a Council Member within the second degree by affinity or within the third degree by consanguinity. Since "affinity" and "consanguinity" are the controlling factors in determining nepotism, both terms need to be clearly understood. Affinity is kinship by marriage, as between a husband and wife, or between husband and blood relatives of the wife (or vice versa). Consanguinity is kinship by blood, as between a mother and child or brother and sister.

The City of Whitesboro's Nepotism policy states: Neither the City Manager/Administrator, the council, nor any other authority of the city government may appoint or elect any person related to the mayor or any other councilman, to the City Manager/Administrator, or to himself, or, in the case of a plural authority, to one of its members, within the second degree by affinity or within the third degree by consanguinity, to any office or position in the city government.

If the relative relationship is established after employment, the individuals concerned will decide who is to be transferred. If that decision is not made within 30 calendar days, management will decide.

In other cases where a conflict or the potential for conflict arises, even if there is no supervisory relationship involved, the parties may be separated by reassignment or terminated from employment.

Social Media

The City of Whitesboro has determined the City Manager/Administrator, or their designee, will be responsible for the use of social media posting and will follow the social media policy approved by Council and attached as Appendix D. All official posts will be approved by the City Manager/Administrator prior to being posted. Board members may wish to utilize social media. Social media is not to be used by appointed officials as mechanisms for conducting official city business other than to informally communicate with the public this includes comments made within the social media. Examples of business that may not be conducted through social media include: making policy decisions, official public notices, and discussing confidential city matters that have not been approved for release to the public. Elected and Appointed Officials are individually responsible to ensure compliance with laws pertaining to campaigning and open meetings, as they relate to social media.

Vested Rights

Chapter 245 of the Local Government Code freezes regulations on the date the first permit application is filed until the project is complete. It ensures uniform regulations during the review and approval of a project by a regulatory agency. The chapter requires that the approval, disapproval, or conditional approval of an application for permit be governed by the regulations in effect at the time the original application was filed. §245.002(a), TEX. LOCAL GOV'T CODE. In addition, if a series of permits is required for a project, the regulations in effect at the time the original application for the first permit in that series is filed shall be the sole basis for the consideration of all subsequent permits required for the completion of the project. §245.002(b), TEX. LOCAL GOV'T CODE.

Under Section 245.002(b) of the Code, all permits required for a project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project. §245.001, TEX. LOCAL GOV'T CODE. Id. In addition, after an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project. §245.002(c), TEX. LOCAL GOV'T CODE.

The statute provides for a few limited exemptions. Chapter 245 does not apply to:

1. Permits that are at least two (2) years old, and issued under laws, ordinances, procedures, rules or regulations adopting only uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or
2. Local amendments to the above codes that are enacted solely to address imminent threats of destruction of property or injury to persons.
3. Municipal zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size, or that do not change development permitted by a restrictive covenant required by a City.
4. Regulations that specifically control only the use of land in a municipality that does not have zoning and that do not affect lot size, lot dimensions, lot coverage, or building zones.
5. Fees imposed in conjunction with development permits.
6. Regulations for sexually oriented businesses, colonias, annexations, or utility connectors.
7. Regulations to prevent imminent destruction of property or injury to persons, including certain flood plain regulations.
8. Construction standards for public works located on public lands or easements.

The statute also contains provisions for dormant projects. A project is considered dormant if, the permit for the project does not have an expiration date and no progress has been made towards the completion of the project. Under §245.005, "progress towards completion of a project" is defined as being anyone or more of the following:

1. application for a final plat;
2. a good faith attempt to file an application with a regulatory agency;
3. incurred costs for project development;
4. posting of fiscal security to ensure performance; or
5. payment of utility connection fees or impact fees for the project.

Golden Rules For Boards and Commissions

A few common-sense rules of general applicability:

1. Discretion is always the better part of valor.
2. Always conduct yourself in a professional and respectful manner, even if others don't. Avoid personal attacks. Treat all similarly. Never discriminate.
3. Never presume that you speak for all or a majority of your board or commission.
4. Do not meet with applicants or discuss applications with the applicant before the meeting.
5. Always consider the effect of your decision on the City as a whole, apart from its effect on one applicant or a small group.
6. Do not make promises to applicants. Consider whether the effect of your decision is to impose added financial or administrative responsibilities for the City. Funding for the City's activities comes from your tax dollars and those of your neighbors.
7. Do not bargain or try to extract improvements or other concessions from an application.
8. Do not "conditionally" grant or deny any application. When you impose conditions on an approval that are not later fulfilled, the City may be unable to require it.
9. Require the applicant to meet the requirements imposed by the City's ordinances, even if you don't see the wisdom right away. Only the City Council has the authority to legislate. No other board or commission has that power.
10. Be prepared. Always read your agenda packet. Before the meeting.

A few rules for the Planning Commission:

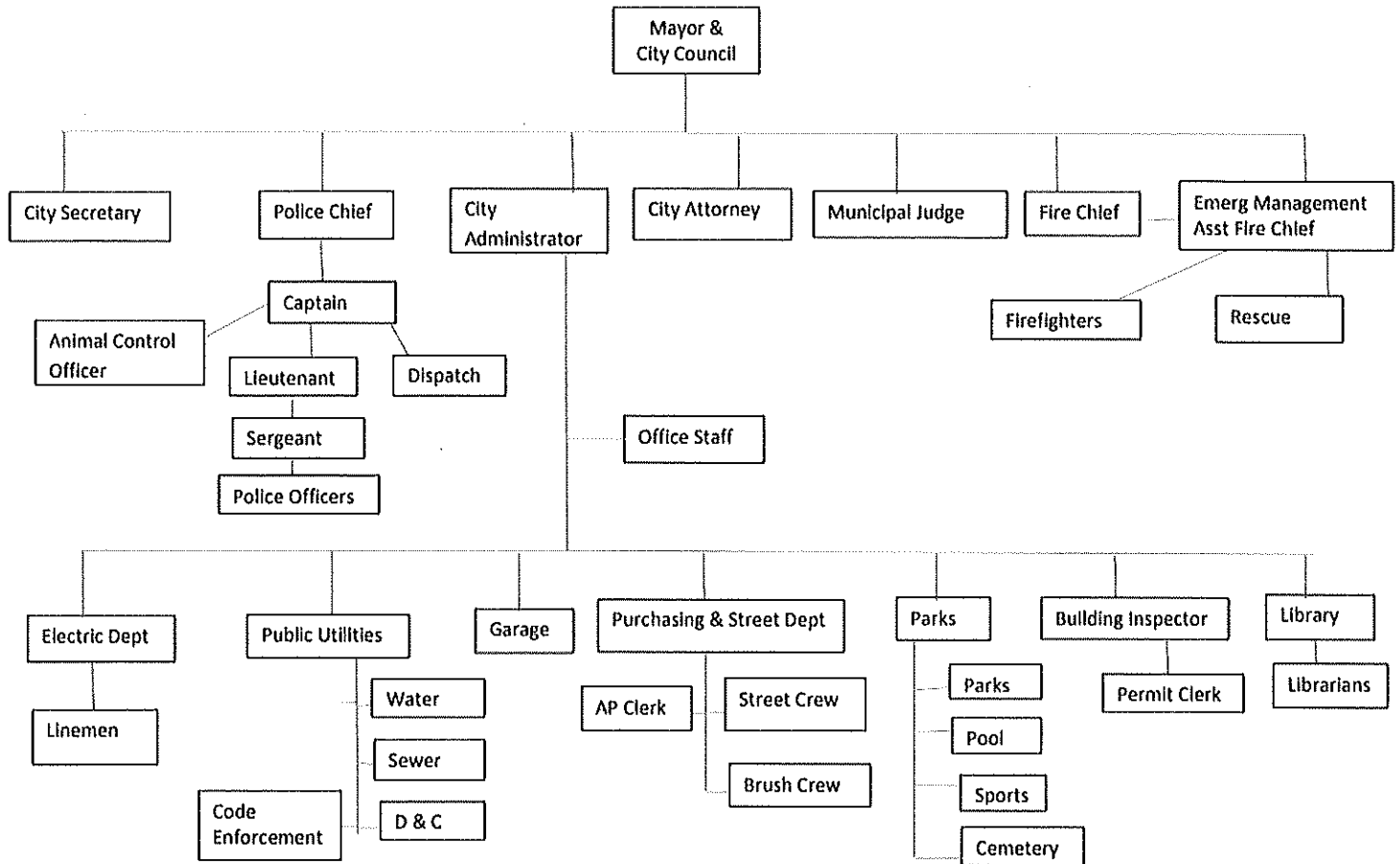
1. Keep in mind the amount of discretion you possess: you have broad discretion in zoning matters. You have very little discretion in plat reviews.
2. You must approve a plat if the application meets all of the City's requirements.
3. When denying a plat, you should provide a specific basis for the denial on the record.
4. Never table a plat application and always avoid tabling a zoning application unless necessary.
5. If denying a plat that complies with your subdivision ordinance on public health, safety or welfare grounds, make sure your reasons concern problems that are unique to that particular plat. Avoid very general concerns, such as fear of increased traffic congestion, effect of development upon schools.
6. Do not participate if you own property within 200 feet of the area of the request.
7. Do not hear case if notice of public hearing is defective - readvertise.

8. Try to keep silent – you do not need to justify your vote or decision. Zoning is a legislative act and is presumed valid and a court may not go behind your decision as to your thought processes or reasons unless you speak and invite such attack.
9. If necessary, blame it on the City attorney.
10. WHEN IN DOUBT, ASK YOUR CITY ATTORNEY!

Appendix A: Organizational Chart



CITY OF WHITESBORO ORGANIZATIONAL CHART



Appendix B: Conflict of Interest Statement

AFFIDAVIT

THE STATE OF TEXAS, COUNTY OF GRAYSON

I, _____, as a member of the _____
Council/Board Member Name
_____, make this affidavit and hereby on oath state the following:

I have a substantial interest in a business entity or real property that may receive a special economic effect by a vote or decision of the Whitesboro City Council or a Board and the economic effect on my business entity or real property is distinguishable from its effect on the general public. What constitutes a "substantial interest," "business entity," "real property," and a "special economic effect" are terms defined in chapter 171 of the Texas Local Government Code.

I affirm that the business entity or real property referred to above is:

The nature of my substantial interest in this business entity or real property is:

- ☐ an ownership interest of 10% or more of the voting stock or shares of the business entity.
- ☐ an ownership interest of 10% or \$15,000 or more of the fair market value of the business entity.
- ☐ funds received from the business entity exceed 10% of _____ (my, his, her) gross income for the previous year.
- ☐ real property is involved and _____ (I, he, she) have/has an equitable or legal ownership with a fair market value of at least \$2,500.
- ☐ a person who is related to me within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the involved real property or business entity. I have also checked which of the above types of interest my relative has in item.

Upon the filing of this affidavit with the official record keeper for the City, I affirm that I shall abstain from any discussion, vote, or decision involving this business entity or real property and from any further participation on this matter whatsoever.

Signed this _____ day of _____ 2018.

Signature of Official

Council or Name of Board

BEFORE ME, the undersigned authority, on this day personally appeared _____
and by oath swore that the facts hereinabove stated are true and correct to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____ 2018.

Notary Public in and for the State of Texas

Appendix C: Roberts Rule of Order

A Quick Guide to Robert's Rules of Order

Parliamentary Procedure

Parliamentary procedure is a set of rules for meeting conduct, allowing everyone to be heard and to make decisions without confusion. Robert's Rules was first published in 1876 by Henry Martin Robert. The basic principles center on courtesy, a balance of rights, the majority to decide, the minority to be heard and absentees to be protected.

Business and Discussion

Business is conducted by means of motions introduced by individuals present at the meeting. *Business may only be conducted when a quorum--a significant minority of the membership stipulated by the Bylaws--is present.*

Individuals are permitted to speak by raising their hand and waiting to be recognized. When an individual has been recognized, he is said to *have the floor*. A speaker may yield the floor when he is finished speaking, or temporarily for an inquiry or secondary motion. No one can interrupt a recognized speaker who has the floor. Anyone who interrupts without just cause should be ruled out of order.

Motions

A motion that brings new business before the assembly is called a *main motion*, and it is submitted *consideration*--debate and a vote--when it has been *seconded* by a show of support from another member. *Only one main motion may be considered at a time.* Subsidiary motions change or affect how a main motion is handled and is voted on before a main motion. Privileged motions bring up urgent items about special or important matters unrelated to pending business. Incidental motions provide a means of questioning procedure concerning other motions and must be considered before the other motion.

Fixed Order of Business

1. Call to order
2. Member roll call
3. Reading of previous meeting minutes
4. Officers' reports
5. Committee reports
6. Special orders—Important business designated for consideration at meeting
7. Unfinished business
8. New business
9. Announcements
10. Adjournment



Debate Rules

- All comments/debate must be directed to the president.
- Keep to established speaking time limit.
- The mover may speak again only after others are finished, unless called by the president.
- You can only interrupt the speaker by making a "point of order" or "point of procedure."

Present a Motion:

1. Obtain the floor by rising and addressing the president by saying, "Ms. President." Wait until the president recognizes you.
2. State the motion affirmatively--say, "I move that we..."
3. Wait for a second to the motion; if there is no second to motion is lost.

Then:

1. The president states the motion by saying, "It has been moved and seconded..." - this places the motion for consideration and action.
2. Membership debates the motion -- once presented it becomes "assembly property" and cannot be changed without member consent.
3. Once debate is finished, the president asks, "Are you ready to vote on the question?" If there is no more discussion, a vote is taken.

Voting—Majority vote is one more than half of the members; Two-thirds vote is one more than two-thirds.

By Voice – President asks those in favor to say "aye" and those opposed to say "no." Any member may move for a exact count.

By Roll Call – Each member answers "yes" or "no" as his name is called and vote is recorded by secretary.

By Division – This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.

By Ballot – Members write their vote on a slip of paper, this method is used when secrecy is desired.

A Quick Guide to Robert's Rules of Order

Points (Incidental Motions)

Points are motions that refer to parliamentary process or other incidental issues. They must always be addressed immediately by the president.

- **Point of Clarification**—used to clear up confusion, to ask to reword a motion, to ask a question about the motion or to inquire as to the correct motion.
- **Point of Information**—used to ask a question of the speaker holding the floor during debate.
- **Point of Order**—used to question a process, improper decorum, or to raise an issue regarding an infraction of the rules. Must be raised immediately after the error is made.



10 Basic Rules for RRO

1. The rights of the organization supersede the rights of individual members.
2. All members are equal and their rights are equal.
3. A quorum must be present to do business.
4. The majority rules.
5. Silence means consent.
6. Two-thirds vote rules.
7. One question and one speaker at a time.
8. Motions must receive full debate.
9. Once a decision is made, an identical motion must not be brought forward at the same meeting.
10. Personal remarks are always out of order.

Motion	Purpose	To Enact
Main	Take action on behalf of the assembly	Debatable; requires majority vote
Adjourn	End the meeting	Not Debatable; immediately voted upon and requires majority vote
Appeal Decision of the Chair	Appeal for the assembly to make the decision instead of the president; must be made before other business is resumed	Not Debatable; use only if relates to decorum, violation of rules, or order of business
Call for Orders of the Day	Ask to stick to the agenda (orders of the day) - deviation from agenda requires a rules suspension	Not Debatable; requires one-third majority vote
Call to Question	Close debate and force a vote	Not Debatable; requires two-thirds majority vote
Divide the Question	Divide a motion into two or more separate questions	Not Debatable; requires majority vote
Extend Debate	Extend debate on a question for a certain period of time; applies only to the pending question	Not Debatable; requires two-thirds majority vote
Object to Consideration	Avoid a motion when it would be undesirable for question to come before the assembly; must be stated before discussion or another motion is made	Not Debatable; requires two-thirds majority vote
Rescind	Change the results of a vote	Debatable; requires two-thirds majority vote
Refer to Committee	Send question to a committee to resolve; if no committee exists, motion must include size of committee desired and method of selecting the members (election or appointment)	Debatable; requires majority vote
Suspend the Rules	Suspend formal process for a short period of time; the object of the suspension must be specified	Debatable; requires two-thirds majority vote
Table	To kill a motion or temporarily suspend further consideration/action on pending question	Not Debatable; requires majority vote
Withdraw/Modify Motion	Request to withdraw or modify a motion before debate; after question is stated, mover can accept amendment without obtaining the floor	Not Debatable; president grants request, or if objection, member of assembly can grant request

Appendix D: Social Media Policy

A. Policy/Purpose

City of Whitesboro departments may utilize social media and social network sites to further enhance communications with various stakeholder organizations in support of City goals and objectives. City officials and City organizations have the ability to publish articles, facilitate discussions and communicate information through various media related to conducting City business. Social media facilitates further discussion of City issues, operations and services by providing members of the public the opportunity to participate in many ways using the Internet.

B. General Provisions

1. All City of Whitesboro social media sites shall be (1) approved by the City Administrator, and (2) published using approved City social networking platform and tools;
2. All City of Whitesboro social networking sites and entries shall adhere to applicable state, federal and local laws, regulations and policies including all Records Management policies and other applicable City policies.
3. Texas Public Information Act and e-discovery laws and policies apply to social media content.
4. All social network sites and entries shall clearly indicate that any articles and any other content posted or submitted for posting are subject to public disclosure.
5. Each City of Whitesboro social networking site shall include an introductory statement which clearly specifies the purpose and topical scope of the blog and social network site. Where possible, social networking sites should link back to the official City of Whitesboro Internet site for forms, documents and other information.
6. City of Whitesboro social networking content and comments containing any of the following forms of content shall not be allowed for posting:
 - a. Comments not topically related to the particular site or blog article being commented upon;
 - b. Profane or obscene language or content;
 - c. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation;
 - d. Sexual content or links to sexual content;
 - e. Content that is considered degrading, demeaning, harassing, or bullying.
 - f. Solicitations of commerce;
 - g. Conduct or encouragement of illegal activity;
 - h. Information that may tend to compromise the safety or security of the public or public systems, personnel, or elected officials

i. Content that violates a legal ownership interest of any other party.

j. Content disparaging specific personnel.

7. All City social networking moderators shall be trained regarding the terms of this City of Whitesboro policy, including their responsibilities to review content submitted for posting to ensure compliance with the policy.

8. All social networking sites shall clearly indicate they are maintained by the City of Whitesboro and shall have City of Whitesboro contact information prominently displayed.

9. Where appropriate, IT security policies shall apply to all social networking sites and articles.

10. Employees representing the City of Whitesboro via social media outlets must conduct themselves at all times as a representative of the City and in accordance with all City of Whitesboro Personnel Policies.

11. Employees found in violation of this policy may be subject to disciplinary action, up to and including termination of employment.

C. Employee Guidance for Participating in Social Networking

The City of Whitesboro understands that social networking and Internet services have become a common form of communication in the workplace and among stakeholders and citizens. Social networks are online communities of people or organizations that share interests and/or activities and use a wide variety of Internet technology to make the interaction a rich and robust experience.

Employees that choose to participate in social networks while a City employee should adhere to the following guidelines.

1. City policies, rules, regulations and standards of conduct apply to employees that engage in social networking activities while conducting City business. Use of your City e-mail address and communicating in your official capacity will constitute conducting City business.

2. Employees who participate in social media outlets on or off-duty are subject to the same standards for such communications as set forth in the City of Whitesboro Personnel Policy.

3. City employees shall notify their supervisor if they intend to create a social networking site or service to conduct City business.

4. Departments, with the approval of the Administrator, have the option of allowing employees to participate in existing social networking sites as part of their job duties.

5. Confidential or proprietary information or similar information of third parties who have shared such information with the City of Whitesboro should not be shared on social media outlets.

6. Employees shall follow all copyright laws, public records laws, retention laws, fair use and financial disclosure laws and any others laws that might apply to the City or your functional area.

7. Employees shall not cite vendors, suppliers, clients, citizens, co-workers or other stakeholders without their approval.
8. When participating in social networking sites not related to City business, an employee shall make it clear that they are not speaking on behalf of the City of Whitesboro but speaking in their capacity as a private citizen.
9. Employees shall not use ethnic slurs, profanity, personal insults, or engage in any conduct that would not be acceptable in the City's workplace. Avoid comments or topics that may be considered objectionable or inflammatory.
10. If an employee identifies one's self as a City employee, the employee shall ensure that their profile and related content is consistent with City of Whitesboro performance and conduct standards regarding how to present one's self to colleagues, citizens and other stakeholders.

Definitions

For the purpose of this City of Whitesboro Social Media Policy, the following terms are defined as provided below:

- A. Social Media and Social Networking: Both terms are used to refer to social Internet sites or websites wherein information is created, exchanged or provided by/to third parties and individuals. Examples of social media include Facebook, blogs, YouTube, Twitter, LinkedIn, Flickr, and blogs of all types, etc.
- B. City of Whitesboro social networking moderator: A designated City of Whitesboro official, approved by City Administrator, who creates, reviews, edits, authorizes and/or allows content to be posted on any City of Whitesboro social media sites.
- C. Article: An original posting of content to a City of Whitesboro social media site by a City of Whitesboro moderator.
- D. Commenter: A City of Whitesboro official or member of the public who submits a comment for posting in response to the content of a particular City of Whitesboro article or social media content.
- E. Comment: A response to a City of Whitesboro article or social media content submitted by a commenter.

Appendix E: Carver Governance Model

John Carver's Policy Governance in a Nutshell

- The Council exists to act as the informed voice and agent of the owners, whether they are owners in a legal or moral sense. All owners are stakeholders but not all stake holders are owners, only those whose position in relation to an organization is equivalent to the position of shareholders in a for-profit corporation.
- The Council is accountable to owners that the organization is successful. As such, it is not advisory to staff but an active link in the chain of command. All authority in the staff organization and in components of the board flows from the board.
- The authority of the Council is held and used as a body. The Council speaks with one voice in that instructions are expressed by the Council as a whole. Individual Council members have no authority to instruct staff.
- The Council board defines in writing its expectations about the intended effects to be produced, the intended recipients of those effects, and the intended worth (cost-benefit or priority) of the effects. These are Ends policies. All decisions made about effects, recipients, and worth are ends decisions. All decisions about issues that do not fit the definition of ends are means decisions. Hence in Policy Governance, means are simply not ends.
- The Council decides its policies in each category first at the broadest, most inclusive level. It further defines each policy in descending levels of detail until reaching the level of detail at which it is willing to accept any reasonable interpretation by the applicant delegate of its words thus far. Ends, Executive Limitations, Governance Process, and Council-Management Delegation policies are exhaustive in that they establish control over the entire organization, both council and staff. They replace, at the council level, more traditional documents such as mission statements, strategic plans, and budgets.
- The identification of any delegate must be unambiguous as to authority and responsibility. No subparts of the council, such as committees or officers, can be given jobs that interfere with, duplicate, or obscure the job given to the City manager/administrator.
- More detailed decisions about ends and operational means are delegated to the City manager/administrator, if there is one. If there is no City manager/administrator, the council must delegate to two or more delegates, avoiding overlapping expectations or causing ambiguity about the authority of the various manager/administrators. In the case of council means, a delegation is to the Mayor unless part of the delegation is explicitly directed elsewhere, for example, to a committee. The delegate has the right to use any reasonable interpretation of the applicable board policies.
- The council must monitor organizational performance against previously stated Ends policies and Executive Limitations policies. Monitoring is only for the purpose of discovering if the organization achieved a reasonable interpretation of these board policies. The board must therefore judge the City manager/administrator's interpretation, rationale for its reasonableness, and the data demonstrating the accomplishment of the interpretation. The ongoing monitoring of the board's Ends and Executive Limitations policies constitutes the City manager/administrator's performance evaluation.