



CITY OF WEST LAKE HILLS, TEXAS
NOTICE OF CITY COUNCIL REGULAR MEETING
Wednesday, November 11, 2020 at 7:00 PM

Notice is hereby given that the City Council of the City of West Lake Hills, Texas, will hold a REMOTE Regular Meeting on the 11th day of November 2020 at 7:00 p.m. at which time the following items will be discussed, to-wit:

REMOTE ACCESS ONLY:

In accordance with the order of the Office of the Governor issued March 16, 2020, the City Council of the City of West Lake Hills will conduct a telephonic meeting in order to advance the public health goal of limiting face-to-face meetings (also called “social distancing”) to slow the spread of the Coronavirus (COVID19).

The public may participate in this meeting by dialing in to the following toll free number: (346) 248-7799, Meeting ID 862 1498 7922, Password: 387042

If you wish to speak during the meeting, please provide your name, phone number and the item number you wish to speak on to citysec@westlakehills.org by 1:00 P.M. on November 11, 2020

Members of the public who wish to submit their written comments in lieu of speaking shall submit their comments by emailing citysec@westlakehills.org. Comments must be received by 1:00 P.M. on November 11, 2020

1. Call to Order
2. Announcements Promotion of Chris Vasquez to Sergeant
3. Citizen Communications The City Council Welcomes Public Comments at this Point on any Issue. If the Issue is Listed on the Agenda, the Speaker May Choose to Comment During the Public Comment Period or When the Specific Agenda item is Taken Up by the Council Later in the Meeting. The Council Cannot Respond to Matters Not Listed on the Agenda Until a Future Meeting. Speakers Shall Limit Their Comments to Five (5) Minutes Each

4. Consent Agenda All Consent Agenda Items Listed are Considered to be Routine by the City Council and Will be Enacted by One (1) Motion. No Separate Discussion or Action on any of the Items is Necessary Unless Desired by a Council Member or Citizen
 - a. Approval of the October 28, 2020 Regular Meeting Minutes
 - b. Approval of the October 26, 2020 Special Called Meeting Minutes

5. Finance Discuss and Consider Action on a Resolution to approve Local Government Investment Cooperative (LOGIC) Investment Pool as an Authorized Investment
 - a. Citizens Communications: All persons wishing to speak on this matter shall be heard

6. Ordinance Discuss and Consider Action for Approval of an Ordinance of the City of West Lake Hills, Texas, amending Chapter 38, Article 38.04, Division 2, of the Code of Ordinances, to amend the administrative procedures for approval of a special use permit; providing for the following: findings of fact; repealer; severability; effective date; codification; proper notice & meeting
 - a. Public Hearing: All persons wishing to speak for or against shall be heard.

7. Executive Session An Executive Session may be held in accordance with the authority contained in Texas Government Code, Section 551 for:
 - a. Consultation with City Attorney Regarding Pending Litigation in Cause No. 2019032801; City of West Lake Hills, Plaintiff, v. Jaffe Ventures, LLC; Douglas Jaffe III, and 1405 Wild Cat Hollow, West Lake Hills, Texas, Defendants and Cause No. D1GN19007546: City of West Lake Hills, Plaintiff v. Jaffe Ventures, LLC and Douglas Jaffe III (Texas Government Code Section 551.071)
 - b. Consultation with City Attorney Regarding City Property Located at 110 Westlake Drive

8. Adjournment

Approved by: Linda Anthony, Mayor

Certificate

I certify that the above Notice of the November 11, 2020 City Council Meeting was posted on the bulletin board at the Municipal Building, 911 Westlake Drive, West Lake Hills, Texas on November 6, 2020 by 5:00 pm. and will remain posted continuously until said meeting is convened.

Signed by: Stephanie Mills, City Secretary

The City of West Lake Hills is committed to compliance with the Americans with Disabilities Act. Reasonable accommodations and equal access to communications will be provided upon request.

All items on the agenda are for discussion and/or action. City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development).

CITY OF WEST LAKE HILLS, TEXAS
MINUTES OF A CITY COUNCIL REGULAR MEETING
Wednesday, October 28, 2020 at 7:00 PM

1. Call to Order

With a quorum present, Mayor Anthony called the meeting to order at 7:01 p.m. Members in attendance were Mayor Linda Anthony, Mayor Pro Tem Jim O'Connor, Councilmembers Rhonda McCollough, Brian Plunkett, Beth South and Darin Walker

2. Citizen Communications The City Council Welcomes Public Comments at this Point on any Issue. If the Issue is Listed on the Agenda, the Speaker May Choose to Comment During the Public Comment Period or When the Specific Agenda item is Taken Up by the Council Later in the Meeting. The Council Cannot Respond to Matters Not Listed on the Agenda Until a Future Meeting. Speakers Shall Limit Their Comments to Five (5) Minutes Each

Mayor Anthony opened the meeting for public comments. Hearing none, the public comment section was closed

3. Consent Agenda All Consent Agenda Items Listed are Considered to be Routine by the City Council and Will be Enacted by One (1) Motion. No Separate Discussion or Action on any of the Items is Necessary Unless Desired by a Council Member or Citizen
- a. Approval of the October 14, 2020 Regular Meeting Minutes
 - b. Quarterly Building & Development Services Update
 - c. Q3 Public Safety Report

**Motion for Approval of the Consent Agenda with the Addition of Item #7 made by Councilmember Walker with a second by Mayor Pro Tem O'Connor
Motion for Approval carried unanimously by a vote of 5 ayes to 0 nays**

4. Administration Discuss and consider action on the Travis County Coronavirus Relief Fund Award application including consideration for Regional Collaboration to include a request from Eanes ISD for funds to cover expenses related to COVID-19
- a. Citizens Communications: All persons wishing to speak on this matter shall be heard

Mayor Anthony provided an update on this item that the application was accepted. No action was taken on this item

5. **Land Use 2 Downie Place:** Discuss and Consider Action of a request to partially release a drainage easement in order to construct a storage area (West Lake Hills Code Sec. 36.01.017). Owner/Applicant William Wiese.

- a. **Public Hearing:** All persons wishing to speak for or against shall be heard.

Applicant Bill Wiese and Tracy Bratton spoke on this item
Motion for Approval made by Mayor Pro Tem O'Connor with a second by Councilmember Plunkett
Motion for Approval carried unanimously by a vote of 5 ayes to 0 nays

6. **Land Use 301 A Cedar Oak Drive:** Discuss and Consider Action on a variance application for the removal of five (5) trees equal to or greater than 14" in diameter in order to construct a new residence: 1) Tree # 1000 - 15" Cedar; 2) Tree # 1081 - 15" Cedar; 3) Tree # 1087 - 14" Cedar; 4) Tree # 1127 - 19" Cedar; and 5) Tree # 1187 - 16" Cedar (West Lake Hills Code Sec. 22.03.304). Applicant Greg Reynolds.

- a. **Public Hearing:** All persons wishing to speak for or against shall be heard.

Applicant Greg Reynolds spoke on this item
Motion for Approval made by Councilmember Walker with a second by Councilmember South
Motion for Approval carried unanimously by a vote of 5 ayes to 0 nays

7. **Land Use 5300 Bee Cave Road:** Discuss and Consider Action on a sign permit for a new wall/projecting sign at Amarillo Bank (West Lake Hills Code Sec. 32.03.009). Applicant Darrell Steffek – G & D Displays.

- a. **Public Hearing:** All persons wishing to speak for or against shall be heard.

This item was added to the Consent Agenda and subsequently approved

8. **Land Use 1801 Westlake Drive:** Discuss and Consider Action on an ordinance and zoning map amendment to rezone 1801 Westlake Drive from Transitional Residential District (R-3) to a Planned Development District (PDD) with a base zoning district of R-3 in order to construct residential condominiums (West Lake Hills Code Sec. 38.05.092 and Sec. 38.06). Applicants 1801 Westlake Drive Venture, LLC & BV Austin Apartments, LLC.

- a. **Public Hearing:** All persons wishing to speak for or against shall be heard.

Terry Irion, David Shiflet, Mark Richardson and Dan Brown spoke on this item
This item was continued to December 9, 2020

9. Administration Discuss and Consider Action on the Appointment/Reappointment of members of the Zoning and Planning Commission

- a. Citizens Communications: All persons wishing to speak on this matter shall be heard

Council went into Executive Session at 8:32 p.m. and reconvened in Open Session at 8:43 p.m.

**Motion to Accept the Resignation of William Vandersteel from the Zoning and Planning Commission, Appoint Karen Bartoletti to serve in his vacated spot as Place 5 ZAPCO Commissioner, and re-appoint Robert Meisel as Chair was made by Councilmember Brian Plunkett with a second by Mayor Pro Tem O'Connor
Motion carried unanimously by a vote of 5 ayes to 0 nays**

10. Administration Discuss and Consider Action on the Cancellation or Rescheduling of the November 25, 2020 and December 23, 2020 City Council Meetings

- a. Citizens Communications: All persons wishing to speak on this matter shall be heard

**Motion to Approve the Rescheduling of the November 25, 2020 City Council Meeting to November 24, 2020 and to Cancel the December 23, 2020 City Council Meeting made by Mayor Pro Tem O'Connor with a second by Councilmember McCollough
Motion for Approval carried unanimously by a vote of 5 ayes to 0 nays**

11. Executive Session An Executive Session may be held in accordance with the authority contained in Texas Government Code, Section 551 for:

- a. Consultation with City Attorney Regarding Pending Litigation in Cause No. 2019032801; City of West Lake Hills, Plaintiff, v. Jaffe Ventures, LLC; Douglas Jaffe III, and 1405 Wild Cat Hollow, West Lake Hills, Texas, Defendants and Cause No. D1GN19007546: City of West Lake Hills, Plaintiff v. Jaffe Ventures, LLC and Douglas Jaffe III (Texas Government Code Section 551.071)
- b. Consultation with City Attorney Regarding City Property Located at 110 Westlake Drive

Council went into Executive Session at 8:52 p.m. and reconvened in Open Session at 9:20 p.m.

12. Adjournment

Motion to adjourn the meeting at 9:21 p.m. made by Councilmember Walker with a second by Councilmember Plunkett
Motion carried unanimously by a vote of 5 ayes to 0 nays

Respectfully submitted,

LINDA ANTHONY, MAYOR

ATTEST:

Stephanie Mills, City Secretary

These minutes were approved on _____, 2020.

CITY OF WEST LAKE HILLS, TEXAS
MINUTES OF A CITY COUNCIL SPECIAL MEETING
Monday, October 26, 2020 at 1:00 PM

1. Call to Order

With a quorum present, Mayor Anthony called the meeting to order at 1:01 p.m. Members in attendance were Mayor Linda Anthony and Councilmembers Rhonda McCollough, Brian Plunkett, Beth South and Darin Walker.

2. Administration Discuss and consider action on the Travis County Coronavirus Relief Fund Award application including consideration for Regional Collaboration to include a request from Eanes ISD for funds to cover expenses related to COVID-19

**Jeremy Trimble from Eanes ISD spoke on this item
Motion for Authorize Mayor Anthony to Move Forward with the Travis County Coronavirus Relief Fund Award application including the request from Eanes ISD made by Councilmember McCollough with a second by Councilmember Walker
Motion carried unanimously by a vote of 5 ayes to 0 nays**

3. Adjournment

**Motion to adjourn the meeting was made at 1:25 p.m. by Councilmember Walker with a second by Councilmember South.
Motion carried unanimously with a vote of 4 ayes and 0 nays**

Respectfully submitted,

LINDA ANTHONY, MAYOR

ATTEST:

Stephanie Mills, City Secretary

These minutes were approved on _____, 2020.

RESOLUTION NO. 2020-11-01

A RESOLUTION OF THE CITY OF WEST LAKE HILLS, TEXAS, APPROVING AND AUTHORIZING EXECUTION OF A PARTICIPATION AGREEMENT AND TRUST INSTRUMENT FOR PARTICIPATION IN A PUBLIC FUNDS INVESTMENT POOL, DESIGNATING THE BOARD OF TRUSTEES OF THE POOL AS AN AGENCY AND INSTRUMENTALITY TO SUPERVISE THE POOL, APPROVING INVESTMENT POLICIES OF THE POOL, APPOINTING AUTHORIZED REPRESENTATIVES AND DESIGNATING INVESTMENT OFFICERS.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended (the “Interlocal Act”), permits any “local government” to contract with one or more other “local governments” to perform “governmental functions and services,” including investment of public funds (as such phrases are defined in the Interlocal Act);; and

WHEREAS, the Interlocal Act authorizes the contracting parties to any interlocal agreement to contract with agencies of the State of Texas, within the meaning of Chapter 771 of the Government Code, and

WHEREAS, the Act permits the contracting parties to any interlocal agreement to create an administrative agency to supervise the performance of such interlocal agreement and to employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of such interlocal agreement; and

WHEREAS, the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, as amended (the “PFIA”), authorizes the entities described in Subsection (a) of the PFIA to invest their funds in an eligible public funds investment pool, and the Local Government Investment Cooperative (LOGIC) intends to become and remain an eligible public funds investment pool, under the terms and conditions set forth in PFIA; and

WHEREAS, the City of West Lake Hills desires to enter into that certain Participation Agreement and Trust Instrument (the “Agreement”), a copy of which is presented with this Resolution and is incorporated herein by reference, and to become a participant in a public funds investment pool created under the PFIA, to be known as Local Government Investment Cooperative (LOGIC) (the “Pool”); and

WHEREAS, the City of West Lake Hills is a Government Entity as defined in the Agreement; and

WHEREAS, the City of West Lake Hills desires to cause administration of the Pool to be performed by a board of trustees (the “Board”), which shall be an advisory board

under the PFIA, an administrative agency created under the Interlocal Act, and trustee of the funds in the Pool; and

WHEREAS, the City of West Lake Hills desires to designate the Board as its agency and instrumentality with authority to supervise performance of the agreement, employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of the Agreement; and

WHEREAS, each capitalized term used in this Resolution and not otherwise defined has the same meaning assigned to it in the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of West Lake Hills, Texas, that:

SECTION 1

The Agreement is hereby approved and adopted and, upon execution thereof by an Authorized Representative (defined below) and receipt of the Government Entity's application to join the Pool by the Administrator, the Government Entity shall become a Participant in the Pool for the purpose of investing its available funds in the Pool from time to time in accordance with the terms of the Agreement.

SECTION 2

The Board is hereby designated as an agency and instrumentality of the Government Entity, and the Board shall have the authority to supervise performance of the Agreement and the Pool, employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of the Agreement. The Government Entity agrees that all moneys it transfers to the Pool shall be held and managed in trust by the Board for the benefit of the Government Entity.

SECTION 3

The investment policies of the Pool, as set forth in the document entitled Investment Policies, as summarized in the Information Statement, and as may be amended from time to time by the Board, are hereby adopted as investment policies of the Government Entity with respect to money invested in the Pool, and any existing investment policies of the Government Entity in conflict therewith shall not apply to investments in the Pool. official records.

SECTION 4

The following officers, officials or employees of the Government Entity are hereby designated as "Authorized Representatives" within the meaning of the Agreement, with full power and authority to: execute the Agreement, an application to join the Pool and any other documents required to become a Participant; deposit money to and withdraw money from the Government Entity's Pool account from time to time in accordance with the Agreement and the Information Statement; to agree to the terms for use of the website for online transactions and take all other actions deemed necessary or appropriate for the investment of funds of the Government Entity:

1. Name: _____ Title: _____ Phone: _____
Signature: _____ Email: _____

2. Name: _____ Title: _____ Phone: _____
Signature: _____ Email: _____

3. Name: _____ Title: _____ Phone: _____
Signature: _____ Email: _____

4. Name: _____ Title: _____ Phone: _____
Signature: _____ Email: _____

In accordance with the Pool's procedures, an Authorized Representative shall promptly notify the Pool in writing of any changes in who is serving as Authorized Representatives.

SECTION 5

List the name of the Authorized Representative listed above that will be designated as the Primary Contact and will receive all LOGIC correspondence including transaction confirmations and monthly statements

Name: _____

SECTION 6

In addition, the following additional Participant representative (not listed above) is designated as an Inquiry Only Representative authorized to obtain account information: (Optional)

Name: _____ Title: _____ Phone: _____
Signature: _____ Email: _____

Applicant may designate other authorized representatives by written instrument signed by an existing Applicant Authorized Representative or Applicant's chief executive officer.

SECTION 7

Taxpayer Identification Number.

Applicant's taxpayer identification number is _____

SECTION 8

Contact Information.

Applicant primary mailing address:

Applicant physical address (if different):

Applicant main phone number:

Applicants main fax number:

In addition to the foregoing Authorized Representatives, each Investment Officer of the Pool appointed by the Board from time to time is hereby designated as an investment officer of the Government Entity and, as such, shall have responsibility for investing the share of Pool assets representing funds of the Government Entity. Each depository and custodian appointed by the Board from time to time are hereby designated as a depository and custodian of the Government Entity for purposes of holding the share of Pool assets representing funds of the Government Entity.

PASSED & APPROVED, this the 11th day of November 2020,

CITY OF WEST LAKE HILLS:

Linda Anthony, Mayor

ATTEST:

Stephanie Mills, City Secretary



Local Government Investment Cooperative (LOGIC) Participation Agreement and Trust Instrument

THIS PARTICIPATION AGREEMENT AND TRUST INSTRUMENT (together with any amendments and supplements, referred to as this “Agreement”) is made and entered into by and among each of those government entities initially executing this Agreement and any other government entity that is eligible and becomes a party hereto (collectively, the “Participants”).

WHEREAS, the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, as amended (the “PFIA”) authorizes the entities described in the PFIA to invest their funds in an eligible public funds investment pool;

WHEREAS, each of the Participants qualifies as an entity described in the PFIA;

WHEREAS, the Participants desire to establish and maintain a public funds investment pool for the purpose of pooling their local funds for joint investment in accordance with the PFIA and the terms hereof and providing assistance to each other on investment alternatives and on other issues of concern to the Participants;

WHEREAS, the Participants desire that the public funds investment pool be entitled Local Government Investment Cooperative (LOGIC) and that it be managed and operated by a board of trustees, which shall be an advisory board under the PFIA;

WHEREAS, each of the Participants has duly taken all official action necessary and appropriate to become a party to this Agreement, including the adoption of a rule, order, ordinance, or resolution, as appropriate;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, each Participant agrees that all moneys it transfers to LOGIC on or after the effective date hereof shall be held and managed in trust by the board of trustees for the benefit of the Participant, and the Participants mutually agree as follows:

ARTICLE I

Definitions and Rules of Construction

Section 1.01. Definitions. Except as otherwise provided in this Agreement, the capitalized terms used herein shall have the following meanings unless the context otherwise requires:

Account - any account established by a Participant.

Additional Party Agreement - a document substantially in the form attached hereto as an Appendix which, when attached to a copy of this Agreement and executed by an Authorized Representative of a Government Entity, constitutes a valid and binding counterpart of this Agreement and results in the Government Entity becoming a party to this Agreement.

Administrator - Any person, firm or organization approved by the Board and under contract to provide administrative assistance in connection with the management and operation of the Pool.

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

Advisor - The registered investment advisor or advisors selected by or at the direction of the Board to provide advice regarding investment of Pool assets pursuant to this Agreement and subject to applicable law.

Authorized Investments - those investments which are authorized from time to time to be purchased, sold and invested in under PFIA or other applicable law and further defined in the Investment Policies.

Authorized Representative - an individual authorized to execute documents and take other necessary actions, pursuant to this Agreement, on behalf of a Government Entity or other person, firm or organization, as evidenced by a duly adopted resolution or bylaw of the governing body of such Government Entity or other person, firm or organization, a certified copy of which is on file with the Administrator. In the case of a Government Entity that is a combination of political subdivisions under the Act, the Authorized Representatives of any administrative agency appointed by such combination of political subdivisions shall be deemed to be Authorized Representatives for such Government Entities.

Board - the governing body of the Pool, known as The Board of Trustees of Local Government Investment Cooperative.

Bylaws - the bylaws adopted by the Board, as the same may be amended from time to time, subject to the requirements of this Agreement.

Custodian - any person, firm or organization selected by or at the direction of the Board to have custody of all money, investments and other assets of the Pool pursuant to this Agreement and subject to applicable law.

General Manager - any person, firm or organization which has contracted with the Board to provide general management services to the Board.

Government Entity - a local government of the State of Texas, as defined in the PFIA, a state agency, as defined in the PFIA, and a nonprofit corporation acting on behalf of a local government or a state agency, including but not limited to an incorporated city or town, a county, a public school district, a district or authority created under art. III, Section 52(b)(1) or (2) of the Texas Constitution, or art. XVI, Section 59 of the Texas Constitution, an institution of higher education as defined by Section 61.003 of the Education Code, a hospital district, or a fresh water supply district.

Information Statement - the information statement or any other document distributed to Participants and potential Participants to provide them with a description of the management and operation of the Pool, as the same may be amended from time to time, subject to the requirements of this Agreement.

Interlocal Act - the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as the same may be amended from time to time.

Investment Officer - one or more officers or employees of the Board designated as investment officers by the Board.

Investment Policies - the written Investment Policies adopted and approved by the Board governing investment and management of Pool assets of different Portfolios, as the same may be amended from time to time, subject to the requirements of this Agreement.

Marketing Representative - any person, firm or organization authorized by the Board to promote the Pool.

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

Participants - the Government Entities that are the initial parties to this Agreement and the Government Entities which subsequently become parties to this Agreement.

PFIA - the Public Funds Investment Act, Chapter 2256, Texas Government Code, as the same may be amended from time to time.

Pool - the public funds investment pool and trust created pursuant to this Agreement.

Portfolio - a portfolio of assets in the Pool which are held separate from other assets of the Pool and which are invested with a defined investment objective which may be different from other Portfolios in the Pool, and in which a Participant may elect to invest its funds.

State - the State of Texas.

Units - equal proportionate units of undivided beneficial interest in the assets of the Pool or of any Portfolio of the Pool from time to time, including fractions of units as well as whole units.

Section 1.02. General Rules of Construction.

- (a) Whenever in this Agreement the context requires: (1) a reference to the singular number shall include the plural and vice versa; and (2) a word denoting gender shall be construed to include the masculine, feminine, and neuter.
- (b) The titles given to any article or section of this Agreement are for convenience only and are not intended to modify the article or section.

ARTICLE II

Creation of the Pool and Trust; Purpose and Objective

Section 2.01. Creation of the Board.

- (a) The Participants hereby agree to jointly invest their funds in a public funds investment pool and trust, to be known as Local Government Investment Cooperative (the "Pool") and to create and establish a board of trustees of the Pool (the "Board"), as an advisory board pursuant to the PFIA, an administrative agency pursuant to the Interlocal Act, and as trustee of the funds in the Pool.
- (b) The Participants delegate to the Pool through its Board, the authority to hold legal title to and manage all money, investments and other assets transferred to or acquired by the Pool pursuant to this Agreement as Pool assets.
- (c) The Board shall have the authority to employ personnel, engage in other administrative activities and provide other administrative services necessary to accomplish the purpose of this Agreement.

Section 2.02. Purpose and Objective.

- (a) The first purpose of the Pool is to provide Government Entities with a variety of investment vehicles to best suit their investment needs, with each Portfolio tailored to meet a specific investment need.

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

- (b) The second purpose of the Pool is to provide Government Entities with a forum for discussion of, and to provide education concerning, investments and other issues of concern in public finance. In all cases, however, the Pool will have the following investment objectives in order of priority: safety of principal; liquidity in accordance with the operating requirements of the Participants; and the highest rate of return.
- (c) In order to accomplish the Pool's objective, each Participant agrees that the money transferred to a Portfolio within the Pool will be commingled with other money transferred to the Portfolio by other Participants for the purpose of making Authorized Investments, subject to the terms of this Agreement, the Investment Policies and applicable law, thereby taking advantage of investment opportunities and cost benefits available to larger investors.

ARTICLE III

Pool Administration

Section 3.01. The Board and the Bylaws

- (a) The business and affairs of the Pool shall be managed by the Board as governing body of the Pool.
- (b) The Board is authorized to adopt Bylaws which shall set forth, among other things, the initial Board members, the procedures governing the selection of the members of the Board, the procedure for holding meetings, the election of officers, and other matters necessary or desirable for governance by the Board, and the right of the Board, the General Manager, and other consultants to be indemnified for damages arising from their actions in connection with the Pool. By executing this Agreement, the Participant consents to the Bylaws. By maintaining funds in the Pool after any amendment to the Bylaws becomes effective, the Participant consents to the Bylaws, as amended. The Board has the right to amend any term or provision of the Bylaws, provided that notice is sent to each Participant at least 30 days prior to the effective date of any change which, in the opinion of the Board, is a material change to the Bylaws.

Section 3.02. Powers and Duties of the Board.

- (a) Subject to applicable law and the terms of this Agreement, the Board shall have full and complete power to take all actions, do all things and execute all instruments as it deems necessary or desirable in order to carry out, promote or advance the investment objective, interests and purposes of the Pool to the same extent as if the Board was the sole and absolute owner of the Pool.
- (b) The Board shall adopt and maintain Investment Policies, consistent with the general objective of the Pool, which shall provide more detailed guidelines for investment and management of Pool assets. By executing this Agreement, the initial Participants consent to the proposed Investment Policies, and the subsequent Participants consent to the Investment Policies then in effect. By maintaining funds in the Pool after any amendment to the Investment Policies becomes effective, the Participant has consented to the Investment Policies, as amended. The Board shall, subject to the terms of this Agreement, have the authority to amend any term or provision of the Investment Policies, provided

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

that notice is sent to each Participant at least 30 days prior to the effective date of any change which, in the opinion of the Board, will have a material effect on such Participant's investment in the Pool.

- (c) The Board shall adopt and maintain Operating Procedures, which shall provide more detailed information on the procedures for depositing and withdrawing funds from the Pool. By executing this Agreement, the initial Participants consent to the proposed Operating Procedures, and the subsequent Participants consent to the Operating Procedures then in effect. By maintaining funds in the Pool after any amendment to the Operating Procedures becomes effective, the Participant has consented to the Operating Procedures, as amended. The Board shall, subject to the terms of this Agreement, have the authority to amend any term or provision of the Operating Procedures provided that notice is sent to each Participant at least 30 days prior to the effective date of any change which, in the opinion of the Board, will have a material effect on such Participant's investment in the Pool.
- (d) The Board shall designate one or more Investment Officers for the Pool who shall be responsible for the investment of Pool assets.
- (e) The Board shall prepare, or direct the preparation of an Information Statement that describes how the Pool will operate in accordance with the terms of this Agreement and the Investment Policies. Subject to the terms of this Agreement and the Investment Policies, the Information Statement may be amended or supplemented, notice of which will be provided to Participants in accordance with the disclosure requirements of the PFIA.
- (f) The Board shall, subject to the limitations established in the Investment Policies, have full and complete power and authority to appoint a general manager and any other service providers deemed necessary or helpful in the operation of the Pool.
- (g) The Board shall provide, through peer review, seminars, computer mail systems, or other means, information and educational opportunities to Participants on investing and on other issues in the area of public finance.
- (h) The Board shall have full and complete power to use, or direct the use of, Pool assets for the following purposes: (1) incur and pay any expenses which, in its opinion, are necessary or incidental to or proper for carrying out any of the purposes of this Agreement; (2) reimburse others for the payment thereof; (3) pay appropriate compensation or fees to persons with whom the Pool has contracted or transacted business; and (4) charge a Participant's Account for any special fees or expenses related specifically to transactions in such Account.
- (i) The Board shall have full power to compromise, arbitrate, or otherwise adjust claims in favor of or against the Pool.
- (j) The Board shall cause financial statements to be prepared and maintained for the Pool and for such statements to be audited annually by an independent certified public accounting firm.
- (k) The Board may appoint a General Manager to perform managerial services for the Pool, provided that the Board shall continue to oversee the operation and

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

management of the Pool and shall have the authority to direct the General Manager to take or not take specific action on behalf of the Pool.

- (l) The enumeration of any specific power or authority herein shall not be construed as limiting the general power and authority of the Board over the Pool.
- (m) The Board shall act in good faith in accordance with the purposes of the Pool.

Section 3.03. Liability.

- (a) Neither the Board, the Investment Officers, nor any officers, employees or board members of any of the forgoing shall be held liable for any action or omission to act on behalf of the Pool or the Participants unless caused by such person's willful misconduct or unless constituting a breach of trust for which a trustee may not be relieved of liability under the Texas Trust Code. The Pool shall indemnify and hold harmless (either directly or through insurance) any person referred to in this Section, to the extent permitted by law, for any and all litigation, claims or other proceedings, including but not limited to reasonable attorney fees, costs, judgments, settlement payments and penalties arising out of the management and operation of the Pool, unless the litigation, claim or other proceeding resulted from the willful misconduct of such person or a breach of trust for which a trustee may not be relieved of liability under the Texas Trust Code.
- (b) Neither the General Manager, the Marketing Representative, the Administrator, the Advisor, the Subadvisor, the Custodian, nor their affiliates, officers, employees or board members shall be held liable for any action or omission to act on behalf of the Pool or the Participants unless such person failed to meet the standard of care required under its agreement relating to the Pool or acted with willful misconduct. The Pool shall indemnify and hold harmless (either directly or through insurance) any person referred to in this Section, to the extent permitted by law, for any and all litigation, claims or other proceedings, including but not limited to reasonable attorney fees, costs, judgments, settlement payments and penalties arising out of the management and operation of the Pool, unless the litigation, claim, or other proceeding is adjudicated to have resulted from such person's failure to meet the standard of care required under its agreement relating to the Pool or its willful misconduct.
- (c) The indemnification provisions are described in more detail in the Bylaws.

ARTICLE IV

Participation in LOGIC

Section 4.01. Eligibility. In order for a Government Entity to become a Participant and transfer money into the Pool, each of the following conditions must be satisfied:

- (a) The Government Entity must adopt a resolution (1) authorizing it to become a Participant and approving this Agreement, (2) acknowledging the Board's power to supervise the Pool and agreeing that moneys it transfers to the Pool shall be held and managed in trust by the Board for the Government Entity's benefit, (3) approving the investment policies of the Pool (as amended from time to time by

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

the Board) and directing that any conflicting local investment policies shall not apply to Pool investments of the Participant, (4) designating Authorized Representatives of the Participant, (5) designating the Investment Officers appointed from time to time by the Board as the Participant's investment officers who shall be responsible for investing the share of Pool assets representing local funds of the Participant, (6) designating the depository and custodian appointed from time to time by the Board as the Government Entity's depository and custodian for purposes of holding the share of Pool assets representing funds of the Government Entity, and consenting to the terms and conditions specified on the website in order to use the online transaction system; and

- (b) The Government Entity must become a party to this Agreement by executing an Additional Party Agreement and delivering the same to the Pool, together with a certified copy of the resolution referred to in subsection (a) of this Section, an application in form and substance satisfactory to the Board, and such other information as may be required by the Board.
- (c) No entity except a Government Entity may be a Participant. The Board shall have sole discretion to determine whether a Government Entity is eligible under Texas law to be a Participant and to designate categories of Government Entities eligible to be Participants in any Portfolio of the Pool.

Section 4.02. Participant Accounts.

- (a) While available local funds of Participants may be commingled for purposes of common investment and operational efficiency, one or more separate Accounts for each Participant in each Portfolio in the Pool designated by the Participant will be established in accordance with the Participant's application to join the Pool and maintained by the Pool.
- (b) Each Participant shall own an undivided beneficial interest in the assets in the Portfolios in which it invests, calculated as described in the Investment Policies.
- (c) The Participant agrees that all Pool fees shall be directly and automatically assessed and charged against the Participant's Account. The basic services fee shall be calculated as a reduction in the daily income earned and only the net income shall be credited to the Participant's Account. Fees for special services shall be charged to each Participant's Account as they are incurred or performed. Use of Pool assets for fees shall be made from current revenues available to the Participant.

Section 4.03. Reports. The Pool shall submit a written report a least once per month to each Participant. Such report will indicate: (1) the balance in each Account of a Participant as of the date of such report, (2) yield information, (3) all account activity since the previous report, and (4) other information required by the PFIA.

Section 4.04. Termination.

- (a) A Participant may withdraw all funds from an Account in accordance with the Investment Policies and Operating Procedures. A Participant may cease to be a Participant under this Agreement, with or without cause, by providing written notice to the Pool at least 10 days prior to such termination.

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

- (b) The Board may terminate a Participant's participation in this Agreement upon at least 30 days' notice if Texas law changes so that such Participant is no longer entitled to join in an eligible public funds investment pool under PFIA, the Interlocal Act, or other applicable law.
- (c) Upon the vote of a majority of its full membership, the Board may order the termination of this Agreement by directing that all outstanding operating expenses of the Pool be paid and remaining assets of the Pool be distributed to Participants in accordance with their respective pro rata interests.

ARTICLE V

Pool Assets

Section 5.01. Investments. Pool assets shall be invested and reinvested by the Pool only in Authorized Investments in accordance with the Investment Policies.

Section 5.02. Custody. All money, investments and assets of the Pool shall be held in the possession of the Custodian.

ARTICLE VI

Miscellaneous

Section 6.01. Severability.

- (a) If any provision of this Agreement shall be held or deemed to be illegal, inoperative or unenforceable, the same shall not affect any other provisions contained herein or render the same invalid, inoperative or unenforceable to any extent whatsoever.
- (b) Any participation in this Agreement or transfer of assets to the Pool that is not qualified for any reason shall not terminate this Agreement or the participation of other Participants or otherwise adversely affect the Pool.

Section 6.02. Limitation of Rights. This Agreement does not create any right, title or interest for any person other than the Participants and any person who has a contract to provide services to the Pool, and nothing in or to be implied from this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under this Agreement.

Section 6.03. Execution of Counterparts. This Agreement may be executed in several separate counterparts, including by Additional Party Agreement, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 6.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 6.05. Term. This Agreement shall have an initial term beginning with the effective date set forth below and shall be automatically renewed for one year on such date and each anniversary of such date, except with respect to any Government Entity that may have terminated itself as a Participant or as otherwise provided in Section 4.05.

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

Section 6.06. Notices. Any notices or other information required or permitted to be given hereunder shall be sent: (a) to the Pool as set forth in the Information Statement, and (b) to a Participant as set forth in its application to become a Participant or as otherwise provided by written notice to the Administrator.

Section 6.07. Trust. LOGIC shall be a trust organized and existing under the laws of the State. LOGIC is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, joint venture, corporation, investment company, or joint stock company. The Participants shall be beneficiaries in LOGIC, and their relationship to the Board shall be solely in their capacity as Participants and beneficiaries in accordance with the rights conferred upon them hereunder. Nothing in this Agreement shall be construed to make the Participants, either by themselves or with the trustees, partners, or members of a joint stock association.

Section 6.08. Entire Agreement; Amendments. This Agreement represents the entire agreement and understanding of the Participants. This Agreement may be amended with the approval of the Board, provided that notice of any such amendment is sent to all Participants at least 60 days prior to the effective date thereof.

* * * * *

Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

Originally executed between Fort Bend County and City of Wichita Falls, Texas as of April 4, 1994, and amended by the Board and effective March 1, 1999 and December 4, 2015. The Board hereby acknowledges its duties as Trustee upon the effective date hereof.

* * * * *

Approved and accepted:

The Board of Directors, Local Government Investment Cooperative

By: /s/ Phil Roberson
President

Date: December 4, 2015

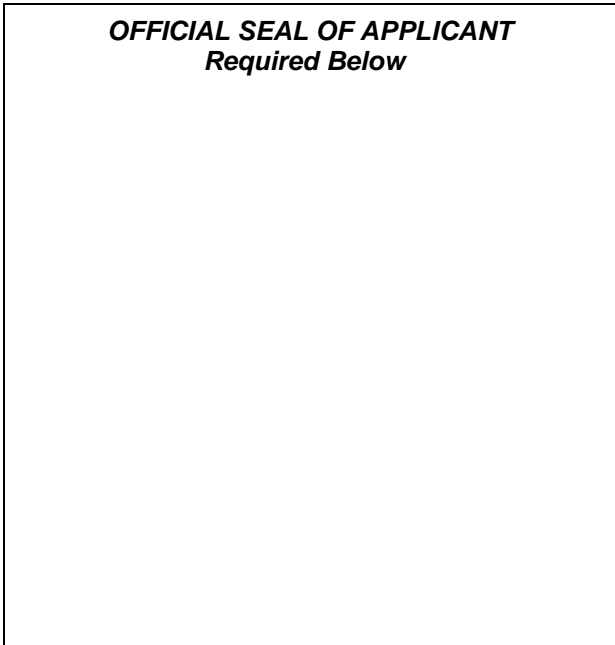
Local Government Investment Cooperative (LOGIC)
Participation Agreement and Trust Instrument

Additional Party Agreement

The Government Entity of the State of Texas named below, acting by and through the undersigned Authorized Representative, hereby agrees to become a party to that certain Participation Agreement and Trust Instrument to which this page is attached, and thereby become a Participant in the Local Government Investment Cooperative, subject to all of the terms and provisions of such Agreement. The undersigned hereby represents that it is a Government Entity as defined in such Agreement.

Executed this _____ day of _____, 20_____.

Name of Government Entity _____



By: _____
Authorized Representative

Printed Name and Title

Attest: _____
Authorized Representative

Printed Name and Title

Approved and accepted:

LOCAL GOVERNMENT INVESTMENT COOPERATIVE {LOGIC}

By: FIRSTSOUTHWEST, A DIVISION OF HILLTOP SECURITIES
Participant Services Administrator

By: _____ Date: _____

Authorized Signer



**SPECIAL USE PERMIT CODE AMENDMENTS
STAFF REPORT**

NOVEMBER 11, 2020

Agenda Item: Ordinance: Discuss and Consider Action for Approval of an Ordinance of the City of West Lake Hills, Texas, amending Chapter 38, Article 38.04, Division 2, of the Code of Ordinances, to amend the administrative procedures for approval of a special use permit; providing for the following: findings of fact; repealer; severability; effective date; codification; proper notice & meeting.

Background/Analysis:

In an effort to streamline the application process and reduce the burden on applicants applying for Special Use Permits (SUPs), staff is proposing Code amendments that will shorten the approval timeframe. Applicants must still comply with the general criteria applicable to all special uses, and the conditions applicable the proposed special use.

Section 211.009(a) of the Local Government Code authorizes the Board of Adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the BOA to do so. Accordingly, the zoning ordinance authorizes the BOA to issue special use permits subject to the requirements and conditions of the ordinance.

Currently, the ordinance requires written notice the public hearing to all property owners within 300 feet at least ten days prior to the date of the hearing. The applicant is responsible for drafting the notice and serving it (though in reality, City staff drafts and sends all public notices). In addition, notice in the form of weather resistant signs must be posted by the applicant for at least 10 days prior to the hearing. Lastly, the notice must be published in the newspaper 15 days prior to the hearing. Due to the notification requirements, applicants therefore must submit SUP applications at least thirty days prior to the next BOA meeting.

The proposed amendments also contemplate requiring home based businesses and short-term rental SUPs to go through the BOA process instead of administrative approval for consistency.

	<u>Section & Page #</u>	<u>Proposed Amendment</u>	<u>Reason for Amendment</u>
1)	38.04.032 (b)(2)	Removal of provisions permitted administrative approval of home based businesses and STRs	Consistency with the rest of provisions and compliance with LGC 211
2)	38.04.032 (e)	Removal of public notification requirements	Streamline and shorten the SUP application process
3)	38.04.032 (f)	Amend lettering (now subsection (e)) and amend subsection header language to	Clarification and clean-up

<u>Section & Page #</u>	<u>Proposed Amendment</u>	<u>Reason for Amendment</u>
	remove "recommendation" by BOA and replace with "approval" by BOA	

Staff Recommendation

Staff recommends approval of the proposed Code amendments.

City of West Lake Hills, Texas

ZONING ORDINANCE AMENDMENT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WEST LAKE HILLS, TEXAS, AMENDING CHAPTER 38, ARTICLE 38.04, DIVISION 2, OF THE CODE OF ORDINANCES, TO AMEND THE ADMINISTRATIVE PROCEDURES FOR APPROVAL OF A SPECIAL USE PERMIT; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; AND PROPER NOTICE & MEETING.

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code, the City has the authority to regulate zoning; and

WHEREAS, the City seeks to amend the Zoning Ordinance, Chapter 38, Article 38.04, to amend the administrative procedures for approval of a special use permit; and

WHEREAS, after notice and hearing required by law, a public hearing was held before the West Lake Hills Zoning and Planning Commission on November __, 2020 to consider the proposed amendments and the Zoning and Planning Commission recommended approval of the proposed amendments; and

WHEREAS, after public hearing held by the City Council on November __, 2020 the City Council voted to _____; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of West Lake Hills to adopt an ordinance amending Chapter 38: Zoning.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST LAKE HILLS, TEXAS, THAT:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Chapter 38, Article 38.04, Division 2, Section 38.04.032 of the West Lake Hills Code of Ordinances is hereby amended to read in accordance with *Attachment "A"* which is attached hereto and incorporated into this Ordinance and the City Code for all intents and purposes. Underlined and italicized text shall be added, and struck-through and bracketed text shall be deleted as indicated in *Attachment "A"*.

3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the ____ day of _____, 2020, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of West Lake Hills, Texas.

CITY OF WEST LAKE HILLS:

by: _____
Linda Anthony, Mayor

ATTEST:

Stephanie Mills, City Secretary

ATTACHMENT "A"

CHAPTER 38 ZONING

ARTICLE 38.04 SUPPLEMENTARY REGULATIONS

Division 2. Special Uses

Sec. 38.04.032 Special use permit

(a) Required. No special use shall be established, operated or maintained except as authorized by a special use permit issued in accordance with the requirements of this section.

(b) Issuance.

(1) Issuance by board of adjustment. A special use permit may be issued only for the special uses specified in this division, and only for the district where it is authorized. [~~Unless for a home-based business or a short-term rental, a~~] A special use permit may only be issued by the board of adjustment acting after a public hearing. In considering any application for a special use permit, the board of adjustment shall give due regard to the nature and condition of all adjacent land, uses, and structures. The board of adjustment may disapprove an application for a special use permit, or approve same subject to such requirements and conditions, in addition to the regulations of the district in which the particular use is located, as it may deem necessary for the protection of adjacent properties and the public interest.

~~[(2) Issuance by city administrator. The city administrator may issue special use permits for:~~

~~(A) Home-based businesses. The city administrator may issue a special use permit for a home-based business, without public hearings, if: the applicant complies with subsection (c), sections 38.04.033 and 38.04.034(a), provides written notice in accordance with the applicable provisions of subsection (e), and provided the city administrator receives no written protests from owners of all real property located within 300 feet in all directions of the applicant's property on which the home-based business is sought, regardless of whether the neighboring property is within the city limits or ETJ.~~

~~(B) Short-term rental. The city administrator may issue a special use permit for a short-term rental, without a public hearing or review by the board of adjustment, if the applicant complies with subsection (c) of this section, section 38.04.033, and section 38.04.034(o)].~~

(c) Application. An application for a special use permit shall be made in writing in a form prescribed by the city administrator and shall be accompanied by such information as may be requested, including a site plan, if required, in order to properly review the proposed use. Such information may include but is not limited to site and building plans, drawings and elevations, and operational data. All applicants for a special use permit for a nonresidential use in a residential district shall provide the city with a signed letter from a licensed attorney verifying that the proposed use will not be violating deed restrictions. Short-term rental permit applications will not require site plans, building plans, drawings, elevations, operational data, or an attorney letter.

(d) Report by city administrator or city inspector. Either the city administrator or the city inspector shall visit the site of the proposed special use, except a proposed short-term rental, and the surrounding area and shall prepare findings to be delivered to the board of adjustment.

~~[(e) — Notice of public hearing before board of adjustment.~~

~~(1) — The board shall hold a public hearing on each application for a special use permit.~~

~~(2) — Written notice of such hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. For nonresidential special uses, written notice of the hearing shall be given to the owners of all real property located within 300 feet in all directions of the property that is the subject of the hearing, regardless of whether the neighboring property is within the city limits or ETJ. Notice shall be given not less than ten days prior to the date of the hearing either by personal service or by depositing a copy of the notice in the mail addressed to each owner at the owner's address shown on the last approved city tax roll, with postage paid.~~

~~(3) — Such notice shall state the purpose, date, time and place of the hearing and shall contain a brief description of the proposed development, including its nature, scope and location. The notice shall also describe any variances the applicant has requested and shall state the location and times at which the applications and supporting documents are available for public inspection. The time and place of the public hearing to be held before the city council shall also be included if known at the time the notice is given and, if it is not known at such time, a telephone number shall be provided where information on the hearing before the city council will be available at a later date.~~

~~(4) — The applicant shall be responsible for drafting the notice and serving it after it has been approved by the city administrator for form and content. An affidavit of proof of service shall be filed by the applicant with the city administrator at or prior to the hearing.~~

~~(5) — Notice in the form of weather resistant signs provided by the city shall be posted by the applicant. The sign shall state the purpose, date, time and place of the hearing before the board, and shall contain a brief description of the proposed development. Signs placed on the property involved must be within 10 feet of any property line paralleling any established or proposed street, and must be visible from that street. Signs must be posted at least 10 days prior to hearing. All required signs shall remain on the property until final disposition of the matter by the city. The applicant must remove all signs required by this section within 24 hours of final disposition by the city. An affidavit of proof of posting shall be filed by the applicant with the city at or prior to the hearing, accompanied by legible photographs of the sign as posted.~~

~~(6) — Notice of the hearing must be published in the city's official newspaper 15 days prior to the hearing before the board.]~~

~~[(f)](e) Review and [recommendation] approval by board of adjustment.~~

(1) The board shall review the application for a special use permit to determine whether the proposed special use complies with each of the general criteria in section 38.04.033 and with each of the specific criteria in section 38.04.034 applicable to the proposed use, and shall make a separate finding thereon for each criterion.

(2) The board shall not approve an application unless it finds that the proposed special use as presented complies with each of the general and applicable specific criteria.

- (3) The board shall make a written finding of its decision in accordance with section 38.02.007.
- (4) The board may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards or effective time periods designed to ensure compliance with the criteria.
- (5) The board shall not grant a special use permit unless it finds that the proposed special use complies with each of the applicable general and specific criteria; otherwise, it shall deny the application.