



AGENDA

WORK SESSION LANCASTER CITY COUNCIL

James R. Williams Pump Station
Training Room, 1999 Jefferson
Lancaster, Texas



Monday, November 1, 2011 – 7:00 P.M.

DEFINITIONS:

Written Briefing: Items that generally do not require a presentation or discussion by the staff or Council. On these items, the staff is seeking consent from the Council or providing information in a written format.

Verbal Briefing: These items do not require extensive written background information or are an update on items previously discussed by the Council.

Regular Item: These items generally require discussion between the Council and staff, boards, commissions, or consultants. These items may be accompanied by a formal presentation followed by discussion and direction to the staff.

[Public comment will not be accepted during Work Session
unless Council determines otherwise.]

Item	Key Person
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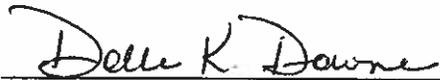
Regular Items:

1. Receive a presentation and discuss annexation in the City's extraterritorial jurisdiction (ETJ). **Stringfellow-Govan**
2. Discuss amendments to the Lancaster Development Code. **Stringfellow-Govan**
3. Receive a presentation and discuss the requirements to establish a Railroad Quiet Zone. **Stringfellow-Govan**

ACCESSIBILITY STATEMENT: Meetings of the Lancaster City Council are held in municipal facilities that are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on October 27, 2011 @ 5:00 pm and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL
Work Session Agenda Communication for
November 1, 2011

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WS11-001

Receive a presentation and discuss annexation in the City's extraterritorial jurisdiction (ETJ).

This request supports the City Council 2011-2012 Policy Agenda.

Goal: Quality Development

Background

On October 17, 2011, Council received an update to the annexation plan scheduled for November 14, 2011 City Council. After that meeting there was a request to provide a tour as well as provide additional information to the Council. Listed below are questions submitted to the City Manager's office:

How will the residents in the area be impacted since we have already approved Redistricting Plan and submitted it to the DOJ for preclearance?

The Attorney that worked on the redistricting plan opined that since the property has not been annexed and the annexation is taking place post redistricting efforts, the property would be included in the district which is closest to the annexation, which will be District 1. Once the annexation is approved, it will be submitted to the Department of Justice as part of that process and the City will be made aware of any issues at that time.

What is the total number of residents in the area to be annexed by 2010 census tract and phase/district?

The approximate number of residents, as calculated in an extrapolation of census blocks is 848, if all districts are annexed. If it is only the Sunrise District, the total population to be annexed is 187. For the Wilson/Nokomis District, the total population is 562 and the Hash Road District is 99.

What is the average home value in the area?

The average home value is \$141,160.

What is the average home size in the area? 2,207 square feet

What is the average acreage and/or lot size in the area? 8.26 acres

When will we install an outdoor siren warning system in the area if we do not already have one?

The Fire Chief has indicated that there is currently not a siren in the area itself but based upon what districts are annexed, there will be the placement of one in the area to serve the affected citizens.

What if any are the environmental concerns in the area (homes built in a floodway, floodplain, like the homes in the Ten Mile Creek area)?

See floodplain map. The area most affected would be in the Sunrise area and the area along the creek. Currently, there are not a lot of structures in the area. Once this area is annexed, there would not be an opportunity to build in the area at the current elevations. They would have to follow the city's standards, after review by the flood plain administrator to build above the finished floor elevation.

If property and homes are annexed into the City, what will be the zoning? Can the City change a property owners zoning?

The properties and homes will be zoned under AO – Agricultural Open Space. This is the typical zoning for newly annexed areas unless the property owner submits a request for a specific zoning category. The City does have the authority to rezone property based upon its discretion, but currently there are no plans for a City initiated rezoning in the annexed area.

Is there an executed copy of the Service Plan? If no, why not? Did panel refuse to sign the service plan? If there is no signed service plan, is it valid? What are the legal consequences of not having?

The service plan was approved by City Council. Please reference Resolution No. 2010-04-46. This is the service plan that was approved by the Annexation Negotiation Panel, appointed by the Dallas County Commissioner's Court. The panel agreed to the Service Plan at the last meeting and subsequently the Service Plan was approved by the City Council on April 26, 2010.

The City Attorney has indicated that even if we cannot find the signed copy, the minutes and the approved resolution with the Service Plan serve as evidence that the Annexation Negotiation Panel approved the plan.

If annexed, on day one, what are the immediate impacts on the following departments?

Staff will prepare the annexation information for submittal to the Department of Justice for comments. After that, there will be a coordination meeting with all of the affected departments to disseminate all of the updated maps showing all of the newly annexed

area. Staff would add to their respective databases all of the new addresses and properties for inclusion in budget considerations for the upcoming 2012/2013 budget discussions. This portion will have oversight by the City Manager's office. Other considerations are as follows:

a) Utility Billing will add the new addresses into their database to inventory the meters in the area and determine which are currently in the system or not, inventory addresses for future development, and complete and overall assessment for City services related to trash pickup and the recycling program. This will be an on-going assignment as staff will continue their normal assignments in serving current citizens;

b) Code Compliance will set up coordination dates in their work plan to assess the area that is annexed and would provide services based upon the negotiated service agreement;

c) The Streets Division of the Public Works Department will maintain public streets and roadways with the annexed area as provided in other similarly populated areas. The City has adopted a pavement management program which will systematically assess and evaluate each of the public streets within the City and their need for improvement and maintenance. This program will be extended into the newly annexed area. Each public street will be placed within the management rating system and set up for maintenance or replacement. The City will also provide, based on circumstances, appropriate maintenance should public safety require immediate attention to any roadway within the newly annexed area. Additionally, appropriate right-of-way maintenance and installation and/or maintenance of traffic control devices will be included. Traffic signalization shall take place as required and provided by state law. The extension or improvement of roadway systems within the newly annexed area will be driven as new development takes place or redevelopment takes place within the newly annexed area;

d) Water and Waste/Water has a current inventory of what is in the City's Certificate of Convenience and Necessity area. If there are maintenance issues related to the water, the current retail provider would continue to provide those services. Most of the properties are on septic tanks and based upon the negotiated service plan, this will be allowed to remain. Additionally, the maintenance related to septic will continue to be the property owner's responsibility;

e) The negotiated service plan includes police protection and facilities by which the newly annexed residents would receive assigned Random Patrol and required responses. The random patrol is accomplished by a minimum of twenty-four (24) hour, seven (7) days a week shift coverage of 6-7 patrol officers and/or supervisors. In addition to those services are special units, such as traffic enforcement, criminal investigations, narcotics, gang suppression, and SWAT; and community programs such as Neighborhood Watches, Citizens Police Academy, Crime prevention, Citizens on Patrol, and Community Forums. Officers will have the necessary equipment to provide the above stated services as well as, there will be dedicated patrols of the area. Residents will also be able to call police dispatch to report emergency and non-emergency concerns;

f) With regard to the Fire Department, there will be no major changes. The Lancaster Fire Department already responds to this area with Fire and EMS protection. Minor changes would be 911 calls would be rerouted to Lancaster Dispatch Center; thereby changing the planning location for future Fire Station #4 and it would eliminate revenue from Dallas County for responses to the area (Approximately \$20,000 annually). Additionally, we do not currently have a siren system in the area. We have an extra siren at the airport that could be reconditioned and moved to the area. (Approximately \$3,000) If the unit is not able to be reconditioned a new siren will cost \$25,000. There is a need for at least two sirens to cover the entire area depending on what was annexed. The end of Ferris Rd. could be problematic and may cause a need for 3 sirens. We would have to run test when the first two were installed to check Db levels in the area. We have replacement sirens scheduled in our replacement plan for 2013 and 2014. We could move those to the area and shift the replacement schedule back two years; all of these options are as funding is available.

Considerations

- **Operational** - The purpose of the annexation is to allow for the logical growth of the City of Lancaster's extraterritorial jurisdiction (ETJ). Once this territory is annexed into the corporate limits of the City of Lancaster, the City will be required to provide municipal services in accordance with the negotiated service plan.

There are three phases included in the annexation: a) Sunrise Area (the area adjacent to the Lancaster Regional Airport); b) Wilson-Nokomis Road area; and c) Hash Road area. It is of note that there is an option to not include all phases at this time, if Council so chooses. The notification included all areas within the extraterritorial jurisdiction, but City Council has the option to only adopt those areas that will accomplish goals set forth by the initial annexation, as well as those that are financially prudent for the City.

The Bear Creek Ranch subdivision, located within the Lancaster Municipal Utility District (MUD) #1 is not included in this plan.

- **Legal** - The process for carrying out the proposed involuntary annexation is detailed in Section 43 of the Texas Local Government Code. Pursuant to Section 43.0561, the first of two required public hearings allowed persons interested in the annexations the opportunity to be heard on the proposed service plan and future annexation of the area included in the 3-Year Annexation Plan.

Additionally, an Annexation Negotiation Panel was selected by the Dallas County Commissioner's Court, pursuant to Section 43 to negotiate the service plan that was approved on April 26, 2010. In summary, the more heavily populated areas were concerned with the City's ability to provide services and in return the City is currently evaluating the total dollar cost of providing water and waste water services to those

residents in the future as a part of the Water/Wastewater Master Plan update, currently being contracted through the Public Works Department.

State Law provides that in order to implement an involuntary annexation, a City is only required to give a three year notice to those areas that have more than 100 inhabitants. At the time the notice was given, the affected areas could have been annexed according to the phasing without notice. As an act of political transparency, the City of Lancaster provided a three year notification to all of the properties that would be affected by the annexation.

- **Financial** - There are minimal financial implications for providing additional services to the area(s) proposed for annexation, as the City currently provides a number of services already, including but not limited to fire protection, emergency services, operation and maintenance of orphan roads, access to parks and recreational services, and library services. Below are the services that will need to be provided to the area immediately upon annexation:

1. Police protection
2. Fire protection
3. Emergency Medical Services
4. Solid waste collection
5. Operation of water and wastewater facilities not within the service area of another water or wastewater utility
6. Operation and maintenance of roadways, including street lighting
7. Operation and maintenance of parks
8. Operation of any other publicly owned facility

Pursuant to Section 43.056 of the Texas Local Government Code, the City of Lancaster has completed a municipal service plan for the affected area during the required time period, April 26, 2010. During the development of the municipal service plan, all municipal departments reviewed the proposed annexation(s) and commented on any fiscal impacts to their respective departmental budgets, many of which were minimal.

At this time, the service plan states that the City would provide services in the same manner that residents are receiving it. This will be discussed in more detail in the presentation.

- **Public Information** – In preparation for the public hearings, all of the requisite public agencies were notified including the Independent School Districts of Lancaster, Ferris, and Dallas; the Dallas County Commissioner's Court, the County Clerk; the County Sheriff's Department; Rockett Water; BNSF Railroad; Union Pacific Railroad; and Roach Waste.

The notices for the public hearing were in compliance with Section 43.0561 of the Texas Local Government Code which required notices to be mailed to each owner,

occupant and public agency located in the ETJ; the publishing of the hearing notice in the Focus Daily News between September 11th and 18th; and the posting of the annexation notice on the City's website. The agenda for this item was also posted by the City Secretary at least seventy-two hours prior to the public hearing in compliance with the Texas Open Meetings Act.

Recommendation

There is no recommendation at this time. The purpose of this item is to brief the City Council on the additional concerns that were brought up from the last work session.

Attachments

- Resolution No. 2010-04-46
- Map - Annexation Plan with Residential and Median Home Value Data (previously provided)
- Map - Annexation Plan with Census Block Data (previously provided)
- Map – Annexation Plan With 2011 Residential Data (new)
- Map – Fire Department Warning Sirens (new)
- Map – Water Master Plan Overlay (new)
- Map – Sewer Master Plan Overlay (new)

Prepared and submitted by:
Rona Stringfellow-Govan, AICP
Director of Development Services

Date: October 26, 2011

RESOLUTION NO. 2010-04-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ADOPTING AN ANNEXATION SERVICE PLAN FOR APPROXIMATELY 8.4 SQUARE MILES OF EXTRATERRITORIAL JURISDICTION PURSUANT TO RESOLUTION 2008-11-48; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has taken an inventory of the services with the area sought to be annexed according to the adoption of an annexation plan by Resolution 2008-11-48; and

WHEREAS, the City has held public hearings on inventory of services and proposed service plan at duly convened meetings of the City Council; and

WHEREAS, the Dallas County has by Court Order appointed five (5) property owners, or their representative, within the area sought to be annexed, such persons being Melissa Adams, Lynnette Taft, Clyde Hargrove, Cheryl Williams and Winn Morton; and

WHEREAS, the committee has met with representatives of the City to discuss proposed service plan; and

WHEREAS, the City Council finds that the Annexation Service Plan which is attached hereto and incorporated herein by reference as Exhibit "A" provides equal services then to other residents within the City in accordance with state law; and

WHEREAS, the City Council at a duly convened meeting has considered the adoption of such Resolution and the attached Service Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS:

SECTION 1. That the Annexation Service Plan which is attached hereto and incorporated herein as Exhibit "A" is hereby adopted for the annexation of certain property into the corporate limits of the City of Lancaster, Texas, in accordance with Resolution 2008-11-48.

SECTION 2. That such Service Plan may be amended at the request of the property owners and/or at the discretion of the City Council in accordance with state law.

SECTION 3. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this Resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this Resolution shall remain in full force and effect.

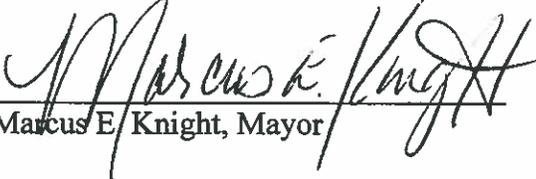
SECTION 4. That should any word, phrase, paragraph, or section of this Resolution be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Resolution as a whole, or any part or provision thereof other than the part so decided to be

unconstitutional, illegal or invalid, and shall not affect the validity of the Resolution as a whole.

SECTION 5. That this Resolution shall take effect immediately from and after its passage as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Dallas County, Texas, on this the 26th day of April 2010.

APPROVED:



Marcus E Knight, Mayor

ATTEST:



Dolle K. Downe, City Secretary

APPROVED AS TO FORM:



Robert E. Hager, City Attorney

**City of Lancaster, Texas
Annexation Service Plan
For Area Southwest of Current City Limits**

I. Area Annexed

On November 10, 2008, the City of Lancaster, Texas, (the "City") adopted a plan of annexation whereby the areas described on Exhibit A (collectively the "Annexation Area") will be annexed into the City's municipal boundaries no later than December 10, 2011. The effective date of annexation is referred to as the "Annexation Date."

The Annexation Area contains one geographically contiguous: South and southwest of the current city limits (as shown in the attached **Exhibit A**). While most of the Service Plan addresses annexation area-wide needs and concerns, when a specific sub-area is to receive a service or improvement it will be identified in the Service Plan.

II. Introduction

Pursuant to Section 43.056 of the Texas Local Government Code, the City hereby adopts the following service plan (the "Service Plan") for the Annexation Area. Municipal facilities and services to the Annexation Area shall be provided or made available on behalf of the City in accordance with the following Service Plan.

III. Ad Valorem (Property Owner) Tax Services

A. Police Protection, Code Compliance, and Animal Services

1. Police Protection & Facilities

The Lancaster Police Department (LPD) will provide protection and law enforcement services in the Annexation Area, commencing on the Annexation Date. These services shall include, but not be limited to: assigned Random Patrol, (hereinafter defined) required responses; special units, such as traffic enforcement, criminal investigations, narcotics, gang suppression, and SWAT; and community programs such as Neighborhood Watches, Citizens Police Academy, Crime Prevention, Citizens on Patrol, and Community Forums.

a. Patrols.

On or after the Annexation Date, the City will service the area with the then existing staff and random patrol is accomplished by a minimum of twenty-four (24) hour, seven (7) days a week shift coverage of 6-7 patrol officers and/or supervisors located at 1650 N. Dallas Avenue.

The main Police facility will be staffed with the current normal staff level with an average of 6-7 TCLEOSE certified peace officers per shift at all times not including supervisor. At least one supervisor, with the grade of sergeant or higher will be on each shift for purposes of supervision of all police activity. A minimum of two E911 dispatchers are assigned to each shift in the emergency communications center.

(b) Equipment.

The City shall purchase and maintain the necessary weapons, equipment, uniforms, and communications devices to equip each police officer for duty as activity warrants. This equipment shall generally include, but not be limited to:

Police vehicles are equipped with all standard police safety, communications, and computer equipment, including but not limited to a first aid kit, flares, surgical gloves, a fire extinguisher, defibrillator, and OB pack and maintain in operable condition.

Each police officer is provided with the required equipment and uniforms, winter jackets, traffic vests, hats, buttons, and securing pins, badges, one bullet-proof vest, utility belt, baton, handcuffs, zip cuffs, flashlight, radio, microphone, pepper spray, holster with attachments, hand gun, shotgun, or assault rifle, ammunition for each weapon, and a Taser which may be required to carry out the task and responsibilities of a peace officer.

(c) Dedicated Patrols.

Unless required by exigent circumstances, at the direction of the Chief of Police or designee, all police officers stationed at the police station shall be assigned, and carry out Patrols in their assigned area to include regular daily patrol of the newly annexed area.

(d) Future Patrol and Police Protection.

Based on current available data from Dallas County Sheriff, the City is able to absorb current call levels into its current shift and patrol function. As density or development and increase demand take place, the City shall annually assess the needs to increase staffing and capital assets to the annexed areas. Since the current density and development has been constant in the annexed area, commitment of additional resources without anticipated demand will not warrant additional manpower and capital allocation. The

additional patrol area requires a time commitment which can be currently incorporated into existing demands.

2. Code Compliance

Code compliance services shall be provided to the Annexation Area.

Upon the Annexation Date, one (1) code compliance officer shall be assigned to provide regular code compliance services to the Annexation Area. Code Compliance Officers are provided with the necessary uniforms and equipment necessary to conduct compliance activities and inspections.

Code Compliance Officers respond to complaints and perform routine compliance inspections.

3. Animal Services

The City has two animal service officers that will also provide service to the Annexation Area for domestic pets and at large livestock, registration and redemption of household domestic pets as well as a mandatory vaccination program to control rabies and other diseases.

The City will commit to consider an amendment to its animal control ordinance to implement a generally accepted standard for livestock concentrations on agricultural land within the annexed area.

In addition, large and small animal traps under the control of the City will be available for use to persons living in the annexed area upon the annexation date.

Animal Service officers have a mobile computer system in place so that they can access city records while in the field. Each Animal Services Officer is provided with the necessary uniforms and equipment to conduct animal control activities.

B. Fire Protection and Emergency Medical

1. Fire Protection / EMS

The Lancaster Fire Department shall provide first responder fire protection and prevention services and emergency medical services in the Annexation Area, commencing on the effective date of annexation. These services shall include: fire suppression and rescue; emergency medical services; hazardous materials mitigation and regulation; emergency

prevention and public education services; construction plan review; fire inspections; and emergency management planning.

2. Fire Personnel

On the effective date of the annexation, the City shall staff each Fire Station with a minimum of four firefighter / paramedic personnel.

All such personnel shall be certified under all applicable requirements by the State of Texas and operate under the medical control officer to deliver fast, efficient and competent fire suppression and emergency medical personnel.

3. Engines, Equipment

Each fire station will be equipped consistent with fire protection best practices. Such equipment will consist of at least one firefighting apparatus and one Mobile Intensive Care Unit (MICU). Other specialized units will be provided as necessary.

4. Future Staffing and Facilities.

Based on current available data from Dallas County, the City is able to absorb current call levels into its shift and functions. As density or development and increase demand take place, the City shall annually assess the needs to increase staffing and capital assets to the annexed areas. Since the current density and development has been stagnant in the annexed area, commitment of resources without anticipated demand will not warrant additional allocation. The additional area requires a time commitment which can be currently incorporated into the Department staffing and capital commitments with adequate response time for emergency assets and personnel. The addition of new territory and increase of development will cause an annual evaluation of facilities, equipment and personnel. We have anticipated that an additional public safety facility may be located in the Sunrise district near the Lancaster Regional Airport. However, there is no current commitment to build such facility on a date certain.

C. Roads and Streets

The City has systematically maintained its roadways and streets as funds are available. The Street Division of the Public Works Department shall maintain public streets and roadways within the annexed area as provided in other like populated areas within the City. The City has adopted a pavement management program which systematically assesses and evaluates each of the public streets within the City and their need for

improvement and maintenance. This pavement management system program is adopted to efficiently provide services to all the citizens and to meet the needs based on the condition of public streets and roadways in the corporate limits of the City. This program, as previously stated, will be extended into the new annexed area. Each of the public streets will be placed within the management rating system and set for maintenance or replacement. The City will also provide, based on circumstances, appropriate maintenance should public safety require immediate attention to any roadway within the newly annexed area. Additionally, as to the pavement management program, the City will, as with other areas of the City, provide the appropriate right-of-way maintenance and the installation and maintenance of traffic control devices within the annexed area. Traffic signalization shall take place as warranted and as provided by state law.

As new development takes place in the annexed area, developers may be called upon to either expand or improve roadway systems in order to meet the demands of the new development. The City's Planning Department, in conjunction with the Public Works Department, shall undertake appropriate planning, design and provide for the installation of new streets within the newly annexed area as it has throughout its history within the current city limits.

The extension or improvement of roadway systems within the newly annexed area will be driven as new development takes place or redevelopment takes place within the newly annexed area. The City would anticipate that the Sunrise district as being sparsely populated and developed with roadway systems may result in new roadways being extended into that area as industrial and/or commercial development takes place in that area. In the areas which have been designated as Wilson/Nokomis and Hash areas, we would anticipate that those roadways being more of a residential and/or rural, demand would result in more of a maintenance function than as new constructed roadways. In those areas which remain undeveloped, new roadway systems can be anticipated as new develop arises.

The City would also anticipate that roadway system improvements are to be reasonably anticipated with the extension and expansion of the Loop 9 facility as it runs through the southern portion of the Sunrise district. While the final alignment of the proposed Loop 9 extension has not been determined as of the date of this Annexation Plan, the City is under the assumption that Loop 9 will be built and it will pass through those portions of the Sunrise district as delineated on the attached exhibit to this Service Plan. The construction of service roads and main travel portion of the Loop 9 limited access roadway will add new construction to the roadway systems within the newly annexed areas. Since a final determination has not been made as to the date of the construction of such roadway at the

date of this Service Plan, we can only anticipate that during the course of the life of the Service Plan that such roadway will be constructed or right-of-way will be obtained and engineering, planning and construction will take place during the life of this Annexation Plan.

As a result of future consideration regarding Loop 9, we would anticipate that this Annexation Service Plan may be amended to meet the needs as a result of new development and/or the extension of the Loop 9 highway.

Additionally, the City will commit to undertake pruning of trees which directly interfere with safe operation of motor vehicles over the roadways or streets, on an as needed basis.

D. Parks and Recreation

1. Facilities

The City shall include the area in the Parks Master Plan for future development of green space, parks, and trails.

Residents of the Annexed Area will have access to the City existing park system which includes swings, and other structures appropriate for use by children, and picnic tables and barbecue grills.

Each existing city park has picnic tables some parks include tables with coverage. Each park has trash containers placed and maintained by the City in the park. The City shall continue to provide for the routine maintenance, seasonal plantings, seeding and upkeep of all parks, open space, and trails within the park system.

The City maintains staffing adequate to provide for the activities, youth sports, recreational programming, training facility and indoor aquatic facility within the recreation center. Seasonal staff such as lifeguards is hired as necessary.

2. Programs

The City shall provide youth programs at the recreation center which may include: Dallas Blaze All Star Cheerleading, Arts & Crafts with Amber, Academics Excellence Tutoring, Sports Excellence Camps and Courses and Spring Break Basketball Camps. Programming will change as demand warrants.

The recreation center also provides adult programs such as Cardio Kickboxing, Early Risers Aerobic Class, Zumba and Body Sculpting.

The City's recreation center has a year round indoor aquatic facility that offers fitness swim, water aerobics, open swim and swim lessons for all age groups.

Athletic leagues are available for both Youth and Adult. These leagues include: Youth & Adult Basketball, Youth Soccer, Youth Baseball, Youth Football and Youth and Adult Volleyball.

The City offers some specialty programs which include Youth Advisory Committee, Friday Night Heat, The Stork's Nest, First Aid/CPR and Hunter's Education.

All programs and facilities will be available to residents of the annexed area at the same rental rates and charges as other City residents.

E. Library Facilities & Services

The Lancaster Veterans Memorial Library is open (6) days per week and until 9:00 p.m. at least three days per week. The library contains public computers with internet access, books, audio visual, DVD's and music for check out all at no cost to City of Lancaster residents. Local history and genealogy is a special collection, enriched by subscriptions to Ancestry.com, HeritageQuest, and Sanborn Map databases. Genealogy programs are sponsored by the library.

The facility is approximately 23,000 square feet in size. The City has an ALA Accredited MLS librarian, professional and paraprofessional youth and children's assistants, and part time staff to operate the library facility. The library contains tables and chairs, and all other standard furnishings for a fully operational library.

F. Building Inspections and Consumer Health Services

The Building and Inspections Department shall provide inspection services (building, electrical, plumbing, code enforcement, etc.) to residents of the Annexation Area. Building Inspections have a state of the art mobile computer system in place so that building inspectors can access city records during on-site inspections. These mobile inspection terminals shall be maintained by the City so that accurate, up to date information is available to the inspector in the field.

Consumer Health Services are performed by Dallas County Health Services Department via contract with the City of Lancaster.

G. Planning and Development Services

The City shall provide, on the effective date of the annexation, planning and development services to residents of the Annexation Area.

In addition, each of the areas sought to be annexed will be incorporated into one or more representative districts for the purpose of council representation in accordance with the Voting Rights Act of 1964.

H. Life (Senior) Center

1. Facilities

The Lancaster Life Center will be available on the effective date of the annexation to the senior citizens of the Annexation Area at the residential rate.

2. Programs

The City offers the seniors a variety of programs that include a congregate meal program for seniors 60+, bingo, bunko, dominos, table pool, Wii Fitness, bridge, arts & crafts, quilting, gardening, computer and day trips.

IV. Utility (Rate-Based) Services

A. Solid Waste Collection

The City is the exclusive residential and commercial solid waste service provider within Lancaster's city limits. Solid waste refuse collection services will be available to all residents of the Annexation Area immediately upon the Annexation Date.

1. Residential Solid Waste Services

(a) City Service. The City shall provide residential solid waste services to the Annexation Area at the prevailing in-city residential rate, and at the same level of service as the in-city level of service. Residential trash pickup shall occur weekly. Recycling services shall occur bi-weekly. Bulk/brush services shall occur every other month.

Each residential property shall receive a refuse and recycling cart. Additional carts may be obtained for an additional fee as determined by the city's master fee schedule. The City will notify all residents of the Annexation Area what day of the week their refuse and recyclables will be collected.

2. Commercial Solid Waste Service

(a) City Service. Each commercial business shall contact the city solid waste collector to arrange for service.

B. Water/Wastewater Facilities & Personnel

1. **Wastewater.** Property owners within the Annexation Area may elect to remain on their existing septic systems. Existing septic systems are legal and conforming. Any existing septic system in place on the Annexation Date shall be allowed to be repaired, replaced, or upgraded with no City fee imposed.

If a resident of the Annexation area elects to connect up to the City's wastewater service, the City shall charge the same usage rate to that resident as it does to a like dwelling unit within the City limits. A like dwelling unit is defined as the closest square footage size of an existing and served dwelling unit structure within the City to the house being connected to the service.

The city maintains the city wastewater department with 8 employees responsible for maintenance and repairs of sewer mains and manholes.

2. **Future Wastewater Service.** The City has developed a proposed phased annexation and extension of wastewater service into the proposed annexed area. The city has identified three (3) unique areas which would require individualized consideration for future potable wastewater extension of service:

- (1) **Sunrise:** (See attached map) This area is sparsely populated on the eastern portion and is adjacent to Lancaster Municipal Airport and Inland Port area. This area along with the southern portion will generate industrial, retail and commercial development. The City will commit to undertake appropriate study within two and one-half (2½) years to determine the appropriate size and extension of the wastewater service. Unless development occurs sooner, the City would look to extend waste water service to the eastern and southern corridors within seven (7) years. We would anticipate that the time frame may be accelerated by development of airport, lanport and Loop 9. The eastern portion of this area is primarily residential.

- (2) **Wilson/Nokomis:** The City has development a proposed phased annexation and extension of water service into the proposed annexed area. The City has identified this portion as the Wilson/Nokomis area, which is depicted on the attached exhibit to the Service Plan. This particular area is unique from other sections of the annexed area in that is primarily populated with single family residential homes. The need for the extension of the wastewater service in the immediate future will be basically for residential purposes. The City will commit to undertake a wastewater study of the proposed Wilson/Nokomis area and will commit to do that within

three (3) years of the date of annexation. The extension of actual wastewater services in the area will be phased in within a time period not to exceed five (5) years from the date of annexation. We would anticipate that the time frame may be accelerated due to development demands within the area as the area becomes subject to development as the City grows within the immediate future. Those areas in the Wilson/Nokomis area which are immediately adjacent to the Bear Creek Ranch as a result of the study may have wastewater service available in a more timely period or as a result of extension into the eastern portion of the Sunrise area as depicted on the attached exhibit.

- (3) **Hash Area:** This is the third identified area within the annexed area which is likely to be the last area annexed into the City. Again, this area is primarily residential and the extension of wastewater service would likewise be specifically studied within approximately two (2) years of the date of annexation of such area with future extension of wastewater services in that area to be five (5) years from the date of annexation. As with any of the areas, if development is accelerated, the cost effective extension of services into this area as in other areas of the current city limits may be accelerated within a quicker time frame. The City would anticipate that there would be full wastewater services within the area within the ten (10) year service date time. There are other areas currently in the City, which due to its sparse population and lack of development, do not have wastewater services and we would treat the areas to be annexed with the same cost effective extension of wastewater services as development occurs.

3. **Water.**

(a) Property owners within the Annexation Area may continue to receive service from their current retail water provider during the term of this Service Plan. Property owners will be allowed to drill and maintain water wells on-site for irrigation, agricultural, and livestock use, and for the capturing of potable water for domestic use in accordance with all Federal and State regulations and permitting requirements.

If, during the term of this Service Plan, the City requires any existing resident or business in the Annexation Area to connect to the City potable water system, the City shall bear the sole cost of extending the water service to the existing resident or business (which cost includes but shall not be limited to: all costs of extending laterals to each service point on the residents' property, trenching water lines to the customer's house, connecting service lines to the house, and providing and installing

metering devices to monitor consumption in such a way as to provide water service with no further action required by the residents), and the residential customer shall be charged the same rate for water service as charged to all in-city customers.

In the event the City provides water utility service, property owners shall not be charged higher rates based on existing water meter sizes, and the City shall not be allowed to replace existing meters with smaller units. The city shall charge the same rate currently charged to all City of Lancaster customers.

(b) Future Water Service. The City has developed a proposed phased annexation and extension of water service into the proposed annexed area. The city has identified three (3) unique areas which would require individualized consideration for future potable water extension of service:

- (1) Sunrise:** (See attached map) This area is sparsely populated on the eastern portion and is adjacent to Lancaster Municipal Airport and Inland Port area. This area along with the southern portion will generate industrial, retail and commercial development. The City will commit to undertake appropriate study within two and one-half (2½) years to determine the appropriate size and extension of the water service. Unless development occurs sooner, the City would look to extend water service to the eastern and southern corridors within five (5) to six (6) years. We would anticipate that the time frame may be accelerated by development of airport, lanport and Loop 9. The eastern portion of this area is primarily residential. The City will study during the next eighteen (18) months the extension or connection through the Bear Creek Subdivision into the Green Acres area within four (4) years.
- (2) Wilson/Nokomis:** The City has development a proposed phased annexation and extension of water service into the proposed annexed area. The City has identified this portion as the Wilson/Nokomis area, which is depicted on the attached exhibit to the Service Plan. This particular area is unique from other sections of the annexed area in that is primarily populated with single family residential homes. The need for the extension of the water service in the immediate future will be basically for residential purposes. The City will commit to undertake a water study of the proposed Wilson/Nokomis area and will commit to do that within three (3) years of the date of annexation. The extension of actual water services in the area will be phased in within a time period not to exceed five (5) years from the date of annexation. We would anticipate that the time frame may be accelerated due to development demands within the area as the area becomes subject

to development as the City grows within the immediate future. Those areas in the Wilson/Nokomis area which are immediately adjacent to the Bear Creek Ranch as a result of the study may have water service available in a more timely period or as a result of extension into the eastern portion of the Sunrise area as depicted on the attached exhibit.

- (3) **Hash Area:** This area is primarily residential and the extension of water service would likewise be specifically studied within approximately two (2) years of the date of annexation of such area with future extension of water services in that area to be five (5) years from the date of annexation. As with any of the areas, if development is accelerated, the cost effective extension of services into this area as in other areas of the current city limits may be accelerated within a quicker time frame. The City would anticipate that there would be full water services within the area within the ten (10) year service date time. There are other areas currently in the City, which due to its sparse population and lack of development, do not have water services and we would treat the areas to be annexed with the same cost effective extension of water services as development occurs.

3. Operation.

All water and wastewater service shall be operated according to Lancaster's City Code, Federal and State law, and TCEQ requirements.

C. Drainage Services

The same standard of drainage maintenance provided to other residents of the City shall be provided to the residents of the Annexation Area on the Annexation Date. The City is responsible to provide repair of surface drainage repair or maintenance of storm water system or surface water which is impeded as the result of silting and obstructions. Routine maintain of over growth and vegetation remain the responsibility of adjacent property owners.

V. Zoning of Annexation Area

The Annexation Area shall be zoned to Agricultural. As development and uses change the annexed area will be rezoned in accordance with the Lancaster Comprehensive Land Use Plan.

VI. Capital Improvements Program

The Annexation Area shall be incorporated into the City's capital improvements program (CIP) and comprehensive plan. Capital Improvements, including but not limited to

streets, water mains, wastewater, and drainage, shall not be paid for through the levying of special assessments on adjacent property owners in the Annexation Area. Notwithstanding anything in this Service Plan, capital improvements in the Annexation Area shall be made according to sound municipal planning principles and practices.

VII. Term

This Service Plan shall be valid for ten (10) years. The Service Plan is eligible for renewal at the discretion of the City.

VIII. Amendments

The City Council may amend the Service Plan to conform to the changed conditions of subsequent occurrences pursuant to the Texas Local Government Code or accommodate significant changes in the population and density characteristics of the Annexation Area. Any amendment to the Service Plan must provide for services that are comparable to or better than those established in the Service Plan before amendment. Any resident of the Annexation Area may dispute the finding that the amendment provides comparable or better service to the Annexation Area. The resident must submit a request within 90 days of the amendment, and request mediation first. Any dispute regarding whether an amendment to the Service Plan provides for comparable or better services shall be first resolved through mediation. Mediation shall be conducted by the Dallas County Commissioner's Court. If the Commissioner's Court fails to resolve the dispute, either party may utilize all legal remedies.

IX. Conflicts

In the event that any provision of this Service Plan conflicts with any other plan, comprehensive plan, or program of the City of Lancaster, the provision contained in this Service Plan shall control.

X. Miscellaneous

As part of its commitment to further not adversely affect the current area, the City Council, when enacting environmental or regulatory ordinances, shall consider an exception or special regulation for rural and/or agricultural property.

(a) Junk Motor Vehicles. Junk Motor Vehicles (as defined in the Texas Transportation Code) shall not be allowed to be placed on any property so that they are visible from a public street or alley.

(b) Ornamentation. Any art or other ornamentation, including but not limited to antique tractors, farm implements, or other antique ornamentation, shall be allowed to be displayed on any property for the purpose of aesthetics, or for the purpose of sale. If for the purpose of sale, the Ornamentation cannot be

displayed for more than three times a year, each sales period not being greater than ten days. Seasonal ornamentation shall be allowed, including holiday decorations. No permit or fee shall be required by the City for the display of Ornamentation.

(c) Pre-Existing Structures. Any and all structures, including accessory structures and temporary structures, that are located on any property in the Annexation area on the Annexation Date, shall be allowed to remain on any property in the Annexation Area, shall be legal and nonconforming, and shall not become illegal by subsequent action of the City during the term of this Service Plan. All Pre-Existing Structures shall be allowed to be rebuilt, repaired, or expanded so long as the expansion does not create an additional degree of non-conformity.

Any structure, in which construction has started on the Annexation Date but has not been completed, shall be allowed to continue to completion, and no additional permits or fees shall be required by the City.

(d) Oversized Vehicles. Oversized vehicles in accordance with current city ordinance shall continue to be allowed to be parked in the Annexation Area on the Public Street adjacent to the property of the resident or owner; however, commercial motor vehicles shall not be permitted to be parked on any residential streets.

(e) Animals. Any and all pre-existing uses of land shall include the use of land for the keeping, raising, and sale of animals, including livestock and pets, in accordance with generally accepted agricultural service. [See III. A. 3. "Animals".]

(f) Severe Weather Warning System. A severe weather warning system shall be installed and maintained so that residents in the Annexation Area are warned of the approach of oncoming severe weather. This Outdoor Early Warning system must be adequate to warn residents of the Annexation Area. One additional Outdoor Early Warning Siren will be located in the area.

(g) Cable Service. The City currently has franchised a cable or telecommunications provider(s) within the current jurisdictional boundaries. The City shall invite other potential franchises to provide non-exclusive cable service to annexed area residents.

(Signature Pages to follow)

Agreed:

Lynnette Taft

Dated

Clyde Hargrove

Dated

Melissa Adams

Dated

Winn Morton

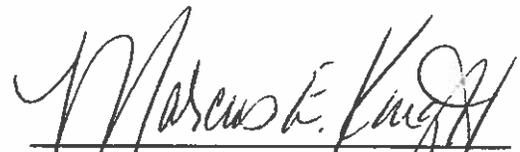
Dated

Cheryl Williams

Dated

Approved by City Council

April 26, 2010



Marcus E. Knight, Mayor

Exhibit A
Map of the Annexation Area

City of Lancaster Annexation Plan

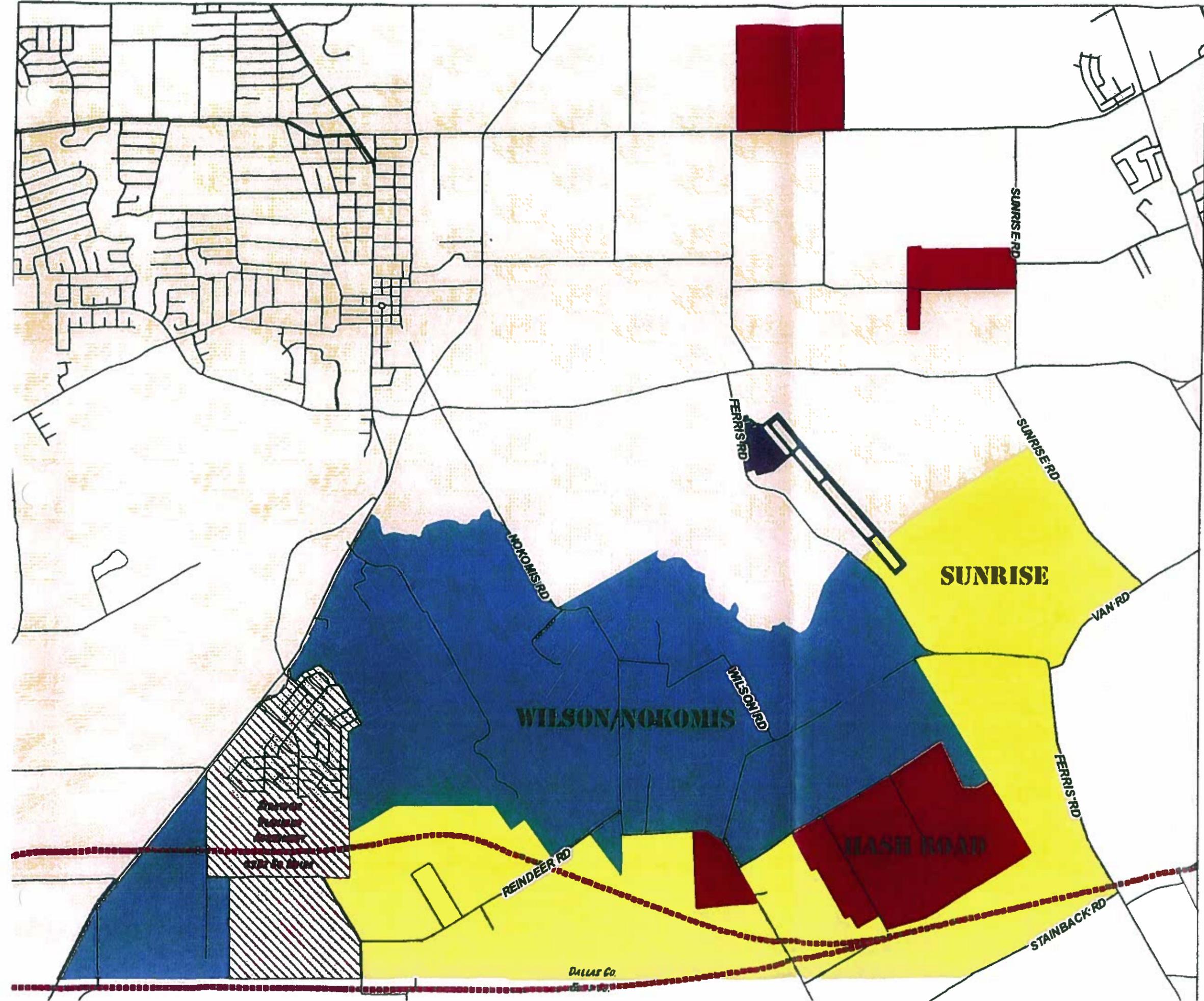


Legend

- Proposed Loop 9 Options
- City Limits - 29.835 Sq Miles
- Airport Runway
- Parcels

Annexation Plan

- Phase #**
- Strategic Planning Agreement
 - Sunrise - 2.952 Sq Miles
 - Wilson/Nokomis - 3.653 Sq Miles
 - Hash Road - 0.968 Sq Miles



City of Lancaster Annexation Plan With Residential & Median Home Value Data

Annexation Phase	Total # of Homes	Median Appraised Home Value
Phase 1/Sunrise	88	\$126,702
Phase 2/Wilson-Nokomis	125	\$150,073
Phase 3/Hash Rd	20	\$146,704
Strategic Planning Area	216	\$111,805
Total ETJ Residential	449	\$133,821

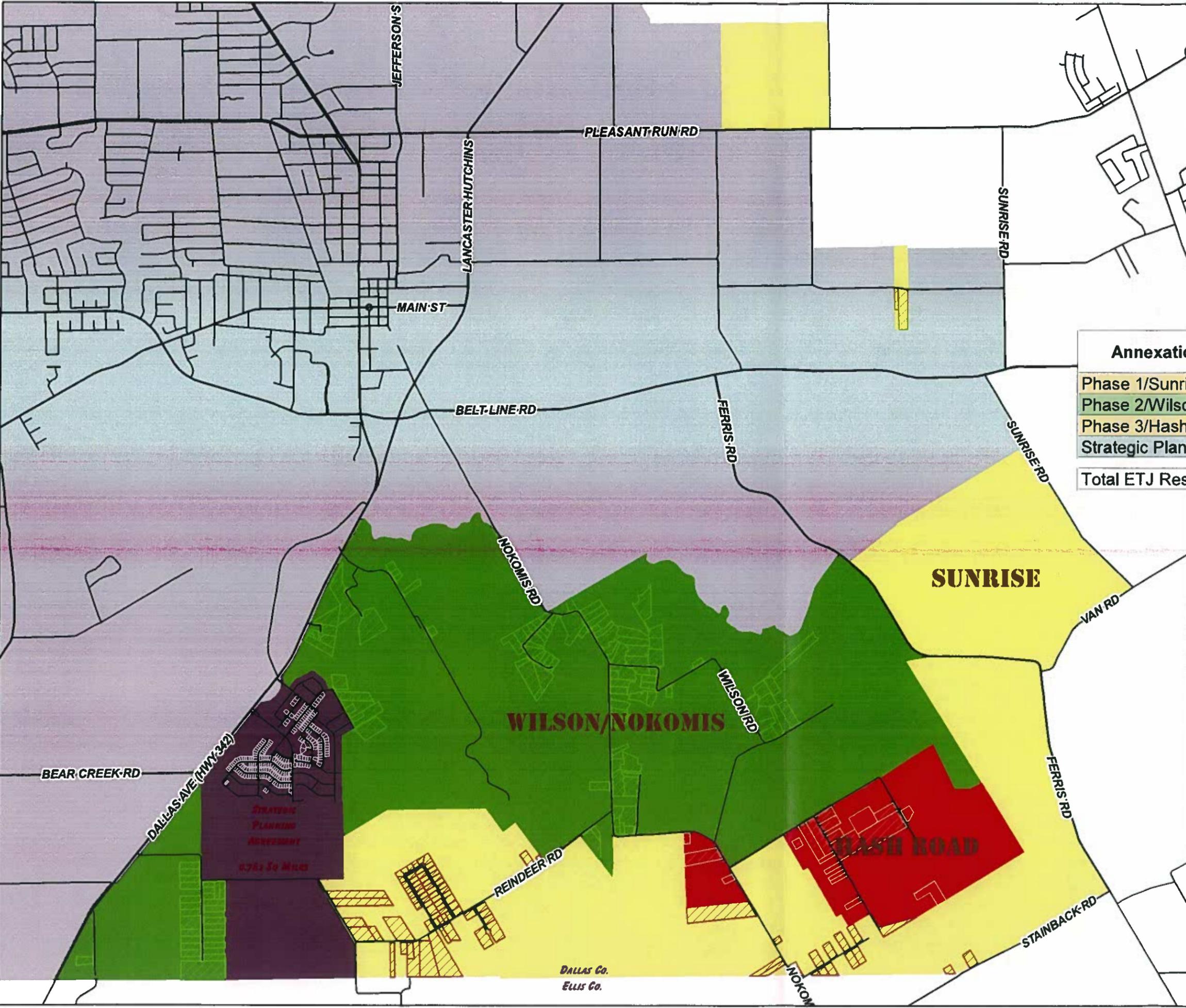
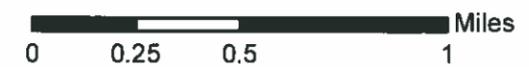
Legend

-  City Limits
-  Hash Rd Residential
-  Wilson/Nokomis Residential
-  Sunrise Residential
-  Limited Residential

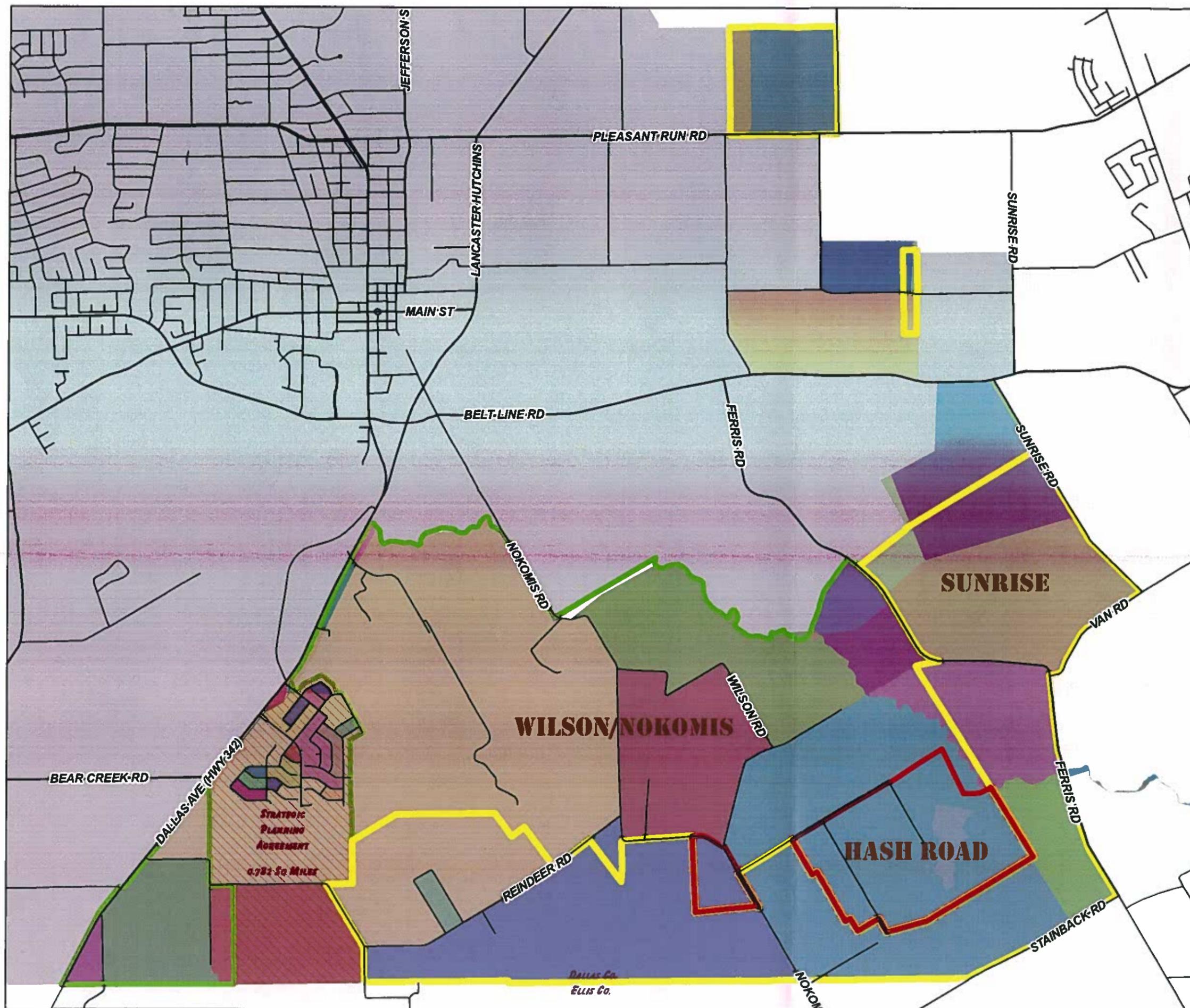
Annexation Plan

Phase

-  Strategic Planning Agreement
-  Sunrise - 3.233 Sq Miles
-  Wilson/Nokomis - 3.653 Sq Miles
-  Hash Road - 0.605 Sq Miles



City of Lancaster Annexation Plan With Census Block Data

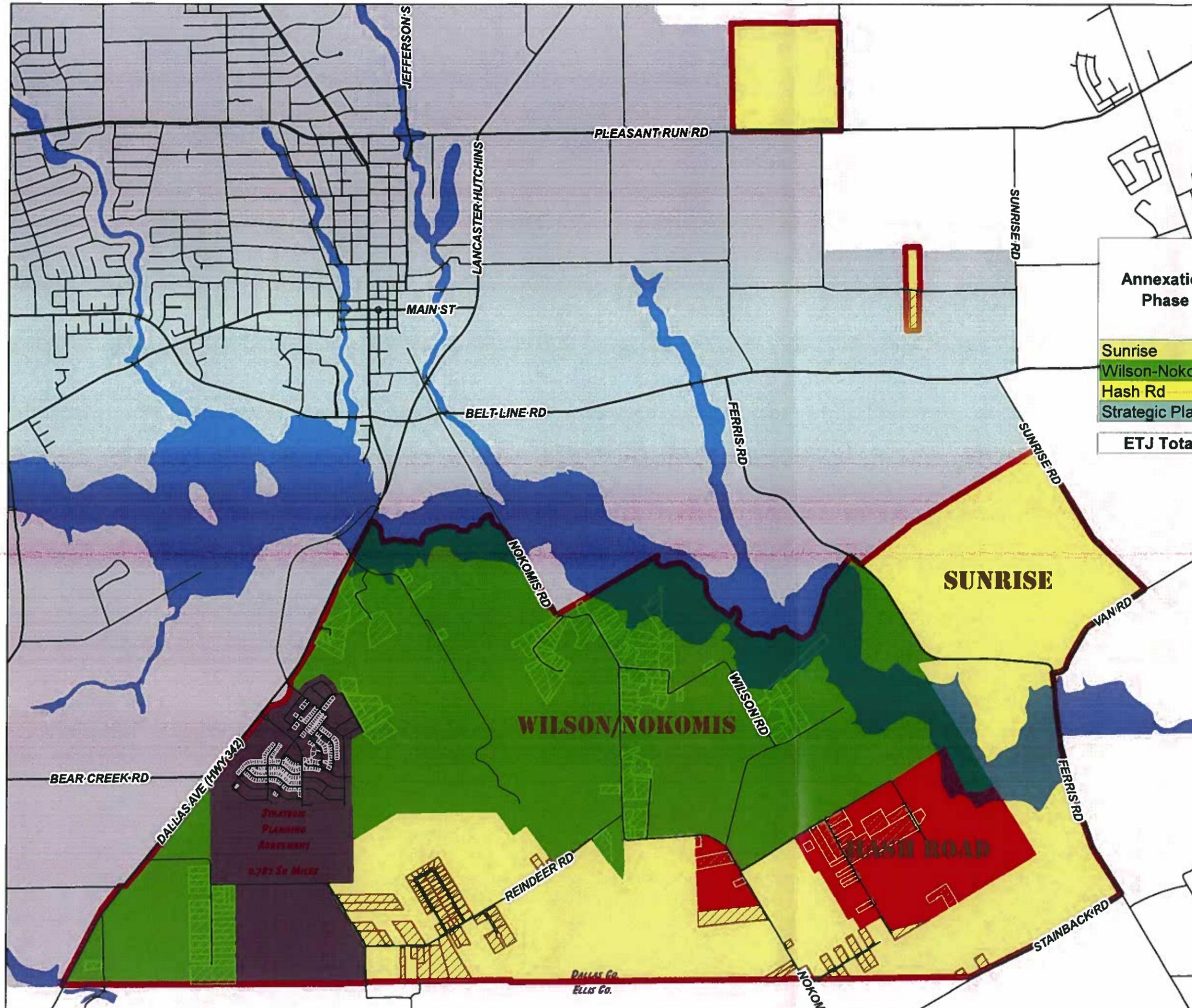


- Annexation Plan Phases**
-  Strategic Planning Agreement
 -  Sunrise - 3.233 Sq Miles
 -  Wilson/Nokomis - 3.653 Sq Miles
 -  Hash Road - 0.605 Sq Miles
 -  2010 Census Blocks
 -  City Limits

Annexation Phase	2010 Census Total Population
Phase 1/Sunrise	187
Phase 2/Wilson-Nokomis	562
Phase 3/Hash Rd	99
Strategic Planning Area	512
Total ETJ Population	1360



City of Lancaster Annexation Plan With 2011 Residential Data



Annexation Phase	2011 Total # of Homes	2011 Average Home Value	2011 Average Home Size (sq feet)	2011 Average Lot Size (acres)
Sunrise	88	\$126,702	2005	10.681
Wilson-Nokomis	125	\$150,073	2187	8.367
Hash Rd	20	\$146,704	2429	5.736
Strategic Plan	216	\$111,805	2231	0.711
ETJ Totals	449	\$133,821	2180	4.394

2000 Census Population	2010 Census Population
645	1360

Legend

- FEMA 100yr Floodplain
- ▨ Hash Rd Residential
- ▨ Wilson/Nokomis Residential
- ▨ Sunrise Residential
- ▨ Limited Residential

Annexation Plan

Phase

- Strategic Planning Agreement
- Sunrise - 3.233 Sq Miles
- Wilson/Nokomis - 3.653 Sq Miles
- Hash Road - 0.605 Sq Miles
- City Limits

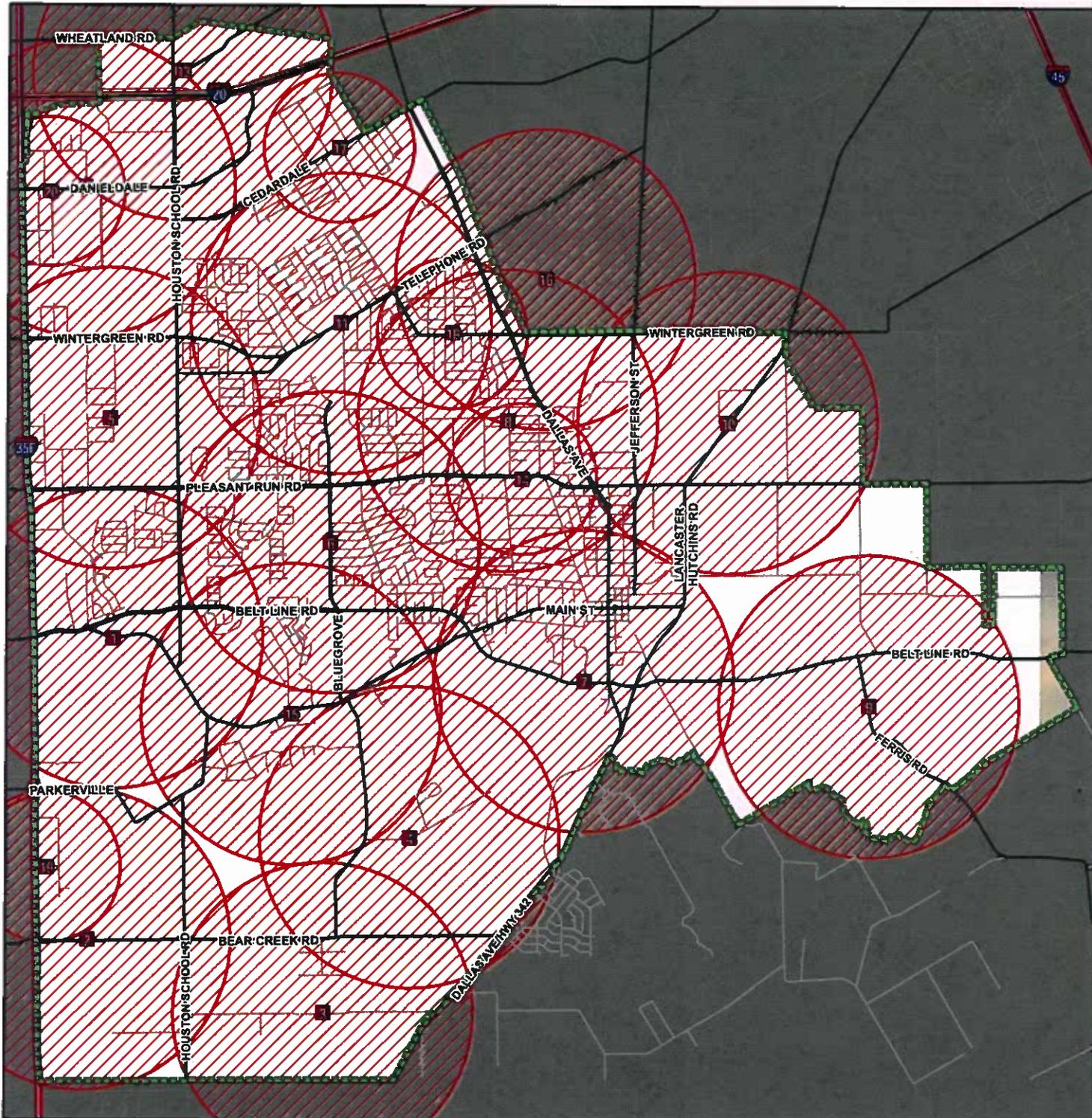


City of Lancaster Severe Weather Warning Sirens

Legend

-  City Limits
-  Sirens
-  Sound Radius

Siren #	Location	Radius
1	2770 W MAIN ST	5280
2	2929 W BEAR CREEK RD	5280
3	1541 REINDEER RD	5280
4	1341 TEN MILE RD	5280
5	2601 PIKE DR	5280
6	640 N BLUEGROVE RD	5280
7	211 W BELT LINE RD	5280
8	1901 DEWBERRY BLVD	5280
9	876 FERRIS RD	5280
10	1913 LANCASTER HUTCHINS RD	5280
11	1200 WINTERGREEN RD	5280
12	3501 WATERS ST	5280
13	1221 E WHEATLAND RD	5280
14	626 W PLEASANT RUN RD	2640
15	1680 W MAIN ST	5280
16	3030 N DALLAS AVE	5280
17	1102 CEDARDALE RD	2640
18	641 W WINTERGREEN RD	2640
19	3130 LOMITA DR	2640
20	3445 SHERWOOD AVE	2640












City of Lancaster

Annexation Plan Water Master Plan Overlay

Legend

Master Plan Water Lines

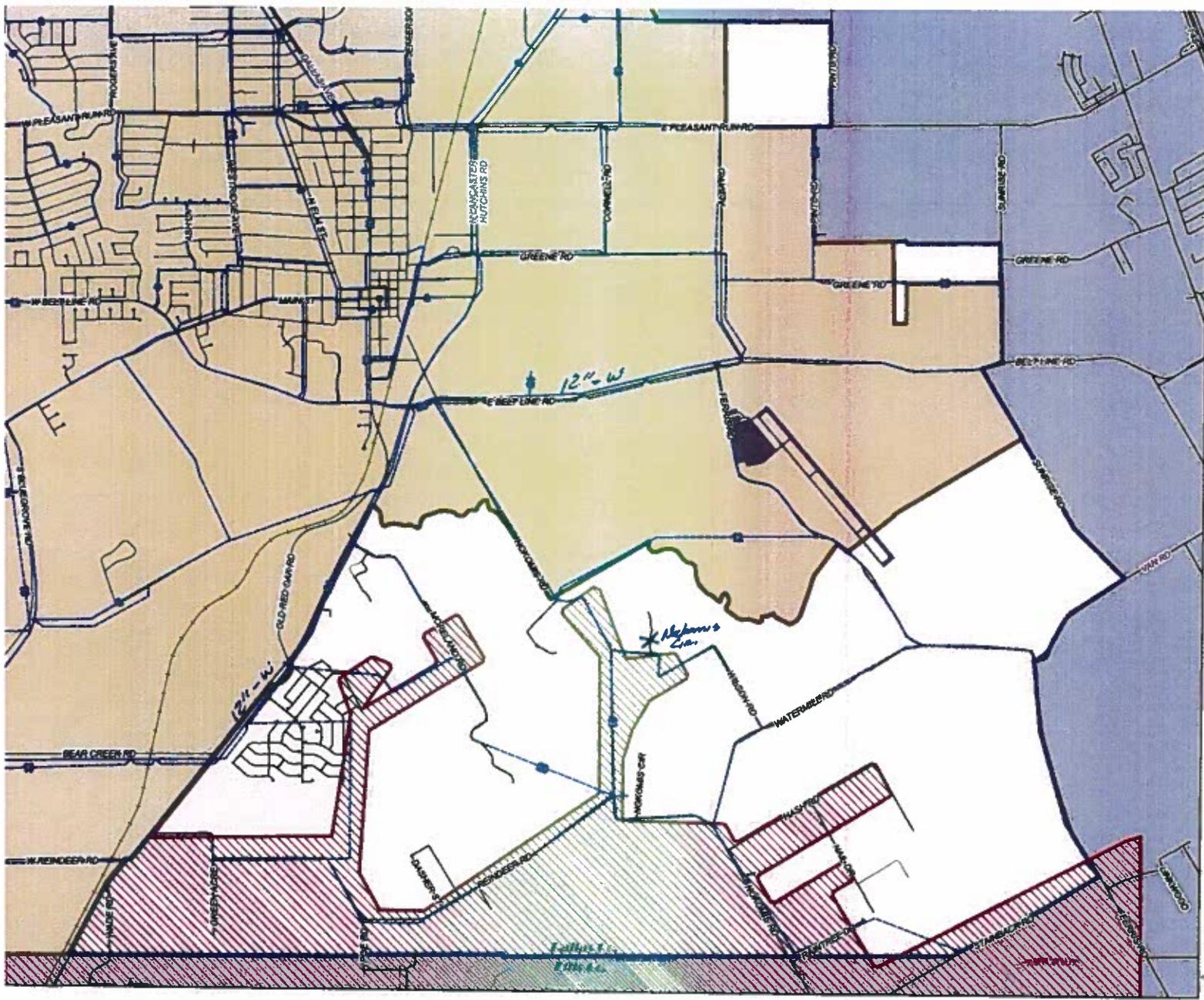
- Existing
- - - Master Planned

- Lancaster Municipal Airport
- Lancaster City Limits
- Lancaster ETJ

- ### Water O&N
- Rocket Water Dist.



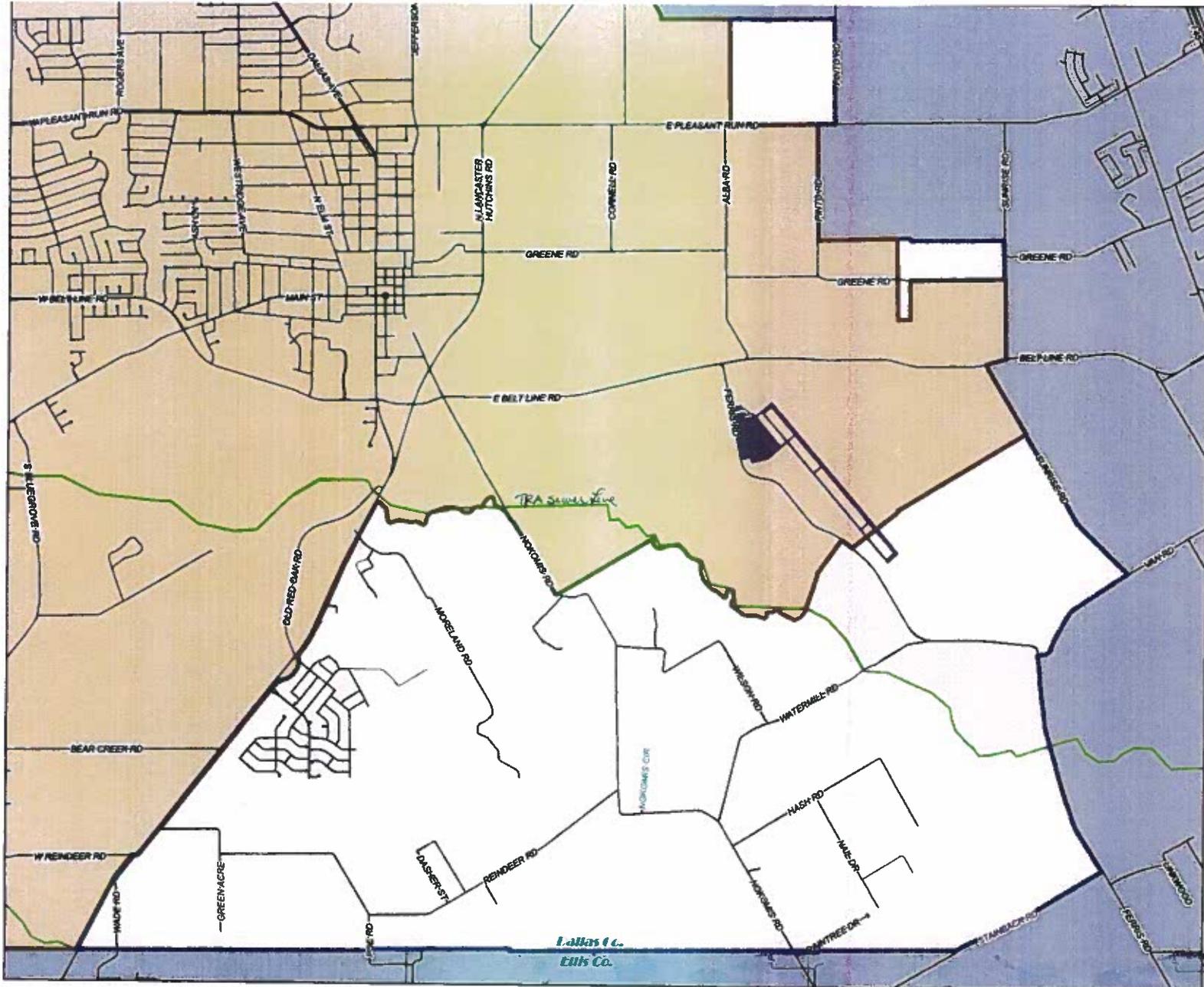
0 0.25 0.5 Miles





City of Lancaster

Annexation Plan Sewer Master Plan Overlay



Legend

-  Existing Sewer Lines
-  Master Planned Sewer Lines
-  Lancaster Municipal Airport
-  Lancaster City Limits
-  Lancaster ERF



0 0.25 0.5 1 Miles

L. Allan C. Ellis Co.

LANCASTER CITY COUNCIL
Work Session Agenda Communication for
November 1, 2011

2

WS11-002

Discuss amendments to the Lancaster Development Code.

This request supports the City Council 2011-2012 Policy Agenda.

Goal: Quality Development

Background

At the March 18, 2011 work session, Council directed staff to continue review of the Lancaster Development Code (LDC) to determine the appropriateness of the rules and regulations which it contains. The review process consists of identifying regulations that could be candidates for amendments that would assist in streamlining development procedures. Once identified, staff determines which regulations can be adjusted immediately and which would require additional research prior to making any changes. Regulations that can be adjusted immediately are presented to the governing body for further actions.

Rationale for selecting certain regulations to be amended include; the changing nature of business, regulations that are inconsistent or conflicting with other regulations which could hinder the development process, adjustments made to codes in other City Departments which would necessitate a change in the LDC, or regulations that have become outdated or inadequate. Staff also researches other City codes and ordinances as well as current Best Practices for multiple industries to determine if amendments need to be recommended for the LDC. From this procedure, Staff has generated a list of amendments recommended to help improve the guidelines for regulating development within the City of Lancaster.

Considerations

The following amendments are being proposed:

1. Building materials required in Industrial zoned areas
2. The establishment of a New Use in the Historic Town Square
3. The allowance of a use by "right" for several uses requiring a Specific Use Permit
4. Establishing separate criteria for erection and co-location of commercial antenna towers and establishing its use by "right" in certain districts

AMENDMENT 1 - Building material required in Industrial zoned areas

Article 14.500, Section 14.505 Industrial Districts requires buildings in the Industrial district to have exterior walls visible from a public right-of-way to consist of 100% masonry material. Staff believes this requirement is not necessary due to the fact that; 1) landscaping provisions contained in the LDC typically screen buildings from the public right-of-way, 2) the nature of the buildings' use typically does not warrant aesthetic enhancements, and 3) the marginal improvements add substantial cost and limited value to the property. Allowing buildings in the Industrial-zoned areas to be 100% metal increases the viability of development and remains consistent with the nature of the area.

AMENDMENT 2 - The establishment of a New Use in the Historic Town Square

In the Historic Overlay District, the use of Hotel and Boutique Hotel is allowed but the use of Bed and Breakfast is not mentioned. Bed and Breakfast establishments are allowed in the City in several districts as shown in Article 14.400, Section 14.401, subsection 2.1.2 Residential & Lodging; Agricultural/Open Space, Single Family Estates, and Neighborhood Services with a Specific Use Permit (SUP) and in Multi-family-16 by "right". Staff believes the allowance of this use in the Historic Town Square would enhance the appeal of the square, add another viable use to attract visitors to the square, and help promote one of the unique areas of the City (the Historic District). Staff recommends the use of Bed and Breakfast be allowed with an SUP in the Historic Town Square and stated in Article 14.400, Section 14.402 (3) Bed and Breakfast Operation.

AMENDMENT 3 - The allowance of a Use by "right" for several uses requiring a Specific Use Permit

In reviewing Article 14.400, Section 14.401 Land Use Tables, staff found multiple uses that require a SUP that should be allowed by "right". These uses are non-controversial, require minimal overview, and generally complement other uses within their zoning category. The removal of the SUP requirement reduces the timeframe allotted for these uses to be developed and increases the potential to utilize vacant buildings by reducing the start-up costs. There are eight (8) uses, six in the category of Retail & Personal Services, one in Commercial & Business Services, and one in Auto & Marine-related uses, which are being recommended to be allowed by "right" in specific zoning categories that currently require a SUP. The following uses and the zoning category which requires them to have a SUP are being recommended by staff to be allowed by "right":

Article 14.400, Section 14.401, subsection 2.1.6 Retail & Personal Services

1. Antique/Collectible Store – NS-Neighborhood Services
2. Catering Service – NS-Neighborhood Services
3. Christmas Tree Sales Lot & Similar Uses, Temporary – NS-Neighborhood Services
4. Museum or Art Gallery (private) – NS-Neighborhood Services
5. Night Club, Discoteque, or Dance Hall – LI-Light Industrial and MI-Medium Industrial
6. Retail Store with more than 2 fuel dispensers – R-Retail

Article 14.400, Section 14.401, subsection 2.1.7 Commercial & Business Services

1. Electrical, Watch, Clock, Jewelry & Similar Repair – NS-Neighborhood Services

Article 14.400, Section 14.401, subsection 2.1.8 Auto & Marine-related

1. Car Wash/Auto Detail – R-Retail and CH-Commercial Highway

AMENDMENT 4 - The allowance of a Use by “right” for several uses requiring a Specific Use Permit

In reviewing the current regulations governing the installation and co-location of commercial antenna towers, staff found that current regulations did not fully meet the intent of providing a development ready approval process. The City’s regulations are superseded by a number of Federal regulations including the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC). There are no regulations that specifically addressed zoning and compatible land uses. This amendment seeks to provide definitive guidance on the approval process as well as a more streamlined site plan approval process. With the addition of the streamlined and definitive site plan approval, the need for an SUP is lessened as it relates to commercial antenna structures. The site plan approval process is currently staff approval only.

Therefore, in reviewing Article 14.400, Section 14.401 Land Use Table, staff found multiple zoning categories that require a SUP that should be allowed by “right”. Again, these uses are non-controversial, require minimal overview, and generally complement other uses within their zoning category. The removal of the SUP requirement reduces the timeframe allotted for these uses to be developed and increases the potential to utilize more appropriate locations for these structures. There are only two (2) uses, in the category of Utilities, Communications & Transportation, which are being recommended to be allowed by “right” in specific zoning categories that currently require a SUP. The following uses and the zoning category which requires them to have a SUP are being recommended by staff to be allowed by “right”:

Article 14.400, Section 14.401, subsection 2.1.11 Utilities, Communications & Transportation

1. Antenna, Commercial - R-Retail, CH – Commercial Highway, CS – Commercial Services, ORT-Office Research Technology, and LI – Light Industrial
2. Antenna, Commercial, Free-Standing - R-Retail, CH - Commercial Highway, CS – Commercial Services, and ORT-Office Research Technology
3. Antenna, Commercial, Mounted - R-Retail, CH – Commercial Highway, and CS – Commercial Services

Options/Alternatives

1. City Council may direct staff to proceed with the recommended amendments to the Lancaster Development Code
2. City Council may direct staff to proceed with the recommended amendments to the Lancaster Development Code with modifications
3. City Council may direct staff to postpone amendments at this time

Recommendation

The purpose of this agenda communication is to inform Council regarding amendments and seek input. Staff recommends adoption of the amendments as presented.

Attachments

- Draft Land Use Table
- Draft Cell tower regulations

Prepared and submitted by:

Nathaniel Barnett, Senior Planner

Rona Stringfellow-Govan, Director of Development Services

Date: October 25, 2011

Table 1 Land Use Tables

P = Permitted A = Accessory Use S = SUP "+ = Permitted with Conditions

Agric.		Residential								Permitted Uses	Commercial					Industrial		
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.1 Rural & Animal-Related	NS	R	CH	CS	TC	ORT	LI	MI
P	P	P	P	P	P	P	P	P	P	Agricultural Uses on Un-Platted Land	P	P	P	P		P	P	P
S	S									Animal Boarding/Kennel <i>with</i> Outside Pens								
P	S									Animal Boarding/Kennel <i>without</i> Outside Pens	S	S	P	P			P	P
S										Animal Clinic for small animals, no outdoor pens +	S	P	P	P			P	S
S										Animal Hospital, Clinic		S	P	S			P	P
S										Animal Production								
S										Animal Sheller							P	P
P										Crop Production								
P	S									Horse Corral or Stable (Commercial)+								
P	P									Horse Corral or Stable (Private)								
S	S									Wholesale Nursery for Growing of Plants, No Retail Sale on Site								

DRAFT

P = Permitted A = Accessory Use S = SUP "+ = Permitted with Conditions

Agric.	Residential									Permitted Uses	Commercial					Industrial			
	A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16		MH	2.1.2 Residential & Lodging	NS	R	CH	CS	TC	ORT	LI
P	P	P	P	P	P	P	P	P	P	P	Accessory Building +	P	P	P	P		P	P	P
S	S								P		Bed & Breakfast Operation +	S							
P											Caretakers Quarters/Domestic or Security Unit		P	P	P		P	P	P
A	A	A	A	A	A	A	A	A	A	A	Carport +								
P									P		Convent or Monastery		P		P				
							P	P	P		Duplex +								
A	A	A	A	A	A	A	A	A	A	A	Garage	A	A	A	A		A	A	A
A	A	A	A	S	S	S	S	P	S	S	Guest Quarters/ Secondary Living Unit +								
P	P	P	P	P	P	P	P	P	P	P	Home Occupation +								
											Hotel or Motel		S		P				
											Hotel, Residence		S		P				
							P	P			Loft	P	P	P	P				
									P		Multi-Family								
	P	P	P	P	P	P	P	P		P	Portable Building - Residential +								
									P		Residential Care Facility	S	S		S				
S											Single Family on less than the min. size lot +								
					P	P	P	P			Single Family, Attached +								
P	P	P	P	P	P	P	P	P	P	P	Single Family, Detached +								
					P	P	P	P			Single Family, Zero Lot Line +								
	S	S	S	S	S	S	S	S			Subdivision Screening Wall								
A	A	A	A	A	A	A	A	A	A	A	Swimming Pool, Private								
A	A	S	S	S	S	S	S	S	S	S	Tennis Court Private	S						P	S
							P	P			Townhouse +		P						
								S			Urban Residential +		S						

DRAFT

P = Permitted A = Accessory Use S = SUP *+ = Permitted with Conditions

Agric.	Residential									Permitted Uses	Commercial					Industrial			
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.3 Institutional & Community Service	NS	R	CH	CS	TC	ORT	LI	MI	
								P		Assisted Living Facility +	S	P		P					
										Blood Plasma Donor Center		P	P	P				P	P
								S		Boarding Home									
										Child Care Center		S	P	P				P	S
										Church/House of Worship +	P	P	P	P				P	P
										College, University, or Seminary		p	P	S			P	P	P
										Convalescent Care Facility/Nursing Home +	P	P	P	P			S	S	
S	S	S	S	S	S	S	S	S	S	Day Care (7 or More Children)+	P	P	P	P			A	S	S
										Emergency Ambulance Services, Ground		P	P	P				P	P
P	P	P	P	P	P	P	P	P	P	Group or Community Home+	P	P							
										Government Facility		P	P	P			P	P	P
								S		Hospice	P	P	P	P			S	S	S
										Hospital		P	P	P			P	P	S
										Library, Art Gallery or Museum (Public)	P	P	P	P			P	P	P
										Mortuary or Funeral Chapel		P	P	P			S	P	
										Penal Boarding Home								P	P
										Post Office, Local Service	P	P	P	P			P	P	P
										Post Office, Regional			P				S	P	P
										Prison/Custodial Institution								P	P
S	S	S	S	S	S	S	S	S	S	Public or Private School, Primary +	P	P	P	P				P	
S	S	S	S	S	S	S	S	S	S	Public or Private School, Secondary +	P	P	P	P				P	
S	S	S	S	S	S	S	S	S	S	Public or Private School, Senior +	S	P	P	P			S	S	
										Rescue Mission or Shelter for the Homeless			S					P	P
										Social Service Provider, except Rescue Mission or Homeless Shelter		S	P					P	P



P = Permitted A = Accessory Use S = SUP "+ = Permitted with Conditions

Agric.	Residential									Permitted Uses	Commercial					Industrial		
P	P	P	P	P	P	P	P	P	P		P	P	P	P		P	P	P
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.4 Office & Professional	NS	R	CH	CS	TC	ORT	LI	MI
										Temporary Educational Building +	P	P	P	P		P	P	P
										Financial Institution with Drive-Through +	S	P	P	P		P	P	P
										Financial Institution without Drive-Through	P	P	P	P		P	P	P
										Office, General		P	P	P		P	P	P
										Office Building, less than 5,000 s.f.	P	P	P	P		P	P	P
										Office Building, 5,000 s.f. or more	S	P	P	P		P	P	P
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.5 Recreation, Entertainment & Amusement	NS	R	CH	CS	TC	ORT	LI	MI
										Billiard Parlor or Pool Hall +		S	S	P			P	P
										Carnival, Circus, or Amusement Ride, Temporary +	S	P	S	P		S	P	P
										Commercial Amusement/ Recreation (Inside) +		S	P	P			P	P
										Commercial Amusement/ Recreation (Outside)		S	S	S			S	P
S	S	S	S	S	S	S	S	S	S	Community or Recreation Club, Public or Private (Accessory)	S	P	P	P		P	P	P
S	S	S	S	S	S	S	S	S	S	Country Club, Private	S	P	P	P		S	P	P
										Golf Driving Range	S	S	S	P		S	P	P
P	P	P	P	P	P	P	P	P	P	Fund Raising Events by Non-Profit, Indoor or Outdoor, Temporary +	P	P	P	P		P	P	P
										Gun Club, Skeet or Target Range (Indoor)		S	P	P			P	P
S										Gun Club, Skeet or Target Range (Outdoor)								S
									A	Health Club	P	P	P	P		P	P	P
										Private Club, Lodge or Fraternal Organization	S	P	P	P			P	S
										Private Sports Arena, Stadium or Track		S	P	S			P	P
P	P	P	P	P	P	P	P	P	P	Public Park or Playground	P	P	P	P		P	P	P



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Agric.	Residential									Permitted Uses	Commercial					Industrial		
S	S	S	S	S	S	S	S	S	S	Tennis Courts (Not accessory to a public or private club) +	S	P	P	P			P	P
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-8	TH-16	MF-16	MH	2.1.6 Retail & Personal Services	NS	R	CH	CS	TC	ORT	LI	MI
										Antique/Collectible Store	S-P	P	P	P				
										Astrologer, Hypnotist, or Psychic Art and Science	P	P	P	P				
										Banquet Facility		P	P	P				
										Business School		P	P	P		P	P	
										Catering Service	S-P	P	P	P		S	P	
										Christmas Tree Sales Lot & Similar Uses, Temporary +	S-P	P	P	P		S	P	P
										Convenience Store/Mini-mart	P	P	P	P				
										Convenience Store/Mini-mart w/ Drive-through							S	S
										Copy Center	P	P	P	P		P	P	P
										Display, Incidental +	P	P	P	P				
										Garden Supply/Plant Nursery +	S	P	P	P			P	
										General Personal Service	P	P	P	P			S	
										Grocery Store	P	P	P	P				
										Grocery Store w/ Drive-through							S	S
										Hair Salon, Manicurist	P	P	P	P				
										Laundry, Drop-off/Pickup	P	P	P	P			P	P
										Laundry, Self Service	P	P	P	P			P	P
										Massage Therapist	P	P	P	P				
										Movie Theater		P	P	P				
										Museum or Art Gallery (Private)	S-P	P		P		P	P	

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Agric.	Residential									Permitted Uses	Commercial					Industrial			
											Monument Works, Stone and Metal				S			S	P
											Portable Building				S			S	S
											Printing & Publishing				P			P	P
											Salvage or Reclamation of Products (Indoors)				S			P	P
											Salvage or Reclamation of Products (Outdoors)							S	P
											Sheet Metal Shop				S			P	P
											Tool, Dye, Guage and Machine Shop							S	P
											Welding Repair				S			P	P
A-O	SF-E	SF-4	SF-5	SF-6	ZL-7	2F-6	TH-16	MF-16	MH	2.1.10 Wholesale, Distribution & Storage	NS	R	CH	CS	TC	ORT	LI	MI	

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Agric.	Residential									Permitted Uses	Commercial					Industrial		
										TV Broadcasting & Other Communication Service		S	P	S		S	P	P
S	S	S	S	S	S	S	S	S	S	Utilities Holding a Franchise from City of Lancaster	S	S	P	S		S	P	P
S	S	S	S	S	S	S	S	S	S	Utility Installation, Other than Listed	S	S	S	S		S	S	S
S	S	S	S	S	S	S	S	S	S	Utility/ Transmission Lines +	S	S	S	S		S	S	S
S	S	S	S	S	S	S	S	S	S	Wireless Communication Tower	S	S	S	S		S	S	S

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Telecommunication antennas.

A. Purpose. These regulations are adopted for the following purposes:

- (1)**To protect and provide for the public health, safety, and general welfare of the city.
- (2)**To enhance the ability of the providers of telecommunications services to provide such services to the community safely, effectively, and efficiently.
- (3)**To provide regulations for antenna support structures and antennas that provide secure mounting and construction and prevent interference with public safety communications equipment.
- (4)**To encourage the users of support structures and antennas to collocate where possible and to locate all facilities, to the extent possible, in areas where adverse impact on the community is minimal. Stealth designs are required for all antenna support structures, antennas, and supporting equipment.
- (5)**To protect and enhance the city's environmental and aesthetic quality.
- (6)**To identify standards in order to ensure equitable treatment of providers of functionally equivalent telecommunications services.

B. Applicability.

- (1)**This article applies to all telecommunications towers, support structures, and antennas installed, built or modified unless exempted in (2) below.
- (2)**Exemptions.
 - (a)**In any zoning district, antennas that are two meter or less in diameter including satellite earth stations.
 - (b)**In any zoning district, any receive-only antennas and antenna support structures that are owned and operated by a federally licensed amateur radio station operator where the combined height does not exceed 40 feet provided an amateur radio antenna shall be installed according to manufacturer's requirements and approved by the building official.
- (3)**Support structures or antennas legally installed before adoption of this ordinance are not required to comply with this ordinance but must meet all applicable state and federal requirements, building codes, and safety standards. However, if a nonconforming structure is damaged or destroyed by any means to an extent where the replacement cost is greater than 50 percent of its appraised value at the time of damage or destruction as determined by the latest tax rolls, then such nonconformity shall not be re-established and such structure may only be rebuilt in compliance with the requirements of this Code except upon action by the board of adjustment to permit reconstruction of such structure and continuance of the nonconforming use. The board of adjustment shall have due regard for the rights of the person or persons affected, and shall consider such in regard to public welfare, character of the area

surrounding, nature of the use in relation to the intent of the area, and the conservation, preservation and protection of property. In addition, no nonconforming structure shall be enlarged or extended to occupy a greater area than was occupied at the effective date of adoption or amendment of the regulations that make the structure nonconforming. Any nonconforming use on a lot or portion of a lot may be altered to decrease its nonconformity.

(4)An AM array shall be subject to these regulations. An AM array consisting of one or more support structure units and supporting ground equipment, which functions as one AM broadcasting antenna, shall be considered one support structure. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the support structures, including the guide wires, in the array. Additional support structure units may be added within the perimeter of the AM array by right.

C. Definitions.

(1)For the purposes of this section, the following terms shall have the respective meanings as ascribed to them:

Antenna: Any exterior transmitting or receiving device mounted on or within a support structure, building, or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals, television signals, or other communication signals.

Antenna support structures: The transmitting or receiving system, its supporting structures, and any appurtenances mounted thereon, including a free-standing structure built specifically to support or act as an antenna or a structure mounted on some other man-made object such as a building or bridge.

Backhaul network: The lines that connect a communications provider's support structure/cell sites to one or more telephone switching offices and/or long distance providers, or the public switched telephone network.

Collocation: The use of a single-support structure and/or site by more than one communications provider. Collocation also means locating a telecommunications facility on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.

The Federal Aviation Administration.

The Federal Communications Commission.

Height: The distance measured from the finished grade of the parcel to the highest point on the support structure or other structure including the base pad and any antenna.

Monopole: A structure composed of a single spire used to support telecommunications equipment.

Omni antenna: A thin, vertical, whip-type antenna that delivers an omni directional signal.

Pre-existing support structures and pre-existing antennas: Any support structure or antenna for which a building permit or use permit has been properly issued prior to the effective date of this ordinance, including permitted support structures or antennas that have not yet been constructed so long as such approval is current and not expired.

Stealth antenna support structure: The design of a tower or tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a stealth design or tower are: architecturally screened, roof-mounted antenna/array/equipment; building-mounted antenna/array/equipment that is painted and treated as an architectural element to blend with the existing building; designs that conceal the antenna/array/equipment, such as manmade trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

Telecommunications facility: Any unmanned facility consisting of equipment for the transmission, switching, and/or receiving of wireless communications. Such facility may be elevated (either structure-mounted or ground-mounted) transmitting and receiving antennas, low-power mobile radio service base station equipment, and interconnection equipment. The categories of facility types include both roof and/or structure-mount facilities and telecommunications support structures.

Telecommunication tower: A structure constructed for the purpose of supporting one or more antennas designed to transmit or receive wireless signals (i.e. cellular, radio, or television).

Temporary antenna: An antenna and supporting equipment used on a temporary basis in conjunction with a special event, emergency situation, or in case of equipment failure.

Transceiver radio: Radio equipment rectangular in shape that attaches to lighting fixtures and/or utility poles and meets wind load requirements. Transceiver radios may have an attached omni-directional whip antenna.

D. General requirements.

- (1)**Antennas and support structures may be considered either principal or accessory uses.
- (2)**Antenna installations shall comply with all other requirements of all city ordinances and the zoning ordinance with the exception of those specified within this article.
- (3)**All commercial attachments including but not limited to signs, flags, lights and attachments, other than those required for emergency identification, communications operations, structural stability, or as required for flight visibility by the FAA and FCC shall be prohibited on any antenna or antenna support structure. However, lights may remain or be replaced on light standards that are altered or replaced to serve as antenna support structures with fixtures that comply with the lighting regulations of the city. However, this provision shall not preclude the inclusion of an antenna within or mounted on a flag pole.
- (4)**All antennas and support structures must meet or exceed current standards and regulations of the FAA, the FCC, and any other state and federal agency with regulatory authority over support structures and antennas. If standards change, owners must comply within six months or as required by the regulating authority.

(5)A building permit is required to erect or install an antenna, antenna support structure, and related equipment, unless the particular antenna is exempt from regulations of this article. All installations must comply with applicable state and local building codes and the standards published by the Electronic Industries Association as may be amended from time to time. In addition to any other approvals required by this section, no new antenna, tower, or support structure shall be erected prior to the issuance of a building permit.

(6)All support structures and antennas must be constructed and operated in a manner that does not create electromagnetic or other interference with the City of Lancaster radio frequencies and public safety operations as required by the FCC.

(7)No commercial antenna, antenna support structure, microwave reflector/antenna, or associated foundations or support wires may be located within any required front, side, or rear yard setback.

(8)All antennas and antenna support structures owned and/or operated by a governmental entity shall be permitted by right in any district.

(9)Design.

(a)Subject to the requirements of the FAA or any applicable state or federal agency, towers shall be painted a neutral color consistent with the natural or built environment of the site.

(b)Stealth structures must be designed so they are reasonably consistent with the surrounding built or natural environment. In order to determine compliance with this requirement, the city will consider the following criteria:

i. Scale;

ii. Color;

iii. The compatibility of the proposed facility with surrounding built and natural features;

iv. Extent to which the proposed facility has been designed to reasonably replicate a non-wireless facility; and

v. Extent to which the proposed facility is not readily identifiable as a wireless communications facility.

(c)Towers shall not exceed the height limitations of any airport overly zone as may be adopted by the city.

(d)Antenna attached to a building or stealth support structure shall be of a color identical to or closely compatible with the surface to which they are mounted.

(e)All towers and equipment shelters or cabinets shall be surrounded by a minimum 6 foot high decorative wall constructed of (1) brick, stone or other approved materials as listed in this Code or (2) wrought iron fence and a landscape strip of not less than 10 feet in width planted with evergreen materials, which will provide a visual barrier to a minimum height of six feet within two years. The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of

screening may be approved by administrative permit. An acceptable alternative shall be in accordance with living screen requirement of the Code, or by an equivalent method approved by the senior planner where visual screening will be achieved that meet the intent of this Code.

(f)If the equipment cabinets or storage buildings contain machinery that produces noise, the cabinet, or building shall be designed so that the noise is not perceptible outside the structure.”

(g)All towers and structures shall be set back from the property line of any adjacent use, and any thoroughfare, collector and above as indicated on the Master Thoroughfare Plan, at least a distance equal to the height of the tower. An exception to this exists where there is provided an engineered break or collapse point of the tower, in which case the setback may be 110 percent of the distance of the breakpoint to the bottom of the tower. The setback shall consider the combined fall distance of the remaining supported base and any collapsed sections so as to prevent encroachment onto adjacent property, public street, overhead utility lines or ground or pad-mounted utility services.

(h)Vehicle or outdoor storage on any tower site is prohibited.

(i)On-site parking on an approved concrete surface for periodic maintenance and service must be provided at all antenna or tower locations consistent with the underlying zoning district.

(10)All antennas and support structures shall be protected from unauthorized access by appropriate security measures. A description of proposed security measures shall be provided as part of any application to install, build, or modify antennas or support structures. Additional measures may be required as a condition of the issuance of a building permit and/or specific use permit as deemed necessary.

(11)Temporary antennas shall only be allowed in the following instances:

(a)In conjunction with a festival, carnival, or other special event.

(b)In case of an emergency as required by the police or fire departments.

(c)When needed to restore service on a temporary basis after failure of an antenna installation. The city must be notified within 72 hours of the placement of a temporary antenna. If the temporary antenna is to be needed for more than seven days, then the provider must acquire a permit for the use.

(12)Applicants must notify the city of any change in collocation or backhaul providers within 30 days of the exchange.

(13)Obsolete non-complying tower structures. Any portion of a tower, which is not occupied by an active antenna for a period of six consecutive months, shall be removed at the owner's expense. Failure to comply with this provision shall constitute a public nuisance that may be remedied by the city at the tower or property owner's expense. Any applicant for a new tower or disguised structure shall place a bond or other security with the city prior to any final approval for the purpose of removing any tower or disguised structure as required herein and

to compensate the city for performing proper maintenance of such towers or disguised structures to ensure such structures do not become unsafe or otherwise fail to be maintained in compliance with this Code. The bond or security shall be in the form approved by the senior planner, and in the amount of \$15,000.00, or such other amount as is determined by the senior planner to satisfy the requirements hereof with regard to the specific tower or structure to which it would apply.

(14)Wind-load. A tower shall be designed with a minimum 90 mile per hour wind-load. The wind load characteristics of the tower shall consider the addition of up to two antennas.

E. Collocation. Collocation shall be accomplished as follows:

(1)All new stealth support structures over 60 feet in height must be constructed to support antennas for at least two carriers unless the support structure is replacing an existing utility structure or light standard. Sufficient area for associated structures and equipment must also be provided. A written agreement committing to shared use as required by this subsection shall be submitted by the tower applicant prior to approval of the application. The failure of the owner of a tower built for shared use shall be in violation of this ordinance and, among other remedies of the city, shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or towers within the city.

(2)Telecommunications area map. Any tower approved within the city or ETJ, indicated within that jurisdiction on the telecommunications area map, shall be designed and constructed to accommodate the number of users indicated on the map to the extent feasible. The failure of the owner of the tower built for shared users to negotiate in good faith with potential users shall be a violation of this Code and, among other remedies of the city, shall be cause for the withholding or revocation of a specific use permit.

(3)Appeal of shared use violations. Any party seeking shared use of a tower subject to this provision shall, after responding to notice of an application, negotiate with the tower owner for such use. The tower owner may, on a legitimate and reasonable business basis, choose between multiple requests for shared use on the same tower or structure, and may reject any request where legitimate technical obstacles cannot be reasonable overcome or where the party requesting shared use will not agree to reasonable financial terms. Any party believing that the applicant has breached its duty to negotiate in good faith for shared use shall notify the applicant and the senior planner in writing within 20 days. The senior planner may reject the application upon a finding that shared use has been improperly denied. A notice of breach of duty shall explain the precise basis for the claim and shall be accompanied by payment of an administrative review fee as established by resolution of the city council. After the tower owner's receipt of the notice, the tower owner shall have 20 days to provide a written submission to the senior planner responding to the alleged violation of the shared use requirement. If deemed necessary by the senior planner, he/she may engage, at the cost of the party alleging the violation, a neutral, qualified technical consultant to provide an opinion on feasibility or costs of the shared use request. If the senior planner receives a notice alleging a violation of the shared use requirement, the time for a decision on an administrative permit is automatically extended until the senior planner has determined that the tower owner has complied.

(4)A support structure which is modified or reconstructed to accommodate collocation shall be of the same type or design as the existing structure and is subject to the following regulations:

(a)The support structure may be modified or rebuilt to a height not to exceed 30 feet over the support structure's existing height, with a maximum height of 150 feet above ground level (AGL). If a use permit issued for the support structure stipulated a maximum height, the support structure may not be modified unless the specific use permit is amended.

(b)Distance separation from other support structures and residential zoning district boundaries are based on the original support structure and are not increased.

(c)The support structure may be moved on the same property within 50 feet of its existing location but may not be moved closer to residentially-zoned property. The new location must be within the boundaries of the specific use permit.

(d)The original support structure must be removed from the property within 90 days of the completion of new support structure.

(e)Additional antennas attached to an existing support structure must comply with the design of the existing antenna on the support structure.

F. Antennas and tower placement allowed by-right. The placement of antenna and towers are permitted by-right in all zoning districts only as follows:

(1)The attachment of additional or replacement of antenna or shelters to any tower existing on the effective date of this Code or subsequently approved in accordance with these regulations, provided that the additional equipment, shelters, or cabinets are located within the existing tower compound area.

(2)The mounting of antenna on any existing building or structure, such as a water tower, provided that the presence of the antenna is concealed by architectural elements or painted a color identical to the surface to which they are attached.

(3)The mounting of antenna on or within any existing high-voltage electric transmission tower, but not exceeding the height of such tower by more than ten feet.

(4)The installation of antenna or the construction of a tower or support structure on building or land owned by the government.

G. Antenna and tower placement allowed by administrative permit. The placement of antenna and towers as listed in this section shall be administratively approved by the planning department based upon compliance with the standards of this section.

(1)Types of antenna and tower placement allowed by administrative permit.

(a)The attachment of additional or replacement antenna or shelters to any tower existing on the effective date of this Code or subsequently approved in accordance with these regulations and requiring the enlargement of the existing tower compound area, as long as all other requirements of this section and the underlying zoning district are met.

(b)The one-time replacement of any tower approved in accordance with these regulations, so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard. The new tower shall be a monopole or stealth design. The height of the new tower may exceed that of the original by not more than 20 feet if such tower meets conditions herein. Subsequent replacements shall require the approval of a specific use permit.

(c)The construction of a stealth support structure provided that all related equipment shall be placed underground or concealed within the structure when the structure is located in any district other than a district authorizing industrial uses. Equipment may be placed in a cabinet if the stealth support structure is incidental to a non-residential use.

(d)Towers erected and maintained for a period not to exceed 45 days for the purpose of replacing an existing tower, testing an existing or proposed network, or special events requiring mobile towers.

(2)Application procedures. Applications for administrative permits shall be made on the appropriate forms to the senior planner and accompanied by payment of a fee as may be established by the council.

(3)Application requirements.

(a)A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements within 200 feet of the proposed antenna or tower, including buildings, drives, walkway, overhead utility lines, ground or pad-mounted utilities, parking areas, and other structures, public right-of-way, the zoning categories of the subject and adjoining properties, the location of the distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the existing or proposed tower. The application shall describe the height, design, location, type and frequency of antenna, tower owner's name, longitude/latitude, antenna providers using the tower, etc.

(b)The application shall be reviewed by the senior planner to determine compliance with the above standards and transmit the application for review and comments by other departments and public agencies as may be affected by the proposed facility.

(c)The senior planner shall issue a decision on the permit within 30 days of the date of application, or the application shall be deemed approved unless the time period for review and action was extended pursuant to this section. The senior planner may deny or approve the application as submitted or with minor changes that are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens consistent with the purpose of this section. The senior planner may consider the purposes of this section and the factors established in this Code, as well as any other considerations consistent with the Code. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

(4) Appeals. Appeals from the decision of the senior planner shall be made pursuant to Article ____, Appeals of administrative decisions.

H. Antennas and tower placement allowed by specific use permit. Unless otherwise provided herein, all proposals to install or replace an antenna, tower, or support structure in any zoning district shall require the approval of a specific use permit, subject to the following limitations:

(1) Applications for specific use permits. Applications for specific use permits shall be filed and processed subject to the requirements of and in the manner and time frame established by the LDC.

(2) Additional minimum requirements. No specific use permit shall be issued unless the applicant has clearly demonstrated that placement of an antenna or support structure pursuant to Antenna and Tower Placement Allowed By-Right, is not technologically or economically feasible. The planning and zoning commission may consider current or emerging industry standards and practices, among other information, in determining feasibility.

(3) Findings required. In addition to the determinations or limitations specified herein for the consideration of specific use permits, the planning and zoning commission shall also base its decision upon, and shall make findings as to, the existence of the following conditions:

(a) The proposed tower is not and cannot be located to meet the co-location requirements of this section.

(b) No existing towers, structures, or buildings within the necessary geographic area for the applicant's tower network, or other limiting conditions that render towers, structures, or buildings within the applicant's required geographic area unsuitable.

(c) The design of the tower or structure, including the antenna, shelter, and ground layout, maximally reduces visual degradation and otherwise complies with provisions and intent of this section. New towers shall be a stealth design.

(d) The proposal minimizes the number and/or size of towers or structures that will be required in the area.

(e) The applicant has not previously failed to take advantage of reasonable available shared use opportunities or procedures provided by this Code or otherwise.

(f) No land owned by any agency of the federal or state government, or by any political subdivision of the state, is available for locating the structure or tower.

LANCASTER CITY COUNCIL
Work Session Agenda Communication for
November 1, 2011

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WS11-003

Receive a presentation and discuss the requirements to establish a Railroad Quiet Zone.

This request supports the City Council 2011-2012 Policy Agenda.

Goal: Healthy, Safe and Vibrant Neighborhoods

Background

Upon the request of Councilmember Weaver, staff was directed to bring forward an item on a potential Railroad Program, including how to establish a quiet zone. Staff has researched to determine regulations governing the establishment of railroad quiet zones.

Since their inception, railroads have sounded locomotive horns or whistles in advance of grade crossings and under other circumstances as a universal safety precaution. During the 20th century, nearly every state in the nation enacted laws requiring railroads to do so. Some states allowed local communities to create whistle bans where the train horn was not routinely sounded.

In the early 1990's, the Federal Railroad Administration (FRA) observed a significant increase in train-vehicle collisions at certain gated grade crossings in Florida which coincided with a statewide whistle ban on the Florida East Coast Railroad (FECR). In 1993, FRA issued Emergency Order #15 requiring trains on the FECR to sound their horns again, pre-empting the 1984 Florida statute that created the ban. The number and rate of collisions at affected crossings returned to pre-whistle ban levels.

In 1994, Congress mandated that the FRA issue a federal regulation requiring the sounding of locomotive horns or whistles at all public highway-rail grade crossings; and to provide for exceptions to that requirement by allowing communities to establish "quiet zones." In 1996, Congress added that special consideration be given to communities with long-standing or legacy whistle bans.

Before finalizing the rule, FRA held public meetings around the country and solicited comment from scores of affected communities and stakeholders. Based upon the voluminous input received, FRA published an Interim Final Rule in December 2003, refining its original proposal and inviting additional public comment. The final federal train horn rule became effective on June 24, 2005.

The rule provides the first opportunity ever for many local communities around the country affected by train horn noise the option of silencing horns by establishing quiet zones.

The City of Lancaster would be eligible to be granted the authority to create quiet zones at railroad crossings because of the Federal Railroad Administration's (FRA) Train Horn Rule if a crossing is suitable for adding quiet zone devices and if project funding has been secured.

Considerations

The Train Horn Rule published by the FRA established the conditions under which a train horn must be used and the requirements for quiet zone implementation. Under the Train Horn Rule, locomotive engineers must sound train horns for a minimum of 15 seconds, and a maximum of 20 seconds, in advance of all public grade crossings, except:

- If a train is traveling faster than 45mph, engineers will not sound the horn until it is within ¼ mile of the crossing, even if the advance warning is less than 15 seconds.
- If a train stops in close proximity to a crossing, the horn does not have to be sounded when the train begins to move again.
- There is a "good faith" exception for locations where engineers can't precisely estimate their arrival at a crossing.

Wherever feasible, train horns must be sounded in a standardized pattern of 2 long, 1 short and 1 long. The horn must continue to sound until the lead locomotive or train car occupies the grade crossing.

A maximum volume level for the train horn has been established at 110 decibels. The minimum sound level remains 96 decibels. Railroads had until 2010 to fully comply with the maximum volume level requirement.

The Rule provided procedures that the City can follow to create quiet zones which would prohibit routine train horn use. The City must install Supplemental Safety Measures (SSMs) to compensate for the train horn. With a proper SSM, or quiet zone device, in place the City can issue a certification notice to inform the FRA, the railroad, and others that the crossing is in compliance with the federal standards for a quiet zone. Crossings might qualify for the quiet zone status if each individual crossing meets requirements.

- **Operational** - The oversight and implementation of this project would be within the Building Inspections Division, by the City Engineer. The process by which to establish a new quiet zone is outlined below as referenced by the FRA:

Establishing a New Quiet Zone: A new quiet zone must be at least ½ mile in length and have at least one public highway-rail grade crossing. Every public grade crossing in a new quiet zone must be equipped at minimum with the standard or conventional flashing light and gate automatic warning system. A

quiet zone may be established to cover a full 24-hour period or only during the overnight period from 10:00 P.M. to 7:00 A.M.

Local governments must work in cooperation with the railroad that owns the track, and the appropriate state transportation authority to form a diagnostic team to assess the risk of collision at each grade crossing where they wish to silence the horn. An objective determination is made about where and what type of additional safety engineering improvements are necessary to effectively reduce the risk associated with silencing the horns based on localized conditions such as highway traffic volumes, train traffic volumes, the accident history and physical characteristics of the crossing, including existing safety measures.

Examples of additional safety engineering improvements that may be necessary to reduce the risk of collisions include: medians on one or both sides of the tracks to prevent a motorist from driving around a lowered gate; a four-quadrant gate system to block all lanes of highway traffic; converting a two-way street into a one-way street; permanent closure of the crossing to highway traffic; or use of wayside horns posted at the crossing directed at highway traffic only.

Once all necessary safety engineering improvements are made, the local community must certify to FRA that the required level of risk reduction has been achieved. A quiet zone becomes effective and train horns go silent only when all necessary additional safety measures are installed and operational.

- **Legal** - The method by which railroad crossings are certified is governed by the Federal Railroad Administration publication, 49 CFR Parts 222 and 229, Use of Locomotive Horns at Highway Grade Crossings; Final Rule.

Upon approval by the City Council, the City Attorney would prepare an ordinance to establish a Railroad Program and work with engineering staff to meet all legal requirements for the necessary submittals and certifications to the FRA.

- **Financial** – If staff is directed to proceed with the creation of this program, necessary staff time will need to be allocated toward working with railroad staff to evaluate whether current at-grade crossings meet the required safety criteria of the FRA. With reduced staffing levels at this time, it is not feasible but could be added to a future budget for consideration.

Funding for the City of Lancaster railroad projects may be accomplished with Capital Improvement Project (CIP) funds, federal grant programs, or developer/private contributions. CIP Railroad program funds and grant programs are intended to support projects initiated by the city. A private entity may initiate a quiet zone project at the City and fund the project in its entirety. If a private entity provides complete project funding for installation and maintenance, then the project will be prioritized for installation.

- **Public Information** – There are no public information requirements at this time.

Recommendation

There is no recommendation at this time. The purpose of this item is to brief the City Council on the requirements to establish a railroad program and quiet zone in the City of Lancaster.

Attachments

- From TML Legal Department: "Railroad Quiet Zones – How do we get there from hear?" (City of Irving)
- Presentation

Prepared and submitted by:
Rona Stringfellow-Govan, AICP
Director of Development Services

Date: October 25, 2011



RAILROAD QUIET ZONES

How do we get there from “hear”?

**Charles R. Anderson
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Charles R. Anderson

**Acting City Attorney
Irving, Texas**

Born and raised in Midland, Texas; an honor graduate of Lee High School (but did not meet either of the George Bushes who resided there then).

Did undergraduate work at the Massachusetts Institute of Technology and the University of Texas at Austin where he received a bachelor's degree in government in 1973. Was involved in the Texas Public Interest Research Group where he participated in a study of dangerous toys in the marketplace and was co-chair of the group.

Received a J.D. from The University of Texas School of Law in Austin, Texas, in 1976 where he participated in the Criminal Justice Project and the Texas International Law Journal with a case note on general average.

While looking for work and waiting for Bar Exam results, volunteered for the honorable William M. Taylor, United States District Judge for the Northern District of Texas.

In 1977, he went to work for the City of Irving as an Assistant City Attorney acting as prosecutor for ordinance violations and Class C Misdemeanors.

In 1978, he began a two year stint as a Special Agent with the Federal Bureau of Investigation in the Jackson, Mississippi Field Office where he investigated civil rights complaints among other duties.

In 1980, he returned to the Office of the City Attorney for the City of Irving where he is now the Acting City Attorney. Principal practice areas include real estate, civil service, and human relations law. Mr. Anderson has served on the Administrative Board of the Irving Supplemental Benefit Plan which provides pension disability and death benefits to City of Irving employees and is currently the Chair of such Board. In addition, Mr. Anderson also chairs the Voluntary Employee Benefit Association trust which administers a fund which augments retirees health insurance premiums.

Mr. Anderson serves on the Board of Directors for the Texas City Attorneys Association, which is an affiliate of the Texas Municipal League.

RAILROAD QUIET ZONES

Unlike current plans to construct new rail lines in transportation corridors far from city centers, most existing rail lines tend to run through the heart of the cities which they serve. Thus most cities have at least one, but often many more at-grade crossings for the rail lines located within the city's boundaries. The rail lines and crossings also tend to be located in proximity to residences and businesses, and so any change in the method that trains use to navigate street and highway crossings tend to affect a large number of people.

Such widespread effect was certainly the case when Congress passed legislation to mandate that trains sound horns prior to entering such at-grade crossings, 49 U.S.C.A. § 20153. This became, literally, a wake-up call to citizens as to how many trains were actually passing through town (with horns required to be at a level of 96 to 110 db, 100 ft forward of locomotive, per 49 C.F.R. § 229.129), but, until recently, there was not much to do about this rather intrusive noise.

This paper will attempt in a modest way to address some of the legal concerns surrounding railroad crossings in general and Quiet Zones in particular. Specifically, the following points will be addressed:

- General Railroad Crossing Liability Concerns
- Establishing a Quiet Zone—Process
- Establishing a Quiet Zone—Substantive Steps
- Semi-Quiet Zones
- Evaluating Alternatives

In addition, within the paper, I will provide such material as links to the web site for the Federal Railroad Administration ("FRA") and, at the end, a copy of the transmittal letter from the City of Irving requesting such a zone.

General Railroad Crossing Liability Concerns

Liability considerations will arise anytime there is a collision between a train and a smaller vehicle (which is just about everything else). Due to the great disparity in size and in weight (even with 18 wheelers), the smaller vehicle almost always sustains massive damage with correspondingly severe injuries to the vehicle occupants. In the opinion of this writer, railroads may be even less sympathetic defendants than municipalities, and this would lead to a natural desire on the part of railroads to avoid liability wherever possible.

Railroad crossings are generally under the ownership and control of the railroad owning the tracks, and maintenance is the responsibility of railroad Kansas City Southern Ry. Co. v. Leatherwood, 519 S.W.2d 533 (Tex. Civ. App.—Beaumont, 1975, *ref'd n.r.e.*) and not the city which owns or maintains the streets. Under normal circumstances, no special equipment is required to be installed. In extra hazardous circumstances which are outside of normal (slope, grade, etc.), additional equipment is required to be installed to give warnings and render the intersection safer for the public to use. Like cities, railroads are required to maintain any safety equipment at the risk of liability for failure to so maintain, Osuna v. Southern Pacific R.R., 641 S.W.2d 229 (Tex. 1982), see also Sec. 71.002(c), Tex. Civ. P. & Rem. Code.¹

Where there are statutory duties to perform a safety function, such as sounding a horn before entering an intersection, it has long been settled that failure to do so by a railroad can constitute negligence *per se*, Missouri, K. & T. Ry. Co. of Texas v. Cardena, 22 Tex. Civ. App. 300, 54 S.W. 312, (Tex. Civ. App. 1899, no writ). Texas does have a

¹ § 71.002.(c), Tex. Civ. P. & Rem. Code provides:

(c) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a proprietor, owner, charterer, or hirer of an industrial or public utility plant or of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers; and

(2) the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

statutory requirement that trains approaching an intersection from a quarter of a mile distant sound a horn, Section 471.006, Texas Transportation Code, and subsection (c) of that section specifically states that a railroad is liable for failing to sound the warning devices required.

Establishing a Quiet Zone—Process

Given the legal background that there are both state and Federal requirements for a train to sound a horn prior to a street crossing, a proper question to ask is how does a Quiet Zone get established where sounding the horn is not automatically required come into being from a legal standpoint? This can occur because the Federal statute previously referenced preempts the state statute in this regard. Such preemption is specifically recognized at 49 C.F.R. § 222.7. The Federal statute, which mandates the sounding of the horn, also has provisions for exceptions to such requirement.²

On June 24, 2005, the final rule on Quiet Zones and the removal of the requirement to sound a horn was adopted and placed in the Code of Federal Regulations, 49 C.F.R. § 222, which had the effect of providing a means by which municipalities can seek relief from the automatic sounding of railroad horns at intersections.

Under U.S.C.A. § 20153, applications for a waiver to the horn requirement shall be made jointly by the entity having control of the streets and the owner or operator of the railroad tracks. However, the FRA has provided a process whereby one party can seek a waiver to this joint filing agreement, 49 C.F.R. § 222.15(b).

² **(c) Exception.** (1) *In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—*
(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;
(B) for which use of the locomotive horn as a warning measure is impractical; or
(C) for which, in the judgment of the Secretary, supplementary safety measures fully compensate for the absence of the warning provided by the locomotive horn.
 (2) *In order to provide for safety and the quiet of communities affected by train operations, the Secretary may specify in such regulations that any supplementary safety measures must be applied to all highway-rail grade crossings within a specified distance along the railroad in order to be excepted from the requirement of this section.*

49 U.S.C.A. § 20153

The actual application process is controlled by 49 C.F.R. Pt. 222, App. C. At this time, there is also help provided on the web by the FRA in the form of a Quiet Zone Calculator at <http://www.fra.dot.gov/us/content/1337>. The information requested is somewhat technical in terms of calculating risk indices, but well within reach of many traffic engineers. The first four pages of the City of Irving's application is attached hereto to give some idea of what is involved.

It should be noted that in making the application, the entity will need to review and decide what additional safety measures it chooses to submit as part of its application. These options are discussed in the next section.

Establishing a Quiet Zone—Substantive Steps

In seeking a waiver of the horn blowing requirement from the FRA, a city will need to select a basis on which to request the waiver. This basis is essentially one which will not increase the number of accidents at a given crossing and is one chosen after due consideration to the following questions:

- What are the different bases which have been recognized by the FRA as a ground to establish a Quiet Zone?
- What crossing or crossings are sought for the Quiet Zone (understanding that a Quiet Zone must be at least one half mile in length³)?
- What is the city's budget in regard to improvements or other measures necessary for Quiet Zone approval?
- How much money is the city willing to commit to maintenance or other programs on an on-going basis once the Quiet Zone is approved and operational?
- What is the railroad's position on the Quiet Zone in general, and on such specifics as original equipment expense, maintenance, and indemnity?
- Is the location under consideration more suitable for a partial Quiet Zone where, for instance, the zone is only effective during certain times such as from 10:00 p.m. to 7:00 a.m.?

³ 49 C.F.R. § 222.35(a)1

Answers to the foregoing questions will aid in the final selection of the basis to ground the application. Bases are essentially divided into two groups. The first group is called Supplementary Safety Measures or SSMs. These consist of physical barriers for the most part, and are more described in 49 C.F.R. Pt. 222, App. A. The five identified in the Code of Federal Regulations are:

1. Temporary Closure of a Public Highway-Rail Grade Crossing
2. Four-Quadrant Gate System
3. Gates with Medians or Channelization Devices
4. One Way Street with Gate(s)
5. Permanent Closure of a Public Highway-Rail Grade Crossing

Exclusive use of SSMs at all crossings should generally be sufficient to reduce the Risk Index calculations set out in 49 C.F.R. Pt. 222, App. C to qualify for Quiet Zone designation on an almost automatic basis (see Section II of Appendix C).

There is a second class of measures which the FRA will consider in order to grant Quiet Zone status, and these are called Alternative Safety Measures, or ASMs. Use of these measures will involve an evaluation by the FRA before being granted and will be subject to annual reevaluation based on revised estimates of risk reduction of the measures employed on a nationwide basis. Nevertheless, these measures generally are much less capital intensive, and might be implemented fairly quickly if approval is obtained from the FRA. Under 49 C.F.R. Pt. 222, App. B, the following ASMs are listed:

1. Modified SSMs (SSMs which do not meet all of the requirements for the FRA).
2. Non-engineered ASMs such as:
 - Programmed Enforcement
 - Public Education and Awareness
 - Photo Enforcement
3. Engineered ASMs (things which improve geometrics such as sight distance).

Semi-Quiet Zones

Sometimes it is not possible to get all the way to a Quiet Zone status for a particular crossing or set of crossings. Failure to achieve that goal may be due to any number of factors such as, but not limited to, fiscal limitations, too many intersections or perhaps a difficult railroad with which to negotiate. Fortunately, there are provisions which would breath life into the adage that half a loaf is better than none.

The first approach would be one which has been called a Partial Quiet Zone and is recognized at 49 C.F.R. Pt. 222, App. C, Sec. I, C. Essentially, this is an area which is quiet only during certain times, such as at nighttime. This can be achieved in a variety of ways such as closing the streets at crossings which you would like to have as quiet during the night. In another situation, there may be a closely spaced series of crossings in a neighborhood which seeks a nighttime Quiet Zone. If a city is not able to do all of the intersections with something like quad gates, then a Partial Quiet Zone could still be achieved by closing some streets during those hours and, for only installing SSM equipment on the intersections which need to stay open. The FRA requires that any intersections which remain open during the quiet period be studied and outfitted as normal Quiet Zone crossings.

Another alternative is Wayside Horns. These are still horns, but they are mounted at intersections and their sound is directed down the street where the crossing is located. This produces noise, but over a far smaller area due to the fact that the horn is not sounded a quarter of a mile from the intersection. Use of a Wayside Horn is treated as a substitution for a train horn by the FRA, 49 C.F.R. Pt. 22, App. C, Sec. I, B.

Evaluating Alternatives

Particular answers to the foregoing questions may dictate or at least strongly suggest an approach to take in securing a Quiet Zone for a city. In a situation where there are both sufficient resources and strong desires to eliminate automatic horn sounding as

well as keep a major street open without delays for train crossings, then grade separation may be the answer. That approach eliminates the intersection. The same result is also reached if a street can be closed altogether at the crossing. Generally, this will require that an area be adequately served by other crossings which are near enough not to effect delivery of emergency services or pose too large an inconvenience on the residents and businesses in the area. One other consideration to keep in mind with a street closure at an existing crossing is that it may be a bargaining chip with the railroad if you want them to agree to a Quiet Zone or maintain other crossings.

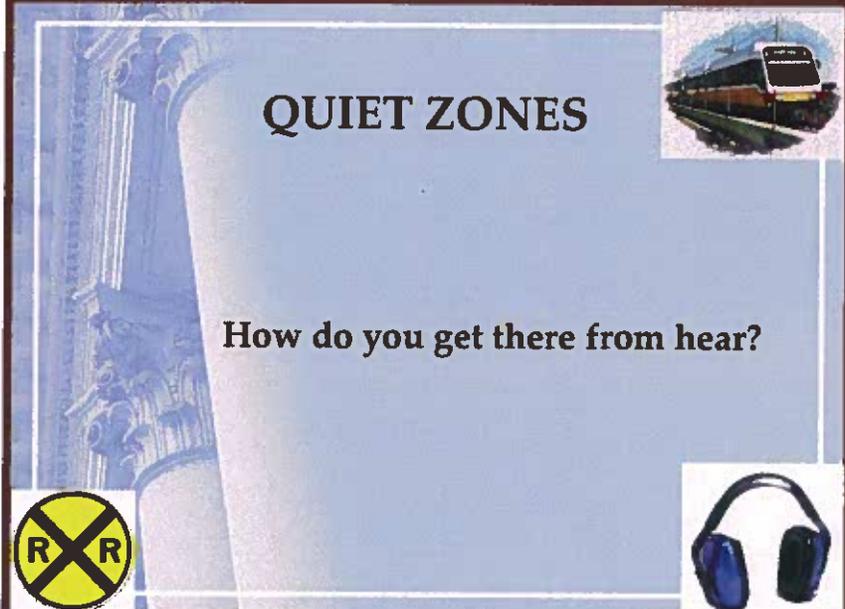
SSMs have an advantage in that FRA approval is fairly well assured. The down side to SSMs tends to be the cost of installation and perhaps maintenance. Railroads will almost always want a city to pay the capital costs of any new equipment which is required, and almost always you will hear about the increased costs of maintenance. A current gated crossing only requires the railroad to maintain two gates. Upgrading to a quad gate system will double the expected amount of maintenance for a given crossing. Certainly, mechanical and electrical apparatus does not function indefinitely without maintenance, and because of the life safety aspect of this equipment, it is reasonable to expect a good deal of preventive maintenance before anything goes wrong. In addition, railroads will often ask for indemnity in exchange for taking on new equipment to maintain. Aside from Texas constitutional restrictions on such requests, and aside from the political repercussions of dedicating a tax to be set aside to pay an unspecified future damage, such a request might be a good indicator of a need to explore other options.

Of all the listed SSMs, the median is one of the most appealing. There is very little maintenance, and almost none of it is done by the railroad, depending on the location of the railroad right-of-way. The median must extend from within one (1) foot of the lowered gate⁴ to a point 100 feet from the lowered gate and have a "non-traversable" curb. This length could be as little as 60 feet if there is a street intersection within 100 feet of the lowered gate arm. If there is sufficient space and the railroad already has an existing gate system, this method works very well. The downside could be that

⁴ 49 C.F.R. Pt. 222, App. A, A(1)f.

residents or businesses have driveways within the 100 foot median length. While these do not necessarily invalidate medians as an SSM, it may not be possible from an access or political standpoint to locate the median as would be required.

As previously mentioned, ASMs have to be evaluated by the FRA before being granted and are then annually reevaluated. Assuming that the FRA does grant Quiet Zone status on the basis of an ASM, it is important for a city to be fully committed to the measures it proposes in lieu of horn soundings. If the measure proposed by the city includes some ongoing responsibilities as would be the case with education or programmed law enforcement, it remains to be seen how the courts would treat a failure by the city to honor its commitments. Assuming a terrible collision, would the city be able to assert and win on its point that its failure to conduct a class is not a premises defect, meaning the city is covered by a sovereign immunity defense? On the other hand, would courts examine the whole Quiet Zone program and come to the conclusion that the intersection is dangerously defective without either a train horn or the city classes on train safety? If so, sovereign immunity might not be available to a city. Since a case has not yet arisen in this regard, this will remain an unanswered legal question. Of course, there is also a fairly significant public relations problem possible if a particularly gruesome accident can be reasonably attributed to the failure of a city to do what they have represented that they would do.



QUIET ZONES

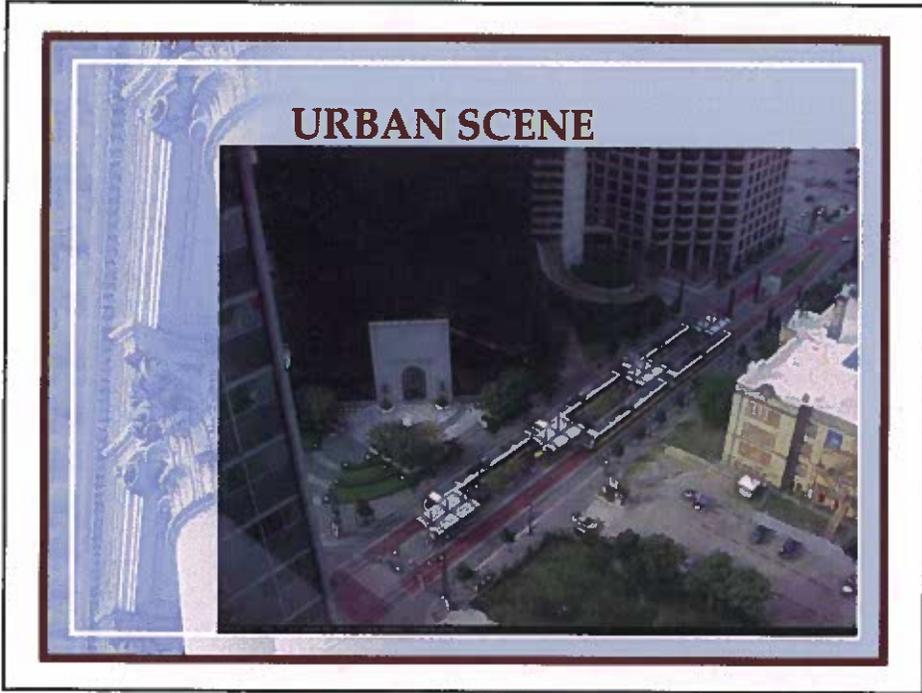
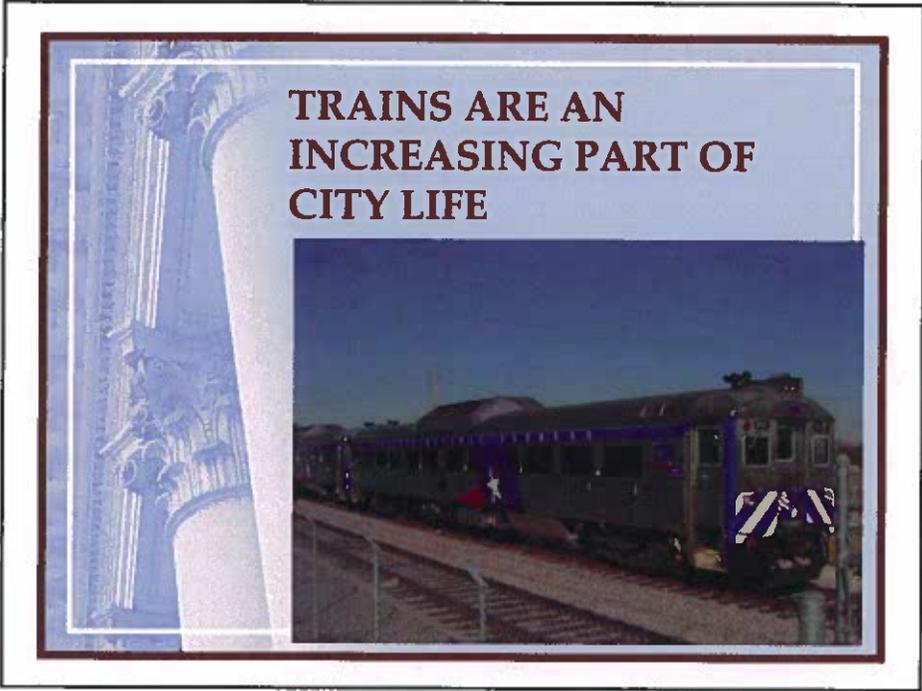


How do you get there from hear?



Main Points

- Background Liability of Railroad Crossings.
- Statutory background of Horn sounding requirements and relief from those requirements.
- SSM's and ASM's
- Assessments of available approaches.



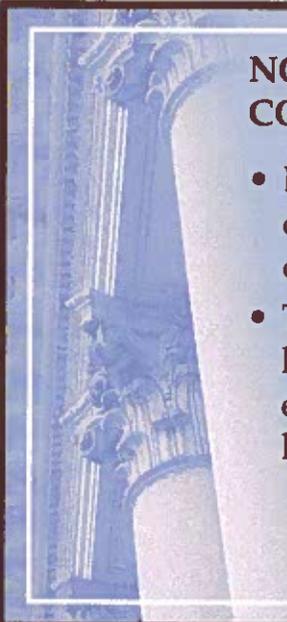
**LIABILITY
A SERIOUS ISSUE**





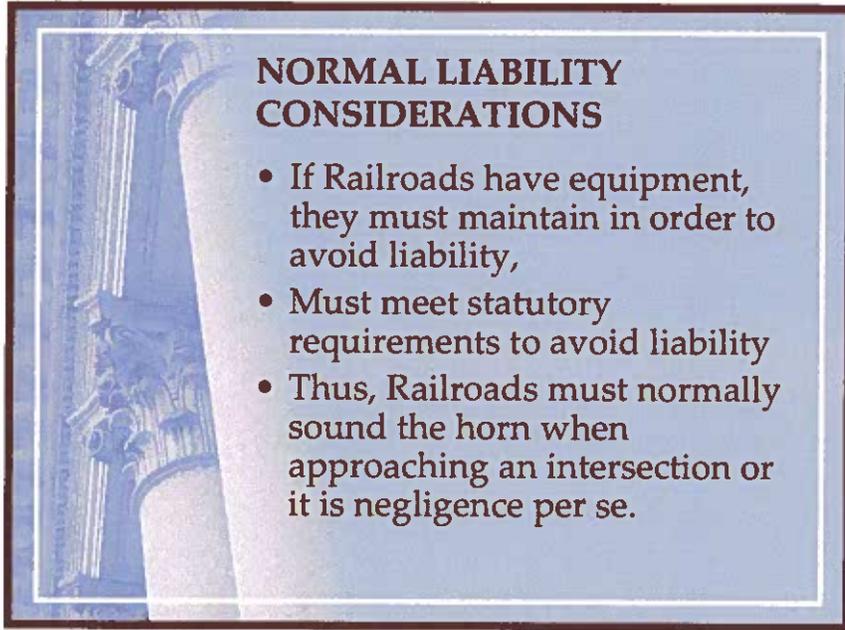
NORMAL LIABILITY CONSIDERATIONS

- Law recognizes this as a dangerous intersection
- While the traveler had best beware, Courts have looked for ways to find liability.



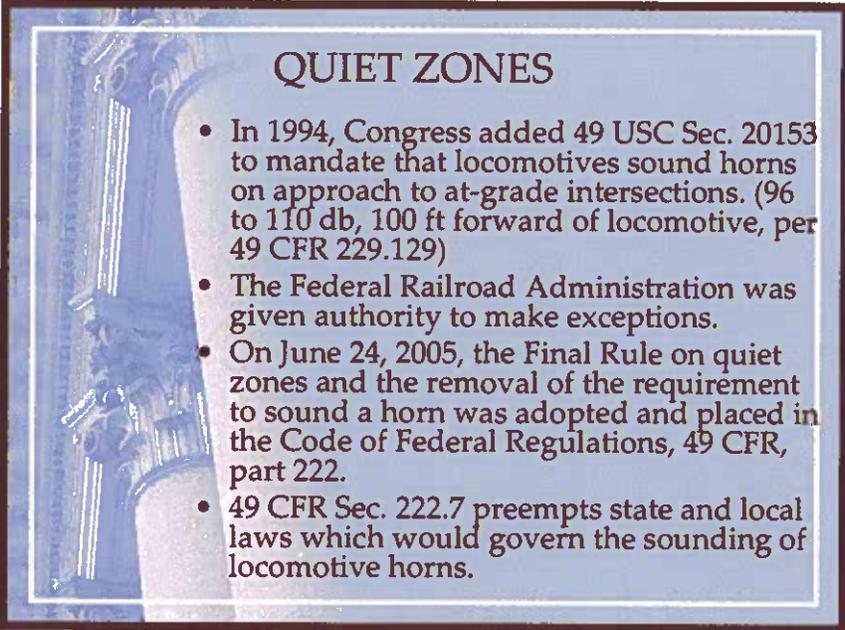
NORMAL LIABILITY CONSIDERATIONS

- Extra-Hazardous Intersections, caused by grades, angle of crossings or view obstructions
- To counter Railroads must have flagman or safety equipment such as gates, lights, signs, signals



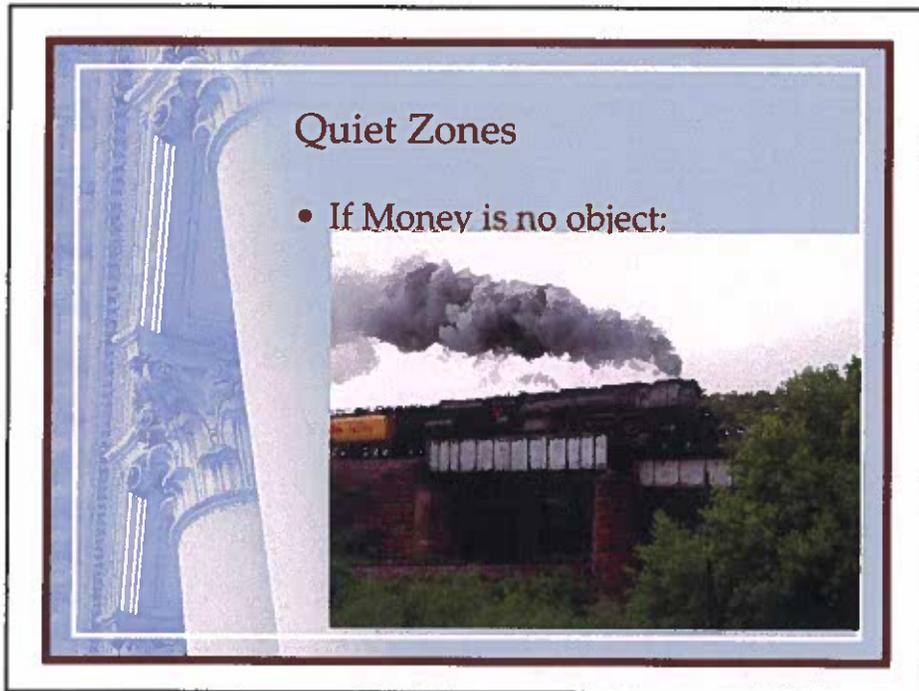
NORMAL LIABILITY CONSIDERATIONS

- If Railroads have equipment, they must maintain in order to avoid liability,
- Must meet statutory requirements to avoid liability
- Thus, Railroads must normally sound the horn when approaching an intersection or it is negligence per se.



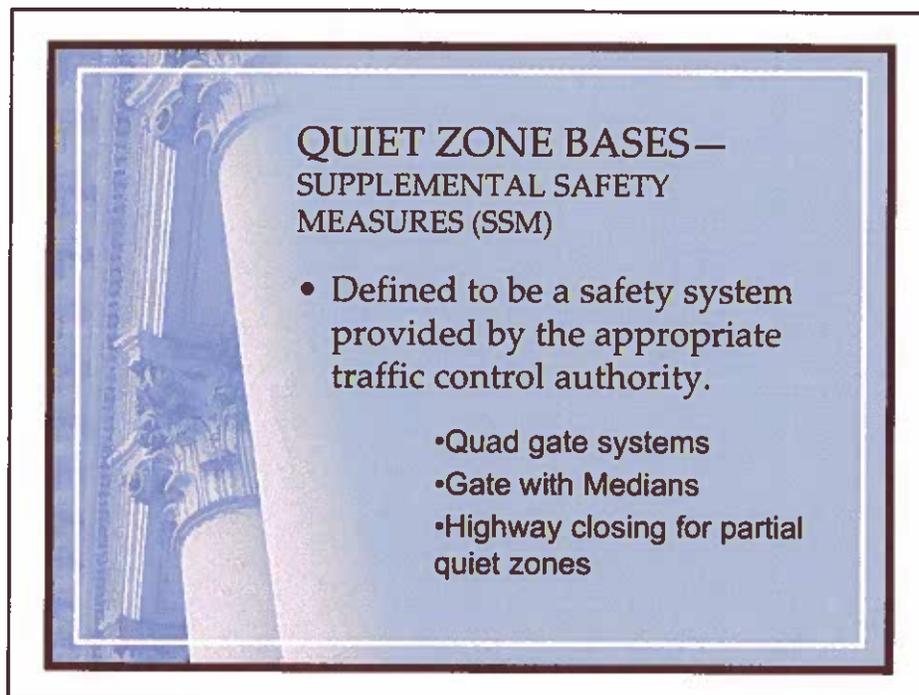
QUIET ZONES

- In 1994, Congress added 49 USC Sec. 20153 to mandate that locomotives sound horns on approach to at-grade intersections. (96 to 110 db, 100 ft forward of locomotive, per 49 CFR 229.129)
- The Federal Railroad Administration was given authority to make exceptions.
- On June 24, 2005, the Final Rule on quiet zones and the removal of the requirement to sound a horn was adopted and placed in the Code of Federal Regulations, 49 CFR, part 222.
- 49 CFR Sec. 222.7 preempts state and local laws which would govern the sounding of locomotive horns.



Quiet Zones

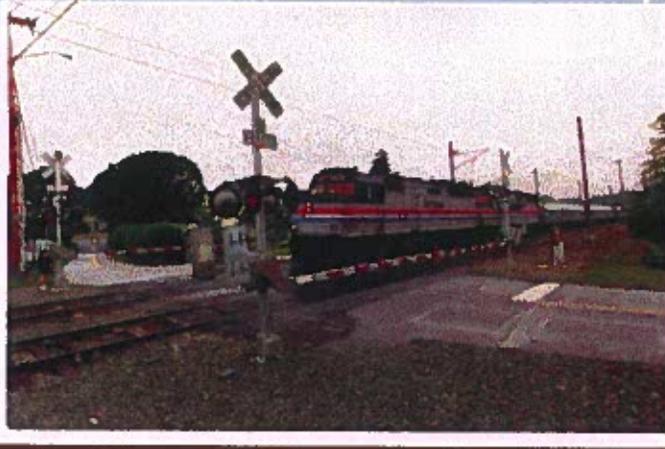
- If Money is no object:



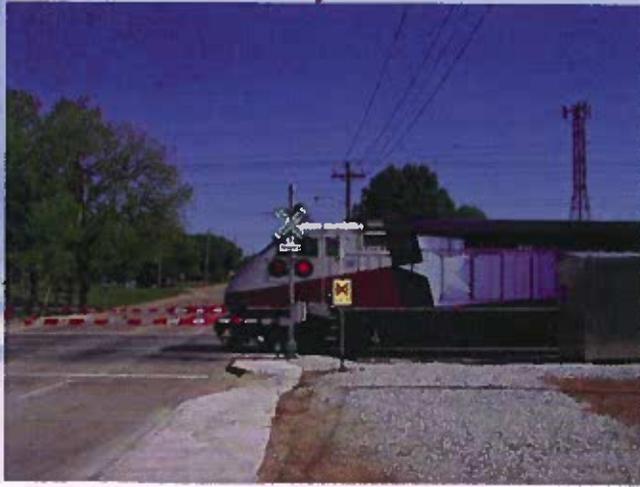
**QUIET ZONE BASES—
SUPPLEMENTAL SAFETY
MEASURES (SSM)**

- Defined to be a safety system provided by the appropriate traffic control authority.
 - Quad gate systems
 - Gate with Medians
 - Highway closing for partial quiet zones

Quad Gate System



Quad Gate System

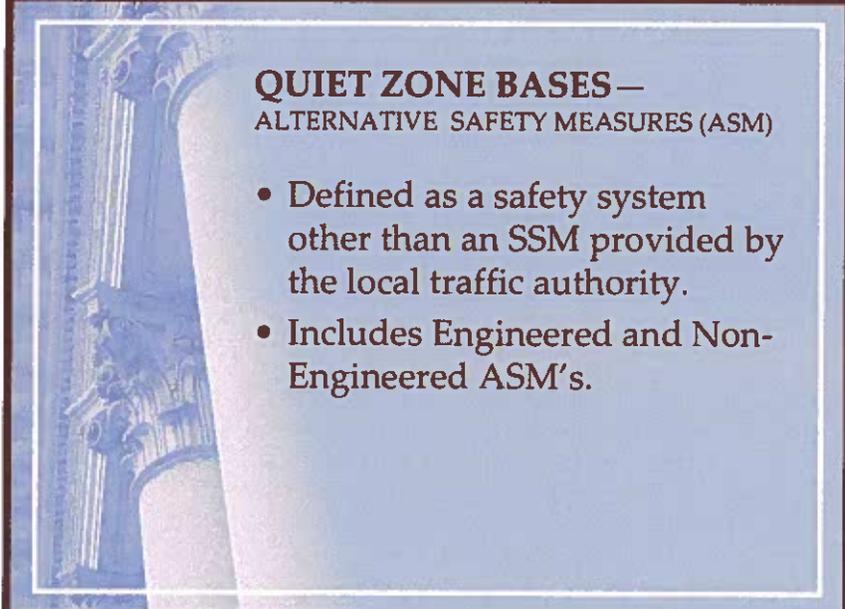


Quad Gate System



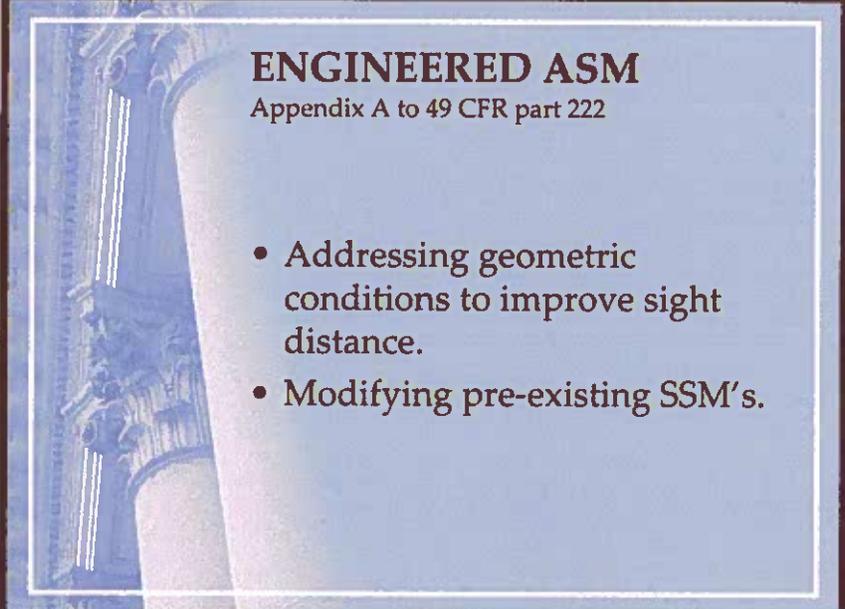
Gate with Median





QUIET ZONE BASES—
ALTERNATIVE SAFETY MEASURES (ASM)

- Defined as a safety system other than an SSM provided by the local traffic authority.
- Includes Engineered and Non-Engineered ASM's.



ENGINEERED ASM
Appendix A to 49 CFR part 222

- Addressing geometric conditions to improve sight distance.
- Modifying pre-existing SSM's.

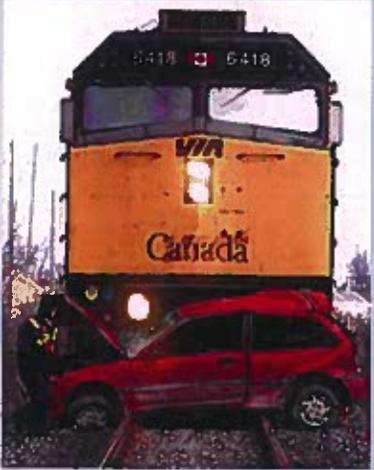
NON-ENGINEERED ASM

Appendix B to 49 CFR part 222

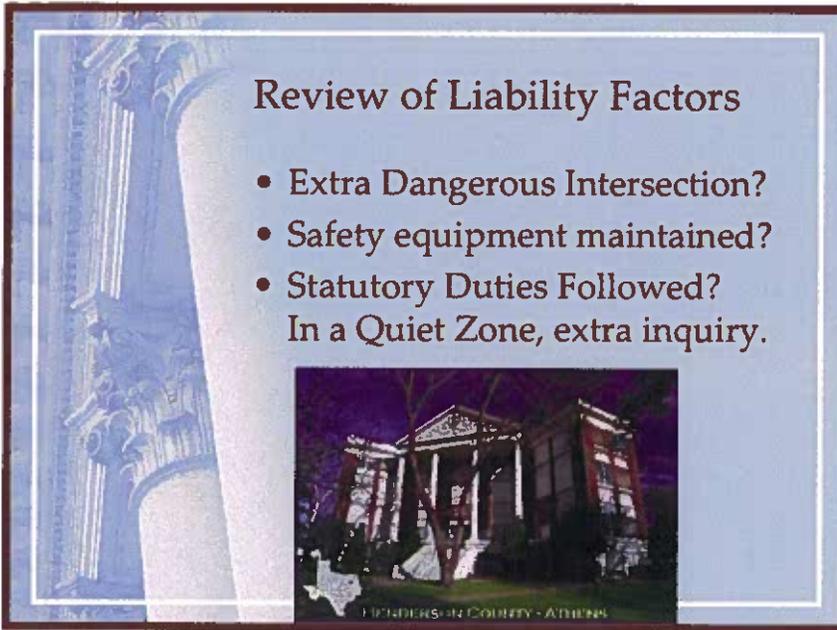
- Programmed Enforcement
- Public Education
- Photo Enforcement



A QUIET ZONE IS ESTABLISHED

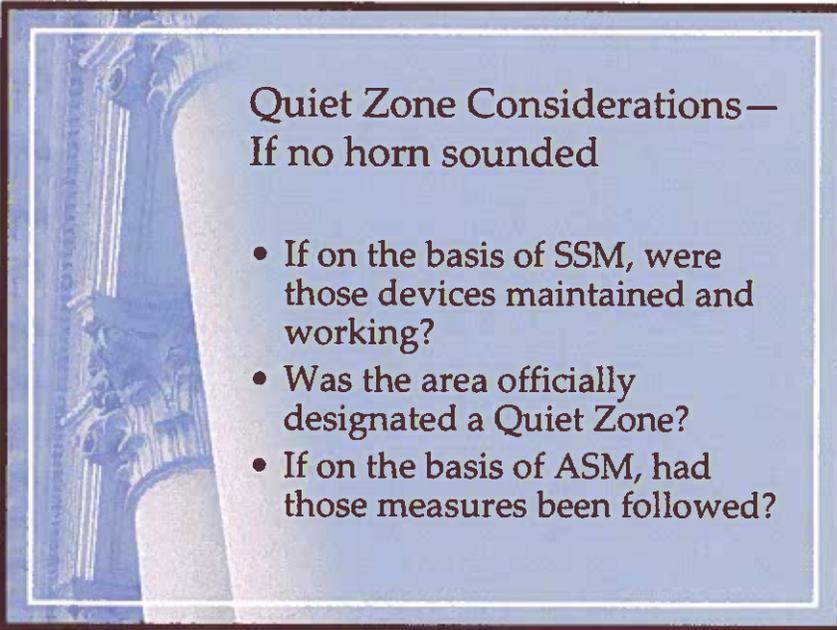


*Now
What?*



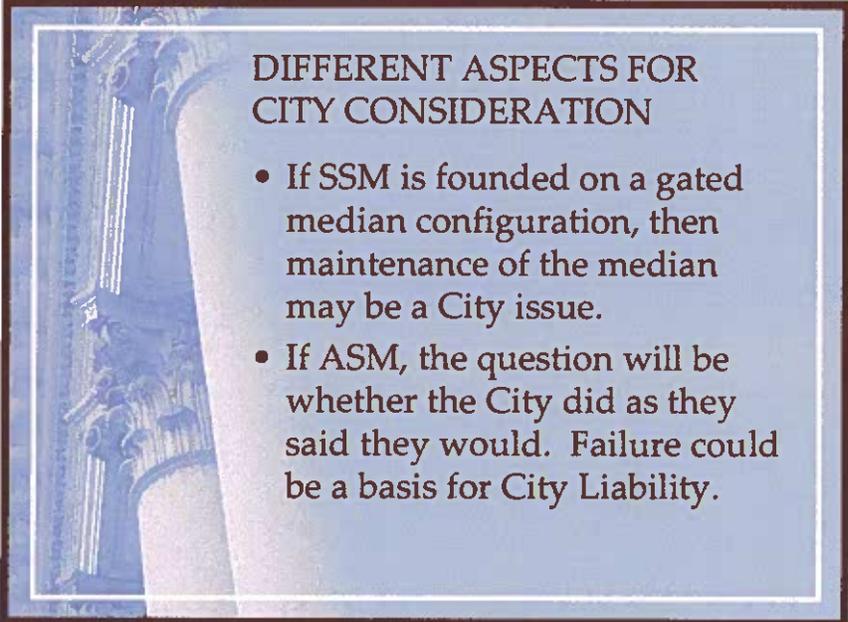
Review of Liability Factors

- Extra Dangerous Intersection?
- Safety equipment maintained?
- Statutory Duties Followed?
In a Quiet Zone, extra inquiry.



Quiet Zone Considerations— If no horn sounded

- If on the basis of SSM, were those devices maintained and working?
- Was the area officially designated a Quiet Zone?
- If on the basis of ASM, had those measures been followed?



DIFFERENT ASPECTS FOR CITY CONSIDERATION

- If SSM is founded on a gated median configuration, then maintenance of the median may be a City issue.
- If ASM, the question will be whether the City did as they said they would. Failure could be a basis for City Liability.





EFFECT OF CITY FAILURE TO PERFORM

- Undecided Area of the Law
- The Analogy may well be akin to City's duty to maintain equipment such as stop signs or street lights—meaning there would be City liability for failure to perform a duty.
- Suit will most likely be filed to determine the legal answer.



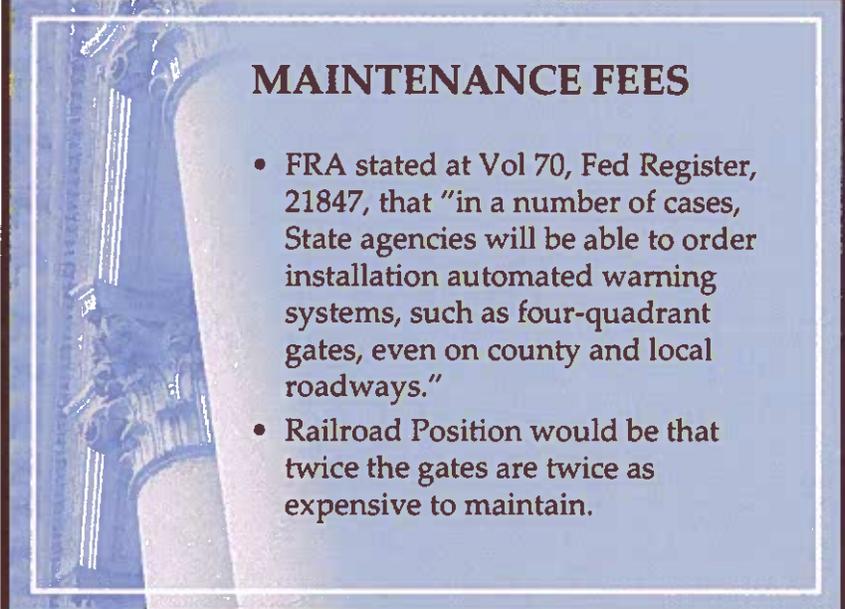
OTHER ISSUES

- Railroads may want indemnity Agreements
- Railroads may want initial construction costs plus a maintenance fee in the case of quad gates.



INDEMNITY AGREEMENTS

- Violates the Texas Constitution, Art. 11, Sec. 7
- FRA stated in the Fed. Register that it had refrained from adding language to the final rule to prohibit RR's from requiring — matter of state law.



MAINTENANCE FEES

- FRA stated at Vol 70, Fed Register, 21847, that "in a number of cases, State agencies will be able to order installation automated warning systems, such as four-quadrant gates, even on county and local roadways."
- Railroad Position would be that twice the gates are twice as expensive to maintain.