



**CITY OF MARSHALL, TEXAS  
REGULAR CITY COMMISSION MEETING  
COMMISSION CHAMBERS, CITY HALL, 401 SOUTH ALAMO  
THURSDAY, FEBRUARY 27, 2020, 6:00 P.M.**

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**AGENDA INFORMATION PACKET IS AVAILABLE FOR THE  
PUBLIC TO REVIEW ON THE CITY'S WEB SITE AFTER 8:00 A.M.  
ON WEDNESDAY BEFORE THE MEETING AT  
[www.marshalltexas.net](http://www.marshalltexas.net)**

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1. **CALL TO ORDER AND ROLL CALL**  
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2. **INVOCATION AND PLEDGES**  
**Page 2**
  
3. **OATH OF OFFICE**  
  
A. Issue Oath of Office for temporary appointment to fill the Commissioner,  
District 2 vacancy. (City Attorney)  
**Page 3**
  
4. **CITIZEN COMMENTS**  
  
House Bill 2840 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on an agenda the opportunity to do so before or during the body's consideration of the item. The "Citizens Comments" portion of the meeting meets the requirements of this law and is the public's opportunity to speak on any item on the agenda. Those who wish to speak will have three minutes to do so unless additional time has been requested.  
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5. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**  
**Page 11**

6. **CONSENT AGENDA**

The items on the Consent Agenda require little or no deliberation by the Commission. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Commissioner may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

A. Consider approval of the minutes from the February 10, 2020 Special-Called meeting and February 13, 2020 Regular meeting.

**Page 12**

B. Consider approval of a contract with the Harrison County Elections Administrator for the May 2, 2020 Elections. (City Secretary)

**Page 19**

C. Monthly financial report. (Finance Director)

**Page 29**

7. **PRESENTATION**

A. Presentation of a proclamation declaring the month of February as “Teen Dating Violence Awareness Month”. (Mayor Brown)

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8. **PUBLIC HEARING**

A. Conduct a Public Hearing regarding the Community Development Block Grant 5-year consolidated Plan and Annual Action Plan for 2020 Program. (Director of Community & Economic Development)

**Page 36**

9. **ORDINANCE**

A. Consider approval of an Ordinance amending Section 21-33 of Chapter 21, “Offenses,” entitled “Animals Prohibited in City Buildings; Exceptions” which established building and facilities of the City of Marshall in which it is unlawful to allow pets or other animals. (Public Works Director)

**Page 39**

10. **SECOND READING OF ORDINANCE**

A. Consider approval of an Ordinance amending Chapter 27 of the City of Marshall Code of Ordinances entitled “Traffic”, specifically repealing Section 27-15.3 entitled “Same – Heavy vehicle parking” and replace with a new section 27-15.3 entitled “Commercial Vehicle Parking”. (Director of Community & Economic Development)

**Page 43**

11. **RESOLUTION**

- A. Consider approval of a Resolution calling for the cancellation of the City General Election for District 5. (City Secretary)

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- B. Consider approval of a Resolution authorizing the issuance of a Request for Qualifications and Proposals (RFQ/RFP), utilizing the Design/Build Contract Method of project delivery, seeking qualifications and proposals from qualified respondents for the development, design and construction of a new animal adoption center. (City Manager)

**Page 55**

12. **CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION**

- A. Presentation of and acknowledgement of receipt of the 2019 Racial Profiling Report for the Marshall Police Department. (Police Chief)

**Page 77**

- B. Presentation of a report on the 2019 Wonderland of Lights Festival. (Director of Community & Economic Development)

**Page 160**

- C. Consider approval of a participation agreement for a Service Line Warranty Program. (Public Works Director)

**Page 166**

13. **CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA**

**Page 172**

14. **ADJOURNMENT**

**Page 173**

Posted: February 24, 2020  
5:00 p.m.  
Y. Graham

This meeting will be conducted in accordance with the Americans with Disabilities Act. The facility is wheelchair accessible and disabled parking is available. Requests for sign interpretive services will be available with at least 48-hour notice prior to the meeting. To make arrangements for these services, please call Elaine Altman at 903-935-4519.

# **ITEM 1**

## **CALL TO ORDER AND ROLL CALL**

## **ITEM 2**

# **INVOCATION AND PLEDGES**

## **ITEM 3**

### **OATH OF OFFICE**

**ISSUE OATH OF OFFICE FOR  
TEMPORARY APPOINTMENT TO FILL  
THE COMMISSIONER, DISTRICT 2  
VACANCY**

# Memorandum

To: Mark Rohr, City Manager

From: Elaine Altman, City Secretary

Date: February 21, 2020

Re: Oath of Office for temporary appointment to fill the Commissioner, District 2  
vacancy

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Attached is a copy of the Oath of Office that will be administered for the temporary appointment of Leo Morris to City Commission District 2.

## Form 2201 - Statement of Officer (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

### **Execution and Delivery Instructions**

A Statement of Officer required to be filed with the Office of the Secretary of State is considered filed once it has been received by this office.

**Mail:** P.O. Box 12887, Austin, Texas 78711-2887.

**Overnight mail or hand deliveries:** James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

**Fax:** (512) 463-5569.

**Email:** Scanned copies of the executed Statement may be sent to [register@sos.texas.gov](mailto:register@sos.texas.gov)

*NOTE: The Statement of Officer form, commonly referred to as the “Anti-Bribery Statement,” must be executed and filed with the Office of the Secretary of State before taking the Oath of Office (Form 2204).*

### **Commentary**

Article XVI, section 1 of the Texas Constitution requires all elected or appointed state and local officers to take the official oath of office found in section 1(a) and to subscribe to the anti-bribery statement found in section 1(b) before entering upon the duties of their offices.

Elected and appointed state-level officers required to file the anti-bribery statement with the Office of the Secretary of State include members of the Legislature, the Secretary of State, and all other officers whose jurisdiction is coextensive with the boundaries of the state or who immediately belong to one of the three branches of state government. Questions about whether a particular officer is a state-level officer may be resolved by consulting relevant statutes, constitutional provisions, judicial decisions, and attorney general opinions. For more information, see Op. Tex. Att’y Gen. No. JC-0575 (2002) (determining the meaning of “state officer” as it is used in Article XVI).

Effective September 1, 2017, Senate Bill 1329, which was enacted by the 85<sup>th</sup> Legislature, Regular Session, amended chapter 602 of the Government Code to require the following judicial officers and judicial appointees to file their oath and statement of officer with the secretary of state:

Officers appointed by the supreme court, the court of criminal appeals, or the State Bar of Texas; and  
Associate judges appointed under Subchapter B or C, Chapter 201, Family Code.

Local officers must retain the signed anti-bribery statement with the official records of the office. *As a general rule, city and county officials do not file their oath of office with the Secretary of State— these officials file at the local level. The Legislature amended the Texas Constitution, Article 16, Section 1, in November 2001 to no longer require local level elected officials to file with our office. **The Office of the Secretary of State does NOT file Statements or Oaths from the following persons:** Assistant District Attorneys; City Officials, including City Clerks, City Council Members, Municipal Judges, Justices of the Peace, and Police/Peace Officers; Zoning/Planning Commission Members; County Officials, including County Clerks, County Commissioners, County Judges (*except County Court of Law Judges who file with the Elections Division*), County Tax Assessors, and District Clerks; and Officials of Regional Entities, such as, Appraisal Review Districts, Emergency Service Districts, and School Districts (ISD’s).*

***Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or [register@sos.texas.gov](mailto:register@sos.texas.gov)***

Revised 09/2017

Form #2201 Rev. 09/2017

This space reserved for office use

Submit to:  
SECRETARY OF STATE  
Government Filings Section  
P O Box 12887  
Austin, TX 78711-2887  
512-463-6334  
512-463-5569 - Fax  
Filing Fee: None



**STATEMENT OF OFFICER**

**Statement**

I, Leo Morris, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Title of Position to Which Elected/Appointed: Marshall City Commissioner, District 2

Marshall, Texas

**Execution**

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer

## Form 2204 - Oath of Office (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

### **Execution and Delivery Instructions**

An Oath of Office that is required to be filed with the Office of the Secretary of State is considered filed once it has been received by this office. The Oath of Office may be administered to you by a person authorized under the provisions of Chapter 602 of the Texas Government Code. Authorized persons commonly used to administer oaths include notaries public and judges.

**Mail:** P.O. Box 12887, Austin, Texas 78711-2887.

**Overnight mail or hand deliveries:** James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

**Fax:** (512) 463-5569. If faxed, the original Oath should also be mailed to the appropriate address above.

**Email:** Scanned copies of the executed Oath may be sent to [register@sos.texas.gov](mailto:register@sos.texas.gov). If sent by email, the original Oath should also be mailed to the appropriate address above.

**NOTE:** Do not have the Oath of Office administered to you before executing and filing the Statement of Officer (Form 2201 – commonly referred to as the “Anti-Bribery Statement”) with the Office of the Secretary of State.

### **Commentary**

Pursuant to art. XVI, Section 1 of the Texas Constitution, the Oath of Office *may not* be taken until a Statement of Officer (see Form 2201) has been subscribed to and, as required, filed with the Office of the Secretary of State. Additionally, gubernatorial appointees who are appointed during a legislative session *may not* execute their Oath until after confirmation by the Senate. Tex. Const. art. IV, Section 12.

### ***Officers Required to File Oath of Office with the Secretary of State:***

- Gubernatorial appointees
- District attorneys
- Appellate and district court judges
- Officers appointed by the supreme court, the court of criminal appeals, or the State Bar of Texas
- Associate judges appointed under subchapter B or C, chapter 201 of the Texas Family Code
- Directors of districts operating pursuant to chapter 36 or 49 of the Texas Water Code file a duplicate original of their Oath of Office within 10 days of its execution. Texas Water Code, Sections 36.055(d) and 49.055(d)

### ***Officers Not Required to File Oath of Office with the Secretary of State:***

Members of the Legislature elected to a *regular* term of office will have their Oath of Office administered in chambers on the opening day of the session and recorded in the appropriate Journal. Members elected to an *unexpired* term of office should file their Oath of Office with either the Chief Clerk of the House or the Secretary of the Senate, as appropriate.

All other persons should file their Oaths locally. Please check with the county clerk, city secretary or board/commission secretary for the proper filing location.

*As a general rule, city and county officials do not file their oath of office with the Secretary of State—these officials file at the local level. The Legislature amended the Texas Constitution, Article 16, Section 1, in November 2001 to no longer require local level elected officials to file with our office.*

**The Office of the Secretary of State does NOT file Statements or Oaths from the following persons:** Assistant District Attorneys; City Officials, including City Clerks, City Council Members, Municipal Judges, Justices of the Peace, and Police/Peace Officers; Zoning/Planning Commission Members; County Officials, including County Clerks, County Commissioners, County Judges (*except County Court of Law Judges who file with the Elections Division*), County Tax Assessors, and District Clerks; and Officials of Regional Entities, such as, Appraisal Review Districts, Emergency Service Districts, and School Districts (ISD's). Questions about whether a particular officer is a state-level officer may be resolved by consulting relevant statutes, constitutional provisions, judicial decisions, and attorney general opinions.

All state or county officers, other than the governor, lieutenant governor, and members of the legislature, who qualify for office, are commissioned by the governor. Tex. Gov't Code, Section 601.005. The Secretary of State performs ministerial duties to administer the commissions issued by the governor, including confirming that officers are qualified prior to being commissioned. Submission of this oath of office to the Office of the Secretary of State confirms an officer's qualification so that the commission may be issued.

*Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or [register@sos.texas.gov](mailto:register@sos.texas.gov).*

*Revised 9/2017*

Form #2204 Rev 9/2017

This space reserved for office use

Submit to:  
SECRETARY OF STATE  
Government Filings Section  
P O Box 12887  
Austin, TX 78711-2887  
512-463-6334  
FAX 512-463-5569  
Filing Fee: None



OATH OF OFFICE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,  
I, Leo Morris, do solemnly swear (or affirm), that I will faithfully  
execute the duties of the office of Marshall City Commissioner, District 2 of  
the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws  
of the United States and of this State, so help me God.

\_\_\_\_\_  
Signature of Officer

Certification of Person Authorized to Administer Oath

State of Texas

County of Harrison

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Affix Notary Seal,  
only if oath  
administered by a  
notary.)

\_\_\_\_\_  
Signature of Notary Public or  
Signature of Other Person Authorized to Administer An  
Oath

\_\_\_\_\_  
Printed or Typed Name

## **ITEM 4**

### **CITIZEN COMMENTS**

## **ITEM 5**

# **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**

## **ITEM 6A**

### **CONSENT AGENDA**

**CONSIDER APPROVAL OF THE  
MINUTES FROM THE FEBRUARY 10,  
2020 SPECIAL-CALLED MEETING AND  
FEBRUARY 13, 2020 REGULAR  
MEETING**

MINUTES OF THE SPECIAL-CALLED MEETING OF THE  
CITY COMMISSION OF THE CITY OF MARSHALL  
MONDAY, FEBRUARY 10, 2020  
6:30 PM

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Mayor Terri Brown called the Special-Called meeting to order in the Commission Chambers, City Hall at 6:30 p.m.

PRESENT:

MAYOR: Terri Brown, District 3

COMMISSIONERS:

Marvin Bonner, District 1	Amy Ware, District 4
Vernia Calhoun, District 5	Larry Hurta, District 6
Doug Lewis, District 7	

ADMINISTRATIVE STAFF PRESENT:

Mark Rohr, City Manager	Cliff Carruth, Police Chief
Scott Rectenwald, Acting City Attorney	
Randy Pritchard, Support Services Superintendant	
Wes Morrison, Community & Economic Development Director	
Elaine Altman, City Secretary/Finance Director	

35. **PUBLIC HEARING**

A. Conduct a Public Hearing regarding proposed Charter Amendments recommendations.

Mayor Brown opened the public hearing.

No one came forward to speak.

Mayor Brown closed the public hearing.

**PRESENTATION**

36. **PRESENTATION OF THE CHARTER REVIEW COMMITTEE’S FINAL CHARTER AMENDMENTS RECOMMENDATIONS.**

Dottie Palumbo, Borjorquez Law Firm, Charter Review Attorney, presented the Charter Review Committee’s final Charter Amendment recommendations.

City Commissioners engaged in discussion and asked questions of Dottie Palumbo and City Staff regarding this item.

**Commissioner Hurta made a motion to look at 404(f) regarding Proposition C. The motion failed for lack of a second.**

**ORDINANCE**

37. **CONSIDER APPROVAL OF AN ORDINANCE OF THE CITY OF MARSHALL, TEXAS, ORDERING A SPECIAL ELECTION MAY 2, 2020, TO CONSIDER SIXTEEN (16) PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF MARSHALL.**

**Commissioner Lewis made a motion to approve the ordinance of the City of Marshall, Texas, ordering a special election May 2, 2020, to**

**consider sixteen (16) proposed amendments to the Charter of the City of Marshall to include the corrections to Propositions I and the amended language of Proposition P. Commissioner Calhoun seconded the motion, which passed with the following vote:**

**Ayes: 5, Mayor Brown, Commissioners Lewis, Calhoun, Bonner and Ware  
Nays: 1, Commissioner Hurta**

38. **ADJOURNMENT**

**Commissioner Calhoun made a motion for adjournment. Commissioner Lewis seconded the motion, which passed with a vote of 6:0.**

**APPROVED:**

\_\_\_\_\_  
**Mayor of the City Commission  
of the City of Marshall, Texas**

**ATTEST:**

\_\_\_\_\_  
**City Secretary**

**Ordinances: O-20-05**

MINUTES OF THE REGULAR MEETING OF THE  
CITY COMMISSION OF THE CITY OF MARSHALL  
THURSDAY, FEBRUARY 13, 2020  
6:00 PM

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Mayor Terri Brown called the Regular meeting to order in the Commission Chambers, City Hall at 6:00 p.m.

PRESENT:

MAYOR: Terri Brown, District 3

COMMISSIONERS:

Marvin Bonner, District 1  
Vernia Calhoun, District 5

Amy Ware, District 4  
Doug Lewis, District 7

ABSENT: Larry Hurta, District 6

ADMINISTRATIVE STAFF PRESENT:

Mark Rohr, City Manager  
Scott Rectenwald, Acting City Attorney  
Randy Pritchard, Support Services Superintendant  
Wes Morrison, Community & Economic Development Director  
Elaine Altman, City Secretary/Finance Director  
Eric Powell, Public Works Director  
Mallori James, Tourism & Cultural Arts Director  
Stormy Nickerson, Management Analysis/Communications Coordinator

INVOCATION & PLEDGE: Commissioner Bonner & Ali Hicks, 4<sup>th</sup> grade student at David Crockett Elementary School

39. **CITIZEN COMMENTS**

Jimbo Roberson, 584 Dorchester Road, spoke regarding the poor condition of the arena facilities.

Ronnie Minatrea, 7109 Hwy 43 N, President of the Marshall Youth Softball Association, detailed the allocation of MYSA funds. He expressed his approval of the new City contract which will reinvest funds to Airport Park.

Jeff Adkins, 1325 Boggy Road, Waskom, spoke regarding unfavorable conditions at the arena.

Joe Fitzgerald, 107 Shadowood Drive, spoke regarding a prospective location for the animal shelter. He distributed a handout to the Commissioners with detailed information.

40. **ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA**

There were no items withdrawn from the Consent Agenda.

41. **CONSENT AGENDA**

**Commissioner Lewis made a motion to approve the Consent Agenda. Commissioner Calhoun seconded the motion, which passed with a vote of 5:0.**

A. Consider approval of the minutes from the January 23, 2020 Regular meeting and January 30, 2020 Special-Called meeting.

- B. Approval of a contract for auction services for the Marshall Police Department.
- C. Street Sweeping Activity Report.
- D. Municipal Court Activity Report.

### **ORDINANCE**

42. CONSIDER APPROVAL OF AN ORDINANCE AMENDING CHAPTER 27 OF THE CITY OF MARSHALL CODE OF ORDINANCES ENTITLED "TRAFFIC", SPECIFICALLY REPEALING SECTION 27-15.3 ENTITLED "SAME – HEAVY VEHICLE PARKING" AND REPLACE WITH A NEW SECTION 27-15.3 ENTITLED "COMMERCIAL VEHICLE PARKING".

Wes Morrison, Community & Economic Development Director, asked for approval of an ordinance amending Chapter 27 of the City of Marshall Code of Ordinances entitled "Traffic", specifically repealing Section 27-15.3 entitled "Same – Heavy vehicle parking" and replace with a new section 27-15.3 entitled "Commercial Vehicle Parking". He stated this ordinance is intended to prevent commercial vehicles from parking in certain areas such as: public streets, allies, right-of-ways and retail establishments.

Commissioners asked questions and discussed.

**Mayor Brown made a motion to approve an ordinance amending Chapter 27 of the City of Marshall Code of Ordinances entitled "Traffic", specifically repealing Section 27-15.3 entitled "Same – Heavy vehicle parking" and replace with a new section 27-15.3 entitled "Commercial Vehicle Parking". Commissioner Ware seconded the motion, which passed with a vote of 5:0.**

### **SECOND READING OF ORDINANCE**

43. CONSIDER APPROVAL OF AN ORDINANCE CALLING FOR A SPECIAL ELECTION FOR THE REAUTHORIZATION OF THE LOCAL SALES AND USE TAX IN THE CITY OF MARSHALL AT THE RATE OF ONE-EIGHTH (1/8<sup>TH</sup>) OF ONE PERCENT TO CONTINUE PROVIDING REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS. THE TAX EXPIRES ON THE FOURTH ANNIVERSARY OF THE DATE OF THIS ELECTION UNLESS THE IMPOSITION OF THE TAX IS REAUTHORIZED.

Elaine Altman, City Secretary/Finance Director, stated there was no new information regarding this item.

**Commissioner Calhoun made a motion to approve an ordinance calling for a special election for the reauthorization of the local sales and use tax in the City of Marshall at the rate of one-eighth (1/8<sup>th</sup>) of one percent to continue providing revenue for maintenance and repair of municipal streets. Commissioner Ware seconded the motion, which passed with a vote of 5:0.**

44.

CONSIDER APPROVAL OF AN ORDINANCE OF THE CITY OF MARSHALL, TEXAS, ORDERING A SPECIAL ELECTION MAY 2, 2020, TO CONSIDER SIXTEEN (16) PROPOSED AMENDMENTS TO THE CHARTER OF THE CITY OF MARSHALL.

Mark Rohr, City Manager, stated the City solicited public input on numerous occasions regarding this item. He described a term limit amendment made in 2010 and recommended removing the last sentence of Proposition O Section 3.04(c).

Dottie Palumbo, Borjorquez Law Firm, Charter Review Attorney, presented the amendments made from the first reading. She stated FOR and AGAINST was added to the end of Proposition O and the language was updated regarding revenue bonds in Proposition P.

**Commissioner Lewis made a motion to approve the changes recommended by City Manager, Mark Rohr to Proposition O and add FOR and AGAINST. Commissioner Bonner seconded the motion, which passed with a vote of 5:0.**

**Commissioner Lewis made a motion to approve the changes to Propositions I, N and P. Commissioner Ware seconded the motion, which passed with a vote of 5:0.**

**Commissioner Lewis made a motion to approve the ordinance as amended. Mayor Brown seconded the motion, which passed with a vote of 5:0.**

**RESOLUTION**

45.

CAST BALLOTS AND CONSIDER APPROVAL OF A RESOLUTION FOR TEMPORARY APPOINTMENT TO FILL THE COMMISSIONER, DISTRICT 2 VACANCY.

Mark Rohr explained the ballots were passed out earlier. One candidate was ineligible due to residency requirements.

Scott Rectenwald, Acting City Attorney, explained the voting process. He read the votes for the record:

Commissioner Bonner:	Leo Morris
Commissioner Ware:	Leo Morris
Mayor Brown:	Jeffrey Henderson
Commissioner Calhoun:	Leo Morris
Commissioner Lewis:	Jeffrey Henderson

Leo Morris' name was added to the resolution. Mayor Brown read the resolution for the record.

**CITY MANAGER REPORTS AND REQUESTS FOR CITY COMMISSION CONSIDERATION**

46.

CONSIDER APPROVAL OF AGREEMENTS FOR BALLFIELD USAGE AND CONCESSION SERVICES AT AIRPORT PARK.

Mark Rohr presented the agreements for ballfield usage and concession services at Airport Park. The three (3) year agreement states team fees will gradually increase from \$60 to \$75 to \$90 in the final year. Revenue from the agreements will be reinvested in the facilities.

Commissioners asked questions and discussed.

**Commissioner Lewis made a motion to approve the agreements for ballfield usage and concession services at Airport Park. Commissioner Bonner seconded the motion, which passed with a vote of 5:0.**

47. UPDATE REGARDING MUNICIPAL COURT OPERATIONS.

Mark Rohr presented an update regarding Municipal Court operations and introduced Leland Benoit, Court Administrator, and Madison Hood, Court Prosecutor, who further explained court procedures and documentation of case logs.

Cliff Carruth, Police Chief, also provided information regarding warrants on file with the City.

Commissioners asked questions and discussed.

48. CONSIDER APPROVAL OF THE PURCHASE OF TEN (10) NEW VEHICLES FOR THE MARSHALL POLICE DEPARTMENT.

Cliff Carruth asked for approval of the purchase of ten (10) new vehicles for the Marshall Police Department.

Commissioners asked questions and discussed.

**Commissioner Lewis made a motion to approve the purchase of ten (10) new vehicles for the Marshall Police Department. Mayor Brown seconded the motion, which passed with a vote of 5:0.**

49. CONSIDERATION OF ITEMS WITHDRAWN FROM THE CONSENT AGENDA

There were no items withdrawn from the Consent Agenda.

50. ADJOURNMENT

**Commissioner Lewis made a motion for adjournment. Commissioner Calhoun seconded the motion, which passed with a vote of 5:0.**

**APPROVED:**

\_\_\_\_\_  
**Mayor of the City Commission  
of the City of Marshall, Texas**

**ATTEST:**

\_\_\_\_\_  
**City Secretary**

**Ordinances: O-20-04  
O-20-05  
O-20-06  
Resolutions: R-20-04**

**ITEM 6B**

**CONSENT AGENDA**

**APPROVAL OF A CONTRACT WITH THE  
HARRISON COUNTY ELECTIONS  
ADMINISTRATOR FOR THE MAY 2, 2020  
ELECTIONS**

# Memorandum

To: Mark Rohr, City Manager

From: Elaine Altman, City Secretary

Date: February 21, 2020

Subject: Contract with Harrison County Elections Administrator for the  
May 2, 2020 City of Marshall General Election and Special Elections

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Attached is the contract prepared by Donald Robinette, Harrison County Elections Administrator for the following May 2, 2020 City of Marshall elections:

- City Commissioners General Election for Districts 5, 6, and 7 and
- Special Election to fill a Vacancy for District 2, and
- Special Election reauthorizing the local sales and use tax for maintenance and repair of municipal streets
- Special Election for the adoption or rejection of proposed Charter propositions

Since Marshall ISD has no opposed candidates and have cancelled their May 2<sup>nd</sup> election, sole (versus joint) contract costs apply.

I recommend approval of the contract.

Harrison County Elections Office  
P.O. Box 8409  
Marshall, Texas 75671  
harrisoncountytexas.org/elections



Phone: 903-935-4822  
Fax: 903-938-1509  
415 E. Burleson St.  
Marshall – 75670

## CONTRACT FOR ELECTIONS SERVICES

THE STATE OF TEXAS

COUNTY OF HARRISON

This contract, is made this 3<sup>rd</sup> day of February 2020, by and between the CITY OF MARSHALL, TEXAS, hereinafter called THE CITY, acting by and through ELAINE ALTMAN, otherwise known as the City Secretary/Finance Director for THE CITY and Donald Robinette, Elections Administrator of Harrison County, Texas, hereinafter the CONTRACTING OFFICER, pursuant to Texas Election Code Sec.31.092, for the conducting and supervision of the:

City Commissioners General Election for Districts 5, 6, and 7 and

Special Election to fill a Vacancy for District 2, and

Special Election regarding "The reauthorization of the local sales and use tax in the City of Marshall at the rate of one-eighth (1/8<sup>th</sup>) of one percent to continue providing revenue for maintenance and repair of municipal streets. The tax expires on the fourth anniversary of the date of this election unless the imposition of the tax is reauthorized." And

Special Election for the adoption or rejection of proposed Charter propositions,

To be held on Saturday May 2, 2020.

This contract is entered into in consideration of the mutual covenants and agreements hereinafter set out. It is agreed as follows:

I. The Contracting Officer, in connection with holding of said elections, shall assume the following responsibilities:

a. Appoint or shall be allowed to delegate the positions of Early Voting Clerk, Central Counting Station Manager, Tabulation Supervisor and Assistant Tabulation Supervisor, as provided for in Texas Election Code, Sec. 31.094 and 31.095.

b. The Harrison County Elections Office shall take responsibility for processing Early Voting Ballot my Mail requests.

c. Procure and distribute election supplies, including the preparation of election kits and the printing and distribution of ballots for both Early Voting and Election Day.

d. Procure, arrange for the programming and distribution of all election equipment.

This includes the use of HAVA mandated electronic equipment purchased from Hart InterCivic. The eScan, JBC and eSlate DAU/DRE (Disabled Access Unit/Direct-Recording Electronic) voting equipment will be used for Early Voting and Election Day.

e. Arrange for the publication of a Notice for the date, time and place of the Public Logic and Accuracy Test of the election equipment, and oversee said test.

f. Post notice of the date, time and place of a school of instruction for election judges and clerks, and conduct said school of instruction.

g. Arrange for the programming and testing materials to be used to test the voting equipment.

h. Arrange for the handling and distribution of election returns, preparation of the tabulation for the official canvass, and will, if needed arrange for the manual validation as required in the Texas Election Code, Se. 127.201.

i. In accordance with Sec. 31.098 of the Texas Election Code, the Contracting Officer is authorized to contract with third-parties for election services and supplies. The cost of such third-party services is to be the responsibility of the CITY.

j. Arrange for the programming of the voting system based on the information provided by the CITY. This information shall include the correct spelling of all candidates' names, the office sought, order of names on the ballot and the English and Spanish translation of the office. The CITY shall pay for the cost of such programming.

k. Provide sufficient time for the CITY to review the ballot before it is finalized.

l. Arrange for the counting of votes registered on the electronic units in accordance with Chapter 127 of the Texas Election Code.

m. Submit precinct by precinct reports to the Texas Secretary of State's office of all election returns for said election.

n. After completion of the unofficial tabulation of precinct results, the Harrison County elections Office shall distribute the election records to the CITY, except for those records that must be distributed to the Voter Registrar, in accordance with Sec. 66.051 of the Texas Election Code.

The Harrison County Elections Office is hereby appointed the custodian of ballots cast on the eScan, eSlate, DAU, DRE voting system consisting of the backup, and preservation of records in accordance with Chapter 66 of the Texas Election Code and other applicable law. The Harrison County elections Office shall also maintain custody of the records pertaining to the operation of the eSlate, DAU, DRE, JBC and eScan. Said records and election documents will be destroyed after the retention period (22 months from Election Day) which is mandated by Texas Election Law unless the CITY notifies the Harrison County Elections Office in writing of

their desire to collect said election records and or documents. This written notice must be received by the Harrison County Elections Office no later than 5 business days before the date to destroy said records and or documents.

o. The Contracting Officer shall tabulate the votes registered on the electronic units in accordance with Chapter 127 of the Texas Election Code, supervise the handling and distribution of election returns, voted ballots, etc., tabulate unofficial returns, assist in preparing the tabulation for the official canvass and certify the election results for representatives of the CITY.

II. THE CITY, in connection with holding the commissioner and special elections to be held on Saturday May 2, 2020 shall assume the following responsibilities and shall directly bear any attendant costs for the same:

a. Approve the appointment of the Election Day Judges and Clerks, as well as the Early Voting Ballot Board and Central Counting Station Judges and Clerks to be used in said elections.

b. Shall pay for any and all expenses involved with Early Voting Ballot by Mail requests for said elections.

c. The use of Harrison County elections Office Poll Pads and MIFI equipment to qualify voters by personal appearance during Early Voting and on Election Day.

d. The use of Harrison County elections Office eScan, JBC and eSlate DAU/DRE voting equipment to process and tally all voted ballots for said elections. NOTE: The Harrison County Elections Office shall manage all Early Voting election equipment, ballots and supplies at the Elections Office and for any Branch polling locations. Election Day voting equipment, ballots and supplies shall be picked up by the Election Day Judge and delivered back to the Elections Office at the close of Election Day voting.

e. Preparation of all election orders, resolutions, notices and other pertinent documents for adoption or execution by the appropriate office of body.

f. Posting or publications of elections notices.

g. The printing costs of any and all related materials for all ballots, Election Day and Early Voting, and all election materials for election kits involved with said elections.

h. In the event of equipment failure, THE CITY will share in the expense for the necessary personnel for the purpose of hand counting all ballots cast in said election.

i. Pay an administrative fee not to exceed ten percent (10%) of the total amount of the contract to the Harrison County Elections Office; said payment to be deposited to the Election Contracts Fund of Harrison County.

j. Take all action necessary under law for calling the election, canvassing the returns and declaring the results.

k. Deliver to the Harrison County Elections Office as soon as possible, but not later than the 45<sup>th</sup> day before the election, the propositions that are to be printed on the ballot with the exact form, wording, spelling and Spanish translation that is to be used on the official ballot.

l. Provide the services necessary to translate any election documents into Spanish.

m. Pay the cost of conducting said elections within thirty (30) days from the date of billing; the cost will be determined by the actual cost schedule submitted with billing.

### III. GENERAL CONDITIONS

a. A total of One Early Voting location, for the purpose of Early Voting by personal appearance on the CITY ballot initiatives, will be used for this/these elections;

Main Elections Office, 415 E Burleson, Marshall TX 75671

April 20 to 24 from 8:00 AM to 5:00 PM and

April 27 and 28 from 7:00 AM to 7:00PM.

b. A total of One Election Day voting location, for the purpose of Election Day voting by personal appearance on the CITY ballot initiatives, will be open on Saturday May 2, 2020:

Marshall Convention Center, 2501 E End BLVD, Marshall, TX, 7:00AM-7:00PM.

c. THE CITY agrees to save and hold harmless the Harrison County Elections Administrator and the Harrison County Elections Office from any and all claims made arising out of the failure or omission of the CITY to perform their obligations under this contract.

d. The Harrison County Elections Administrator and the Harrison County Elections Office agrees to save and hold harmless the CITY from any and all claims made arising out of the failure or omission of the Harrison County Elections Administrator or the Harrison County Elections Office to perform their obligations under this contract.

e. Should a lawsuit be filed as a result of this election, THE CITY agrees to provide (including the authority to select) and pay the legal fees and any associated costs of a defense by competent legal counsel and representation for the Harrison County Elections Administrator and Harrison County Elections Office personnel. Nothing in this agreement shall be construed as a waiver of any immunity or defense to which the CITY is entitled under statutory, constitutional or common law.

f. In the event of a recount, THE CITY agrees to pay any expenses incurred by the Harrison County Elections Office not covered by the charges assessed to that person requesting the recount. This would include, but not be limited to, the overtime of any Harrison County Elections Office personnel required to work beyond regular office hours in order to conduct said recount of this election.

IV. THE CONTRACTING OFFICE shall keep the original, signed contract onsite at the Elections Office and will file copies of this contract with the Harrison County Treasurer and the Harrison County Auditor. THE CITY shall maintain a copy of the contract as its central office.

#### V. DAMAGE TO HARRISON COUNTY ELECTIONS OFFICE VOTING EQUIPMENT

THE CITY recognizes and acknowledges responsibility for any actual expenses for repairs and or replacement for any damage or loss of equipment that occurs while the Harrison County Elections Office voting equipment is onsite for this/these elections and not covered under the Hart InterCivic warranty.

VI. THE CITY acknowledges that the following local political subdivisions located wholly or partly within Harrison County, will be holding an election at the same time as the CITY on the 2<sup>nd</sup> of May, 2020 unless one or more of such local political subdivisions cancels its election in accordance with Section 2.053 of the Texas Election Code: Marshall Independent School District.

VII. THE CITY does hereby agree to hold a Joint Election under Section 271.002 of the Texas Election Code with the other local political subdivision(s) listed above that is (are) also holding an election on the 2<sup>nd</sup> of May 2020 in all or part of the same territory and to execute with such other local political subdivision(s) a Joint Election Agreement.

In the event of such a Joint election, the CITY does hereby agree to share in the expenses common to both contracting parties.

It is also agreed upon that the CITY gives its consent to use the same Early Voting location and the services of the Election Clerks assigned.

It is agreed upon that the CITY gives its consent to use the same Election Day polling location and services of the Election Clerks assigned.

The CONTRACTING Officer agrees to charge only once for the use of voting equipment at a shared polling location and will divide the charges equally among the local political subdivisions using the same polling locations.

VIII. If the CITY cancels its election pursuant to Section 2.053 of the Texas Election Code, the CITY shall not be responsible for any expenses involved with or incurred by the other local political subdivision involved in the Joint Election Agreement.

Should the ISD cancel its election, The CITY acknowledges that it will be totally responsible for any and all expenses involved with the holding of their election(s).

IX. THIS CONTRACT is made and performed in Harrison County Texas.

Signed and executed this 3<sup>rd</sup> day of February 2020

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Acting City Manager

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City Secretary

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Elections Administrator, Donald Robinette

Seal of the Harrison County Elections Office

Harrison County Elections Office  
P.O. Box 8409, Marshall TX 75671

TO THE CITY OF MARSHALL: ESTIMATED COST OF ELECTION SERVICES CONTRACT

DESCRIPTION	SOLE	JOINT
Hart Ballot Production Services	\$1500.00	\$1500.00
Shipping MBB's, Ballots	200.00	100.00
Configuration/Testing	400.00	200.00
Pollbook config. Program, Test	300.00	150.00
Ballot by mail, estimated 50 @ \$2.00 each	100.00	50.00
MNM publish of Logic Accuracy Test	120.00	60.00
Election kit supplies, EV	54.00	27.00
Election kit supplies, ED	54.00	27.00
Rental poll books	200.00	100.00
Rental voting machine sets EV	400.00	200.00
Rental voting machine sets ED	400.00	200.00
MIFI connections	108.00	54.00
Transportation of voting equipment	25.00	12.50
EARLY Voting clerks: 3 @74hr\$8.50	1887.00	943.50
Election DAY Judge Fee	25.00	12.50
Election DAY judge and 2 clerks, 14 hrs each	357.00	178.50
3 member EVBB, CCSB, PLBB, 4 hrs ea. Ea. Meet	306.00	153.00
Judge fee x 3	75.00	37.50
Overtime	300.00	150.00
Technical Support	300.00	150.00
SUBTOTAL	\$7111.00	\$4305.50
ADMINISTRATIVE FEE 10%	711.10	430.55
ESTIMATED TOTALS	<b>\$7822.20</b>	<b>\$4736.05</b>

Harrison County Elections Office

P.O. Box 8409, Marshall, Texas 75671

To CITY OF MARSHALL—Election Contract—Scope of Work—Uniform Election

Voting Entities: City of Marshall, Marshall ISD Joint election

Registered Voters:

Projected Voter Turnout/number of ballots: 1,000

Absentee Ballot Estimate: 100

Qualifying Voters: KnowInk apple 2 E tablets with polling application

Voting systems: Hart eScan with paper ballots; Hart JBC with eSlate DAU/DRE electronic ballots

Poll worker training: Yes in person at elections office.

Election Day: Saturday May 2, 2020

Early Voting Timeframe: 7 days: Monday April 20 to Friday April 24 from 8 to 5 and Monday and Tuesday April 27 and 28 from 7:00 AM to 7:00 PM.

Number of Early voting locations: One, main office

Equipment to be used: 1 eScan, 1 JBC and 2 eSlates; 2 e Poll Books with MIFI

Poll workers: 3

Number of Election DAY voting locations: one, Marshall Convention Center

Equipment to be used: 1 eScan, 1 JBC and 2 eSlates; 2 e poll books with MIFI

Poll workers: 3; 1 lead Judge and 2 clerks

Equipment Delivery and Pickup by Election Judge and clerks.

Payments should be made payable to “Harrison County” within 30 days of receipt of invoice.

For any questions please contact the Harrison County Election Office at 903-935-4822.

Thank You for the opportunity to administer your election!

## **ITEM 6C**

### **CONSENT AGENDA**

### **MONTHLY FINANCIAL REPORT**

## MEMORANDUM

To: Mark Rohr, City Manager

From: Elaine Altman, Finance Director

Date: February 20, 2020

Subject: January Revenue and Expense Report Summaries – General Fund and Water and Sewer Enterprise Fund

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Attached is the Revenue and Expense Report Summaries for January. This report provides current month, year to date, and budgeted amounts for major revenue categories and expenditures by department. The report also provides a percent of current budget. On average, a department will expend approximately 8.33% of its budget on a monthly basis and this can be used as a benchmark when reviewing this report.

**CITY OF MARSHALL**  
**REV/EXP/BUD - SHORT REPORT - NEW**  
**PERIOD ENDING: JANUARY 2020**

GENERAL FUND	CURRENT MONTH	CURRENT YTD	PRIOR YTD	REVISED ADOPTED BUDGET	ADOPTED BUDGET	1/12 th OF ADOPTED BUDGET	PERCENT OF ADOPTED	REMAINING BUDGET
<b>REVENUES:</b>								
TAXES	2,030,646	2,030,646	2,085,267	12,467,306	12,467,306	1,038,942	16.3	10,436,660
LICENSES & PERMITS	12,906	12,906	14,781	178,000	178,000	14,833	7.3	165,094
INTERGOVERNMENTAL REVENUE	22,997	22,997	9,686	161,235	161,235	13,436	14.3	138,238
FEES	454,113	454,113	341,471	5,200,894	5,200,894	433,408	8.7	4,746,781
FINES & FORFEITURES	19,184	19,184	20,549	484,332	484,332	40,361	4.0	465,148
MISCELLANEOUS REVENUE	406,386	406,386	911,930	2,573,331	2,573,331	214,444	15.8	2,166,945
<b>TOTAL GENERAL FUND REVENUE</b>	<b>2,946,232</b>	<b>2,946,232</b>	<b>3,383,684</b>	<b>21,065,098</b>	<b>21,065,098</b>	<b>1,755,425</b>	<b>14.0</b>	<b>18,118,866</b>
<b>EXPENSES:</b>								
GENERAL GOVERNMENT	37,229	37,229	33,624	555,300	555,300	46,275	6.7	518,071
FINANCE	34,740	34,740	48,290	522,314	522,314	43,526	6.7	487,574
POLICE	320,673	320,673	926,715	5,153,135	5,153,135	429,428	6.2	4,832,462
FIRE	475,084	475,084	450,276	4,144,820	4,144,820	345,402	11.5	3,669,736
PUBLIC SERVICES	97,251	97,251	267,536	4,768,142	4,768,142	397,345	2.0	4,670,891
PLANNING	51,690	51,690	21,814	598,469	598,469	49,872	8.6	546,779
SUPPORT SERVICES	69,576	69,576	101,613	905,449	905,449	75,454	7.7	835,873
TOURISM & PROMOTIONS	82,042	82,042	29,570	1,206,297	1,206,297	100,525	6.8	1,124,255
PARKS & RECREATION	32,329	32,329	52,693	530,892	530,892	44,241	6.1	498,563
NON DEPARTMENTAL	176,138	176,138	218,696	2,045,370	2,045,370	170,448	8.6	1,869,232
APPRAISAL DISTRICT	23,327	23,327	0	97,910	97,910	8,159	23.8	74,583
INTERFUND TRANSFERS	0	0	0	537,000	537,000	44,750	0.0	537,000
CAPITAL OUTLAY	0	0	29,356	0	0	0	0.0	0
<b>TOTAL GENERAL FUND EXPENSES</b>	<b>1,400,080</b>	<b>1,400,080</b>	<b>2,180,183</b>	<b>21,065,098</b>	<b>21,065,098</b>	<b>1,755,425</b>	<b>6.7</b>	<b>19,665,018</b>
<b>TOTAL GENERAL FUND</b>	<b>1,546,153</b>	<b>1,546,153</b>	<b>1,203,502</b>	<b>0</b>	<b>0</b>	<b>0</b>		

**CITY OF MARSHALL**  
**REV/EXP/BUD - SHORT REPORT - NEW**  
**PERIOD ENDING: JANUARY 2020**

	CURRENT MONTH	CURRENT YTD	PRIOR YTD	REVISED ADOPTED BUDGET	ADOPTED BUDGET	1/12 th OF ADOPTED BUDGET	PERCENT OF ADOPTED	REMAINING BUDGET
<b>WATER &amp; SEWER ENTERPRISE FUND</b>								
<b>REVENUES:</b>								
PERMITS & FEES	873	873	2,409	11,400	11,400	950	7.7	10,528
WATER & SEWER CHARGES	792,696	792,696	910,897	10,301,854	10,301,854	858,488	7.7	9,509,158
MISCELLANEOUS REVENUES	1,722	1,722	4,475	72,000	72,000	6,000	2.4	70,278
<b>TOTAL W&amp;S REVENUE</b>	<b>795,291</b>	<b>795,291</b>	<b>917,781</b>	<b>10,385,254</b>	<b>10,385,254</b>	<b>865,438</b>	<b>7.7</b>	<b>9,589,963</b>
<b>EXPENSES:</b>								
ADMINISTRATION	29,398	29,398	15,858	398,310	398,310	33,193	7.4	368,912
WATER PRODUCTION	125,744	125,744	138,935	1,735,906	1,735,906	144,659	7.2	1,610,162
DISTRIBUTION/COLLECTION	125,233	125,233	112,359	2,483,027	2,483,027	206,919	5.0	2,357,794
WASTEWATER TREATMENT	86,163	86,163	120,046	1,718,056	1,718,056	143,171	5.0	1,631,893
WATER BILLING	40,193	40,193	35,223	512,884	512,884	42,740	7.8	472,691
ENGINEERING	3,774	3,774	5,778	31,576	31,576	2,631	12.0	27,802
NON DEPARTMENTAL	101,797	101,797	98,029	990,267	990,267	82,522	10.3	888,470
INTERFUND TRANSFERS	396,250	396,250	288,465	2,515,228	2,515,228	209,602	15.8	2,118,978
<b>TOTAL W&amp;S EXPENSES</b>	<b>908,552</b>	<b>908,552</b>	<b>814,693</b>	<b>10,385,254</b>	<b>10,385,254</b>	<b>865,438</b>	<b>8.8</b>	<b>9,476,702</b>
<b>TOTAL WATER &amp; SEWER FUND</b>	<b>(113,261)</b>	<b>(113,261)</b>	<b>103,088</b>	<b>0</b>	<b>0</b>	<b>0</b>		

## **ITEM 7A**

### **PRESENTATION**

# **PRESENTATION OF A PROCLAMATION DECLARING THE MONTH OF FEBRUARY AS “TEEN DATING VIOLENCE AWARENESS MONTH”**

## MEMORANDUM

To: Members of the City Commission

From: Mark Rohr, City Manager

Date: February 18, 2020

Subject: Presentation of a Proclamation Declaring the Month of February as “Teen Dating Violence Awareness Month”

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Mayor Brown will present a Proclamation declaring the month of February as “Teen Dating Violence Awareness Month”

A representative from the Women's Center of East Texas will be in attendance at the meeting to accept the Proclamation.

# PROCLAMATION



## *Teen Dating Violence Awareness Month*

*WHEREAS*, one in three adolescents in the U.S. is a victim of physical, sexual, emotional or verbal abuse from a dating partner, a figure that far exceeds rates of other types of youth violence; and

*WHEREAS*, intimate partner violence often begins in adolescence, with 25% of male and female survivors identifying their first experiences of intimate partner violence as occurring during teen relationships; and

*WHEREAS*, young people who experience physical violence in a dating relationship are more likely to use drugs and alcohol, are at greater risk of suicide and are much more likely to carry patterns of abuse into future relationships; and

*WHEREAS*, working with youth to help them build social-emotional skills, such as empathy, respect, healthy communication, and conflict resolution, promotes the development and expectation of mutually respectful, caring, and nonviolent relationships; and

*WHEREAS*, engaging teens and adults to promote social norms that support healthy relationships has great potential to transform our communities so that teen dating violence is not acceptable and everyone has access to the tools to intervene when they witness teen dating violence; and

*WHEREAS*, the Women's Center of East Texas is focused on ending violence by providing safe haven, crisis intervention and comprehensive support services to victims of teen dating violence; and

*WHEREAS*, everyone has the right to a safe and healthy relationship and to be free from abuse.

*NOW, THEREFORE*, I, Mayor Terri Brown, do hereby proclaim the month of February to be "*Teen Dating Violence Awareness Month*" and urge all citizens to work toward ending teen dating violence by empowering young people to develop healthier relationships, assisting victims in accessing the information and supportive services they need, creating better and more resources for young people in need, instituting effective intervention and prevention policies in schools and engaging in discussions with family members and peers to promote awareness and prevention of the quiet epidemic of teen dating violence.

*Presented this 27<sup>th</sup> day of February 2020.*

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Terri Brown, Mayor  
Marshall City Commission



## **ITEM 8A**

### **PUBLIC HEARING**

**CONDUCT A PUBLIC HEARING  
REGARDING THE COMMUNITY  
DEVELOPMENT BLOCK GRANT 5-YEAR  
CONSOLIDATED PLAN AND ANNUAL  
ACTION PLAN FOR 2020 PROGRAM**



## Agenda Information Sheet

### February 27, 2020

#### Agenda Item

Hold a public hearing regarding the Community Development Block Grant 5-year Consolidated Plan and Annual Action Plan for 2020 Program Year.

#### Background & Summary of Request:

Every year the City of Marshall as a Community Development Block Grant (CDBG) Entitlement grantee must prepare an Annual Plan which identifies priorities for the upcoming year and allocations for sub-recipients. In addition, every five years the City is required to submit a Consolidated Plan that outlines goals for the community over a five-year period. This year we are required to submit both which were drafted with the Mobilize Marshall Plan and the 2043 Comprehensive Plan in mind as well as a survey from our sub-recipients. These plans must be submitted to the U.S. Department of Housing and Urban Development by April 15, 2020. For those who wish to review the entire plan we have placed those on our website as well as we have a hard copy in the Community Development Office on the first floor of City Hall.

This year Staff anticipates our total allocation for our CDBG program at \$361,302.00. We received six Public Service applications requesting funding this year, totaling in \$389,607.25 in requests, due to HUD regulations, the maximum we are allowed to fund in public services is 15% of the CDBG Grant allocation or an anticipated \$54,195.00. Below is a breakdown of request and the Community Development Advisory Committee's (CDAC) recommendation:

Public Service Goal			
Organization	Amount Requested	Type of Service	CDAC Recommendation
Boys & Girls Club	\$39,107.25	Youth Services	\$16,250.00
Marshall/ Harrison County Literacy Council	\$15,000.00	Adult Education	\$15,000.00
Mission Marshall	\$12,000.00	Food Pantry	\$12,000.00
Anointing Ministries Grace	\$91,500.00	Youth Services	\$0.00
Anointing Ministries Grace	\$100,500.00	Senior Citizens	\$0.00
Tracy Foundation Andrus	\$6,500.00	Facility Rehabilitation	\$0.00
<b>Total Requested:</b>	<b>\$389,607.25</b>	<b>Recommended:</b>	<b>\$43,250.00</b>

Addition allocations were recommended as follows:

<b>Projects</b>	<b>Amount Requested</b>	<b>Type of Service</b>	<b>CDAC Recommendation</b>
Owner Occupied Repairs	\$125,000.00	Affordable Housing Goal	\$100,000.00
Code Enforcement	\$68,000.00	Neighborhood Development Goal	\$68,000.00
Demolition	\$68,000.00	Neighborhood Development Goal	\$68,000.00
Marshall Connection	\$9,792.00	Neighborhood Development Goal	\$9,792.00
Community Development Admin	\$72,260.00	CDBG Program Administration	\$72,260.00
<b>Requested:</b>	\$343,052.00	<b>Recommended:</b>	<b>\$318,052.00</b>
<b>Total Requested:</b>	<b>\$732,659.25</b>	<b>Public Service Rec.</b>	<b>\$ 43,250.00</b>
		<b>Total Recommended</b>	<b>\$361,302.00</b>

The purpose of tonight's agenda item is to present the recommended CDBG budget for program year 2020 and to hold the second of three public hearings. The CDAC held the first public hearing on February 20<sup>th</sup>, the third public hearing will be at the City Commission's April 9<sup>th</sup> meeting where staff will also ask the Commission to approve the Consolidated and Annual Plan so that it can be forwarded to the Department of Housing and Urban Development for acceptance by the required deadline of April 15<sup>th</sup>, 2020.

## **ITEM 9A**

### **ORDINANCE**

**APPROVAL OF AN ORDINANCE  
AMENDING SECTION 21-33 OF CHAPTER  
21, “OFFENSES,” ENTITLED “ANIMALS  
PROHIBITED IN CITY BUILDINGS;  
EXCEPTIONS” WHICH ESTABLISHED  
BUILDING AND FACILITIES OF THE  
CITY OF MARSHALL IN WHICH IT IS  
UNLAWFUL TO ALLOW PETS OR  
OTHER ANIMALS**



**TO:** Members of the City Commission

**FROM:** Eric Powell, PE   
Director of Public Works

**DATE:** February 18, 2020

**SUBJECT:** Amending Chapter 21, Section 21-33 of the Code of Ordinances regarding prohibiting pets or other animals in City buildings or facilities

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There has been some concern voiced from members of the Marshall Youth Softball and Marshall Youth Baseball Associations, in regard to dogs being brought to softball and baseball games at Airport Park. Many of the dogs are large-breed animals that have frightened children who attend games at the park. This ordinance specifically clarifies that dogs are not allowed in City parks facilities, with the exception of law enforcement animals, seeing-eye dogs, or other animals trained to assist handicapped persons. Passage of this ordinance will also allow for signage to be posted in those areas to notify the public that this ordinance is in place.

A copy of the ordinance is attached for your review.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 21-33 OF CHAPTER 21, "OFFENSES," ENTITLED "ANIMALS PROHIBITED IN CITY BUILDINGS; EXCEPTIONS" WHICH ESTABLISHES BUILDINGS AND FACILITIES OF THE CITY OF MARSHALL IN WHICH IT IS UNLAWFUL TO ALLOW PETS OR OTHER ANIMALS; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS CONDUCTED IN STRICT COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND ESTABLISHING AN EFFECTIVE DATE .**

**WHEREAS**, the City of Marshall adopted an ordinance on 21-33 amending chapter 21 of the Code of Ordinances, and which designated certain building and facilities in the City of Marshall in which it is unlawful to allow pets or other animals; and

**WHEREAS**, that ordinance was incorporated into the Code of Ordinances for the City of Marshall, Texas as Sec. 21-33, entitled "Animals prohibited in city buildings; exceptions." (herein called "Sec. 21-33" and

**WHEREAS**, the City of Marshall has determined that in addition to the buildings owned by the City already designated under 21-33 , that certain of the city owned facilities, including some City Parks, should also be designated under the ordinance as places where pets or other animals are not permitted;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS:**

**SECTION 1.** The Code of Ordinances of the City of Marshall, Texas, Chapter 21 "Offenses", Section 21-33 "Animals prohibited in city buildings; exceptions" is hereby amended to read as follows:

"Sec. 21-33. - Animals prohibited in city buildings and facilities; exceptions.

(a) This section shall not apply to the Marshall Animal Shelter or the City Arena.

(b) Except as provided herein, no person shall knowingly or intentionally allow a pet or other animal to enter or remain in a city building or facility.

(c) As used in this section "city building" or "facility" includes all buildings, centers, or enclosed areas owned, leased or otherwise occupied by the city of or its agents, and City Parks (indoor or outdoor) that have a sign at the entrance(s) to said park indicating that animals are not allowed, except as provided for under this ordinance.

(d) This section shall not apply to the following:

- (1) Law enforcement dogs; or,

(2) Seeing-eye dogs or other animals trained to assist handicap persons;

(e) Animals may be allowed in city buildings and facilities at specific events such as dog shows, if authorized by the city manager or his designee.”

**SECTION 2.** All ordinances of the City of Marshall in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with any other state and/or federal law.

**SECTION 3.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

**SECTION 4.** This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAINED: \_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN OF THE CITY COMMISSION  
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

\_\_\_\_\_  
City Secretary

## **ITEM 10A**

### **SECOND READING OF ORDINANCE**

**APPROVAL OF AN ORDINANCE  
AMENDING CHAPTER 27 OF THE CITY  
OF MARSHALL CODE OF  
ORDINANCES ENTITLED “TRAFFIC”,  
SPECIFICALLY REPEALING SECTION  
27-15.3 ENTITLED “SAME – HEAVY  
VEHICLE PARKING” AND REPLACE  
WITH A NEW SECTION 27-15.3  
ENTITLED “COMMERCIAL VEHICLE  
PARKING”.**



## **Agenda Information Sheet**

### **February 27, 2020**

#### Agenda Item

**SECOND READING:** Consider approval of an ordinance amending Chapter 27 of the City of Marshall Code of Ordinances entitled “Traffic”, specifically repealing Section 27-15.3 entitled “Same – Heavy vehicle parking” and replace with a new section 27-15.3 entitled “Commercial Vehicle Parking”.

(Director of Community & Economic Development)

City Commission approved first reading by a vote of 5-0-0.

#### Background & Summary of Request:

The goal of the attached ordinance amendment is to prohibit commercial vehicle parking in non-permitted areas. There is an increase in commercial vehicles being parked for long periods of time in various parking lots and in residential districts. The parking of these vehicles cause numerous problems for the property owners and the city.

The proposed ordinance defines a commercial vehicle as a truck-tractor, semi-trailer, bus, truck or trailer that has a carrying capacity of 10 tons and has a length of 35 feet or more. Based on research, the average 18-wheeler has a carrying capacity of 40 tons and average length of 70 feet; a passenger bus has the carrying capacity of 10 tons and average length of 35 feet.

The proposed ordinance prohibits commercial vehicles from parking on public streets, alleys, or right-of-ways and does provide for a few exceptions such as the loading and unloading of material or passengers. In addition, the ordinance prohibits commercial vehicles from parking in residential areas unless allowed by zoning and other commercial areas unless allowed by zoning.

The proposed ordinance does outline a process for which a hotel/motel may want to request a permit to allow commercial vehicle parking, if the ordinance is passed and an application made, the City Commission would have approval or denial authority over such request.

Ordinance \_\_\_\_\_

**AN ORDINANCE REPEALING IN ITS ENTIRETY CHAPTER 27 SECTION 15-3 OF THE CITY OF MARSHALL, TEXAS CODE OF ORDINANCES ENTITLED “SAME – HEAVY VEHICLE PARKING” AND REPLACING WITH A NEW SECTION CHAPTER 27 SECTION 15-3 ENTITLED “COMMERCIAL VEHICLE PARKING”; PROVIDING FOR PENALTIES; PROVIDING FOR PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE FOR SUCH ORDINANCE.**

**WHEREAS**, the City Commission of Marshall has determined that its citizens and visitors shall have a safe and clean physical environment; and

**WHEREAS**, the City Commission of Marshall has also determined that commercial vehicle parking shall be regulated by location; and

**WHEREAS**, the City Commission of Marshall wishes to repeal Chapter 27 of the Code of Ordinances entitled “Traffic” specifically Section 15-3 entitled “Same – Heavy Vehicle Parking” and replace with Chapter 27 entitled “Traffic” specifically Section 15-3 entitled “Commercial Vehicle Parking”.

**THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS:**

**Section 1.** That the findings set out in the preamble of this ordinance are hereby in all things approved.

**Section 2.** Repeal Chapter 27 Section 15-3 of the Code of Ordinances:

**~~“Sec. 27-15.3. – Same – Heavy vehicle parking.~~**

~~(a) Definitions. For the purposes of this section, the following words and terms shall have the meanings respectively ascribed to them:~~

~~(1) Heavy vehicle is defined as any motor vehicle, truck, truck tractor, trailer or semi-trailer having a gross weight of ten thousand (10,000) pounds or more.~~

~~(2) Parking is defined as the leaving of any vehicle unattended.~~

~~(3) Rights of way are defined as that portion of a street between the curblineline and the adjacent property line.~~

~~(b) Parking prohibited on public property; exceptions.~~

~~(1) It shall be unlawful for any person, firm or corporation to park a heavy vehicle upon any public property, including but limited to public streets, alleys, rights of way, sidewalks or other~~

~~public property, except in designated parking spaces on such public streets or rights of way, excluding the following cases:~~

~~a. Postal vehicles or delivery vehicles that are in the actual process of being loaded or unloaded.~~

~~b. Vehicles of an electric utility, gas utility, telephone company, cable company, the City of Marshall, or their agent or contractor actually engaged in the repair, maintenance and/or installation of utilities serving the city.~~

~~c. The parking of heavy vehicles within residential districts shall be limited to the use of such vehicles, trailers or equipment in the performance of a service to the subject property for the period of time necessary to complete such service or construction and shall be limited to temporarily leaving the vehicle; in the event the same becomes disabled in the performance of service, to adjacent property in such a manner and to such an extent that it is impossible to move such vehicle or equipment until proper repair and/or towing assistance can be obtained by the owner or operator of such vehicle or equipment.~~

~~(2) The chief of police or his designee is hereby authorized to grant an exception or exceptions to the no parking regulations upon the showing that special conditions and/or circumstances exists which justify an exemption.~~

~~(e) Violations, penalties:~~

~~(1) A person, firm, or corporation violating any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine in a sum as follows:~~

~~a. First violation—Not less than twenty five dollars (\$25.00).~~

~~b. Second violation—Not less than fifty dollars (\$50.00).~~

~~c. Additional violations—Not less than fifty dollars (\$50.00), but not to exceed two hundred dollars (\$200.00) for each additional violation.~~

~~(2) For the purposes of this section, each day that a violation continues shall constitute a separate offense.”~~

**Section 3.** Replace Chapter 27 Section 15-3 with the following:

**“Sec. 27.15.3 Commercial Vehicle Parking**

**a) Definitions.** For the purpose of this section, the following terms shall carry the meanings as set out below:

*Commercial Vehicle shall mean truck-tractor, road tractor, semi-trailer, bus, truck or trailer or any other commercial vehicle with a rated carrying capacity of ten (10) tons or more and the length of 35 feet or more according to the manufactures classification.*

*Integral part of a lawfully zoned business shall mean the operation and use of a commercial vehicle to deliver merchandise, or transport tools, equipment or supplies necessary to the operation of the lawfully zoned business and other uses of a commercial vehicle without which the operation of said business would be substantially hindered. Remote and incidental uses of a commercial vehicle in connection with a business, such as advertising, name exposure and promotion, except where such is specifically permitted by the zoning ordinance, shall not be deemed use as an integral part of such business.*

*Standard truck parking area shall mean a designated parking area at a motel or hotel within the city that meets the criteria for parking lot design for truck parking established by the city as follows:*

- (1) Minimum six-inch lime stabilized subgrade with six-inch reinforced concrete pavement;*
- (2) Minimum approach width of forty (40) feet for two-way driveway and twenty-five (25) feet for one-way entrance or exit with minimum thirty-foot curb return radii on driveway approaches; and*
- (3) Minimum twenty-five-foot turning radii.*

**b) *Parking of commercial vehicles prohibited – Public streets, alleys, etc.*** *It shall be unlawful for any owner or person in control of a commercial vehicle, as defined herein, to leave, park or stand, or permit the leaving, parking or standing of such vehicle upon any public street, alley, parkway, boulevard or other property owned or controlled by any unit of government, except that this section shall not apply to:*

- (1) Commercial vehicles while being used for street construction, maintenance or repair;*
- (2) Commercial vehicles being utilized by a company engaged in extending public service utilities;*
- (3) Passenger buses taking on or discharging passengers at an approved bus stop;*
- (4) A commercial vehicle parked in a loading zone for the purpose of loading or unloading freight or merchandise to a lawfully zoned business;*
- (5) A commercial vehicle parked for the purpose of expeditiously delivering or picking up merchandise to or from a specific designated location or loading or unloading personal property to or from a specific designated location; and*
- (6) A commercial vehicle experiencing a mechanical defect making it unsafe or impossible to proceed, for such period of time as emergency repairs are made or, if repairs cannot be made in a timely manner, until a tow truck arrives.*

**c) *Parking of commercial vehicles prohibited – residential areas.*** *It shall be unlawful for any owner or person in control of a commercial vehicle, to leave, park, or stand, or permit the leaving, parking, or standing of such vehicle within any area of the City zoned residential according to the Marshall Zoning Ordinance, except that this section shall not apply to a commercial vehicle parked for the purpose of expeditiously delivering or picking up merchandise to or from a specific designated location or loading or unloading personal property to or from a specific designated location while in the normal course of business for which the commercial vehicle operates.*

**d) *Parking of commercial vehicles – within certain zoning districts.*** *It shall be unlawful for any owner or person in control of property described herein to leave, park, or stand a commercial vehicle, or permit the leaving, parking, or standing of a commercial vehicle*

*upon property within an area zoned nonresidential according to the Marshall Zoning Ordinance, except where one or more of the following conditions exist:*

- (1) The commercial vehicle is parking upon an approved parking surface within an area zoned industrial according to the Marshall Zoning Ordinance.*
- (2) The commercial vehicle is parked or standing for the purpose of expeditiously loading and unloading passengers, freight, or merchandise.*
- (3) The commercial vehicle is parked at a lawfully zoned business establishment, wherein such commercial vehicle is utilized as an integral part of such lawfully zoned business with an approved certificate of occupancy.*
- (4) The commercial vehicle is a passenger bus parked on a parking lot in an area designated by the owner of the parking lot for the parking of buses, and with the consent of the owner during such period as the bus passengers are attending an event at a facility zoned for such activities, or are customers at a retail center or in the case of a hotel or motel, during such periods of time that the bus passengers are customers of the hotel or motel.*
- (5) The commercial vehicle parked is parked in a designed area at an exhibit hall, convention center, entertainment, or similar facility when the commercial vehicle is involved in the delivery and removal of equipment, products, merchandise, livestock or other items to and from the facility.*
- (6) The commercial vehicle is truck or trailer being driven by an individual who has rented the vehicle from a commercial business for the purpose of transporting personal property from one location to another, and parked for less than 24 hours at a motel or hotel while the driver is a customer of the hotel or motel.*
- (7) The Commercial vehicle is parked in a truck parking area at a motel or hotel within the City, which has been specifically approved for truck parking by the City Commission in accordance with the procedures and standards set out below:*
  - a. Application: An application containing the following information shall be submitted: (a) specific identification of the property for which the request is made; (b) a detailed site plan of the property showing dimensions and indicating the area(s) for which truck parking is being requested; (c) the maximum number of trucks the proposed area will accommodate; (d) description and identification of the location of proposed screening and buffering; and (e) other information relevant to the request.*
  - b. Notification and hearing: Prior to making a determination concerning the application, the City Commission will hold a public hearing to receive input from the applicant, adjoining property owners and other interested persons. Owners of property abutting the property described in the application, including those properties separated by a street or alley, shall be provided written notifications at least ten (10) days prior to the consideration of the application. Adjoining owners*

*shall be informed of the applicant's request for a truck parking area and be given the opportunity to respond in writing and/or in person at the public hearing.*

- c. Application review for new hotel or motel: A determination of approval or denial by the City Commission shall be based upon an evaluation of the purpose and justification for a truck parking area as stated in the application; the location of the property and proposed parking area in relationship to existing, proposed, and potential uses in the area; the ability to reasonably accommodate truck parking and maneuvering on the site; and other factors affecting onsite circulation and off-site impact. The decision of the City Commission shall be final. City Commission approval of a truck parking area at a new hotel or motel will include specific number of trucks that may be parked in the approved area and require the construction of a standard truck parking area.*
- d. Application review criteria for an existing hotel or motel: In addition to the criteria set forth for the determination of approval or denial for a new hotel or motel, an existing motel or hotel must demonstrate that their existing parking lot can support and accommodate the use and maneuvering of trucks, that truck traffic will not greatly impact the area, and that requirements concerning the number of spaces required for passenger vehicles will continue to be met. The decision of the City Commission shall be final. City Commission approval of a truck parking area at an existing hotel or motel will include the number of trucks that may be parked in the approved area. The provisions of this section shall not affect truck parking previously approved before the passage of this ordinance.*

- e) **Parking of commercial vehicles – not to affect truck route regulations.** Notwithstanding the provisions of this division, it shall be unlawful for the operator of any tractor-trailer combination commercial vehicle commonly known as an “eighteen wheeler” to operate such vehicle in violation of any provision of the City Code relating to truck routes.”*

**Section 4.** That the meeting at which this ordinance was passed was conducted in strict compliance with the Texas Open Meetings Act (Texas Government Code Chapter 551).

**Section 5.** That all other prior ordinances or portions of ordinances or portions of ordinances of the City of Marshall in conflict with the terms and provisions of this ordinance are hereby repealed to the extent of such conflict only.

**Section 6.** That the repeal of any ordinance or portion of any ordinance by this ordinance shall not affect the validity of any pending enforcement action or fines outstanding and due and payable on or before the effective date of this ordinance.

**Section 7.** That if any section, paragraph, subdivision, clause, phrase, or provision of this ordinance is hereafter determined to be invalid or in violation of the laws of the State of Texas or the Constitution of the United States by of court of appropriate jurisdiction, such finding of invalidity shall affect the continued enforcement only of the provision or provisions so determined to be invalid, it being the intent of the City Commission of the City of Marshall that all other terms and provisions of this ordinance not affected shall remain in full force and effect.

**Section 8.** That this ordinance shall be effective from and after its passage and publication as required by law.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAINED: \_\_\_\_\_

PASSED, APPROVED AND ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2020.

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAINED: \_\_\_\_\_

\_\_\_\_\_  
MAYOR OF THE CITY COMMISSION OF  
THE CITY OF MARSHALL, TEXAS

ATTEST:

\_\_\_\_\_  
Elaine Altman, City Secretary

**ITEM 11A**

**RESOLUTION**

**APPROVAL OF A RESOLUTION  
CALLING FOR THE CANCELLATION OF  
THE CITY GENERAL ELECTION FOR  
DISTRICT 5**

## Memorandum

To: Mark Rohr, City Manager  
From: Elaine Altman, City Secretary  
Date: February 19, 2020  
Subject: Cancellation of the City General Election District 5

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Commissioner Vernia Johnson, candidate for re-election to the City Commission in District 5, is unopposed for the upcoming May 2, 2020 general election. Attached is a Resolution that would cancel the General Election for District 5 and declare the unopposed candidate elected.

It is my recommendation that the City Commission adopt the attached Resolution cancelling the General Election for District 5 and declaring Commissioner Vernia Johnson re-elected City Commissioner, District 5.

**R-20-  
RESOLUTION  
ORDER AND NOTICE OF CANCELLATION OF CITY GENERAL ELECTION  
FOR DISTRICT 5**

To the Resident Qualified Voters of the City of Marshall, Texas:

**WHEREAS**, a general election was ordered to be held on May 2, 2020, by the City Commission on the 23<sup>rd</sup> day of January 2020, to elect Commissioners from Districts 5, 6, and 7; and

**WHEREAS**, the deadline for filing an application for a place on the ballot was February 14, 2020 at 5:00 p.m.: and,

**WHEREAS**, the deadline for write-in candidates to file declarations of write-in candidacy was February 18, 2020 at 5:00 p.m.: and,

**WHEREAS**, the City Secretary of the City of Marshall has certified the unopposed status of Vernia Johnson.

**THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARSHALL:**

1.

That the general election to be held in the City of Marshall, Texas, on the 2<sup>nd</sup> day of May, 2020, at which election candidates for the office of Commissioner District 5 was to be submitted to the resident qualified voters of said City for their action thereon is hereby canceled.

2.

In accordance with Section 2.053 of the Texas Election Code, the following unopposed candidate is hereby declared duly elected to the respective offices shown:

Vernia Johnson, City Commissioner District 5

3.

A copy of this Resolution signed by the Chairman of the City Commission and attested by the City Secretary shall serve as proper notice of cancellation of said general election. The City Secretary is authorized and directed to post on Election Day a properly executed copy of said Notice of Cancellation of City General Election at City Hall and at each polling place that would have been used had the election not been cancelled.

**PASSED, APPROVED, AND ADOPTED** this \_\_\_\_\_ day of March 2020.

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAINED: \_\_\_\_\_

\_\_\_\_\_  
MAYOR OF THE CITY COMMISSION  
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

**R-20-  
RESOLUCIÓN  
ORDEN Y AVISO DE CANCELACIÓN DE LA CIUDAD DE ELECCIÓN GENERAL  
PARA LOS DISTRITO 5**

A los votantes calificados residentes de la Ciudad de Marshall, Texas:

CONSIDERANDO, que las elecciones generales se le ordenó que se celebrarán el 5 de mayo de 2018, por la Comisión de la Ciudad en el día 23 de enero de 2020, para elegir a comisarios de los distritos 5, 6, y 7, y

CONSIDERANDO, que el plazo para la presentación de una solicitud para un lugar en la boleta electoral fue 14 de febrero 2020 a las 5:00 pm: y,

CONSIDERANDO, que el plazo para la amortización de los candidatos a presentar declaraciones de escritura en la candidatura fue 18 de febrero 2020 a las 5:00 pm: y,

CONSIDERANDO, el Secretario Municipal de la Ciudad de Marshall ha certificado el estado sin oposición de Vernia Johnson.

POR LO TANTO, SE RESUELVE POR LA COMISIÓN MUNICIPAL DE LA CIUDAD DE MARSHALL:

1.

Que las elecciones generales que se celebrarán en la ciudad de Marshall, Texas, el día 2 de mayo 2020, en el que los candidatos electorales para el cargo de Comisionado de los Distrito 5 se iba a presentar al residente calificado los votantes de dicha Ciudad por su acción al respecto quedará cancelada.

2.

De conformidad con el artículo 2.053 del Código Electoral de Texas, los siguientes candidatos sin oposición se declaran debidamente electos para los respectivos cargos indicados:

Vernia Johnson, Comisionado de la Ciudad del Distrito 5

3.

Una copia de esta Resolución firmada por el Presidente de la Comisión de la Ciudad y certificado por el Secretario de la Ciudad deberá servir como aviso correspondiente de la cancelación de dicha elección general. La Secretaria de la Ciudad se autoriza y ordena publicar en el Día de Elecciones una copia correcta ejecución de dicho aviso de cancelación de la Elección General de la Ciudad en el Ayuntamiento y en cada lugar de votación que se habría utilizado si no la elección fue cancelada.

PASADO, APROBADO Y ADOPTADO este día \_\_\_\_\_ de marzo de 2020.

SIS: \_\_\_\_\_

NO: \_\_\_\_\_

ABSTENIDO: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENTE DE LA COMISIÓN DE LA CIUDAD DE  
MARSHALL, TEXAS

ATESTIGUA:

\_\_\_\_\_  
SECRETARIA DE LA CIUDAD

## **ITEM 11B**

### **RESOLUTION**

**APPROVAL OF A RESOLUTION  
AUTHORIZING THE ISSUANCE OF A  
RFQ/RFP, UTILIZING THE  
DESIGN/BUILD CONTRACT METHOD OF  
PROJECT DELIVERY, SEEKING  
QUALIFICATIONS AND PROPOSALS  
FROM QUALIFIED RESPONDENTS FOR  
THE DEVELOPMENT, DESIGN AND  
CONSTRUCTION OF A NEW ANIMAL  
ADOPTION CENTER**

## MEMORANDUM

To: Members of the City Commission

From: Mark Rohr, City Manager

Date: February 18, 2020

Subject: Resolution Authorizing the Issuance of a Request for Qualifications and Proposals (RFQ/RFP) for a New Animal Adoption Center

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Phase 5 of the Design/Build process requires the authorization of the advertisement of the RFQ/RFP. The attached Resolution authorizes the issuance of a Request for Qualifications and Proposals (RFQ/RFP), utilizing the Design/Build Contract Method of project delivery, seeking qualifications and proposals from qualified respondents for the development, design and construction of a new animal adoption center.

We have also provided a copy of the draft Request for Qualifications and Proposals (RFQ/RFP) for your review.

RESOLUTION \_\_\_\_\_

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS AUTHORIZING THE ISSUANCE OF A REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/RFP), UTILIZING THE DESIGN/BUILD CONTRACT METHOD OF PROJECT DELIVERY, SEEKING QUALIFICATIONS AND PROPOSALS FROM QUALIFIED RESPONDENTS FOR THE DEVELOPMENT, DESIGN AND CONSTRUCTION OF A NEW ANIMAL ADOPTION CENTER**

**WHEREAS**, the City of Marshall, Texas is desirous of constructing an Adoption Center to replace the dated, worn, small, and inefficient animal service facility it now has; and

**WHEREAS**, the Design/Build method of project delivery was approved at the August 22, 2019 Commission Meeting in open session; and

**WHEREAS**, the new facility will be located at 2502 East Travis, Marshall, TX and will generally consist of approximately 7,285 square feet; and

**WHEREAS**, the City Commission finds that the Design/Build Method of project delivery for buildings will allow for competitive procurement and achieve the best value for the City; and

**WHEREAS**, the project is capable of clear definition, the city has the capacity to oversee and manage the project with existing personnel and available professional help.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARSHALL, TEXAS;**

**Section 1.** The City Commission hereby approves the issuance of the proposed Request for Qualifications and Proposals for the Development, Design and Construction of a new Animal Adoption Center as attached.

**Section 2.** Directs the publication of an advertisement for the Request for Qualifications and Proposals as required by law.

**Section 3.** This Resolution shall become effective as and from the date of final passage.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor of the City Commission  
of the City of Marshall, Texas

ATTEST:

\_\_\_\_\_  
Elaine Altman, City Secretary

**CITY OF MARSHALL TEXAS**  
**February 20, 2020**

**REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS**  
**FOR DESIGN-BUILD SERVICES FOR CONSTRUCTION PROJECT**

Pursuant to Texas Government Code, Chapter 2269, Subchapter G, the City of Marshall Texas, here in after called (“City”) will be accepting statements of qualifications and proposals for the Design-Build of: New Animal Adoption Center here in after called (“Project”), as further described herein. By submitting a response to this Request for Qualifications (“RFQ”) and Request for Proposals (“RFP”) all those submitting agree to comply with all terms and conditions set out in this RFQ/RFP.

The RFQ/RFP package may be obtained at City located at: City of Marshall - City Manager’s Office, 401 S. Alamo Blvd., Marshall, Texas 75670

**Responses to this RFQ/RFP must be received no later than March 16, 2020, at 2:00 P.M., at City of Marshall - City Manager’s Office, 401 S. Alamo Blvd., Marshall, Texas 75670**

ANY RESPONSE RECEIVED AFTER THE TIME AND DATE STATED ABOVE WILL NOT BE CONSIDERED. UNSIGNED PROPOSALS AND/OR PROPOSALS RECEIVED VIA FACSIMILE OR EMAIL WILL NOT BE CONSIDERED. ALL RESPONSES MUST BE RECEIVED AT THE ADDRESS SHOWN ABOVE. RESPONSES SENT/DELIVERED TO ANY OTHER CITY ADDRESS WILL NOT BE CONSIDERED.

Each submittal should be prepared simply and economically, providing a straightforward, concise description of your firm’s ability to meet the requirements of this RFQ/RFP. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the City’s needs.

Respondents must provide all requested information; failure to comply with any portion of this solicitation will be reflected in the evaluation process. The City reserves the right to accept or reject any Submission or any part thereof or any combination of Submissions and to waive any and all formalities. All responses in the Submission may be used by the City in the selection process. The City reserves the right to verify the accuracy and completeness of all responses by utilizing any information available to the City without regard to whether such information appears in the submission.

***For questions regarding this RFQ/RFP, please contact Mark Rohr, City Manager at the City of Marshall, Texas, by e-mail at Rohr.Mark@marshalltexas.net.***

All questions and answers will be made available to all by e mail upon request.

There will be a Site Visit for Respondents on Friday, March 6, 2020 at 10:00 a.m.

## **TERMS AND CONDITIONS**

The City intends to secure the services of the most qualified Design-Build firm demonstrating a capability to perform services needed and possessing the integrity and general reputation to handle the project. The firm must have expertise, experience and the necessary support staff to design and construct the Project for the City. The firm does not need to have a local office. However, the firm should have experience and knowledge of construction practices, procedures, regulations, and soil and environmental conditions, as applicable to the Project and public entities in the State of Texas.

The design criteria package is attached hereto as Exhibit A dated February 20, 2020.

The estimated Substantial Completion date for this project as stated in the Design Criteria Package is April 23, 2021.

### **STANDARD TERMS & CONDITIONS AND REQUIREMENTS FOR SOLICITATIONS**

This Solicitation shall be governed by the following documents unless an exception is otherwise taken within the submitted response.

- (1) Texas Government Code Chapter 2269, Subchapter G;
- (2) Texas Government Code 2254, Title 10, Subchapter A, Professional Services;
- (3) The successful Respondent will be required to enter into an AIA A141-2014 Agreement between Owner and Design-Builder, as revised by the City, which is attached hereto as Exhibit B. Respondent must provide any requested changes to the AIA A141-2014 document as part of the response to the request. Failure to provide such information shall be deemed acceptance of all terms; and Exhibit B is incorporated by reference only, and is not attached as part of this Solicitation. A copy may be obtained by contacting the City.

### **DISCREPANCIES OR OMISSIONS**

Respondent shall carefully examine all documents included in this solicitation. No representations or guarantees of any kind, either expressed or implied, are made with regard to the matters of information contained in this solicitation. Respondent must rely on its own assessment as the basis for the submission. Should Respondent find discrepancies in, or omissions from the Project Description, Scope of Services, or other documents, or should Respondent be in doubt as to submittal procedures and requirements, Respondent should contact the City via e-mail not later than four (4) days before the submittal deadline.

Contact information:

City of Marshall Texas  
401 S. Alamo Blvd  
Marshall, TX 75670  
Email address: [Rohr.Mark@marshalltexas.net](mailto:Rohr.Mark@marshalltexas.net).

### **Addendum**

Where such interpretation or clarification requires a material change in the solicitation, the City will issue an Addendum. A good faith attempt will be made to deliver a copy of same Addendum to those persons or firms who, according to the records of the City, have previously received a copy of this solicitation. The City shall not be bound by and Respondent shall not rely on any oral interpretation or clarification of the solicitation documents.

## **RESPONSE CONSIDERATION REQUIREMENTS**

### Costs of Preparing Response

The costs of developing a response is the sole responsibility of the Respondent. The City shall not reimburse those costs. In the case of site visits, the Respondent's costs shall be the responsibility of the Respondent. In no way shall the Respondent's costs be billable to the City.

### Submittal Format & Requirements

In order for a response to be considered, the Respondent is required to submit one (1) electronic version in PDF format, one (1) paper original, and seven (7) paper copies of the response submittal consisting of the following:

1. QUALIFICATION STATEMENT.
2. PROOF OF INSURABILITY: Submit a letter from your insurance provider stating provider's commitment to insure the Respondent for the types of coverage at the levels specified in the RFQ/RFP, if awarded a contract in response to this RFQ/RFP. Respondent shall also submit a copy of current insurance certificate.
3. CONFLICTS OF INTEREST: Respondent acknowledges that it is informed that City Policy and Chapter 176 of the Texas Local Government Code require that persons or their agents who seek to contract for the sale or purchase of property, goods, or services with the City shall file a completed conflict of interest questionnaire with the appropriate City records administrator not later than the seventh business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for qualifications, submissions or proposals, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Completed conflict of interest questionnaires must be included with responses to this RFQ/RFP. Please consult your own legal counsel if you have questions regarding the statute or form.
4. FELONY CONVICTION NOTIFICATION FORM AND NON-COLLUSION AFFIDAVIT.

Envelopes must be plainly marked on the outside as follows:

***RFQ/RFP FOR DESIGN-BUILD SERVICES  
THE CITY OF MARSHALL TEXAS  
NEW ANIMAL ADOPTION CENTER***

**PROCUREMENT METHOD & EVALUATION**

The evaluation of the Request for Qualifications shall be based on the requirements described in this solicitation. The initial review of qualifications (Step 1, Qualifications) will be performed by the City. The City will then rank the submissions and qualify no more than five responders to submit additional information (Step II, Proposals). The City may conduct interviews and will rank submittals based upon the criteria set forth in this RFQ/RFP.

The Respondent selected for an award will be the Respondent whose proposal, as presented in response to this solicitation, is the most advantageous to the City. The City is not bound to accept any proposal if that proposal is not in the best interest of the City as determined by the City.

**Step 1 (Qualifications) Preliminary Evaluation**

A preliminary evaluation by the City shall determine whether each proposal is complete and compliant with the instructions in this solicitation. Any proposals that are incomplete or that do not comply with the instructions or terms and conditions may be rejected by the City and excluded from further consideration.

Evaluation of responses will be based on the criteria in this solicitation document and will evaluate each Respondent's experience, technical competence, capability to perform, past performance of the Respondent's team and members of the team, and other appropriate factors submitted by the Design-Build firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each Respondent must certify to the City that each Architect or Engineer that is a member of its team was selected based on demonstrated competence and qualifications.

Qualifications Statements for Step I (Qualifications) shall not include any information regarding Respondent's fees, pricing, or other compensation.

**Step 2 (Proposals) Additional Information**

In Step II (Proposals) of the selection process, the City will evaluate the information submitted by the Respondents on the basis of the selection criteria stated in the request for proposals and the results of any interview. The City may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the Respondent to meet schedules, costing methodology, or other factors as appropriate. "Costing methodology" means a Respondent's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment,

and expected staffing for administrative duties. The City may ask Respondents to send a representative to the City for an interview/presentation during the ranking and selection process, as part of Step II (Proposals) of the selection process. The interview/presentation time and date will be determined after Step 1 (Qualifications). The City will rank each proposal submitted on the basis of the criteria set forth in the request for proposals. The City will select the design-build firm that submits the proposal offering the best value for the City on the basis of the published selection criteria and on its ranking evaluations. The City will first attempt to negotiate a contract with the highest ranked Respondent. If the City is unable to negotiate a satisfactory contract with the selected Respondent, the City will, formally and in writing, end negotiations with that Respondent and proceed to negotiate with the next highest ranked Respondent in the order of the selection ranking until a contract is reached or negotiations with all ranked Respondents end.

**Step 1 (Qualifications) Selection Criteria and Weight (Points) Preliminary Information**

1. Organization and Management Plan Proposed for Project (15)
2. Design-Builder's Financial Capability (10)
3. Design-Builder's Management Experience and Capability (20)
4. Design-Builder's Construction Experience (20)
5. Architect and Engineer's Design Experience (20)
6. References (15)

**Total Points-Step I (Qualifications): 100**

**Step 2 (Proposals) Additional Information**

1. Demonstrated competence and qualifications (20)
2. Considerations for safety and long-term durability (20)
3. Feasibility of implementing the project as proposed (20)
4. Ability of respondent to meet schedules (20)
5. Costing methodology (20)

**Total Points—Step II (Proposals): 100**

## **REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS-STEP 1 (Qualifications)**

Respondents shall carefully read the information contained in the following criteria and submit a complete statement of Qualification as outlined below. Incomplete Qualifications will be considered non-responsive and subject to rejection.

### Fact Sheet

1. Name of Design-Build Firm submitting.
2. Principal business address.
3. Name of the individual representing the firm and his/her e-mail address and telephone number.
4. Type of organization (i.e. corporation, partnership, etc.).
5. Years in Business (if less than five years, previous experience of principal is critical).
6. Former business names, if applicable.
7. Key personnel proposed to be assigned to project.
8. List of any professional services provided by your organization (architectural planning, design, construction management, engineering, mechanical engineering, structural engineering, interior design, etc.).
9. Statement regarding the ability of the firm to provide the following:
  - a. Performance and Payment Bonding.
  - b. Financial Statements.
  - c. Statement regarding whether your company is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If so, please explain the impact both in organizational and directional terms.
10. Name of Architect and Engineering Firm(s).

### Preliminary Information Selection Criteria

1. Organization and Management Plan Proposed for Project
  - a. Provide a statement of interest for the project, including a narrative describing the Organization's and Project Team's unique qualifications as they pertain to this particular project.
  - b. Describe the professional and contractor licenses of all team participants.
  - c. Indicate those trades for which the prime contractor is qualified and may self-perform, if any.
  - d. Provide a statement on the availability and commitment of the organization and its principal(s) and assigned professionals to undertake the project.
  - e. List the major projects your organization has in progress, giving the name and location of project, owner, contract amount, percentage complete, and scheduled completion date. Include the anticipated impact of this project on those schedules and staffing plans.
  - f. Describe, in graphic (organization chart) and written form, the proposed project assignments and lines of authority and communication for principals and key professional members of the Architect and each engineering consultant that will be involved in the project. Indicate the estimated

percentage of time these individuals will be involved in the project for design and construction.

2. Design-Builder's Financial Capability
  - a. Name and address of current bonding company and agent (including your current bonding capacity and amount available).
  - b. Design or construction claims against surety.
  - c. Outstanding financial judgments.
  - d. Ability to provide insurance coverage.
  - e. Whether your company is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If so, specify date(s), details, circumstances, and prospects for resolution.
  - f. List and explain any claims and litigation involving the firm in the last five years including arbitration proceedings, including:
    - 1) Whether your firm has ever failed to complete any work awarded and or has been assessed liquidated damages. Provide details.
    - 2) Whether there are any judgments, claims, arbitration proceedings or suits outstanding against your firm or its officers.
    - 3) Whether your organization has filed any lawsuits or requested arbitration with regard to projects within the last five years.
    - 4) Any claims history under construction / professional malpractice insurance for the past five (5) years for the organization and any team members proposed to provide professional architectural or engineering services.
    - 5) Whether Respondent or any key employee or agent of your company has been convicted under state or federal antitrust laws (i.e. price fixing, bid rigging, monopolization, predatory pricing, etc.). If so, please explain.
  
3. Design-Builder's Management Experience and Capability
  - a. Current employee and sub-contractor training and development programs.
  - b. Management methodologies for this project.
  - c. Project delivery philosophy, including expectation statements concerning elements for successful partnering: communication, commitment and conflict resolution.
  - d. If the organization does not have a local office, indicate the means by which it acquired experience in the region and knowledge of the local construction practices, procedures, regulations, and soil and environmental conditions. Indicate the means by which a nonlocal firm will communicate and collaborate with the City and community given the distance from the firm's office and the City.
  
4. Design-Builder's Construction Experience
  - a. List a maximum of five (5) projects for which you have provided services that are most related to this project. List the projects in order of priority,

with the most relevant project listed first. Provide the following information for each project listed:

- 1) Project name, location, contract delivery method, and description.
- 2) Color images (photographic or machine reproductions).
- 3) Project cost (design and construction) including Change Orders.
- 4) Provide original vs. final cost.
- 5) Final project size in gross square feet.
- 6) Type of construction (new, renovation, or expansion).
- 7) Actual start and finish dates for design.
- 8) Actual Notice to Proceed and Substantial Completion dates for construction.
- 9) Description of professional services provided for the project.
- 10) Name of Project Manager (individual responsible to the Owner for the overall success of the project).
- 11) Name of Project Architect (individual responsible for coordinating the day-to-day work).
- 12) Name of Project Designer (individual responsible for design concepts).
- 13) Consultants.

5. Architect and Engineer's Design Experience

- a. Design expertise in performing design services for similar projects.
- b. Provide resumes giving the experience and expertise of the professional members for each consultant that will be involved in the project, including their experience with similar projects, and the number of years with the firm.
- c. Projects designed similar to the proposed project type or size.
- d. Examples of Architect's and Engineer's design excellence.
- e. Awards and publications listing previous similar projects.
- f. Professional registrations or licenses.

6. References

(For each project listed above, identify the following):

- a. Owner's name and representative who served as the day-to-day liaison during the design and construction Steps of the project, including telephone number.
- b. Contractor's name and representative who served as the day-to-day liaison during the preconstruction and/or construction Step of the project, including telephone number.
- c. Length of business relationship with the owner.

References shall be considered relevant based on specific project participation and experience with the Respondent. The City may contact references during any part of this process. The City reserves the right to contact any other references at any time during the RFQ/RFP process. The City will also rely on past direct experiences with the contractor or any member of the team.

No cost related or price related factors will be considered in Step I (Qualifications) of the selection process. The Respondent must certify that each Architect and Engineer, who is a member of Respondent's team, was selected based on demonstrated competence and qualifications. A maximum of five (5) Respondents will be qualified to provide additional information as set forth below.

#### REQUIREMENTS FOR ADDITIONAL INFORMATION-STEP 2 (Proposals)

1. Please describe in detail your firm's demonstrated competence and management, regarding ability to meet budgets on past projects.
2. Please provide information regarding projects completed utilizing Respondent's proposed Design-Build team.
3. Please provide any additional qualifications with institutional Design-Build projects, particularly those for an animal adoption center.
4. Please provide information regarding your firm's demonstrated ability to meet schedules on past projects.
5. Please describe the feasibility of implementing the project as proposed.
6. Please include record of safety on construction projects.
7. Please describe your firm's cost methodology.

### **II. Respondent's Acceptance of Evaluation Methodology**

Submission of a proposal indicates Respondent's acceptance of the evaluation technique and Respondent's recognition that some subjective judgments must be made by the City during the assigning of points.

The successful proposal will be determined by the highest total ranking score from the City.

### **III. Commitment**

Respondent understands and agrees that this solicitation is issued predicated on anticipated requirements for the City and that the City has made no representation, written or oral, that any such requirements be furnished under a Contract arising from this solicitation. Furthermore, Respondent recognizes and understands that any cost borne by the Respondent, which arises from Respondent's response to this solicitation hereunder will be at the sole risk and responsibility of Respondent.

#### City's Reservation of Rights

The City reserves the right to evaluate the Qualifications based on the anticipated completion of all or any portion of the project. The City reserves the right to divide the project into multiple parts, to reject any and all Qualifications and re-solicit for new Qualifications, or to reject any and all proposals and temporarily or permanently abandon the project. The City reserves the right to award the project based on Preliminary Information evaluations and rankings. This City reserves the right to withdraw this RFQ/RFP at any time and for any reason. Receipt of a response by the City or submission of a response to the City or selection of a Respondent for the purposes of negotiating a contract confers no rights to the Respondent, nor obligates the City in any manner.

The City makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ/RFP for any project and no such representation is intended or should be construed by the issuance of this RFQ/RFP.

#### Waiver

By submitting a proposal, each Respondent agrees to waive any claim it has or may have against the City, its representatives, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the proposal documents; acceptance or rejection of any proposal; and award of the proposal. The City shall have no contractual obligation to any Respondent, nor will any Respondent have any property interest or other right in the proposal or contract being proposed unless and until the contract is unconditionally executed and delivered by all parties, and all conditions to be fulfilled by the Respondent have been fulfilled by the Respondent.

#### Basis of Award

The professional services solicited with this document will be procured in accordance with Chapter 2254 of the Government Code, Title 10, Subchapter A, Professional Services. Selection of the most highly qualified Respondent will be made on the basis of demonstrated competence and qualifications as determined by the City based on the qualifications submitted in response to this solicitation. Upon completion of the evaluation process, the City will enter into contract negotiations with the highest scoring firm. Contract negotiations might address any term, condition, or fees in the final agreement. If terms, conditions, and fees cannot be agreed on in a timely manner with the highest ranked firm, the City may negotiate with the next highest ranked firm until an agreement is reached.

### FELONY CONVICTION NOTIFICATION

Texas Education Code Section 44.034, Notification of Criminal History, Subsection (a) states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

Subsection (b) states “a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The City must compensate the person or business entity for services performed before the termination of the contract.”

This notice is not required of a Publicly-held Corporation.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Vendor’s Name: \_\_\_\_\_

Authorized Company Official’s Name (Printed): \_\_\_\_\_

- a. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable:

Signature of Company Official \_\_\_\_\_

- b. My firm is not owned nor operated by anyone who has been convicted of a felony.

Signature of Company Official \_\_\_\_\_

- c. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s) \_\_\_\_\_

Details of Conviction(s) \_\_\_\_\_

Signature of Company Official \_\_\_\_\_

### NON-COLLUSION STATEMENT

The undersigned affirms that he/she is duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this submission in collusion with any other proposer, and that the contents of this submission as to prices, terms or conditions of said submission have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this submission.

Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Respondent (Signature): \_\_\_\_\_

Respondent (Print Name): \_\_\_\_\_

Position with Company: \_\_\_\_\_

Signature of Company Official  
Authorizing Submission: \_\_\_\_\_

Company Official (Print Name): \_\_\_\_\_

Official Position: \_\_\_\_\_

## EXHIBIT A

### DESIGN CRITERIA PACKAGE

February 20, 2020

#### Project Scope

The total budget for the project is approximately One Million Two-Hundred Thousand Dollars (\$1,200,000). Please note that the site work for this project will be donated by a local contractor.

#### Description:

New Animal Adoption Center and associated site work as generally illustrated on the attached drawings, EXHIBIT C.

**All design and specifications documents shall be submitted to the City for approval at the 50% and 100% design completion. Construction shall not begin until the City has approved all Construction Drawings and Specification documents. Design-Builder shall comply with all the City requirements, including providing an Architectural and Engineer's Seal and submission(s), as required.**

As part of the planning process the Design-Build Firm, in coordination with the City staff, shall:

1. Achieve the objectives of the City;
2. Develop cost-effective alternatives;
3. Evaluate constructability;
4. Foster a high-level quality in design;
5. Assist in the resolution of issues;
6. Identify critical design issues related to the site and to the City goal;
7. Work with the City's independent Architect, Shelter Planners of America.

#### Project Responsibilities

1. Design-Builder must design and construct the facility in compliance with minimum standards as required by the City.
2. Contractor must be equipped, experienced and certified to design, manage and install this type of project to meet any certifications by governing associations.
3. Prior to submitting project cost, Design-Builder must visit the site and become familiar with existing conditions.
4. Provide for regular, on-site monitoring by the construction manager.
5. Require payment and performance bonds approved by the City that are adequate and appropriate for the proposed contract.
6. Provide for assumption of liability by the Design-Builder for all claims arising from the services performed under the contract by the Design-Builder and to protect the City from actions by a third party against the Design-Builder, its officers, employees and agents as a result of the contract.

7. Design-Builder must install project in accordance to applicable codes, requirements and standards, plus pay all fees and permits as may be required by authoritative agencies.
8. Design-Builder will furnish all materials, labor, equipment, tools, architecture and engineering as may be required.
9. Design-Builder must have sufficient personnel available to meet a schedule of achievement of Substantial Completion by approximately April 23, 2021.
10. Design-Builder must furnish and maintain all required barricades, safety measures, and toilets for this type of project. Design-Builder will at all times maintain a clean and safe project site.
11. Following selection of a Design-Build firm, that firm's Architect and Engineers will complete the design, submitting all design elements for review and determination of scope compliance to City representatives before construction.
12. The following items should be considered:
  - a. Construction Materials: Materials in the animal areas and other areas subject to wash down shall be non-permeable and durable.
  - b. Floor and Wall Finishes: Finishes are vital to maintaining a clean healthy environment. Finishes shall be waterproof, durable and chemical resistant.
  - c. Lighting: Shall be located and provide sufficient light to facilitate viewing in the adoption process, and maintain a safe environment.
  - d. Plumbing: Drainage of kennels and other areas that are subject to wash-down shall be incorporated in the design. Drainage design must prevent waste from one kennel from contaminating another. Each kennel shall be equipped with a separate screened 4" floor drain in the center of the floor. Piping system shall be designed such that building drain piping is 6" minimum and sloped to provide sufficient movement of solids through the system. Multiple clean-outs shall be provided for easy stoppage removal. Building drain shall be fitted with a hair trap or other "easy to clean" device as it exits the building, in compliance with City requirements.
  - e. HVAC: Kennel and other animal areas shall be provided with sufficient ventilation air to control odors and maintain a healthy environment.
  - f. Landscaping: Incorporate a low-maintenance landscape design.
  - g. Foundation: The foundation shall be designed to accommodate the soil found at the Site as illustrated in the attached Geotechnical Study prepared by E TTL Engineers & Consultants Inc., dated January 28, 2020, with report no. G 5345-195, attached as EXHIBIT D.
13. Please find attached EXHIBIT E that is a copy of the survey of the property.

**EXHIBIT B**

**AIA A141-2014 Edition - Blank  
February 20, 2020**

CONTRACT: The STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER, American Institute of Architects, AIA Document A141, 2014 Edition, will be the form of the Formal Contract Agreement to be executed by the Owner and the successful Design Builder.

A blank copy of this Standard Form of Agreement is attached.

DRAFT

**EXHIBIT C**

**DESIGN CRITERIA DRAWINGS**

**February 6, 2020**

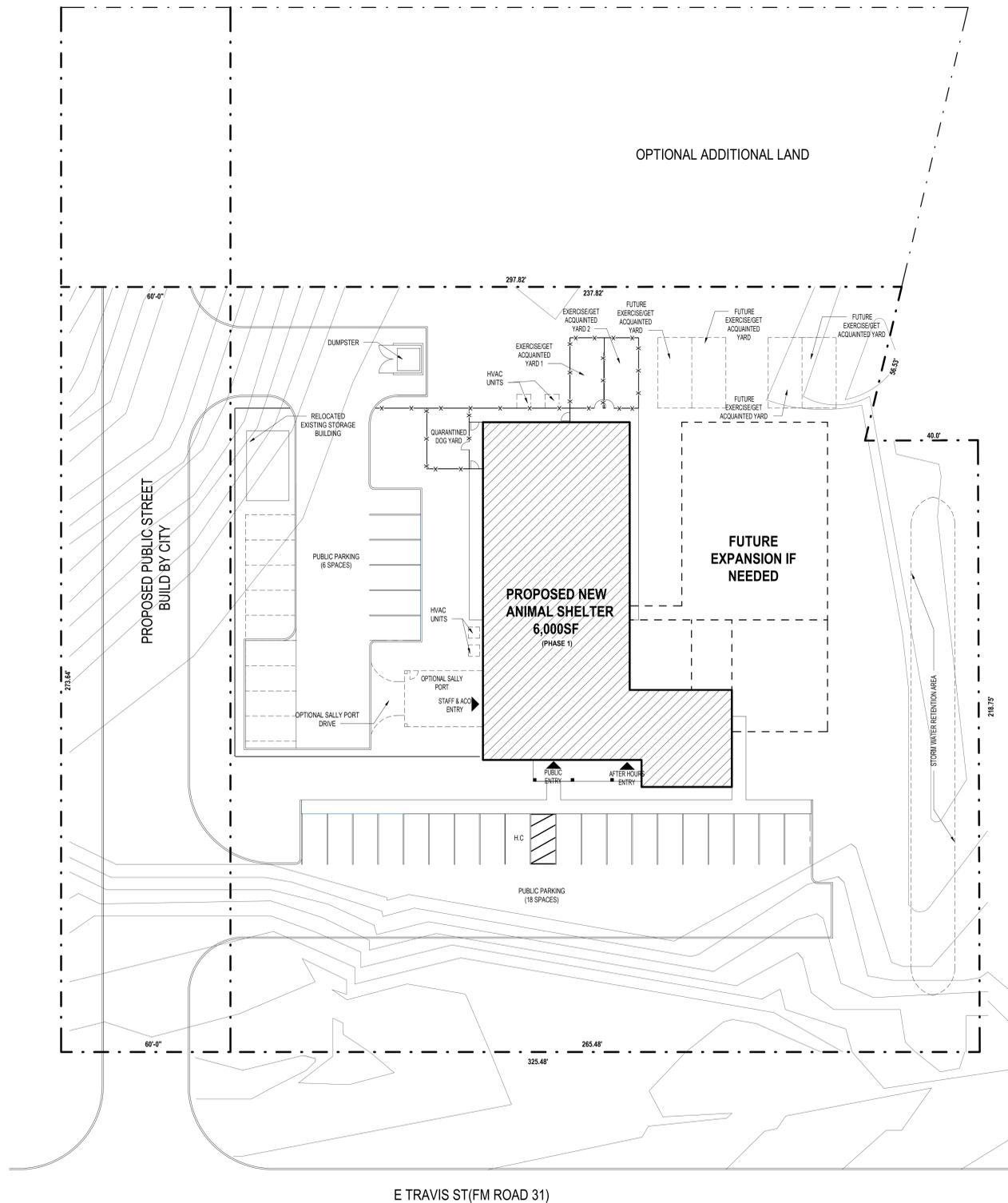
New Animal Adoption Center  
2502 E. Travis Street (Please see legal description attached)  
Marshall, TX 75672

The Design Criteria Drawings are those listed below and dated 2-20-20, as prepared by Shelter Planners of America, unless otherwise indicated by Addendum.

**ARCHITECTURAL DRAWINGS**

PROPOSED SITE PLAN  
PROPOSED FLOOR PLAN

DRAFT



E TRAVIS ST(FM ROAD 31)

PARKING TABULATION			
	PHASE 1	PHASE 2	TOTAL
CODE REQUIRED PARKING	6	6	12
RECOMMENDED PARKING	20	18	38
PARKING SHOWN ON THIS DRAWING	21	12	33

SITE PLAN - OPTION 1

SCALE: 1" = 1'-00"  
 0 10'-0" 20'-0" 40'-0"

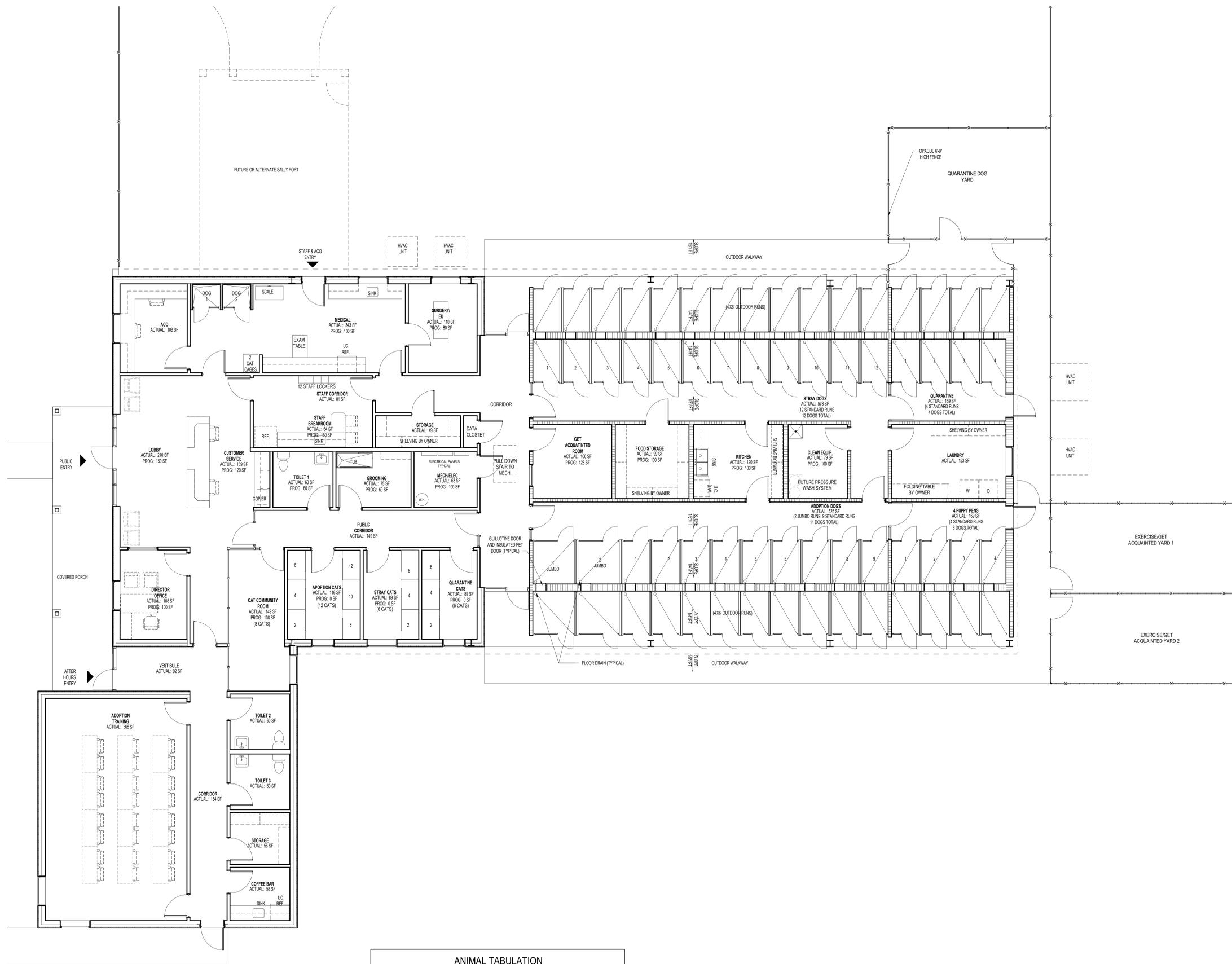


NOT FOR REGULATORY APPROVAL  
 PERMITTING, OR CONSTRUCTION

CONCEPTUAL DESIGN  
 CITY OF MARSHALL, TX  
 DATE: 02-20-20



SHELTER PLANNERS OF AMERICA, COPYRIGHT ©  
 1106 W. RANDOL MILL RD., SUITE 300, ARLINGTON, TX 76012 - PHONE (817) 265-8522  
 TEXAS LICENCE NO. 9701 / FIRM NO. 8172658522



AREA TABULATION	
	ACTUAL AREA
FULLY ENCLOSED A/C SPACE	6,225 SF
NON - A/C SPACE	1,060 SF
<b>TOTAL</b>	<b>7,285 SF</b>

ANIMAL TABULATION			
DOGS		CATS	
	ACTUAL		ACTUAL
ADOPTION DOGS	13 DOGS	ADOPTION CATS	12 CATS
STRAY DOGS	12 DOGS	CAT COMMUNITY	8 CATS
QUARANTINE DOGS	4 DOGS	STRAY CATS	6 CATS
PUPPIES ( 2 PER PEN)	8 DOGS	QUARANTINE CATS	6 CATS
<b>TOTAL DOGS</b>	<b>37 DOGS</b>	<b>TOTAL CATS</b>	<b>32 CATS</b>

**FLOOR PLAN**  
 SCALE: 3/16" = 1'-0"  
 0' 2'-0" 4'-0" 8'-0"



NOT FOR REGULATORY APPROVAL  
 PERMITTING, OR CONSTRUCTION

**CONCEPTUAL DESIGN  
 CITY OF MARSHALL, TX**

DATE: 02-20-20



SHELTER PLANNERS OF AMERICA, COPYRIGHT ©  
 1106 W. RANDOL MILL RD. SUITE 300, ARLINGTON, TX 76012 - PHONE (817) 265-8522  
 TEXAS LICENCE NO. 9701 / FIRM NO. 8172658522

## EXHIBIT D

### GEOTECHNICAL REPORT

February 6, 2020

- A. **ETTL Engineers & Consultants Inc. 1717 East Erwin Street, Tyler, Texas 75702** has prepared a geotechnical investigation report, dated January 28, 2020, for the project, **ETTL Job No. G 5345-195**. The report was prepared for the use of the Owner, the Owner's Design Builder.
- B. Neither the Owner, the Owner's Architect, preparer of the geotechnical investigation report, nor any of their agents or consultants guarantees the accuracy or adequacy of the report or that they represent the actual subsurface conditions that may be encountered during construction. The Geotechnical Investigation Report is made available only as a convenience to prospective bidders and the Design Builder and any use or interpretation of the data contained in the report is the sole responsibility of each bidder and the Design Builder.
- C. The report is included in the RFQ/ RFP for reference only with permission from **ETTL Engineers & Consultant Inc.** The prospective bidders and Design Builders shall make such additional explorations, analyses, and other investigations as they deem necessary to inform themselves of the actual conditions to be encountered in performing the work required for the Project, including but not limited to information necessary to develop a trench safety program to comply with all requirements of OSHA, federal, state, and local laws, rules and regulations. Compliance with these laws, rules and regulations, shall rest solely with the Contractor.

## **ITEM 12A**

# **PRESENTATION OF AND ACKNOWLEDGEMENT OF RECEIPT OF THE 2019 RACIAL PROFILING REPORT FOR THE MARSHALL POLICE DEPARTMENT**



## **CITY OF MARSHALL**

## **COMMISSION AGENDA INFORMATION SHEET**

**MEETING DATE:**

**PROJECT: Racial Profiling Report**

**DESCRIPTION:** 2019 Racial profiling report as required by Texas statute.

**COST:** None

**RECOMMENDED**

**ACTION:** No action required

**CITY CONTACT:** Chief Carruth

cc: File

DEL CARMEN CONSULTING, LLC

LAW ENFORCEMENT SERVICES

2  
0  
1  
9

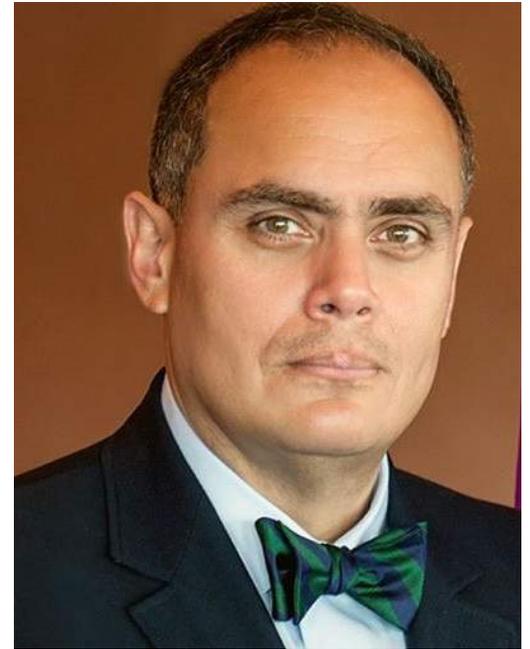
# MARSHALL POLICE DEPARTMENT ANNUAL REPORT

SANDRA BLAND ACT

Marshall City Commission  
400 S. Alamo  
Marshall, Texas 75670

Dear Distinguished Members of the City Commission,

In 2001, The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. In previous years, the Marshall Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Moreover, in 2017, the Sandra Bland Act was passed and signed into law (along with HB 3051 which introduced new racial and ethnic designations). The Sandra Bland Law requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Marshall Police Department and are included in this report.



This particular report contains three sections with information on motor vehicle-related contact data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Marshall Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate Bill (SB1074); which later became the Texas Racial Profiling Law. Further, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling as well as the Sandra Bland Act. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCOLE (Texas Commission on Law Enforcement) is included. In addition, you will find, in sections 2 and 3 documentation which demonstrates compliance by the Marshall Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, you will find documents relevant to the implementation of an institutional policy banning racial profiling, the incorporation of a racial profiling complaint process and the training administered to all law enforcement personnel.

The last section of this report includes statistical data relevant to contacts, made during the course of motor vehicle stops and in accordance with the law, between 1/1/19 and 12/31/19. In addition, this section contains the TCOLE Tier 2 form, which is required to be submitted to this particular organization by March 1st of each year. The data in this report has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report. The findings in this report serve as evidence of the Marshall Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

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# Responding to the Law





# Public Education on Filing Compliments and Complaints

## Informing the Public on the Process of Filing a Compliment or Complaint with the Marshall Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Marshall Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Marshall Police officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

# RACIAL PROFILING

Photo Caption

Photo Caption

## Training

All Marshall Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Marshall Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Marshall has been included in this report.

It is important to recognize that the Chief of the Marshall Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Marshall Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.



# Racial Profiling

## Course Number 3256

Texas Commission on Law Enforcement  
September 2001

### Racial Profiling 3256

#### Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

#### Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

**Target Population:** Licensed law enforcement personnel in Texas

**Prerequisites:** Experience as a law enforcement officer

**Length of Course:** A suggested instructional time of 4 hours

**Material Requirements:** Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

**Instructor Qualifications:** Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

#### Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

#### Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

# Racial Profiling 3256

## 1.0 RACIAL PROFILING AND THE LAW

**1.1 UNIT GOAL:** The student will be able to identify the legal aspects of racial profiling.

**1.1.1 LEARNING OBJECTIVE:** The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

### Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

#### A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

#### B. Not prima facie evidence

#### C. Feasibility of use of video equipment

#### D. Data does not identify officer

#### E. Copy of complaint-related video evidence to officer in question

#### F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

#### G. Compilation and analysis of data

#### H. Exemption from reporting – audio/video equipment

#### I. Officer non-liability

#### J. Funding

#### K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074





# Racial Profiling

## Course Number 3256

Texas Commission on Law Enforcement  
September 2001

**1.1.2 LEARNING OBJECTIVE:** The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

**A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)**

1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

**B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)**

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

**C. Other cases**

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)

## 2.0 RACIAL PROFILING AND THE COMMUNITY

**2.1 UNIT GOAL:** The student will be able to identify logical and social arguments against racial profiling.

**2.1.1 LEARNING OBJECTIVE:** The student will be able to identify logical and social arguments against racial profiling.

A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole .

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.



# Racial Profiling

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### 3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

**3.1 UNIT GOAL:** The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

**3.1.1 LEARNING OBJECTIVE:** The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
2. The driver and passengers are questioned about things that do not relate to the traffic violation
3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

**3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.**

A. Drug courier profile (adapted from a profile developed by the DEA)

1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

**3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.**

A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior

1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators

1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

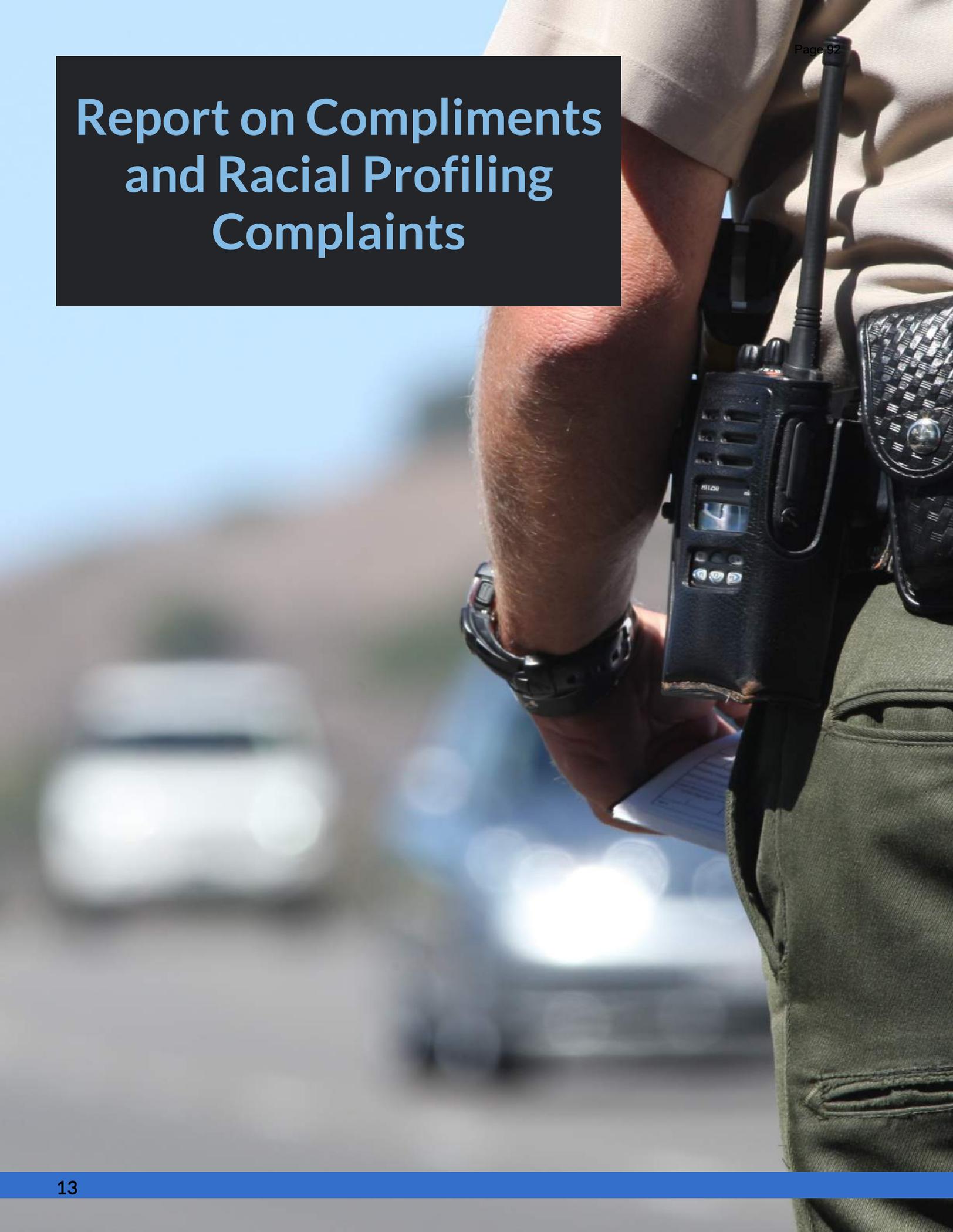
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

**Resources**

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: <http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

# Report on Compliments and Racial Profiling Complaints





# Tables Illustrating Motor Vehicle-Related Contacts



# Tier 2 Data





## **Total stops: 6,126**

### **1. Gender**

1.1 Female: 2,512

1.2 Male: 3,614

### **2. Race or ethnicity**

2.1 Black: 2,253

2.2 Asian/Pacific Islander: 47

2.3 White: 3,007

2.4 Hispanic/Latino: 793

2.5 Alaska Native/American Indian: 26

### **3. Was race or ethnicity known prior to stop?**

3.1 Yes: 379

3.2 No: 5,747

### **4. Reason for stop?**

4.1 Violation of law: 899

4.2 Pre-existing knowledge: 104

4.3 Moving traffic violation: 3,686

4.4 Vehicle traffic violation: 1,437



## 5. Street address or approximate location of the stop

- 5.1 City street: **2,217**
- 5.2 US highway: **2,166**
- 5.3 County road: **26**
- 5.4 State Highway: **360**
- 5.5 Private Property: **1,357**

## 6. Was a search conducted?

- 6.1 Yes: **249**
- 6.2 No: **5,877**

## 7. Reason for Search?

- 7.1 Consent: **92**
- 7.2 Contraband in plain view: **11**
- 7.3 Probable cause: **130**
- 7.4 Inventory: **8**
- 7.5 Incident to arrest: **8**

## 8. Was Contraband discovered?

- 8.1 Yes: **134**
- 8.2 No: **115**

## 9. Description of contraband

- 9.1 Drugs: **109**
- 9.2 Currency: **1**
- 9.3 Weapons: **3**
- 9.4 Alcohol: **23**
- 9.5 Stolen property: **0**
- 9.6 Other: **11**

## 10. Result of the stop

- 10.1 Verbal warning: **1,512**
- 10.2 Written warning: **1,482**
- 10.3 Citation: **3,071**
- 10.4 Written Warning and Arrest: **0**
- 10.5 Citation and Arrest: **9**
- 10.6 Arrest: **52**

## 11. Arrest based on

- 11.1 Violation of Penal Code: **20**
- 11.2 Violation of Traffic Law: **6**
- 11.3 Violation of City Ordinance: **0**
- 11.4 Outstanding Warrant: **35**

## 12. Was physical force resulting in bodily injury used during stop?

- 12.1 Yes: **37**
- 12.2 No: **6,089**



Table 1. (Motor Vehicle Contacts Including Tickets, Citations and Warnings). (1/1/19-12/31/19).

Race/Ethnicity	All Motor Vehicle Contacts		Tickets or Citations*		Verbal Warnings		Written Warnings	
	N	%	N	%	N	%	N	%
White	3,007	49	1,469	48	704	47	820	55
Black	2,253	37	1,117	36	610	40	482	33
Hispanic or Latino	793	13	451	15	179	12	160	11
Asian or Pacific Islander	47	.8	22	.7	10	.7	15	1
Alaska Native or American	26	.4	12	.4	9	.6	5	.3
Middle Eastern **	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>6,126</b>	<b>100</b>	<b>3,071</b>	<b>100</b>	<b>1,512</b>	<b>100</b>	<b>1,482</b>	<b>100</b>

\*Includes stops for alleged violation of a law or ordinance, tickets/citations, and verbal and written warnings

"N" represents "number" of all motor vehicle-related contacts

\*\*Race/Ethnicity is defined by HB 3051.

\*\*Not Required Racial/Ethnic Components



**Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison (Marshall)**

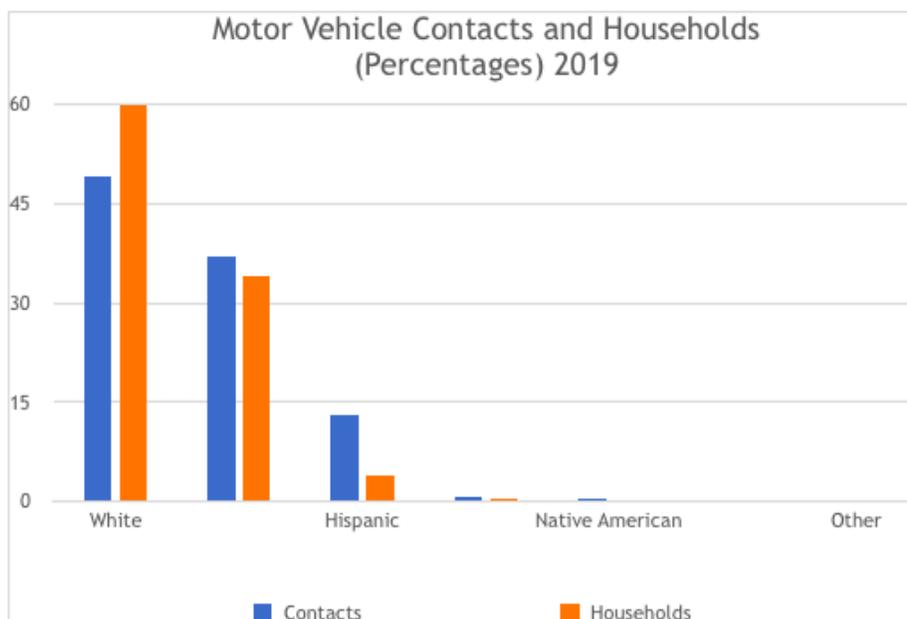
Comparison of motor vehicle-related contacts with households that have vehicle access (in percentages). (1-1-2019 to 12-31-2019).

Race/Ethnicity*	Contacts (in percentages)	Households With Vehicle Access (in percentages)
White	49	60
Black	37	34
Hispanic or Latino	13	4
Asian or Pacific Islander	.8	.3
Alaska Native or American Indian	.4	.2
Middle Eastern	0	N/A
Other**	0	N/A
<b>TOTAL</b>	<b>100</b>	<b>100</b>

"N" represents "number" of all motor vehicle contacts

\*\* Race/Ethnicity is defined by HB 3051

\*\* Not Required Racial/Ethnic Components



**Table 3. Motor Vehicle Searches and Arrests**

(1-1-2019 to 12-31-2019),

Race/Ethnicity	Searches		Consensual Searches		Custody Arrests	
	N	%	N	%	N	%
White	62	25	27	31	9	22
Black	155	62	46	53	30	73
Hispanic or Latino	29	12	11	13	2	5
Asian or Pacific Islander	2	.8	2	2	0	0
Alaska Native or American	1	.4	1	1	0	0
Middle Eastern **	0	0	0	0	0	0
Other**	0	0	0	0	0	0
<b>TOTAL</b>	249	100	87	100	41	100

"N" represents "number" of all motor vehicle contacts

\*\* Race/Ethnicity is defined by HB 3051

\*\* Not Required Racial/Ethnic Components

**Table 4. Total Number of Instances where Officers Knew/Did not Know Race/Ethnicity of Individuals Before Being Detained (1-1-2019 to 12-31-2019)**

Total Number of Instances Officers <u>KNEW</u> Race and Ethnicity of Individuals Before Being Detained	Total Number of Instances Officers <u>DID NOT KNOW</u> Race and Ethnicity of Individuals Before Being Detained
379	5,747

**Table 5. Instances where Peace Officers Used Physical Force that Resulted in Bodily Injury**  
(1-1-2019 to 12-31-2019).

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Location of Stop	Reason for Stop
Jan 4, 2019	US Highway	Moving Traffic Violation
Jan 4, 2019	City Street	Pre-Existing Knowledge
Jan 4, 2019	US Highway	Moving Traffic Violation
Jan 5, 2019	US Highway	Moving Traffic Violation
Jan 7, 2019	City Street	Moving Traffic Violation
Jan 8, 2019	Private Property or Other	Moving Traffic Violation
Jan 10, 2019	City Street	Moving Traffic Violation
Jan 11, 2019	County Road	Pre-Existing Knowledge
Jan 11, 2019	US Highway	Moving Traffic Violation
Jan 13, 2019	US Highway	Vehicle Traffic Violation
Jan 20, 2019	US Highway	Pre-Existing Knowledge
Jan 25, 2019	US Highway	Moving Traffic Violation
Jan 27, 2019	City Street	Moving Traffic Violation

**Table 5. Instances where Peace Officers Used Physical Force that Resulted in Bodily Injury**  
(1-1-2019 to 12-31-2019).

<b>Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury</b>	<b>Location of Stop</b>	<b>Reason for Stop</b>
Jan 27, 2019	County Road	Vehicle Traffic Violation
Jan 31, 2019	City Street	Moving Traffic Violation
Feb 5, 2019	US Highway	Moving Traffic Violation
Feb 6, 2019	City Street	Moving Traffic Violation
Feb 9, 2019	City Street	Moving Traffic Violation
Feb 12, 2019	US Highway	Vehicle Traffic Violation
Feb 13, 2019	US Highway	Violation of Law
Feb 15, 2019	City Street	Moving Traffic Violation
Feb 17, 2019	US Highway	Vehicle Traffic Violation
March 14, 2019	City Street	Pre-Existing Knowledge
March 17, 2019	US Highway	Vehicle Traffic Violation
March 21, 2019	City Street	Pre-Existing Knowledge
March 21, 2019	County Road	Moving Traffic Violation

**Table 5. Instances where Peace Officers Used Physical Force that Resulted in Bodily Injury**  
(1-1-2019 to 12-31-2019).

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Location of Stop	Reason for Stop
March 23 2019	State Highway	Moving Traffic Violation
March 25, 2019	US Highway	Moving Traffic Violation
April 2, 2019	State Highway	Violation of Law
April 4, 2019	City Street	Moving Traffic Violation
April 5, 2019	City Street	Moving Traffic Violation
April 15, 2019	City Street	Moving Traffic Violation
April 16, 2019	US Highway	Moving Traffic Violation
April 22, 2019	City Street	Moving Traffic Violation
April 23, 2019	City Street	Pre-Existing Knowledge
May 3, 2019	US Highway	Moving Traffic Violation
June 14, 2019	City Street	Moving Traffic Violation

Table 6. Search Data. (1-1-2019 to 12-31-2019).

Race/Ethnicity	Searches		Contraband/ Evidence Found		Contraband/ Evidence Not Found		Arrests	
	N	%	N	%	N	%	N	%
White	62	25	28	22	34	28	9	22
Black	155	62	87	69	68	55	30	73
Hispanic or Latino	29	12	11	9	18	15	2	5
Asian or Pacific Islander	2	.8	0	0	2	2	0	0
Alaska Native or American	1	.4	0	0	1	.8	0	0
Middle Eastern **	0	0	0	0	0	0	0	0
Other**	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>249</b>	<b>100</b>	<b>126</b>	<b>100</b>	<b>123</b>	<b>100</b>	<b>41</b>	<b>100</b>

"N" represents "number" of all motor vehicle contacts

\*\* Race/Ethnicity is defined by HB 3051

\*\* Not Required Racial/Ethnic Components



**Table 7. Report on Audits.**

The following table contains data regarding the number and outcome of required data audits during the period of 1-1-2019 to 12-31-2019.

**Data Audits on Racial Profiling Data (1-1-2019 to 12-31-2019).**

Number of Data Audits Completed	Date of Completion	Outcome of Audit
3	2019	Data reviewed is valid and reliable.

**Additional Comments:**






# Analysis and Interpretation of Data

In an effort to understand the analysis provided in this report, it is crucial that the evolution of the Texas Racial Profiling Law and its requirements, is discussed. That is, in 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. Thus, the law came into effect on January 1, 2002 and required all police departments in Texas, to collect traffic-related data and report this information to their local governing authority by March 1st of each year. In 2009, the racial profiling law was modified to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individual before detaining them. Further, it was required that agencies report motor vehicle related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1st of each year. The purpose in collecting and presenting this information is to determine if police officers in a particular municipality are engaging in the practice of racially profiling minority motorists.

The Texas Racial Profiling Law also requires police departments to interpret motor vehicle-related data. Even though most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if individual police officers are engaging in racial profiling, from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As mentioned previously, in 2009, the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These changes included, but are were not limited to, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the 2009 law required adding "middle eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1st of each year.

In 2017, the Texas Legislators passed H.B. 3051 which removed the Middle Eastern data requirement but standardized the racial and ethnic categories relevant to the individuals that came in contact with the police. In addition, the Sandra Bland Act (S.B. 1849) was passed and became law. Thus, the most significant legislative act in Texas history regarding data requirements on law enforcement contacts, became law and took effect on January 1, 2018. The Sandra Bland Act not only requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. *A comparative analysis of the information compiled (under Article 2.133):*

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. *Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.*

In an effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Marshall Police Department commissioned the analysis of its 2019 contact data. Thus, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2019 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), that came in contact with the police in the course of a motor vehicle related contact, and were either issued a ticket, citation, warning were issued or an arrest was made. Also, included in this data were instances where a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest and use of physical force resulting in bodily injury.

The additional data analysis performed was based on a comparison of the 2019 motor vehicle contact data with a specific baseline. When reviewing this particular analysis, it should be noted that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Marshall Police Department opted to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2010) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It is clear that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Marshall Police Department in 2019 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

Since 2002, several civil rights groups in Texas expressed their desire and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Marshall Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to Marshall.

### **Tier 2 (2019) Motor Vehicle-Related Contact Analysis**

When analyzing the enhanced Tier 2 data collected in 2019, it was evident that most motor vehicle-related contacts were made with males and most of the contacts were made with White drivers. This was followed by Black and Hispanic drivers. In most instances, police officers report not knowing the race or ethnicity prior to the stop. Further, they cite as the primary reason for the stop to have been a “moving traffic violation”. This was followed by “vehicle traffic violation”. Most stops took place in city streets.

The Marshall Police Department cites that most contacts did not result in a search. Of those searches made, most were based on probable cause. The second most significant reason for a search was “consent”. In addition, contraband was found as a result of most searches. Of the contraband found, in most instances, drugs were cited as the most frequent contraband found.

The data also shows that the majority of stops resulted in a citation. This was followed by “verbal warnings”. When an arrest was made, the most frequent reason provided was an outstanding warrant. Also, thirty-seven of the contacts resulted in the use of physical force which caused bodily injury.

### **Comparative Analysis**

The data analysis of motor vehicle contacts to the census data relevant to the number of “households” in Marshall who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites that came in contact with the police was lower than the percentage of White households in Marshall that claimed, in the 2010 census, to have access to vehicles. The opposite was true of Blacks, Hispanics and Asians. That is, a higher percentage of Blacks, Hispanics and Asians came in contact with the police than the percentage of Black, Hispanic and Asian households in Marshall that claimed, in the 2010 census, to have access to vehicles. It should be noted that the percentage difference in Black and Asian contacts when compared to their respective households with access to vehicles, is of 3% or less in each category. This is deemed by some as being statistically insignificant.

The analysis of the searches performed shows that most searches produced contraband. This is above national law enforcement trends. In addition, of those searches that produced contraband, the majority of them involved Black contacts. This was followed by Whites.

The most recent Texas Racial Profiling Law requires that police department perform data audits in order to validate the data being reported. Consistent with this requirement, the Marshall Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in table 7, the audits performed have shown that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings made in this analysis, it is recommended that the Marshall Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected) which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Marshall Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in future years.
- 2) Commission data audits in 2020 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive analysis of the data included in this report demonstrates that the Marshall Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of tier 2 data, and ensures that the practice of racial profiling is not tolerated.





## Checklist

The following requirements were met by the Marshall Police Department in accordance with The Texas Racial Profiling Law:

- ✓ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✓ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Marshall Police Department from engaging in racial profiling.
- ✓ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✓ Provide public education related to the compliment and complaint process.
- ✓ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✓ Collect, report and analyze motor vehicle data (Tier 2).
- ✓ Commission Data Audits and a Search Analysis.
- ✓ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✓ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2020.
- ✓ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

# LEGISLATIVE & ADMINISTRATIVE ADDENDUM





# TCOLE GUIDELINES

## Guidelines for Compiling and Reporting Data under Senate Bill 1074

### Background

Senate Bill 1074 of the 77<sup>th</sup> Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

### Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

### Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

## **Standard 2**

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

## **Commentary**

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

## **Standard 3**

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

## Commentary

Senate Bill 1074 from the 77<sup>th</sup> Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

#### **Standard 4**

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

#### **Commentary**

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

#### **Standard 5**

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

#### **Commentary**

None

#### **Standard 6**

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

#### **Commentary**

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

### **Standard 7**

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

### **Commentary**

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

# The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and  
(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;  
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) ~~[(7)]~~ the date of conviction; and

(9) ~~[(8)]~~ the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

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Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

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Chief Clerk of the House

Approved:

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Date

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Governor

# Modifications to the Original Law

## (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

- (A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);
- (B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);
- (C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);
- (D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION \_\_\_\_\_. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:
  - (A) the race or ethnicity of the individual detained; and
  - (B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and
  - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION \_\_\_\_\_. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race ~~[:~~

~~{(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered];~~

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION \_\_\_\_\_. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency];~~ and

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from ~~[the]~~ stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION \_\_\_\_\_. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION \_\_\_\_\_. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION \_\_\_\_\_. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION \_\_\_\_\_. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION \_\_\_\_\_. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

- (a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:
  - (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;  
or

(3) a commission rule.

SECTION \_\_\_\_\_. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

# Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino ~~[, Native American, or Middle Eastern descent]~~.

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino ~~[, or Native American descent]~~.

SECTION 3. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor

# The Sandra Bland Act

## (S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b)

or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous

municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

- (1) establishing [a] new collaboratives; or
  - (2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].
- (b) The department shall require each entity awarded a grant under this section to:
- (1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]
  - (2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and
  - (3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

- (1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;
- (2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and
- (3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

### ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or **intellectual and developmental disability [mental retardation]** authority or another mental health expert under Article 16.22 **[of this code]**;

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with **an intellectual disability [mental retardation]** and is nonetheless competent to stand trial; and

(B) recommends mental health treatment **or intellectual disability treatment** for the defendant, **as applicable**; and

(4) magistrate determines, in consultation with the local mental health or **intellectual and developmental disability [mental retardation]** authority, that appropriate community-based mental health or **intellectual disability [mental retardation]** services for the defendant are available through the **[Texas] Department of State [Mental] Health Services [and Mental Retardation]** under Section 534.053, Health and Safety Code, or through another mental health or **intellectual disability [mental retardation]** services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or **intellectual disability [mental retardation]** treatment as recommended by the local mental health or **intellectual and developmental disability [mental retardation]** authority if the defendant's:

(1) mental illness or **intellectual disability [mental retardation]** is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, **[it is not necessary to serve him with a copy, but]** the clerk shall **[on request]** deliver a copy of the **indictment [same]** to the accused or **the accused's [his]** counsel[, ] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, **the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible**

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

- (a) The commission shall:
- (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
  - (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;
  - (3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;
  - (4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;
  - (5) revise, amend, or change rules and procedures if necessary;
  - (6) provide to local government officials consultation on and technical assistance for county jails;
  - (7) review and comment on plans for the construction and major modification or renovation of county jails;
  - (8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;
  - (9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;
  - (10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;
  - (11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;
  - (12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;
  - (13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;
  - (14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;
  - (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
  - (16) adopt a policy for gathering and distributing to jails under the commission's

jurisdiction information regarding:

- (A) common issues concerning jail administration;
- (B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and
- (C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

- (A) determine if a prisoner is pregnant; and
- (B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; **[and]**

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

**(21) [(20)]** require the sheriff of each county to:

- (A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and
- (B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

**(22) [(20)]** adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

- (A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and
- (B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; **and**

**(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:**

- (A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;**
- (B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and**
- (C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk**

individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and  
 (2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;  
 (2) an attempted suicide;  
 (3) a death;  
 (4) a serious bodily injury, as that term is defined by

Section 1.07, Penal Code;

(5) an assault;  
 (6) an escape;  
 (7) a sexual assault; and  
 (8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal

Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

#### ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not

be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

## ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of

the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;

(E) the location of the stop; and

(F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Texas Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and

motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

- (1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;
- (2) smaller jurisdictions; and
- (3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the

guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and

(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

\_\_\_\_\_  
Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:  
Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:  
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\_\_\_\_\_  
Chief Clerk of the House

**MARSHALL POLICE DEPARTMENT  
RACIAL PROFILING POLICY**

	<b>MARSHALL POLICE DEPARTMENT</b>	
	<b>Policy 2.2 Bias Based Policing</b>	
	<b>Effective Date: 11/14/18</b>	<b>Replaces:</b>
	<b>Approved:</b>	
	 <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-left: 20px;">       Cliff Carruth Chief of Police     </div>	
<b>Reference: TBP 2.01</b>		

## I. POLICY

We are committed to a respect for constitutional rights of individuals in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, national origin, ethnicity, age, or religion. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of individuals (for traffic and other purposes), investigative detentions, arrests, searches, and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U.S. Constitution, Article I, Section 9 of the Texas Constitution, statutory authority, and case law construing these provisions. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion. Officers shall base all such actions on a reasonable suspicion or probable cause that the person or an occupant of a vehicle committed an offense.

The purpose of this policy is to reaffirm the Marshall Police Department's commitment to unbiased policing in all its encounters between officer and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of Departmental policy and the Law.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and the public.

## **II. PURPOSE**

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

## **III. DEFINITIONS**

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. Bias: Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. Biased policing: Stopping, detaining, searching, or attempting to search, citing or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. Ethnicity: A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.
- D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Probable cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.
- F. Race: A category of people of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial and Bias Based Profiling: A law enforcement-initiated action based on an individual's race, ethnicity, national origin, ethnic background, gender, sexual

orientation, religion, economic status, age, cultural group, or any other identifiable group, rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Racial and Bias Based profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

- H. Acts Constituting Racial and Biased Based Profiling: Acts initiating law enforcement action, such as motor vehicle stops, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, national origin or ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group, rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.
- I. Reasonable suspicion: Articulable, objective facts which lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."
- J. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- K. Stop: The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is an investigative detention.
- L. Contact: A law enforcement contact, including motor vehicle stop, for an alleged violation of law of ordinance.

#### **IV. Prohibition Against Racial and Bias Based Profiling**

- A. Peace officers of the Department are strictly prohibited from engaging in racial or bias based profiling. The prohibition against racial or bias based profiling does not preclude the use of race, ethnicity, national origin, or ethnic background, gender, age, cultural group, or any other identifiable group, as factors in a detention decision by a peace officer. Race, ethnicity, national origin, gender or age may be legitimate factors in such a decision when used as part of a description of a suspect or witness for whom a peace officer is searching.
- B. Peace officers of the Department are prohibited from requesting consent to search unless there is reasonable basis of criminal activity. In all cases where consent is requested, whether granted or not, the officer will document the facts which constitute the reasonable basis of criminal activity and the name and date of birth

of the subject who granted consent in the comments section of the Mobile Data Computer (MDC), electronic citation writer and or necessary reports. When any intelligence is gathered during the consent search the officer will forward that intelligence to the appropriate division through departmental e-mail or by memorandum. Officers who do not have a MDC will be required to document consent to searches in an incident report.

- C. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to Department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
- D. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety. When concluding an encounter, personnel should thank him or her for cooperating.
- E. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their name, departmental identification number, and name of the immediate supervisor. Officers are not required to stop law enforcement activities to provide information to bystanders or persons not involved with said law enforcement activity. Officers are not required to identify themselves when doing so would compromise an official investigation.
- F. All personnel are accountable for their actions. Personnel shall justify their actions when required.

#### Supervisory responsibilities

- A. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
- B. Supervisors shall use the disciplinary mechanisms of the Department to ensure compliance with this order and the constitutional requirements of law enforcement.
- C. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
- D. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of

control over bias also exposes the Department to the consequences of liability. Supervisors shall be held accountable for repeated instances of biased enforcement by their subordinates.

- E. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
- F. Supervisors shall facilitate the filing of any complaint about law enforcement service.

#### Disciplinary consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

#### Training (TBP: 2.01)

Officers shall complete all training required by state law regarding bias based profiling.

## V. COMPLAINTS

### **Complaint Process and Public Education:**

- A. Any person who believes a peace officer employed by the Department has engaged in racial or biased based profiling may file a complaint with the Department, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or be discriminated against because they have filed such a complaint.
- B. The Department shall accept and investigate citizen complaints alleging racial or biased based profiling by its peace officers. Such complaints shall be in writing, or the city employee, officer, or official receiving the complaint should reduce the same to writing, and should include the time, place, and details of the incident of alleged racial or biased based profiling, the identity or description of the peace officer or officers involved, and the identity and manner of contacting the complainant.
- C. Any Department employee who receives a citizen complaint alleging racial or biased based profiling shall forward the complaint to the Internal Affairs Section within 24 hours of receipt of the complaint. All such complaints shall be reviewed

and investigated by the Internal Affairs Section or assigned supervisor within a reasonable period of time, and the results of the review and investigation shall be filed with the Internal Affairs Section.

- D. In investigating a complaint alleging racial or biased based profiling, the Internal Affairs investigator or supervisor assigned shall seek to determine if the officer who is the subject of the complaint has engaged in a pattern of racial or biased based profiling that includes multiple acts constituting racial or biased based profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures.
- E. In the event a complaint of racial or biased based profiling filed by an individual involves an occurrence that was recorded on audio or video, the individual assigned the investigation shall, upon commencement of the investigation of the complaint and upon written request of the officer, promptly provide a copy of the recording to the peace officer who is a subject of the complaint.
- F. The Marshall Police Department shall provide education to the public concerning the racial profiling complaint process. A summary of the public education efforts made during the preceding year shall be included with the annual report filed with T.C.O.L.E and the governing body of the City Marshall under Section 20.28 below.
- G. Any peace officer who is found, after investigation, to have engaged in racial profiling in violation of this policy shall be subject to corrective action, which may include reprimand; diversity, sensitivity or other appropriate training or counseling; paid or unpaid suspension; termination of employment, or other appropriate action as determined by the Chief.
- H. The Department's compliment-complaint process will be posted to the Department's website. The department will make available the name, address, telephone number and email address where a person may make a compliment or complaint regarding every traffic stop. This information will be included on the violator's copy of departmental citation. Whenever possible, the media will be used to inform the public of the Department's policy and complaint process.
- I. When a motor vehicle contact is made and a citation or written warning is not issued, the MPD Information card which includes the compliment/complaint information will be issued to the driver.
- J. If a person is arrested from a motor vehicle contact, they will be issued a copy of the MPD Information card.
- K. Information for making a compliment or complaint regarding any MPD employee will be posted to the departmental website.

- L. Complaints alleging incidents of bias based profiling will be fully investigated.
- J. Complainants will be notified of the results of the investigations when such investigation is completed.
- K. Compliments or complaints may be made in person, in writing, by telephone, or by electronic mail at the following:  
Marshall Police Department  
2101 East End Blvd North  
Marshall, TX 75672  
903-935-4575  
[compliment-complaint@marshallpd.com](mailto:compliment-complaint@marshallpd.com)
- L. The information listed in item N above will be provided when requested by any Member of the public, and will be provided to persons who temporarily were temporarily detained as a result of a motor vehicle stop.

## VI. RECORD KEEPING

- A. The Department will maintain all required records on all traffic stops pursuant to state law.
- B. The information collected above will be reported to the city council annually.
- C. The information will also be reported to TCOLE in the required format.
- D. Information will be collected relating to motor vehicle stops in which a ticket, warning, or citation is issued or an arrest is made as a result of these stops. Including information related to:
  - 1. The race or ethnicity of the person detained
  - 2. Whether a search was conducted, and if so, whether the individual detained consented to the search;
  - 3. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
  - 4. Whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code (means physical pain, illness, or any impairment of physical condition), during the stop;

- a. The location of the stop
  - b. The reason for the stop
- E. Patrol supervisors shall review, at least monthly, one randomly selected body camera and one randomly selected in-car video recording for each officer under their supervision. This data will be used to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.
- F. Video reviews will be documented on the MPD Video Review Log and submitted to the Patrol Captain monthly. Logs will be maintained in the files of the MPD administrative division.

## Contact Information

For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting, LLC

817.681.7840

[www.texasracialprofiling.com](http://www.texasracialprofiling.com)

[www.delcarmenconsulting.com](http://www.delcarmenconsulting.com)

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DEL CARMEN CONSULTING, LLC  
LAW ENFORCEMENT SERVICES

**ITEM 12B**

**PRESENTATION OF A REPORT ON THE  
2019 WONDERLAND OF LIGHTS  
FESTIVAL**



## **Agenda Information Sheet**

**February 27, 2020**

### Agenda Item

Presentation of a report on the 2019 Wonderland of Lights Festival. (Director of Community & Economic Development)

### Background & Summary of Request:

2019 Wonderland of Lights Profit and Loss Statement and an infographic is attached which provides you an overview of profits for year and highlights the successes and challenges of this past year's festival. Staff will be prepared to share additional information at the City Commission meeting.

**Marshall Downtown Development Corp**  
**Profit & Loss Prev Year Comparison**  
**Wonderland of Lights**  
2019 versus 2018

	<u>Jan - Dec 19</u>	<u>Jan - Dec 18</u>	<u>\$ Change</u>
<b>Income</b>			
Carousel	20,662	19,042	1,620
Carriage Rides	31,240	29,562	1,678
City of Marshall	60,000	50,000	10,000
Credit Card Fees Exp	(3,348)	(1,950)	(1,398)
<b>Donations</b>			
\$100 Supporting Contributio	400	550	(150)
\$1000 Gold	5,500	5,500	0
\$250 Bronze	250	700	(450)
\$2500 & Above Platinum	27,500	35,000	(7,500)
\$50 Supporting Contribution	50	75	(25)
\$500 Silver	500	1,000	(500)
<b>Total Donations</b>	<u>34,200</u>	<u>42,825</u>	<u>(8,625)</u>
Jingle Bell Run	1,205	3,300	(2,095)
Ice Skating	59,812	71,822	(12,010)
Outdoor Market	350	3,589	(3,239)
Overage/Shortage	(1,703)	0	(1,703)
Parade Entry Fees	1,200	1,040	160
Refunds	(1,403)	0	(1,403)
Sales Tax Collected	12,658	12,903	(244)
Souvenirs	264	742	(478)
Train	27,677	26,634	1,044
Wagonette	16,137	16,203	(66)
<b>Total Income</b>	<u><b>258,951</b></u>	<u><b>275,711</b></u>	<u><b>(16,760)</b></u>
<b>Expense</b>			
Adv & Promotion	4,587	0	4,587
Carousel	13,743	16,986	(3,242)
Carriage Rides	37,059	32,559	4,500
Entertainment	1,250	7,191	(5,941)
Jingle Bell Run	3,871	3,955	(84)
Lighting & Displays	53,952	71,639	(17,687)
Miscellaneous	3,382	21	3,361
Payroll	3,163	1,830	1,332
Sales Tax	12,658	12,903	(244)
Santa's Workshop	24,066	16,650	7,416
Skating Rink	59,710	92,354	(32,644)
Souvenir Shop	0	64	(64)
Supplies	528	13,362	(12,834)
Ticket Booth	319	420	(101)
Train	815	5,276	(4,461)
<b>Total Expense</b>	<u><b>219,104</b></u>	<u><b>275,211</b></u>	<u><b>(56,107)</b></u>
<b>NET INCOME</b>	<u><b>39,847</b></u>	<u><b>500</b></u>	<u><b>39,347</b></u>

\*Payroll costs (for part-time, non-exempt, and exempt city staff) totaling \$59,511 for 2019 and \$62,902 for 2018 are not reflected above.

### 2019 Wonderland of Lights

	Ice Rink	Carousel	Jingle Bell Run	Carriage/Wagonette Rides	Train	Santa's Workshop	Souvenirs	Outdoor Market	Other*	Total
Revenue	\$59,812	\$24,162	\$3,405	\$47,377	\$30,677	\$10,250	\$264	\$350	\$22,654	\$198,951
Expense	(\$59,710)	(\$13,743)	(\$3,871)	(\$37,059)	(\$815)	(\$24,066)	\$0	\$0	(\$79,840)	(\$219,104)
Profit/Loss	\$102	\$10,419	(\$466)	\$10,318	\$29,862	(\$13,816)	\$264	\$350	(\$57,186)	(\$20,153)
						Plus City's HOT Portion				\$60,000
						<b>Total Profit/Loss</b>				<b>\$39,847</b>

\*Other Revenue includes: General Donations; Parade entry fees; Misc.

\*Other Expenses include: \$53,952 Lighting Displays; \$4,587 Advertising/Promotion; \$1250 Entertainment; \$12,658 Sales Tax; \$528 Supplies; \$3,163 Payroll; \$319 Ticket Booth; \$3,383 Misc

## DAYS OF OPERATION

### 2017

The 2017 season projected 34 days of operation

There were 3 weather related closures that shut down all activities, resulting in 31 actual days of operation

### 2018

The 2018 season projected 34 days of operation

There were 5 weather related closures, though only 2 required full event shut down of all activities, resulting in 32 actual days of operation

### 2019

The 2019 season projected 27 days of operation

There was only 1 weather related closures, resulting in 26 actual days of operation

## PAY ROLL

Payroll costs reflect part-time, non-exempt, and exempt City staff



Payroll costs have reduced by \$20,000 in the past 3 years

**\$79,090**

2017 Payroll Costs

**\$62,902**

2018 Payroll Costs

**\$59,511**

2019 Payroll Costs



## COMMUNITY INVOLVEMENT



### VILLAGE OPERATION & DECORATION VOLUNTEERS

**2017** 178 / 204 spots  
49 decorators

**2018** 178 / 204 spots  
67 decorators

**2019** 125 / 162 spots  
37 decorators

### 2019 VISITOR CENTER CONCERNS

Just two of the four volunteers that signed up followed through at the Visitor Center to answer phones for just 11 of the 27 nights of operation

### SPONSORSHIP DOLLARS & GENERAL DONATIONS



**2017** **\$52,885**

**2018** **\$42,825**

**2019** **\$34,200**

# NET INCOME & DAILY AVERAGES

## 2017

34 Days

Operating cost exceeded income by \$867, putting us in the red. The daily average income was \$8,111.12

## 2018

34 Days

Income exceeded operating costs by \$500. The daily average income was \$8,109.15

## 2019

27 Days

Income exceeded operating costs by \$39,847. The daily average income was \$9,590.78

Daily Average is based on projected days of operation as it includes sponsorship & general donation amounts.

## SPOTLIGHT ON: JINGLE BELL RUN

### 2017

275 participants

### 2018

198 participants

### 2019

125 participants

# 54% DECREASE IN ATTENDANCE IN A 3 YEAR PERIOD

## AVERAGE TRAINS MADE PER DAY



## **ITEM 12C**

# **APPROVAL OF A PARTICIPATION AGREEMENT FOR A SERVICE LINE WARRANTY PROGRAM**



**TO:** Mark Rohr, City Manager

**FROM:** Eric Powell, PE   
Director of Public Works

**DATE:** February 21, 2020

**SUBJECT:** Renewal of marketing agreement between the City of Marshall and Utility Service Partners, Inc., dba Service Line Warranties of America

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In 2015, the Marshall City Commission approved a partnership with the Service Line Warranties of America, which allowed citizens to purchase low-cost warranty insurance for unexpected, expensive water/sewer utility line repairs, with no deductibles or service fees. As of January 2020, there were 325 policy holders in the city. As part of the agreement, the City of Marshall receives a license fee of \$.50 for each month a warranty is in force for a residential property owner. A payment was received in 2018, in the amount of \$1,456.69; and in 2109, in the amount of \$3,338.73.

Renewal of this agreement was authorized three times (2017-2019) by the former Director of Public Works. Attached is a copy of the 2020 marketing renewal agreement for consideration and approval by the City Commission.

**SEWER AND WATER LINE MARKETING LICENSE AGREEMENT BETWEEN THE CITY OF MARSHALL, TEXAS, AND UTILITY SERVICE PARTNERS PRIVATE LABEL, INC. D/B/A SERVICE LINE WARRANTIES OF AMERICA**

This SEWER AND WATER LINE MARKETING LICENSE AGREEMENT ("Agreement") entered into as of [\_\_\_\_\_, 20\_\_] ("Effective Date"), by and between the City of Marshall, Texas ("City"), and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America ("SLWA"), herein collectively referred to singularly as "Party" and collectively as the "Parties".

**RECITALS:**

**WHEREAS**, sewer and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners ("Residential Property Owner"); and

**WHEREAS**, City desires to offer Residential Property Owners the opportunity, but not the obligation, to purchase a service line warranty ("Warranty"); and

**WHEREAS**, SLWA is the administrator of the National League of Cities Service Line Warranty Program and has agreed to provide the Warranty to Residential Property Owners subject to the terms and conditions contained herein; and

**NOW, THEREFORE**, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties agree as follows:

**AGREEMENT**

1. **Purpose.** City hereby grants to SLWA the right to offer the Warranty to Residential Property Owners subject to the terms and conditions herein.
2. **Grant of License.** City hereby grants to SLWA a non-exclusive license ("License") to use City's name and logo on letterhead, bills and marketing materials to be sent to Residential Property Owners from time to time, and to be used in advertising, all at SLWA's sole cost and expense and subject to City's prior review and approval, which will not be unreasonably conditioned, delayed, or withheld. City agrees that it will not extend a similar license to any competitor of SLWA during the term of this Agreement.

3. **Term.** The term of this Agreement ("Term") shall be for three (3) years from the Effective Date. The Agreement will automatically renew for additional one (1) year terms ("Renewal Term") unless one of the Parties gives the other written notice at least ninety (90) days prior to end of the Term or of a Renewal Term that the Party does not intend to renew this Agreement. In the event that SLWA is in material breach of this Agreement, the City may terminate this Agreement thirty (30) days after giving written notice to SLWA of such breach, if said breach is not cured during said thirty (30) day period. SLWA will be permitted to complete any marketing initiative initiated or planned prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate. During the Term, SLWA shall conduct a Spring and Fall campaign each year in accordance with the schedules set forth in Exhibit A. The pricing for each such campaign shall be in accordance with Exhibit A attached hereto.

4. **Consideration.** As consideration for such license, SLWA will pay to City a License Fee of Fifty-Cents (\$.50) for each month a Warranty shall be in force (and for which payment is received by SLWA) for a Residential Property Owner ("License Fee") during the term of this Agreement. The first payment shall be due by January 30th of the year following the conclusion of first year of the Term. Succeeding License Fee payments shall be made on an annual basis throughout the Term and any Renewal Term, due and payable on January 30th of the succeeding year. Each License Fee payment herein shall be paid within thirty (30) days after it becomes due. SLWA shall include with each License Fee payment to City a statement signed by an SLWA corporate officer certifying the calculation of the License Fee. City will have the right, at its sole expense, to conduct an audit, upon reasonable notice and during normal business hours, of SLWA's books and records pertaining to any fees due under this Agreement while this Agreement is in effect and for one (1) year after any termination of this Agreement.

5. **Indemnification.** SLWA hereby agrees to protect, indemnify, and hold the City, its elected officials, officers, employees and agents (collectively or individually, "Indemnitee") harmless from and against any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees and court costs (individually or collectively, "Claim"), which an Indemnitee may suffer or which may be sought against or are recovered or obtainable from an Indemnitee, as a result of, or by reason of, or arising out of or in consequence of any act or omission, negligent or otherwise, of the SLWA or its officers, employees, contractors, subcontractors, agents or anyone who is directly or indirectly employed by, or is acting in concert with, the SLWA or its officers, its employees, contractors, subcontractors, or agents in the performance of this Agreement; provided that the applicable Indemnitee notifies SLWA of any such Claim within a time that does not prejudice the ability of SLWA to defend against such Claim. Any Indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

6. **Notice.** Any notice required to be given hereunder shall be deemed to have been given when notice is (i) received by the Party to whom it is directed by personal service, (ii) telephonically faxed to the telephone number below provided confirmation of transmission is

received thereof, or (iii) deposited as registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows:

To: City:  
ATTN: J.C. Hughes  
City of Marshall  
401 S Alamo  
Marshall, TX 75670  
Phone: (903) 503-4503

To: SLWA:  
ATTN: Vice President, Business Development  
Utility Service Partners Private Label, Inc.  
11 Grandview Circle, Suite 100  
Canonsburg, PA 15317  
Phone: (724) 749-1003

7. **Modifications or Amendments/Entire Agreement.** Any and all of the representations and obligations of the Parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party unless in writing signed by that Party.

8. **Assignment.** This Agreement and the License granted herein may not be assigned by SLWA without the prior written consent of the City, such consent not to be unreasonably withheld.

9. **Counterparts/Electronic Delivery.** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

10. **Choice of Law/Attorney Fees.** The governing law shall be the laws of the State of Texas. In the event that at any time during the Term or any Renewal Term either Party institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, then the unsuccessful Party shall be responsible for the reasonable expenses of such action including reasonable attorney's fees, incurred therein by the successful Party.

11. **Incorporation of Recitals and Exhibits.** The above Recitals and Exhibit A attached hereto are incorporated by this reference and expressly made part of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and year first written above.

**SEWER AND WATER LINE MARKETING LICENSE AGREEMENT BETWEEN THE CITY OF MARSHALL AND UTILITY SERVICE PARTNERS PRIVATE LABEL, INC. D/B/A SERVICE LINE WARRANTIES OF AMERICA**

**CITY OF MARSHALL**

By: \_\_\_\_\_

**UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.**

By: \_\_\_\_\_

Brad H. Carmichael, Vice President

By: \_\_\_\_\_

Edwin F. Westfield, III, Chief Financial Officer

## **ITEM 13**

# **ITEMS WITHDRAWN FROM THE CONSENT AGENDA**

## **ITEM 14**

# **ADJOURNMENT**