

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

**IN THE COURT OF CRIMINAL APPEALS OF THE  
STATE OF TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
9/26/2018  
DEANA WILLIAMSON, CLERK

---

**JOSE MUSA-VALLE,**

**Appellee**

**VS.**

**THE STATE OF TEXAS,  
Appellant**

---

**ON DISCRETIONARY REVIEW FROM THE FOURTH  
COURT OF APPEALS DISTRICT OF THE STATE OF TEXAS  
COURT OF APPEALS NUMBER 04-17-00278-CR**

---

**APPELLEE'S PETITION FOR DISCRETIONARY REVIEW**

---

ANNE BURNHAM  
2507 NW 36<sup>th</sup> Street  
San Antonio, TX 78228  
(210) 431-5753  
State Bar No. 00798088

STEPHANIE L. STEVENS  
2507 NW 36<sup>th</sup> Street  
San Antonio, TX 78228  
(210) 431-5710  
State Bar No. 01720800

LAUREN MCCOLLUM  
2507 NW 36<sup>TH</sup> Street  
San Antonio, TX 78228  
(210) 431-5705  
Student Bar No. 24107082

Attorneys for Appellant

**APPELLEE REQUESTS ORAL ARGUMENT**

## IDENTITY OF JUDGE, PARTIES, AND COUNSEL

**Appellee:** Jose Musa-Valle

**Attorneys for Appellee:** Anne Burnham  
The Center For Legal And Social Justice  
2507 N.W. 36th  
San Antonio, TX 78228

Stephanie L. Stevens  
The Center For Legal And Social Justice  
2507 N.W. 36th  
San Antonio, TX 78228

Lauren McCollum  
The Center for Legal And Social Justice  
2507 N.W. 36<sup>th</sup>  
San Antonio, TX 78228

**Attorneys for State:** Nicolas A. Lahood  
Lauren Scott  
Bexar County District Attorney's Office  
101 W. Nueva  
San Antonio, Texas 78205

**Trial Court:** Honorable John Longoria

***Court of Appeals:*** Justice Marialyn Barnard  
Justice Karen Angelini  
Justice Rebeca Martinez

## TABLE OF CONTENTS

<b>IDENTITY OF JUDGES, PARTIES, AND COUNSEL</b> .....	ii
<b>INDEX OF AUTHORITIES</b> .....	v
<b>STATEMENT REGARDING ORAL ARGUMENT</b> .....	1
<b>STATEMENT OF THE CASE</b> .....	2
<b>STATEMENT OF PROCEDURAL HISTORY</b> .....	4
<b>QUESTION FOR REVIEW NUMBER ONE:</b> .....	5
<b>Did the court of appeals err by failing to recognize municipalities' authority, granted pursuant to the doctrine of home-rule cities and by Texas Penal Code §42.12(d), to ban the discharge of firearms ?</b> .....	5
<b>A. Reason for Review: Tex. R. App. Proc. 66.3(d)</b> .....	5
<b>B. The Lower Court Erred</b> .....	5
<b>C. The Law Regarding Home-Rule Cities</b> .....	7
1. San Antonio Is A Home Rule City .....	7
2. The Legislature Authorized Cities To Enact Laws On This Issue .....	8
3. State Law Can Only Preempt If The Legislature Intended To Do So And It Did Not .....	8
4. The Legislative History of §42.12(d) .....	9
<b>QUESTION FOR REVIEW NUMBER TWO:</b> .....	11
<b>Did the lower court err by holding the San Antonio Ordinance should be construed as a strict liability crime?</b> .....	11
<b>A. Reason for Review: Tex. R. App. Proc. 66.3(b)</b> .....	11
<b>B. The Lower Court Erred</b> .....	12
<b>QUESTION FOR REVIEW NUMBER THREE:</b> .....	18

**Did the court of appeals misconstrue the doctrine of *in pari materia* by requiring that all elements in the provisions of law being compared must be identical?** ..... 18

**A. Reason For Review: Rule 66.3( c)** ..... 18

**B. The Lower Court Erred** ..... 19

*The Court of Appeals Misinterpreted A Line of Cases Regarding In Pari Materia And Created A New Requirement That All Elements in Both Provisions Be Identical..* ..... 19

**PRAYER FOR RELIEF** ..... 22

**CERTIFICATE OF SERVICE** ..... 23

**CERTIFICATE OF COMPLIANCE** ..... 24

**APPENDIX A:** Opinion of Court of Appeals in State v. Musa-Valle

**APPENDIX B:** Order Denying Motion For Rehearing

**APPENDIX C:** San Antonio City Ordinance § 21-152

**APPENDIX D:** Partial List of Home-Rule City Ordinances Banning Discharge of a Firearm within the Municipality

**APPENDIX E:** Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995)

**APPENDIX F:** Tex. C.S.S.B. 68, 74<sup>th</sup> Leg., R.S. (1995)

**APPENDIX G:** Comm. Substitute, Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995)

**APPENDIX H:** H.R.O., Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995)

**APPENDIX I:** City Council of San Antonio, *Regular Meeting* at 19-21 (Dec. 16, 1993).

## INDEX OF AUTHORITIES

<i>Cases</i>	<i>Page</i>
<i>Aguirre v. State</i> , 22 S.W.3d 471 (Tex. Crim. App. 2000) .....	13, 17
<i>Cheney v. State</i> , 755 S.W.2d 123 (Tex. Crim. App. 1988) .....	7,21
<i>Cuellar v. State</i> , 521 S.W.2d 277 (Tex. Crim. App. 1975) .....	20
<i>Delay v. State</i> , 465 S.W.3d 232 (Tex. Crim.App. 2014) .....	14
<i>Ex parte Harrell</i> , 542 S.W.2d 169 (Tex. Crim. App. 1976) .....	18, 19, 20
<i>Ex Parte Weise</i> , 23 S.W.3d 949 (Tex. App. – Houston 2000) .....	16
<i>Garza v. State</i> , 755 S.W.2d 123 (Tex. Crim. App. 1988) .....	21
<i>In Re Sanchez</i> , 81 S.W.3d 794 (Tex. 2002) .....	8,9
<i>Jones v. State</i> , 552 S.W.2d 836 (Tex. Crim. App. 1977) .....	18, 19
<i>State v. DeLoach</i> , 458 S.W.2d 696 (Tex. App. – San Antonio 2015, pet. ref'd) .....	6, 7
<i>State v. Musa-Valle</i> , 04-17-00278-CR, 2018 WL 3264831 (Tex. App. – San Antonio 2018) .....	4, 6,7, 13, 15, 18, 19, 21

<i>State v. Houdaille Industries, Inc.</i> , 632 S.W.2d 723 (Tex. 1982) .....	16
<i>State v. Walker</i> , 195 S.W.3d 293 (Tex. App. – Tyler 2006, no pet.) .....	16
<i>State v. Wiesman</i> , 269 S.W.3d 769 (Tex. App. – Austin 2008) .....	20
<i>Thompson v. State</i> , 44 S.W.3d 171 (Tex. App.– Houston 2001, no pet.) .....	16, 17
<i>U.S. v. Emerson</i> , 46 F.Supp.2d 598 (N.D. Tex. 1999) .....	16
<i>U.S. v. Santos</i> , 553 U.S. 507 (2008) .....	14
<i>Weise v. State</i> , 55 S.W.3d 617 (Tex. Crim. App. 2001) .....	16
<i>Williams v. State</i> , 641 S.W.2d 236 (Tex. Crim. App. 1982) .....	18, 19, 20

***Constitutions***

Tex. Const. art. XI, §5 .....	5, 7, 12
-------------------------------	----------

***Statutes:***

TEX. ELECTION CODE 143.007(a) .....	8, 9
TEX. PENAL CODE 6.02 .....	12, 17
TEX. PENAL CODE 22.02(b)(2)(D)(3) .....	15
TEX. PENAL CODE 42.12 .....	2, 5, 6, 8, 9, 16, 18, 19, 22

SAN ANTONIO CODE OF ORDINANCES. art. 21-152 ..... 3,12, 13, 14, 15, 17, 18

***Rules:***

Tex. R. App. Proc. 66.3 (b) ..... 1,11

TEX. R. APP. PROC. 66.3(c) ..... 1,18

TEX. R. APP. PROC. 66.3(d) ..... 1,5

***Websites:***

[ballotpedia.org/Cities\\_in\\_Texas](http://ballotpedia.org/Cities_in_Texas) ..... 5

**IN THE COURT OF CRIMINAL APPEALS OF THE  
STATE OF TEXAS**

---

**JOSE MUSA-VALLE,**

**Appellee**

**VS.**

**THE STATE OF TEXAS,**

**Appellant**

---

**APPELLEE'S PETITION FOR DISCRETIONARY REVIEW**

---

**TO THE HONORABLE TEXAS COURT OF CRIMINAL APPEALS:**

Jose Musa-Valle respectfully petitions this Court to grant discretionary review pursuant to Rule 66.3(b), ( c), and (d) of the Texas Rules of Appellate Procedure.

**STATEMENT REGARDING ORAL ARGUMENT**

Counsel requests oral argument if this petition is granted. The issue forming the basis for this appeal is not frivolous, rather, it is complex and important because it will have far-reaching implications. The home-rule doctrine applies in all cities that have a population of over 5,000 in which its citizens have adopted a



home-rule charter. Home-rule cities do not derive their authority and power from state law, rather the Texas Constitution establishes the city's power and authority. As such, home-rule cities are only limited by state law when state law clearly manifests the intent to limit.

Very little case law exists addressing the home-rule doctrine and how it applies when there is a contemporaneous state penal code provision. While the briefs and legal arguments adequately present the facts of the case as well as the relevant law, oral argument would provide a more complete understanding of the legal complexities.

Oral argument would permit both parties to provide analytical responses to this novel area of law. Although the issues presented largely concern statutory construction and interpretation, the practice of prosecutorial discretion in the charging offense would be significantly affected by any decision regarding the home-rule doctrine, as prosecutors would no longer be able to subjectively choose what law to adhere to in a home-rule city. Accordingly, the Court's decisional process will be significantly aided by oral argument.

### **STATEMENT OF THE CASE**

Pursuant to Texas Penal Code § 42.12, Mr. Jose Musa Valle was charged with discharging a firearm inside the corporate limits of a municipality having a

population of 100,000 or more, namely the municipality of San Antonio, Texas. (C.R., p. 5.) The City of San Antonio also specifically prohibits the discharge of a firearm within the city limits of San Antonio. San Antonio City Ordinance § 21-152. Musa-Valle filed a Motion to Set Aside the Information claiming that the conduct alleged should be charged as a Class C misdemeanor in San Antonio Municipal Court. (C.R., pp. 10-13). Musa-Valle filed a supplemental motion to set aside and argued that the information was defective for failing to allege with reasonable certainty the act, or acts relied upon by the State to show that the Defendant acted recklessly. (C.R., pp. 14-19).

The trial court conducted a hearing on these motions. (R.R., p. 4). Although the parties primarily focused on the argument regarding improper venue, the trial court's ruling on the record did not clearly state which motion he was granting.<sup>1</sup> (R.R., p. 16). Furthermore, the order signed by the judge was attached to the supplemental motion to set aside (the motion complaining of the lack of notice for acts constituting recklessness) and the trial court noted that the State could refile. (C.R., p. 19). The State filed a timely notice of appeal of the order setting aside the information, but did not request findings of fact or conclusions of law. (C.R., pp.

---

<sup>1</sup>During the hearing on the motions to set aside, the prosecutor agreed that the information was faulty for failure to allege a manner and means and thus, the information needed to be amended or refiled. (R.R., p. 6).

20-23)

### **STATEMENT OF PROCEDURAL HISTORY**

On July 5, 2018, the Fourth Court of Appeals in San Antonio reversed and remanded the trial court's decision to set aside the information. *State v. Musa-Valle*, 04-17-00278-CR, 2018 WL 3264831 (Tex. App. – San Antonio 2018)(unpublished) *See* Appendix A. The court denied Musa-Valle's motion for rehearing on August 23, 2018. *See* Appendix B. This petition for discretionary review is due on September 24, 2018.

## QUESTION FOR REVIEW NUMBER ONE

**Did the court of appeals err by failing to recognize municipalities' authority, granted pursuant to the doctrine of home-rule cities and by Texas Penal Code §42.12(d), to ban the discharge of firearms ?<sup>2</sup>**

### A.

#### **Reason for Review: Tex. R. App. Proc. 66.3(d).**

Review should be granted under Rule 66.3(d), because the court of appeals misconstrued Texas Penal Code §42.12 and the legislative authority home-rule cities derive from Texas Constitution article XI, §5. More than 352 cities in Texas are home-rule cities.<sup>3</sup> Many of these cities have ordinances banning the discharge of weapons within the city limits. *See Appendix D*. Should the lower court's ruling be allowed to stand, it may affect the respective ordinances in numerous cities in Texas in contravention of Texas Penal Code §42.12(d) and the home-rule city doctrine.

### B.

#### **The Lower Court Erred**

---

<sup>2</sup>Texas Penal Code §42.12(d) reads as follows: “subsection (a) does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm.”

<sup>3</sup>[https://ballotpedia.org/Cities\\_in\\_Texas](https://ballotpedia.org/Cities_in_Texas)

Within his motion to set aside the information for lack of jurisdiction, Mr. Musa-Valle cited to San Antonio's broad powers of self government as a home-rule city. (C.R., pp. 10-13). In Mr. Musa-Valle's brief to the Fourth Court of Appeals, he raised the issue that the City Ordinance should prevail because San Antonio is a home-rule city. (Appellee's Brief, pp. 8-10). The Fourth Court, however, did not address this issue in its memorandum opinion, except in an endnote, and not in response to Appellee's brief. *State v. Musa-Valle*, 2018 WL 3264831 at \*5, n. 3. Within the endnote, the lower court refuted the State's use of *State v DeLoach*, 458 S.W.3d 696, 698 (Tex. App. – San Antonio 2015, pet. ref'd), to support its position that the San Antonio ordinance was not enforceable. Stating that *DeLoach* was discussing the doctrine of preemption, not in *pari materia*, the lower court explained that a home-rule city has broad powers. *Id.* Furthermore, the endnote explained the powers granted to a home-rule city can be limited only when the legislature expresses its intent to do so with "unmistakable clarity." In conclusion, it was noted that the doctrine of preemption is not applicable in Mr. Musa-Valle's case, because § 42.12(d) made clear the Texas Legislature expressly intended not to preempt a municipality from enacting such an ordinance. *Id.*

Despite the lower court's recognition of the difference between the doctrine of preemption and the doctrine of in *pari materia*, the lower court did not address

the home-rule city's powers directly. Instead, the court focused solely on the doctrine of *in pari materia*, erroneously concluding that the “the statute and the ordinance are not in *in pari materia*, and the State ‘properly exercised its option’ to prosecute Musa-Valle under the statute.” *Musa-Valle*, 2018 WL 3264831 at \*5.

A finding that two provisions are not in *in pari materia*, does not end an analysis on whether the provisions may be harmonized or are in irreconcilable conflict with one another. *Cheney v. State*, 755 S.W.2d 123 (Tex. Crim. App. 1988). “Where two provisions not in *in pari materia* are at issue, other rules of statutory construction will then dictate which statute controls.” *Id.* at 127. Accordingly, this Court should grant review of the other rules of statutory construction, such as the home-rule city powers, that the Court of Appeals failed to address.

### **C. The Law Regarding Home-Rule Cities**

#### *1. San Antonio Is A Home-Rule City.*

The Texas Constitution grants cities with over 5,000 citizens the power to self-govern. TEX. CONST. art. XI, § 5. These cities are referred to as home-rule cities. *State v. DeLoach*, 458 S.W.3d 696, 698 (Tex. App. – San Antonio 2015, pet. ref'd.) As a home-rule city, San Antonio derives its powers from the Texas

Constitution and not from the legislature. *Id.* A home-rule city has all the powers of the state as long as the powers are not inconsistent with the Texas Constitution, the general laws, or the city's charter. *Id.* As such, home-rule city ordinances are given a presumption of validity. *Id.* The Legislature may only curtail the city's broad powers "when it expresses its intent to do so with unmistakable clarity." *Id.*

*2. The Legislature Authorized Cities To Enact Laws On This Issue.*

Far from expressing an intent to limit San Antonio's, or any other city's, right to pass ordinances regarding discharging firearms, the Legislature manifestly allowed for such local governance. Texas Penal Code § 42.12 (d) says that "[s]ubsection (a) does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm."

*3. State Law Can Only Preempt If The Legislature Intended To Do So And It Did Not.*

The Texas Supreme Court reviewed a similar issue in 2002. *In re Sanchez*, 81 S.W.3d 794 (Tex. 2002). *Sanchez* required the Texas Supreme Court to determine whether a home-rule city provision for election filing deadlines was preempted by the state Election Code. *Id.* at 796. Noting that the Election Code provision in question, §143.007(a), specifically acknowledged other code sections may provide exceptions to the state law deadline, the Supreme Court found that no

intent to preempt was clearly manifested by the Legislature. *Id.* at 797. Texas Election Code §143.007(a) states a deadline of 45 days, but then provides the exception, “[e]xcept as otherwise provided by this code.” Furthermore, section 143.005(a) provides that city charters may prescribe requirements for ballots for home-rule city offices. *Id.* Therefore, the Texas Supreme Court found that the Election Code expressly allows home-rule cities to establish their own requirements in municipal elections. *Id.* Having so concluded, the Court found that the city’s provision regarding election deadlines is the provision that must be applied. *Id.* at 798.

Likewise, Texas Penal Code § 42.12(d) provides that cities may provide their own regulations with regard to discharging a firearm.<sup>4</sup> San Antonio, a home-rule city, has such a provision and like *Sanchez*, it should prevail.

#### 4. *The Legislative History of 42.12(d).*

In 1995, Senate Bill 68 was brought before the Senate to make recklessly discharge a firearm inside the corporate limits of a city with a population of

---

<sup>4</sup>*See* Op. Tex. Att’y Gen. No. GA-0862 (To Hon. Jeff Wentworth, June 16, 2011) stating that “Section 229.002 of the Texas Local Government Code does not prohibit a Type A general-law municipal ordinance from regulating the discharge of a firearm or other weapon in an area that is within the municipality’s original city limits.” Based on this opinion, it would appear that even non home-rule cities may regulate discharging a firearm within city limits. Certainly a home-rule city ordinance should have even stronger protection.



100,000 or more a Class A misdemeanor . Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995); *see* Appendix E. Senate Bill 68, in its original form, did not contain any reference to a city's authority to regulate the same conduct. *Id.* The Senate did not pass Senate Bill 68 in its original form and appointed a committee to review the proposed legislation. H.J. of Tex., 74<sup>th</sup> Leg., R.S. A493-494 (1995). The committee considered a substitute and adopted the substitute. C.S.S.B. 6, Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995); *See* Appendix F. The substituted version contained subsection (d) of § 42.12, which stated that the Penal code provision does not affect a municipality's authority to enact an ordinance that prohibits the discharge of a firearm. *Id.* This amendment appears to be a result of the committee's review of the problems with the original version of Senate Bill 68. H.R.O., Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995); *See* Appendix H. The House Research Organization bill analysis noted that opponents of Senate Bill 68 were concerned that "cities already have authority to enact ordinances otherwise regulating the firing of weapons." *Id.* at p. 3. Moreover, opponents expressed that the bill was too broad and could infringe on the rights of persons to fire their guns. *Id.* And, opponents feared the recklessness standard would make it easier to prosecute people and the precise location of the city limits is often unknown to a person shooting a gun in an isolated area. *Id.*

As a result, the committee “specified that the bill would not affect a city’s authority to enact ordinances.” *Id.*; C.S.S.B. 6, Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995); *See Appendix F.* This substituted version was then passed, without objection, by both the House and Senate and signed by the governor. H.J. of Tex., 74<sup>th</sup> Leg., R.S. 4708 (1995); S.J. of Tex., 74<sup>th</sup> Leg. R.S. 4068(1995); E.J. of Tex., 74<sup>th</sup> Leg., 4093 (1995). To be sure, the legislators did not intend to preempt the city’s authority to regulate this activity.

## **QUESTION FOR REVIEW NUMBER TWO**

**Did the lower court err by holding the San Antonio Ordinance should be construed as a strict liability crime?**

### **A.**

#### **Reason For Review: Tex. R. App. Proc. 66.3 (b)**

This is an important question of law that will affect many home-rule cities in Texas. A non-exhaustive survey of the 352 home-rule cities in Texas found at least forty cities with ordinances banning the discharge of weapons in the city limits.<sup>5</sup> Only five of the forty cities expressly stated a culpable mental state.<sup>6</sup> The Fourth

---

<sup>5</sup>This is not to say that only forty cities have such ordinances. Rather, this is to limit the focus, at present, to the home-rule cities with the largest populations with prohibitions on weapon discharges. *See Appendix D.*

<sup>6</sup>*See* <https://ballotpedia.org/cities-in-Texas>; Appendix D - Houston, Arlington, Pasadena, Midland and Waco.

Court's holding that lack of express culpability language renders the ordinance strict liability would have far reaching consequences for all other cities' prohibitions on the discharge of firearms. Thus, the lower court's sweeping holding involves not only the Texas Penal Code, but also the numerous home rule cities' ordinances derived from the authority of the Texas Constitution. *See* Tex. Penal Code 6.02; Tex. Const. art. XI, §5. This important issue of law should be settled by this Court.

**B.**  
**The Lower Court Erred**

The language of Ordinance § 21-152 is silent on the issue of culpability. The State argued on appeal, that the statutes have different elements because Ordinance § 21-152 is a strict liability offense and requires no culpability. (State's Brief, p. 8).<sup>7</sup> However, Texas Penal Code § 6.02 requires a culpable mental state and provides that the absence of a culpable mental state does not dispense with the

---

<sup>7</sup>This argument was not presented at the trial level. In fact, at the hearing before Judge Longoria, the State argued the opposite. That is, the State conceded the laws were the same, but for the level of punishment. "And let me be clear. It conflicts in the sense that it addresses the same conduct but it makes it a lesser offense and I think that's the main point here, is that under the city ordinance it's a class C misdemeanor, whereas under the Penal code - -." (R.R., pp. 11-12). Musa-Valle noted, in his motion for rehearing, that the State's objection at trial did not comport with its objection on appeal and was therefore not preserved for review. *Hodge v. State*, 631 S.W.2d 754, 757 (Tex. Crim. App. 1982); Appellant's Motion for Rehearing, pp. 12-14.

culpability requirement unless it is expressly done so. In determining whether Ordinance § 21-152 requires a culpable mental state, the Court of Appeals addressed only a few factors from the non-exhaustive list of factors. *State v. Musa-Valle*, 2018 WL 3264831 at \*6 (citing *Thompson v. State*, 44 S.W.3d 171, 178 (Tex. App. – Houston 2001, no pet.)).

“Silence of a statute about whether a culpable mental state is an element of the offense leaves a presumption that one is required.” *Aguirre v. State*, 22 S.W.3d 463, 472 (Tex. Crim. App. 1999). The Court cited to the language of San Antonio City Ordinance § 21-154, a neighboring provision, in holding that the omission of a culpable mental state in § 21-152 was intentional. *State v. Musa-Valle*, 2018 WL 3264831 at \*6. However, the San Antonio City Council clearly dispensed with the culpability requirement in numerous sections of the same chapter of the code. *See* SAN ANTONIO, TEX., CODE OF ORDINANCES ch. 21 §§ 26, 29, 54, 58 (2018). The express intent to dispense with a culpability requirement seen in other sections of the ordinance, and the fact that no such expression of intent was drafted in the subject statute, a reasonable interpretation of Ordinance § 21-152 would provide that the legislators did not intend a strict liability offense. *See Aguirre v. State*, 22 S.W.3d at 471. The existence of express intent to dispense culpability in other ordinances of the same chapter weighs in favor of a culpability requirement for

Ordinance § 21-152.

Further, the rule of lenity reinforces the conclusion that Ordinance § 21-152 is not a strict liability offense. The doctrine of lenity applies to Ordinance § 21-152 due to the ambiguity of the ordinance's language. The doctrine of lenity requires that any ambiguity be resolved in the Defendant's favor. *U.S. v. Santos*, 553 U.S. 507, 514 (2008). Because Ordinance § 21-152 is ambiguous in regard to its intended culpability, the "tie should go to the defendant." *Id.* In construing a penal code provision outside of the penal code, the Criminal Court of Appeals in *Delay v. State*, applied the rule of lenity and held that "... even when construing provisions within the Penal Code, we have typically resolved ambiguities with respect to the scope of the applicable mens rea in favor of making sure that mental culpability extends to the particular circumstance that renders otherwise innocuous conduct criminal." *Delay v. State*, 465 S.W.3d 232, 251 (Tex. Crim. App. 2014). This Court went on to say that the fact that "...the legislature may have more explicitly assigned mental culpability to attendant circumstances in neighboring statutory provisions does not eliminate the patent ambiguity..." *Id.*

In its memorandum opinion, the Fourth Court of Appeals points to the fact that neighboring statutes in the San Antonio City Ordinances have express culpability requirements, however, this fact does not erase the patent ambiguity

present in Ordinance § 21-152 due to the lack of culpable mental state. Due to the ambiguity present in the culpability element of Ordinance § 21-152, the doctrine of lenity should have been applied by the lower court and a culpable mental state should have been found to be necessary.

The Court of Appeals noted that it was unable to take into consideration the legislative history of Ordinance § 21-152.<sup>8</sup> *State v. Musa-Valle*, 2018 WL 3264831 at \*8. Ordinance § 21-152 was passed by the San Antonio City Council in 1993. *See* City Council of San Antonio, *Regular Meeting* at 19–21 (Dec. 16, 1993)(Attached as Appendix I, pp. 19-21). The minutes of the city council meeting reflect a discussion amongst council members and community members seeking to limit drive-by shootings and juvenile access to weapons. *Id.* These types of offenses routinely require a culpable mental state. *See* TEX. PENAL CODE ANN. § 22.02(b)(2)(D)(3) (requiring a culpable mental state for assault committed while in a vehicle). The fact that the city considered passage of this Ordinance in conjunction with other offenses requiring a culpable mental state is indicia of their intent to assign a culpable mental state to the Ordinance.

Further cases cited by the Court of Appeals in denying the requirement of a

---

<sup>8</sup>At the trial level, no discussion about the culpable mental state of the ordinance occurred, because the State did not argue that. Therefore, no evidence or information was presented to refute (or support) that 21-152 is a strict liability ordinance.

culpable mental state for the city ordinance, do not support this holding.

Specifically, the cases cited for the proposition that *malum prohibitum* offenses are likely to be strict liability, in fact, each found a culpable mental state was necessary. *State v. Walker*, 195 S.W.3d 293, 299 (Tex. App. – Tyler 2006, no pet.)(court required culpable mental state for *malum prohibitum* offense of filing record of unapproved plat and subdivision of real property); *Thompson v. State*, 44 S.W.3d 171, 182 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2001, no pet.)(ordinance regulating sexually oriented businesses required culpable mental state). *Thompson* referenced three cases to support the position of *malum prohibitum* offenses as strict liability: *State v. Houdaille Industries, Inc.*, 632 S.W.2d 723 (Tex. 1982); *Ex Parte Weise*, 23 S.W.3d 449, 452 (Tex. App. – Houston 2000) rev'd on other grounds by *Weise v. State*, 55 S.W.3d 617 (Tex. Crim. App. 2001); and *United States v. Emerson* 46 F. Supp2d 598 (ND Tex. 1999) rev'd 270 F.3d 203, 216 (5<sup>th</sup> Cir. 2001). Two of the cases, *Weise* and *Emerson*, did conclude a culpable mental state was necessary. *See Ex parte Weise*, 23 S.W.3d at 452 (finding that a culpable mental state was required for an illegal dumping offense); *United States v. Emerson*, 270 F.3d at 216 (holding that while the defendant need not know he has a domestic violence order restraining his ability to possess a weapon, knowledge of the possession of the weapon was still required). *State v. Houdaille Industries*,

*Inc.*, 632 S.W.2d at 730, held that because the penalty at issue was *civil*, not *criminal*, no culpable mental state was required. Regardless of the court of appeal's characterization of the ordinance at issue as *malum prohibitum*, the case law under *Thompson* provides that a culpable mental state is not precluded by this classification.

The lower court considered a partial analysis of the non-exhaustive list of factors laid out by *Aguirre*. The incomplete consideration of several non-exhaustive factors is not sufficient to overcome the strong presumption against strict liability offenses as codified by the Texas Penal Code § 6.02. The possibility of accidental discharge and weapon malfunctions also support the idea that not all gunshots were intended to be proscribed by legislators, especially in light of the recent expansion of open carry and concealed carry laws. The wide breadth of exceptions allowing the legal discharge of weapons in certain places supports the notion that not all instances of discharge were intended to be criminalized without regard to culpability. *See* San Antonio City Ordinance § 21-152 (2)(A-D).

Because the *Aguirre* factors considered by the Court were incomplete and no weight was initially given to the legislative history surrounding the ordinance, a culpable mental state should have been found to be required for an offense under Ordinance § 21-152. Therefore, although not required under the doctrine of *pari*



*materia*, the elements of Ordinance § 21-152 and TPC § 42.12 would be identical, and thus are in *pari materia*.

### **QUESTION FOR REVIEW NUMBER THREE**

**Did the court of appeals misconstrue the doctrine of in *pari materia* by requiring that all elements in the two provisions of law being compared must be identical?**

**A.**

**Reason For Review: Tex. R. App. Proc. 66.3 ( c)**

This Court should grant review because the lower court misconstrued the rule of law involving in *pari materia* and added a requirement not present in this Court's prior decisions. The lower court held that Texas Penal Code § 42.12 requires a culpable mental state of recklessness and that the San Antonio Ordinance has no culpable mental state. *State v. Musa-Valle*, 2018 WL 3264831 at \*2. This is the only distinction between the two laws the lower court found. *Id.* Based on the difference of one different element of proof, the lower court held the provisions could not be in *pari materia*. *Id.* at \*5. This holding contradicts prior cases from this Court. *Williams v. State*, 641 S.W.2d 236 (Tex. Crim. App. 1982); *Jones v. State*, 552 S.W.2d 836 (Tex. Crim. App. 1977); *Ex parte Harrell*, 542 S.W.2d 169 (Tex. Crim. App. 1976).

**B.**  
**The Lower Court Erred**

*The Court of Appeals Misinterpreted A Line of Cases Regarding In Pari Materia And Created A New Requirement That All Elements in Both Provisions Be Identical.*

The court of appeals reversed the trial court's order and held that the San Antonio city ordinance and Texas Penal Code § 42.12 were not in *pari materia*. *State v. Musa-Valle*, 2018 WL 3264831 at \*5. The court of appeals found that, although the ordinance and the statute “clearly relate to the same subject matter and class of persons,” the elements of proof are different. *Id.* The only difference in the elements of proof, according to the lower court, is that the ordinance does not contain a culpable mental state.<sup>9</sup> *Id.* at \*2. Thus, two laws designed to cover the same subject matter and the same class of persons with nearly identical elements were not considered to be in *pari materia*. Mr. Musa-Valle respectfully urges that the cases applying the doctrine of in *pari materia* have never required identical elements. *See Williams v. State*, 641 S.W.2s 236 (Tex. Crim. App. 1982); *Jones v. State*, 552 S.W.2d 836 (Tex. Crim. App. 1977); *Ex parte Harrell*, 542 S.W.2d 169

---

<sup>9</sup>Musa-Valle does not agree with the conclusion that the San Antonio ordinance is a strict liability law and urges this Court to reconsider this portion of the lower court's decision as well. However, even if the lower court is correct that the ordinance does not require a culpable mental state, the doctrine of in *pari materia* should still apply under existing authority.

(Tex. Crim. App. 1976).

Citing *State v. Wiesman*, 269 S.W.3d 769, 775 (Tex. App. – Austin 2008, no pet.), the lower court noted that when determining whether two laws are in *pari materia*, courts may also consider whether the statutes have different elements of proof. *Id. Wiesman*, as made clear in further cases, does not limit the review of statutory elements as the only factor in the analysis. *Cuellar v. State*, 521 S.W.2d 277, 279 (Tex. Crim. App. 1975)(stating “Where the special statute is complete within itself, it controls, even though other statutes concerning the same subject matter contain requirements not enumerated in the special statute.”).

*Ex parte Harrell*, 542 S.W.2d at 173, held that the appellant should have been convicted under the penal code provision prohibiting possession of a forged writing with intent to utter it, rather than possession of a criminal instrument with intent to use it in the commission of an offense. *Id.* at 170-172. This Court listed the elements of each offense and despite the fact that the elements of proof were not identical, found they related to one subject and were “governed by one spirit and policy.” *Id.* Citing *Harrell*, this Court found that felony theft and hindering secured creditors statutes were in *pari materia*. *Williams v. State*, 641 S.W.2d 236, 283 (Tex. Crim. App. 1982). Importantly, this Court held this despite noted conflicts between the statutes “as to elements of proof and penalty provisions.” *Id.*

at 239. Likewise, this Court found that the offenses of felony theft and official misconduct, despite having different elements, were in *pari materia* and construed them together to harmonize and give effect to the legislative intents. *Garza v. State*, 687 S.W.2d 325, 332 (Tex. Crim. App. 1985).

As part of its analysis regarding the requirement of same elements of proof, the lower court relied on *Cheney v. State*, 755 S.W.2d 123, 130 (Tex. Crim. App. 1988). *State v. Musa-Valle*, 2018 WL 3264831 at \*2. *Cheney*, however, focused on whether the two provisions at issue (felony theft and making a false statement to obtain property or credit) dealt with the same general subject and had the same general purpose. *Cheney v. State*, 755 S.W.2d at 126. This Court found that while the two statutes covered the same general class of people and property, they had markedly different purposes or objectives. A review of the elements of the two provisions played a part in the Court's determination that the laws were enacted for different purposes, but was not the sole reason for the Court's decision. *Id.* at 129. Felony theft is designed to prevent a person from fraudulently receiving property by focusing on the actual acquisition. *Id.* Theft can be achieved in many ways, one of which is presenting false pretexts. But, the focus is still on the acquisition. *Id.* The goal of the latter provision, making a false statement to obtain property or credit, is to discourage people from intentionally making materially false or

misleading statements. As such, the offense is complete even if the perpetrator does not obtain any property or credit. *Id.*

The objective of both the San Antonio ordinance and the Texas penal code provision is to prevent one from discharging a firearm in an urban environment. The plain language of each provision demonstrates a concern for the dangers of weapons in crowded areas. Accordingly, this Court should grant this petition for discretionary review to resolve whether the ordinance, and similar ordinances across the state, are in *pari materia* with Texas Penal Code §42.12.

#### **PRAYER**

Jose Musa-Valle prays that this Petition for Discretionary Review be granted and that the trial court's order setting aside the information be affirmed.

Respectfully submitted:

/s/ Stephanie L. Stevens  
STEPHANIE L. STEVENS  
2507 NW 36<sup>th</sup> Street  
San Antonio, Texas 78228  
(210) 431-5710  
State Bar No. 01720800

/s/ Anne Burnham  
ANNE BURNHAM  
2507 NW 36<sup>th</sup> Street  
San Antonio, Texas 78228  
(210) 431-5753

State Bar No. 00798088

/s/ Lauren McCollum

LAUREN McCOLLUM

2507 NW 36<sup>th</sup> Street

San Antonio, Texas 78228

(210) 431-5705

Student Bar No. 24107082

Attorneys for Petitioner

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of appellant's Petition for Discretionary Review was electronically delivered to the District Attorney's Office, Bexar County Justice Center; 300 Dolorosa, San Antonio, Texas, and electronically delivered to the State Prosecuting Attorney's Office on this the 24<sup>th</sup> day of September, 2018.

/s/ Stephanie L. Stevens

STEPHANIE L. STEVENS

## **CERTIFICATE OF COMPLIANCE**

Pursuant to TEX. R. APP. PROC. 9.4(i)(3), I certify that this Petition for Discretionary Review for Appellant contains 4138 words according to the word count of the computer program used to prepare the motion.

/s/ Stephanie L. Stevens

STEPHANIE L. STEVENS

# **APPENDIX A**





**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-17-00278-CR

The **STATE** of Texas,  
Appellant

v.

José **MUSA-VALLE**,  
Appellee

From the County Court at Law No. 5, Bexar County, Texas  
Trial Court No. 538466  
Honorable John Longoria, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Karen Angelini, Justice  
Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice

Delivered and Filed: July 5, 2018

**REVERSED AND REMANDED**

In the underlying cause, the trial court granted José Musa-Valle’s motion to set aside the information charging him with recklessly discharging a firearm. On appeal, the State presents the following issue: “Whether San Antonio Municipal Ordinance Section 21-152 prevents the State from filing criminal charges against Musa-Valle under Texas Penal Code Section 42.12.” We reverse the trial court’s order and remand the cause to the trial court for further proceedings.

**BACKGROUND**

The information in the underlying cause charged Musa-Valle with the following:

on or about the 22nd Day of January, 2017, JOSE LEON MUSA-VALLE did recklessly discharge a firearm inside the corporate limits of a municipality having

a population of One Hundred Thousand (100,000) or more, namely: the City of San Antonio, Texas, by shooting a gun in an area in which others reside and are present;

Musa-Valle filed a motion to set aside the information asserting his conduct should be punishable as a Class C misdemeanor under San Antonio Municipal Ordinance § 21-152, not as a Class A misdemeanor under section 42.12 of the Texas Penal Code.

At the hearing on the motion, Musa-Valle's attorney argued the ordinance and statute were in *pari materia* and contained an irreconcilable conflict because of the differences in punishment. As a result, Musa-Valle's attorney argued Musa Valle had a due process right to be prosecuted under the ordinance. At the conclusion of the hearing, the trial court granted Musa-Valle's motion. The State appeals.

#### STANDARD OF REVIEW

"[A] statutory interpretation question is a question of law which we review *de novo*." *Pruett v. State*, 510 S.W.3d 925, 927 (Tex. Crim. App. 2017). "When interpreting statutory language, we focus on the 'collective' intent or purpose of the legislators who enacted the legislation." *Cortez v. State*, 469 S.W.3d 593, 598 (Tex. Crim. App. 2015) (internal quotation omitted). "To determine the collective intent of the Legislature, we begin by examining the literal text." *Id.* "If the [statutory] language, [when read using the established canons of construction of such text,] is unambiguous, our analysis ends because the Legislature must be understood to mean what it has expressed, and it is not for the courts to add to or subtract from such a statute." *Bays v. State*, 396 S.W.3d 580, 584–85 (Tex. Crim. App. 2013); *see also State v. Cooper*, 420 S.W.3d 829, 831 (Tex. Crim. App. 2013) (noting that meaning of statutory text should be "read using the established canons of construction of such text"); *Boykin v. State*, 818 S.W.2d 782, 785 n.3 (Tex. Crim. App. 1991) (noting "canons of construction are no more than rules of logic for the interpretation of texts").

### **DOCTRINE OF IN PARI MATERIA**

The doctrine of in pari materia is a principle of statutory interpretation. *Mills v. State*, 722 S.W.2d 411, 413 (Tex. 1986); *State v. Wiesman*, 269 S.W.3d 769, 774 (Tex. App.—Austin 2008, no pet.). Under the doctrine, statutes that deal with the same general subject, have the same general purpose, or relate to the same person, thing, or class are considered to be in pari materia even if they contain no reference to each other or were passed at different times or at different sessions of the legislature. *Alejos v. State*, 555 S.W.2d 444, 449-50 (Tex. Crim. App. 1977) (op. on reh'g); *Wiesman*, 269 S.W.3d 774. Statutes that are in pari materia are construed together and, if possible, any conflicts between their provisions are harmonized. *Mills*, 722 S.W.2d at 413; *Alejos*, 555 S.W.2d at 449; *Wiesman*, 269 S.W.3d at 774. In the case of an irreconcilable conflict, “the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.” TEX. GOV'T CODE ANN. § 311.026 (West 2013); *see also Wiesman*, 269 S.W.3d at 774 (noting doctrine of in pari materia is codified in section 311.026). The doctrine of in pari materia also applies in construing ordinances and statutes. *See Wehbe v. State*, No. 02-07-00407-CR, 2011 WL 1743785, at \*3-6 (Tex. App.—Fort Worth May 5, 2011, pet. ref'd) (not designated for publication) (applying doctrine but concluding the statute and ordinance were not in pari materia because they had different purposes).

### **ARE THE ORDINANCE AND STATUTE IN PARI MATERIA?**

As previously noted, in determining whether the ordinance and the statute are in pari materia, we consider whether they have the “same general subject, have the same general purpose, or relate to the same person, thing, or class.” *Alejos*, 555 S.W.2d at 449-50. In *Alejos*, the Texas Court of Criminal Appeals held the statutes being considered were not in pari materia because the statutes “are contained in different legislation, have different elements of proof, different penalties

and [are] obviously designed to serve different purposes and objectives.” *Id.* at 449. Accordingly, we focus our attention on these same considerations.

A. General Subject

Section 42.12(a) of the Texas Penal Code provides:

A person commits an offense if the person recklessly discharges a firearm inside the corporate limits of a municipality having a population of 100,000 or more.

TEX. PENAL CODE ANN. § 42.12(a) (West 2016). Section 21-152(a) of the San Antonio Code of Ordinances provides:

It shall be unlawful for any person to discharge a firearm within the city limits of the City of San Antonio.

SAN ANTONIO, TEX., CODE OF ORDINANCES ch. 21, art. VI, § 21-152(a) (2018). Therefore, the ordinance and statute clearly relate to the same subject matter and class of persons because both address the conduct of a person discharging a firearm within city limits.

B. Elements of Proof

“Another factor that may be considered in determining whether two statutes are in *pari materia* is whether they have different elements of proof.” *Wiesman*, 269 S.W.3d at 775; *see also Burke v. State*, 28 S.W.3d 545, 548 (Tex. Crim. App. 2000) (noting provisions held not to be in *pari materia* where they had different elements of proof) (quoting *Cheney v. State*, 755 S.W.2d 123, 130 (Tex. Crim. App. 1988)). In this case, the State argues the two provisions have different elements of proof because section 42.12(a) requires proof of recklessness while the ordinance is a strict liability provision. Unlike the recklessness required to be shown under section 42.12(a), the State contends, “the plain text of Section 21-152 shows the San Antonio city government intended to criminalize all discharging of firearms and it does not matter how the person fired the weapon, only that they were standing inside the city limits when they pulled the trigger.” *Musa-Valle*, however, asserts section 6.02 of the Texas Penal Code mandates the inclusion of a culpable mental

state in the ordinance because the ordinance does not plainly dispense with any culpable mental state. *See* TEX. PENAL CODE ANN. §6.02(b) (“If the definition of an offense does not prescribe a mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.”); *Honeycutt v. State*, 627 S.W.2d 417, 424 (Tex. Crim. App. 1981) (holding ordinance required culpable mental state under section 6.02(b) and minimum required culpability was recklessness under section 6.02(c)).<sup>1</sup> The State does not address section 6.02 of the Texas Penal Code or discuss whether the ordinance can be construed as plainly dispensing with a culpable mental state under the guidelines established by the Texas Court of Criminal Appeals in *Aguirre v. State*, 22 S.W.3d 463, 470-477 (Tex. Crim. App. 1999). Instead, the State appears to rely on the omission of a mental state from the language of the ordinance. As the Texas Court of Criminal Appeals has instructed, however, “The legislative history of Section 6.02(b) makes it clear that that feature of the statute — the mere omission of a mental element — cannot be construed to plainly dispense of a mental element.” *Id.* at 471. And, “[i]f the definition of an offense is silent about whether a culpable mental state is an element of the offense, Subsection (b) presumes that one is and Subsection (c) requires that it amount at least to recklessness.” *Id.* at 472. Therefore, if we limited our discussion to the State’s argument, we would hold the ordinance and the statute do not have different elements of proof because under section 6.02 “the minimum required culpability is recklessness,” which is the same culpable mental state required by the statute.<sup>2</sup> *See Honeycutt*, 627 S.W.2d at 424. The guidelines provided by the Texas Court of

---

<sup>1</sup> Section 6.02(c) provides, “If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b), intent, knowledge, or recklessness suffices to establish criminal responsibility.” TEX. PENAL CODE ANN. § 6.02(c).

<sup>2</sup> In its brief, the State relies on *Avery v. State*, 359 S.W.3d 230 (Tex. Crim. App. 2012) and *Alejos v. State*, 555 S.W.2d 444 (Tex. Crim. App. 1977) (op. on reh’g), to assert the State had prosecutorial discretion to decide whether to prosecute under the ordinance or statute. *Avery* did not, however, address the doctrine of in pari materia but discussed the effect of overlapping subsections in a single statutory provision. 359 S.W.3d at 235-37. And, in *Alejos*, the Texas Court of Criminal Appeals held the statutes being considered were “*not* in pari materia.” 555 S.W.2d at 451 (emphasis added). Accordingly, neither of those decisions supports the State’s assertion that it had prosecutorial discretion absent an analysis of whether the statute and the ordinance are in pari materia.

Criminal Appeals in *Aguirre*, however, require us to look beyond the State’s argument and “look for a manifest intent to dispense with the requirement of a culpable mental state” by “ask[ing] whether such an intent is manifested by other features of the [ordinance].” 22 S.W.3d at 472. We, therefore, “examin[e] other attributes of the ordinance in light of [the] non-exhaustive list of suggested factors articulated in *Aguirre*.” *Thompson v. State*, 44 S.W.3d 171, 178 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

(1) Language of the Statute

If any section of the ordinance prescribes a mental state, we presume the omission in section 21-151 was necessarily intended to dispense with a mental state. *See Aguirre*, 22 S.W.3d at 472; *Rivera v. State*, 363 S.W.3d 550, 668 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *Thompson*, 44 S.W.3d at 178. In this case, section 21-154, which is also contained in article VI of Chapter 21 of the San Antonio Code of Ordinances, makes it unlawful “for any person seventeen (17) years of age or older to intentionally, knowingly, recklessly, or with criminal negligence facilitate, suffer, or permit” either the discharge of a firearm or the physical possession of a firearm “by any person under the age of seventeen (17) by allowing that person to obtain unsupervised access to the firearm.” SAN ANTONIO, TEX., CODE OF ORDINANCES ch. 21, art. VI, § 21-154 (2018). Because section 21-154 prescribes a mental state, we presume the omission of a mental state in section 21-151 was intentional. Accordingly, this factor weighs against requiring a culpable mental state.

(2) Nature of the Offense: *Malum Prohibitum* or *Malum in Se*

*Malum in se* offenses include acts that are inherently immoral, such as murder, arson, or rape, while *malum prohibitum* offenses are acts that are crimes merely because the act is prohibited by statute even though the act itself is not necessarily immoral. *State v. Walker*, 195 S.W.3d 293, 298 (Tex. App.—Tyler 2006, no pet.); *Thompson*, 44 S.W.3d at 178. “Examples of *malum*

*prohibitum* offenses include speeding, illegal dumping of trash, and possession of a firearm while under a domestic restraining order.” *Thompson*, 44 S.W.3d at 178. “The implication is that a strict liability offense must be *malum prohibitum*.” *Aguirre*, 22 S.W.3d at 473. Because a violation of section 21-152 is not inherently immoral, it is a *malum prohibitum* offense; therefore, this factor also weighs against requiring a culpable mental state.

(3) Subject of the Ordinance

“The most important factor in the more recent cases [discussing strict liability offenses] is the subject of the statute” or ordinance. *Id.* “Strict liability is traditionally associated with protection of public health, safety, or welfare.” *Id.* Quoting the United States Supreme Court’s decision in *Morissette v. United States*, 342 U.S. 246, 252-54 (1952), the court further explained in *Aguirre*:

Many of these offenses are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. ... The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities.

*Aguirre*, 22 S.W.3d at 474 (quoting *Morissette*, 342 U.S. 252-54); *see also Rivera*, 363 S.W.3d at 668-69 (“The class of public safety statutes that appellate courts have found to impose strict liability comprises statutes that punish dangerous activities that may result in serious physical injury or death to members of the public.”); *Thompson*, 44 S.W.3d at 179 (noting strict liability offenses “represent society’s attempts to regulate nuisances that might affect or be detrimental to the general health, safety, and welfare of the citizenry”) (internal quotation omitted). In this case, making it unlawful to discharge a firearm within city limits relates to public safety and punishes a dangerous activity that has the potential to cause serious physical injury or death to members of the public. Accordingly, this factor weighs against requiring a culpable mental state.

(4) Legislative History

“We are not provided with a legislative history of the ordinance,” and we could not locate any. *Aguirre*, 22 S.W.3d at 476.

(5) Seriousness of Harm to the Public

The more serious the consequences to the public, the more likely liability was intended to be imposed without regard to fault. *Aguirre*, 22 S.W.3d at 476; *Walker*, 195 S.W.3d at 299. Most strict liability statutes protect “unwitting and unwilling members of the public from the noxious and harmful behavior of others, in situations in which it would be difficult for members of the public to protect themselves.” *Thompson*, 44 S.W.3d at 180. Such statutes involve serious risk to the public, including serious physical injury or death. *Rivera*, 363 S.W.3d at 669; *Walker*, 195 S.W.3d at 299. Because the discharge of a firearm involves serious risk to the public, this factor weighs against requiring a culpable mental state.

(6) Defendant’s Opportunity to Ascertain the True Facts

“When ordinary citizens are not in a position to know about a statute or conduct constituting a violation of the statute, it is unlikely that the legislature intended to forego a culpable mental state.” *Rivera*, 363 S.W.3d at 670. “This factor should be viewed in the context of who, as between one in a business or an ordinary citizen, would have greater knowledge of the accepted standards of conducting the activity out of which the offense arose.” *Walker*, 195 S.W.3d at 299. In evaluating this factor, ordinary citizens are considered to be less likely to be in a position to know a law governing their conduct exists. *See id.* Because discharging a firearm is inherently dangerous, however, ordinary citizens are more likely to be aware that laws would exist to govern the discharge as opposed to the existence of laws governing less obviously dangerous activities. Because the application of this factor is unclear, we consider this factor to be neutral.



## (7) Difficulty in Proving Mental State

The greater the difficulty prosecutors would have in proving a mental state for the particular offense, the more likely legislators intended to create a strict liability offense so that the law could be more effectively enforced. *Aguirre*, 22 S.W.3d at 476; *Walker*, 199 S.W.3d at 299. A defendant's intentions or culpable mental state can be inferred from circumstantial evidence, such as her words, actions, and conduct. *Rivera*, 363 S.W.3d at 670; *Walker*, 195 S.W.3d at 300. Because intent may be inferred from a defendant's words, actions, and conduct, proving a mental state required to violate the ordinance is no more difficult than proving a mental state in another offense. *Rivera*, 363 S.W.3d at 670; *Walker*, 195 S.W.3d at 300. Accordingly, this factor weighs in favor of a conclusion that the ordinance requires a culpable mental state. *See Rivera*, 363 S.W.3d at 670; *Walker*, 195 S.W.3d at 300.

## (8) Number of Prosecutions Expected

"The fewer the expected prosecutions, the more likely the legislature meant to require the prosecuting officials to go into the issue of fault; the greater the number of prosecutions, the more likely the legislature meant to impose liability without regard to fault." *Aguirre*, 22 S.W.3d at 476. Because we lack information regarding this factor, this factor is neutral. *See Rivera*, 363 S.W.3d at 670; *Thompson*, 44 S.W.3d at 182.

## (9) Severity of the Punishment

"[T]he greater the possible punishment, the more likely some fault is required; and, conversely, the lighter the possible punishment, the more likely the legislature meant to impose liability without fault." *Aguirre*, 22 S.W.3d at 476. "Strict liability is generally associated with civil violations that are punishable by fine only." *Walker*, 195 S.W.3d at 300.

A violation of the ordinance is a Class C misdemeanor. "Conviction of a Class C misdemeanor does not impose any legal disability of disadvantage." TEX. PENAL CODE ANN. §

12.03(c). “An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.” *Id.* at § 12.23. Therefore, this factor weighs against requiring a culpable mental state.

(10) Conclusion

A majority of the factors weigh against requiring a culpable mental state, and only one factor weighs in favor of requiring a culpable mental state. The remaining factors are neutral. Therefore, we hold the ordinance does not require a culpable mental state. As a result, the statute and the ordinance have different elements of proof, and this weighs against the statute and the ordinance being in *pari materia*.

C. Purpose or Object

“Similarity of purpose or object is the most important factor in determining whether two provisions are in *pari materia*.” *Burke*, 28 S.W.3d at 547; *see also Alejos*, 555 S.W.2d at 450 (“As between characterization of the subject matter with which a statute deals and characterization of its object or purpose, the latter appears to be the more important factor.”) (internal quotation omitted). “The two provisions must have been enacted with the same purpose in mind in order for the doctrine to apply.” *Burke*, 28 S.W.3d at 547. Because the ordinance provides for a strict liability offense, while the statute requires a culpable mental state, we believe they have a different purpose or object. The statute targets people who recklessly discharge a firearm and, therefore, have engaged in culpable criminal conduct. The ordinance imposes strict liability on people who discharge a firearm within the city limit because the conduct is inherently dangerous to members of the public.

D. Conclusion

Although the ordinance and the statute deal with the same subject matter and the same conduct may sometimes violate both, they are enacted by two separate legislative bodies, “have

different elements of proof, different penalties and [are] designed to serve different purposes or objectives.” *See Alejos*, 555 S.W.2d at 449. Accordingly, we hold the statute and the ordinance are not in pari materia, and the State “properly exercised its option” to prosecute Musa-Valle under the statute. *See id.* at 451. Therefore, the trial court erred in granting Musa-Valle’s motion to set aside the information.<sup>3</sup>

### CONCLUSION

The trial court’s order is reversed, and the cause is remanded to the trial court for further proceedings.

Rebeca C. Martinez, Justice

DO NOT PUBLISH

---

<sup>3</sup> We note that if the ordinance and the statute were in pari materia, we would reject the State’s argument that “[h]aving different punishment ranges does not create a conflict between the two laws.” *See Mills*, 722 S.W.2d at 414 (holding where “special statute provides for a lesser range of punishment than the general, obviously an ‘irreconcilable conflict’ exists”); *see also Azeez v. State*, 248 S.W.3d 182, 193 (Tex. Crim. App. 2008) (“Moreover, because violation of Section 543.009(b) of the Transportation Code carries a lesser range of punishment than the broader Section 38.10(a) of the Penal Code, the statutes are in irreconcilable conflict.”). The State also cites a statement from this court’s opinion in *State v. DeLoach*, 458 S.W.3d 696, 698 (Tex. App.—San Antonio 2015, pet. ref’d), as support for its position that if the ordinance and the statute conflicted, the ordinance is unenforceable. In making the referenced statement, however, this court was discussing the doctrine of preemption, not the doctrine of in pari materia. Our discussion focused on when an ordinance is preempted by a statute, noting, “The Legislature may limit a home-rule city’s broad powers only when it expresses its intent to do so with ‘unmistakable clarity.’” *DeLoach*, 458 S.W.3d at 698. And, we then cited *Dall. Merchant’s & Concessionaire’s Ass’n v. City of Dall.*, 852 S.W.2d 489, 491 (Tex. 1993), to note the effect of a conflict between a statute and an ordinance in the context of preemption. *DeLoach*, 458 S.W.3d at 698. As the Texas Supreme Court stated in *Dall. Merchant’s & Concessionaire’s Ass’n*, “An ordinance of a home-rule city that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute.” 852 S.W.2d at 491. In this case, the doctrine of preemption is not applicable because the Legislature has expressly stated it did not intend for section 42.12 to preempt a municipality from enacting an ordinance prohibiting the discharge of a firearm. *See* TEX. PENAL CODE ANN. § 42.12(d) (noting statute “does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm”).

# **APPENDIX B**



**Fourth Court of Appeals**  
**San Antonio, Texas**

August 23, 2018

No. 04-17-00278-CR

The **STATE** of Texas,  
Appellant

v.

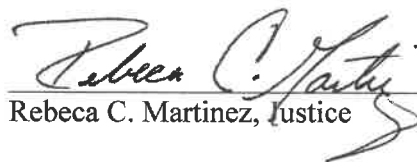
José **MUSA-VALLE**,  
Appellee

From the County Court at Law No. 5, Bexar County, Texas  
Trial Court No. 538466  
Honorable John Longoria, Judge Presiding

**O R D E R**


Sitting: Karen Angelini, Justice  
Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice

The panel has considered the appellee's motion for rehearing, and the motion is DENIED.

  
Rebeca C. Martinez, Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 23rd day of August, 2018.



  
Keith E. Hottle  
Clerk of Court

# APPENDIX C

## **San Antonio City Ordinance § 21-152**

### **Sec. 21-152. - Discharge of firearm.**

**(1) It shall be unlawful for any person to discharge a firearm within the city limits of the City of San Antonio.**

**(2) It is an affirmative defense to prosecution for a violation of this provision that:**

**(A) The person discharging the firearm was a certified peace officer at the time and the discharge was done in the performance of his duties as such; or**

**(B) The person discharging the firearm was a certified security guard at the time and the discharge was done in the performance of his duties as such; or**

**(C) The discharge was justified under the provisions of Chapter 9 of the Texas Penal Code; or**

**(D) The discharge occurred at a firing range or other area designated for target practice.**

**(Ord. No. 79328, § 2, 12-16-93; Ord. No. 84805, § 1, 9-19-96)**

# APPENDIX D



HOME RULE CITY	CODE PROVISION PROSCRIBING FIREARM DISCHARGE
Houston, Texas	Code of Ordinances Sec. 28-47**
San Antonio, Texas	Code of Ordinances Sec. 21-152
Dallas, Texas	Code of Ordinances 31-4
Austin, Texas	Code of Ordinances Sec. 9-6-7
Fort Worth, Texas	Code of Ordinances Sec. 23-6
El Paso, Texas	Code of Ordinances Sec. 10.12.010
Arlington, Texas	Code of Ordinances Sec. 1.07**
Corpus Christi, Texas	Code of Ordinances Sec. 33-75
Plano, Texas	Code of Ordinances Sec. 14-5
Laredo, Texas	Code of Ordinances Sec. 21-151
Lubbock, Texas	Code of Ordinances Sec. 14.02.002
Irving, Texas	Code of Ordinances Sec. 24-2
Garland, Texas	Code of Ordinances Sec. 26.05
Amarillo, Texas	Code of Ordinances Sec. 13-3-27
San Angelo, Texas	Code of Ordinances Sec. 8.02.004
Grand Prairie, Texas	Code of Ordinances Sec. 17.50
McKinney, Texas	Code of Ordinances Sec. 70-1
Frisco, Texas	Code of Ordinances Sec. 54-57
Pasadena, Texas	<i>See</i> Code of Ordinances Sec. 20-91 (pertaining to minors and discharge of firearms).**
Mesquite, Texas	Code of Ordinances Sec. 10-9
Killeen, Texas	Code of Ordinances Sec. 16.43
McAllen, Texas	Code of Ordinances Sec. 70-6
Carrollton, Texas	Code of Ordinances Sec. 130.11
Midland, Texas	Code of Ordinances Sec. 6-1-21**
Waco, Texas	Code of Ordinances Sec. 14-4**

Denton, Texas	Code of Ordinances Sec. 21-4
North Richland Hills, Texas	Code of Ordinances Sec. 50-1
Conroe, Texas	Code of Ordinances Sec. 46-3
Victoria, Texas	Code of Ordinances Sec. 15-6
Cedar Park, Texas	Code of Ordinances Sec. 8.01.002
Harlingen, Texas	Code of Ordinances Sec. 34-84
Georgetown, Texas	Code of Ordinances Sec. 9.08.020
San Marcos, Texas	Code of Ordinances Sec. 54.026
Rowlett, Texas	Code of Ordinances Sec. 34-33
Pflugerville, Texas	Code of Ordinances Sec. 130.03
Grapevine, Texas	Code of Ordinances Sec. 15-2
Tyler, Texas	Code of Ordinances Sec. 4-104
Eules, Texas	Code of Ordinances Sec. 50-26
DeSoto, Texas	Code of Ordinances Sec. 8.314

\*\* Denotes an express culpability requirement

# APPENDIX E

Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995)

By: West S.B. No. 68  
A BILL TO BE ENTITLED  
AN ACT

1-1 relating to the reckless discharge of a firearm; creating an 1-2 offense and providing criminal penalties and civil remedies.

1-3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-4 SECTION 1. Chapter 42, Penal Code, is amended by adding 1-5 Section 42.12 to read as follows:

1-6 Sec. 42.12. DISCHARGE OF FIREARM IN CERTAIN METROPOLITAN 1-7 AREAS. (a) A person commits an offense if the person recklessly 1-8 discharges a firearm inside the corporate limits of a municipality 1-9 having a population of 100,000 or more. 1-10 (b) An offense under this section is a Class A misdemeanor. 1-11 (c) If conduct constituting an offense under this section 1-12 also constitutes an offense under another section of this code, the 1-13 person may be prosecuted under either section.

1-14 SECTION 2. Section 125.001, Civil Practice and Remedies 1-15 Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 1-16 857, Acts of the 73rd Legislature, Regular Session, 1993, is 1-17 amended to read as follows:

1-18 Sec. 125.001. COMMON NUISANCE. A person who knowingly 1-19 maintains a place to which persons habitually go for the purpose of 1-20 prostitution or gambling in violation of the Penal Code, for the 1-21 purpose of reckless discharge of a firearm as described by Section 1-22 42.12 <42.015>, Penal Code, for the purpose of engaging in 1-23 organized criminal activity as a member of a combination <e-e-e-s---e, 2-1 member of a criminal street gang> as described by Section 71.02, 2-2 Penal Code, or for the delivery or use of a controlled substance in 2-3 violation of Chapter 481, Health and Safety Code, maintains a 2-4 common nuisance.

2-5 SECTION 3. Section 125.004(a), Civil Practice and Remedies 2-6 Code, is amended to read as follows:

2-7 (a) Proof that prostitution or gambling in violation of the 2-8 Penal Code, that reckless discharge of a firearm as described by 2-9 Section 42.12 <42.015>, Penal Code, or that the delivery or use of 2-10 a controlled substance in violation of Chapter 481, Health and 2-11 Safety Code, is frequently committed at the place involved or that 2-12 the place is frequently used for reckless discharge of a firearm as 2-13 described by Section 42.12 <42.015>, Penal Code, is prima facie 2-14 evidence that the proprietor knowingly permitted the act.

2-15 SECTION 4. Section 125.004(b), Civil Practice and Remedies 2-16 Code, as amended by Section 3, Chapter 857, and Section 2, Chapter 2-17 968, Acts of the 73rd Legislature, Regular Session, 1993, is 2-18 amended to read as follows:

2-19 (b) Evidence that persons have been convicted of gambling, 2-20 committing prostitution, reckless discharge of a firearm as 2-21 described by Section 42.12 <42.015>, Penal Code, engaging in 2-22 organized criminal activity as a member of a combination <o ra 2-23 criminal street gang> as described by Section 71.02, Penal Code, or 2-24 delivering or using a controlled substance in violation of Chapter 2-25 481, Health and Safety Code, in the place involved is admissible to 3-1 show knowledge on the part of the defendant that the act occurred. 3-2 The originals or certified copies of the papers and judgments of 3-3 those convictions are admissible in the suit for injunction, and 3-4 oral evidence is admissible to show that the offense for which a 3-5 person was convicted was committed at the place involved.

3-6 SECTION 5. Section 125.021, Civil Practice and Remedies 3-7 Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 3-8 857, Acts of the 73rd Legislature, Regular Session, 1993, is 3-9 amended to read as follows:

3-10 Sec. 125.021. PUBLIC NUISANCE. The habitual use or the 3-11 threatened or contemplated habitual use of any place for any of the 3-12 following purposes is a public nuisance:

3-13 (1) gambling, gambling promotion, or communicating

3-14 gambling information prohibited by law;

3-15 (2) promotion or aggravated promotion of prostitution; 3-16 (3) compelling prostitution;

3-17 (4) commercial manufacture, commercial distribution, 3-18 or commercial exhibition of obscene material;

3-19 (5) commercial exhibition of live dances or other acts 3-20 depicting real or simulated sexual intercourse or deviate sexual 3-21 intercourse;

3-22 (6) engaging in a voluntary fight between a man and a 3-23 bull if the fight is for a thing of value or a championship, if a 3-24 thing of value is wagered on the fight, or if an admission fee for 3-25 the fight is directly or indirectly charged, as prohibited by law;

4-1 (7) reckless discharge of a firearm as described by 4-2 Section 42.12 <42.015>, Penal Code; <et.> 4-3 (8) <(7)> engaging in organized criminal activity as a 4-4 member of a combination <oras a member of a criminal street gang> 4-5 as described by Section 71.02, Penal Code; or 4-6 (9) <(8)> delivering or using a controlled substance 4-7 in violation of Chapter 481, Health and Safety Code.

4-8 SECTION 6. Section 125.041, Civil Practice and Remedies 4-9 Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 4-10 857, Acts of the 73rd Legislature, Regular Session, 1993, is 4-11 amended to read as follows:

4-12 Sec. 125.041. PUBLIC NUISANCE. For the purposes of this 4-13 subchapter, a public nuisance is considered to exist at a place if 4-14 one or more of the following acts occurs at that place on a regular 4-15 basis:

4-16 (1) gambling, gambling promotion, or communication of 4-17 gambling information, as prohibited by Chapter 47, Penal Code;

4-18 (2) promotion or aggravated promotion of prostitution, 4-19 as prohibited by Chapter 43, Penal Code;

4-20 (3) compelling prostitution, as prohibited by Chapter 4-21 43, Penal Code;

4-22 (4) commercial manufacture, commercial distribution, 4-23 or commercial exhibition of material that is obscene, as defined by 4-24 Section 43.21, Penal Code;

4-25 (5) commercial exhibition of a live dance or other act

5-1 in which a person engages in real or simulated sexual intercourse 5-2 or deviate sexual intercourse, as defined by Section 43.01, Penal 5-3 Code;

5-4 (6) reckless discharge of a firearm as described by 5-5 Section 42.12 <42.015>, Penal Code; <ei-> 5-6 (7) <(6)> engaging in organized criminal activity as a 5-7 member of a combination < 5-8 as described by Section 71.02, Penal Code; or 5-9 (8) <(7)> manufacture, delivery, or use of a 5-10 controlled substance in violation of Chapter 481, Health and Safety 5-11 Code.

5-12 SECTION 7. The change in law made by Sections 2-6 of this 5-13 Act applies only to a cause of action that accrues on or after the 5-14 effective date of this Act. A cause of action that accrues before 5-15 the effective date of this Act is governed by the law in effect at 5-16 the time the cause of action accrued, and that law is continued in 5-17 effect for that purpose.

5-18 SECTION 8. This Act takes effect September 1, 1995.

5-19 SECTION 9. The importance of this legislation and the 5-20 crowded condition of the calendars in both houses create an 5-21 emergency and an imperative public necessity that the 5-22 constitutional rule requiring bills to be read on three several 5-23 days in each house be suspended, and this rule is hereby suspended.

# APPENDIX F

1-1 By: West  
 1-2 (In the Senate - Filed November 17, 1994; January 11, 1995,  
 1-3 read first time and referred to Committee on Criminal Justice;  
 1-4 March 15, 1995, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 6, Nays 0; March 15, 1995,  
 1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 68 By: West

1-8 A BILL TO BE ENTITLED

1-9 AN ACT

1-10 relating to the reckless discharge of a firearm and other common or  
 1-11 public nuisances; creating an offense and providing criminal  
 1-12 penalties and civil remedies.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 42, Penal Code, is amended by adding  
 1-15 Section 42.12 to read as follows:

1-16 Sec. 42.12. DISCHARGE OF FIREARM IN MUNICIPALITIES. (a) A  
 1-17 person commits an offense if the person recklessly discharges a  
 1-18 firearm inside the corporate limits of a municipality.

1-19 (b) An offense under this section is a Class A misdemeanor.

1-20 (c) If conduct constituting an offense under this section  
 1-21 also constitutes an offense under another section of this code, the  
 1-22 person may be prosecuted under either section.

1-23 (d) Subsection (a) does not affect the authority of a  
 1-24 municipality to enact an ordinance which prohibits the discharge of  
 1-25 a firearm.

1-26 SECTION 2. Section 125.001, Civil Practice and Remedies  
 1-27 Code, as amended by Section 1, Chapter 968, and Section 2, Chapter  
 1-28 857, Acts of the 73rd Legislature, 1993, is amended to read as  
 1-29 follows:

1-30 Sec. 125.001. COMMON NUISANCE. A person who knowingly  
 1-31 maintains a place to which persons habitually go for the purpose of  
 1-32 prostitution or gambling in violation of the Penal Code, for the  
 1-33 purpose of reckless discharge of a firearm as described by Section  
 1-34 42.12 <42-015>, Penal Code, for the purpose of engaging in  
 1-35 organized criminal activity as a member of a combination ~~or as a~~  
 1-36 ~~member of a criminal street gang~~ as described by Section 71.02,  
 1-37 Penal Code, ~~or~~ for the delivery or use of a controlled substance  
 1-38 in violation of Chapter 481, Health and Safety Code, or any felony  
 1-39 maintains a common nuisance.

1-40 SECTION 3. Subsection (a), Section 125.004, Civil Practice  
 1-41 and Remedies Code, is amended to read as follows:

1-42 (a) Proof that prostitution or gambling in violation of the  
 1-43 Penal Code, that reckless discharge of a firearm as described by  
 1-44 Section 42.12 <42-015>, Penal Code, or that the delivery or use of  
 1-45 a controlled substance in violation of Chapter 481, Health and  
 1-46 Safety Code, is frequently committed at the place involved or that  
 1-47 the place is frequently used for reckless discharge of a firearm as  
 1-48 described by Section 42.12 <42-015>, Penal Code, or the frequent  
 1-49 commission of any felony or felonies is prima facie evidence that  
 1-50 the proprietor knowingly permitted the act.

1-51 SECTION 4. Subsection (b), Section 125.004, Civil Practice  
 1-52 and Remedies Code, as amended by Section 3, Chapter 857, and  
 1-53 Section 2, Chapter 968, Acts of the 73rd Legislature, 1993, is  
 1-54 amended to read as follows:

1-55 (b) Evidence that persons have been convicted of gambling,  
 1-56 committing prostitution, reckless discharge of a firearm as  
 1-57 described by Section 42.12 <42-015>, Penal Code, engaging in  
 1-58 organized criminal activity as a member of a combination ~~or a~~  
 1-59 ~~criminal street gang~~ as described by Section 71.02, Penal Code,  
 1-60 ~~or~~ delivering or using a controlled substance in violation of

1-61 Chapter 481, Health and Safety Code, or any felony in the place  
1-62 involved is admissible to show knowledge on the part of the  
1-63 defendant that the act occurred. The originals or certified copies  
1-64 of the papers and judgments of those convictions are admissible in  
1-65 the suit for injunction, and oral evidence is admissible to show  
1-66 that the offense for which a person was convicted was committed at  
1-67 the place involved.

1-68 SECTION 5. Section 125.021, Civil Practice and Remedies  
2-1 Code, as amended by Section 1, Chapter 968, and Section 2, Chapter  
2-2 857, Acts of the 73rd Legislature, 1993, is amended to read as  
2-3 follows:

2-4 Sec. 125.021. PUBLIC NUISANCE. The habitual use or the  
2-5 threatened or contemplated habitual use of any place for any of the  
2-6 following purposes is a public nuisance:

2-7 (1) gambling, gambling promotion, or communicating  
2-8 gambling information prohibited by law;  
2-9 (2) promotion or aggravated promotion of prostitution;  
2-10 (3) compelling prostitution;  
2-11 (4) commercial manufacture, commercial distribution,  
2-12 or commercial exhibition of obscene material;  
2-13 (5) commercial exhibition of live dances or other acts  
2-14 depicting real or simulated sexual intercourse or deviate sexual  
2-15 intercourse;

2-16 (6) engaging in a voluntary fight between a man and a  
2-17 bull if the fight is for a thing of value or a championship, if a  
2-18 thing of value is wagered on the fight, or if an admission fee for  
2-19 the fight is directly or indirectly charged, as prohibited by law;

2-20 (7) reckless discharge of a firearm as described by  
2-21 Section ~~42.12~~ <42-015>, Penal Code; <ex>

2-22 (8) <+7> engaging in organized criminal activity as a  
2-23 member of a combination <ex as a member of a criminal street gang>  
2-24 as described by Section 71.02, Penal Code; <ex>

2-25 (9) <+8> delivering or using a controlled substance  
2-26 in violation of Chapter 481, Health and Safety Code; or

2-27 (10) committing any felony or felonies.

2-28 SECTION 6. Section 125.041, Civil Practice and Remedies  
2-29 Code, as amended by Section 1, Chapter 968, and Section 2, Chapter  
2-30 857, Acts of the 73rd Legislature, 1993, is amended to read as  
2-31 follows:

2-32 Sec. 125.041. PUBLIC NUISANCE. For the purposes of this  
2-33 subchapter, a public nuisance is considered to exist at a place if  
2-34 one or more of the following acts occurs at that place on a regular  
2-35 basis:

2-36 (1) gambling, gambling promotion, or communication of  
2-37 gambling information, as prohibited by Chapter 47, Penal Code;

2-38 (2) promotion or aggravated promotion of prostitution,  
2-39 as prohibited by Chapter 43, Penal Code;

2-40 (3) compelling prostitution, as prohibited by Chapter  
2-41 43, Penal Code;

2-42 (4) commercial manufacture, commercial distribution,  
2-43 or commercial exhibition of material that is obscene, as defined by  
2-44 Section 43.21, Penal Code;

2-45 (5) commercial exhibition of a live dance or other act  
2-46 in which a person engages in real or simulated sexual intercourse  
2-47 or deviate sexual intercourse, as defined by Section 43.01, Penal  
2-48 Code;

2-49 (6) reckless discharge of a firearm as described by  
2-50 Section ~~42.12~~ <42-015>, Penal Code; <ex>

2-51 (7) <+6> engaging in organized criminal activity as a  
2-52 member of a combination <ex as a member of a criminal street gang>  
2-53 as described by Section 71.02, Penal Code; <ex>



2-54 (8) <(7)> manufacture, delivery, or use of a  
2-55 controlled substance in violation of Chapter 481, Health and Safety  
2-56 Code; OR

2-57 (9) committing any felony or felonies.

2-58 SECTION 7. The change in law made by Sections 2 through 6 of  
2-59 this Act applies only to a cause of action that accrues on or after  
2-60 the effective date of this Act. A cause of action that accrues  
2-61 before the effective date of this Act is governed by the law in  
2-62 effect at the time the cause of action accrued, and that law is  
2-63 continued in effect for that purpose.

2-64 SECTION 8. This Act takes effect September 1, 1995.

2-65 SECTION 9. The importance of this legislation and the  
2-66 crowded condition of the calendars in both houses create an  
2-67 emergency and an imperative public necessity that the  
2-68 constitutional rule requiring bills to be read on three several  
2-69 days in each house be suspended, and this rule is hereby suspended.

2-70 \* \* \* \* \*

# APPENDIX G

## BILL ANALYSIS

C.S.S.B. 68  
By: West (Hochberg)  
April 3, 1995  
Committee Report (Substituted)

## BACKGROUND

In the 73rd Session, S.B. 145 (which regulated the reckless discharge of a firearm in certain metropolitan areas), was passed and became effective September 1, 1993. However, when the revised Penal Code took effect in September 1994, the statute was repealed because it had been inadvertently omitted in the Penal Code reform bill. Now, Houston, Dallas, and other heavily populated metropolitan areas have no means to regulate the problem of citizens who discharge firearms.

## PURPOSE

If enacted, C.S.S.B. 68 would reinstate the offense for recklessly discharging a firearm within the corporate limits of a municipality with a population greater than 100,000.

## RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 42, Penal Code, by adding Section 42.12, as follows:

Sec. 42.12. DISCHARGE OF FIREARM IN CERTAIN METROPOLITAN AREAS.

- (a) Creates an offense for recklessly discharging a firearm inside the corporate limits of a municipality with a population of 100,000 or more.
- (b) Provides that the offense is a Class A misdemeanor.
- (c) Authorizes a person to be prosecuted under this section or another section of this code if conduct constituting an offense under this section also constitutes an offense under another section of this code.
- (d) Provides that Subsection (a) does not affect a municipality's authority to enact an ordinance that prohibits the discharge of a firearm.

SECTION 2. Amends Section 125.001, Civil Practice and Remedies Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 857, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

**Sec. 125.001. COMMON NUISANCE.** Expands definition under this section to include maintaining a place to which persons habitually go for the purpose of discharge of a firearm in a public place in violation of Section 42.01(a)(9), Penal Code (DISORDERLY CONDUCT).

**SECTION 3.** Amends Section 125.004(a), Civil Practice and Remedies Code, as follows:

(a) expands the list of items considered prima facie evidence of a proprietor's knowledge of permitting an act to include the discharge of a firearm in a public place in violation of Section 42.01(a)(9), Penal Code (DISORDERLY CONDUCT).

**SECTION 4.** Amends Section 125.004(b), Civil Practice and Remedies Code, as amended by Section 3, Chapter 857, and Section 2, Chapter 968, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

(b) expands the list of items considered admissible evidence to show defendant's knowledge that the act occurred to include discharge of a firearm in a public place in violation of Section 42.01(a)(9), Penal Code (DISORDERLY CONDUCT).

**Section 5.** Amends Section 125.021, Civil Practice and Remedies Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 857, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

**Sec. 125.021. PUBLIC NUISANCE.** Expands the definition of place used for public nuisance under this Section to include the discharge of a firearm in a public place in violation of Section 42.01(a)(9), Penal Code.

**SECTION 6.** Amends Section 125.041, Civil Practice and Remedies Code, as amended by Section 1, Chapter 968, and Section 2, Chapter 857, Acts of the 73rd Legislature, Regular Session, 1993, as follows:

**Sec. 125.041. PUBLIC NUISANCE.** Expands the definition of habitual use of a public place used for public nuisance to include the discharge of a firearm in a public place in violation of Section 42.01(a)(9), Penal Code.

**SECTION 7.** Change in law made by sections 2-6 applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the Act's effective date is governed by the law in effect at the time the cause of action accrued.

**SECTION 8.** Effective date: September 1, 1995.

**SECTION 9.** Emergency clause.

#### COMPARISON OF SUBSTITUTE TO ORIGINAL

**SECTION 1.** Provides that Sec. 42.12(a), Penal Code, does not affect a municipality's authority to enact an ordinance that prohibits the discharge of a firearm.

SECTIONS 2 - 6. Expands definitions in these Sections to include the discharge of a firearm in a public place in violation of Section 42.01(a)(9), Penal Code.

#### SUMMARY OF COMMITTEE ACTION

SB 680 was considered by the full committee in a formal meeting on March 28, 1995. The bill was left pending. SB 680 was considered by the full committee in a public hearing on April 3, 1995. The committee considered a complete substitute for SB 680. The substitute was adopted without objection. SB 680 was reported favorably as substituted, with the recommendation that it do pass and be printed, by a record vote of 8 ayes, 0 nays, 0 pnv, and 1 absent.

# APPENDIX H

**SUBJECT:** Recklessly discharging a firearm inside a city of 100,000 or more

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 8 ayes — Place, Talton, Farrar, Hudson, Nixon, Pickett, Pitts, Solis  
0 nays  
1 absent — Greenberg

**SENATE VOTE:** On final passage, March 21 — voice vote

**WITNESSES:** None

**BACKGROUND:** Discharging or displaying a firearm becomes a criminal offense under various circumstances detailed in the Penal Code. Discharge of a firearm in a public place, other than a public road or shooting gallery, and display of a firearm in public place in a manner calculated to alarm, constitute Class B misdemeanors, maximum penalty of 180 days in jail and a \$2,000 fine, under disorderly conduct (Penal Code sec. 42.01). It is a Class C misdemeanor, maximum penalty of a \$500 fine, to discharge a firearm on or across a public road. Deadly conduct (Penal Code 22.05) includes the offense of knowingly discharging a firearm at or in the direction of one or more individuals or a habitation, building or vehicle, if the offender is reckless about whether the habitation is occupied. The offense is a third-degree felony, punishable by a prison term of two to 10 years and a maximum \$10,000 fine. It is a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine, under deadly conduct to engage in conduct that places another in imminent danger of serious bodily injury.

**DIGEST:** CSSB 68 would make it a Class A misdemeanor to recklessly discharge a firearm inside the corporate limits of a city with a population of 100,000 or more. CSSB 68 would not affect city's authority to enact ordinances to prohibit the discharge of a firearm.

Discharge of firearm in a public place and reckless discharge of a firearm would be added to the list of acts that can define a common nuisance and a

public nuisance and that can be abated and enjoined through suits under the Civil Practices and Remedies Code.

CSSB 68 would eliminate references to "criminal street gangs" in references to organized criminal activity.

CSSB 68 would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

CSSB 68 would restore to state law a prohibition against the dangerous conduct of recklessly firing a gun inside a city. A statewide law is necessary to establish minimum standards in the state's largest cities (about 19 would be included) and to provide a stiffer penalty, including possible jail time, than city ordinances can impose. Such a prohibition was enacted in 1991, and again in 1993, but it was not made part of the Penal Code revisions that took effect September 1, 1994.

The provision is needed because the current Penal Code offenses of discharge of a firearm in a public place and deadly conduct do not always cover the firing of guns in *private* places.

Every year there are numerous cases of people being struck by indiscriminate gunfire. Even a bullet fired straight up in the air on private property can cause severe injury when it lands. People are being shot by randomly fired bullets as they stroll down a street or watch television in their living rooms. CSSB 68 would decrease the likelihood of such senseless shootings and give prosecutors a precise charge to use when they occur.

CSSB 68 would only affect large metropolitan areas where recklessly fired guns can cause the most damage. Recklessness, defined in Penal Code sec. 6.03 as being aware of, but disregarding, a substantial and unjustifiable risk, would be a required element of the offense.

By adding discharge of a firearm and reckless discharge of a firearm to the lists of common and public nuisances that can be ordered abated through a civil suit, this bill would create a tool to have dangerous behavior stopped in the same way as gambling or prostitution. To be considered a common



or public nuisance acts must be habitual; a one-time offender would not be subject to a civil suit.

The elimination of references to "criminal street gangs" regarding organized criminal activity would simply make the Civil Practices and Remedies Code conform to Penal Code language adopted in 1993.

**OPPONENTS  
SAY:**

The conduct CSSB 68 describes is already prohibited by the deadly conduct laws that make it an offense to recklessly engage in conduct that places another in imminent danger of serious bodily injury. Furthermore, cities already have authority to enact ordinances otherwise regulating the firing of weapons.

The bill is too broad and could infringe on the rights of persons to fire their guns. For example, persons who fire guns in a city for self defense or the defense of others could be charged with reckless discharge of a firearm. The "recklessness" standard that would be used would make it easier for prosecutors to prove an offense, even if no harm was intended or done. Also, the precise location of the city limits in large cities is often unknown to a person shooting a gun in an isolated area.

**OTHER  
OPPONENTS  
SAY:**

The reckless discharge of firearms is a problem in all cities, not just large ones. CSSB 68 should apply in all cities, not just those with populations over 100,000.

**NOTES:**

The committee substitute added the Penal Code offense of discharge of a firearm in a public place (disorderly conduct) to the common and public nuisance provisions, specified that the bill would not affect a city's authority to enact ordinances and eliminated a provision that would have added the commission of felonies to the acts that can be considered when a place is determined to be a common or public nuisance.

The companion bill, HB 112 by Hochberg, Bailey et al., was reported favorably from the Criminal Jurisprudence Committee on March 6. HB 112 does not include the Penal Code offense of discharge a firearm in a public place (disorderly conduct) as part of the common and public nuisance provisions and does not include the provision stating that the bill would not affect city's authority to enact ordinances.

**A similar bill, SB 145 by West, was enacted by the 73rd Legislature but was not part of the 1993 Penal Code revisions, so it was law only until the new Penal Code took effect, September 1, 1994. SB 145 did not include the Penal Code offense of discharge of a firearm in a public place (disorderly conduct) as part of the common and public nuisance provisions and did not include the provision stating that the bill would not affect a city's authority to enact ordinances.**

# APPENDIX I

REGULAR MEETING OF THE CITY COUNCIL  
OF THE CITY OF SAN ANTONIO, HELD IN  
THE COUNCIL CHAMBER, CITY HALL, ON  
THURSDAY DECEMBER 16, 1993.

\* \* \* \*

93-50 The City Council convened in an informal session at 10:00 A.M.,  
City Hall, "B" Room, to consider the following item:

Staff Report on Capital Improvement Funds.

The following City Council members were present: PEREZ,  
McCLENDON, BILLA BURKE, AVILA, SOLIS, ROSS, THORNTON, PEAK, LARSON,  
WOLFF; Absent: AYALA.

- - - -  
\* \* \* \*

93-50 The regular meeting was called to order at 1:00 P.M. by the  
presiding officer, Mayor Nelson W. Wolff, with the following members  
present: PEREZ, McCLENDON, BILLA BURKE, AVILA, SOLIS, ROSS, THORNTON,  
PEAK, LARSON, WOLFF; Absent: AYALA.

- - - -  
93-50 Invocation - Councilman William Thornton.

- - - -  
93-50 Pledge of Allegiance to the flag of the United States.

- - - -  
93-50 Minutes of the November 23, 1993 Regular City Council Meeting  
were approved.

- - - -  
93-50 NIGERIAN VISITORS

Mayor Wolff noted that San Antonio is proud to have a  
distinguished delegation of Nigerian officials visiting our city, and  
stated that they would be in San Antonio until December 18, 1993. He  
then introduced Mr. J.T. Ayambem, Mr. S.B. Adegbite, and Ms. A.I.E.  
Okubanjo, Nigerian consular officials.

The Nigerian visitors each identified themselves and spoke to their reasons for visiting San Antonio, in order to see Nigerian nationals in residence here.

Mayor Wolff presented gifts to each and welcomed them to San Antonio.

93-50

DAVID ARZOLA AWARD

Mayor Wolff noted that the David Arzola Award was initiated by the San Antonio HIV/AIDS Commission, and is the highest award presented by the City to either an organization or an individual for outstanding efforts in the fight against AIDS.

Mayor Wolff stated that this year's award is posthumously honoring Mr. Paul Ely, one of the original founders of the Alamo Area Resource Center and a member of the San Antonio HIV/AIDS Commission who helped develop its mission statement, establish the David Arzola Award, and create a City Resolution to establish a public awareness campaign to help stop the spread of AIDS. He also noted that the late Mr. Ely was active in the San Antonio AIDS Foundation, the Bexar County Consortium, and Arts For Life.

Mayor Wolff then introduced the late Mr. Ely's mother, Ms. Betty Parsons; his sister-in-law, Ms. Laura Ely; and Ms. Sharon Rupp, Executive Director of the San Antonio AIDS Foundation. He then read the awards plaque and presented it to Ms. Parsons.

Ms. Rupp, speaking for the group, thanked the Mayor and City Council on behalf of the family, and spoke to the late Mr. Ely's work for AIDS awareness.

Ms. Angie Garza and others representing the AIDS Foundation spoke to the late Mr. Ely's work, and introduced relatives of the late Mr. Arzola, present in the audience.

93-50

RETIREMENT OF MS. ALICE HAMBY

Mr. Thornton noted that City Council secretary Ms. Alice Hamby is retiring from service with the City of San Antonio today, after 23 years of service with the City. He thanked her for her years of service to the City and to the City Council.

Mayor Wolff and Mr. Thornton then jointly presented her with a Certificate of Service.

Ms. Hamby thanked the Mayor and City Council for the recognition and the opportunity to serve the City.

Various City Council members then spoke to her many years of service, both to the City and to the City Council.

93-50

CONSENT AGENDA

Mr. Larson made a motion to approve Agenda Items 9 through 47b, constituting the Consent Agenda, with Agenda Item 46 having earlier been removed from consideration by the City Manager, and Agenda Items 11, 26, 39 and 42 pulled for individual consideration. Mr. Perez seconded the motion.

After consideration, the motion, carrying with it the passage of the following Ordinances, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff. NAYS: None. ABSENT: Ayala.

AN ORDINANCE 79,284

ACCEPTING THE PROPOSAL OF DUN & BRADSTREET INFORMATION SERVICES IN THE AMOUNT OF \$3,330.00 TO FURNISH THE CITY OF SAN ANTONIO PUBLIC LIBRARY WITH INFORMATION BUSINESS REFERENCE BOOKS AND PUBLICATIONS.

\* \* \* \*

AN ORDINANCE 79,285

ACCEPTING THE PROPOSAL OF UNIVERSITY MICROFILM INTERNATIONAL IN THE AMOUNT OF \$68,800.00 TO RENEW A ONE-YEAR SUBSCRIPTION FOR GENERAL PERIODICALS FOR THE CITY OF SAN ANTONIO PUBLIC LIBRARY.

\* \* \* \*

AN ORDINANCE 79,286

ACCEPTING THE LOW BID OF ALAMO PLUMBING SUPPLY COMPANY IN THE AMOUNT OF \$9,292.85 TO FURNISH THE CITY OF SAN ANTONIO PARKS & RECREATION DEPARTMENT WITH PLUMBING FIXTURES.

\* \* \* \*

AN ORDINANCE 79,287

ACCEPTING THE LOW BID OF WATSON DISTRIBUTING COMPANY, INC. IN THE AMOUNT OF \$9,996.00 TO FURNISH

THE CITY OF SAN ANTONIO PUBLIC WORKS DEPARTMENT WITH  
CHEMICAL SPRAYERS.

\* \* \* \*

AN ORDINANCE 79,288

ACCEPTING THE LOW BID OF ABRAMS AIR CONDITIONING &  
REFRIGERATION IN THE AMOUNT OF \$3,500.00 TO REPAIR  
TWO ROOF-TOP LIQUID CHILLERS AT THE SAN ANTONIO  
POLICE HEADQUARTERS.

\* \* \* \*

AN ORDINANCE 79,289

ACCEPTING THE LOW QUALIFIED BID OF JERRY D. DREHER  
IN THE AMOUNT OF \$7,037.05 TO FURNISH THE CITY OF  
SAN ANTONIO PUBLIC WORKS DEPARTMENT WITH PARKING  
METERS.

\* \* \* \*

AN ORDINANCE 79,290

ACCEPTING THE LOW BID OF FERRERA FIREFIGHTING  
EQUIPMENT IN THE AMOUNT OF \$26,680.00 TO FURNISH THE  
CITY OF SAN ANTONIO FIRE DEPARTMENT WITH  
FIREFIGHTING PROTECTIVE CLOTHING.

\* \* \* \*

AN ORDINANCE 79,291

ACCEPTING THE LOW BID OF DIAMOND SHAMROCK REFINING &  
MARKETING IN THE AMOUNT OF APPROXIMATELY  
\$2,000,000.00 TO PROVIDE GASOLINE FOR THE CITY OF  
SAN ANTONIO VEHICLE FLEET DURING 1994.

\* \* \* \*

AN ORDINANCE 79,292

ACCEPTING THE LOW BID OF CHEVRON USA PRODUCTS  
COMPANY IN THE AMOUNT OF APPROXIMATELY \$1,200,000.00  
TO PROVIDE DIESEL FUEL FOR THE CITY OF SAN ANTONIO  
VEHICLE FLEET DURING 1994.

\* \* \* \*

AN ORDINANCE 79,293

AUTHORIZING FIELD ALTERATION NO. 1 - FINAL IN THE DECREASED AMOUNT OF \$43,539.47 TO THE CONTRACT WITH CLARK CONSTRUCTION COMPANY, INC. IN CONNECTION WITH THE RIVER ROAD AREA 1993 SEAL COAT PROJECT.

\* \* \* \*

AN ORDINANCE 79,294

ACCEPTING THE LOW QUALIFIED BID OF SUPERIOR ROOFING IN THE AMOUNT OF \$29,549.00 FOR ROOF REPAIRS TO THE PALM HEIGHTS COMMUNITY CENTER; TRANSFERRING FUNDS FROM THE SPECIAL REVENUE RESERVE FUND; AUTHORIZING A \$2,950.00 CONTINGENCY ACCOUNT, \$1,160.00 FOR BID ADVERTISING, AND \$107.00 FOR PRINTING; APPROPRIATING FUNDS; AND PROVIDING FOR PAYMENT.

\* \* \* \*

AN ORDINANCE 79,295

AUTHORIZING THE EXECUTION OF FIELD ALTERATION NO. 2, IN THE AMOUNT OF \$33,589.66, TO THE CONTRACT WITH V. K. KNOWLTON PAVING CONTRACTOR, INC., FOR CONSTRUCTION OF THE AIRCRAFT HOLDING BAYS PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT; REVISING THE BUDGET FOR THE PROJECT; AND PROVIDING FOR PAYMENT.

\* \* \* \*

AN ORDINANCE 79,296

AUTHORIZING THE EXECUTION OF FIELD ALTERATION NO. 4, IN THE AMOUNT OF \$47,802.20, TO THE CONTRACT WITH STODDARD CONSTRUCTION COMPANY, FOR CONSTRUCTION OF THE BUILDING RENOVATIONS TO FAIRCHILD AIRCRAFT LEASEHOLD PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT; REVISING THE BUDGET FOR THE PROJECT; AND PROVIDING FOR PAYMENT.

\* \* \* \*

AN ORDINANCE 79,297

APPROVING A THREE-MONTH LEASE AGREEMENT WITH CNN AMERICA, INC., FOR SAID CORPORATION'S USE OF BUILDING NO. 252 (THE SOLIS HOUSE) IN HEMISFAIR PARK FOR A TOTAL CONSIDERATION OF FIFTEEN HUNDRED DOLLARS (\$1,500.00).

\* \* \* \*



AN ORDINANCE 79,298

APPROVING A THREE YEAR LEASE AGREEMENT WITH JANE K. DREYFUS, JAMES M. KALLISON, AND JACK B. KALLISON FOR 4,000 SQUARE FEET OF OFFICE SPACE LOCATED AT 415 SOUTH MAIN AVENUE FOR USE BY THE CITY'S OFFICE OF INTERNAL REVIEW WITH RENTS PAID IN MONTHLY INSTALLMENTS OF \$3,000.00 BEGINNING DECEMBER 17, 1993, THROUGH DECEMBER 16, 1996.

\* \* \* \*

AN ORDINANCE 79,299

ACCEPTING FEE SIMPLE TITLE FROM BARBARA E. MCCLUER TO THAT CERTAIN PROPERTY AT 620-622 FUNSTON PLACE, SAN ANTONIO, TEXAS, ALSO KNOWN AS LOT 20, NEW CITY BLOCK 7186, HILLTOP TERRACES, IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1625, PAGE 163, DEED AND ACCEPTING THE CONDITIONS FOR THE USE OF SAID PROPERTY IN CONNECTION WITH THE SAN ANTONIO BOTANICAL CENTER.

\* \* \* \*

AN ORDINANCE 79,300

AUTHORIZING THE EXECUTION OF A MONTHLY LEASE AGREEMENT WITH NORTHWEST AIRLINES, INC. FOR 521 SQUARE FEET OF OFFICE SPACE IN TERMINAL 1 AT SAN ANTONIO INTERNATIONAL AIRPORT AT A MONTHLY RENTAL OF \$2,852.48.

\* \* \* \*

AN ORDINANCE 79,301

AUTHORIZING THE ACCEPTANCE OF \$82,378.00 FROM THE ALAMO AREA COUNCIL OF GOVERNMENTS IN FINANCIAL ASSISTANCE FROM THE TEXAS CRIMINAL JUSTICE DIVISION TO AUGMENT THE CITY'S CRIMINAL JUSTICE PROGRAMS FOR FY 1993-94.

\* \* \* \*

AN ORDINANCE 79,302

AUTHORIZING AN AMENDMENT TO TEXAS NATURAL RESOURCE CONSERVATION COMMISSION GRANT CONTRACT NO. 3100000004, WHICH PROVIDES PARTIAL FUNDING TO THE

LITTER ABATEMENT PROGRAM, IN ORDER TO EXTEND THE  
TERMINATION DATE OF THE CONTRACT TO DECEMBER 31,  
1993.

\* \* \* \*

AN ORDINANCE 79,303

AUTHORIZING THE ACCEPTANCE OF \$32,190.00 FROM THE  
TEXAS ASSOCIATION OF PRIVATE INDUSTRY COUNCIL  
(TAPIC) TO PROVIDE A FOOD STAMP EMPLOYMENT AND  
TRAINING SERVICES PROJECT FOR FOOD STAMP RECIPIENTS  
IN GUADALUPE COUNTY FOR THE PERIOD NOVEMBER 1, 1993  
TO SEPTEMBER 30, 1994.

\* \* \* \*

AN ORDINANCE 79,304

RATIFYING AN AGREEMENT EXTENDING THE TERM OF A  
DRAINAGE AGREEMENT RELATING TO THE CONCOURSE PROJECT  
FROM 5 NOVEMBER 1993 FOR A PERIOD OF NINETY DAYS TO  
5 FEBRUARY 1994, AUTHORIZING THE EXECUTION OF AN  
"AGREEMENT PURSUANT TO DRAINAGE AGREEMENT" AND  
WAIVING THE NOTICE REQUIREMENTS OF ORDINANCE NO.  
58880 AS TO THE CLOSING OF CERTAIN STREETS WITHIN  
THE BOUNDARIES OF THE CONCOURSE PROJECT.

\* \* \* \*

AN ORDINANCE 79,305

AUTHORIZING AN AGREEMENT WITH CNA INSURANCE COMPANY  
THROUGH MARSH & McLENNAN FOR THE PURCHASE OF EXCESS  
WORKERS' COMPENSATION AT A COST OF \$260,000.00.

\* \* \* \*

AN ORDINANCE 79,306

AUTHORIZING THE RENEWAL OF THE CITY'S THIRD PARTY  
ADMINISTRATION CONTRACT WITH LINDSEY MORDEN CLAIMS  
MANAGEMENT, INC. FOR THE HANDLING OF THIRD-PARTY  
LIABILITY CLAIMS FILED AGAINST THE CITY AT AN  
ESTIMATED COST OF \$401,750.00

\* \* \* \*

AN ORDINANCE 79,307

AUTHORIZING THE PURCHASE OF THE CITY'S AIRCRAFT HULL  
AND LIABILITY INSURANCE POLICY FROM AMERICAN EAGLE

INSURANCE COMPANY THROUGH ARTHUR J. GALLAGHER AT A COST OF \$30,558.00.

\* \* \* \*

AN ORDINANCE 79,308

AUTHORIZING THE PURCHASE OF THE CITY'S AIRPORT LIABILITY INSURANCE FROM AMERICAN EAGLE INSURANCE COMPANY THROUGH ARTHUR J. GALLAGHER AT A COST OF \$73,350.00.

\* \* \* \*

AN ORDINANCE 79,309

AUTHORIZING THE PURCHASE OF BOILER AND MACHINERY INSURANCE FROM KEMPER INSURANCE AT A COST OF \$28,368.00.

\* \* \* \*

AN ORDINANCE 79,310

AUTHORIZING THE PURCHASE OF THE CITY BLANKET PROPERTY INSURANCE FROM MARSH & MCLENNAN AT A COST NOT TO EXCEED \$427,000.00.

\* \* \* \*

AN ORDINANCE 79,311

AUTHORIZING THE RENEWAL OF THE CITY'S EXCESS LIABILITY INSURANCE FROM SCOTTSDALE INSURANCE THROUGH MARSH & MCLENNAN AT A COST OF \$551,811.36.

\* \* \* \*

AN ORDINANCE 79,312

AUTHORIZING THE PURCHASE OF AN ANNUAL SUBSCRIPTION WITH THE NATIONAL SAFETY COUNCIL IN THE AMOUNT OF \$18,960.00 FOR THE FAMILY SAFETY AND HEALTH QUARTERLY PUBLICATION FOR CITY EMPLOYEES.

\* \* \* \*

AN ORDINANCE 79,313

AUTHORIZING THE RENEWAL OF THE CITY'S CONTRACT WITH AUTOMATIC DATA PROCESSING (ADP) OF SAN ANTONIO FOR AUDITS AND CLAIMS ADMINISTRATION SERVICES FOR THE CITY'S UNEMPLOYMENT CLAIMS IN AN AMOUNT NOT TO

EXCEED \$16,000.00 FOR THE PERIOD OF JANUARY 1, 1994  
TO DECEMBER 31, 1994.

\* \* \* \*

AN ORDINANCE 79,314

AUTHORIZING THE RENEWAL OF THE CITY'S CONTRACT WITH  
PREFERRED HEALTH ARRANGEMENT (PHA) INC. TO  
ADMINISTER A PREFERRED NETWORK FOR THE CITY'S  
EMPLOYEE HEALTH BENEFIT PROGRAM AT AN ESTIMATED COST  
OF \$172,000.00.

\* \* \* \*

AN ORDINANCE 79,315

AUTHORIZING THE EXECUTION OF A CONTRACT WITH  
HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY TO  
PROVIDE SUPPLEMENTAL TERM LIFE INSURANCE TO ALL  
ELIGIBLE CITY EMPLOYEES; APPROPRIATING FUNDS; AND  
PROVIDING FOR PAYMENT.

\* \* \* \*

AN ORDINANCE 79,316

AUTHORIZING THE RENEWAL OF THE CITY'S CONTRACT WITH  
MANAGED HEALTHCARE, INC. TO PROVIDE HEALTH CARE  
REVIEW SERVICES AT A COST OF \$146,000.00.

\* \* \* \*

AN ORDINANCE 79,317

APPOINTING MR. DAVID S. ANDERSON (DISTRICT 3) TO  
THE BOARD OF APPEALS FOR A TERM OF OFFICE TO EXPIRE  
ON JULY 31, 1995.

\* \* \* \*

AN ORDINANCE 79,318

APPOINTING MS. OLIVIA THERIOT (DISTRICT 6) TO THE  
HOUSING TRUST FUND BOARD OF TRUSTEES FOR A TERM OF  
OFFICE TO EXPIRE ON MAY 30, 1996.

\* \* \* \*

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,319

ACCEPTING THE PROPOSAL OF FREYMAN & ASSOCIATES IN THE AMOUNT OF \$6,300.00 TO FURNISH THE CITY OF SAN ANTONIO WITH BOOKS ENTITLED "THIS IS/ASI ES SAN ANTONIO" FOR VISITING DIGNITARIES.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Ms. McClendon seconded the motion.

Mr. Archie Titzman, Director of Purchasing & General Services, spoke to this re-order of the official San Antonio books presented to visiting dignitaries.

A discussion then took place concerning the various updated editions of the book by the publisher.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,320

APPROPRIATING FUNDS AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$3,023.48 FOR APPRAISAL SERVICES ON THE OCTAVIA DRAINAGE PROJECT #63; AND TITLE SERVICES ON THE RITTIMAN ROAD RECONSTRUCTION PROJECT - THORNWOOD TO GIBBS-SPRAWL ROAD.

\* \* \* \*

Ms. McClendon made a motion to approve the proposed Ordinance. Ms. Billa Burke seconded the motion.

In response to a question by Ms. McClendon, Mr. John German, Director of Public Works, discussed the addition of the Fratt Road east side intersection improvements with donated land from HEB Grocery Company.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez,

McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,321

AUTHORIZING THE PURCHASE OF EXCESS LIABILITY COVERAGE FOR THE ALAMODOME FROM SCOTTSDALE INSURANCE AT AN ESTIMATED COST OF \$17,500.00 AND FROM GENERAL STAR INDEMNITY COMPANY AT AN ESTIMATED COST OF \$67,352.00, TOTALING \$84,852.00.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Mr. Avila seconded the motion.

Mr. Mark Persson, Risk Manager, Finance Department, addressed the need for excess liability insurance for the Alamodome.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,322

AUTHORIZING THE RENEWAL OF THE CITY'S CONTRACT WITH BENEFIT PLANNERS, INC. FOR THE CITY'S MEDICAL, DENTAL PLANS, HEALTH CARE AND DEPENDENT CARE REIMBURSEMENT ACCOUNTS AT AN ESTIMATED COST OF \$440,000.00.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Ms. McClendon seconded the motion.

Ms. Nora Chavez, Finance Director, briefly explained the proposed one-year contract extension for Benefit Planners, Inc., in view of the planned overhaul of the entire City employee insurance coverage.

In response to a question by Ms. McClendon, Ms. Chavez spoke to the Request For Proposal process followed in originally awarding this contract to Benefit Planners, Inc., and spoke to plans for use of the RFP process in 1994.

Mr. Alex Briseno, City Manager, noted that sufficient time was not available to process the entire RFP package, prior to January 1, 1994, and noted that it was easier to continue the existing contract for one year while the City staff develops its Preferred Provider Network and prepares a new RFP program covering all facets of City employee insurance coverage, next year.

Mayor Wolff spoke to his concern with awarding the bid to a firm that had moved out of San Antonio.

Mr. Ross spoke to the need for good analysis efforts in this regard, in view of what is happening with health care at the national level.

Ms. Chavez spoke of her desire to retain as many controls over City employee health care as possible at the in-house level.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

- - -  
93-50

XEROX CHECK PRESENTATION

Mayor Wolff noted that Mr. Harvey Heard, representing Xerox Corporation, had now arrived at the City Council chambers to present the City with a check for "The CO", proceeds from a Xerox-sponsored golf tournament designed to raise funds for the youth program of the City of San Antonio.

Mr. Heard then presented the City with a check in the amount of \$2,380.00, representing proceeds from the golf tournament, matched by a like amount of funds from Xerox Corporation.

Mayor Wolff and City Council members thanked Mr. Heard and the Xerox Corporation for its generous contribution to "The CO".

- - -  
93-50

AGENDA ITEMS ON GRAFFITI, YOUTH CURFEW, AND FIREARMS

At the suggestion of Ms. Billa Burke, it was the concensus of City Council members present to undertake Agenda items 58, 59 and 60 after 3:00 P.M.

- - -  
December 16, 1993  
nw

12

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,323

AUTHORIZING PAYMENTS OF REFUNDS TOTALING \$70,870.74, TO PERSONS MAKING A DOUBLE PAYMENT, OVERPAYMENT, OR AS A RESULT OF A VALUE CHANGE ON 31 TAX ACCOUNTS.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Mr. Solis seconded the motion.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,324

AUTHORIZING THE ACCEPTANCE OF \$30,000.00 FROM THE SAN ANTONIO CONSERVATION SOCIETY TO COMPLETE THE RESTORATION OF THE DECORATIVE PAINTING ON THE MEZZANINE WALLS OF THE NEW CITY COUNCIL CHAMBERS; AND AUTHORIZING FIELD ALTERATION NO. 11 IN THE AMOUNT OF \$29,676 RELATED TO THIS WORK AS PART OF THE CITY COUNCIL CHAMBER MAIN PLAZA BUILDING PROJECT; REVISING THE PROJECT BUDGET; AND PROVIDING FOR PAYMENT TO M. C. BOYLE GENERAL CONTRACTOR, INC.

\* \* \* \*

Mr. Solis made a motion to approve the proposed Ordinance. Ms. McClendon seconded the motion.

Mr. John German, Director of Public Works, explained the work involved in restoration of the decorative painting on the mezzanine level walls of the new City Council chambers in the Main Plaza Building.

Ms. Marianna Jones, representing the San Antonio Conservation Society, spoke to the importance of the new Council chambers and the need for the restoration work.

Several Council members thanked the Society for financing this restoration work.



After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,325

REGULATING THE RATES FOR ELECTRIC SERVICE THROUGH THE SAN ANTONIO ELECTRIC SYSTEM OPERATED BY THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Mr. Solis seconded the motion.

Mr. George Noe, Director of Management Services, spoke to the five separate parts to the electric rates charged by City Public Service, representing a reduction in those rates.

Mr. Don Thomas, City Public Service, provided Council members with a handout of overhead-projection charts, a copy of which is made a part of the papers of this meeting. He explained the proposed reduction in certain electric rates, noting that they are similar to the reduction in gas rates, effected recently. He noted that this proposed reduction in certain electric rates is needed to keep CPS competitive in the market, and he addressed the ramifications of the proposed rate reductions. He noted further that probably only 25 local electric users would be eligible for the new Super Large Power Service Schedule, which would reduce those firms' electric costs by about 10 per cent. He addressed the impact of that reduction on CPS revenues, and noted that the three largest local military bases account for perhaps 55 per cent of the reduction. He then spoke to electrical conservation aspects of the experimental "interruptible riders" rate package, and addressed an experimental "Residential Time of Use" rate, which allows homeowners to achieve certain discounts for shifting their electrical power usage to non-peak hours.

In summary, Mr. Thomas noted that these proposed electrical rate reductions will cost CPS an estimated \$8.9 million per year in revenues.

Mr. George Windrow, deputy base civil engineer, Kelly Air Force Base, spoke in support of the CPS rate-reduction proposal, and spoke to its possible impact upon Kelly Air Force Base and other local military installations.

CPT Barbara Zanotti, U.S. Air Force Civil Engineer Support Agency, spoke to the impact of utility costs upon San Antonio's military bases, and commended CPS for taking the initiative on rate reduction, noting that it will avoid problems in the future.

Mr. Howard Rogers, representing San Antonio Manufacturers Association, spoke to the proposed rate reduction as a healthy economic step forward by both CPS and the City of San Antonio, one which will allow industry to perhaps expand here, rather than consider leaving San Antonio.

Mayor Wolff spoke to the rationale for the proposed rate reductions and advantages in helping retain local military bases here in the next wave of base reductions. He noted that some 20 per cent of military base costs is in utilities.

(At this point, Mayor Wolff was obliged to leave the meeting. Mayor Pro-Tem Peak presided.)

Mr. Noe spoke to City staff's concerns with proposed street-light rates, and asked CPS to temporarily hold off on these proposed rates. He also asked CPS to report back to City Council in one year with the results of the experimental rate programs being proposed.

Mr. Thornton commended CPS for taking this initiative.

In response to a question by Mr. Ross, Mr. Noe spoke to how these proposed rate reductions will affect CPS' annual "payments in lieu of taxes" to the City of San Antonio, estimating an annual reduction of some \$1.3 million in City revenues from CPS.

Mr. Ross made a motion to delete from the proposed rate reductions the "street light/expressway lighting" portion. Ms. McClendon seconded the motion.

Mr. Peak stated that he has been assured that this will not cause energy waste.

In response to a question by Mr. Perez, Mr. Thomas addressed how CPS will seek to cope with the lost revenue, noting his belief that certain cuts in several areas will make up the difference.

In response to a question by Mr. Larson, Mr. Noe stated that the City pays some \$7 million annually to CPS for street lights.

Mr. Arthur von Rosenberg, General Manager, CPS, discussed his utility's plans for system expansion in the future, including plans for a new coal-fired powerplant to be constructed about 2000 AD. He expressed his confidence that the current system capacity will last, until that time.

Ms. McClendon spoke in support for the proposal to provide utility-cost reduction aid to San Antonio's military bases, noting that these actions today will not affect residential rates.

(At this point, Mayor Wolff returned to the meeting to preside.)

After consideration, the amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

After consideration, the main motion as amended, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Solis, Ayala.

93-50                    BRIEFING ON STATUS OF SOUTH TEXAS NUCLEAR PROJECT

Mr. Arthur von Rosenberg, General Manager, City Public Service, spoke to certain misconceptions concerning the so-called 'bonuses' paid to STNP licensed plant operators, when actually it was a withheld 10 per cent of their contracted salary being returned to them, along with interest earned, as part of their three-year contract provisions. He then spoke to the work being done to get STNP back on-line, and noted that CPS currently is in arbitration with STNP management on certain matters.

Mr. Mike Hart, Director, Nuclear Division, City Public Service, provided Council members with a handout of materials, a copy of which is made a part of the papers of this meeting. He spoke to certain findings of the Nuclear Regulatory Commission which resulted in 'diagnostic evaluation' of the powerplant, earlier this year. He also addressed details of problems experienced with the auxiliary feed water pump system that caused the plant shutdown, and spoke to certain management problems cited by the NRC which caused placement of STNP on the NRC commissioners' "watch list". He then addressed the current status of STNP's re-start efforts and plans to have Unit 1 re-started at the end of January 1994, with Unit 2 scheduled for re-start in late April 1994. He also spoke to certain steam and turbine generator issues that have been discussed with their manufacturers.

In response to a question by Mr. Thornton, Mr. Hart spoke to the background and history of the South Texas Nuclear Project, and the four major findings of management problems at the plant.

A discussion ensued concerning the possibility of a change in management at STNP.

Mr. von Rosenberg stated that Houston Lighting & Power, the project's managing partner, wants to be relieved of the responsibility of running STNP, and noted that the matter currently is in negotiation and arbitration. He further noted that San Antonio rate-payers are paying some \$30 million more this year as a result of non-operation of STNP, and asked to be able to brief City Council in Executive Session on the status of those arbitrations. He also noted that STNP would have to be re-licensed, if the project changes its managing partner at this point.

Mr. Thornton addressed his frustration at this matter, and encouraged CPS to take all necessary steps to resolve the issue.

Mr. Larson stated his belief that San Antonio needs oversight over STNP management.

Mr. Perez asked that an Executive Session be scheduled for a briefing from CPS on arbitration matters involving STNP.

Mayor Wolff asked the City Manager to schedule such an Executive Session.

A discussion then took place concerning the status of STNP arbitration issues.

(After discussion, it was the concensus of Council members present to undertake consideration of agenda items 58, 59 and 60 at this time.)

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,326

AMENDING THE CITY CODE, SECTION 21-6 INJURIES TO PROPERTY, TO ESTABLISH DEFINITIONS, OFFENSES AND PENALTIES FOR GRAFFITI, AND PRESCRIBING A PENALTY OF A FINE NOT TO EXCEED \$500.00 FOR VIOLATION HEREOF.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Mr. Avila seconded the motion.

Mr. Sergio Soto, Director of Youth Initiatives, explained the proposed provisions of the 'graffiti' ordinance.

Mr. Ray Hamilton, San Antonio Crime Commission, spoke to the commission's drawing upon other cities' experiences with anti-graffiti

ordinances in preparing these proposed new ordinance provisions for San Antonio.

Mr. Larson, Chairman of the Crime Commission, noted that the Business Crime Council will assist with funding anti-graffiti cleanup efforts, and spoke to certain aggressive actions planned to rid San Antonio of the graffiti problem.

(At this point, Mayor Wolff was obliged to leave the meeting. Mayor Pro-Tem Peak presided.)

A discussion took place concerning enforcement of the City's spray-paint laws.

Ms. Billa Burke stated her desire to have every local store selling spray-paint to be reminded of the provisions of the law regarding such products.

Mr. Ross addressed his concerns with enacting a highly-restrictive ordinance that perhaps cannot be enforced.

Mr. Solis spoke in support for all three proposed "youth ordinances" to come before City Council today.

(At this point, Mayor Wolff returned to the meeting to preside.)

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: McClendon, Ayala.

- - -

(At this point, Mayor Wolff was obliged to leave the meeting. Mayor Pro-Tem Peak again presided.)

- - -

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,327

AMENDING ORDINANCE NO. 74025, PASSED AND APPROVED ON JULY 24, 1991, ESTABLISHING A CURFEW FOR MINORS TO PROHIBIT MINORS FROM BEING IN ANY PUBLIC PLACE BETWEEN THE HOURS OF 9:00 A.M. AND 2:30 P.M. ON SCHOOL DAYS; ADOPTING CERTAIN EXCEPTIONS; AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

\* \* \* \*

Ms. Billa Burke made a motion to approve the proposed Ordinance. Mr. Avila seconded the motion.

Mr. Sergio Soto, Director of Youth Initiatives, explained the proposed ordinance provisions involving youth curfew hours on school days and recent changes in the proposed ordinance language. He stated that he would be meeting with school district officials and representatives of the Alamo Area Council of Governments during January 1994 concerning enforcement of the proposed ordinance provisions.

Judge Andy Mireles, Judge of the 43rd District Court, spoke to enforcement problems with current truancy provisions, and plans to "beef-up" truancy regulations with a proposed new ordinance of the City of San Antonio.

A discussion then took place concerning the fact that police officers will have, as their top priority, returning youths to school, under the proposed new ordinance.

Mr. Dan Burgess, representing the American Civil Liberties Union, questioned enforcement of ordinance provisions on youths from outside San Antonio, who happen to be on San Antonio's streets during local school hours. He stated his belief that the ordinance provisions will intrude upon their constitutional rights, and asked that the proposed new ordinance be rejected.

Mr. Cliff Lindsay, representing Prayers For America, stated his belief that today's youth needs to be stimulated by positive things, and provided Council members with a handout of materials, copies of which are made a part of the papers of this meeting. He also stated his belief that the religion of 'humanism' is being taught in the public schools today.

Mr. Perez stressed the need for an increased emphasis upon education as a way for today's youth to get ahead in the world, and stated his belief that the proposed ordinance is only an early-intervention tool.

Mr. Soto noted that some other area cities also are considering ordinances such as the one now before City Council.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: McClendon, Ayala.

93-50 The Clerk read a proposed ordinance prohibiting the discharge of firearms within the city limits of the City of San Antonio, with exceptions; prohibiting the carrying of firearms at certain locations within the city limits, with exceptions; prohibiting the carrying of firearms by persons under seventeen years of age at certain locations

within the city limits, with exceptions; prohibiting the carrying of knives with blades longer than three inches by persons under seventeen years of age at certain locations within the city limits; and providing for penalties in an amount not to exceed \$500.00 for violations of said prohibitions.

Ms. Billa Burke made a motion to approve the proposed Ordinance. Mr. Avila seconded the motion.

Mr. Sergio Soto, Director of Youth Initiatives, explained the impact of the proposed ordinance on firearms and other weapons, and addressed statistics involving drive-by shooting incidents.

CPT Gilbert Sandoval, head of the Police Department's Violent Crimes Task Force, spoke to problems experienced because certain youths are armed with assault-type weapons, and stated his opinion that the proposed ordinance is sorely-needed to help combat this problem.

Mr. Larson stated his opinion that some things cannot be controlled, but others can, such as the matter of assault-type weapons and their confiscation from juveniles. He spoke to the need to be pro-active in combating the matter of such weapons in the hands of juveniles.

Mr. Thornton spoke to the need for 'zero tolerance' toward youths with weapons.

Ms. Billa Burke offered an amendment to delete any size restriction on the matter of knives possessed by juveniles, making it illegal for any-sized knife to be in possession of a juvenile. Mr. Avila seconded the motion.

A discussion ensued concerning the study of the possibility of banning gun shows on public property in San Antonio.

Mr. Tom Finlay, Assistant City Attorney, stated that he would report back to the City Council on this matter by mid-January.

Mr. Ross spoke against the proposed amendment as being unenforceable, in his opinion. He also noted that local school districts have "zero tolerance" rules on the matter of weapons in schools, and lauded the Crime Commission for its hard work.

(At this point, Mayor Wolff returned to the meeting to preside.)

In response to a question by Mr. Solis, CPT Sandoval noted that assault-type weapons can be purchased at gun shows for as little as \$59.00.

Mayor Wolff noted that the federal government may soon be placing reasonable restrictions on the sale of guns.

After consideration, the amendment to the motion to delete any size restriction on the matter of knives possessed by juveniles, and making it illegal prevailed by the following vote: AYES: Perez, Billa Burke, Avila, Solis, Thornton, Peak, Larson, Wolff; NAYS: Ross; ABSENT: McClendon, Ayala.

After consideration, the main motion as amended, carrying with it the passage of the following Ordinance, prevailed by the following vote: AYES: Perez, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson; NAYS: None; ABSENT: McClendon, Ayala, Wolff.

AN ORDINANCE 79,328

PROHIBITING THE DISCHARGE OF FIREARMS WITHIN THE CITY LIMITS OF THE CITY OF SAN ANTONIO, WITH EXCEPTIONS; PROHIBITING THE CARRYING OF FIREARMS AT CERTAIN LOCATIONS WITHIN THE CITY LIMITS, WITH EXCEPTIONS; PROHIBITING THE CARRYING OF FIREARMS BY PERSONS UNDER SEVENTEEN YEARS OF AGE AT CERTAIN LOCATIONS WITHIN THE CITY LIMITS, WITH EXCEPTIONS; PROHIBITING THE CARRYING OF KNIVES BY PERSONS UNDER SEVENTEEN YEARS OF AGE AT CERTAIN LOCATIONS WITHIN THE CITY LIMITS; AND PROVIDING FOR PENALTIES IN AN AMOUNT NOT TO EXCEED \$500.00 FOR VIOLATIONS OF SAID PROHIBITIONS.

\* \* \* \*

93-50 PUBLIC HEARING AND CONSIDERATION OF ORDINANCE  
ALAMODOME NEIGHBORHOOD PLAN:

Mayor Wolff opened the Public Hearing.

Mr. David Pasley, Director of Planning, spoke to the proposed amendments to the Alamodome Neighborhood Plan.

Mr. Andrew Cameron, Director of Housing & Community Development, addressed the HOME Program in the area and plans to maintain the residential integrity of the neighborhood, with some commercial uses planned.

The following persons appeared to speak:

Mr. Walter Brown, speaking for Ms. Mary Vance, owner of property at 700 Cherry Street, stated that Ms. Vance wishes to retain the commercial zoning on this property and to lease it out. He noted that Metro Alliance is opposed to any commercial zoning on Cherry Street.

In response to a question by Mr. Frank Washington, 112 South Monumental, concerning his property, Ms. McClendon stated that she



would ask to return this case to the Zoning Commission for reconsideration.

Mr. Louis Ponce, Jr., 1218-1220 Wyoming, asked for "R-3" zoning on his property.

In response to a question by Ms. Frances Garcia, 102 Denver, relative to property located at 102 Denver, 204 Denver, and 301 Piedmont, Ms. McClendon stated that she would recommend "B-3NA" zoning on the property at 102 Denver, and referral of the other two cases back to the Zoning Commission for reconsideration.

Ms. Marcia Welch, representing Metro Alliance, stated that her organization favors "R-2" residential zoning in the Alamodome Neighborhood Plan area.

A teacher at Herff Elementary School stated her belief that commercial zoning in the area will cause the area's deterioration.

Mr. Daniel Rubio, a student, spoke in favor of residential zoning in the area.

Ms. Celia Segovia stated her belief that commercial zoning will destroy the neighborhood.

Another teacher, residing in the area, spoke in favor of "R-2" zoning in the area.

Ms. Elsie Carillo, area homeowner, and Ms. Pamela Wells, principal of Herff Elementary School, both spoke in favor of "R-2" residential zoning in the area.

Rev. Claude W. Black, pastor, Mt. Zion First Baptist Church, stated his belief that the members of the community need to have input into what type of zoning is allowed to come into this area, and spoke in favor of a compromise.

Mr. Cliff Brown, 630 Cherry Street, noted that he has an 18,000-square-foot warehouse presently zoned "J" Commercial, in this neighborhood.

A discussion then took place concerning the 'grandfather rights' on use of area properties, and the possibility of selling those properties by their owners, for residential development.

Mayor Wolff asked City staff to work with Mr. Brown on his particular problem.

There being no further citizens to speak to this matter, Mayor Wolff declared the Public Hearing to be closed.

Ms. McClendon made a motion to approve the proposed Resolution. Mr. Perez seconded the motion.

After consideration, the motion, carrying with it the passage of the following Resolution, prevailed by the following vote: AYES: Perez, McClendon, Avila, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Billa Burke, Solis, Ayala.

The Clerk read the following Resolution:

A RESOLUTION NO. 93-50-76

ADOPTING AMENDMENTS TO THE ALAMODOME NEIGHBORHOOD PLAN.

\* \* \* \*

93-50

ZONING HEARINGS

4B. CASE 293101 - The rezoning and reclassification of property from "C" Apartment district to "R-A" CC Residence Agriculture District with City Council approval for a utility infrastructure listed below as follows: NCB 1552, All of NCB. The rezoning and reclassification of property from "B" Residence District, "C" Apartment District, "D" Apartment District, "E" Office District, "G" Local Retail District, "J" Commercial District, "L" First Manufacturing District, "R-3" Multiple Family Residence District, "B-2NA" Non Alcoholic Sales Business District, "B-2" Business District and "B-3NA" Non-Alcoholic Sales Business District To "R-2" Two Family Residence District listed below as follows: NCB A-11; NCB A-13; NCB A-14; NCB A-30, Lots A-5 and A-15; NCB A-45; NCB 600, save and except Lots 3 thru 9 and the south 120 feet of Lot 37; NCB 604, Block A, Lots 1 thru 6 and 9 thru 14; NCB 604, All of Block B; NCB 608, Lots 6,7,8,11 thru 16 and the east 150.5 feet of Lots 9 and 10; NCB 609; NCB 610, save and except Lots 17 and 18; NCB 611, save and except Lot 1; NCB 616, All of Block 2; NCB 617, Block 20, save and except Lots 19, 36 and the south 47.25 feet of Lot 27; NCB 618; NCB 619; NCB 623; NCB 624; NCB 625; NCB 626; NCB 630; NCB 631, All of Block A; NCB 631, Block B, Lots A, B, D, F, 9, the east 9.52 feet of Lot 8, West 10.96 feet of Lot 10; NCB 632, save and except Lot 18, Block B; NCB 633; NCB 637; NCB 638, Lots 12 thru 18; NCB 639; NCB 640, save and except Lot 18, Block D; NCB 645, save and except Lots 6, 7, 9, 11, 16, 17 and 18; NCB 646, save and except Lots 13, 15 and the south 26 feet of Lot 5, Block E; NCB 647, save and except Lot 3, Block G and Lots 10 thru 13, Block H; NCB 651, Lot 10, 11, 12 and 14 thru 20; NCB 652, Lots 2 thru 7; NCB 653, save and except Lot 1, the south 36.4 feet of Lot 13 and the east 42.07 feet of Lot 16 and the west 13.07 feet of Lot 17; NCB 654; NCB 657, Lots 15 thru 20 and 24 thru 30; NCB 658, save and except the north 46 feet of Lots 17 and 18; NCB 659, Lots 4, 5, 12 thru 21, 23, 24, 25 and 27 thru 31; NCB 660; NCB 661, save and except Lot 9, Block 3 and Lot 19, Block 4; NCB 664, Lots 5 thru 10; NCB 665, save and except the north 150 feet of Lot 1 and the south 50 feet of Lot 6; NCB 666, save and except Lot 13 and the east 130 feet of Lot 9; NCB 667, save and except Lot 19; NCB 668; NCB 671, Lots 4 thru 10, 13 thru 17 and 24 thru 29; NCB 672,

save and except Lots 1, 2 and the north 50 feet of Lot 10; NCB 673, Lots 1 thru 9 and the west 60 feet of Lot 10; NCB 674, Lots 1, 2, 4 and 8 thru 12; NCB 675; NCB 1026; NCB 1027; NCB 1028, save and except Lots 9 and A-17; NCB 1029; NCB 1030; NCB 1031; NCB 1032; NCB 1033; NCB 1034; NCB 1035; NCB 1386; NCB 1387, Lots 4, 5, 6, 10, 11 and 12; NCB 1388, Lot A-1, save and except the north 150 feet; NCB 1393; NCB 1394; NCB 1395; NCB 1396; NCB 1397; NCB 1398; NCB 1399; NCB 1400; NCB 1401; NCB 1402, save and except Lot 4; NCB 1403; NCB 1404; NCB 1405; NCB 1406; NCB 1407; NCB 1408, save and except Lot 1 and 2; NCB 1409; NCB 1410; NCB 1411; NCB 1412; NCB 1413; NCB 1414; NCB 1415; NCB 1416; NCB 1437, Lots 15 thru 26; NCB 1438, Lots 14 thru 26; NCB 1441, Lots 14 thru 26; NCB 1443, Lots 15 thru 28; NCB 1444, Lots 15 thru 28; NCB 1454; NCB 1455; NCB 1456; NCB 1457; NCB 1458, save and except Lots 1, 18 and 24; NCB 1459, Lot A-18; NCB 1461, Lots 12 and 13; NCB 1462, save and except the north 80 feet of Lots 1 and 2; NCB 1482, save and except Lots 15, 16 and 17; NCB 1485; NCB 1487; NCB 1488; NCB 1493; NCB 1495, Lots 16 thru 21 and the east 50 feet of Lot 15; NCB 1501, save and except the south 110 feet of Lots 1 and 2; NCB 1506, Lots 1 thru 8; NCB 1507, save and except Lots 7, 8 and A-9; NCB 1508, save and except Lot A-10; NCB 1509, Lots 7 thru 12; NCB 1510; NCB 1511; NCB 1512; NCB 1513; NCB 1514, save and except Lots 1, 2, 3, 6 and 8; NCB 1517, Lots 1 thru 4 and 13 thru 16; NCB 1518, save and except Lots 1, 2 and 3; NCB 1519; NCB 1520, Lots 1 thru 17 and the west 25.41 feet of south 11.4 feet of Lot 8; NCB 1521; NCB 1522; NCB 1523; NCB 1524; NCB 1525; NCB 1526; NCB 1527; NCB 1528, Block 1, Lots 6, 7, 8 and 21; NCB 1528, Block 2; NCB 1529; NCB 1530; NCB 1531, save and except Lots 9, 10 and 11; NCB 1532, save and except Lots 6, 7 and 8; NCB 1533; NCB 1534, save and except Lot 3; NCB 1535, Lots 4 thru 16; NCB 1536, save and except the south 15 feet of Lot 13, Lot 14, the west 73.8 of Lots 15 and 16; NCB 1537; NCB 1538, save and except Lots 16 and the west 73 feet of Lot 9; NCB 1540; NCB 1541, save and except Lot 6; NCB 1542; NCB 1543; NCB 1544; NCB 1545; NCB 1546; NCB 1547, Lots 6 thru 12 and 18 thru 24; NCB 1548; NCB 1553; NCB 1554; NCB 1555; NCB 1556; NCB 1559; NCB 1560; NCB 1561, save and except Lots 13, 14 and 15; NCB 1562; NCB 1565; NCB 1566, save and except Lots 1, 2, 3, 4 and 13; NCB 1567, save and except Lots A, B, C, J, K, L, 10, 11, 12, 13 and the west 50 feet of Lot 14; NCB 1571; NCB 1572; NCB 1573; NCB 1585; NCB 1586, Lots 7 thru 16; NCB 1589; NCB 1590; NCB 1591; NCB 1592, save and except Lot 26; NCB 1593; NCB 1594; NCB 1595; NCB 1596, save and except Lots 27 thru 30; NCB 1597, save and except Lots 47 thru 52; NCB 1598; NCB 1599, save and except Lot 53; NCB 1600; NCB 1601, save and except Lots 13 and 14; NCB 1602; NCB 1603; NCB 1604, save and except Lot 55; NCB 1605; NCB 1606; NCB 1607, Lots 41, 42, 43, 44, 47, 48, 53, 54, 55 and 56; NCB 1608; NCB 1610; NCB 1611, save and except Lots 23 thru 31; NCB 1612, save and except Lots 50, 51 and 52; NCB 1613, save and except Lots 1, 2, 3 and 4; NCB 1614; NCB 1615, save and except Lot 7 and 8; NCB 1616, save and except the north 100 feet of Lots 3, 4, 5 and 6; NCB 1617, save and except Lot 25 and 26; NCB 1618, Lots 5 thru 24 and 31 thru 52; NCB 1619, save and except Lots 1, 2 and 3; NCB 1620, save and except Lots 23 thru 32; NCB 1621, save and except Lots 38, 39 and 40; NCB 1622; NCB 1623, save and except Lots 27 and 28; NCB 1624, save and except the north 114 feet of Lots 25, 26, 27 and 28; NCB 1625, save and except

Lots 4, 5, 6, 7 and the north 100 feet of Lots 1, 2 and 3; NCB 1627, save and except the north 60 feet of Lots 14, 15, 16 the south 83 feet of Lots 17 and 18; NCB 1628, Lots 7 thru 28; NCB 1629, Lots 1 thru 14 and 15 thru 32; NCB 1630; NCB 1631; NCB 1632; NCB 1633; NCB 1634; NCB 1635, save and except Lot 55; NCB 1636, save and except Lots 1 thru 4, 51 and 52; NCB 1637, save and except Lot 27 and 28; NCB 1638; NCB 1639; NCB 1640; NCB 1641; NCB 1642; NCB 1643; NCB 1644, save and except Lots 22 thru 29 and 53; NCB 1645, save and except Lots 52 thru 56; NCB 1646; NCB 1647, Lots 1 thru 28 and 48 thru 56; NCB 1648; NCB 1649; NCB 1650, Lots 1 thru 13 and 22 thru 32; NCB 1651, save and except Lot 29 and 30; NCB 1652, save and except Lots 14, 15 and 16; NCB 1662, save and except Lots 1 and 2; NCB 1663, save and except Lots 1 and 2; NCB 1669; NCB 1670; NCB 1697; NCB 1699; NCB 2796; NCB 2848; NCB 2918; NCB 2923; NCB 2924; NCB 2925; NCB 2926; NCB 2927; NCB 2928; NCB 2954, save and except Lot A-15; NCB 2955, save and except Lot 17, 22, 27, 28, 29, A-4, A-6, A-35 and the west 50 feet of the north irregular 250.2 feet of Lot 23 or A-10; NCB 2988; NCB 3056, Lots 1, 2 and 3; NCB 3072, save and except Lots 14, 15 and 16; NCB 3073; NCB 3074, save and except Lots 13, 14 and 15; NCB 3100; NCB 3101; NCB 3117, save and except the north 100 feet of Lots 1 and 2 the south 90 feet of Lots 14, 15, 16 and 17; NCB 3118, save and except Lots 14, 15 and the south 50 feet of Lots 1 and 2; NCB 3119, save and except Lots 13 and 14; NCB 3146; NCB 3164; NCB 3269; NCB 3270; NCB 3271; NCB 3272; NCB 3273; NCB 3274; NCB 3275; NCB 3276; NCB 3277; NCB 3278; NCB 3523; NCB 3524; NCB 3566; NCB 3569; NCB 3570; NCB 3780, Lots 3 thru 11 and 13 thru 22; NCB 3781, Lots 2 thru 11; NCB 3782; NCB 3783, save and except Lot 13; NCB 3784; NCB 3785; NCB 3786; NCB 3788; NCB 3789; NCB 3790; NCB 3791; NCB 3792; NCB 3793; NCB 3794; NCB 3795; NCB 3796; NCB 3885; NCB 3886; NCB 3887; NCB 3888; NCB 3895, Lots 19 thru 27, 34, 35 and 36; NCB 3899; NCB 6087; NCB 6088; NCB 6134; NCB 6162, save and except Lot 2; NCB 6163, save and except Lots 1 and 2; NCB 6397; NCB 6398; NCB 6462; NCB 6463; NCB 6464; NCB 6579; NCB 6582; NCB 6583; NCB 6672; NCB 6735; NCB 6736, Lots 7 thru 28; NCB 6737, Lots 3 thru 14; NCB 6814, Lots 1 thru 13 and 13 thru 28; NCB 6815, Lots 1 thru 12 and 16 thru 27; NCB 6818, Lots 1 thru 13. The rezoning and reclassification of property from Historic Landmark "C" Apartment District and "J" Commercial District to Historic "R-2" Two Family Residence District listed below as follows: NCB 638, Lots 1 thru 11. The rezoning and reclassification of property from "B" Residence District and "J" Commercial District to "R-2" CC two Family Residence District with City Council approval for a cemetery listed below as follows: NCB A-8; NCB A-9; NCB A-10; NCB A-11; NCB A-12; NCB 1388; NCB 1389; NCB 1390; NCB 1391; NCB 1392; The rezoning and reclassification of property from "D" Apartment District, "C" Apartment District and "R-3" CC Multiple Family Residence District with City Council approval for a daycare center to "R-2" CC Two Family Residence District with City Council approval for a daycare and learning center listed below as follows: NCB 610, Lots 17 and 18; NCB 631, Lots C, E, G, H, I, J, K, and 8 thru 12; NCB 632, Block A, Lot 18; NCB 639, Block A, Lot 1; NCB 647, Block G, Lot 3; NCB 653, the east 42.07 feet of Lot 16, and the west 13 feet of Lot 17; NCB 1402, Lot 2; NCB 1528, Block 1, Lots 1 thru 5 and 14 thru 20. The rezoning and reclassification of property from "C" Apartment District to "R-2" CC Two Family Residence

District with City Council approval for a museum listed below as follows: NCB 1532, Lots 6, 7 and 8. The rezoning and reclassification of property from "C" Apartment District and "J" Commercial District to "R-2" CC Two Family Residence District with City Council approval for a college listed below as follows: NCB 1460, save and except Lot 20; NCB 1461; NCB 1483; NCB 1484; NCB 1498; NCB 1499; NCB 1501, the south 110 feet of Lots 1 and 2; NCB 1502; NCB 1503; NCB 1504; NCB 1514, Lots 6 and 8; NCB 1515; NCB 1516; NCB 1517, Lots 5, 6, 11, 12, and 17 thru 23; NCB 1518, Lots 1, 2 and 3. The rezoning and reclassification of property from "B" Residence District to "R-2" SUP Two Family Residence District Special Use Permit for two residence structures listed below as follows: NCB 1538, Lot 16. The rezoning and reclassification of property from "C" Apartment District to "R-2" SUP Two Family Residence District Special Use Permit for a mobile home listed below as follows: NCB 1541, Lot 6. The rezoning and reclassification of property from "C" Apartment District to "R-2" SUP Two Family Residence District Special Use Permit for a triplex residence listed below as follows: NCB 1458, Block 18, Lot 18. The rezoning and reclassification of property from "B" Residence District to "R-A" Residence-Agriculture District listed below as follows: NCB 1621, Lots 38, 39 and 40. The rezoning and reclassification of property from "C" Apartment District, "F" Local Retail District, "H" Local Retail District and "J" Commercial District to "R-3" Multiple Family Residence District listed below as follows: NCB 1443, Lots 1 thru 4; NCB 1444, Lots 1 thru 13; NCB 1446; NCB 1447, save and except Lots 3 and 8; NCB 1448; NCB 1450; NCB 1451; NCB 1459; NCB 1465; NCB 1496; NCB 1550; NCB 1551; NCB 7457; NCB 12777. The rezoning and reclassification of property from "B" Residence District to "R-7" Small Lot Home District listed below as follows: NCB 1538, the west 73 feet of Lot 9. The rezoning and reclassification of property from "E" Office District, "G" Local Retail District and "J" Commercial District to "O-1" Office District listed below as follows: NCB 617, Block 20, Lot 19; NCB 1599, Lot 53; NCB 1607, Lots 34 thru 40; NCB 1624, the north 114 feet of Lot 25, 26, 27, and 28; NCB 3056, the north 50 feet of Lots 13, 14 and 15. The rezoning and reclassification of property from "J" Commercial District to "O-1" SUP Office District Special Use Permit for a restaurant listed below as follows: NCB 1601, Lots 50, 51 and 52. The rezoning and reclassification of property from "J" Commercial District to "O-1" SUP Office District Special Use Permit for a cabinet shop listed below as follows: NCB 1607, Lots 45 and 46. The rezoning and reclassification of property from "J" Commercial District to "O-1" SUP Office District Special Use Permit for an electric repair shop and a contractor listed below as follows: NCB 1607, Lots 49, 50, 51, and 52. The rezoning and reclassification of property from "B-2" Business District to "O-1" SUP Office District with Special Use Permit for a Molino and Bakery listed below as follows: NCB 1618, Lots 1 thru 4. The rezoning and reclassification of property from "B" Residence District, "C" Apartment District, "D" Apartment District, "H" Local Retail District, "J" Commercial District and "L" First Manufacturing District to "B-1" Business District listed below as follows: NCB A-30, Lots 23, 23-A and 23-B; NCB 651, Lot 13; NCB 653, the south 36.4 feet of Lot 13; NCB 657, Lots 9 and 10; NCB 658, the north 46 feet of Lots 17 and 18; NCB 659, the east 100 feet of Lot 22; NCB 665, the north

150 feet of Lot 1; NCB 666, Lot 13; NCB 672, Lot 2; NCB 674, Lots 6 and 7; NCB 1441, Lots 3 and 8; NCB 1442; NCB 1507, Lots 7, 8 and A-10; NCB 1531, Lots 9, 10 and 11; NCB 1534, Lot 3; NCB 1567, Lots A, B, C, J, K, and L; NCB 1596, Lots 27, 28, 29, and 30; NCB 1597, Lots 47 thru 52; NCB 1618, Lots 25 and 26; NCB 1627, the south 83 feet of Lots 17 and 18. The rezoning and reclassification of property from "C" Apartment District, "D" Apartment District, "G" Local Retail District, "J" Commercial District, "L" First Manufacturing District and "B-3" Business District to "B-2" Business District listed below as follows: NCB 603, save and except Lot 12; NCB 604, Block A, Lots 7, 8, 15 and 16; NCB 608, Lots 1 thru 5, 20 and the west 58 feet of Lots 9 and 10; NCB 617, Block 20, Lot 36, the south 47.25 feet of Lot 27; NCB 640, Block D, Lot 18; NCB 645, Lots 6, 7, 9, 11, 16, 17 and 18; NCB 646, Block E, the south 26 feet of Lot 5; NCB 647, Block H, Lots 10, 11 and 13; NCB 659, the west 50 feet of Lots 22 and 26; NCB 666, the east 130 feet of Lot 9; NCB 671, Lots 18, 19, 20 and 30; NCB 674, Lot 5; NCB 1408, Block 20, Lots 1 and 2; NCB 1441, Lots 3 thru 13, 27 and 28; NCB 1444, Lot 14; NCB 1520, Lot 9 and Lot 10 save and except the west 25.41 feet of the south irregular 11.4 feet; NCB 1535, Lots 1, 2 and 3; NCB 1536, Lots 14 and the south 15 feet of Lot 13; NCB 1560, the north 75 feet of Lots 13, 14 and 15; NCB 1586, Lots 5 and 6; NCB 1588, Lots 1, 2, 3, 16 and 17; NCB 1611, Lots 23, 24, 25, 26, 30 and 31; NCB 1620, Lots 23 thru 32; NCB 1625, Lots 4, 5, the north 100 feet of Lots 1, 2 and 3; NCB 1635, Lot 55; NCB 1636, Lots 1, 2, 3, 4, 51 and 52; NCB 1637, Lots 27 and 28; NCB 1644, Lots 22 thru 26, the north 45 feet of Lots 27, 28 and 29; NCB 1652, Lots 14, 15 and 16; NCB 2954, Lot A-15; NCB 2955, Lots A-4, A-6, 27, 28 and 29; NCB 3072, Lots 14, 15 and 16; NCB 3074, Lots 13, 14 and 15; NCB 3119, Lots 13 and 14. The rezoning and reclassification of property from "J" Commercial District to "B-2" SUP Business District Special Use Permit for Auto Repairs listed below as follows: NCB 1625, Lots 6 and 7. The rezoning and reclassification of property from "C" Apartment District, "G" Local Retail District, "J" Commercial District, "B-2" Business District and "O-1" Office District to "B-2NA" Non Alcoholic Sales Business District listed below as follows: NCB 1482, Lots 15, 16 and 17; NCB 1508, Lot A-10; NCB 1509, Lots 3, 4, 5 and 6; NCB 1604, Lot 55; NCB 1623, Lots 27 and 28; NCB 3783, Lot 13; NCB 3895, Lots 31, 32 and 33. The rezoning and reclassification of property from "J" Commercial District, "K" Commercial District and "I-1" Light Industry District to "B-3" Business District listed below as follows: NCB 597; NCB 598; NCB 599; NCB 600, Lots 3 thru 9 and Lot 37, save and except the south 120 feet; NCB 665, the south 100 feet of Lot 6; NCB 1386, Lots 1 thru 8 and 12 thru 16; NCB 1387, Lots 1, 2, 3, 7, 8 and 9; NCB 1388, the north 150 feet of Lot A-1; NCB 1437, Lots 12 and 13; NCB 1536, the west 73.8 feet of Lots 15 and 16; NCB 1587, Lots 6, 7 and the east 13.3 feet of Lot 8; NCB 1644, the south 105 feet of Lots 27, 28 and 29; NCB 3118, the south 50 feet of Lots 1 and 2; NCB 6818, the north 80.3 feet of Lots 14 and 15. The rezoning and reclassification of property from "K" Commercial District to "B-3" CC Business District with special City Council approval for a pet cemetery listed below as follows: NCB 1386, Lots 9, 10 and 11. The rezoning and reclassification of property from "J" Commercial District to "B-3" SUP Business District Special Use Permit for a Planning Mill listed below as follows: NCB 1460, Lot 20. The

rezoning and reclassification of property from "C" Apartment District, "D" Apartment District, "J" Commercial District, "L" First Manufacturing District, "B-1" Business District and "B-3" Business District to "B-3R" Restrictive Business District listed below as follows: NCB 603, Lot 12; NCB 643, the north 50 feet of Lots 1 thru 5, the northeast 50 feet of Lots 6 thru 11, the east 50 feet of Lots A, C, D and E; NCB 646, Block E, Lots 13 and 15; NCB 651, Lots 1 thru 9; NCB 652, Lots 1 and 8 thru 16; NCB 653, Lot 1; NCB 659, Lots 1, 2, 3, 6 thru 11 and the east 100 feet of Lot 26; NCB 661, Block 4, Lot 19; NCB 667, Lot 19; NCB 672, Lot 1 and the north 50 feet of Lot 9; NCB 673, Lots 11 thru 16 and the east 140 feet of Lot 10; NCB 674, Lot 3; NCB 1437, Lots 1 thru 14; NCB 1438, Lots 1 thru 13; NCB 1458, Lots 1 thru 24; NCB 1494, Lots 13, 14, 15 and 16; NCB 1514, Lots 1, 2 and 3; NCB 1561, Lots 13, 14 and 15; NCB 1566, Lots 1, 4 and 13; NCB 1567, Lot 10 and Lot 14, save and except the west 50 feet; NCB 1586, Lot 17, the north 50 feet of Lots 1, 2, 3 and 4; NCB 1587, save and except Lot 6, 7 and the east 13.3 feet of Lot 8; NCB 1612, Lots 50, 51 and 52; NCB 1618, Lots 27, 28, 29 and 30; NCB 1619, Lots 1, 2 and 3; NCB 1626; NCB 1628, Lots 1 thru 6, and Lots 29 thru 32; NCB 1629, Lots 15 thru 18; NCB 1645, Lots 52 thru 56; NCB 1650, Lots 14 thru 21; NCB 1651, Lots 29 and 30; NCB 1662, Lots 1 and 2; NCB 1663, Lots 1 and 2; NCB 2955, Lots 17, 22 and A-35; NCB 3056, Lots 4, 10 and the north 50 feet of Lots 11 and 12; NCB 3780, Lots 1, 2 and 12; NCB 3781, Lot 1; NCB 3895, Lots 28, 29 and 30; NCB 6162, Lot 2; NCB 6163, Lots 1 and 2; NCB 6736, Lots 4, 5 and 6; NCB 6737, Lots 1 and 2; NCB 6814, Lots 14, 15, 29 and 30; NCB 6815, Lots 13, 14, 15, 28, 29 and 30; NCB 6815, the south 80 feet of Lots 14 and 15. The rezoning and reclassification of property from "F" Local Retail District to "B-3R" SUP Restrictive Business District Special Use Permit for a sand and gravel yard and construction office listed below as follows: NCB 1567, Lots 11, 12 and 13. The rezoning and reclassification of property from "J" Commercial District to "B-3R" SUP Restrictive Business District Special Use Permit for outside repairs of lawnmowers listed below as follows: NCB 1647, Lots 29, 30, 31 and 32. The rezoning and reclassification of property from "J" Commercial District to "B-3R" SUP Restrictive Business District Special Use Permit for an outside storage of safety equipment, signs and barricades listed below as follows: NCB 1647, Lots 33 thru 43. The rezoning and reclassification of property from "B" Residence District and "J" Commercial District to "B-3NA" Non Alcoholic Sales Business District listed below as follows: NCB 1617, Lots 25 and 26; NCB 1627, the north 60 feet of Lots 14, 15 and 16; NCB 3117, the north 100 feet of Lots 1 and 2, the south 100 feet of Lots 14, 15, 16 and 17; NCB 3118, Lots 14 and 15; NCB 6115, Lots 7 and 8. The rezoning and reclassification of property from "J" Commercial District to "B-3NA" SUP Non Alcoholic Sales Business District Special Use Permit for truck and trailer maintenance listed below as follows: NCB 1647, Lots 44 thru 47. The rezoning and reclassification of property from "F" Local Retail District, "J" Commercial District, "K" Commercial District and "L" First Manufacturing District to "B-4" Central Business District listed below as follows: NCB 602; NCB 607; NCB 613; NCB 614; NCB 615; NCB 620; NCB 621; NCB 622; NCB 627; NCB 628; NCB 629; NCB 636; NCB 679, Lots 9, 10, 11 and 12; NCB 14083; NCB 14084. The rezoning and reclassification of property from Historic "K" Commercial District and Historic "L" First

Manufacturing District to Historic "B-4" Central Business District listed below as follows: NCB 601; NCB 679, that portion of NCB between Walnut Street and Hoefgen Avenue; NCB 681; NCB 14081; NCB 14082. The rezoning and reclassification of property from "C" Apartment District, "D" Apartment District, "J" Commercial District and "L" First Manufacturing District to "I-1" Light Industry District listed below as follows: NCB A-27, Lots A-1, A-2, A-3, A-4, A-8, A-9, A-10, A-11 and A-12; NCB A-30, Lots A-1 and A-4; NCB 635; NCB 641; NCB 642, save and except Lots 11, 12, 15 and 16; NCB 643, save and except Lot 1, the north 50 feet of Lots 1 thru 5, the northeast 50 feet of Lots 6 thru 11, and the east 50 feet of Lots A, C, D and E; NCB 649, save and except Lot 9; NCB 650; NCB 656; NCB 657, Lots 1 thru 8, 11 thru 14, and 21 thru 23; NCB 663; NCB 664, Lots 1 thru 4 and 11 thru 30; NCB 669; NCB 670; NCB 671, Lots 1, 2, 3, 11, 12, 21, 22 and 23; NCB 676; NCB 677; NCB 678; NCB 1505, Lots 6, 7, 8, and 17; NCB 1566, Lots 2 and 3; NCB 2736; NCB 2737; NCB 2955, the west irregular 50 feet of the north irregular 250.2 feet of Lot 23 or A-10; NCB 3056, Lot 16; NCB 3056, Lots 11, 13, 14 and 15 save and except the north 50 feet; NCB 3519; NCB 6583, Lots 7 thru 10; NCB 7057. The rezoning and reclassification of property from "L" First Manufacturing District to "I-2" Heavy Industry District listed below as follows: NCB 642, Lots 11, 12, 15 and 16; NCB 649, Lot 9.

Ms. McClendon made a motion to approve the proposed East Side rezoning plan. Mr. Perez seconded the motion.

A discussion then ensued concerning the ramifications of the Alamodome Neighborhood Plan on future rezoning requests in that area.

Ms. McClendon briefly reviewed the process of creating a neighborhood plan near the Alamodome, and the residents' impact upon uses for area properties.

Ms. Barbara McDonald, 319 Mesquite, spoke in support for the neighborhood plan.

(There followed a series of 21 amendments to the main motion, concerning individual properties in the area and the disposition of their recommended rezoning.)

Ms. McClendon offered an amendment to return to the Zoning Commission for reconsideration the proposed rezoning of Lots 4, 5 and 6, NCB 1387, 112 Monumental Street. Mr. Solis seconded the motion.

After consideration, the first amendment to the main motion prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to return to the Zoning Commission for reconsideration the proposed rezoning of Lots 19 and 20, Block 14, NCB 610, 324 South Hackberry. Mr. Solis seconded the motion.



After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to return to the Zoning Commission for reconsideration the proposed rezoning of Lots 15 and 16, Block 2, NCB 609, 933 Wyoming Street. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to return to the Zoning Commission for reconsideration the proposed rezoning of the north 58.18 feet of Lot 11, Block 12, NCB 608, 327 South Mesquite Street. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to return to the Zoning Commission for reconsideration the proposed rezoning of Lot 19, NCB 616, 425 South Mesquite Street and 132 Dashiell. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to allow the property located at 102 Denver to be rezoned "B-3NA", as recommended by the Zoning Commission; and to return to the Zoning Commission for reconsideration the proposed rezoning of the property located at 204 Denver. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to return to the Zoning Commission for reconsideration the proposed rezoning of the property located at 301 Piedmont. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-3" zoning on Lots 23-26, Block 7, NCB 1637, 1104 Denver Blvd. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "R-2CC" zoning, with City Council approval for a day-care center, on Lots 11, 12, and 13, Block 19, NCB 1457 (207 Gevers Street); and Lot 26, Block 19, NCB 1457 (215 Wyoming Street). Mr. Solis seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-1" zoning for a beauty shop on the north 73.3 feet of Lot 11, Block 27, NCB 623 (526 South Cherry Street). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "R-3" zoning on Lot 4, Block G, NCB 647 and Lot 12, Block F, NCB 646 (712 South Olive and 723 South Olive). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-1" zoning on Lot 2, Block A, NCB 639 (704 South Hackberry Street). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-3NA" zoning on Lots 49, 50, 51 and 52, Block 44, NCB 1607 (1901 Virginia). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-3NA" zoning on Lots 14, 15 and 16, Block 17, NCB 1537. Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-2NA" zoning on Lots 1, 2, 3 and 4, Block 6, NCB 1618 (748 and 750 Porter Street). Mr. Solis seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-3" zoning on Lots 51 and 52, Block 10, NCB 1636 (1515 South Gevers). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-2" zoning on Lots 51 and 52, Block 3, NCB 1601 (1125 South Mittman). Mr. Solis seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "B-2" zoning on Lot 11, Block 18, NCB 1536 (510 Meerscheidt Street). Mr. Perez seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "R-3" zoning on Lot 16, Block 11, NCB 45; and Lots 4, 5 and 6, Block 2, NCB 1528 (1218-1220 Wyoming). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

Ms. McClendon offered an amendment to grant "R-3" zoning on Lot 5, Block 2, NCB 1026 (110 Applin Street). Mr. Avila seconded the motion.

After consideration, the next amendment to the main motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

After consideration, the main motion as amended, carrying with it the passage of the following Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

AN ORDINANCE 79,329

AMENDING CHAPTER 35 OF THE CITY CODE THAT CONSTITUTES THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF SAN ANTONIO BY CHANGING THE CLASSIFICATION OF AND REZONING CERTAIN PROPERTY DESCRIBED HEREIN: FROM "C" APARTMENT DISTRICT TO "R-A" CC RESIDENCE AGRICULTURE DISTRICT WITH CITY COUNCIL APPROVAL FOR A UTILITY INFRASTRUCTURE LISTED BELOW AS FOLLOWS: NCB 1552, ALL OF NCB. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT, "C" APARTMENT DISTRICT, "D" APARTMENT DISTRICT, "E" OFFICE DISTRICT, "G" LOCAL RETAIL DISTRICT, "J" COMMERCIAL DISTRICT, "L" FIRST MANUFACTURING DISTRICT, "R-3" MULTIPLE FAMILY RESIDENCE DISTRICT, "B-2NA" NON ALCOHOLIC SALES BUSINESS DISTRICT, "B-2" BUSINESS DISTRICT AND "B-3NA" NON-ALCOHOLIC SALES BUSINESS DISTRICT TO "R-2" TWO FAMILY RESIDENCE DISTRICT LISTED BELOW AS FOLLOWS: NCB A-11; NCB A-13; NCB A-14; NCB A-30, LOTS A-5 AND A-15; NCB A-45, SAVE AND EXCEPT LOT 16; NCB 600, SAVE AND EXCEPT LOTS 3 THRU 9 AND THE SOUTH 120 FEET OF LOT 37; NCB 604, BLOCK A, LOTS 1 THRU 6 AND 9 THRU 14; NCB 604, ALL OF BLOCK B; NCB 608, LOTS 6, 7, 8, 12, 13, 14, 15, 16 THE EAST 150.5 FEET OF LOT 9, 10 AND THE SOUTH 80.72 FEET OF LOT 11; NCB 609, ALL OF NCB, SAVE AND EXCEPT LOTS 15 AND 16, BLOCK 2; NCB 610, SAVE AND EXCEPT LOTS 17 AND 18; NCB 611, SAVE AND EXCEPT LOT 1; NCB 616, ALL OF BLOCK 2, SAVE AND EXCEPT LOT 19; NCB 617, BLOCK 20, SAVE AND EXCEPT LOTS 19, 36 AND THE SOUTH 47.25 FEET OF LOT 27; NCB 618; NCB 619; NCB 623, SAVE AND EXCEPT THE NORTH 73.3 FEET OF LOT 11, BLOCK 27; NCB 624; NCB 625; NCB 626; NCB 630; NCB

631, ALL OF BLOCK A; NCB 631, BLOCK B, LOTS A, B, D, F, 9, THE EAST 9.52 FEET OF LOT 8, WEST 10.96 FEET OF LOT 10; NCB 632, SAVE AND EXCEPT LOT 18, BLOCK B; NCB 633; NCB 637; NCB 638, LOTS 12 THRU 18; NCB 639, SAVE AND EXCEPT LOT 2, BLOCK A; NCB 640, SAVE AND EXCEPT LOT 18, BLOCK D; NCB 645, SAVE AND EXCEPT LOTS 6, 7, 9, 11, 16, 17 AND 18; NCB 646, BLOCK E, SAVE AND EXCEPT LOTS 13, 15 AND THE SOUTH 26 FEET OF LOT 5; NCB 646, BLOCK F, SAVE AND EXCEPT LOT 12; NCB 647, BLOCK G, SAVE AND EXCEPT LOTS 3 AND 4; NCB 647, BLOCK H, SAVE AND EXCEPT LOTS 10, 11, 12 AND 13; NCB 651, LOT 10, 11, 12 AND 14 THRU 20; NCB 652, LOTS 2 THRU 7; NCB 653, SAVE AND EXCEPT LOT 1, THE SOUTH 36.4 FEET OF LOT 13 AND THE EAST 42.07 FEET OF LOT 16 AND THE WEST 13.07 FEET OF LOT 17; NCB 654; NCB 657, LOTS 15 THRU 20 AND 24 THRU 30; NCB 658, SAVE AND EXCEPT THE NORTH 46 FEET OF LOTS 17 AND 18; NCB 659, LOTS 4, 5, 12 THRU 21, 23, 24, 25 AND 27 THRU 31; NCB 660; NCB 661, SAVE AND EXCEPT LOT 9, BLOCK 3 AND LOT 19, BLOCK 4; NCB 664, LOTS 5 THRU 10; NCB 665, SAVE AND EXCEPT THE NORTH 150 FEET OF LOT 1 AND THE SOUTH 50 FEET OF LOT 6; NCB 666, SAVE AND EXCEPT LOT 13 AND THE EAST 130 FEET OF LOT 9; NCB 667, SAVE AND EXCEPT LOT 19; NCB 668; NCB 671, LOTS 4 THRU 10, 13 THRU 17 AND 24 THRU 29; NCB 672, SAVE AND EXCEPT LOTS 1, 2 AND THE NORTH 50 FEET OF LOT 10; NCB 673, LOTS 1 THRU 9 AND THE WEST 60 FEET OF LOT 10; NCB 674, LOTS 1, 2, 4 AND 8 THRU 12; NCB 675; NCB 1026, SAVE AND EXCEPT LOT 5; NCB 1027; NCB 1028, SAVE AND EXCEPT LOTS 9 AND A-17; NCB 1029; NCB 1030; NCB 1031; NCB 1032; NCB 1033; NCB 1034; NCB 1035; NCB 1386; NCB 1387, LOTS 10, 11 and 12; NCB 1388, LOT A-1, SAVE AND EXCEPT THE NORTH 150 FEET; NCB 1393; NCB 1394; NCB 1395; NCB 1396; NCB 1397; NCB 1398; NCB 1399; NCB 1400; NCB 1401; NCB 1402, SAVE AND EXCEPT LOT 4; NCB 1403; NCB 1404; NCB 1405; NCB 1406; NCB 1407; NCB 1408, SAVE AND EXCEPT LOT 1 AND 2; NCB 1409; NCB 1410; NCB 1411; NCB 1412; NCB 1413; NCB 1414; NCB 1415; NCB 1416; NCB 1437, LOTS 15 THRU 26; NCB 1438, LOTS 14 THRU 26; NCB 1441, LOTS 14 THRU 26; NCB 1443, LOTS 15 THRU 28; NCB 1444, LOTS 15 THRU 28; NCB 1454; NCB 1455; NCB 1456; NCB 1457, SAVE AND EXCEPT LOTS 11, 12, 13 AND 26; NCB 1458, SAVE AND EXCEPT LOTS 1, 18 AND 24; NCB 1459, LOT A-18; NCB 1461, LOTS 12 AND 13; NCB 1462, SAVE AND EXCEPT THE NORTH 80 FEET OF LOTS 1 AND 2; NCB 1482, SAVE AND EXCEPT LOTS 15, 16 AND 17; NCB 1485; NCB 1487; NCB 1488; NCB 1493; NCB 1495, LOTS 16 THRU 21 AND THE EAST 50 FEET OF LOT 15; NCB 1501, SAVE AND EXCEPT THE SOUTH 110 FEET OF LOTS 1 AND 2; NCB 1506, LOTS 1 THRU 8; NCB 1507, SAVE AND EXCEPT LOTS

7, 8 AND A-9; NCB 1508, SAVE AND EXCEPT LOT A-10; NCB 1509, LOTS 7 THRU 12; NCB 1510; NCB 1511; NCB 1512; NCB 1513; NCB 1514, SAVE AND EXCEPT LOTS 1, 2, 3, 6 AND 8; NCB 1517, LOTS 1 THRU 4 AND 13 THRU 16; NCB 1518, SAVE AND EXCEPT LOTS 1, 2 AND 3; NCB 1519; NCB 1520, LOTS 1 THRU 17 AND THE WEST 25.41 FEET OF SOUTH 11.4 FEET OF LOT 8; NCB 1521; NCB 1522; NCB 1523; NCB 1524; NCB 1525; NCB 1526; NCB 1527; NCB 1528, BLOCK 1, LOTS 6, 7, 8 AND 21; NCB 1528, BLOCK 2, SAVE AND EXCEPT LOTS 4, 5 AND 6; NCB 1529; NCB 1530; NCB 1531, SAVE AND EXCEPT LOTS 9, 10 AND 11; NCB 1532, SAVE AND EXCEPT LOTS 6, 7 AND 8; NCB 1533; NCB 1534, SAVE AND EXCEPT LOT 3; NCB 1535, LOTS 4 THRU 16; NCB 1536, SAVE AND EXCEPT LOTS 11, 14, THE SOUTH 15 FEET OF LOT 13, THE WEST 73.8 FEET OF LOTS 15 AND 16; NCB 1537, SAVE AND EXCEPT LOTS 14, 15 AND 16; NCB 1538, SAVE AND EXCEPT LOTS 16 AND THE WEST 73 FEET OF LOT 9; NCB 1540; NCB 1541, SAVE AND EXCEPT LOT 6; NCB 1542; NCB 1543; NCB 1544; NCB 1545; NCB 1546; NCB 1547, LOTS 6 THRU 12 AND 18 THRU 24; NCB 1548; NCB 1553; NCB 1554; NCB 1555; NCB 1556; NCB 1559; NCB 1560; NCB 1561, SAVE AND EXCEPT LOTS 13, 14 AND 15; NCB 1562; NCB 1565; NCB 1566, SAVE AND EXCEPT LOTS 1, 2, 3, 4 AND 13; NCB 1567, SAVE AND EXCEPT LOTS A, B, C, J, K, L, 10, 11, 12, 13 AND THE WEST 50 FEET OF LOT 14; NCB 1571; NCB 1572; NCB 1573; NCB 1585; NCB 1586, LOTS 7 THRU 16; NCB 1589; NCB 1590; NCB 1591; NCB 1592, SAVE AND EXCEPT LOT 26; NCB 1593; NCB 1594; NCB 1595; NCB 1596, SAVE AND EXCEPT LOTS 27 THRU 30; NCB 1597, SAVE AND EXCEPT LOTS 47 THRU 52; NCB 1598; NCB 1599, SAVE AND EXCEPT LOT 53; NCB 1600; NCB 1601, SAVE AND EXCEPT LOTS 13 AND 14; NCB 1602; NCB 1603; NCB 1604, SAVE AND EXCEPT LOT 55; NCB 1605; NCB 1606; NCB 1607, LOTS 41, 42, 43, 44, 47, 48, 53, 54, 55 AND 56; NCB 1608; NCB 1610; NCB 1611, SAVE AND EXCEPT LOTS 23 THRU 31; NCB 1612, SAVE AND EXCEPT LOTS 50, 51 AND 52; NCB 1613, SAVE AND EXCEPT LOTS 1, 2, 3 AND 4; NCB 1614; NCB 1615, SAVE AND EXCEPT LOT 7 AND 8; NCB 1616, SAVE AND EXCEPT THE NORTH 100 FEET OF LOTS 3, 4, 5 AND 6; NCB 1617, SAVE AND EXCEPT LOT 25 AND 26; NCB 1618, LOTS 5 THRU 24 AND 31 THRU 52; NCB 1619, SAVE AND EXCEPT LOTS 1, 2 AND 3; NCB 1620, SAVE AND EXCEPT LOTS 23 THRU 32; NCB 1621, SAVE AND EXCEPT LOTS 38, 39 AND 40; NCB 1622; NCB 1623, SAVE AND EXCEPT LOTS 27 AND 28; NCB 1624, SAVE AND EXCEPT THE NORTH 114 FEET OF LOTS 25, 26, 27 AND 28; NCB 1625, SAVE AND EXCEPT LOTS 4, 5, 6, 7 AND THE NORTH 100 FEET OF LOTS 1, 2 AND 3; NCB 1627, SAVE AND EXCEPT THE NORTH 60 FEET OF LOTS 14, 15, 16 THE SOUTH 83 FEET OF LOTS 17 AND 18; NCB 1628, LOTS 7 THRU 13 AND 17 THRU 28; NCB 1629, LOTS

1 THRU 14 AND 15 THRU 32; NCB 1630; NCB 1631; NCB 1632; NCB 1633; NCB 1634; NCB 1635, SAVE AND EXCEPT LOT 55; NCB 1636, SAVE AND EXCEPT LOTS 1 THRU 4, 51 AND 52; NCB 1637, SAVE AND EXCEPT LOT 27 AND 28 AND THE NORTH 90 FEET OF LOTS 23 THRU 26, BLOCK 7; NCB 1638; NCB 1639; NCB 1640; NCB 1641; NCB 1642; NCB 1643; NCB 1644, SAVE AND EXCEPT LOTS 22 THRU 29 AND 53; NCB 1645, SAVE AND EXCEPT LOTS 52 THRU 56; NCB 1646; NCB 1647, LOTS 1 THRU 28 AND 48 THRU 56; NCB 1648; NCB 1649; NCB 1650, LOTS 1 THRU 13 AND 22 THRU 32; NCB 1651, SAVE AND EXCEPT LOT 29 AND 30; NCB 1652, SAVE AND EXCEPT LOTS 14, 15 AND 16; NCB 1662, SAVE AND EXCEPT LOTS 1 AND 2; NCB 1663, SAVE AND EXCEPT LOTS 1 AND 2; NCB 1669; NCB 1670; NCB 1697, SAVE AND EXCEPT THE EAST 86.5 FEET OF LOT 10; NCB 1699; NCB 2796; NCB 2848; NCB 2918; NCB 2923; NCB 2924; NCB 2925; NCB 2926; NCB 2927; NCB 2928; NCB 2954, SAVE AND EXCEPT LOT A-15; NCB 2955, SAVE AND EXCEPT LOT 17, 22, 27, 28, 29, A-4, A-6, A-35 AND THE WEST 50 FEET OF THE NORTH IRREGULAR 250.2 FEET OF LOT 23 OR A-10; NCB 2988; NCB 3056, LOTS 1, 2 AND 3; NCB 3072, SAVE AND EXCEPT LOTS 14, 15 AND 16; NCB 3073; NCB 3074, SAVE AND EXCEPT LOTS 13, 14 AND 15; NCB 3100; NCB 3101; NCB 3117, SAVE AND EXCEPT THE NORTH 100 FEET OF LOTS 1 AND 2 THE SOUTH 90 FEET OF LOTS 14, 15, 16 AND 17; NCB 3118, SAVE AND EXCEPT LOTS 14, 15 AND THE SOUTH 50 FEET OF LOTS 1 AND 2; NCB 3119, SAVE AND EXCEPT LOTS 13 AND 14; NCB 3146; NCB 3164; NCB 3269; NCB 3270; NCB 3271; NCB 3272; NCB 3273; NCB 3274; NCB 3275; NCB 3276; NCB 3277; NCB 3278; NCB 3523; NCB 3524; NCB 3566; NCB 3569; NCB 3570; NCB 3780, LOTS 3 THRU 11 AND 13 THRU 22; NCB 3781, LOTS 2 THRU 11; NCB 3782; NCB 3783, SAVE AND EXCEPT LOT 13; NCB 3784; NCB 3785; NCB 3786; NCB 3788; NCB 3789; NCB 3790; NCB 3791; NCB 3792; NCB 3793; NCB 3794; NCB 3795; NCB 3796; NCB 3885; NCB 3886; NCB 3887; NCB 3888; NCB 3895, LOTS 19 THRU 27, 34, 35 AND 36; NCB 3899; NCB 6087; NCB 6088; NCB 6134; NCB 6162, SAVE AND EXCEPT LOT 2; NCB 6163, SAVE AND EXCEPT LOTS 1 AND 2; NCB 6397; NCB 6398; NCB 6462; NCB 6463; NCB 6464; NCB 6579; NCB 6582; NCB 6583; NCB 6672; NCB 6735; NCB 6736, LOTS 7 THRU 28; NCB 6737, LOTS 3 THRU 14; NCB 6814, LOTS 1 THRU 13 AND 13 THRU 28; NCB 6815, LOTS 1 THRU 12 AND 16 THRU 27; NCB 6818, LOTS 1 THRU 13. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM HISTORIC LANDMARK "C" APARTMENT DISTRICT AND "J" COMMERCIAL DISTRICT TO HISTORIC "R-2" TWO FAMILY RESIDENCE DISTRICT LISTED BELOW AS FOLLOWS: NCB 638, LOTS 1 THRU 11. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE

DISTRICT AND "J" COMMERCIAL DISTRICT TO "R-2" CC TWO FAMILY RESIDENCE DISTRICT WITH CITY COUNCIL APPROVAL FOR A CEMETERY LISTED BELOW AS FOLLOWS: NCB A-8; NCB A-9; NCB A-10; NCB A-11; NCB A-12; NCB 1388; NCB 1389; NCB 1390; NCB 1391; NCB 1392. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "D" APARTMENT DISTRICT, "C" APARTMENT DISTRICT AND "R-3" CC MULTIPLE FAMILY RESIDENCE DISTRICT WITH CITY COUNCIL APPROVAL FOR A DAYCARE CENTER TO "R-2" CC TWO FAMILY RESIDENCE DISTRICT WITH CITY COUNCIL APPROVAL FOR A DAYCARE AND LEARNING CENTER LISTED BELOW AS FOLLOWS: NCB 610, LOTS 17 AND 18; NCB 631, LOTS C, E, G, H, I, J, K, AND 8 THRU 12; NCB 632, BLOCK A, LOT 18; NCB 639, BLOCK A, LOT 1; NCB 647, BLOCK G, LOT 3; NCB 653, THE EAST 42.07 FEET OF LOT 16, AND THE WEST 13 FEET OF LOT 17; NCB 1402, LOT 2; NCB 1528, BLOCK 1, LOTS 1 THRU 5 AND 14 THRU 20. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT AND "R-3" MULTIPLE FAMILY RESIDENCE DISTRICT TO "R-2" CC TWO FAMILY RESIDENCE DISTRICT WITH CITY COUNCIL APPROVAL FOR A DAYCARE CENTER LISTED AS FOLLOWS: NCB 1457, LOTS 11, 12, 13 AND 26. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT TO "R-2" CC TWO FAMILY RESIDENCE DISTRICT WITH CITY COUNCIL APPROVAL FOR A MUSEUM LISTED BELOW AS FOLLOWS: NCB 1532, LOTS 6, 7 AND 8. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT AND "J" COMMERCIAL DISTRICT TO "R-2" CC TWO FAMILY RESIDENCE DISTRICT WITH CITY COUNCIL APPROVAL FOR A COLLEGE LISTED BELOW AS FOLLOWS: NCB 1460, SAVE AND EXCEPT LOT 20; NCB 1461; NCB 1483; NCB 1484; NCB 1498; NCB 1499; NCB 1501, THE SOUTH 110 FEET OF LOTS 1 AND 2; NCB 1502; NCB 1503; NCB 1504; NCB 1514, LOTS 6 AND 8; NCB 1515; NCB 1516; NCB 1517, LOTS 5, 6, 11, 12, AND 17 THRU 23; NCB 1518, LOTS 1, 2 AND 3. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT TO "R-2" SUP TWO FAMILY RESIDENCE DISTRICT SPECIAL USE PERMIT FOR TWO RESIDENCE STRUCTURES LISTED BELOW AS FOLLOWS: NCB 1538, LOT 16. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT TO "R-2" SUP TWO FAMILY RESIDENCE DISTRICT SPECIAL USE PERMIT FOR A MOBILE HOME LISTED BELOW AS FOLLOWS: NCB 1541, LOT 6. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT TO "R-2" SUP TWO FAMILY RESIDENCE DISTRICT SPECIAL USE PERMIT FOR A TRIPLEX RESIDENCE LISTED BELOW AS FOLLOWS: NCB 1458, BLOCK 18, LOT 18. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT TO "R-A" RESIDENCE-AGRICULTURE DISTRICT LISTED BELOW AS FOLLOWS: NCB 1621, LOTS 38, 39 AND 40. THE



REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT, "D" APARTMENT DISTRICT, "F" LOCAL RETAIL DISTRICT, "H" LOCAL RETAIL DISTRICT AND "J" COMMERCIAL DISTRICT TO "R-3" MULTIPLE FAMILY RESIDENCE DISTRICT LISTED BELOW AS FOLLOWS: NCB 45, LOT 16; NCB 646, BLOCK F, LOT 12; NCB 647, BLOCK G, LOT 4; NCB 1026, BLOCK 2, LOT 5; NCB 1443, LOTS 1 THRU 4; NCB 1444, LOTS 1 THRU 13; NCB 1446; NCB 1447, SAVE AND EXCEPT LOTS 3 AND 8; NCB 1448; NCB 1450. NCB 1451; NCB 1459; NCB 1465; NCB 1496; NCB 1528, LOTS 4, 5 AND 6; NCB 1550; NCB 1551; NCB 7457; NCB 12777. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT TO "R-7" SMALL LOT HOME DISTRICT LISTED BELOW AS FOLLOWS: NCB 1538, THE WEST 73 FEET OF LOT 9. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "E" OFFICE DISTRICT, "G" LOCAL RETAIL DISTRICT AND "J" COMMERCIAL DISTRICT TO "O-1" OFFICE DISTRICT LISTED BELOW AS FOLLOWS: NCB 617, BLOCK 20, LOT 19; NCB 1599, LOT 53; NCB 1607, LOTS 34 THRU 40; NCB 1624, THE NORTH 114 FEET OF LOT 25, 26, 27, AND 28; NCB 3056, THE NORTH 50 FEET OF LOTS 13, 14 AND 15. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT TO "O-1" SUP OFFICE DISTRICT SPECIAL USE PERMIT FOR A CABINET SHOP LISTED BELOW AS FOLLOWS: NCB 1607, LOTS 45 AND 46. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT, "C" APARTMENT DISTRICT, "D" APARTMENT DISTRICT, "H" LOCAL RETAIL DISTRICT, "J" COMMERCIAL DISTRICT AND "L" FIRST MANUFACTURING DISTRICT TO "B-1" BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB A-30, LOTS 23, 23-A AND 23-B; NCB 623, THE NORTH 73.3 FEET OF LOT 11, BLOCK 27; NCB 639, BLOCK A, LOT 2; NCB 651, LOT 13; NCB 653, THE SOUTH 36.4 FEET OF LOT 13; NCB 657, LOTS 9 AND 10; NCB 658, THE NORTH 46 FEET OF LOTS 17 AND 18; NCB 659, THE EAST 100 FEET OF LOT 22; NCB 665, THE NORTH 150 FEET OF LOT 1; NCB 672, LOT 2; NCB 674, LOTS 6 AND 7; NCB 1441, LOTS 3 AND 8; NCB 1442; NCB 1507, LOTS 7, 8 AND A-10; NCB 1531, LOTS 9, 10 AND 11; NCB 1534, LOT 3; NCB 1567, LOTS A, B, C, J, K, AND L; NCB 1596, LOTS 27, 28, 29, AND 30; NCB 1597, LOTS 47 THRU 52; NCB 1618, LOTS 25 AND 26; NCB 1627, THE SOUTH 83 FEET OF LOTS 17 AND 18. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT, "D" APARTMENT DISTRICT, "G" LOCAL RETAIL DISTRICT, "J" COMMERCIAL DISTRICT, "L" FIRST MANUFACTURING DISTRICT AND "B-3" BUSINESS DISTRICT TO "B-2" BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB 603, SAVE AND EXCEPT LOT 12; NCB 604, BLOCK A, LOTS 7, 8, 15 AND 16; NCB 608, LOTS 1 THRU 5, 20 AND THE WEST 58 FEET OF LOTS 9 AND 10; NCB 617, BLOCK 20, LOT 36, THE SOUTH 47.25 FEET OF LOT

27; NCB 640, BLOCK D, LOT 18; NCB 645, LOTS 6, 7, 9, 11, 16, 17 AND 18; NCB 646, BLOCK E, THE SOUTH 26 FEET OF LOT 5; NCB 647, BLOCK H, LOTS 10, 11 AND 13; NCB 659, THE WEST 50 FEET OF LOTS 22 AND 26; NCB 666, THE EAST 130 FEET OF LOT 9; NCB 671, LOTS 18, 19, 20 AND 30; NCB 674, LOT 5; NCB 1408, BLOCK 20, LOTS 1 AND 2; NCB 1441, LOTS 3 THRU 13, 27 AND 28; NCB 1444, LOT 14; NCB 1520, LOT 9 AND LOT 8 SAVE AND EXCEPT THE WEST 25.41 FEET OF THE SOUTH IRREGULAR 11.4 FEET; NCB 1535, LOTS 1, 2 AND 3; NCB 1536, LOTS 11, 14 AND THE SOUTH 15 FEET OF LOT 13; NCB 1560, THE NORTH 75 FEET OF LOTS 13, 14 AND 15; NCB 1586, LOTS 5 AND 6; NCB 1588, LOTS 1, 2, 3, 16 AND 17; NCB 1601, LOTS 51 AND 52; NCB 1611, LOTS 23, 24, 25, 26, 30 AND 31; NCB 1620, LOTS 23 THRU 32; NCB 1625, LOTS 4, 5, THE NORTH 100 FEET OF LOTS 1, 2 AND 3; NCB 1635, LOT 55; NCB 1636, LOTS 1, 2, 3, AND 4; NCB 1637, LOTS 27 AND 28; NCB 1644, LOTS 22 THRU 26, THE NORTH 45 FEET OF LOTS 27, 28 AND 29; NCB 1652, LOTS 14, 15 AND 16; NCB 2954, LOT A-15; NCB 2955, LOTS A-4, A-6, 27, 28 AND 29; NCB 3072, LOTS 14, 15 AND 16; NCB 3074, LOTS 13, 14 AND 15; NCB 3119, LOTS 13 AND 14. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT TO "B-2" SUP BUSINESS DISTRICT SPECIAL USE PERMIT FOR AUTO REPAIRS LISTED BELOW AS FOLLOWS: NCB 1625, LOTS 6 AND 7. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT, "G" LOCAL RETAIL DISTRICT, "J" COMMERCIAL DISTRICT, "B-2" BUSINESS DISTRICT AND "O-1" OFFICE DISTRICT TO "B-2NA" NON ALCOHOLIC SALES BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB 1482, LOTS 15, 16 AND 17; NCB 1508, LOT A-10; NCB 1509, LOTS 3, 4, 5 AND 6; NCB 1601, LOTS 50, 51 AND 52; NCB 1604, LOT 55; NCB 1618, LOTS 1 THRU 4; NCB 1623, LOTS 27 AND 28; NCB 3783, LOT 13; NCB 3895, LOTS 31, 32 AND 33. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT, "K" COMMERCIAL DISTRICT AND "I-1" LIGHT INDUSTRY DISTRICT TO "B-3" BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB 597; NCB 598; NCB 599; NCB 600, LOTS 3 THRU 9 AND LOT 37, SAVE AND EXCEPT THE SOUTH 120 FEET; NCB 665, THE SOUTH 100 FEET OF LOT 6; NCB 1386, LOTS 1 THRU 8 AND 12 THRU 16; NCB 1387, LOTS 1, 2, 3, 7, 8 AND 9; NCB 1388, THE NORTH 150 FEET OF LOT A-1; NCB 1437, LOTS 12 AND 13; NCB 1536, THE WEST 73.8 FEET OF LOTS 15 AND 16; NCB 1587, LOTS 6, 7 AND THE EAST 13.3 FEET OF LOT 8; NCB 1636, LOTS 51 AND 52; NCB 1637, BLOCK 7, THE NORTH 90 FEET OF LOTS 23 THRU 26; NCB 1644, THE SOUTH 105 FEET OF LOTS 27, 28 AND 29; NCB 3118, THE SOUTH 50 FEET OF LOTS 1 AND 2; NCB 6818, THE NORTH 80.3 FEET OF LOTS 14 AND 15. THE REZONING AND

RECLASSIFICATION OF PROPERTY FROM "K" COMMERCIAL DISTRICT TO "B-3" CC BUSINESS DISTRICT WITH SPECIAL CITY COUNCIL APPROVAL FOR A PET CEMETERY LISTED BELOW AS FOLLOWS: NCB 1386, LOTS 9, 10 AND 11. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT TO "B-3" SUP BUSINESS DISTRICT SPECIAL USE PERMIT FOR A PLANNING MILL LISTED BELOW AS FOLLOWS: NCB 1460, LOT 20. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT, "D" APARTMENT DISTRICT, "J" COMMERCIAL DISTRICT, "L" FIRST MANUFACTURING DISTRICT, "B-1" BUSINESS DISTRICT AND "B-3" BUSINESS DISTRICT TO "B-3R" RESTRICTIVE BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB 603, LOT 12; NCB 643, THE NORTH 50 FEET OF LOTS 1 THRU 5, THE NORTHEAST 50 FEET OF LOTS 6 THRU 11, THE EAST 50 FEET OF LOTS A, C, D AND E; NCB 646, BLOCK E, LOTS 13 AND 15; NCB 651, LOTS 1 THRU 9; NCB 652, LOTS 1 AND 8 THRU 16; NCB 653, LOT 1; NCB 659, LOTS 1, 2, 3, 6 THRU 11 AND THE EAST 100 FEET OF LOT 26; NCB 661, BLOCK 4, LOT 19; NCB 667, LOT 19; NCB 672, LOT 1 AND THE NORTH 50 FEET OF LOT 9; NCB 673, LOTS 11 THRU 16 AND THE EAST 140 FEET OF LOT 10; NCB 674, LOT 3; NCB 1437, LOTS 1 THRU 14; NCB 1438, LOTS 1 THRU 13; NCB 1458, LOTS 1 THRU 24; NCB 1494, LOTS 13, 14, 15 AND 16; NCB 1514, LOTS 1, 2 AND 3; NCB 1561, LOTS 13, 14 AND 15; NCB 1566, LOTS 1, 4 AND 13; NCB 1567, LOT 10 AND LOT 14, SAVE AND EXCEPT THE WEST 50 FEET; NCB 1586, LOT 17, THE NORTH 50 FEET OF LOTS 1, 2, 3 AND 4; NCB 1587, SAVE AND EXCEPT LOT 6, 7 AND THE EAST 13.3 FEET OF LOT 8; NCB 1612, LOTS 50, 51 AND 52; NCB 1618, LOTS 27, 28, 29 AND 30; NCB 1619, LOTS 1, 2 AND 3; NCB 1626; NCB 1628, LOTS 1 THRU 6, AND LOTS 29 THRU 32; NCB 1629, LOTS 15 THRU 18; NCB 1645, LOTS 52 THRU 56; NCB 1650, LOTS 14 THRU 21; NCB 1651, LOTS 29 AND 30; NCB 1662, LOTS 1 AND 2; NCB 1663, LOTS 1 AND 2; NCB 2955, LOTS 17, 22 AND A-35; NCB 3056, LOTS 4, 10 AND THE NORTH 50 FEET OF LOTS 11 AND 12; NCB 3780, LOTS 1, 2 AND 12; NCB 3781, LOT 1; NCB 3895, LOTS 28, 29 AND 30; NCB 6162, LOT 2; NCB 6163, LOTS 1 AND 2; NCB 6736, LOTS 4, 5 AND 6; NCB 6737, LOTS 1 AND 2; NCB 6814, LOTS 14, 15, 29 AND 30; NCB 6815, LOTS 13, 14, 15, 28, 29 AND 30; NCB 6815, THE SOUTH 80 FEET OF LOTS 14 AND 15. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "F" LOCAL RETAIL DISTRICT TO "B-3R" SUP RESTRICTIVE BUSINESS DISTRICT SPECIAL USE PERMIT FOR A SAND AND GRAVEL YARD AND CONSTRUCTION OFFICE LISTED BELOW AS FOLLOWS: NCB 1567, LOTS 11, 12 AND 13. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT TO "B-3R" SUP RESTRICTIVE BUSINESS DISTRICT SPECIAL USE PERMIT FOR OUTSIDE REPAIRS OF LAWNMOWERS LISTED BELOW AS

FOLLOWS: NCB 1647, LOTS 29, 30, 31 AND 32. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT TO "B-3R" SUP RESTRICTIVE BUSINESS DISTRICT SPECIAL USE PERMIT FOR AN OUTSIDE STORAGE OF SAFETY EQUIPMENT, SIGNS AND BARRICADES LISTED BELOW AS FOLLOWS: NCB 1647, LOTS 33 THRU 43. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "B" RESIDENCE DISTRICT AND "J" COMMERCIAL DISTRICT TO "B-3NA" NON ALCOHOLIC SALES BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB 1537, LOTS 14, 15 AND 16; NCB 1607, LOTS 49, 50, 51, 52; NCB 1617, LOTS 25 AND 26; NCB 1627, THE NORTH 60 FEET OF LOTS 14, 15 AND 16; NCB 3117, THE NORTH 100 FEET OF LOTS 1 AND 2, THE SOUTH 100 FEET OF LOTS 14, 15, 16 AND 17; NCB 3118, LOTS 14 AND 15; NCB 6115, LOTS 7 AND 8. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "J" COMMERCIAL DISTRICT TO "B-3NA" SUP NON ALCOHOLIC SALES BUSINESS DISTRICT SPECIAL USE PERMIT FOR TRUCK AND TRAILER MAINTENANCE LISTED BELOW AS FOLLOWS: NCB 1647, LOTS 44 THRU 47. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "F" LOCAL RETAIL DISTRICT, "J" COMMERCIAL DISTRICT, "K" COMMERCIAL DISTRICT AND "L" FIRST MANUFACTURING DISTRICT TO "B-4" CENTRAL BUSINESS DISTRICT LISTED BELOW AS FOLLOWS: NCB 602; NCB 607; NCB 613; NCB 614; NCB 615; NCB 620; NCB 621; NCB 622; NCB 627; NCB 628; NCB 629; NCB 636; NCB 679, Lots 9, 10, 11 and 12; NCB 14083; NCB 14084. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM HISTORIC "K" COMMERCIAL DISTRICT AND HISTORIC "L" FIRST MANUFACTURING DISTRICT TO HISTORIC "B-4" CENTRAL BUSINESS DISTRICT LISTED BELOW A FOLLOWS: NCB 601; NCB 679, THAT PORTION OF NCB BETWEEN WALNUT STREET AND HOEFGEN AVENUE; NCB 681; NCB 14081; NCB 14082. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "C" APARTMENT DISTRICT, "D" APARTMENT DISTRICT, "J" COMMERCIAL DISTRICT AND "L" FIRST MANUFACTURING DISTRICT TO "I-1" LIGHT INDUSTRY DISTRICT LISTED BELOW AS FOLLOWS: NCB A-27, LOTS A-1, A-2, A-3, A-4, A-8, A-9, A-10, A-11 AND A-12; NCB A-30, LOTS A-1, A-4; NCB 635; NCB 641; NCB 642, SAVE AND EXCEPT LOTS 11, 12, 15 AND 16; NCB 643, SAVE AND EXCEPT LOT 1, THE NORTH 50 FEET OF LOTS 1 THRU 5, THE NORTHEAST 50 FEET OF LOTS 6 THRU 11, AND THE EAST 50 FEET OF LOTS A, C, D AND E; NCB 649, SAVE AND EXCEPT LOT 9; NCB 650; NCB 656; NCB 657, LOTS 1 THRU 8, 11 THRU 14, AND 21 THRU 23; NCB 663; NCB 664, LOTS 1 THRU 4 AND 11 THRU 30; NCB 669; NCB 670; NCB 671, LOTS 1, 2, 3, 11, 12, 21, 22 AND 23; NCB 676; NCB 677; NCB 678; NCB 1505, LOTS 6, 7, 8, AND 17; NCB 1566, LOTS 2 AND 3; NCB 2736; NCB 2737; NCB 2955, THE WEST IRREGULAR 50 FEET OF THE NORTH IRREGULAR 250.2 FEET OF LOT 23 OR

A-10; NCB 3056, LOT 16; NCB 3056, LOTS 11, 13, 14 AND 15 SAVE AND EXCEPT THE NORTH 50 FEET; NCB 3519; NCB 6583, LOTS 7 THRU 10; NCB 7057. THE REZONING AND RECLASSIFICATION OF PROPERTY FROM "L" FIRST MANUFACTURING DISTRICT TO "I-2" HEAVY INDUSTRY DISTRICT LISTED BELOW AS FOLLOWS: NCB 642, LOTS 11, 12, 15 AND 16; NCB 649, LOT 9. "THE PENALTY FOR VIOLATION IS A FINE NOT TO EXCEED \$1,000.00."

\* \* \* \*

93-50 PUBLIC HEARING AND CONSIDERATION OF ORDINANCE AMENDING THE UNIFIED DEVELOPMENT CODE:

Mayor Wolff opened the Public Hearing.

No citizens were registered to speak on the matter.

Mayor Wolff declared the Public Hearing closed.

The City Clerk read the following Ordinance:

AN ORDINANCE 79,330

AMENDING THE PROVISIONS OF THE ZONING REGULATIONS CONCERNING LANDSCAPING REQUIREMENTS FOR MINIWAREHOUSES AND BUSINESS PARK DISTRICTS, AND GREEN SPACE REQUIREMENTS AND RECOMMENDED TREE SPECIES FOR URBAN CORRIDOR DISTRICTS, SO AS TO AVOID CONFLICTS WITH THE NEW LANDSCAPE ORDINANCE.

\* \* \* \*

Mr. Peak made a motion to approve the proposed Ordinance. Ms. Billa Burke seconded the motion.

Mr. David Pasley, Director of Planning, explained the four proposed amendments to the Unified Development Code, in order to make them coincide with the recently-enacted Landscape Ordinance provisions.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, Billa Burke, Avila, Solis, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: McClendon, Ayala, Ross.

PUBLIC HEARING AND CONSIDERATION OF ORDINANCE  
COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY ANNUAL  
PERFORMANCE REPORT:

Mayor Wolff opened the Public Hearing.

No citizens were registered to speak on the matter.

Mayor Wolff declared the Public Hearing closed.

The City Clerk read the following Ordinance:

AN ORDINANCE 79,331

ADOPTING THE CITY OF SAN ANTONIO'S COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY (CHAS) ANNUAL PERFORMANCE REPORT (OCTOBER 1, 1992-SEPTEMBER 30, 1993), ADOPTING THE CHAS FIVE YEAR PLAN (OCTOBER 1, 1993-SEPTEMBER 30, 1998) AND AUTHORIZING SUBMISSION OF SAID DOCUMENTS TO THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD).

\* \* \* \*

Mr. Perez made a motion to approve the proposed Ordinance. Ms. Billa Burke seconded the motion.

Mr. Andrew Cameron, Director of Housing & Community Development, explained the proposed ordinance on the Comprehensive Housing Affordability Strategy (CHAS) Annual Performance Report and the CHAS Five-Year Plan.

(At this point, Mayor Wolff was obliged to leave the meeting. Mayor Pro-Tem Peak presided.)

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson; NAYS: None; ABSENT: McClendon, Ayala, Wolff.

(At this point, Mayor Wolff returned to the meeting to preside.)

The Clerk read the following Ordinance:

AN ORDINANCE 79,332

ACCEPTING THE PROPOSAL OF J. A. NAMMACK ASSOCIATES, INC. AND AUTHORIZING THE EXECUTION OF

AN AGREEMENT PURSUANT THERETO FOR PROFESSIONAL CONSULTANT SERVICES AT A COST NOT TO EXCEED \$127,500.00 IN CONNECTION WITH THE DEVELOPMENT OF AN AIR SERVICE IMPROVEMENT PROGRAM FOR SAN ANTONIO INTERNATIONAL AIRPORT AND PROVIDING FOR PAYMENT.

\* \* \* \*

Mr. Solis made a motion to approve the proposed Ordinance. Mr. Peak seconded the motion.

Mr. Mike Kutchins, Director of Aviation, explained the proposed plan to develop the Air Service Improvement Program for San Antonio International Airport.

In response to a question by Mr. Larson, Mr. Kutchins spoke to the selection of the consultant firm.

A discussion ensued concerning development of airline routes through San Antonio, as a result of the North American Free Trade Agreement.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,333

ACCEPTING THE PROPOSAL OF PARAGON DECISION RESOURCES, INC., AUTHORIZING THE EXECUTION OF AN AGREEMENT PURSUANT THERETO FOR PROFESSIONAL CONSULTANT SERVICES AT A COST NOT TO EXCEED \$52,946.58 IN CONNECTION WITH THE AVIATION TARGET INDUSTRY STUDY AND PROVIDING FOR PAYMENT.

\* \* \* \*

Mr. Peak made a motion to approve the proposed Ordinance. Mr. Solis seconded the motion.

Ms. Claudia Mora, Department of Economic Development, briefly explained the first phase of the two-phase program to produce an "Aviation Target Industry Study", and spoke to the recommendation for a consulting firm.

Mr. Larson spoke to the need to target jobs that fit the skills of military workers who have lost their jobs or who might be involved in future reductions-in-force.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 Agenda item 54, being a proposed Ordinance authorizing the use of \$65,000.00 to fund two Field Alterations to the Farmers Market Renovation Contract totaling \$6,520.00; to fund the purchase of certain materials at a cost of \$17,400.00 in connection with said project; to fund the purchase of certain materials and services in connection with the Farmers Market Grand Opening at a cost of \$41,080.00; appropriating funds; and providing for payment, was earlier removed from consideration by the City Manager.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,334

REINSTATING CATERING BY NICK AS AN APPROVED CATERER AT THE ALAMODOME FOR A CAPITAL CONTRIBUTION OF \$40,000.00; AND RESCINDING ORDINANCE NO. 78909, ADOPTED ON OCTOBER 14, 1993.

\* \* \* \*

Ms. McClendon made a motion to approve the proposed Ordinance. Ms. Billa Burke seconded the motion.

Mr. Edward C. Garcia, Director of Convention Facilities, briefly explained the restoration of the fourth planned Alamodome catering firm, previously removed from consideration at the firm's request.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50 The Clerk read the following Ordinance:

AN ORDINANCE 79,335

RATIFYING FIELD ALTERATION NUMBER 2 IN THE DEDUCTIVE AMOUNT OF \$92,200.00 TO THE CONTRACT WITH BARTLETT COCKE, JR., FOR CONSTRUCTION OF THE SAN ANTONIO MUNICIPAL BASEBALL STADIUM TO REDUCING THE ORIGINAL TOTAL OF THE CONTRACT FROM \$7,910,000.00 TO A NEW



TOTAL OF \$7,717,800.00; RATIFYING FIELD ALTERATION NO. 3 IN THE AMOUNT OF \$26,775.00 FOR THE PURCHASE OF 792 ARMCHAIR SEATS FROM THE CONTRACT CONTINGENCY FUND; REDUCING THE APPROPRIATION IN PROJECT NO. 43-203004 (CONSTRUCTION CONTRACT - STADIUM) BY \$92,200.00; AUTHORIZING ADDITIONAL PROFESSIONAL SERVICES FEES IN THE AMOUNT OF \$228,595.60 PAYABLE TO FORD, POWELL AND CARSON, INC.; ACCEPTING A \$250,000.00 CONTRIBUTION FROM THE SAN ANTONIO MISSIONS BASEBALL CLUB FOR USE IN CONNECTION WITH THE BASEBALL STADIUM PROJECT; REVISING SAID PROJECT'S BUDGET BY AUTHORIZING AN ADDITIONAL \$1,925.00 FOR EXPENDITURE INDEX NO. 53758, FENCE RELOCATION; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT.

\* \* \* \*

Mr. Solis made a motion to approve the proposed Ordinance. Mr. Billa Burke seconded the motion.

Mr. Ron Darner, Director of Parks & Recreation, explained the two proposed field alterations involving the construction of the San Antonio Municipal Baseball Stadium; the additional professional services fees; and the \$250,000.00 donation to the project by the San Antonio Missions Baseball Club.

Mr. Solis noted that the Baseball Advisory Team supports the proposed ordinance, and he addressed how the projected deficits will be made up.

Mr. Darner discussed the status of negotiations with the San Antonio Missions Baseball Club on a contract to use the Municipal Baseball Stadium, beginning next spring.

After consideration, the motion, carrying with it the passage of the Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson, Wolff; NAYS: None; ABSENT: Ayala.

93-50

CITIZENS TO BE HEARD

CRUZ CHAVIRA

Mr. Cruz Chavira, Bexar County Taxi Drivers Association, spoke to their concerns about the proposed new regulations on taxi-cabs. They are especially concerned about eliminating the use of cellular telephones in the cabs as proposed by the new rules.

Mayor Wolff asked Mr. Chavera to condense his statements and make those available to the Council.

\* \* \* \*

ROBERT GONZALEZ

Mr. Robert Gonzalez, San Antonio Taxi Drivers Alliance, read a prepared statement to the Council (A copy of which is on file with the papers of this meeting), requesting to negotiate with the City Council on the proposed ordinance so it will be acceptable to both the City and the taxi-cab industry. The statement is signed by Mr. Norman Posey and Mr. Samen Raza.

\* \* \* \*

LUKE BOURKE

Mr. Luke Bourke distributed to the Council a chart showing income estimates for class A taxi-cab recommendations for changes in meter rates and the development of a mystery rider program. (A copy of his statement is on file with the papers of this meeting.)

\* \* \* \*

MARIA DOMINGUEZ

Ms. Maria Dominguez, spoke to the City Council about her concerns with the transportation of persons to special events at the Dome.

\* \* \* \*

- - -  
93-50 City Council recessed its regular meeting in order to convene in Executive Session at 7:58 P.M. for a Staff Briefing on the selection of Gardere and Wynne, L.L.P., to provide environmental consulting services to the Blue Ribbon Committee for the Alamodome Contaminated Soils, reconvening in regular meeting at 9:49 P.M. The Mayor announced that no formal action had been taken.

- - -  
93-50 The City Clerk read a proposed Ordinance ratifying the selection, and accepting the proposal from Gardere and Wynne, L.L.P., Attorneys, to provide environmental consulting services for an amount not to exceed \$304,230.00 to the Blue Ribbon Committee for Alamodome Contaminated Soils; authorizing a total of \$350,000.00 for such legal services, meeting expenses and contingencies; and providing for payment from the 1/2 percent sales tax.

Ms. Billa Burke made a motion to approve the proposed Ordinance. Ms. McClendon seconded the motion.

Ms. McClendon made a substitute motion to ratify the selection of the firm of Gardere and Wynne, L.L.P. only. Mr. Ross seconded the substitute motion.

After consideration, the substitute motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson; NAYS: None; ABSENT: Ayala, Wolff.

After consideration, the main motion as substituted, carrying with it the passage of the following Ordinance, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson; NAYS: None; ABSENT: Ayala, Wolff.

AN ORDINANCE 79,336

RATIFYING THE SELECTION OF GARDERE AND WYNNE, L.L.P., ATTORNEYS, TO PROVIDE ENVIRONMENTAL CONSULTING SERVICES TO THE BLUE RIBBON COMMITTEE FOR ALAMODOME CONTAMINATED SOILS.

\* \* \* \*

After discussion, Ms. McClendon made a motion that the firm of Gardere and Wynne, L.L.P. come back to City Council with a revised budget recommendation by April 15, 1994, and that the firm not encumber more than \$75,000.00. Ms. Billa Burke seconded the motion.

After consideration, the motion, prevailed by the following vote: AYES: Perez, McClendon, Billa Burke, Avila, Solis, Ross, Thornton, Peak, Larson; NAYS: None; ABSENT: Ayala, Wolff.

Mr. David Page, representing the firm of Gardere and Wynne, L.L.P., stated that he would take back to the firm the decision of City Council, and prepare a new budget recommendation.

93-50

CITY MANAGER'S REPORT

C D B G EXPENDITURE RATE

Mr. Andrew Cameron, Director of Housing & Community Development, distributed to members of the City Council a memorandum on "Issues Regarding the CDBG Expenditure Rate", concerning recent mention of problems with San Antonio's ability to spend its allotted CDBG funds in a timely manner. He spoke to one report that noted that San Antonio stands to possibly lose up to \$7 million in CDBG funding as a result, and addressed staff actions being taken to rectify the situation. He noted that San Antonio's Community Development Block Grant (CDBG) funding is heavily oriented toward capital improvements; thus, the

December 16, 1993  
nw

time-line between project funding and actual expenditure is sometimes extended. He noted that City staff is now in process of reprogramming funds into faster-spending projects, for City Council consideration in January 1994.

Mr. Perez spoke in support of the City staff's three-step approach to a solution, as presented.

93-50 There being no further business to come before the Council, the meeting was adjourned at 10:04 P.M.

A P P R O V E D

*[Handwritten signature]*  
M A Y O R

Attest: *[Handwritten signature]*  
CITY CLERK

December 16, 1993

Honorable Mayor and Members of the City Council of the City of San Antonio:

The following petitions were received in my office and forwarded to the City Manager for investigation and report to the City Council:

December 3, 1993

Petition submitted by Mr. Fred Sheppard, et al, 1418 N. Onslow, San Antonio, Texas 78202, request the City of San Antonio to demolish the property located at 1422 Onslow.

/s/ Norma S. Rodriguez  
City Clerk