

CITY OF ENNIS COMMISSION REGULAR MEETING

NOVEMBER 18, 2013

7:00 P.M.

Mayor Thomas called the meeting to order at 7:02 p.m. on November 18, 2013, in the City Commission Chambers of the City of Ennis Municipal Building, 115 W. Brown Street, Ennis, Texas 75119.

PRESENT: Mayor Thomas, Commissioners Salik, Frazier, Haupt, Walker, Searcy, and Holley, City Manager Howerton, City Attorney Wilson, Chief Erisman, City Secretary Batchler, and the News Media and Citizens.

INVOCATION: Commissioner Walker

PLEDGE OF ALLEGIANCE was led by Mayor Thomas.

ROLL CALL to determine the presence of a quorum: The City Secretary called the roll and determined that a quorum was present.

MINUTES of the November 4, 2013, workshop were approved as presented on a motion by Commissioner Salik, seconded by Commissioner Walker with all members present voting AYE. Minutes of the November 4, 2013 regular meeting were approved as presented on a motion by Commissioner Haupt and seconded by Commissioner Holley with all members present voting AYE.

PUBLIC HEARING

HISTORIC PRESERVATION AND REDEVELOPMENT POLICIES FOR THE NATIONAL REGISTER HISTORIC DOWNTOWN DISTRICT (HISTORIC PRESERVATION TAX ABATEMENT AND HISTORIC PRESERVATION GRANT PROGRAM).

At 7:03 Mayor Thomas opened the Public Hearing and City Manager Howerton read the proposed policy.

**HISTORIC PRESERVATION GOALS AND POLICIES
NATIONAL REGISTER HISTORIC DOWNTOWN
DISTRICT**

**TAX ABATEMENT AND HISTORIC PRESERVATION GRANT
POLICIES NOVEMBER 12, 2013**

BACKGROUND

The National Register Historic Downtown District is approximately 20.35 acres (8 square blocks) of Ennis History. The District contains 85 structures with an appraised valuation of approximately \$10,000,000.00.

59 historically dated properties in the National Register Historic Downtown District are 101 years in average age (the average date of construction for these structures was 1912). Collectively, the National Register Historic Downtown District represents both the past and future of the City of Ennis.

Many of the structures in the National Register Historic Downtown District are in poor physical condition and are deteriorating rapidly. Without significant restoration efforts, it is unlikely that many of the buildings will survive the next 30-50 years. Brick mortar is missing or in poor repair on many structures. Many building roof systems are in poor repair. Electrical systems are sub-standard in many structures. Many buildings are inadequately insured and in the event of a casualty loss (fire, windstorm, flood, collapse, etc.) building owners do not have adequate insurance to rebuild in the historical style of the District. The age and condition of downtown buildings prevents lease (rental) revenues that are substantial enough to fund major building restoration projects.

Five (5) structures in the National Register Historic Downtown District were damaged substantially as a result of the May 16, 2013 Tornado.

Due to the nature of common wall construction prevalent at the turn of the Twentieth Century, the structural condition of one building in the National Register Historic Downtown District often impacts two, or more, adjacent structures. Further, the physical integrity of the District, as a whole, is important in maintaining its National Register designation.

The National Register Historic Downtown District is of historic and economic significance to the City of Ennis and the preservation and redevelopment of the District is in the public interest.

PUBLIC PURPOSE AND INTENT

It is the public purpose and intent of the City of Ennis, Texas, to:

1. To safeguard the historic resources, tax base and the collective economic viability of the 85 structures in the National Register Historic Downtown District.
2. To encourage (induce) the physical preservation of all structures within the National Register Historic Downtown District that are significantly aged and in poor condition.
3. To prevent or lessen the likelihood of the casualty loss of any historic structure within the National Register Historic Downtown District and to likewise prevent the loss of adjoining common wall structures.
4. To assist property owners in the National Register Historic Downtown District in recovery from building damage and real property loss resulting from the May 16, 2013 Tornado.
5. To encourage and promote the economic development of the National Register Historic Downtown District.

PROPOSED HISTORIC PRESERVATION POLICY

1. City Commission of the City of Ennis, Texas, does hereby declare that as a matter of public policy the protection, enhancement and perpetuation of the National Register Historic Downtown District is necessary to promote the economic, cultural and general welfare of the City of Ennis; and,
2. The City Commission of the City of Ennis, Texas, does hereby recognize that the historical resources of the National Register Historic Downtown District represent the unique confluence of time and place that have shaped the identity of generations of citizens, collectively and individually, and these resources constitute the heritage of the citizens of Ennis, Texas; and,
3. The City Commission of the City of Ennis, Texas, does hereby recognize that it is of public importance to establish historic preservation programs for the National Register Historic Downtown District that are intended to:

- a) Perpetuate, protect, enhance and preserve the National Register Historic Downtown District;
- b) To safeguard the city's historic and cultural heritage through the use of incentives that induce private investment in the National Register Historic Downtown District;
- c) To strengthen the economy within the National Register Historic Downtown District and to protect and enhance attractions to tourists and visitors within the District; and
- d) To provide assistance to property owners in the preservation of individual properties within the National Register Historic Downtown District.

PROPOSED POLICY IMPLEMENTATION

1. PROPOSED TAX ABATEMENT ORDINANCE

Historic preservation (construction, reconstruction or restoration) projects within the National Register Historic Downtown District with documented expenditure for construction, reconstruction or restoration in an amount in excess of \$15,000.00 shall be eligible for a seven (7) year, one hundred (100) percent City tax reimbursement. Beginning with the first full tax year after the effective date, and following full payment of taxes to the City of Ennis, the City of Ennis shall annually pay an eligible property owner a Chapter 380 Payment equal to one hundred (100) percent of all Real Property Taxes assessed against the existing real property that are paid to the City of Ennis. Personal Property Taxes (furniture, fixtures, equipment and inventory) assessed against personal property shall not be eligible for reimbursement.

To be eligible for a seven (7) year, one hundred (100) percent City of Ennis tax reimbursement, an applicant must submit documentation reflecting the cost of the eligible historic preservation (construction, reconstruction or restoration) project prior to commencing the project; secure Historic Landmark Commission and City Commission approval; complete the historic preservation project within the agreed time frame; and if facade (exterior) restoration is contemplated, comply fully with the United States Secretary of Interior's Standards for Treatment of Historic Properties. All contemplated historic preservation projects must be approved by the City Commission of the City of Ennis. All facade (exterior) construction, reconstruction or restoration projects must also be approved by the Ennis Historic Landmark Commission and must be completed in conformance with a Certificate of Appropriateness issued by the Ennis Historic Landmark Commission. The applicant must secure all city permits and must also secure periodic city inspection of the project to ensure proper completion of the project as authorized by the City Commission and the Historic Landmark Commission.

All historic preservation (construction, reconstruction or restoration) projects within the National Register Historic Downtown District applying for City tax reimbursement under this ordinance shall comply fully with Section 8.5-5 of the City of Ennis Code of Ordinances (Certificate of Appropriateness Application Procedure) and said section of the code shall be incorporated in the body of this ordinance by reference for all purposes as if copied in its entirety.

All historic preservation (construction, reconstruction or restoration) projects within the National Register Historic Downtown District which receive a Certificate of Appropriateness from the Historic Landmark Commission and City tax reimbursement pursuant to this ordinance shall maintain the building for which the Certificate of Appropriateness has been issued in accordance with the Certificate of Appropriateness for the duration of the seven (7) year tax reimbursement period. Should the building owner or occupant fail to maintain the building in accordance with the Certificate of Appropriateness, tax reimbursements shall be subject to recapture by the City and the building owner shall repay to the City said tax reimbursements within sixty (60) days of demand made by the City.

Under no circumstance shall the annual City tax reimbursement that is the subject of this ordinance in combination with annual reinvestment tax abatements authorized in Section 8.5-7 (c) (1),(2),(3) of the City Code of Ordinances exceed one hundred (100) percent of all Real Property Taxes paid to the City of Ennis.

1. PROPOSED HISTORIC PRESERVATION GRANT PROGRAM ORDINANCE

a) A Major Historic Preservation (construction, reconstruction or restoration) Project within the National Register Historic Downtown District with a documented expenditure for construction, reconstruction or restoration in an amount in excess of \$75,000.00 will be eligible for a Historic Preservation Grant in an amount equal to twenty-two (22) percent of the improvement expenditure for construction, reconstruction or restoration. By way of example, if a \$2,000,000.00 Historic Preservation Project meets all Historic Preservation Grant approval requirements and the project is approved by the City Commission, a Historic Preservation Grant would be provided in the amount of \$440,000.00.

b) A Major Historic Preservation (construction, reconstruction or restoration) Project within the National Register Historic Downtown District with a documented expenditure for construction, reconstruction or restoration in an amount in excess of \$75,000.00 will be eligible for a Historic Preservation Grant in an amount equal to thirty (30) percent of the improvement expenditure for construction, reconstruction or restoration; provided the

construction, reconstruction or restoration project is necessitated by damage from wind, fire, flood, explosion or structural collapse and said damage, including but not limited to the May 16, 2013, Tornado, is in excess of fifty (50) percent of the building's appraised value. By way of example, if a \$2,000,000.00 Historic Preservation Project for a damaged building meets all Historic Preservation Grant approval requirements and is approved by the City Commission, a Historic Preservation Grant would be provided in the amount of \$600,000.00.

c) In addition to the above requirements, each applicant must submit documentation reflecting the cost of the eligible Historic Preservation Project, complete the Historic Preservation Project within the agreed time frame and if facade (exterior) restoration is contemplated the project must comply with the United States Secretary of Interior's Standards for Treatment of Historic Properties. All contemplated Historic Preservation Projects must be approved by the City Commission of the City of Ennis and all facade (exterior) construction, reconstruction or restoration projects must also be approved by the Ennis Historic Landmark Commission (Certificate of Appropriateness). The applicant must secure all city permits and must also secure periodic city inspection of the project to ensure proper completion of the project.

d) As additional consideration for the Incentives provided hereunder, any Historic Preservation Grant recipient will make reasonable efforts to maximize sales tax payable to the City on equipment and construction materials by employing or requesting that its contractors employ the following measures; provided, however, it is acknowledged that the Improvements may require highly specialized materials that may not be available in the City of Ennis and that the recipient has pre-existing relationships with preferred vendors:

1. for materials that can be obtained at comparable pricing, quality, quantity and timing from a vendor having a place of business within the City, the recipient and its contractors shall have such materials shipped from, or delivered to, such vendor's Ennis location, and shall take possession of such materials within the City of Ennis;

2. for materials that cannot be obtained at comparable pricing, quality, quantity and timing from a vendor with a place of business within the City, and cannot be ordered directly from a vendor's supplier, the recipient and its contractors shall have such materials shipped freight on board to, and take possession of such materials at, a location within the City of Ennis; and

3. for materials obtained from vendors with no place of business within Texas, or materials ordered directly with a vendor's supplier and shipped directly to the recipient's location or its contractor's location, the recipient and its contractors

shall have such materials shipped or delivered to, and shall take possession of such materials at, a location within the City of Ennis.

4. Recipient shall require the contractors with whom it directly contracts for the construction of the Improvements to use separated contracts for the purchase of construction materials in which the Sales and Use Tax is sourced to the Improvements and to prohibit such contractors from using lump sum billing in such instances.

In addition, the recipient will keep all taxes due the City of Ennis current, and if not paid after fifteen (15) days' notice of delinquent taxes, Historic Preservation Grant disbursements shall cease until taxes are current, and the recipient shall be in default of any agreement issued as a part of the Historic Preservation Grant Program.

In addition, the recipient shall obtain a minimum of a fifty (50) percent occupancy rate for useable building space within two years of receiving the Certificate of Occupancy for any development receiving a Historic Preservation Grant and must maintain such occupancy for the remaining term of any performance agreement.

e) In the event of default by the recipient and the Historic Preservation Grant is terminated pursuant to the agreed conditions, all Historic Preservation Grant funds previously provided by the City pursuant to a Historic Preservation Grant shall be recaptured and repaid by the Grant recipient within sixty (60) days from the date of such termination.

f) Limitations: Historic Preservation Grant funds shall not be used for or be matched against non-real property expenditures. Non-real property expenditures are identified as, objects of art, historic artifacts and personal property identified by the Texas Property Tax Code as furnishing, fixtures, equipment and inventory. Historic Preservation Grant funds shall only be used for or be matched against real property expenditures.

g) Application Form: An applicant for benefits from the Historic Preservation Grant Program shall complete an application on a form provided by the City of Ennis. The application shall contain (but not be limited to) the following information:

1. Legal name, address and contact information for Applicant

2. List of owners, investors and corporate officers, as appropriate
 3. Record plat of property with address and legal description
 4. Conceptual plan of improvements with all intended uses identified
 5. Architectural drawings of all building elevations
 6. Five (5) year business plan (pro forma) detailing annual revenues and expenditures for building redevelopment and commercial use. The business plan should identify known or potential building users/tenants and intended uses.
 7. Detailed cost estimates for building redevelopment. Estimates shall be prepared by a Registered Professional Engineer or Architect licensed in the State of Texas.
- h) Application Approval: Each application will be reviewed individually and an approval or denial decision shall be made by the City Commission based upon, but not limited to, the following:
1. The amount of tax revenues the City expects to be generated by the operation of the commercial enterprise; and
 2. The extent of economic enhancement and stimulation that the City will derive from location and/or operation of the commercial enterprise's business; and
 3. The number and quality of new employment opportunities which the City expects will result, directly and indirectly, from the operation of the commercial enterprise; and
 4. The availability and priority of funding and resources the City currently has to participate in an incentive program; and
 5. The viability of the five (5) year business plan for the redevelopment and subsequent commercial operation of the project along with the cost benefit ratio of the investment and induced economic benefits compared

to the amount of the City Incentive (Historic Preservation Grant).

i) The decision to approve or deny any Historic Preservation Grant will be based upon the merits of the individual project. In determining what, if any, incentives to provide, the City Commission will consider to what extent such incentives are necessary to attract or assist such commercial enterprise, what amount of incentive would provide the City with the most benefit for the cost and meet the needs of the commercial enterprise, the economic benefit that the City will derive from operation of the commercial enterprise's business in the City, the City's budgetary limitations, and the amount of financial participation by the commercial enterprise. Nothing within these procedures shall imply or suggest that the City of Ennis is under any obligation to provide any incentive to an applicant as it reserves the right to decline to participate in the Historic Preservation Grant program with any commercial enterprise. If Type B (4B) sales tax revenues are used to fund a Historic Preservation Grant, then all approvals shall be in accordance with Section 505.151 – 505.158 of the Texas Local Government Code.

j) Construction Monitoring: Following the issuance of all necessary construction permits by the City of Ennis, the City of Ennis Building Inspection Department shall at least weekly monitor the construction activity associated with any Historic Preservation Project.

k) Compliance Reporting and Expenditure Documentation: The recipient of a Historic Preservation Grant shall provide a weekly summary report of construction activities. To prevent default or loan recapture, a recipient of a Historic Preservation Grant must maintain and provide to the City of Ennis documentary evidence of all real property expenditures required to receive a Historic Preservation Grant. Should a recipient of a Historic Preservation Grant fail to complete the agreed project, the full Historic Preservation Grant shall be repaid as a default of grant conditions. Should a recipient of a Historic Preservation Grant complete the agreed project but fail to make expenditures in the agreed amount, the recipient shall refund the City of Ennis (as appropriate) twenty-two (22) percent or thirty (30) percent of the agreed expenditures that were not spent.

l) Compliance Inspection: The recipient of a Historic Preservation Grant shall agree to periodic (unannounced) compliance inspection(s) of construction work and the documentation of agreed materials used and their purchase, installation and finished costs.

m) Auditing and Compliance Documentation: The recipient of a Historic Preservation Grant shall agree to maintain and make available to the City of Ennis (upon request) record documents that allow the complete audit of construction, reconstruction

or restoration expenditures and materials used.

n) **Historic Preservation Grant Recapture in the Event of Performance Default or Partial Non-compliance:** Should a recipient of a Historic Preservation Grant fail to complete the agreed project, the full grant amount shall be repaid as a default of grant conditions. Should a recipient of a Historic Preservation Grant complete the agreed project but fail to make expenditures in the agreed amount, the recipient shall refund the City of Ennis (as appropriate) twenty-two (22) percent or thirty (30) percent of the agreed expenditures that were not spent.

o) **Historic Preservation Grant Proceeds Disbursement:** Historic Grant Proceeds shall be disbursed in three(3) installments:

1. Twenty-five (25) percent of the total grant amount shall be disbursed to the grant recipient when the building permit is issued for an approved Historic Preservation (construction, reconstruction or restoration) Project.
2. Fifty (50) percent of the total grant amount shall be disbursed to the grant recipient when the approved Historic Preservation (construction, reconstruction or restoration) Project is twenty-five (25) percent complete.
3. The final twenty-five (25) percent of the total grant amount shall be disbursed to the grant recipient following the City's issuance of the Certificate(s) of Occupancy for all agreed improvements subject to the Historic Preservation Grant.
4. Within thirty (30) days of the recipient's compliance with the Historic Preservation Grant performance agreement, a Letter of Completion will be issued to the recipient from the City and will formally state that the property owner's performance requirement for the Historic Preservation Grant are satisfied.

(p) **Performance Agreement:** The city and the Historic Preservation Grant Recipient shall enter into a Performance Agreement which specifies the Historic Preservation Grant Recipient's performance requirements to receive and maintain the Historic Preservation Grant. The Performance Agreement shall also set out provisions of Historic Preservation Grant Recipient default and grant recapture by the City.

(q) **Performance Guaranty:** The Historic Preservation Grant Recipient shall provide one of the following project completion guarantees:

1. The Historic Preservation Grant Recipient shall provide a performance bond in the amount of the Historic Preservation Grant. The performance bond shall be issued by a Texas licensed surety in a form acceptable to the City of Ennis. The City of Ennis shall be the named beneficiary of the performance bond

which shall insure the completion of the Historic Preservation Project. The City of Ennis shall reimburse the Grant Recipient the premium cost for the performance bond. -OR-

2. The Historic Preservation Grant Recipient shall provide an irrevocable letter of credit in the amount of the Historic Preservation Grant. The irrevocable letter of credit shall be provided by a financial institution chartered within the State of Texas and shall be in a form acceptable to the City of Ennis. The City of Ennis shall be the named beneficiary of the letter of credit which shall be authorized by separate agreement and shall ensure the completion of the Historic Preservation Project. -OR-
3. The Historic Preservation Grant Recipient shall provide another type of legal instrument which provides financial recourse sufficient to allow recovery of the amount of the Historic Preservation Grant should the Historic Preservation Grant Recipient fail to complete the project. This legal instrument may be in the form of a collateral agreement, lien or other legal instrument acceptable to the City of Ennis.

(r) Property Insurance: Until issuance of a Certificate of Occupancy, the Historic Preservation Grant Recipient shall maintain in force and shall provide evidence of a Builder's Risk Insurance Policy in the amount of the sum of the building value at the time of project commencement and all improvements being made to redevelop, restore and/or reconstruct the building. Existing building value shall be insured at actual cash value and improvement value shall be insured at replacement value. The City of Ennis shall be a named insured on the Builder's Risk Insurance Policy. The Builder's Risk Insurance Policy shall be issued by a surety acceptable to the City of Ennis.

(s) Certificate of Appropriateness: Each Historic Preservation Project which receives a Historic Preservation Grant must be completed in accordance with a Certificate of Appropriateness issued by the Ennis Historic Landmark Commission.

Mayor Thomas requested public comment from the citizens in attendance. The following spoke as proponents and opponents of the Historic Preservation and Redevelopment Policies for the National Register Historic Downtown District: Bramlet Beard, Dr. John Sullivan, Jim Grant, Dennis Zembala, Keith Jantz, Joyce Lindauer, Felton Smith, Dr. Meg Sullivan, and Richard Bell.

At 7:45 p.m. Commissioner Searcy moved to close the Public Hearing, Commissioner Haupt seconded and the Commission Members in attendance voted AYE.

NEW BUSINESS

ISSUANCE OF 2014 STREET IMPROVEMENT PROGRAM BONDS (6,000,000) -
CERTIFICATES OF OBLIGATION AND AUTHORIZING MARK MCLINEY OF

SOUTHWEST SECURITIES (CITY FINANCIAL ADVISOR), GREG SCHAECHER OF MCCALL PARKHURST AND HORTON (CITY BOND COUNSEL) AND CITY STAFF TO PROCEED WITH THE ISSUANCE OF CERTIFICATES OF OBLIGATION LEADING TO RECEIPT OF FUNDS ON OR ABOUT APRIL 1, 2014.

Commissioner Salik moved to authorize City Staff, Bond Counsel, and Financial Advisors to proceed with the issuance of Certificates of Obligation Series 2014 in the face amount of six million dollars (\$6,000,000.00). Commissioner Haupt seconded and all members in attendance voted AYE.

PROFESSIONAL SERVICES AGREEMENT (INTERIM CITY MANAGER – FIRST TEXAS GROUP. John Hatchel shall initially assume the City Manager responsibilities during the term of the agreement.

Commissioner Haupt moved to enter into the professional service agreement for Interim City Manager with First Texas Group. Commissioner Salik seconded and all members in attendance voted AYE.

OLD BUSINESS

APPOINTMENTS TO CITY OF ENNIS BOARDS AND COMMISSIONS: The was no action taken.

REQUEST FROM CITY COMMISSION AND ROUNDTABLE: Commissioner Walker thanked the City Manager, Street Department and Utilities Department for repairing Bluebonnet Hills. Commissioner Searcy stated that there remains a problem with speeding on Crisp Pike Road.

With no further business, Mayor Thomas adjourned the meeting at 7:59 p.m.

ATTEST:

Russell R. Thomas, Mayor

Donna Batchler, City Secretary

