



**NOTICE OF A WORK SESSION AND REGULAR MEETING  
OF THE TOWN COUNCIL  
TUESDAY, SEPTEMBER 27, 2016 – 6:00 pm**

Notice is hereby given as required by Title 5, Chapter 551.041 of the Government Code that the Argyle Town Council will meet in a work session and regular meeting September 27, 2016 at 6:00 pm at the Argyle Town Hall, 308 Denton Street, Argyle, Texas. The items listed below are placed on the agenda for discussion and/or action.

**WORK SESSION AGENDA – 6:00 PM**

**A. CALL WORK SESSION TO ORDER**

**B. WORK SESSION**

The pre-meeting work session is designed as an opportunity for the Town Council to discuss pending items. No action will be taken during the work session portion of the meeting.

1. Briefing and discussion pertaining to municipal liability under the Texas Tort Claims Act.
2. Discussion regarding possible updates to the Town of Argyle Comprehensive Plan, as recommended by the Planning and Zoning Commission.
3. Discussion regarding any regular session items.

**REGULAR SESSION AGENDA – 7:00 PM**

**(or immediately following the 6:00 pm work session)**

**C. CALL REGULAR SESSION TO ORDER**

**D. INVOCATION**

**E. PLEDGE OF ALLEGIANCE**

American Flag

Texas Flag: *“Honor the Texas Flag; I pledge allegiance to thee Texas, one state under God, one and indivisible”*

**F. ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS**

1. Council Recognition of Students and Citizens
2. Town Council and Staff Presentations / Reports
  1. Development Project Updates

**G. OPEN FORUM:**

The opportunity for citizens to address the Town Council on any non-agenda item (limit 5 minutes per person); however, the Texas Open Meetings Act prohibits the Town Council from discussing issues which the public has not been given seventy-two (72) hour notice. Issues raised may be referred to Town Staff for research and possible future action.

**H. BUDGET ITEMS:**

1. Consider approval of an ordinance adopting FY2016-2017 Annual Budget for the Town of Argyle.
2. Consider approval of a Resolution ratifying the tax revenue for the tax year 2016 (FY 2016-2017) for the Town of Argyle, TX.
3. Consider approval of an Ordinance levying taxes to be assessed on all taxable properties within the Town Limits of the Town of Argyle, TX for the Tax Year 2016 (FY 2016-2017).

**I. CONSENT AGENDA:**

***Any Council Member may request an item on the Consent Agenda to be taken up for individual consideration***

1. Consider approval of a resolution adopting the 2016 Compensation Study and the FY17 pay and step plan.
2. Consider approval of a resolution declaring certain property as surplus and authorizing its sale, donation and destruction.
3. Consider approval of ratification of the purchase of one 2016 Ford F350 Super Duty Chassis 4x4 with Dump Body and one 2016 Chevrolet C2500 4x4 Pickup.
4. Consider approval of a purchase of a 2016 Police Tahoe PPV for vehicle replacement.
5. Consider approval of an additional contribution to Texas Municipal Retirement System (TMRS) Municipality Accumulation Fund on behalf of the Town of Argyle, Texas.

**J. NEW BUSINESS & PUBLIC HEARINGS:**

1. Public hearing: Consider and take appropriate action on an ordinance amendment (ORD-16-004) to Section 14.3.42-OR- Office Retail District of the Town of Argyle Town Development Standards, regarding changes to the permitted use chart, to allow "Health Club (Indoor)" as a permitted use in the Office Retail District.
2. Public Hearing: Consider and take appropriate action on an ordinance designating a geographic area within the town, generally described as 101.350 contiguous acres within the corporate limits of the Town and generally located: (1) east of U.S.

Highway 377; (2) south of FM 407; and (3) north of Frenchtown Road, as a tax increment reinvestment zone and identifying the area as Tax Increment Reinvestment Zone No. 1.

3. Discuss and consider a nomination to be placed on the ballot for the Board of Directors of the Denton County Transportation Authority.

**K. OLD BUSINESS:**

1. Consider and take appropriate action on an ordinance amending the Chapter 12, Article 12.05 of the Code of Ordinances relating to traffic control devices.

**L. CONVENE INTO EXECUTIVE SESSION:**

PURSUANT TO TEXAS GOVERNMENT CODE, ANNOTATED, CHAPTER 551, SUBCHAPTER D:

1. Section 551.087 – Deliberation regarding economic development negotiations; (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
2. Adjourn into Open Meeting.
3. Consider action on executive session items.

**M. RECEIVE REQUESTS FROM COUNCIL MEMBERS/STAFF FOR ITEMS TO BE PLACED ON NEXT MEETING AGENDA** (*discussion under this item must be limited to whether or not the Council wishes to include a potential agenda item on a future agenda*)

**N. ADJOURN**

**CERTIFICATION**

I hereby certify that the above notice was posted in the bulletin board at Argyle Town Hall, 308 Denton Street, Argyle, Texas, by 5:00 pm on the 23<sup>rd</sup> day of September, 2016.

  
\_\_\_\_\_  
Kristi Gilbert, Town Secretary

**NOTE:** If, during the course of the meeting, any discussion of any item on the agenda should be held in a closed meeting, the Council will conduct a closed meeting in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551, Subchapters D and E

 ***Persons with disabilities who plan to attend this public meeting and who may need auxiliary aid or services are requested to contact the Argyle Town Hall 48 hours in advance, at 940-464-7273, and reasonable accommodations will be made for assistance.***



# TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Briefing and discussion pertaining to municipal liability under the Texas Tort Claims Act.

**Requested by:**

Paul Frederiksen, Town Manager

Matthew Boyle -Boyle and Lowry, LLP, Town Attorney

**Background:**

At your August 23, 2016 Town Council meeting, a remark was made during the "Citizen Comments" agenda item regarding municipal liability and it was requested that more information be provided at a future Town Council meeting. Our Town Attorney will provide a briefing pertaining to municipal liability as delineated in the Texas Tort Claims Act.

**Staff Recommendation:**

N/A

**Requested Action:**

N/A

**Attachments:**

Texas Municipal League Briefing Paper - Texas Tort Claims Act Basics

## **TEXAS TORT CLAIMS ACT BASICS**

**Dick Evans, TMLIRP  
Lori Gillespie, TMLIRP**

**William M. McKamie  
McKamie Krueger, LLP**

**Laura Mueller  
Assistant General Counsel  
Texas Municipal League**

Tort Claims Act Basics

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**Tort Claims Act Basics**

**Laura Mueller**  
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Laura, originally from Yukon, Oklahoma, graduated summa cum laude from the University of Oklahoma in 2001 with a liberal arts degree. She attended the University of Texas School of Law, where she was active in student recruiting, advocacy programs, and the Texas Journal on Civil Liberties and Civil Rights. While in law school, Laura worked as a law clerk for TML and as an intern for the Travis County Juvenile Public Defender's Office. After graduating with honors in 2004, Laura clerked for the Supreme Court of Texas. She joined the TML legal staff as legal counsel in November 2006. Laura became Assistant General Counsel in November 2010. Laura was given the TML Employee of the Year Award for 2013. Laura specializes in employment law, sign regulation, and writes amicus briefs for member cities. Laura has spoken at conferences conducted by the Texas Municipal League, Texas City Attorneys Association, Houston-Galveston Area Council of Governments, Texas Municipal Human Resources Association, and at the Government Law Boot Camp on topics related to employment law, types of cities, ethics, open government, and other municipal topics.

## Introduction

Governmental entities are generally immune from liability. The Tort Claims Act waives governmental and sovereign immunity of these entities and determines the liability of governmental entities related to personal injury and property damage caused by the negligence of a government employee or defect in government property.

### I. BACKGROUND AND HISTORY

Under the English common law, a person could not sue the state for a wrong committed against that person – “The King could do no wrong.” Because English common law is the source of much of the law initially adopted in the United States, this country followed that doctrine. Texas courts held that, under the doctrine of sovereign immunity, the state and its political subdivisions were not liable for the torts of their agents or officers unless there was a constitutional or statutory waiver of immunity. In 1969, the Texas Legislature enacted such a waiver of sovereign immunity when it passed the Texas Tort Claims Act. TEX. CIV. PRAC. & REM. CODE Ann. §101.001, *et. seq.* (Vernon 2005 & Supp. 2006). (Originally enacted as Tex. Rev. Stat. Art. 6252-19). The Act is a partial waiver of the sovereign or governmental immunity of governmental units of the state. ‘Governmental unit’ as used in the Act means the State and its various agencies, departments, bureaus, boards, commissions, etc., and political subdivisions of the state, including cities, counties, school districts, and other types of districts created by state law or state constitution. *See, for example, Texas A&M Univ. v. Bishop*, 996 S.W.2d 209 (Tex. App.—Houston [14th Dist.] 1999, *reversed on other grounds*, 156 S.W.3d 580 (Tex. 2005); *Loyd v. ECO Resources, Inc.*, 956 S.W.2d 110 (Tex. App.—Houston [14th Dist.] 1997, no writ); *Clark v. University of Texas Health Science Center at Houston*, 919 S.W.2d 185 (Tex. App.—Eastland 1996, writ denied).

This is an overview of liability under the Tort Claims Act and its waiver of sovereign or governmental immunity. While some use the terms governmental and sovereign immunity interchangeably, political subdivisions are considered to have “governmental immunity” and the state is

considered to have “sovereign immunity.” *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex., 2006). It is not an exhaustive analysis of the Act. The paper does not address liability under the Federal Civil Rights Act, immunities under which are governed by the United States Constitution and federal laws. The Tort Claims Act and the liability limits under the Act have no application to the Federal Civil Rights Act. Generally, actions brought under the Texas Tort Claims Act involve allegations of negligent conduct, while actions brought under the Federal Civil Rights Act involve allegations of intentional conduct.

### II. GOVERNMENTAL FUNCTIONS v. PROPRIETARY FUNCTIONS: CITY LIABILITY UNDER THE ACT

Before the enactment of the Tort Claims Act, Texas courts held that a municipality could not be held liable for property damages, personal injury, or death arising from a “governmental function” performed by the municipality. However, municipalities were liable for damages, injuries, or death arising from a “proprietary function,” where the courts treated municipalities in the same manner that a private entity would be treated and subjected them to the same risks as private entities. *Dilley v. City of Houston*, 222 S.W.2d 992 (Tex. 1949). *See also Tooke v. City of Mexia*, 197 S.W.3d 325, 343 (Tex. 2006). As counties were regarded as legal subdivisions of the State, they also could not perform proprietary functions and had no tort liability until the passage of the Tort Claims Act. Distinguishing between governmental and proprietary functions based on a reading of court cases was difficult and confusing. Generally, governmental functions were those which the municipality was required by state law to perform in the interest of the public. Proprietary functions were those which the municipality chose to perform when it believed it would be in the best interest of its inhabitants, or when it sought to compete with private enterprise. Among the operations held to be governmental functions were: garbage collection and disposal, sanitary sewer operations, police, fire suppression, and traffic regulation. Activities held to be proprietary functions included: construction of sanitary sewer lines; construction, repair, and maintenance of streets; and construction and operation of storm sewer facilities.

As part of the tort reform laws passed by the 70th Texas Legislative Session in 1987, the Legislature sought to define governmental functions and thereby limit the liability of

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municipalities. Some functions previously held to be proprietary in court decisions were changed to governmental functions by the Legislature. To ensure the validity of the legislative action, an amendment to Article 11, §13 of the Texas Constitution was presented to the voters for approval. That amendment was approved by voters in November 1987 and states:

- (a) Notwithstanding any other provision of this constitution, the legislature may by law define for all purposes those functions of a municipality that are to be considered governmental and those that are proprietary, including reclassifying a function's classification assigned under prior statute or common law.
- (b) This section applies to laws enacted by the 70th Legislature, Regular Session, 1987, and to all subsequent regular or special sessions of the legislature. TEX. CONST. art. 11, §13.

By the adoption of Tex. Civ. Practices and Remedies Code Section 101.0215, the Texas Legislature defined which functions were governmental and which were proprietary. Subsection (a) provides that a municipality is liable for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given to it by the state as part of the state's sovereignty, to be exercised by the municipality in the public interest, including, but not limited to:

- (1) police and fire protection and control;
- (2) health and sanitation services;
- (3) street construction and design;
- (4) bridge construction and maintenance and street maintenance;
- (5) cemeteries and cemetery care;
- (6) garbage and solid waste removal, collection, and disposal;
- (7) establishment and maintenance of jails;
- (8) hospitals;
- (9) sanitary and storm sewers;
- (10) airports;
- (11) waterworks;
- (12) repair garages;
- (13) parks and zoos;
- (14) museums;
- (15) libraries and library maintenance;
- (16) civic, convention centers, or coliseums;
- (17) community, neighborhood, or senior citizen centers;

- (18) operation of emergency ambulance service;
- (19) dams and reservoirs;
- (20) warning signals;
- (21) regulation of traffic;
- (22) transportation systems;
- (23) recreational facilities, including but not limited to swimming pools, beaches, and marinas;
- (24) vehicle and motor driven equipment maintenance;
- (25) parking facilities;
- (26) tax collections;
- (27) firework displays;
- (28) building codes and inspection;
- (29) zoning, planning, and plat approval;
- (30) engineering functions;
- (31) maintenance of traffic signals, signs, and hazards;
- (32) water and sewer service;
- (33) animal control;
- (34) community development or urban renewal activities undertaken by municipalities and authorized under Chapters 373 and 374, Local Government Code;
- (35) latchkey programs conducted exclusively on a school campus under an interlocal agreement with the school district in which the school campus is located; and
- (36) enforcement of land use restrictions under Subchapter A, Chapter 230, Local Government Code. Tex. Civ. Prac. & Rem. Code Ann. §101.0215(a) (Vernon 2005 & Supp. 2006).

Section 101.0215 provides that the Tort Claims Act does not apply to the liability of a municipality for damages arising from its proprietary functions, which are those functions that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality, including, but not limited to:

- (1) the operation and maintenance of a public utility;
- (2) amusements owned and operated by the municipality; and
- (3) any activity that is abnormally dangerous or ultra-hazardous. §101.0215(b).

However, Subsection (a) is not an independent waiver of governmental immunity, and therefore a plaintiff must establish the applicability of the Tort

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Claims Act under another section, such as Section 101.021, before relying on Section 101.0215. *Bellnoa v. City of Austin*, 894 S.W.2d 821, 826 (Tex. App.—Austin 1995, no writ); *City of San Antonio v. Winkenhower*, 875 S.W.2d 388, 391 (Tex. App.—San Antonio 1994, writ denied). Further, Section 101.0215(c) provides that the proprietary functions of a municipality do not include the thirty-six functions listed in Section 101.0215(a). For proprietary functions, a political subdivision has the same liability as a private person. Although the vast majority of actions by a governmental unit will be governmental functions, court of appeals decisions have held the following actions of a city to be proprietary.

**Development Project funded by federal dollars:** In *Josephine E. Abercrombie Interests, Inc. v. City of Houston*, 830 S.W.2d 305 (Tex. App.—Corpus Christi 1992, writ denied), the City of Houston was sued after it foreclosed upon a development project which it had agreed to fund in part through federal community development block grant loans. The court held that the city engaged in a proprietary act when it gave federal community development block grant loans to private developers for a project designed to revitalize an area of the city. The developer sued the city alleging fraud, negligent misrepresentation, constructive fraud, wrong foreclosure, breach of fiduciary duty, and breach of express and implied warranties and covenants. The city was not immune from suit because the cause of action arose from the performance of a proprietary function.

**Rehabilitation Construction Projects:** In *City of Houston v. Southwest Concrete Constr., Inc.*, 835 S.W.2d 728 (Tex. App.—Houston [1st Dist.] 1992, writ denied), the city was sued for tortious interference with a contract, negligence, breach of contract, breach of the covenant of good faith and fair dealing, retaliation, and harassment arising out of its administration of rehabilitation construction projects under the federal Rental Rehabilitation Program. The city was held to have no immunity to suit since the activity was a proprietary activity.

**Avoidance of Monetary Loss:** In *City of Corpus Christi v. Absolute Industries*, 120 S.W.3d 1 (Tex. App.—Corpus Christi 2001, no pet.), the court held that merely because the cause of action—intentional interference with a contract—touched upon waste and disposal, did not make the act a governmental function; and in light of the pleadings alleging that this act was done on the city’s part to

avoid monetary loss, the court held that the action was proprietary.

Section 101.0215 determines only whether the particular act involved is a governmental or proprietary function. Section 101.0215 does not itself waive sovereign immunity. If an act is determined to be a governmental act, one must then look to Section 101.021 to determine if the municipality has waived immunity.

**III. WAIVER OF IMMUNITY**

**A. Generally**

With regard to governmental functions, the Tort Claims Act waives sovereign immunity to suit to the extent set out in the Act. The Tort Claims Act does NOT apply to proprietary functions. Therefore, municipalities performing proprietary functions are liable on the same basis and under the same conditions as private entities. Section 101.021 provides that:

A governmental unit in the state is liable for:

- (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
  - (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
  - (B) the employee would be personally liable to the claimant according to Texas law; and
- (2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

TEX. CIV. PRAC. & REM. CODE § 101.021.

It should be noted that property damages can be recovered only where the wrongful act, omission, or negligence involves the operation or use of a motor-driven vehicle or motor-driven equipment. For example, a governmental entity has no liability for property damage resulting from driving through a

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pothole, but is liable for personal injuries suffered in an accident caused by driving through a pothole. Also, there is normally no liability for property damage from a sewer backup, but there may be liability for some sort of personal injury (e.g. mental anguish damages). Damages for personal injury or death are recoverable if the wrongful act, omission, or negligence in issue: (i) involves the operation or use of a motor-driven vehicle or motor-driven equipment or (ii) involves a condition or use of tangible personal or real property.

The plaintiff must plead and prove that an act falling within those areas for which sovereign or governmental immunity has been waived was a proximate cause of some compensable damage or injury. Proximate causation consists of: (1) cause in fact and (2) foreseeability. Cause in fact means that the negligent act or omission was a substantial factor in bringing about the injury, and without which no harm would have been incurred. Mere usage of a motor-driven vehicle or tangible personal property does not establish causation. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540 (Tex. 2003)(quoting *Dallas County Mental Health and Mental Retardation v. Bossley*, 968 S.W.2d 339 (Tex. 1998)) (“Thus, as with the condition or use of property, the operation or use of a motor vehicle ‘does not cause injury if it does no more than furnish the condition that makes the injury possible.’”). Foreseeability means that the actor who caused the injury, as a person of ordinary intelligence, should have anticipated the dangers that his negligent act or omission created for others. *Travis v. City of Mesquite*, 830 S.W.2d 94, 98 (Tex. 1992).

In *Dallas Metrocare Servs. v. Juarez*, 420 S.W.3d 39 (Tex. Nov. 22, 2013) (per curiam), the issue was whether a whiteboard falling on an individual is considered “use” of governmental property caused the injury under the Tort Claims Act (Act). A patient, Juarez, at a Metrocare clinic was hit in the head by a falling whiteboard and was injured. No one was using the whiteboard when this occurred. Juarez sued Metrocare (a governmental entity) under the Act. The trial court and court of appeals both held that Metrocare’s immunity was waived under the Act. The Supreme Court of Texas disagreed as to whether immunity had been waived and sent the case back to the court of appeals, requiring them to consider all of Metrocare’s arguments regarding whether Metrocare’s immunity is waived under the Act. The Court also held that

Metrocare’s immunity was not waived under the “use” doctrine because the entity did not use the whiteboard, it merely allowed the patient to access it.

The Tort Claims Act does not create new legal duties, but only waives governmental immunity in circumstances where a private person similarly situated would be liable. To establish tort liability, a plaintiff must prove the existence and violation of a legal duty owed to him by the defendant. The existence of a legal duty is a question of law for the court, although in some instances it may require the resolution of disputed facts or inferences which are inappropriate as questions of law. *Fort Bend County Drainage Dist. v. Sbrusch*, 818 S.W.2d 392 (Tex. 1991).

Further, the Act does not expressly recognize state constitutional torts. There is no state law similar to 42 U.S.C. §1983, and therefore, there is no direct cause of action for the violation of the Texas Constitution. See *City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995).

The defense of sovereign or governmental immunity must be affirmatively pled and proved or it is waived. The failure to plead immunity as a defense waives that defense, and it cannot be raised for the first time on appeal. In 1988, the Supreme Court of Texas ruled that a city had waived its governmental immunity defense in a malicious prosecution case by failing to plead the defense. *Davis v. City of San Antonio*, 752 S.W.2d 518, 520 (Tex. 1988); *Harris County Hosp. Dist. V. Estrada*, 872 S.W.2d 759, 764 (Tex. 1993).

### B. Condition of Real Property

As stated above, liability for premises defects extends only to personal injury and death. It does not extend to property damage. The premises for which the governmental unit is sought to be held liable must be owned, occupied, or controlled by the governmental unit. *Wilson v. Texas Parks and Wildlife Dept.*, 8 S.W.3d 634, 635 (Tex. 1999).

In *City of Boerne v. Vaughan*, 2012 WL 2839889, No. 04-11-0821 (Tex. App.—San Antonio 2012, no pet.) the city had a contract with Vaughan to act as the sexton for the city-owned cemetery. Based on inaccurate information provided by the city, Vaughan sold a third party a plot that had previously been sold, which ultimately resulted in the disinterment/reburial of the third party’s husband. After the third party sued Vaughan, Vaughan sued the

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city. The trial court denied the city's plea to the jurisdiction, but the San Antonio Court of Appeals found that the plaintiff's pleadings "affirmatively demonstrate[d] that no cause of action exists for which the City's immunity is waived." Specifically the court stated that in order for immunity to be waived under this section of the statute, a premises condition must actually be the instrumentality that causes the plaintiff's harm. No possible amendment to Vaughan's pleadings, or to Thomas's for that matter, could establish that a premises condition was the cause of harm alleged in the instant case. Instead, it was actions taken pertaining to the cemetery plot that allegedly caused the harm, not the cemetery plot itself. The court found that the breach of contract claim that was arguably within the waiver of immunity was the third party's claim, not the sexton's.

TEX. CIV. PRAC. & REM. CODE §101.022.

Therefore, the standard of care that is generally imposed in premise defect cases against a governmental entity is that of the licensor to licensee. As with Section 101.0215, Section 101.022 does not create a separate basis for liability. Section 101.022 acts to limit the duty owed by the governmental entity and serves as a limitation upon the general liability created under Section 101.021.

For cases under the Tort Claims Act, a premises defect does not have to be caused by a governmental employee. In *Eldridge v. Brazoria Cnty.*, No. 01-13-00314-CV, 2014 WL 1267055 (Tex. App.—Houston [1st Dist.] Mar. 27, 2014) (mem. op.), Eldridge sued the county after being severely injured in a wreck on a county bridge that had been torn out to be rebuilt by the county. Eldridge argued that the county was negligent because it did not have adequate warning signs that the bridge was out, but only "thin barricades" which created a premises defect and special defect under the Tort Claims Act. The county filed a plea to the jurisdiction, arguing that under Texas Civil Practices and Remedies Code Section 101.021 (Texas Tort Claims Act), a governmental entity is liable only for injuries occurring because of a premises or special defect if the injury is caused by the actions of an employee of the governmental entity. The court of appeals held that a county can be liable for an injury caused by a special or premises defect caused by a condition of real property without participation of a governmental employee based on a Supreme Court of Texas opinion, *DeWitt v. Harris Cnty.*, 904 S.W.2d 650, 653 (Tex. 1995). In *DeWitt*, the court held that when the injury is caused by real property, liability is not determined by the action of a governmental employee, but upon the property itself being unsafe. *Id.* The court of appeals held that there were sufficient facts for the case to go forward without any argument that a county employee caused the injury.

### 1. Premise Defects—Statutory Duty

A condition or use of real property involves what are referred to as "premise defects." Premise defects include such things as a pothole in a street, a water hose placed across a sidewalk at a state university, a slippery floor in a building, etc. Section 101.021 waives governmental immunity for certain premise defects. The degree of liability that the governmental unit has for a premise defect depends on what duty is owed to the person entering the real property. The person's status on the property, i.e. invitee, licensee, or trespasser, determines what duty the city owes. See *Gunn v. Harris Methodist Affiliated Hosp.*, 887 S.W.2d 248, 250 (Tex. App.—Fort Worth 1994, writ denied). The Tort Claims Act declares the duty of a governmental unit as follows:

- (a) If a claim arises from a premise defect, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property, unless the claimant pays for the use of the premises.
- (b) The limitation of duty in this section does not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads, or streets or to the duty to warn of the absence, condition, or malfunction of traffic signs, signals, or warning devices as is required by §101.060.
- (c) If a claim arises from a premise defect on a toll highway, road, or street, the governmental unit owes to the claimant only the duty that a private person owes to a licensee on private property.

*M.O. Dental Lab, et al. v. Rape*, 139 S.W.3d 671 (Tex. 2004) involved ordinary mud or dirt that accumulated naturally on a concrete slab outside a business. Rape slipped and fell on the slippery mud. The mud had accumulated on the sidewalk as a result of rain. The Supreme Court of Texas held that ordinary mud that accumulates naturally on an outdoor concrete slab without the assistance or involvement of unnatural contact is, in normal circumstances, nothing more than dirt in its natural state and is not a condition posing an unreasonable risk of harm. See also *City of Houston v. Cogburn*,

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No. 01-11000318-CV, 2014 WL 1778279 (Tex. App.—Houston [1st Dist.] May 1, 2014) (mem. op. on reh'g)(tree roots are naturally occurring).

In *City of Dallas v. Prado*, 373 S.W.3d 848 (Tex. App.—Dallas 2012) the city had begun locking a side entrance to a community center when it rained because the rain was getting in the building through the door. Prado tried to get in through the locked door and slipped when she tried to open the locked door. The trial court denied the plea to the jurisdiction based on governmental immunity. The court of appeals reversed and held that the undisputed evidence showed that there had been no reports of accidents resulting from pooled water outside the door, or from the combination of the pooled water and the locked door. Further, the plaintiff was foreclosed from a general negligence claim, because that claim was subsumed within the premises defect claim.

*Brownsville Nav. Dist. v. Izaguirre*, 829 S.W.2d 159 (Tex. 1992) concerned a warehouse built and operated on District land by a lessee. A trailer, disconnected from the tractor, had its front end resting on its extendable supports. Because of mud from recent rains, a board was placed under the supports to keep them from sinking into the mud. The board broke, the trailer shifted to one side, and Izaguirre was crushed. Izaguirre's heirs sued, asserting that the District failed to warn the lessee of a dangerous condition of the premises that made it unsafe to load trailers. The Texas Supreme Court held that plain dirt which ordinarily becomes soft and muddy when wet is not a dangerous condition of property for which a landlord may be liable. *Id.* at 160.

**2. Standard of Care—Invitee**

When a person makes payment for the use of the premises, the governmental unit owes that person the duty it owes to an invitee, which is:

- (i) the duty to maintain the premises in a reasonably safe condition,
- (ii) the duty of reasonable care to inspect and discover a condition involving an unreasonable risk of harm, and
- (iii) the duty to protect against danger and to make safe any defects or to give adequate warning thereof. The duty owed is to exercise reasonable care to protect against danger from a condition on the land that creates an unreasonable risk of harm of which the owner or

occupier knew or by the exercise of reasonable care would discover.

*State ex rel. Texas Dept. of Parks and Wildlife v. Shumake*, 131 S.W.3d 66 (Tex. App.—Austin 2003), judgment affirmed by *State v. Shumake*, 199 S.W.3d 279 (Tex. 2006). It is important to note that the payment must be for the use of the premises in questions. In *State Dept. of Highways and Public Transp. v. Kitchen*, 867 S.W.2d 784 (Tex. 1993), the Supreme Court of Texas held that payment of vehicle registration and licensing fees did not constitute payment for the use of the state's highways.

**3. Standard of Care—Licensee**

A licensor owes a licensee the duty not to injure him by a willful or wanton act or through gross negligence while the licensee is on the licensor's private property. Gross negligence can be defined as knowing indifference to the rights, welfare, or safety of others. See *Burk Royalty Co. v. Walls*, 616 S.W.2d 911, 922 (Tex. 1981). If the licensor has actual knowledge of the defect, and the licensee does not, then the licensor has a duty to either warn the licensee or make the condition reasonably safe. Actual knowledge embraces those things that a reasonably diligent inquiry would have disclosed. *City of San Benito v. Cantu*, 831 S.W.2d 416 (Tex. App.—Corpus Christi 1992, no writ). "A licensee is not entitled to expect that the possessor [of land] will warn him of conditions that are perceptible to him, or the existence of which can be inferred from facts within his present or past knowledge." *Wal-Mart Stores, Inc. v. Miller*, 102 S.W.3d 706, 709 (Tex. 2003), citing *Lower Neches Valley Auth. v. Murphy*, 536 S.W.2d 561, 564 (Tex. 1976). Even if the city has knowledge of a dangerous condition, the city has no duty to warn or make the danger reasonably safe if the claimant has actual knowledge of the danger as well. Whether a premise defect is open and obvious is not a complete defense to liability, but is merely one of the things that a fact finder can consider when determining questions of the comparative negligence of the parties.

**4. Standard of Care—Trespassers**

Generally, a person owes a trespasser only the legal duty to refrain from injuring him willfully, wantonly, or through gross negligence. *Lampasas v. Spring Center, Inc.*, 988 S.W.2d 428 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1999, no pet.). Moreover, a trespasser must take the premises as he finds them, and if he is injured by unexpected dangers, the loss is

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his own. *Spencer v. City of Dallas*, 819 S.W.2d 612, 627 (Tex. App. -- Dallas 1991, no writ). “The distinction between the duty owed to a trespasser as opposed to a licensee is important. The premises occupier does not owe a trespasser the duty to warn or make safe dangerous (latent) conditions known to it. It has only the duty to refrain from injuries the trespasser through acts or omissions. The acts or omissions in question refer to the activities or conduct of the occupier on the premises, not the conditions of the premises.” *Smithers v. Texas Utilities Elec. Co.* 824 S.W.2D 693 (Tex. App. -- El Paso 1992).

## 5. Special Defects

Section 101.022(b) imposes a duty on the governmental unit to warn of “special defects” and cites as examples of special defects obstructions or excavations on roadways. Special defects have been held to include such things as floodwater on a state highway and an abnormally large hole, six to ten inches deep covering ninety percent of the width of the asphalt roadway. Compare *City of Houston v. Rushing*, 7 S.W.3d 909 (Tex. App.—Houston [1st Dist.] 1999, no pet.), where the court found that a stopped pickup truck blocking a lane of traffic was not a special defect; Compare *City of Grapevine v. Roberts*, 946 S.W.2d 841 (Tex. 1997), where the Supreme Court of Texas found that a sidewalk and its steps to the street were not special defects. In the case of *State Dept. of Highways and Public Transp. v. Payne*, 838 S.W.2d 235 (Tex. 1992), the Supreme Court of Texas stated that the question of whether a condition is a premise defect or special defect is a question of duty involving statutory interpretation and thus an issue of law for the court to decide. See also *State v. Burris*, 877 S.W.2d 298 (Tex. 1994); *Morse v. State*, 905 S.W.2d 470, 473-74 (Tex. App.—Beaumont 1995, writ denied). But, the threshold question of whether the particular set of circumstances created a dangerous condition is a fact question for a jury. *State v. McBride*, 601 S.W.2d 552 (Tex. Civ. App.—Waco 1980, writ ref’d n.r.e.).

*Payne*, 838 S.W.2d 235, involved a man who sustained injuries when he walked off the end of a culvert built and maintained by the State. The culvert ran perpendicular to and beneath the road, ending about twenty-two feet from the roadbed. In the dark, Payne stepped off the culvert and fell about twelve feet into a drainage ditch. Payne claimed he did not see where the culvert ended that morning because vegetation obscured it and a reflective marker was missing. Payne alleged that the culvert was a special defect. The Supreme Court of Texas held that the

question of whether a defect is a premise defect or a special defect is a question of law. However, the Court concluded that the culvert was not a special defect because special defects are excavations or obstructions on highways, roads, or streets which present unexpected and unusual dangers to ordinary users of roadways.

In the *Kitchen* case, a driver in a pickup truck hit a patch of ice on a bridge and skidded out of control, colliding with an oncoming truck. *Kitchen*, 867 S.W.2d at 786. The State had closed a sign warning of ice on the bridge the night before because of weather reports that the day of the accident would be warmer and drier. *Id.* When the weather did not change the day of the accident, the State dispatched crews to reopen the sign; however the accident occurred before the sign was reopened. *Id.* Given that a special defect is an excavation, obstruction, or other condition that presents an unexpected and unusual danger to ordinary users of roadways, See TEX. CIV. PRAC. & REM. CODE § 101.022(b); *Payne*, 838 S.W.2d at 238, the Supreme Court of Texas held that an icy bridge is not a special defect. *Id.* The Court reasoned that “when there is precipitation accompanied by near-freezing temperatures, as in this case, an icy bridge is neither unexpected nor unusual, but rather, entirely predictable.” *Id.* The same rationale was the basis for the Supreme Court’s determination that a flooded low water crossing is not a special defect. *Reyes v. Laredo*, 335 S.W.3d 605 (Tex. 2010). The Fort Worth Court of Appeals also held recently that a 2 inch difference in grade on a highway is not enough to cause a special defect, even if it could be considered an “excavation” or a highway. *Brumfield v. Tex. Dept. of Transp.*, 2014 WL 2462699, No. 02-13-00175-CV (Tex. App.—Fort Worth May 29, 2104) (mem. op.).

Further in *City of Denton v. Paper*, 376 S.W.3d 762 (Tex. 2012) the court concluded that the sunken area that caused the bicyclist’s accident was not a premises defect in the same class as an excavation or obstruction as it did not physically impair her ability to travel and could have been avoided; there was no evidence that the city had actual knowledge of the dangerous condition, and summary judgment should have been granted to it. The court held that a 3” depression is not in the nature of an excavation or obstruction of a highway (and distinguished a 6-10” hole that extended across 90% of the width of the street, which was found to be a special defect in *County of Harris v. Baton*, 573 S.W.2d 177, 179 (Tex. 1978)). Although the city crew had twice

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returned to make the repair even with the street, the city had received no reports following the last repair, so there was no evidence that the city had notice of the premises defect.

If a warning is not provided, and it can be shown that the governmental unit actually knew or should have known about the defect, the governmental unit may be held liable for personal injuries or death caused by the defect. Section 101.022 also imposes a duty to warn of the absence, condition, or malfunction of traffic signals, signs, or warnings. See *id.* §101.060, which states that a governmental unit is liable only if the situation is not corrected within a reasonable time after notice of the missing or malfunctioning sign or signal. With special defects, the governmental unit owes the same duty to warn that a private landowner owes to an invitee. *Payne*, 838 S.W.2d at 237; *Harris County v. Eaton*, 573 S.W.2d 177, 180 (Tex. 1978).

Further, in *Military Highway Water Supply Corp. v. Morin*, 156 S.W.3d 569 (Tex. 2005), the Supreme Court of Texas held that although normally landowners have a duty to warn for any excavations or artificial conditions on or near a roadway, when the traveler is not in the ordinary course of travel, no duty is owed. *Id.* at 574. The Court held that “ordinary course of travel” did not include the traveler deviating from the roadway some five hundred feet from the point of impact with a horse, before coming in contact with an excavation left by the Military Highway Water Supply Corp. twenty feet off of the opposite side of the roadway. *Id.* at 573. This was beyond what the landowner could have reasonably anticipated. *Id.* Therefore, the landowner had no duty to warn.

In *City of Houston v. Cogburn*, No. 01-11000318-CV, 2014 WL 1778279 (Tex. App.—Houston [1st Dist.] May 1, 2014) (mem. op. on reh’g) a man tripped over tree roots on his way to pay a parking meter and was severely injured. He sued the city under the Tort Claims Act under a theory of special defect. On rehearing, the court held that the city had proven that the “defect” in question, tree roots, was a naturally occurring phenomenon that was open and obvious, and thus, the city could not be held liable for injuries caused by the tree roots. The court rendered judgment for the city.

**6. Recreation Facilities**

Section 75.002 of the Texas Civil Practices and Remedies Code provides

governmental entities some protection from liability with regard to lands used for recreational purposes. It states that:

- (c) If an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:
  - (1) assure that the premises are safe for that purpose;
  - (2) owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises; or
  - (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted.
- (d) Subsections (a), (b), and (c) shall not limit the liability of an owner, lessee, or occupant of real property who has been grossly negligent or has acted with malicious intent or in bad faith.

TEX. CIV. PRAC. & REM. CODE § 75.002.

Section 75.001 defines “recreation” as:

- (4) “Recreation” means an activity such as:
  - ( A ) hunting;
  - ( B ) fishing;
  - ( C ) swimming;
  - ( D ) boating;
  - ( E ) camping;
  - ( F ) picnicking;
  - ( G ) hiking;
  - ( H ) pleasure driving;
  - ( I ) nature study, including bird-watching;
  - ( J ) cave exploration;
  - ( K ) waterskiing and other water sports;
  - ( L ) any other activity associated with enjoying nature or the outdoors;
  - ( M ) bicycling and mountain biking;
  - ( N ) disc golf; or
  - ( O ) on-leash and off-leash walking of dogs.

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The Legislature later added §75.002(e), which states:

- (e) In this section, “recreation” means, in addition to its meaning under §75.001, the following activities only if the activities take place on premises owned, operated, or maintained by a governmental unit for the purposes of those activities:
- (1) hockey and in-line hockey; skating, in-line skating, roller-skating, skateboarding, and rollerblading; and
  - (2) soap box derby use.

*Id.* § 75.002.

Section 75.002(f) limits the duty owed by a governmental entity to the degree of care owed to a trespasser for any person who enters the governmental unit’s premises and engages in recreation. *Id.* § 75.002(f).

Furthermore, a city that owns, operates, or maintains premises on which recreational activities described in Section 75.002(e) are conducted must post and maintain a clearly readable sign that contains language from Section 75.002(g). There has been some speculation that the Recreational Use Statute abolished liability altogether because the statute states that it does not waive sovereign immunity, however, the court in *City of Houston v. Morua*, 982 S.W.2d 126, 130 (Tex. App.—Houston [1st Dist.] 1998, no pet.), *overruled on other grounds by Smith v. Brown*, 51 S.W.3d 376, 381 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) rejected this argument. It stated that “...section 75.003(f) merely emphasize[d] that the recreational use statute limits *preexisting* liability, and does not, in and of itself, waive sovereign immunity or abolish the waiver of liability found in the Act.” *Id.* (emphasis in original). Therefore, if the premises fall within the definition of recreational facility under Chapter 75, the duty owed is effectively reduced from a licensee to that of a trespasser. *Id.*

The initial question is whether the Recreational Use Statute applies. If it does, the duty owed is only that owed to a trespasser on the premises. The Legislature clearly expressed its intent to shield governmental entities from liability for recreational activities by enacting Section 101.085 of the Texas Civil Practices and Remedies Code, which states that “[t]o the extent that Chapter 75 limits the liability of a governmental unit under circumstances in which the governmental unit would be liable under this

chapter, Chapter 75 controls.” *Id.* § 101.58; *City of Bellmead v. Torres*, 89 S.W.3d 611 (Tex. 2002). However, the common law standard applicable to a trespasser does not apply to a person who is “trespasser” under the Recreational Use State. As discussed earlier, the under common law test, the terms “willful, wanton or grossly negligent” refer to the contemporaneous acts or omissions of the landowner, not the condition of the premises. In *State v Schumake*, 199 S.W.3d 279 (Tex. 2006), The Court determined that the Legislature did not intend to distinguish between injuries caused by activities of the landowner as opposed to injuries caused by a condition of the property. It concluded that the Recreational Use Statute permits a premise defect claim for gross negligence. *Id.* at 287. That decision in *Schumake* was based on the specific language of Texas Civil Practice & Remedies Code Section 75.002(d).

Recreational use can encompass a variety of activities. Recently, in *City of Corpus Christi v. Ferguson*, No. 13-12-00679-CV, 2014 WL 495146 (Tex. App.—Corpus Christi Feb. 6, 2014) (mem. op.), the Corpus Christi Court of Appeals, reviewed whether an activity was considered “recreational use” when there is an argument that the activity was tangential to the recreation. The plaintiff was attending a boat event, and on the morning of the event, but before it started, the plaintiff went to the shower facilities but slipped on ice along the way. The plaintiff asserted that she was not engaged in a recreational use, but was merely returning from a shower in the morning. The Corpus Christi Court of Appeals determined the activity at the marina fell within the Recreational Use Statute since she camped overnight on a sailboat dock at the marina. In other words, “camping overnight on the boat was merely one stage of the broader boating activity . . . .”

### C. Condition or Use of Tangible Personal Property

Liability with regard to tangible personal property requires that the injury or death be proximately caused by some condition or use of the tangible personal property. *See Dallas County Mental Health & Mental Retardation v. Bossley*, 968 S.W.2d 339, 343 (Tex. 1998) (“death must be proximately caused by the condition or use of tangible property...[p]roperty does not cause injury if it does no more than furnish the condition that makes the injury possible”), *citing Union Pump Co. v. Allbritton*, 898 S.W.2d 773 (Tex. 1995); *Texas Dept. of Mental Health and Mental Retardation v. Pearce*, 16 S.W.3d 456 (Tex. App.—Waco 2000, pet.

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dism'd w.o.j.). One court held that the injury must be proximately caused either by the negligence of an employee acting within the scope of his employment in the use of tangible property, or under circumstances where an employee or agent furnished tangible property the use of which caused the personal injury or death. As noted earlier, the liability for a condition or use of tangible personal property only extends to personal injuries or death, not to property damage. One of the areas where this distinction is important is with regard to claims for sewer backups. There is no liability for sewer backup claims involving property damage. However, if damages for mental anguish or some type of personal injury can be proven, they are recoverable. See *Texas Dept. of Transp. v. Jones*, 8 S.W.3d 636 (Tex. 1999).

Some governmental entities, including cities and river authorities, wanted to cover the property damage cost of sewer backups for their customers but had a hard time doing so because they are not liable. In 2009, a bill was passed that allows a city or river authority to pay these damages, even if the entity is not liable under the Tort Claims Act. TEX. LOC. GOV'T CODE § 552.912. The statute allows payment, but has language that allows an entity to retain its immunity.

## 1. Tangible Property

Normally, when one thinks of tangible personal property, one thinks of something that can be handled, touched, or seen. In Texas, a line of cases developed that raised the question whether certain types of records or printed documents are tangible personal property under the Tort Claims Act. In *Salcedo v. El Paso Hosp. Dist.*, 659 S.W.2d 30 (Tex. 1983), the Supreme Court of Texas held an electrocardiogram to be tangible personal property. In that case, the alleged negligence was in the misinterpretation of the electrocardiogram graph.

In 1992, the Texas Supreme Court considered the scope of governmental immunity arising from the negligent use of medical records in *Texas Dept. of Mental Health and Mental Retardation v. Petty*, 848 S.W.2d 680 (Tex. 1992). Opal Petty was committed to the Austin State Hospital in 1934. *Id.* at 681. "Over time, the State's diagnosis for Ms. Petty ranged from hebephrenic schizophrenic, mentally ill, not mentally ill, mildly mentally retarded, moderately mentally retarded, to not mentally retarded at all." *Id.* For five decades, her treatment consisted of only "custodial care." *Id.* After her release, at 74 years of age, she sued TDMHMR alleging negligence. The

Court held that "Ms. Petty's treatment records, as used and relied on here, are tangible property, the misuse of which will subject the government to liability just as if it were a 'private person...in accordance with the law of this state.'" *Id.* at 684; *Baston v. City of Port Isabel*, 49 S.S.3d 425, 428 (Tex. 2001).

In the case of *University of Texas Med. Branch at Galveston v. York*, 871 S.W.2d 175 (Tex. 1994), the Supreme Court of Texas stopped short of overruling *Petty* and *Salcedo*, and characterized the decisions as having very little precedential value, which would control in only identical factual circumstances. *Id.* at 178-79. *York* explicitly disapproved of the old line of cases mentioned above and instead imposed a new rule of law. It held that misuse of information, that may or may not be recorded in medical records, is not a negligent use of personal property under the Tort Claims Act. *Id.* at 179. Therefore, governmental immunity is not waived for negligence involving the use, misuse, or non-use of information found in medical records.

Furthermore, the Court in *Dallas County v. Harper*, 913 S.W.2d 207 (Tex. 1995), using the *York* rationale, reaffirmed that a written statement is not tangible personal property for Tort Claims Act purposes. *Harper* involved the release of an indictment that had been expunged. *Id.* The Court stated that an indictment was the written statement of a grand jury accusing a person of an act or omission, and was not tangible personal property. *Id.* at 208. The act of simply reducing information to writing on paper does not make the information personal property. *Id.* at 207-08. In *Jefferson County v. Sterk*, 830 S.W.2d 260 (Tex. App.—Beaumont 1992, writ denied), the Court held that a *capias*, which was inadvertently not removed from the active warrant files and resulted in the mistaken arrest of an individual, was not tangible personal property. In *Eakle v. Texas Dept. of Human Servs.*, 815 S.W.2d 869 (Tex. App.—Austin 1991, writ denied), the Court held that a list of registered family homes was not tangible personal property. In *Robinson v. City of San Antonio*, 727 S.W.2d 40 (Tex. App.—San Antonio 1987, writ ref'd n.r.e.), the Court held that a written protective order was not tangible personal property. In *Wilkins v. State*, 716 S.W.2d 96 (Tex. App.—Waco 1986, writ ref'd n.r.e.), the Court held that a permit used by the Highway Department to transport a mobile home on a narrow highway was a piece of paper evidencing permission, but in no way constituted tangible personal property.

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However, the courts have made it clear that police dogs and other animals owned by a governmental entities, are tangible property that can cause compensable damage. *City of Houston v. Jenkins*, 363 S.W.3d 808 (Tex. App.—Houston [14 Dist.] 2012) (police dog); *City Of Dallas v. Heard*, 252 S.W.3d 98 (Tex. App.—Dallas 2008)(gorilla). Once the court determines that an item is tangible personal property, the next analysis is whether such property was “used” by the governmental entity.

## 2. Use of Property

The Tort Claims Act does not define what is meant by “a condition or use” of property. Therefore, it has been left to the courts to determine when property has been used. In dealing with claims concerning the failure of a governmental employee to use tangible personal property, the courts have generally stated that the “use” required by the Tort Claims Act before immunity is waived requires that the personal property be put or brought into action or service, or that it be employed or applied to a given purpose. Therefore, the non-use of personal property does not impose liability on a governmental unit. Among the allegations held to involve a non-use of property are: the failure of a nurse to read a doctor’s notes on a medical chart; the failure to use available drugs and equipment to render emergency medical care to a person who later died; and the failure to use a building to confine a schizophrenic person who later burned a house, however, some decisions have held that the failure to furnish an item of property may come within the statutory waiver of immunity for a “condition or use” of property.

In *Lowe v. Texas Tech University*, 540 S.W.2d 297 (Tex. 1976), the Supreme Court of Texas held that a football player stated a cause of action involving a condition or use of property by alleging that the university was negligent in failing to provide him with proper protective items to be used as part of the uniform.

In *Robinson v. Central Texas Mental Health and Mental Retardation Center*, 780 S.W.2d 169 (Tex. 1989), the Supreme Court of Texas held that the failure to furnish a life preserver as part of a patient’s swimming attire stated a cause of action involving the condition or use of property. In *Kassen v. Hatley*, 887 S.W.2d 4, 14 (Tex. 1994), the plaintiff brought suit claiming that the non-use of medication was an actionable use of personal property under the Tort Claims Act. The Supreme Court of Texas rejected this argument stating, “we have never held that non-use of

property can support a claim under the Texas Tort Claims Act...nonuse of available drugs during emergency medical treatment is not a use of tangible personal property that triggers waiver of sovereign immunity....” *Id.*

The Court reiterated this logic in *Kerrville State Hosp. v. Clark*, 923 S.W.2d 582 (Tex. 1996), by holding that the failure to administer a drug by injection was a non-use of tangible personal property and therefore did not trigger the waiver provisions of the Tort Claims Act. The Court also limited the applicability of the *Robinson* and *Lowe* decisions. It explained that the value of those cases was “limited to claims in which a plaintiff alleges that a state actor has provided property that lacks an integral safety component and that the lack of this integral component [leads] to the plaintiff’s injuries.” *Clark*, 923 S.W.2d at 585. The Court used the example of a hospital bed provided to a patient without the safety bed rails, the lack of which leads to the patient’s injury.

In *San Antonio Hosp. v. Cowan*, 128 S.W.3d 244 (Tex. 2004), the deceased was involuntarily committed to the state hospital because of his psychotic behavior, acute depression, and suicidal tendencies. *Id.* at 245. The hospital took possession of his personal effects, including his suspenders and walker, but allowed him to keep these two items with him. *Id.* Two days later, Cowan used his suspenders and a piece of pipe from the walker to commit suicide. *Id.* The Court held that merely providing someone with personal property that is not inherently unsafe is not “use” of the property within the meaning of the Tort Claims Act provision, thereby waiving governmental immunity for death caused by use of tangible personal property. *Id.* at 247. In *Cowan*, it was the deceased’s misuse of the property provided to him by the hospital that resulted in his death, not the use of the property by the hospital.

In *Dallas Metrocare Servs. v. Juarez*, 420 S.W.3d 39 (Tex. Nov. 22, 2013) (per curiam), the Supreme Court of Texas again analyzed what constituted “use” of property. The issue in this case is whether a whiteboard falling on an individual is considered “use” of governmental property under the Tort Claims Act (Act). A patient, Juarez, at a Metrocare clinic was hit in the head by a falling whiteboard and was injured. No one was using the whiteboard when this occurred. Juarez sued Metrocare (a governmental entity) under the Act. The trial court and court of appeals both held that

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Metrocare's immunity was waived under the Act. The Court held that Metrocare's immunity was not waived under the "use" doctrine because the entity did not use the whiteboard, it merely allowed the patient to access it.

Animal cases require unique analyses to determine whether an animal was "used" for purposes of the Act. In *City of Houston v. Jenkins*, 363 S.W.3d 808 (Tex. App.—Houston [14 Dist.] 2012), a police dog bit a sheriff's deputy, Jenkins, after the suspects in question had been apprehended and the dog was being transported back to the police car. In *City of Elgin v. Reagan*, 2009 WL 483344, No. 03-06-00504-CV (Tex. App.—Austin 2009) (mem. op.), an individual's child was bit by a dog that had recently been adopted from a city shelter. The plaintiff argued that the city used the adoption process and so "used" the dog which caused the personal injury. The court of appeals held that using a process is not the same as using property and that providing property for use by another (giving the dog to the family) is not the same as the city "using" the dog. Finally, the court did note that the city could be liable for giving property to another if it lacked an integral safety component, but the lack of a family-oriented personality in the dog was not such a safety component.

In *City Of Dallas v. Heard*, 252 S.W.3d 98 (Tex. App.—Dallas 2008), a gorilla escaped from its enclosure at the zoo and attacked individuals at the zoo. The court of appeals held that the city was using the gorilla as an attraction to generate revenue, and thus the plaintiffs could bring their Tort Claims Act action. Interestingly, there was a dissent in this case, where the judge argued that the city had put the gorilla up for display and the city stopped "using" it when the gorilla escaped from its enclosure.

The Court on several occasions has requested that the Legislature clarify the waiver of immunity provisions, particularly the "condition or use" language, as the language in the Tort Claims Act is susceptible to broad or narrow interpretations. To date, the Legislature has not acted to provide any guidance for the application of the waiver of governmental immunity. In a dissenting opinion, a frustrated Texas Supreme Court Justice resorted to quoting from Lewis Carroll in Through the Looking Glass. Citing Alice's retort to Humpty Dumpty's

statement that a word "means just what I choose it to mean—neither more or less," the Justice described the situation in Alice's words: "That's a great deal to make one word mean." *Robinson*, 780 S.W.2d at 176. The Justice writing the majority opinion in the case responded to his colleague by stating that while Humpty Dumpty had been willing to explain the meaning of his words to Alice, the Texas Legislature had not attempted to do so despite repeated requests for definitional assistance. *Id.* at 170.

### D. Use of Motor-Driven Vehicle and Equipment

With regard to motor-driven vehicles or motor-driven equipment, the claim for damages must arise from operation or use of the vehicle or equipment in performing governmental functions. See *City of El Paso v. Hernandez*, 16 S.W.3d 409 (Tex. App.—El Paso 2000, no pet.), where a complaint that city emergency personnel failed to recognize that a patient had a life-threatening condition and thus negligently failed to transport her by ambulance to the nearest hospital amounted to a complaint about the non-use of the ambulance, and therefore, the city's sovereign immunity was not waived under the Tort Claims Act provision for "use" of any motor-driven vehicle. As with the phrase "use of tangible personal...property," the courts have been left with the task of defining "operation or use."

In *Texas Natural Resource Conservation Com'n v. White*, 46 S.W.3d 864 (Tex. 2001), the Texas Supreme Court considered whether a stationary electric motor-driven pump qualified as motor-driven equipment, and whether the pump in question caused the plaintiff's property damage. The case involved a storeowner who called the Texas Natural Resource Conservation Commission ("TNRCC") out to her property. TNRCC dug a trench on her property and installed a motor-driven pump to dissipate the fumes. Several days later, TNRCC removed the pump. Six days later, the fumes migrated and pooled in a corner of White's store and started a fire that completely destroyed it. *Id.* at 866. The Court held that a pump was "motor-driven equipment" because the pump was in fact driven by a motor to perform its task, and therefore it fit the general definition of "motor-driven equipment" found in Black's Law Dictionary. *Id.* at 868.

The Court stated that the Legislature used "motor-driven equipment" in the Tort Claims Act, and not just "motor-driven vehicle." Therefore a stationary pump would fall within the scope of the

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Act. On the issue of whether White's injury arose from the pump's "operation or use," the Court found that White had not presented any evidence to support the contention. The Court found that the injury must have been caused by the TNRCC's actual use of the pump, not its failure to use it. The Court stated, "[t]his court has never held that non-use of property can support a claim under the Texas Tort Claims Act...doing so would be tantamount to abolishing governmental immunity, contrary to the limited waiver the Legislature clearly intended." *Id.* at 869-70, citing *Clark*, 923 S.W.2d at 585.

"Operation" has been described as "a doing or performing of practical work," while "use has been defined as meaning "to put or bring into action or service; to employ for or apply to a given purpose...." *Mount Pleasant Indep. Sch. Dist. v. Estate of Linburg*, 766 S.W.2d 208, 211 (Tex. 1989). Some wrongful act or omission or negligence in the operation or use must be the proximate cause of the injury suffered.

The mere presence of a motor-driven vehicle or motor-driven equipment is not a basis of liability. The operation or use of the motor-driven vehicle or motor-driven equipment must cause the injury or property damage. The courts have dealt with a number of cases where an injury occurred on school buses. In several of these cases, the courts held that the vehicle was the physical setting of the injury, but that its use or operation did not cause the injury. *See Dart v. Whitley*, 104 S.W.3d 540 (Tex. 2003); *Hopkins v. Spring Indep. Sch. Dist.*, 736 S.W.2d 617 (Tex. 1987) (student with cerebral palsy suffered severe convulsions while on a bus); *Garza's Estate v. McAllen Indep. Sch. Dist.*, 613 S.W.2d 526 (Tex. Civ. App.—Beaumont 1981, writ ref'd n.r.e.) (high school student stabbed to death on school bus, which the Court described as a failure to control and supervise the public). One of the issues involved in a 1992 Supreme Court of Texas case was whose operation or use of the motor-driven vehicle or equipment is necessary to give rise to liability—the employee's, the injured person's, or some third party's. The Court held that it is the employee's use that negligently causes an injury or property damage. *Leleaux v. Hamshire-Fannett Indep. Sch. Dist.*, 835 S.W.2d 49 (Tex. 1992). Again, in this case, the Court held that the bus was nothing more than the site of the injury, not the cause of the injury. *Id.* at 51.

If the employee is not liable, then governmental unit is not liable. Section 101.021 states that a governmental employee's act creates liability for

the governmental entity only if "the employee would be personally liable to the claimant according to Texas law." In a case involving a Johnson County Constable who pulled over a driver because of faulty tail lights, the Court held that the Constable was discharging discretionary duties in good faith. Therefore, the Constable was entitled to official or qualified immunity. In the absence of the Constable's liability, Johnson County was not liable under the Tort Claims Act. *Carpenter v. Barner*, 797 S.W.2d 99 (Tex. App.—Waco 1990, writ denied), *overruled on other grounds by Travis v. City of Mesquite*, 830 S.W.2d 94 (Tex. 1992). Consequently, if the judge or jury determines that the employee is not liable to the injured party, the governmental unit cannot be held liable.

The use of a motor-driven vehicle that may present the most issues for political subdivision liability is the use of police vehicles to chase suspects. A number of cases have resulted from police chases that ended in a collision between the fleeing suspect and a third party. Previously, appellate courts held that there was no liability for injuries to third parties in such collisions because the actions of the police vehicle were not a proximate cause of the accident. *See Dent v. City of Dallas*, 729 S.W.2d 114 (Tex. App.—Dallas 1986, writ ref'd n.r.e.). In *Travis v. City of Mesquite*, 830 S.W.2d 94 (Tex. 1992), the Supreme Court of Texas held that the decision to initiate or continue a police pursuit may be negligent when the heightened risk of injury to third parties is unreasonable in relation to the interest of apprehending suspects. "Police officers must balance the risk to the public with their duty to enforce the law to choose an appropriate course of conduct. Public safety should not be thrown to the winds in the heat of the chase." *Id.* at 98. The Supreme Court of Texas made the issue about whether an officer properly engaged in a pursuit of a fleeing suspect a fact question for a jury to determine.

### E. Joint Enterprise

The Supreme Court of Texas has held that a governmental entity can waive sovereign or governmental immunity under the theory of joint enterprise. *Texas Dept. of Transp. v. Able*, 35 S.W.3d 608 (Tex. 2000); *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513 (Tex. 2002). In *Able*, the Texas Department of Transportation ("TxDOT") engaged in a joint enterprise with the Houston Metropolitan Transit Authority ("Metro") to build and maintain a High Occupancy Vehicle ("HOV") lane. An accident occurred which implicated the safety of the HOV lane.

### Tort Claims Act Basics

The Supreme Court of Texas held that TxDOT waived immunity under Section 101.021 of the Tort Claims Act because Metro, as its agent, would have been liable as a private person for its negligence in the construction and maintenance of the HOV lane. To be engaged in a joint enterprise, the governmental entity must meet these four requirements: (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right to control. In *Able*, the Court held that if a governmental entity that would otherwise be immune engaged in a joint enterprise whereby the other party was an agent for the governmental entity, the governmental entity would be liable for the agent's negligence as if it were a private person. *Id.* at 613. Therefore, the governmental entity has waived its immunity and is liable if a plaintiff pleads a cause of action under the Tort Claims Act. *Id.*

## IV.

### EXEMPTIONS AND EXCEPTIONS FROM THE WAIVER OF IMMUNITY

#### A. Exceptions to Waiver of Immunity

Although the Tort Claims Act waives sovereign or governmental immunity in certain circumstances, the Act also specifically sets out areas where sovereign immunity is NOT waived. The Act does not apply to:

- Claims against a school district or a junior college district, except as to the operation of motor vehicles. TEX. CIV. PRAC. & REM. CODE § 101.051. Any act or omission of the legislature or a member of the legislature acting in his official capacity or to the legislative functions of a governmental unit. *Id.* § 101.052.
- Any act or omission of a court or any member of the court acting his official capacity or to a judicial function of a governmental unit. § 101.053(a).
- Any act or omission of an employee in the execution of a lawful order of any court. § 101.053(b).
- Activities of the state military forces when on active duty under the lawful orders of competent authority. § 101.054.
- In connection with the assessment or collection of taxes by a governmental unit. § 101.055(1).
- The action of an employee while responding to an emergency call or reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action, or in the absence of such a law or ordinance, if the action is not taken with conscious indifference or reckless disregard for the safety of others. § 101.055(2).
- The failure to provide or the method of providing police or fire protection. § 101.055(3).
- The failure of a governmental unit to perform an act that the unit is not required by law to perform. § 101.056(1).
- A governmental unit's decision not to perform an act or on its failure to make a decision on the performance or nonperformance of an act, if the law leaves the performance or nonperformance of the act to the discretion of the governmental unit. § 101.056(2).
- An injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection, or rebellion. § 101.057(1).
- Assault, battery, false imprisonment, or any other intentional tort, including a tort involving disciplinary action by school authorities. § 101.057(2).
- The theory of attractive nuisance. § 101.059.
- The failure of a governmental unit initially to place a traffic or road sign, signal, or warning device, if the failure is a result of discretionary action of the governmental unit. § 101.060(1).
- The absence, condition, or malfunction of a traffic or road sign, signal, or warning device, unless the absence, condition, or malfunction is not corrected by the responsible governmental unit within a reasonable time after notice. § 101.060(2).
- The removal or destruction of a traffic or road sign, signal, or warning device by a third person, unless the governmental unit fails to correct the removal or destruction within a reasonable time after actual notice. § 101.060(3).
- An act or omission that occurred before January 1, 1970. § 101.061.

## Tort Claims Act Basics

**B. Specific Exceptions and Exemptions****1. Discretionary Acts. Texas Civil Practices & Remedies Code § 101.056**

The courts have stated that the discretionary decisions, or policy decisions, of a governmental entity are not to be second-guessed by the courts. The discretionary function exception is limited to the exercise of governmental discretion and does not apply to the exercise of non-governmental discretion such as professional or occupational discretion. *Christilles v. Southwest Texas State Univ.*, 639 S.W.2d 38, 42 (Tex. App.—Austin 1982, writ ref'd n.r.e.), *overruled on other grounds by Texas A&M Univ. v. Bishop*, 156 S.W.3d 580 (Tex. 2005). A court reviewing a claim of immunity for discretionary acts should determine whether imposing liability will cause the court to substitute its judgment for that of the government. *Eakle*, 815 S.W.2d at 874. Some decisions have characterized the analysis as an issue of separation of powers, with the judiciary not second-guessing an executive or legislative decision. The question of whether a city's actions fall within its discretionary power is probably a question of law for the courts.

Once a city makes a discretionary decision, negligence in the implementation of the decision can give rise to liability. In other words, the decision on whether to repair a bridge may be discretionary, i.e. a budgetary issue for the governmental unit; however, once the city makes the decision to repair the bridge, it must not be negligent in how it does the repairs.

**2. Method for Providing Police/Fire Protection—Texas Civil Practices & Remedies Code § 101.055(3)**

The courts have construed this exception to liability as not applying broadly to any act or omission that occurs while an officer is providing police protection. The Texas Supreme Court held that the “method” of providing police or fire protection refers to the governmental decisions as to how to provide police or fire protection. *State of Texas v. Terrell*, 588 S.W.2d 784 (Tex. 1979); *Stephen F. Austin State Univ. v. Flynn*, 228 S.W.3d 653 (Tex. 2007). While the Court held that a governmental unit may be immune from liability for policy formulation, it may be liable for policy implementation. As so construed, this exception is very similar to the §101.056 exception.

**3. Intentional Tort—Texas Civil Practices & Remedies Code § 101.057**

A governmental entity retains immunity if the complained of act was intentional instead of negligent. *Id.* § 101.057. In *City of Watauga v. Gordon*, 2014 WL 2535995, 13-0012 (Tex. June 6, 2014), Gordon sued the city when his wrists were injured due to the officers' use of handcuffs. The city argued that the injury was not from the negligent use of property which would waive its immunity, but allegedly were caused by the intentional use of personal property and was therefore a case of battery for which the city's immunity was not waived. Gordon argued that he either: (1) consented to being handcuffed; or that (2) it was negligence because the officer did not intend to injure him. The Supreme Court dismissed both arguments. No one really consents to being handcuffed and the physical contact was intended—even if the injury was not. Because the plaintiff alleged excessive force, a claim that a battery occurred, the act was intentional and the city was held not to be liable. The Court dismissed the case against the city. The Supreme Court of Texas has also construed the phrase “arising from” in Section 101.057 to mean that the intentional tort must have been committed by the governmental employee or agent before the governmental unit may claim this exception from liability. *Delaney v. Univ. of Houston*, 835 S.W.2d 56 (Tex. 1992).

**4. Traffic Signs, Signals, and Warning Devices— Texas Civil Practices & Remedies Code § 101.060**

It is a discretionary decision, and is protected by governmental immunity, for a governmental entity to erect a traffic sign, signal, or warning device. Decisions involving design and placement usually involve the exercise of discretion. With regard to the actual erection of the sign or signal, which must generally comply with the Manual of Uniform Traffic Control Devices, there may be liability. *City of Fort Worth*, 51 S.W.3d 436 (Tex. App.—Fort Worth 2001, no pet.), *overruled on other grounds by City of Grapevine v. Sipes*, 195 S.W.3d 689 (Tex. 2006); *Villarreal v. State*, 819 S.W.2d 419 (Tex. App.—Dallas 1991, writ denied).

With regard to the removal or destruction of a traffic sign, signal, or warning device by a third person, the governmental unit is liable only if it fails to correct the situation within a reasonable time after actual notice. At least one appellate court

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defined “actual notice” as “information...actually communicated to or obtained by a city employee responsible for acting on the information.” *City of Dallas v. Donovan*, 768 S.W.2d 905 (Tex. App.—Dallas 1989, no writ). In *Donovan*, it was shown that police officers and sanitation workers had passed through an intersection where the plaintiff sustained injuries when other witnesses testified that the stop sign was down. As persons responsible for acting on the information that the stop sign was missing were in a position to obtain that information, the Court concluded that there was sufficient evidence to hold that the city had actual notice.

The Supreme Court of Texas held that the State’s failure to stop the repeated removal of traffic signs by vandals did not waive the State’s immunity. The Court stated that the Tort Claims Act created a duty for the State to correct a traffic sign’s removal or destruction by a third person upon receiving actual notice; however, the Department of Transportation’s alleged failure to make certain discretionary decisions affecting a stop sign’s susceptibility to repeated vandalism was not a failure to correct the sign’s “condition.” *State ex rel. State Dept. of Highways and Public Transp. v. Gonzalez*, 82 S.W.3d 322 (Tex. 2002).

Finally, a governmental unit will be given a reasonable time to replace a missing sign or repair a malfunctioning one only if the malfunction or absence was the result of a component failure, act of God, or act of a third party. *Texas Dept. of Transp. v. Ramming*, 861 S.W.2d 460, 465 (Tex. App.—Houston [14th Dist.] 1993, writ denied). The Court in *Ramming* held that a governmental unit could be held strictly liable for injuries and deaths if the absence or malfunction of the traffic control device was caused by one of its employees. *Id.*

### C. Plea to the Jurisdiction

A plaintiff must plead an exception to sovereign or governmental immunity to be successful in a suit against a governmental entity under the Tort Claims Act. If a plaintiff does not plead a cause of action within the express terms of the Tort Claims Act, or another statutory waiver of immunity, the trial court lacks subject matter jurisdiction. *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). Governmental entities can use this to their advantage when sued by filing a plea to the jurisdiction, challenging the trial court’s subject matter jurisdiction. A plea to the jurisdiction challenges a trial court’s jurisdiction by attacking the sufficiency of the

plaintiff’s pleadings. A plaintiff must plead a cause of action within the Act’s express terms of the Tort Claims Act or other statutory waiver of immunity. *City of El Paso v. W.E.B. Investments*, 950 S.W.2d 166, 169 (Tex. App.—El Paso 1997, pet. denied). When a plaintiff’s petition lacks the proper language to show that the governmental entity has waived immunity, a plea to the jurisdiction is proper. *Texas Dept. of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Specifically, if a plaintiff fails to plead a cause of action that falls under Section 101.021 of the Tort Claims Act, and the pleadings affirmatively negate the existence of jurisdiction, the defendant’s plea to the jurisdiction should be granted without the opportunity for the plaintiff to amend. *Texas Dept. of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004). If the failure to plead a cause of action that waives sovereign or governmental immunity under the Tort Claims Act can be cured, the plaintiff must be given the opportunity to amend. *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002). Used effectively, a plea to the jurisdiction will prompt the trial court to dismiss with prejudice a claim based on sovereign immunity. *Sykes*, 136 S.W.3d at 639; *Speer v. Stover*, 685 S.W.2d 22, 23 (Tex. 1985).

The trial court’s denial of a plea to the Jurisdiction is immediately appealable under Texas Civil Practices & Remedies Code Section 51.014(a)(8). Further, if the plea to the jurisdiction is filed and requested for submission or hearing not later than the later of the 180th day after the date a defendant filed an original answer or other first responsive pleading raising immunity. TEX. CIV. PRAC. & REM. CODE § 51.014(c). The perfection of an interlocutory appeal from a trial court order denying the plea to the jurisdiction stays all proceedings in the trial court, including trial on the merits and discovery, pending resolution of the appeal. TEX. CIV. PRAC. & REM. CODE § 51.014(b). *In re Hudak*, 267 S.W.3d 569 (Tex. App. 2008).

## V. INDIVIDUAL IMMUNITY FROM LIABILITY

In general, an employee can be held liable for his or her own wrongful acts or omissions. In claims involving negligence, the employer may also be liable of the acts of its employees under the doctrine of *respondeat superior* (the master is responsible for the servant). *Respondeat superior* is a sword to be used by the plaintiff to recover from the employer, not a shield from personal liability for the employee. A

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governmental employee has special defenses to civil liability. One is known as official immunity. The other is Section 101.106 of the Texas Tort Claims Act. Official immunity for an employee sued personally is a distinct from that of the defense of sovereign available to the governmental entity. *Id.* § 101.026. Section 101.026 provides that the passage of the Tort Claims Act does not abrogate the individual's common law defense of official immunity.

Texas has adopted a three-part test to guide courts in the application of qualified or official immunity. The elements that must be shown in asserting the defense are:

- (1) the governmental actor was performing a discretionary act;
- (2) the act was performed in good faith; and
- (3) it was within the scope of his official authority.

*City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994). This defense of official immunity protects government officers and employee from personal liability because of their good faith performance of discretionary duties while in the scope of their authority. *Kassen*, 887 S.W.2d at 8. A plaintiff can attack any of these elements, and if successful, defeats a defendant's individual immunity.

To qualify for official immunity, a defendant must show that the act complained of was discretionary. A discretionary act is one that "involves personal deliberation, decision and judgment...." *Chambers*, 883 S.W.2d at 654.

However, "...government-employed medical personnel are not immune from tort liability if the character of the discretion they exercise is medical and not governmental." *Kassen*, 887 S.W.2d at 11. To help decide whether an act includes governmental or medical discretion, the Supreme Court of Texas has held that one must focus on the facts of the particular case and the policies promoted by official immunity. *Id.* at 12. If a doctor or nurse was influenced by governmental concerns or factors, policy considerations may warrant official immunity. *Id.* But, if no governmental factors affected the doctor's or nurse's discretion, official immunity may be improper.

An act is not discretionary, but is rather ministerial, if it is so precisely defined by law that there is no element of judgment or discretion left to the employee. *Id.* Official immunity does not extend to ministerial acts. For ministerial acts, the governmental employee is liable for his tortious conduct to the same extent as a person who holds no governmental position. Ministerial actions are those that require obedience to orders, or the performance of a duty to which the actor is left no choice. A clerk's duties are usually held to ministerial; therefore, the clerk is liable for his tortious conduct. Finally, the official must have acted in "good faith". The good faith test is objective. The official meets the "good faith" requirement if a reasonable and prudent official, under the same circumstances, could have believed that his or her conduct was justified based on the information they possessed when the conduct occurred. *Chambers at 556*. As with governmental immunity, the burden is upon the official to plead and prove this defense. This plea of immunity for the individual should be clearly and separately made from any plea of immunity by the governmental unit, if it is a party in the same lawsuit.

*Alexander v. Walker*, a recent case from the Supreme Court of Texas discusses how Section 101.106 works in relation to suits against individual employees versus those against a governmental entity. *Alexander v. Walker*, No. 11-0606 (Tex. June 6, 2014). Section 101.106 provides that the filing of suit under the Tort Claims Act (Chapter 101) against a governmental unit constitutes an irrevocable election by the plaintiff and forever bars any suit or recovery by the plaintiff against any employee of the governmental unit regarding the same subject matter in the employee's individual capacity. TEX. CIV. PRAC. & REM. CODE 101.106 (a); *Alexander v. Walker*, No. 11-0606 (Tex. June 6, 2014) (per curiam); *Tex. Adjutant Gen. Office v. Ngakoue (TAGO)*, 408 S.W.3d 350 (Tex. 2013). To determine whether the proper party is the employee or the employer (the governmental entity) it must be determined whether the employee was "within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit . . ." TEX. CIV. PRAC. & REM. CODE § 101.106(f). If such is the case, then it does not really matter when the employee or the employer is sued, the suit is truly against the governmental entity, not the employee. The suit is considered one against the employee in his or her "official capacity". *Id.* § 101.106(f); *TAGO*, 408 S.W.3d at 357; *Franka v. Velasquez*, 332 S.W.3d 367, 382-83 (Tex. 2011). However, if it is the employee who is sued in his

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official capacity, then the plaintiff must amend his pleadings to name the governmental entity as a party or risk dismissal. *TAGO*, 408 S.W.3d at 359. The one instance where a suit against a government employee in his official capacity is *not* a suit against the governmental entity is if the governmental employee is accused of action outside his scope of authority or taking an “*ultra vires*” action. *Franka*, 332 S.W.3d at 382.

To determine whether a suit is in an employee’s individual or official capacity, a court looks at whether the employee was within their scope of employment when the damages occurred. *Id.* § 101.106. Section 101.101(5) defines “scope of employment” as:

means the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority.

In *Alexander v. Walker*, the Supreme Court of Texas held that the claims were in the employee’s official capacity, and within the scope of their employment, because the same claims were brought against the county in federal court. Generally, an individual is within the “scope of employment” if they are performing duties normally assigned to them, even if they make mistakes when performing those duties. *See Lopez v. Serna*, 414 S.W.3d 890 (Tex. App.—San Antonio 2013; *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417, 424 (Tex. 2004). One court has held that the intoxication of an employee when an injury is caused could waive the immunity of the employee and, in essence, allow a suit against the employee in his or her individual capacity. *Molina v. Alvarado*, No. 08-13-00157-CV, 2014 WL 1632991\*7 (Tex. App.—El Paso Apr. 23, 2014).

The Supreme Court of Texas, in *Franka*, ruled that an employee sued individually may file a motion to be dismissed when damages are sought against them based on any common law cause of action. They merely need to show that they are sued for acts performed within the course and scope of their employment. They may do so regardless of whether or not the governmental entity will ultimately be immune based on its defense of sovereign immunity. *Franka v. Velasquez*, 332 S.W.3d 367 (Tex. 2011).

Section 101.106 does not bar an action against an employee of an independent contractor of a governmental unit. *Castro v. Cammerino*, 186

S.W.3d 671, 678 (Tex. App.—Dallas 2006, no pet.). Even though the Texas Transportation Code treats an independent contractor of a governmental unit and the governmental unit the same regarding liability and damage caps under the Tort Claims Act, it does not extend this treatment to the independent contractor’s employees. *Id.* TEX. TRANSP. CODE § 452.056(d). In *Cammerino*, the Court held that a driver for Dallas Area Rapid Transit (“DART”), who was actually an employee of First Transit, Inc., an independent contractor of DART, was not entitled to have the action against him barred by Section 101.106 of the Tort Claims Act. *Id.* at 680.

## VI. DAMAGES

### A. Statutory Limits

Section 101.023 of the Tort Claims Act sets maximum damage limits on liability for actions brought under the Act, i.e. for actions against a governmental entity involving governmental functions to the extent that sovereign immunity has been waived. These liability caps apply to the total for monetary damages and prejudgment interest. The limits are:

- For **state government**, liability is limited to money damages in a maximum amount of \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.
- For a **unit of local government, except municipalities**, liability is limited to money damages in the maximum amount of \$100,000 for each person, \$300,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.
- For **municipalities**, liability is limited to money damages in a maximum amount of \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.

TEX. CIV. PRAC. & REM. CODE § 101.023. In Section 101.024, the Act specifically provides that no exemplary or punitive damages are recoverable against the State of Texas or any of its political subdivisions, including local governments and municipalities.

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The Tort Claims Act also contains provisions concerning settlement (§101.105), the payment and collection of a judgment (§101.107), the levy of an ad valorem tax for the payment of a judgment (§101.108), and the payment of claims against certain universities (§101.109).

Finally, Chapter 108 of the Texas Civil Practices and Remedies Code caps the personal liability for a public servant at \$100,000 for damages arising from personal injury, death, or deprivation of a right, privilege, or immunity if the damages are the result of an act or omission by the public servant in the course and scope of the public servant's office, employment, or contractual performance for or service on behalf of a governmental unit. Property damages are similarly capped at \$100,000 for public servants. As long as the public servant is within the course and scope of the public servant's duties, damages are limited to \$100,000. This limit applies regardless of whether the duty is discretionary or ministerial.

### B. Damages

Actual, or compensatory, damages for injuries or damages suffered by a living person may include:

- (1) Past reasonable and necessary medical expenses;
- (2) Future probably reasonable and necessary medical expenses;
- (3) Past lost earnings;
- (4) Future probable lost earnings;
- (5) Past physical pain and suffering and mental anguish;
- (6) Future probable physical pain and suffering and mental anguish;
- (7) Past property damages and losses;
- (8) Pre-judgment interest;
- (9) Post-judgment interest; and
- (10) Court costs.

See TEX. CIV. PRAC. & REM. CODE Ch. 41.

A parent, spouse, child, brother, or sister can recover damages for his or her mental anguish over the physical injury of a counterpart relative, if he or she has a contemporaneous sensory perception of the injury to the other and is thereby caused mental anguish. See *Reagan v. Vaughn*, 804 S.W.2d 463 (Tex. 1990). A spouse can recover for loss of consortium to a negligently or intentionally injured spouse. In wrongful death cases, the estate of the

deceased can recover the above-specified damages suffered by the victim before death. Under Chapter 71 of the Texas Civil Practices and Remedies Code, if an injured individual would have been entitled to bring an action for an injury if he had lived, the persons listed in such statute may bring an action to recover damages. Persons entitled to bring an action under the wrongful death statute are the surviving spouse, children, and parents of a deceased person. If none of those persons brings an action within three calendar months of the decedent's death, the executor or administrator of the decedent's estate may bring the action unless requested not to do so by all of the persons entitled to bring the action. The statutory survivors can recover not only for provable economic loss, but also for their own grief, shock, worry, other mental anguish, and loss of love, guidance, and support caused by the death.

## VII. MISCELLANEOUS MATTERS

### A. Notice of Claim

Section 101.101 of the Tort Claims Act provides that a governmental unit is entitled to receive notice of a claim against it not later than six months after the day that the incident giving rise to the claim occurred. The notice of claim requirement applies only to claims under the Texas Tort Claims Act. The requirement has no application to claims brought under the Federal Civil Rights Act. The notice must reasonably describe the damage or injury claimed, the time and place of the incident, and the incident itself. *Cathay v. Booth*, 900 S.W.2d 339, 340 (Tex. 1995) (per curiam). The purpose of the notice requirement is to give governmental entities sufficient time to gather information, settle claims, and prepare for trial. *Tex. Dep't Crim. Justice v. Simons*, 140 S.W.3d 344 (Tex. 2004).

In *Univ. of Texas Southwestern Med. Ctr. at Dallas v. Loutzenhiser*, 140 S.W.3d 351 (Tex. 2004), the Supreme Court of Texas held that though this notice requirement is mandatory, and failure to give such notice will bar any action under the Act, it does not deprive the court of subject matter jurisdiction. The governmental unit must raise failure to give such notice as a defense. However, the 79th Legislature added a provision to Section 311.034 of the Texas Government Code to provide that "statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity." This amendment reverses the effect of the *Loutzenhiser* case and allows

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the notice requirement to be raised by a plea to the jurisdiction.

Section 101.101 also ratified and approved city charter provisions or ordinances requiring that notice be given to a city. However, notice of claim provisions requiring that notice be given within sixty or ninety days have been declared a violation of the “open courts” provision of Article I, Section 13 of the Texas Constitution. *See Fitts v. City of Beaumont*, 688 S.W.2d 182, 184-85 (Tex. App.—Beaumont 1985, writ ref’d n.r.e.) for a discussion of 60-day notice; *See Schauteet v. City of San Antonio*, 702 S.W.2d 680, 682-83 (Tex. App.—San Antonio 1985, writ ref’d n.r.e.) for a discussion of 90-day notice. Given the language of these decisions, it is probable that any notice of claim provision that is less than six months (the time Section 101.101 specifically sets forth) may be similarly invalidated by a reviewing court.

Regardless of the notice of claim requirements, Section 101.101 states that if the governmental unit has actual notice of the incident in question, a notice of claim is not required. Actual notice must consist of substantially the same information as set forth in Section 101.101. Actual notice to a governmental unit requires knowledge of: (1) death, injury, or property damage; (2) the governmental unit’s alleged fault producing or contributing to the death, injury, or property damage; and (3) the identity of the parties involved. *Tex. Dept. of Criminal Justice v. Simons*, 140 S.W.3d 338 (Tex. 2004); *Cathey v. Booth*, 900 S.W.2d 339 (Tex. 1995). What is intended by the second requirement is that the governmental unit must have knowledge that amounts to the same notice to which it is entitled under the Tort Claims Act. That includes subjective awareness of its fault, as ultimately alleged by the claimant, and producing or contributing to a claimed injury. *See Simons*, 140 S.W.3d 338. It is not enough that a governmental unit should have investigated an incident as a prudent person would have, or that it did investigate, perhaps as part of routine safety procedures, or that it should have known from the investigation it conducted that it might have been at fault. If a governmental unit is not subjectively aware of its fault, it does not have the same incentive to gather information that the statute is designed to provide, even when it would not be unreasonable to believe that the governmental unit was at fault.

Further, the six month notice period is not tolled because a person is a minor. Minors are required to give the same six month notice as adults. *Martinez v.*

*Val Verde County Hosp. Dist.*, 140 S.W.3d 370 (Tex. 2004). In an appellate court decision prior to *Martinez*, the Court held that the discovery rule does not apply to the notice provisions of the Tort Claims Act. *Univ. of Tex. Med. Branch at Galveston v. Greenhouse*, 889 S.W.2d 427 (Tex. App.—Houston [1st Dist.] 1994, writ denied). It does not matter that the party is incapable of knowing or discovering the injury, the Tort Claims Act does not provide for such a tolling of the notice provision. Moreover, the refusal to apply the discovery rule does not violate the “open courts” provision in the Texas Constitution. The Court in *Greenhouse* stated that the “open courts” provision applies only to common law actions, whereas a suit under the Tort Claims Act is statutory in nature. Furthermore, the court in *Dinh v. Harris County Hosp. Dist.*, 896 S.W.2d 248 (Tex. App.—Houston [1st Dist.] 1995, writ dismissed w.o.j.), states that the application of the notice of a claim requirement to a person who is mentally incapacitated does not violate the “open courts” provision of the Texas Constitution.

### B. Payment of Award against Employee

Chapter 102 of the Texas Civil Practices and Remedies Code provides that a local government, defined as a county, city, town, special purpose district, or any other political subdivision of the state, may pay actual damages awarded against an employee of the local government, if the damages result from the act or omission of the employee in the course and scope of his employment for the local government, and arise from a cause of action for negligence. The local government may also pay court costs and attorney’s fees awarded against that employee. However, the local government may not pay damages awarded against an employee that arise from a cause of action for official misconduct or that arise from a cause of action involving a willful act or omission constituting gross negligence. TEX. CIV. PRAC. & REM. CODE § 102.002. A local government also may not pay damages awarded against an employee to the extent that the damages are recoverable against an insurance contract or a self-insurance plan authorized by statute. *Id.* Payments under Chapter 102 may not exceed \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death, or \$100,000 for a single occurrence of property damage.

### C. Insurance

Section 101.027 of the Tort Claims Act provides that each governmental unit may purchase insurance policies protecting the unit and its

### **Tort Claims Act Basics**

employees against claims and may relinquish to the insurer to the right to investigate, defend, compromise, and settle any claim. The governmental unit may not require an employee to purchase liability insurance as a condition of employment if the governmental unit is insured by a liability insurance policy.

Section 101.104 of the Tort Claims Act states neither the existence, nor the amount of insurance held by a governmental unit is admissible in the trial of a lawsuit against the governmental unit. Furthermore, the existence and amount of insurance held by the governmental unit is not subject to discovery in a lawsuit against the unit. The Texas Supreme Court held that the statute prohibits discovery of insurance covering claims against a governmental unit and against its employees for which it can be directly or vicariously liable under the Tort Claims Act. *In re Sabine Valley Ctr.*, 986 S.W.2d 612 (Tex. 1999).

### **D. Representation**

Section 101.103 of the Tort Claims Act provides that the Attorney General shall defend each action brought against a governmental unit that has authority and jurisdiction coextensive with the geographical limits of the state, and that he may be fully assisted by counsel provided by an insurance carrier. A governmental unit having an area of jurisdiction smaller than the entire state shall employ its own counsel according to the organic act under which the unit operates, unless the governmental unit has relinquished to an insurance carrier the right to defend it against the claim.

Chapter 102 provides that a local government may provide legal counsel to represent an individual for whom the local government may pay damages under circumstances authorize by Chapter 102. The counsel provided may be the governmental unit's regularly employed counsel, provided there is no potential conflict of interest between the unit and that individual. If a potential conflict exists, the unit may employ other legal counsel to defend the lawsuit. The legal counsel employed may settle the portion of a suit that may result in the payment of damages by the local government under Chapter 102.

Similar to Chapter 102 is Section 180.002 of the Texas Local Government Code. Section 180.002 provides that a municipality or special purpose district shall provide an employee who is a peace officer, fire fighter, or emergency medical services

personnel with legal counsel, without cost to the employee, to defend the employee against a suit for damages by a party other than a governmental entity if: (1) the employee requests such legal counsel and (2) the suit involves an official act of the employee within the scope of the employee's authority. The term "peace officer" has been given the meaning specified under Article 2.12 of the Texas Code of Criminal Procedure. The requirement to provide legal counsel applies to actions under the Federal Civil Rights Act as well as actions under state law. The municipality or special purpose district may provide counsel already employed by it or may employ and pay private counsel to defend the employee against the claim. If the employee is not provided with an attorney, the employee may sue to recover reasonable attorney's fees incurred to defend the suit if the trier of fact finds that: (1) the fees were incurred in defending a suit for which the employee was entitled to representation and (2) the employee is without fault or that the employee acted with a reasonable good faith belief that his actions were proper.

Frequently, one attorney will be employed to represent both the governmental entity and the officer against whom a lawsuit is filed. While in many cases this representation presents no problem, because defenses available to the entity and the officer are not conflicting, the defenses can be significantly different, and an attorney representing both parties can find himself with an ethical conflict. A conflict exists if the representation of one party requires that he compromise the interests of the other party. If such a conflict arises, the attorney has an ethical obligation to advise his clients of the problem. It will then be necessary for separate counsel to be obtained for one or both of the parties. Depending on what stage of the lawsuit the conflict arises, the original attorney, if he has confidential knowledge of conflicting parties' positions, may have to withdraw from the case altogether, and the parties would need to acquire new attorneys.

## APPENDIX

## Appendix: Legal Q & A for Government Officials and Clients

### What is the Texas Tort Claims Act?

The Texas Tort Claims Act (“The Act”) is a set of statutes that determine when a city or other governmental entity may be liable for accidents or intentional acts that cause property damage or personal injury. Prior to the adoption of the Act, individuals could not recover damages from cities or other governmental units for injuries or damages caused by actions of a government employee or officer in the performance of a governmental function. Sovereign immunity (state) and governmental immunity (local governments like cities and counties) serve several purposes. It protects the expense of time and money caused by private litigation and encourages forthright action by public officials. It also protects the government from fraudulent or frivolous suits that otherwise may arise because of the perceived “deep pockets” of government entities.

In 1969, the Texas Legislature enacted the Texas Tort Claims Act. The Act waived sovereign immunity for a governmental entity that was engaged in a governmental function. A governmental unit in the state is liable for:

- (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
  - (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
  - (B) the employee would be personally liable to the claimant according to Texas law; and
- (2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

TEX. CIV. PRAC. & REM. CODE § 101.021. The purpose of allowing some recovery for the injuries and damages caused by governmental entities is to allow individuals to have some compensation for their costs as well as providing additional incentives to governments and employees to act in a prudent manner.

**Table 1 Damages Recoverable**

Cause of Damages or Injuries	What the Plaintiff Can Recover
Motor Vehicle/Equipment	Property Damages, Personal Injuries, Death
Real Property	Personal Injuries, Death
Personal Property	Personal Injuries, Death

### What is the maximum the city or government will have to pay for damages or injuries under the Act?

- For **state government**, liability is limited to money damages in a maximum amount of \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.
- For a **unit of local government, except cities**, liability is limited to money damages in the maximum amount of \$100,000 for each person, \$300,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.

**Tort Claims Act Basics**

- For **cities**, liability is limited to money damages in a maximum amount of \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.

TEX. CIV. PRAC. & REM. CODE § 101.023 (b).

**What activities is a city not liable for?**

For a city, the limitations on liability created by the Tort Claims Act only applies to damages or injuries is caused by a governmental function and do not apply to damages or injuries caused by the a city's exercise of what a proprietary function. *Id.* § 101.0215.

*Governmental Functions*

Governmental functions are those functions that are imposed on a city by law and are given to the city by the state, as part of the state's sovereignty, to be exercised by the city in the interest of the general public. Governmental functions involve providing for the health, safety, and welfare of the general public. Examples of governmental functions include police and fire protection, health and sanitation services, parks and zoos, zoning, and animal control. TEX. CIV. PRAC. & REM. CODE §101.0215(a).

*Proprietary Functions*

Section 101.0215 of the Act specifically lists three activities that are considered to be proprietary and 36 activities that are considered governmental functions. The proprietary functions listed in the statute include the operation and maintenance of a public utility; the operation of amusements that are owned and operated by the city and any activity that is abnormally dangerous or "ultra-hazardous". TEX. CIV. PRAC. & REM. CODE § 101.0215 (b). Proprietary functions are those functions that a city may perform in its discretion, and the functions are performed to serve the interests of the city's residents. Examples of proprietary functions include operation and maintenance of a public utility or amusements owned and operated by a city. *Id.*

It is important to note that the list of 36 governmental functions is exclusive, while the list of proprietary functions is not. This means that, for the purposes of the Act, only these 36 specifically enumerated activities are considered governmental functions. Conversely, even though the statute lists three activities as "proprietary functions", the reality is that, for the purposes of the Act, any activity that the city engages in that is not listed as a governmental function is considered proprietary in nature. Under state law, the distinction between governmental and proprietary functions is significant because the city's liability for governmental functions exists only to the extent that it has been waived under the Act. However, for proprietary functions, the city is liable to the same extent as a private entity or individual. *If a proprietary function is involved and liability is established, there is no limit to the amount of damages that may be awarded.*

**Does the Act protect individual employees or official from liability?**

Only to the extent that the employee is acting in his or her official capacity when any damages occur. In general, an employee can be held liable for his or her own wrongful acts or omissions. However, in claims involving negligence, the employer may also be liable of the acts of its employees if the employee is acting in his or her official capacity. *Id.* § 101.106. If an employee is sued in his or official capacity, then the plaintiff must amend the pleadings to name the governmental entity as the liable party to the case or risk dismissal of their entire case. To determine whether a suit is in an employee's individual or official capacity, a court looks at whether the employee was within their scope of employment when the damages occurred. *Id.* § 101.106. Scope of employment is where an employee was doing a lawful task within their normal duties assigned by the governmental entity. *Id.* § 101.101(5); *Lopez v. Serna*, 414 S.W.3d 890 (Tex. App.—San Antonio 2013; *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417, 424 (Tex. 2004). The Supreme Court of Texas, in *Franka*, held that an employee sued individually may file a motion to be dismissed when damages are sought against them based on any common law cause of action. They merely need to show that they are sued for acts performed within the course and scope of their employment. *Franka v. Velasquez*, 332 S.W.3d 367 (Tex. 2011).

## Tort Claims Act Basics

### **Are individual employees or officials protected from liability in any other way?**

Yes. The Tort Claims Act mainly addresses immunity for the governmental entity, but there are other legal doctrines that come into play with regard to official immunity. Texas courts have adopted a doctrine of limited official immunity. In certain cases, it absolves a public officer or employee from personal liability for acts within the scope of the officer's or employee's governmental authority. Texas case law provides either absolute immunity or qualified immunity to a public servant depending on the type of authority retained by that individual. For example, judges are generally entitled to the defense of absolute or complete immunity in the exercise of judicial functions. *Turner v. Pruitt*, 342 S.W.2d 422 (Tex. 1961). The majority of Texas public servants, however, may only assert a defense of qualified immunity from liability. Qualified immunity provides protection from liability for discretionary actions taken in good faith within the scope of the officer's or employee's authority. Determination of whether an action was taken in good faith is a fact issue and a discretionary action involves the exercise of discretion or judgment.

There is no qualified immunity for ministerial (i.e. mandatory) actions for which the public servant has no choice. *Worsham v. Votgsberger*, 129 S.W. 157 (Tex. Civ.App. 1919, no writ). For example, the duties of jailers and sheriffs in receiving and caring for prisoners are usually held to be ministerial, as are those of animal pound directors. The line between a discretionary duty and a ministerial one is difficult to draw and competent legal advice should be sought when liability is at issue.

### **Does the receipt of compensation by the governmental unit's elected officials impact the officials' personal liability?**

Yes, under some existing case law. Pursuant to the Texas Tort Claims Act, an employee who is sued individually may file a motion requiring the plaintiff to dismiss them from the suit and name the governmental entity as a defendant in their place, so long as the employee is being sued for an act done in the course and scope of employment. TEX. CIV. PRAC. & REM. CODE § 101.106(f). The term "employee" is defined as "a person, including an officer or agent, who is in the paid service of a governmental unit by competent authority, but does not include an independent contractor, an agent or employee of an independent contractor, or a person who performs tasks the details of which the governmental unit does not have the legal right to control." *Id.* § 101.001(2).

The Supreme Court of Texas has not directly addressed the issue of whether a paid elected official is an "employee" for purposes of this statute, however, at least one intermediate appellate court has concluded that is the case. *See Texas Bay Cherry Hill v. City of Fort Worth*, 257 S.W.3d 379, 398 (Tex. App.—Fort Worth 2008, no pet.) (concluding that a city councilmember in the "paid service of a governmental unit" is an employee for purposes of Section 101.106); *see also Hopkins v. Strickland*, No. 01-12-00315-CV, 2013 WL 1183302 at \*2 (Tex. App.—Houston [1st Dist.] March 21, 2013) ("It is undisputed that [the City of] Liverpool, a governmental unit, employed Strickland as mayor at the relevant time."). Thus, providing at least nominal pay to members of the governing body may entitle them to the same protections as paid employees if they are in the course and scope of their work as elected officials, and may lead to the quick dismissal of such individual defendants from a lawsuit.

### **To what extent are cities liable for the actions of volunteers?**

The Texas Tort Claims Act waives sovereign and governmental immunity for certain actions of governmental employees. TEX. CIV. PRAC. & REM. CODE § 101.021 (1). The Act defines an employee as "a person, including an officer or agent, who is in the paid service of a governmental unit." *Id.* § 101.001(1). In *Harris County v. Dillard*, the Supreme Court of Texas concluded that an unpaid "volunteer" is not an "employee" for whose acts the governmental unit can be held liable. 883 S.W.2d 166, 167 (Tex. 1994).



# TOWN COUNCIL DATA SHEET



## **Agenda Item:**

Discussion regarding possible updates to the Town of Argyle Comprehensive Plan, as recommended by the Planning and Zoning Commission.

## **Requested by:**

Planning and Zoning Commission

## **Staff:**

Matt Jones, Director of Community Development

## **Background:**

The Planning and Zoning Commission requested that Town Staff place an item on their August 2, 2016 agenda to discuss possible updates to the Comprehensive Plan. On August 2<sup>nd</sup> the Planning and Zoning Commission held a work session to go over the current Comprehensive Plan. Chairman Walker asked that each Commissioner take some time to review the plan and come prepared at their regularly scheduled September meeting with any recommended changes.

The Planning and Zoning Commission held a second work session at their regularly scheduled meeting on September 6, 2016 to make recommendations to Town Council for consideration. During that meeting several items were discussed amongst the Commission regarding making amendments to add some clarity to the document, which include the following:

1. Updating the information in the plan regarding the "Tax Gap"; and
2. Cleaning up the language in the plan to remove any conflicting information and consider updating the language to discern between "enabling" versus "limiting".

The Planning and Zoning Commission is a recommending body and will need direction from Town Council on whether or not to pursue such changes to the Comprehensive Plan. If Council decides to move forward with possible changes to the Comprehensive Plan, Town Staff, as directed by Council, will work with the Planning and Zoning Commission to draft appropriate language for amendments to the Comprehensive Plan. At that time, the amendments would then be considered by the Planning and Zoning Commission as well as Town Council for approval. Public hearings would be required by the Planning and Zoning Commission and Town Council for approval.

## **Staff Recommendation:**

N/A

## **Requested Action:**

Provide appropriate direction to Town Staff regarding any proposed amendments.

## **Attachments:**

N/A



# TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Consider approval of an ordinance adopting FY2016-2017 Annual Budget for the Town of Argyle.

**Requested by:**

Paul Frederiksen, Town Manager  
Kim Collins, Director of Finance

**Background:**

As required by state law, the Town Council conducted the required public hearing on the proposed FY 2016-2017 annual operating budget on September 13, 2016; therefore, all statutory requirements have been met. As noticed, the purpose of this item is to approve the annual Town operating budget for FY 2016-2017. However, consideration of the adoption of the FY 2017 budget cannot be accomplished without the Town Council's consideration of the following two (2) agenda items – ratifying the tax rate and adoption of the tax rate (levying taxes), because the revenue generated by the approved tax rate affects the total annual budget dollars. **This is not a public hearing.**

Section 4 of the proposed Ordinance enumerates the proposed budget/expenditures for FY 2016-2017, totaling \$6,977,744, as well as the revised budget/expenditures for FY 2015-2016 of \$4,751,753. The proposed FY 2016-2017 budget expenditures by fund, as well as the revised current year budget expenditures, were included in the public hearing presentation and documentation on September 13, 2016. All program expenditures outlined in and discussed during the public hearing are included in the above expenditures.

**Financial Impact:**

The General Fund revenue and expenditures have been presented and discussed in multiple Council meetings and public hearings. The FY 2017 Budget Summary is attached for reference, and staff is available to answer any questions.

**Requested Action:**

Based on published notices, the Town Council may reduce the proposed total budget amount or any funds therein as well as reduce the amount of the proposed tax rate (next item), but neither the total budget amount nor the tax rate can be increased without another round of public notices. Both the budget and tax rate must be certified to the County not later than September 30, 2016.

**Attachments:**

Proposed Ordinance and FY2017 Budget

**TOWN OF ARGYLE, TEXAS  
ORDINANCE NO. 2016-15**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS, ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2016 AND ENDING SEPTEMBER 30, 2017, AND APPROVING CERTAIN AMENDMENTS TO THE FISCAL YEAR 2015-2016 ANNUAL BUDGET FOR THE TOWN OF ARGYLE, TEXAS.**

**WHEREAS,** the Annual Budget for the Town of Argyle, Texas was prepared by the Town Manager and presented to the Town Council in accordance with ordinances of the Town of Argyle, Texas; and

**WHEREAS,** the Argyle Economic Development Corporation Board of Directors approved the budget for the Argyle Economic Development Corporation on June 9, 2016, and subsequently, a public hearing on the proposed Argyle Economic Development Corporation budget was held by the Town Council of the Town of Argyle, Texas, on September 13, 2016; and

**WHEREAS,** a public hearing on the Argyle Crime Control Prevention District was held, and the Board of Directors of the Argyle Crime Control Prevention District unanimously approved the budget for the Argyle Crime Control Prevention District, on June 16, 2016, and subsequently, a public hearing on the proposed Argyle Crime Control Prevention District budget was held by the Town Council of the Town of Argyle, Texas, on September 13, 2016; and

**WHEREAS,** the proposed annual budget document was posted on the Town's Internet web site and also made available for public review; and

**WHEREAS,** a notice of public hearing concerning the proposed Annual Town Budget was published as required by State law and said public hearing thereon was held by the Town Council on September 13, 2016; and

**WHEREAS,** following the public hearing on September 13, 2016, and upon careful review of, the proposed Fiscal Year 2016-2017 Budget, and the review of the amendments to the current Fiscal Year 2015-2016 Budget, it is deemed to be in the best financial interest of the citizens of the Town of Argyle, Texas, that the Town Council approve said budget and any amendments to the current fiscal year budget and as presented by the Town Manager.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:**

**Section 1:** THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

**Section 2:** THAT, the official budget for the Town of Argyle, Texas, for the fiscal year beginning October 1, 2016 and ending September 30, 2017, is hereby adopted by the Town Council of the Town of Argyle, Texas, and the Town Secretary is directed to keep and maintain a copy of such official budget on file in the office of the Town Secretary and, upon request, make same available to the citizens and the general public.

**Section 3:** THAT, the Town Council of the Town of Argyle, Texas, hereby approves certain amendments to the current Fiscal Year 2015-2016 Budget, as stated herein.

**Section 4:** THAT, the sums specified below are hereby appropriated from the respective funds for the payment of expenditures on behalf of the Town government as established in the approved budget document:

	<b>FY2015-2016 Revised Expenditures</b>	<b>FY2016-2017 Expenditures</b>
General Fund	\$2,993,870	\$3,621,351
Interest and Sinking Fund	\$475,818	\$472,094
Wastewater Utility Fund	\$541,143	\$516,430
Crime Control & Prevention District Fund	\$138,519	\$142,962
Argyle Economic Development Corp. Fund	\$298,480	\$196,110
Street Maintenance Sales Tax Fund	\$99,048	\$145,000
Building Maintenance Fund	-0-	\$25,000
Court Technology Fund	\$8,800	\$7,700
Court Security Fund	\$6,000	\$7,500
Parkland Dedication Fund	\$7,500	\$300,000
Tree Reforestation Fund	-0-	\$5,000
LEOSE Fund	\$382	\$785
Police Donations Fund	\$4,500	\$7,000
Senior Citizens Organization Fund	\$1,600	\$1,200
Capital Improvement Fund *	\$66,001	\$1,375,000
Wastewater CIP Fund *	\$110,092	\$120,612
Equipment Replacement Fund	-0-	\$34,000
<b>TOTAL EXPENDITURES</b>	<b>\$4,751,753</b>	<b>\$6,977,744</b>

\* Unspent funds as of September 30, 2016 will be automatically re-appropriated to the respective project for FY 2016-2017.

**Section 5:** THAT, Capital Projects Funds are presented in the budget document on a multi-year, project basis, whereby all unexpended capital project funds are automatically re-appropriated into the subsequent fiscal year. Accordingly, no annual appropriation for Capital Projects Funds, other than those specifically listed in Section 4 above, is provided.

**Section 6:** THAT, expenditures on behalf of the Town government for the following funds are expressly limited or restricted to specific uses by other provisions in the Town of Argyle Code of Ordinances, and therefore, no specific annual appropriation, except for interfund (intra-governmental) transfers are provided in the budget document:

Roadway Impact Fee Fund: Revenues are derived from roadway impact fees assessed on new development within the Town, and the expenditures are restricted to roadway improvement projects and/or debt service costs by the Code of Ordinances related to specific roadway improvement projects.

Wastewater Impact Fee Fund: Revenues are derived from wastewater impact fees assessed on new development within the Town, and expenditures are restricted to wastewater improvement projects and/or debt service costs by the Code of Ordinances related to specific wastewater improvement projects.

**Section 7:** THAT, should any part, portion, section, or part of a section of this Ordinance be declared invalid, or inoperative, or void for any reason by a court of competent jurisdiction, such decision, opinion, or judgment shall in no way affect the remaining provisions, parts, sections, or parts of sections of this Ordinance, which provisions shall be, remain, and continue to be in full force and effect.

**Section 8:** THAT, all ordinances and appropriations for which provisions have heretofore been made are hereby expressly repealed if in conflict with the provisions of this Ordinance.

**Section 9:** THAT, in accordance with State Law and the Town's Code of Ordinances, proper notice of public hearings has been provided for said Ordinance to be considered and passed, and this Ordinance shall take effect and be in full force and effect from and after its final passage.

**AND IT IS SO ORDAINED.**

**Passed and approved by a vote of \_\_\_ to \_\_\_ on this the 27<sup>th</sup> day of September, 2016.**

**TOWN OF ARGYLE, TEXAS**

BY: \_\_\_\_\_  
Peggy Krueger, Mayor

**ATTEST:**

\_\_\_\_\_  
Kristi Gilbert, Town Secretary

**Approved as to Form and Legality:**

\_\_\_\_\_  
Matthew C. G. Boyle, Town Attorney



## **Town of Argyle**

### **Proposed Annual Operating Budget**

**For Fiscal Year 2016 - 2017**

This budget will raise more total property taxes than last year's budget by \$81,097 (3.97%), and of that amount \$59,930 is tax revenue to be raised from property added to the tax roll this year.

#### **Town Council**

Peggy Krueger, Mayor

Joey Hasty, Mayor Pro Tem

Kay Teer

Eric Lamon

Dr. Jay Haynes

Marla Hawkesworth

Paul Frederiksen, Town Manager

Kim Collins, Director of Finance

**TOWN OF ARGYLE**  
Proposed Annual Program of Services  
Fiscal Year 2016 - 2017

FUNDS	FY 15 ACTUAL	FY 16 BUDGET	FY 16 REEST.	FY 17 BUDGET	Inc/Dec over FY16 Budget
<b><u>GENERAL FUND</u></b>					
<b>REVENUES</b>					
Ad valorem tax	1,471,804	1,545,640	1,545,640	1,627,206	
Sales tax	399,332	367,200	460,224	460,224	
Franchise tax	388,363	370,000	378,000	370,000	
Municipal court	226,490	192,000	255,000	255,000	
Permits & registrations	44,737	36,900	33,650	38,950	
Construction permits	282,199	208,600	185,756	194,600	
Development	39,716	48,762	63,762	128,930	
Other revenues	24,354	9,800	12,650	9,000	
Transfers In	43,300	73,300	48,300	119,193	
Other Proceeds	12,500	-	10,398	-	
<b>TOTAL REVENUES</b>	<b>2,932,793</b>	<b>2,852,202</b>	<b>2,993,380</b>	<b>3,203,103</b>	<b>12.30%</b>
<b>EXPENDITURES</b>					
<b><u>Town Council - 110</u></b>					
Personnel	92	33	93	93	
Supplies & Contracted Services	27,092	34,600	28,177	36,302	
Transfers	-	-	-	-	
<b>Total City Council</b>	<b>27,184</b>	<b>34,633</b>	<b>28,270</b>	<b>36,395</b>	<b>5.09%</b>
<b><u>Administration - 120</u></b>					
Personnel	353,986	403,139	404,619	330,856	
Supplies	11,107	6,400	4,900	5,100	
Contracted Services	183,642	161,040	166,622	165,195	
Repair & Maintenance	8,998	8,000	8,000	8,000	
Capital Outlay	-	-	-	-	
<b>Total Administration</b>	<b>557,733</b>	<b>578,579</b>	<b>584,141</b>	<b>509,151</b>	<b>-12.00%</b>
<b><u>Finance - 130</u></b>					
Personnel	106,513	112,028	112,411	150,227	
Supplies	-	-	-	-	
Contracted Services	10,385	15,500	15,500	14,330	
<b>Total Finance</b>	<b>116,898</b>	<b>127,528</b>	<b>127,911</b>	<b>164,557</b>	<b>29.04%</b>
<b><u>Municipal Court - 135</u></b>					
Personnel	67,650	64,596	64,971	55,058	
Supplies	841	900	900	900	
Contracted Services	21,041	21,000	20,000	25,300	
<b>Total Municipal Court</b>	<b>89,532</b>	<b>86,496</b>	<b>85,871</b>	<b>81,258</b>	<b>-6.06%</b>
<b><u>Information Technology - 140</u></b>					
Personnel	-	-	-	-	
Supplies	335	550	550	550	
Contracted Services	7,303	10,500	5,900	7,000	
Repair & Maintenance	14,836	9,250	7,300	11,900	
Capital Outlay	47,625	29,800	10,400	13,000	
<b>Total Information Technology</b>	<b>70,099</b>	<b>50,100</b>	<b>24,150</b>	<b>32,450</b>	<b>-35.23%</b>
<b><u>Police Administration - 210</u></b>					
Personnel	320,676	300,224	306,416	331,672	
Supplies	8,679	5,900	5,700	5,700	
Contracted Services	68,398	94,889	83,390	97,040	
Repair & Maintenance	3,810	7,250	7,250	7,250	
Capital Outlay	-	-	-	-	
<b>Total Public Safety Administration</b>	<b>401,563</b>	<b>408,263</b>	<b>402,756</b>	<b>441,662</b>	<b>8.18%</b>

<b>FUNDS</b>	<b>FY 15 ACTUAL</b>	<b>FY 16 BUDGET</b>	<b>FY 16 REEST.</b>	<b>FY 17 BUDGET</b>	<b>Inc/Dec over FY16 Budget</b>
<u>Police Operations - 212</u>					
Personnel	532,973	565,750	550,384	658,338	
Supplies	27,089	41,000	31,000	31,000	
Contracted Services	9,029	13,960	11,250	13,960	
Repair & Maintenance	19,662	19,300	19,800	19,300	
Capital Outlay	22,833	5,250	-	3,500	
Total Police Operations	611,586	645,260	612,434	726,098	12.53%
<u>Animal Control - 220</u>					
Contracted Services	11,200	11,500	11,500	13,200	
Total Animal Control	11,200	11,500	11,500	13,200	14.78%
<u>Community Devel. Administration - 410</u>					
Personnel	112,847	120,033	120,598	170,027	
Supplies	243	1,100	2,716	1,100	
Contracted Services	61,320	84,700	42,500	81,000	
Total Development Administration	174,410	205,833	165,814	252,127	22.49%
<u>Community Devel. Inspections - 412</u>					
Supplies	193	300	300	300	
Contracted Services	167,277	145,000	126,800	157,000	
Repair & Maintenance	-	-	-	-	
Capital Outlay	-	-	-	-	
Total Development Inspections	167,470	145,300	127,100	157,300	8.26%
<u>Street Maint. Administration - 510</u>					
Personnel	129,409	138,703	138,753	189,203	
Supplies	3,240	5,800	5,100	5,100	
Contracted Services	32,783	28,008	28,010	29,289	
Repair & Maintenance	1,422	2,100	1,850	2,100	
Capital Outlay	-	600	600	600	
Total Public Works Administration	166,854	175,211	174,313	226,292	29.15%
<u>Street Maintenance - 520</u>					
Personnel	142,030	168,927	169,535	247,635	
Supplies	33,336	48,650	41,650	49,150	
Contracted Services	31,931	58,000	51,025	64,475	
Repair & Maintenance	38,413	61,500	31,000	73,500	
Debt Service	-	-	-	-	
Capital Outlay	3,921	1,100	86,400	1,100	
Total Street Maintenance	249,630	338,177	379,610	435,860	28.89%
<u>Transfers to Other Funds - 710</u>					
Transfers out	-	-	225,000	500,000	
Transfer to Equip. Repl. Fund	50,000	45,000	45,000	45,000	
Total Transfers Out	50,000	45,000	270,000	545,000	
<b>TOTAL EXPENDITURES</b>	<b>2,694,158</b>	<b>2,851,879</b>	<b>2,993,870</b>	<b>3,621,351</b>	26.98%
<b>REVENUES OVER/ (UNDER) EXPENDITURES</b>	<b>238,634</b>	<b>323</b>	<b>(490)</b>	<b>(418,248)</b>	
<b>BEGINNING FUND BALANCE</b>	<b>1,680,523</b>	<b>1,919,158</b>	<b>1,919,158</b>	<b>1,918,668</b>	
<b>ENDING FUND BALANCE</b>	<b>1,919,158</b>	<b>1,919,481</b>	<b>1,918,668</b>	<b>1,500,420</b>	

**TOWN OF ARGYLE**  
Proposed Annual Program of Services  
Fiscal Year 2016 - 2017

FUNDS	FY 15 ACTUAL	FY 16 BUDGET	FY 16 REEST.	FY 17 BUDGET	Inc/Dec over FY16 Budget
<b><u>SPECIAL REVENUE FUNDS</u></b>					
<b>ECONOMIC DEVELOPMENT FUND - 210</b>					
REVENUES	202,088	184,360	241,412	231,237	25.43%
EXPENDITURES	133,673	260,916	298,480	196,110	-24.84%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>68,414</u>	<u>(76,556)</u>	<u>(57,068)</u>	<u>35,127</u>	
<b>CRIME CONTROL &amp; PREVENTION FUND - 220</b>					
REVENUES	103,265	95,080	115,618	115,618	21.60%
EXPENDITURES	108,288	139,187	138,519	142,962	2.71%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>(5,023)</u>	<u>(44,107)</u>	<u>(22,901)</u>	<u>(27,344)</u>	
<b>STREET MAINTENANCE SALES TAX FUND - 230</b>					
REVENUES	100,616	92,080	115,718	115,618	25.56%
EXPENDITURES	94,950	145,000	99,048	145,000	0.00%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>5,666</u>	<u>(52,920)</u>	<u>16,670</u>	<u>(29,382)</u>	
<b>BUILDING MAINTENANCE FUND - 235</b>					
REVENUES	-	25,000	25,000	25,000	0.00%
EXPENDITURES	-	25,000	-	25,000	0.00%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>-</u>	<u>-</u>	<u>25,000</u>	<u>-</u>	
<b>COURT TECHNOLOGY FUND - 240</b>					
REVENUES	7,646	7,730	9,060	8,440	9.18%
EXPENDITURES	6,226	12,600	8,800	7,700	-38.89%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>1,419</u>	<u>(4,870)</u>	<u>260</u>	<u>740</u>	
<b>COURT SECURITY FUND - 241</b>					
REVENUES	5,824	5,830	6,840	6,360	9.09%
EXPENDITURES	-	11,500	6,000	7,500	-34.78%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>5,824</u>	<u>(5,670)</u>	<u>840</u>	<u>(1,140)</u>	
<b>KEEP ARGYLE BEAUTIFUL FUND - 250</b>					
REVENUES	-	200	N/A	N/A	
EXPENDITURES	-	12,500	N/A	N/A	
REVENUES OVER/ (UNDER) EXPENDITURES	<u>-</u>	<u>(12,300)</u>	<u>-</u>	<u>-</u>	

<b>FUNDS</b>	<b>FY 15 ACTUAL</b>	<b>FY 16 BUDGET</b>	<b>FY 16 REEST.</b>	<b>FY 17 BUDGET</b>	<b>Inc/Dec over FY16 Budget</b>
<b>PARKLAND DEDICATION FUND - 255</b>					
REVENUES	35,279	45,170	33,881	42,280	-6.40%
EXPENDITURES	12,011	114,000	7,500	300,000	163.16%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>23,268</u>	<u>(68,830)</u>	<u>26,381</u>	<u>(257,720)</u>	
<b>TREE REFORESTATION - 256</b>					
REVENUES	29	20	20	5	-75.00%
EXPENDITURES	-	4,000	-	5,000	25.00%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>29</u>	<u>(3,980)</u>	<u>20</u>	<u>(4,995)</u>	
<b>LEOSE TRAINING FUND - 260</b>					
REVENUES	1,202	1,200	1,190	1,190	-0.85%
EXPENDITURES	961	2,000	382	785	-60.75%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>241</u>	<u>(800)</u>	<u>808</u>	<u>405</u>	
<b>POLICE DONATIONS FUND - 265</b>					
REVENUES	4,244	4,260	4,614	4,660	9.39%
EXPENDITURES	2,977	7,000	4,500	7,000	0.00%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>1,268</u>	<u>(2,740)</u>	<u>114</u>	<u>(2,340)</u>	
<b>SENIOR CITIZEN ORGANIZATION - 270</b>					
REVENUES	1,633	1,442	1,322	1,210	-16.09%
EXPENDITURES	924	1,200	1,600	1,200	0.00%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>709</u>	<u>242</u>	<u>(278)</u>	<u>10</u>	

**TOWN OF ARGYLE**  
Proposed Annual Program of Services  
Fiscal Year 2016 - 2017

<u>FUNDS</u>	<u>FY 15 ACTUAL</u>	<u>FY 16 BUDGET</u>	<u>FY 16 REEST.</u>	<u>FY 17 BUDGET</u>	<u>Inc/Dec over FY16 Budget</u>
<b><u>CAPITAL PROJECTS FUNDS</u></b>					
<b>CAPITAL IMPROVEMENTS FUND - 310</b>					
REVENUES	4,138	700	125,624	1,300,100	185628.57%
EXPENDITURES	23,129	66,001	66,001	1,375,000	1983.32%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>(18,991)</u>	<u>(65,301)</u>	<u>59,624</u>	<u>(74,900)</u>	
<b>ROADWAY IMPACT FEES FUND - 320</b>					
REVENUES	100,128	138,510	106,507	119,008	-14.08%
EXPENDITURES		-	-	-	
REVENUES OVER/ (UNDER) EXPENDITURES	<u>100,128</u>	<u>138,510</u>	<u>106,507</u>	<u>119,008</u>	
<b>EQUIPMENT REPLACEMENT FUND - 330</b>					
REVENUES	50,224	20,200	20,200	20,100	-0.50%
EXPENDITURES	75,647	32,750	-	34,000	3.82%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>(25,424)</u>	<u>(12,550)</u>	<u>20,200</u>	<u>(13,900)</u>	

## TOWN OF ARGYLE

### Proposed Annual Program of Services Fiscal Year 2016 - 2017

FUNDS	FY 15 ACTUAL	FY 16 BUDGET	FY 16 REEST.	FY 17 BUDGET	Inc/Dec over FY16 Budget
<b><u>DEBT SERVICE FUND - 410</u></b>					
REVENUES	465,111	489,406	489,842	498,335	1.82%
EXPENDITURES	460,887	475,818	475,818	472,094	-0.78%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>4,224</u>	<u>13,588</u>	<u>14,024</u>	<u>26,241</u>	

#### OUTSTANDING DEBT ISSUE DETAIL

	FY 15 Actual Prin & Int	FY 16 Budget Prin & Int	FY 16 Re-Est Prin & Int	FY 17 Budget Prin & Int
2008 C.O. Bonds-\$1,010,000 (church purchase)	78,925	82,013	82,013	79,988
2009 C.O. Bonds-\$800,000 (renovation)	64,860	63,366	63,366	61,872
2010 C.O. Bonds-\$3,650,000 (street improvements)	246,863	264,063	264,063	266,013
2014 G.O. Refunding Bonds - 2003 C.O.	67,452	65,277	65,277	63,122
Administrative Fees	2,787	1,100	1,100	1,100
	<u>460,887</u>	<u>475,818</u>	<u>475,818</u>	<u>472,094</u>

**TOWN OF ARGYLE**  
Proposed Annual Program of Services  
Fiscal Year 2016 - 2017

<u>FUNDS</u>	<u>FY 15 ACTUAL</u>	<u>FY 16 BUDGET</u>	<u>FY 16 REEST.</u>	<u>FY 17 BUDGET</u>	<u>Inc/Dec over FY16 Budget</u>
<b><u>UTILITY FUNDS</u></b>					
<b>WASTEWATER UTILITY OPERATING FUND - 710</b>					
<b>REVENUES</b>					
Sewer System Revenue	343,133	328,800	365,432	368,400	
Sewer System Installation Fees	13,700	23,200	17,600	19,600	
Miscellaneous Income	8,618	19,034	20,034	22,359	
Transfers in WW Development Fund	123,333	138,905	138,905	120,612	
<b>TOTAL REVENUES</b>	<u>488,784</u>	<u>509,940</u>	<u>541,972</u>	<u>530,971</u>	4.12%
<b>EXPENDITURES</b>					
Personnel	90,852	147,093	89,436	N/A	
Supplies	3,487	6,300	4,000	1,700	
Contracted Services	217,500	256,161	246,305	309,900	
Repair & Maintenance	19,880	31,500	37,500	38,500	
Debt Service	69,024	163,152	163,152	165,483	
Capital Outlay	330	750	750	750	
Transfers	-	-	-	-	
Amortized Expenses	83,394	-	-	-	
<b>TOTAL EXPENDITURES</b>	<u>484,468</u>	<u>604,956</u>	<u>541,143</u>	<u>516,333</u>	-14.65%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>4,317</u>	<u>(95,017)</u>	<u>828</u>	<u>14,638</u>	
<b>WASTEWATER CAPITAL PROJECTS FUND - 720</b>					
REVENUES	16,858	500	500	100	-80.00%
EXPENDITURES	94,520	110,092	110,092	120,612	9.56%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>(77,662)</u>	<u>(109,592)</u>	<u>(109,592)</u>	<u>(120,512)</u>	
<b>WASTEWATER IMPACT FEE FUND - 730</b>					
REVENUES	48,332	142,672	107,182	121,794	-14.63%
EXPENDITURES	28,813	43,813	28,813	28,813	-34.24%
REVENUES OVER/ (UNDER) EXPENDITURES	<u>19,518</u>	<u>98,859</u>	<u>78,369</u>	<u>92,981</u>	



# TOWN COUNCIL DATA SHEET



## Agenda Item:

Consider approval of a Resolution ratifying the tax revenue for the tax year 2016 (FY 2016-2017) for the Town of Argyle, TX.

## Requested by:

Paul Frederiksen, Town Manager  
Kim Collins, Director of Finance

## Background:

As a result of the Town Council's proposal of a \$0.39750 total tax rate for FY2017 which exceeds the calculated 2016 (FY2017) effective tax rate of \$0.394355, thus raising more property taxes (revenue) than was generated the previous (this) year, the Town Council has completed the two (2) required public hearings on said proposed tax rate (August 23rd and September 13<sup>th</sup>) and one required public hearing on the annual FY2017 Budget (September 13<sup>th</sup>). **As a result, this agenda item for consideration is not a public hearing.**

## Financial Impact:

**Effect of the Proposed Tax Rate.** The following is a comparison of the proposed tax rate on the average taxable value of a Town of Argyle homestead:

	<u>Last Year (FY16)</u>	<u>This Year (FY17)</u>
<b>Average taxable value of homestead</b>	<b>\$357,712</b>	<b>\$374,804</b>
Tax amount imposed at \$0.39750 per \$100 of taxable value	\$1,421.91	\$1,489.85
Difference between the Proposed FY 2017 Tax Rate of \$0.39750 and FY 2016 Adopted Tax Rate		+ \$ 67.94

## Requested Action:

Council must take a separate vote to ratify the property tax increase necessary to support the budget adopted in the vote prior to this action, thereby officially notifying property taxpayers that property tax revenues have increased over the previous year's revenue. Council will adopt the tax rate in a third vote following this action. LGC 102.007 (c) states "Adoption of a budget that will require raising more revenue from property taxes than in the previous year requires a separate vote of the governing body to ratify the property tax increase reflected in the budget. A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tax Code, or other law."

**Attachments:** Proposed Resolution

**TOWN OF ARGYLE, TEXAS  
RESOLUTION NO. 2016-25**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS, RATIFYING THE TAX REVENUE FOR THE TAX YEAR 2016 (FISCAL YEAR 2016-2017) FOR THE TOWN OF ARGYLE, TEXAS.**

WHEREAS, Section 102 of the Texas Local Government Code requires a separate vote of the governing body to ratify the property tax revenue increase reflected in the adopted annual budget; and

WHEREAS, proper notice of a public hearing on the proposed budget was provided in accordance with Section 102 of the Texas Local Government Code, and said public hearing was held on September 13, 2016; and

WHEREAS, proper notice of two public hearings on the proposed tax rate was provided in accordance with Chapter 26 of the Tax Code, and said public hearings were held on August 23, 2016 and September 13, 2016; and

WHEREAS, proper notice of the vote on the tax rate was provided in accordance with Chapter 26 of the Tax Code, and said vote was held on September 27, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2: THAT, the Town Council of the Town of Argyle hereby ratifies the property tax revenue increase reflected in the adopted budget for fiscal year 2016-2017 for the Town of Argyle, Texas

AND IT IS SO RESOLVED.

Passed by a vote of \_\_\_\_ to \_\_\_\_ on this the 27<sup>th</sup> day of September, 2016.

TOWN OF ARGYLE, TEXAS

By: \_\_\_\_\_  
Peggy Krueger, Mayor

ATTEST:

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Kristi Gilbert, Town Secretary

Approved as to Form and Legality:

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Matthew C. G. Boyle, Town Attorney



# TOWN COUNCIL DATA SHEET



## **Agenda Item:**

Consider approval of an Ordinance levying taxes to be assessed on all taxable properties within the Town Limits of the Town of Argyle, TX for the Tax Year 2016 (FY 2016-2017).

## **Requested by:**

Paul Frederiksen, Town Manager  
Kim Collins, Director of Finance

## **Background:**

On August 9, 2016, the Town Council, by record vote, proposed a total tax rate of \$0.39750 per \$100 of assessed value for FY 2016-2017, the same total tax rate as FY 2015-2016. As a result of the proposed rate being above the effective tax rate of \$0.394355 per \$100 assessed value, two public hearings were required. Subsequently, the Town Council conducted those statutorily-required public hearings on said proposed tax rate on August 23 and September 13, 2016. **This is not a public hearing.**

Section 2 of the Ordinance breaks down the Maintenance and Operations Rate (General Fund) and Interest and Sinking Rate (Debt Service Fund) totaling \$0.39750. Because the rate is unchanged from FY 2015-2016, the Maintenance and Operations taxpayer cost and the Debt Service cost remains the same. The cost of an individual taxpayer's property taxes is dependent on their appraised value. The remainder of the Ordinance recites the various taxpayer exemptions, including the over-65 and the disabled exemption of \$40,000, as well as the due dates for payment of property taxes.

## **Financial Impact:**

The 2016 Certified Ad Valorem value of \$534,475,793 combined with a tax rate of \$0.39750 per \$100 assessed value will generate \$2,124,541 total tax revenue. Of this total revenue, \$1,627,206 goes into the General Fund, and \$497,335 goes into the Interest and Sinking Fund.

## **Requested Action:**

This is the third action necessary to finalize the annual budget process wherein Council levies taxes on 2016 taxable properties within the Town limits of the Town of Argyle at \$0.39750 per \$100 of assessed valuation. Like the annual budget, the Town Council must adopt a tax rate for FY 2016-2017 not later than September 30, 2016.

## **Attachments:**

Proposed Ordinance

**TOWN OF ARGYLE, TEXAS  
ORDINANCE NO. 2016-16**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS, LEVYING TAXES TO BE ASSESSED ON ALL TAXABLE PROPERTIES WITHIN THE TOWN LIMITS OF THE TOWN OF ARGYLE, TEXAS FOR THE TAX YEAR 2016 (FISCAL YEAR 2016-2017).**

**WHEREAS,** a public hearing on the proposed annual budget for the Town of Argyle, Texas, for the fiscal year beginning October 1, 2016 and ending September 30, 2017, has been duly advertised, and hearing held on September 13, 2016; and

**WHEREAS,** the annual budget has been approved and adopted in an amount necessary to require the tax levy as herein stated; and

**WHEREAS,** it is deemed to be in the best interest of the citizens of the Town of Argyle, Texas, to levy said tax on all taxable properties within the Town limits of Argyle in order to provide the necessary funds to provide municipal service to its citizens; and

**WHEREAS,** it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the date, time, location, and subject of said meeting, including this Ordinance, was given, all as required by the applicable provisions of the Texas Government Code, Chapter 551.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:**

**Section 1:** THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

**Section 2:** THAT, the Town Council of the Town of Argyle, Texas, shall hereby levy the following taxes on each one hundred dollars (\$100.00) of taxable valuation on all taxable property within the Town limits of the Town of Argyle, Texas, to be assessed and collected by the Tax Assessor/Collector for the Tax Year 2016 (Fiscal Year 2016-2017) for the purposes hereinafter stipulated:

- a. For the General Fund Maintenance and Operations levied on the \$100.00 of taxable valuation:

\$0.304449

b. For the Interest and Sinking Fund levied on the \$100.00 of taxable valuation:

\$0.093051

**Total tax rate** **\$0.3975**

**Section 3:** **THAT, THIS TAX RATE WILL NOT CHANGE THE TAXES FOR MAINTENANCE AND OPERATIONS COMPARED TO LAST YEAR’S TAX RATE.**

**Section 4:** **THAT, THIS TAX RATE WILL NOT CHANGE THE TAXES FOR DEBT SERVICE COMPARED TO LAST YEAR’S TAX RATE.**

**Section 5:** THAT, there shall be exempted from the valuation of all residential homesteads for which proper application shall have been made, an amount equal to the greater of one percent (1%) of the appraised value of such residential homestead, or Five Thousand Dollars (\$5,000.00). The exemption shall be granted to any such residential homestead and the improvements qualifying for same as provided by law.

**Section 6:** THAT, there shall be exempted the sum of Forty Thousand Dollars (\$40,000.00) of the assessed value of residence homesteads of residents of the Town of Argyle, Texas, who are sixty-five (65) years of age or older, from all ad valorem taxes thereafter levied by the Town of Argyle, Texas.

**Section 7:** THAT, there shall be exempted the sum of Forty Thousand Dollars (\$40,000.00) of the assessed value of residence homesteads of residents of the Town of Argyle, Texas, meeting the definition of a “disabled” individual, as defined by the Texas Tax Code.

**Section 8:** THAT, there shall be exempted from valuation any other exemption or exemptions, which may be authorized by the Texas Tax Code for which proper application by the Taxpayer shall have been made.

**Section 9:** THAT, the taxes are hereby assessed and levied and are due and payable on October 1, 2016 and shall be payable not later than January 31, 2017. The penalties and interest provided for shall accrue after this date. However, if the entire taxes due are paid in full by January 31, 2017, no penalty or interest shall be due.

**Section 10:** THAT, in addition to the taxes assessed and levied herein, there is also assessed and levied a penalty for the failure to pay taxes due as State law provides.

**Section 11:** THAT, in addition to the taxes and penalty and interest assessed and levied herein, there is also assessed and levied a twenty percent (20%) collection fee on all taxes, penalty, and interest that become delinquent and remain unpaid on July 1, 2017.

**Section 12:** THAT, in accordance with State Law, proper notice of a public hearing has been provided for ordinances to be considered and passed upon and further, this Ordinance shall take effect and be in full force and effect from and after its final passage.

**AND IT IS SO ORDAINED.**

**Passed and approved by a vote of \_\_\_\_ to \_\_\_\_ on this the 27<sup>TH</sup> day of September, 2016.**

**TOWN OF ARGYLE, TEXAS**

BY: \_\_\_\_\_  
Peggy Krueger, Mayor

**ATTEST:**

\_\_\_\_\_  
Kristi Gilbert, Town Secretary

**Approved as to Form and Legality:**

\_\_\_\_\_  
Matthew C. G. Boyle, Town Attorney



# TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Consider approval of a resolution adopting the 2016 Compensation Study and the FY17 Pay and Step Plan.

**Prepared by:**

Kristi Gilbert, Town Secretary

**Background:**

The 2016 Compensation Study and proposed FY 17 pay and step plan were prepared in response to meetings of the Benefits Committee. The resulting documentation has been provided to Council over the past several budget meetings. The attached resolution and exhibits will formalize the FY 17 Pay and Step Plan.

**Fiscal Impact:**

The market adjustments associated with the pay and step plan were included in the FY 17 budget.

**Staff Recommendation:**

Staff recommends approval of the resolution.

**Requested Action:**

Approve a resolution adopting the 2016 Compensation Study and the FY17 Pay and Step Plan.

**Attachments:**

Resolution

**TOWN OF ARGYLE, TEXAS  
RESOLUTION NO. 2016-XX**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS ADOPTING THE 2016 COMPENSATION STUDY AND ASSOCIATED FISCAL YEAR 2017 PAY AND STEP PLAN FOR THE TOWN OF ARGYLE.**

WHEREAS, the Town of Argyle conducted a compensation study at the direction of the Benefits Committee; and

WHEREAS, the Town of Argyle's intent is to maintain a compensation system that establishes fair and equitable compensation within the organization, reflects relevant market conditions outside the organization and is maintained in accordance with best business practices; and

WHEREAS, the Town Council is fully supportive and committed to implementing and maintaining a pay for performance system and agrees to appropriately fund.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:

Section 1. THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2. THAT, the Town Council of the Town of Argyle, Texas hereby adopts the 2016 Compensation Study attached as Exhibit "A".

Section 3. THAT, the Town Council agrees to adopt the FY 17 Pay and Step Plan as recommended in the 2016 Compensation Study, attached as Exhibit "B".

Section 4. THAT, the implementation of the pay plan will be as follows:

- a. All non-exempt, non-uniformed employees will receive a market adjustment effective October 2, 2016 as provided for in the FY 2017 Budget.
- b. All non-exempt, uniformed officers will receive a market adjustment and be placed on the step plan effective October 2, 2016 as provided for in the FY 2017 Budget.
- c. All exempt personnel will receive a market adjustment as provided for in the FY 2017 Budget at a time during the 2017 fiscal year as determined by the Town Manager.

AND IT IS SO RESOLVED.

PASSED AND APPROVED this the 27<sup>TH</sup> Day of September 2016.

TOWN OF ARGYLE, TEXAS

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Peggy Krueger, Mayor

ATTEST:

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Kristi Gilbert, Town Secretary

Approved as to Form and Legality:

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Matthew G. C. Boyle, Town Attorney

**EXHIBIT "A"**  
**2016 ARGYLE COMPENSATION STUDY**



2016  
EMPLOYEE  
BENEFITS  
COMMITTEE

Peggy Krueger, Mayor

Eric Lamon,  
Councilmember

Jay Haynes,  
Councilmember

Paul Frederiksen,  
Town Manager

Kim Collins,  
Finance Director

Kristi Gilbert,  
Town Secretary/HR  
Director

## ARGYLE COMPENSATION STUDY

August 2016

### GOAL STATEMENT

*Realizing the importance and contribution of employees in achieving and maintaining the goals and objectives of the Council, the Town's goal as an employer is to attract and retain quality employees who provide excellent, friendly services to our community in an effective and efficient manner.*

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## SECTION 1 – INTRODUCTION

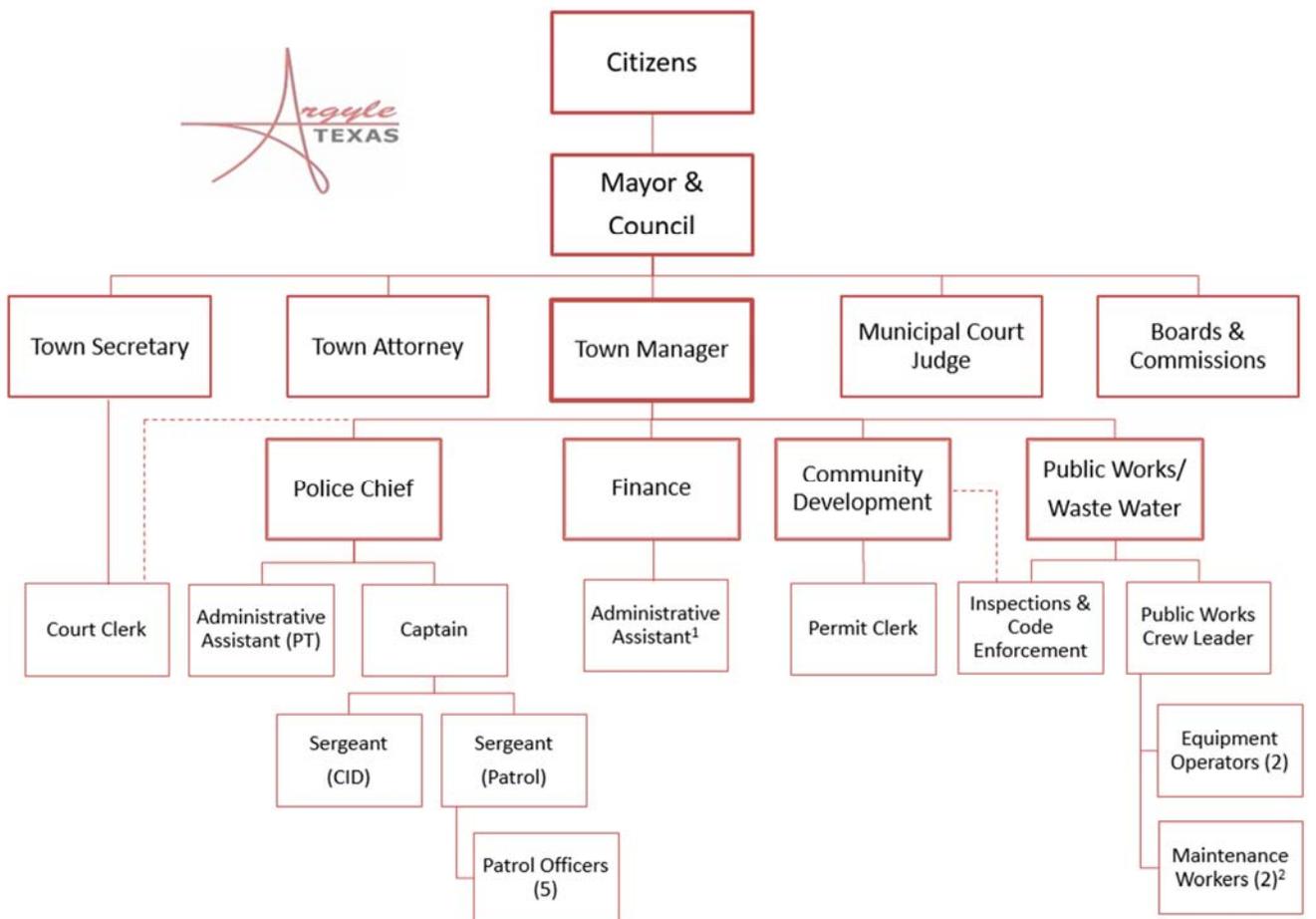
### EMPLOYEE BENEFITS COMMITTEE

The Argyle Town Council established an Employee Benefits Committee (“Committee”) on November 17, 2015. The Committee was comprised of Mayor Peggy Krueger, Councilmembers Eric Lamon and Jay Haynes, Town Manager Paul Frederiksen, Finance Director Kim Collins and Town Secretary/HR Director Kristi Gilbert. One of the purposes of the Committee was to analyze the Town’s compensation program compared to the market and to make recommendations based on identified priorities.

### CURRENT CONDITIONS

The Town of Argyle is a Type A, General Law municipality with 22.5 full-time equivalents serving a population of 3,820. The Town is split into Administration, Finance, Community Development, Police and Public Works/Wastewater. As is common with Town’s similar to Argyle, employees wear many hats and perform a wide variety of job functions. Administration includes human resources and municipal court activities. Community Development and Public Works have shared employees performing split duties. The Town’s current organizational chart in **Figure 1.A.** indicates the varied responsibilities.

**Figure 1.A. Organizational Chart**



August 2016

1 – Shared Administrative Assistant  
2 – One FTE vacancy in Wastewater

The last compensation study was performed in 2008 by Ray Associates, Inc. It was the first compensation plan ever performed by the Town. At that time, seven of the 16 jobs analyzed were below the average mid-market by double-digit percentages. Once the survey was concluded, significant market adjustments were made and a pay plan for FY 08 and FY 09 was adopted. The pay plan included a step plan, but due to an unforeseen market downturn in 2008, the plan was never enacted.

Since the 2008 Compensation Study, a minor modification was made in 2011 as a result in the promotion of the Finance Manager and the Development Services Manager to director level positions. No additional market updates have been performed and the pay plan has not been adjusted. However, in recent years, staff has avoided hiring at the minimum level of the FY08/FY09 pay plan to avoid exacerbating the compensation issues. In order for a compensation plan to stay current with the market, the pay scale should be reviewed by the Town Manager on an annual basis with a more comprehensive review conducted every three to five years.

### **PRIORITIES ESTABLISHED**

At the first meeting of the Committee, members were provided with current salary information along with a comparison against Spring 2015 dollars from nine surrounding municipalities. In reviewing these numbers, the Committee elected to forego the cost of an external compensation survey, estimated to be at least \$13,000, in order to better allocate the funds towards necessary salary increases. By employing an outside firm, there is more objectivity, however, there is unfamiliarity with the organizational jobs. The determination was made for staff to conduct a compensation study expanding and updating the comparable municipalities to allow for more reliable data. Every effort has been made to provide the most objective data possible. The committee established the following priorities:

#### **Priority #1 Address the discrepancy with Police Officers**

The initial review indicated Argyle Police Officers were the lowest paid among ten surrounding municipalities. The low salary could be a factor in the vacancies the Police Department has seen in the last several years. From January 2013 to July 2016 (43 months), there has been total of 28 months (65% of the time) where the Police Department has had a vacancy in one of the budgeted positions. The longest sustained period was 21 months. From September 2013 to November 2014 (35% of the time), the Police Department had two vacant officer positions.

Currently, there is a position that has been vacant since January 2016. As a result of the small size of the department, a single vacancy requires a shift in duties. When there is a vacancy in patrol officers, the traffic officer is assigned to patrol. When there have been two vacancies, the patrol supervisor (a sergeant) is assigned to handle patrol shifts.

#### **Priority #2 Adjust all positions to the average minimum**

The initial review indicated at least two positions, representing six employees, were below the average minimum pay.

#### **Priority #3 Determine positions where there is a flight risk**

The goal was to attempt to identify key positions where a highly marketable and educated employee was under-compensated compared to the market. A number of factors are taken into consideration when evaluating employee retention. Some are within the control of the Town (e.g.,

competitive benefits, training opportunities, work environment) and some are outside of our control (e.g., career changes, family obligations, retirement).

**Priority #4 Adjust positions to average mid-point**

The initial review indicated there were only two positions that were above the mid-point, with the balance of staff being below.

**COMPETITIVE EMPLOYEE COMPENSATION POLICY**

Through the recent adoption of the Fiscal and Budgetary Policy Statements, the Town Council established a *Competitive Employee Compensation Maintenance Policy* to address competitive market factors and other issues impacting compensation. The program consists of:

- **Pay Scale Review** – To ensure the Town’s pay system is accurate and competitive within the market, the Town will review its pay plan for any potential market adjustments necessary to maintain the Town’s pay scale. The Town shall utilize a salary survey, as well as data from other benchmark cities, as a reference for making market-based adjustments. Market based adjustments are based upon the job duties and job descriptions of the position, not on performance of the employee within the position.
- **Pay for Performance** – The Town utilizes a merit based pay plan as a part of the overall compensation system. Council may fund merit increases annually during the budget process to aid in retaining and rewarding quality employees for productivity and job performance. These merit based adjustments are recommended by the employee’s immediate supervisor and reviewed by both the Department Director and the Town Manager. Employees may receive a merit increase upon approval of the Town Manager based upon the previous year’s annual performance evaluation, or when other situations warrant this type of increase, such as reclassification due to additional job duties. The percentage adjustments are determined by the employee’s position within their pay grade, including merit adjustments for productivity and quality performance during the previous fiscal year. In addition, the Town may also choose to fund a one-time payment for performance that exceeds expectations during the review period.
- **Cost of Living Adjustment (COLA)** – To protect Town employees from the effects of general inflation, the Town may fund a COLA adjustment for all regular employees not included in a defined pay plan. The COLA will be based on a three-year rolling average for the Consumer Price Index (CPI) reported by the U.S. Bureau of Labor Statistics for Southern cities pertinent to Argyle’s population.

## SECTION 2 – METHODOLOGY

A compensation study is only as successful, and as applicable, as the accuracy of data it generates and is based on. It is important to note that the information and data presented is reflective of the market conditions at the time of the study which, in this instance, represents salaries adopted in September 2015 for the FY16 budget year. Market conditions have the potential for rapid change. Therefore, in order to ensure that an organization remains current with its competitive position to the market, market surveys should be conducted regularly. Many municipalities adopt a merit or cost of living increase at the beginning of each fiscal year. Consideration should be given to the fact that the data used could increase by an average of 3-5% for FY 2017.

### **ANALYZATION OF JOB DESCRIPTIONS**

The Town's job descriptions were evaluated in comparison to the job descriptions of participating organizations. The job descriptions were analyzed according to the duties, responsibilities, required skills and level of supervision required or provided.

### **ANALYZATION OF PAY SCALES**

Two organizations surveyed did not have a pay scale. In those instances, the actual rate of pay was used as the mid-point. Three organizations did not have a pay scale for the Town Secretary position, primarily as a result of the organizational structure and the position's pay being set directly by the Town Council. Again, in these instances, the actual salary was used as the mid-point. Three organizations with pay scales did not have an established scale for director level positions.

## SECTION 3 – MARKET SURVEY

A market survey was performed to determine the Town's current position in relation to select municipalities with regards to salary. For the purposes of this survey, competitive benefits were not evaluated. A study of this nature is performed by surveying peer organizations on their compensation rates and pay scales for positions similar to that of Argyle. The values are then averaged in order to establish a market average compensation range by which the Town is compared against.

### PREVIOUS BENCHMARK EMPLOYERS

In a compensation study conducted for the Town of Argyle by Ray Associates, Inc. in 2008, 12 employers were selected as benchmark municipalities by utilizing a matrix to score the comparability with the Town of Argyle with regards to population, number of employees, operating budget, ad valorem value, tax rate, median household income, growth rate, new construction costs and geographic proximity. Eleven of the 12 employers identified participated in the survey which included:

City of Coppell	City of Roanoke	City of Heath
City of Southlake	City of Highland Village	Town of Flower Mound
City of Keller	Town of Hickory Creek	City of Lewisville
Town of Prosper	Town of Trophy Club	

After a review of the previous survey participants, the Committee made the determination to revise the list of benchmark municipalities to identify more data points to be used for the survey. Additions and removals were also made to adjust for geographical proximity.

### NEW BENCHMARK EMPLOYERS

A review was conducted of employers that the Town of Argyle competes with in relation to proximity, population and budget size. Additional consideration was given to organizations which the Town considers competitors in employee attraction and retention. Other employers were included as they have characteristics that have been identified as desirable. The benchmark sample size was also increased in order to provide more reliable data. Fifteen employers were identified as follows:

City of Coppell	City of Corinth	City of Denton
Town of Double Oak	Town of Flower Mound	City of Grapevine
Town of Hickory Creek	City of Highland Village	City of Keller
City of Lake Dallas	Town of Little Elm	Town of Northlake
City of Roanoke	City of Southlake	Town of Trophy Club

## POSITIONS EVALUATED

When a compensation study is undertaken, typically a sample of jobs are compared against the marketplace. Since the Town of Argyle is small, the survey consisted of all the Town's current positions. Additional positions were included that may be created in the future or are of a similar job responsibility. For example, Director level position evaluations incorporated the average of the organizations Director and Assistant Director positions. This is a better reflection on the job duties and also provides for a more reasonable compensation range. Additionally, the various ranks of Police Department personnel were evaluated to help identify any discrepancies with officer pay. **Figure 3.A.** indicates a list of current positions and positions surveyed. **Figure 3.B.** indicates additional positions surveyed for future growth or for further assessment of current personnel. A total of 25 positions were evaluated for the purposes of this study.

**Figure 3.A. Current Position Comparison**

CURRENT POSITION	POSITIONS EVALUATED AGAINST
Town Secretary/HR Director	Town Secretary & HR Director
Finance Director	Finance Director & Asst. Finance Director
Community Development Director	Community Development Director & Asst. Community Development Director
Public Works Director	Public Works Director & Asst. Public Works Director
Police Chief	Police Chief & Asst. Police Chief
Court Clerk	Court Clerk
Permit Clerk	Permit Clerk
Administrative Assistant	Administrative Assistant
Public Works Inspector/Code Enforcement	Public Works Inspector
Crew Leader	Crew Leader
Equipment Operator	Equipment Operator
Maintenance Worker	Maintenance Worker
Police Administrative Assistant	Administrative Assistant & Police Administrative Assistant
Police Captain	Police Captain
Police Sergeant	Police Sergeant
Police Officer	Police Officer

**Figure 3.B. Additional Positions Surveyed**

Development Coordinator (Planning Technician)
Accounting/Finance Clerk
Code Enforcement Officer (standalone position)
Police Lieutenant (for comparison purposes)

### SALARY SURVEY RESULTS

The results of the market survey can be found in **Figures 3.C. and 3.D.** Within the results, each position is listed along with the range minimum, range maximum, and the average minimum, midpoint and maximum. The percent of data points matched with the 15 municipalities surveyed is also included. All positions received at least seven matches with comparable municipalities', a majority of the positions matched 10 or more comparable municipalities.

- Eighteen of the 25 positions were matched by at least 11 organizations.
- Assistant Police Chief, a position not currently scheduled with the Town, received the lowest number of responses with seven. This position was used as a comparison with the position of Police Chief, although the average responses for the minimum, midpoint and maximum were nearly identical with both positions.
- Police Captain received the lowest number of responses of the currently scheduled positions with a total of eight responses received, a rate of 53%.
- The position of Police Officer matched 100% of the organizations.

Current combined salaries are, on average, 1.59% **above** the minimum of the salary range, 14.32% **below** at the midpoint and 27.0% **below** at the maximum. The market's average range spread was 40.0% for all employees. The spread for positions excluding the sworn police officers is 42.2%, for director level positions the spread is 44.1%. For officers and sergeants the spread is 20.4%.

Figure 3.C. Salary Survey Results

ID	Title	Range Min	Range Max	Average Min	Average Mid	Average Max	Data Points Matched
2	Town Secretary	\$52,998	\$121,285	\$64,595	\$80,239	\$92,596	86.7%
3	Court Clerk	\$29,598	\$63,000	\$33,614	\$39,947	\$48,054	93.3%
4	Finance Director (CFO)	\$48,288	\$173,118	\$97,738	\$121,837	\$142,689	73.3%
5	Asst. Finance Director	\$63,973	\$125,599	\$79,152	\$95,915	\$112,678	60.0%
6	Development Director	\$48,288	\$173,118	\$92,640	\$115,277	\$135,000	80.0%
7	Asst. Development Dir.	\$55,640	\$126,000	\$72,530	\$88,361	\$104,192	60.0%
8	Development Coordinator	\$36,067	\$71,000	\$42,877	\$51,765	\$60,653	66.7%
9	Permit Clerk	\$28,205	\$59,000	\$32,728	\$40,031	\$46,853	86.7%
10	Finance Clerk	\$29,216	\$60,669	\$35,939	\$44,336	\$50,825	86.7%
11	Administrative Asst.	\$26,312	\$53,955	\$32,218	\$38,191	\$45,933	86.7%
12	Public Works Director	\$53,112	\$173,118	\$93,314	\$106,960	\$137,224	86.7%
13	Asst Public Works Dir	\$43,896	\$132,486	\$71,663	\$87,183	\$102,703	66.7%
14	Public Works Inspector	\$33,592	\$81,120	\$44,021	\$52,881	\$61,742	66.7%
15	Code Enforcement	\$32,715	\$61,665	\$38,881	\$46,857	\$55,491	86.7%
16	Crew Leader	\$35,000	\$68,088	\$39,256	\$47,642	\$56,029	86.7%
17	Equipment Operator	\$30,160	\$55,932	\$33,224	\$39,699	\$46,175	93.3%
18	Maintenance Worker	\$22,880	\$43,824	\$27,820	\$33,530	\$39,239	86.7%
19	Police Admin. Asst.	\$29,116	\$63,294	\$35,643	\$43,237	\$50,830	80.0%
20	Police Chief	\$64,260	\$173,118	\$98,327	\$113,332	\$143,779	86.7%
21	Police Captain	\$58,428	\$134,243	\$88,826	\$100,698	\$112,570	53.3%
22	Police Lieutenant	\$53,112	\$113,277	\$78,623	\$86,038	\$93,453	73.3%
23	Police Sergeant	\$48,288	\$97,853	\$69,140	\$76,754	\$84,368	86.7%
24	Police Officer	\$41,766	\$78,048	\$51,326	\$58,754	\$67,931	100.0%
25	Asst Police Chief	\$78,208	\$150,093	\$98,265	\$114,258	\$130,251	46.7%
26	HR Director	\$48,288	\$173,118	\$87,621	\$106,186	\$128,122	73.3%

Figure 3.D. Combined Director Positions

Title	Average Min	Average Mid	Average Max
Town Secretary/HR Director	\$78,140	\$92,131	\$113,464
Finance Dir./Asst. Finance Director	\$88,934	\$110,172	\$128,473
Development Dir./Asst. Development Director	\$83,591	\$103,742	\$121,136
Public Works Dir./Asst. Public Works Director	\$82,489	\$98,361	\$119,963
Police Chief/Asst. Police Chief	\$98,301	\$113,656	\$138,209

## SECTION 4 – FINDINGS

The findings associated with each priority established by the Committee is analyzed below in detail.

Priority #1:

**POLICE OFFICER POSITIONS**

The current average starting salary for a Police Officer in the municipalities surveyed is \$51,005 and median is \$50,936. **Figure 4.A.** indicates entry-level Police Officer salaries in organizations surveyed. **Figure 4.B.** illustrates the same for Police Sergeants. The average starting salary for a Sergeant is \$69,140, with the median at \$71,119.

**Figure 4.A. FY 16 Police Officer Entry Pay**

1.	Denton	\$60,297
2.	Roanoke	\$57,407
3.	Flower Mound	\$54,600
4.	Coppell	\$54,275
5.	Grapevine	\$52,788
6.	Keller	\$52,458
7.	Highland Village	\$52,157
8.	Southlake	\$50,936
9.	Trophy Club	\$50,500
10.	Corinth	\$49,400
11.	Little Elm	\$49,200
12.	Northlake	\$48,880
13.	Double Oak	\$46,519
14.	Argyle	\$46,405
15.	Lake Dallas	\$43,896
16.	Hickory Creek	\$41,766

Figure 4.B. FY 16 Police Sergeant Entry Pay

1.	Denton	\$84,092
2.	Coppell	\$78,347
3.	Flower Mound	\$78,062
4.	Southlake	\$77,274
5.	Keller	\$74,006
6.	Grapevine	\$73,783
7.	Roanoke	\$71,119
8.	Highland Village	\$69,895
9.	Corinth	\$65,291
10.	Trophy Club	\$62,000
11.	Argyle	\$59,226
12.	Little Elm	\$58,425
13.	Northlake	\$58,240
14.	Lake Dallas	\$48,288
15.	Double Oak	n/a
16.	Hickory Creek	n/a

## Priority #2:

**POSITIONS BELOW AVERAGE MINIMUM**

After conducting the updated compensation survey, none of the positions were determined to be the actual lowest out of the municipalities surveyed. Five positions, totaling 10 of the Town's 22.5 FTE's were below the average entry level salary of the organizations surveyed. **Figure 4.C.** illustrates the percentages each position is below the average minimum.

**Figure 4.C.**

<b>JOB TITLE</b>	<b>% BELOW AVERAGE MINIMUM</b>
Finance Director	-6.5%
Community Development Director	-5.8%
Public Works Director	-12.5%
Police Sergeant	-1.0%
Police Officer (starting salary)	-9.6%
Police Officer (average salary)	0.0%

## Priority #3:

**EMPLOYEE RETENTION ("FLIGHT RISK")**

A number of factors are taken into consideration when evaluating employee retention. Among these include competitive benefits, a desirable work environment, training opportunities and opportunities for advancement. With regards to the compensation element of employee retention, positions were reviewed in relation to the market. By reviewing positions in the context of the other priorities established by the Committee, the financial aspect of employee retention is addressed to the extent possible.

## Priority #4:

**POSITIONS BELOW THE AVERAGE MID-POINT**

Argyle's ultimate goal is to have positions at the mid-point of those organizations surveyed. **None** of the Town's employees are currently at or above the average mid-point. Eleven positions, representing 77% of the Town's employees, are below the average mid-point by **double-digit** percentages. Compared to the 2008 Compensation Study which identified 43.7% of jobs below the average mid-point by double-digit percentages, indicating the Town has fallen further behind the market. **Figure 4.D.** illustrates the percentages each employee is below the average mid-point.

Figure 4.D.

POSITION	% BELOW AVERAGE MID-POINT
Town Secretary/HR Director	-14.3%
Finance Director	-24.6%
Community Development Director	-24.1%
Public Works Director	-26.6%
Police Chief	-6.2%
Court Clerk	-10.8%
Permit Clerk	-16.9%
Administrative Assistant	-4.1%
PW Inspector/Code Enforcement	-5.7%
Crew Leader	-16.0%
Equipment Operator (average salaries)	-13.7%
Maintenance Worker	-16.3%
Police Captain	-3.8%
Police Sergeant	-10.8%
Police Officer	-21.0%

## SECTION 5 – RECOMMENDATIONS

After reviewing the results of the salary study and taking into consideration the priorities of the Committee, the follow recommendations are offered. The recommended changes do **not** include the benefit costs directly tied to salaries (retirement match through TMRS, Medicare, etc.).

### STAFFING CHANGES

The Town Manager has recommended staffing changes to provide for anticipated growth and current staffing needs. The changes suggested below by the Town Manager are incorporated into the salary costs included in the recommendations to follow.

- Transition Permit Clerk to newly created Development Coordinator position effective October 1, 2016 with a salary equivalent to an entry-level candidate. This will allow the Town to grow our current talent in anticipation of an increased work load on the Community Development Department. The Permit Clerk position will not be filled in FY17.
- Transition the position of Administrative Assistant for the Police Department from part-time to full-time effective January 1, 2017.
- Create a sixth police officer position effective April 1, 2017 to satisfy current staffing needs.
- Create a second Maintenance Worker position effective April 1, 2017 to satisfy current staffing needs and in anticipation of increased workloads resulting from new development and maintenance of the new park.

### POLICE OFFICERS AND SERGEANTS

It is recommended that a step plan be instituted for Police Officers and Police Sergeants. The adoption of a step plan can be used as a tool to attract and retain police officers. Considering the average and median starting salaries indicated in Figures 4.A and 4.B. and assuming competing municipalities adjust their pay scales for an increase in the Consumer Price Index (which is less than a one percent increase since this time last year), a base salary of \$52,016 per year is recommended for Police Officers and \$69,610 for Police Sergeants.

**Figure 5.A.** indicates the proposed step plan which illustrates a 2% increase per step. Officers will initially be placed on the step reflecting their years of service; however, annual increases on the step plan will be based on performance. Ten steps for officers are proposed to maintain a near 20% spread according to market conditions. It is common for supervisory level police personnel to have a smaller number of steps than the officers. Therefore, sergeants will participate in the step plan to a maximum of six steps. The market adjustment will be effective October 1, 2017. The Crime Control and Prevention District (CCPD) has agreed to fund the difference between the step pay and the base pay. The salary costs associated with the Police Officer and Police Sergeant positions market adjustments and the addition of a new Police Officer effective April 1<sup>st</sup> represents an increase of \$29,443 to the General Fund and the addition of \$35,377 to the CCPD Fund. The CCPD has authorized total expenditures of \$38,000 for the step plan that will also include the cost of retirement and Medicare costs.

**Figure 5.A. Proposed Step Plan**

Police Officer									
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
\$52,016	\$53,056	\$54,117	\$55,200	\$56,304	\$57,430	\$58,578	\$59,750	\$60,945	\$62,164

Police Sergeant									
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
\$69,610	\$71,002	\$72,422	\$73,871	\$75,348	\$76,855				

**NON-DIRECTOR LEVEL EMPLOYEES**

All non-director employees, with the exception of the Permit Clerk, will be brought up to the average mid-point of the surveyed municipalities. The Permit Clerk position will be transitioned to a Development Coordinator at entry-level pay. After adjustments are made, the range of compensation increase is 4-19% and will be effective October 1, 2016. The cost of the proposed market adjustments and the additional staffing needs for non-director employees is \$71,997.

**DIRECTOR POSITIONS**

Director positions require unique skill sets, particularly in a small municipality. To bring all Director positions to mid-point would cost \$98,419. Due to the large financial burden and potential sustainability concerns of a large scale adjustment, none of the Director positions are proposed to be raised to the average mid-point in FY17.

The Town Manager has made a recommendation, based on skill sets and limited funds, for a phased in approach to market adjustments for Directors. Each Director has been evaluated with regard to their education, experience, responsibilities and skills and will receive a phased in market adjustment according to that evaluation. The positions that were below the average minimum (Finance Director, Community Development Director and Public Works Director) will receive a market adjustment effective January 1, 2017. The positions that were between the average minimum and average mid-point (Town Secretary/HR Director and Police Chief) will receive a market adjustment effective April 1, 2017. Market adjustments proposed by the Town Manager for Directors will cost \$26,570 to implement.

## PAY PLAN

A key component to achieving a competitive position in the market is adopting a pay scale that is in line with current market conditions. **Figure 5.B.** is the proposed pay plan for FY 17 general employees and exempt Police Department personnel. It is recommended that the Town review and update the pay plan each fiscal year. If the Council makes across-the-board adjustments based on a percentage of base pay, the same adjustments should be applied to the pay plan. It should be noted that the proposed pay plan indicates a minimum, mid-point and maximum pay for each position. The mid-point of the pay plan is not necessarily the mid-point of the salary survey. Minor adjustments have been made to provide a pay plan that will continue to reflect market conditions throughout FY 17.

The pay plan reflects a 40% spread that is comparable to market conditions. For the purposes of brevity within the context of the report, only the grades in which a position is scheduled are indicated below. Just because the position is scheduled does not mean that it will be filled in FY 17 (i.e. Permit Clerk, Accounting Clerk, Code Enforcement Officer), however, it helps to plan for future needs. The full pay scale is attached as Exhibit A to the report.

**Figure 5.B. Proposed Pay Plan**

Grade	FLSA Status	Job Title	Basis	Minimum	Midpoint	Maximum
102	NE	Maintenance Worker	A	\$27,673.31	\$33,207.98	\$38,742.64
			H	\$13.30	\$15.97	\$18.63
107	NE	Administrative Assistant	A	\$32,867.21	\$39,440.66	\$46,014.10
			H	\$15.80	\$18.96	\$22.12
108	NE	Equipment Operator	A	\$34,017.57	\$40,821.08	\$47,624.59
			H	\$16.35	\$19.63	\$22.90
109	NE	Court Clerk	A	\$35,208.18	\$42,249.82	\$49,291.45
	NE	Permit Clerk	H	\$16.93	\$20.31	\$23.70
110	NE	Accounting Clerk	A	\$36,440.47	\$43,728.56	\$51,016.66
			H	\$17.52	\$21.02	\$24.53
113	NE	Crew Lead	A	\$40,402.20	\$48,482.64	\$56,563.08
	NE	Code Enforcement Officer	H	\$19.42	\$23.31	\$27.19
114	NE	Development Coordinator	A	\$41,816.28	\$50,179.53	\$58,542.79
			H	\$20.10	\$24.12	\$28.15
116	NE	Public Works Inspector	A	\$44,794.64	\$53,753.57	\$62,712.50
			H	\$21.54	\$25.84	\$30.15
202	E	Town Secretary/HR Director	A	\$77,230.18	\$92,676.21	\$108,122.25
			H	\$37.13	\$44.56	\$51.98
203	E	Public Works Director	A	\$79,933.23	\$95,919.88	\$111,906.53
			H	\$38.43	\$46.12	\$53.80
204	E	Community Development Director	A	\$82,730.90	\$99,277.08	\$115,823.26
	E	Police Captain	H	\$39.77	\$47.73	\$55.68
206	E	Finance Director	A	\$88,623.40	\$106,348.09	\$124,072.77
			H	\$42.61	\$51.13	\$59.65
208	E	Police Chief	A	\$94,935.61	\$113,922.73	\$132,909.85
			H	\$45.64	\$54.77	\$63.90

NE – non-exempt E - exempt

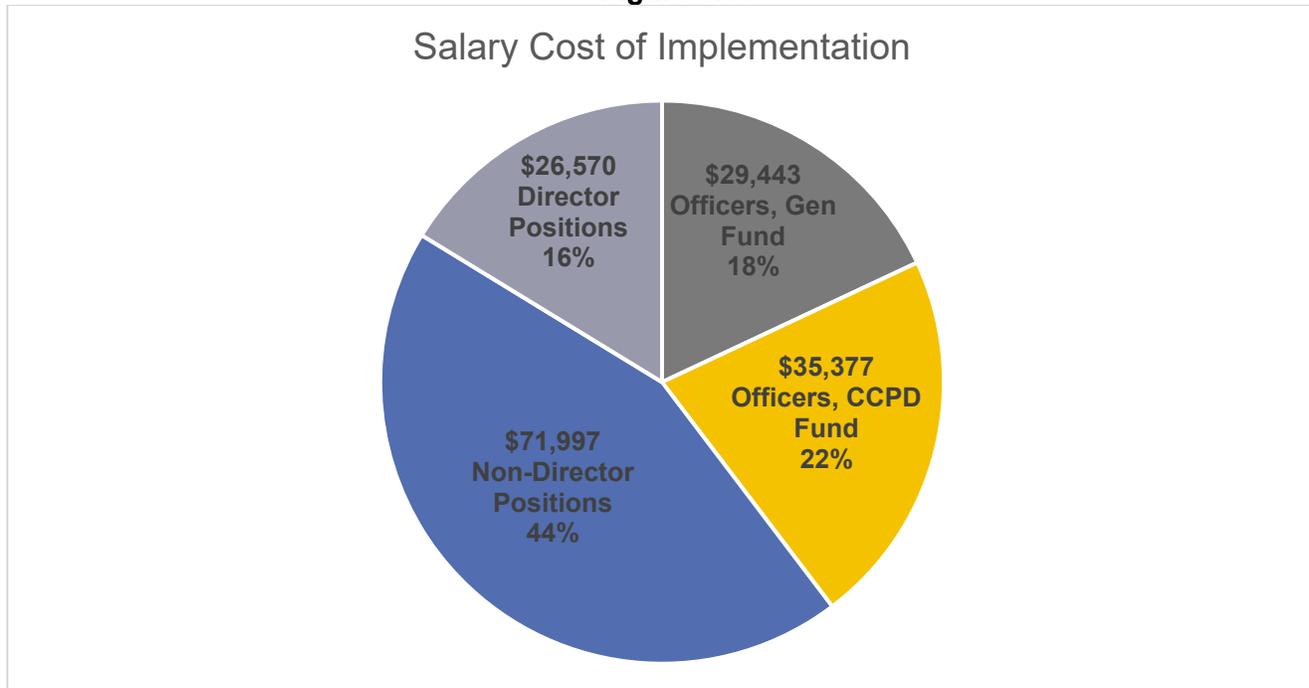
**MERIT INCREASES AND COST OF LIVING ADJUSTMENTS**

The Town of Argyle encourages the use of merit increases for exceptional performance evaluations. Conversely, cost of living adjustments are discouraged except in extraordinary circumstances. As a result of the costs associated with implementing the recommended market adjustments, merit increases and cost of living adjustments are not recommended in FY17.

**TOTAL SALARY COSTS OF IMPLEMENTATION**

**Figure 5.C.** depicts the total increased salary cost to implement the recommended changes is \$163,387 over FY16 dollars. Of which, \$35,377 will be funded by the Crime Control and Prevention District.

**Figure 5.C.**



## EXHIBIT A – FY 17 PAY SCHEDULE

## NON – EXEMPT EMPLOYEES

Grade	FLSA	Job Title	Basis	Minimum	Midpoint	Maximum
100			A	\$25,833.33	\$31,000.00	\$36,166.67
			M	\$2,152.78	\$2,583.33	\$3,013.89
			B	\$993.59	\$1,192.31	\$1,391.03
			H	\$12.42	\$14.90	\$17.39
101			A	\$26,737.50	\$32,085.00	\$37,432.50
			M	\$2,228.13	\$2,673.75	\$3,119.38
			B	\$1,028.37	\$1,234.04	\$1,439.71
			H	\$12.85	\$15.43	\$18.00
102	NE	Maintenance Worker	A	\$27,673.31	\$33,207.98	\$38,742.64
			M	\$2,306.11	\$2,767.33	\$3,228.55
			B	\$1,064.36	\$1,277.23	\$1,490.10
			H	\$13.30	\$15.97	\$18.63
103			A	\$28,641.88	\$34,370.25	\$40,098.63
			M	\$2,386.82	\$2,864.19	\$3,341.55
			B	\$1,101.61	\$1,321.93	\$1,542.25
			H	\$13.77	\$16.52	\$19.28
104			A	\$29,644.34	\$35,573.21	\$41,502.08
			M	\$2,470.36	\$2,964.43	\$3,458.51
			B	\$1,140.17	\$1,368.20	\$1,596.23
			H	\$14.25	\$17.10	\$19.95
105			A	\$30,681.90	\$36,818.28	\$42,954.65
			M	\$2,556.82	\$3,068.19	\$3,579.55
			B	\$1,180.07	\$1,416.09	\$1,652.10
			H	\$14.75	\$17.70	\$20.65
106			A	\$31,755.76	\$38,106.92	\$44,458.07
			M	\$2,646.31	\$3,175.58	\$3,704.84
			B	\$1,221.38	\$1,465.65	\$1,709.93
			H	\$15.27	\$18.32	\$21.37
107	NE	Administrative Assistant	A	\$32,867.21	\$39,440.66	\$46,014.10
			M	\$2,738.93	\$3,286.72	\$3,834.51
			B	\$1,264.12	\$1,516.95	\$1,769.77
			H	\$15.80	\$18.96	\$22.12
108	NE	Equipment Operator	A	\$34,017.57	\$40,821.08	\$47,624.59
			M	\$2,834.80	\$3,401.76	\$3,968.72
			B	\$1,308.37	\$1,570.04	\$1,831.72
			H	\$16.35	\$19.63	\$22.90

109	NE	Court Clerk	A	\$35,208.18	\$42,249.82	\$49,291.45
	NE	Permit Clerk	M	\$2,934.02	\$3,520.82	\$4,107.62
			B	\$1,354.16	\$1,624.99	\$1,895.83
			H	\$16.93	\$20.31	\$23.70
110	NE	Accounting Clerk	A	\$36,440.47	\$43,728.56	\$51,016.66
			M	\$3,036.71	\$3,644.05	\$4,251.39
			B	\$1,401.56	\$1,681.87	\$1,962.18
			H	\$17.52	\$21.02	\$24.53
111			A	\$37,715.88	\$45,259.06	\$52,802.24
			M	\$3,142.99	\$3,771.59	\$4,400.19
			B	\$1,450.61	\$1,740.73	\$2,030.86
			H	\$18.13	\$21.76	\$25.39
112			A	\$39,035.94	\$46,843.13	\$54,650.32
			M	\$3,253.00	\$3,903.59	\$4,554.19
			B	\$1,501.38	\$1,801.66	\$2,101.94
			H	\$18.77	\$22.52	\$26.27
113	NE	Crew Lead	A	\$40,402.20	\$48,482.64	\$56,563.08
	NE	Code Enforcement Officer	M	\$3,366.85	\$4,040.22	\$4,713.59
			B	\$1,553.93	\$1,864.72	\$2,175.50
			H	\$19.42	\$23.31	\$27.19
114	NE	Development Coordinator	A	\$41,816.28	\$50,179.53	\$58,542.79
			M	\$3,484.69	\$4,181.63	\$4,878.57
			B	\$1,608.32	\$1,929.98	\$2,251.65
			H	\$20.10	\$24.12	\$28.15
115			A	\$43,279.84	\$51,935.81	\$60,591.78
			M	\$3,606.65	\$4,327.98	\$5,049.32
			B	\$1,664.61	\$1,997.53	\$2,330.45
			H	\$20.81	\$24.97	\$29.13
116	NE	Public Works Inspector	A	\$44,794.64	\$53,753.57	\$62,712.50
			M	\$3,732.89	\$4,479.46	\$5,226.04
			B	\$1,722.87	\$2,067.44	\$2,412.02
			H	\$21.54	\$25.84	\$30.15
117			A	\$46,362.45	\$55,634.94	\$64,907.43
			M	\$3,863.54	\$4,636.25	\$5,408.95
			B	\$1,783.17	\$2,139.81	\$2,496.44
			H	\$22.29	\$26.75	\$31.21
118			A	\$47,985.14	\$57,582.17	\$67,179.19
			M	\$3,998.76	\$4,798.51	\$5,598.27
			B	\$1,845.58	\$2,214.70	\$2,583.82
			H	\$23.07	\$27.68	\$32.30

**EXEMPT EMPLOYEES**

Grade	FLSA	Job Title	Basis	Minimum	Midpoint	Maximum
200			A	\$69,736.94	\$83,684.33	\$97,631.72
			M	\$5,811.41	\$6,973.69	\$8,135.98
			B	\$2,682.19	\$3,218.63	\$3,755.07
			H	\$33.53	\$40.23	\$46.94
201			A	\$74,618.53	\$89,542.23	\$104,465.94
			M	\$6,218.21	\$7,461.85	\$8,705.50
			B	\$2,869.94	\$3,443.93	\$4,017.92
			H	\$35.87	\$43.05	\$50.22
202	E	Town Secretary/HR Director	A	\$77,230.18	\$92,676.21	\$108,122.25
			M	\$6,435.85	\$7,723.02	\$9,010.19
			B	\$2,970.39	\$3,564.47	\$4,158.55
			H	\$37.13	\$44.56	\$51.98
203	E	Public Works Director	A	\$79,933.23	\$95,919.88	\$111,906.53
			M	\$6,661.10	\$7,993.32	\$9,325.54
			B	\$3,074.36	\$3,689.23	\$4,304.10
			H	\$38.43	\$46.12	\$53.80
204	E	Community Development Director	A	\$82,730.90	\$99,277.08	\$115,823.26
	E	Police Captain	M	\$6,894.24	\$8,273.09	\$9,651.94
			B	\$3,181.96	\$3,818.35	\$4,454.74
			H	\$39.77	\$47.73	\$55.68
205			A	\$85,626.48	\$102,751.77	\$119,877.07
			M	\$7,135.54	\$8,562.65	\$9,989.76
			B	\$3,293.33	\$3,951.99	\$4,610.66
			H	\$41.17	\$49.40	\$57.63
206	E	Finance Director	A	\$88,623.40	\$106,348.09	\$124,072.77
			M	\$7,385.28	\$8,862.34	\$10,339.40
			B	\$3,408.59	\$4,090.31	\$4,772.03
			H	\$42.61	\$51.13	\$59.65
207			A	\$91,725.22	\$110,070.27	\$128,415.31
			M	\$7,643.77	\$9,172.52	\$10,701.28
			B	\$3,527.89	\$4,233.47	\$4,939.05
			H	\$44.10	\$52.92	\$61.74
208	E	Police Chief	A	\$94,935.61	\$113,922.73	\$132,909.85
			M	\$7,911.30	\$9,493.56	\$11,075.82
			B	\$3,651.37	\$4,381.64	\$5,111.92
			H	\$45.64	\$54.77	\$63.90
209			A	\$98,258.35	\$117,910.02	\$137,561.69
			M	\$8,188.20	\$9,825.84	\$11,463.47
			B	\$3,779.17	\$4,535.00	\$5,290.83
			H	\$47.24	\$56.69	\$66.14

**FY 17 POLICE STEP PLAN**

Police Officer									
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
\$52,016	\$53,056	\$54,117	\$55,200	\$56,304	\$57,430	\$58,578	\$59,750	\$60,945	\$62,164

Police Sergeant									
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
\$69,610	\$71,002	\$72,422	\$73,871	\$75,348	\$76,855				

**EXHIBIT "B"**  
**FY 17 PAY SCHEDULED**  
**NON – EXEMPT EMPLOYEES**

Grade	FLSA	Job Title	Basis	Minimum	Midpoint	Maximum
100			A	\$25,833.33	\$31,000.00	\$36,166.67
			M	\$2,152.78	\$2,583.33	\$3,013.89
			B	\$993.59	\$1,192.31	\$1,391.03
			H	\$12.42	\$14.90	\$17.39
101			A	\$26,737.50	\$32,085.00	\$37,432.50
			M	\$2,228.13	\$2,673.75	\$3,119.38
			B	\$1,028.37	\$1,234.04	\$1,439.71
			H	\$12.85	\$15.43	\$18.00
102	NE	Maintenance Worker	A	\$27,673.31	\$33,207.98	\$38,742.64
			M	\$2,306.11	\$2,767.33	\$3,228.55
			B	\$1,064.36	\$1,277.23	\$1,490.10
			H	\$13.30	\$15.97	\$18.63
103			A	\$28,641.88	\$34,370.25	\$40,098.63
			M	\$2,386.82	\$2,864.19	\$3,341.55
			B	\$1,101.61	\$1,321.93	\$1,542.25
			H	\$13.77	\$16.52	\$19.28
104			A	\$29,644.34	\$35,573.21	\$41,502.08
			M	\$2,470.36	\$2,964.43	\$3,458.51
			B	\$1,140.17	\$1,368.20	\$1,596.23
			H	\$14.25	\$17.10	\$19.95
105			A	\$30,681.90	\$36,818.28	\$42,954.65
			M	\$2,556.82	\$3,068.19	\$3,579.55
			B	\$1,180.07	\$1,416.09	\$1,652.10
			H	\$14.75	\$17.70	\$20.65
106			A	\$31,755.76	\$38,106.92	\$44,458.07
			M	\$2,646.31	\$3,175.58	\$3,704.84
			B	\$1,221.38	\$1,465.65	\$1,709.93
			H	\$15.27	\$18.32	\$21.37
107	NE	Administrative Assistant	A	\$32,867.21	\$39,440.66	\$46,014.10
			M	\$2,738.93	\$3,286.72	\$3,834.51
			B	\$1,264.12	\$1,516.95	\$1,769.77
			H	\$15.80	\$18.96	\$22.12
108	NE	Equipment Operator	A	\$34,017.57	\$40,821.08	\$47,624.59
			M	\$2,834.80	\$3,401.76	\$3,968.72
			B	\$1,308.37	\$1,570.04	\$1,831.72
			H	\$16.35	\$19.63	\$22.90

109	NE	Court Clerk	A	\$35,208.18	\$42,249.82	\$49,291.45
	NE	Permit Clerk	M	\$2,934.02	\$3,520.82	\$4,107.62
			B	\$1,354.16	\$1,624.99	\$1,895.83
			H	\$16.93	\$20.31	\$23.70
110	NE	Accounting Clerk	A	\$36,440.47	\$43,728.56	\$51,016.66
			M	\$3,036.71	\$3,644.05	\$4,251.39
			B	\$1,401.56	\$1,681.87	\$1,962.18
			H	\$17.52	\$21.02	\$24.53
111			A	\$37,715.88	\$45,259.06	\$52,802.24
			M	\$3,142.99	\$3,771.59	\$4,400.19
			B	\$1,450.61	\$1,740.73	\$2,030.86
			H	\$18.13	\$21.76	\$25.39
112			A	\$39,035.94	\$46,843.13	\$54,650.32
			M	\$3,253.00	\$3,903.59	\$4,554.19
			B	\$1,501.38	\$1,801.66	\$2,101.94
			H	\$18.77	\$22.52	\$26.27
113	NE	Crew Lead	A	\$40,402.20	\$48,482.64	\$56,563.08
	NE	Code Enforcement Officer	M	\$3,366.85	\$4,040.22	\$4,713.59
			B	\$1,553.93	\$1,864.72	\$2,175.50
			H	\$19.42	\$23.31	\$27.19
114	NE	Development Coordinator	A	\$41,816.28	\$50,179.53	\$58,542.79
			M	\$3,484.69	\$4,181.63	\$4,878.57
			B	\$1,608.32	\$1,929.98	\$2,251.65
			H	\$20.10	\$24.12	\$28.15
115			A	\$43,279.84	\$51,935.81	\$60,591.78
			M	\$3,606.65	\$4,327.98	\$5,049.32
			B	\$1,664.61	\$1,997.53	\$2,330.45
			H	\$20.81	\$24.97	\$29.13
116	NE	Public Works Inspector	A	\$44,794.64	\$53,753.57	\$62,712.50
			M	\$3,732.89	\$4,479.46	\$5,226.04
			B	\$1,722.87	\$2,067.44	\$2,412.02
			H	\$21.54	\$25.84	\$30.15
117			A	\$46,362.45	\$55,634.94	\$64,907.43
			M	\$3,863.54	\$4,636.25	\$5,408.95
			B	\$1,783.17	\$2,139.81	\$2,496.44
			H	\$22.29	\$26.75	\$31.21
118			A	\$47,985.14	\$57,582.17	\$67,179.19
			M	\$3,998.76	\$4,798.51	\$5,598.27
			B	\$1,845.58	\$2,214.70	\$2,583.82
			H	\$23.07	\$27.68	\$32.30

**EXEMPT EMPLOYEES**

Grade	FLSA	Job Title	Basis	Minimum	Midpoint	Maximum
200			A	\$69,736.94	\$83,684.33	\$97,631.72
			M	\$5,811.41	\$6,973.69	\$8,135.98
			B	\$2,682.19	\$3,218.63	\$3,755.07
			H	\$33.53	\$40.23	\$46.94
201			A	\$74,618.53	\$89,542.23	\$104,465.94
			M	\$6,218.21	\$7,461.85	\$8,705.50
			B	\$2,869.94	\$3,443.93	\$4,017.92
			H	\$35.87	\$43.05	\$50.22
202	E	Town Secretary/HR Director	A	\$77,230.18	\$92,676.21	\$108,122.25
			M	\$6,435.85	\$7,723.02	\$9,010.19
			B	\$2,970.39	\$3,564.47	\$4,158.55
			H	\$37.13	\$44.56	\$51.98
203	E	Public Works Director	A	\$79,933.23	\$95,919.88	\$111,906.53
			M	\$6,661.10	\$7,993.32	\$9,325.54
			B	\$3,074.36	\$3,689.23	\$4,304.10
			H	\$38.43	\$46.12	\$53.80
204	E	Community Development Director	A	\$82,730.90	\$99,277.08	\$115,823.26
	E	Police Captain	M	\$6,894.24	\$8,273.09	\$9,651.94
			B	\$3,181.96	\$3,818.35	\$4,454.74
			H	\$39.77	\$47.73	\$55.68
205			A	\$85,626.48	\$102,751.77	\$119,877.07
			M	\$7,135.54	\$8,562.65	\$9,989.76
			B	\$3,293.33	\$3,951.99	\$4,610.66
			H	\$41.17	\$49.40	\$57.63
206	E	Finance Director	A	\$88,623.40	\$106,348.09	\$124,072.77
			M	\$7,385.28	\$8,862.34	\$10,339.40
			B	\$3,408.59	\$4,090.31	\$4,772.03
			H	\$42.61	\$51.13	\$59.65
207			A	\$91,725.22	\$110,070.27	\$128,415.31
			M	\$7,643.77	\$9,172.52	\$10,701.28
			B	\$3,527.89	\$4,233.47	\$4,939.05
			H	\$44.10	\$52.92	\$61.74
208	E	Police Chief	A	\$94,935.61	\$113,922.73	\$132,909.85
			M	\$7,911.30	\$9,493.56	\$11,075.82
			B	\$3,651.37	\$4,381.64	\$5,111.92
			H	\$45.64	\$54.77	\$63.90
209			A	\$98,258.35	\$117,910.02	\$137,561.69
			M	\$8,188.20	\$9,825.84	\$11,463.47
			B	\$3,779.17	\$4,535.00	\$5,290.83
			H	\$47.24	\$56.69	\$66.14

**FY 17 POLICE STEP PLAN**

Police Officer									
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
\$52,016	\$53,056	\$54,117	\$55,200	\$56,304	\$57,430	\$58,578	\$59,750	\$60,945	\$62,164

Police Sergeant									
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
\$69,610	\$71,002	\$72,422	\$73,871	\$75,348	\$76,855				



## TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Consider approval of a resolution declaring certain property as surplus and authorizing its sale, donation and destruction.

**Requested by:**

Troy Norton, Director of Public Works

**Background:**

On an annual basis, the Town assembles unusable equipment and/or items that have no useful life, declares the items surplus and sells or destroys them in accordance with state law. These items were purchased from property tax dollars and/or may be a part of the Town's fixed assets, which necessitates an official policy declaration of the Town's intent to eliminate the items from the Town's inventory, as well as, providing full disclosure and a public accountability measure.

The attached resolution and Exhibit "A" identifies the items of surplus and sets forth the declaration that the items are deemed surplus and will be either sold, donated or destroyed. There are on-line auction sites used by municipalities as well as public auctions whereby many cities take surplus vehicles and equipment for discarding. Staff attempts to use the method that is most efficient and effective given the items being discarded.

**Staff Recommendation:**

Staff recommends approval of the request.

**Requested Action:**

Approve a resolution declaring certain property as surplus and authorizing its sale, donation or destruction.

**Attachments:**

Resolution

**TOWN OF ARGYLE, TEXAS  
RESOLUTION NO. 2016-\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS DECLARING CERTAIN PROPERTY AS SURPLUS AND AUTHORIZING ITS SALE, DONATION OR DESTRUCTION**

**WHEREAS**, the Town of Argyle has purchased real property, furnishings, fixtures, and/or equipment relating to Town operations; and

**WHEREAS**, certain property, furnishings, fixtures, and/or equipment, as listed on Exhibit "A" has been determined to be past its useful life and is not needed is hereby declared surplus property.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:**

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2: THAT, the property, furnishings, fixtures, and/or equipment as described on the attached Exhibit "A" is hereby declared surplus and the Town Manager, or designee, is instructed to sell or dispose of all items at public auction for the best available price or properly dispose of items that cannot be sold.

**AND, IT IS SO RESOLVED.**

Passed on this the 27th day of September, 2016.

**TOWN OF ARGYLE, TEXAS**

\_\_\_\_\_  
By: Peggy Krueger, Mayor

**ATTEST:**

\_\_\_\_\_  
Kristi Gilbert, Town Secretary

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Matthew G.C. Boyle, Town Attorney

**EXHIBIT “A”**

**Town of Argyle, Texas  
Surplus Property**

**Vehicles:**

- 1999 C3500 (Unit 2120) VIN 1GBHC33R2XF025631 (mileage – 91,879)
- 2004 C2500 (Unit 2122) VIN 1GBHC29U94E213053 (mileage –148,970)



## TOWN COUNCIL DATA SHEET

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**Agenda Item:**

Consider approval of a resolution declaring certain property as surplus and authorizing its sale, donation and destruction.

**Requested by:**

Troy Norton, Director of Public Works

**Background:**

Approximately one time per year, the Town assembles unusable equipment and/or items that have no useful life, declares the items surplus and sells or destroys them. Since items have been purchased from property tax dollars and/or may be a part of the Town's fixed assets, it's necessary that we make an official policy declaration of the Town's intent to eliminate the items from the Town's inventory as well as being a good full disclosure and public accountability measure.

The attached resolution and Exhibit "A" identifies the items of surplus and sets forth the declaration that the items are deemed surplus and will be either sold, donated or destroyed. There are on-line auction sites used by municipalities as well as public auctions whereby many cities take surplus vehicles and equipment for discarding. We attempt to use the method that is most efficient and effective given what is being discarded. We plan to use Lone Star Auctioneers as we have in the past.

**Staff Recommendation:**

Staff recommends approval of the request.

**Requested Action:**

Approve a resolution declaring certain property as surplus and authorizing its sale, donation or destruction.

**Attachments:**

Resolution



# TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Consider ratification of the purchase of one 2016 Ford F350 Super Duty Chassis 4x4 with Dump Body and one 2016 Chevrolet C2500 4x4 Pickup.

**Requested by:**

Troy Norton, Director of Public Works

**Background:**

At the August 9, 2016 Town Council Budget Workshop, staff proposed utilizing excess FY16 General Fund Balance funds of \$75,400 to purchase two trucks. Two trucks have been ordered through Sam Pack 5 Star Ford & Chevrolet, a State of Texas Co-op (TxSmart Buy) authorized vendor. The vehicles have been through the approved bidding process through TxSmart Buy. The cost of the Ford 2016 F350 Super Duty Chassis 4x4 with Dump Body is \$41,506. The cost of the 2016 Chevrolet C2500 4x4 Pickup is \$31,889. This represents a total purchase price of \$73,395.

**Fiscal Impact:**

Purchases will be made out of FY16 excess fund balance as a result of revenues above budget and expenditures below budget.

**Staff Recommendation:**

Staff recommends approval of the request.

**Requested Action:**

Approval.

**Attachments:**

Invoices







# TOWN COUNCIL DATA SHEET

**Agenda Item:**

Consider approval of a purchase of a 2016 Police Tahoe PPV for vehicle replacement.

**Requested by:**

Chief Tackett

**Background:**

Part of our overall strategy is to have dependable vehicles for officers to respond to calls for service. The selection of a police service vehicle involves a multitude of decisions that affect not only our town staff, but the community that we service as a whole. Choices such as price, style and color somewhat influence our decision making process, however those choices are emotional and are generally not based upon research. Police vehicle testing from the Michigan State Police (MSP), hands on research at trade shows, current news articles, liability, and our personal experience are the best selectors. Safety, storage, and visibility in our community are our main concerns.

The attached estimate from Defender Supply/Holiday Chevrolet (under the Tarrant County Purchasing Contract) and related equipment assist us in obtaining that goal. All equipment that can be transferred from the older models of the vehicles is transferred. There are some items that must be replaced due to age/fitment. The estimate also considers trade-in allowance of the older police unit. As you can see from the estimate, the Tahoe package retains much more value for trade in than any other police vehicle that we have utilized in the last 20 years.

**Financial Impact:**

\$33,982.00. This purchase has been budgeted for in FY17 by the Crime Control and Prevention District.

**Staff Recommendation:**

Approval purchase of replacement vehicle

**Requested Action:**

Ratify purchase of replacement vehicle for the 2017 Budget year out of the Crime Control and Prevention District Budget.

**Attachments:**

Estimate from Defender Supply

**Holiday Ford and Holiday Chevrolet  
(DBA: Johnson Grayson Automotive, Inc.)**

1009 Highway 82 W  
Whitesboro, TX 76273

<b>Date</b>	9/13/2016
<b>Estimate By</b>	Mike Hewitt
	mike@defendersupply.com
	(903) 564-5641



Bill To
Argyle Police Department P.O. Box 609 506 N. Hwy 377 Argyle, Texas 76226

<b>Customer Contact</b>	Temple Cottle
<b>Customer Phone</b>	940-464-7254
<b>Customer E-mail</b>	tcottle@argyletx.com
<b>Estimate #</b>	15628

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Description	Location	Qty.	Ext. Price
2016 Chevrolet Tahoe RWD 9C1 Police Vehicle with EcoTec3 5.3-liter, Dual Batteries, Heavy Duty Locking Differential, OnStar with Bluetooth Connectivity & Front Tow Hooks. (No Spotlight) (Purchased Through Holiday Chevrolet).		1	34,179.00
2 Year Texas State Inspection Certificate		1	7.00
Unity driver side halogen spotlight, shaft, handle and mount for a 2015+ Tahoe			436.00
Whelen LED 8 Degree Spotlight Replacement		1	149.00
Dealer Prep		1	130.00
Whelen light bar strap kit for a 2015 Tahoe		1	50.00
Go Industries push bumper for the 2015+ Tahoe		1	259.00
Center Sliding Polycarbonate Window for 2015+ Tahoe (Includes Recessed Panel and Pair of Bucket Seat Extension Panels)		1	589.00
Standard Transport Seat w/ 7 Ga. Steel Screen Window Cargo Barrier, and Outboard Seat Belts for 2015+ Tahoes		1	1,011.00
BASE, VMT, HDM, SILV, 14-15, TAH, 2015		1	96.00
Havis Console, 2015 Tahoe PPV		1	344.00
Havis Shield Cup Holder		1	33.00
HAVIS HAVIS Arm Rest - Hinged		1	79.00
Whelen Dominator 4 LED Light - Red Blue	Rear Trailer Hitch Area	1	229.00
Whelen Dominator 4" Brackets		1	19.00
Whelen M4 LED Light - Red	Push Bumper-Front	1	104.00
Whelen M4 LED Light - Blue	Push Bumper-Front	1	104.00
Forward facing bracket for an M4 light		2	32.00
Whelen M4 LED Light - Red/Blue	Push Bumper-Side	2	224.00
45 degree mounting bracket for Whelen M4 lighting		2	18.00
Whelen Ion with Black Housing - RED	Rear License Plate	1	89.00

Final sale amount may be subject to state and local sales tax.  
PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

**Vehicle and Emergency Equipme...**

SIGNATURE

**Holiday Ford and Holiday Chevrolet  
(DBA: Johnson Grayson Automotive, Inc.)**

1009 Highway 82 W  
Whitesboro, TX 76273

<b>Date</b>	9/13/2016
<b>Estimate By</b>	Mike Hewitt
	mike@defendersupply.com
	(903) 564-5641



Bill To
Argyle Police Department P.O. Box 609 506 N. Hwy 377 Argyle, Texas 76226

<b>Customer Contact</b>	Temple Cottle
<b>Customer Phone</b>	940-464-7254
<b>Customer E-mail</b>	tcottle@argyletx.com
<b>Estimate #</b>	15628

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Description	Location	Qty.	Ext. Price
Whelen Ion with Black Housing - BLUE	Rear License Plate	1	89.00
Whelen ION License Plate Bracket		1	19.00
Installation of Customer Supplied Graphics		1	75.00
Shipping of Above Emergency Parts for Upfit		1	139.00
Defender Supply Wiring Harness, Power Distribution Block and Battery Management System. Timer on Distribution Block as discussed with Bobby			355.00
Misc. Shop Supplies- Switch For Rear Arrow Stick		1	4.00
Installation of Above Equipment. Removal of Equipment from Trade in. Installation of Equipment, from Trade, to new Tahoe		1	3,120.00
Installation Notes: Reinstall Stop Sticks to the inside Hatch			
Battery Saver - get with Bobby			
L3 Constant Power			
Radio and CENCOM Amp in Rear Compartment-Not on rear cage			
Hand Mics accessible			
Front Radar Antenna Bracket should be the taller style.			
Trade in of 2010 Tahoe AR176504			-8,000.00

Final sale amount may be subject to state and local sales tax.  
PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

<b>Vehicle and Emergency Equipme...</b>	<b>\$33,982.00</b>
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SIGNATURE \_\_\_\_\_



# TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Consider approval of an additional contribution to Texas Municipal Retirement System (TMRS) Municipality Accumulation Fund on behalf of the Town of Argyle, Texas.

**Requested by:**

Kim Collins, Director of Finance

**Background:**

At the August 9, 2016 Town Council Budget Workshop, staff proposed utilizing excess FY16 General Fund balance funds of \$100,000 to make an additional contribution to the Texas Municipal Retirement System (TMRS) Municipality Accumulation Fund on behalf of the Town of Argyle, Texas. This additional contribution increases the Town's assets held by TMRS and will help to reduce the Town's unfunded actuarial liability in the next actuarial valuation.

**Fiscal Impact:**

Contribution will be made out of FY16 excess fund balance as a result of revenues above budget and expenditures below budget. Three options were given to the Council at the meeting, and this was the most aggressive. Council directed staff to go with this format which will save the Town \$513,248 over the current calculation and pay off the unfunded actuarial liability 11 years earlier than projected with no changes. Additionally, the TMRS monthly contribution will be held constant throughout 2017 at the current rate of 15% rather than the newly calculated rate of 14.20%. The additional .80 point goes toward the unfunded liability also.

**Staff Recommendation:**

Staff recommends approval of the request.

**Requested Action:**

Approval.

**Attachments:**

Remittance of Lump Sum City Contribution (unsigned)  
Council Briefing from August 9<sup>th</sup> Council Work Session

# Remittance of Lump Sum City Contributions



**CITY INFORMATION** • Please type or use only black ink and do not highlight. Any corrections or whiteouts must be initialed.

Town of Argyle City Name 00051 City Number

**CONTRIBUTION INFORMATION** • Please type or use only black ink and do not highlight. Any corrections or whiteouts must be initialed.

**LUMP SUM AMOUNT REMITTED** • \$ 100,000.00

**REMITTED VIA** • (CHECK ONE)  ACH  Check attached

TMRS Board Rule 34 TAC §125.7 (effective January 1, 2008) allows a city to make additional contributions, on a voluntary basis, to its account in the TMRS Municipality Accumulation Fund above the calculated annual contribution rate. These additional contributions can be in the form of a lump-sum payment or in periodic payments and are not subject to the maximum contribution rate limits (Statutory Max) that are applicable to some TMRS cities. This additional contribution increases the city's assets held by TMRS and will help to reduce the city's unfunded actuarial liability in the next actuarial valuation.

Please use this form if you wish to make a lump sum contribution to TMRS in addition to your monthly contribution. If you want to include extra funds in your monthly contribution amount, please use Line 2A of the Summary of Monthly Payroll Report (TMRS-3) to indicate the actual contribution rate you are making. It is not necessary to report additional amounts made with your monthly contribution on this form.

Additional city contributions can be made at any time during the year. Once remitted to TMRS, these additional contributions will be held in trust and cannot be returned to the city nor applied to future payroll obligations of the city. The city's monthly required payroll contributions should continue to be remitted on the TMRS-3 form, Summary of Monthly Payroll Report.

This form should be completed and signed by an authorized city official and should be provided to TMRS with a check or ACH payment to TMRS.

**CITY CERTIFICATION**

I certify this to be an additional contribution for the above-named city and understand that this remittance does not replace the monthly required payroll contribution.

\_\_\_\_\_  
Signature of Authorized City Official (required) \_\_\_\_\_  
Date Signed (MM/DD/YYYY)

\_\_\_\_\_  
Printed Name and Title \_\_\_\_\_  
City Name

For TMRS Use Only

\_\_\_\_\_  
Entered by \_\_\_\_\_  
Date (MM/DD/YYYY)



August 9, 2016 Data Sheet



## TOWN COUNCIL DATA SHEET

**Agenda Item:**

Receive presentation by Texas Municipal Retirement Service (TMRS) regarding the Town's current plan and Unfunded Actuarial Accrued Liability (UAAL).

**Requested by:**

Kim Collins, Director of Finance

**Background:**

The Town participates in TMRS which is a statewide municipal retirement system with approximately 104,000 contributing members. Each employee's retirement benefits are based on their account balance at retirement which is funded through the mandatory employee deposits, city matching contributions, and investment income. Our employees contribute 7% of their salary and the Town matches this amount 2 to 1 at the time of retirement. The Town receives an actuarially determined contribution rate each year from TMRS, and has made 100% of contributions as required.

The annual contribution rate consists of the Normal Cost contribution rate, which finances the monthly service credits as they accrue, and the Prior Service contribution rate, which amortizes the unfunded (or overfunded) actuarial liability (asset) over the remainder of each plan's amortization period. The current service portion of the rate is actuarially determined so that when a member becomes eligible to retire, there are sufficient funds in the account to match the individual employee's deposits and interest. The prior service portion of the rate amortizes a town's unfunded actuarial accrued liability (UAAL) over a defined period of time. An unfunded actuarial liability is the difference between the benefits promised under the plan and the assets held in the plan. It can occur as a result of several situations. In our case, it is a result of the combined impact of actual plan experience different than expected, changes in the actuarial funding method in both 2007 and 2013, and changes in actuarial assumptions including a reduction in the assumed rate of return from 7% to 6.75% effective Dec. 31, 2015.

TMRS is a very conservatively managed pension plan. As noted above, their Board has been proactive in responding to declining return rates, and made adjustments to the plan that have strengthened the sustainability and funding of all TMRS plans. Some of these adjustments resulted in unfunded liabilities for towns and cities. Each city stands on its own by having its own actuarial assets, liabilities and funded ratio. Currently, our unfunded liability is amortized over a remainder of 26 years. Cities and towns have the ability to shorten the amortization period by either paying a rate higher than the actual rate and/or paying a lump sum towards the liability.



August 9, 2016 Data Sheet

## TOWN COUNCIL DATA SHEET



Our current total rate is 14.99%. The rate for FY17 is 14.20% (Normal Cost 11.28% + Prior Service 2.92%). We are proposing the aggressive approach of Option #3 - using \$100,000 of fund balance in 2016 to pay towards the liability, and adding .80 points to next year's rate, effectively keeping it a level 15% of payroll in FY17. If Council agrees with this option, we will save \$513,248 over the projected period and pay off the UAAL 11 years earlier than if we do nothing.

**Financial Impact:**

Option #1 – Do nothing and pay contribution rates as they are presented each year, and UAAL will be paid out by 2041

Option #2 – Pay an additional .80 towards prior service contribution rate in FY17 (\$12,708.70 cost; currently reflected in budget) which pays the UAAL off 8 years early and saves the Town \$357,389

Option #3 – Pay \$100,000 lump sum in 2016 + additional .80 (\$12,708.70 cost; currently reflected in budget) towards prior service contribution rate which pays the UAAL off 11 years earlier and saves the Town \$513,248.

**Staff Recommendation:**

Option #3

**Requested Action:**

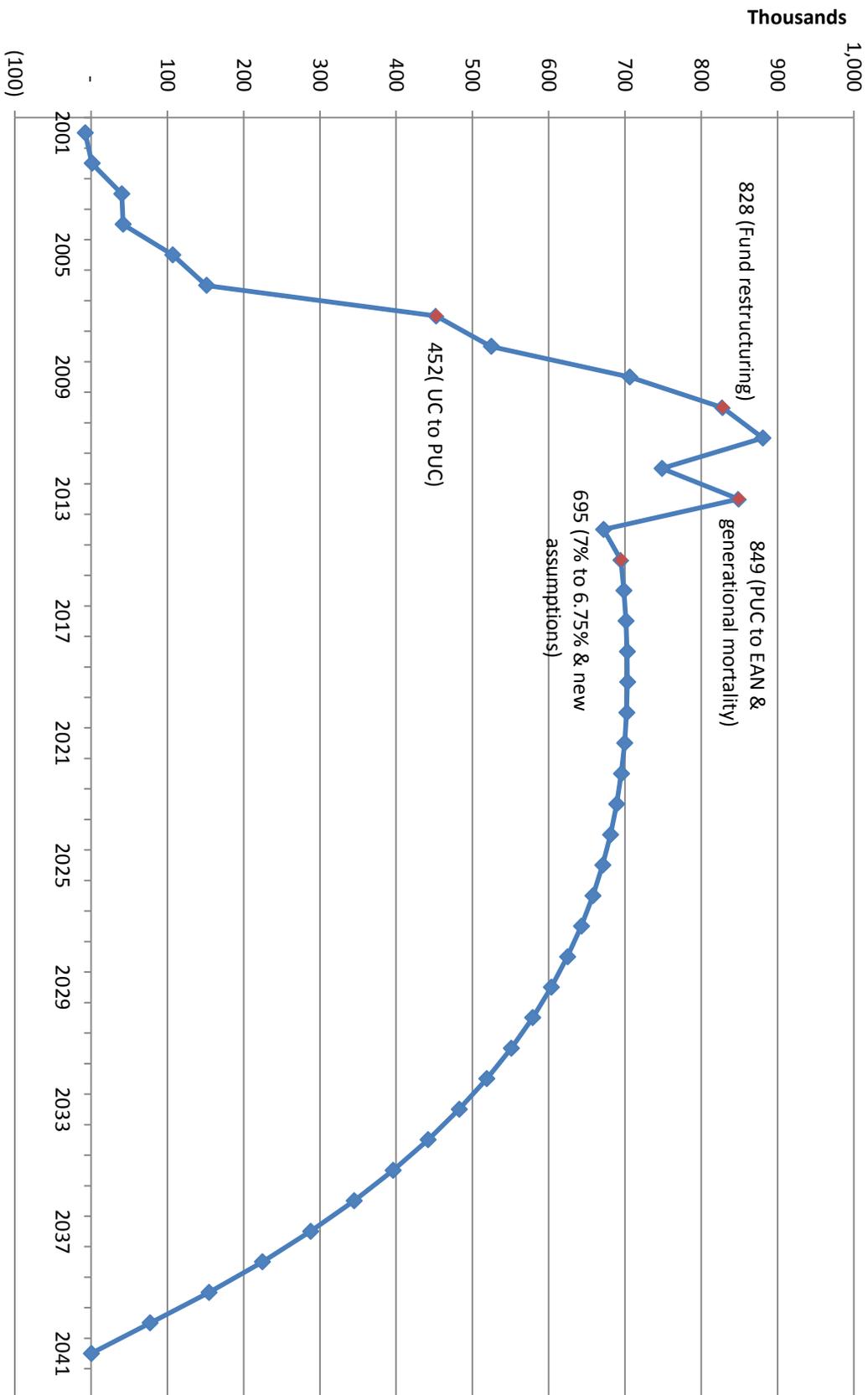
Seeking Council input

**Attachments:**

Charts showing Options 1, 2 & 3

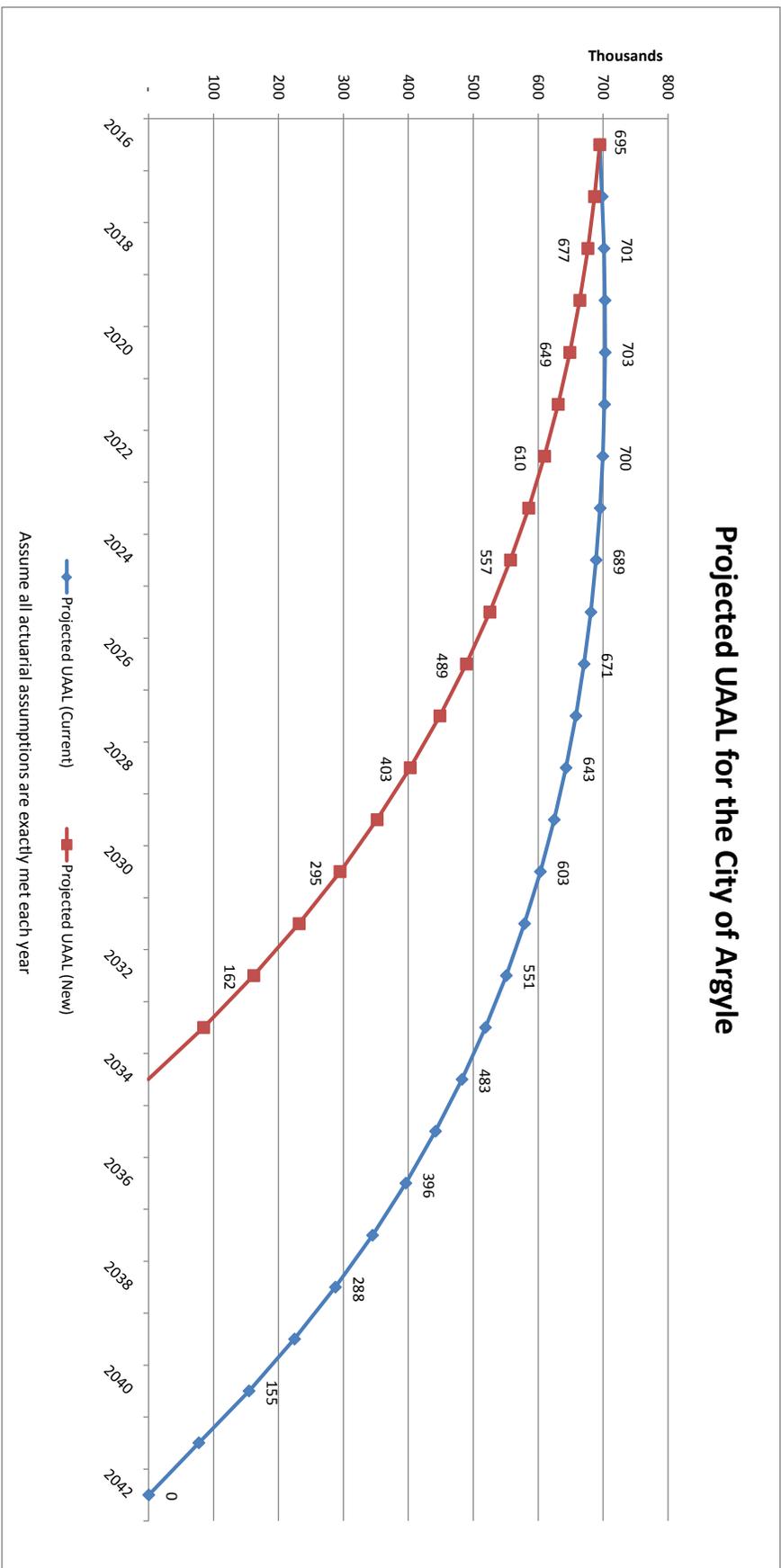
# Option #1 - Do nothing

## Historical & Projected UAAL for the City of Argyle



Assumes all actuarial assumptions are exactly met each year

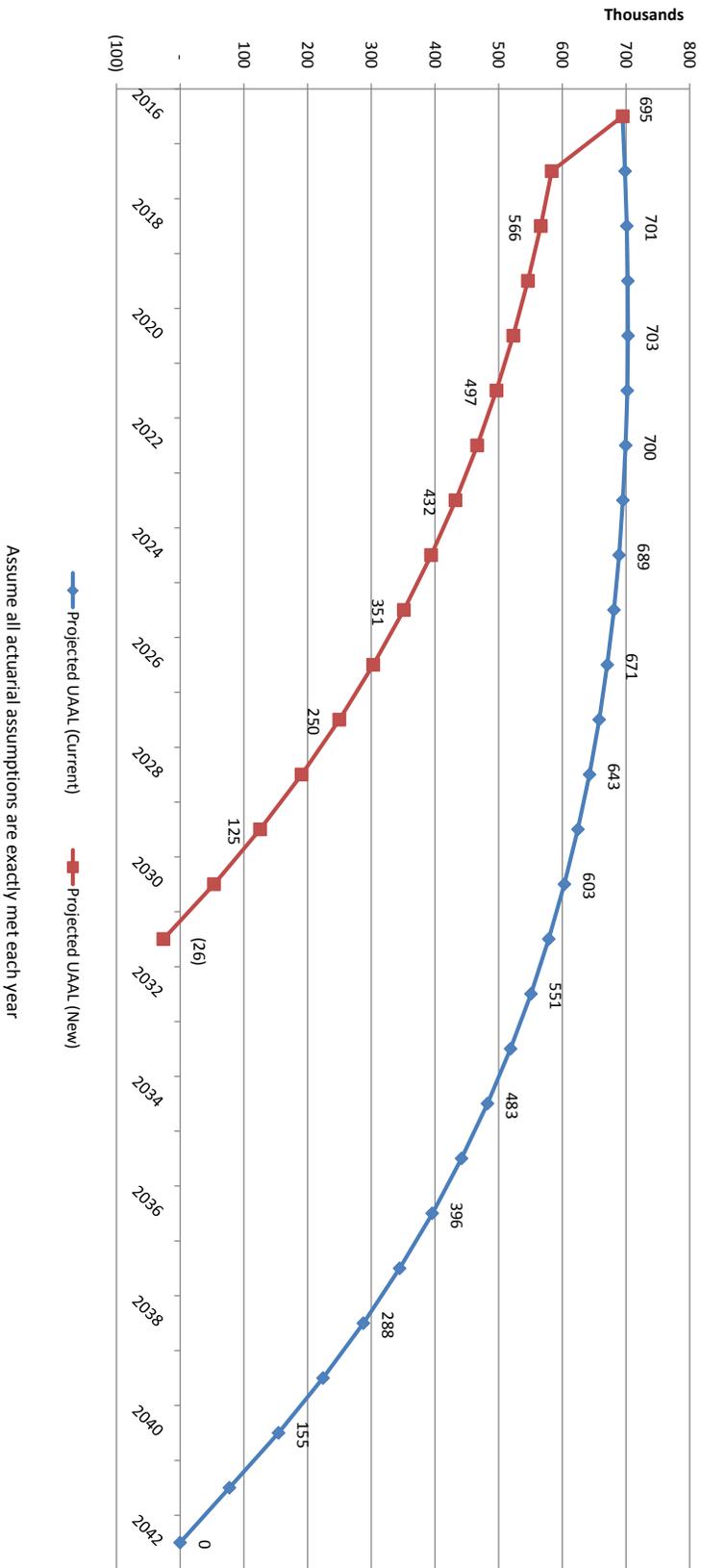
### Projected UAAL for the City of Argyle



Total Amortization Payments	
Current Schedule	\$ 1,601,445
Revised Schedule	\$ 1,244,056
Difference	\$ 357,389

**Option #2**  
**15% contribution rate**  
**No Lump sum**

### Projected UAAL for the City of Argyle



Total Amortization Payments	
Current Schedule	\$ 1,601,445
Revised Schedule	\$ 1,088,197
Difference	\$ 513,248

**Option #3**  
**15% contribution rate**  
**\$100,000 lump sum in 2016**



## TOWN COUNCIL DATA SHEET

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**Agenda Item:**

Consider and take appropriate action on an ordinance amendment (ORD-16-004) to Section 14.3.42-OR- Office Retail District of the Town of Argyle Town Development Standards, regarding changes to the permitted use chart, to allow "Health Club (Indoor)" as a permitted use in the Office Retail District.

**Requested by:**

Matt Jones, Director of Community Development

**Background:**

The applicant has requested to bring forward an ordinance amendment to add "Health Club (Indoor)" to the Office Retail District permitted use chart in the Town Development Standards. The definition in the Town development Standards for "Health Club (Indoor)" is the following:

HEALTH CLUB (INDOOR) - Includes, but is not limited to, an establishment which provides facilities and equipment (e.g., gymnasiums, weight rooms, swimming pools/spas, exercise apparatus, instruction/classes, etc.) which are intended to promote health, fitness, weight reduction and/or similar health-related activities. Such facilities may include such accessory uses as food service, sales of sundries and apparel, and child care services, provided that such accessory uses are clearly incidental to the primary use and are for the use of studio patrons only (i.e., not the general public).

**Staff Recommendation:**

Staff recommends approval of the request.

**Requested Action:**

Take action on the proposed amendment.

**Planning and Zoning Commission Recommendation:**

The Planning and Zoning Commission considered this item at their September 6, 2016 regularly scheduled meeting.

A Motion was made to approve the amendment as presented. The motion carried by a vote of five (5) in favor to none (0) opposed.

**Attachments:**

"OR" District Permitted Use Chart  
Proposed Ordinance 2016-XX

**TOWN OF ARGYLE, TEXAS  
ORDINANCE NO. 2016-XX**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS AMENDING THE ARGYLE CODE OF ORDINANCES BY AMENDING ARTICLE 14, TOWN DEVELOPMENT STANDARDS, SECTION 14.3.42 OFFICE RETAIL DISTRICT, AS IT RELATES TO PERMITTED USES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY, CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Argyle is authorized to regulate various aspects of development within the Town and its extraterritorial jurisdiction; and

**WHEREAS**, the Town of Argyle deems the regulation of development as necessary to protect the health, safety and welfare of the public; and

**WHEREAS**, the Town of Argyle deems the passage of this Ordinance to be in the best interest of the citizens of Argyle.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:**

**Section 1.** That all matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

**Section 2.** That Article 14, Town Development Standards, of the Town of Argyle Code of Ordinances is hereby amended by amending Section 14.3.42 Office Retail District, as it relates to permitted uses to read as follows:

“SECTION 14.3.42 OR - OFFICE RETAIL DISTRICT:

.....

**Office Retail District**

P = Permitted Uses

SUP = May be approved by Specific Use Permit

.....

Governmental Building (Municipal, State or Federal)	P
Handicraft Shop	P

Health Club (Indoor)	P
Insurance Agency Offices	P
Library (Public)	P

.....”

**Section 3.** That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect.

**Section 4.** Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed two thousand dollars (\$2,000.00) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**Section 5.** If any section, subsection, sentence, clause or phase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 6.** In addition to and accumulative of all other penalties, the Town shall have the right to seek injunctive relief for any and all violations of this ordinance.

**Section 7.** In order to protect the public interest, comfort and general welfare, this ordinance shall take effect immediately from and after its passage.

**PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS,** on this the 27<sup>th</sup> day of September, 2016.

APPROVED:

\_\_\_\_\_  
Peggy Krueger, Mayor

ATTEST:

\_\_\_\_\_  
Kristi Gilbert, Town Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Matthew C. G. Boyle, Town Attorney

## Office Retail District

P = Permitted Uses

SUP = May be approved by Specific Use Permit

Accessory Building/Structure (Nonresidential)	P
Antenna (Commercial)	Section 14.3.71-5 [ <a href="#">14.3.72</a> ]
Antenna (Noncommercial)	P
Antique Shop (No Outside Sales or Storage)	P
Armed Services Recruiting Center	P
Art Dealer/Gallery	P
Art Supply Store	P
Artist Studio	P
Automatic Teller Machines (ATMs)	P
Bakery (Retail)	P
Bank	P
Barber Shop (Non-College)	P
Beauty Shop (Non-College)	P
Book Store	P
Broadcast Towers (Commercial)	Section 14.3.71-5 [ <a href="#">14.3.72</a> ]
Cellular Communications Tower/CCT	Section 14.3.71-5 [ <a href="#">14.3.72</a> ]
Child Day Care Center (Business)	SUP
Church/Place of Worship	P
Clinic (Medical)	SUP
Community Center (Public)	P
Computer Sales	P
Confectionery Store (Retail)	P
Contractor's Office/Sales (No Outside Storage including Vehicles)	SUP
Contractor's Temporary On-Site Construction Office	SUP
Convenience Store without Gas sales	P
Country Club (Private)	SUP

Credit Agency	P
Credit Unions	P
Dance/Drama/Music Schools (Performing Arts)	P
Drapery Shop/Blind Shop	P
Earth Satellite Dish (Private, less than 3' in diameter)	P
Electrical Transmission Line	SUP
Exploration and Extraction of Hydrocarbons	SUP
Financial Services (Advice/Invest)	P
Fire Station	P
Florist	P
Franchised Private Utility (Not Listed)	P
Fraternal Organization	P
Furniture Sales (Indoor)	P
Gas Transmission Line (Regulating Station)	SUP
Golf Course (Public/Private)	SUP
Governmental Building (Municipal, State or Federal)	P
Handicraft Shop	P
Insurance Agency Offices	P
Library (Public)	P
Martial Arts School	P
Needlework Shop	P
Offices (Brokerage Services)	P
Offices (Health Services)	P
Offices (Legal Services)	P
Offices (Medical Office)	P
Offices (Professional)	P
Park and/or Playground (Large)	SUP
Park and/or Playground (Small)	P
Pharmacy	P
Philanthropic organization	SUP

Photo Studio	P
Police Station	P
Post Office (Governmental)	P
Public Garage/Parking Structure	SUP
Real Estate Offices	P
Rectory/Parsonage	P
Restaurant (With Drive-Thru)	SUP
Restaurant (Without Drive-Thru)	P
Retail Store (Misc.)	SUP
Savings and Loan	P
School, Defensive Driving	P
School, K through 12 (Private)	P
School, K through 12 (Public)	P
Tailor Shop	P
Temporary Outdoor Retail Sales/Commercial Promotion	SUP
Travel Agency	P
Used Merchandise; Furniture	P
Utility Distribution/Transmission Lines	P
Veterinarian (Indoor Kennels)	SUP
Video Rental/Sales	P
Water Supply Facility (Elevated Water Storage)	SUP
Water Supply Facility (Private)	SUP
Wedding Facility	P
Wind Energy System	SUP
Winery	SUP



# TOWN COUNCIL DATA SHEET



## Agenda Item:

Public Hearing: Consider and take appropriate action on an ordinance designating a geographic area within the town, generally described as 101.350 contiguous acres within the corporate limits of the Town and generally located: (1) east of U.S. Highway 377; (2) south of FM 407; and (3) north of Frenchtown Road, as a tax increment reinvestment zone and identifying the area as Tax Increment Reinvestment Zone No. 1.

## Requested by:

Paul Frederiksen, Town Manager  
Trent Petty, Petty & Associates, Town ED Consultant

## Background:

On August 9, 2016, the Council approved the Development Agreement between the Town of Argyle and Terra Manna, LLC for the Waterbrook Development located on the Southeast corner of FM 407 and US 377. The development agreement included components related to the creation of the Public Improvement District (PID), as well as the creation of a Tax Increment Reinvestment Zone (TIRZ) which will be used to buy down the PID assessment on the project as well as reimburse eligible developer costs. The Council approved a resolution calling a public hearing to create the TIRZ at their last Council meeting.

Included in this item are the TIRZ Project and Finance Plan and the TIRZ Feasibility Study. The public hearing is intended to provide the public an opportunity to comment on the TIRZ and provide feedback to Council. As a reminder, the Waterbrook Development Agreement deal points are recapped below.

## WATERBROOK DEAL POINTS

1. The PID and TIRZ are both necessary for this project due to the extraordinary cost of extending the S1 sewer line to the project.
2. The term of the TIRZ and PID will be 30 years.
3. As modeled, the project does provide a positive revenue stream to the Town sufficient to cover operating expenses with a varying degree of surplus annually.
4. There are performance based sales tax contributions to the project included in the TIRZ model that will be reimbursed to the Developer via a separate 380 Agreement. **All** sales tax reimbursements are performance based in that they will not be paid unless the commercial and retail components of the development occur and produce according to the estimates.
5. Denton County has not yet formally endorsed the TIRZ, but positive discussions continue. Denton County support has been conservatively estimated for illustration purposes only and should not be assumed to represent Denton County's ultimate decision as to whether or not to participate. As such;

6. The Development Agreement is intended to establish broad deal point parameters which will be subject to review and possible alteration contingent upon the consent of the Council as the project progresses.

Summary of action on the Waterbrook of Argyle development:

April 26, 2016	Council approved zoning and Master Development Plan (MDP)
June 17, 2016	Petition filed with Town for creation of PID
June 28, 2016	Council accepted petition from owners to create a PID
August 9, 2016	Council approved Development Agreement
August 23, 2016	Council conducted public hearing and approved the creation of the PID
September 13, 2016	Council approved a resolution calling for a hearing on the creation of a TIRZ

**Financial Impact:**

The developer has also escrowed with the Town funds to reimburse all Town expenses associated with reviewing the application.

**Staff Recommendation:**

Approval

**Requested Action:**

Approval

**Attachments:**

Ordinance *(attached under separate cover)*



# TOWN COUNCIL DATA SHEET



---

**Agenda Item:**

Discuss and consider a nomination to be placed on the ballot for the Board of Directors of the Denton County Transportation Authority.

**Prepared by:**

Kristi Gilbert, Town Secretary

**Background:**

See attached communication from Denton County Judge Mary Horn regarding nominations to be placed on the ballot to serve on the Board of Directors of the Denton County Transportation Authority. Each municipality is allowed to nominate one person to the Board. In year's past, the Council has nominated Skip Kalb who is currently one of three representatives of small cities (population 500-17,000). All three of these positions expire November 30, 2016. Skip Kalb has indicated his interest in continuing his service on the board.

**Financial Impact:**

None

**Staff Recommendation:**

Staff is seeking Council direction.

**Requested Action:**

The Council may choose to nominate an individual to be placed on the ballot or take no action.

**Attachments:**

Correspondence from Judge Horn  
Nomination Form



**MARY HORN**  
**Denton County Judge**

September 1, 2016

The Honorable Peggy Krueger  
 PO Box 609  
 City of Argyle, TX 76226

Re: Designation of Representative to Serve on the Board of Directors of the DCTA

Dear Mayor Krueger,

In 2001, the Texas Legislature authorized the creation of the Denton County Transportation Authority (DCTA). Denton County Commissioners Court approved a resolution creating the DCTA, with the citizens of Denton County confirming the DCTA in November 2002. Since its creation, the Authority has been and remains an active member of our public community.

As a Coordinated County Transportation Authority, all citizens of Denton County are represented on the Board of Directors. Pursuant to §460.054(b)(3) TEX. TRANSPORTATION CODE, municipalities with a population of more than 500, but less than 17,000, located in the County, have three board representatives. The current terms of these directors will expire on **November 30, 2016**.

The nomination and election of small city representatives is a two-step process. First, cities shall nominate one person to the Board of Directors for the general geographic area; to be eligible for nomination for election and appointment to the Board of Directors for the DCTA, a person must have professional experience in the field of transportation, business, government, engineering or law. The nomination form must be received by the Denton County Commissioners Court on or before **October 1, 2016**, for each properly nominated individual to be placed on the ballot. Second, cities cast one vote for an individual on the ballot. The three individuals receiving the highest plurality vote, as a result of the ballots cast, will be designated to serve on the Board of Directors of the DCTA.

The responsibility of the Board of Directors is critical to the future of transportation options in Denton County. I encourage you to separately or in conjunction with other qualified cities nominate an individual who can articulate the needs and requirements of your city and area.

Should you have any questions about the nomination and election process to the DCTA, please feel free to contact me.

Sincerely,

Mary Horn  
 Denton County Judge

# Denton County Transportation Authority Nomination Form

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

City: \_\_\_\_\_ Population: \_\_\_\_\_

Commissioner Precinct: \_\_\_\_\_

Mayor: \_\_\_\_\_ City Manager/Administrator: \_\_\_\_\_

**Designee Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

Home Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Profession/Type of Work: \_\_\_\_\_

Work Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Work Fax: \_\_\_\_\_

Office E-Mail: \_\_\_\_\_

Special experience, knowledge or skills you will bring to this position: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Return to: Denton County Commissioners Court  
Courthouse-on-the-Square  
110 West Hickory, Suite 219  
Denton, Texas 76201

Attach Resume/Bio

**MUST BE RETURNED ON OR BEFORE OCTOBER 1, 2016**

\*Pursuant to §460.054(c) Tex. Transportation Code, please nominate one person to have their name placed on a ballot to select three representatives to the Interim Executive Committee, Denton County Transportation Authority.



# TOWN COUNCIL DATA SHEET



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**Agenda Item:**

Consider and take appropriate action on an ordinance amending the Chapter 12, Article 12.05 of the Code of Ordinances relating to traffic control devices.

**Prepared by:**

Chief Tackett

**Background:**

Residents of The Oaks Subdivision appeared before Council at the March 22, 2016 meeting regarding cut-through traffic from the high school. The residents expressed interest in the installation of a gate or a "No Left Turn" sign on Cook Street. Since the August 23<sup>rd</sup> Council Meeting, Argyle PD and Public Works relocated a speed display, at the Council's request, to Boonesville for incoming traffic counts from the direction of the school (attached).

Traffic Data shows ~310 cars per day on Boonesville Bend when school is in session, Saturday traffic around ~100 and Sunday traffic ~160. Traffic Data shows Myrtle with a car count of ~480 when school is in session and weekend traffic ~160. When school was out of session Myrtle was tracking ~300 weekday traffic counts. These counts are significantly below the counts when the Middle School was at the same location where Myrtle was around 600-700 per day. Chief Cairney states that he has counted traffic twice out of the High School and was in the ~35 area each time of those turning left and ~85 total traffic exiting the campus at Cook Street.

**Requested Action:**

Staff has prepared the ordinance as directed.

**Attachments:**

Ordinance

Traffic Counts

**TOWN OF ARGYLE, TEXAS  
ORDINANCE NO. 2016-15**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS, AMENDING THE CODE OF ORDINANCES CHAPTER 12, TRAFFIC & VEHICLES, ARTICLE 12.05 RELATIVE TO LOCATION OF TRAFFIC-CONTROL DEVICES BY DELETING CHAPTER 12, ARTICLE 12.05 IN ITS ENTIRETY AND ADDING A NEW ARTICLE 12.05; AUTHORIZING THE ERECTION OF TRAFFIC REGULATION SIGNS; REPEALING CONFLICTING ORDINANCES; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH TIME A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Texas Transportation Code § 545.352 provides that a speed in excess of 30 miles per hour in an urban district is prima facie evidence that the speed is not reasonable and prudent and the speed is unlawful and "Urban District" means the territory adjacent to and including a highway, if the territory is improved with structures that are used for business, industry, or dwelling houses and are located at intervals of less than 100 feet for a distance of at least one-quarter mile on either side of the highway; and

**WHEREAS**, Texas Transportation Code § 545.356 provides that the governing body of a municipality, for a highway or a part of a highway in the municipality that is not an officially designated or marked highway or road of the state highway system, may declare a lower speed limit of not less than 25 miles per hour, if the governing body determines that the prima facie speed limit on the highway is unreasonable or unsafe; and

**WHEREAS**, Based upon a request of the developer and residents of the 5T and Oaks Addition that due to special hazards that exist due to narrow streets, cut through traffic and limited sight visibility the prima facie speed limit of 30 MPH is unsafe and unreasonable; and

**WHEREAS**, the Town Council of the Town of Argyle declares the reasonable and prudent speed due to these special hazards should be 25 MPH on Booneville Bend, Nora Lane, Ellison Trace, Myrtle; Big Sky Way; Pegasus Ridge; Appaloosa Run, Trigger Trail, Travelers Terrace, Comanche Run and 5T Ranch Road; and

**WHEREAS**, the Town Council of the Town of Argyle deems the passage of this ordinance as necessary to protect the public, health, safety, and welfare;

**WHEREAS**, the Town Council of the Town of Argyle has complied with all necessary legislative prerequisites to the passage of this ordinance.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:

Section 1. All matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

Section 2. That Chapter 12, Article 12.05, of the Code of Ordinances of the Town of Argyle, Texas, is hereby deleted in its entirety and a new Chapter 12, Article 12.05, be added as follows:

**“ARTICLE 12.05 LOCATION OF TRAFFIC-CONTROL DEVICES”**

**Sec. 12.05.001 Stop signs, yield signs, and lane use signs**

In accordance with the provisions of chapter 544 of the Texas Transportation Code, the town council, hereby authorizes the following traffic-control devices to be placed and maintained at the following locations:

***STOP SIGNS:***

Dallas @ Cypress Streets, two (2) signs halting both north and southbound traffic on Cypress Street;

Cypress @ Denton Streets, two (2) signs halting both north and southbound traffic on Cypress Street;

Mesquite @ Denton Streets, two (2) signs halting north and southbound traffic on Mesquite St.;

Walnut @ Denton Streets, one (1) sign halting southbound traffic on Walnut St.;

West Hickory Ridge Circle @ Hickory Hill Road, one (1) sign halting northbound traffic on West Hickory Ridge Circle;

East Hickory Ridge Circle @ Hickory Hill Road, one (1) sign halting northbound traffic on East Hickory Ridge Circle;

Hickory Ridge Court @ Hickory Ridge Circle, one (1) sign halting northbound traffic on Hickory Ridge Court;

Hickory Hill Rd. @ N. Gibbons Road, one (1) sign halting northbound traffic on N. Gibbons Rd.;

N. Gibbons Road. @ Harpole Road, one (1) sign halting southbound traffic on N. Gibbons Rd.;

Whispering Trail @ Harpole Road, one (1) sign halting southbound traffic on Whispering Trail;

Harpole Road @ S. Gibbons Road, one (1) sign halting northbound traffic on S. Gibbons Road;

Rolling Acres Drive @ S. Gibbons Road, one (1) sign halting westbound traffic on Rolling Acres Dr.;

S. Gibbons Road @ Frenchtown Road, one (1) sign halting southbound traffic on S. Gibbons Road;

Charyl Lynn Drive @ Frenchtown Rd, one (1) sign halting southbound traffic on Charyl Lynn Dr.;

Frenchtown Road @ Stonecrest Road, one (1) sign halting westbound traffic on Frenchtown Road;

Frenchtown Road @ US Hwy 377, two (2) signs halting east and westbound traffic on Frenchtown Road;

Forest Trail @ Stonecrest Road, one (1) sign halting eastbound traffic on Forest Trail;

Forest Trail @ Pioneer Circle East, one (1) sign halting northbound traffic on Pioneer Circle E.;

Forest Trail @ Pioneer Circle West, one (1) sign halting northbound traffic on Pioneer Circle W.;

Prairie Trail @ Forest Trail, one (1) sign halting northbound traffic on Prairie Trail;

Winchester Pass @ Stonecrest Road, one (1) sign halting eastbound traffic Winchester Pass;

Shenandoah Drive @ Stonecrest Road, one (1) sign halting southbound traffic on Shenandoah Drive;

Joyce Drive @ Stonecrest Road, one (1) sign halting westbound traffic on Joyce Drive;

Stonecrest Road @ Sam Davis Road, one (1) sign halting eastbound traffic on Sam Davis Road;

Stonecrest Road @ Squirrel Run, one (1) sign halting eastbound traffic on Squirrel Run;

Shadowwood Drive @ Harpole Road; one (1) sign halting traffic northbound on Shadowwood Drive;

Partridge Drive @ Harpole Road, one (1) sign halting traffic eastbound on Partridge Drive;

Cherokee Trail @ Chisholm Trail, one (1) sign halting traffic northbound on Cherokee Trail;

Goodnight Trail @ Chisholm Trail, one (1) sign halting traffic southbound on Goodnight Trail;

Chisholm Trail @ Sante Fe Trail, one (1) sign halting traffic eastbound on Chisholm Trail;

Santa Fe Trail @ Oregon Trail, one (1) sign halting traffic southbound on Sante Fe Trail;

Oregon Trail @ Cherokee Trail, one (1) sign halting traffic westbound on Oregon Trail;

Hwy 377 North @ Chisholm Trail, one (1) sign halting westbound traffic on Chisholm Trail;

West Front Street @ Old Justin Road, one (1) sign halting southbound traffic on West Front Street;

Old Justin Road @ Willow Street, one (1) sign halting northbound traffic on Willow Street;

Redbud Lane @ Old Justin Road, one (1) sign halting northbound traffic on Redbud Lane;

Herriot Lane @ Old Justin Road, one (1) sign halting northbound traffic on Herriot Lane;

Surrey Lane @ Old Justin Road, one (1) sign halting southbound traffic on Surrey Lane;

Skyline Drive @ Crawford Road, one (1) sign halting northbound traffic on Skyline Drive;

John Paine Road @ Crawford Road, one (1) sign halting southbound traffic on John Paine Road;

Argyle ISD north entrance @ Crawford Road, one (1) sign halting northbound traffic exiting Argyle ISD Campus;

West Front Street @ Eagle Drive, one (1) sign halting northbound traffic on West Front Street;

Eagle Drive @ Crawford Road, one (1) sign halting northbound traffic on Eagle Drive;

Valley View @ Skyline Drive, one (1) sign halting eastbound traffic on Valley View;

Sunset Court @ Skyline Drive, one (1) sign halting eastbound traffic on Sunset Court;

Country Lakes Blvd @ Crawford Road, one (1) sign halting southbound traffic at Country Lakes Blvd;

Creekside Trail @ Meandering Creek, one (1) sign halting westbound traffic on Creekside;

Meandering Creek @ John Paine Road, one (1) sign halting westbound traffic on Meandering Creek;

Creekside Trail @ Country Lakes Blvd., one (1) sign halting eastbound traffic on Creekside Trail;

Parkview @ Creekside, one (1) sign halting southbound traffic on Parkview;

River Meadows Lane @ Country Lakes Blvd., one (1) sign halting westbound traffic on River Meadows Lane;

Sandy Cove @ River Meadows Lane, one (1) sign halting southbound traffic on Sandy Cove;

Wooded Court @ Lakeside Drive, one (1) sign halting southbound traffic on Wooded Court;

Lakeside Drive @ River Meadows Lane, one (1) sign halting westbound traffic on Lakeside Drive;

Lakeside Drive @ Crooked Cove, one (1) sign halting eastbound traffic on Lakeside Drive;

Timber Creek Court @ Crooked Cove, one (1) sign halting westbound traffic on Timber Creek Court;

Hidden Trail @ Timber Creek Court, one (1) sign halting southbound traffic on Hidden Trail;

Hidden Trail @ Country Lakes Blvd., one (1) sign halting northbound traffic on Hidden Trail;

Johns Well Court @ C. Taylor Road, one (1) sign halting westbound traffic on Johns Well Court;

Prairie View Court @ C. Taylor Road, one (1) sign halting westbound on Prairie View Court;

Knob Hill Court @ C. Taylor Road, one (1) sign halting westbound traffic on Knob Hill Court;

Harrison Lane @ Country Club Road, one (1) sign halting northbound traffic on Harrison Lane;

AISD High School Campus @ Cook Street, one (1) sign halting southbound traffic exiting the campus;

C. Taylor Road @ Crawford Road, one (1) sign halting northbound traffic on C. Taylor Road;

Manor Court @ Frenchtown Road, one (1) sign halting southbound traffic on Manor Court;

Woods Court at F.M. 407, one (1) sign halting northbound traffic on Woods Court;

Birch Court @ F.M. 407, one (1) sign halting northbound traffic on Birch Court;

Robin Lane @ F.M. 407, one (1) sign halting northbound traffic on Robin Lane;

Stonecrest Road @ F.M 407, two (2) signs, halting both north and southbound traffic on Stonecrest Road;

Gibbons Road @ F.M. 407, two (2) signs, halting both north and southbound traffic on Gibbons Road;

Ben Boyd Road @ F.M. 407, one (1) sign halting southbound traffic on Ben Boyd Road;

Partridge Drive @ Shadowwood Drive, one (1) sign halting westbound traffic on Partridge Drive;

Morning Dove Court @ Partridge Drive, one (1) sign halting southbound traffic on Morning Dove Court;

Mosswood Drive @ Partridge Drive, one (1) sign halting northbound traffic on Mosswood Drive;

Mosswood Drive @ Primrose Court, one (1) sign halting southbound traffic on Mosswood Drive;

Primrose Court @ Shadowwood Drive, one (1) sign halting westbound traffic on Primrose Court;

Pecan Acres Lane @ Hickory Hill Road, one (1) sign halting northbound traffic on Pecan Acres Lane;

Thornridge Circle @ Country Club Road, one (1) sign halting northbound traffic on Thornridge Circle;

Rusk Street @ US Highway 377, one (1) sign halting westbound traffic on Rusk Street;

Denton Street @ US Highway 377, one (1) sign halting westbound traffic on Denton Street;

Dallas Street @ US Highway 377, one (1) sign halting westbound traffic on Dallas Street;

Collin Street @ US Highway 377, one (1) sign halting westbound traffic on Collin Street;

Timberview Court @ Stonecrest Road, one (1) sign halting eastbound traffic on Timberview Court;

Westover Court @ Stonecrest Road, one (1) sign halting eastbound traffic on Westover Court;

Sam Davis Road @ Stonecrest Road, one (1) sign halting eastbound traffic on Sam Davis Road.

Cochran Street @ Whispering Trails, one (1) sign halting northbound traffic on Cochran Street.

Old Town Blvd. North @ US Highway 377, one (1) sign halting westbound traffic on Old Town Blvd. North.

Old Town Blvd. South @ US Highway 377, one (1) sign halting westbound traffic on Old Town Blvd. South.

Thornridge Court @ Thornridge Circle, one (1) sign halting northbound traffic on Thornridge Court.

Old Justin Road @ US Highway 377, one (1) sign halting eastbound traffic on Old Justin Road.

C. Taylor Road @ Old Justin Road, one (1) sign halting southbound traffic (turning east) on C. Taylor Road.

Village Way @ Harrison Lane, two (2) signs halting both east and westbound traffic on Village Way.

Village Way @ Hearth Terrace, one (1) sign halting southbound traffic on Village Way.

Village Way @ US Hwy 377, one (1) sign halting westbound traffic on Village Way.

Hearth Terrace @ Harrison Lane, one (1) sign halting westbound traffic on Hearth Terrace.

Harrison Lane @ Village Way, one (1) sign halting southbound traffic on Harrison Lane.

Myrtle Drive @ Boonesville Bend, one (1) sign halting northbound traffic on Myrtle Drive.

Myrtle Drive @ FM 407 E, one (1) sign halting southbound traffic on Myrtle Drive.

5T Ranch Road @ Country Club, one (1) sign halting northbound traffic on 5T Ranch Road.

Appaloosa Run @ 5T Ranch Road, one (1) sign halting eastbound traffic on Appaloosa Run.

Pegasus Ridge Road @ 5T Ranch Road, one (1) sign halting eastbound traffic on Pegasus Ridge Road.

Pegasus Ridge Road @ Big Sky Way, one (1) sign halting westbound traffic on Pegasus Ridge Road.

Travelers Terrace @ Big Sky Way, one (1) sign halting westbound traffic on Travelers Terrace.

Travelers Terrace @ 5T Ranch Road, one (1) sign halting eastbound traffic on Travelers Terrace.

***YIELD SIGNS:***

C. Taylor Road @ Old Justin Road, one (1) sign warning southbound traffic (turning west) on C. Taylor Road.

Cook Street @ Boonesville Bend, one (1) sign warning eastbound traffic entering the traffic circle.

Nora Road @ Ellison Trace, one (1) sign warning westbound traffic entering the traffic circle.

Ellison Trace @ Boonesville Bend, one (1) sign warning westbound traffic entering the traffic circle.

***LANE USE TURN CONTROL SIGNS:***

AISD High School Campus drive @ US Hwy 377, one (1) sign mandating no left turns for traffic exiting the campus.

US Hwy 377 @ AISD High School Campus drive, one (1) sign mandating no left turns for traffic entering the campus.

Cook Street @ AISD School Campus drive, one (1) sign mandating no left turns for traffic exiting the campus between the hours of 7:00 a.m. and 9:00 a.m. and 3:00 p.m and 5:00 p.m. on school days.”

Section 3. That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect; provided, however, that the ordinance or ordinances under which the cases currently filed and pending in the Municipal Court of the Town of Argyle, Texas, shall be deemed repealed only when all such cases filed and pending under such ordinance or ordinances have been disposed of by a final conviction or a finding not guilty or nolo contendere, or dismissal.

Section 4. If any section, article, paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any person or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. The fact that the present ordinances and regulations of the Town of Argyle, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency which requires that this ordinance become effective from and after the date of its passage, and it is accordingly so ordained.”

PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS on this 27th day of September, 2016.

APPROVED:

\_\_\_\_\_  
Peggy Krueger, Mayor

ATTEST:

\_\_\_\_\_  
Kristi Gilbert, Town Secretary

APPROVED AS TO FORM:

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Matthew C.G. Boyle  
Town Attorney



# Volume By Time Report

For Town of Argyle on 9/8/2016 at 2:52 PM

Generated by Chief William Tackett  
 Location: Boonesville Bend, 400 Bonnesville Bend, E  
 Time View: By Date (Total Volumes)  
 Notes:

Time of Day: 0:00 to 23:59  
 Dates: 8/9/2016 to 9/9/2016 (Su, M, T, W, Th, F, Sa)  
 Speed Bin Range: 1 to 100

Date	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total Vehicles
8/24/2016	0	0	0	0	0	0	0	0	29	14	7	9	10	24	23	32	28	31	33	9	11	4	0	0	264
8/25/2016	0	2	0	0	1	1	8	26	35	16	13	19	12	25	23	35	40	21	14	13	33	6	2	0	345
8/26/2016	1	0	1	1	1	2	11	28	37	14	17	10	12	23	19	69	32	18	10	9	4	5	0	0	324
8/27/2016	0	1	0	1	1	1	1	4	17	9	22	15	22	15	10	12	9	17	6	9	0	1	1	21	195
8/28/2016	8	3	0	0	1	0	0	0	6	10	6	14	17	7	7	13	15	3	11	4	6	2	2	0	135
8/29/2016	0	0	0	1	0	1	18	28	27	13	7	4	10	20	20	42	34	21	18	11	8	16	1	0	300
8/30/2016	0	0	1	1	0	4	6	17	33	17	11	10	12	24	15	44	23	20	17	22	26	4	2	0	309
8/31/2016	0	0	1	1	0	0	13	27	33	14	8	6	8	38	25	45	35	29	25	9	5	4	2	0	328
9/1/2016	0	1	0	1	1	3	14	32	33	17	11	10	13	19	24	21	41	19	15	15	9	3	0	0	302
9/2/2016	0	0	0	2	0	0	20	23	35	16	12	5	6	29	34	36	29	13	14	4	4	5	3	0	290
9/3/2016	20	4	3	0	2	0	0	2	14	8	20	11	7	14	18	5	13	8	3	5	6	3	2	1	169
9/4/2016	0	0	0	0	1	1	1	0	5	7	4	14	11	6	3	7	3	10	8	2	8	4	3	1	99
9/5/2016	1	0	0	1	0	0	1	2	9	3	9	10	5	14	18	8	9	6	9	8	2	0	1	0	116



# Volume By Time Report

For Town of Argyle on 9/8/2016 at 2:52 PM

Generated by Chief William Tackett  
 Location: Boonesville Bend, 400 Bonnesville Bend, E  
 Time View: By Date (Total Volumes)

Time of Day: 0:00 to 23:59  
 Dates: 8/9/2016 to 9/9/2016 (Su, M, T, W, Th, F, Sa)  
 Speed Bin Range: 1 to 100

Date	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total Vehicles
9/6/2016	0	0	0	1	0	1	8	30	31	18	8	8	9	22	18	39	19	16	27	24	28	16	1	0	324
9/7/2016	0	0	1	1	2	4	10	37	32	14	12	18	10	33	25	38	23	37	25	8	10	4	0	0	344
Total # Vehicles	30	11	7	11	10	18	111	256	376	190	167	163	164	313	282	446	353	269	235	152	160	77	20	23	3,844



# Volume By Time Report

For Town of Argyle on 9/8/2016 at 2:52 PM

Generated by Chief William Tackett

Location: Boonesville Bend, 400 Boonesville Bend, E

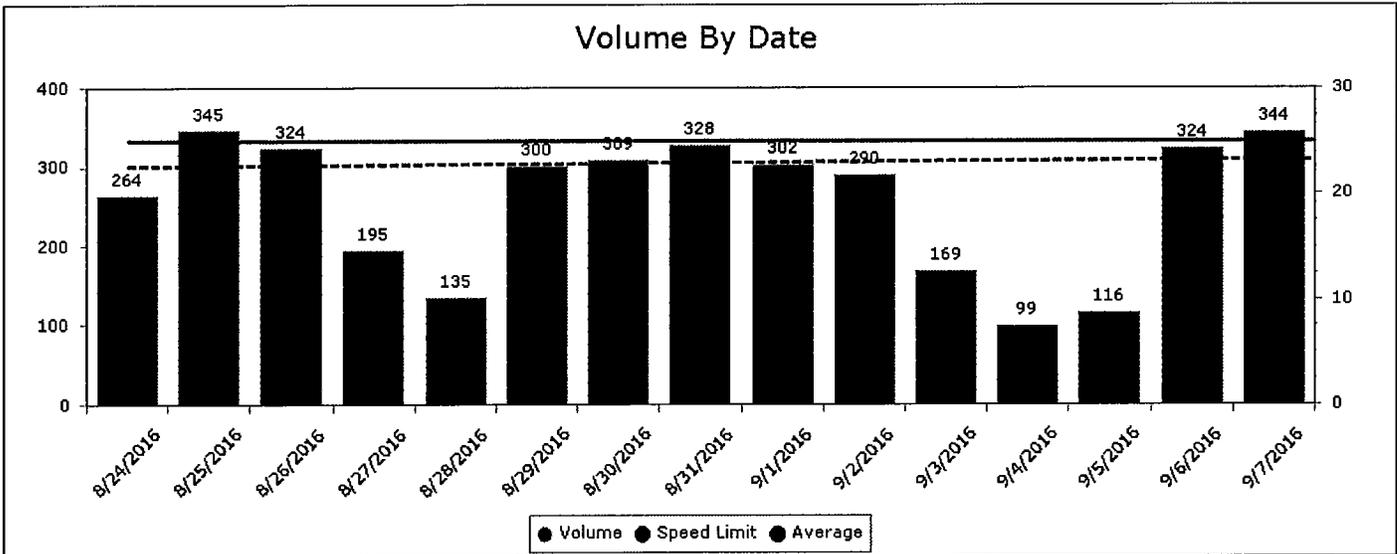
Time View: By Date (Total Volumes)

Time of Day: 0:00 to 23:59

Dates: 8/9/2016 to 9/9/2016 (Su, M, T, W, Th, F, Sa)

Speed Bin Range: 1 to 100

### Volume By Date





# Volume By Time Report

For Town of Argyle on 9/8/2016 at 2:56 PM

Generated by Chief William Tackett  
 Location: Myrtle, Myrtle, S  
 Time View: By Date (Total Volumes)  
 Notes:

Time of Day: 0:00 to 23:59  
 Dates: 7/25/2016 to 8/24/2016 (Su, M, T, W, Th, F, Sa)  
 Speed Bin Range: 1 to 100

Date	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total Vehicles
7/25/2016	0	0	0	0	1	0	0	0	3	16	35	13	19	24	15	12	10	31	26	19	22	15	5	2	268
7/26/2016	0	3	0	2	0	0	0	0	0	0	21	21	17	12	19	14	21	24	27	23	14	19	8	4	249
7/27/2016	3	0	0	1	0	0	0	0	16	12	24	20	33	15	21	26	24	31	29	22	19	12	5	6	319
7/28/2016	2	3	0	0	2	0	0	0	0	28	32	18	26	9	33	26	16	36	25	17	23	9	14	5	324
7/29/2016	0	0	0	0	0	0	0	0	3	18	32	16	15	20	21	28	27	30	15	8	17	9	10	5	274
7/30/2016	0	0	0	0	0	0	0	0	0	0	10	27	8	16	5	25	19	14	25	11	14	10	7	5	196
7/31/2016	2	0	0	0	0	0	0	0	0	0	4	16	8	15	15	22	11	19	13	3	14	2	8	0	152
8/1/2016	0	2	3	1	0	0	0	0	0	0	11	38	48	28	35	19	25	66	26	13	23	12	8	2	360
8/2/2016	3	0	0	2	0	0	0	0	0	0	12	39	47	19	33	32	19	57	31	23	27	10	10	1	365
8/3/2016	4	1	0	0	0	0	0	0	0	0	15	42	23	20	34	37	18	22	27	11	16	19	5	0	294
8/4/2016	0	0	0	0	0	0	0	0	0	0	16	26	21	26	15	36	20	29	37	25	23	6	4	0	284
8/5/2016	1	0	0	1	0	0	0	0	0	0	11	48	25	27	22	66	24	46	22	23	27	6	17	6	372
8/6/2016	0	2	0	0	1	0	0	0	0	0	14	15	34	24	13	20	18	17	13	30	18	16	12	19	266



# Volume By Time Report

For Town of Argyle on 9/8/2016 at 2:56 PM

Generated by Chief William Tackett  
 Location: Myrtle, Myrtle, S  
 Time View: By Date (Total Volumes)

Time of Day: 0:00 to 23:59  
 Dates: 7/25/2016 to 8/24/2016 (Su, M, T, W, Th, F, Sa)  
 Speed Bin Range: 1 to 100

Date	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total Vehicles
8/7/2016	4	0	0	0	0	0	0	0	0	0	10	11	14	13	10	18	14	25	20	8	8	9	4	5	173
8/8/2016	7	1	0	0	1	0	0	0	0	0	13	54	23	31	18	28	42	44	43	33	29	1	2	1	371
8/9/2016	0	0	0	0	0	0	0	0	0	14	24	41	24	12	42	23	38	58	59	14	14	14	3	3	383
8/10/2016	0	0	0	1	0	0	0	0	0	0	12	38	21	23	34	29	30	40	27	19	27	7	8	3	319
8/11/2016	4	0	2	0	1	0	0	0	0	0	23	61	43	32	46	46	24	38	37	13	14	15	5	5	409
8/12/2016	0	0	0	0	0	0	0	0	0	0	21	34	24	14	21	32	40	47	21	10	15	6	6	6	297
8/13/2016	3	0	0	0	0	0	0	0	0	6	22	21	26	22	11	18	11	7	8	12	14	8	8	2	199
8/14/2016	0	0	0	0	0	0	0	0	0	0	22	14	18	21	13	31	20	21	16	22	10	5	11	2	226
8/15/2016	0	0	0	0	0	0	0	0	0	12	22	13	22	21	26	45	42	67	30	19	11	7	4	0	341
8/16/2016	4	1	0	0	0	0	0	0	0	16	30	12	37	22	31	59	80	81	39	32	18	9	4	6	481
8/17/2016	0	0	0	0	0	0	0	0	0	0	4	22	30	26	40	61	31	62	30	27	16	18	1	2	370
8/18/2016	2	0	0	0	0	0	0	0	0	21	21	28	25	38	17	29	74	142	54	16	15	11	2	3	498
8/19/2016	2	1	0	0	0	0	0	0	2	44	33	0	0	11	13	0	0	0	0	0	0	0	0	0	106
8/20/2016	0	0	0	0	0	0	0	0	0	0	0	20	24	19	16	18	20	26	13	20	20	12	6	1	215
8/21/2016	10	5	0	3	1	1	0	1	9	12	8	11	25	20	10	20	11	26	18	10	3	4	1	0	209



# Volume By Time Report

For Town of Argyle on 9/8/2016 at 2:56 PM

Generated by Chief William Tackett  
 Location: Myrtle, Myrtle, S  
 Time View: By Date (Total Volumes)

Time of Day: 0:00 to 23:59  
 Dates: 7/25/2016 to 8/24/2016 (Su, M, T, W, Th, F, Sa)  
 Speed Bin Range: 1 to 100

Date	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	Total Vehicles
8/22/2016	0	0	0	2	0	2	37	69	77	29	2	0	0	16	28	36	28	75	31	18	23	8	3	0	484
Total # Vehicles	51	19	5	13	7	3	37	70	110	228	504	719	680	596	657	856	757	1,181	762	501	494	279	181	94	8,804

Volume By Date

