

ORDINANCE NO. 2022-___-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING A REQUEST TO USE AN APPROXIMATELY TEN-FOOT (10') WIDE STRIP OF LAND LOCATED WITHIN PUBLIC LAND DESIGNATED AS A FUTURE PARK OR RECREATION AREA THAT WILL ALLOW (I) A PORTION OF THE REQUIRED PARKING SPACES FOR THE PROSPER INDEPENDENT SCHOOL DISTRICT EARLY CHILDHOOD LEARNING CENTER TO BE LOCATED PARTIALLY ON THE PARK TRACT, AND (II) THE UTILIZATION OF PARKING SPACES LOCATED IN WHOLE OR IN PART ON THE DISTRICT TRACT FOR PATRONS OF THE PARK TRACT FOR THE MUTUAL BENEFIT OF THE FUTURE NEIGHBORHOOD PARK PROJECT AND THE ADJACENT PROPERTY OWNER PROSPER INDEPENDENT SCHOOL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR NO VESTED INTEREST; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

WHEREAS, land legally described as Lot 1, Block X, The Highlands at Westridge Phase 4, an Addition to the City of McKinney, Collin County, Texas, was dedicated to the City of McKinney Parks, Recreation and Open Space Department (“Department”) for a neighborhood park (the “Park Tract”); and

WHEREAS, the Park Tract is located adjacent to Lot 1, Block W, the Highlands at Westridge Phase 4, an Addition to the City of McKinney, Collin County, Texas, that is owned by Prosper Independent School District and is currently being developed for an Early Childhood Learning Center (the “District Tract”); and

WHEREAS, the City of McKinney (“City”) frequently works with school districts situated within the City’s corporate limits to obtain neighborhood park sites adjacent to school sites and often-times install playground equipment and park facilities at such neighborhood park sites to provide a greater public benefit through such cooperation; and

WHEREAS, the Prosper Independent School District (“PISD”) has similarly cooperated with the City to allow access to a school’s parking areas and playground equipment and across the school site to City-owned neighborhood park sites to provide a greater public benefit through such cooperation; and

WHEREAS, the Park Tract and the District Tract are abutting and adjoining tracts of land (the “Properties”); and

WHEREAS, the City requires that the various uses within the City’s corporate limits including schools provide sufficient off-street parking spaces to accommodate the amount of traffic volume anticipated for each such use based on a combination of conditions; and

WHEREAS, the District Tract needs an additional ten foot (10’) wide strip of land along its eastern property line, which property line is the abutting and adjoining property line with the Park Tract, in order to construct all of the parking spaces required for the Early Childhood Learning Center; and

WHEREAS, the constraints of the District Tract do not provide any alternatives for required parking that will allow PISD to provide the additional twenty-five parking spaces and two handicap parking spaces necessary to park the Early Childhood Learning Center; and

WHEREAS, the City and PISD have maintained an ongoing mutual benefit of sharing parking spaces between City neighborhood parks and PISD elementary schools; and

WHEREAS, the peak usage for parking for park patrons is during the evening and weekend hours when the PISD learning center being constructed on the District Tract is typically closed; and

WHEREAS, Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing regarding the use or taking of public park land, after which public hearing the governing body must determine that no feasible and prudent alternative to the use or taking of public park land exists, and that the proposed use or taking includes all reasonable planning to minimize the harm to the land as a park resulting from the use or taking proposed; and

WHEREAS, Notice of the Public Hearing was duly served and published in conformity to Chapter 26 of the Texas Parks and Wildlife Code; and

WHEREAS, the City Council of the City of McKinney, Texas, held a public hearing on July 19, 2022, regarding the encroachment of a portion of PISD's required parking spaces upon and across mutual boundary line between the Park Tract and the District Tract during which public hearing all interested persons had the opportunity to testify and present relevant evidence before City Council.

NOW THEREFORE BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS:

Section 1. All of the above premises are found to be true and correct legislative and factual determinations of the City Council of the City of McKinney and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. The City Council of the City of McKinney, Texas, after public notice and public hearing as required by law, and upon due deliberation and consideration of all testimony and information submitted during said public hearing, has determined that there is no feasible and prudent alternative to the use of an approximately ten-foot (10') wide strip of City-owned park land for the construction of twenty-five (25) parking spaces plus two (2) handicap parking spaces that will encroach approximately ten feet (10') across and upon the western boundary of the Park Tract as more fully depicted in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law.

Section 3. The City Council of the City of McKinney, Texas has further determined that the use of an approximately ten-foot (10') wide strip of City-owned park land for the construction of twenty-five (25) parking spaces plus two (2) handicap parking spaces as depicted in Exhibit A includes all reasonable planning to minimize harm to the use of the Park Tract as a park, which harm may result from such use.

Section 4. The City Council of the City of McKinney agrees to allow the conveyance of a Reciprocal Parking Agreement and the construction of twenty-five parking spaces plus two handicap parking spaces that will encroach approximately ten feet (10') across and upon the western boundary of the Park Tract for the future neighborhood park abutting the eastern boundary of the District Tract for the PISD Early Childhood Learning Center for the mutual benefit of the City and PISD as more fully depicted in Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law.

- Section 5. The City Council of the City of McKinney hereby authorizes the City Manager to execute the Reciprocal Parking Agreement with PISD that is attached hereto as Exhibit B and incorporated herein by reference for all purposes allowed by law.
- Section 6. If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.
- Section 7. It shall be unlawful for any person, firm or corporation to develop this property, or any portion thereof, in any manner other than is authorized by this Ordinance, and upon conviction therefore, shall be fined any sum not exceeding \$2,000.00, and each day that such violation shall continue shall be considered a separate offense. These penal provisions shall not prevent an action on behalf of the City of McKinney to enjoin any violation or threatened violation of the terms of this Ordinance, or an action for mandatory injunction to remove any previous violation hereof.
- Section 8. That no developer or property owner shall acquire any vested interest in this Ordinance or specific regulations contained herein. The ordinance, and the subsequent site plans (if any) and regulations may be amended or repealed by the City Council of the City of McKinney, Texas, in the manner provided by law.
- Section 9. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and shall become effective upon such publication.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS ____ DAY OF _____, 2022.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

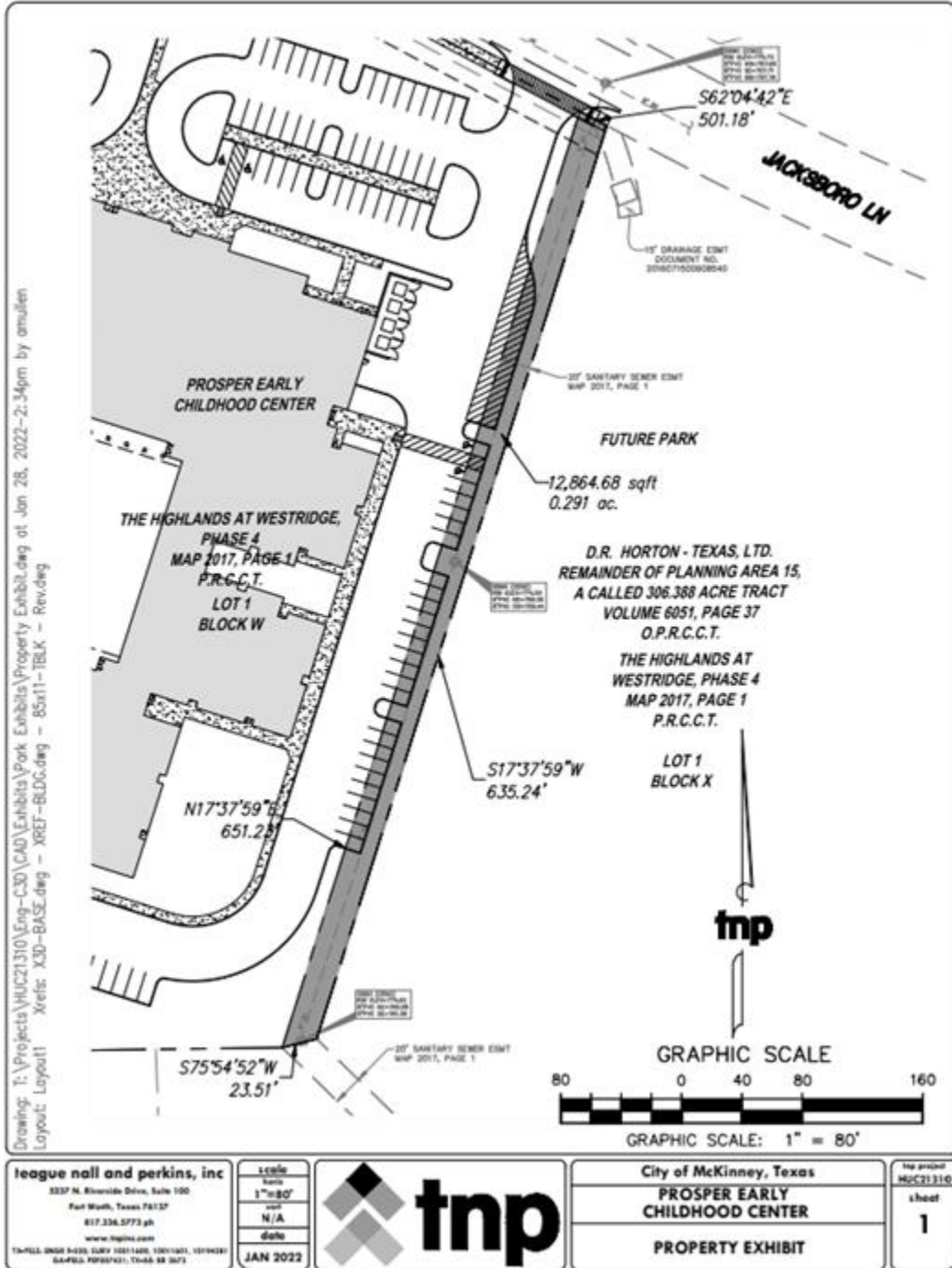
DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT A

Depiction of Encroaching Parking Spaces



Drawing: T:\Projects\MUC21310\Eng-C30\CAD\Exhibits\Park Exhibits\Property Exhibit.dwg at Jan 28, 2022--2:34pm by amullen
 Layout: Layout1 Xrefs: X:3D-BASE.dwg - XREF-BLDG.dwg - B5x11-TBLK - Rev.dwg

league nall and perkins, inc
 3337 N. Riverside Drive, Suite 100
 Fort Worth, Texas 76137
 817.336.5773 ph
 www.lnpi.com
TW: (817) 336-5773, (817) 336-5773, (817) 336-5773, (817) 336-5773
 644-465, 644-465, 644-465, 644-465

Scale
 Units
 1" = 80'
 Date
 N/A
 delfe
 JAN 2022



City of McKinney, Texas
PROSPER EARLY CHILDHOOD CENTER
 PROPERTY EXHIBIT

Map Project
 MUC21310
 sheet
1

EXHIBIT B

AFTER RECORDING RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
McKinney, Texas 75069

RECIPROCAL PARKING AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

THIS RECIPROCAL PARKING AGREEMENT (this "Parking Agreement") is made and executed to be effective as of the ____ day of _____ 2022, by the City of McKinney, Texas, a Texas municipal corporation ("the City") and the Prosper Independent School District (the "District" or "PISD").

WHEREAS, The City owns the tract of land situated in the City of McKinney, Collin County, Texas, legally described as:

Lot 1, Block X, The Highlands at Westridge Phase 4, an Addition to the City of McKinney, Collin County, Texas, (the "Park Tract"),

WHEREAS, PISD owns the tract of land situated in the City of McKinney, Collin County, Texas, legally described as:

Lot 1, Block W, the Highlands at Westridge Phase 4, an Addition to the City of McKinney, Collin County, Texas (the "District Tract").

WHEREAS, the City of McKinney frequently works with school districts situated within the City's corporate limits to obtain neighborhood park sites adjacent to school sites and often-times install playground equipment and park facilities at such neighborhood park sites to provide a greater public benefit through such cooperation; and

WHEREAS, school districts situated within the City's corporate limits also cooperate with the City to allow access to a school's parking areas and playground equipment and across the school site to City-owned neighborhood park sites to provide a greater public benefit through such cooperation; and

WHEREAS, the Park Tract and the District Tract are abutting and adjoining tracts of land (the "Properties"); and

WHEREAS, the City requires that the various uses within the City's corporate limits including schools provide sufficient off-street parking spaces to accommodate the amount of traffic volume anticipated for each such use based on a combination of conditions including by example, and not by way of limitation, the type of use involved, the square footage of the structure's floor space, the maximum occupancy of the structure, or the number of tables and chairs for customers that are contained in the structure; and

WHEREAS, the District Tract needs an additional ten foot (10') wide strip of land along its eastern property line, which property line is the abutting and adjoining property line with the Park Tract, in order to construct the required number of parking spaces; and

WHEREAS, the City and PISD have maintained an ongoing mutual benefit of sharing parking spaces between City neighborhood parks and PISD elementary schools; and

WHEREAS, the peak usage for parking for park patrons is during the evening and weekend hours when the PISD learning center being constructed on the District Tract is typically closed; and

WHEREAS, The City and the District have agreed to bind and obligate the Park Tract and the District Tract one to the other to share parking spaces in order to provide sufficient parking for all the collective uses contained on the Properties.

NOW THEREFORE, for and in consideration of the foregoing and the benefits provided to each of the Properties, the receipt of which benefit is hereby acknowledged, the City and the District do hereby agree, as follows:

Section 1. Recitals

The foregoing recitals are found to be true and correct and are fully incorporated into the body of this Parking Agreement and become a part hereof.

Section 2. Parking Privilege

The City and the District desire to establish a shared parking agreement by and between the District Tract and the Park Tract that will allow (i) a portion of the required parking spaces for the PISD learning center to be located partially on the Park Tract, and (ii) the utilization of parking spaces located in whole or in part on the District Tract for patrons of the Park Tract. This Parking Agreement is subject to all matters of record and previously existing uses that may be situated upon and within the Park Tract.

Section 3. Amendment.

This Parking Agreement shall not be amended, modified, or revised in any way, shape, form, or manner nor shall its provisions be countermanded or rescinded by any other form or fashion in the absence of the express prior written approval of the City and the PISD.

Section 4. Binding Effect.

This Parking Agreement shall be binding upon and shall inure to the benefit of the owners of the Properties together with their respective representatives, successors, and assigns.

Section 5. Change in Use.

The City and the District specifically understand and agree that this Parking Agreement may be used by the District to satisfy in part the City's requirements regarding the provision of necessary off-street parking facilities. District understands and agrees that upon the occurrence of any change in ownership or change in use of the District Tract to a non-PISD use shall result in the automatic revocation of this Parking Agreement and the necessity to remove the parking spaces encroaching upon the Park Tract and the restoration of the Park Tract as nearly as possible to its pre-construction state. In this regard it is specifically understood and acknowledged that this Parking Agreement does not act as a waiver or variance of any law, regulation or requirement of the United States, the State of Texas, the County of Collin or the City of McKinney, Texas.

Section 6. Remedies.

In addition to any and all other remedies available to the parties regarding any breach or violation of this Parking Agreement, the City shall have the further right to revoke the Certificate of Occupancy for the then existing use(s) on the Properties that were altered or used in violation of this Parking Agreement.

EXECUTED to be effective on this the _____ day of _____, 2022.

CITY OF MCKINNEY, TEXAS, a Texas municipal corporation

By: _____
Paul G. Grimes
City Manager

ATTEST:

By: _____
EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

**PROSPER INDEPENDENT SCHOOL
DISTRICT**

By: _____
Dr. Greg Bradley
Deputy Superintendent

EXHIBIT A
Location of Shared Parking Spaces

