

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> March 25, 2014		<b>DATE SUBMITTED:</b> March 10, 2014	
<b>DEPARTMENT OF ORIGIN:</b> Economic Development		<b>SUBMITTED BY:</b> Frank Clark	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consider adopting a Resolution creating a Single Family Housing Home Builders Incentive Program pursuant to Chapter 380 of the Texas Local Government Code to offer builders economic incentives to construct single family, site built homes in the size range of 2,200 to 3,000 square feet of heated and cooled area; and authorizing the City Manager or his designee to execute Chapter 380 Agreements with qualified homebuilders.			
<b>SUMMARY STATEMENT:</b> The Chapter 380 Program (Program) is necessary to incentivize builders to construct residential homes in the target range of 2,200 to 3,000 square feet of heated and cooled area. During the past five (5) years, there has been a yearly average of twenty-seven (27) building permits obtained in the target range.			
<p>The proposed Program would allow the City Manager to execute Chapter 380 Agreements with home builders providing incentives for homes built in the targeted range of 2,200 to 3,000 square feet of heated and cooled area. Incentives would include waiving building permit fees, water and sewer tap fees (up to 30 homes), and entry fee rebates for homes (up to 7 homes) entered in the 2014 Spring and/or Fall Bryan/College Station Home Builder's Association "Parade of Homes". Conditions for the program are as follows:</p> <ul style="list-style-type: none"> <li>• the home heated/cooled square footage must be in the target range of 2,200 to 3,000 square feet;</li> <li>• the certificate of occupancy (CO) must be obtained within seven (7) months after building permits are obtained;</li> <li>• homes must be built within the city limits of Bryan;</li> <li>• permit applications must be submitted with all residential plan requirements;</li> <li>• waiving of tap fees (Water and Sewer) limited to domestic use only, include only ¾ inch meters (max. credit of \$400), 4-inch sewer taps (max. credit of \$350), and excludes irrigation meters, and,</li> <li>• the homes must be single family,</li> </ul>			
Note that the City Council/City Manager reserves the right to limit the time period for offering free building permits.			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> The proposed program includes zero cash up front by waiving building permits and tap fees. Rationale for the program is if the number of building permits is increased by ten (10) in 2014, the loss in permit/tap fee revenue would be in the order of \$50,250. However, the increase in BCAD taxable value would yield a payback in lost permit revenue in approximately 2 ½ years.			
The Parade of Homes entry fee rebate, at \$700 each, will encourage builders to enter homes in the spring and fall Parade of Homes. The Parade of Homes will attract home buyers and realtors alike to the City. There are typically			

two to three homes built in the City per year that is included in the Parade of Homes. As such, the goal is to attract additional homes with the maximum rebate amount of \$4,900 for the entire program.

Staff recommends approval of the proposed Chapter 380 Program. The proposed program requires zero up-front City funding for the free building permits and minimal funding for the Parade of Homes entry rebate program. This proposed Chapter 380 Program gives the City the capability to spur growth in the targeted home sizes in residential development.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve the Resolution creating the Chapter 380 Program.
2. Modify the terms of the Chapter 380 Program and the Resolution, which may require consideration at a future City Council meeting.
3. Deny approval of the Chapter 380 Program Resolution and provide direction to City staff.

**ATTACHMENTS:**

1. The proposed Resolution and Chapter 380 Program

**FUNDING SOURCE:** General Fund.

**APPROVALS:** Hugh R. Walker, 03/12/2014

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 03-13-2014

**APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 03-17-2014**

Revised 05/2013

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, ESTABLISHING A PROGRAM UNDER TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 TO PROVIDE ECONOMIC INCENTIVES TO ENCOURAGE NEW HOME CONSTRUCTION; AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS TO PROVIDE INCENTIVES TO QUALIFIED NEW HOME BUILDERS, AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS**

**WHEREAS**, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with Chapter 380 of the Texas Local Government Code, the City hereby establishes such a program to provide incentives and financial assistance to Homebuilders to encourage and promote the construction of new single family, site built homes in the mid-size target range of 2,200 – 3,000 square feet of heated and cooled area inside the City of Bryan, thereby enhancing and stimulating business and commercial activity within the City limits; and

**WHEREAS**, the promotion of new construction of mid-size housing stock in the City promotes economic development within the City and is essential for the continued economic growth of the City; and

**WHEREAS**, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within the City, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

**WHEREAS**, such construction will create employment opportunities for carpenters, roofers, electricians, and related trades; and

**WHEREAS**, the development of the New Homes, as defined in Section I, will contribute to the economic development of the City by: providing housing for individuals, and families wishing to relocate in Bryan and create business startups or find employment in the area; increasing real property value and tax revenue for City; and have both direct and indirect positive impact on, and provide an overall improvement/stimulus to, the local and state economy; and

**WHEREAS**, City desires to promote the beneficial impact anticipated by new home construction; and

**WHEREAS**, City desires to offer incentives to encourage Home Builders to construct in the City of Bryan new single family, site built homes in the 2,200 - 3,000 square foot size, pursuant to the terms of this Program and in a manner that is consistent with City's economic development plan; and

**WHEREAS**, this instrument incorporates the terms under which the City and New Home Builders may execute and enter into an agreement to set forth certain terms and obligations of City and

New Home Builders with respect to such matters, including any grant payment, rebate or other incentives made to New Home Builders of certain City funds for New Home Builders investment, and construction of New Homes; and

**WHEREAS**, all agreements under this Program are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

**WHEREAS**, the all conditions precedent for this Program to become effective, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

**WHEREAS**, the City Council hereby adopts these recitals by Resolution and authorizes the City Manager to execute agreements to make certain economic development grants and incentives to New Home Builders in recognition of the positive economic benefits which will accrue to City through New Home Builders' efforts to develop Property as described in this Program.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRYAN, TEXAS, THAT:**

**SECTION I  
NEW HOME CONSTRUCTION PROGRAM ESTABLISHED**

Pursuant to Texas Local Government Code Chapter 380, City Council hereby establishes a program to encourage new home construction as follows:

**A. DEFINITIONS**

**“Agreement”** means a separate Chapter 380 Agreement between the City and an approved New Home Builder providing for the waiver of fees and Grant Payments under this program.

**“Development Regulations”** means provisions of City’s Code of Ordinances, including but not limited to International Building Codes adopted by City, relevant to new home construction.

**“Grant Payments”** means City’s payments to New Home Builders under this program.

**“Platted Lot”** means a lot located within the City limits of the City of Bryan, Texas that has been platted in accordance with the City of Bryan’s Subdivision Regulations.

**“New Home Builder”** means the builder of a New Home Construction.

**“New Home Construction” or “New Home”** means the construction of a new single family detached dwelling, of 2,200 – 3,000 square feet, heated and cooled area, on a vacant Platted Lot, when such construction is initiated on the Speculation by New Home Builder that the new home will be sold.

**“Property”** means one or more Platted Lots.

**“Real Property Improvements”** means improvements to real property for which BCAD assesses a value.

**“Site Built Construction”** means a home that is constructed or assembled on site with exterior walls made out of brick, brick veneer, wood, HardyBoard, vinyl or similar materials. The term does not include HUD approved manufactured housing or Modular Housing.

**“Speculation”** means without a contract or other commitment that the new home will be purchased upon completion.

**“Year”** for the purposes of this Agreement, shall begin on the date this Agreement is executed and shall end on December 31, 2014, and on December 31<sup>st</sup> of each successive year thereafter.

**B. PROJECT REQUIREMENTS**

**1. Description of the Property.** Properties eligible for Incentives under this Program must be platted and of such configuration to allow New Home Construction in accordance with development regulations.

**2. Development and Construction of New Homes.** New Home Construction shall be Site Built Construction.

**C. INCENTIVES**

New Home Builders in full compliance with the requirements of this Program may be eligible for Grant Payments and Waiver of Fees as follows

**1. Fee Waiver.**

- a) The City may waive building permit fees.
- b) The City may waive tap fees (Water and Sewer) in the City of Bryan service area as follows:
  - (i) **In a new subdivisions:** City may waive tap fees (Water and Sewer) for domestic use for ¾ inch meters ( up to \$400) and 4-inch sewer taps ( up to \$350). This waive of TAP fees will not apply to irrigation meters.
  - (ii) **In existing subdivisions and infill development:** Waiver of Tap fees is limited to the base fee, only and will not include long side taps.

**2. Parade of Homes Entry Fee Rebate:**

- a) The Bryan-College Station Home Builders Association (BCSHBA) organizes two Parade of Homes annually; one in the Spring and one in the Fall. The City may refund to an approved Home Builder up to 100% of the cost of entry fees for participation of one or more New Home Construction in a BCSHBA Parade of Homes, up to a total not-to-exceed amount of \$4,900 annually, subject to availability of funds.

**D. SEPARATE AGREEMENT.** The City will provide for the waiver of fees and the payment of Grant Payments under this program to be made pursuant to a separate Chapter 380 agreement (“ the Agreement”) with an approved Home Builder.

**SECTION II  
GRANT APPLICATION**

The New Home Builders Grant Application period shall be open for a period of 12 months from the effective date of this resolution. The program will renew annually, subject to annual appropriation.

**SECTION III  
GRANT APPROVAL PROCESS**

An Applicant shall submit a completed application and fee to the Director of Economic Development. The Application shall be reviewed by the Director of Economic Development or his designee, not later than fifteen (15) business days after submission. If an application is incomplete or if additional information is required, the Director of Economic Development shall notify the Applicant in writing of such request with a deadline to submit such requested information. The Applicant shall provide a complete application or the requested additional information, as the case may be, within the stated time period or the application shall be deemed withdrawn. The Director of Economic Development will notify the New Home Builder in writing if the application is denied or approved, and if approved, the City Manager may execute an Agreement, in substantially the same form as **Exhibit "A"** with the New Home Builder without further action by this Council to be necessary.

**SECTION IV  
APPEAL PROCESS**

Any applicant who is denied participation in the program may appeal such denial to City Council. The grievance shall be placed on the next available agenda of City Council. Approval of an application and participation in the program is discretionary with the City Council, and the program may be suspended, terminated, or modified at any time regardless of availability of City funds or pending applications on file.

**APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Bryan, Texas, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**ATTEST:**

**CITY OF BRYAN:**

\_\_\_\_\_  
Mary L. Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton City Attorney

**EXHIBIT "A"**

**CITY OF BRYAN, TEXAS**

**CHAPTER 380 HOME BUILDER INCENTIVE PROGRAM AGREEMENT**

The City of Bryan, Texas, a Texas Home Rule Municipality, (hereinafter "City") acting by and through its City Manager in accordance with the authority delegated pursuant to Resolution No.\_\_\_\_, passed and approved on \_\_\_\_\_2014, and \_\_\_\_\_(hereinafter "Home Builder").hereby enter into a Chapter 380 Agreement for Home Builder Incentive Program ("Agreement") as follows:

**SECTION I  
THE PROJECT**

- A. **Term.** The term of this Agreement shall begin upon execution by both parties and shall continue for a period of 18 months, unless terminated sooner as provided herein.
  
- B. **Terms and Conditions Incorporated.** All terms, definitions, and conditions of Resolution No.\_\_\_\_\_, are incorporated herein
  
- C. **The Project.** The Project location and description, for which Incentives are granted is described in the application submitted by Home Builder.

**SECTION II  
INCENTIVES**

A. New Home Builders in full compliance with the requirements of this Program may be eligible for Grant Payments and Waiver of Fees as follows (Select applicable):

**1. Fee Waiver.**

- a) The City may waive building permit fees.
  
- b) The City may waive tap fees (Water and Sewer) in the City of Bryan service area as follows:
  - (i) **In a new subdivisions:** City may waive tap fees (Water and Sewer) for domestic use for ¾ inch meters ( up to \$400) and 4-inch sewer taps ( up to \$350). This waive of TAP fees will not apply to irrigation meters.
  
  - (ii) **In existing subdivisions and infill development:** Waiver of Tap fees is limited to the base fee, only and will not include long side taps.

The City will keep a running total of all fees waived for Homebuilder pursuant to this Agreement.

**2. Parade of Homes Entry Fee Rebate:**

a) The Bryan-College Station Home Builders Association (BCSHBA) organizes two Parade of Homes annually; one in the Spring and one in the Fall. The City may refund to an approved Home Builder up to 100% of the cost of entry fees for participation of one or more New Home Construction in a BCSHBA Parade of Homes, up to a total not-to-exceed amount of \$4,800 annually, subject to availability of funds. Reimbursement shall be paid by City to Homebuilder within 30 days of the Parade of Homes show.

**SECTION III  
CONDITIONS FOR REFUND ELIGIBILITY**

- A. **Complete Construction.** No Rebate Payment or Fee Waiver shall be due under this Agreement unless and until all improvements are made to the Property, a certificate of occupancy has been issued for the main structure on the Property.
- B. **Single Family Improvements.** Fee Waivers and Rebate Payments may only be paid under this Agreement for new single family, detached residential dwelling of 2,200 – 3,000 square feet, heated and cooled area, of site built construction.
- C. **Payments Subject to Appropriation of Funds.** All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made. In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to Homebuilder for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that Homebuilder in its sole discretion, shall have the right but not the obligation to terminate this Agreement.

**SECTION IV  
COVENANTS AND WARRANTIES**

- A. **Home Builder's Covenants, Warranties, Obligations and Duties.** Home Builder agrees to timely and fully comply with all of the terms and conditions of this Agreement Any false or substantially misleading statement contained in Homebuilder's application or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Home Builder. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Home Builder.
  - 1. Home Builder is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.
  - 2. The execution of this Agreement has been duly authorized by Home Builder's general partner, and the individual signing this Agreement is the manager of the general partner, empowered to execute such Agreement and bind the partnership.

3. No litigation or governmental proceeding is pending or, to the knowledge of Home Builder or Home Builder's officers, threatened against or affecting Home Builder that may result in any material adverse change in Home Builder's business, properties or operation.

4. There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Home Builder has not been informed of any potential involuntary bankruptcy proceedings.

5. To its current, actual knowledge, Home Builder has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Bryan, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

## **SECTION V**

### **Breach, Recapture and Termination.**

A. **Breach.** It shall be a breach of this Agreement if:

1. Completion of the New Home Construction and a certificate of occupancy has not been issued for the main structure on the Property within seven (7) months.

2. In the event of a breach, Homebuilder shall be notified in writing that it is in breach. Homebuilder will have thirty (30) days in which to cure the breach. In the event the breach is uncured, this agreement may be terminated and the City is entitled to payment from Homebuilder equal to the running total of fees that have been waived pursuant to this Agreement.

B. **Termination.** City, under the following circumstances, and at its sole discretion, may suspend its obligations under this Agreement or terminate this Agreement and all future payment obligations shall automatically cease upon any one of the following events, which are an Act of Default:

1. The appointment of a receiver of Home Builder, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

2. The adjudication of Home Builder as a bankrupt.

3. The filing by Home Builder of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

## **SECTION V.**

### **MISCELLANEOUS PROVISIONS**

A. **Miscellaneous.**

1. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives,



9. No Waiver. City's failure to take action to enforce this Agreement in the event of TAP's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

10. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

11. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

**Executed and effective on this the \_\_\_\_ day of \_\_\_\_\_, 2014.**

**CITY OF BRYAN:**

**HOMEBUILDER:**

\_\_\_\_\_  
Jason P. Bienski, Mayor

\_\_\_\_\_  
(Name and Title)

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis Hampton, City Attorney