

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: April 14, 2015		DATE SUBMITTED: March 24, 2015	
DEPARTMENT OF ORIGIN: Economic Development		SUBMITTED BY: Frank Clark	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<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
<p>AGENDA ITEM DESCRIPTION: Consideration to continue, and amend, the Single Family Housing-Home Builders Incentive Program approved on March 25, 2014. The proposed changes to the terms of the Home Builders Incentive Program are: (a) require that a slab inspection occur within three (3) months of building permit issuance instead of the requirement to obtain a certificate of occupancy within of seven (7) months of building permit issuance, (b) removes the Parade of Homes rebate from the program (to be considered under separate council action and resolution), and (c) to clarify that “custom homes” are included in the program. All homes must be constructed within the city limits of Bryan.</p>			
<p>SUMMARY STATEMENT: Resolution 3540 was passed unanimously on March 25, 2014, to create a Chapter 380 Program to incentivize builders to construct residential homes in the target range of 2,200 to 3,000 square feet of heated and cooled area. The Program allows the City Manager to execute Chapter 380 Agreements with home builders that allows for waiving building permit fees, and water and sewer tap fees, and provides entry-fee rebates for homes entered in the Spring and Fall Bryan/College Station Home Builder’s Association “Parade of Homes”. The funding for the rebates is capped at \$4,900 annually. Current conditions for the program are as follows:</p> <ul style="list-style-type: none"> • the home heated/cooled square footage must be in the target range of 2,200 to 3,000 square feet; • the certificate of occupancy (CO) must be obtained within seven (7) months after building permits are obtained; • homes must be built within the city limits of Bryan; • permit applications must be submitted with all residential plan requirements; • 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, • the homes must be single family. <p>There has been overwhelming support for the program from citizens, builders, BISD, developers and realtors. Participation in the program includes thirty (30) builders; seven (7) of the participating builders are new to Bryan. The Parade of Homes reimbursement portion of the Program was well received and resulted, presumably, in the builders Parade of Homes participation increasing from three (3) homes in the Spring Parade of 2014 to nine (9) homes later that year in the Fall Parade.</p> <p>Prior to the implementation of the Program, the five year average (2009-2013) of homes constructed in Bryan with the “Target Range” of 2,200-3,000 square foot of heated/cooled area was twenty-seven (27). Within the first year of the Program (March 25, 2014 – March 24, 2015), an increase of 181% in the “target range” home permits was realized (76 issued versus 27). From January 1, 2014, to December 31, 2014, all single family detached building permits increased by 27% over the previous five (5) year average (2009-2013) from 164 single family “detached” homes to 208 single family “detached” homes by the end of 2014.</p>			

The cost of the program for the first year was \$116,875. The City of Bryan had an additional 49 permits during the first year of the program in the “Target Range” above the previous five (5) year average of 27. If attributing all 49 homes to the program, the payback for the program is 1.6 years. The additional BCAD value of the 49 homes (assuming equal value for all 76 homes in the “Target Range”) is approximately \$11,551,850 or \$72,776 additional in ad valorem taxes per year for the life of the home.

Staff has gathered valuable feedback from participants over the first year of the Program. Some builders have expressed that the requirement to obtain a CO within seven months of building permit issuance has been difficult to achieve. This requirement is particularly true for the larger homes because there is currently a shortage of contractors and the weather in the past year has not been conducive for construction. Many insurance companies that write builders’ risk policies for loss coverage during construction define the house as completed when the CO is obtained from the City. The builder must then obtain an uninhabited single family home insurance policy where the cost of the policy could exceed the savings to the builder from program participation. The intent of this requirement was to set a time limit on the particular home within the Program and avoid having numerous partially completed homes in the city. The proposed modification is to require a slab inspection and approval within three (3) months of building permit issuance. This requirement would satisfy the original intent of preventing abuse of the program and will not penalize the builder if the home does not sell, or if there is excessive inclement weather, or if there is a shortage of contractors.

Additionally, as currently written, the program (Resolution 3540) only allows reimbursement of the parade entry fees for the “Target Range” size homes. It has been suggested that the reimbursements for the parade entrance fees be changed to include all sizes of homes. Resolution 3540 is structured only for homes in the “Target Range”. Modifying the reimbursement for parade fees to include all size homes requires a separate program and resolution. The original intent of the parade fee reimbursement was to promote home participation in the Bryan-College Station Home Builders Association “Parade of Homes” and showcase new homes within the city of Bryan. Including all size homes in the rebate program increases the number of home buyers looking in the city of Bryan.

The original intent of the program was to include both custom and speculative homes. Clarification needs to be made in the resolution under the definitions of “New Home Construction” to where the words “as a custom” are added.

STAFF ANALYSIS AND RECOMMENDATION: Staff recommends continuing the Single Family Housing-Home Builders Incentive Program and approve the following proposed modifications: (a) require a slab inspection and approval within three (3) months of building permit issuance instead of requiring a certificate of occupancy within seven (7) months of building permit issuance, (b) removal of the rebates for “Target Range” homes in the Parade of Homes constructed in the city of Bryan and (c) clarify that custom homes are included in the program.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve continuing the Home Builders Incentive Program and Resolution and accept modifications;
2. Modify the terms of the Home Builders Incentive Program and Resolution, which may require consideration at a future City Council meeting: or
3. Deny continuing the Home Builders Incentive Program and Resolution and provide direction to City staff.

ATTACHMENTS:

1. The proposed Resolution and Chapter 380 Program

FUNDING SOURCE: General Fund and Enterprise Fund revenues are potentially impacted by the waiver of permit fees and tap fees.

APPROVALS: Hugh R. Walker, 04/06/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 04-06-2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis Hampton, 04-06-2015

Revised 05/2013

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, REPEALING RESOLUTION NO 3540; APPROVING AN AMENDED 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.

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, on March 25, 2014, under the authority of Chapter 380 of the Texas Local Government Code, the City adopted Resolution No. 3540 establishing 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, the City Council wishes to amend certain terms of program and the Chapter 380 Home Builder Incentive Agreement to include the removal of the requirement that a certificate of occupancy be obtained within seven (7) months to be replaced with a requirement that a slab inspection be performed and passed within 90 days of obtaining building permit, and to remove the Parade of Homes Rebate from this program; and

WHEREAS, this Resolution incorporates the amended 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, 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 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.

“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 as a custom or on 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, fiber cement siding/board, 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 mean fiscal year.

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 the 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 waiver 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.

D. SEPARATE AGREEMENT. The City will provide for the waiver of fees under this program to be made pursuant to a Chapter 380 Agreement(“ the Agreement”).

**SECTION II
GRANT APPLICATION**

The Amended Home Builders Chapter 380 Program shall commence from the effective date of this resolution through September 30, 2015. The program will automatically renew annually, subject to annual appropriation, unless terminated earlier by Resolution repealing this program.

**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.

SECTION V

This resolution shall be effective immediately upon adoption.

PASSED AND APPROVED AT BRYAN, TEXAS THIS ___ DAY OF _____, 2015.

ATTEST:

CITY OF BRYAN:

Mary L. Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton City Attorney

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 _____, 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.

SECTION III
CONDITIONS FOR ELIGIBILITY

- A. **Single Family Improvements.** Fee Waivers may only be granted 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.
- B. **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 by the Home Builder if:
1. A slab inspection is not performed and passed within 90 days of obtaining building permit.
 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.

6. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

7. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

8. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

9. No Waiver. City's failure to take action to enforce this Agreement in the event of Home Builder'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 _____, 2015.

CITY OF BRYAN:

HOMEBUILDER:

Kean Register, City Manager

(Name and Title)

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney