

MEMORANDUM

TO: Honorable Mayor and City Commissioners
FROM: Albert C. Galloway, Jr., City Attorney
Autumn Cochella, Interim Development Services Director
VIA: James Slaton, City Manager
SUBJECT: Ordinance 2023-11
DATE: February 9, 2023

Synopsis: The subject Ordinance 2023-11 is for the purpose of correcting a clerical error in Ordinance 2022-45 which was adopted on October 5, 2022. The error came to light in the process of approval of a project proposed by Advanced Drainage Systems, Inc., (“ADS”) to be located on property currently owned by Hunt Brothers, Inc.

Historical analysis: The subject property owned by Hunt Brothers, Inc., was annexed in to the City in the year 2007 and was given I-1 Industrial zoning.

On March 2, 2022, the City Commission adopted Ordinance 2022-06. The agenda Memorandum dated February 15, 2022, a copy of which is appended hereto, specifically addressed a change to Table 23-421 Permitted Uses to provide that Manufacturing–Heavy is a permitted use. The justification set forth in the Memorandum provides as follows: “2.) In order to open up the city’s industrial zones to heavy manufacturing, it is proposed to change *Manufacturing–Heavy*, from S (special exception use permit), to P (permitted), in the I-1 zoning district.” The change is reflected on Page 15 of 20 of the adopted Ordinance 2022-06.

On October 5, 2022, the City Commission adopted Ordinance 2022-45. The agenda Memorandum dated September 20, 2022, a copy of which is appended hereto, addressed changes to Table 23-421. None of the suggested changes involved any revision to Manufacturing–Heavy. Although no change to this permitted use was suggested, Table 23-421 as found on Page 7 Of 17 of the adopted Ordinance shows an S rather than the previously adopted P as set forth in Ordinance 2022-06. The S is not underlined to indicate it is a change to the prior designation. The change is a clerical error which may be corrected by adoption of Ordinance 2023-11. A clerical error is defined as an error on the part of an office worker, often a secretary or personal assistant, which should be corrected as soon as it is identified.

The City’s Development Services Division initially believed the ADS project required a special exception use permit due to requested outside storage. The special exception use permit requires

a Public Hearing before the City's Planning and Zoning Board. A Hearing was scheduled for February 9, 2023. A Notice of Hearing was published. Subsequent to the publication, attorney Andrew J. Hand, identified as Special Counsel for the Village of Highland Park, raised several objections to the special exception process and to the notice as being legally insufficient.

City staff then brought in the City Attorney concerning the issues raised. After review of relevant documentation, an opinion was rendered by the City Attorney, a copy of which is appended hereto. Albert C. Galloway, Jr., advised that in light of Ordinance 2022-06 designating Manufacturing–Heavy as a permitted use, along with other relevant portions of the City's development regulations, special exception permitting for the project was not required. The opinion was subsequently provided to Mr. Hand who then brought up Ordinance 2022-45 which had changed Table 23-421 designating Manufacturing–Heavy as a use requiring a special exception permit.

The City Attorney then provided a follow up letter, a copy of which is appended hereto, rescinding the prior opinion.

Ordinance 2023-11 has been prepared in order to restore the original intent of the City Commission in establishing Manufacturing–Heavy as a permitted use by right. The only revision to Table 23-421 is found on Page 8 of 13. The Ordinance serves to correct the clerical error which occurred in preparation of Ordinance 2022-45 for consideration and adoption by the City Commission.

Recommendation: That the City Commission adopt Ordinance 2023-11.

Attachments: Ordinance 2023-11

City Commission Agenda Memorandum dated February 15, 2022

City Commission Agenda Memorandum dated September 20, 2022

City Attorney Opinion letter dated February 7, 2023

City Attorney letter dated February 8, 2023, rescinding prior opinion