

Village Board of Aldermen
**Regularly Scheduled Board of Aldermen
Meeting Minutes**

Municipal Building, 301 N. Stagecoach Rd.
Thursday, August 19, 2010 6:00pm

Members present: Merle Stalcup, Stephen Peters, Danney McCort, Susan Terry, Carol Walls, Bryan Fritch

Members Absent:

Others Present: Dianna Zulauf – Village Secretary, Debbie Charbonneau – Tourism Director, Jack Hensley – Chief of Police, citizens: 2

Mayor Stalcup called the meeting to order at 6:00, quorum present.

The Pledge of Allegiance and the Texas Pledge of Allegiance were recited. Mayor Stalcup gave the invocation.

Citizen Comments: None

Alderman Fritch made a motion to approve the previous meeting minutes dated August 5th. Motion was seconded by Alderman McCort, motion carried unanimously.

Chief of Police Report: Chief Hensley reported 176 calls for service during July, 98% inside the city and 2% outside. Average response time was 5 minutes 16 seconds; 16 alarm calls.

Report from Tourism Chair: Director Charbonneau presented the Tourism Tidbits one-page newsletter the tourism department puts together each month giving dates for upcoming events, retail shop news, etc.

The Visitor Center is now open in its new location on Main Street in the William Reed historical log cabin.

Unfinished Business:

1. Amend Zoning Ordinance Use Chart to Include "Sporting Goods Store" as Allowable in Local Retail Districts and to Allow Planning and Zoning Commission to Appoint their Chairman *Second Reading*

The amended Zoning Ordinance was presented. There were no comments from citizens received on the amendment.

Motion was made by Alderman Peters to adopt Ordinance No. 2010.07 as amended. Motion was seconded by Alderman Walls; motion carried unanimously.

New Business:

2. Year-to-Date Financials

Alderman Peters briefly went over the financials and the recently received six month financial from the Fire Department as required by agreement with the department. There were no objections.

3. Amendment to Employee Handbook, Requirements for Using Compensatory Time

Alderman Fritch explained that the current employee handbook spoke very little about compensatory time and presented the Board with a revision to that section. There are three employees currently with exempt status as defined by the Fair Labor Standards Act. The Board directed the Mayor to have a meeting with the three employees and come up with a revision that would work best and bring this issue back to the Board at a later date.

Motion was made by Alderman Fritch to table this issue pending further research. Motion was seconded by Alderman Peters; motion carried unanimously.

4. Sign Variance Request by Ace Hardware

Russell Allen, Manager for Kieth's Ace Hardware, requested a variance to the sign ordinance allowing them to place two illuminated signs on the old Brookshire Brothers building, now Ace Hardware. This variance is required due to the space being part of a multi-tenant complex.

Motion was made by Alderman Fritch to grant the variance as requested. Motion was seconded by Alderman Walls; motion carried with 4 ayes and 1 no, Alderman Peters.

5. Establish Proposed Property Tax Rate for 2010

Alderman Peters explained that the effective tax rate established by the Bell County Tax Appraisal District for Salado is .0486 and the tax rate currently on the proposed 2010-2011 budget is .0492, which would create a tax rate increase of 1.234%. A home valued at \$100,000.00 would see an increase in property taxes of \$.60/year.

Motion was made by Alderman Peters to adopt a property tax rate of .0492 for the budget year of 2010-2011. Motion was seconded by Alderman Fritch; motion carried unanimously.

6. Proposed Hotel/Motel Budget Amendment First Reading

Alderman Peters explained that state law indicates that Hotel/Motel spending cannot exceed the budget and the current financials indicate that may happen without an amendment. A draft budget amendment was presented with a few changes by Alderman Peters. The amendment would increase the expenditure budget by \$41,300.00, making the total budget for expenditures for the fiscal year \$280,000.00.

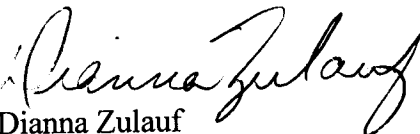
Announcements:

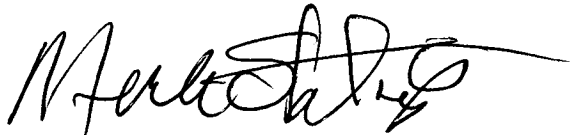
1. Next scheduled Board meeting is September 2, 2010 at 6:00PM. This will be the first of two public hearings on the proposed 2010-2011 budgets.

Adjourned at 6:43PM.

For copies of all handouts, please contact the Village office at 947-5060.

Respectfully submitted,


Dianna Zulauf
Village Secretary


Merle Stalcup
Mayor

SALADO POLICE DEPARTMENT
July 2010 Activities

POLICE

Calls for service	176
Percentage in the city	98%
Percentage out of the city	2%
Offenses	10
Average response time	5.16
Arrest	6
Motor Vehicle Accidents	7
Alarm calls	16
Residential:	13
Business:	3

Citations: 77

	Charge	Location
2	Speeding	Royal
1	loud noise	"
1	No driver's license	"
1	Public Intoxication	Center Circle
6	Speeding	Baines
1	Expired Motor Vehicle Registration	"
1	No seat belt	"
1	Ran stop sign	Mill Creek
1	Expired Motor Vehicle Inspection	"
1	No Vehicle Registration	"
1	No seat belt	FM 2268
1	Fail to signal turn	"
3	Speeding	"
2	No driver's license	"

1	No vehicle registration	“
3	No liability insurance	“
1	Loud noise	“
7	Ran stop sign	Thomas Arnold at Robertson
1	Loud noise	“
1	No driver’s license	“
2	Fail to signal turn	“
1	Expired MVR	“
1	No liability insurance	“
2	Ran stop sign	Thomas Arnold at Stagecoach
1	Defective equipment	Stagecoach
1	No driver’s license	“
1	Possession of drug paraphernalia	“
1	No liability insurance	“
2	No driver’s license	Main street
1	No seat belt	“
3	No liability insurance	“
1	defective equipment	“
2	Expired MVI	“
16	Speeding	“
1	Possession of drug paraphernalia	“
1	Ran stop sign	“
1	Expired MVI	“
1	Expired MVR	“
1	Animal running at large	Blaylock Ct

Citizen on Patrol Salado
26 Man Hours

- Police Chief Contract with the village expires in 90 days



Project: Use Chart Amendment, Board of Aldermen

Location:

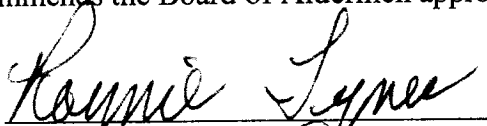
PLANNING & ZONING COMMITTEE

Date met: July 12, 2010

From: Ronnie Tynes, Chair

To: Village of Salado Board of Aldermen

The Planning & Zoning Commission met today at their regularly scheduled meeting to consider a request by the Salado Board of Aldermen, to amend the zoning ordinance Use Chart to include "Sporting Goods Store" in the Local Retail District. The P&Z have determined that this request does meet the conditions or/and intent of the Comprehensive Plan. The P&Z recommends the Board of Aldermen approve the request as submitted.



Ronnie Tynes, Chair

VILLAGE BOARD OF ALDERMEN

In consideration of the recommendation by the P&Z Committee, the Village of Salado Board of Aldermen

_____ approves _____ denies

The zoning Use Chart amendment request to include Sporting Goods Store in Local Retail Districts.

Mayor Merle Stalcup

ATTEST:

Dianna Zulauf
Village Secretary

Date

Village of Salado
Planning & Zoning Commission Meeting
Tuesday, July 13, 2010 @ 1:30PM
301 N. Stagecoach Rd.

Members Present: Ronnie Tynes, Gerry Reihsen, Tom McMahan, Jerry Johns

Members Absent: Dick Prater

Others Present: Dianna Zulauf, Bob Mitchell w/Mitchell & Assoc, Gary Soloski w/Lucy's Restaurant, Kathryn Campbell w/Celebration Center, Hulda Horton

Chair Ronnie Tynes called the meeting to order at 1:30PM. A quorum was present.

1. Request to Amend Zoning Ordinance Use Chart to Include "Sporting Goods Store" in Local Retail
A notice of this amendment was put in the newspaper. There were no citizen comments submitted to the Village.
Motion was made by Gerry Reihsen to amend the Zoning Ordinance Use Chart to include "Sporting Goods" as allowable in Local Retail districts. Motion was seconded by Jerry Johns; motion carried unanimously.
2. Conditional Use Permit Request by Celebration Center to Sell Beer, Wine, and Mixed Beverages in Historical District
A notice of this request was put in the newspaper and mailed to property owners within 200 feet of 218 Royal Street. There were no citizen comments submitted to the Village.
Motion was made by Jerry Johns to grant the Conditional Use Permit request by Ms. Campbell and allow her to sell beer, wine, and mixed beverages within the Historic District. Motion was seconded by Gerry Reihsen; motion carried unanimously.
3. Replat of 409 Salado Plaza Dr., Lucy's Restaurant
A replat combining two pieces of property into one is required in order to meet Bell County Health Departments requirements for septic use. Mitchell & Associates presented a replat doing that. The Village Engineer, John Simcik, has reviewed the plat and has no objections.
Motion was made by Gerry Reihsen to recommend approval of the replat known as VHF Addition as submitted. Motion was seconded by Jerry Johns; motion carried unanimously.

Meeting adjourned at 1:07PM.

Respectfully submitted,

Dianna Zulauf
Village Secretary

**Ordinance No. 2010.
Village of Salado
County of Bell
State of Texas
July 15, 2010**

AN ORDINANCE OF THE VILLAGE OF SALADO, TEXAS, AMENDING THE ORDINANCE ESTABLISHING ZONING REGULATIONS WITHIN THE VILLAGE OF SALADO (2003.12); PROVIDING FOR AN EFFECTIVE DATE, REPEALER, AND PROVIDING FOR A SEVERABILITY CLAUSE

WHEREAS, after notice and hearing required by law, a public hearing was held before the Planning and Zoning Commission of the Village of Salado, Texas (“Planning and Zoning Commission”) on the 18th day of ~~March~~ 2008, at which public testimony was invited and information was considered for and against proposed amendments to the Zoning Ordinance of the Village of Salado; and

WHEREAS, the Planning and Zoning Commission recommended approval of the proposed amendments by a vote of ~~5 ayes, 0 nays~~, to 0 *abstentions*; and

WHEREAS, after public hearing held by the Board of Aldermen of the Village of Salado, Texas on the 3rd day of ~~April~~ 2008, the Board of Aldermen voted to accept the recommendation of the Planning and Zoning Commission; and

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code, the Village of Salado has the authority to make amendments to the Zoning Ordinance;

WHEREAS, the Board of Aldermen previously enacted Ordinance No. 2003.12 on September 18, 2003, which was later amended by Ordinance No. 2003.14 on December 11, 2008, Ordinance No. 2005.03 on March 3, 2005, Ordinance No. 2005.12 on September 29, 2005, Ordinance No. 2006.15 on July 20, 2006 and by Ordinance No. 2006.19 on December 7, 2006, Ordinance No. 2008.11 on April 3, 2008; and

WHEREAS, the Board of Aldermen of the Village of Salado deems it in the best interest of the Village of Salado to amend said Ordinance No. 2003.12 in its entirety and for said Ordinance No. 2003.12, to be replaced in its entirety as follows:

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS:

SECTION 1. The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. Ordinance No. 2003.12 is amended in its entirety and shall read as provided in Attachment "A" attached hereto and incorporated herein as if fully set forth for all purposes.

SECTION 3. That this Ordinance shall become effective after its passage.

SECTION 4. This Ordinance, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other Village ordinances or regulations. Except to the extent they apply to obligations and violations arising prior to the enactment of this Ordinance, this Ordinance expressly repeals Ordinances No. 2003.12, 2003.14, 2005.03, 2005.12, 2006.15, ~~and 2006.19,~~ and 2008.11.

SECTION 5. In the event that any one or more of the provisions, clauses, or words of this ordinance or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provisions, clauses, or words of this ordinance or the application thereof to any other situations or circumstance and it is intended that this ordinance shall be severable and that it shall be construed and applied as if such invalid or unconstitutional clause, section, provision, or word had not been included herein.

SECTION 6. That the meeting at which this Ordinance was enacted, was open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of the meeting was given as required by the Texas Open Meetings Act.

PASSED AND APPROVED this, the 3rd day of April, 2008, by a ___ (ayes) to ___ (nays) and ___ (abstentions) vote of the Board of Aldermen of Salado, Texas.

VILLAGE OF SALADO

Rick Ashe, Mayor

ATTEST:

Dianna Zulauf, Village Secretary

Village of
Salado
Texas

ZONING ORDINANCE

~~April 2008~~ June 2010

Attachment "A"

5. Members of the Planning and Zoning Commission may be removed from office at any time by a simple majority vote of the full Board of Aldermen either upon its own motion or upon recommendation of the Planning and Zoning Commission. Failure to attend three (3) consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family. A vote to remove a Commission member shall be placed on the appropriate agenda as a regular item, and shall be voted upon accordingly.
6. The members of the Commission shall regularly attend meetings and public hearings of the Commission, shall serve without compensation, and shall not hold any other office within, or serve as an employee of, the Village while serving on the Commission. The Commission shall meet a minimum of once per month at a time established by the Board of Aldermen. If there have been no applications filed for review by the Commission, the Village Secretary shall notify the Chairman and no meeting shall be required for that month.
7. ~~The Board of Aldermen shall appoint a Chairperson and a Vice-Chairperson shall be appointed by from among the Commission membership, and each officer shall hold office for one (1) year or until replaced by a simple majority vote of the full ZBA or full Board of Aldermen.~~ The Mayor/Village Administrator's designee shall serve as Secretary to the Commission, and shall keep minutes of all meetings held by the Commission as well as the full record of all recommendations made by the Commission to the Board of Aldermen.
8. The Commission shall have the power to make rules, regulations and bylaws for its own governance, which shall conform with those set forth by the Board of Aldermen, and such rules, regulations and bylaws shall be subject to approval by the Board of Aldermen. Such rules and bylaws shall include, among other items, provisions for the following:
 - a. Regular and special meetings, open to the public;
 - b. A record of its proceedings, to be open for inspection by the public;
 - c. Reporting to the Board of Aldermen and the public, from time to time and annually; and
 - d. Reviewing the Comprehensive Plan on a regular basis.

C. Parliamentary Procedure; Quorum; Voting:

1. The Commission will follow the parliamentary procedure adopted by the Board of Aldermen, and procedures shall not be in conflict with the laws applicable to the Commission on the following:
 - a. **Quorum** - A quorum shall consist of a majority of the membership of the Commission, and any issue to be voted upon shall be resolved by a majority of those members present.
 - b. **Voting** - All Commission members, including the Chairperson, shall be entitled to one vote each upon any question, a quorum being present. Voting procedures shall be in accordance with the parliamentary procedures adopted by the Board of Aldermen.
 - c. **Conflict of Interest** - If any member has a conflict of interest regarding any item on the Commission's agenda, that member shall remove himself or herself from the room and shall refrain from voting only on the item for which a conflict exists. Refer to Chapter 171 of the Texas Local Government Code and any applicable Village ethics policies or regulations.

Permitted Uses	Residential Uses						Non-Residential Uses						
	A	SF-21	SF-7	SF-PH	SFA	MF-1	O	HD	LR	RR	MU	BP	C
RETAIL													
Convenience Store (With Gas Sales)									C	P	P	P	P
Convenience Store (Without Gas Sales)								C	P	P	P	P	P
Department Store								C	C	P	C	P	P
Drapery, Blind, Furniture Upholstery Shop								C	C	C	P	P	P
Firearms (in-store and special order)									P				
Florist Shop							C	P	P	P	P	P	P
Food or Grocery Store								C	C	P	P	P	P
Furniture Store, New and Used (Indoor)								C	C	P	P	P	P
Garden Shop (Inside Storage)								C	C	P	P	P	P
Gravestone/Tombstone Sales												P	P
Artisans Shop								P	P	P	C	P	P
Hardware Store								P	P	P	P	P	P
Home Improvement Center										C	C	P	P
Lawnmower Sales and/or Repair									C	C	C	P	P
Major Appliance Sales (Indoor)										P	P	P	P
Market (Public)								C	C	C	C	P	C
Motorcycle Dealer (New and/or Repair)										C	C	P	P
Personal Watercraft Sales (New and/or Repair)										C	C	P	P
Needlework Shop								P	P	P	P	P	P
Pet Shop/Supplies								P	P	P	C	P	P
Pharmacy							C	P	P	P	P	P	P
Plant Nursery (Retail Sales Outdoors)							C	C	C	P	C	P	P
Recycling Kiosk							C	C	C	C	C	P	C
Restaurant (With No Drive-Through Service)							C	P	P	P	P	P	P
Restaurant (With Drive-In Service)									P	P		P	P
Restaurant (With Drive-Through Service)									P	P		P	P
General Retail Store								C	C	P	C	P	P
Security Systems Installation Company								C	C	C		P	C
Sporting Goods Store									P				C
Studio, Tattoo or Body Piercing												C	
Temporary Outdoor Retail Sales / Commercial Promotion								C	C	C	C	C	C
Upholstery Shop (Non-Auto)								C	C	C	P	P	P
Used Merchandise; Furniture								P	P	P	P	P	P
Vacuum Cleaner Sales and Repair									C	P	C	P	P
Veterinarian Clinic (Indoor Kennels)									C	P	C	P	P

excluding the caretaker's own children, and that provides care after school hours for not more than six (6) additional elementary school siblings of the other children given care. However, the number of children, including the caretaker's own, provided care at such facility shall not exceed twelve (12) at any given time. No outside employment is allowed at the facility. This facility shall conform to Chapter 42 of the Human Resources Code of the State of Texas, as amended, and in accordance with such standards as may be promulgated by the Texas Department of Human Resources.

94. **Farms, General (Crops):** An area used for growing usual farm products, vegetables, fruits, trees, and grain and including the necessary accessory uses for raising, treating, and storing products grown on the premises, but not including any type of agriculture specifically prohibited by ordinance or law.
95. **Farms, General (Livestock/Ranch):** An area used for the raising thereon of the usual farm animals such as horses, cattle, and sheep and including the necessary accessory uses for raising, treating, and storing animals on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of husbandry specifically prohibited by ordinance or law.
96. **Feed and Grain Store:** An establishment for the selling of corn, grain and other food stuffs for animals and livestock, and including implements and goods related to agricultural processes, but not including farm machinery.
97. **Fence:** An artificially constructed structure of wood, masonry, stone, etc.(solid or otherwise), which is a barrier and used as a boundary or means of protection, confinement, or concealment
- ~~97.98~~ **Firearms:** (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.
- ~~98.99~~ **Fire Station, Police Station, or Municipal Building:** Any public service building of the municipal government including a library or Village Municipal Building, but excluding storage yards, utility shops and equipment centers.
- ~~99.100~~ **Flood Plain:** An area of land subject to inundation by a 100-year frequency flood as determined using standard engineering practices and generally as shown on the FIRM Flood Insurance Rate Map of the Village of Salado.
- ~~100.101~~ **Floor Area, Gross:** The total gross square feet of floor space within the outside dimensions of a building including each floor level, but excluding carports, residential garages, and breezeways.
- ~~104.102~~ **Floor Area Ratio (FAR):** The floor area of a main building or buildings on a lot, divided by the lot area.
- ~~102.103~~ **Florist Shop:** An establishment for the display and retail sale of flowers, small plants and accessories.
- ~~103.104~~ **Food Processing:** A manufacturing or light industrial use that primarily deals with the processing and packaging of food, such as dairy or grain products that are intended for human consumption, but which are not typically sold in volume to end users on the premises. Incidental retail sales of food products, including bread and baked goods, dairy products such as cheese, created and packaged on the premises may be allowed as an accessory use.



Municipal Employee Handbook

This Employee Handbook has been adopted by the Board of Aldermen to serve as a general guide. It establishes basic procedures and policies and is not intended to be exclusive or comprehensive in nature. This document is provided to employees for informational purposes only and shall in no way be construed as a contract. All employees of the Village of Salado serve at-will; thus, the employment relationship may be terminated at any time by the Village or by the employee, with or without cause, with or without notice. The Board of Aldermen, at its sole discretion, may amend this Handbook without notice to employees.

Village of Salado
P.O. Box 219
Salado, Texas 76571-0219

Adopted August 2002
Revised September 2002
Revised January 2008
Revised January 2009

- a) Overtime will be paid at the premium pay rate for hours worked over 40 hours in the work period for all full-time non-exempt employees.

~~(1) If the employee does not choose to take compensatory time during the same pay period or next pay period in which it occurs, the employee must be paid at one and one-half times the regular rate of pay for the hours worked over 40 hours.~~

(1) Compensatory time may be accrued by an employee through the end of the fiscal year up to a maximum of 240 hours. Compensatory time not taken by an employee by 30 September of each year will be paid to the employee in the first pay period in October. Compensatory time may not be carried over into the next fiscal year. Upon termination of employment any unused comp time will be paid to the employee in their final check.

(2) Comp time cannot be taken in conjunction with other forms of leave.

(3) Comp time cannot be taken in increments less than one hour or more than 80 hours at a time.

(42) All hours worked during a pay period by seasonal employees exempt from overtime, as defined by the Fair Labor Standards Act, will be paid at the employee's regular hourly rate.

(53) For calculating overtime, the work week is considered to be Monday through Sunday.

E. Other Forms of Compensation

1. Acting Status Pay

- a. Any employee who is temporarily assigned to serve and actually serves in a higher level position for a minimum of 30 days will be compensated for the additional duties and responsibilities of the higher level position. The employee must be qualified to perform and must actually perform the range of duties of the higher level

Fair Labor Standards Act

What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) generally provides for minimum wage for employees and that a covered, nonexempt employee must be compensated at a rate of one-and-one-half times his or her regular hourly rate of pay for all hours worked over 40 in a standard seven-day work period.¹ It also provides for exemptions to this general rule.

However, not all employees of a city are affected by the FLSA. Certain employees are not covered by the Act, and some are covered but exempted by a specific provision of the Act. Employees that are not covered by the Act include elected officials and their personal staffs, legal advisors, and bona fide volunteers.² These exemptions will be discussed below.

Is my city required to comply with the FLSA?

Yes. Section 203(s)(1)(C) provides that the FLSA covers all public employees of a state, a political subdivision, or an interstate government agency.³

What is the minimum wage?

The current minimum wage is \$7.25 an hour.⁴

Which employees are required to be paid overtime?

All employers must pay overtime to all “nonexempt” employees if they work more than 40 hours in a seven-day work period. However, some employees are “exempt” and do not have to be paid overtime if they work over 40 hours a week. The exemptions are based on a salary test and the definitions of executive, professional, and administrative employees. An “exempt” employee is not required to be paid overtime, but is paid his salary regardless of the number of hours the employee works.

How can the city differentiate between exempt and nonexempt employees?

Most employees are “nonexempt” and must be paid overtime if they work more than 40 hours in a seven-day work week. The “standard” salary test provides that any employee who earns less than \$455 a week (\$23,660 a year) is automatically entitled to overtime pay, regardless of the employee’s position. On the other hand, an employee who earns more than \$100,000 a year is exempt from overtime compensation, regardless of job classification, under the “highly compensated employee” test.

¹ 29 U.S.C. § 201, *et seq.*

² *Id.* § 203(e).

³ *Id.* § 203.

⁴ *Id.* § 206.

The three primary exemptions for overtime pay are executive, professional, and administrative.⁵ For an employee to be considered exempt under the executive employee test, the employee must: (a) have as a primary duty the management of the enterprise or of a recognized department or subdivision; (b) customarily and regularly direct the work of two or more employees; (c) have authority to hire or fire other employees (or the employee's recommendations as to hiring, firing, promotion, or other change of status of other employees are given particular weight); and (d) be compensated on a salary basis at a rate not less than \$455 a week.⁶

To qualify under the professional employee exemption, an employee must have as a primary duty the performance of office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.⁷ The employee must also be compensated on a salary basis at a rate not less than \$455 a week.

Finally, an employee is exempt under the administrative employee test if the employee: (a) is responsible for the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers; (b) exercises discretion and independent judgment with respect to matters of significance within the organization; and (c) is compensated on a salary or fee basis at a rate no less than \$455 a week.⁸

Whether an employee is exempt is a fact question based on job duties. The city should consult with its city attorney and human resources professional to determine which city employees are exempt from overtime.

How is overtime calculated?

If overtime is paid, it must be not less than one-and-one-half times the regular rate of pay.⁹ The regular rate of pay is the hourly pay of the employee, which must be greater than \$7.25 an hour, plus any other bonuses or pay the employee receives.¹⁰

Do we have to pay overtime if an employee works more than eight hours in a day?

No. Overtime is based on the number of hours worked in a seven-day workweek, not on the amount of hours worked in a single day.

⁵ *Id.* § 213(a)(1).

⁶ *Id.* § 213; 29 C.F.R. § 541.100

⁷ 29 U.S.C. § 213; 29 C.F.R. § 541.300.

⁸ 29 U.S.C. § 213; 29 C.F.R. § 541.200.

⁹ 29 U.S.C. § 207(a).

¹⁰ *Id.* § 207(e).

Do we have to pay overtime or double time if an employee works on a state or federal holiday?

No. Employees must only be paid overtime, one-and-one-half times the regular rate of pay, if the employee is nonexempt and works more than 40 hours in a seven-day workweek. It is generally up to the city to decide whether to pay additional amounts if an employee works on a holiday.

Does the city have to give employees a certain amount of sick, vacation, or other paid time off?

No. Generally the city decides when and how much sick, vacation, and other paid leave to give. However, federal and state laws such as the Family Medical Leave Act, the Americans with Disabilities Act, and laws dealing with the military may require some unpaid time off. A couple of state laws also have some time off requirements. Section 431.005 of the Government Code states that an employee who is a member of the state military forces or the armed forces is entitled to a paid leave of absence of up to 15 working days for authorized training or duty.¹¹ Finally, police and fire employees must be given the same number of days off as other city employees.¹² Also, fire employees must also have September 11th listed as one of their holidays.¹³

What is the difference between a part-time and a full-time employee?

State and federal law generally do not determine what is a full-time or part-time employee, the city's own policy does. Federal law only gets involved if a nonexempt employee works over 40 hours in one week, at which time they must be paid overtime. Many times benefits can be affected by an employee's full-time or part-time status. If the city wonders at which point it must provide benefits, such as health benefits or retirement benefits to its employees, the city should review its personnel policies and contact its benefits providers to see what their requirements are. The Texas Municipal Retirement System can be reached at <http://www.tmr.org/>. The Texas Intergovernmental Employee Benefits Pool can be reached at <http://www.tmliebp.org/>.

Can we pay our employees in compensatory time instead of overtime?

Yes. City employees can be paid in compensatory time (paid time off) instead of overtime. Compensatory time is paid time off, and a nonexempt employee earns one-and-one-half hour of compensatory time for every hour of work over 40 hours in a seven-day work period. However, compensatory time may only be given to employees if the employees agree before beginning work to accept compensatory time off in lieu of overtime through individual agreements or through a collective bargaining agreement.¹⁴

¹¹ TEX. GOV'T CODE § 431.005.

¹² TEX. LOC. GOV'T CODE § 142.0013.

¹³ *Id.*

¹⁴ 29 U.S.C. § 207(o); 29 C.F.R. § 553.23.

When does the city have to pay compensatory time?

The city must allow an employee to use compensatory time off if the employee requests it and the use of the time does not “unduly disrupt” the city’s work.¹⁵ The city also must pay the employee his compensatory time off hours when he leaves employment with the city, regardless of whether he is terminated or quits.¹⁶

How many hours of compensatory time can an individual earn?

An employee who is not engaged in public safety activities can only accrue 240 hours of compensatory time off (160 hours of overtime). If an employee works more than these hours they must be paid overtime wages.¹⁷

Do we have to pay employees for the time they spend waiting “on call”?

This question is a fact-based question and depends on what the employee is required to do during on call time. Issues that weigh towards the requirement of paying on call time include: (1) being required to stay at or near the job site; (2) short response times; (3) limitations on the types of activities that individuals can participate in while on call (for example a prohibition on drinking alcohol); (4) a high number of call ins during on call time; and (5) requiring that the employees respond to a high percentage of calls (for example if only one or two individuals must respond to a high number of calls). Issues that would make paying for on call time voluntary would be: (1) freedom of movement of the employees; (2) longer response times (30 minutes or more is a good limit); (3) no limitations on the activities of those on call; (4) low number of call ins; or (5) allowing individuals who are on call to respond to a limited number or low percentage of call ins. Of course, any time an employee is called in or otherwise works he must be paid for any time actually worked.

Is a city required to provide an employee with a meal break or rest period, and does the city have to compensate an employee who takes such a break?

A city is not required to provide an employee with a meal period or rest period. However, if a city allows an employee to take such a break, whether the break would be compensable depends on the duration of the break and whether the employee worked during the break. A city is not required to compensate an employee for a meal break if the following requirements are met: (1) the employee is completely relieved from performing any job duty; (2) the employee is free to leave the worksite; and (3) the meal break is at least thirty minutes long.¹⁸ Rest breaks, including coffee breaks or smoking breaks, that are between five and ten minutes long are compensable.¹⁹

¹⁵ 29 U.S.C. § 207(o)(5).

¹⁶ *Id.* § 207(o)(4).

¹⁷ *Id.* § 207(o)(3).

¹⁸ See *Bernard v. IBP., Inc.*, 154 F.3d 259, 265 (5th Cir. 1998); 29 C.F.R. § 785.19.

¹⁹ 29 C.F.R. § 785.15.

Can a city deduct from an employee's salary or require an employee to reimburse the city for damage to or loss of city equipment, such as a laptop computer or cellular phone?

It depends on whether an employee is exempt or non-exempt under the Fair Labor Standards Act (FLSA). Section 13(a)(1) of the FLSA provides a complete exemption from minimum wage and overtime for an employee who meets the duties test (administrative, executive, or professional), is paid at a rate of at least \$455 per week, and is compensated on a "salary basis."²⁰ For an employee to be considered paid on a "salary basis," the employee must be paid "a predetermined amount...not subject to reduction because of variations in the quality or quantity of the work performed."²¹ Subject to limited exceptions, the FLSA requires an exempt employee to receive the full salary for any week in which the employee performs any work, regardless of quantity or quality of work.²² Making deductions from the salary of an exempt employee's pay for any reason, other than for what is provided for under the regulations, would result in a violation of the "salary basis" rule and a loss of the employee's exempt status.²³

Recently, the Department of Labor (DOL) held that a deduction from the salary of an exempt employee for the loss, damage, or destruction of the employer's property is an impermissible deduction, and would destroy the employee's exempt status because the employee's salary would not be "guaranteed" or paid "free and clear."²⁴ This holds true even if an employer and an employee have entered into an agreement that the employer will deduct for any damages, or that the employee will receive the full salary and the employer will seek a reimbursement.²⁵ With regard to nonexempt employees, the DOL opined that a policy allowing an employer to deduct from the salary of a nonexempt employee for damages would be valid as long as the employee's pay does not go below the minimum wage.²⁶

Is a city council authorized to give an employee a bonus?

Cities are prohibited from granting extra compensation to an employee after her services have been rendered.²⁷ However, a city is authorized to correct improper payments. For example, if an employee who is classified as nonexempt under the Fair Labor Standards Act (overtime) was not properly compensated for his or her overtime work, back pay may be proper to remedy that situation. However, if a city gives longevity pay or some other pay that is included in the budget and is offered to the employee before the work is performed, such extra pay may be permissible. Please consult with local legal counsel regarding specific cases.

²⁰ 29 U.S.C § 213(a) (1); 29 C.F.R. § 541.600(a).

²¹ 29 C.F.R. § 541.602(a).

²² *Id.*

²³ 29 C.F.R. §§ 541.602; 541.710.

²⁴ Dep't Labor Op. FLSA2006-7 (2006).

²⁵ *Id.*

²⁶ *Id.*

²⁷ TEX. CONST. art. III, § 53; *Fausett v. King*, 470 S.W.2d 770, 774 (Tex. Civ. App.—El Paso 1971, no writ).

Resources

Department of Labor:

<http://www.dol.gov/compliance/laws/comp-flsa.htm>

FLSA Fact Sheets:

<http://www.dol.gov/whd/fact-sheets-index.htm>

FLSA Statute:

<http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

FLSA Regulations:

http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm

FLSA Poster:

<http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>

LM- May 2010

Village of Salado

~~City of Nolanville~~

Proposed Budget Revision, Hotel/Motel Tax Fund
For the Year Ending September 30, 2010

ACCOUNT	Current Budget	Proposed Increase	Proposed Decrease	Revised Budget
5112 Salary (Assistant)	15,000	1,468		16,468
5115 Overtime/Parttime	7,000	5,000		12,000
5175 Office Equip. & Maint.	3,000	4,500		7,500
6520 Way Finding Signage	6,910	6,000		12,910
6551 Founders Day	3,000	24,332		27,332
		41,300		
Total Expenditures, Original Budget				238,700
Amendment				41,300
Revised Total Expenditures				280,000