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**[Address Redacted]**

**WINNSBORO, TX. 75494**

August 3, 2020

A LETTER TO THE CITY COUNCIL AND THE PLANNING AND ZONING  
COMMISSION OF THE CITY OF WINNSBORO, TEXAS

Ladies and Gentlemen:

I am the owner of a building located within the proposed Historic Overlay District Ordinance (No. 1029-2020).

I write to oppose the adoption of the proposed ordinances 1029-2020 (Historic Overlay District), 1030-2020 (Regulations and Administration of Historic Districts), and 1027-2020 (Vacant Building Ordinance). I have been a resident of Winnsboro for forty years and raised two children here. For thirty of the forty years, I was the City Attorney of the City of Winnsboro. I retired for health reasons in 2011, but I remain a licensed attorney and a member of the State Bars of Texas and Tennessee.

For continuity, I will divide my letter into three sections: First, the Historical District ordinances, No. 1029-2020 and No.1030-2020; Second, the Vacant Building Ordinance, No. 1027-2020; and Third, a brief conclusion.

I. Ordinances 1029 and 1030

Most functional towns and cities have a mixture of new and old buildings consistent with the growth or needs of the town during its history. The proposed districts currently have such a mix of the old and the new, yet even the relatively new will be subsumed under the Historical District rubric and made to conform to its regulations and rules. Further with the

effort " to freeze the structures in amber" by these ordinances, that functional evolutionary blending of old and new will effectively end except in the unlikely event that a structure is demolished under the onerous terms of the ordinances. Even then, the erection of a new structure must comply with layer upon layer of regulations and bureaucracy. It has become a truism that regulations and bureaucracy equal costs.

It was represented to you that these ordinances were adapted from the similar ordinances of the City of Fredericksburg. I have spoken with a number of citizens and officials of Fredericksburg about their ordinance and our proposed ordinances. I learned that their ordinance was carefully thought out over a period of years.

One gentleman inquired about our "historical surveys," telling me that Fredericksburg had done 3 historical surveys by architectural historians and others from the State of Texas who catalog and grade potential historical districts so it is known what buildings have historical significance within the district and what level of significance they have.

For example, a building with significant historical architectural features and with actual historical significance, as for example, a building with finely adorned parapets and spires from the 19th century, plus actual history that it was the law office of Governor Sam Houston, would be in the highest significance category.

On the other hand, a ten-year-old bank building with no actual recent historical significance would receive the lowest grade and would be free to undertake most alterations its owners choose with only minimal pro forma scrutiny by the Historical Preservation Commission. Only with this survey can it be determined the level of intensity that building owners can expect from the Historical Preservation Commission and its Historical Preservation Officer.

Also, the proposed ordinances call for the City Administrator to appoint a Historical Preservation Officer from among his staff, city officials, or appropriate local residents. I was told by a Historical Preservation member in Fredericksburg that much time and energy was expended in

filling that important position and that the Historical Preservation Commission and others interviewed a number of applicants attracted to the position by widespread advertising, and a person was ultimately hired with a degree in the historic preservation field. Further, it is a full time position.

It is apparent that this ordinance needs further study and input. It is a bit of a shock that the first notice I had that a historical district was being considered was the letter I got notifying me of the hearing. Why did no one come to the owners to ask our thoughts? Some of us are sympathetic to a well considered ordinance, but not to this Frankenstein variety creation seemingly prepared in secret as an August surprise for some 52 residential homes, 94 commercial buildings, one apartment building, 3 church buildings, and the Winnsboro ISD administration building.

Looks like an ordinance that will affect so many would be subject to much more study and advertisement, unless it was conceived and hustled on the agenda in the midst of a pandemic to see who would brave the virus to show up.

The notion that you must make written application to a Historic Preservation Commission and obtain approval to paint your house or building a new color is difficult to swallow. Yet, this is the working reality of what is proposed--only much worse: your paint must be selected from a "Historical Palette," of colors selected by the Historical Preservation Commission or the Historical Preservation Officer who is selected by the City Administrator.

That's only the beginning. To get to the point of your safely buying the paint, the City, acting through the new Commission and its Historical Preservation Officer, must first decide the appropriateness of painting at all, and a detailed application must be submitted (likely with a fee), which must include much data, photographs of your structure and those around it, drawings and more.

The example of painting is the merest tip of the iceberg. Any exterior "new construction, reconstruction, alteration, restoration, exterior new rehabilitation, . . . material change to the light fixtures, signs, sidewalks,

fences, steps, paving, building exterior elements visible from a public right of way. . .which affect the appearance and cohesiveness of the historical district" will be required to get a certificate of appropriateness. The road to such a certificate is long and arduous. Once you apply, the Commission has 45 days to act, then another 30 to write up and send its decision reflecting their action. Thus, your painting or new light fixture could be delayed 75 days from when you complete all the paperwork. This is oppressive and will doubtless prove costly.

The decisions of the Commission can be appealed to the City Council. No such appeal from decisions of the Historical Preservation Officer is contained in the ordinances, even though he is charged with administering the Ordinances. He is chosen by the City Administrator from staff, city officials, or an appropriate resident of the city. It is almost a certainty that the Historical Preservation Officer will be staff or city official, unless it is made a paid position. This vests much too much control of our property in one person: a City Administrator.

In short, the import of the Historical Districts Ordinances, is to make the property owners within the districts mere stewards of their own property, who are without meaningful control of their own property because it will have become the beneficial property of the City of Winnsboro, which offers no economic incentives nor choice to join the district, nor to comply with the rules and regulations that come with the ordinances, or rules and regulations that shall come as adopted by the Historical Preservation Commission.

I urge the Planning and Zoning Commission to deny a recommendation to these two ordinances, I urge the City Council not to pass them.

## II. Ordinance 1027-2020

The Vacant Building Ordinance is fraught with dangers of creating the very evil it purports to seek to correct. In addition, it is sweepingly broad and cynical in its ultimate end game. I strongly oppose this Ordinance.

Vacant Building Ordinances began in larger cities as a method of deterring homeless and the criminal from inhabiting the buildings. A cursory computer search for such a ordinance reveals advertisements by lawyers offering to help cities with such ordinances, and making it implicitly clear that the purpose of the ordinance is to eliminate such vacant structures as part of a scheme of "Gentrification" of vintage neighborhoods, where low income houses and less desirable buildings don't fit into the City's vision for the future of the town. This is unamerican and unfair.

This ordinance seeks to eliminate unoccupied buildings by stigmatizing the buildings and, by association, their owners by, for example, requiring signs on the buildings that are 18 by 24 inches with black letters that must be 1 3/8 inches high and 2 inches wide that say, "VACANT BUILDING." The whole thing must be on a "bright yellow background."

In addition, it must have printed on it the name, address, and telephone number of a 24-hour emergency contact, who will arrive at the building within one hour of being contacted about an emergency. The penalty for not so arriving could be as much as a \$2000 fine. This sign must be posted in a "conspicuous location" on each exterior of the building that faces a public right-of-way.

Though the Ordinance is quite specific about the size and color of letters, the content, and even the background color, the format must nonetheless be approved by the City Administrator. The bright yellow sign with "VACANT BUILDING" on the front of the building harkens back to the "PLAGUE HOUSE" signs of centuries past. It is inconceivable that these signs will do anything other than further discourage the sale or lease of buildings to which they are attached.

In addition, the Ordinance as written criminalizes all vacant buildings but provides certain defenses like, for example, that it was occupied 45 days preceding the date of the alleged offense. This means you may be charged with an offense of maintaining an "unregistered" building, but the City must prove it was not occupied for the 45-day period preceding the alleged date of the offense. Renovation under a city issued permit is another defense, but the building must have been occupied within the 90 day period preceding the alleged offense.

Had this ordinance been adopted a year ago, this defense would not have been available to the new Sinclair Restaurant being renovated these many months with a potential opening date of November. The renovation would have taken too long to satisfy the 90-day occupation requirement of the Ordinance. Too bad. Others who might undertake similar renovations should be forewarned that if it takes more than ninety days, then their unoccupied and unregistered building may subject them to \$2000 a day fines. Welcome to Winnsboro, Entrepreneurs!

The Registration application requires 11 types of information, including information easily available to the City, but nonetheless required, like proof of payment of ad valorem taxes. In addition, the applicant must supply any additional information the City Administrator may decide he needs to help him to decide to issue or deny the application. This is likely a constitutionally inadequate requirement for an ordinance with criminal penalties.

The fee is \$500.00, an amount clearly not related to the cost of issuance of the Certificate of Registration. Thus, the Ordinance is obviously intended to be punitive and financially coercive.

Once you have obtained the Certificate, it must be displayed in a manner approved by the City Administrator. If requested by the City Administrator or a peace officer, you must remove it from the place it was ordered to be displayed by the City Administrator and present it for display to the City Administrator or a peace officer. No form of the Certificate to be issued is called for in the Ordinance.

In addition to all these requirements, an applicant must also provide proof of commercial general liability insurance insuring the City against any liability for claims for damages to persons or property "as a result of or arising out of the registrant's "operation maintenance [sic] or use" of the vacant building.

The aggregate limit of such a policy must be \$2,000,000. It is likely that no such claim was ever made against this City in its history and that no such claim was made against any Texas city in the last century that was successful. Further, my insurance agent tells me he doubts such a policy would be issued by his underwriters. Too, one wonders why the city taxpayers' tax money is going to pay the Texas Municipal League for the City's own liability insurance.

This requirement is cynical harassment of the hapless owner who made the innocent mistake of ownership of a downtown building that he, like so many others cannot sell or lease. This is another example of the ordinance being used to exert economic pressure on the owner of the building to lease or sell it. Yet with all the pressure exerted no mention is made of assistance by the City to remedy the vacant condition it so deplors.

There is a further unhealthiness about this Ordinance. The City Administrator wields almost unbridled power and can make far too many discretionary decisions for a law with criminal sanctions applied. Here are some examples;

1) The City Administrator may determine what information must be provided by a Registration applicant in addition to the 10 categories of information set out in the Ordinance. No limits are set on what additional information may be requested or how long the process could be stalled. Section 3.12.007 (1) k

2) The City Administrator decides whether or not the Certificate will issue based on his sole interpretation of the information provided with the application and his determination of whether or not the applicant was truthful on the application. 3.12.009 (1) a-c

3) If the City Administrator does issue a permit, he alone determines the location and manner of display of the permit by the Registrant. There are no guidelines in the Ordinance for this. 3.12.009 (4)

4) Even though the City Administrator issues the Certificate of Registration and determines where and how it is displayed, he may demand its presentation to him at any time, thus sending the Registrant on a fool's errand.

5) The City Administrator alone determines what is occupancy of a vacant building for purposes of the Ordinance. (Section 3.12.011 (1) c.)

6) The City Administrator (or his designee) who issues and revokes permits) is charged with inspecting a Registered vacant building at least once a year to determine whether or not in his opinion the Registrant has violated the Vacant Building Ordinance or any other city ordinance, state or federal law applicable to the building . 3.12.013

7) The City Administrator decides the format of the bright yellow VACANT BUILDING sign on a registered building. 3.012.014(4)d

8) The vacant building must be maintained up to a particular standard of care subject to approval by the City Administrator. While there are some guidelines as to the standard of care, they are the very things that are apparently subject to approval. 3.12.017 (1)

9) The City Administrator or his designee is authorized to administer and enforce the provisions of this Ordinance. Thus the Administrator has a hand in every part of the process.

10) And the most dangerous discretionary power of all: the" City Administrator or his designee shall have the authority to render interpretations of this title and to adopt policies and procedures in order to clarify the application of its provisions." 3.12.003 (2) (underlining added). Here the Ordinance turns the keys to the City Council over to the City Administrator. He solely decides what the Ordinance means, can adopt policies to effectuate his interpretation, and then he enforces his interpretation.



Instead of fining and prosecuting, and insuring the Owner into bankruptcy because he can't find a tenant or a buyer, why doesn't the City undertake dramatic steps to find buyers and tenants. The Vacant Building Ordinance is like a King flogging a subject because the King is ugly. The problem of vacant buildings downtown cannot be solved by punishing those who want to have their buildings leased but cannot find tenants or punishing those who want to sell but cannot find buyers. Only a vigorous economic development program aimed at the downtown area can turn the vacant building problem around. This Ordinance is cruel and unwieldy. It will prove a practical monster and a tsunami of litigation.

### III. Conclusion

It is absolutely appalling and irresponsible that the City proposes to enact these Ordinances affecting and burdening persons who, prior to Ordinances' enactment, would have done nothing wrong except to own buildings downtown. The vacant buildings have not attracted criminal activity or transient infestations. They have not become so dilapidated as to become a blight on the City.

The City cannot freeze the proposed district in amber. It will lose any potential chance at becoming vital again if saddled with endless layers of regulations and financial burdens. I have spoken to many people within the proposed district and out of it, but I have not found a single person in favor of these Ordinances once the details are explained. It is so true that the devil is in the details.

And could there be a worse time to begin new schemes imposing economic burdens on building owners? Forty million people are out of work nationally. The gross domestic product for the last quarter dropped over 32% the largest drop since such records began in the history of the country. The country is in the grip of a worldwide pandemic, with Texas in the Top 3 states in the mounting daily total of new and existing cases, with each days' death toll exceeding the last day's record.

This is no time to saddle people with more to worry about. In this vein, I would like very much to be at your meetings to tell you all this in person, but my doctors, tell me that if I go and contract Covid-19, I would have virtually no chance of survival; therefore, I'm usually home if you wish to speak with me. My telephone number is (903) 342-6723.

I implore the City Council and the Planning and Zoning Commission to listen to the owners in the proposed historic district and repudiate these ill thought out Ordinances by voting against them.

Respectfully,

/S/

John W. Alexander

Original: City Secretary

Sent via email to all City Council and P&Z Members

cc: City Administrator via email