

Public Safety Officer Memorial Project

Executive Summary

Presented by:

Austin Police Department

Austin Police Department Assistant Chief Al Eells

Austin Police Department Officer Jason Huskins

Assistant City Attorney Brent Lloyd and Kristy Orr

Planning Commission

June 8, 2010

Public Safety Officer Memorial Project

Executive Summary

Under the general direction of the Austin Police Department (APD), the Public Safety Officer Memorial Project consists of placing granite memorials at locations in Austin where a City of Austin Public Service employee was killed in the line of duty. This project was first conceived as an effort to remind the citizens of Austin of the ultimate sacrifice made by Austin Police Officers in the name of public safety, security and well-being. The project later expanded to include all City of Austin Public Safety personnel killed in the line of duty (Fire, EMS and Police). The Memorials will contribute historical value and serve as a place for family, friends and prospective officers to remember their fallen officers. The outstanding tasks listed below need approval for the project's success:

- ☒ **Memorial markers on state highways:** In Senate Bill 2028, the 2009 Texas Legislature authorized memorial markers on Texas Department of Transportation right-of-ways for any peace officers killed in the line of duty on the site the officer was slain. *(Approved and effective as of September 2, 1009)*
- ☒ **Memorial markers on private property:** The City of Austin Law Department, in conjunction with APD, finalized the private property agreement that will allow private property owners to enter into an agreement to have a memorial marker erected onto their property. *(Finalized)*
- ☐ **Memorial markers in the City of Austin right-of-way:** In order to place memorial markers in the City's right-of-way, a code amendment must be made to City Code Chapter 25-10 (Sign Regulations) to allow the placement of memorial markers in the public right-of-way. The proposed amendments should include reasonable requirements to ensure that the design, location, and placement of the memorial markers do not pose a threat to public safety. *(Pending)*

DIRECTION FROM CITY COUNCIL

- On February 4, 2010, City Council approved a resolution initiating amendments to City Code Chapter 25-2 (*Sign Regulations*) to authorize placement of memorial markers in the public right-of-way to honor public safety officers killed in the line of duty.
- Public Works and Planning, Development Review Departments, and Right-of-Way directed to provide insight on safety and right-of-way requirements.
- City Legal was directed to draft amendments to the City Code.
- The Austin Police Department was directed to present draft amendments to the Planning Commission.

RECOMMENDED CHANGE

City Code Section 12-10-3 (*Definitions*)

PART 1. City Code Section 25-10-3 (*Definitions*) is amended to add a new definition of “memorial marker” to read as follows and to renumber the remaining definitions accordingly:

- (7) **MEMORIAL MARKER** means a marker honoring a City of Austin public safety officer killed in the line of duty.

PART 2. Subsection (H) of City Code Section 25-10-103 (*Signs Prohibited in Public Right-of-Way*) is amended to read:

- (H) This section does not prohibit the installation, use, or maintenance in the right-of-way of:
 - (1) a sidewalk sign;
 - (2) a projecting sign in the downtown sign district;
 - (3) a street banner; [or]
 - (4) a wall sign that is mounted flat against the building and extends not more than 18 inches from the facade of a building and into right-of-way; or
 - (5) a memorial marker.

RECOMMENDED CHANGE

City Code Section 12-10 (*Sign Regulations*)

PART 3. City Code Chapter 25-10 (*Sign Regulations*) is amended to add a new Section 25 10-157 to read as follows:

§ 25-10-157 MEMORIAL MARKERS.

- (A) A memorial marker is permitted in the public right-of-way accordance with the requirements of this section.
- (B) The building official shall issue a sign installation permit for a memorial marker if the following requirements are met:
 - (1) The memorial marker must be placed in coordination with other permitted right-of-way uses, as determined by the building official.
 - (2) The memorial marker may not:
 - (a) be placed within:
 - (i) 20 feet of a driveway or pedestrian crosswalk; or
 - (ii) an ADA accessible sidewalk;
 - (b) narrow an existing or planned pedestrian travel way, including a sidewalk or crosswalk;

RECOMMENDED CHANGE

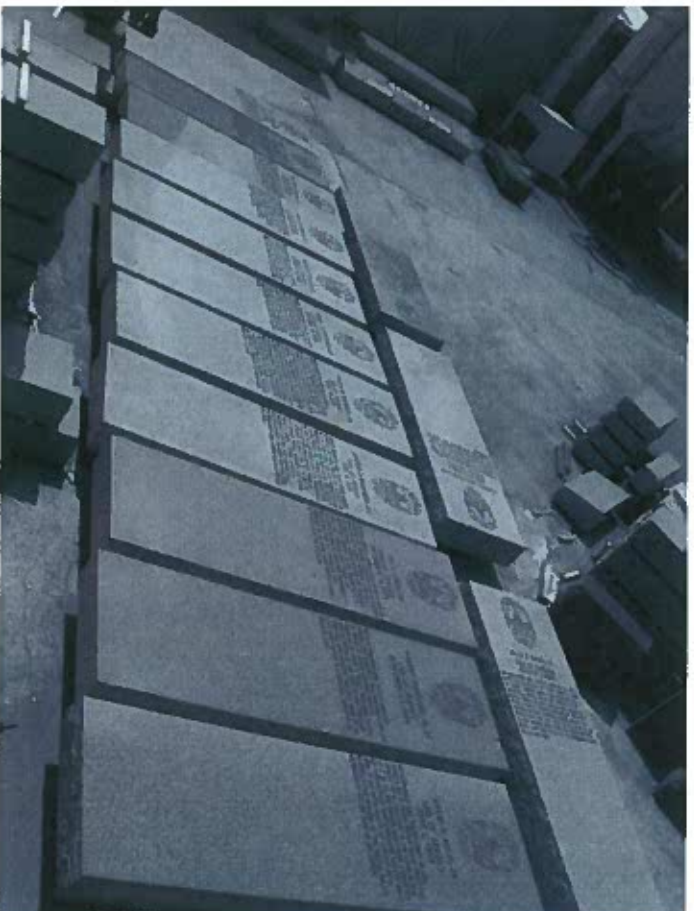
City Code Section 12-10 (*Sign Regulations*) continued

- (c) obstruct the line of sight for oncoming traffic;
 - (d) be taller than 5 feet, 4 inches or wider than 20 inches;
 - (e) block an entrance or doorway;
 - (f) extend onto an abutting property without written approval of the landowner; and
 - (g) interfere with the maintenance of existing utilities, infrastructure, or amenities that lawfully occupy the right-of-way, including but not limited to lamp posts, parking meters, mail boxes, traffic signal stanchions and control boxes, fire hydrants, trees, benches, planters, bus shelters, or traffic control devices.
- (3) At least 10 days prior to issuing an installation permit for a memorial marker under this section, the building official shall provide mailed notice of the proposed memorial marker to the owners of property within 25 feet of the proposed memorial marker.

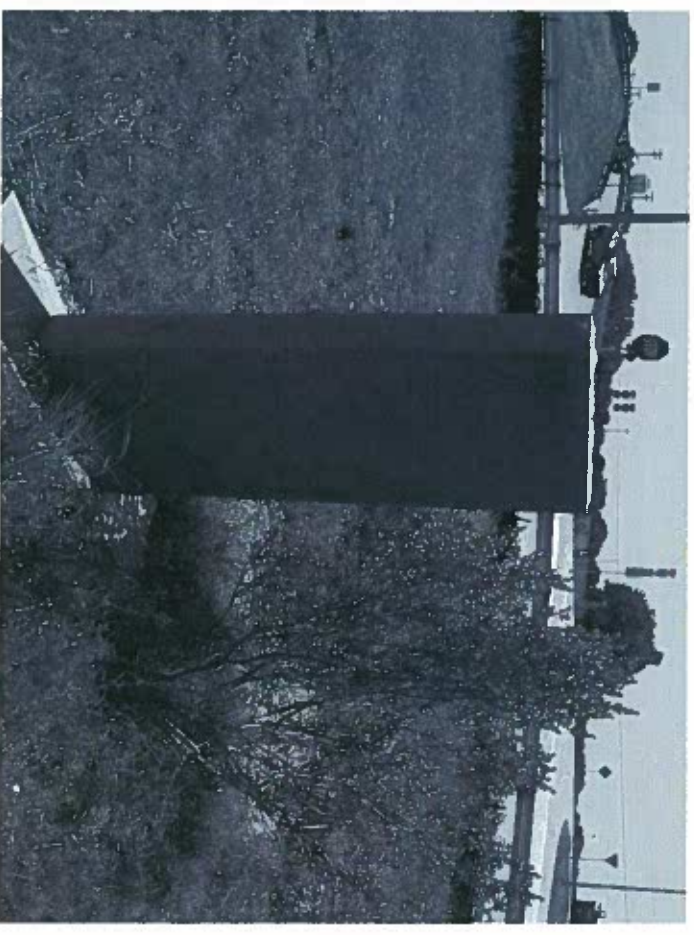
PART 4. This ordinance takes effect on June 11, 2010.

MEMORIAL MARKER SPECIFICATIONS

The Memorials are 5 feet 4 inches tall,
20 inches wide and 6 inches thick and
constructed of gray granite.



All memorials were donated by
Rockdale Memorials.



ADDITIONAL ACTION TAKEN

- Construction of a Private Property Agreement - this agreement will address public safety concerns of the memorial markers and any outstanding location requirements as recommended by the City of Austin Public Works, Right-of-Way, and Planning and Development Departments.
- APD has contacted the City of Austin's Integrity Office to address any outstanding issues pertaining to the donations of the memorial markers – due to the fact that APD officers did not solicit donations from the vendor (vendor offered to build the memorial markers), there are no integrity concerns related to this project.
- APD has also placed the memorial markers into the City of Austin's fixed asset inventory list as well as the APD Police Equipment Unit for retention and inventory records.
- This proposal was discussed at the Codes and Ordinances Subcommittee on April 20, 2010 – The committee voted to approval a recommendation of approval to the Planning Commission on April 27, 2010.

FUTURE ACTIONS

- The draft ordinance will be presented to the Planning Commission on June 8, 2010 for recommended approval to City Council.
- A Request for Council Action (RCA) has be initiated to present the ordinance change to City Council during the June 10, 2010 Council session.
- If approved, the ordinance will become effective immediately on June 11, 2010.
- APD will begin communicating with Rockdale Memorials to begin the installation of the memorial markers on June 11, 2010.
- All memorial markers should be erected throughout the City by September 31, 2010.

QUESTIONS

Assistant Chief Al Eells

Austin Police Department

Chiefs Office

Al.Eells@ci.austin.tx.us

(512) 974-5030 office

(512) 974-6611 fax

LICENSE FOR SPACE

THIS LICENSE FOR SPACE (the "License") is entered into effective _____, by and between the City of Austin, Texas, a Texas home-rule municipal corporation (the "Licensee") and _____ (the "Licensor").

RECITALS

A. Licensor is the managing agent for the owner of a certain shopping center commonly known as _____, located in Austin, Texas (the "Property").

B. Licensee is a home-rule municipal corporation.

C. Licensee is desirous of obtaining a license to use a portion of the Property for the placement of a Memorial Plaque, described in Exhibit A, to honor officers killed in the line of duty and Licensor is willing to grant Licensee the right to use a portion of the Property (as described below) for said purpose on the terms and conditions as contained herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. **AGREEMENT TO LICENSE.** Licensor hereby grants a non-exclusive License to Licensee and Licensee accepts such License from Licensor, to use only that portion of the Property in the approximate location as outlined on Exhibit B ("Licensed Property") in order to place the Memorial Plaque, and for no other purpose.

2. **TERM.** The term of this License shall be for a period beginning _____ and ending _____.

3. **LICENSE FEE.** Licensor will not charge Licensee a fee for the granting of this License.

4. **SET-UP.** Licensee shall be solely responsible for obtaining all required licenses, approvals and permits for placement of the plaque at the Licensed Property at its sole cost and expense. Licensee shall be responsible for the entire cost and maintenance of the plaque. Licensee agrees to keep Licensee's personal property brought onto the Property by or at the request of Licensee or its agents or employees in a safe and hazard-free condition. Licensee shall, at its sole cost and obligation, comply with all zoning laws and ordinances, and all other laws, agreements and ordinances governing the conduct and operation of the Property and/or the Event and all declarations, covenants, restrictions and rules and regulations affecting the Property.

All utilities will be provided by Licensor at its sole cost and expense and in accordance with all laws, ordinances and regulations. Licensee shall not cause or permit any hazardous substance to be brought upon, kept, stored or used in or about the Licensed Property or the Property.

5. REPAIRS. Licensee will be liable for the cost of any repairs required to the Licensed Property or the Property resulting from the placement and maintenance of the Memorial Plaque.

6. TERMINATION. Licensor shall have the right to terminate this License at any time if Licensee defaults in any covenant, term or condition of this License. In addition to the right to terminate as provided above, in the event of Licensee's default, Licensor shall have all rights and remedies as provided by law and equity and shall be entitled to recover its costs, including attorney's fees incurred to pursue such remedies. The indemnity provisions of paragraph 10 below will remain in full force and effect and will survive any expiration or termination of this License by lapse of time or otherwise. Licensee shall have the right to terminate this License at any time.

7. QUIET ENJOYMENT. The Memorial Plaque will be placed and maintained by Licensee in such manner as not to interfere with Licensor's use of the Property or with any adjoining or neighboring landowner's use of their property. Licensee shall construct and maintain the Memorial Plaque and control its agents, members, employees, contractors, invitees, and customers in such manner so as not to create any nuisance, or interfere with, annoy or disturb any use of the Property by the Licensor, any other permitted user, occupant, tenant or invitee of the Property. Licensee shall provide Licensor with 48 hours notice prior to any repair or construction of the Memorial Plaques on Licensed Property.

8. INSURANCE. Licensee is a governmental entity and self insures its operations. A letter evidencing such self insurance shall be provided to Licensor if requested by Licensor.

9. TAXES. N/A

10. LICENSEE RESPONSIBILITY. To the extent allowed by Texas law, the Licensee agrees that it is responsible to the exclusion of any such responsibility of the Licensor for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this License and as determined by a court of competent jurisdiction, provided that the execution of this License will not be deemed a negligent act.

11. DUTIES UPON TERMINATION. Upon expiration or termination of this License, whether by lapse of time or otherwise, Licensee will immediately clean up all debris and restore the Licensed Property to broom-clean condition and to the condition it was in before the Event, normal wear and tear excepted.

12. **TERMINATION FOR BREACH.** If either party breaches any provision in this License, the non-breaching shall provide written notice to the other party describing the breach and the effective date of termination. Upon receipt, the breaching party shall have 90 days to cure the breach or provide a satisfactory explanation to the non-breaching party for the failure to cure the breach. Failure to cure the breach will result in automatic termination of the License in 90 days from the receipt of notice.

13. **GENERAL PROVISIONS:**

A. It is understood and agreed that this License is being entered into at the request of Licensee. Licensee hereby releases Licensor from any liability or responsibility it may have in connection with Licensee's personal property. Any claims against Licensor based on theft of, or vandalism or damage to, Licensee's personal property and/or sale items by anyone other than Licensor and any injury to the members, invitees, or guests of Licensee are hereby waived by Licensee.

B. The rights and privileges herein granted shall not be exclusive to Licensee and Licensor shall be entitled to give other parties rights, licenses and privileges in such businesses which may be or become competitive with Licensee and/or the Event as and when Licensor shall deem proper.

C. Time is of the essence of this License and of all of the terms and provisions thereof.

D. The parties stipulate, anything herein to the contrary notwithstanding, that the Licensee shall be considered only as the holder of a License in the manner provided herein, and in no event shall the Licensee be deemed to be the holder of an easement or holder of any other interest in the Licensed Property or the Property. This License shall not be recorded against the Property or any portion thereof. The License herein contained shall not be assignable or transferable in any manner by the Licensee without the express written approval of Licensor, which may be withheld by Licensor in its sole discretion. Licensor may freely transfer or assign its interest in the License. The owner may freely transfer or assign its interest and/or ownership in the Property.

E. None of the terms, provisions or conditions of this License shall be construed as creating or constituting Licensor as a co-partner or joint venture with Licensee, nor constituting Licensee the agent of Licensor, nor shall any of the provisions of this License be construed in a manner so as to make Licensor liable for the debts or obligations of Licensee.

F. This License shall be construed in accordance with the laws of the State of Texas.

G. This License shall be binding upon the respective successors and permitted assigns of the parties hereto. In no event will Licensor and Licensee be deemed to be partners, joint ventures or otherwise in business together.

H. If any term, condition or provision of this License shall be declared invalid or unenforceable, the remainder of this License, other than such term, condition or provision, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

I. The provisions of this License may be altered, amended or repealed, in whole or in part, only on the written consent of both parties to the License.

J. This License may be executed in one or more counterparts, each of, which shall be deemed an original, but all of which together shall constitute one and the same instrument.

K. This License shall be deemed to have been drafted jointly by the parties and any uncertainty or ambiguity shall not be construed for or against either party as an attribution of drafting of either party.

L. All notices and other communications given pursuant to this License shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed on the day of service if by personal delivery, on the next business day after being deposited with an overnight carrier service, or on the third day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, as follows:

If to Licensor:

Licensee:

Austin Police Department
Attn: Art Acevedo, Chief of Police
P.O. Box 689001
Austin, Texas 78768-9001

LICENSEE:

AUSTIN POLICE DEPARTMENT

By: _____

Name: _____ Title: _____

LICENSOR:

AN ORDINANCE AMENDING CITY CODE SECTIONS 25-10-3 AND 25-10-103 AND ADDING A NEW SECTION 25-10-157 AUTHORIZING THE PLACEMENT OF MEMORIAL MARKERS IN THE PUBLIC RIGHT-OF-WAY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-10-3 (*Definitions*) is amended to add a new definition of "memorial marker" to read as follows and to renumber the remaining definitions accordingly:

- (7) **MEMORIAL MARKER** means a marker honoring a City of Austin public safety officer killed in the line of duty.

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 - (5) a memorial marker.

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- (1) The memorial marker must be placed in coordination with other permitted right-of-way uses, as determined by the building official.

- 1 (2) The memorial marker may not:
- 2 (a) be placed within:
- 3 (i) 20 feet of a driveway or pedestrian crosswalk; or
- 4 (ii) an ADA accessible sidewalk;
- 5 (b) narrow an existing or planned pedestrian travel way, including a
- 6 sidewalk or crosswalk;
- 7 (c) obstruct the line of sight for oncoming traffic;
- 8 (d) be taller than 5 feet, 4 inches or wider than 20 inches;
- 9 (e) block an entrance or doorway;
- 10 (f) extend onto an abutting property without written approval of the
- 11 landowner; and
- 12 (g) interfere with the maintenance of existing utilities, infrastructure,
- 13 or amenities that lawfully occupy the right-of-way, including but
- 14 not limited to lamp posts, parking meters, mail boxes, traffic signal
- 15 stanchions and control boxes, fire hydrants, trees, benches,
- 16 planters, bus shelters, or traffic control devices.
- 17 (3) At least 10 days prior to issuing an installation permit for a memorial
- 18 marker under this section, the building official shall provide mailed
- 19 notice of the proposed memorial marker to the owners of property within
- 20 25 feet of the proposed memorial marker.

21

22 **PART 4.** This ordinance takes effect on June 11, 2010.

23

24 **PASSED AND APPROVED**

25

26 §

27 §

28 _____, 2010 § _____

29 Lee Leffingwell

30 Mayor

31

32

33 **APPROVED:** _____

34 David Allan Smith

35 City Attorney

36

33 **ATTEST:** _____

34 Shirley A. Gentry

35 City Clerk