

ORDINANCE NO. 2023-04

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW “MARKET, OPEN AIR” WITHIN THE OLD TOWN & MIXED USE (OT & MU) ZONING DISTRICT; SAID PROPERTY BEING APPROXIMATELY 0.46 ACRES OF LAND LEGALLY DESCRIBED AS BEING LOTS 17 THROUGH 24, BLOCK 18 OF THE REVISED MAP OF TOMBALL. LOCATED AT 401-409 COMMERCE STREET, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS; PROVIDING FOR PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

Whereas, Ideaco Investments, LLC, represented by Michael Pierce has requested that approximately 0.46 acres of land legally described as being Lots 17 through 24, Block 18 of the Revised Map of Tomball, located at the southwest corner of Commerce Street and Oak Street at 401-409 Commerce Street, within the City of Tomball, Harris County, Texas (the “Property”), receive a CUP; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within three hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested CUP; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City’s receipt of the requested CUP; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested CUP; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested CUP, the City Council held the public hearing for the requested CUP and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested CUP.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. A CUP to allow a “Market, Open Air” at the property and subject to the terms and conditions set forth below is hereby granted.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as hereby stated, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement or revise any provision of any ordinance of the City of Tomball, save and except the granting of the CUP as herein provided.

Section 5. The CUP granted hereby shall be null and void after the expiration of two (2) years from the date of adoption hereon unless the Property is being used in accordance with the CUP herein authorized within said two-year period, or unless an extension of time is approved by City Council.

Section 5. The CUP is subject to the following additional imitations, restrictions and conditions:

- 1) The site shall be developed and operated in substantial compliance with Exhibit “A”,
- 2) Hours of operation shall be limited to 7:00 AM to 10:00 PM.
- 3) No more than 12 outdoor vendors/booths/tents shall be permitted in total on Lots 17 through 24, Block 18 in Revised map of Tomball.
- 4) Restroom facilities must be provided during the open-air market hours of operation. Said restrooms may be provided on site or within adjacent businesses owned and operated by the same owner of the open air market, located within the boundaries of this Conditional Use Permit. Portable restroom facilities are prohibited.
- 5) Adhere to Section 50-116 (d.2.a) Temporary Outdoor Sales, with an exception on the required distance from “main building”.
 - a. “Shall not be placed/located more than 30 feet from the main building in GR, and C Districts, and not more than 12 feet from the main building in the Old Town area.”
- 6) An opaque fence/wall with a minimum height of 6-feet must be provided along the western boundary of Lot 17 to minimize sound and visibility of the adjacent land use;
- 7) Booths/tents and outdoor sales/displays must adhere to non-residential setback standards in OT & MU. Being the following:
 - a. Front & Rear Setback = N/A
 - b. Side Setback (adjacent to commercial use) = N/A
 - c. Side Setback (adjacent to residential use) = 20-feet (20’) Minimum

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 8. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON 20th DAY OF MARCH 2023.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DUNAGIN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN PARR	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON 3rd DAY OF APRIL 2023.

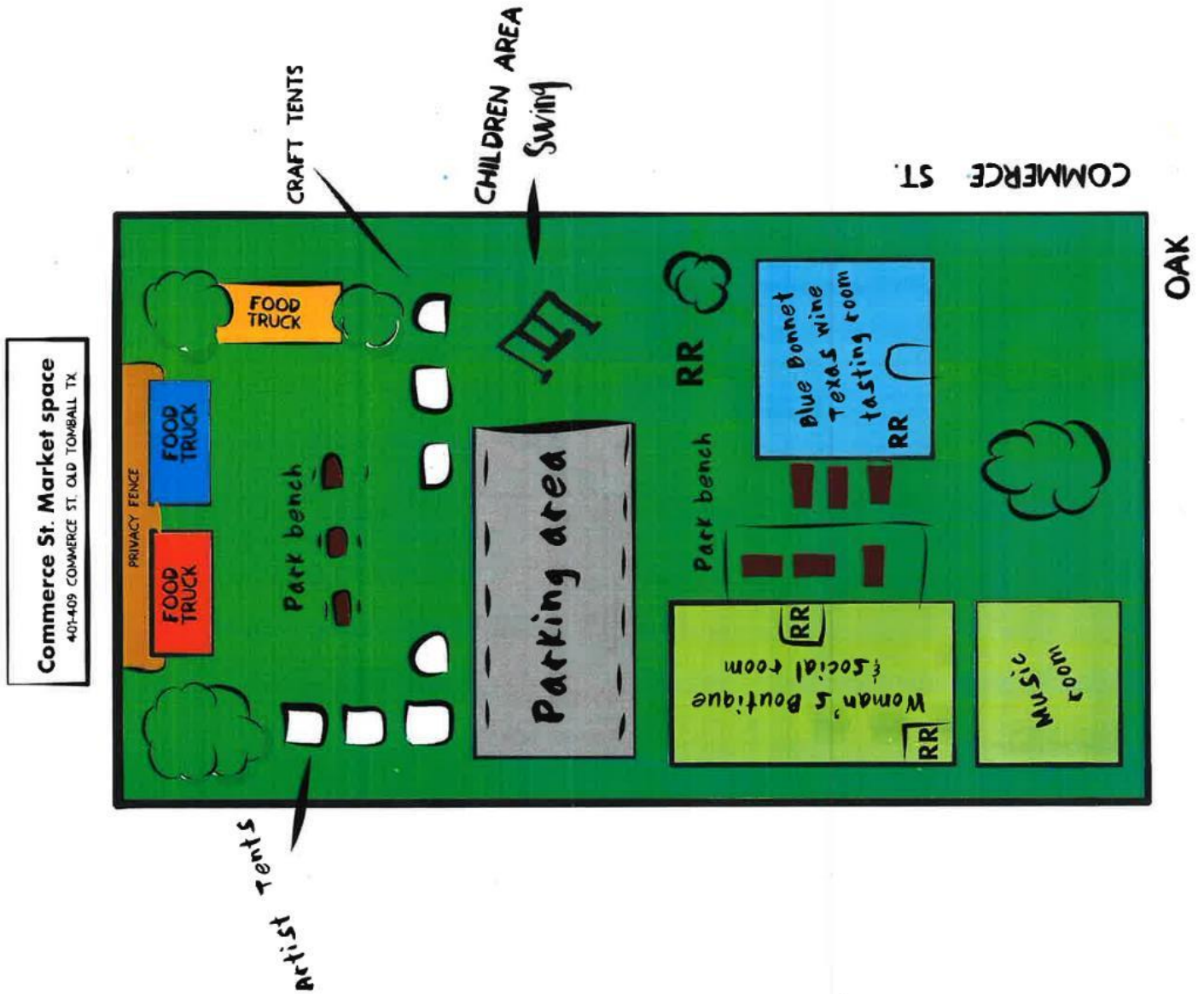
COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN PARR	_____

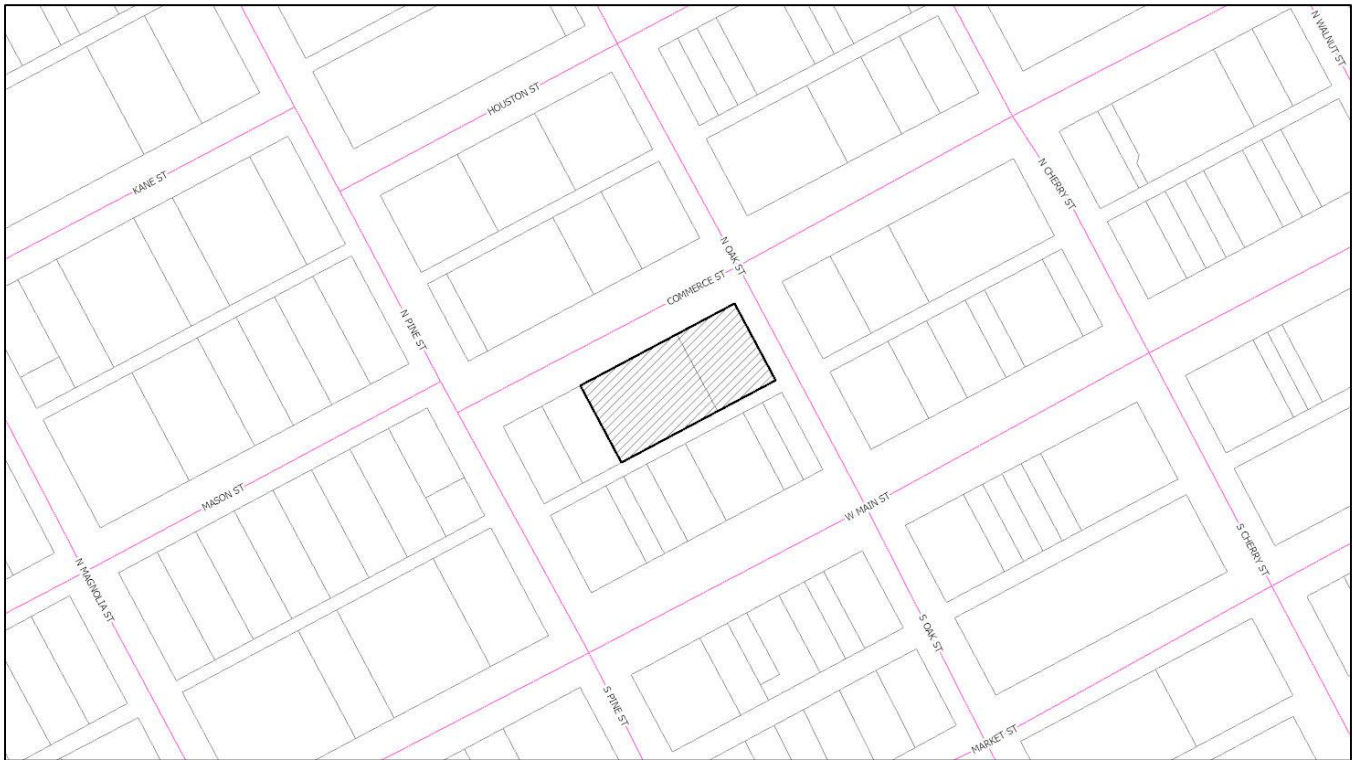
LORI KLEIN QUINN, Mayor

ATTEST:

Tracylynn Garcia, City Secretary

Exhibit “A”





Location: 400 block (south side) of Commerce Street. Being Lots 17 through 24, Block 18 of Revised Map of Tomball, City of Tomball, Harris County, Texas