



"City of Choice"

ORDINANCE NO. 1445

AN ORDINANCE OF THE CITY OF CIBOLO, TEXAS GRANTING A CONDITIONAL USE PERMIT FOR 7.51 ACRES OF REAL PROPERTY DESCRIBED AS ABS: 134 SUR: JOSE FLORES, 7.51 AC TO ALLOW FOR CONCRETE ASPHALT BATCHING PLANT (TEMPORARY); IMPOSING CONDITIONS ON SUCH CONDITIONAL USE; AMENDING THE ZONING MAP OF THE CITY OF CIBOLO, TEXAS; DECLARING COMPLIANCE WITH APPLICABLE STATE AND LOCAL LAWS; PROVIDING FOR SEVERABILITY, REPEAL, SAVINGS, PUBLICATION AND CODIFICATION; DECLARING THAT THE MEETING AT WHICH THIS ORDINANCE WAS ADOPTED WAS CONDUCTED IN COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, Texas Local Government Code Section 211.002 authorizes the City of Cibolo ("City"), as a home rule municipality, to adopt, repeal or amend zoning district boundaries and regulations to promote the-public health, safety and general welfare of the City; and

WHEREAS, the City has adopted such regulations as codified in the City's Unified Development Code ("UDC"); and

WHEREAS, MLM Trust ("Owner") owns approximately 7.51 acres of land within the corporate limits of the City described as ABS: 134 SUR: JOSE FLORES, 7.51 AC located at 10833 IH-10 ("Property"); and

WHEREAS, the Property is located within the Mixed Use Regional Employment Center (MURE) zoning district; and

WHEREAS, the Owner's representative, Webber LLC ("Applicant"), has submitted to the City an application for a Conditional Use Permit ("CUP") to allow for a temporary Concrete/Asphalt Batching Plant use on the Property,

WHEREAS, the Commercial Uses Table set forth in Section 13.2 of the UDC permits a Concrete/Asphalt Batching Plant as a temporary, short-term use within any zoning district, including the MURE zoning district, upon approval of a CUP for same, provided that such conditional use are allowed only until completion of a specific construction project or projects supplied by the concrete batching plant unless City Council renews the CUP for a specific, additional period of time; and

WHEREAS, a CUP for temporary Concrete/Asphalt Batching Plant use on the Property was previously issued to Webber LLC by Cibolo Ordinance No. 1435; and

WHEREAS, Cibolo Ordinance No. 1435 was terminated by operation of law after Webber LLC failed to adhere to the terms of the CUP granted by that ordinance; and

WHEREAS, the City Council has duly considered the requested CUP and finds that the proposed concrete batching operation will provide concrete exclusively to the Texas Department of Transportation (TxDOT) and/or its affiliates, operating under a TCEQ permit as a "registered portable facility" to be located contiguous to the right-of-way to provide concrete batching services for use on a single infrastructure project within the right-of-way of IH-10 at 10833 E. IH-10, and therefore any concrete batching operations permitted by the requested CUP will be temporary and will not be permitted to continue once said TxDOT project is completed, and finds further that the Applicant has agreed to the terms and conditions set forth in this ordinance, including requirements relating to dust prevention and other potential nuisances such as light, noise, and traffic; and

WHEREAS, the City Council finds two public hearings were held for the purpose of providing all interested persons the opportunity to be heard concerning the proposed CUP to allow for Concrete/Asphalt Batching Plant on the Property as described herein and further depicted in **Exhibit A** attached hereto; and

WHEREAS, the City Council finds legal notice, notifying the public of both public hearings on the consideration of the requested CUP, was posted on the City's official website and published in the Seguin Gazette, a newspaper of general circulation in the City, in accordance with state and local law; and

WHEREAS, the City Council finds written notice of the aforementioned public hearings before the Planning and Zoning Commission and the City Council were sent to each owner of real property within 200 feet of the subject Property of this requested CUP, as indicated on the most recently approved municipal tax roll of the City, in accordance with applicable state and local law; and

WHEREAS, the City Council finds the Planning and Zoning Commission, after due consideration of the requested CUP, including all matters specified in Section 4.3.2 of the UDC, issued its recommendation regarding the CUP to the City Council in accordance with state and local law; and

WHEREAS, the City Council finds that the Planning and Zoning Commission found 1) the proposed use is in accord with the objectives of the UDC and the purposes of the district in which the Property is located, 2) the proposed use will comply with all of the applicable provisions of the UDC, 3) the proposed use and site development, together with any modifications applicable thereto, will be completely compatible with existing or permitted uses in the vicinity, 4) the conditions applicable to approval are the minimum necessary to minimize potentially unfavorable impacts on nearby uses and ensure compatibility with existing or permitted uses in the same district and the surrounding area, and that the prescribed zoning standards ensure proper mitigation of identified impacts by recommending stricter standards where necessary, 5) the Commission gave due consideration to all technical information supplied by the Applicant and 6) the proposed use, together with the conditions applicable thereto, will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity, and the City Council adopts these findings as its own; and

WHEREAS, the City Council, having duly considered the request for CUP, desires to approve the CUP for Concrete/Asphalt Batching Plant as a temporary, short-term use.

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

SECTION 1. Incorporation of Recitals. The City Council finds the recitals in the preamble of this Ordinance are true and correct and incorporates them as findings of fact.

SECTION 2. Description of Property. The Property described as ABS: 134 SUR: JOSE FLORES, 7.51 AC is depicted in **Exhibit A** attached hereto and incorporated herein for all purposes.

SECTION 3. CUP Granted. A CUP for the use of Concrete/Asphalt Batching Plant for the Property is hereby granted and issued to Webber LLC, subject to all applicable federal, state or local laws or regulations, including supplemental use regulations set forth in the City's UDC, and the following conditions:

- a. Time Restriction. This CUP shall effectively expire on December 31, 2026, and shall not be valid thereafter; however, the Owner/Applicant may apply for an extension of this CUP prior to December 31, 2026, if more time is needed to complete the Applicant's contractual work for the TxDOT and/or its affiliates. Any extension of this CUP shall be limited to a period not to exceed twelve (12) months.
- b. Plat Approval. The Owner/Applicant shall apply for and have an approved, valid, and completed plat, as required by the UDC, or shall receive an approved waiver to platting within 90 days of approval of this CUP.
- c. Site Plan Approval. The Owner/Applicant shall apply for and have an approved official site plan in accordance with the UDC within 90 days of approval of this CUP. Once approved, the concrete batching plant use and related activities permitted by this CUP may not substantially deviate from the proposed site plan attached hereto as Exhibit B, nor any site plan subsequently approved by the City.
- d. Permits and Inspections required and in place. All required building permits as required by the City's adopted codes shall be submitted by end of business on Friday, June 14th, and based on the City's Chief Building Official's on-site visit to determine required building permits. The Chief Building Official shall provide the list of required permits to the applicant. Further, the applicant shall work in good faith to request inspections in a timely manner to complete permits and obtain Certificate(s) of Occupancy if appropriate. The City will process and conduct inspections in advance of the City's approval of the Site Plan and satisfaction of the City's subdivision regulations unless otherwise allowed by this CUP. The City shall not approve any building permit until satisfaction of Condition b (Plat Approval) and Condition c (Site Plan Approval).
- e. Perimeter Fence Required to Operate. A perimeter fence must be installed per UDC Sec. 4. .7.4.3.E.2 and Sec. 9.3.2. TxDOT, as owner of the IH-10 frontage road abutting the Property, has expressed that a perimeter fence is not needed along its Property, and such fencing shall not be required between the Property and the IH-10 frontage road owned by TxDOT. Perimeter fencing shall be required along all other boundaries of the Property within 15 days of an approved site plan.
- f. Landscape Buffer Required to Operate. A Landscape Buffer must be installed per UDC Sec. 17.1.L and Sec. 4..7.4.3.J., or the Owner/Applicant must apply for and receive an approved variance to landscape requirements within 60 days of approval of this CUP.

- g. Hours of Operation once lawful operation is otherwise achieved pursuant to this CUP. Subject to authorized letter from TxDOT. Concrete batching operations shall be allowed to occur outside of the permitted timeframe(s) listed within the Cibolo Code of Ordinances to accommodate the logistical requirements of the TxDOT highway expansion project.
- h. Dust Mitigation Required to Operate. The RA-200, or equivalent, dust controller shall be always in operation during which the silo is operating.
- i. Expiration. This CUP shall expire: 1) upon the expiration of two years from the effective date of this Ordinance or 2) upon cessation of business operations on the property for more than 90 days, or 3) the occurrence of December 31, 2026, whichever occurs first.
- j. Grading mitigation Required at Cessation of the Concrete Batch Plant. Upon the cessation of the concrete batching operations associated with this conditional use permit, the site shall be restored to the approved permit grading plan. The site shall be restored to the previously approved grading no later than December 31, 2026, unless an extension of this CUP has been granted prior to such date.
- k. Additional Uses. No other conditional uses are allowed under this conditional use permit.
- l. The City reserves the right to inspect the premises at least once per quarter, i.e. at least once per three-month period, to ensure compliance with the terms of this CUP and all other applicable laws and regulations.

SECTION 4. Zoning Map Amendment. The Zoning Map of the City of Cibolo is hereby amended to reflect the CUP as created by this Ordinance.

SECTION 5. Declaration of Compliance. The City Council finds that all required public notices for consideration of the CUP have been properly issued and all required public hearings have been properly conducted.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or illegal by final judgment of a court of competent authority, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and ordained all the remaining portions of this Ordinance without the inclusion of such portion or portions found to be unconstitutional or invalid.

SECTION 7. Repeal. All resolutions, ordinances, or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict. In the event of a conflict or inconsistency between this Ordinance and any other resolution, code or ordinance of the City, or parts thereof, the terms and provisions of this Ordinance shall govern.

SECTION 8. Savings. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and such accrued violations and litigation, both civil and criminal, whether pending in court or not, under such ordinances, shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 9. Publication and Codification. The City shall publish this Ordinance in the newspaper designated as the official newspaper of the City twice as required by Section 3.13(3) of the City Charter. This Ordinance will be codified in the Cibolo Code in the next appropriate update.

SECTION 10. Open Meeting Compliance. The City Council finds that the meeting at which this Ordinance passed was conducted in compliance with the Texas Open Meetings Act.

SECTION 11. Penalty. It shall be unlawful for any person to violate any provision of this Ordinance. Any person who violates, or any person who causes or allows another person to violate, any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2000.00). Each occurrence of any violation of this Ordinance shall constitute a separate offense. Each day on which any violation of this Ordinance occurs shall constitute a separate offense.

SECTION 12. Effective Date. This Ordinance will become effective within the corporate city limits of the City of Cibola upon the required newspaper publication.

ORDERED on this 14th day of May 2024.

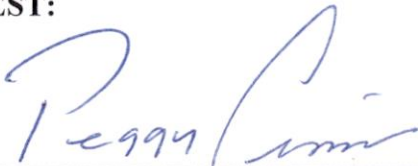


Mark Allen, Mayor

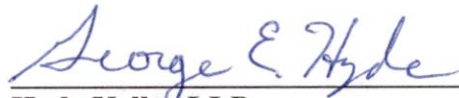


ATTEST:

APPROVED AS TO FORM.



Peggy Cimics, TRMC
City Secretary



Hyde Kelley LLP
City Attorney

Exhibit "A"
Description of Property

TRACT I:

All that certain tract, piece or parcel of land being a part of that certain 20 acre tract of land out of the Jose Flores Survey No. 63, Abst. No. 134, in Guadalupe County, Texas, conveyed by R.J. Jung et ux to Udo Grobe by deed dated December 30, 1929, and recorded in Vol. 117, Page 564 of the Deed Records of Guadalupe County, Texas, and being more particularly described as follows:

BEGINNING at the South West corner of the Udo Grobe tract, said corner being also the North West corner of a tract of land conveyed by H.J. Wieters to Franz Schrank by deed dated the 23rd day of November, 1929, and recorded in Vol. 118, Page 165, of the Deed Records of Guadalupe County, Texas, for the Beginning corner of this tract;

THENCE N. 30 deg. 16' W. with the West property line, a distance of 49.2' to a point in the Right-of-Way for Highway IH-10, being project I 10-4 (16) 603. Said point being 202.0' from and normal to Texas Highway Department Engineers Station 156 plus 36.8;

THENCE N. 66 deg. 29' E. with the Right-of-Way for Highway IH-10 a distance of 452.6' to a point; A portion of Highway IH-10 Right-of-Way being out of the Udo Grobe tract as conveyed by Udo Grobe and wife, Rosaline Grobe to the Texas Highway Department by deed dated the 22nd day of December, 1958, and recorded in Vol. 321, Page 435 of the Deed Records of Guadalupe County, Texas;

THENCE S. 60 deg. 15' W. with the common line of the Udo Grobe tract and said Schrank tract a distance of 449.5' to the place of beginning, and containing 0.25 acre of land, more or less.

TRACT II:

All that certain tract, piece or parcel of land being a part of that certain 91 acre tract of land, out of the Jose Flores Survey No. 63, Abst. No. 134, in Guadalupe County, Texas, conveyed by H.J. Wieters et ux, to Franz Schrank, by deed dated the 23rd of November, 1929, and recorded in Vol. 118, Page 165 of the Deed Records of Guadalupe County, Texas, and being more particularly described as follows:

BEGINNING at the Northwest corner of the Franz Schrank tract, said corner being also the South West corner of a tract of land conveyed by R.J. Jung and wife, Etta Jung, to Udo Grobe and Rosaline Grobe by deed dated the 30th day of December, 1929, and recorded in Vol. 117, Page 564-5 of the Deed Records of Guadalupe County, Texas;

THENCE N. 60 deg. 15' E. with the common line of the Franz Schrank tract and said Udo Grobe tract a distance of 449.5' to a point in the Right-of-Way for Highway IH-10, being project I 10-4 (16) 603. Said point being 202.0' from and normal to Texas Highway Department Engineer's Station 160-89.4;

THENCE N. 66 deg. 29' E. with the Right-of-Way for Highway IH-10 a distance of 660.6' to a point. A portion of Highway IH-10 Right-of-Way being out of the Franz Schrank tract as conveyed by Franz Schrank and Anna Schrank to the Texas Highway Department by deed dated the 22nd day of December, 1958, and recorded in Vol. 321, Page 437 of the Deed Records of Guadalupe County, Texas;

THENCE S. 34 deg. 50.5' E. with the Right-of-Way for Highway IH-10 a distance of 102.0' to a point;

THENCE with the Highway IH-10 Right-of-Way along the arc of a circular curve to the left having a radius of 395.5' a distance of 136.7' to a point. The chord of the arc of said curve bears S. 33 deg. 25' E. a distance of 136.0';

THENCE S. 60 deg. 15' W. a distance of 1121.1' to a point in the West property line of the Franz tract;

THENCE N. 30 deg. 16' W. with the West property line a distance of 308.3' to the place of Beginning and containing 7.26 acres of land, more or less.

SAVE AND EXCEPT out of Tract II, that certain 0.834 acre tract of land conveyed by Lucille Nolen to Lloyd J. Mueller in Warranty Deed recorded in Volume 894, Page 400 of the Real Property Records of Guadalupe County, Texas.

NOTE: The company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes and does not override Item 2 of Schedule B hereof.

Exhibit "B"

