

City of Windcrest



**CITY COUNCIL MEETING
NOVEMBER 2, 2020**

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN

6:00 P.M.

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST CITY COUNCIL MEETING WILL BE HELD AT WINDCREST CITY HALL LOCATED AT 8601 MIDCROWN, WINDCREST, TEXAS ON THE 2nd DAY OF NOVEMBER 2020, STARTING AT 6:00 P.M.

THE CITY COUNCIL RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF NOVEMBER 2, 2020, AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, NOVEMBER 3, 2020, AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

The City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. In compliance with Americans with Disabilities Act, the City of Windcrest will provide reasonable accommodations for persons attending the meeting. To better serve you, requests should be received 48 hours prior to the meeting. Please contact the City Secretary's Office, at 210-655-0022 ext. 2150 or Fax 210-655-8776, or 711 Texas Relay.

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE AND INVOCATION**
- IV. CITIZENS TO BE HEARD/CITIZEN PARTICIPATION**
 - a) Citizens may address the City Council on topics not on the agenda for no more than three (3) minutes.
 - b) Citizens shall also have the opportunity to address the City Council during consideration of posted agenda items for no more than six (6) minutes.
 - c) Only a maximum of six (6) members of the public will be permitted in the City Council Chambers at a time. All attendees will be required to be screened for present signs of COVID-19 prior to entering City Hall.
 - d) Four (4) hours prior to the meeting, an email to the city secretary at citysecretary@windcrest-tx.gov is required, to be added to the attendee list ensuring proper physical distance seating inside and outside City Council Chambers.
 - e) An email statement may be sent to the City Secretary @ citysecretary@windcrest-tx.gov to be read into the meeting to City Council. Statements will be provided to Council and available to

the public not in attendance after the meeting.

- f) A City Official may make a statement of specific factual information in response to an inquiry made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.

THE FOLLOWING ITEMS MAY BE CONSIDERED AT ANY TIME DURING THE REGULAR COUNCIL MEETING:

V. CONSENT AGENDA

- a) City Council will review, discuss, and take action on Ordinance 2020-032(O), an ordinance amending City Waste Management System including landlord responsibility regarding trash service. **2nd Reading** [Rafael Castillo, Jr., City Manager; Cindy Strzelecki, City Councilmember Place 2]

VI. ORDINANCE

- a) City Council will review, discuss, and take action on Ordinance 2020-033(o), an ordinance allowing additional illuminated signs for purposes of advertisement by amending section 109-12-signs of chapter 109-signs, of the municipal code. [Dan Reese, Mayor] **1st Reading**

VII. DISCUSSION & ACTION

- a) City Council will receive a presentation and have discussion on the Texas Department of Transportation (TxDOT) I-35 Northeast Expansion Central Project from TxDOT representatives. [Rafael Castillo, Jr., City Manager]
- b) City Council will review, discuss, and may take action on recommended updates to the City's video recording and streaming systems in the City Council Chamber. [Rafael Castillo, Jr., City Manager]
- c) City Council will review, discuss, and may take action on the renewal of the 2021 Greater Randolph Area Services Program, Inc. [Rafael Castillo, Jr., City Manager]

VIII. CITY MANAGER'S REPORT

IX. GENERAL ANNOUNCEMENTS & FUTURE AGENDA ITEMS REQUESTED

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

X. ADJOURNMENT

DECORUM REQUIRED: *Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.*

OCT 30 '20 11:33

ACTION BY COUNCIL AUTHORIZED: *The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code § 551.072 (Deliberations about Real Property); § 551.073 (Deliberations about Gifts & Donations); § 551.076 (Deliberations about Security Devices); §551.087 (Economic Development); and, § 551.071 to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.*

EXECUTIVE SESSIONS APPROVED BY CITY ATTORNEY: *This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.*

ATTENDANCE BY OTHER ELECTED OR APPOINTED OFFICIALS:

It is anticipated that members of other city boards, commissions and committees may attend the meeting in numbers that may constitute a quorum of such other city boards, commissions and committees, so that notice is hereby given that the meeting is also a meeting of the other city boards, commissions and committees whose members are in attendance. The members of the other city boards, commissions and committees may participate in discussions which occur at the meeting, but no action will be taken by the other boards, commissions and committees whose members are in attendance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the City Council of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting on November 2, 2020.

By:

Rachel C. Dominguez

ORDINANCE NO. 2020-032(O)

AN ORDINANCE CREATING ARTICLE III-WASTE DISPOSAL AND FRANCHISES OF CHAPTER 14 OF THE WINDCREST CODE OF ORDINANCES, AND PROVIDING FOR SERVICES, PROGRAMS, ENFORCEMENT AND PENALTIES FOR SOLID WASTE MANAGMENT

WHEREAS, the City of Windcrest is a home-rule municipality, which has codified its regulations and enforcement; and

WHEREAS, the City manages its own garbage and recycling system for its citizens; and

WHEREAS, the City has provided a franchise to an identified waste management company to provide solid waste collection, handling, transportation, storage, processing, and disposal; and

WHEREAS, the City is authorized under Texas law to enter into contracts to enable it to furnish or receive solid waste management services; and

WHEREAS, the City believes it should adopt reasonable regulations regarding solid waste management services and franchises for solid waste collection, handling, transportation, storage, processing, and disposal; and

WHEREAS, the City anticipates certain developments to occur within the next calendar year as well as several potential businesses to relocate to Windcrest; and

WHEREAS, the City believes it is in the best interest of the City and its citizens to develop a program which provides for a franchise for a potential alternate waste management company to utilize when, in the opinion of the City Manager, use of the alternate at selective times and sites is necessary to ensure proper solid waste pickups, removals or equipment; and

WHEREAS, the City believes it is in the best interest of the City and its citizens to adopt reasonable rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal; and

WHEREAS, the City Council finds the adoption of this article is to protect public health, safety and wellbeing of all citizens, for the general health and safety of the public, including eliminating possible germ breeding materials and conditions which may contribute to the spreading of diseases and infections to humans and animals, and to provide a means for the controlled and safe handling, collection, transporting and disposal of municipal solid waste within the City.

I.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Article III of Chapter 14 of the Windcrest Code of Ordinances is adopted and shall read as follows:

Article III - WASTE DISPOSAL AND FRANCHISE

Division I – Services and Programs within the City

Sec. 14-150. – Definitions

A. Adoption

The city adopts the definitions found in §363.004 of the Texas Health and Safety Code and such definitions apply to this article unless a definition is expressly changed within this article.

B. Further Definitions

Brush shall include tree branches, woody vines, shrubs, and other herbaceous and woody plants less than six (6) feet in length, excluding posts, boards, lumber or their fragments. Stumps, roots, or shrubs with root balls, loose or containerized leaves and grass clippings are unacceptable for brush collection. Brush does not include any material generated at a location other than the residence from which it is collected.

Bulky waste shall include only municipal solid wastes in the forms of irregularly sized items that do not readily fit into refuse containers, which include but are not limited to, large appliances (e.g. refrigerators, water heaters, washers, and dryers), toilets and furniture, also small and medium-sized appliances, and other domestic wastes and discards which are commonly regarded by the regulated community as large non-putrescible municipal solid waste items. Bulky waste does not include household hazardous waste, hazardous or special wastes, construction and demolition waste, vehicle parts, commercial tires, brush, electronics, or products containing glass which may break during collection. Bulky waste does not include waste generated at a location other than the residence from which it is collected.

Curbside Service shall mean garbage, trash and recyclable materials to be picked up by a franchise holder or contractor which will be located at the curbside of the street bearing the customer's address.

Customer shall mean owner, occupant, tenant or person otherwise in control of premises in the City on which garbage and trash are accumulated and from which the same is removed or required to be removed pursuant to the terms of this article.

Deface shall mean and apply to writing, carving or scratching on the varnish or paint or plaster of any public refuse or recycling containers, or staining such containers with paint, or any other article which will produce a discoloration of the painting or plaster on them.

Garbage shall have the same definition as refuse.

Hazardous waste shall mean any liquid or solid waste identified or listed as a hazardous waste by the administrator of the U.S. Environmental Protection Agency (EPA) pursuant to the

federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976.

Infectious waste (see *special waste*) shall mean waste containing pathogens or biologically active material, which because of its type, concentration, and quantity, is capable of transmitting disease to persons exposed to the waste.

Mulch shall mean the organic product resulting from chipping of wood and woody materials.

Multi-family residential property means three (3) or more dwellings, typically rented and not owner-occupied where multiple families live. Certain aspects may be shared, including parking, outdoor space and mail delivery points. Multi-family residential property may include apartments, condominiums, and townhouses. If solid waste collection services are also shared for these properties, container service from the city is not feasible for such developments and is only provided to limited multi-family residential properties.

Owner as used herein shall include, but not limited to, any equitable owner, any person having a possessory right to the land or building or the person occupying it, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety.

Prohibited waste shall mean any waste prohibited from landfill disposal by the EPA, the city, TCEQ, or landfill-operating permit. Prohibited wastes also include wastes that may be injurious to collectors or may cause damage to collection vehicles.

Qualifying customer shall mean a customer for solid waste management services which meets certain express qualifications in order to utilize a city program.

Recyclable materials shall mean those solid wastes that are separated for recycling or reuse such as newspaper, mixed office paper, corrugated cardboard, kraft paper, container glass, aluminum and tin cans, magazines, steel aerosol cans, and plastic bottles and containers. A material that has been recovered or diverted from the nonhazardous waste stream for the purposes of reuse, recycling or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. The following is a non-exclusive list that constitute recycled materials. (1) Newspapers, magazines and catalogs, excluding other paper items, such as mail, paper bags or other paper. (2) Clear and colored glass bottles and jars, excluding mirrors, windows, ceramics, light bulbs and other glass products. (3) Metal cans composed of tin, steel or aluminum (excluding, scrap metals). (4) Plastic containers of polyethylene terephthalate and high-density polyethylene varieties (i.e. clear plastics.) (5) Other items identified as recyclable by the city and any person having a franchise or contract with the city, or as a result of changes in local, state, or federal laws, ordinances, or regulation.

Recycling shall mean the collection, separation, recovery, and sale or reuse of metals, glass, paper, plastics, and other materials that would otherwise be disposed or processed as municipal waste.

Solid waste management services shall mean all forms of solid waste collection and disposal services to which the City is authorized by law to perform and have performed, including but not limited to, refuse and trash pickup and disposal, recycling pickup and disposal, brush pickup and disposal, construction material pickup and disposal, bulk pickup and disposal, and alleyway pickup and disposal. This definition shall also include the definition of solid waste management found in §363.004 of the Texas Health and Safety Code.

Special waste shall mean any waste defined as Special Waste by 30 TAC §330.3 (148). Further, *Special waste* shall mean any liquid, semi-liquid, solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics or biological properties, require special handling and disposal to protect the human health or the environment. Special wastes include, but are not limited to:

- (1) Household hazardous waste.
- (2) Infectious and hospital related wastes.
- (3) Municipal water and wastewater treatment plant sludges.
- (4) Grease and grit trap wastes.
- (5) Slaughterhouse wastes.
- (6) Dead animals.
- (7) Drugs, contaminated foods, or drink products, other than those contained in normal household waste.
- (8) Pesticide (insecticide, herbicide, fungicide, or rodenticide) containers.
- (9) Asbestos or materials containing asbestos.
- (10) Contaminated soil.
- (11) Tires.

Special wastes may need pretreatment before they are disposed of.

Trash shall mean all household refuse other than garbage, debris, brush, and bulky Waste; trash shall include grass, yard clippings, weeds, heavy accumulations of newspaper and magazines, recyclable materials, old clothes, and other household trash of like kind, but shall not include unacceptable waste.

Unacceptable waste shall mean any and all waste that is either: 1) Waste which is now or in the future becomes prohibited from disposal at a sanitary landfill by state, federal, and/or local laws and/or regulations promulgated there under; or 2) “Hazardous Waste”; or 3) “Special Waste”, as defined herein; or 4) Waste, including landfill prohibited waste materials, which is prohibited from disposal at the landfill by a holder of a franchise or city contract for solid waste management services including tires, concrete, and bulk petroleum or chemical products or by-products; or 5) Liquid waste, as defined herein, and septic tank pumping and grease and grit trap

wastes; or 6) Sludge waste, including water supply treatment plant sludge and stabilized and/or unstabilized sludge from municipal or industrial wastewater treatment plants; or 7) Dead animals and/or slaughterhouse waste, except for animal euthanized under authority and direction of the City Manager; or 8) Any waste, including “special waste” as defined herein, which because of its quantity, concentration, frequency of disposal, required disposal procedures, regulatory status, or physical, chemical, infectious or other characteristics jeopardizes or may jeopardize the environmentally sound operation of the disposal site, as determined by a franchise holder or contractor in its sole discretion; or 9) Construction debris not generated by a residential customer; or 10) Appliances containing CFC’s that do not bear a certification tag that shows the CFC’s have been properly recovered in accordance with federal law.

Unrecoverable cost shall mean a cost the city must pay to a franchise holder or contractor for solid waste collection or disposal, including recycling, which the city does not receive compensation from the customer to cover the full cost paid to the franchise holder or contractor.

Yard waste shall mean leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material not greater than six inches in diameter that result from landscaping maintenance. The term does not include stumps, roots or shrubs with intact root balls.

Sec. 14-151.- Services

- A. **Scope of Services.** In order to properly manage and assure the City complies with the regional and local solid waste management plans, the City shall control the solid waste collection, handling, transportation, storage, processing, and disposal within the City and any municipal territory, for any solid waste services operated within the jurisdiction of the City as authorized under state law. The City shall charge a fee for such services and programs.
- B. **Solid Waste Collection and Disposal Services Required.** Every occupied residential or commercial structure within the City, and every service address for purposes of water and/or sewer services within the City must be served by a solid waste management service. The owner of the property is responsible for compliance with this requirement. The City shall arrange for proper solid waste collection and disposal of all City owned property, but no fee is required.
- C. **Garbage Fund.** The City hereby establishes a solid waste management fund to be used in the collection of rates, charges, fees, fines, and other amounts for services and the payments necessary to operate the city’s solid waste management services. The City charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract for solid waste management services. Those fees, rates, charges, rentals, and other amounts may be charged to and collected from the residents of the city, if any, or from users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges, including solid waste collection or handling fees. All prior

garbage of specialized funds used to manage the city's solid waste management system are incorporated into this established fund.

D. Established Services and Programs. The city establishes the following services and programs for solid waste management services within its jurisdictions.

1. Services.

a) **Residential Service.** This service provides solid waste management services to properties zoned or which are held to be residential in nature or operation. Any owner, occupant, tenant or lessee of any residential premises in the city shall have their municipal solid waste regularly removed by the city. The charges for such service shall be included on a regularly scheduled bill issued by the city or as otherwise provided for under the policies of the city. While the owner of a property may agree for a tenant or lessee to pay the charges for such service, the owner and any tenant and lessee of the property are jointly and severally responsible for compliance with this provision and all charges associated with such service.

b) **Commercial Service.** This service provides solid waste management services to properties which are not residential or do not qualify for a residential service. Such properties include, but are not limited to, operations which are commercial, industrial, institutional, non-profit, charitable, educational or holding some other zoning designation which is not residential. Any owner, occupant, tenant or lessee of any premises in the city which is not residential in character or zone shall have their municipal solid waste regularly removed by the city. The charges for such service shall be included on a regularly scheduled bill issued by the city or as otherwise provided for under the policies of the city. While the owner of a property may agree for a tenant or lessee to pay the charges for such service, the owner and any tenant and lessee of the property are jointly and severally responsible for compliance with this provision and all charges associated with such service.

2. Programs.

a) **Alternative Hauler Program.** Only qualifying commercial customers are permitted to use this program. It provides for additional haulers to receive franchises for the limited purpose of covering qualifying customers who generate, on average, an overly large amount of solid waste tonnage and pickups. This program requires a written contract between the qualifying customer and the city, approved by the City Council.

- b) **Persons with Disability Program.** Only qualifying residential customers are permitted to use this program. This program may provide additional assistance with solid waste disposal at a person's residence in the event the individual suffers from a disability preventing or severely limiting the person's ability to utilize residential services. A fee may be charged for participation in such a program by a qualified customer.
- c) **City Manager Initiated Program.** In order to take advantage of grants or other separately funded or required programs by other entities, the City Manager is authorized to create such additional programs, by written policy, as deemed appropriate by the City Manager. However, no City Manager Initiated Program may relieve any person or property of having to comply with a mandatory service for pickup and disposal of solid waste.
- E. **Mandatory Participation.** All persons who own or occupy property within the city and who generate any form of municipal solid waste shall register and receive services from the city under one or more services. Each property which generates any form of solid waste must be separately registered and shall receive separate services.
- F. **Permissive Programs.** The City may allow an owner or occupant of a property to register and receive the benefits of one or more programs for solid waste management services. The City Manager shall not allow any person to receive the benefits of a program without being registered and receiving service from a mandatory service for a property. While *services* are mandatory, *programs* are permissive.¹
- G. **City Manager Control.** All services and programs shall be operated under the control of the City Manager. The City Manager may adopt reasonable policies, protocols, and rules to operate all solid waste management services and programs within the City which are not inconsistent with this article, Section 361.0961 of the Texas Health and Safety Code or Chapter 363 of the Texas Health and Safety Code.
- H. **Owner Responsibility.** All property owners who own property within the city's jurisdiction are jointly and severally responsible for their properties, along with all tenants and lease holders, for the proper collection of solid waste from each property owned and for all charges attributed to the collection, transport and disposal.²

¹ Official Comment: There is a difference in this code between a program and a service. The *service* is intended to be the mandatory solid waste pickup and disposal process everyone in the city must follow to ensure trash and refuse are routinely picked up and disposed and the charges for such service. A *program* is an added or alternate way in which a service is provided to qualifying customers because of the customer's specific circumstances.

² Official Comment: The intent is for a property owner to be responsible for solid waste management accounts servicing properties owned by the property owner or in which the property owner holds a real property interest. However, the owner must ensure the property owned is clean and free from solid waste, regardless of whether the

I. Rates.

1. The City shall set residential service and program rates by ordinance.
2. The City shall set all other service and program rates by contract, license agreement, or rule.
3. The City Manager may adopt reasonable written policies, protocols, and rules for the setting of fees and administrative fines to operate all solid waste management services and programs within the City which are not inconsistent with this article.
4. All commercial services and programs which do not have a rate set by contract, license or rule shall have a default rate set by ordinance.

Section 14-152. – Franchises and Hauler Contract Required

- A. A person commits an offense if the person engages in the business of collection solid materials from another person's premises within the city in exchange for a fee without first having a contract or franchise with the city. It is further declared a public nuisance for a person to collect or offer to collect, or to dispose or offer to dispose of, solid waste within the city's jurisdiction unless the person has secured a franchise or contract with the city.
- B. In order to obtain a franchise with the city, the potential franchisee must respond to a bid proposal or inquiry from the city regarding a franchise or contract.
- C. All franchises shall be approved by the City Council.
- D. The City Manager is authorized to enter into a non-franchise contract with a provider for the collection of solid waste without Council approval of a franchise, only in the following conditions:
 1. An unexpected, immediate but temporary need arises for additional haulers or providers of solid waste collection and disposal to timely and fully provide collection and disposal of solid waste within the city's jurisdiction. Such contract shall last no more than thirty (30) days and shall not impose an unrecoverable cost to the City of more than ten thousand dollars. Such contracts cannot be renewed without Council approval; or
 2. The combined ability of all available franchise holders is insufficient to meet an unexpected need to timely and fully provide collection and disposal of solid waste within the city's jurisdiction. Such contract shall last no more than thirty (30) days and shall not impose an unrecoverable cost to the City of more

owner contracts or expects a tenant or vendor to clean the property. This joint responsibility does not affect the property owner's other legal abilities, as a landlord, to recover from the tenant or lease holder any fees or damages under the terms of the lease.

than ten thousand dollars. Such contracts cannot be renewed without Council approval; or

3. Due to an emergency or disaster and the need for services temporally exceeds the combined ability of all available franchise holders to provide sufficient solid waste management services. Such contract shall last no more than is necessary to and shall not impose an unrecoverable cost to the City of more than fifty thousand dollars. Such contracts cannot be renewed without Council approval.
- E. The City Council shall impose reasonable rules and regulations, including appropriate rate structures, within all franchise agreements. Separate from the franchise agreement, the City Manager may adopt and impose reasonable policies, rules and protocols which are not inconsistent with a franchise agreement or this article in order to manage such franchise agreement.
- F. All franchise agreements shall have the following terms and such terms shall be considered part of all franchise agreements, regardless of whether such are expressly stated in the contract:
1. All franchise holders shall identify on all vehicles and containers its name in letters at least two inches tall and its logo.
 2. All franchise holders shall designate a customer dispute resolution number and process so customers can resolve disputes regarding pickups and disposals or to make special arrangements for special pickup times or conditions.
 3. All franchise holders shall not discriminate against any person because of race, sex, age, creed, color religion or national origin.
 4. All franchise holders shall indemnify, defend, and hold the city harmless from all suits and claims brought against the city due to the franchise holder's performance of services under the franchise agreement.
 5. All franchise holders shall obtain all licenses and permits to perform the franchise agreement terms and conditions and promptly pay all taxes required by federal, state, and local law.
 6. All franchise holders shall, at all times, have and maintain full insurance for employer's liability, worker's compensation, public liability, property damage insurance, motorist insurance, bodily injury insurance, and other such insurance as required by the City in the contract.
 7. All franchise holders shall issue a performance bond in the amount of one hundred thousand dollars (\$100,000.00) as security for the performance of the franchise agreement terms and conditions.

8. All franchise holders shall submit statements to the city, which shall be designated as the entity entitled to collect on the accounts for services.
 9. No franchise may be transferred to assigned by the franchise holder without express written consent of the City, approved by the City Council.
- G. In order to efficiently manage the city's solid waste systems and programs, the city will select a principle franchise holder who shall have the right to collect all solid waste from within the city and shall be paid by the city for such collection. No principle franchise shall be granted except by written agreement approved by the City Council and signed by an authorized representative of the City and the principle franchise holder.
- H. All residential customers must use the principle franchise holder for solid waste services.
- I. Unless a commercial customer is a qualifying customer for the Alternative Hauler Program, all commercial customers must use the principle franchise holder for solid waste services.

Section 14-153. –Alternative Hauler Program

- A. **Purpose of Program.** Certain commercial services require more solid waste pickup and disposal than most other customers given the nature of certain industries. For such customers who qualify, the City may offer them the ability to participate in the Alternative Hauler Program.
- B. **Qualifying Customer.** In order to qualify to apply for the program, a customer must:
1. Be a commercial service customer;
 2. Must anticipate, in good faith, to generate over 300 tons of solid waste per month at an identified property within the city's jurisdiction;
 3. Must anticipate, in good faith, it will require more than 80 hauls per month from an identified property within the city's jurisdiction; and
 4. Must not be delinquent in the payment of any charges for solid waste management services owed to the city.
- C. **Application.** A qualifying customer must fill out an application to utilize the program. The application must contain sufficient back up information to establish the applicant meets the qualify customer requirements. The City Manager is authorized to adopt reasonable policies, rules and protocols for conditions of the application. The City Manager can require any other information the manager determines is necessary to establish whether the program should be extended to each particular applicant, taking into account the specific circumstances of the applicant's operations. Regardless of whether an applicant is a qualifying customer, the City may decline to extend the program to any specific applicant but must specify the cause.

- D. Separate Contract Required.** This program requires a written contract with the applicant given different pickups, disposals, and tonnage are anticipated to service the applicant. As a result, the city and the applicant shall negotiate the specific terms of the customer contract for solid waste management services. The contract shall be between the applicant and the city. However, the customer contract shall utilize the principle franchise holder as the primary hauler under the contract. The contract shall specify under what conditions an alternate franchise holder may be utilized. The contract shall also specify any variations in rates, charges, or fees to be paid by the qualified customer. The City Manager may adopt reasonable policies, rules and protocols which are not inconsistent with the customer contract in order to facilitate the contract and program.
- E. Alternative Franchise Holder.** The City Council may approve a franchise agreement for an alternative franchise holder to be utilized in the following circumstances:
1. As part of the Alternate Hauler Program;
 2. In the event the principle franchise holder is unable or unwilling to make specific pickups or disposals; or
 3. In the event additional haulers are needed due to emergency, disaster, or unexpected events where the principle franchise holder's resources may, in the opinion of the City Manager, be insufficient on a temporary basis.

Division II – Contracts

Section 14-160

A. General Service Terms

1. All contracts with the City under this article are for express governmental functions as health and sanitation services and garbage and solid waste removal, collection and disposal and shall not contain any city proprietary conditions.
2. All contracts under this article between the city and a customer are considered a fee for service contract where the city is providing a service to the customer and the customer is providing payment for such services.
3. All contracts under this article between the city and a franchise holder or other hauler of solid waste are considered contracts for services. All franchise holders or other haulers of solid waste are considered independent contractors. No franchise holder may, without City Council approval, enter into, maintain, or hold a franchise agreement with the city while also having an agreement directly with a property owner for solid waste collection outside of the franchise agreement.

B. Residential and Commercial Services.

1. By registering to receive solid waste management services from the city, all service customers are agreeing to comply with the terms, conditions, policies, rules, and protocols of the services and programs.
2. The customer agrees to make timely payments to the city.
3. The customer acknowledges the service may be discontinued in the event the customer's account is delinquent or closed, consistent with the policies, rules and protocols established by the City Manager.

Division III - Enforcement

Section 14-170. Methods of Enforcement

It is a violation of this article for any person to fail to comply with any requirement of this article. The City may enforce this article through any means authorized by law including but not limited to administrative enforcement, civil enforcement, or criminal enforcement. These enforcement methods are in addition to any legally authorized process to enforce the requirements and prohibitions of this article.

Section 14-171. Administrative Enforcement Methods

- A) All customers, franchise holders, and contractors must comply with the policies, rules and protocols adopted by the City Manager in relation to providing or receiving services and programs.
- B) **Permits for Property, Uses and Events within City Jurisdiction.** Applicants for building permits, remodel permits, certificates of occupancy, business registrations, business permits, garage sale permits, or any other permit required by the city shall be required to have a valid registration and account for solid waste management services applicable to the applicant's property, use, event, location, or business prior to the issuance of such permit, registration, or certificate. The City may deny such permit, registration, or certificate due to the lack of registration or if any registered account for waste management services of the applicant is delinquent for more than sixty (60) days.
- C) **Administrative Penalty Determination.** Should a customer or other person violate any provision of this article the City Manager may enforce any requirements or prohibitions by imposing an administrative penalty, not to exceed \$500 per delivery cycle for residential service customers or \$1,000 per delivery cycle for all other alleged violations, after notice and an opportunity to respond by the customer or person. The City Manager may also discontinue or suspend services of a delinquent account for a customer after following the procedures outlined in this section.
- D) **Procedure.**

1. **Notice.** Should the City Manager wish to administratively enforce this article, the City Manager shall cause written notice to be sent to any customer or person who has violated any requirements of this article. Such notice shall include, but is not limited to:

- a) The customer's or person's name, address, and, if applicable, account number
- b) A factual description of the violation including date(s) of the violation;
- c) A list of the section(s) the City Manager believes were violated;
- d) Copies of any documents the City Manager believes demonstrate a violation occurred;
- e) The customer's or person's ability to submit a response along with the potential consequences and penalties facing the customer or person; and
- f) A specific date and time the customer or person may submit a written response to the City Manager's office (including the address for submission) regarding the alleged violations.

2. **Presumptions.**

- a) Each customer is presumed to have been properly mailed notice if the notice is mailed by U.S. mail to the address on file with the City has holding the registered account for solid waste management services.
- b) Each person is presumed to have been properly mailed notice if the notice is mailed by U.S. mail to the address on file with the City to: i. the person's last known residence³, ii. for an entity, the entity's business headquarters, iii. for an entity who does not have an address on file with the City, the entity's designated registered agent on file with the Secretary of State's office, iv. the address on file with the Bexar County Appraisal District as being the owner of any property on which a violation occurred⁴ or v. any other presumption of delivery or receipt recognized by other state or federal law.

3. **Considerations.**

³ Official Comment: This requirement assumes that a person has filed with the U.S. Postal Service a request to forward mail to a new address of residency in the event of a move. As a result, it is proper to mail to the last known place the person claims to have lived.

⁴ Official Comment: These are not the only ways in which a person may receive the notice. These are the primary ways the City may assume the person received the notice.

- a) The City Manager must consider any complete written response submitted by the alleged violator. For a written response to be considered complete, the response must contain:
 - i. The proper legal name of the person or entity responding;
 - ii. A correct phone number, mailing address and email address of the customer or the person who should receive future notices for the administrative matter;
 - iii. A description of why the person believes a violation did not occur, or, the reasons a violation did occurred with any justification for the violation;
 - iv. A description of how any violation has been corrected, if applicable;
 - v. Copies of any documentation the responding person believes the City Manager should have regarding the alleged violations which would aide the City Manager in making any determination;
 - b) The City Manager may consider any verbal statement of any person, but is not required to take verbal statements.
 - c) The City Manager may consider any documentation submitted by city staff or the alleged violator.
4. **Determination.** After the deadline has passed for the alleged violator to have submitted a written response to the City Manager's office, the City Manager must make a written determination of whether a violation occurred and any administrative penalty (including discontinuing certain services) within ten business days of the deadline. Such written determination is considered an administrative order. Such a determination must be in writing and mailed or emailed to the customer or person alleged to have violated a provision of this article. Such determination may be mailed or emailed to any address provided notice or any mail or email address provided in the customer or person's written response. If the City Manager fails to make a written determination and have placed in the U.S. mail or email the determination by 11:59 p.m. on the deadline, the violation shall be considered dismissed with no determination made.
5. **Appeal.**

- a) If a customer or other person who has assessed any form of administrative penalty under this section wishes to appeal such a determination, the customer or person may file an appeal with the City of Windcrest Municipal Court within ten business days of the date the determination was mailed or emailed to the customer or other person.
- b) The Windcrest Municipal Court is hereby authorized to hear any timely filed appeal under this article. The judge of the Windcrest Municipal Court sits as a judicial officer during such appeal. The Windcrest Municipal Court further has jurisdiction over enforcement of an administrative order pursuant to Chapter 54 of the Texas Local Government Code.
- c) Such appeal must be in writing, labeled as “Notice of Appeal of Administrative Order” or a comparable title, and must set forth the grounds upon which the appellant seeks the appeal.
- d) The person appealing must provide notice to the City by providing a copy of the documents filed with the Municipal Court Clerk to the City Manager’s office within three business days of filing the appeal.
- e) The Municipal Court shall set a hearing on the appeal. The appellant and the City Manager’s office are both entitled to reasonable notice of such hearing. Such hearing may be a live evidentiary hearing, or it may be a hearing on motions with attached evidence. Such hearing lies within the sound discretion of the judge of the Municipal Court.
- f) During the appeal, the City Manager bears the burden to support any administrative orders subject to the appeal with substantial evidence.⁵
- g) In reviewing any administrative order, the judge of the Municipal Court shall analyze whether any aspects of the violations asserted constitute a nuisance as a matter of law. If the judge finds such aspects constitute a legal nuisance, the judge shall expressly list as an affirmative finding in the Judge’s final order.

⁵ Official Comment: With the exception of any nuisance determinations contained within an administrative order, the appellant’s appeal is to be conducted under the Texas administrative agency appeal standard, which the law labels as a substantial evidence review. The judge of the Municipal Court shall perform a legal analysis of whether any aspects of the violations asserted in the administrative order constitute a nuisance as a matter of law and may do so outside of the administrative agency appeal standard, which the law refers to as a *de novo* review.

- h) The Judge of the Municipal Court may reverse, affirm, or modify an administrative order. Upon the judge of the Municipal Court affirming or modifying any portion of the administrative order, the judge shall also issue a judicial enforcement order, compelling the appellant to comply with the administrative order, as affirmed or modified, as directed by the Judge.
- i) As a municipal court of record, an appeal from a final judgment of the Windcrest Municipal Court regarding an administrative appeal is controlled by Chapter 30 of the Texas Government Code.
- j) Any administrative penalties assessed may be assessed personally against the violator as well as against the property upon which the service was to be performed. The City may collect on all administrative penalties through any lawful means.

Section 14-172.- Civil Enforcement

- E) The City may initiate any enforcement action in a court of competent jurisdiction to enforce the provisions of this article. Such enforcement action may be based on city personnel's own observations or a complaint from others for violation of the city's code.
- F) The City Manager and the City Attorney are authorized to file such claims or lawsuits as might be necessary to enforce the requirements and prohibitions of this article. The City may seek all legally authorized relief and damages allowed by law, including the costs of the court and attorney's fees.
- G) The City may seek civil penalties against any person who violates any requirements and prohibitions of this article or against the property upon which a service was to be performed, for amounts not to exceed \$1,000 per day for each day a violation continues to exist. The City may collect on all civil penalties through any lawful means.

Section 14-173.- Criminal Enforcement

Any person who violates any provision of this article shall be guilty of a misdemeanor punishable by a fine not to exceed \$2,000 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. This provision is further governed by §1-5 of this code.

II. CUMULATIVE CLAUSE

That this Ordinance shall be cumulative of all provisions of the City of Windcrest Code of Ordinances, except where the provisions of this Ordinance are in direct conflict with the provisions of an existing ordinance or code, in which event the conflicting provisions of such existing ordinance or code are hereby repealed, while leaving the remainder of such other ordinance or code intact. To the extent of any conflict, this Ordinance is controlling.

III. SEVERABILITY

That it is hereby declared to be the intention of the City Council of the City of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional or invalid by final judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinance, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional or invalid phrases, sentences, paragraphs, or sections.

IV. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government

DULY PASSED ON FIRST READING, on the 28th day of September, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

DULY PASSED AND APPROVED, on the _____ day of _____, 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

CITY OF WINDCREST, TEXAS

Dan Reese, Mayor

ATTEST:

Rachel C. Dominguez, City Secretary

APPROVED:

Ryan S. Henry, City Attorney

PENDING CITY COUNCIL APPROVAL

ORDINANCE NO. 2020-033(O)

AN ORDINANCE TO ALLOW ADDITIONAL ILLUMINATED SIGNS FOR LOCAL BUSINESSES AND NONPROFIT ORGANIZATIONS FOR PURPOSES OF ADVERTISEMENT BY AMENDING SECTION 109-12 SIGNS OF CHAPTER 109 – SIGNS OF THE MUNICIPAL CODE.

WHEREAS, the City of Windcrest City Council finds electronic advertising of local businesses and nonprofit organizations provides benefits to the city and its citizens by advertising goods and/or services available within its boundaries; and

WHEREAS, the City of Windcrest City Council finds that such advertising will generate additional revenues for the city by soliciting the purchase of goods and services within the city; and

WHEREAS, the City of Windcrest City Council finds that unrestricted use of illuminated signs by local businesses and nonprofit organizations would negatively impact the appearance of the city; and

WHEREAS, the City of Windcrest City Council finds to enable local businesses and nonprofit organizations to utilize illuminated signs for advertising the City's code must be amended to include exceptions with certain limitations; and

WHEREAS, the Windcrest City Council finds this ordinance is in the interest of the public and the City and in furtherance of good governance.

I.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS that Chapter 109, Section 109-12 is amended as indicated with cross- through text being deletions and underlined text being additions and shall read as follows:

Sec. 109-12. - Illuminated signs.

- (1) The use of changeable electronic variable message signs and digital billboards is prohibited in the city after May 19, 2008, **unless expressly permitted by this article.**
- (2) **Permitted changeable electronic variable message signs.**
 - a. **Changeable electronic variable message signs are permitted for use by the city for governmental purposes.**
 - b. **Changeable electronic variable message signs are permitted ~~except~~ in the I-35 Corridor **upon approval of the city council.****
 - c. **Other than the signs permitted under (a) of this subsection, changeable electronic variable message signs are permitted:**

- i. for on-premise use only;
- ii. on lots which do not contain a residential dwelling;
- iii. shall not exceed a face size of 5' x 8';
- iv. shall not be placed on a vacant lot or lot under construction;
- v. must be a monument or low profile sign;
- vi. cannot be placed on public property;
- vii. must meet the brightness level restrictions of a City gateway sign;
- viii. must be the only illuminated exterior sign upon the property; and
- ix. cannot unreasonably interfere with the surrounding property owner's peace and tranquility or enjoyment of their private property.

(3) The placement, structure, and location of all changeable electronic variable message signs shall be ~~and only if~~ approved by the city council.

(4) The use of flashing lights, moving lights, animated displays, moving videos or scrolling advertising is prohibited. ~~Static advertising displayed electronically which rotates between advertisements in accordance with the requirements of a City gateway sign are permitted.~~

...

II.

CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of the Windcrest Code of Ordinances except where the provisions of this Ordinance are in direct conflict with the provisions of an existing ordinance, in which event the conflicting provisions of such existing ordinance are hereby repealed and replaced by the provisions of this Ordinance.

III.

SEVERABILITY

That it is hereby declared to be the intent of the City Council of Windcrest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

IV.

PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meetings at which this Ordinance

was approved and adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government.

**V.
EFFECTIVE DATE**

This ordinance shall be effective upon passage and publication as required by state and local law.

VI. READING

FIRST READING approved by the City Council of the City of Windcrest this the _____ day of _____, 2020.

SECOND READING DULY PASSED AND APPROVED, on the _____ day of _____ 2020 at a regular meeting of the City Council of the City of Windcrest, Texas, which was held in compliance with the Open Meetings Act, Gov't. Code §551.001, et. Seq. at which meeting a quorum was present and voting.

Dan Reese, Mayor

ATTEST:

Rachel C. Dominguez, City Secretary

APPROVED AS TO FORM:

Ryan Henry, City Attorney



I-35 North East Expansion (NEX) Project-Elevated Express Lanes

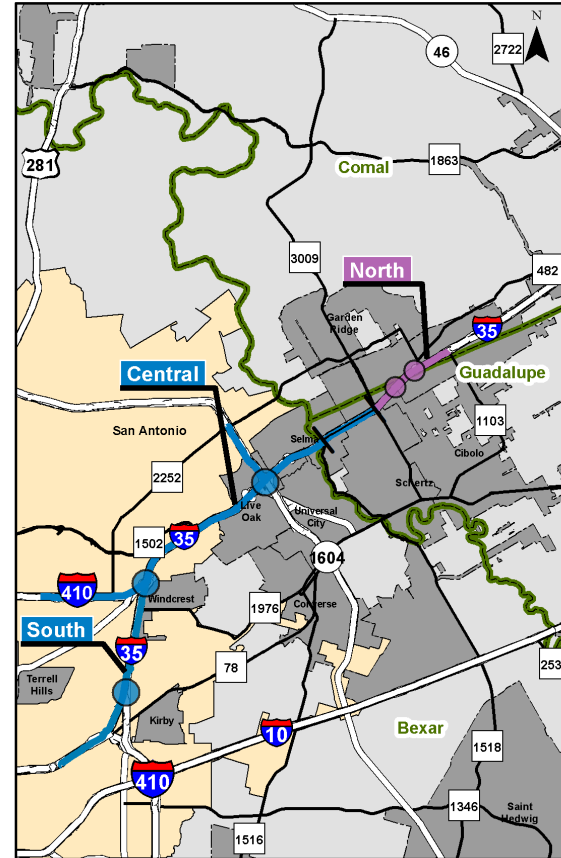
I-35 NEX Ultimate project location & corridor limits

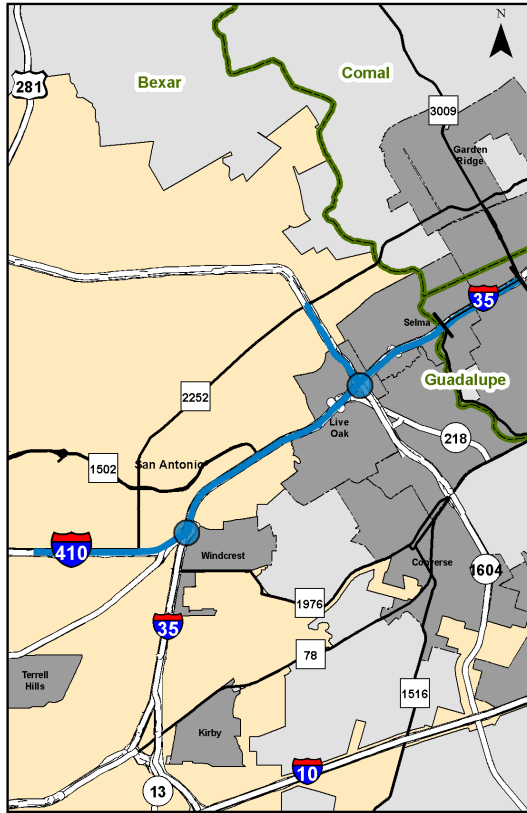


I-35 NEX Full Project Length: 20 Miles

I-35 NEX Full Construction Limits: I-410
S to FM 1103

Project Location: Bexar, Guadalupe, and
Comal counties





Project Limits: I-410 N to FM 3009

Current Status: TxDOT is in the RFP phase of procuring a DB contractor

Contract Execution: June 2021

Anticipated Start of Construction: Early 2022

Project Duration: 6.5 years

I-35 NEX South and North



- Project Limits: I-410 S to I-410 N
- Current Status: TxDOT to begin procurement early 2021
- Anticipated Contract Execution: September 2022
- Anticipated Start of Construction: Early 2023

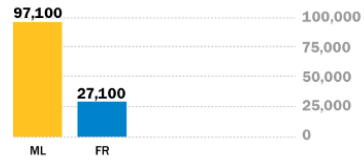


- Project Limits: FM 3009 to FM 1103
- Anticipated Letting: 2023

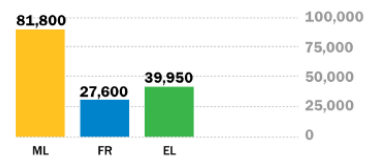


I-35 SOUTHBOUND

2018 AADT

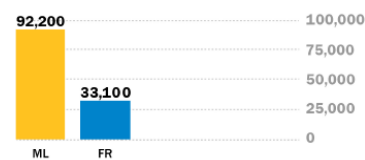


2024 Build AADT

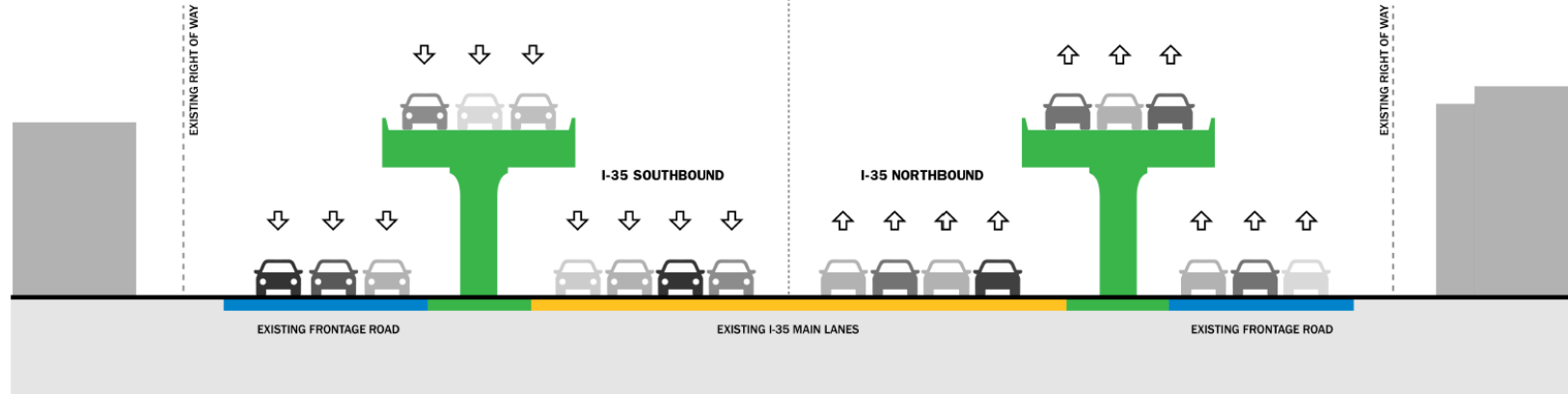
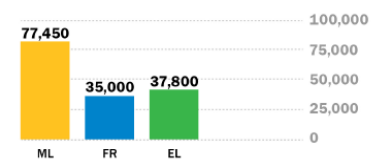


I-35 NORTHBOUND

2018 AADT



2024 Build AADT



KEY

- ML = Mainlanes
- FR = Frontage Roads
- EL = Elevated Lanes



Questions?

