

**MINUTES OF THE  
REGULAR CITY COUNCIL MEETING  
MONDAY, AUGUST 24, 2009 — 6:00 P.M.  
KAUFMAN CITY HALL  
209 S. WASHINGTON  
KAUFMAN, TEXAS 75142**

**CITY COUNCILMEMBERS**

<b>MAYOR</b>	<b>WILLIAM FORTNER</b>
<b>MAYOR PRO-TEM</b>	<b>BARRY RATCLIFFE</b>
<b>COUNCILMEMBER</b>	<b>GIL ALTOM JR.</b>
<b>COUNCILMEMBER</b>	<b>JEFF COUNCIL</b>
<b>COUNCILMEMBER</b>	<b>CHARLES GILLENWATER</b>
<b>COUNCILMEMBER</b>	<b>KENNETH MUNDEN</b>

**INVOCATION:** Pastor Frank Schoenle, Love Fellowship, Kemp, Texas

**PLEDGE OF ALLEGIANCE**

**CALL MEETING TO ORDER:** Mayor Fortner called the Meeting to order at 6:09 p.m. Councilmember's present were William Fortner, Gil Altom Jr., Jeff Council, Charles Gillenwater and Kenneth Munden. Mayor Fortner declared a quorum present. Barry Ratcliffe was absent. Also present were City Attorney David Dodd, City Manager Curtis Snow, ACM/City Secretary Jo Ann Talbot, Chief of Police Michael Holder, and Director of Development of Services Marcy Ratcliff.

**CITIZENS COMMENTS (5 MINUTES)** Citizens may address the City Council on any subject but must first complete a Request to Speak Form. Comments are limited to five (5) minutes, but no more than five (5) minutes per individual, and are not transferable. Citizen's comments not to exceed a total of 15 minutes.

No comments were made by citizens.

**CONSENT AGENDA ITEMS #1 THROUGH #8**

**“All matters listed under the Consent Agenda, are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.”**

1. Consider approval of the Minutes of the July 27, 2009, Regular City Council Meeting.

2. Consider Second Reading and Adoption of Ordinance of O-08-09 of the City of Kaufman, Texas, amending the Comprehensive Zoning Ordinance O-02-07 and establishing Specific Use Permit Number Fifteen (SUP-15) for Auto Laundry and Specific Use Permit Sixteen (SUP-16) for Minor Auto Repair; providing certain conditions; amending the Official Zoning Map; and providing for a penalty, severability, savings, and an effective date.
3. Consider Second Reading and Adoption of Ordinance O-09-09 of the City of Kaufman amending O-13-99, repealing the existing Planning Elements: Future Land Use Plan Map and Thoroughfare Plan of the Comprehensive Plan and adopting the new planning elements: Future Land Use Plan Map and Thoroughfare Plan of the Comprehensive Plan for the City of Kaufman, Texas; providing for long-range guidance related to future land uses and future thoroughfares.
4. Consider Second Reading and Adoption of Ordinance O-10-09 of the City Council of the City of Kaufman, Texas, ("City") approving a negotiated Resolution between the Atmos Cities Steering Committee ("ACSC" or "Steering Committee") and Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") regarding the company's rate review mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; requiring the company to reimburse cities' reasonable ratemaking expenses; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; approving Atmos' proof of revenues; adopting a savings clause; determining that this Ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; declaring an effective date; and requiring delivery of the Ordinance to the Company and the Steering Committee's Legal Counsel.
5. Consider Approval and Authorize the Mayor to execute a Revised Interlocal Agreement with Texas Municipal League (TML) Intergovernmental Employee Benefits Pool (City Employees Health Insurance Coverage).
6. Consider Approval of a Revised Section 125 Flexible Spending Account Service Agreement with Texas Municipal League (TML) Intergovernmental Employee Benefits Pool.
7. Consider Approval of a Revised Health Reimbursement Service Agreement with Texas Municipal League (TML) Intergovernmental Employee Benefits Pool.
8. Consider approval of Resolution R-19-09 of the City of Kaufman to Authorize the City Manager to enter into an Agreement with the Texas Department of Transportation to close the Kaufman County Courthouse Square October 24<sup>th</sup>, 2009, for the Kaufman Fall Festival.

Councilmember Gillenwater moved and seconded by Councilmember Munden to approve the Consent Agenda Items #1 through #8. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

## **END OF CONSENT AGENDA**

## **PLANNING AND ZONING ITEMS**

9. Conduct a Public Hearing and Consider First Reading of Ordinance O-11-09 for a Zoning Change for a Specific Use Permit for Major Auto Repair located at 33 Oak Creek Drive.
  - a. Conduct a Public Hearing For TPC Properties, Tommy Clark, for a Specific Use Permit for Major Auto Repair located at 33 Oak Creek Drive, being a 0.5 acre tract out of the C.A. Lovejoy Survey, Abstract 303, in the City of Kaufman, Kaufman County, Texas on property zoned Highway Commercial "HC".

Mayor Fortner declared the Public Hearing open at 6:13 p.m.

Director of Development of Services Marcy Ratcliffe informed the Council that Mr. Clark is requesting Specific Use Permit for major auto repair on 0.50 acres of land at 33 Oak Creek Drive. TPC Properties purchased the property this last spring. Mr. Clark wants to lease out two existing non-conforming metal buildings for major auto repair.

The property is currently zoned Highway Commercial "HC". The "HC" district was established to provide a relatively high intensity area which permits a mixture of land uses including office, retail, some types of commercial and entertainment uses, and highway-oriented uses, such as hotels, motels and restaurants, which should generally be located along high-volume thoroughfares. Auto repair, major is listed as a permitted use in the Light Industrial District, and as a specific use permit in the Commercial and Highway Commercial districts. The definitions of auto repair, major and minor are included below.

"Auto Repair, Major" is defined in the Zoning Ordinance as the general repair or reconditioning of engines, air-conditioning systems and transmissions for motor vehicles; wrecker service; collision repair services including body, frame or fender straightening or repair; customizing; painting; welding; vehicle steam cleaning; undercoating and rust proofing; those uses listed under "Auto Repair, Minor" or any other similar uses.

“Auto Repair, Minor” is defined in the Zoning Ordinance as the minor repair or replacement of parts, tires, tubes and batteries; diagnostic services; minor maintenance services such as grease, oil, spark plug and filter changing; tune-ups; emergency road service; replacement of starters, alternators, hoses and brake parts; automobile washing and polishing; installation of minor automobile accessories such as car alarm, radio and stereo equipment, window tinting, pin striping, cellular telephones and similar accessories; performing state inspections and making minor repairs necessary to pass said inspection; normal servicing of air-conditioning systems; and other similar minor services for motor vehicles except heavy load vehicles, but not including any operation named under “Auto Repair, Major” or any other similar use.

Building “A” contains approximately 4,550 square feet, with 3 bay doors and an office area containing less than 500 square feet.

Building “B” contains approximately 2,050 square feet with 4 bay doors and no designated office area.

According to the zoning ordinance, automotive service parking regulations are found under the parking requirements for motor-vehicle sales and new or used car lots. The parking required is one parking space for each 500 SF of sales floor/office and other indoor uses, plus one parking space for each 1,000 SF of exterior lot area used for storage, sales and parking areas, plus one parking space per repair bay in service areas (indoors or outdoors), plus one parking space per service/towing vehicle to be stored on site.

Required off-street parking for the proposed automotive repair based on standard above is:

Office area: (500 SF) requires 1 parking space + 7 parking spaces for 7 service bays for a total of 8 parking spaces.

The applicant, since the August 3, 2009, Planning and Zoning meeting, has received a building permit to add approximately 2,500 square feet of asphalt paving for parking and driving area.

One letter of opposition from Kincaid’s Paint and Body has been received to date.

Mr. Kevin Smith representing Kincaid’s Paint and Body Shop spoke at the meeting. He had numerous concerns about the appearance, the upkeep of the property, junk/inoperable vehicles, availability of

a bathroom and office facility in Building “B” and the operational ability of the existing standard septic system.

**BACKGROUND:**

Building “A” was initially developed in or around 1995, and Building “B” was developed in 2000. The property has been occupied most recently by Ultimate Road Gear (U-Haul Rental) and Preston’s Truck & Auto Repair. The property is considered non-conforming, because the existing development does not meet the current development standards for masonry, landscaping, and parking lot standards.

The property was granted a variance to the Kaufman Zoning Ordinance O-02-07, Section 44.9.C.5.b. – Sign Regulations for Pole Sign Setbacks, by the Zoning Board of Adjustment on April 22, 2008, by a vote of 5-0. The approval allows a proposed pole sign to encroach into the thirty-five foot (35’) side yard setback by twelve feet (12’), allowing a side yard setback of twenty-three feet (23’).

**SURROUNDING ZONING AND EXISTING LAND USE:**

	<b>Zoning</b>	<b>Existing Land Use</b>
<b>North:</b>	“HC”	Undeveloped & Kincaid’s Paint and Body Shop
<b>South:</b>	“HC”	Undeveloped
<b>East:</b>	“HC”	Large single family tracts
<b>West:</b>	“HC”	Undeveloped

**COMPREHENSIVE PLAN:**

**Land Use Plan:**

The 1999 Future Land Use Plan designates the land use of the subject property as Commercial. The existing Highway Commercial zoning is in compliance with the proposed Future Land Use Plan that is soon scheduled for adoption.

**Thoroughfare Plan:**

The Thoroughfare Plan designates W. US Highway 175 as a “Type AA”, Major Arterial Thoroughfare, requiring a future right-of-way width of 240 feet. The existing right-of-way is developed and maintained by the State of Texas. TxDOT controls the driveway access to all properties on Oak Creek Drive (frontage road to US Highway 175). There are two existing driveway’s that are proposed to remain the same.

DETERMINATIONS NECESSARY FOR CONSIDERING SUP'S

Sec 30.2.A

In recommending that a Specific Use Permit for the premises under consideration be granted, the City shall determine that such uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening and open space, heights of structures, and compatibility of buildings. In approving a requested SUP, the Planning and Zoning Commission and City Council may consider any or all of the following:

1. The use is harmonious and compatible with surrounding existing uses or proposed uses;
  2. The activities requested by the applicant are normally associated with the permitted uses in the base district;
  3. The nature of the use is reasonable;
  4. Any negative impact on the surrounding area has been mitigated; and/or
  5. That any additional conditions specified ensure that the intent of the district purposes are being upheld.
- B. In granting a Specific Use Permit, the Planning and Zoning Commission and City Council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy ed by the Building Official, or his designee, for use of the building on such property pursuant to such Specific Use Permit and such conditions precedent to the granting of the certificate of occupancy. Any special conditions shall be set forth in writing by the City Council prior to issuance of the Certificate of Occupancy, and shall be incorporated into the amending ordinance establishing the SUP.

The Planning and Zoning Commission, on August 3, 2009, recommended approval by a vote of 4-0, the requested Specific Use Permit for Major Auto Repair in a Highway Commercial District at 33 Oak Creek Drive with the following stipulations:

1. All open storage is prohibited.
2. All vehicles must be parked on either concrete or asphalt paving. No parking or storage allowed on grass or gravel areas.
3. No parking in the right-of-way.

4. No inoperable or damaged vehicle storage shall be allowed outside.
5. The property will be maintained in an attractive manner. Additional landscaping in the front will be encouraged.
6. Approximately 1,000 square feet of additional concrete or asphalt paving will be added in front of Building "B".
7. Eight (8) required off-street parking spaces will be provided. Additional temporary parking will be provided in front of the bays.
8. All required off-street parking spaces will be striped. The first 4 off-street parking spaces noted on the site plan will have wheel stops.
9. Remove the existing sign posts at the front of the property.
10. All future signage will be in accordance with Section 44, Sign Regulations of the Kaufman Zoning Ordinance.
11. A designated fire lane will be required (to be determined at the time of occupancy).

Tommy Clark, 701 Broad Street, Forney, Texas, informed the City Council that he has cleaned up the property and plans on keeping it clean. His plans are to lease the property out and to get good tenants in the property. He reported that he could meet all the Planning and Zoning Commission's stipulations.

Mayor Fortner declared the Public Hearing closed at 6:22 p.m.

- b. Consider First Reading and Approval Ordinance O-11-09 of the City of Kaufman, Texas amending the Comprehensive Zoning Ordinance O-02-07 and Establishing Specific Use Permit Number Seventeen (SUP-17) for Major Auto Repair; providing certain conditions; amending the Official Zoning Map; and providing for a penalty, severability, savings, and an effective date.

After discussion, Councilmember Altom moved and seconded by Councilmember Council to approve the first reading of Ordinance O-11-09 of the City of Kaufman, Texas amending the Comprehensive Zoning Ordinance O-02-07 and Establishing Specific Use Permit Number Seventeen (SUP-17) for Major Auto Repair; providing certain conditions; amending the Official Zoning

Map; and providing for a penalty, severability, savings, and an effective date, including the stipulation as follows:

All open storage is prohibited.

All vehicles must be parked on either concrete or asphalt paving.

No parking or storage allowed on grass or gravel areas.

No parking in the right-of-way.

No inoperable or damaged vehicle storage shall be allowed outside.

The property will be maintained in an attractive manner. Additional landscaping in the front will be encouraged.

Approximately 1,000 square feet of additional concrete or asphalt paving will be added in front of Building "B".

Eight (8) required off-street parking spaces will be provided.

Additional temporary parking will be provided in front of the bays.

All required off-street parking spaces will be striped. The first 4 off-street parking spaces noted on the site plan will have wheel stops.

Remove the existing sign posts at the front of the property.

All future signage will be in accordance with Section 44, Sign Regulations of the Kaufman Zoning Ordinance.

A designated fire lane will be required (to be determined at the time of occupancy).

Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

10. Authorize Setting a Public Hearing, on Monday, September 28, 2009, to Consider and Adopt the Land Use Assumptions for Impact Fees.

After discussion, Councilmember Gillenwater moved and seconded by Councilmember Altom to set a Public Hearing for September 28, 2009, to consider and adopt the land use assumptions for impact fees. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

11. Discussion on Kaufman Code of Ordinances, Chapter 50 Health and Sanitation, Article II, Food Service Establishment proposed regulations

and proposed required Food Handler Certification for Food Handlers only in eating establishments.

Director of Development of Services Marcy Ratcliffe informed the Council that at the end of 2008 and in the beginning of 2009, City Council discussed the viability of letter grade scoring for health inspections of food service establishments, at a workshop on November 4, 2008, and at the public hearing, on February 23, 2009. There was much discussion at the public hearing about the ramifications of a letter grade scoring system for food service establishments versus training all personnel regarding food handling safety. Most of the existing food service establishments were opposed to the proposed letter grade scoring system. They did not seem opposed to requiring all food service employees to have a food handler's certification.

City Sanitarian Tony Hiller and Development Services Staff have developed revised language that keeps the previously proposed definitions, food inspection criteria, food inspection procedures, eliminated the letter grade scoring requirements and inserted language that requires food handler's permit for all food service employees (school cafeterias, day cares, hospitals, nursing homes, restaurants, delicatessens, meat markets, seafood markets, bakeries, mobile/catering units and temporary food vendors). The food handler's certification is a valid permit issued by an accredited food handler program that is valid for 2 years.

Routine health inspections for food service establishments will stay the same, with the proposed language, with the exception that all food service employees will be required to have their food handler's permit on file with the employer and available to the Health Sanitation Officer. The inspection report consists of 27 critical violations. Demerits ranging from 3 points to 5 points are issued when a food establishment is found in non-compliance. Demerits are categorized by food temperature/time requirements; personnel/handling/source requirements; and facility and equipment requirements. At present, a facility is considered in compliance when the total demerits are less than 30. Every food service establishment will be required to have 2 routine health inspections a year.

The Mayor requested a 6 month trial period be included in the ordinance. That language is included in the attached draft language.

The food handler's permit can be done through the Kaufman County Agricultural Extension Service or through a Texas certified program online. The County charges \$15 for a 2 hour class and the online programs charge \$9-\$15 and the program is self paced. The City of Kaufman would not be requiring any additional fees or permits.

Staff recommends Council review and discusses the proposed regulations and the newly required food handler's permit. The proposed amendments are not required to be adopted after a public hearing; however if Council is amendable to the regulations, Staff recommends holding a public hearing and invite all businesses that would be impacted by the food handler's permit requirement.

Mayor Fortner asked Staff to research if other cities give a grace period to obtain the food handler certification within 6 months of adoption of the ordinance.

Mayor Fortner moved and seconded by Councilmember Altom setting September 28, 2009, for a public hearing on the Food Handler Certification for Food Handlers only in eating establishments. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

### **DISCUSSION/ACTION ITEMS**

12. Consider Approval and Authorize the Mayor to enter into an Agreement with Tristem, LTD to conduct electric utility bill and street light audits.

Trisha Santiago, representative of Tristem, LTD, 328 Ivy Lane, Hewitt, Texas gave a presentation to the City Council for their company to conduct electric utility billing and street light audits for the City of Kaufman. She reported that the agreement included a review of the City's paid utility bills for billing and metering accuracy, identify and document overcharges and errors in bills and work directly with utility providers to correct errors and recover overcharges. There is a 45% fee of any overcharges that TriStem is able to recover for the City. There are no up-front fees or hidden costs. TriStem will not collect a percentage of your future savings and if there is no refund, the City will owe nothing to TriStem.

After discussion, Councilmember Altom moved and seconded by Councilmember Council to approval and Authorize the Mayor to enter into an Agreement with Tristem, LTD to conduct electric utility bill and street light audits. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

13. Consider First Reading of Ordinance O-12-09 of the City Council of the City of Kaufman, Texas amending Chapter 14 Amusements and Entertainments, Section 14-32 Regulations Governing Premises, (a) Condition of Premises; by Amending this paragraph and supplementing with a new paragraph of Section 14-32 Regulations Governing Premises, (a) Condition of Premises; providing for a repealer, providing a severability clause; and providing an effective date.

City Manager Curtis Snow informed the City Council that this ordinance amends the City of Kaufman Code of Ordinance, Chapter 14, allows for rules and regulation on amusements centers, billiard halls, bowling alleys, and coin-operated amusement devices (game machines).

Staff is recommending removing paragraph (3) of Section 14.32 Regulations governing premises, which states:

“No alcoholic beverages shall be stored, consumed, served or sold on the premises nor at any other place within 300 feet of the premises which is reasonably under the control of the owner, occupant, operator or custodian of the premises.”

This paragraph is somewhat outdated within our City. Most all convenience stores and some restaurants with alcohol sales have game machine devices. Therefore, the businesses are in violation of the City Code of Ordinance. By removing this paragraph, current establishments will come into compliance with the Code of Ordinances and allow game devices in their business.

After discussion, Councilmember Altom moved and seconded by Councilmember Munden to approve first reading of Ordinance O-12-09 of the City Council of the City of Kaufman, Texas amending Chapter 14 Amusements and Entertainments, Section 14-32 Regulations Governing Premises, (a) Condition of Premises; by Amending this paragraph and supplementing with a new paragraph of Section 14-32 Regulations Governing Premises, (a) Condition of Premises; providing for a repealer, providing a severability clause; and providing an effective date. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

14. Consider Approval and Authorize the City Manager to execute an Agreement with Jacobs Engineering to Provide an Analysis on the City Lake Park Dams.

City Manager Curtis Snow informed the City Council that the Texas Commission on Environmental Quality (TCEQ) performed an inspection of the facility in 2008 and determined that the lake dams and spillways were in need of improvement. All improvements to this facility require an engineering assessment prior to any work performed to reduce any stress to the existing structures and ultimately eliminating a dam breach. The analysis will determine what improvements will be needed along with the most cost effective means to make such improvements.

The contract submitted by Jacobs Engineering is for a lump sum amount \$37,700. These funds are budgeted in Fiscal Year 2008/2009.

Staff recommends that Council authorize the City Manager to execute an agreement for engineering services with Jacobs Engineering for a lump sum contract amount of \$37,700.

Councilmember Council moved and seconded by Councilmember Gillenwater to approve and authorize the City Manager to execute an Agreement with Jacobs Engineering to Provide an Analysis on the City Lake Park Dams. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

15. Consider authorizing the use of General Fund, Street Department to pay the cost of additional Right of Way acquisition for the Mulberry Street Improvement Project to the Texas Department of Transportation (TxDOT).

City Manager Curtis Snow informed the City Council that on August 17, 2009, the City of Kaufman received an invoice from Texas Department of Transportation (TxDOT) for the balance of right of way acquisition on the Mulberry Street Improvement Project due to the cost of drainage and street right-of-way. The City's portion was equal to ten (10) percent of the cost of the right of way to be acquired by the State.

The City has already paid \$2,000.00. The balance due for the final cost of the right of way is \$6,690.50.

The General Fund Street Department will pay for the additional right of way purchase.

After discussion, Councilmember Altom moved and seconded by Mayor Fortner to authorize the use of General Fund, Street Department to pay the cost of additional Right of Way acquisition for the Mulberry Street Improvement Project to the Texas Department of Transportation (TxDOT). Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

## **PRESENTATIONS**

16. Presentation – KART Public Transportation – Omega Ann Hawkins, General Manager.

Omega Hawkins, representing KART Public Transportation, informed the Council what KART transportation services were about. In addition, she asked to be included in the Fiscal Year 2010 budget for a show of support for the services provided to the Kaufman citizens from the KART Public Transportation.

After discussion, Mayor Fortner asked the City Manager to write a letter of support and try to locate a small token of support for the KART services.

**APPOINTMENTS**

17. Consider the appointment of one (1) Planning and Zoning Commissioner for an unexpired term through November 2010.

City Staff informed the City Council that Marshall Park had submitted his name in May 2009, but had not recently confirmed his interest. After discussion of the appointment, Councilmember Council moved and seconded by Councilmember Gillenwater to table this item until next month. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

18. Consider the approval of Curtis Snow to serve on the TML Intergovernmental Employee Benefits Pool Board of trustees – TML Region 13, from October 1, 2009 through September 30, 2012.

Mayor Fortner moved and seconded by Councilmember Altom the approval of Curtis Snow to serve on the TML Intergovernmental Employee Benefits Pool Board of Trustees – TML Region 13, from October 1, 2009 through September 30, 2012. Mayor Fortner called for a vote with all voting AYE, the motion carried. Mayor Pro-Tem Ratcliffe was absent.

**ANNOUNCEMENTS FROM CITY MANAGER.**

City Manager Curtis Snow reminded the City Council of the Budget Public Hearing, the adoption of the Fiscal Year 2009/2010 Budget and Tax Rate. The meeting is scheduled for Monday, August 31, 2009.

**ADJOURNMENT.**

There being no further business, the meeting was adjourned at 7:28 p.m.

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**WILLIAM FORTNER  
MAYOR**

**ATTEST:**

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**JO ANN TALBOT  
CITY SECRETARY**