

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, FEBRUARY 28, 2023, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

Kerrville will be a vibrant, welcoming and inclusive community that:

- *Respects and protects the natural environment that surrounds it;*
- *Seeks to attract economic growth and development;*
- *Provides opportunities for prosperity, personal enrichment and intellectual growth for people of all ages; and*
- *Does so while preserving the small-town charm, heritage, arts and culture of the community.*



Kerrville2050



CITY COUNCIL MEETING AGENDA
FEBRUARY 28, 2023 6:00 PM
CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



**Council Meeting Procedures, City Council and City Staff Safety Measures, and
Citizen Participation Guidelines**

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website (www.kerrvilletx.gov). City Council meetings are recorded and the recordings are posted on the City's website. Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meeting begin. Each speaker is limited to four minutes.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property.

Thank you for your participation!

CALL TO ORDER: By Mayor Judy Eychner

INVOCATION AND PLEDGE OF ALLEGIANCE: Led by Councilmember Brenda Hughes

- 1 **ANNOUNCEMENTS OF COMMUNITY INTEREST:** Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.
- 2 **PRESENTATIONS:**
 - 2.A Kerrville Kindness award recognizing Starkey Elementary fourth grader Cooper Smithson.
 - 2.B Proclamation recognizing March 2023 as Texas History Month in Kerrville, Texas.
 - 2.C Commendations for outgoing Board members of the Recovery Community Coalition and the Senior Services Advisory Board.
 - 2.D Kerrville Police Department Team Member Recognition.
- 3 **VISITORS/CITIZENS FORUM:** Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.
- 4 **CONSENT AGENDA:** These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:
 - 4.A Resolution No. 08-2023. A Resolution of the City of Kerrville, Texas designating the City of Kerrville as a HIPAA Hybrid Entity in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and providing an effective date.
Attachment: [20230228_Reso 08-2023 HIPAA.pdf](#)
 - 4.B City Council workshop minutes, February 14, 2023.
Attachment: [20230228_Minutes Council workshop 2-14-23 4pm.pdf](#)

4.C City Council meeting minutes, February 14, 2023.

Attachment: [20230228_Minutes Council meeting 2-14-23 6pm.pdf](#)

END OF CONSENT AGENDA.

5 ORDINANCE(S), FIRST READING:

5.A Ordinance No. 2023-09. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, titled "Streets, Sidewalks, and Other Public Places"; by adding a new Article titled "Right-Of-Way Management", to create regulations, including a permit requirement, for construction, maintenance, and repair work within the City's Rights-Of-Way; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing other matters relating to the subject.

Attachment: [20230228_Ord 2023-09 ROW regulations.pdf](#)

6 PUBLIC HEARING AND POSSIBLE ACTION:

6.A Request for variance from distance requirement pursuant to §30-17, City's Code of Ordinances, for a proposed boarding home facility at 316 Jefferson.

Attachment: [20230228_Map Boarding Home Facility.pdf](#)

7 CONSIDERATION AND POSSIBLE ACTION:

7.A Resolution No. 07-2023. A Resolution in support of the submission of an application to the 2023 competitive housing tax credit (HTC) program through the Texas Department of Housing and Community Affairs (TDHCA) by Communities River Rock Partners, LLC, for the new construction of affordable senior housing.

Attachment: [20230228_Reso 07-2023 River Rock Partners Sr Housing.pdf](#)

7.B Authorization to negotiate a Design-Build contract for the Public Safety Facility.

7.C Resolution No. 09-2023. A Resolution authorizing the approval of a contract for collection services for debts and accounts receivable with Linebarger Goggan Blair and Sampson, LLP; such services to include collections of unpaid fines, fees, and court costs pertaining to the City's Municipal Court; making certain findings required by Section 2254.1036 of the Texas Government Code; authorizing the City Manager to execute the contract; and providing for an effective date.

Attachment: [20230228_Reso 09-2023 Collection services for municipal court.pdf](#)

8 INFORMATION & DISCUSSION:

8.A Financial update for month ending January 31, 2023, and Tax Increment Reinvestment Zone (TIRZ) Annual Report for year-ended September 30, 2022.

Attachment: [20230228_Presentation TIRZ annual.pdf](#)

10 EXECUTIVE SESSION: *City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code.*

11 ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.

12 ITEMS FOR FUTURE AGENDAS: *City Council may suggest items or topics for future agendas.*

ADJOURN.

NOTICE OF A PUBLIC MEETING

(pursuant to §2254.1036, Tx. Gov't Code)

Notice is hereby given that a meeting of the City Council of the City of Kerrville, Texas will be held on February 28, 2023, beginning at 6:00 PM, at City Hall, 701 Main St., Kerrville, Texas for the purpose of considering and taking action on all matters on the agenda for the meeting, including the approval of an agreement with the law firm of Linebarger Goggan Blair & Sampson, LLP (the "Law Firm"). City Council will consider appointing the Law Firm as special counsel to perform all legal services necessary to collect unpaid fines, fees, and court costs as provided in Art. 103.0031, Texas Code of Criminal Procedure ("Art. 103.0031") and authorizing the execution of such agreement (the "Agreement").

The proposed Agreement is necessary for the most effective collection of unpaid fines, fees, and court costs owed to the Kerrville Municipal Court. The City seeks to collect the unpaid fines, fees, and court costs as provided in the Texas Code of Criminal Procedure.

The Law Firm is fully qualified to provide this representation, being the largest law firm specializing in the collection of governmental receivables in the State of Texas, as well as the United States, and having been engaged in this specialized legal service for more than 40 years. In addition, the Law Firm possesses infrastructure and technology, such as call center technology, that the City does not possess. The Law Firm has not represented the City in the collection of past due Municipal Court Fees and Fines for any past years.

The specialized legal services required by the Agreement cannot be adequately performed by the attorneys and supporting personnel of the City due to the high cost of implementing the appropriate infrastructure and technology and employing sufficient in-house attorneys and staff with the level of experience and competence necessary to perform these activities.

The Law Firm will be compensated on a contingent fee basis as provided in Art. 103.0031. This law specifically provides for an additional collection fee in the amount of 30 percent in certain cases to compensate collection attorneys for their efforts. An agreement to pay outside attorneys on an hourly basis would represent an additional cost to the City.

Entering into the proposed Agreement is in the best interests of the residents of the City because the unpaid fines, fees, and court costs will be professionally and competently collected without the additional costs to the City of implementing infrastructure and technology, and employing in-house personnel or paying outside counsel on an hourly fee basis which would otherwise be required.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Kerrville Kindness award recognizing Starkey Elementary fourth grader Cooper Smithson.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 16, 2023

SUBMITTED BY: Mayor Judy Eychner

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The City of Kerrville recognizes the actions of an individual or entity performing acts of kindness in the City.

RECOMMENDED ACTION:

Present award.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Proclamation recognizing March 2023 as Texas History Month in Kerrville, Texas.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 16, 2023

SUBMITTED BY: Mayor Judy Eychner

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

The City of Kerrville recognizes March 2023 as Texas History month.

RECOMMENDED ACTION:

Present proclamation.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Commendations for outgoing Board members of the Recovery Community Coalition and the Senior Services Advisory Board.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 16, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Recovery Community Coalition = Randie Benno, LeighAnn Fitzpatrick, Sabine Kuenzel.
Senior Services Advisory Board = Karen Burkett.

RECOMMENDED ACTION:

Present commendations.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Kerrville Police Department Team Member Recognition.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 16, 2023

SUBMITTED BY: Chris McCall, Police Chief

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

Chief McCall will present the following recognitions:
Civilian of the Year: Jennette Dennis, Inventory Control Analyst
Supervisor of the Year: Detective Sergeant James Machetta
Officer of the Year: Officer Dan Virdell

RECOMMENDED ACTION:

Chief McCall will present the Kerrville Police Department's 2022 Civilian Employee of the Year, Officer of the Year, and Supervisor of the Year. No Action Required.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution No. 08-2023. A Resolution of the City of Kerrville, Texas designating the City of Kerrville as a HIPAA Hybrid Entity in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPPA); and providing an effective date.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 15, 2023

SUBMITTED BY: William Tatsch, Assistant City Attorney

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

As required by the Health Insurance Portability and Accountability Act ("HIPAA"), a federal law, City Council previously adopted a HIPAA policy in 2003. The policy, which Council adopted by resolution, designated the City as a hybrid entity; however, based on HIPAA amendments, the passage of the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and our knowledge of how the City and its departments use Personal Health Information ("PHI"), the City must amend its HIPAA policy and hybrid entity designation.

Under the previous HIPAA law, the City must designate any department with potential access to PHI as a "covered entity." However, HIPAA now provides that a "covered entity", such as the City and in particular its Fire Department/EMS, is the department or departments that actually use PHI for the primary purpose of dealing with a patient. In addition, HITECH expanded HIPAA's requirements to any business associates of health care providers. Thus, under HIPAA and its amendments and HITECH, City staff is recommending that Council divide departments within the City between those that primarily use PHI (the health care component) from other departments that only tangentially use PHI (the business associate component). In addition, the original hybrid entity designation omitted the City Attorney's Office from the departments that may deal with PHI. the City Attorney's Office should be added since the City Attorney's Office addresses legal issues with PHI, such as EMS billing.

This is the only new department in this updated hybrid entity designation; the updated hybrid entity designation still includes the HR, Fire, Finance, and IT departments. HIPAA also requires the City to designate privacy and security officer(s). The City has previously designated a HIPAA compliance officer; however, the City believes the privacy and security requirements should be separated into two individuals. Thus, the proposed policy designates the Human Resources Director (or person acting in that position) and the Information Technology Director as such officers. The City Attorney recommends that Council adopt the policy as written, by making a motion to adopt the Resolution referenced above.

RECOMMENDED ACTION:

Approve Resolution No. 08-2023.

ATTACHMENTS:

[*20230228_Reso 08-2023 HIPAA.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 08-2023**

**A RESOLUTION OF THE CITY OF KERRVILLE, TEXAS DESIGNATING
THE CITY OF KERRVILLE AS A HIPAA HYBRID ENTITY IN
COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 (HIPAA); AND PROVIDING AN
EFFECTIVE DATE**

WHEREAS, the City of Kerrville, Texas (“City”) is a home-rule municipal corporation acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and the regulations promulgated thereunder; both require public and private entities that provide certain health care services to comply with regulations related to the collection, use, disclosure, and security of individually identifiable health information; and

WHEREAS, as a “covered entity” under HIPAA, the City strives to protect the confidentiality, integrity, and availability of protected health information (“PHI”) by taking reasonable and appropriate steps to protect the security and privacy of PHI and complies with all applicable laws and regulations relating to data privacy and security, including HIPAA, HITECH, and the Texas Medical Records Privacy Act; and

WHEREAS, because the City is a single legal entity with business activities that include both covered and non-covered functions, the City, pursuant to City Council’s adoption of Resolution No. 45-2003, declared itself a Hybrid Entity as defined by 45 C.F.R. § 164.103 and in accordance with 45 C.F.R. § 164.105(a)(2)(iii); and

WHEREAS, since the adoption of Resolution No. 45-2003, the Federal Government has amended HIPAA rules and passed HITECH such that the City wishes to revise its designation of HIPAA Health Care Components, designate Business Associate Components, and appoint HIPAA Privacy and Security Officers.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS, THAT:

SECTION ONE. The City repeals Resolution No. 045-2003 dated April 8, 2003 in its entirety.

SECTION TWO. The City is designated as a “hybrid entity” pursuant to 42 C.F.R. 164 for the purposes of HIPAA.

SECTION THREE. The City designates the following City departments as Healthcare Components covered under HIPAA:

- a. The Kerrville Fire Department to the extent it performs covered functions as the operator of the Kerrville Emergency Medical Service (“EMS”), which excludes the search and rescue, firefighting, and law enforcement functions.
- b. The City’s Human Resources Department to the extent it performs workers compensation evaluation services relating to physical medical evaluations and participates in employee background checks that require medical evaluations, testing, or evaluation.

SECTION FOUR. The City designates the following departments as a City Business Associate Components:

- a. The City Attorney’s Office to the extent it provides services to the City’s designated Healthcare Components that are required to comply with HIPAA.
- b. The Finance Department to the extent it provides services to the City’s designated Healthcare Components that are required to comply with HIPAA.
- c. The City’s Human Resources Department to the extent it provides services to the City’s designated Healthcare Components that are required to comply with HIPAA outside of the activities that falls within its covered components.
- d. The City’s Information Technology Department to the extent it provides services to the City’s designated Healthcare Components that are required to comply with HIPAA.

SECTION FIVE. City Council designates the following position as the City’s HIPAA Privacy Officer responsible for the development, implementation, and oversight of the City’s HIPAA privacy policies and procedures:

Director of Human Resources or the individual acting as that role

SECTION SIX. City Council designates the following position of the City as the City’s HIPAA Security Officer responsible for security policies and procedures:

Director of Information Technology

SECTION SEVEN. City Council directs and authorizes the City Manager to ensure that the HIPAA Privacy and Security Officer(s) work in conjunction with the City Manager and City Attorney to approve changes in the designation of departments, divisions, units, and/or programs as health care components or business associate components to maintain compliance with HIPAA and the Texas Medical Records Privacy Act, to develop policies and procedures, and outline other actions as necessary for the implementation of this Resolution and compliance with HIPAA, HITECH, and the Texas Medical Record Privacy Act.

SECTION EIGHT. This Resolution shall take effect immediately from and after the date of passage and it is so resolved.

PASSED AND APPROVED on this ____ day of _____, 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:



William L. Tatsch, Asst. City Attorney

Shelley McElhannon, City Secretary

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**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: City Council workshop minutes, February 14, 2023.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 16, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

City Council workshop minutes held February 14, 2023 at 4:00 p.m., City Hall Council Chambers.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20230228_Minutes Council workshop 2-14-23 4pm.pdf](#)

**CITY COUNCIL WORKSHOP MINUTES
CITY HALL COUNCIL CHAMBERS**

**FEBRUARY 14, 2023 4:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On February 14, 2023 at 4:13 p.m., the City Council workshop was called to order by Mayor Judy Eychner at the City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Judy Eychner, Mayor
Kim Clarkson, Mayor Pro Tem, Council Place 2
Roman Garcia, Council Place 1
Joe Herring Jr, Council Place 3
Brenda Hughes, Council Place 4

COUNCILMEMBERS ABSENT:

None

CITY STAFF PRESENT:

E.A. Hoppe, City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Kim Meisner, Asst City Manager
Shelley McElhannon, City Secretary
Stuart Barron, Executive Director

Ashlea Boyle, Director Parks & Rec
Kyle Burow, Director Engineering
Guillermo Garcia, Exec Dir Innovation
Chris McCall, Police Chief
Drew Paxton, Director Planning
William Tatsch, Assistant City Attorney

VISITOR(S) PRESENT:

Louis Amestoy, Media Roger Mathews, Media Bruce Stracke

1. **PUBLIC COMMENT:** None

2. **DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION:**

2A. Right-of-way management regulations to include permit requirement for construction, maintenance, and repair work within City's right of way.

Drew Paxton and E.A. Hoppe provided information and responded to questions.

2B. Procedural Rules for City Boards – Boards and Commissions applications and deadline processes.

E.A. Hoppe provided information and responded to questions.

City Council provided direction to continue with the current process, add language in the City Council meeting agenda bill when additional applications have been received after the deadline, and add language "*First review of applications will occur 14 days prior to the Council meeting*" to the Boards and Commissions vacancy press release.

Kim Clarkson made a motion that the City Council adjourn into closed executive session under 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), and 551.087 (deliberation regarding economic development negotiations), seconded by Joe Herring. The motion passed 5-0.

Mayor Eychner recessed the workshop, and convened the closed executive session at 4:52 p.m. in the Upstairs Conference Room.

3. EXECUTIVE SESSION:

3A. Commercial Lease between City and BTB Baseball Commercial Ventures LLC, a franchise of D-BAT regarding the management and operation Kerrville Sports Complex (551.071, 551.072, 551.087)

3B. Economic Development Projects (551.071, 551.072, 551.087)

The closed executive session adjourned, and Council returned to workshop open session at 6:00 p.m. Item 3B was not discussed. No action was taken during executive session.

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: N/A

ADJOURN. The workshop adjourned at 6:00 p.m.

APPROVED BY COUNCIL: _____ ATTEST:

Judy Eychner, Mayor

Shelley McElhannon, City Secretary



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: City Council meeting minutes, February 14, 2023.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 16, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

City Council meeting minutes held February 14, 2023 at 6:00 p.m., City Hall Council Chambers.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230228_Minutes Council meeting 2-14-23 6pm.pdf*](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
FEBRUARY 14, 2023 6:00 PM**

On February 14, 2023 at 6:00 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Mayor Pro Tem Kim Clarkson provided the invocation and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

Judy Eychner, Mayor
Kim Clarkson, Mayor Pro Tem/Councilmember Place 2
Roman Garcia, Councilmember Place 1
Joe Herring, Jr., Councilmember Place 3
Brenda Hughes, Councilmember Place 4

COUNCILMEMBER ABSENT:

None

CITY EXECUTIVE STAFF:

E.A. Hoppe, City Manager	Stuart Cunyus, Public Information Officer
Mike Hayes, City Attorney	Guillermo Garcia, Exec Dir Innovation
Michael Hornes, Asst City Manager	Brandon Kelly, Asst Street Superintendent
Kim Meisner, Asst City Manager	Eric Maloney, Fire Chief
Shelley McElhannon, City Secretary	Chris McCall, Police Chief
Stuart Barron, Exec Director Public Works	Joel Meyners, Street Superintendent
Kyle Burow, Director of Engineering	Drew Paxton, Planning Director

VISITORS PRESENT: A list of the citizen speakers present during the meeting is on file in the City Secretary's Office for the required retention period.

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Announcements of Community Interest provided by Stuart Cunyus.

2. PRESENTATION(S):

2A. Briefing on Winter Storm 2023 "Mara" – January 31 through February 02, 2023.

Chief Eric Maloney and Stuart Barron provided information.

3. VISITORS FORUM:

The following person(s) spoke:

- Lillian Beard
- Monica Allen
- Bruce Stracke

4. CONSENT AGENDA:

Councilmember Roman Garcia made a motion to approve the Consent Agenda, seconded by Councilmember Brenda Hughes. The motion passed 5-0.

4A. Purchase Case Wheel Loader from Associated Supply Co, Inc. in the amount of \$72,019.22.

4B. Professional Services Agreement with Hewitt Engineering, Inc. for the Flow Equalization Basin Lift Station project in the amount of \$78,500.00.

4C. City Council workshop minutes January 24, 2023.

4D. City Council meeting minutes January 24, 2023.

END OF CONSENT AGENDA.

5. ORDINANCES, SECOND READING:

5A. Ordinance No. 2023-06, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning for properties known as 402, 405, 406, 407, 409, 410, 411, 413, 414, and 415 W. Water; consisting of the Westland Addition; from a Single Family Residential with Accessory Dwelling Unit Zoning District (R-1A) to a Residential Transition Zoning District (RT); and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-06 caption into record.

Councilmember Clarkson made a motion to adopt Ordinance No. 2023-06 on second reading, seconded by Councilmember Joe Herring, Jr. The motion passed 5-0.

5B. Ordinance No. 2023-07, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas; by changing the zoning of a property known as 3800 Loop 534; consisting of Lot 1, Block 5 of the Legion Hills Phase Four Subdivision, being approximately 3.56 acres, and within the City of Kerrville, Kerr County, Texas; from a Medium Density Residential Zoning District (R2) to a Light Commercial Zoning District (C-2); and providing other matters relating to the subject

Shelley McElhannon read Ordinance No. 2023-07 caption into record.

Councilmember Garcia made a motion to approve Ordinance No. 2023-07, seconded by Councilmember Hughes. The motion passed 5-0.

5C. Ordinance No. 2023-08, second reading. An Ordinance annexing a tract of land into the Corporate Limits of the City of Kerrville, Texas; such property making up approximately 0.08 acres and generally located adjacent to and south of Lehmann Drive in the area that Lehmann Drive intersects with Lenard Lane; such property more specifically described in this Ordinance and being located within the extraterritorial jurisdiction of and adjacent to the City Limits; adopting a service agreement; establishing the zoning for the annexed property as a Public and Institutional (PU) Zoning District; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-08 into record.

Councilmember Hughes made a motion to approve Ordinance No. 2023-08 on second reading, seconded by Councilmember Garcia. The motion passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Consider a request for the granting of major waivers pursuant to §82-37 of the City's Code of Ordinances, such waivers concerning 1) the delayed submission of security for public infrastructure; 2) approval to reduce such security following City's acceptance of phased installation; 3) the early termination of an improvement agreement, all waivers applicable to property being a 37.10 acre tract, referenced as Creekside Apartments Phase 1A, to be addressed as 102 Wellborn Way, and generally located near the intersection of State Highway 16.

Shelley McElhannon read Item 6A caption into record.

Drew Paxton provided information and responded to questions.

The following person(s) spoke:

- Joann Hagemeier
- Bruce Stracke
- Carl Schwab (developer)

Mayor Eychner made a motion to approve the request for the granting of the waivers with the recommended terms, seconded by Councilmember Hughes. The motion passed 5-0.

6B. Resolution No. 04-2023. A Resolution authorizing execution of an Advance Funding Agreement (AFA) with the Texas Department of Transportation for a Transportation Alternatives Set-Aside (TASA) Project.

Shelley McElhannon read item 6B caption into record.
Kyle Burow provided information and responded to questions.

Councilmember Hughes made a motion to approve Resolution No. 04-2023 and authorize the City Manager and the Mayor to finalize and execute any actions necessary to satisfy any TXDOT requirements, seconded by Councilmember Clarkson. The motion passed 5-0.

6C. Construction Agreement with G5 Utilities, Inc. for the Public Safety Facility Wastewater Realignment project in the amount of \$347,777.00.

Shelley McElhannon read item 6C caption into record.
Kyle Burow provided information and responded to questions.

Councilmember Hughes made a motion to authorize the City Manager to finalize and execute a contract, seconded by Councilmember Clarkson. The motion passed 5-0.

7. **EXECUTIVE SESSION:** Executive Session not convened.

8. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.** N/A

9. **ITEM(S) FOR FUTURE AGENDAS:**

- Councilmember Garcia requested that staff review the pending section of the Pending Agenda list.

ADJOURN. The meeting adjourned at 7:04 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Judy Eychner, Mayor

Shelley McElhannon, City Secretary



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Ordinance No. 2023-09. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, titled "Streets, Sidewalks, and Other Public Places"; by adding a new Article titled "Right-Of-Way Management", to create regulations, including a permit requirement, for construction, maintenance, and repair work within the City's Rights-Of-Way; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing other matters relating to the subject.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 17, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	M - Mobility / Transportation
Guiding Principle	N/A
Action Item	M5.6 - Develop and implement a new ROW ordinance and an access management policy for driveways, curb cuts, median openings, turn lanes, etc.

SUMMARY STATEMENT:

As an action item within the Kerrville 2050 Comprehensive Plan, the Code Review Committee reviewed the needs for Right of Way (ROW) Management. The proposed ROW ordinance provides the necessary management and regulations to protect the communities investment in the ROW infrastructure as well as coordinate the multiple interests and users of the public right of way.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-09, on first reading.

ATTACHMENTS:

[20230228_Ord 2023-09 ROW regulations.pdf](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-09**

AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS, TITLED “STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES”; BY ADDING A NEW ARTICLE TITLED “RIGHT-OF-WAY MANAGEMENT”, TO CREATE REGULATIONS, INCLUDING A PERMIT REQUIREMENT, FOR CONSTRUCTION, MAINTENANCE, AND REPAIR WORK WITHIN THE CITY’S RIGHTS-OF-WAY; PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF \$2,000.00 FOR VIOLATIONS THEREOF; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, the State of Texas has delegated to each city the fiduciary duty, as a trustee, to manage the rights-of-way within a city for the health, safety, and welfare of the public, subject to state law; and

WHEREAS, City Council has determined that construction within the City of Kerrville’s rights-of-way, at times, significantly interferes with the public use of the streets and results in a negative impact to public safety, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, City Council has determined that substantial public funds have been invested to build, maintain, and repair City streets, utilities, and rights-of-way; and

WHEREAS, City Council finds it desirable to adopt regulations to manage construction and other work within the City’s rights-of-way to protect and safeguard the public infrastructure; and

WHEREAS, City Council finds that the regulations provided for by this Ordinance are reasonable, necessary, and for the public benefit;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Chapter 90 “*Streets, Sidewalks, and other Public Places*” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article IV “*Right-of-Way Management*”, which will add the language that is underlined (added) as follows:

“ARTICLE IV. – RIGHT-OF-WAY MANAGEMENT

Sec. 90-90. – Administration.

The provisions of this Article shall be administered by the City Manager or designee (“Director”).

Sec. 90-91. Purpose; violation.

It is unlawful for any person to fail to comply with any provision of this Article, including anyone who constructs within the City of Kerrville, Texas (“City”) right-of-way or in violation of any detailed statement of specifications or plans submitted and approved by the City, or any certificate or permit issued by the City. Anyone violating a provision of this Article shall be guilty of a misdemeanor and upon conviction, shall be subject to the general penalty provision found in Section 1-7 of this Code. Each day any violation or noncompliance continues shall be a separate offense. For purposes of this Article, a “person” means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, association, and other such entity who owns or controls facilities.

Sec. 90-92. Injunctive relief and other remedies for violation.

Any person who fails to comply with any provision of this Article, or who commits any of the acts described by this Article, or is found guilty of any of the omissions thereof, shall be liable to injunctive action prohibiting the violation of this Article and shall be subject to being mandatorily enjoined to restore any right-of-way illegally excavated to its original form and function; and shall be liable and responsible for any and all expenses that may be incurred by the City in connection with any such action, omission, or other violation, including reasonable attorneys’ fees.

Sec. 90-93. Authorized hours for right-of-way construction.

Unless approved in writing by the Director, any construction governed by this Article is restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, except for City-recognized holidays (“holidays”). For purposes of this Article, “construction” or “construct” means any of the following activities performed by a right-of-way user within a right-of-way: a. installation, excavation, laying, boring, jacking, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent; b. modification or alteration to any surface or subsurface; c. performance, restoration, or repair of pavement cuts or excavations; and/or d. any other similar work. “Facilities” means the plant, equipment, and property, including lines, transport service, poles, mains, pipes, conduits, ducts, cables and wires located under, on, or above the surface of the ground within the right-of-way and valves and related equipment used or useful for the provision of utility services, wireless or network services, or communication services to the public.

Sec. 90-94. Notice of violation.

The Director may give notice to any person who violates this Article and the person receiving the notice shall correct all violations alleged in the notice. Failure to correct any such alleged violations shall cause the person to be subject to penalties provided in Sections 90-91 and 90-92. The Director's notice may initially consist of oral notice, but must be followed up in writing. Notwithstanding this section, the Director does not need to provide any such notice prior to the application of Sections 90-91 and 90-92.

Sec. 90-95. Revocation, suspension, or denial of permit.

Notwithstanding other sanctions set forth in this Article, if any of the provisions of this Article are not complied with, the Director may revoke or suspend a permit previously issued by the City. If a person has not followed the terms, conditions, or specifications of this Article in work done pursuant to a prior permit, the Director may deny new permits or impose additional requirements applicable to a current permit.

Sec. 90-96. Non-transferability of permits.

Any permit issued under this Article is not transferable from the person receiving the permit to another person without the prior written approval of the Director.

Sec. 90-97. Effect on City's liability.

No permit or certificate of inspection shall be conclusive as against the City that the work therein referred to has been installed in conformity with any applicable law; but the owner of the premises, the contractor, and all other persons concerned shall be obligated to see that all matters, things, and acts to which this Article and such permit or certificate relate shall comply with all local, state, and federal laws. All work installed in this City for purposes provided herein shall be maintained in full compliance with this Article.

Sec. 90-98. Preserving other ordinances not in conflict.

This Article takes precedence over any other existing ordinance of the City which may contain provisions that are less restrictive than those specified in this Article. However, nothing contained in this Article mitigates, interferes with, alters, or repeals any provision of any other ordinance of the City not in conflict with the provisions of this Article.

Sec. 90-99. Right-of-way construction.

No person shall commence or continue with construction above, upon, or beneath right-of-way in the City except as provided by this Article, including the directives as part of a permit issued pursuant to this Article.

Sec. 90-100. Construction standards for work within right-of-way.

The City's *Technical Construction Standards and Specifications* ("TCSS") apply to all construction work undertaken within the right-of-way. A copy of the TCSS is available in the office of the City Engineer. The TCSS is referred to herein as "City construction standards".

Sec. 90-101. Right-of-way permits.

- (a) No person shall perform any construction in the right-of-way without first obtaining a right-of-way permit, except as otherwise provided by this Article. The permit must be in the name of the person who owns or will subsequently own the facilities to be constructed who is referred to within this Article as the right-of-way user. The "right-of-way user" means a person and its successors and assigns that uses the right-of-way for purposes of construction, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including landowners, utilities, certified telecommunication providers, network providers, public infrastructure contractors, and the City. The permit application shall be completed and signed by the right-of-way user, who may then be referred to as "applicant" or where a permit is issued, "permittee".
- (b) Construction considered an emergency relating to existing facilities may be undertaken without first obtaining a permit from the City. However, a right-of-way user shall: 1) notify the Director's office as promptly as possible after beginning the emergency construction, but in no event later than the next City-business day, of any emergency construction; 2) provide within two (2) business days a reasonably detailed description of the construction performed in the right-of-way; and, 3) further provide to the Director within ninety (90) days from the date any facilities that are reconstructed or relocated and an updated map of any facilities that were affected by such emergency construction. For purposes of this Article, an "emergency" is narrowly defined as any event that may threaten public health or safety, including, unexpected or unplanned outages, cuts, ruptures, leaks, or any other failure of a utility facility that prevents or significantly jeopardizes the ability of a utility to provide service to customers; or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak, or any other such failure of utility facilities is not immediately repaired, controlled, stabilized, or rectified; or any unforeseen occurrence involving a utility facility that a reasonable person could conclude under the circumstances that immediate action by the utility is necessary and warranted in order to protect public safety and welfare. Upgrading facilities, new service installations, and improvement projects are not an emergency.
- (c) An applicant shall provide the Director the following information prior to the issuance of a permit and such information shall be incorporated by reference into the permit if issued by the Director:

- (1) the name of the right-of-way user, to include entity name, contact information, and emergency contact information;
- (2) a description of the location of construction activities;
- (3) a description and location of existing facilities and/or facilities to be installed;
- (4) a description of the route of all facilities to be constructed on or about the right-of-way;
- (5) the location of all right-of-way easements which the applicant plans to use;
- (6) location of existing City and third-party facilities as required by section 90-110;
- (7) description of plans, which may be submitted as a form statement, to restore existing facilities pursuant to this Article and other right-of-way construction. Such plans shall comply with the standard construction guidelines of the City, including the City construction standards;
- (8) drawings of any bores, trenches, hand holes, manholes, switch gear, transformers, pedestals, poles, and the like, including applicable depths and heights;
- (9) typicals of manholes and hand holes that the applicant plans to use or access;
- (10) the construction methods and materials to be employed by the applicant for the protection of existing facilities within, above, beneath, or adjacent to the right-of-way, which methods and materials are subject to approval by the Director;
- (11) estimated dates and times that construction is scheduled to be performed;
- (12) the base material to be used pursuant to section 90-108;
- (13) the methods and scope for the restoration of property pursuant to section 90-119;
- (14) three (3) sets of construction plans which shall be on a scale not to exceed one inch equaling one hundred (100) feet unless otherwise approved by the Director. The plans shall include the dimensions from the proposed facility to permanent reference points;
- (15) detailed description of what the applicant proposes to construct, including if applicable, pipe sizes, the number of interducts, and valves;
- (16) a complete legend of drawings submitted by the applicant, which may be provided by reference to previously submitted documents; if symbols are used, the applicant shall provide the City with an accurate guide to the meaning of the symbols;
- (17) the submission of proof of insurance, bond, or other financial information required by this Article or a written statement that proof of insurance, bond, or other financial information is current and on file with the City; and

(18) a traffic control plan acceptable to the Director.

- (d) All construction in the right-of-way shall be in accordance with the right-of-way permit for the facilities. The Director shall be provided access to the right-of-way construction and to such further information as the Director may reasonably require in order to ensure compliance with the permit or this Article.
- (e) A copy of the right-of-way permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Director at all times when construction is occurring.
- (f) All construction authorized by permit shall be completed in the time specified in the permit. If construction cannot be completed in the specified time period, the permittee may request an extension of time from the Director. The permittee may continue work specified within the permit during the time the request for an extension is pending, so long as the request is made prior to the expiration of the permit.
- (g) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the City shall be provided by the permittee to the Director upon request.
- (h) A request for a right-of-way permit shall be submitted at least eighteen (18) days before the commencement of the proposed construction unless:
 - (1) the construction is for primary service and federal or state law requires construction time be less than eighteen (18) days; or
 - (2) the Director agrees to a request by the applicant for a modified submission date.
- (i) Requests for right-of-way permits shall be promptly processed and approved or disapproved by the Director but in any event no later than fifteen (15) days after receiving all the permit information required under this Article, except that, if subsection (h)(1) of this subsection shall apply, a right-of-way permit shall be processed as soon as reasonably practical.
- (j) The Director may require a pre-construction meeting with the permittee.

Sec. 90-102. Sidewalk and lane closure permit.

- (a) When work on a sidewalk or lane of a thoroughfare, including an alleyway used by traffic, requires closure, the right-of-way user shall apply for a closure permit from the Director, to include submission of the permit fee.
- (b) The right-of-way user shall be responsible for compliance with Texas Department of Transportation ("TxDOT") rules concerning markings, flagmen, barricades and barriers, and steel plate covers whether the closure occurs on a state or City controlled right-of-way.

- (c) The application for a closure permit shall include point of contact and date and time information regarding the closure.
- (d) Application fees for closure permits for sidewalks, residential thoroughfares, arterial streets, and other rights-of-way shall be as adopted in the City's fee schedule.

Sec. 90-103. Required inspections.

- (a) The Director shall provide inspections, including the following, to verify full compliance with the right-of-way permit and all federal, state, and local laws:
 - (1) upon installation of equipment, but prior to backfill;
 - (2) backfill, but prior to surface patch; and
 - (3) final inspection upon completion of work.
- (b) The fact that an inspection has been performed does not relieve, excuse, or otherwise alleviate or minimize a permittee's obligations of otherwise complying with this Article or from complying with other obligations or specifications legally imposed on a permittee.

Sec. 90-104. Inspection fees.

- (a) Permit fees include the cost for the initial inspection of completed work. When work has been reported to the Director as completed and ready for inspection, and when upon such inspection the work is found to be incomplete or defective, an additional non-refundable fee shall be paid at the time of the next request for inspection. After the second failed inspection, the inspection fee for each subsequent request for inspection shall be double the previous fee.
- (b) If the inspection requires the Director to use a third-party consultant, the City shall apply a non-refundable fee for the actual cost paid by the City plus a three (3) percent administrative fee.
- (c) Unless waived by the Director in accordance with section 90-105, inspections shall not be conducted until any and all outstanding fees owed to the City are paid in full.
- (d) All fees shall be as adopted in the City's fee schedule.

Sec. 90-105. Right-of-way permit and fee exemptions.

The Director shall have the authority to waive fees provided for in this Article for public agencies, licensees, franchisees, certificated telecommunications providers, and others but only where providing the City with construction or other services. When deemed appropriate, the Director shall also have the authority to waive the requirement for a right-of-way permit.

Sec. 90-106. Failure to obtain necessary inspections.

A permittee who fails to obtain and pass all necessary inspections shall be in violation of this Article. Violation of this Article may be addressed by any combination of the following options:

- (1) Refusal of the Director to issue future permits to the violator until the inspections are successfully obtained;
- (2) Such actions as are permitted under the provisions of Sections 90-91 and 90-92; and/or
- (3) Other such appropriate procedures and measures at the time of the violation(s).

Sec. 90-107. Construction procedures.

- (a) A permittee shall notify the Director not less than twenty-four (24) hours in advance that construction is ready to proceed and provide the name, address, and phone number of the contractor and/or subcontractor(s) who will perform the actual construction, including the name and telephone number of an individual designated by the contractor or subcontractor(s) who will be available for contact by the Director at all times during construction.
- (b) A permittee shall notify all adjoining or impacted property owners not less than twenty-four (24) hours in advance of any construction unless such construction constitutes an emergency as defined herein. The Director will approve the type and scope of notification, which shall then be specified within the permit.
- (c) Construction shall comply with federal, state, and local laws, to include the City construction standards.
- (d) A permittee shall place information signs at the boundary(s) of the location where construction is to occur. Such signs, which must be approved by the Director and referenced within the permit, shall measure approximately three (3) feet by three (3) feet and specify the identity and telephone number of the person performing the construction (contractor). The signs shall be posted at least twenty-four hours prior to construction and remain posted during the entire time of construction. If construction is due to an emergency as defined in this Article, the twenty-four hour advanced placement is not required.
- (e) The size and nature of facilities subject of the construction within the right-of-way, including their location, depth, height, upgrades, and other particulars, are subject to the approval of the Director unless such approval conflicts with federal or state law.

Sec. 90-108. Base material.

Base material shall be constructed as designated on the right-of-way permit and as required pursuant to the City construction standards. A permittee shall notify the

Director not less than two (2) hours prior to the placement of base material. Failure to do so may result in the Director immediately suspending further construction and the required removal of any base material placed without prior approval.

Sec. 90-109. Disturbance of facilities.

- (a) A permittee's facilities shall not be allowed to disturb City facilities, in particular gravity-dependent facilities.
- (b) The Director may require a permittee to keep a reasonable distance from facilities which are City-owned or leased. Facilities constructed shall be presumed to disturb facilities which are City-owned or leased if the existing facility, or the facility to be constructed, is within three (3) feet horizontally of such City-owned or leased facility. However, nothing in this section shall diminish the authority of the Director to require specific placement of particular facilities.

Sec. 90-110. Location and placement.

- (a) Prior to commencing construction, unless otherwise excepted by this Article, a permittee shall verify the horizontal and vertical location of existing City and third-party facilities within three (3) feet of the proposed construction. Prior to commencing construction, unless otherwise excepted by this Article, a permittee shall verify only the horizontal location for facilities outside three (3) feet of the proposed construction and which may be reasonably anticipated to be disturbed by the construction.
- (b) Any facility constructed by a permittee shall maintain a minimum of six (6) inches vertical separation when crossing any existing facility.
- (c) Facilities constructed by the permittee shall be constructed at a minimum depth of twenty-four (24) inches, except the Director may require a lesser or greater depth if it is deemed necessary for the health, safety, or general welfare of the public.
- (d) All bores shall be a minimum of twenty-four (24) inches below the street gutter or edge of pavement.
- (e) All directional boring shall have the right-of-way user place bore marks and depths while the bore is in operation. The right-of-way user shall place a mark at each stem with a paint dot and shall mark the depth at least at every other stem.
- (f) Placement of all appurtenances must be approved by the Director prior to placement.

Sec. 90-111. Conformance with public improvements.

- (a) For the purpose of conforming underground or overhead facilities for public improvements, and as allowed by, or consistent with, federal or state laws

governing such conformance, and if it shall be deemed necessary by the Director to undertake such conformance, such conformance shall be accomplished by permittee, at the permittee's expense and direction, within ninety (90) days from receipt of notice from the Director unless a longer time schedule has been approved by the Director. The Director will consider all reasonable and economical public improvement alternatives prior to requiring conformance. The permittee may notify the Director of options other than conformance.

- (b) Facilities that do not conform after ninety (90) days to the stated purposes set forth in the permit or within an extended schedule approved by the Director, are subject to removal from the right-of-way by the City. If removal occurs, City shall not be liable for damages or other compensation to the permittee or any other person, but the City shall be responsible for reasonable care of such removed facilities while such facilities are in City custody and until permittee takes possession of such removed facilities. The City shall bear no responsibility for removed facilities not repossessed by permittee within thirty (30) days after the City has taken custody of removed facilities.
- (c) Whenever it shall be necessary to require a permittee to conform its facilities within the right-of-way, such conformance shall be made without claim for reimbursement or damages against the City. It is understood and further provided, however, that the City shall not require a permittee to remove its facilities entirely from the right-of-way. If the City requires the permittee to conform its facilities to enable any entity or person other than the City to use, or to use with greater convenience, the right-of-way, the permittee shall not be required to conform its facilities until such other person reimburses or make arrangements satisfactory to the permittee to reimburse the permittee for any loss and expense caused by or arising out of such conformance.

Sec. 90-112. Erosion control.

- (a) The permittee shall cause all erosion control measures, including backfill, silt fencing, advance warning signs, markers, cones, and barricades to be in their proper locations before construction begins in the right-of-way. The permittee is responsible for storm water management erosion control that complies with federal, state, and local laws. Requirements may include the installation of silt fencing in erosion areas until reasonable vegetation is established and wire-backed silt fencing around high erosion areas.
- (b) A right-of-way user may be required to show proof of plans approved by the applicable federal and/or state agency (e.g., Texas Commission on Environmental Quality ("TCEQ")) relating to storm water and erosion, when applicable, or in the alternative, written documentation verifying that the right-of-way user is not required to obtain such plans.

Sec. 90-113. Traffic control.

Unless an emergency exists, as that term is defined herein, traffic lane closures in the right-of-way which obstruct the flow of traffic for longer than four (4) hours at a time may be allowed only under the direction and permission of the Director and in accordance with the *Texas Manual on Uniform Traffic Control Devices* ("MUTCD") and other applicable federal, state, and local laws, except that the flow of traffic on collectors or arterials cannot be obstructed for any period of time except under the direction and permission of the Director and in accordance with the MUTCD and federal, state, and local law.

Sec. 90-114. Street and sidewalk cuts.

- (a) Except in the event of an emergency, when a street or sidewalk cut is required, prior written approval must be obtained from the Director, and all requirements of this Article and other applicable ordinances must be followed.
- (b) Prior to excavation of a street or sidewalk, a right-of-way user shall be in compliance with federal, state, and local law, including the *Texas Underground Facility Damage Prevention and Safety Act* (Ch. 251, Tx. Utilities Code).
- (c) All trenches in asphalt or concrete-surfaced areas shall have a clean, straight cut through the pavement surface prior to removal of the surface, in accordance with City specifications, including the City construction standards. Any cuts in sidewalks, including those cuts required in the event of an emergency, shall be made at existing control joints.
- (d) Except in the event of an emergency, a right-of-way user shall notify the Director not less than two (2) hours prior to commencing a street or sidewalk cut.
- (e) A right-of-way user shall comply with proper traffic control during a street or sidewalk cut. Traffic control shall be in conformance with the MUTCD and other applicable federal, state, and local law.
- (f) A right-of-way user shall be responsible for obtaining line locates from all affected facilities prior to executing any street or sidewalk cut.

Sec. 90-115. Prohibition of street and sidewalk cuts; exceptions.

- (a) Notwithstanding section 90-114, no street or sidewalk cut may be made as follows, with the Director being responsible for maintaining specific dates:
 - (1) within five (5) years of the finalized construction of new pavement;
 - (2) within five (5) years of the finalized use of mill and overlay; or
 - (3) within two (2) years of the finalized use of slurry seal.
- (b) Exceptions to subsection (a) may apply for an emergency repair, minor repair, or new installations, in accordance with the following:

(1) an emergency repair is permitted but only where damage or an uncontrollable leak has occurred that renders the utility no longer operable.

(2) a minor repair exists where there is a new service line installation or a repair made that does not extend more than five (5) feet perpendicularly from the back of curb.

(c) where an exception does not exist and a right-of-way user chooses to proceed, any such cut shall require:

(1) a larger paving section to mitigate degradation, as determined by the Director.

(2) the right-of-way user to repave the entire block curb to curb, intersection to intersection, as determined by the Director.

(d) all pavement repairs to cuts made under this section shall comply with the City construction standards.

Sec. 90-116. Waivers.

(a) Where a prohibition against a street or sidewalk cut exists pursuant to section 90-114, a right-of-way user may apply for a waiver from City Council. Any application for a waiver shall include the submission of the applicable fee.

(b) To be considered for approval, the street and/or sidewalk cut and pavement repair shall be designed in a manner to mitigate early pavement degradation, including drainage, water infiltration, lanes, and wheel paths.

(c) a pre-application conference with the Director is required prior to the submission of a waiver application.

(d) the Director shall provide City Council with a recommendation as to whether a waiver should be granted.

(e) The Director shall set a date for City Council's consideration of a waiver within 30 days from the date a complete application for a waiver is received.

(f) In considering a waiver, City Council shall determine if trenchless technology, such as boring or other methods, can adequately be used. Where such technology may be used, a waiver shall not be approved.

Sec. 90-117. Backfill.

(a) Backfill shall be constructed pursuant to the City construction standards. A right-of-way user shall notify the Director at least two (2) hours prior to beginning backfill operations. Failure to so notify may result in suspension of construction and removal of any unauthorized installed backfill.

(b) Densities may be taken to ensure compliance with standard backfill requirements. At least five (5) days prior to the commencement of the backfill

operations, a right-of-way user shall submit to the Director a sample of the backfill material to be used at the construction site.

- (c) In excavations eighteen (18) inches or less in width, or where for any reason compaction cannot be achieved with gravel backfill, flowable concrete shall be used in place of gravel backfill in all areas within three (3) feet of the back of the curb or the edge of pavement. Flowable fill shall conform to the City construction standards.

Sec. 90-118. Substandard construction.

- (a) A person performing construction in City right-of-way shall perform such construction in a manner that complies with federal, state, and local law, to include the City construction standards.
- (b) Facilities installed after the effective date of this Article shall be presumed to be improperly constructed and substandard if:
 - (1) the construction endangers, or is reasonably likely to endanger, the general public or persons using the right-of-way;
 - (2) the facilities do not meet federal, state, or local law, to include the City construction standards;
 - (3) the facilities are not capable of being reasonably located pursuant to the City construction standards or as otherwise required by this Article;
 - (4) the facilities are not located in the proper place in accordance with this Article, the directives provided by the Director pursuant to this Article, or the City construction standards;
 - (5) the facilities are placed in an area that disturbs facilities which are City-owned or leased; and/or
 - (6) the facilities constructed or to be constructed are within three (3) feet horizontally of such City-owned or leased facility.
- (c) Substandard construction is unacceptable to the City and may be ameliorated by the City or by a third party, at the direction of the City, and the right-of-way user shall be liable for the costs of such amelioration. Before amelioration is undertaken by or at the direction of the City, the right-of-way user shall be provided notice and allowed ten (10) days, or a longer period of time if requested by the right-of-way user and granted by the Director, to bring the construction up to applicable standards acceptable to the City.

Sec. 90-119. Insurance requirements.

Any right-of-way user seeking a permit shall carry, and provide documentation upon request, the following:

- (1) worker's compensation insurance covering all employees of contractor engaged in any operation covered by the permit;
- (2) automobile liability insurance;
- (3) general liability insurance of at least five hundred thousand dollars (\$500,000.00) for personal injury and one hundred thousand dollars (\$100,000.00) for property damage; and
- (4) umbrella coverage of at least one million dollars (\$1,000,000.00) on an occurrence basis and must include coverage for personal injury or death, contractual liability, premises liability, medical damages, and explosion and collapse hazards.

Sec. 90-120. Liability for damage.

- (a) Without intending to affect or determine the legal relationship between a right-of-way user and any third party, the right-of-way user and/or any person working for or at the direction of the right-of-way user shall be liable for any property damage or destruction it causes as a result of constructing within the right-of-way. A designated agent or representative of the right-of-way user shall be available to the Director for contact purposes in the event of damage or destruction.
- (b) A right-of-way user shall notify the Director upon occurrence of any damage or destruction to any facility or other property owned or leased by a third party or by the City, in connection with construction occurring in the right-of-way, if such occurrence happens during a City business day. If the occurrence happens on a day other than a City business day, notification must be given by 9:00 a.m. on the first City business day following the occurrence.

Sec. 90-121. Restoration of property and pavement.

- (a) Surface restoration shall be constructed as designated on the right-of-way permit and as required pursuant to the City construction standards. A right-of-way user shall notify the Director not less than two (2) hours prior to the placement of surface restoration material. Failure to do so may result in the suspension of construction and the removal of any surface material placed without prior approval.
- (b) A right-of-way user shall be responsible for having all abandoned facilities removed within seven (7) days after their abandonment unless otherwise extended by the Director or unless the Director determines that such abandoned facilities should not be removed upon request.
- (c) During a cessation in the construction or after completion of the construction, and in order to avoid safety hazards to vehicles and pedestrian traffic, all street and sidewalk construction shall be restored by a right-of-way user within a reasonable period of time to be determined by the Director.

- (d) A right-of-way user shall restore property damaged or destroyed by construction on or adjacent to the right-of-way to a condition that is as good as or better than the pre-existing condition of the right-of-way or adjacent property, as determined by the Director. Streets shall be restored based on their Pavement Condition Index ("PCI") prior to construction, as determined by the Director during the application process, as follows:
- (1) PCI of 0-50. Excavations in streets and/or rights of way with PCI values of 50 or less shall be deemed to be excavations in streets with nominal loss of life. The right-of-way user shall promptly repair the trench envelope and surface in accordance with specifications set forth in the UECM.
 - (2) PCI of 51-85. In the event of an excavation in a street or right-of-way having a PCI of 51-85, the right-of-way user shall promptly repair the trench envelope and surface, including pavement and foundation, to the same condition, or better, than existed before the commencement of the work in accordance with the specifications set forth in the UECM. In the event of failure of the repair during the guaranty period, the right-of-way user shall reimburse the City for its pavement restoration cost.
 - (3) PCI of 86-100. Excavations in streets and/or right-of-way with PCI values of 86 or greater shall be deemed one hundred (100) percent loss of pavement life. These excavations require block to block and curb to curb pavement reconstruction. Use of a hot mix asphalt repaving process is an option with approval of the Director. In the event of any trench failure in the street or right-of-way during the guaranty period, the contractor shall reimburse the City for its costs to repair the failure. Additionally, in the event of such failure, the c right-of-way user shall within forty-eight (48) hours repair the subject trench envelope if required by the Director.
- (e) Restoration shall be completed in a timely manner as specified by schedules prepared and provided by the Director. Right-of-way users shall be fully responsible for the performance of all trenches or other restorative work for a period not to exceed twenty-four (24) months from the completion of the work and/or inspection by the Director. Any trench or other restorative failures resulting from any work authorized by this article shall be immediately repaired upon notification by the City and are subject to inspection and approval by the City.
- (f) All repairs to right-of-way of any PCI are guaranteed by the right-of-way user making the repair to be made for the life of the street. The life of the street for these purposes is defined to be until such time as that certain street or right-of-way is repaved by the City or another, in the same location as the excavation, or until such time as the PCI Index of such street or right-of-way drops to below 50.

Sec. 90-122. Requirement to relocate equipment for City public works projects.

Any user of the City right-of-way shall be required to relocate and bear the cost of relocating their equipment to accommodate City public works projects. Such relocation shall be completed within thirty (30) days upon notice by the City of the requirement for such relocation.

Sec. 90-123. Exemptions for maintenance of sewer laterals by single family residents.

Residential customers issued permits to excavate in the right-of-way for the maintenance of sewer laterals for single family or duplex residential properties shall not be subject to any fees required by this chapter and shall only be required to restore a street or right-of-way to a maximum PCI value of 85, even if the PCI value is determined to be higher than 85.”

SECTION TWO. The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City’s Code of Ordinances and the publisher is authorized to amend said Code to reflect the provisions adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

SECTION THREE. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, this Ordinance takes precedence over any other existing City ordinance which may contain provisions that are less restrictive than those specified in this Article. However, nothing contained in this Article mitigates, interferes with, alters, or repeals any provision of any other ordinance of the City not in conflict with the provisions of this Article.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City’s Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SIX. This Ordinance shall become effective immediately upon the

expiration of ten (10) days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, A.D., 2023.

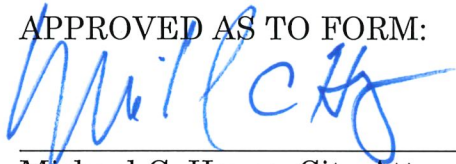
PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ of _____, A.D., 2023.

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Request for variance from distance requirement pursuant to §30-17, City's Code of Ordinances, for a proposed boarding home facility at 316 Jefferson.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 1, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

This is a request for a distance variance for a boarding home to be operated at 316 Jefferson Street.

Procedural Requirements: The City, in accordance with the Code of Ordinances, mailed 15 letters on 1/25/2023 to adjacent property owners. The City published a similar notice in the Kerrville Daily Times on 2/4/2023.

Staff Analysis and Recommendation: This home is within a ½ mile of four (4) other boarding homes and therefore, pursuant to Code of Ordinances, section 30-17, is required a distance variance in order to operate as a boarding home. The home is located at 316 Jefferson St in Kerrville, Texas. The property is zoned RT, Residential Transition.

This property was operating as a boarding home until September 2022. The applicant is seeking to re-open the boarding home. Since the boarding home was nonconforming to the separation distance, the closure of the home in September eliminated the nonconforming status and is now required a variance for the separation distance in order to re-open.

After conducting a public hearing, council should take action to approve or deny the variance request based on the following criteria:

1. In determining whether to grant a variance, city council must find that the enforcement of the distance requirement is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a permit, does not serve its intended purpose, and/or is not effective or necessary.
2. If at the conclusion of the public hearing the city council grants the applicant's request for a variance, the city council may impose additional conditions on the granting of the variance where such conditions are intended to mitigate the impacts caused by the boarding home facility and are in the public interest.

The establishment of a distance requirement between boarding homes, in state codes as well as our local ordinance, is intended to protect the single-family neighborhood from the disruption of non-residential uses and the issues that stem from an increased density. The ordinance was put in place to protect both the boarding homes and the neighborhoods.

However, staff would place an emphasis on the input from the public hearing. While the ordinance is meant to balance the protection of the neighborhood along with the inclusion of boarding homes within the single-family neighborhood setting, the comments from adjacent property owners may best describe the impacts in this particular situation.

The City does not have any records of neighbor complaints when the boarding home was operating.

RECOMMENDED ACTION:

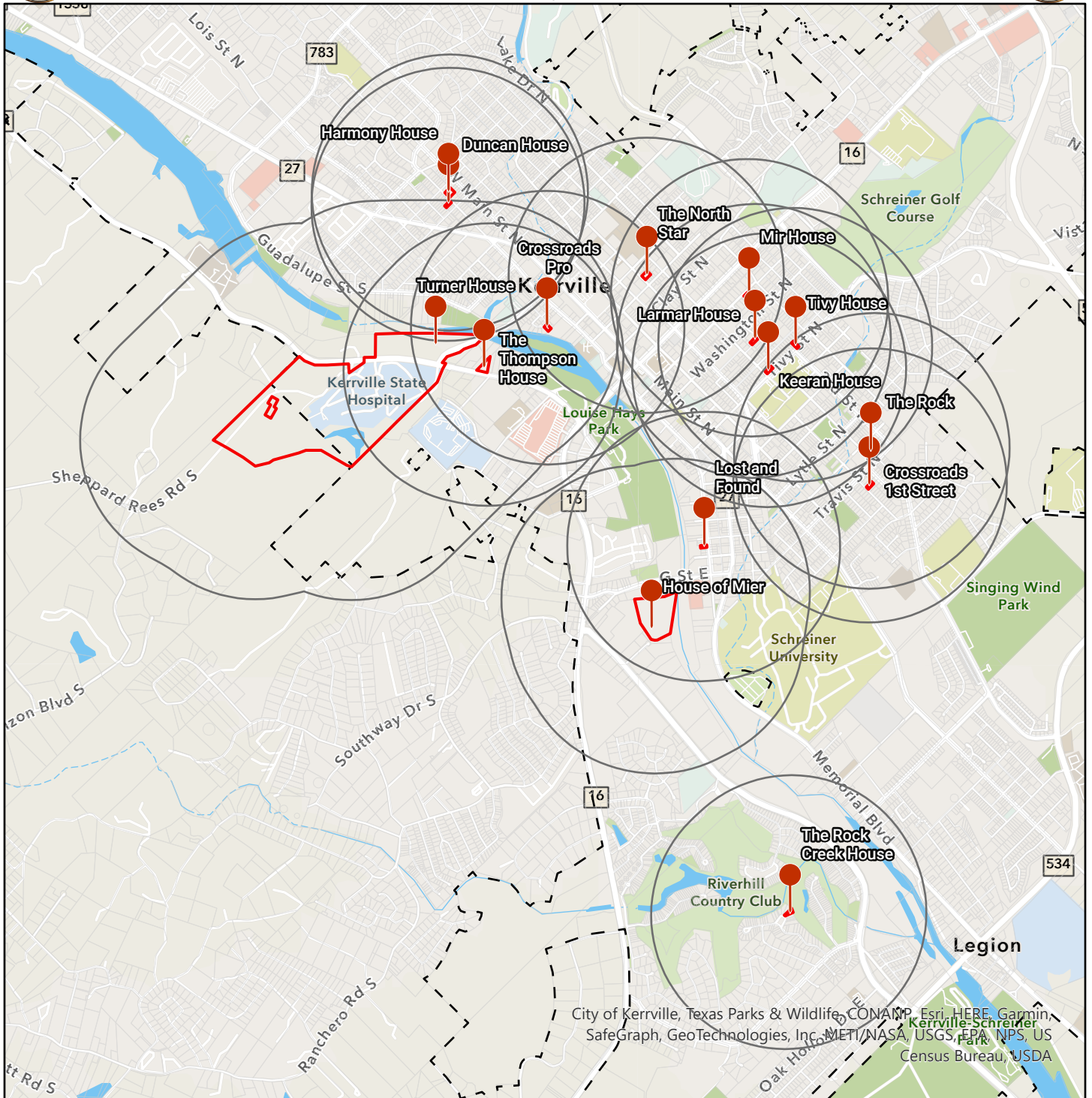
Discuss and consider the variance.

ATTACHMENTS:

[*20230228_Map Boarding Home Facility.pdf*](#)

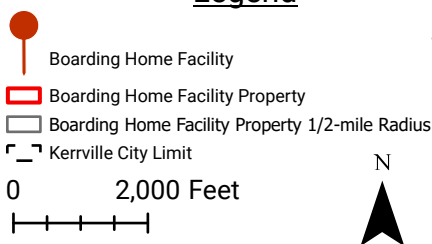


Boarding Home Facilities February 2023



City of Kerrville, Texas Parks & Wildlife, CONANP, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Legend



Boarding Home Facility List

Name	Address	Zoning	Name	Address	Zoning
Keeran House	976 Barnett Street	RT	Lost and Found	1509 Water Street	MU
Crossroads 1st Street	1612 First Street	R-1	Mir House	829 Earl Garrett Street	RT
Crossroads Pro	134 Loop 13	R-1	Larmer House	917 Bulwer Avenue	R-1A
The North Star	418 McFarland Street	R-3	Duncan House	405 West Water Street	R-1A
The Rock	1512 Second Street	R-2	House of Mier	200 Chapman Drive	MU
Turner House	114 Texas Circle	PI	The Rock Creek House	617 Rock Creek Loop	R-2
The Thompson House	406 Thompson Drive	MU	Harmony House	410 West Water Street	R-1A
Tivy House	828 Tivy Street	R-1A			



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT:

Resolution No. 07-2023. A Resolution in support of the submission of an application to the 2023 competitive housing tax credit (HTC) program through the Texas Department of Housing and Community Affairs (TDHCA) by Communities River Rock Partners, LLC, for the new construction of affordable senior housing.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 17, 2023

SUBMITTED BY: Michael Hornes, Assistant City Manager

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	H - Housing
Guiding Principle	N/A
Action Item	H3.3 - Seek to attract senior living options for individuals requiring varying levels of assistance and care

SUMMARY STATEMENT:

Communities River Rock Partners, LLC ("Applicant") has requested support from the City of Kerrville for the new construction of 32-35 affordable independent senior living units named River Rock Apartments. Located at 301 Mathison, Kerrville, Kerr County, Texas (the "Development"); and intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for the 2023 Competitive 9% Housing Tax Credits for the construction of River Rock Apartments. This development is being proposed by the same developer who is currently under construction on the Residence at Ridgehill, a 43 unit affordable independent senior living community at 170 Lehmann Drive, and the Reserves at Holdsworth, a 36 unit affordable apartment development at 239 N Holdsworth Drive, both located in Kerrville.

Applicant has requested a commitment of required funding assistance for \$500.00 for its application in the form of a reduced fees for the benefit of the Development from the City of Kerrville for its application to TDHCA for the new development of affordable senior housing. The City has previously provided this, in their support on the two prior applications of this

developer. This Resolution is in standard form as required by TDHCA.

RECOMMENDED ACTION:

Approve Resolution No. 07-2023.

ATTACHMENTS:

[*20230228_Reso 07-2023 River Rock Partners Sr Housing.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 07-2023**

**A RESOLUTION IN SUPPORT OF THE SUBMISSION OF
AN APPLICATION TO THE 2023 COMPETITIVE
HOUSING TAX CREDIT (HTC) PROGRAM THROUGH
THE TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS (TDHCA) BY COMMUNITIES
RIVER ROCK PARTNERS, LLC, FOR THE NEW
CONSTRUCTION OF AFFORDABLE SENIOR HOUSING**

WHEREAS, Communities River Rock Partners, LLC (“Applicant”) has requested support from the City of Kerrville (“City”) for its new construction of 32 to 35 affordable senior housing units named River Rock Apartments located at 301 Mathison, Kerrville, Kerr County, Texas (the “Development”); and

WHEREAS, the Applicant intends to submit an application to the Texas Department of Housing and Community Affairs (“TDHCA”) for an allocation of 2023 Competitive 9% Housing Tax Credits (“HTCs”) for the construction of the Development; and

WHEREAS, the Applicant acknowledges that the City currently has more than twice the state average of units per capita supported by housing tax credits; and

WHEREAS, pursuant to the rules that govern the allocation of HTCs by the TDHCA, an applicant who provides a resolution of support from the governing body of a local political subdivision will improve the overall success of its application; and

WHEREAS, pursuant to the rules that govern the allocation of HTCs by TDHCA, an applicant who provides a resolution from the governing body of a local political subdivision agreeing to commit a minimum of \$250.00 of funding assistance to a development will also improve the overall success of its application; and

WHEREAS, the Applicant has requested a commitment of required funding assistance for \$250.00 for its application in the form of a reduced fees for the benefit of the Development from the City for its application to TDHCA for the Development; and

WHEREAS, City Council finds it in the public interest to support efforts by the private development sector to construct decent affordable housing in Kerrville;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. The City of Kerrville, Texas, acting through its City Council, hereby confirms that it supports the affordable senior housing development by Communities River Rock Partners, LLC, named River Rock Apartments located at 301 Mathison, Kerrville, Kerr County, Texas, and that this formal action has been taken to put on record the opinion expressed by the City Council on this date. In addition and pursuant to 10 Texas Administrative Code Section 11.3(c), City Council supports the Development and cites Section 2306.6703(a)(4), Texas Government Code in acknowledging that the City currently has more than twice the state average of units per capita supported by housing tax credits and authorizing an allocation of housing tax credits for the Development.

SECTION TWO. In accordance with 10 Texas Administrative Code Section 11.9(d)(2), the City hereby commits to an in-kind contribution to the Development in the form of a reduced fees for the benefit of the Development in the amount of no less than \$250.00. Such support from the City will be in the form of reduced or waived fees as to building and other development permits, such support to be more specifically provided for in a subsequent resolution, which will include the appropriate findings.

SECTION THREE. For and on behalf of City Council, the City Manager, or designee, is hereby authorized, empowered, and directed to certify this Resolution to the Texas Department of Housing and Community Affairs and to take any other action required by state law in furtherance and support of this Development.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:



Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Authorization to negotiate a Design-Build contract for the Public Safety Facility.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 17, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
TBD	\$44,184,676.07	\$45,000,000.00	Project #70-22005

PAYMENT TO BE MADE TO: TBD

Kerrville 2050 Item?	Yes
Key Priority Area	F - Public Facilities and Services
Guiding Principle	N/A
Action Item	F2.4 - Consider bond funding for a new public safety building/complex

SUMMARY STATEMENT:

In May 2022, the citizens of Kerrville approved the issuance of bonds through a general election for a new Public Safety Facility. The property at the corner of Rio Monte Drive and Clearwater Paseo was later purchased and City Council authorized the Design-Build method for the construction of the building and appurtenances. Request for Qualifications (RFQ) for Design Build Services on the City's Public Safety Facility were issued on September 20, 2022 and eight (8) submissions were received in October 2022. Per Local Government Code Sec. 2269.307, the selection committee evaluated responses based on the criteria identified in the RFQ and requested City Council's authorization to qualify (short-list) a maximum of five responders to submit proposals for final selection. The Committee's short-listing of five recommended finalist was approved in the November 2022 City Council meeting to proceed to the Request for Proposals (RFP) phase of the selection process. Proposals from the short-listed Design-Build teams were received on February 10, 2023 and a multi-departmental review committee rated the proposals based on the scoring criteria contained in the RFP packet. The next step is to negotiate a Design-Build contract based on the review committee's rankings. Staff is requesting confirmation from the City Council for the City Manager to proceed with negotiating and finalizing a Design-Build contract with the highest ranked Design-Build team. If negotiations fail with the highest ranked team, staff will cease negotiations in writing and proceed to the next highest Design-Build team until an agreement has been finalized.

RECOMMENDED ACTION:

Authorize City Manager to negotiate and finalize contract for the Public Safety Facility.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution No. 09-2023. A Resolution authorizing the approval of a contract for collection services for debts and accounts receivable with Linebarger Goggan Blair and Sampson, LLP; such services to include collections of unpaid fines, fees, and court costs pertaining to the City's Municipal Court; making certain findings required by Section 2254.1036 of the Texas Government Code; authorizing the City Manager to execute the contract; and providing for an effective date.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 7, 2023

SUBMITTED BY: Yesenia Luna, Municipal Court Director

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

Article 103.0031 of the Texas Code of Criminal Procedures permits the City Council to enter into a contract with a private attorney to collect unpaid fines, fees, and court costs ordered paid by the Kerrville Municipal Court. In addition, Article 103.0031 provides that the City Council may authorize the addition of a collection fee in the amount of 30 percent on any fine, fee, or court cost the private attorney collects.

The Kerrville Municipal Court has reached an agreement with Linebarger Goggan Blair & Sampson, LLP ("Linebarger") to provide the legal services for collections of fines and fees on delinquent cases. This contract includes the inclusion of a 30 percent contingency fee as payment of Linebarger's fees. This 30 percent contingency fee, however, is not taken out of the fines, fees, and court costs owed to the Kerrville Municipal Court. Instead, it is included as an additional fee on top of the fines, fees, and court costs, which allows the Kerrville Municipal Court to recover 100 percent of the outstanding fines, fees, and court costs.

If the Council wants to approve this contingency fee contract, there are specific findings that it must make to comply with the Texas Government Code. These findings are included in Resolution 09-2023.

The City recommends that Council adopt Resolution 09-2023 and approve the contract with Linebarger.

RECOMMENDED ACTION:

Approve Resolution No. 09-2023, and authorize the City Manager to finalize and execute a contract with Linebarger Goggan Blair & Sampson, LLP, for Fines and Fees Collection Services.

ATTACHMENTS:

[*20230228_Reso 09-2023 Collection services for municipal court.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 09-2023**

A RESOLUTION AUTHORIZING THE APPROVAL OF A CONTRACT FOR COLLECTION SERVICES FOR DEBTS AND ACCOUNTS RECEIVABLE WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP; SUCH SERVICES TO INCLUDE COLLECTIONS OF UNPAID FINES, FEES, AND COURT COSTS PERTAINING TO THE CITY'S MUNICIPAL COURT; MAKING CERTAIN FINDINGS REQUIRED BY SECTION 2254.1036 OF THE TEXAS GOVERNMENT CODE; AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Article 103.0031, Texas Code of Criminal Procedure, City Council is authorized to enter into a contract with a private attorney for the provision of legal services to collect debts and accounts receivable such as unpaid fines, fees, and court costs, as ordered paid by the judge of the City's Municipal Court; and

WHEREAS, the City desires to approve a contract for collection services of unpaid fines, fees, and court costs with Linebarger Goggan Blair & Sampson, LLP; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Pursuant to Section 2254.1036, Texas Government Code, City Council has provided notice to the public, and hereby affirms such notice and/or makes the following findings with respect to the *Contract for Fine and Fees Collection Services* (the "Contract") with Linebarger Goggan Blair & Sampson, LLP:

- A. there is a substantial need for the legal services to be provided pursuant to the Contract;
- B. the legal services to be provided pursuant to the Contract cannot be adequately performed by the attorneys and supporting personnel of the City at a reasonable cost; and
- C. the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of these receivables as provided by Texas Code of Criminal Procedure Article 103.0031 and because the City does not have the funds to pay the estimated amounts required under a contract only for the payment of hourly fees.

SECTION TWO. After having provided legal notice, as required by Section 2254.1036 of the Texas Government Code, the Mayor is authorized to approve the Contract for Fine and Fees Collection Services with Linebarger Goggan Blair & Sampson, LLP. The Contract is attached as **Exhibit A**.

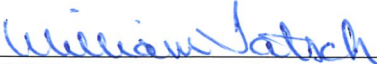
SECTION THREE. This Resolution shall become effective immediately upon its passage.

PASSED AND APPROVED ON this the _____ day of _____ A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:



William L. Tatsch, Assistant City Attorney

Shelley McElhannon, City Secretary

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Contract for Fines and Fees Collection Services

STATE OF TEXAS

CITY OF KERRVILLE

THIS CONTRACT (hereinafter "AGREEMENT") is made and entered into by and between the City of Kerrville, acting herein by and through its governing body, hereinafter styled "CLIENT", and Linebarger Goggan Blair & Sampson, LLP, hereinafter styled "FIRM".

Article I

Nature of Relationship and Authority for Contract

1.01 The parties hereto acknowledge that this AGREEMENT creates an attorney-client relationship between CLIENT and FIRM.

1.02 The CLIENT hereby employs the FIRM to provide the services hereinafter described for compensation hereinafter provided.

1.03 This AGREEMENT, as applicable, is entered into pursuant to and as authorized by Subsection (a) of ART. 103.0031, Texas Code of Criminal Procedure.

Article 2

Scope of Services

2.01 CLIENT agrees to employ and does hereby employ FIRM to provide specific legal services provided herein and to:

Enforce the collection of delinquent court fees and fines that are subject to this AGREEMENT, pursuant to the terms and conditions described herein; and,

Such legal services shall include but not be limited to recommendations and legal advice to CLIENT to take legal enforcement action; representing CLIENT in any dispute or legal challenge over authority to collect such accounts; defending CLIENT in litigation or challenges of its collection authority; and representing CLIENT in collection interests in bankruptcy matters as determined by FIRM and CLIENT. This AGREEMENT supersedes all prior oral and written agreements between the parties regarding court fees and fines and can only be amended if done so in writing and signed by all parties. Furthermore, this contract cannot be transferred or assigned by either party without the written consent of all parties.

2.02 The CLIENT may from time-to-time specify in writing additional actions that should be taken by the FIRM in connection with the collection of accounts identified in 2.01 above and that are subject to this AGREEMENT. CLIENT further constitutes and appoints the FIRM as CLIENT's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue collection of the CLIENT's claims.

2.03 Fines and fees that are subject to this AGREEMENT are those that are more than sixty (60) days past due as of the effective date hereof and those that become more than sixty (60) days past due during the term hereof. As used in this section, "more than 60 days past due" has that meaning assigned by Subsection (f) of Art. 103.0031, Texas Code of Criminal Procedure [as amended by Senate Bill 782, 78th Legislature (2003), effective June 18, 2003]. The meaning assigned to the phrase "more than 60 days past due" shall, for the term and purposes of this AGREEMENT, survive any future amendments to, or repeal of, Article 103.0031, Texas Code of Criminal Procedure, or any parts thereof.

2.04 The CLIENT agrees to provide to the FIRM data regarding any fines and fees that are subject to this AGREEMENT. The data shall be provided by electronic medium in a file format specified by the FIRM. The CLIENT and the FIRM may from time-to-time agree in writing to modify this format. The CLIENT shall provide the data to the FIRM not less frequently than weekly or as otherwise mutually agreed.

2.05 The FIRM, in all communications seeking the collection of fines and fees, shall direct all payments directly to the CLIENT at an address designated by the CLIENT. If any fines and fees are paid to the FIRM, said payments shall be expeditiously turned over to the CLIENT.

Article 3

Compensation

3.01 The CLIENT agrees to pay the FIRM as compensation for the services required hereunder:

(a) Thirty percent (30%) percent, pursuant to Article 103.0031(b), Texas Code of Criminal Procedure, of all the fines and fees subject to the terms of this AGREEMENT that are collected by the CLIENT during the term of this AGREEMENT and that were incurred under Art. 103.0031(a)(2), Texas Code of Criminal Procedure, as a result of the commission of a criminal or civil offense committed after June 18, 2003.

(b) All compensation shall become the property of the FIRM at the time payment of the fines and fees is made to the CLIENT.

All compensation shall become the property of the FIRM at the time payment of the fines and fees is made to the CLIENT.

3.02 The CLIENT shall pay the FIRM by the twentieth day of each month all compensation earned by the FIRM for the previous month as provided in this Article 3. The CLIENT shall provide an accounting showing all collections for the previous month with the remittance.

Article 4
Intellectual Property Rights

4.01 The CLIENT recognizes and acknowledges that the FIRM owns all right, title and interest in certain proprietary software that the FIRM may utilize in conjunction with performing the services provided in this AGREEMENT. The CLIENT agrees and hereby grants to the FIRM the right to use and incorporate any information provided by the CLIENT ("CLIENT Information") to update the databases in this proprietary software, and, notwithstanding that CLIENT Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the CLIENT shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the CLIENT shall be entitled to obtain a copy of such data that directly relates to the CLIENT's accounts at any time.

4.02 The FIRM agrees that it will not share or disclose any specific confidential CLIENT Information with any other company, individual, organization or agency, without the prior written consent of the CLIENT, except as may be required by law or where such information is otherwise publicly available. It is agreed that the FIRM shall have the right to use CLIENT Information for internal analysis, improving the proprietary software and database, and generating aggregate data and statistics that may inherently contain CLIENT Information. These aggregate statistics are owned solely by the FIRM and will generally be used internally, but may be shared with the FIRM's affiliates, partners or other third parties for purposes of improving the FIRM's software and services.

Article 5
Costs

5.01 The FIRM and CLIENT recognize that certain costs may be incurred in the process of providing any additional services contemplated in Section 2.02 above or in providing any special litigation services. The CLIENT agrees that all such costs shall be billed to the CLIENT, but that the FIRM will either (i) advance such costs on behalf of the CLIENT or, (ii) when possible, arrange with the vendor or agency providing the service that the costs of services will not be paid unless and until such costs are recovered by the CLIENT from the debtor.

5.02 The CLIENT acknowledges that the FIRM may provide such services with its own employees or with other entities or individuals who may be affiliated with the FIRM, but the FIRM agrees that any charges for such services will be reasonable and consistent with what the same services would cost if obtained from a third party.

5.03 The CLIENT agrees that upon the recovery of such costs, the CLIENT will (i) pay the FIRM for any such costs that have been advanced by the FIRM or performed by the FIRM and (ii) pay any third-party agency or vendor owed for performing such services.

Article 6

Term and Termination

6.01 This AGREEMENT shall be effective January 10, 2023 (the "Effective Date") and shall expire on January 9, 2025 (the "Expiration Date") unless extended as hereinafter provided.

6.02 Unless prior to sixty (60) days before the Expiration Date, the CLIENT or the FIRM notifies the other in writing that it does not wish to continue this AGREEMENT beyond its initial term, this AGREEMENT shall be automatically extended for an additional one-year period without the necessity of any further action by either party. In the absence of any such sixty (60) day notice by either the CLIENT or the FIRM, the AGREEMENT shall continue to automatically renew for additional and successive one-year terms in the same manner at the end of each renewal period.

6.03 If, at any time during the initial term of this AGREEMENT or any extension hereof, the CLIENT determines that the FIRM's performance under this AGREEMENT is unsatisfactory, the CLIENT shall notify the FIRM in writing of the CLIENT's determination. The notice from the CLIENT shall specify the particular deficiencies that the CLIENT has observed in the FIRM's performance. The FIRM shall have sixty (60) days from the date of the notice to cure any such deficiencies. If, at the conclusion of that sixty (60) day remedial period, the CLIENT remains unsatisfied with the FIRM's performance, the CLIENT may terminate this AGREEMENT effective upon the expiration of thirty (30) days following the date of written notice to the FIRM of such termination ("Termination Date").

6.04 Whether this AGREEMENT expires or is terminated, the FIRM shall be entitled to continue to collect any items and to pursue collection of any claims that were referred to and placed with the FIRM by the CLIENT prior to the Termination Date or Expiration Date for an additional sixty (60) days following termination or expiration. The CLIENT agrees that the FIRM shall be compensated as provided by Article 3 for any such item or pending matters during the sixty (60) day period.

6.05 The CLIENT agrees that the FIRM shall be reimbursed for any costs advanced and shall be paid for any services performed pursuant to Article 5 when such costs are recovered by or on behalf of the CLIENT, regardless of the date recovered. It is expressly agreed that neither the expiration nor the termination of this AGREEMENT constitutes a waiver by the FIRM of its entitlement to be reimbursed for such costs and to be paid for such services. It is further expressly agreed that the expiration of any sixty (60) day period under Section 6.04 does not constitute any such waiver by the FIRM.

Article 7

Miscellaneous

7.01 Subcontracting. The FIRM may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the FIRM will retain supervisory control and responsibility for any services provided by such

co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

7.02 Arbitration. Any controversy between the parties to this AGREEMENT involving the construction or application of any of the terms, covenants, or conditions of this AGREEMENT shall, on the written request of one party served on the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act.

7.03 Integration. This AGREEMENT contains the entire AGREEMENT between the parties hereto and may only be modified in a written amendment, executed by both parties.

7.04 Representation of Other Governmental Entities. The CLIENT acknowledges and consents to the representation by the FIRM of other governmental entities that may be seeking the payment of fines and fees, utilities or other claims from the same person(s) as the CLIENT.

7.05 Notices. For purposes of sending any notice under the terms of this contract, all notices from CLIENT shall be sent to FIRM by certified United States mail, or delivered by hand or by courier, and addressed as follows:

Linebarger Goggan Blair & Sampson, LLP
Attention: Director of CMS
P.O. Box 17428
Austin, Texas 78760-7428

All notices from the FIRM to the CLIENT shall be sent to CLIENT by certified United States mail, or delivered by hand or by courier, and addressed as follows:

City of Kerrville
Attention: City Administration
701 Main St
Kerrville, TX 78028

7.06. Compliance with Tx. Govt. Code §2271.002. In order to comply with Tx. Govt. Code §2271.002, the Firm verifies that it does not boycott Israel and will not boycott Israel during the term of the contract.

7.07 Compliance with Tx. Govt. Code §2252.151- .154. In order to comply with Tx. Govt. Code §2252.152, the Firm verifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law.

7.08 Compliance with Tx. Govt. Code §2274.001 - .002. In order to comply with Tx. Govt. Code §2274.002, the Firm verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

7.09 Compliance with Tx. Govt. Code §2274.001 - .002. In order to comply with Tx. Govt. Code §2274.002, the Firm verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

EXECUTED ON the 10th day of January, 2023.

City of Kerrville

By: _____
Judy Eychner, Mayor

Linebarger Goggan Blair & Sampson, LLP

By: _____
Douglas Steven Bird, Capital Partner
For the FIRM



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Financial update for month ending January 31, 2023, and Tax Increment Reinvestment Zone (TIRZ) Annual Report for year-ended September 30, 2022.

AGENDA DATE OF: February 28, 2023 **DATE SUBMITTED:** February 3, 2023

SUBMITTED BY: Julie Behrens , Director of Finance

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Financial update for month ending January 31, 2023 and Tax Increment Reinvestment Zone (TIRZ) Annual Report for year-ended September 30, 2022.

RECOMMENDED ACTION:

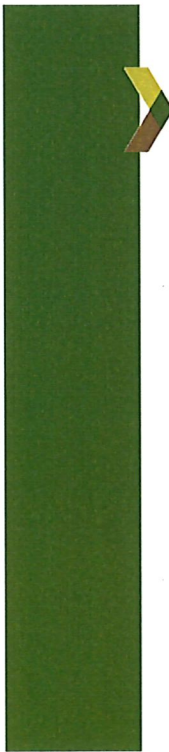
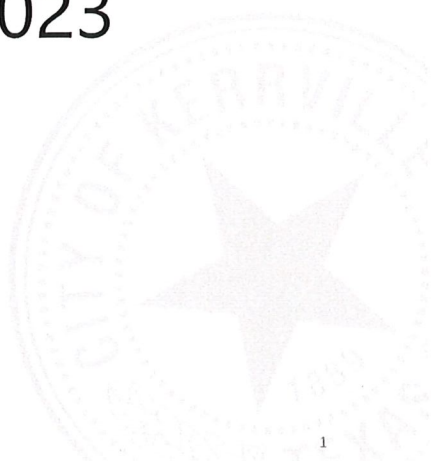
Report. No action.

ATTACHMENTS:

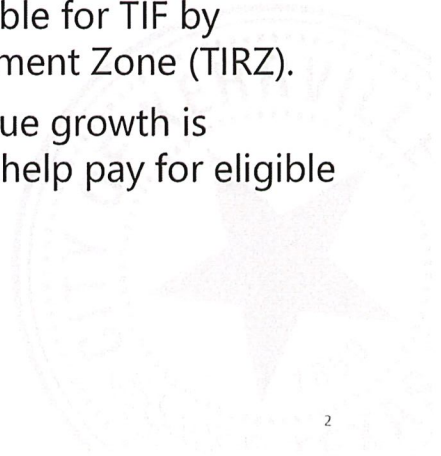
[20230228_Presentation TIRZ annual.pdf](#)



TIRZ MEETING JANUARY 26, 2023



What is Tax Increment Financing (TIF)?

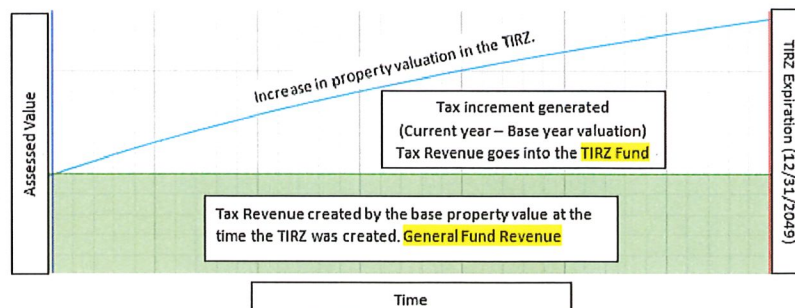
- Tax Increment Financing (TIF) is a tool to help finance public improvements and development projects within a defined area. A municipality makes an area eligible for TIF by designating it a Tax Increment Reinvestment Zone (TIRZ).
 - Once a TIRZ is established, all tax revenue growth is retained within the fund and is used to help pay for eligible improvements within the zone.
- 

What is considered increment?

- Increment is the difference between the property valuations in the current tax year and the base year.
- All property taxes collected in the base year valuation remains in the General Fund.
- All property taxes collected using the value of increment is retained in the TIRZ Fund.

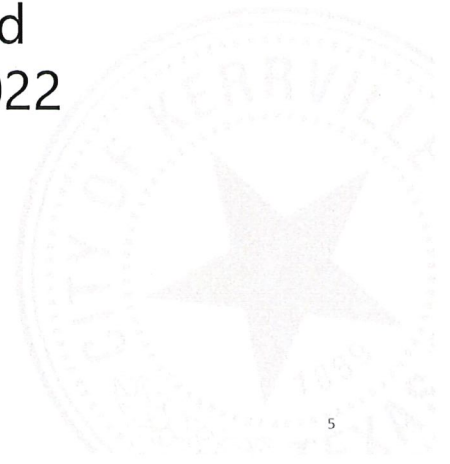
3

What is considered increment cont.

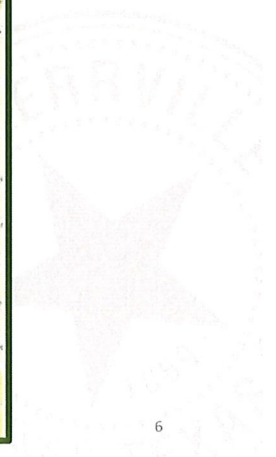
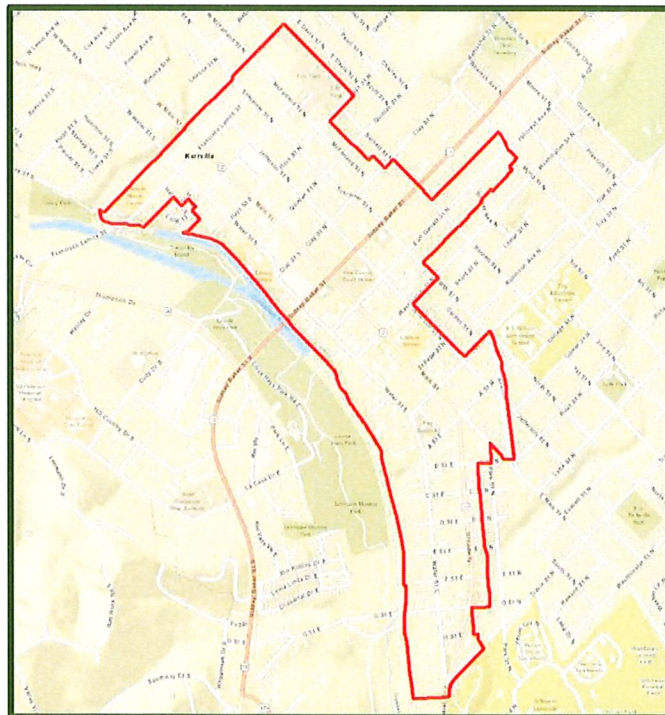


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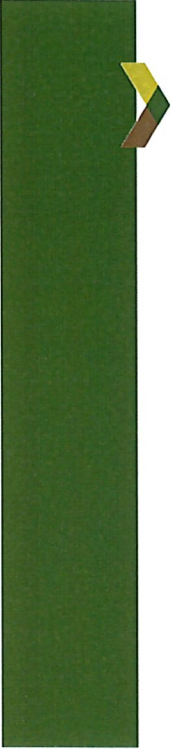
Annual Report
Fiscal Year Ended
September 30, 2022



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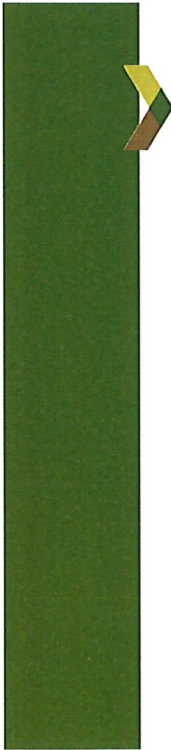
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City of Kerrville Tax Increment Reinvestment Zone #1

- Established in 2018 to encourage private investment in downtown Kerrville
- 477 acres
- Generally bound by Paschal Avenue to the Northwest, the Guadalupe River to the west, Travis Street to the south, and Barnett & Aransas Streets to the east
- TIRZ can fund public improvements related to streets, water and sewer infrastructure, parks and open spaces, and may include economic development grants related to this area

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TIRZ ANNUAL REPORTING REQUIREMENTS

Texas law requires the City to submit an annual report to each taxing unit that levies taxes on property within the TIRZ to include:

1. Amount & sources of revenue
2. Amount & purpose of expenditures
3. Amount of indebtedness
4. Tax increment base and current captured appraised value in the TIRZ
5. Captured appraised value shared by the City and other taxing units
6. Total amount of tax increments received

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City of Kerrville Tax Increment Reinvestment Zone #1 Budget

	FY2021 Actual	FY2022 Original Budget	FY2022 Current Budget	FY2022 Estimated	FY2023 Budget
Beginning Restricted Fund Balance	\$ 22,914	\$ 58,605	\$ 58,605	\$ 58,605	\$ 110,255
Revenues					
Property Tax	35,641	62,641	62,641	51,112	280,000
Total Tax Revenue	35,641	62,641	62,641	51,112	280,000
Interest Revenue	50	250	250	538	1,000
Total Interest and Miscellaneous	50	250	250	538	1,000
Total Revenues	35,691	62,891	62,891	51,650	281,000
Net Revenue (Expenditures)	35,691	62,891	62,891	51,650	281,000
Ending Restricted Fund Balance	\$ 58,605	\$ 121,496	\$ 121,495	\$ 110,255	\$ 391,255

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Required Annual Reporting For the Year Ended September 30, 2022

1. The amount of revenue received in the Tax Increment Reinvestment Zone fund in FY2022:

Property Tax Increment:	51,112
Interest Revenue:	538
Total:	\$51,650

2. The amount and purpose of expenditures from the fund :

There were no expenditures budgeted or incurred during FY2022 within the TIRZ #1 Fund.

3. The amount of principal and interest due on outstanding bonded indebtedness:

The TIRZ #1 fund has not incurred any debt.

4. The tax increment base appraised value and current captured appraised value retained by the zone (freeze adjusted taxable value):

	Base Year Appraised Value (Tax Year 2018)	FY2022 Appraised Value (Tax Year 2021)	*FY2022 Captured Appraised Value (Tax Year 2021)
Taxing Jurisdiction			
City of Kerrville	\$97,488,489	\$115,963,265	\$18,474,776

* Captured Appraised Value Calculation:

FY2022 Appraised Value - Base Year Appraised Value = Value taxed for TIRZ

5. The captured appraised value of the TIRZ #1 for FY2022 (Tax Year 2021):

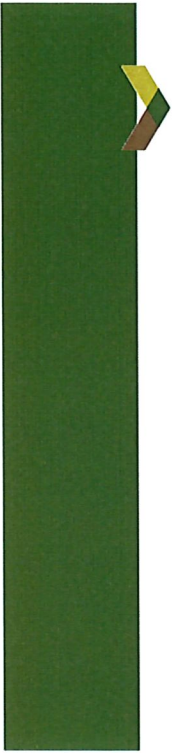
The captured appraised value of the TIRZ #1 for FY2022 is \$18,474,776

6. The total amount of revenue received since inception of the zone:

Since the creation of the TIRZ #1, the fund has received \$110,255 in revenue.

Property Tax Increment:	109,652
Interest Revenue:	603
Total:	\$110,255

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Questions?

