

AGENDA FOR REGULAR MEETING

KERRVILLE CITY COUNCIL

TUESDAY, OCTOBER 27, 2015, 6:00 P.M.

KERRVILLE CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

KERRVILLE CITY COUNCIL AGENDA
REGULAR MEETING, TUESDAY, OCTOBER 27, 2015, 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

INVOCATION: by Gavin Rogers, Executive Director of St. Peter's Episcopal Church.

PLEDGE OF ALLEGIANCE TO THE FLAG

Those in attendance may stand if they wish.

1. 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. City Council may not discuss or take any action on an item but may place the issue on a future agenda. The number of speakers will be limited to the first ten speakers and each speaker is limited to four minutes.

2. 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 City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:

2A. Minutes of the city council regular meeting held September 22, 2015, and city council special meeting held October 8, 2015. (staff)

END OF CONSENT AGENDA

3. PUBLIC HEARINGS AND ORDINANCE FIRST READINGS:

3A. Ordinance No. 2015-22 amending the comprehensive plan for the City of Kerrville, Texas, pursuant to Chapter 213 of the Texas Local Government Code; by revising the future land use plan for an approximate 1.94 acres and 1.39 acres tracts of land located adjacent to and south of Bandera Highway (SH 173) and between the highway's intersections with Riverhill Boulevard East to the west and Oak Hollow Drive East to the east; and changing the future land use of this area from low-density residential to general commercial. (staff)

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the City hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: October 23, 2015 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

3B. Ordinance No. 2015-23 amending the City's "Zoning Code" by changing the zoning district for an approximate 1.94 acres and 1.39 acres tracts of land located adjacent to and south of Bandera Highway (SH173) and between the highway's intersections with Riverhill Boulevard East to the west and Oak Hollow Drive East to the east, otherwise known as 2180 Bandera Highway; by removing the combined 3.33 acre property, more or less, from the residential cluster (RC) zoning district and placing it within the 36-S zoning district; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); ordering publication; and providing other matters relating to the subject. (staff)

4. ORDINANCE FIRST READING:

4A. Ordinance No. 2015-24 granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Kerrville, Kerr County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all predecessor ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing a savings clause; a most favored nations clause, and a severability clause; and providing an effective date. (staff)

Approximately 6:20 p.m.

5. CITY COUNCIL RECESS

THE CITY COUNCIL WILL RECESS THE REGULAR MEETING TO CONVENE A MEETING OF THE HEALTH FACILITIES DEVELOPMENT CORPORATION (see separate posted agenda)

THE KERRVILLE CITY COUNCIL WILL RECONVENE INTO REGULAR SESSION FOLLOWING THE MEETING OF THE HEALTH FACILITIES DEVELOPMENT CORPORATION.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Resolution No. 34-2015 approving a bond resolution by City of Kerrville, Texas Health Facilities Development Corporation providing for the issuance of bonds for Sid Peterson Memorial Hospital.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the City hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: October 23, 2015 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

7. INFORMATION AND DISCUSSION:

7A. Quarterly report from Kerr Economic Development Corporation. (staff)

7B. Update on the effluent reuse project and provide direction to city staff to initiate the bond issuance process to fund its construction. (staff)

7C. Budget and economic update. (staff)

8. APPOINTMENTS TO CITY BOARDS AND COMMISSIONS:

8A. Golf Course Advisory Board. (staff)

9. ITEMS FOR FUTURE AGENDA

10. 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.

11. EXECUTIVE SESSION:

City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above including 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 matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code, including the following matter:

10A. Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following:

- River trail.

12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

13. ADJOURNMENT.

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-257-8000 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the City hall of the City of Kerrville, Texas, and said notice was posted on the following date and time: October 23, 2015 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Brenda Craig
City Secretary, City of Kerrville, Texas

Agenda Item:

2A. Minutes of the city council regular meeting held September 22, 2015, and city council special meeting held October 8, 2015. (staff)

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
September 22, 2015

On September 22, 2015, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor Pratt in the city hall council chambers at 701 Main Street. The invocation was offered by Reverend Allen Noah, Pastor of Barnett Chapel United Methodist Church, followed by the Pledge of Allegiance led by Police Chief David Knight.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Gary F. Stork	Mayor Pro Tem
Stephen P. Fine	Councilmember
Bonnie White	Councilmember

COUNCILMEMBER ABSENT:

Gene Allen	Councilmember
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CITY CORE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Day	Deputy City Manager
Cheryl Brown	Deputy City Secretary
Sandra Yarbrough	Director of Finance
Ashlea Boyle	Special Projects Manager
Kim Meisner	Director of General Operations
David Knight	Police Chief
Dannie Smith	Fire Chief
Stuart Barron	Public Works Director

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

1. VISITORS/CITIZENS FORUM:

1A. Robert Naman spoke regarding how helpful Ms. White was to him recently.

2. PRESENTATIONS:

2A Resolutions of Commendation for James Howard and Jeffrey Mitchel for serving on the Golf Course Advisory Board: Neither Mr. Howard nor Mr. Mitchel were present.

2B. Resolution of Commendation for Robert Irvin for serving on the Zoning Board of Adjustment: Mayor Pratt presented the Resolution of Commendation to Mr. Irvin.

3. CONSENT AGENDA:

Mr. Fine requested that the items on the consent agenda be considered separately.

3A. Resolution No. 27-2015 supporting the adoption of Proposition 7 at the November General Election as upon passage, Proposition 7 will provide a new, stable source of funding for the construction and maintenance of Texas roads as a way of improving transportation in this state.

The Councilmembers discussed the resolution and Proposition 7.

Mr. Stork moved to approve Resolution 27-2015. Mr. Fine seconded, and the motion passed 4-0.

3B. Resolution No. 28-2015 supporting the adoption of Proposition 6 at the November General Election which will affirm the right of Texans to hunt, fish, and harvest wildlife by the use of traditional methods.

Council reviewed the resolution and Proposition 6.

Mr. Stork moved to approve Resolution No. 28-2015. Mr. Fine seconded, and the motion passed 4-0.

3C. Resolution No. 29-2015 opposing newly proposed regulations by the Environmental Protection Agency regarding ground-level ozone which lowers current standards despite the 50% reduction in ozone emissions since 1980 and recognizing that the regulations are projected to be the most costly in this agency's history. Council reviewed the resolution.

Ms. White moved to approve Resolution 29-2015. Mr. Stork seconded, and the motion passed 4-0.

3D. Resolution No. 30-2015 opposing the new clean water rules adopted by the Environmental Protection Agency as such rules exceed the agency's authority under the Constitution and the Clean Water Act.

Council reviewed the resolution

Mr. Fine moved to approve Resolution No. 30-2015. Ms. White seconded, and the motion passed 4-0.

4. ORDINANCE, SECOND AND FINAL READING:

4A. Ordinance No. 2015-20, adopting the annual budget for the City of Kerrville, Texas, fiscal year 2016; providing appropriations for each city department and fund; containing a cumulative clause; and containing a savings and severability clause. Mayor Pratt read the ordinance by title only.

Mr. Stork moved for approval of Ordinance No. 2015-20 on second reading; Mr. Fine seconded the motion and it passed 3-1-0 on record vote as follows:

Mayor Pratt	For
Councilmember Fine	For
Councilmember White	Against
Councilmember Stork	For
Councilmember Allen	Absent

4B. Ordinance No. 2015-21, levying an ad valorem tax for the use and the support of the municipal government for the City of Kerrville, Texas, for the fiscal year 2016; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid. Mayor Pratt read the ordinance by title only.

Mr. Fine moved for approval of Ordinance No. 2015-21 on second and final reading, and moved that the property tax rate be increased by the adoption of a tax rate of \$.5625, which was effectively a 2.2% increase in the effective tax rate. Ms. White seconded the motion and it passed 3-1-0 on record vote as follows:

Mayor Pratt	For
Councilmember Fine	For
Councilmember White	For
Councilmember Stork	Against
Councilmember Allen	Absent

5. CITY COUNCIL RECESS:

The Kerrville City Council recessed the regular city council meeting to convene a meeting of the City of Kerrville Health Facilities Development Corporation at 6:29 p.m. Following the City of Kerrville Health Facilities Development Corporation meeting, the Kerrville City Council reconvened into regular session at 6:43 p.m.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Resolution No. 26-2015, providing for the city's approval or disapproval of the Kerr Central Appraisal District's purchase of land on Oak Hollow Drive for the future construction of an office building.

Ms. White submitted an Affidavit of Conflict of Interest, recused herself from the dais, and left the Council Chambers.

Ray Orr, Secretary of Kerr Central Appraisal District (KCAD), summarized the purchase of the land. He stated that, if the purchase is approved, KCAD would come back at a later date with a design plan. He stated that the City had 30 days to approve or disapprove the resolution, and return it to KCAD.

Mr. Fine moved to approve Resolution 26-2015. Mr. Stork seconded and the motion passed 3-0-1, with Mayor Pratt, Mr. Stork, and Mr. Fine voting for the motion, no votes against, and Ms. White abstaining.

6B. Approval or public art project, "Guadalupe Bass," in an amount not to exceed \$10,000, to be paid through the fundraising efforts of the Main Street Advisory Board, Mardi Gras on Main project.

Terry Cook, City of Kerrville Main Street Manager, presented the project, and showed pictures of the chosen artwork. David Martin, Main Street Advisory Board member, answered questions from the Council.

Mr. Stork moved to approve the project, and to direct staff to draft a contract with the chosen artist. Mr. Fine seconded, and the motion passed 4-0.

6C. Resolution No. 23-2015 authorizing amendments to the Procedural Rules for Kerrville City Boards.

Mr. Parton reported that there were four changes made pursuant to the direction received at the prior Council meeting.

Ms. White moved to approve Resolution No. 23-2015. Mr. Fine seconded, and the motion passed 4-0.

6D. Direction to city staff to initiate the process to create an industrial development corporation to provide tax-exempt or taxable financing for eligible industrial or manufacturing projects.

Mr. Parton stated that staff worked with the Kerrville Economic Development Corporation regarding the creation of an industrial development corporation. He responded to questions from the Council regarding the timing and necessity of creating the corporation. Although there were no projects pending, the creation of this corporation would be a useful tool for KEDC in future negotiations with prospective businesses.

Mayor Pratt moved to direct City staff to proceed with the initiation process for an industrial development corporation, which upon creation would consist of City Councilmembers. Mr. Fine seconded and the motion passed 4-0.

7. INFORMATION AND DISCUSSION:

7A. Budget/economic update.

Ms. Yarborough gave the financial report year to date for the period ending August 31, 2015: general fund revenues totaled \$23,191,581.00 and expenditures \$21,166,815; water and sewer fund revenues totaled \$8,327,710 and expenditures \$10,199,977; hotel/motel fund revenues totaled \$990,260 and expenditures \$937,184; 58 permits for new residential construction and 24 for new commercial construction.

8. APPOINTMENTS TO CITY BOARDS AND COMMISSIONS:

8A. Golf Course Advisory Board. Ms. White moved to appoint Raymond Holloway, with term to expire July 1, 2017; Mr. Fine seconded. Mr. Fine and Ms. White voted for, and Mayor Pratt and Mr. Stork voted against. The motion failed with a vote of 2-2.

8B. Zoning Board of Adjustment. Mr. Stork requested this item be tabled until Mr. Allen was present at the next meeting to voice his recommendations as a member of the interview team for the Zoning Board of Adjustment.

9. ITEMS FOR FUTURE AGENDA:

- Consider advertising in both the Hill Country Community Journal and the Kerrville Daily Times newspapers.

10. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- Kerrville Police Department planned to participate in "National Take-Back Day" on Saturday, September 26, 2015, during which citizens may bring unused medications to the Police Department for disposal.
- Kerrville's 5th Annual Triathlon Event was scheduled for September 26-27.
- Entries for the Holiday Lighted Parade to take place on November 21, 2015 are being accepted.
- Citizens were encouraged to pick up their vouchers from the Water Office for use at the landfill. The vouchers expire on September 30, 2015.
- Mayor Pratt announced that he was looking into becoming a magistrate.
- "The Gathering" at Antler stadium for a common worship assembly was scheduled for October 3, 2015 at 6:30 p.m.

11. EXECUTIVE SESSION:

Mayor Pratt moved for the city council to go into executive closed session under Sections 551.071 and 551.072 of the Texas Government Code; motion was seconded by Mr. Stork and passed 4-0 to discuss the following:

11A. Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties.

At 7:29 p.m. the regular meeting recessed.

Council went into executive closed session at 7:29 p.m. At 7:59 p.m. the executive closed session recessed and council returned to open session at 7:59 p.m. Mayor Pratt announced no action was taken in executive session.

12. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION

No action was taken in open session.

ADJOURNMENT. The meeting adjourned at 7:59 p.m.

APPROVED: _____
ATTEST: _____

Jack Pratt, Jr., Mayor

Cheryl Brown, Deputy City Secretary

CITY COUNCIL MINUTES
SPECIAL MEETING

KERRVILLE, TEXAS
October 8, 2015

On October 8, 2015, the Kerrville City Council meeting was called to order at 12:04 p.m. by Mayor Pratt in the city hall council chambers at 701 Main Street.

MEMBERS PRESENT:

Jack Pratt
Gary Stork
Stephen Fine
Gene Allen

MEMBER ABSENT:

Bonnie White

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Kristine Day	Deputy City Manager
Mike Hayes	City Attorney
Brenda Craig	City Secretary
Sandra Yarbrough	Finance Director
Kim Meismer	Director of General Operations
David Knight	Police Chief
Dannie Smith	Fire Chief

2. CONSIDERATION:

2A. Authorize execution of documents associated with the acquisition of property at 529 Water Street, including the following:

- Amendment to One to Four Family Residential Contract (Resale).
- Donation Agreement.
- General Warranty Deed.

EXECUTIVE SESSION:

Mr. Stork moved for the city council to go into executive closed session under Sections 551.071, 551.072, and 551.073 of the Texas Government Code; motion was seconded by Mr. Fine and passed 4-0 to discuss the following:

3A. Sections 551.071, 551.072 and 551.073:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following:

- Acquisition of property at 529 Water Street.

At 12:04 p.m. the regular meeting recessed. Council went into executive closed session at 12:05 p.m. At 12:14 p.m. the executive closed session recessed and council

returned to open session at 12:15 p.m.

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

Mr. Fine moved to approve: amendment to residential contract deed, donation agreement, and general warranty deed; and to authorize the city manager to execute all contracts and closing documents. Mr. Stork seconded the motion.

The following persons were allowed to speak:

1. Bill Morgan questioned if the city could afford the property as it looked to be an albatross rather than a gift, citing \$1 million for ADA compliance. The city was already stretched financially for the river trail and sports complex and should not extend its debt any further. He asked what the building could be used for, if the parking garage would be used to meet the parking requirement, and if county residents would be able to use the facility without having to pay a fee such as was required to use the library.

Council noted that the city would seek funding through grants, donations, and fund raising first before using city budget. Council received an adaptive reuse feasibility study with many recommended uses; however, deed restrictions required that the property be used for general public use with city library approval. The parking garage would provide parking for the facility; however, since the property was located in the central business district, parking requirements would not apply. The city had not addressed any issue in which the city would fund any library fees for persons who were not citizens of the city. City residents also paid county taxes and thus had a double burden already.

2. Robert Naman asked the timeline behind the city's accepting the gift and whether the city had done preliminary work to assess the property, and the cost to bring it up to standards. If grants and donations were not sufficient to cover expenses, where would funding come from, and was this discussed during the budget process? Had the city investigated with the Texas Historical Commission to see if any funding was available? Staff spent hundreds of hours working on the project and were not attending to city business, and still had no plan to pay for it. Staff and council spent over a year working on the sports complex behind closed doors and had contracts signed before it was presented to the public. He asked if user fees generated would cover the cost of future maintenance. He opined that the city had the cart before the horse sometimes, such as moving into the new city hall and not having sold the former city hall property.

Council noted the donor and staff had been in discussion for some time and staff had probably spent hundreds of hours on property inspection and developing cost estimates. It was not appropriate to discuss the project during the budget process because at that time the property had not been offered to the city. It was estimated to cost about \$500,000 to bring the property up to standards and meet disability requirements, and the city would seek grants and donations. Revenue from property rentals could offset some of the cost of maintenance. Staff was conducting due diligence and had not neglected any city business while investigating the feasibility of this project; due diligence was part of city's staff job. Staff had provided extensive

documents to council, including a very thorough inspection report on the condition of the property and a reuse feasibility study with many recommended uses. This was an opportunity for the city to protect an historic and cultural site.

The motion passed 4-0.

Adjournment.

The meeting adjourned at 12:30 p.m.

APPROVED: _____
ATTEST: _____

Jack Pratt, Jr., Chairman

Brenda G. Craig, City Secretary

Agenda Item:

3A. Ordinance No. 2015-22 amending the comprehensive plan for the City of Kerrville, Texas, pursuant to Chapter 213 of the Texas Local Government Code; by revising the future land use plan for an approximate 1.94 acres and 1.39 acres tracts of land located adjacent to and south of Bandera Highway (SH 173) and between the highway's intersections with Riverhill Boulevard East to the west and Oak Hollow Drive East to the east; and changing the future land use of this area from low-density residential to general commercial. (staff)

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

SUBJECT: Public hearing, First reading of the Ordinance & Action concerning a proposed Comprehensive Plan Amendment to amend the future land use category from "Low-Density Residential" to "General Commercial" for an approximate 3.33 acres tract. 3.33 acres of land, more or less, out of the John A. Southmayd Survey No. 148, Abstract No. 288 in Kerr County, Texas, and being a part of a 7.9 acre tract and all of a 1.6 acre tract recorded in Volume 243, Page 95 and Volume 288, Page 568 of the Deed Records of Kerr County, Texas said two tracts being parts of a 24.56 acre tract recorded in Volume 221, Page 468 of the Deed Records of Kerr County, Texas, located on the southwest side of Bandera Highway between Oak Hollow Drive East and Riverhill Boulevard East. 2180 Bandera Highway.

FOR AGENDA OF: October 27, 2015

DATE SUBMITTED: October 16, 2015

SUBMITTED BY: Trenton Robertson
City Planner

CLEARANCES: Kristine Day
Deputy City Manager

EXHIBITS: Location Map, P&Z Staff Report
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

This item is concerning public hearing, first reading of the ordinance & action concerning a proposed Comprehensive Plan Amendment to amend the future land use category from "Low-Density Residential" to "General Commercial". The applicant requested the comprehensive plan amendment on August 26, 2015.

A public hearing was conducted by the Planning and Zoning Commission at its regular meeting on October 1, 2015.

RECOMMENDED ACTION

Staff recommends that the Council hold the required public hearing to receive public comments and take action for approval.



City of Kerrville Planning Department Report

To:	Planning & Zoning Commission
Agenda Item:	3A
Planning File #:	2015-043
Hearing Date:	October 1, 2015
Representative:	David L. Jackson
Location:	Located on the southwest side of Bandera Highway between Oak Hollow Drive East and Riverhill Boulevard East. 2180 Bandera Highway
Legal Description:	3.33 acres of land, more or less, out of the John A. Southmayd Survey No. 148, Abstract No. 288 in Kerr County, Texas, and being a part of a 7.9 acre tract and all of a 1.6 acre tract recorded in Volume 243, Page 95 and Volume 288, Page 568 of the Deed Records of Kerr County, Texas said two tracts being parts of a 24.56 acre tract recorded in Volume 221, Page 468 of the Deed Records of Kerr County, Texas
Total Acreage:	3.33

Proposal

Comprehensive Plan Amendment to amend the future land use category from "Low-Density Residential" to "General Commercial"

Procedural Requirements

The application was published in The Hill Country Community Journal, an official newspaper of general circulation on September 16, 2015. Notices were sent to property owners within two hundred (200) feet of the subject property on September 21, 2015. Additionally, notice of this meeting was posted at city hall and on the city's internet website on September 18, 2015, in accordance with Section 551.043(a) of the Texas Government Code.

Recommended Action

Staff recommends that the Commission hold the required public hearing to receive public comments and make a recommendation to the Council.

Notices Mailed

Owners of Property within 200 feet: 19

Topography

The subject property is relatively flat with little vegetation, besides grass and is undeveloped.

Adjacent Zoning and Land Uses

Direction: North

Current Base Zoning: "PD-005" and "S-36"

Current Land Uses: Vacant and RV Park

Direction: West

Current Base Zoning: "PD-005"

Current Land Uses: Vacant

Direction: South

Current Base Zoning: "R-1" and "RC"

Current Land Uses: Vacant and Single-Family Residential

Direction: East

Current Base Zoning: "S-36" and "RC"

Current Land Uses: Single-Family Residential and Commercial Strip Center

Transportation

Thoroughfare: Bandera Highway

Existing Character: Two lanes in each direction with no sidewalks

Proposed Changes: None known

Thoroughfare: Oak Hollow Drive East

Existing Character: One lane in each direction with partial sidewalks

Proposed Changes: None known

Parking Information: Office

Minimum vehicle spaces: One (1) space per 300 sq. feet.

Planning & Zoning Commission: Approval

Staff Analysis and Recommendation: Approval

1. Plan Amendment:

The subject property is surrounded by residential, commercial and vacant land. By amending the future land use designation to General Commercial it will create a buffer between the existing residential neighborhood to the south and the office/commercial uses (present and future) to the north and east.

2. Adverse Impacts on Neighboring Lands:

Although, staff has found no evidence of likely adverse impacts on neighboring lands in relation to this plan amendment request, the potential uses could increase traffic. The proposed plan amendment would allow the subject property to request a zoning change in order to be permitted more intense uses. The proposed plan amendment is consistent with properties that have frontage along major roadways such as Bandera Highway.

3. Health, Safety and Welfare:

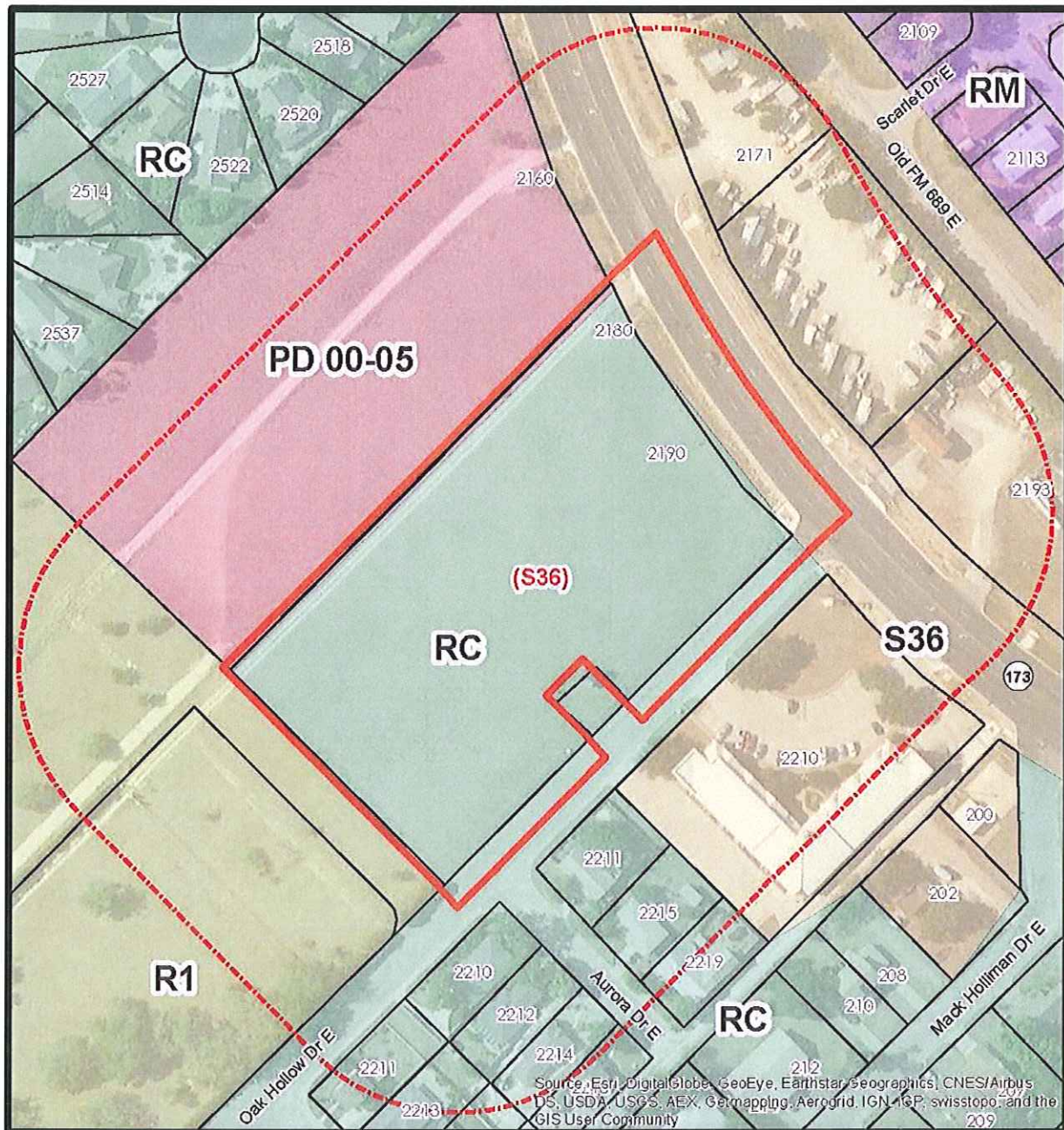
Staff has found no indication of likely adverse effects on the public health, safety, or welfare.

4. Size of Tract:

The subject property is approximately 3.33 acres in size, which should be able to reasonably accommodate the proposed office/commercial uses.

5. Other Factors:

None.



Zoning Case Location Map

Case Z2015-042

Location:
2190 Bandera Hwy

Legend

200' Notification Area
Subject Properties
Current Zoning
Requested Zoning

TEXT
(TEXT)



0 50 100 200
Scale In Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2015-22**

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN FOR THE CITY OF KERRVILLE, TEXAS, PURSUANT TO CHAPTER 213 OF THE TEXAS LOCAL GOVERNMENT CODE; BY REVISING THE FUTURE LAND USE PLAN FOR AN APPROXIMATE 1.94 ACRES AND 1.39 ACRES TRACTS OF LAND LOCATED ADJACENT TO AND SOUTH OF BANDERA HIGHWAY (SH 173) AND BETWEEN THE HIGHWAY'S INTERSECTIONS WITH RIVERHILL BOULEVARD EAST TO THE WEST AND OAK HOLLOW DRIVE EAST TO THE EAST; AND CHANGING THE FUTURE LAND USE OF THIS AREA FROM LOW-DENSITY RESIDENTIAL TO GENERAL COMMERCIAL

WHEREAS, City Council adopted Ordinance No. 2002-14 on July 9, 2002, which adopted the *Kerrville Comprehensive Plan—A Link To The Future* as the City's Comprehensive Plan (Plan); and

WHEREAS, the Plan, pursuant to Section 213.002 of the Texas Local Government Code, was adopted as a planning tool for the long-range development of the City; and

WHEREAS, a Future Land Use Plan ("FLUP") was included as part of the Plan; and

WHEREAS, Section 211.004 of the Texas Local Government Code requires zoning regulations to be adopted in accordance with the Plan; and

WHEREAS, the Plan, specifically the FLUP, as found at figure 3.2 of the Plan, must now be amended in conjunction with a pending application for a zoning change; and

WHEREAS, the City Council finds that a public hearing was held on the proposed revisions to the Plan as required by law and the Council has heard and considered any such comments; and

WHEREAS, the City Council finds it in the public interest to amend the Plan as provided herein;

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

SECTION ONE. The above recitals and findings are hereby found to be true and correct.

SECTION TWO. The *City of Kerrville Comprehensive Plan – A Link To The Future*, and specifically the FLUP, is amended by changing the future land use designation from "Low-Density Residential" to "General Commercial" for the property, as described and depicted at

Exhibit A, consisting of an approximate 1.94 acres and 1.39 acres tracts of land, out of the John A. Southmayd Survey No. 148, Abstract No. 288, within the City of Kerrville, Kerr County, Texas, and more commonly referred to as 2180 Bandera Highway.

SECTION THREE. The provisions contained herein amend and revise, as appropriate, the provisions of Ordinance No. 2002-14 and specifically the FLUP. Further, that 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, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

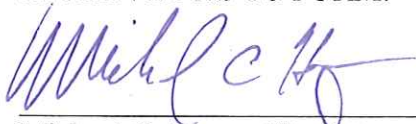
SECTION FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding will not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, hereby declares that it 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.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, A.D., 2015.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D., 2015.

Jack Pratt, Jr., Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Brenda G. Craig, City Secretary

FIELD NOTES DESCRIPTION FOR 1.94 ACRES OF LAND OUT OF THE
IQ INVESTMENTS, LTD. LAND ALONG STATE HIGHWAY NO. 173 IN
THE CITY OF KERRVILLE, KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 1.94 acres, more or less, out of John A. Southmayd Survey No. 148, Abstract No. 288 in the City of Kerrville, Kerr County, Texas; part of a certain 3.333 acre tract conveyed from Southern Investments, Inc. to IQ Investments, Ltd. by a Warranty Deed executed the 5th day of October, 2004 and recorded in Volume 1392 at Page 24 of the Official Public Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron stake found at the intersection of the southwest right-of-way line of State Highway No. 173 (aka Bandera Highway) and the northwest right-of-way line of Oak Hollow Drive, a sixty (60) ft. wide public street (Ref: Vol. 5 Pg. 179, Plat Records) for the east corner of the herein described tract and said 3.333 acre tract;

THENCE, along the northwest right-of-way line of said Oak Hollow Drive with the southeast line of said 3.333 acre tract S44°52'10"W, 222.64 ft. to a 1/2" iron stake found at a fence cornerpost for the southeast corner of the herein described tract, a southeasterly corner of 3.333 acre tract and the east corner of a certain 0.057 acre tract conveyed as TRACT 2 from Guy W. Dean, Jr. and Doris E. Dean to Richard E. Cremer and Bernadine A. Cremer by a Warranty Deed with Vendor's Lien executed the 31st day of December, 1980 and recorded in Volume 243 at Page 95 of the Deed Records of Kerr County, Texas;

THENCE, along a fence with the common line between said 3.333 and 0.057 acre tracts: N44°53'33"W, 50.15 ft. to a fence cornerpost for a reentrant corner of the herein described tract and 3.333 acre tract, and the north corner of 0.057 acre tract; and S45°02'52"W, 50.18 ft. to a 5/8" iron stake found at a fence cornerpost for the southwest corner of the herein described tract, a reentrant corner of 3.333 acre tract, and the west corner of 0.057 acre tract;

THENCE, upon, over and across said 3.333 acre tract N45°36'47"W, 244.33 ft. to a 1/2" iron stake set in its northwest line for the west corner of the herein described tract;

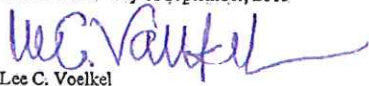
THENCE, with the northwest line of said 3.333 acre tract: N44°56'39"E, 52.05 ft. to a found 3/8" iron stake; and N44°44'37"E, 276.36 ft. to a 1/2" iron pipe found in the southwest right-of-way line of State Highway No. 173 for the north corner of the herein described tract and 3.333 acre tract;

THENCE, along the southwest right-of-way line of said State Highway No. 173 with the northeast line of said 3.333 acre tract 300.52 ft. along the arc of a 03°50' curve to the left subtended by an 11°32'07" central angle and 1492.69 ft. radius (long chord: S34°48'40"E, 300.02 ft.) to the PLACE OF BEGINNING.

I hereby certify that these field notes and accompanying plat are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown. (Bearing basis = True north based on GPS observations)

Date Surveyed: September 10, 2015

Dated this 21st day of September, 2015


Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas



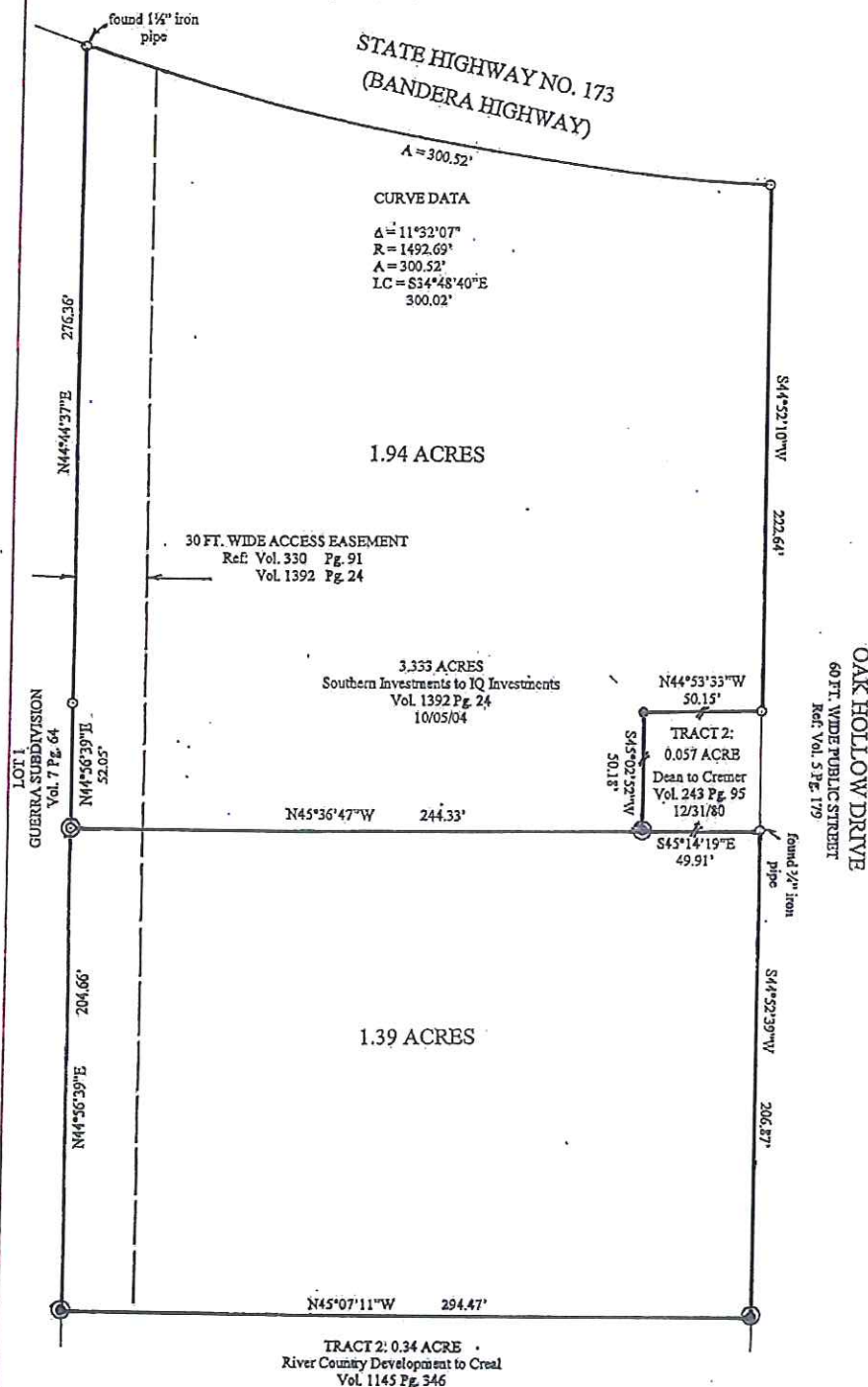
VOELKEL

LAND SURVEYING, PLLC • PHONE: 830-257-3313 • 212 CLAY STREET, KERRVILLE, TEXAS 78028

Firm Registration N° 100528-00

EXHIBIT A

SURVEY PLAT FOR TWO TRACTS OF LAND - 1.94 ACRES AND 1.39 ACRES - OUT OF JOHN A. SOUTHMAYD SURVEY NO. 148, ABSTRACT NO. 288 IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; PARTS OF A CERTAIN 3.333 ACRE TRACT CONVEYED FROM SOUTHERN INVESTMENTS, INC. TO IQ INVESTMENTS, LTD. BY A WARRANTY DEED EXECUTED THE 5TH DAY OF OCTOBER, 2004 AND RECORDED IN VOLUME 1392 AT PAGE 24 OF THE OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS



SCALE: 1" = 60'

LEGEND

- found 1/2" iron stake
- ⊙ found 5/8" iron stake
- ⊙ set 1/2" iron stake
- fencepost
- fence

I hereby certify that this plat and accompanying field notes description are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown. (Bearing basis = True north based on GPS observations)

Date Surveyed: September 10, 2015

Dated this 21st day of September, 2015

Lee C. Voelkel
Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas



Agenda Item:

3B. Ordinance No. 2015-23 amending the City's "Zoning Code" by changing the zoning district for an approximate 1.94 acres and 1.39 acres tracts of land located adjacent to and south of Bandera Highway (SH173) and between the highway's intersections with Riverhill Boulevard East to the west and Oak Hollow Drive East to the east, otherwise known as 2180 Bandera Highway; by removing the combined 3.33 acre property, more or less, from the residential cluster (RC) zoning district and placing it within the 36-S zoning district; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); ordering publication; and providing other matters relating to the subject. (staff)

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

SUBJECT: Public hearing, First reading of the Ordinance & Action concerning requested zoning change from (RC) Residential Cluster District to (S-36) South Side 36-District for an approximate 3.33 acres tract. 3.33 acres of land, more or less, out of the John A. Southmayd Survey No. 148, Abstract No. 288 in Kerr County, Texas, and being a part of a 7.9 acre tract and all of a 1.6 acre tract recorded in Volume 243, Page 95 and Volume 288, Page 568 of the Deed Records of Kerr County, Texas said two tracts being parts of a 24.56 acre tract recorded in Volume 221, Page 468 of the Deed Records of Kerr County, Texas, located on the southwest side of Bandera Highway between Oak Hollow Drive East and Riverhill Boulevard East. 2180 Bandera Highway.

FOR AGENDA OF: October 27, 2015

DATE SUBMITTED: October 16, 2015

SUBMITTED BY: Trenton Robertson
City Planner

CLEARANCES: Kristine Day
Deputy City Manager

EXHIBITS: Location Map, P&Z Staff Report
AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OR FINANCE:

SUMMARY STATEMENT

This item is concerning public hearing, first reading of the ordinance & action concerning a zoning change request from (RC) Residential Cluster District to (S-36) South Side 36-District. The applicant requested the zoning change on August 26, 2015.

A public hearing was conducted by the Planning and Zoning Commission at its regular meeting on October 1, 2015.

RECOMMENDED ACTION

Staff recommends that the Council hold the required public hearing to receive public comments and take action for approval.



City of Kerrville Planning Department Report

To: Planning & Zoning Commission

Agenda Item: 3B

Planning File #: 2015-042

Hearing Date: October 1, 2015

Representative: David L. Jackson

Location: Located on the southwest side of Bandera Highway between Oak Hollow Drive East and Riverhill Boulevard East. 2180 Bandera Highway

Legal Description: 3.33 acres of land, more or less, out of the John A. Southmayd Survey No. 148, Abstract No. 288 in Kerr County, Texas, and being a part of a 7.9 acre tract and all of a 1.6 acre tract recorded in Volume 243, Page 95 and Volume 288, Page 568 of the Deed Records of Kerr County, Texas said two tracts being parts of a 24.56 acre tract recorded in Volume 221, Page 468 of the Deed Records of Kerr County, Texas

Total Acreage: 3.33

Proposal

Requested zoning change from (RC) Residential Cluster District to (S-36) South Side 36-District

Procedural Requirements

The application was published in The Hill Country Community Journal, an official newspaper of general circulation on September 16, 2015. Notices were sent to property owners within two hundred (200) feet of the subject property on September 21, 2015. Additionally, notice of this meeting was posted at city hall and on the city's internet website on September 18, 2015, in accordance with Section 551.043(a) of the Texas Government Code.

Recommended Action

Staff recommends that the Commission hold the required public hearing to receive public comments and make a recommendation to the Council.

Notices Mailed

Owners of Property within 200 feet: 19

Topography

The subject property is relatively flat with little vegetation, besides grass and is undeveloped.

Adjacent Zoning and Land Uses

Direction: North

Current Base Zoning: "PD-005" and "S-36"

Current Land Uses: Vacant and RV Park

Direction: West

Current Base Zoning: "PD-005"

Current Land Uses: Vacant

Direction: South

Current Base Zoning: "R-1" and "RC"

Current Land Uses: Vacant and Single-Family Residential

Direction: East

Current Base Zoning: "S-36" and "RC"

Current Land Uses: Single-Family Residential and Commercial Strip Center

Transportation

Thoroughfare: Bandera Highway

Existing Character: Two lanes in each direction with no sidewalks

Proposed Changes: None known

Thoroughfare: Oak Hollow Drive East

Existing Character: One lane in each direction with partial sidewalks

Proposed Changes: None known

Parking Information: Office

Minimum vehicle spaces: One (1) space per 300 sq. feet.

Planning & Zoning Commission Recommendation: Approval

Staff Analysis and Recommendation: Approval

1. Consistency:

The property's land use designation is Low-Density Residential. The requested "S-36" base zoning district is not consistent with the adopted land use designation. A plan amendment has been requested. The proposed future land use designation for the subject property is "General Commercial" and will allow for the proposed "S-36" zoning district.

2. Adverse Impacts on Neighboring Lands:

Although, staff has found no evidence of likely adverse impacts on neighboring lands in relation to this zoning change request, the potential uses could increase traffic. The proposed zoning change would allow the subject property to utilize more intense uses than what is permitted in the existing "RC" zoning district. Current planning practices encourage commercial uses to be located along the fringe of neighborhoods that abut major roadways such as Bandera Highway. The proposed uses for the "S-36" zoning district would act as a buffer between the residential neighborhood to the south and the commercial uses and zoning to the north and west.

3. Suitability as Presently Zoned:

Both the existing and proposed zoning districts are suitable for the subject property. The surrounding commercial uses are of low intensity, having little impact on the existing neighborhoods. In accordance with the City of Kerrville's Zoning Code the "S-36" base zoning district "...is to allow low intensity business uses that are appropriate for the district's location near the River Hill and Oak Hollow residential development..."

4. Health, Safety and Welfare:

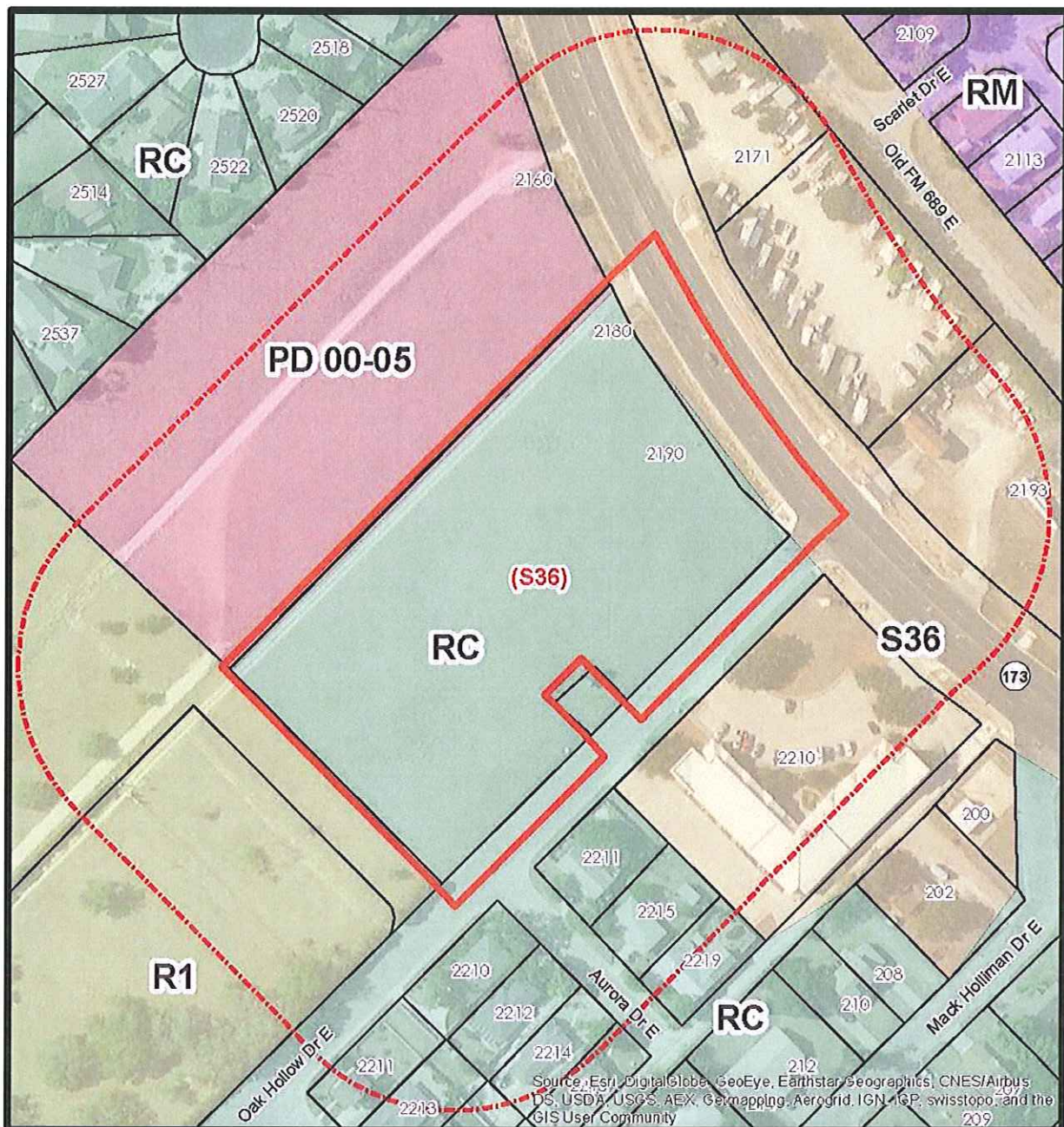
Staff has found no indication of likely adverse effects on the public health, safety, or welfare.

5. Size of Tract:

The subject property is approximately 3.33 acres in size, which should be able to reasonably accommodate the proposed office/commercial uses.

6. Other Factors:

None.



Zoning Case Location Map

Case Z2015-042

Location:
2190 Bandera Hwy

Legend

200' Notification Area
Subject Properties
Current Zoning
Requested Zoning

TEXT
(TEXT)



0 50 100 200
Scale In Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2015-23**

AN ORDINANCE AMENDING THE CITY'S "ZONING CODE" BY CHANGING THE ZONING DISTRICT FOR AN APPROXIMATE 1.94 ACRES AND 1.39 ACRES TRACTS OF LAND LOCATED ADJACENT TO AND SOUTH OF BANDERA HIGHWAY (SH 173) AND BETWEEN THE HIGHWAY'S INTERSECTIONS WITH RIVERHILL BOULEVARD EAST TO THE WEST AND OAK HOLLOW DRIVE EAST TO THE EAST, OTHERWISE KNOWN AS 2180 BANDERA HIGHWAY; BY REMOVING THE COMBINED 3.33 ACRE PROPERTY, MORE OR LESS, FROM THE RESIDENTIAL CLUSTER (RC) ZONING DISTRICT AND PLACING IT WITHIN THE 36-S ZONING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2000.00); ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, pursuant to Texas Local Government Code Sections 211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper for the City of Kerrville, Texas ("City"), and otherwise, of a hearing which was held before the City Council on October 1, 2015, which considered a report of the City's Planning and Zoning Commission regarding its recommendations on an ordinance, the adoption of which will result in the change of a zoning district for the property making up approximately 3.33 acres and located adjacent to and south of Bandera Highway (SH 173) and between the highway's intersections with Riverhill Boulevard East to the west and Oak Hollow Drive East to the east, otherwise known as 2180 Bandera Highway; such change to result in the removal of the property from the Residential Cluster (RC) Zoning District to placement of the property within the 36-S Zoning District; and

WHEREAS, such public hearing was held in the Council Chambers beginning at approximately 6:00 p.m. on October 27, 2015, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission and City staff; and after considering among other things, the character of the various areas of the City and the suitability of particular uses in each area; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City, the Council finds it to be in the best interest of the health, safety, morals, and general welfare of the City of Kerrville, Texas, to amend the City's Zoning Code to change the zoning district for the property described below by placing it within the 36-S Zoning District;

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

SECTION ONE. The zoning district for the following property located adjacent to and south of Bandera Highway (SH 173) and between the highway's intersections with Riverhill Boulevard East to the west and Oak Hollow Drive East to the east, otherwise known as 2180 Bandera Highway, is changed from the Residential Cluster (RC) Zoning District to the 36-S Zoning District:

Being all of certain tracts or parcels of land containing a combined 3.33 acres, more or less, out of the John A. Southmayd Survey No. 148, Abstract 288, within the City of Kerrville, Kerr County, Texas, and being a part of a 7.9 acre tract and all of a 1.6 acre tract, as recorded in Volume 243, Page 95, and Volume 288, Page 568, respectively, of the Real Property Records of Kerr County, Texas, and being more particularly described and depicted at Exhibit A, attached hereto and made a part hereof for all purposes.

SECTION TWO. The City Manager or designee is authorized and directed to amend the City's official zoning map to reflect the change in districts adopted herein and to take other actions contemplated by and in accordance with Section 11-I-4(c) of the City's Zoning Code.

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, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

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 Council of the City of Kerrville, Texas, 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. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7, Chapter 1 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

SECTION SIX. 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 SEVEN. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07b. of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, A.D., 2015.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ of _____, A.D., 2015.

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

FIELD NOTES DESCRIPTION FOR 1.94 ACRES OF LAND OUT OF THE
IQ INVESTMENTS, LTD. LAND ALONG STATE HIGHWAY NO. 173 IN
THE CITY OF KERRVILLE, KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land containing 1.94 acres, more or less, out of John A. Southmayd Survey No. 148, Abstract No. 288 in the City of Kerrville, Kerr County, Texas; part of a certain 3.333 acre tract conveyed from Southern Investments, Inc. to IQ Investments, Ltd. by a Warranty Deed executed the 5th day of October, 2004 and recorded in Volume 1392 at Page 24 of the Official Public Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron stake found at the intersection of the southwest right-of-way line of State Highway No. 173 (aka Bandera Highway) and the northwest right-of-way line of Oak Hollow Drive, a sixty (60) ft. wide public street (Ref: Vol. 5 Pg. 179, Plat Records) for the east corner of the herein described tract and said 3.333 acre tract;

THENCE, along the northwest right-of-way line of said Oak Hollow Drive with the southeast line of said 3.333 acre tract S44°52'10"W, 222.64 ft. to a ½" iron stake found at a fence cornerpost for the southeast corner of the herein described tract, a southeasterly corner of 3.333 acre tract and the east corner of a certain 0.057 acre tract conveyed as TRACT 2 from Guy W. Dean, Jr. and Doris E. Dean to Richard E. Cremer and Bernadine A. Cremer by a Warranty Deed with Vendor's Lien executed the 31st day of December, 1980 and recorded in Volume 243 at Page 95 of the Deed Records of Kerr County, Texas;

THENCE, along a fence with the common line between said 3.333 and 0.057 acre tracts: N44°53'33"W, 50.15 ft. to a fence cornerpost for a reentrant corner of the herein described tract and 3.333 acre tract, and the north corner of 0.057 acre tract; and S45°02'52"W, 50.18 ft. to a 5/8" iron stake found at a fence cornerpost for the southwest corner of the herein described tract, a reentrant corner of 3.333 acre tract, and the west corner of 0.057 acre tract;

THENCE, upon, over and across said 3.333 acre tract N45°36'47"W, 244.33 ft. to a ½" iron stake set in its northwest line for the west corner of the herein described tract;

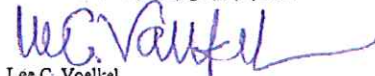
THENCE, with the northwest line of said 3.333 acre tract: N44°56'39"E, 52.05 ft. to a found 3/8" iron stake; and N44°44'37"E, 276.36 ft. to a ½" iron pipe found in the southwest right-of-way line of State Highway No. 173 for the north corner of the herein described tract and 3.333 acre tract;

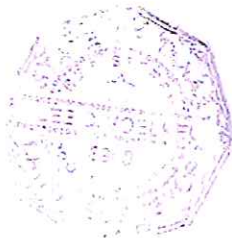
THENCE, along the southwest right-of-way line of said State Highway No. 173 with the northeast line of said 3.333 acre tract 300.52 ft. along the arc of a 03°50' curve to the left subtended by an 11°32'07" central angle and 1492.69 ft. radius (long chord: S34°48'40"E, 300.02 ft.) to the PLACE OF BEGINNING.

I hereby certify that these field notes and accompanying plat are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown. (Bearing basis = True north based on GPS observations)

Date Surveyed: September 10, 2015

Dated this 21st day of September, 2015


Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas

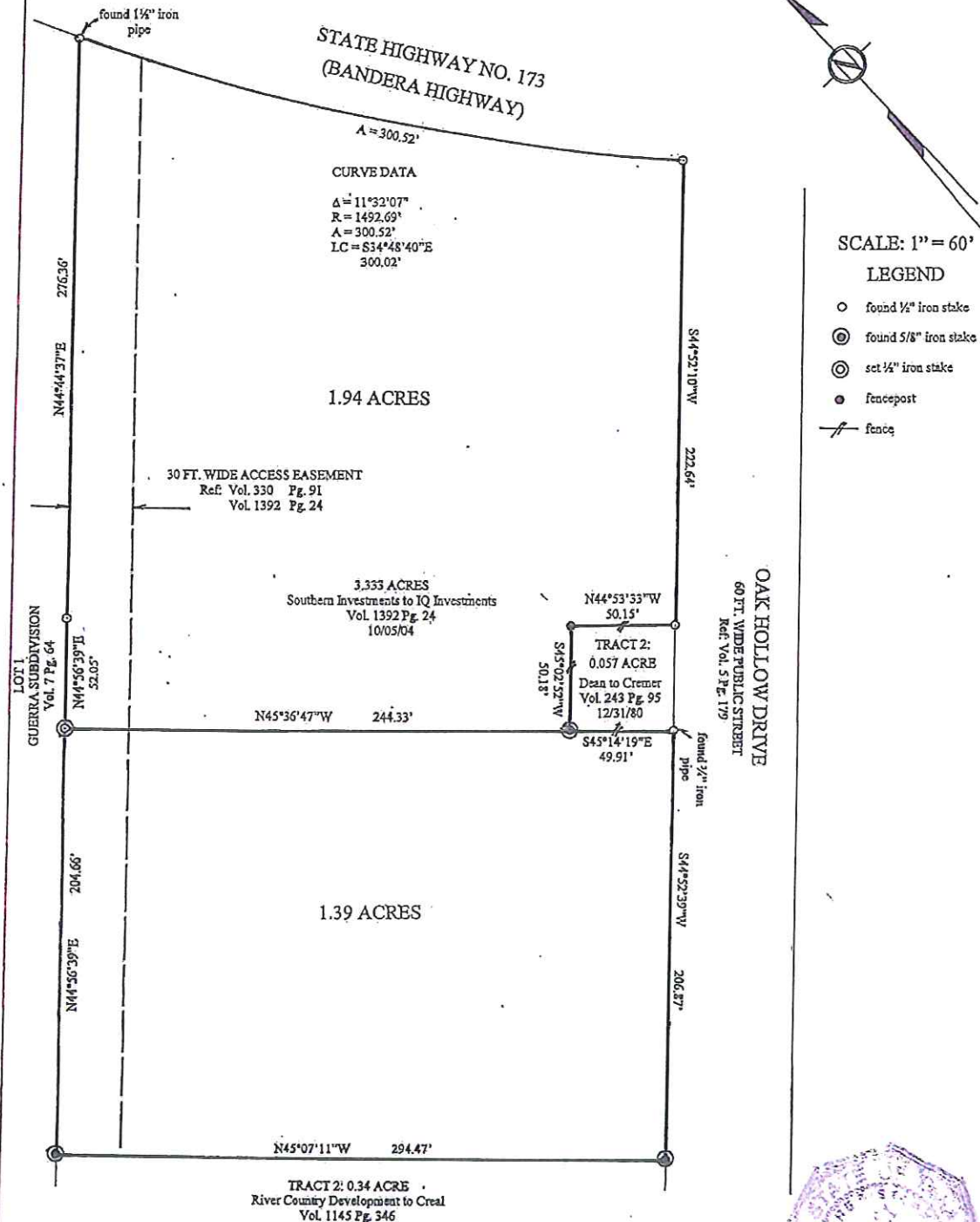


VOELKEL

LAND SURVEYING, PLLC • PHONE: 830-257-3313 • 212 CLAY STREET, KERRVILLE, TEXAS 78028

Firm Registration N° 100528-00

EXHIBIT A



I hereby certify that this plat and accompanying field notes description are accurate representations of the property shown and described hereon as determined by a survey made on the ground under my direction and supervision, except no survey was made to reestablish Patent Survey lines or corners; and that all property corners are as shown. (Bearing basis = True north based on GPS observations)

Date Surveyed: September 10, 2015

Dated this 21st day of September, 2015

Lee C. Voelkel
Registered Professional Land Surveyor No. 3909
County Surveyor for Kerr County, Texas

Agenda Item:

4A. Ordinance No. 2015-24 granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Kerrville, Kerr County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all predecessor ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing a savings clause; a most favored nations clause, and a severability clause; and providing an effective date. (staff)

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

SUBJECT: An Ordinance granting to Atmos Energy Corp., a Texas and Virginia Corp. its successors and assigns, a franchise to furnish, transport, and supply gas to the general public in the City of Kerrville, Kerr County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all predecessor ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations, and limitations under which such franchise shall be exercised; providing a savings clause, a most favored nations clause, and a severability clause and providing an effective date (**FIRST READING**)

FOR AGENDA OF: October 27, 2015 **DATE SUBMITTED:** October 15, 2015

SUBMITTED BY: Mike Hayes, 
City Attorney **CLEARANCES:**

EXHIBITS: Franchise Ordinance

AGENDA FORWARDED TO: Atmos Energy Corporation Mid-Tex Division

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$NA	\$ NA	\$ NA	NA

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

The City has previously granted Atmos Energy Corporation ("Atmos") a franchise to furnish, transport, and supply gas to its residential, commercial, and industrial customers within the City. The franchise, entered into in January 2006 following Council's adoption of an ordinance, expires on January 1, 2016.

Earlier this year, Atmos submitted a proposed ordinance to renew the franchise. Since that time, staff and outside counsel have worked to review the proposed ordinance and to revise it in ways that better suit the City's interests.

The City Attorney will review the franchise ordinance and highlight the significant changes made from the previous ordinance.

RECOMMENDED ACTION

Approval of Franchise Ordinance upon 1st reading.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2015-24**

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REPEALING ALL PREDECESSOR ORDINANCES; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A SAVINGS CLAUSE, A MOST FAVORED NATIONS CLAUSE, AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

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

SECTION ONE. GRANT OF AUTHORITY

(A) The City of Kerrville, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

(B) Said privilege and license being granted by this Ordinance is for a term ending ten (10) years after the Effective Date. Unless written notice of its intent to renegotiate and/or terminate is provided by either the City or Atmos Energy at least 180 days prior to the expiration of any term, the franchise shall be extended for two (2) additional term of five (5) years on the same terms and conditions as set forth herein.

(C) The provisions set forth in this Ordinance represent the terms and conditions under which Atmos Energy shall construct, operate, and maintain the System within City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of City, including but not limited to generally applicable ordinances regulating the use of Public Rights-of-Way. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and

rights as the same may be from time to time vested in City shall be in full force and effect and subject to the exercise thereof by City at any time.

SECTION TWO. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

(A) “*Affiliate*” shall mean in relation to Company, a Person that controls, is controlled by, or is under common control with Company. As used in this definition, the term “control” means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract, or otherwise.

(B) “*City*” shall mean the City of Kerrville, Texas.

(C) “*Company*” shall mean Atmos Energy Corporation, Mid-Tex Division, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section Six.

(D) “*City Manager*” shall mean the City’s chief executive officer, or his or her designee.

(E) “*Gross Revenues*” shall mean all revenues received by Company from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.

(1) “*Gross Revenues*” shall include:

(a) revenues derived from the following miscellaneous charges:

- i. charges to connect, disconnect, or reconnect gas within City;
- ii. charges to handle returned checks from consumers within City;
- iii. miscellaneous charges may include certain other service charges that have, from time to time, been authorized in the rates and charges on file with City. Current miscellaneous service charges included in Gross Revenues are the charges identified in Exhibit A to this Agreement. Any such service charge not already described in this Section Two (D)(1)(a) will be included in the definition of Gross Revenues upon the mutual written agreement of City and Company; and
- iv. contributions in aid of construction (“CIAC”).

- (b) revenues billed but not ultimately collected or received by Company;
 - (c) State gross receipts fees;
 - (d) all revenues derived by Company from the transportation of gas through the System of Company within City to customers located within City (excluding any gas transported to another gas utility in City for resale to its customers within City);
 - (e) the value of gas transported by Company for Transport Customers through the System of Company located in City's Public Right-of-Way ("Third Party Sales")(excluding the value of any gas transported to another gas utility in the City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
 - (f) fees paid pursuant to this Ordinance.
- (2) "*Gross Revenues*" shall not include:
- (a) the revenue of any Affiliate or subsidiary of Company; and
 - (b) sales taxes; and
 - (c) any interest or investment income earned by Company; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within City's Public Right-of-Way.

(F) "*Person*" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include City or any employee, agent, servant, representative or official of City.

(G) "*Public Right-of-Way*" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of City, or in such territory as may hereafter be added to, consolidated or annexed to City.

(H) "*System*" or "*System Facilities*" shall mean all of Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

(I) "*Transport Customer*" shall mean any Person for which Company transports gas through the System of Company within the City's Public Right-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within City).

SECTION THREE. EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY COMPANY

(A) If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Right-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

(B) The City acknowledges that the exercise of this right is conditioned upon City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

SECTION FOUR. ACCEPTANCE OF TERMS OF FRANCHISE

(A) Prior to the adoption of this Ordinance by the City, the Company shall provide to the City its agreement with the form of the Ordinance as presented to the City Council. After the final passage and approval of this Ordinance by the City, the Company shall file its written acceptance thereof with the City Secretary. If Company does not file such written acceptance of this Ordinance by [REDACTED], the Ordinance shall be rendered null and void.

(B) At 11:59 p.m. on December 31, 2025, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited, extended pursuant to Section One or by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

SECTION FIVE. NO THIRD PARTY BENEFICIARIES

This Franchise is made for the exclusive benefit of City and Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION SIX. SUCCESSORS AND ASSIGNS

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate, without approval of the City Council of City. Notice of said transfer or assignment to an Affiliate shall be provided to the City. City will otherwise have the right to approve the transfer or assignment of the franchise to a non-Affiliate. City shall grant approval unless the assignee is materially weaker than the Company. For the purpose of this section, "materially weaker" means that the long term unsecured debt rating of the assignee is less than investment grade as rated by both S&P and Moody's. The City may request additional documents and information reasonably related to the transaction and to the legal, financial, and technical qualifications of the assignee. City agrees that approval of a transfer or assignment to a non-Affiliate that is materially weaker shall not be unreasonably withheld or delayed. Upon approval, the rights, privileges, and franchise herein granted to

Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of Company.

SECTION SEVEN. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Kerrville City Charter, as amended, and all other applicable ordinances of City, not inconsistent herewith, including, but not limited to, ordinances generally applicable to regulating the use of Public Rights-of-Way.

SECTION EIGHT. PREVIOUS FRANCHISE ORDINANCES

All previous gas franchise ordinances and parts of franchise ordinances applicable to Company or its predecessors in interest granted by City are hereby repealed.

SECTION NINE. NOTICES

(A) Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

City Manager
City of Kerrville
City Hall
701 Main Street
Kerrville, Texas 78028

COMPANY

Manager of Public Affairs
Atmos Energy, Mid-Tex Division
3110 North I-35
Round Rock, Texas 78681

(B) The Company shall provide to the City the toll-free telephone number for its Gas Dispatch Center that is manned twenty-four (24) hours a day, seven (7) days a week. The Gas Dispatch Center is intended to provide a response to the emergency situation and will be available to the City to keep the City informed of the response and possible estimated time of arrival. The City understands that the Gas Dispatch Center is not equipped to handle calls from the public, and the City will not provide this number to customers, but will direct them to the Company's Call Center. If the Company cannot timely respond to an emergency with Company employees, the Company will attempt to respond to the emergency with qualified local contractors. The Company's contact information shall be kept current at all times. The

Company and the City shall periodically, and upon request by either party, meet to discuss and address emergency response issues, in order to rectify any problems identified by either party.

SECTION TEN. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION ELEVEN. CONDITIONS OF OCCUPANCY

(A) All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the generally applicable ordinances, rules and regulations now in force, including but not limited to any "Right-of-Way Management" Chapter of the City Code of Ordinances, and that may hereafter be adopted by City, relating to the use of City's Public Rights-of-Way. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation.

(B) As a general rule, and unless otherwise permitted by City, mains installed by Company in the Public Right-of-Way shall be installed at a minimum depth of four feet (4') and in accordance with City's subdivision regulations unless City determines there is no existing or reasonably anticipated future conflict between Company's mains and City's facilities, in which case the Company's mains must be installed at a minimum depth of three feet (3') or some other depth as mutually agreed to between the parties. Company shall not be required to install or relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Company.

(C) Company shall remove or allow removal of System Facilities that have been abandoned by Company where such System Facilities are in conflict with new facilities that are installed in the Public Right-of-Way or as required in Section Twelve below.

(D) When using directional boring, Company shall submit bore logs to City as they are kept by Company in the normal course of business.

SECTION TWELVE. RELOCATION OF COMPANY EQUIPMENT

(A) Whenever by reason of widening or straightening or construction or reconstruction of streets, alleys, drainage, water, wastewater, or electrical line projects, to include sidewalks or other improvements to Public Rights-of-Way as required by the Americans with Disabilities Act, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project (*e.g.*, installing or improving storm

drains, water lines, wastewater lines, etc.), it shall be requested by City to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Right-of-Way, such alterations shall be made by Company at Company's expense for facilities that are in conflict (unless provided otherwise by federal or state law). Facilities are deemed to be in conflict to the extent that the proposed City facilities are inconsistent with gas distribution industry standard safe operating statutes, regulations, and practices for existing facilities as determined by the Company and the City. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, the Company shall do so as soon as practically possible with respect to the scope of the project. In no event shall the Company be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City. The Company will work with the Public Works Director or his/her designee to set an acceptable deadline. The Company shall be responsible for any direct costs associated with project delays associated with its failure to conform System Facilities within the required time frame. Unless mutually agreed to by City and Company, in no event shall Atmos delay the start of its relocation work more than ninety (90) days from receipt of notice from City, which notice shall include substantially complete plans. If Company's System Facilities are not moved on or before the approved scheduled completion date, Company shall be subject to the termination provisions of Section Twenty Five.

(B) When Company is required by City to remove or relocate its System Facilities to accommodate widening or straightening or construction or reconstruction of streets, alleys, drainage, water, wastewater, or electrical line projects, to include sidewalks or other improvements to Public Rights-of-Way as required by the Americans with Disabilities Act, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project (e.g., installing or improving storm drains, water lines, wastewater lines, etc.), and Company is eligible under federal, state, county, local, or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. Upon receipt of an amount of reimbursement intended for utility relocation including, but not limited to, gas utilities, City shall remit to Company, within thirty (30) days of receipt, the portion of reimbursement related to the relocation or removal of Company's facilities. Notwithstanding anything contained in this Ordinance, if System Facilities are required to be removed or relocated for any reason other than the reasons noted in this Section, Company shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

(C) If City abandons, pursuant to Council action, any Public Right-of-Way in which Company has facilities, for public safety reasons or in furtherance of a public project, City shall determine whether it is appropriate to retain a public utility easement in such Public Right-of-Way for use by Company. If City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Company is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section Twenty, and to the maximum extent of its right to do so, City shall grant Company an easement for such use, and

the abandonment of the Public Right-of-Way shall be subject to the right and continued use of Company. If City determines, in its sole reasonable discretion, that it is not appropriate to retain a public utility easement in such Public Right-of-Way, Company shall be responsible, subject to the provisions of Section Eleven, for relocating its System from such Public Right-of-Way, as directed by City. If Public Right-of-Way is sold, conveyed, abandoned, or surrendered by City to a third party, such action shall be conditioned upon Company's right to maintain use of the former Public Right-of-Way. If the third party requests Company to relocate its System from the former Public Right-of-Way, and if such relocation is agreed to by Company, such relocation shall be at the expense of the party requesting same. In addition, in the event of a third party requesting the relocation, if the relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

(D) When Company is required to remove or relocate its mains, laterals or other System Facilities to accommodate construction by City without reimbursement from City, Company shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Company to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law, nor shall anything herein be construed to waive City's rights or obligations under state and/or federal law to review and approve or deny such surcharge request. Notwithstanding the foregoing, in cases where the Company is seeking to implement a surcharge to recover unreimbursed costs of relocations required by City, City shall not contest the necessity of the relocation, nor shall it demand documentation of Company's reasonable efforts to receive reimbursement for relocations required by City. City shall not oppose recovery of reasonable relocation costs when Company is required by City to perform relocation. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.

(E) When required for a public health or safety purpose, Company shall identify for the City the location of its System Facilities within the Public Rights-of-Way. Any maps provided by Company to the City shall be deemed confidential and shall be clearly identified as such by Atmos Energy when provided to the City, and will be provided solely for the City's use. The City agrees to maintain the confidentiality of any non-public information obtained from Atmos Energy to the extent allowed by law. If the City receives a request under the Texas Public Information Act that includes Company's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Company shall provide all location and "as built" plans on a going forward basis as required pursuant to the City's permitting process.

SECTION THIRTEEN. LAYING OF LINES IN ADVANCE OF PAVING

(A) City shall provide Company with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall

notify Company as soon as reasonably possible of any projects that will affect Company's facilities located in the Public Rights-of-Way.

(B) Whenever City shall conclude to pave any Public Right-of-Way in which System Facilities already exist or in which Company may propose to install its System, Company will be provided the opportunity, at no expense to City, in advance of such paving to lay or renew such System Facilities.

(C) At least ninety (90) days prior to the planned paving or repaving of Public Rights-of-Way, City shall give Company written notice of the intention of City to pave any such Public Right-of-Way. Upon receipt of such notice, Company shall initiate its review process to determine the need to lay or renew its System Facilities, and the need to lay or renew service lines underneath the portions of the Public Rights-of-Way to be paved. If Company determines such a need, Company shall promptly initiate such work and shall thereafter proceed in a good faith and workmanlike manner to completion of the necessary work within ninety (90) days after receipt of the notice from the City. Company's failure to complete the necessary work within the ninety (90) day period may be excused at the City's discretion, if Company has promptly notified the City of the circumstances that have caused the delay, and has requested an extension of the construction period. City shall grant the extension unless withheld for good cause.

(D) If Company should fail to take advantage of the pre-paving opportunity to undertake new construction or repairs to existing System Facilities in the Rights-of-Way to be paved, and such street or alley is thereafter paved, except in an emergency or in response to a request for initiation of new service, Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose, except by written permission of the City Manager under such terms and conditions as the City Manager may prescribe.

SECTION FOURTEEN. CONFLICTING FACILITIES

If Company, in installing its System, shall come into conflict with the facilities of any other Person authorized by City to use the Public Right-of-Way, the Public Works Director shall decide all questions concerning the conflict of the respective parties, and shall determine the location of the structures of the said parties and the actions necessary to reconcile their differences. Company shall have the right to request City Council review of any such actions.

SECTION FIFTEEN. INSTALLATION OF METER

If a meter is to be installed in or near the Public Right-of-Way, Company agrees to discuss with the Public Works Director or his or her delegate, the aesthetics of the meter placement and to accommodate the request of City to the maximum extent possible. If City requests a meter upgrade, Company will comply so long as City reimburses Company for the reasonable costs incurred by Company in changing meters. In no event, however, shall underground meters be required.

SECTION SIXTEEN. EXTENSIONS FOR CUSTOMERS

Company shall, at its expense, extend distribution mains in any street up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Company shall not be required to

extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION SEVENTEEN. DUTY TO SERVE

Company hereby agrees that it will not arbitrarily refuse to provide service to anyone that it is economically feasible for Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order Company to provide service or take any other action necessary to bring Company into compliance with the intent of the Council in granting this Franchise, including termination or forfeiture of the Franchise in accordance with Section Twenty-Five. The Council may render its opinion at this meeting but in no event shall it be required to act in less than fourteen (14) days.

SECTION EIGHTEEN. CUSTOMER SERVICE STANDARDS; LOCAL OFFICE

(A) Company shall maintain a local, toll-free or collect call telephone access line which will be available to its customers 24 hours a day, seven days a week.

(B) Company shall make a good faith effort to maintain within City one or more conveniently located bill payment offices where customers can pay their bills. In no circumstance shall the absence of such a bill payment office be considered violation of a material provision of this Franchise as outlined in Section Twenty-Five.

SECTION NINETEEN. RATES

Company shall furnish high quality service to the public at reasonable rates and charges therefor; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either City or Company in the manner provided by law.

SECTION TWENTY. PAYMENTS TO THE CITY

(A) In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section Twenty(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section Two(D), for the preceding calendar quarter. The initial payment provided under this Franchise shall be due on or before May 15, 2016, based on the preceding calendar quarter (January 1, 2016 to March 31, 2016) and shall be for the right and privilege during the preceding calendar quarter (January 1, 2016 to

March 31, 2016). Subsequent payments shall be made as follows during the term of the Franchise:

Payment Due	For Calendar Quarter
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30
Feb. 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – March 31

The final payment under the initial term of this Franchise will be due on or before February 15, 2026, and will be for the preceding calendar quarter (October 1, 2025 to December 31, 2025).

(B) The franchise fee amounts based on “Contributions in Aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, *i.e.*, from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2016 and will be based on CIAC received from January 1, 2015, through December 31, 2015. Unless this Franchise is extended, the final payment of franchise fee amounts based on CIAC will be April 30, 2026, for the calendar year ending December 31, 2025.

(C) It is also expressly agreed that the franchise fees shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company’s agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company’s separate obligations to reimburse the City for City’s reasonable rate case expenses and for street repairs in accordance with City’s ordinances, are not affected by Company’s payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company’s obligations, if any, to pay such occupation taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

(D) If Company fails to pay when due any payment provided for in this section, Company shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 from such due date until payment is received by City.

(E) City agrees that: (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos’ rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos’ franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos; and (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos.

(F) Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Right-of-Way provided: (i) Company first notifies City of the name of the lessee, licensee or user, the type of service(s) intended to be provided through the facilities, and the name and telephone number of a contact person associated with such lessee, licensee or user; and (ii) Company makes the franchise fee payment due on the revenues from such lease pursuant to Section Twenty of this Ordinance. This authority to lease Facilities within City's Public Right-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

(G) City shall, within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the City limits no later than sixty (60) days after receipt of notice from City. The annexed areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

SECTION TWENTY-ONE. BOOKS AND RECORDS

(A) Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section Two(E).

(B) City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein. Company shall make available, during normal working hours and upon reasonable notice, such personnel and records as City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefor. Company shall assist City in its review by providing all requested information no later than fifteen business (15) days after receipt of a request. The cost of the audit shall be borne by City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be immediately reimbursed to the City by the Company. If such an examination reveals that Company has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section Twenty (D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company including any interest calculated in accordance with Section Twenty (D). The period of review for purposes of determining overpayments or

underpayments shall be limited to payments made in the two (2) year period before commencement of the audit.

SECTION TWENTY-TWO. RESERVATION OF RIGHTS: GENERAL

(A) City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

(B) The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power and for City and the inhabitants thereof.

(C) City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City.

(D) Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

SECTION TWENTY -THREE. RIGHT TO INDEMNIFICATION AND TO BE HELD HARMLESS

(A) In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations; except that the indemnity provided for in this paragraph shall not apply to any liability determined by a court of competent jurisdiction to have resulted from the sole negligence or intentional acts of omissions of City, its officers, agents, and employees. In the event of joint and concurrent negligence or fault of both Company and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both

Company and City, responsibility for all costs of defense shall be apportioned between City and Company based upon the comparative fault of each.

(B) In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which shall not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all defense costs incurred by City, except as set out in Section Twenty-Three (A).

SECTION TWENTY-FOUR. INSURANCE

Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, in the minimum amount of six million dollars (\$6,000,000), consisting of one million dollars (\$1,000,000) primary plus five million dollars (\$5,000,000) umbrella coverage. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to City.

SECTION TWENTY-FIVE. TERMINATION

(A) Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that Company violates any material provision of the Franchise.

(B) Procedures for Termination.

(1) City may, at any time, terminate this Franchise for a continuing material violation by Company of any of the substantial terms hereof. In such event, City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Company at the address set forth in Section Nine hereof. Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that if Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Company shall be provided at least fifteen business (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days' notice by

publication shall be given of the date, time and place of any public hearing to interested members of the public.

(3) City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent City from seeking to compel compliance by suit in any court of competent jurisdiction if Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION TWENTY-SIX. RENEGOTIATION

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION TWENTY-SEVEN. SEVERABILITY

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION TWENTY-EIGHT. NO WAIVER

Either City or Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION TWENTY-NINE. EFFECTIVE DATE

This Franchise shall be effective on January 1, 2016, if City has received Company's acceptance as provided by Section Four herein.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, 2015.

PASSED AND APPROVED ON SECOND READING, this the ____ day of _____, 2015.

PASSED AND APPROVED ON THIRD AND FINAL READING, this the ____ day of _____, 2015.

CITY OF KERRVILLE

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

Agenda Item:

6A. Resolution No. 34-2015 approving a bond resolution by City of Kerrville, Texas Health Facilities Development Corporation providing for the issuance of bonds for Sid Peterson Memorial Hospital.

**TO BE CONSIDERED BY THE
HEALTH FACILITIES DEVELOPMENT CORPORATION
CITY OF KERRVILLE, TEXAS**

SUBJECT: A resolution approving a bond resolution by City of Kerrville, Texas Health Facilities Development Corporation providing for the issuance of bonds for Sid Peterson Memorial Hospital

FOR AGENDA OF: Oct. 27, 2015

DATE SUBMITTED: Oct. 23, 2015

SUBMITTED BY: Todd Parton
City Manager

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Resolution No. 34-2015

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:



Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:

REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

This resolution is for approval of the issuance of a maximum aggregate principal amount of \$75,000,000 for the refinancing of the outstanding bonds purchased to construct the new Peterson Regional Medical Center. The approval of this resolution will authorize the sale. This issuance will not place any liability on the City of Kerrville for the payment of the bonds nor require that the City of Kerrville pledge any of its assets to secure the bond payments.

RECOMMENDED ACTION

Since this resolution is consistent with the prior consideration and actions of the HFDC and the contemplated debt will have no financial impact on the City of Kerrville, city staff recommends approval of Resolution No. 34-2015.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 34-2015**

**A RESOLUTION APPROVING A BOND RESOLUTION BY
CITY OF KERRVILLE, TEXAS HEALTH FACILITIES
DEVELOPMENT CORPORATION PROVIDING FOR THE
ISSUANCE OF BONDS FOR SID PETERSON MEMORIAL
HOSPITAL**

WHEREAS, the City of Kerrville, Texas Health Facilities Development Corporation (the "Issuer") is a nonprofit corporation created by the City of Kerrville, Texas (the "City") pursuant to Chapter 221, Texas Health and Safety Code; and

WHEREAS, on October 13, 2015, the Board of Directors of the Issuer adopted a "Resolution of City of Kerrville, Texas Health Facilities Development Corporation concerning issuance of revenue bonds with respect to certain health facilities of Sid Peterson Memorial Hospital and authorizing the execution and delivery of all financing documents relating to the issuance, sale, and delivery of such bonds, including an Indenture of Trust, a Loan Agreement, a Contract of Purchase and other documents in connection therewith" (the "Bond Resolution"); and

WHEREAS, a public hearing was held with respect to the issuance of bonds by the Issuer for the benefit of Sid Peterson Memorial Hospital (the "Obligor") after notice (the "Notice") of such public hearing was duly and timely published; and

WHEREAS, it is deemed necessary and advisable that this Resolution be adopted;

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

SECTION ONE. The Bond Resolution in substantially the form and substance attached to this Resolution and made a part hereof for all purposes, is hereby specifically approved, and an Indenture of Trust, a Loan Agreement, and a Contract of Purchase described therein are hereby specifically approved, and the Series 2015 Bonds in the maximum aggregate principal amount of \$75,000,000 may be issued pursuant thereto for the purpose of refunding certain of the Issuer's bonds, and paying a portion of the cost of issuance and certain other costs as described in the Bond Resolution.

SECTION TWO. City of Kerrville, Texas hereby approves the issuance of the aforesaid Series 2015 Bonds in the maximum aggregate principal amount of \$75,000,000 for the Obligor, and further approves the Project as described in the Notice, and such approval shall be solely for the purposes of Section 147(f) of the Internal Revenue Code of 1986 and the City of Kerrville, Texas shall have no liabilities for the payment of the Series 2015 Bonds nor shall any of its assets be pledged to payment of the Series 2015 Bonds.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2015.

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary

Agenda Item:

7A. Quarterly report from Kerr Economic Development Corporation. (staff)

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

SUBJECT: Quarterly Report by the Kerr Economic Development Corporation

FOR AGENDA OF: October 27, 2015 **DATE SUBMITTED:** October 14, 2015

SUBMITTED BY: Ashlea Boyle *AB* **CLEARANCES:** Todd Parton
Special Projects Manager City Manager

EXHIBITS:

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: *[Signature]*

Expenditure Required:	Current Balance in Account:	Amount Budgeted:	Account Number:
\$	\$	\$	

PAYMENT TO BE MADE TO:

REVIEWED BY THE DIRECTOR OF FINANCE:

SUMMARY STATEMENT

The Executive Director of the Kerr Economic Development Corporation (KEDC) will provide a report regarding KEDC activity.

RECOMMENDED ACTION

This report is provided for informational purposes only and no action is required.

Agenda Item:

7B. Update on the effluent reuse project and provide direction to city staff to initiate the bond issuance process to fund its construction. (staff)

**TO BE CONSIDERED BY THE
HEALTH FACILITIES DEVELOPMENT CORPORATION
CITY OF KERRVILLE, TEXAS**

SUBJECT: Receive an update on the effluent reuse project and provide direction to city staff to initiate the bond issuance process to fund its construction

FOR AGENDA OF: Oct. 27, 2015 **DATE SUBMITTED:** Oct. 23, 2015

SUBMITTED BY: Todd Parton **CLEARANCES:** Todd Parton
City Manager City Manager

EXHIBITS: Debt Model
Freese and Nichols Presentation – dated September 29, 2015

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER: 

Expenditure	Current Balance	Amount	Account
Required:	in Account:	Budgeted:	Number:
\$0	\$0	\$0	

PAYMENT TO BE MADE TO:
REVIEWED BY THE FINANCE DEPARTMENT:

SUMMARY STATEMENT

In June 2013, the City of Kerrville engaged Freese and Nichols, an engineering consultant, to determine the feasibility of capturing and using the city's 305 million gallons of effluent that goes unused annually. The resulting study, which was accepted by the City Council, showed that it was feasible to reuse this effluent. Based on the results of the study, City Council approved the hiring of Freese and Nichols for design services, bidding services, and construction administration services for the initial phases of the Kerrville Effluent Reuse Facility. Fees for this contract are a lump sum of \$1,965,000.

Freese and Nichols is on schedule to complete its design work for the initial phases of the Kerrville Effluent Reuse Facility in December 2015. Designs and bid ready documents will be for a storage pond (105 million gallon capacity), pump station, 24-inch gravity pipeline from the wastewater treatment plant, and pipeline connections to the existing reuse system.

It is contemplated that the initial part of the effluent reuse project will be constructed in two phases. Phase 1 would consist of the storage pond, pipeline from the wastewater treatment plant, and a portion of the piping for connection to the existing reuse system. Phase 2 would consist of the pump station, distribution mains, and final piping connections to the reuse system.

Upon completion of these two phases, Kerrville will significantly increase the amount of treated effluent available for irrigation and non-potable uses. This will allow the city to expand its services to accommodate other major customers like Schreiner University, Riverhill Golf Course, KISD, and the future municipal athletic complex. It will also reduce the demand for treated water for irrigation purposes, thereby extending the city's potable water supply.

With the completion of the design and bid documents, the city is ready to proceed to funding and construction. Plans call for funding and construction in two phases according to the following schedule:

Phase 1

1. Certificates of Obligation (\$10 Million) – November 2015 to February 2016
2. Bidding and Contract Execution – February to March 2016
3. Construction – June 2016 to September 2017

Phase 2

1. Certificates of Obligation (\$8.5 Million) – November 2016 to February 2017
2. Bidding and Contract Execution – February to March 2017
3. Construction – April to December 2017

The schedule anticipates that effluent will be delivered by early 2018.

City staff has coordinated with FirstSouthwest, Kerrville's financial advisor, to model a debt service schedule. The model is attached to this report and is built utilizing conservative assumptions with regard to interest rates and Water and Wastewater Fund revenues. It shows that the debt can be serviced under the existing utility rate structure and in accordance with the city's financial policies for the Water and Sewer Fund. Kerrville's utility rates were last raised in 2012 and were adjusted in order to provide funding for major capital needs.

Kerrville's future depends on expanding its supply of dependable, clean water and diversifying the community's water sources. Effluent is an attractive source because other options for ground water and surface water are extremely limited, expensive, and very sensitive to drought conditions as well as subject to a regulatory system that is costly, lengthy, and uncertain. After the construction of the 105 million gallon reuse facility, the city will continue to send another 200 million gallons of effluent downstream during the winter months. This additional effluent has been identified by the city as a good candidate to significantly increase the drinking water supply. Pursuant to a contract with Freese and Nichols approved by the City Council in May 2015, city staff and Freese and Nichols have implemented a year-long sampling program of the city's treated effluent to determine whether it is of adequate quality to use for drinking water through a direct potable reuse (DPR) program. Thus far the samples have shown the city's effluent to be of good quality. Two monthly samples and one quarterly sample have been drawn thus far.

Attached to this report is a copy of a PowerPoint presentation prepared jointly by Freese and Nichols and City of Kerrville staff to explain the city's plans for the reuse of its treated effluent.

RECOMMENDED ACTION

City staff recommends that the City Council initiate the funding process for the Kerrville Effluent Reuse Facility to include the issuance of \$10 million in 2016 and \$8.5 million in 2017. Further, city staff recommends that the bond sale process for the first \$10 million issuance be initiated in November 2015.



Integrating ASR and DPR to Enhance the City of Kerrville's Water Supply



September 29th, 2015



Introduction: City of Kerrville



Located in the heart of Texas Hill Country



Kerrville City Hall

- **Population = 22,905**
- **20 square miles**
- **Home of James Avery and Mooney Aviation Company**



Net Revenues		Existing Utility Supported Debt Service ⁽³⁾		- UTILITY SUPPORTED -						Projected Total Debt Service Coverage	
FYE 9/30	Available For Debt Service ⁽¹⁾	Estimated Growth ⁽²⁾		\$10,000,000 - Series 2016 Delivery: 2/17/2016 @ 2.82% ⁽⁴⁾			\$8,500,000 - Series 2017 Delivery: 1/21/2017 @ 3.34% ⁽⁴⁾			Projected Total Debt Service	Projected Total Debt Service Coverage
				Principal	Interest	Total	Principal	Interest	Total		
2015	\$ 5,830,884		\$ 3,235,731	-	-	-	-	-	-	\$ 3,235,731	1.80 x
2016	5,830,884	0.00%	3,239,194	\$ 295,000	\$ 186,529	\$ 481,529	-	-	-	3,720,723	1.57 x
2017	5,830,884	0.00%	3,238,849	115,000	371,350	486,350	\$ 150,000	\$ 206,253	\$ 356,253	4,081,452	1.43 x
2018	5,830,884	0.00%	3,247,817	110,000	369,050	479,050	100,000	360,225	460,225	4,187,092	1.39 x
2019	5,830,884	0.00%	3,199,001	145,000	366,300	511,300	170,000	357,225	527,225	4,237,526	1.38 x
2020	5,830,884	0.00%	3,160,666	175,000	362,675	537,675	250,000	352,125	602,125	4,300,466	1.36 x
2021	5,830,884	0.00%	2,892,904	170,000	357,425	527,425	250,000	343,375	593,375	4,013,704	1.45 x
2022	5,830,884	0.00%	2,901,703	185,000	352,325	537,325	250,000	334,625	584,625	4,023,653	1.45 x
2023	5,830,884	0.00%	2,201,524	535,000	346,775	881,775	390,000	325,875	715,875	3,798,174	1.53 x
2024	5,830,884	0.00%	1,969,706	550,000	328,050	878,050	405,000	310,275	715,275	3,563,031	1.64 x
2025	5,830,884	0.00%	1,972,606	570,000	308,800	878,800	425,000	294,075	719,075	3,570,481	1.63 x
2026	5,830,884	0.00%	1,968,631	595,000	286,000	881,000	440,000	274,950	714,950	3,564,581	1.64 x
2027	5,830,884	0.00%	1,968,206	620,000	262,200	882,200	460,000	255,150	715,150	3,565,556	1.64 x
2028	5,830,884	0.00%	1,965,754	645,000	237,400	882,400	485,000	234,450	719,450	3,567,604	1.63 x
2029	5,830,884	0.00%	1,974,796	670,000	211,600	881,600	505,000	212,625	717,625	3,574,021	1.63 x
2030	5,830,884	0.00%	1,623,721	695,000	184,800	879,800	525,000	189,900	714,900	3,218,421	1.81 x
2031	5,830,884	0.00%	1,037,388	725,000	157,000	882,000	550,000	166,275	716,275	2,635,663	2.21 x
2032	5,830,884	0.00%	1,038,138	755,000	128,000	883,000	575,000	141,525	716,525	2,637,663	2.21 x
2033	5,830,884	0.00%	626,775	785,000	97,800	882,800	600,000	115,650	715,650	2,225,225	2.62 x
2034	5,830,884	0.00%		815,000	66,400	881,400	630,000	88,650	718,650	1,600,050	3.64 x
2035	5,830,884	0.00%		845,000	33,800	878,800	655,000	60,300	715,300	1,594,100	3.66 x
2036	5,830,884	0.00%					685,000	30,825	715,825	715,825	8.15 x
				<u>\$ 10,000,000</u>		<u>\$ 5,014,279</u>	<u>\$ 8,500,000</u>		<u>\$ 13,154,353</u>	<u>\$ 71,631,741</u>	

(1) Projections for revenue available for debt service as provided by City Officials.

(2) Assumes 1.7% growth in net revenues through Fiscal Year 2020 and no growth thereafter.

(3) Includes waterworks and sewer system supported portions of SIB Loan, GO Refunding 2007, Certificates of Obligation 2008, Certificates of Obligation 2009, Certificates of Obligation 2010, GO Refunding 2010, Certificates of Obligation 2011, Certificates of Obligation 2012 and Certificates of Obligation 2013.

(4) Assumes Current 'AA' Market Rates of 2.82% interest rate in 2016 and Current Market Rates + 50 bps of 3.34% interest rate in 2017 for illustrative purposes. Rates as of 10/23/2015.

Introduction: City of Kerrville



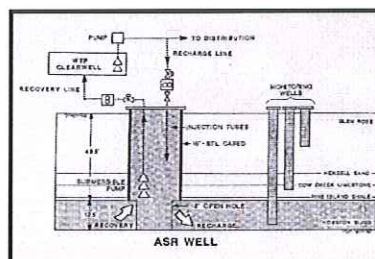
- 10,000+ active water connections
- 15 pressure planes
- 9 booster pump stations
- 238 miles of water pipe
- 2 ASR wells & 8 native ground water wells
- 1 Water Resource Recovery Facility (WW Treatment)



Current Water Supply Strategies



1. Surface Water from Guadalupe River
2. Groundwater Wells
3. Aquifer Storage and Recovery
4. Non-Potable Direct Reuse



Current Water Supply Strategies

Surface Water



Surface Water from Guadalupe River

- City owns 840 ac-ft Impoundment
- Run of River rights available = 6,051 acre foot a year

Limitation of Surface Water

- Not available during floods
- Limited during drought
- Highly regulated by the State of Texas



Current Water Supply Strategies

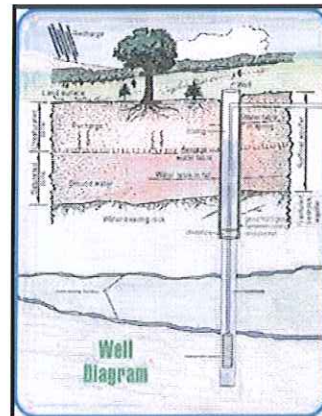
Groundwater



- City operates 8 groundwater wells
- Annual groundwater permitted = 4,160 acre foot a year

Limitation of Groundwater

- Limited amount available
- Slow to recharge
- Highly regulated by State and local government



Current Water Supply Strategies

Aquifer Storage & Recovery (ASR)



City of Kerrville was the first City in the State of Texas to develop an ASR well system

- The City operates two ASR wells
- As of January 2015 - 590 million gallons stored (1,811 acre feet)

Limitations to ASR

- Cost of well construction.
- Inability to alternate between ASR water and ground water



Current Water Supply Strategies

Non Potable Reuse

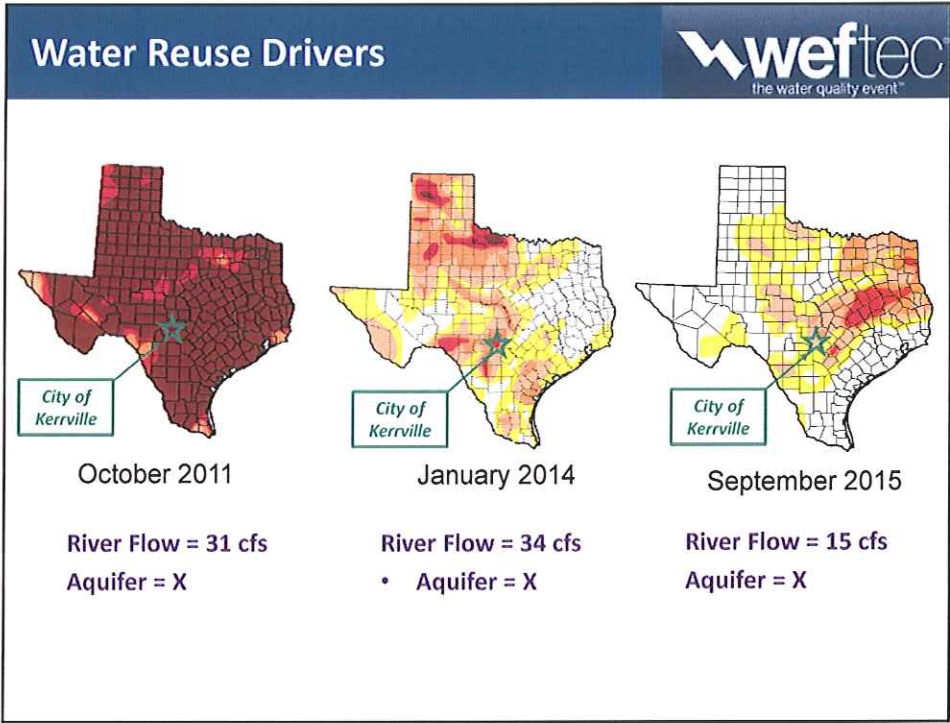


- **The City provides 100% of its summertime WWTP effluent (2.5 MGD) as reuse water to current irrigation customers**
 - High School
 - Golf Courses
 - Animal Shelter
 - Truck haulers

Limitation of Non Potable Reuse Supply

- Typically seasonal
- Demand-driven
- ❖ Appx 400 MG of effluent is sent downstream during winter





Kerrville's Direct Non-Potable Reuse Project
June 2013 - Ongoing

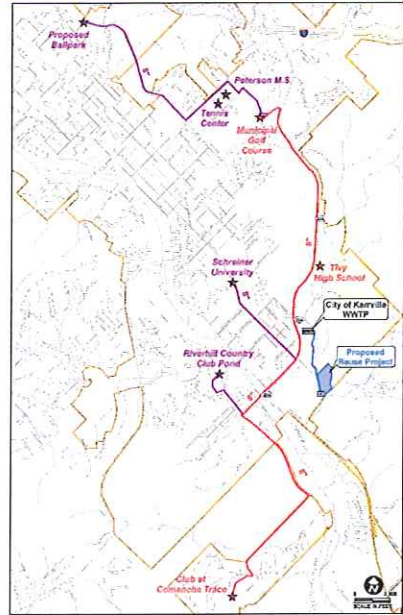
weftec[®]
the water quality event™

September 29th, 2015

Non Potable Water Reuse Project Drivers



- The City provides 100% of its summertime WWTP effluent as reuse water to current irrigation customers
- Potential reuse customers requesting reuse water from City
- Additional reuse storage would allow flexibility to match year-round reuse water supply and demand

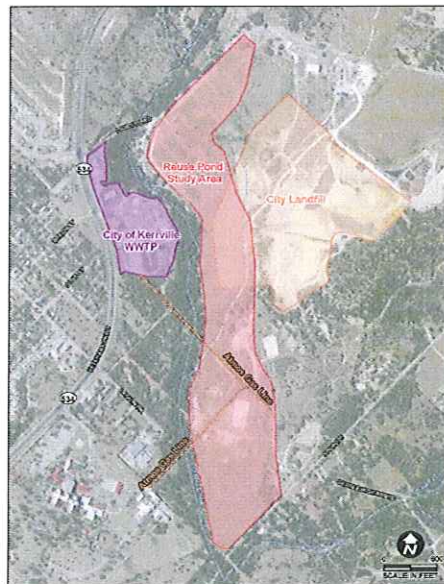


Kerrville Non Potable Water Reuse 2013 Feasibility Study



Study Considerations

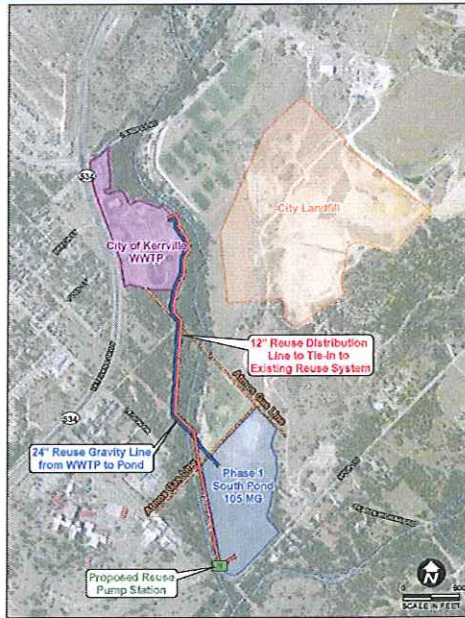
- Identifying potential obstacles or fatal flaws in concept
- Maximizing Pond Storage Volume
- Minimizing Cost
- Coordination with the City Landfill Master Plan
- Provide City with a Reuse Program path forward



Non Potable Water Reuse: Phase 1 Under Design



- 105 MG Storage for Proposed South Pond
- 24" Gravity Pipe from WWTP
- Reuse Pump Station
- 12" Transmission Pipe to Existing Reuse System

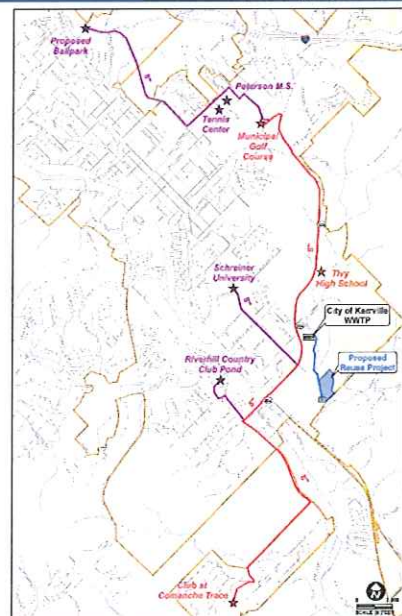


Extension of Non Potable Reuse Phase 1 Under Design



Distribution System Extension

- Developed a reuse system hydraulic model
- Identified five potential future non potable reuse customers
- Evaluated preliminary routes for reuse line extensions
- 6 miles of new 8"/10" pipeline



**105 MG Storage Phase 1 Pond
Under Design**



**Non Potable Water Reuse
Phase 1 Pump Station Under Design**



Non Potable Water Reuse Infrastructure Costs



Item	Reuse Infrastructure Components	Cost (2014 \$)
1	105 MG Reuse Pond	\$9,389,000
2	3000 LF of 24" Gravity Line from WWTP	\$767,000
3	Reuse Pump Station	\$1,611,000
4	4500 LF of 12" Pipeline to Existing Reuse System	\$620,000
5	30000 LF Extension of 8" Reuse Distribution Pipeline	\$2,784,000
6	Construction Contingency @ 20%	\$3,034,200
Subtotal:		\$18,205,200
Engineering & Construction Management @ 13%:		\$2,366,676
Project Total:		\$20,571,876

Kerrville's Direct Potable Reuse Project May 2015 - Ongoing



September 29th, 2015



Direct Potable Reuse (DPR)



• WHAT IS DIRECT POTABLE REUSE?

- Incorporation of wastewater-derived water into the source of a drinking water supply without an “environmental barrier”

• WHO IS USING DPR IN TEXAS?

- Colorado River Municipal Water District (In service)
- City of Wichita Falls (In service)
- City of Brownwood (Approved but not implemented)
- City of El Paso (In Progress)



City of Wichita Falls - Cypress Water Treatment Plant

Why Potable Reuse for Kerrville?



- Diversify water resource management with focus on drought resistant supplies
 - Potential high cost of non-potable reuse expansion
 - Current successful DPR Projects in Texas
 - Gaining public acceptance
 - Provides the City with a non-seasonal, demand-independent water supply source
- ❖ City has commenced a project to investigate concept costs and risks

Direct Potable Reuse: Current Regulatory Requirements

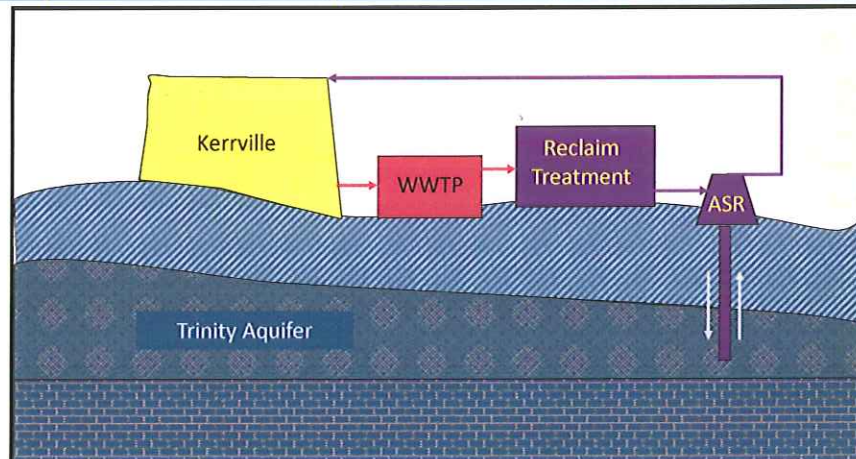


- City has existing non-potable reuse authorization from Texas Commission on Environmental Quality (TCEQ)
- No current guidelines or regulations for potable reuse in Texas
- TCEQ has developed a recommended DPR sampling plan
- Direct reuse projects considered on case-by-case basis
- City met with TCEQ in Oct 2014



Colorado River MWD — Big Spring Raw Water Production Facility

Direct Potable Reuse: City of Kerrville Proposed Concept



- **Keys to Kerrville DPR Concept:**
 - Have to be able to use ASR
 - No blending with other water

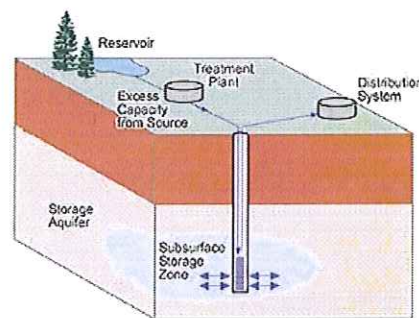
Direct Potable Reuse: Aquifer Storage and Recovery



- Aquifer Storage and Recovery – Storage of water during periods of reduced demand allowing its use beyond the seasonal availability in peak periods
- Unknown amount of underground blending
- Requires treatment to drinking water standards

• Benefits of ASR

- Evaporation Prevention
- Large Volume of Storage
- Detention Time for virus inactivation



Direct Potable Reuse: Implementation Plan



• KERRVILLE DPR PHASE 1

- Water Quality Testing and Analysis
- Evaluation of Treatment Concept
- Regulatory/Public Coordination

• KERRVILLE DPR PHASE 2

- ASR Evaluation
- Treatment
 - Pilot testing
 - Reject water disposal plan
- Determine Monitoring and Operations Plan
- Application for Approval of Source Water
- Regulatory/Public Coordination

Direct Potable Reuse: Water Quality Sampling Plan

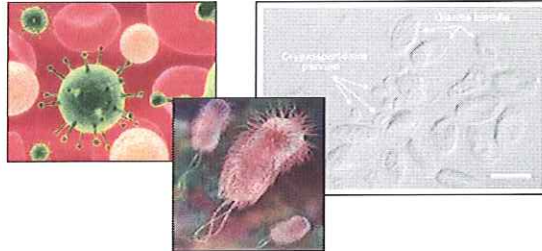


- One year of sampling for appx 60 parameters
- \$75,000 sampling cost

What to Test for?

- **Microbes**

- Bacteria
- Viruses
- Protozoans



- **Chemicals**

- Disinfection By-products
- Inorganics and Organics

- **Other Constituents**

- TDS, TSS, pH, etc

Direct Potable Reuse: Implementation Plan



- **KERRVILLE DPR PHASE 1**

- Water Quality Testing and Analysis
- Evaluation of Treatment Concept
- Regulatory/Public Coordination

- **KERRVILLE DPR PHASE 2**

- ASR Evaluation
- Treatment
 - Pilot testing
 - Reject water disposal plan
- Determine Monitoring and Operations Plan
- Application for Approval of Source Water
- Regulatory/Public Coordination



QUESTIONS?



September 29th, 2015



Direct Potable Reuse: Project Finances



- Phase 1 Sampling Costs = \$75,000
- Water Treatment Plant = \$10 - \$15 million
- ASR Well = \$1M - \$1.5 million
- Reject Water Handling is a big unknown



Reuse Program Path Forward



- Design and construction of Non-Potable Phase 1 infrastructure
 - December 2014 to December 2017
- Direct Potable Reuse Project
 - Began May 2015
- Evaluation of expansion to Phase 2 of ponds
 - Dependent on Potable Reuse Feasibility



Agenda Item:

7C. Budget and economic update. (staff)

City of Kerrville
Month ending September 30, 2015
 (Month 12 of FY15 Budget)

	Current Month	Year To-Date	Budget @ 100%	Prior Year To-Date
General Fund				
Total Revenues	\$1,263,528	\$24,599,185	100.12%	\$22,301,923
Property tax	\$3,971	\$8,554,903	98.46%	\$8,299,381
Sales tax	\$512,547	\$6,211,170	103.28%	\$5,813,203
Total Expenditures	\$2,126,733	\$23,535,468	95.93%	\$22,154,372

Water and Sewer Fund				
Total Revenues	\$953,802	\$9,281,693	94.07%	\$10,370,342
Water Sales	\$564,990	\$4,585,065	88.32%	\$4,820,417
Sewer Service	\$326,432	\$3,716,417	95.29%	\$3,807,273
Expenditures	\$836,803	\$11,361,871	93.89%	\$11,827,410

Hotel/Motel:				
Revenues	\$91,094	\$1,081,305	107.14%	\$1,045,911
Expenditures	\$0	\$937,537	95.74%	\$947,581

Unemployment: (August)		Consumer confidence: (September)	
National	5.3%	National	103 up 15.8% over 2014
Texas	4.1%	Texas	115.6 up 5.1% under 2014
Local	3.8%	(Sources: State Comptroller/Workforce Alamo)	

New Building Permits Issued:			Housing:	
	Res	Com	<i>Local:</i>	
Oct	4	0	669 active residential listings; 69 residential sales September 2015	
Nov	7	0	\$14,576,260 total residential sales dollars for September 2015	
Dec	7	1	\$133,377.631 total residential sales dollars Y-T-D for 2015	
Jan	4	1	(Source: Kerrville Board of Realtors)	
Feb	4	1		
Mar	8	5	Water	
Apr	2	1	Residential - 8,044 meters serving 10,889 units	
May	2	3	Commercial - 1,249 meters serving 1,549 units	
June	10	9	Irrigation - 537 meters; 5 re-use meters	
July	6	1	Sewer	
Aug	4	2	Residential - 7,904 services serving 10,433 units	
Sept	5	2	Commercial - 1,099 services serving 1,283 units	
YTD	63	26		

Agenda Item:

8A. Golf Course Advisory Board. (staff)

**BUSINESS OF THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Appointment to the Golf Course Advisory Board

FOR AGENDA OF: October 27, 2015

DATE SUBMITTED: October 23, 2015

SUBMITTED BY: Brenda Craig
City Secretary *BC*

CLEARANCES: Todd Parton
City Manager

EXHIBITS: Board List

AGENDA MAILED TO:

APPROVED FOR SUBMITTAL BY CITY MANAGER:

SUMMARY STATEMENT

Consider appointment to the following board:

Golf Course Advisory Board: One term that expired July 1, 2015.

RECOMMENDED ACTION

Consider appointment.

GOLF COURSE ADVISORY BOARD

	<u>Telephone</u>	<u>Orig. Appt.</u>	<u>Re-Appt. Date</u>	<u>Exp. Date</u>
McCARTER, CHARLES Chairman 937 Myrta	210-286-4646 (C) 895-1112 (H)	09-11-12	09-23-14	07-01-16
GIESECKE, MARION C. 9 Antelope Trail	896-4646 (H) 377-8100 (C)	09-23-14		07-01-16
HERD, HELEN 2829 Rock Barn Dr.	895-4373 (H) 979-777-2274 (C)	09-08-15		07-01-17
PINSON, EDDIE 102 Ridgerock Cove	285-5555 (H)	09-08-15		07-01-17
SIGERMAN, MICHAEL 2744 Indian Wells Dr.	895-7765 (H) 305-498-1602 (O)	09-08-15		07-01-17
STERN, ALLEN 2565 Bandera Hwy.	895-2892 (H) 739-5353 (O)	09-11-12	09-23-14	07-01-16
VACANT				07-01-17
COUNCIL LIAISON: STEPHEN P.FINE 1210 Virginia Dr.	285-4234 (C) 896-2934 (H)	06-26-15		
CITY STAFF: Kristine Day Assistant City Manager	258-1106 (O)			
Scott McDonough General Manager of Golf & Tennis	258-1400 (O)			

Qualifications:	Of the seven (7) regular voting members appointed by the City Council, six (6) shall be residents of the City of Kerrville, Texas, and one (1) member may reside outside the City but within Kerr County.
Purpose and Duties:	The purpose of the Board is to advise the City Council and city staff on matters relating to the operation of the Scott Schreiner Municipal Golf Course.
Term of Office:	Two Years. No member shall serve more than two consecutive full terms without having at least one full year off of the Board between terms.
Vacancies:	Upon the vacancy, removal, or expiration of the term of office of any member, the

city council shall appoint a successor who shall hold that position for the unexpired term or for the period of two years when the appointment is made as the result of the expiration of a board member's term.

Quorum: Four members of the board, excluding liaison members.

Number of Members: Seven

Meeting Time & Place: Fourth Wednesday, in the months of January, March, May, July, September, and November, at 4:30 p.m.; Upstairs Conference Room

Absences: The name of any member having three consecutive absences from regularly called meetings of the board, or who in any consecutive twelve-month period is absent from more than 25 percent of the regularly called meetings, shall be forwarded to the city council for consideration for removal and replacement on the board.

Established by: Resolution No. 037-2009, (repealed Resolution Nos. 99-230, 99-307, 080-2000, and 136-2004); Resolution 30-2012

Revised: September 9, 2015