

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, SEPTEMBER 28, 2021, 6:00 P.M.

CAILLOUX CITY CENTER

910 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

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

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



Kerrville2050



CITY COUNCIL AGENDA
SEPTEMBER 28, 2021, 6:00 PM
CAILLOUX CITY CENTER
910 MAIN STREET, KERRVILLE, TEXAS



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

COVID-19 (Coronavirus) provides a unique concern in that gathering members of the public, City Council, and City staff within a physical setting constitutes a public health risk. Taking this into account and due to the recent increase of Coronavirus positive cases in Kerr County, standard safety protocols will be observed by City Council, City staff, and citizens/visitors attending the meeting. Masks are voluntary and highly encouraged. Six-foot distance seating will be observed and visitor seating will be designated.

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website (www.kerrvilletx.gov). City Council meetings are recorded and the recordings are posted on the City's website.

Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meetings begin. Each speaker is limited to four minutes.

Written comments will be accepted for any agenda items. Comments must include a person's first and last name, address, and identify the item for comment. Written comments may be emailed to shelley.mcelhannon@kerrvilletx.gov and must be received by 3:00 pm the afternoon of the Council meeting. In addition, anyone may email Councilmembers via City email addresses specified on the City's website.

Thank you for your participation!

CALL TO ORDER:

INVOCATION AND PLEDGE OF ALLEGIANCE:

Led by Councilmember Kim Clarkson.

1 ANNOUNCEMENTS OF COMMUNITY INTEREST:

Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.

2 PRESENTATIONS:

- 2.A. Proclamation recognizing September 2021 as National Recovery month.
- 2.B. Proclamation recognizing October 2021 as Dark Sky month.

3 VISITORS/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.

4 CONSENT AGENDA:

These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:

4.A. Resolution No. 39-2021. A Resolution approving the budget for Kerr Emergency 9-1-1 Network for Fiscal Year 2022.

Attachments:

[20210928_Resolution_39-2021 Kerr 911 Budget FY2022.pdf](#)

4.B. Interlocal Cooperation Contract between Texas Health and Human Services Commission (acting on behalf of the Kerrville State Hospital) and the City of Kerrville for pre-employment and fitness for duty evaluations for police officers.

Attachments:

[20210928_Contract_Interlocal Health Human Services KSH and KPD.pdf](#)

4.C. Minutes for the City Council workshop held September 14, 2021.

Attachments:

[20210928_Minutes_Council workshop 9-14-21 5pm.pdf](#)

4.D. Minutes for the City Council meeting held September 14, 2021.

Attachments:

[20210928_Minutes_Council meeting 9-14-21 6pm.pdf](#)

END OF CONSENT AGENDA

5 ORDINANCES, FIRST READING:

KERRVILLE 5.A. Ordinance No. 2021-26. An Ordinance amending Chapter 2, "Administration", Article IV "Boards and Commissions", Section 2-91 "Senior Services Advisory Committee" of the Code of Ordinances of the City of Kerrville, Texas; by decreasing the membership of this committee to 9 members; and providing other matters relating to this subject.

Attachments:

[20210928_Ordinance_2021-26 SSAC membership reduction.pdf](#)

[20210928_Letter_Waverly_Jones-Chair_support_SSAC_membership_reduction.pdf](#)

6 ORDINANCES, SECOND READING:

KERRVILLE 6.A. Ordinance No. 2021-24. An Ordinance adopting the City of Kerrville, Texas, Subdivision Code, a comprehensive rewrite of the City's Subdivision regulations; said rewrite to be known as the "City of Kerrville, Texas Subdivision Code" and found within Chapter 82 of the City's Code of Ordinances; repealing all Ordinances or parts of Ordinances inconsistent herewith; providing an effective date; and providing other matters related to this subject.

Attachments:

[20210928_Ordinance_2021-24 Subdivision Code second reading.pdf](#)

[20210928_Subdivision Code Attachment A.pdf](#)

6.B. Ordinance No. 2021-25, second reading. An Ordinance amending Ordinance No. 2019-14, which created a Planned Development District on an approximate 58.74 acre tract of land out of the Joseph S. Anderson Survey No. 141, Abstract No. 2 and the J.S. Sayder Survey No. 142, Abstract No. 290; generally located north of and in the 1000 to 1200 block of Thompson Drive (Spur 98); said amendment to update the previously adopted Concept Plan and the Land Use Table; establishing a penalty and effective date; and providing other matters relating to the subject.

Attachments:

[20210928_Ordinance_2021-25 The Landing Concept Plan second reading.pdf](#)

7 INFORMATION & DISCUSSION:

7.A. Financial update for month ending August 31, 2021.

Attachments:

[20210928_Presentation_Finance.pdf](#)

7.B. Update from the 2021 Texas Legislative Sessions.

7.C. City's ongoing preparedness and response to COVID-19 (Coronavirus); and Declaration of local state of disaster due to a public health emergency, Review of Declaration of local state of disaster due to a public health emergency, March 20, 2020.

Attachments:

[20200922_Resolution_16-2020 Extending Mayor's Disaster Declaration Covid-19 7-28-20.pdf](#)

8 CONSIDERATION AND POSSIBLE ACTION:

8.A. Paid quarantine leave policy for fire fighters, peace officers, emergency communications personnel, and emergency medical technicians to become part of the City of Kerrville Personnel Policies and Procedures Manual.

Attachments:

[Paid Quarantine Leave Policy for Police and Fire - Effective 061521.pdf](#)

8.B. City Council Ethics policy.

Attachments:

[20210928_Ethics Policy.pdf](#)

8.C. Amendments to Procedural Rules for Meetings – Kerrville City Council.

Attachments:

[20210928_ProceduralRulesforMeetings_081221 DRAFT redlined.pdf](#)

8.D. Appointment of City Council committee for Municipal Court Judges evaluations.

8.E. Appointment of City of Kerrville delegate for the 2021 Texas Municipal League (TML) Annual Conference business meeting.



8.F. Appointments to the Kerrville Area Youth Leadership Academy (KAYLA).

Attachments:

[KAYLA Guidelines and Schedule - 2021-2022.pdf](#)

9 BOARD APPOINTMENTS:

9.A. Appointment to the Senior Services Advisory Committee.

Attachments:

[20210928_Roster_SSAC 8-2021.pdf](#)



9.B. Appointment to the Main Street Advisory Board.

Attachments:

[20210928_Roster_Main Street 8-2021.pdf](#)



9.C. Appointment to the Tax Increment Reinvestment Zone, Number One, Board of Directors. *(This appointment is eligible for Executive Session 551.071).*

Attachments:

[20210928_Roster_TIRZ.pdf](#)

9.D. Appointment to the Zoning Board of Adjustment. (*This appointment is eligible for Executive Session 551.071*).

Attachments:

[20210928_Roster_ZBA 8-2021.pdf](#)

10 ITEMS FOR FUTURE AGENDAS:

City Council may suggest items or topics for future agendas.

11 EXECUTIVE SESSION:

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

12 ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY:

ADJOURN.



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

SUBJECT: Proclamation recognizing September 2021 as National Recovery month.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Aug 12, 2021

SUBMITTED BY: Kesha Franchina

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Recognizing September 2021 as National Recovery month in the City of Kerrville.

RECOMMENDED ACTION:

Present proclamation.



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

SUBJECT: Proclamation recognizing October 2021 as Dark Sky month.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 13, 2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Recognizing October 2021 as Dark Sky month in the City of Kerrville.

RECOMMENDED ACTION:

Present proclamation.



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

SUBJECT: Resolution No. 39-2021. A Resolution approving the budget for Kerr Emergency 9-1-1 Network for Fiscal Year 2022.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Aug 13, 2021

SUBMITTED BY: Chris McCall

EXHIBITS: [20210928_Resolution_39-2021 Kerr 911 Budget FY2022.pdf](#)

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
None	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

The city has received the proposed 2022 budget for the Kerr Emergency 9-1-1 Network. The FY 2022 proposed operating budget totals \$442,000.00 as compared to \$448,000.00 in FY 2020, for an overall decrease of 1.34%. The change in revenue is attributed to projected decreases in wireline telephone service fees. The 9-1-1 service fee of \$0.75 per month for all classes of service for FY 2022 will remain unchanged. The Texas Health and Safety Code, Subchapter D, The Emergency Telephone Number Act requires the 9-1-1 Board to present to the governing body of the participating jurisdictions (cities) and to the county commissioners court no later than 45 days prior to the date the budget is adopted. The participating jurisdictions shall review the proposed budget and submit any comments regarding the budget to the 9-1-1 board. The budget must be approved by a majority of the participating jurisdictions. If no action is taken on the proposed budget before the 61st day after the proposed budget is received, the budget is approved by operation of law. The city received the proposed 9-1-1 budget on August 13, 2021.

RECOMMENDED ACTION:

Recommend adoption of Resolution No. 39-2021 approving the proposed budget for Kerr Emergency 9-1-1 Network.

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 39-2021

**A RESOLUTION APPROVING THE BUDGET FOR KERR
EMERGENCY 9-1-1 NETWORK FOR FISCAL YEAR 2022**

WHEREAS, in accordance with Section 772.309 of the Texas Health and Safety Code, the Executive Director of the Kerr Emergency 9-1-1 Network has prepared and presented to City Council a budget for the Network's fiscal year commencing January 1, 2022; and

WHEREAS, City Council finds it to be in the public interest to approve said budget;

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

The City Council of the City of Kerrville, Texas, approves the 2022 Fiscal Year Budget for the Kerr Emergency 9-1-1 Network as presented and set forth in **Exhibit A**.

PASSED AND APPROVED ON this the _____ day of _____, A.D., 2021.

Bill Blackburn, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



Subject: Proposed 2022 Budget Summary

08/12/2021

1. 100 Revenue. Estimated Net Income: \$442,000.00 based on an overall decrease of -1.34% from 2021's income projection. The change in revenue is attributed to projected decrease in wireline telephone service fee income.
2. 200 Payroll. Payroll expenses include 1.2% overall salary increase for current staff members, and a 7.5% projected decrease in health care insurance costs. Payroll overhead includes staff salaries, payroll taxes, retirement account contributions, employee life insurance and Texas Workforce Commission unemployment insurance costs. TCDRS will see a modest increase in this category, the effective rate increased due underperforming investments. Overall, there is a decrease of -0.54% change in costs compared to last year.
3. 300 Operations (PSAP/Call Centers). This expense category includes all operation and maintenance expenses for the Public Safety Answering Point (911 backroom server / telephony equipment / software) and the two call centers (KPD & KCSO). Our expenses are projected to decrease \$2,500.00 or -2.19% from the previous year.
4. 400 Direct Services. Direct Services will see an overall increase of \$400.00 or .71% compared to the previous year. Direct services include office supplies, office equipment repair/replacement, district liability insurance, staff professional training, office space lease, attorney, CPA, auditor, and other professional service expenses, and banking fees.
5. 500 Miscellaneous. Misc. expenses are projected to decrease by \$2,900 or -6.87% compared to 2021. Misc. expenses include Aerial Imagery costs, dues and subscriptions, public education / advertising, Texas 911 Alliance meetings and NENA/APCO conferences.
6. 700: PSAP Equipment Replacement Fund: This category will remain at \$50,000 to fund the PSAP capital replacement account. The capital replacement fund is utilized for PSAP equipment upgrades.

Capital Considerations: The capital cash account will have an estimated balance in of \$899,450.00 at the end of 2021 from nominal interest and scheduled PSAP Equipment Replacement Fund transfers. We expect our end-of-2022 capital balance to be in the neighborhood of \$924,200.00.

This final figure includes all capital expenses of \$27,500.00 and revenue of \$52,250.00. The primary source of revenue is from scheduled operating fund transfers, and 9-1-1 sign sales cost-recovery.

9-1-1 Emergency Service Fee: The Texas Health and Safety Code – Chapter 772.314 (d): *The board shall set the amount of the fee each year as part of the annual budget.*

For the 2022 budget, Kerr 9-1-1 will keep the service fee of \$0.75 per month for all classes of service (Residential, Business, Trunk, VOIP).

Vision for 2022:

1. Continued 9-1-1 sign sales.
2. Continued 9-1-1 public education.
3. Transition to NextGen 911 Services if feasible.

Conclusions:

1. The 2022 proposal is a balanced budget.
2. This budget adequately addresses the expected operating needs of our district in providing state-of-the-art 9-1-1 workstations/software and to continue our efforts to enhance and maintain our 9-1-1 connectivity as well as maintaining our Geographic Information Systems (GIS).
3. Our district's vision and public-funds stewardship is based firmly in the state and local government codes, guided by conservative spending and liberal savings policies.
4. Kerr 9-1-1 Board of Managers Budget approval date: 08/12/2021



Mark Del Toro
Executive Director
Kerr Emergency 9-1-1 Network

Kerr Emergency 911 Network
2022 Operating Budget
Proposed

		2021	2022 Proposed	Delta	% Change
100 - Revenue					
	101 - Local 911 Service	135,000.00	125,000.00	-10,000.00	-7.41%
	105 - Wireless Emergency Income	263,000.00	263,000.00	0.00	0.00%
	110 - VoIP Service Fees	45,000.00	46,000.00	1,000.00	2.22%
	120 - Interest Income	5,000.00	8,000.00	3,000.00	60.00%
Total 100 - Revenue		448,000.00	442,000.00	-6,000.00	-1.34%
200 - Payroll Expense					
	210 - Salary	125,000.00	126,500.00	1,500.00	1.20%
	212 - Payroll Taxes	10,000.00	10,200.00	200.00	2.00%
	213 - Medical Insurance Expense	40,000.00	37,000.00	-3,000.00	-7.50%
	214 - TCDRS Expense Company	9,700.00	10,000.00	300.00	3.09%
	215 - TCDRS OTLI	200.00	200.00	0.00	0.00%
	225 - Texas Workforce Commission	100.00	100.00	0.00	0.00%
	230 - Excess Vacation Payout	0.00	0.00	0.00	#DIV/0!
Total 200 - Payroll Expense		185,000.00	184,000.00	-1,000.00	-0.54%
300 - Operations (PSAP)					
	315 - 911 Call Taker Training	7,000.00	7,500.00	500.00	7.14%
	320 - Wireless Phase I & II Contracts	10,000.00	6,000.00	-4,000.00	-40.00%
	321 - AT&T Wireless Tariff	1,900.00	1,900.00	0.00	0.00%
	331 - Text to 9-1-1 Charges	4,000.00	4,000.00	0.00	0.00%
	332 - ALI Service Charge	18,000.00	18,000.00	0.00	0.00%
	335 - TX DIR ALI MPLS	8,500.00	8,500.00	0.00	0.00%
	337 - AT&T SR Fees	4,500.00	4,500.00	0.00	0.00%
	340 - ESInet Charge	29,000.00	29,000.00	0.00	0.00%
	350 - PSAP Trunk Charges	19,000.00	19,000.00	0.00	0.00%
	355 - Language Translation Services	500.00	500.00	0.00	0.00%
	357 - PSAP Fiber KPD/KCSO	2,000.00	2,000.00	0.00	0.00%
	366 - Wireless Redundancy MRC	800.00	800.00	0.00	0.00%
	370 - PSAP Repairs & Maintenance	9,000.00	10,000.00	1,000.00	11.11%
Total 300 - Operations (PSAP)		114,200.00	111,700.00	-2,500.00	-2.19%
400 - Direct Services					
	410 - Office Supplies	2,000.00	2,000.00	0.00	0.00%
	412 - Office Equipment & Repairs	4,500.00	4,500.00	0.00	0.00%
	420 - Liability Insurance	3,500.00	3,900.00	400.00	11.43%
	430 - Professional Development	4,000.00	4,000.00	0.00	0.00%
	440 - Rent	28,000.00	28,000.00	0.00	0.00%
	450 - Professional Fees	14,000.00	14,000.00	0.00	0.00%
	460 - Postage & Delivery	500.00	500.00	0.00	0.00%
	490 - Bank Service Charges	100.00	100.00	0.00	0.00%
Total 400 - Direct Services		56,600.00	57,000.00	400.00	0.71%
500 - Miscellaneous					
	502 - Pictometry Annual Payment	15,000.00	11,000.00	-4,000.00	-26.67%
	510 - Awards & Honorariums	400.00	400.00	0.00	0.00%
	520 - Dues & Subscriptions	800.00	900.00	100.00	12.50%
	530 - Public Education & Advertising	2,500.00	2,500.00	0.00	0.00%
	550 - Telecommunications	8,500.00	8,500.00	0.00	0.00%
	560 - Sundry	2,000.00	2,000.00	0.00	0.00%
	570 - Texas 911 Alliance Meetings	7,000.00	8,000.00	1,000.00	14.29%
	575 - Nena/APCO Conferences	6,000.00	6,000.00	0.00	0.00%
Total 500 - Miscellaneous		42,200.00	39,300.00	-2,900.00	-6.87%

**Kerr Emergency 911 Network
2022 Operating Budget
Proposed**

700 - PSAP Equipment Replacement Account	710 - Operating to Capital Fund Transfer	50,000.00	50,000.00	0.00 0.00%
Total 700 - PSAP Equipment Replacement Account		50,000.00	50,000.00	0.00 0.00%
Annual Budget Totals		448,000.00	442,000.00	-6,000.00 -1.34%
Net Income		448,000.00	442,000.00	-6,000.00 -1.34%
Projected Budget Surplus/Deficit		0.00	0.00	0.00 #DIV/0!

**Kerr Emergency 911 Network
2022 Operating Budget
Proposed**

2022 Budget Capital Account	Comments
Capital Expenses - 800	
804 - Sign Materials	\$2,500.00
888 - Misc PSAP Projects	<u>\$25,000.00</u>
	<u><u>\$27,500.00</u></u>
Total - 800	
Capital Income - 900	
901 - Sign Sales (Recovery)	\$2,250.00
902 - Equipment Replacement Fund Transfers	<u>\$50,000.00</u>
Total - 900	<u><u>\$52,250.00</u></u>
 2022 Starting Capital Balance (Est.)	 \$899,450.00
 2022 Net Capital Expenses	 \$27,500.00
 2022 Net Capital Income	 <u><u>\$52,250.00</u></u>
 Projected End-of-2022 Capital Account Balance	 \$924,200.00



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

SUBJECT: Interlocal Cooperation Contract between Texas Health and Human Services Commission (acting on behalf of the Kerrville State Hospital) and the City of Kerrville for pre-employment and fitness for duty evaluations for police officers.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Aug 18, 2021

SUBMITTED BY: Chris McCall

EXHIBITS: [20210928_Contract_Interlocal Health Human Services KSH and KPD.pdf](#)

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$4500.00	\$4500.00	\$4500.00	

PAYMENT TO BE MADE TO:

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

SUMMARY STATEMENT:

The Kerrville State Hospital will provide under this Contract, to the Kerrville Police Department, pre-employment evaluations of applicants for police officers and Fitness for Duty Evaluations; consultations, to include quarterly in-service training to the Local Government. Services will be provided in accordance with the Texas Commission on Law Enforcement Standards of pre-employment. These services for pre-employment shall include at a minimum a test of psychopathology, normal personality, and brief intellectual screen along with a face-to-face interview. Any additional services will be accomplished in accordance with prevailing police psychology standards. This service will be provided for an amount not to exceed \$4500 annually.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute the Interlocal Cooperation Contract.

INTERLOCAL COOPERATION CONTRACT
BETWEEN
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
AND
CITY OF KERRVILLE

The **HEALTH AND HUMAN SERVICES COMMISSION** (“HHSC” or “System Agency”), for and on behalf of its facility **Kerrville State Hospital** (KSH) (“Facility”), and **CITY OF KERRVILLE** (“Local Government”), for and on behalf of its Police Department, each a “Party” and collectively the “Parties,” enter into the following contract for Pre-Employment Evaluations (the “Contract”) pursuant to the provisions of the “Interlocal Cooperation Act,” Chapter 791 of the Texas Government Code.

I. CONTRACT REPRESENTATIVES

The following will act as the Representative authorized to act on behalf of their respective Party.

HHSC

Terry Jane Mohnke, CTCM
721 Thompson Drive
Kerrville, TX 78028
830-258-5285
jane.mohnke@hhs.texas.gov

Local Government

E. A. Hoppe, City Manager
701 Main Street
Kerrville, Texas 78028
830-258-1110
eahoppe@kerrvilletx.gov

Either Party may change its designated contract Representative by providing written notice to the other Party.

II. STATEMENT OF SERVICES

The Parties agree to cooperate to provide necessary and authorized services and resources in accordance with the terms of this Contract. HHSC will provide under this Contract, to the Local Government, pre-employment evaluations of applicants for police officers and Fitness for Duty Evaluations; consultations, to include quarterly in-service training to the Local Government. Services will be provided in accordance with the Texas Commission on Law Enforcement Standards of pre-employment. These services for pre-employment shall include at a minimum a test of psychopathology, normal personality, and brief intellectual screen along with a face-to-face interview. Any additional services will be accomplished in accordance with prevailing police psychology standards.

III. CONTRACT PERIOD AND RENEWAL

The Contract is effective on the date upon which both Parties have signed the Contract and terminates on **August 31, 2022**, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. HHSC, in its sole discretion, may extend this Contract for any period or periods of time no greater than a cumulative total of four years, which four-year period includes the original contract term, subject to mutually agreeable terms and conditions. At the sole option

of HHSC, the Contract may also be extended beyond all exercised renewal periods as necessary to ensure continuity of service or as otherwise determined by HHSC to serve the best interest of the state.

IV. AMENDMENT

Not applicable – see 9.1 of the HHSC Uniform Terms and Conditions

V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES PROVIDED

The total amount of this Contract shall not exceed **\$4500.00** annually.

Not applicable – see 3.1 of the HHSC Uniform Terms and Conditions

VI. LEGAL NOTICES

Legal Notices under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

System Agency

Health and Human Services Commission
Attn: Office of Chief Counsel
4900 N. Lamar Boulevard; MC 1100
Austin, Texas 78751

Local Government

City of Kerrville
Attn: Office of City Attorney
701 Main Street
Kerrville, Texas 78028

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for receiving legal notice by notifying the other Party in writing.

VII. CERTIFICATIONS

The undersigned contracting Parties certify that:

- (1) The services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agency of state government or local government;
- (2) Each Party executing this Contract on its behalf has full power and authority to enter into this Contract;
- (3) The proposed arrangements serve the interest of efficient and economical administration of state government and local government; and
- (4) The services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

HHSC further certifies that it has sufficient statutory authority to contract for the services described in this Contract under *Texas Government Code* Chapter 531.

Local Government further certifies that it has sufficient statutory authority to Contract for the services described in this contract under *Texas Local Government Code* Chapter 51.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR
HHSC CONTRACT NO.**

Health and Human Services Commission

By: _____
Leigh Ann Fitzpatrick
Superintendent, Kerrville State Hospital

Date of Execution: _____

CITY OF KERRVILLE

By: _____
E. A. Hoppe
City Manager

Date of Execution: _____

**THE FOLLOWING ATTACHMENTS TO THIS INTERLOCAL COOPERATION CONTRACT ARE HEREBY
INCORPORATED BY REFERENCE:**

ATTACHMENT A – BUDGET

ATTACHMENT B – UNIFORM TERMS AND CONDITIONS V 3.2

ATTACHMENT C – CONTRACT AFFIRMATIONS V. 1.8

Budget

I. PAYMENT FOR SERVICES PROVIDED

HHSC will submit invoices monthly to the **Local Government** for costs determined in accordance with the terms and conditions of this Contract based on the fee schedule as referenced within Section II below, but shall not exceed the total amount set forth in Contract Section V, which does not include or allow for indirect costs.

All payments by the Local Government under this Contract will be made in accordance with the “Texas Prompt Payment Act,” *Texas Government Code* Chapter 2251.

II. FEE SCHEDULE

- **EVALUATIONS - \$300 EACH WITH THE NOT-TO-EXCEED NUMBER OF 15 EVALUATIONS PER YEAR.**
- **CONTRACT AMOUNT SHALL NOT EXCEED \$4500 FOR THE TERM OF THE CONTRACT.**

III. INVOICE AND PAYMENT

Invoices for payment must be submitted monthly in a secure, non-alterable electronic format (.pdf is acceptable). Payment shall be rendered Net 30 from date of invoice. All invoices will be submitted while clearly providing the following information:

1. Contract Number and purchase order clearly stated;
2. HHSC’s legal name and “remit to” address, telephone number, and fax number;
3. Unique invoice number assigned by the HHSC;
4. The date of the invoice;
5. The correct invoice amount (invoices that contain an incorrect amount or a disputed amount will need to be revised and resubmitted);
6. HHSC’s taxpayer identification number and mail code;
7. The name and contact information of the person submitting the invoice;
8. The name of the Local Government contract manager; and
9. Any supporting documentation that may be reasonably requested by the Local Government to verify the accuracy of the invoiced amounts.

The invoice must be submitted directly to chris.mccall@kerrvilletx.gov and a courtesy report to the Contract Representative with HHSC’s name in the subject line.

HEALTH AND HUMAN SERVICES
Contract Number _____
EXHIBIT/ATTACHMENT B. CONTRACT AFFIRMATIONS

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors regardless of their business form (e.g., individual, partnership, corporation).

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. Complete and Accurate Information

Contractor represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. Public Information Act

Contractor understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

5. Assignment

- A. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

6. Terms and Conditions

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

7. HHS Right to Use

Contractor agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

9. Dealings with Public Servants

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

10. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

11. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this

Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

13. Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, *“Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,”* published by the United States Department of the Treasury, Office of Foreign Assets Control.’

15. Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

16. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

18. Franchise Tax Status

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

19. Debts and Delinquencies

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

21. Buy Texas

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

22. Disaster Recovery Plan

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

23. Computer Equipment Recycling Program

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

24. Television Equipment Recycling Program

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is in compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

25. Cybersecurity Training

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

26. Restricted Employment for Certain State Personnel

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

27. No Conflicts of Interest

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

28. Fraud, Waste, and Abuse

Contractor understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <http://sao.fraud.state.tx.us/>

All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General
Attn: Fraud Hotline
MC 1300
P.O. Box 85200
Austin, Texas 78708-5200

29. Antitrust

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

30. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

31. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

32. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

33. Entities that Boycott Israel

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify System Agency.

34. E-Verify

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

35. Former Agency Employees – Certain Contracts

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

36. Disclosure of Prior State Employment – Consulting Services

If this Contract is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

1. Name of individual(s) (Contractor or employee(s));
2. Status;
3. The nature of the previous employment with HHSC or the other State of Texas agency;
4. The date the employment was terminated and the reason for the termination; and
5. The annual rate of compensation for the employment at the time of its termination.

B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

37. Abortion Funding Limitation

Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

1. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

38. Funding Eligibility

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code.

39. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)

Contractor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract or funding pursuant to 2 CFR 200.216.

40. COVID-19 Vaccine Passports

Contractor represents and warrants that it is in compliance with Section 161.0085(c) of the Texas Health and Safety Code and eligible, pursuant to that section, to receive a grant or enter into a contract payable with state funds.

41. False Representation

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

42. False Statements

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

43. Permits and License

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

44. Drug-Free Workplace

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

45. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

46. Federal Occupational Safety and Health Law

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

47. Signature Authority

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

Signature Page Follows

Authorized representative on behalf of Contractor must complete and sign the following:

Legal Name of Contractor

Assumed Business Name of Contractor, if applicable (d/b/a or 'doing business as')

Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')

Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed

Signature of Authorized Representative

Date Signed

Printed Name of Authorized Representative

First, Middle Name or Initial, and Last Name

Title of Authorized Representative

Physical Street Address

City, State, Zip Code

Mailing Address, if different

City, State, Zip Code

Phone Number

Fax Number

Email Address

DUNS Number

Federal Employer Identification Number

Texas Payee ID No. – 11 digits

Texas Franchise Tax Number

Texas Secretary of State Filing Number



TEXAS

Health and Human Services

Health and Human Services (HHS)

**Uniform Terms and Conditions -
Governmental Entity**

Version 3.2

Published and Effective - May 2020

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any attachments, and any Amendments, purchase orders, and Work Orders that may be issued by the System Agency.

“Deliverables” means the goods, services, Work, and Work Product to be provided to System Agency under the Contract.

“DSHS” means the Department of State Health Services.

“Effective Date” means the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“HHSC” means the Health and Human Services Commission.

“Health and Human Services” or “HHS” includes HHSC and DSHS.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“Local Government” means a Texas governmental unit defined under and authorized to enter this contract by Texas Government Code, Chapter 791.

“Parties” means the System Agency and Performing Agency, collectively.

“Party” means either the System Agency or Performing Agency, individually.

“Performing Agency” means the State Agency or Local Government providing the goods or services defined in this Contract.

“Receiving Agency” means HHSC or DSHS, as applicable, Agency receiving the benefit of the goods or services provided under this Contract.

“Signature Document” means the document executed by both Parties that sets forth all the documents that constitute the Contract.

“Solicitation” means the document, if any, issued by the System Agency (including any published addenda, exhibits, and attachments) under which the goods or services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

“Solicitation Response” means Performing Agency’s full and complete response (including any attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

“State Agency” means a Texas “Agency” as defined under Texas Government Code, Chapter 771.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means the Texas Comptroller of Public Accounts’ state travel laws, rules, and policies.

“System Agency” means HHSC or DSHS, as applicable.

“Third Party IP” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a subcontractor.

“Work” means all services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

“Work Order” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

“Work Product” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Performing Agency in connection with Performing Agency’s performance of its duties under the Contract or through use of any funding provided under this Contract.

1.2 INTERPRETIVE PROVISIONS

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a

whole and not to any particular provision, section, attachment, or schedule of this Contract unless otherwise specified.

- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute, rule, or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, or supplementing the statute or regulation.
- D. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- E. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- F. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative.
- G. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- H. Time is of the essence in this Contract.

ARTICLE II. PAYMENT PROVISIONS

2.1 PAYMENT

Payment shall be made in accordance with Government Code, Chapter 771, Government Code, Chapter 791, or Government Code, Chapter 2251.051, as applicable.

2.2 ANCILLARY AND TRAVEL EXPENSES

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Performing Agency in connection with its provision of the services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller of Public Accounts’ *Textravel* accessible at the Texas Comptroller of Public Accounts website.

2.3 NO QUANTITY GUARANTEES

The System Agency makes no guarantee of volume or usage of Work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

2.4 TAXES

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Performing Agency represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Performing Agency or its employees. System Agency shall not be liable for any taxes resulting from the contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Performing Agency's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Performing Agency for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

3.2 NO DEBT AGAINST THE STATE

This Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBT AND DELINQUENCIES

Performing Agency agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

3.4 REFUNDS AND OVERPAYMENTS

A. At its sole discretion, the System Agency may:

- i. withhold all or part of any payments to Performing Agency to offset overpayments, unallowable or ineligible costs made to the Performing Agency, or if any required financial status report(s) is not submitted by the due date(s); or,
- ii. require Performing Agency to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.

B. "Overpayments," as used in this Section, include payments:

- i. made by the System Agency that exceed the maximum allowable rates;
- ii. that are not allowed under applicable laws, rules, or regulations; or,
- iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Performing Agency understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Performing Agency further understands and agrees that reimbursement of such disallowed costs shall be paid by Performing Agency from funds which were not provided or otherwise made available to Performing Agency under this Contract.

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

4.1 WARRANTY

Performing Agency warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Performing Agency has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Performing Agency, at its sole expense, to:

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Performing Agency received from System Agency for all defective or damaged Work and, in conjunction therewith, require Performing Agency to accept the return of such Work; and,
- iii. Take necessary action to ensure that Performing Agency's future performance and Work conform to the Contract requirements.

4.2 CONTRACT AFFIRMATIONS

Performing Agency certifies that, to the extent Contract Affirmations are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the Contract Affirmations and that Performing Agency is in compliance with all requirements.

4.3 FEDERAL ASSURANCES

Performing Agency certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal assurances and that Performing Agency is in compliance with all requirements.

4.4 FEDERAL CERTIFICATIONS

Performing Agency certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Performing Agency has reviewed the federal certifications and that Performing Agency is in compliance with all requirements. In addition, Performing Agency certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

ARTICLE V. INTELLECTUAL PROPERTY

5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Performing Agency and Performing Agency's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Performing Agency hereby irrevocably assigns and

transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

- C. Performing Agency agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Performing Agency has any rights in and to the Work Product that cannot be assigned to System Agency, Performing Agency hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Performing Agency. Performing Agency shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

5.2 PERFORMING AGENCY'S PRE-EXISTING WORKS

- A. To the extent that Performing Agency incorporates into the Work Product any works of Performing Agency that were created by Performing Agency or that Performing Agency acquired rights in prior to the Effective Date of this Contract ("**Incorporated Pre-existing Works**"), Performing Agency retains ownership of such Incorporated Pre-existing Works.
- B. Performing Agency hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Performing Agency represents, warrants, and covenants to System Agency that Performing Agency has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Performing Agency, Performing Agency hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business purposes only,
 - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
 - ii. to authorize others to do any or all of the foregoing.
- B. Performing Agency shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Performing Agency shall

notify System Agency on delivery of the Work Product if such materials include any Third Party IP.

C. Performing Agency shall provide System Agency all supporting documentation demonstrating Performing Agency's compliance with this **Section 5.3**, including without limitation documentation indicating a third party's written approval for Performing Agency to use any Third Party IP that may be incorporated in the Work Product.

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Performing Agency shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Performing Agency's compliance with Performing Agency's obligations under this **Article V**.

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency's request, Performing Agency shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Performing Agency's failure to timely deliver such Work Product is a material breach of the Contract. Performing Agency will not retain any copies of the Work Product or any documentation or other products or results of Performing Agency's activities under the Contract without the prior written consent of System Agency.

5.6 SURVIVAL

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

5.7 SYSTEM AGENCY DATA

- A. As between the Parties, all data and information acquired, accessed, or made available to Performing Agency by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Performing Agency in the course of providing data processing services in connection with Performing Agency's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Performing Agency has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Performing Agency to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Performing Agency is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Performing Agency shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Performing Agency's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Performing Agency's performance of its obligations hereunder.

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

- A. Performing Agency is prohibited from using State Property for any purpose other than performing services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Performing Agency shall not remove State Property from the continental United States. In addition, Performing Agency may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Performing Agency shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services.
- E. During the time that State Property is in the possession of Performing Agency, Performing Agency shall be responsible for:
 - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
 - ii. all charges attributable to Performing Agency's use of State Property that exceeds the Contract scope. Performing Agency shall fully reimburse such charges to System Agency within ten (10) calendar days of Performing Agency's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

6.2 DAMAGE TO GOVERNMENT PROPERTY

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Performing Agency or Performing Agency's employees, agents, Subcontractors, and suppliers, Performing Agency shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Performing Agency shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Performing Agency shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Performing Agency's receipt of System Agency's notice of amount due.

6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

ARTICLE VII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

7.1 RECORD MAINTENANCE AND RETENTION

- A. Performing Agency shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.
- B. Performing Agency shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Performing Agency for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

7.2 AGENCY'S RIGHT TO AUDIT

- A. Performing Agency shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Performing Agency pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Performing Agency and any of Performing Agency's affiliate or subsidiary organizations, or subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Performing Agency shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Performing Agency shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any subcontract it awards.

7.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Performing Agency must act to ensure its and its subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the services and Deliverables provided. Any such correction will be at Performing Agency's or its Subcontractor's sole expense. Whether Performing Agency's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the services, Performing Agency must provide to System Agency upon request a copy of those portions of Performing Agency's and its subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Contract.

7.4 STATE AUDITOR'S RIGHT TO AUDIT

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. The Performing Agency shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

7.5 CONFIDENTIALITY

Performing Agency shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Performing Agency under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Performing Agency.

ARTICLE VIII. CONTRACT REMEDIES AND EARLY TERMINATION

8.1 CONTRACT REMEDIES

To ensure Performing Agency's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Performing Agency accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Performing Agency to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Performing Agency found to be in error;

- iv. suspending, limiting, or placing conditions on the Performing Agency's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

8.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

8.3 TERMINATION FOR CAUSE

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

i. Material Breach

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Performing Agency has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Performing Agency's duties under the Contract. Performing Agency's misrepresentation in any aspect of Performing Agency's Solicitation Response, if any, or Performing Agency's addition to the System for Award Management (SAM) exclusion list will also constitute a material breach of the Contract.

ii. Failure to Maintain Financial Viability

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Performing Agency no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

8.4 PERFORMING AGENCY RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

If the System Agency terminates the Contract for cause, the Performing Agency shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Performing Agency. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Performing Agency's failure to perform any Work in accordance with the terms of the Contract.

ARTICLE IX. GENERAL PROVISIONS

9.1 AMENDMENT

The Contract may only be amended by an Amendment executed by both Parties.

9.2 INSURANCE

- A. Unless otherwise specified in this Contract, Performing Agency shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper

fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Performing Agency shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Performing Agency shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Performing Agency must produce renewal certificates for each type of coverage.

B. These and all other insurance requirements under the Contract apply to both Performing Agency and its subcontractors, if any. Performing Agency is responsible for ensuring its subcontractors' compliance with all requirements.

9.3 LIMITATION ON AUTHORITY

- A. The authority granted to Performing Agency by the System Agency is limited to the terms of the Contract.
- B. Performing Agency shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Performing Agency may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Performing Agency may not rely upon implied authority and is not granted authority under the Contract to:
 - i. Make public policy on behalf of the System Agency;
 - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
 - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Performing Agency, the Performing Agency shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

9.4 LEGAL OBLIGATIONS

Performing Agency shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Performing Agency shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

9.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Performing Agency shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended

throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

9.6 E-VERIFY PROGRAM

Performing Agency certifies that for contracts for services, Performing Agency shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- i. all persons employed by Performing Agency to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Performing Agency to perform Work pursuant to the Contract within the United States of America.

9.7 PERMITTING AND LICENSURE

At Performing Agency's sole expense, Performing Agency shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Performing Agency to provide the goods or services required by this Contract. Performing Agency shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Performing Agency shall be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

9.8 SUBCONTRACTORS

Performing Agency may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Performing Agency shall be in writing and be subject to the requirements of the Contract. Should Performing Agency subcontract any of the services required in the Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve Performing Agency of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

9.9 INDEPENDENT PERFORMING AGENCY

Performing Agency and Performing Agency's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Performing Agency nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Performing Agency shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Performing Agency and System Agency.

9.10 GOVERNING LAW AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

9.11 SEVERABILITY

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

9.12 SURVIVABILITY

Expiration or termination of the Contract for any reason does not release Performing Agency from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

9.13 FORCE MAJEURE

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

9.14 DISPUTE RESOLUTION

- A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Performing Agency's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Performing Agency shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Performing Agency with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Performing Agency's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Performing Agency shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Performing Agency may suspend performance during the pendency of such claim or dispute if the Performing Agency has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

9.15 NO IMPLIED WAIVER OF PROVISIONS

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Performing Agency which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

9.16 MEDIA RELEASES

- A. Performing Agency shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Performing Agency is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Performing Agency may publish, at its sole expense, results of Performing Agency performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

9.17 NO MARKETING ACTIVITIES

Performing Agency is prohibited from using the Work for any Performing Agency or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Performing Agency's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Performing Agency as part of the Work.

9.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

Performing Agency shall not require any employees or subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

9.19 SOVEREIGN IMMUNITY

Nothing in the Contract shall be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

9.20 ENTIRE CONTRACT AND MODIFICATION

This Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

9.21 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

9.22 CIVIL RIGHTS

- A. Performing Agency shall comply with all applicable state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Performing Agency shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Performing Agency shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a Performing Agency from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require Performing Agency to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Performing Agency shall take

reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- D. Performing Agency shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at:
<http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>
- E. Performing Agency shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring Performing Agency to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Performing Agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- F. Performing Agency shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Performing Agency shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- G. Upon request, Performing Agency shall provide the HHSC Civil Rights Office with copies of the Performing Agency's civil rights policies and procedures.
- H. Performing Agency must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885.

9.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Performing Agency shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

9.24 DISCLOSURE OF LITIGATION

- A. The Performing Agency must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Performing Agency. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Performing Agency must also disclose any material litigation threatened or pending

involving subcontractors, consultants, and/or lobbyists. For purposes of this section, “material” refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Performing Agency’s financial condition.

B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

9.25 NO THIRD-PARTY BENEFICIARIES

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

9.26 BINDING EFFECT

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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

SUBJECT: Minutes for the City Council workshop held September 14, 2021.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 13, 2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS: [20210928_Minutes_Council workshop 9-14-21 5pm.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Minutes for the City Council workshop held September 14, 2021 at 5:00 p.m. at the Cailloux City Center.

RECOMMENDED ACTION:

Approve minutes as presented.

**CITY COUNCIL WORKSHOP MINUTES
CAILLOUX CITY CENTER**

**SEPTEMBER 14, 2021 5:00 PM
KERRVILLE, TEXAS**

CALL TO ORDER: On September 14, 2021 at 5:00 p.m., the City Council workshop was called to order by Mayor Bill Blackburn at the Cailloux City Center, 910 Main Street.

COUNCILMEMBERS PRESENT:

Bill Blackburn, Mayor
Kim Clarkson, Mayor Pro Tem, Councilmember Place 2
Roman Garcia, Councilmember Place 1
Judy Eychner, Councilmember Place 3
Brenda Hughes, Councilmember Place 4

COUNCILMEMBER ABSENT: None

CITY STAFF PRESENT:

E.A. Hoppe, City Manager
Mike Hayes, City Attorney
Shelley McElhannon, City Secretary
Guillermo Garcia, Exec Director Innovation

VISITORS PRESENT: No visitors or citizens attended the workshop.

1. PUBLIC COMMENT: None.

2. INFORMATION AND DISCUSSION:

2A. Kerrville Economic Development Corporation (KEDC) quarterly update.

Gil Salinas with the Kerrville Economic Development Corporation was unable to attend the workshop, however provided a printed report to City Council. Council provided comments.

2B. Department of Development Services update.

Guillermo Garcia provided information and responded to questions.

ADJOURN. The workshop adjourned at 5:22 p.m.

APPROVED BY COUNCIL: _____ ATTEST:

Bill Blackburn, Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: Minutes for the City Council meeting held September 14, 2021.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 13, 2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS: [20210928_Minutes_Council meeting 9-14-21 6pm.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Minutes for the City Council meeting held September 14, 2021 at 6:00 p.m. at the Cailloux City Center.

RECOMMENDED ACTION:

Approve minutes as presented.

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
SEPTEMBER 14, 2021 6:00 PM**

On September 14 2021, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn at the Cailloux City Center, 910 Main Street. Councilmember Roman Garcia introduced Abigail Carpenter, who provided the invocation and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Kim Clarkson	Mayor Pro Tem, Councilmember Place 2
Roman Garcia	Councilmember Place 1
Judy Eychner	Councilmember Place 3
Brenda Hughes	Councilmember Place 4

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF:

E.A. Hoppe, City Manager	Kesha Franchina, Deputy City Secretary
Mike Hayes, City Attorney	Eric Maloney, Fire Chief
Shelley McElhannon, City Secretary	Kim Meismer, Exec Director General Ops
Stuart Barron, Director Public Works	Drew Paxton, Chief Planner
Julie Behrens, Asst Finance Director	Trina Rodriguez, Finance Manager
Ashlea Boyle, Director Parks & Rec	Curtis Thomason, Asst Chief of Police
Stuart Cunyus, Public Info Officer	

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

1. ANNOUNCEMENTS OF COMMUNITY INTEREST: Items of interest to the community were presented by Stuart Cunyus, Mayor Blackburn, Councilmember Brenda Hughes, Councilmember Judy Eychner, and Councilmember Garcia.

2. VISITORS FORUM:

The following persons spoke:

- Raymond Tear
- Robin Monroe
- Bethany Puccio
- Michaela Carabajal

E.A. Hoppe, Shelley McElhannon, and Mayor Blackburn provided clarification.

3. CONSENT AGENDA:

Shelley McElhannon read consent agenda item captions into record. Councilmember Eychner made a motion to accept the consent agenda as presented, and Councilmember Garcia seconded. The motion passed 5-0.

3A. Purchase and installation of a shade structure for the Carver Park playground from Craftsman Commercial Playgrounds and Water Parks in the amount of \$77,425.00.

3B. Minutes for the City Council workshop held August 24, 2021.

3C. Minutes for the City Council meeting held August 24, 2021.

END OF CONSENT AGENDA.

4. CONSIDERATION AND POSSIBLE ACTION:

4A. City's ongoing preparedness and response to COVID-19 (Coronavirus).

Chief Eric Maloney provided Covid information and responded to questions.

5. PUBLIC HEARINGS AND RESOLUTIONS:

5A. Resolution No. 40-2021. A Resolution granting a Conditional Use Permit to authorize a short-term rental unit on the property comprising Lot 1 and part of Lot 2, Block 17, Westland Place Addition, and more commonly known as 414 W. Water; said property is located within a Single-Family Residential Zoning District (R-1); and making said permit subject to certain conditions and restrictions contained herein.

Shelley McElhannon read Resolution No. 40-2021 caption into record.

Drew Paxton presented information and responded to questions.

Mayor Blackburn opened the public hearing at 6:38 p.m.

The following persons spoke:

- Russell Nemky – declined when called
- Martha Hix

Mayor Blackburn closed the public hearing at 6:43 p.m.

Councilmember Garcia moved to approve Resolution No. 40-2021, and Councilmember Hughes seconded. The motion passed 5-0.

5B. Resolution No. 41-2021. A Resolution granting a Conditional Use Permit to authorize a short-term rental unit on the property comprising part of Lot 11, Block 2, Fairview Addition, and more commonly known as 604 E. Shady; said property is located within a Single-Family Residential Zoning District (R-1); and making said permit subject to certain conditions and restrictions contained herein.

Shelley McElhannon read Resolution No. 41-2021 caption into record.

Drew Paxton presented information and responded to questions.

Mayor Blackburn opened the public hearing at 6:49 p.m.

No person spoke.

Mayor Blackburn closed the public hearing at 6:49 p.m.

Councilmember Kim Clarkson moved to approve Resolution No. 41-2021, and Councilmember Hughes seconded. The motion passed 5-0.

5C. Resolution No. 42-2021. A Resolution granting a Conditional Use Permit to authorize a short-term rental unit on the property comprising part of Lot 4, Block 81, J.A. Tivy Addition, and more commonly known as 1220 Aransas; said property is located within a Single-Family Residential with Accessory Dwelling Unit Zoning District (R-1A); and making said permit subject to certain conditions and restrictions contained herein.

Shelley McElhannon read Resolution No. 42-2021 caption into record.

Drew Paxton presented information and responded to questions.

Mayor Blackburn opened the public hearing at 6:50 p.m.

The following persons spoke:

- Russell Nemky
- Martha Hix – declined when called
- Greg Lewis

Mayor Blackburn closed the public hearing at 6:54 p.m.

Councilmember Eychner moved to adopt Resolution No. 42-2021, and Councilmember Hughes seconded. The motion passed 4-0 with Councilmember Clarkson, Councilmember Eychner, Councilmember Garcia, and Councilmember Hughes voting.

6. PUBLIC HEARINGS AND ORDINANCES, FIRST READING:

6A. Ordinance No. 2021-24. An Ordinance adopting the City of Kerrville, Texas, Subdivision Code, a comprehensive rewrite of the City's Subdivision regulations; said rewrite to be known as the "City of Kerrville, Texas Subdivision Code" and found within Chapter 82 of the City's Code of Ordinances; repealing all Ordinances or parts of Ordinances inconsistent herewith; providing an effective date; and providing other matters related to this subject.

Shelley McElhannon read Ordinance No. 2021-24 caption into record.

E.A. Hoppe commended the Code Review Committee (comprised of citizen volunteers) and the Planning and Zoning Commission for reviewing and updating the Subdivision Code. Drew Paxton presented information. Drew Paxton and Mike Hayes responded to questions.

Councilmember Garcia moved to change on page 46, section 4B, the wording that says requires an affirmative vote of at least three fourths of the members present at the Commission Hearing – *"I would strike "members present at the" – so it reads "requires an affirmative vote of at least three fourths of the Commission" – and I would strike the word Hearing".*

Mayor Blackburn opened the public hearing at 7:28 p.m.

The following person spoke:

- Jerry Wolff

The following person provided written comment:

- Bruce Stracke

Drew Paxton provided clarification.

Mayor Blackburn closed the public hearing at 7:29 p.m.

Mayor Blackburn called for a second to Councilmember Garcia's motion. Councilmember Garcia requested to hold the motion until after Council discussion. The motion was held. Council discussion ensued. Drew Paxton and E.A. Hoppe responded to questions.

Councilmember Garcia moved to approve Ordinance No. 2021-24 on first reading and further instruct staff to review the comments made in Bruce Stracke's letter and the three-fourths vote of the members present of the Commission and the three-fourth vote of the entire Council as indicated on pages 46, 73, and 82, and return to Council with information at the second reading of this Ordinance. The motion was seconded by Councilmember Hughes. After discussion by Council, Councilmember Hughes withdrew the second.

One hour and forty-four minutes into the meeting, the televised live feed and the Granicus software audio and video dropped at approximately 7:44 p.m. Video and audio was restored by 8:41 p.m.

Councilmember Garcia moved to approve Ordinance No. 2021-24 on first reading and direct staff to look at changes requested by Council, and Councilmember Hughes seconded. After discussion by Council, the motion passed 5-0.

6B. Ordinance No. 2021-25. An Ordinance amending Ordinance No. 2019-14, which created a Planned Development District on an approximate 58.74 acre tract of land out of the Joseph S. Anderson Survey No. 141, Abstract No. 2 and the J.S. Sayder Survey No. 142, Abstract No. 290; generally located north of and in the 1000 to 1200 block of Thompson Drive (Spur 98); said amendment to update the previously adopted Concept Plan and the Land Use Table; establishing a penalty and effective date; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2021-25 caption into record. Drew Paxton presented information and responded to questions.

Mayor Blackburn opened the public hearing at 7:51 p.m.

The following persons spoke:

- Bonnie Johnson
- J.E. Johnson
- Justin MacDonald
- Jim Builta

Mayor Blackburn closed the public hearing at 8:16 p.m.

Councilmember Clarkson moved to approve Ordinance No. 2021-25 without Zoning C-3, and Councilmember Eychner seconded. The motion passed 5-0.

7. ORDINANCES, SECOND READING:

7A. Ordinance No. 2021-20. An Ordinance adopting the annual budget for the City of Kerrville, Texas, Fiscal Year 2022; providing appropriations for each City Department and fund; containing a cumulative clause; and containing a savings and severability clause.

Shelley McElhannon read Ordinance No. 2021-20 caption into record.

Julie Behrens presented information.

The following person spoke:

- Bonnie White
- Jerry Wolff

Julie Behrens and Stuart Barron provided clarification and responded to questions.

Councilmember Hughes made a motion to approve Ordinance No. 2021-20 to adopt the City's budget for Fiscal Year 2022 on second reading, seconded by Councilmember Eychner. This motion was passed and approved 5-0, the vote recorded as follows:

	YES	NO
Roman Garcia, Place 1	X	—
Kim Clarkson, Place 2	X	—
Bill Blackburn, Mayor	X	—
Judy Eychner, Place 3	X	—
Brenda Hughes, Place 4	X	—

Councilmember Eychner made a motion to ratify the vote to adopt the budget that will require raising more revenue from property taxes than the previous fiscal year, seconded by Councilmember Hughes. The motion was passed 5-0.

7B. Ordinance No. 2021-21. An Ordinance 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 2022; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when the same shall become delinquent if not paid.

Shelley McElhannon read Ordinance No. 2021-21 caption into record.

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

The following person signed up to speak, but withdrew: Peggy McKay.

Councilmember Eychner made a motion to approve Ordinance No. 2021-21 and that the property tax rate be increased by the adoption of a tax rate of \$0.5093, which is effectively a 4.6% percent increase in the tax rate, seconded by Councilmember Hughes. This motion was passed and approved 5-0, the vote recorded as follows:

	YES	NO
Roman Garcia, Place 1	<u>X</u>	—
Kim Clarkson, Place 2	<u>X</u>	—
Bill Blackburn, Mayor	<u>X</u>	—
Judy Eychner, Place 3	<u>X</u>	—
Brenda Hughes, Place 4	<u>X</u>	—

8. CONSIDERATION AND POSSIBLE ACTION:

8A. Appointments to the Kerrville Area Youth Leadership Academy.

Shelley McElhannon read item caption into record.

Kim Meismer provided information and responded to questions.

Councilmember Eychner moved to select the proposed applicants for membership into the Kerrville Area Youth Leadership Academy for the 2021-2022 term and extend the application deadline to September 17, 2021, seconded by Councilmember Hughes. This motion was approved 5-0.

8B. Resolution No. 43-2021. A Resolution establishing a policy of the City Council to set the City's Water and Wastewater fees for Fiscal Years 2023 through 2026 for the purpose of stabilizing revenues and encouraging water conservation.

Shelley McElhannon read Resolution No. 43-2021 caption into record.

Trina Rodriguez provided information and responded to questions.

The following person spoke:

- Jerry Wolff

Councilmember Eychner moved to approve Resolution No. 43-2021, seconded by Councilmember Hughes. This motion was approved 5-0.

9. ITEMS FOR FUTURE AGENDAS:

- Councilmember Hughes requested a Playhouse 2000 update in late October, seconded by Councilmember Garcia. The item received Council consensus.
- Councilmember Eychner requested to appoint a Council Committee to evaluate the Municipal Court Judges, at the September 28, 2021 Council meeting, seconded by Councilmember Hughes. The item received Council consensus.

- Councilmember Eychner requested to add to the pending list, review parking garage planning and budget, seconded by Councilmember Hughes. The item received Council consensus 3-2.

10. EXECUTIVE SESSION: N/A

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

ADJOURN. The meeting adjourned at 9:08 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Bill Blackburn, Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: Ordinance No. 2021-26. An Ordinance amending Chapter 2, "Administration", Article IV "Boards and Commissions", Section 2-91 "Senior Services Advisory Committee" of the Code of Ordinances of the City of Kerrville, Texas; by decreasing the membership of this committee to 9 members; and providing other matters relating to this subject.

AGENDA DATE OF: September 28, **DATE SUBMITTED:** Aug 26, 2021
2021

SUBMITTED BY: Kim Meismer

EXHIBITS: [20210928_Ordinance_2021-26 SSAC membership reduction.pdf](#)
[20210928_Letter_Waverly_Jones-Chair_support_SSAC_membership_reduction.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	C - Community / Neighborhood Character and Place Making
Guiding Principle	C1. Promote "aging in place" or full life-cycle amenities to address the needs and desires of children, teens, young families and single professional adults.
Action Item	C1.6 - Provide service options for elderly persons who want to stay in their homes

SUMMARY STATEMENT:

When the Senior Services Advisory Committee (SSAC) was created by City Council it was comprised of 16 members. In January 2019, Council approved Ordinance 2020-02 to reduce the membership from 16 to 14 members.

Since we began meeting again in 2021 after a lapse due to the pandemic, we have had three member resignations. In addition, of the potential for six meetings so far in 2021 - March through August, we have had to cancel two of the meetings due to a lack of quorum.

On 09/30/2021, we have five membership terms that will be expiring. Three of those five

members have re-applied, one advised me that she will fulfill her term but will not re-apply, and one has missed all six of the meetings scheduled for 2021 and has not re-applied.

I would like to recommend that Council consider a reduction of the membership for SSAC from 14 members to nine members. We have six members whose terms expire 09/30/2022. If the three members whose terms expire 09/30/2021, who have re-applied and are re-appointed, this combination would make up the nine members recommended. There are six members who regularly attend every meeting and this would reduce the number required to make quorum to five so that meetings could be held on a more regular basis.

The SSAC discussed their concern for the continuing potential for a lack of quorum at future meetings and are supportive of the reduction of members. I have attached a letter of support from Waverly Jones, SSAC Chair.

RECOMMENDED ACTION:

Approve Ordinance No. 2021-26, on first reading as presented.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2021-26**

**AN ORDINANCE AMENDING CHAPTER 2,
“ADMINISTRATION,” ARTICLE IV “BOARDS AND
COMMISSIONS”, SECTION 2-91 “SENIOR
SERVICES ADVISORY COMMITTEE” OF THE
CODE OF ORDINANCES OF THE CITY OF
KERRVILLE, TEXAS; BY DECREASING THE
MEMBERSHIP OF THIS COMMITTEE TO 9
MEMBERS; AND PROVIDING OTHER MATTERS
RELATING TO THIS SUBJECT**

WHEREAS, City Council believes it beneficial to decrease the membership of the City's Senior Services Advisory Committee from 14 to 9 members; and

WHEREAS, City Council finds it to be in the public interest to amend Chapter 2, Article IV, Section 2-91 of the Code of Ordinances of the City of Kerrville as provided herein;

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

SECTION ONE. Chapter 2 “Administration,” Article IV “Boards and Commissions” of the Code of Ordinance of the City of Kerrville, Texas, is amended by revising Section 2-91, subsection (a)(1), to add the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) as follows:

“Sec. 2-91. – Senior Services Advisory Committee.

(a) *Creation of Senior Services Advisory Committee; terms; membership; meetings.*

- (1) There is hereby created the Senior Services Advisory Committee of the City (“Committee”), which shall be an advisory body of 9 ~~14~~ members appointed by City Council. The mayor shall appoint the chair and vice-chair from among the appointments made by Council, but only following the appointment of the initial Committee. Thereafter, each Committee shall select the chair and vice-chair from among its members.
- (2) ~~During the initial appointment of Committee members, Council will appoint 7 of the Committee members to terms expiring September 30, 2019. Council will then appoint each of the remaining 7 members to terms expiring September 30, 2020. Subsequent appointments shall serve a full two-year term.~~ All members shall serve until their successors are appointed

and qualified, but regardless, each term will exist as a two-year term beginning October 1 through September 30 two years hence."

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

SECTION THREE. The provisions of this Ordinance are to be 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.

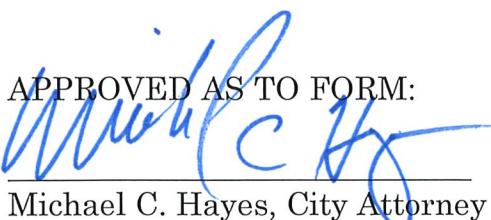
SECTION FOUR. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that 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., 2021.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of _____, A.D., 2021.

Bill Blackburn, Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:


Shelley McElhannon, City Secretary

Waverly Jones, Chair
Kerrville City Senior Services Advisory Committee
Dieter Center
451 Guadalupe St
Kerrville, TX 78028
9/8/2021

Kerrville City Council
City of Kerrville
701 Main St
Kerrville, TX 78028

Dear Kerrville City Council:

The members of the Senior Services Advisory Committee would like to thank you for the opportunity to help serve our community. During the past two years, we have accomplished a number of projects and have some great ideas for the future.

One of our largest challenges has been the ability to meet and work as a committee due to the restrictions of a quorum. We are currently set for 14 members and with only an average of 5-6 regular attendees, we do not have a quorum and thus cannot meet. The committee is requesting the city council's support in considering changing the member limit to 9. This will give the members a chance to continue to meet and be productive as vital part of the community.

Sincerely,

Waverly Jones

Waverly Jones, Chair
Kerrville City Senior Services Advisory Committee



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

SUBJECT: Ordinance No. 2021-24. An Ordinance adopting the City of Kerrville, Texas, Subdivision Code, a comprehensive rewrite of the City's Subdivision regulations; said rewrite to be known as the "City of Kerrville, Texas Subdivision Code" and found within Chapter 82 of the City's Code of Ordinances; repealing all Ordinances or parts of Ordinances inconsistent herewith; providing an effective date; and providing other matters related to this subject.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 16, 2021

SUBMITTED BY: Drew Paxton

EXHIBITS: [20210928_Ordinance_2021-24 Subdivision Code second reading.pdf](#)
[20210928_Subdivision Code Attachment A.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	E - Economic Development
Guiding Principle	E2. Develop policies, processes and programs, including economic incentives, which are clear and consistently applied by a team of City and partner economic development entities working with stakeholders and focused on attracting, retaining and expanding business
Action Item	E2.12 - Ensure that Development Services processes and existing codes and ordinances are not impediments to development/redevelopment

SUMMARY STATEMENT:

Following the adoption of the Kerrville 2050 Comprehensive Plan, the City has reviewed and updated several of its ordinances that related to development. The Code Review committee worked with a consultant to begin reviewing and drafting the updated

subdivision code. Updating the subdivision ordinance implements the legislative changes in the state statutes related to subdivision of land. It also completes six Kerrville 2050 Action Items.

Since the kickoff of the project, the process has included the following:

- Staff and Consultants reviewed current ordinance
- Consultants Identified recommended updates
- Code Review Committee reviewed each Division Draft
- October 2019 – May 2021
- June 24th - Planning and Zoning Commission Workshop
- July 15th - Planning and Zoning Commission
- Public Hearing and Recommendation to City Council
- August 17th - City Council Workshop
- September 14th - City Council Public Hearing & 1st Reading
- September 28th - City Council 2nd Reading

The update also addresses several policy issues that were brought up through the Kerrville 2050 Plan and process. Collectively, these topics respond to 16 Kerrville 2050 Action Items.

- Timing of public improvements
- Private Streets
- Traffic Impact Analysis requirements
- Stormwater Management
- Sidewalks

The Code Review Committee and the Planning and Zoning Commission have each given their recommendation for the adoption of the updated subdivision ordinance.

During the September 14, 2021 City Council meeting, a written comment was received, and the comment addressed; also one person spoke during the public hearing and first reading.

September 14, 2021, the City Council approved Ordinance No. 2021-24 on first reading.

The Subdivision Code will be reviewed annually.

RECOMMENDED ACTION:

Approve Ordinance No. 2021-24 on second reading.

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2021-24

AN ORDINANCE ADOPTING THE CITY OF KERRVILLE, TEXAS, SUBDIVISION CODE, A COMPREHENSIVE REWRITE OF THE CITY'S SUBDIVISION REGULATIONS; SAID REWRITE TO BE KNOWN AS THE "CITY OF KERRVILLE, TEXAS SUBDIVISION CODE" AND FOUND WITHIN CHAPTER 82 OF THE CITY'S CODE OF ORDINANCES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT HEREWITH; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THIS SUBJECT

WHEREAS, the City of Kerrville, Texas, has previously adopted a platting ordinance to provide for the orderly division and development of land within its corporate limits and extraterritorial jurisdiction (ETJ) in accordance with Chapter 212 of the Texas Local Government Code; and

WHEREAS, following the adoption of the *City of Kerrville Comprehensive Plan – Kerrville 2050* ("Comprehensive Plan"), City Council created and appointed a Code Review Committee ("CRC") made up of people with a variety of vocations, experiences, and interests; and

WHEREAS, City Council, pursuant to Resolution No. 34-2018, charged the CRC with reviewing and considering recommendations regarding development codes cited for possible consideration within the Comprehensive Plan; and

WHEREAS, following its help developing a new Zoning Code for the City, the CRC began reviewing the City's subdivision regulations; and

WHEREAS, the CRC, City staff, and at times, the City's consultants, worked diligently to develop subdivision regulations in accordance with the general principals and guidelines found within the Comprehensive Plan; and

WHEREAS, the CRC began meeting in July 2019, to consider subdivision regulations, and met 8 times in meetings that were open to the public; and

WHEREAS, the CRC eventually helped develop a draft Subdivision Code that it recommends that the City adopt; and

WHEREAS, on June 24, 2021, the Planning and Zoning Commission (the "Commission") held a workshop to consider the draft Subdivision Code, and thereafter on July 15, 2021, held a public hearing to consider the proposed code and to provide comments and directions; and

WHEREAS, the CRC, Commission, and City staff now recommend that City Council approve and adopt a newly revised Subdivision Code, said code to be known as the “City of Kerrville, Texas, Subdivision Code” (“Subdivision Code”), which will be found within Chapter 82 of the City’s Code of Ordinances; and

WHEREAS, after receiving the Subdivision Code from the Commission along with its recommendation for adoption, City Council reviewed and considered the Subdivision Code; and

WHEREAS, as part of this review, City Council held a public hearing on September 14, 2021, as required by law; and

WHEREAS, City Council finds that the intent of the Subdivision Code, through its regulation of plats and subdivisions, is to promote the health, safety, morals, or general welfare of the City and its safe, orderly, and healthful development in accordance with Section 212.002, Texas Local Government Code; and

WHEREAS, City Council will require staff to report back to Council on or before one year from the Effective Date (defined below) of this Ordinance as to the implementation of the new Subdivision Code, to include whether any amendments need to be made; and

WHEREAS, after receiving and considering the recommendations of the CRC, the Commission, and City staff and after multiple meetings and a public hearing at which all parties in interest and citizens were given an opportunity to be heard, Council finds it to be in the best interest of the health, safety, morals, and general welfare of the City of Kerrville, Texas, to adopt the proposed Subdivision Code as a comprehensive rewrite of the City’s subdivision and platting regulations;

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

SECTION ONE. The facts, recitations, and findings contained in the preamble of this Ordinance are found to be true and correct.

SECTION TWO. The City of Kerrville, Texas, Subdivision Code, which is attached as **Attachment A** and incorporated herein by reference as if set forth in full, is adopted in its entirety, and will be placed within Chapter 82 of the City’s Code of Ordinances.

SECTION THREE. City Council directs the City Manager to report back to Council on or before the expiration of one year from the Effective Date of this Ordinance as to its implementation and whether any amendments need to be made.

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

SECTION FIVE. 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. Further, the proposed Subdivision Code results from a comprehensive review, rewrite, and replacement of the City's current subdivision regulations and said Code repeals and replaces, to include without limitation: Ordinance No. 82-34 and subsequent amending ordinances regarding Subdivision Regulations, to include Ordinance Nos. 83-27, 84-08, 84-61, 84-67, 86-13, 87-29, 87-46, 87-55, 89-27, 90-03, 91-10, 91-24, 96-04, 97-09, 97-15, 01-13, 07-14, 13-05, and 14-07.

SECTION SIX. It is officially found and determined that the meetings at which this Ordinance is passed were open to the public as required and that public notice of the time, place, and purpose of said meetings was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

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

SECTION EIGHT. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7 of the Code of Ordinances of the City of Kerrville, Texas.

SECTION NINE. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is 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.

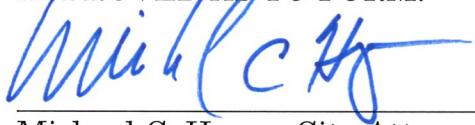
SECTION TEN. This Ordinance shall become effective on October 15, 2021 (the "Effective Date").

PASSED AND APPROVED ON FIRST READING, this the 14 day of SEPTEMBER A.D., 2021.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of _____, A.D., 2021.

Bill Blackburn, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

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Chapter 82 - PLANNING Subdivision Code

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ARTICLE I. GENERAL PROVISIONS

Sec. 82.01. - Kerrville Subdivision Code.

This Chapter shall be known and may be cited as the “*City of Kerrville Subdivision Code*,” and unless otherwise stated, the phrase “Subdivision Code” or “Code” as used in this Chapter means the *City of Kerrville Subdivision Code*.

Sec. 82.02. - Purpose Statement.

The subdivision of land is a major factor toward the process of achieving sound community development and makes up a public responsibility because at times, it includes the construction and dedication of public improvements; meaning, for example, streets, water, wastewater, drainage (stormwater), sidewalks, park facilities, utilities, and other public improvements shall be provided and thereafter maintained by the City. Therefore, it is to the interest of the public, the developer, property owners, and future owners that subdivisions and other developments be conceived, designed, and developed in accordance with appropriate design standards and development specifications. It is the intent of these regulations to aid in guiding the growth of the City of Kerrville (“City”) and its extraterritorial jurisdiction (“ETJ”) in an orderly manner; and to provide attractive, well planned subdivisions with adequate streets, water, wastewater, drainage (stormwater), sidewalks, park facilities, utilities, and building sites in a manner that will be uniformly applied. The goals and objectives of this Subdivision Code are:

- (1) to provide for the harmonious development of the urban area;
- (2) to coordinate the supply of services as a tool for directing the optimal distribution of population in the urban area;
- (3) to provide for the separation of pedestrian and vehicular traffic;
- (4) to designate and preserve through advance dedication and reservation of rights-of way for transportation corridors;
- (5) to ensure the acquisition of land for public needs to include parks, schools, drainage, open space, fire, and police facilities;
- (6) to preserve and maintain scenic vistas;
- (7) to encourage the preservation of natural vegetation to minimize erosion;

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- (8) to restrict development in areas where hazards may result;
- (9) to minimize the financial burden of urban development upon the City and taxpayers;
- (10) to assure the accuracy of land records; and
- (11) to address the needs of sensitive lands that would be adversely affected by the strict application of this Code.

Sec. 82-03. - Authority and Jurisdiction.

- (a) *Authority.* From and after the date of its adoption, this Code shall govern all subdivisions of land and other development activities specified herein within the City and within its extraterritorial jurisdiction (“ETJ”), under the authority conferred by Chapter 212, Texas Local Government Code, and pursuant to the home rule charter of the City and the Constitution of the State of Texas.
- (b) *Applicability.*
 - (1) This Code applies to approval of plats, subdivision plans, and other developments for the division or development of property.
 - (2) This Code does not apply to applications for approval of zoning plans or plans required to accompany applications for building permits.
 - (3) Any application for plat or subdivision plan approval filed before the effective date of this Code is governed by the subdivision procedures in effect immediately preceding this Code. Any application for plat or subdivision plan approval filed after such date shall be processed under the requirements of this Code.
 - (4) This Code applies to divisions of land and other developments within the City’s ETJ, except as otherwise expressly stated in the regulations or as may be prohibited by law.

Sec. 82-04. - Definitions.

- (a) *Usage and Interpretation.*

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- (1) Usage. For purposes of this Code, words and phrases have the meanings set forth below.
- (2) Conflicts. When words and terms are defined herein and are also defined in other ordinance(s) of the City, they are to be read in harmony unless there exists an irreconcilable conflict, in which case the definition contained in this section controls.
- (3) Present and Past Tenses. Words used in the present tense include the future tense; words used in the masculine gender include the feminine gender; words used in the singular number include the plural number; and words used in the plural number include the singular number.
- (4) Specific Word Usage.
 - a. The word “shall” or “will” is mandatory and not discretionary.
 - b. The word “may” is permissive.
 - c. The word “including” shall be construed as meaning “including, but not limited to”.
 - d. The word “includes” shall be construed as meaning “includes, but is not limited to”.
 - e. The words “applicant”, “developer”, “owner”, “person”, or “individual” shall include corporations, partnerships, associations, and groups acting together as a single entity.
 - f. The word “year” means 365 calendar days.
 - g. The word “month” means 30 calendar days.
 - h. The word “developer” is not, in all cases, interpreted as a reference solely to the property owner. The Director may interpret “developer” to mean the property owner or persons acting on behalf of the property owner as an agent to which the Director may require written affirmation of this relationship.
- (5) Words Not Defined. Terms not herein defined have the meaning assigned to them in the City’s building code(s) or other applicable City code. Terms

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not herein defined nor defined in any applicable City code have the meaning customarily assigned to them in the planning and zoning profession.

(6) Interpretation. In the event a word or phrase used in this Code is unclear or ambiguous, any interpretation shall be made in a manner that uses reasonable judgment to apply the intent and purpose of regulations to the specific situation in question. The Director of Development Services (“Director”), or such other official as designated by the City Manager, shall have the authority, upon request of an affected person, to interpret unclear or ambiguous words and phrases.

(b) Definitions.

100-year floodplain means the land area that may be affected by the flood having a one percent (1%) chance of being equaled or exceeded in any given year, based upon a fully developed watershed and the capacity of a creek or other drainageway to accommodate stormwater runoff from a 100-year storm event.

Abutting means adjacent, adjoining and contiguous to; it may also mean having a lot line in common with a right-of-way or easement, or with a physical improvement such as a street, utility line, park, open space, etc.

Access means an approach or entrance to a property either from a public right-of-way or via a private way, alley, easement or other right of passage.

Adequate facilities plan (“AFP”) means a written plan that ensures that an adequate level of public facilities and services is available to efficiently serve the proposed and existing development.

Alley means a minor right-of-way which provides a secondary means of vehicular access to abutting properties for delivery or public service purposes.

Block means a grouping of residential lots (and their alleys) that are partially or fully surrounded by one or more streets. A block consists of one or two tiers of lots. Lots that are separated by an alley are in the same block, but lots that are separated by a street are in different blocks.

Building means any structure which is built for the support, shelter, or enclosure of persons, animals, machinery, equipment, or movable property of any kinds.

Building line or *building setback line* means a line that is parallel, or

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approximately parallel, to the street right-of-way line at a specific distance therefrom and defines an area on the building lot, or tract, between the street right-of-way lines and the building line within which no structure shall be constructed.

Commission means the City's Planning and Zoning Commission.

Comprehensive Plan means the City's adopted planning document and maps, to include the City's *Thoroughfare Plan*, along with any amendments, which is used as a guide for future development of the City and its surrounding areas.

Corner lot means a lot or parcel of land bound on two (2) sides, usually at a 90-degree angle, by public streets.

Council means the governing body of the City of Kerrville.

County means Kerr County, Texas.

Crosswalk means a public right-of-way generally not more than six feet (6.0') in width between property lines which provides pedestrian circulation.

Cul-de-sac means a street having only one vehicular access to another street and terminated by a vehicular turnaround.

Dead-end street means a street, other than a cul-de-sac, with only one vehicular outlet.

Development means any activities related to the division of land or installation of improvements thereon, including the construction, reconstruction, conversion, or enlargement of buildings or structures; the construction of impervious surfaces, including parking lots; the installation of streets, water, wastewater, drainage (stormwater) or park facilities, utilities, or other infrastructure; or any disturbance of the surface or subsurface of the land in preparation for such construction activities, including grading, drainage, storage, paving, clearing, filling, and/or removal of vegetation or soil, and any mining, dredging, excavation, or drilling operations. "Development" includes such activities on a previously platted lot or tract.

Double-frontage lot means a building lot, not a corner lot, which has frontage on two (2) streets that are parallel or within forty-five (45) degrees of being parallel to each other.

Driveway means the paved or improved access, approach, or entrance to a property

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either from a public right-of-way or via a private way, alley, easement, or other right of passage.

Easement means a right that is granted to the City, to the public generally, and/or to a private entity for the purpose of limited public or semi-public use across, over, or under private land. It may include a street right-of-way.

Extraterritorial jurisdiction ("ETJ") means the unincorporated area this is contiguous to the corporate boundaries of the City pursuant to Chapter 42, Texas Local Government Code, and as may be expanded or contracted from time to time by operation of state law or by agreement.

Final plat means the map or plat of a proposed subdivision submitted to the City for approval by the Commission.

Front or *frontage* means that portion of a tract of land which abuts on a street to which it has direct access.

Homeowners Association ("HOA") means a community association which is organized within a development in which individual owners share common interests and responsibilities for open space, landscaping, amenities, or facilities, and which operates under recorded land agreements. This term also includes a Property Owners Association (POA) and Property Management Corporation (PMC), which are more typically formed for multi-family and nonresidential developments.

Lot means a physically undivided tract or parcel of land having access to a street and which is, or in the future may be, offered for sale, conveyance, transfer, lease, or improvement, which is designated as a distinct and separate tract and may be identified by a lot number or tract symbol on an approved subdivision plat which has been properly recorded.

Lot depth means the horizontal distance measured perpendicularly between two points on the front lot line and two points on the rear lot line which creates an area that meets (or exceeds) the zoning district's minimum width and depth requirements.

Lot width means the horizontal distance measured between side lot lines parallel to the front lot line, measured along the front building line.

Master plan(s) means the *Thoroughfare Plan, Parks and Recreation Master Plan, Water Master Plan, Wastewater Master Plan, Stormwater Master Plan* and other master plans adopted, or that may in the future be adopted, by the City.

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Off-site improvements means all required improvements beyond the property limits of the subdivision.

On-site improvements means all required improvements within or contiguous to the proposed subdivision.

Open space means public and private property under public or common ownership designated for recreational use, private park, play lot area, building setback and ornamental areas open to general view within the development, areas to be retained for views and vistas, wild-life preserves, and land set aside for drainage ways. No parking shall be permitted in lands defined as open space.

On-site sewage facility or *OSSF* means an on-site wastewater system capable of complying with the current rules and regulations of the State of Texas and the County or any other applicable local entity.

Pavement width means the portion of the surface of a street available for vehicular traffic. Where curbs are laid, "pavement width" shall be measured from back of curb to back of curb. In the absence of curbs, it is that portion of vehicular improvements.

Person means any individual, association, firm, corporation, governmental agency, or political subdivision.

Plat means a map drawing or plan identifying the layout of a subdivision and includes a preliminary plat, final plat, minor plat, amending plat, and replat.

Pollution means any substance which would generate, produce, or discharge any matter or thing into the atmosphere, surface of land, or water courses, including noise or odor, which violates state, federal, or local laws and/or is offensive to a person of ordinary sensibilities.

Preliminary plat means the first or introductory plat of a proposed subdivision submitted to the Commission.

Public facilities system means the collection of water, wastewater, roadway, drainage (stormwater), or park facilities owned or operated by or on behalf of the City for the purpose of providing services to the public, including existing and new developments.

Public infrastructure or *public improvement(s)* means a street, water, wastewater, drainage (stormwater), sidewalks, park facilities, utilities, and other improvements

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that is a part of one or more of the public facilities systems.

Record drawings sometimes referred to as “as-builts”, means a group of drawings or plans that depicts the final configuration of the installed or constructed improvements of a development, improvements which have been verified by the contractor as their installation or construction occurs during development, reflecting the construction plans, or working drawings, used, corrected, and/or clarified in the field and signed by the project’s design engineer.

Remainder tract means any portion of a larger parcel that is not included within the boundaries of a subdivision plat.

Replat means a preliminary plat or final plat for all or part of any block or blocks of a previously platted subdivision, addition, lot or tract, other than an amending plat, whether or not the prior plat for the subdivision is proposed for vacation.

Rural road means a rural road that does not meet the City’s street standards.

Sidewalk(s) means a paved pathway, normally located within public right-of-way or within a pedestrian easement, which is typically used by pedestrian traffic, bicycles, and other non-motorized personal conveyances.

Street(s) means an access way for vehicular traffic and other public uses, whether designated a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, or however otherwise designated. An alley is not considered a street. Streets include the following types:

- (1) An *arterial street* means a principal traffic artery or traffic way, generally having continuous routing over long distances, whose function is to serve as a principal connecting street with state and federal highways and shall include each street designated as an “arterial” on the *Thoroughfare Plan*.
- (2) A *collector street* means a street whose primary function is to collect and distribute traffic between major thoroughfares and minor streets, is not necessarily having continuous routing for long distances, generally has intersections at-grade providing direct access to abutting properties, and shall include each street designated as a “collector” on the *Thoroughfare Plan*.
- (3) A *local street* means a street whose primary function is to provide access to abutting residential property within neighborhoods, with all intersections

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at-grade, and not having continuous routing for any great distances to discourage through traffic.

- (4) A *marginal access street* means a street whose primary function is to provide a buffer between a subdivision fronting along an arterial street or highway. The purpose of these streets is to allow better through-traffic movement along arterials while preserving low-density residential living environments.
- (5) An *access street* means a street that provides access to cluster housing unit developments limited to 10 dwelling units or less. Access streets provide direct vehicular access to individual garages, drives or common parking courts.

Subdivide or *subdivision* means the division of a tract of land into two or more parts by using metes and bounds description in a deed conveyance, a contract for deed, or by another manner such as platting, for the purpose of:

- (1) Laying out a subdivision of any tract of land or any addition to the City;
- (2) Laying out suburban lots or building lots or any lots; or
- (3) Laying out streets, alleys, or parks or other portions intended for public use or the use of the purchasers, owners, or lessees of lots fronting thereon or adjacent thereto.

Subdivision application means a request for approval of a plat or subdivision plan required to initiate the division or development of land.

Subdivision plan means an adequate facilities plan or construction plans. A subdivision plan excludes a zoning plan and/or approvals required pursuant to the City's Zoning Code.

Subdivision regulations or “*these regulations*” means the standards and procedures for property development and division, adopted by the Council by ordinance, as may be amended from time to time.

Technical Construction Standards and Specifications (“*TCSS*”) means the City's latest adopted edition of standards and specifications applicable to the construction of public infrastructure or public improvements, as approved by the City Engineer.

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Texas Commission on Environmental Quality (“TCEQ”) means the environmental agency for the state or its successor.

Thoroughfare Plan means the City’s adopted planning document and maps, along with any amendments or supplements, which is used as a guide for the layout and configuration of major and secondary streets and highways and is a component part of the Comprehensive Plan.

Undevelopable lot means a lot that is unbuildable or cannot be feasibly developed due to conditions such as shape, size, topography, amount of floodplain or floodway, unable to meet setbacks, unable to meet minimum size requirements for lots or improvements, lots less than one acre in size located in the ETJ, unable to accommodate utilities to serve the lot, incapable of meeting all applicable requirements for constructing utilities and buildings, or other impairments to lawful development.

Vested right means a right of an applicant in accordance with Chapter 245, Texas Local Government Code, as amended, requiring the City to review and decide the application under standards in effect prior to the effective date of the standards of the subdivision regulations or any subsequent amendments thereto.

Waiver, major has the meaning set forth in Sec. 82-37.

Waiver, minor has the meaning set forth in Sec. 82-37.

Wastewater means a waterborne industrial waste, recreational waste, domestic waste, or combination of these wastes, as defined by the TCEQ.

Zoning plan means a concept plan, site plan, or similar document required to determine compliance with land use regulations which are authorized under Chapter 211, Texas Local Government.

Sec. 82-05. - Platting Required.

(a) *Duty to file plat.* Except as otherwise provided in Sec. 82.06, the owner of land located within the City or extraterritorial jurisdiction who proposes to divide or develop the land shall have a plat of the land approved as provided in this Code. A division of land under this section includes a division of land by metes and bounds, or in a contract for a deed, contract of sale, or other executory contract for conveyance. No improvements to the land shall be commenced or any type of development or building permit shall be issued until compliance

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with this Code is achieved.

(b) *Exemptions.* The following subdivisions are exempted from the above-stated platting requirement:

- (1) A conveyance of land by dedication, lease, or sale to a public agency for a street or other type of right-of-way, utility line, or drainage facility, provided that said conveyance is accepted and approved by the public agency.
- (2) Leases, including a lease of public property at the Kerrville Airport.
- (3) Any property subdivided prior to February 12, 2012, provided that each part of the subdivided property was adequately served by the following after the subdivision:
 - a. Streets constructed and previously accepted for maintenance by the City or County, whichever is applicable;
 - b. Water improvements as currently required by this or other applicable ordinances;
 - c. Wastewater or individual OSSF disposal system as currently required by this or other ordinances;
 - d. Storm drainage facilities as currently required by this or other applicable ordinances; and
 - e. Easements or rights-of-way as may be currently required by this or other applicable ordinance for the installation of any of the above-stated improvements.
- (4) In accordance with Section 212.004(a), Texas Local Government Code, the division of land into two or more parts provided that:
 - a. all parts after the division of land are larger than five acres;
 - b. no public improvement is required by this Code to be dedicated; and,
 - c. after the division, each part has access.

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For purposes of this subsection, “access” means connection to an existing public right-of-way abutting each part of the subdivided property, on which right-of-way is constructed a publicly maintained paved street or road, unless access by some other means has been previously approved by the City. A person proposing to divide land under this subsection may apply for an exemption determination from the Director.

Sec. 82-06. - Authority of decision makers.

- (a) *General Delegation.* All actions set forth in this Code for matters not designated for decision by the Commission or reserved to the City Council or otherwise expressly delegated hereby are delegated to the Director.
- (b) *City Engineer.* The City Engineer, or designee (“City Engineer”), is the responsible official for approval of construction plans, preparing rough proportionality determinations, overseeing construction management, and promulgating standard specifications applicable to subdivision approvals.
- (c) *Director.* The Director is responsible for filing plat and subdivision plan applications; for preparing recommendations for approval, conditional approval, or disapproval of plat and adequate facilities plan applications to the Commission; for promulgating requirements for such plat or plan applications; for deciding exemption requests; and for approving adequate facilities plans. In carrying out these duties, the Director shall consult with the City Engineer and other City departments and officials and his or her recommendations shall reflect such communications.
- (d) *Planning and Zoning Commission.* The Commission is responsible for approving plats and granting specified waivers to platting requirements.
- (e) *City Council.* City Council is responsible for reviewing appeals from rough proportionality determinations and waiver requests and for adopting changes to the subdivision regulations.

Sec. 82-07. - Filing fees.

- (a) *Establishment and Amendment of Filing Fees.* A schedule of filing fees for plat and subdivision plan applications shall be established by City Council by resolution or ordinance, as amended from time to time.
- (b) *Fees Non-refundable.* All filing fees are nonrefundable.

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Sec. 82-08. - Enforcement.

(a) *Commission authorization required.*

- (1) No plat of any subdivision within the City or its ETJ shall be recorded in the Real Property Records of the County, and has no validity until such has been approved by the Commission in the manner prescribed by this Code.
- (2) No changes, erasures, modifications, or revisions shall be made in any plat of a subdivision after approval has been given by the Commission and endorsed in writing on the plat, unless such changes are approved by the Commission.
- (3) Until a final plat has been approved by the Commission and filed for record in the Real Property Record of the County, no person shall transfer title of any parcel of such land, nor shall there be initiated any construction of residences or other buildings or private wastewater disposal systems, nor shall any such property be served with public utilities. This prohibition does not apply to the construction of approved streets and utilities, provided that said utilities do not become operable and serve the development until such time as the final plat is approved and recorded.

(b) *Withholding Permits and Services.*

- (1) The City shall not issue a permit for construction on a lot in a subdivision or development for which a final plat has not been approved and recorded.
- (2) The City shall withhold all public improvements, including the maintenance of streets and the furnishing of wastewater facilities and water service, to a subdivision or development for which a final plat has not been approved and recorded.

(c) *Enforcement.*

- (1) Any person violating any of the provisions of this Code shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalty provided in the Code of Ordinances.
- (2) The City shall have the right to institute an action in an appropriate court to enjoin the violation of any provision of this Code.

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- (3) The City may institute an action to recover damages from the owner of a tract of land in an amount adequate for the City any construction or other activity necessary to bring about compliance with a requirement of this Code. "Owner" does not include the purchaser of an individual lot in a subdivided tract of land.
- (d) *Severability.* If any section, paragraph, subdivision, clause, phrase, or provision of the ordinance adopting the Subdivision Code is adjudged invalid or held unconstitutional, the same shall not affect the validity of the ordinance or this Code as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

ARTICLE II. PLATTING PROCESS - GENERAL PROVISIONS

Sec. 82-20. - Stages of subdivision approval.

- (a) *Platting Sequence.* Except for minor plats, amending plats, and certain replats described in Article III, the City's review and, where appropriate, approval of a subdivision is subject to three or four separate stages. Approval is required for each stage before the City will accept an application for the next stage of the sequence for filing. The stages occur in the following sequence:
 - (1) Adequate facilities plan (AFP);
 - (2) Preliminary plat;
 - (3) Construction plans; and
 - (4) Final plat.

(b) *Sequence to be followed.*

- (1) No required plat or subdivision plan may be submitted for filing simultaneously with another required plat or subdivision plan, except under the alternative procedure provided in Sec. 82-22. No required plat or subdivision plan may be approved unless a required prior plat or subdivision plan has been approved or conditionally approved. Approval is required before the City will accept an application for the next stage of the sequence.
- (2) Unless otherwise indicated in the action taken on an application,

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conditional approval means that conditions shall be satisfied prior to the approval of a subsequent plat or subdivision plan. Disapproval of an application means that the applicant may not proceed to the next stage of subdivision approval until the grounds for disapproval have been satisfied.

Sec. 82-21. - Application procedures.

(a) *Pre-application conference.*

- (1) Before a person may submit an application for approval of a plat or subdivision plan approval to the City, an applicant shall meet with the Director to review the following matters:
 - a. the sequence of stages required prior to approval;
 - b. any claim of exemption for a contemplated division of land;
 - c. prerequisites to filing the initial application;
 - d. any request for major waivers to the subdivision regulations; and
 - e. complete application requirements.
- (2) The following authorizations are required prior to submittal of an initial subdivision application for approval, unless a major waiver is approved waiving the requirement:
 - a. For property within the City, zoning approval for the contemplated use(s) of the property to be divided or the developer has applied for a zoning change simultaneously with the subdivision application;
 - b. Texas Department of Transportation approval for any contemplated modification(s) to a state-owned or -maintained roadway, to include access;
 - c. Approval of amendments to the City's adopted *Thoroughfare Plan* or other master plan for public facilities and services necessary to serve the proposed development;
 - d. Any requested vested rights determination; and

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- e. Any request for a major waiver to the subdivision regulations.
- (3) At the pre-application conference, the applicant may elect in writing to an alternative procedure pursuant to Sec. 82-22.
- (4) No subdivision application will be accepted for filing at the pre-application conference.

(b) *Official submittal dates.*

- (1) A person may only submit a subdivision application, documents for removal of conditions imposed on a plat or subdivision plan application, or documents for satisfaction of grounds for denial of a subdivision, on an official submittal date.
- (2) The City shall establish and publish annually on its website a monthly schedule of official submittal dates, which is subject to change.
- (3) An applicant shall schedule a meeting with the Director on the official submittal date in order to review the proposed subdivision application.
- (4) A subdivision application shall not be accepted for filing on an official submittal date and shall be returned to the applicant in the following circumstances:
 - a. Prerequisite authorizations have not been obtained;
 - b. A prior required application has not been approved;
 - c. A proposed major waiver is pending for decision;
 - d. The subdivision application is not complete; or
 - e. The applicant has not submitted the filing fee.
- (5) If a subdivision application has been returned to the applicant for incompleteness following an initial review, the application shall be accepted for filing on the next official submittal date that it is submitted by the applicant. If any of the items in subsection (b)(4), above, have not been resolved, the application shall be placed on the Commission agenda for summary denial. No further materials in support of the application shall be

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filed after the application has been accepted for filing. An applicant may elect to withdraw an application prior to the Commission decision on the application.

(c) *Complete application determination.*

- (1) The Director shall perform a completeness determination for the application within 5 days of the official submittal date.
- (2) In addition to any requirements stated in this Code, the Director, in consultation with the City Engineer, shall promulgate standards for a complete application for each plat or subdivision plan, such standards to be in conformance with this Code and published on the City's website.
- (3) The Director shall accept the application as complete or provide a list of deficiencies to the applicant that render the application incomplete.
- (4) The Director shall deny and return any subdivision application that remains incomplete after acceptance for filing.

(d) *Thirty-day decision process.*

- (1) Approval by Commission. The Director shall prepare a report on a proposed plat or subdivision application. The adequate facilities plan shall be considered for approval as described in subsection (d)(2), below. The Commission, upon consideration of the Director's report, shall approve, approve with conditions, or disapprove a preliminary plat, final plat, or other plat within 30 days after the date the plat or adequate facilities plan application is filed. A plat is deemed approved unless it is conditionally approved or disapproved by the Commission within that period in the manner provided in subsection (d)(4), below.
- (2) Approval of Adequate Facilities Plan ("AFP"). The Director shall approve, approve with conditions, or disapprove an adequate facilities plan within 30 days after the date the AFP application is filed. An AFP is deemed approved unless it is conditionally approved or disapproved within that period in the manner provided in subsection (d)(4), below.
- (3) Approval of Construction Plans. The City Engineer shall approve, approve with conditions, or disapprove construction plans within 30 days after the date the construction plans application is filed. A construction plan

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application is deemed approved unless it is conditionally approved or disapproved within that period in the manner provided in subsection (d)(4), below.

- (4) Documentation for Conditional Approval or Disapproval. The Commission or the Director, as the case may be, shall provide the applicant a written statement that clearly articulates each specific condition for conditional approval or reason for disapproval of the plat or subdivision plan. Each condition or reason specified in the written statement shall be directly related to the requirements of this Code and include a citation to the applicable law, including state or local laws, that is the basis for the conditional approval or disapproval. The Commission or Director shall identify the stage of the subdivision approval process by which the time for satisfaction of each condition or reason for approval imposed on the application shall be satisfied.
- (5) Extension by Agreement. The applicant may request in writing and the Commission may approve the request for an extension of the time for plat or subdivision plan approval required by subsection (d)(1), above, for a period not to exceed 30 days. The written request shall be made at least 15 days prior to the time scheduled for a decision on the application. If an extension is granted, the applicant may submit additional materials in support of the application no later than 20 days before the date the Commission is scheduled to review the application.

(e) Post-decision procedures.

- (1) Applicant's response. After the conditional approval or disapproval of a plat or subdivision plan under subsection (d)(4), above, the applicant may submit to the Commission or the responsible official, as the case may be, on an official submittal date, a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval. The Commission or responsible official shall disapprove any response that does not address all of the conditions or reasons for disapproval. When the Director or City Engineer determine that a condition may be satisfied at the next stage of subdivision approval, the applicant need not submit a response before application is made for the next plat or subdivision plan in the sequence of approvals.
- (2) Reply to applicant's response. The Commission or the responsible official, as the case may be, that receives an applicant's response in accordance with

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subsection (e)(1), above, shall determine whether to approve or disapprove the plat or subdivision plan not later than the 15th day after the date the response was submitted. The Commission or the responsible official, as the case may be, shall approve the plat or subdivision plan if the response adequately addresses each condition of the conditional approval or each reason for the disapproval. If the Commission or responsible official disapproves the plat or subdivision plan, the Director shall then provide the applicant with a written statement that clearly articulates each reason for disapproval in the manner provided in subsection (d)(4), above. Following timely disapproval of the plat or subdivision plan, a new application for the plat or subdivision plan will need to be filed. If the response meets the criteria in subsection (e)(1), above, and the Commission or responsible official, as the case may be, fails to act upon the response as required by this subsection, the plat or subdivision plan shall be deemed approved.

- (3) Delegation and appeal. The Director is authorized, and hereby designated as a municipal authority, to take action on and prepare a reply to an applicant's response to conditional approval or disapproval of a plat or an adequate facilities plan in the event the Commission is unable to meet within the 15-day period required by subsection (e)(2), above. The City Engineer is authorized to take action on and prepare a reply to an applicant's response to conditional approval or disapproval of construction plans. An applicant may appeal the decision of the Director or the City Engineer to the Commission. An applicant may also elect to have the Commission take action on and make the reply by agreeing in writing to have the response considered at the next scheduled Commission meeting.
- (f) *Exceptions to thirty-day decision process.* The 30-day decision process and post-decision procedures described in subsections (d) and (e), above, do not apply to the following proceedings:
 - (1) Any request for relief provided for in this Code, including an application for any waivers from the standards or procedures;
 - (2) Any appeal provided for in these regulations, including an appeal from a vested rights determination;
 - (3) Any action by the City Council on the City Engineer's rough proportionality determination, including an appeal taken by an applicant;
 - (4) Any actions taken to modify an approved final plat;

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- (5) Inspections of improvements;
- (6) Any actions taken after plat recordation, other than a replat or amending plat;
- (7) Any request to extend plat or subdivision plan approval beyond an expiration date; or
- (8) Any matter requiring authorization prior to submittal of a plat or subdivision plan application identified in subsection (a)(2), above.

(g) Certification.

- (1) If a plat or subdivision plan is approved, the Commission or the responsible official, as the case may be, shall endorse the approved plat or subdivision plan with a certificate indicating the approval. Where approved, the certificate shall be signed by the chair of the Commission. The City Engineer is responsible for approving all construction plans, technical notes, and/or the dedication of improvements and property interests.
- (2) If a plat or subdivision plan application is deemed approved pursuant to subsections (d)(1) or (e)(2), above, the Commission or the responsible official, as the case may be, shall issue a certificate stating the date that the plat or plan application was filed and that the Commission or the responsible official failed to act on the application within the prescribed period.

(h) Expiration and extension of an approved plat or subdivision plan.

- (1) Expiration date. Except as otherwise provided in this Code, unconditional approval of a plat or subdivision plan application or conditional approval where all conditions may be satisfied at a subsequent stage of subdivision approval, expire 2 years from the date of approval, unless the applicant submits and receives approval for a required subsequent application for approval. Unconditional approval of a preliminary plat expires 2 years from the date of approval, if a final plat has not been submitted to the City.
- (2) New application required. Following expiration of an approved plat or subdivision plan, a new subdivision application is required unless the date for expiration has been extended in accordance with this section.

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- (3) Project expiration. Following expiration of an approved plat or subdivision plan, the project defined by a prior-approved subdivision application shall be deemed to have expired within 5 years from the date of the last prior approval, unless a new subdivision application is made and approved for the expired plat or subdivision plan within such period, or unless progress toward completion of the project has otherwise been made in accordance with Section 245.005, Texas Local Government Code, such as completion of one or more phases, utility installations, and/or recorded final plats.
- (4) Extension request. An applicant may submit a request to the Director, or in the case of construction plans, to the City Engineer, for an extension of a plat or subdivision plan expiration date for a period not to exceed 1 year, if the request is filed at least 30 days before the date of expiration. Every request for extension shall include a statement of the reasons why the expiration date should be extended. More than one extension request may be filed.
- (5) Criteria for Approval of Extension Request. The Director shall take into account the reasons for the requested extension; the ability of the applicant to comply with any conditions attached to the original approval; whether extension is likely to result in timely completion of the project; whether the applicant has made a good faith effort to submit a complete application for the next required application, whether there are circumstances beyond the applicant's control, which have prevented submittal of an application for a subsequent stage of approval; and the extent to which newly adopted regulations should be applied to the original subdivision application.
- (6) Appeal to Commission. Denial of an extension request by the responsible official may be appealed to the Commission within 10 days of notification of the denial. In deciding the appeal, the Commission shall apply the criteria in subsection (h)(5), above.
- (7) Conditions. The responsible official, or the Commission on appeal, may attach conditions to approval of an extension request such as are needed to assure that the land will be developed in a timely fashion and that the public interest is served.
 - (i) Withdrawal of application. The applicant for a plat or subdivision plan approval may withdraw the subdivision application following the City's acceptance for filing but no later than 4 days before the time of the scheduled decision on the subdivision application. Following withdrawal, the applicant shall submit a

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new subdivision application, including the fee.

Sec. 82-22. - Alternative procedures.

- (a) *Purpose.* The alternative procedures in this section are intended to facilitate the development of a complete subdivision application for each stage of subdivision approval. This process will allow an applicant to have components of their submittal reviewed ahead of an application for a plat or subdivision plan to assure that prerequisites to subdivision approval have been met and that a subdivision application is complete for Commission or responsible official review before the time periods in Sec. 82-21 begin to run.
- (b) *Initial stage procedures.* At the time of the pre-application conference and submittal of an adequate facilities plan or preliminary plat application, an applicant may notify the Director in writing that he or she desires to utilize the alternative procedures provided in this section. If the request to utilize the alternative procedures is approved by the Director, an applicant may submit simultaneously an application for an AFP, where required, and an application for preliminary plat approval.
- (c) *Staff review and application processing.* The Director shall convene necessary staff and others to review the application(s) in order to identify any prerequisites to completeness of the application(s) and shall assist the applicant in satisfying such requirements. To the extent reasonably possible, the responsible official shall expedite approval of any prerequisites to completing the application(s). When the application(s) is complete in accordance with application standards, the responsible official shall accept the application(s) for filing on the next official submittal date. Thereafter, the procedures in subsections 82-21(d) and (e), above, apply.
- (d) *Second stage procedures.* Following approval or conditional approval of the adequate facilities plan and/or preliminary plat, the applicant may elect in writing to utilize the alternative procedures for applications for construction plans and final plat approval at the pre-application conference for construction plans or on any official submittal date. Thereafter, an applicant may submit simultaneously an application for construction plans approval and an application for final plat approval. The procedures in subsection (c), above, apply to review and processing of these applications.
- (e) *Applicant's options.*

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- (1) An applicant who has submitted an application for a plat or subdivision plan approval may opt into the alternative procedures under this section by executing the election in writing and by withdrawing his or her subdivision application pending for decision by the Commission or by the responsible official at least 5 days prior to the time scheduled for decision on the application. No additional filing fees will be charged for such election. Thereafter, the alternative procedures shall apply to processing the subdivision application.
- (2) An applicant may withdraw from use of the alternative procedures by notifying the responsible official in writing and by submitting the application for a plat or subdivision plan approval on an official submittal date in the sequence required by Sec. 82-21.
- (3) Where an application for a plat or subdivision plan approval has been denied or is subject to a condition that shall be satisfied before the time of submitting a subsequent application, an applicant may elect in writing to consult with the Director and other staff prior to submitting a response that satisfies the reasons for denial or the condition(s) as otherwise required by subsection 82-21(e).

ARTICLE III. PLATTING PROCEDURES

Sec. 82-30. - Platting procedures; adequate facilities plan.

- (a) *Purpose.* The purpose of an adequate facilities plan is to assure that specific subdivisions, as described in subsection (b), below, are served with adequate, streets, water service, wastewater services, drainage (stormwater) and flood control, parks, and other facilities for each phase of the subdivision or development. An AFP shall delineate the sequence and timing of development within a proposed subdivision or development, where the tract to be developed is relatively large, will be developed in phases, or is part of a larger parcel of land owned by the applicant, in order to determine compliance with the Comprehensive Plan and the availability and capacity of public improvements needed to serve the development, both now and into the future.
- (b) *Applicability.* An adequate facilities plan shall be required for any of the following proposed subdivisions and developments:
 - (1) any division of land where proposed development of the tract is to occur in phases;

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- (2) any division that creates a remainder tract;
- (3) a proposed residential subdivision containing 25 or more residential units or lots; or
- (4) a proposed non-residential subdivision of 1 or more acres.

(c) *Remainder tract.*

- (1) Remainder tracts will not be considered lots or tracts of the subdivision. A plan for the future development or subdivision of remainder tracts will be reviewed with the application for adequate facilities plan. The City Engineer may require an adjustment in the number of acres included in the subdivision plat to comply with the standards applicable to the plat or plan.
- (2) The City shall not accept a subdivision application for a remainder tract for filing until a final plat has been approved for the first phase of the adequate facilities plan.
- (3) A remainder tract shall not be an undevelopable lot.

(d) *Submittal requirements.* An application for an adequate facilities plan shall be submitted to the Director. The application for the AFP shall include the following information and documentation:

- (1) A copy of all required pre-authorizations set forth in subsection 82-21(b);
- (2) Names and addresses of the subdivider(s), record owner, land planner, engineer, or surveyor, when applicable;
- (3) Proposed name of the subdivision;
- (4) Location in relation to the rest of the City and boundaries of proposed subdivision;
- (5) A schematic layout of the entire property to be subdivided, including any remainder tracts, and the property's relationship to adjacent property and existing adjoining developments;
- (6) Designation of each phase of development within the subdivision, the order of development, and a proposed schedule for the development of each phase

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of the development;

- (7) Proposed major categories of land use for each phase, showing existing and proposed zoning, if applicable;
- (8) Proposed and existing arterials and collector streets to serve the land to be platted consistent with the *Thoroughfare Plan*;
- (9) Location of proposed sites for parks, schools, and other public uses as consistent with those required by the Comprehensive Plan;
- (10) Location of significant natural drainage features including drainage courses and other natural areas;
- (11) Location of significant man-made features such as streets, buildings, utilities, or other physical structures;
- (12) Proposed dedication of land, including rights-of-way, for the construction and placement of public improvements, whether on-site or off-site, intended to serve each proposed phase of the subdivision, such as streets, utilities, and drainage facilities;
- (13) A detailed statement of how the proposed subdivision will be served by water, wastewater, roadway, and drainage facilities that have adequate capacity to serve the development;
- (14) The following studies, where impacts on the City's public infrastructure systems from the development exceed the thresholds established in Article IV or as may be required by the City Engineer:
 - a. a traffic impact analysis ("TIA");
 - b. a drainage study; and/or
 - c. a utility plan; and
- (15) Any other requirements promulgated in writing by the Director and City Engineer.

(e) *Decision by City Engineer.*

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- (1) The City Engineer is the responsible official for processing an adequate facility plan. The procedures in Sec. 82-21 apply to an AFP submitted for approval.
- (2) The City Engineer, in consultation with the Director, shall approve, approve with conditions, or disapprove the adequate facilities plan based on the criteria for approval in subsection (g), below. In addition to other conditions, approval of the AFP may be conditioned on exclusion of land from the AFP, adjustments in the proposed sequence, or timing in the phases of the development. If approved with conditions, the City Engineer shall specify whether such conditions must be met at the time of preliminary plat or construction plans approval.

(f) *Appeal.* An applicant may appeal the City Engineer's disapproval of the adequate facilities plan to the Commission within 10 days following notification thereof. The appeal shall state with specificity why the AFP should be approved. The Commission shall approve, approve with conditions or disapprove the AFP in accordance with the criteria in subsection (g), below. Such conditions may address but are not limited to matters involving conformity with the City's Zoning Code (see Ch. 60, City's Code of Ordinances), the availability and capacity of public improvements, or the phasing of development. The Commission may require that a utility plan, drainage study, or traffic impact analysis that supports the subdivision be prepared as a condition of approval or reason for disapproval. In addition to other conditions, approval of the adequate facilities plan may be conditioned on exclusion of land from the AFP, or adjustments in the proposed sequence or timing in the phases of the development. The Commission shall specify whether any conditions to approval must be met at the time of preliminary plat or construction plans approval.

(g) *Criteria for Approval.* The following criteria apply to determine whether an adequate facilities plan shall be approved, approved with conditions, or disapproved:

- (1) The AFP is consistent with all existing or proposed zoning requirements for the property and any approved development or annexation agreements;
- (2) The proposed provision and configuration of streets, water, wastewater, drainage (stormwater), sidewalk, and park facilities generally conform to the master plans for such improvements;

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- (3) The streets, water, wastewater, drainage (stormwater), and park facilities serving the development have adequate capacity to accommodate the demands for services created by each phase of the development in accordance with the standards in Article IV;
- (4) A required TIA, drainage study, and/or utility plan has been properly prepared and supports the adequacy of such facilities to serve the proposed development;
- (5) The schedule of development for phased subdivisions is feasible and prudent and supports the development schedule;
- (6) The location, size, and sequence of the phases of development proposed assure orderly and efficient development of the land subject to the plat;
- (7) Where the proposed development is located in whole or in part within the ETJ and if subject to an interlocal agreement with the County pursuant to state law, the proposed AFP meets any County standards to be applied pursuant to the agreement.

(h) *Effect of Approval.* Approval of an adequate facilities plan authorizes an applicant to submit for approval of a preliminary plat for one or more phases of the subdivision. However, approval of the AFP does not reserve any type of utility capacity for the development. Infrastructure capacity may be reserved through the approval of the construction plans.

(i) *Expiration and Extension.*

- (1) Time of expiration. An adequate facilities plan that is approved, or approved with conditions, is valid for 2 years from date of such approval, but automatically expires without notice if the subdivider fails to receive approval, or conditional approval, for a preliminary plat by such date. Failure to meet said platting deadline to include where the Commission disapproves of a plat will result in the expiration of the AFP for that and any subsequent phases of the development. In addition, where an approved preliminary plat expires pursuant to Sec. 82-31, the AFP for that phase shall expire and for all other phases for which a preliminary plat or final plat has not been approved, is not pending for approval, or no longer remains in effect.
- (2) Extension. The expiration date for any phase of the development may be

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extended by the Commission for a period of not more than 1 year provided that a request for extension is made in writing by the subdivider at least 30 days before the expiration date of the AFP. Extension of the expiration date for the phase extends the expiration date for the AFP for a like period, including a requirement that one or more current development standards be applied to subsequent subdivision applications within the area subject to the AFP.

Sec. 82-31. - Platting procedures; preliminary plat.

- (a) *Purpose.* The purpose of a preliminary plat is to determine the general layout of the subdivision, the adequacy of public infrastructure needed to serve the intended development, and the overall compliance of the land division with the subdivision regulations.
- (b) *Submittal Requirements.* The following documents and verifications shall be submitted to the Director with the application for preliminary plat approval:
 - (1) The application shall include a statement describing the current ownership of the property. The owner or owner's representative shall verify such information by signature, with the representative to also submit an owner's affidavit or some other written proof affirming such information and the relationship.
 - (2) If required, a copy of the approved adequate facilities plan and documents addressing any conditions attached to the AFP, where satisfaction of the conditions has been delayed until the time of preliminary plat approval;
 - (3) Where an adequate facilities plan is not required, documentation that all pre-authorizations set forth in Sec. 82-21 have been obtained and a detailed statement of how the proposed subdivision will be served by streets, water, wastewater, drainage (stormwater), sidewalk, and park facilities that have adequate capacity to serve the development;
 - (4) A copy of the preliminary plat showing the scale, layout requirements, and technical standards as per the application checklist promulgated by the Director.
- (c) *Commission Decision.*
 - (1) The Director is the responsible official for processing preliminary plats in

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accordance with the procedures in Sec. 82-21.

- (2) Both the Director and the City Engineer shall submit reports to the Commission and the Commission shall thereafter approve, approve with conditions, or disapprove the preliminary plat based on the criteria for approval in subsection (d), below.
- (3) The Commission may impose such conditions on the approval of the preliminary plat as are reasonably necessary to assure compliance with the criteria in subsection (d), below. Such conditions may include that the applicant prepare a utility plan, drainage study, or traffic impact analysis that supports the subdivision.
- (4) The Commission shall specify whether such conditions must be met at the time of construction plans or final plat approval.

(d) *Criteria for Approval.* The Commission shall apply the following criteria to determine whether the preliminary plat shall be approved, approved with conditions, or disapproved:

- (1) The preliminary plat is consistent with all zoning requirements for the property if the property is located within the City's limits;
- (2) The proposed provision and configuration of public infrastructure including streets, water, wastewater, drainage (stormwater), sidewalk, park facilities, and corresponding easements or other property interests are adequate to serve the subdivision and conform to the master plans for those facilities;
- (3) Where the proposed preliminary plat is located in whole or in part in the ETJ and if subject to an interlocal agreement with the County pursuant to state law, the plat meets any County standards to be applied pursuant to the agreement;
- (4) The preliminary plat conforms to design requirements and construction standards set forth in Article IV, below; and
- (5) The proposed subdivision represented on the preliminary plat mitigates the impact of the proposed subdivision on public health, safety, or welfare.

(e) *Effect.* The approval of a preliminary plat authorizes the applicant to apply for

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approval of construction plans.

(f) *Expiration and Extension.*

(1) Procedures and Standards. Except as modified by this subsection, the provisions of subsection 82-21(h) apply to expiration and extension of preliminary plat approvals.

(2) Time of Expiration. A preliminary plat expires 2 years after approval if a final plat is not submitted to the City. If applicant does not submit and receive approval, or conditional approval, for construction plans or a final plat with appropriate surety within the 2 year period, the preliminary plat shall automatically expire without notice. A preliminary plat shall remain valid for the period of time in which approved construction plans are in effect.

(g) *Amendments to Preliminary Plat Following Approval.*

(1) Minor Amendments. Following approval of the preliminary plat, minor amendments may be made to the design of the subdivision by incorporating those into an application for approval of a final plat without the necessity of filing a new application for a preliminary plat. Minor amendments only include minor adjustments in street or alley alignments, lengths and paving details, and minor adjustments to lot lines that do not result in creation of additional lots or any non-conforming lots, provided that such amendments are otherwise consistent with the approved prior plat and subdivision plan.

(2) Major Amendments. All other proposed changes to the design of the subdivision subject to an approved preliminary plat will be deemed major amendments that require submittal and approval of a new application for approval of a preliminary plat before approval of construction plans and/or a final plat.

(3) Determination. The Director shall make a determination of whether proposed amendments are deemed to be minor or major, thereby requiring new submittal of a preliminary plat.

Sec. 82-32. - Platting procedures; construction plans.

(a) *Purpose.* The purpose of a construction plan is to assure that required public infrastructure be installed in accordance with all of the standards in Article

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IV. The approval of construction plans will serve as capacity reservation from the City for the infrastructure contained within said plans, subject to the conditions below.

(b) *Submittal requirements.* The following documents and verifications shall be submitted with an application for approval of construction plans:

- (1) Documentation that any conditions of an approved adequate facilities plan that have been deferred to the time of construction plan approval have been satisfied;
- (2) An approved preliminary plat showing that all conditions attached to approval have been satisfied;
- (3) Any request to defer construction of required public infrastructure until after final plat approval and recordation;
- (4) If construction of required public infrastructure will occur before final plat approval and recordation, documents evidencing the provision for the existence of on-site easements for utility providers and acquisition of off-site easements for placement of the improvements as required by subsection (d), below. The easements shall be filed of record in the Real Property Records of the County and the recording information shall be specified on the plat; and
- (5) The construction of improvements within all subdivisions and developments shall be in conformance with the *Technical Construction Standards and Specifications* pursuant to Article IV.

(c) *Decision by City Engineer.* The City Engineer is the responsible official for processing and approving construction plans. The City Engineer shall review and approve, approve with conditions, or disapprove the construction plans applying the criteria in subsection (f), below.

(d) *Timing of public improvements.*

- (1) Completion prior to final plat approval and recordation. A developer may complete all required public improvements in accordance with the approved construction plans prior to the approval of a final plat.
- (2) Completion before recordation of final plat. Unless an improvement

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agreement is executed pursuant to subsection (3), below, an approved final plat shall not be recorded in the real property records until after the public improvements have been completed by the owner and thereafter, inspected and accepted by the City.

- (3) Deferral of obligation. The City Engineer may defer a subdivider's obligation to construct public improvements upon execution of an improvement agreement, in a form approved by the City Attorney, and upon provision of adequate security pursuant to subsection (e), below. Such improvement agreement shall be executed and security provided before final plat approval if the subdivider wishes to defer construction of any public improvement.
- (4) Easements for utility providers. The applicant shall secure all necessary easements for utility providers prior to City releasing the plans for construction or final acceptance of utility infrastructure. This obligation may be fulfilled for an onsite easement by dedicating the easement on the final plat and may be fulfilled for any offsite easement as set forth in subsection (5), below.
- (5) Off-Site easements. All necessary off-site easements required for installation of required off-site public infrastructure to serve the subdivision shall be acquired by the applicant prior to the City releasing the plans for construction. This obligation may be attached as a condition of final plat approval if the City Engineer allows deferral of public infrastructure until after final plat approval and recordation. Off-site easements shall be conveyed and recorded in the real property records of the County by an instrument approved by the City.

(e) *Improvement agreement and security for completion.*

- (1) Contents of agreement. When construction of any of the required public infrastructure has been deferred until after final plat approval and recordation, the final plat will not be accepted for filing, nor will it be approved, unless and until the applicant enters into an improvement agreement with the City by which the applicant:
 - a. agrees to complete the improvements by a specified date;
 - b. warrants the improvements for 2 years following final acceptance by the City;

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- c. provides a maintenance bond in the amount of 110% of the costs of the improvements for such time period;
- d. provides for securing the obligations of the agreement consistent with subsections (4) and (5), below; and
- e. contains other terms and conditions as are agreed to by the applicant and the City or as may be required by these subdivision regulations.

(2) Agreement to run with the land. The improvement agreement shall provide that the covenants of the agreement contained therein shall run with the land and shall bind all successors, heirs, and assignees of the applicant. All existing owners shall be required to execute the agreement or provide written consent to the covenants contained in the agreement. The applicant shall record the agreement or evidence thereof in the County's real property records on a form approved by the City prior to submitting an application for final plat approval. The applicant shall thereafter return a copy of the filing to the Director.

(3) Decision by City Engineer. The City Engineer shall review the improvement agreement and shall approve it, approve it with conditions, or disapprove it. The agreement shall also be reviewed and approved by the City Attorney prior to any approval by the City Engineer. An improvement agreement shall not be considered final until the approved form is executed by the City and all existing owners.

(4) Security for completion of improvements.

- a. Type of security. When any of the required public infrastructure will be constructed after approval and recordation of the final plat, the applicant shall guarantee his or her construction obligations by an irrevocable letter of credit, cash deposit with the City, or bond executed by a surety company licensed to do business in the State of Texas and on a form provided by the City Attorney. The type of security required for each improvement shall be as agreed to by the City.
- b. Estimated cost and security approval. Security shall be issued in the amount of 110% of the estimated cost, in the sole opinion of the City Engineer, to construct and complete all required public infrastructure to City's standards. Security shall be subject to the review and approval of the City Attorney.

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- c. Security for Construction in ETJ. Where all or some portion of the public infrastructure will be constructed in the ETJ, the security shall be in a form and shall contain such terms as are consistent with the City's interlocal agreement with the County, where applicable. In cases where the requirements governing the form and terms of the security are defined in such interlocal agreement, they will supersede any conflicting provisions within these regulations.

(5) Escrow Policies and Procedures.

- a. Request for Escrow. The City Engineer may require, or the developer may petition the City, to defer required public infrastructure in exchange for a deposit of cash funds in escrow. The City Engineer may require studies and other information to support a developer's request to escrow funds. The parties will incorporate the provisions for escrow into the improvement agreement.
- b. Escrow Deposit. When the City Engineer requires or agrees to accept escrow deposits, the subdivider shall deposit funds in escrow in an amount equal to 110% of the total "turnkey" costs including the design, permitting, acceptance, and inflation costs related to the improvement(s). The City Engineer shall review and approve the amount, which shall be approved and paid prior to approval of the final plat.
- c. City usage of escrowed funds. The City may also use the escrowed funds in participation with another party to jointly construct the public infrastructure.
- d. Termination of escrow. Escrow funds which remain unused after a period of 10 years following the date of such payment shall, upon written request, be returned to the property owner or successor without interest if the recorded final plat is vacated. Such return of escrowed funds does not remove any obligations of the subdivider for construction of the required improvement(s).
- e. Refund. If funds are deposited in escrow for a public infrastructure that is constructed by a party other than the developer or City, any unused escrowed funds, upon written request, shall be refunded to the property owner, without interest, after completion and City acceptance of the improvement.

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(f) *Criteria for Approval of Construction Plans.* The City Engineer shall approve the construction plans if:

- (1) The plans are consistent with any deferred conditions attached to an approved adequate facilities plan;
- (2) The plans are consistent with the approved preliminary plat and any conditions attached thereto;
- (3) The plans conform to the standards of Article IV of these regulations;
- (4) An applicant has provided on-site easements and has acquired off-site utilities easements as required by subsection (d), above;
- (5) Postponing construction of public infrastructure until after final plat approval and recordation is appropriate and a financial guarantee is acceptable through an improvement agreement; and
- (6) An applicant has executed an improvement agreement and has posted security as required in subsection (e), above, if the obligation to construct public infrastructure has been deferred until final plat approval.

(g) *Effect.* Approval of construction plans authorizes the applicant to schedule a pre-construction meeting with the City in accordance with subsection 82-40(a) and to apply for the City to release the plans for construction or final acceptance of utility infrastructure in accordance with subsection 82-40(b). If the obligation to construct public infrastructure has been deferred until after final plat approval and recordation, approval of construction plans authorizes the applicant to apply for final plat approval.

(h) *Expiration and Extension.*

- (1) Procedures and Standards. Except as modified by this subsection, the provisions of subsection 82-21(h) apply to expiration and extension of construction plan approvals.
- (2) Expiration. Approved construction plans remain valid for a period of 1 year following the date of approval during which period, a developer shall commence and be diligently and continuously pursuing construction of the public infrastructure. If the developer does not undertake these activities as described above, the construction plans will automatically expire without

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notice. If the obligation to construct public infrastructure has been deferred until after approval and recordation of the final plat, the construction plans will expire upon the deadline to complete the improvements contained in the improvement agreement.

Sec. 82-33. - Platting procedures; final plat.

- (a) *Purpose.* The purpose of a final plat is to ensure that the proposed subdivision and development of the land is consistent with all standards of these subdivision regulations pertaining to the adequacy of public infrastructure, that public infrastructure to serve the subdivision have been installed and accepted by the City or that provision for such installation has been made, and that all other requirements and conditions have been satisfied or provided for to authorize the recording of the final plat.
- (b) *Submittal requirements.* The following documents and verifications shall be submitted to the Director with the application for preliminary plat approval:
 - (1) A copy of the approved preliminary plat and approved construction plans;
 - (2) If construction of any public infrastructure is to be delayed until after recordation of the final plat, an executed copy of the improvement agreement and security for completion required by subsection 82-32(e);
 - (3) Documents addressing any conditions attached to the approved preliminary plat or construction plans, where satisfaction of the conditions has been delayed until the time of final plat approval;
 - (4) A current title commitment issued by a title insurance company authorized to do business in Texas, a title opinion letter from an attorney licensed to practice in Texas, or other proof of ownership acceptable to the City, identifying all persons having an ownership interest in the property subject to the preliminary plat. Records from the Kerr County Appraisal District are not sufficient;
 - (5) A copy of the final plat showing the signatures of each owner, or owner's representative, authorized to sign legal documents for the owner(s), denoting that each owner is consenting to the platting of the property and to the dedications and covenants that may be contained in the final plat;
 - (6) Where the land to be platted is located in whole or part in the ETJ of the

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City and if subject to an interlocal agreement with the County pursuant to state law, the proposed plat meets any County standards to be applied pursuant to the agreement; and

(7) One paper bond copy of the final plat, as well as a PDF or other digital file in a format acceptable to the City and showing the following:

- a. Name and location of subdivision, date the drawing was prepared, graphic scale, and true north arrow;
- b. Location map at a scale of one inch (1.0") to one thousand feet (1,000.0');
- c. Lot and block numbers for each lot or tract;
- d. Certification of dedication of all rights-of-way, easements or property to be dedicated for public use, signed by the owner(s);
- e. An agreement waiving any claim for damages against the City occasioned by the alteration of the surface of any portion of existing streets or alleys to conform to the grade established in the subdivision;
- f. Certification by a Registered Professional Land Surveyor registered in the State of Texas to the effect that the plat represents a complete and accurate survey made on the ground;
- g. If the final plat is not a minor plat, a note referencing the date of approval of the preliminary plat by the Commission and its location in City records; and
- h. any other requirements as required by an application checklist as promulgated by the Director and available on the City's website.

(c) *Commission decision.*

- (1) The Director is the responsible official for processing final plats.
- (2) After consideration of the Director's report and the report of the City Engineer, the Commission shall approve, approve with conditions, or disapprove the final plat based on the criteria for approval in subsection (d), below.

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- (3) If the obligation to construct public infrastructure has been deferred until after approval and recordation of the final plat, the Commission may impose such conditions on the approval of the final plat as are reasonably necessary to assure compliance with the criteria for approval in subsection (d), below.
- (d) *Criteria for approval of final plat.* The Commission shall use the following criteria to determine whether the application for a final plat shall be approved, approved with conditions, or disapproved:
 - (1) The final plat conforms to the approved preliminary plat and may be approved without the necessity of revising the approved preliminary plat;
 - (2) All conditions imposed at the time of approval of the preliminary plat have been satisfied;
 - (3) Construction plans have been approved by the City Engineer;
 - (4) Where public infrastructure have been installed, the infrastructure conforms to the approved construction plans and have been approved for acceptance by the City Engineer;
 - (5) Where the City Engineer has authorized public infrastructure to be deferred, an improvement agreement has been executed and submitted by the property owner, and security and/or escrow in conformity with these regulations has been provided to the City;
 - (6) The final layout of the subdivision or development meets all standards for adequacy of public infrastructure to comply with these subdivision regulations;
 - (7) If applicable, the final plat meets all County standards to be applied under an interlocal agreement between the City and the County under Chapter 242, Texas Local Government, and where the proposed subdivision is located in whole or in part in the ETJ; and
 - (8) The plat conforms to design requirements and construction standards as set forth in Article IV, below.
- (e) *Effect.* The approval of a final plat supersedes any prior approved preliminary plat for the same land. The approval authorizes the applicant to install any

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improvements in public rights-of-way in conformance with approved construction plans, an improvement agreement as provided in subsection 82-32(e), and other City regulations.

(f) *Recordation of Plat.*

- (1) The applicant shall deliver to the Director the required number of signed and executed copies of the final plat that will be needed to file the plat in the real property records of the County.
- (2) The Director shall procure the requisite City approvals required on the plat.
- (3) The Director shall record the final plat if:
 - a. The final plat is approved by the Commission;
 - b. All required public infrastructure has been completed and accepted by the City, or an improvement agreement has been executed and appropriate security and/or escrow has been provided in accordance with these regulations;
 - c. All County filing requirements are met;
 - d. Where some of or all required public infrastructure are not yet completed in connection with an approved final plat, the applicant shall submit the final plat as approved by the Commission and revised to reflect any conditions imposed by the Commission as part of approval; and
 - e. If there has been any change in ownership since the time of the proof of ownership provided under subsection (b), above, the applicant shall submit a new consent agreement executed by each owner consenting to the platting of the property and the dedications and covenants contained in the plat. The title commitment or title opinion letter and consent agreement is subject to review and approval by the City Attorney.
- (4) Revisions to the recorded plat may only be processed and approved as a replat or amending plat under Secs. 82-35 or -36, respectively.

Sec. 82-34. - Platting procedures; minor subdivisions.

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- (a) *General delegation.* The Director, after consultation with the City Engineer, may approve a minor subdivision. The approval of a minor subdivision will be deemed to be the approval of a final plat for the subdivision, which may be recorded following approval.
- (b) *Applicability.* A proposed subdivision is eligible for minor subdivision approval if it meets each of the following standards:
 - (1) The division creates four or fewer lots;
 - (2) Each lot abuts and takes access from a public street that is constructed to current City specifications;
 - (3) City's water and wastewater systems are in place adjacent to each lot and there is no further extension of improvements for such systems; or, the lots are to be served by on-site water and wastewater facilities, which use is subject to compliance with applicable laws; and
 - (4) Drainage facilities to serve each lot have been constructed in accordance with an approved storm water drainage study for properties within the City.
- (c) *Submittal Requirements.* An application for minor subdivision approval shall be submitted to the Director, together with required number of copies of the minor subdivision drawn at an adequate scale as required by the application checklist promulgated by the Director and available on the City's website. Submission shall include the following:
 - (1) Authorization for any on-site water and wastewater facilities;
 - (2) Any storm water drainage study approved for the property; and
 - (3) If the street abutting the subdivision from which the lots will take access is substandard under current subdivision regulations, a waiver approved by Council authorizing approval of the subdivision without the necessity of improving the street to current standards.
- (d) *Processing and Decision.*
 - (1) The procedures in Sec. 82-21 apply to an application for minor subdivision approval.

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- (2) The Director shall approve the minor subdivision application if it meets the eligibility standards in subsection (b), above, within 30 days after the date the application is filed. Such division may not create an undevelopable lot. If an application does not meet the eligibility standards, the Director shall disapprove the application within such period. An applicant may then submit an application for preliminary plat approval to the Commission in accordance with these regulations.
- (3) The Director may refer the minor subdivision application to the Commission for a decision for any reason, such decision to be made within 30 days after the date the application is filed. The Commission shall decide the application at its next regularly scheduled meeting applying the criteria in subsection (b), above.

Sec. 82-35. - Platting procedures; re-subdivision.

(a) *Vacation of prior plat.*

- (1) Purpose. The purpose of a plat vacation is to provide an expeditious means of vacating a previously recorded plat in its entirety, consistent with state law.
- (2) Application.
 - a. By property owner. The property owner of the whole tract covered by a plat may submit an application to vacate the plat at any time before any lot in the plat is sold.
 - b. By all lot owners. If lots in the plat have been sold, an application to vacate the plat shall be submitted by all the owners of lots in the plat.
- (3) Commission decision. The Commission, on the recommendation of the Director, shall determine whether the plat is eligible for vacation and whether the plat should be vacated in whole or in part. The Commission's decision on a plat vacation is final.
- (4) Recordation of action. If the Commission determines that a plat should be vacated, it shall certify in writing by resolution that the plat vacation has been approved by the City. If the Commission adopts a resolution vacating a plat, it shall cause a vacating plat to be recorded. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is

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approved by the Commission and recorded in the manner prescribed for the original plat.

(5) Effect.

- a. On the execution and recording of the vacating instrument, a previously filed plat has no effect. Regardless of the Commission's action on the application, the property owner(s) or subdivider has no right to a refund of any application fees paid to the City nor to the return of any property or consideration previously dedicated or delivered to the City.
- b. City Council, at its discretion, shall have the right to retain all or specific portions of street rights-of-way or easements shown on the plat being considered for vacation, and may require separate instruments prior to the vacating plat being recorded.
- c. Following vacation of a plat, a new application must be filed for any subdivision approval, as provided in Article II.

(b) *Replat without vacation of preceding plat.*

- (1) Purpose and applicability. The purpose of a replat is to allow changes to be made to all or a portion of a recorded plat without vacation of the recorded plat, if the replat:
 - a. is signed and acknowledged by only the owners of the property being replatted;
 - b. does not propose to amend or remove any covenants or restrictions previously incorporated in the recorded plat; and
 - c. is approved by the Commission.
- (2) Exceptions. The term "replat" for purposes of this subsection does not include the following:
 - a. a vacating plat and any plat filed after plat vacation;
 - b. platting of a remainder tract; or
 - c. an amending plat.

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(3) General procedures.

- a. The Director is the responsible official for processing a replat application in accordance with Article II, except as otherwise stated in this subsection.
- b. At the required pre-application conference, the City Engineer will determine the replat requires construction of additional improvements, in which case an application for approval of construction plans shall be required in accordance with Section 82-32.
- c. Unless otherwise specified, an application for a replat shall be processed as a final plat application.
- d. If a replat is submitted for only a portion of a previously platted subdivision, the replat shall reference the previous subdivision name and recording information and shall state on the replat the specific lots which are being changed along with a detailed statement as to the purpose of the replat.

(4) Notice and public hearing requirements for certain replats.

- a. If the proposed replat requires a minor waiver, then the Commission shall hold a public hearing. The Director shall then cause a notice of a public hearing to be given by:
 1. Publication in the City's official newspaper before the 15th day (*i.e.*, 17 days) before the date of the hearing; and
 2. Written notice, mailed before the 15th day (*i.e.*, 17 days) before the date of the hearing, including a copy of Section 212.015(c), Texas Local Government Code, as may be amended, and sent by the Director to the owners of lots that are in the original subdivision and that are within two hundred feet (200.0') of the lots to be replatted, as indicated on the most recent City tax roll or in the case of a replat within the ETJ, the most recent County tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a postal depository within the City.
- b. The Commission shall conduct a public hearing. If a protest is received

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in accordance with subsection (c), below, before the close of the public hearing, approval or conditional approval of the replat requires an affirmative vote of at least three-fourths of the members present at the Commission hearing.

- c. A protest triggering the requirements of subsection (b), above, shall be signed by at least twenty percent (20%) of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending two hundred feet (200.0') from that area, and contained within the original plat. In determining the percentage of land area, the area of streets and alleys shall be included.
- d. Following approval or conditional approval of the replat that does not require a major or minor waiver, the Director shall cause written notice of the Commission's decision to be given by mail not later than 15 days after the date of approval of the replat to each owner of a lot that is on the original plat and is within two hundred feet (200.0') of the replatted lots according to the most recent City or County tax roll. The notice shall include the zoning designation of the property after the replat, where applicable, and a telephone number and email address an owner of a lot may use to contact the City about the replat.

(5) Effect. Following Commission approval of the replat application and recording of the replat, the replat is controlling over the previously recorded plat for the portion replatted.

Sec. 82-36. - Platting procedures; amending plat.

(a) *Purpose and applicability.*

- (1) Purpose. The purpose of an amending plat is to provide an expeditious means of making minor revisions to a previously recorded plat.
- (2) Applicability. The procedures for an amending plat only apply if the sole purpose is to achieve one or more of the following:
 - a. Correct an error in a course or distance shown on the preceding plat;
 - b. Add a course or distance that was omitted on the preceding plat;
 - c. Correct an error in a real property description shown on the preceding

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plat;

- d. Indicate monuments set after the death, disability, or retirement from practice of the engineer or surveyor responsible for setting monuments;
- e. Show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;
- f. Correct any other type of scrivener or clerical error or omission on a plat previously approved by the City, including lot numbers, acreage, street names, and identification of adjacent recorded plats;
- g. Correct an error in courses and distances of lot lines between two adjacent lots if:
 - 1. Both lot owners join in the application for amending the plat;
 - 2. Neither lot is abolished;
 - 3. The amendment does not attempt to remove recorded covenants or restrictions; and
 - 4. The amendment does not have a material adverse effect on the property rights of the other owners in the plat;
- h. Relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;
- i. Relocate one or more lot lines between one or more adjacent lots if:
 - 1. The owners of all those lots join in the application for amending the plat;
 - 2. The amendment does not attempt to remove recorded covenants or restrictions; and
 - 3. The amendment does not increase the number of lots;
- j. Make necessary changes to the preceding plat to create 6 or fewer lots in the subdivision or a part of the subdivision covered by the preceding

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plat if:

1. The changes do not affect applicable zoning and other regulations of the City;
2. The changes do not attempt to amend or remove any covenants or restrictions; and
3. The area covered by the changes is located in an area that the City has approved, after a public hearing, as a residential area; or

k. Replat one or more lots fronting on an existing street if:

1. The owners of all those lots join in the application for amending the plat;
2. The amendment does not attempt to remove recorded covenants or restrictions;
3. The amendment does not increase the number of lots; and
4. The amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

(b) *Submittal Requirements.* The applicant shall identify the matters under subsection (a)(2), above, for which an amending plan is sought and submit documentation sufficient to show that the application meets the standards set forth therein.

(c) *Decision by Director.*

- (1) The approval and issuance of an amending plat does not require notice, a public hearing, or approval of other lot owners.
- (2) The provisions in Sec. 82-21 apply to an amending plat.
- (3) The Director, in consultation with the City Engineer, shall approve the amending plat, approve the amending plat with conditions, or disapprove the amending plat in accordance with the criteria in subsection (e), below.

(d) *Appeal.* An applicant may appeal the Director's disapproval of the amending

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plat to the Commission within 10 days following notification thereof. The appeal shall state with specificity why the amending plat should be approved. The Commission shall approve the amending plat, approve the amending plat with conditions, or disapprove the amending plat in accordance with the criteria in subsection (e), below.

(e) *Criteria for Approval.* The following criteria shall be used to determine whether the amending plat shall be approved, approved with conditions, or disapproved:

- (1) For each ground for which the applicant seeks approval for an amending plat, the eligibility requirement stated in subsection (a)(2), above, have been met; and
- (2) The plat otherwise meets the requirements of Article IV.

(f) *Effect and Recordation.* Upon approval, an amending plat shall be recorded and is controlling over the previously recorded plat without vacation of that plat. The procedures for recordation of an amending plat shall be the same as the procedures for recordation of a final plat.

Sec. 82-37. - Relief procedures; waivers.

City Council may authorize major waivers from these subdivision regulations upon a request by an applicant. The Director or Commission may authorize minor waivers in accordance with the following:

(a) *Request for waiver.* Prior to any application for plat or subdivision plan approval, an applicant who seeks a major waiver, as specified below, to the standards in these regulations shall submit the request for the waiver(s) to the Director for consideration by City Council. The request shall be accompanied by a detailed statement of the reasons for the waiver and addressing the criteria for approval of the request, together with a schematic showing the plat or subdivision plan with and without the waiver. No application for plat or subdivision approval shall be accepted for filing until Council has acted upon the waiver request. Any waiver request that is based upon the alleged disproportionate costs of dedicating land, construction, or payment of fees for a public infrastructure will be classified as an appeal of a rough proportionality determination and processed under Sec. 82-38. Determinations on request for waivers will be handled in the following manner:

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(1) Minor Waivers. Request for waivers that will be considered minor amendments to the subdivision regulations may only include minor adjustments in street or alley alignments, and lengths, and minor adjustments to lot lines that do not result in creation of additional lots or any non-conforming lots, provided that such amendments are consistent with applicable approved prior plats and subdivision plans. Minor waivers may be approved by the Director. However, if the plat or subdivision plan goes to the Commission, then the waiver shall be decided in the Commission's report with the recommendation of the Director. If a minor waiver is requested in an application for a replat, the minor waiver shall be approved by the Commission following the procedures in subsection 82-35(b), above.

(2) Major Waivers. All other proposed changes that do not meet the criteria to be a minor waiver to the subdivision regulations shall be deemed major amendments that require approval of the major waiver by City Council. If a major waiver is requested in an application for a replat, the public hearing and notice procedures in subsection 82-35(b), above, shall apply to approval of the major waiver.

(b) *Criteria for Approval of Waiver.*

(1) In deciding a major waiver request, Council shall consider the hardship of the applicant in complying with the standards for which the waiver is sought, the nature of the proposed use of land involved and existing uses of the land in the vicinity, and the probable effect of such waivers upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity. No major waiver will be granted unless Council finds that:

- a. There are special circumstances or conditions affecting the land to be platted such that the strict application of the provisions of these subdivision regulations would result in unnecessary hardship to the applicant and/or the waiver accomplishes one of the following:
 1. to preserve environmental features that would be otherwise be affected by a strict application of these regulations, including tree preservation, geologic formations, steep slopes, springs, or similar conditions;
 2. to enable more efficient use of the land;

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3. to minimize or correct previous adverse effects from placement of drainage courses, transmission lines, or septic systems; or
4. to enable orientation of lots for greater solar advantage; and

- b. The granting of the waiver will not be detrimental to the public health, safety, general welfare, or injurious to surrounding properties; and
- c. The granting of the waiver will not have the effect of preventing the orderly subdivision of other land in the area in accordance with these subdivision regulations.

(2) The Director or the Commission may grant a minor waiver utilizing the criteria in subsection (a)(1), above.

(3) No waiver may be granted that would constitute a violation of a City ordinance.

(c) *Decision and Effect.* Council or the Director, as the case may be, or in the event of a minor waiver for a replat, the Commission, shall provide the applicant with its written decision on the waiver request. Where Council grants a major waiver, the applicant is authorized to submit an application for plat or subdivision plan approval that incorporates the major waiver(s), which shall not be altered by the Director or Commission, as the case may be, nor shall an approved waiver be the basis for a denial of the application.

Sec. 82-38. - Rough proportionality determination; appeal.

(a) *Purpose and Applicability.*

- (1) Purpose. The purpose of a proportionality determination is to assure that any requirement to dedicate, construct, or pay a fee for streets, water, wastewater, drainage (stormwater), sidewalks, park facilities, utilities, and other public infrastructure imposed on a proposed plat or subdivision plan as a condition of approval does not result in a disproportionate cost burden on the developer, taking into consideration the nature and extent of the demands created by the proposed development on the public facilities systems.
- (2) Applicability. The proportionality determination by the City Engineer and any appeals filed by the developer apply solely to the dedication of land for,

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the construction of, or the payment of fees for public infrastructure that serves developments in addition to the subdivision which is the subject of the determination or appeal. The standards for on-site public infrastructure set forth in these regulations are the minimum standards required to supply the development with services from the public facilities systems.

(b) *Proportionality Determination by City Engineer.* Following the submission of an AFP and/or an application for a preliminary plat, the City Engineer, in conjunction with such review, shall prepare a written report affirming that each required dedication of land for, construction of, or payment of fees for a public infrastructure is roughly proportionate to the City's costs required to supply services to the subdivision from its public facilities systems, taking into consideration the nature and extent of the development proposed.

(1) The City Engineer, in drafting the report, may rely upon categorical findings pertaining to on-site improvements; the proposed or potential use of the land; the timing and sequence of development in relation to availability of adequate levels of public facilities systems; the effects of development of subsequent phases of the subdivision or of a remainder tract on the public facilities systems; impact fee studies or other studies that measure the demand for services created by the development and the cost impacts on the public facilities systems; standardized land values or construction costs; the function of the public infrastructure in serving the proposed development; the degree to which public infrastructure to serve the subdivision are supplied by other developments; the anticipated participation by the City in the costs of such infrastructure; any reimbursements for the costs of public infrastructure for which the proposed development is eligible; or any other information relating to the mitigating effects of the public infrastructure on the impacts created by the development on the public facilities systems.

(2) The City Engineer may require the developer, at his or her expense, to submit any information or studies that reasonably may assist in making the proportionality determination.

(3) Based on the proportionality determination, the City Engineer shall affirm or not affirm that the exaction requirements of this Code or other ordinance, as applied to the proposed development or subdivision, does not impose costs on the developer for public infrastructure that exceed those roughly proportionate to the impact of the proposed development or subdivision.

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- (4) The City Engineer shall provide the report to the Director and the Commission shall consider the report when making a decision on a plat application.
- (5) If the City Engineer does not affirm that the costs of the dedication of land for, construction of, or fees for public infrastructure is roughly proportionate to the costs necessary for the City to provide services to the subdivision from its public facilities systems, he or she shall make a recommendation whether City Council should negotiate a participation agreement with the developer in which the City will participate in the costs of such public infrastructure. Council may then determine to eliminate or lessen the requirements for dedication of land for, or construction of, the public infrastructure or negotiate any other terms as it deems necessary.
- (6) City Council shall approve, reject, or modify the participation agreement. In lieu of entering into a participation agreement, Council may determine to eliminate or lessen the requirements for dedication of land for, or construction of, the public infrastructure. In such case, Council's determination shall be reflected in the Commission's decision on the final plat application.

(c) *Appeals.* An applicant may appeal the City Engineer's report to City Council as follows:

- (1) Time for filing and stay of construction or applications. The appeal shall be filed in writing within 15 days following the receipt of the report. The appeal shall be filed with the City Secretary and shall be forwarded to City Council for consideration. The applicant may not proceed with construction of improvements or submit an application for final plat approval until Council has decided the appeal.
- (2) Form of appeal. An appeal shall allege that the costs of the required dedication of land for, construction of, or payment of fees for public infrastructure is not roughly proportionate to the City's costs in supplying the subdivision with services from its public facilities system or does not reasonably benefit the subdivision. The applicant shall specifically allege what applicant asserts to be proportionate in the appeal.
- (3) Study required. The applicant shall provide a study in support of the appeal that includes the following information within 30 days following the date the appeal is filed, unless a longer time is requested:

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- a. As a threshold matter, the study shall demonstrate that the public infrastructure at issue serves other property or development(s) in addition to the subdivision which is the subject of the appeal.
- b. Total capacity of the City's streets, water, wastewater, drainage (stormwater), sidewalk, and/or park facilities to be utilized by the proposed development, employing standard measures of capacity and equivalency tables relating the type of development proposed to the quantity of public facilities systems capacity to be consumed by the development. If the proposed subdivision is to be developed in phases, such information shall be provided for the entire development proposed, including any phases already developed.
- c. Total capacity to be supplied to the City's streets, water, wastewater, drainage (stormwater), sidewalk, and park facilities by the dedication of land for, construction, or payment of fees for public infrastructure and the associated costs. If the plat application is proposed as a phased development, the information shall include the costs of any capacity supplied by prior dedication of land for, construction of, payment of fees for public infrastructure.
- d. Comparison of the capacity of the public facilities systems to be utilized by the proposed development with the capacity to be supplied to such systems by the proposed dedication of land for, construction of, or payment of fees for the public infrastructure. In making this comparison, the impacts on the public facilities systems from the entire development shall be considered.
- e. The amount of any City participation in the costs of oversizing the public infrastructure to be constructed in accordance with the City's requirements.
- f. Any other information that shows the alleged disproportionality between the impacts created by the proposed subdivision and the dedication, construction, or fee requirement imposed by the City.

(4) Extraterritorial jurisdiction. Where the subdivision or the public infrastructure are located in the ETJ and are to be dedicated to the County under an interlocal agreement, if any, an appeal or study in support of the appeal shall not be accepted as complete for filing by the City Engineer unless the appeal and subsequent study are accompanied by verification

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that a copy has been delivered to the County.

(5) Processing application.

- a. The City Engineer is the responsible official for evaluation and processing of an appeal. Where the appeal is for relief from dedication of an easement or other property interest for, or construction of, a facility in the ETJ that is to be dedicated to a County under any interlocal agreement, if applicable, the City Engineer shall coordinate a recommendation with the County.
- b. The City Engineer shall evaluate the appeal and supporting study and shall make a recommendation to City Council based upon the information contained in the study, any comments received from the County, and the City Engineer's report. The City Engineer's recommendation shall present the City's costs of supplying the subdivision with services from its public facilities systems in comparison to the costs attributed to the subdivision by the proportionality determination.

(6) *Decision.* City Council shall decide the appeal within 30 days following the final submission of any testimony or evidence by the applicant. Council shall base its decision on the criteria listed in subsection (7), below, and may take one of the following actions:

- a. Deny the appeal and affirm the required dedication of land for, construction of, or payment of fees for the public infrastructure in accordance with the report;
- b. Grant the appeal and waive in whole or in part any dedication of land for, construction of, or payment of fees for the public infrastructure to the extent necessary to achieve rough proportionality; or
- c. Grant the appeal and direct that the City participate in the costs of acquiring land for or constructing the public infrastructure under standard participation policies.

If the appeal is granted in whole or in part by Council, the Commission's decision on the final plat application shall reflect Council's action on the appeal.

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(7) *Criteria for Approval.* In deciding an appeal under this section, City Council shall determine whether the application of the standard or condition requiring dedication of land for, construction of, or payment of a fee for public infrastructure is roughly proportionate to the City's costs of supplying services to the subdivision from its public facilities systems for streets, water, wastewater, drainage (stormwater), sidewalk, and park facilities and reasonably benefits the development. In making such determination, Council shall consider the evidence submitted by the applicant, the report from the City Engineer, and, where the property or the public infrastructure is located within the ETJ, any recommendations from the County.

Sec. 82-39. - Relief procedures; vested rights determination; appeal.

(a) *Vested rights petition.*

- (1) Purpose. The purpose of a vested rights petition is to determine whether one or more standards of these subdivision regulations should not be applied to a plat or subdivision plan application by operation of state law.
- (2) Applicability. A vested rights petition may be filed and shall be decided prior to submittal of a plat or subdivision plan application. A petitioner may elect to request a decision on all required plat or subdivision plan applications simultaneously.
- (3) Effect. Upon granting of a vested rights petition in whole or in part, the plat or subdivision plan application shall be decided in accordance with the standards specified in the relief order based on prior subdivision requirements.
- (4) Exceptions. The procedures in Article II are not subject to a vested rights petition, nor are the submittal requirements for plat or subdivision plan applications.

(b) *Petition requirements.*

- (1) Who may petition. A vested rights petition may be filed by a property owner or the owner's authorized agents, with a preliminary or final plat application.
- (2) Form of petition. The vested rights petition shall allege that the petitioner

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has a vested right for some or all of the land subject to the plat application under Chapter 245, Texas Local Government Code, or pursuant to Section 43.002, Texas Local Government Code, that requires the City to review and decide the application under standards in effect prior to the effective date of the these regulations. The petition shall include the following information and documents:

- a. A narrative description of the grounds for the petition;
- b. A copy of each approved or pending development application which is the basis for the contention that the City may not apply current standards to the plat or subdivision plan application which is the subject of the petition;
- c. Documentation reflecting the original date of submittal of the prior application or development plan which is claimed as the basis for vesting;
- d. The date the project defined by the prior application or development plan was commenced;
- e. Identification of all standards otherwise applicable to the application(s) from which relief is sought;
- f. Identification of the standards which the petitioner contends apply to the plat or subdivision plan application;
- g. Identification of any current standards which petitioner agrees can be applied to the application(s) at issue; and
- h. A copy of any prior vested rights determination by the City involving the same land.

(c) Processing of Petition and Decision.

- (1) **Responsible Official.** The Director shall review a petition for completeness and where complete, process the vested rights petition. A petition that is incomplete shall be rejected and the applicant shall be notified in writing of the incomplete items within 10 days. An incomplete petition expires if the missing items are not submitted to the Director within 45 days following the date notice is issued. The petition shall be reviewed by the

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Director in consultation with the City Attorney following receipt of the petition.

- (2) Decision by Director. The Director shall render a decision on the vested rights petition within 30 days after receiving a complete petition.
- (3) Appeal of Decision. The petitioner may appeal the Director's decision on the vested rights petition within 10 days following the date of such decision to City Council.
- (4) Decision by Council. Council shall consider the vested rights petition on appeal no later than its first regular meeting that follows the expiration of 30 days from the date the written appeal is received from the owner.

(d) *Form of Action on Petition*. The Director, or Council on appeal, may take any of the following actions:

- (1) Deny the relief requested in the petition and direct that the plat or subdivision plan application(s) be reviewed and decided under currently applicable standards;
- (2) Grant the relief requested in the petition and direct that the plat or subdivision plan application be reviewed and decided in accordance with the standards contained in the identified prior subdivision regulations or other than applicable exceptions identified in subsection (a)(4), above; or
- (3) Grant the relief requested in part and direct that certain identified current standards shall be applied to the plat application, while other standards contained in prior subdivision regulations also shall be applied.

(e) *Order on Petition*. Either the Director's or Council's decision on the petition shall be memorialized in an order stating the following:

- (1) The nature of the relief granted, if any;
- (2) The application(s) or development plan(s) which is the basis for any vesting determination;
- (3) Current standards which shall apply to the plat or subdivision plan application for which relief is sought;

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- (4) Prior subdivision standards which shall apply to the plat application for which relief is sought; and
- (5) The statutory exception or other grounds upon which relief is denied in whole or in part on the petition.

(f) *Criteria for Approval.* The Director, or Council on appeal, shall decide the vested rights petition based upon the following factors:

- (1) The nature and extent of prior applications or development plans filed or approved for the land subject to the petition;
- (2) Whether any prior vested rights determinations have been made with respect to the property subject to the petition;
- (3) Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
- (4) Whether any statutory exception to vesting applies to the standards in the current subdivision regulations from which the applicant seeks relief; and
- (5) Whether the project defined by a prior application(s) has expired.

Sec. 82-40. - Construction management of public infrastructure.

(a) *Pre-Construction Conference.*

- (1) Purpose. The purpose of the pre-construction conference is to discuss procedures for project construction prior to construction release under subsection (b), below. The City Engineer may furnish a list of typical inspection items, procedures, and acceptance criteria for public infrastructure within public right-of-way and easements to the applicant.
- (2) Drawings. All record drawings shall reflect the construction plans, or working drawings, used, corrected, and/or clarified in the field and be signed by the project's design engineer.
- (3) Requirement and effect. Following approval of construction plans and prior to commencement of any construction of public infrastructure, the subdivider or his or her engineer(s) and contractors shall attend a pre-

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construction conference with the City Engineer. Following the pre-construction conference, the subdivider may request construction release, as provided in subsection (b), below.

(b) *Construction release.* Following approval of construction plans and fulfillment of any conditions thereto, the City Engineer shall release the plans for commencement of construction of the public infrastructure. The construction release will remain in effect as long as the construction plans are in effect. If the obligation to construct public infrastructure has been deferred, the City Engineer shall release plans for commencement of construction following approval of the final plat, fulfillment of any conditions thereto, and following recordation of the final plat. No construction release shall be issued until after a pre-construction conference has been held pursuant to subsection (a), above.

(c) *Inspections.*

(1) The City Engineer shall inspect the construction of public infrastructure while in progress as well as upon completion. The subdivider, or his contractor, shall maintain contact with the City Engineer during construction of improvements.

(2) Construction shall be in accordance with the approved construction plans. Any significant change in design required during construction shall be made by the applicant's engineer and shall be subject to approval by the City Engineer.

(3) If the City Engineer finds, upon inspection, that any of the required public infrastructure have not been constructed properly and in accordance with the approved construction plans, the applicant shall be responsible for completing and/or correcting the public infrastructure to bring such into compliance.

(d) *Maintenance during construction.* The subdivider shall maintain all required public infrastructure during construction of the development.

(e) *Acceptance of improvements.*

(1) Responsible official. The City Engineer shall be responsible for accepting completed public infrastructure intended for dedication to the City.

(2) Final inspection. After completion of all public infrastructure, franchise

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utilities, grading, and erosion control, the City Engineer shall perform a final inspection before recommending acceptance of the infrastructure.

- (3) Letter of final acceptance. When all public infrastructure have been completed, inspected, tested (if applicable), and determined by the City Engineer to be in conformance with the approved construction plans and the standards and specifications in Article IV, and when all required documents associated with acceptance of the new improvements, including maintenance bonds, contractors' affidavits of final payment and release, record drawings reflecting the construction plans, or working drawings, used, corrected, and/or clarified in the field and signed by the project's design engineer, have been submitted to the City, the City Engineer shall issue a letter of final acceptance to the subdivider.
- (4) Effect. Acceptance of the improvements shall mean that the applicant has transferred all rights to all the public infrastructure to the City for title, use, and maintenance.
- (5) Rejection. The City Engineer shall reject infrastructure that fails to comply with the City's standards and specifications. The City shall enforce the guarantee provided by the improvement agreement.
- (6) Disclaimer. Approval of a preliminary plat or final plat by the Commission, or construction plans by the City Engineer, shall not constitute acceptance of any of the public infrastructure required to serve the subdivision. No public infrastructure shall be accepted for dedication by the City except in accordance with this section.
- (7) Acceptance of improvements for land in the ETJ. Where the improvements to be constructed under an improvement agreement are located within the extraterritorial jurisdiction and are to be dedicated to the public, the City Engineer shall inform the County that the public infrastructure have been constructed in accordance with approved construction plans and are ready for acceptance by the County.
- (8) Maintenance Bond for Accepted Improvements. The subdivider shall furnish the City Engineer with a sufficient maintenance bond with a reputable and solvent corporate surety registered with the State of Texas, in favor of the City, to indemnify the City against any repairs. The bond shall remain in effect for 1 year from the date of the City's final acceptance of all public infrastructure. The bond shall be a minimum of 110% of the

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value of the work constructed, such value to be determined by the City Engineer. Final acceptance shall be withheld until said maintenance bond is furnished to the City in a form acceptable by the City Attorney.

ARTICLE IV. SUBDIVISION IMPROVEMENTS AND DESIGN STANDARDS

Sec. 82-50. - Public infrastructure standards.

(a) *Compliance with minimum standards.* Land proposed for subdivision or development within the City and within the ETJ shall be adequately served by public infrastructure, including streets, water, wastewater, drainage (stormwater), sidewalk, and park facilities that meet the City's minimum standards as specified within this Article IV. No plat or development shall be approved unless and until the infrastructure necessary to serve the development exists or provision has been made for the facilities, whether the facilities are to be located within the property being developed or off-site. In addition:

- (1) It is necessary and desirable to require dedication of rights-of-way and easements for public improvements, and in some cases to require construction of such improvements to support new subdivisions.
- (2) There is an essential nexus between the demand on public facility systems created by a new development and the requirement to dedicate rights-of-way and easements and to construct public infrastructure to offset such impacts.
- (3) The City desires to assure both that development impacts are mitigated through contributions of rights-of-way, easements, and construction of public infrastructure, and that a subdivision contributes not more than its proportionate share of such costs.

(b) *Conformance to Plans and Specifications.*

- (1) Proposed public improvements serving new subdivisions and developments shall conform to and be properly related to the master plans and shall meet the service levels specified in such plans.
- (2) The construction of improvements within all subdivisions and developments shall be in conformance with the *Technical Construction Standards and Specifications* (TCSS) and any component or portion of the

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TCSS may be further amended by the City Engineer at any time. The TCSS includes technical design and construction standards, specifications, and regulations that apply to all developments and redevelopments, together with all associated tables, drawings, and other attachments. All City standards described or referred to in these regulations are adopted by reference and are a part of these regulations in the same way as if they were set forth at length herein, and include the most current versions of the following, each of which City Council may have adopted and may amend:

- a. *Standard Specifications for Subdivision Construction;*
- b. *Design Manual for Storm Drainage Facilities;*
- c. *Stormwater Master Plan;*
- d. *Thoroughfare Plan;*
- e. Building Codes;
- f. Fire Code;
- g. *Water and Wastewater Master Plans;*
- h. *Parks Master Plan;*
- i. *Bicycle Plan;*
- j. *River Trail Master Plan;*
- k. *Sidewalk Master Plan; or*
- l. other City plan as adopted.

(c) *Adequacy of facilities.* All development and all public improvements shall meet the standards and requirements set forth in the master plans and TCSS to include the following:

- (1) Water. All lots, tracts, and parcels of a proposed subdivision shall be connected to a public water system which has capacity to provide water for domestic use and emergency purposes, including adequate fire protection. The City may require the phasing of development and/or improvements in

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order to maintain adequate water capacity. Additional standards and requirements are defined in Sec. 82-51.

- (2) Wastewater. All lots, tracts, and parcels of a proposed subdivision shall be served by an approved means of wastewater collection and treatment. The City Engineer is responsible for determining the approved means of wastewater collection and treatment. The City may require the phasing of development and/or improvements in order to maintain adequate wastewater capacity. Additional standards and requirements are defined in Sec. 82-52.
- (3) Streets. Streets serving a proposed subdivision shall provide a safe, convenient and functional system for vehicular circulation, and shall be properly related to the applicable *Thoroughfare Plan*, and any amendments thereto, and shall be appropriate for the particular traffic characteristics of each proposed subdivision. New subdivisions shall be supported by a thoroughfare network having adequate capacity, and safe and efficient traffic circulation. Each development shall have adequate access to the thoroughfare network. The City may require the phasing of development and/or improvements in order to maintain adequate street capacity. Additional standards and requirements are defined in Sec. 82-53.
- (4) Drainage (stormwater) and flood control. Drainage (stormwater) improvements serving a proposed subdivision shall accommodate potential runoff from the entire property drainage area under fully developed conditions; and, shall be designed to prevent overloading the capacity of the downstream drainage system, or under-designed, to prevent potential flooding upstream. The City may require the phasing of development, the use of control methods such as retention or detention, and/or the construction of off-site drainage improvements in order to mitigate the impacts of the proposed subdivision. Additional standards and requirements are defined in Sec. 82-54 and Sec. 82-55.
- (5) Parks. All lots, tracts, and parcels of a proposed subdivision shall be served by public parks that provide a variety of outdoor recreational opportunities, and are located according to the *Parks and Recreation Master Plan*. This requirement shall be satisfied by compliance with the City's parkland dedication ordinance, as may be amended, and which may include requirements such as dedication of park land or the payment of fees in lieu thereof at the time of final plat approval.

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(d) *City Options.* In order to maintain prescribed levels of public facilities and services for the health, safety, and general welfare of its citizens, the City may require the dedication of easements, including rights-of-way, for or construction of on-site or off-site public infrastructure for streets, water, wastewater, drainage (stormwater), sidewalks, park facilities, utilities, and other public improvements to serve a proposed subdivision, or may require the payment of fees in lieu thereof. If adequate levels of public facilities and services cannot be provided concurrent with the schedule of development proposed, the City may deny a plat or subdivision plan application until the public facilities and services can be provided, or may require that the development be phased so that the delivery of facilities and services coincides with the demands for public improvements created by the development.

(e) *Property Owner's Obligation.*

- (1) Dedication and construction of improvements. The developer shall dedicate all rights-of-way and easements to the public for, and shall construct at developer's expense, public infrastructure and capital improvements within the rights-of-way and easements for those water, wastewater, street, and drainage (stormwater) improvements needed to adequately serve a proposed development consistent with master plans, whether the facilities are located on, adjacent to, or outside the boundaries of the property being developed. Following completion of construction by developer, and inspection and acceptance by the City, all streets (unless approved as private), utilities, and other public improvements within the City limits shall become the property of the City. The developer, at developer's expense, shall extend all water mains, wastewater lines, other utilities and streets across a property's full frontage, or as approved by the City Engineer, and to the outer boundaries of the subdivision for future connections and use beyond the subdivision. The ability to tap into, and utilize, City water and wastewater services will become available only when a public utility main exists or is constructed across the full property frontage, and future connection point(s) shall be located such that future extension(s) are easily made. If water and/or wastewater main(s) are across developer's private property, an easement(s) shall be provided to the abutting property line with no gaps such that the main can be easily extended.
- (2) Adjacent street improvements. In the case of adjacent or abutting streets, along and parallel to the property line, the City shall require that the one half (1/2) the entire width of the right-of-way be dedicated and improved to

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City design standards, depending on factors such as the impact of the development on the street, the timing of development in relation to need for the street, and the likelihood that adjoining property will develop in a timely manner. In the case of frontage or service roads for state and federally designated highways, the entire abutting right-of-way for the frontage or service road shall be dedicated and improved to applicable design standards.

- (3) Substandard street improvements. Notwithstanding any other provision within these subdivision regulations, where an existing street that does not meet the City's right-of-way or design standards abuts a proposed subdivision, the City may require the property owner to dedicate part or all of the right-of-way for the improvement of the road to its ultimate planned width, and to improve the street according to the dimensions and specifications in the *Thoroughfare Plan*, depending on factors such as the impact of the development on the thoroughfare, the timing of development in relation to the need for the thoroughfare, and the likelihood that an adjoining property will develop in a timely manner.
- (4) Facilities impact studies. The City may require that a property owner prepare a comprehensive traffic impact analysis (TIA) study, drainage study, and/or other public facilities study(s) in order to assist the City in determining whether a proposed development will be supported with adequate levels of public facilities and services concurrent with the demand for the facilities created by the subdivision. The study(s) shall identify at a minimum the adequacy of existing facilities and the nature and extent of any deficiencies, and the public improvements that will be needed to meet the facilities' established levels of service assuming development at the intensity proposed in the subdivision application. The study(s) shall be subject to approval by the City Engineer.
- (5) Proportionality. The requirements in this section are subject to a proportionality determination by the City Engineer and subsequent appeal, as provided in Sec. 82-38.

(f) *Timing of Dedication and Construction.*

- (1) Initial provision for dedication or construction. The City shall require an initial demonstration that a proposed development shall be adequately served by public facilities and services at the time for approval of the first development application that portrays a specific plan of development,

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including a petition for establishing a planned development zoning district, or other overlay zoning district; a petition for an annexation agreement or a development agreement; an application for a subdivision plat, or an application for a preliminary or final subdivision plat. As a condition of approval of the development application, the City may require provision for dedication of rights-of-way or easements for, and construction of, capital improvements to serve the proposed development.

(2) Deferral of obligation. The obligation to dedicate rights-of-way for and/or to construct one or more public improvements to serve a proposed subdivision may be deferred until approval of a subsequent stage of subdivision approval, or until approval of a subsequent phase of the subdivision, at the sole discretion of the City Engineer, upon written request of the subdivider, or at the City's own initiative. As a condition of deferring the obligation, the City may require that the developer enter into a public improvements agreement, specifying the time for dedication of rights-of-way for or construction of public improvements serving the subdivision.

Sec. 82-51. - Water improvements.

(a) *Water Supply System.*

(1) Water mains properly connected with the City's water distribution system, or with an alternate supply approved by the City Engineer, shall be constructed to adequately serve all lots shown on the subdivision plat for both domestic use and shall meet Fire Code requirements for fire protection. The sizes of water mains; the location and types of valves, hydrants, and appurtenances; the amount of soil cover over the pipes; and other features of the installation shall be approved by the City Engineer and shall conform with the TCSS.

(2) If the City's water distribution system is available within two thousand feet (2,000.0') of a development or subdivision, each lot shall then be required to connect. This requirement also applies to a development or subdivision that is exempt from platting.

(3) When it is necessary to relocate, oversize, or replace the City's water distribution system to accommodate a proposed subdivision or development, the developer is responsible for all costs associated therewith unless the City agrees to participate in oversizing the facility.

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Sec. 82-52. - Wastewater improvements.

(a) *Wastewater system.*

- (1) Sanitary sewers and ancillary appurtenances shall be installed in such a manner to adequately serve all lots with connection to the City's wastewater system. The sizes of wastewater mains, the location and types of manholes and appurtenances, the amount of soil cover over the pipes, and other features of the installation shall be approved by the City Engineer and shall conform with the TCSS.
- (2) A proposed development or subdivision shall tie onto the City's public wastewater system at the developer's expense if any part of the property is located within two thousand feet (2,000.0') away from the nearest City-owned wastewater line.
- (3) When it is necessary to relocate, oversize, or replace an existing public wastewater facility to accommodate a proposed development or subdivision, the developer is responsible for all costs associated with such work, unless the City agrees to participate in oversizing the facility.

Sec. 82-53. - Thoroughfare and street improvements.

- (a) *Conformity to thoroughfare plans.* The general location, connections, and width of all streets and roads shall conform to the *Thoroughfare Plan*.
- (b) *Relation to adjoining street system.* A proposed street system shall extend existing stubbed streets from adjacent properties at the same or greater right-of-way and paving widths, but in no case less than the required minimum widths.
- (c) *Additional width of existing streets.* Subdivisions that adjoin existing streets shall dedicate additional right-of-way to meet the minimum street requirements shown on the *Thoroughfare Plan* and as follows:
 - (1) The entire right-of-way shall be provided where any part of the subdivision is on both sides of the existing street.
 - (2) When the subdivision is located on only one side of an existing street, one-half of the required right-of-way measured from the centerline of the existing roadway, shall be provided. In no case shall the resulting right-of-

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way width be less than fifty feet (50.0').

(d) *Street right-of-way widths.* The minimum width of street rights-of-way, measured from lot line to lot line shall be as shown on the *Thoroughfare Plan*.

(e) *Cul-de-sacs.*

(1) Streets that are designed to have one end permanently closed (cul-de-sacs) may not exceed six hundred feet (600.0') in length unless a longer length is necessitated by topography or other pre-existing natural feature. In no instance shall any such street exceed twelve-hundred feet (1,200.0') in length unless a waiver is approved by the City in accordance with these regulations. At the closed end, cul-de-sacs shall be provided with a permanent turn-around having an outside street pavement diameter that meets the Fire Code and a street right-of-way diameter that extends a minimum of ten feet (10.0') beyond the paving around the turnaround "bulb". Waivers may be granted as follows:

- a. A minor waiver for residential cul-de-sacs over six-hundred feet (600.0') in length may be granted by the Director or the Commission pursuant to Sec. 82-37, up to a maximum length of twelve-hundred feet (1,200.0') or 60 lots, whichever is less.
- b. A minor waiver for non-residential cul-de-sacs over six-hundred feet (600.0') in length may be granted by the Director or the Commission, up to a maximum length of twelve-hundred feet (1,200.0'), pursuant to Sec. 82-37 and subject to the Fire Code.

(2) Street access to adjoining property is required unless necessitated by topography or other pre-existing natural feature. Proposed cul-de-sac streets shall be extended by right-of-way dedication to the boundary of such property with abutting (*i.e.*, contiguous) width of at least the same width of the street segment for future extension.

(3) Temporary dead-end streets may not exceed twelve-hundred feet (1,200.0') in length unless a waiver is granted by City Council in accordance with Sec. 82-37. Such streets shall be provided with a paved turn-around having an outside roadway pavement diameter that meets the Fire Code and be designated by a recorded temporary street easement, which is typically a separate instrument for ease of abandonment when the street is permanently connected. Paving type(s) that can be used for temporary

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turnarounds shall be as determined by the Fire Code. Permanent dead-end streets without a permanent cul-de-sac “bulb” are prohibited.

- (4) Streets which temporarily dead end at power lines, rights-of-way, or easements shall be constructed for at least one-half the distance across these areas or to the property boundary. The applicant shall submit written permission from the utility or entity that owns the easement or right-of-way being crossed to the City prior to preliminary plat approval.
- (5) For any temporary dead-end street, a note shall be clearly placed on the final plat stating that the street will be extended with future development. In addition, the dead-end street shall have a sign in accordance with the City's street signs prominently posted at the terminus of the street to provide notice that the street will be extended in the future.
- (f) *Topographic restrictions.* In cases where topography or other physical conditions make a street of the required minimum width, cul-de-sac length, and/or street grade impracticable, the Commission may approve an exception allowing extension of the six hundred feet (600.0') maximum length to be up to one thousand feet (1,000.0') maximum length at the time of preliminary plat approval as described in Sec. 82-37.
- (g) *Restriction of access.* When a tract fronts on an arterial street or highway, the Commission may require such lots to be provided with frontage on a marginal access street having a minimum right-of-way and paving width as set forth in subsection (k), below.
- (h) *Reserve strips.* Reserve strips are prohibited. A “reserve strip” is a strip of property that separates one developing property from another property as a way to prevent street or utility extensions into or out of it, thereby controlling access to the streets or utilities. An exception may be made where the control of such strips is definitely placed with the City under conditions approved by the Commission.
- (i) *Intersections.* Proposed streets shall align with existing streets at intersections. Street intersections shall be as nearly at right angles as is possible and no intersection shall be at an angle of less than 75 degrees for a principal or secondary arterial, or 75 degrees for a collector or local street, unless a lesser angle is granted by waiver of City Council in accordance with Sec. 82-37. Corner property line radii at street intersections shall not be less than twenty-five feet (25.0'), or as required by Fire Code, and where the angle

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of street intersection is less than 75 degrees, the Commission may require a greater curb radius at the time of preliminary plat approval. Wherever it is necessary to allow the construction of a curb having a desirable radius without curtailing the sidewalk at a street corner to less than normal width, the property line at such street corner shall be rounded or otherwise set back sufficiently to accommodate such construction.

- (j) *Street jogs.* Street jogs with centerline offsets of less than one hundred fifty feet (150.0') shall only be allowed if approved by the City Engineer.
- (k) *Minimum pavement widths.* Minimum pavement widths from back of curb to back of curb for each type of street shall be as set forth in the *Thoroughfare Plan and Technical Construction Standards and Specifications (TCSS)* unless a waiver is granted by City Council in accordance with Sec. 82-37.
- (l) *Pavement.* Excavation, embankment, compaction, preparation of sub-grade, flexible base, and surfacing shall be in compliance with the TCSS.
- (m) *Curb and gutters.* The developer shall provide permanent reinforced concrete curbs and gutters which shall be in compliance with the TCSS.
- (n) *Horizontal curves.* Any curves in the street or street rights-of-way shall be in compliance with the TCSS.
- (o) *Street grades.* The grade of streets shall be as set forth in the TCSS and Fire Code unless otherwise approved by the City Engineer due to unusual topographic or other design constraints.
- (p) *Private streets.*
 - (1) *Eligibility criteria.* No private streets shall be permitted within a subdivision unless the City Council approves a waiver and the subdivision application complies with the following criteria:
 - a. The subdivision shall have no fewer than 20 residential lots;
 - b. The streets to be restricted to private use are not intended for regional or local through traffic circulation (see subsection (4), below);
 - c. The subdivision is located in an area that is surrounded on at least three sides (*i.e.*, 75% of the perimeter) by natural or manmade barriers (*e.g.*,

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creeks and flood plains, golf course, linear park, utility easements, or rights-of-way, etc.) or by other private street subdivisions;

- d. The subdivision is not located adjacent to an existing or approved public street subdivision that can be reasonably connected, even where the street connection would require construction of a bridge or culvert; and
- e. The subdivision shall connect to any existing street stubs with a public street.

If the proposed subdivision cannot meet the eligibility requirements, the applicant may request a waiver from City Council prior to a preliminary plat application. Said waiver shall require a super majority (3/4 majority) vote of the entire Council for approval.

- (2) *Design and construction.* Private streets shall be designed and constructed in accordance with the *Technical Standards and Specifications* (TCSS). The term “private streets” shall also include alleys if such are provided within the development.
- (3) *Homeowners’ association (HOA) ownership and maintenance required.* A subdivision developed with private streets shall have a mandatory homeowners association, which includes all properties served by the private streets. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances. The HOA’s recorded document shall indicate that the streets within the development are private, owned and maintained by the HOA, and that the City has no obligation to maintain the streets. The documents shall be filed of record prior to the approval of the final plat. A notation shall be included on the final plat with the recording information and stating that the HOA shall own and be responsible for all costs associated with the maintenance and reconstruction of the private streets and that the City has no obligation to maintain the streets. Lot deeds shall convey membership in the HOA and provide for the payment of dues and assessments as required by the HOA. The HOA shall not be dissolved without the prior written consent of the City Council. No portion of the HOA’s documents pertaining to the maintenance of the private streets and assessments thereto shall be amended without the written consent of the Council. All HOA documents must be reviewed and approved by the City Attorney to ensure that they conform to this and other applicable City policies prior to being filed of record. The HOA may not be dissolved, nor may deed restrictions and

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covenants providing for maintenance of common areas be deleted or amended, without the prior written consent of the Commission, by way of a plat amendment.

- (4) *Streets excluded.* Streets that are shown on the *Thoroughfare Plan* as arterials or collectors shall not be used, maintained, or constructed as private streets and a private street subdivision shall not cross or interfere with an existing or future collector or arterial street. City Council may deny the creation of a private street subdivision if, in its sole judgment, the private streets would negatively affect traffic circulation on public streets or if they would impair access to the subject or adjacent property, impair access to or from public facilities including schools or parks, or if they could cause possible delays in the response time of emergency vehicles.
- (5) *Points of access.* A private street subdivision shall have at least two points of access from a public street(s) as required by the Fire Code. If the subdivision is to be secured/gated and will have fewer than 100 residential lots, then only one main entry point may be allowed, with the second (additional) point(s) of access being designated as emergency-only, if such arrangement is approved by the City Engineer and Fire Chief.
- (6) *Parks and greenbelts excluded.* A private street subdivision shall not cross or interfere with an existing or future public pedestrian pathway, hike and bike trail, greenbelt, or park as shown on the *Parks and Recreation Master Plan*.
- (7) *Private street lot.* Private streets shall be constructed within a separate lot owned by the HOA. This lot shall conform to the City's standards for public rights-of-way. An easement covering the street lot shall be granted to the City providing unrestricted access to and use of the property for any purpose related to the exercise of a governmental service or function, including City utilities, fire and police protection, and code enforcement. This right shall also extend to utility providers operating within the City. The easement shall also permit the City to remove any vehicle or obstacle within the street lot that may impair emergency access.
- (8) *Restricted access.* The entrances to all private street subdivisions shall be clearly marked with a sign, placed in a prominent and visible location, stating that the streets within the subdivision are private and that they are not maintained by the City. Guard houses, access control gates, and cross arms, if used, shall be constructed per subsection (9), below. All restricted

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access entrances shall be manned twenty-four (24) hours every day, or they shall provide an alternative means of ensuring access to the subdivision by City personnel and other utility or public service providers (e.g., postal carriers, utility companies, etc.) with appropriate identification. If the HOA fails to maintain reliable access as required herein, the City may enter the subdivision and remove any gate or device which is a barrier to emergency access at the sole expense of the HOA.

(9) *Access restricted entrance design standards.* A private street which has an access control gate or cross arm shall have a minimum uninterrupted pavement width of twenty-two feet (22.0') at the location of the access control device. If an overhead-lifting barrier is used, it shall be a minimum of fourteen feet (14.0') in height above the street surface, and this clearance height shall be extended through all streets. All gates and cross arms shall be of a break-away design. A turnaround space shall be located in front of any restricted access entrance to allow vehicles denied access to safely exit onto public streets without having to back up into the street. The design and geometry of such turnaround shall be such that it will accommodate smooth, single-motion U-turn movements by the following types of vehicles:

- a. Larger passenger vehicles (e.g., vans, pick-up trucks, etc.);
- b. Passenger vehicles with short trailers up to twenty-four feet (24.0') in length (e.g., small flatbed, camping, or box-type trailers); and
- c. The types of service and utility trucks that commonly visit or make deliveries to neighborhoods that are similar to the proposed private street development (e.g., utility company vehicles, postal/UPS delivery trucks, two- to three-axle flatbed or box-type trucks used by contractors and moving companies, etc.). The City Council and/or the City Engineer may require submission of additional drawings, plans, and/or exhibits demonstrating that the proposed turnaround will work and that vehicle turnaround movements will not compromise public safety on the subdivision entrance or on the adjacent public street(s). The design of all proposed access restricted entrances shall be submitted for review and approval by the City Engineer along with the construction plans for the subdivision.

(10) *Waiver of services.* The subdivision final plat, HOA documents, and contracts for sale of each lot shall note that certain City services will not be provided for private street subdivisions. Among the services which will not

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be provided are: routine law enforcement patrols, enforcement of traffic and parking regulations, and preparation of accident reports. Depending upon the characteristics of the development and upon access limitations posed by the design of entrances into the subdivision, other services, such as sanitation, may not be provided.

- (11) *Hold harmless.* The final plat and HOA documents shall contain language whereby the HOA, as owner of the private streets and appurtenances, agrees to release, indemnify, defend, and hold harmless the City, its officers, agents, licensees, servants, and employees, any other governmental entity, and any public utility entity for claims or suits for property damage, loss, personal injury, or death, arising out of or in connection with, directly or indirectly the reasonable use of the private streets, emergency access, utility easements, entrance gate or structure by the City, its officers, agents, licensees, servants, and employees; b) the condition of the private streets or appurtenances; or c) any use of the subdivision with private streets by the City, its officers, agents, licensees, servants, and employees for any purpose related to the exercise of a governmental functions or services. The HOA shall be responsible for carrying liability insurance to meet the requirements in this paragraph.
- (12) *Conversion of private streets to public.* City Council may, but is not obligated to, accept private streets for public access and maintenance. Private alleys shall remain private. Requests to convert private streets to public streets are subject to the following provisions:
 - a. The homeowners' association (HOA) shall submit a petition signed by at least seventy-five percent (75%) of its members/lot owners, or a greater number of signatures, if required by the HOA documents or declaration.
 - b. All of the infrastructure shall meet or exceed the TCSS, pursuant to street core sampling and plans as required and approved by the City Engineer.
 - c. All security stations and other structures not consistent with a public street development shall be removed by the HOA, at its cost, prior to acceptance of the streets and appurtenances by the City.
 - d. All monies in the reserve fund for private street maintenance shall be delivered to the City. Money in the reserve fund in excess of what is needed to bring the streets and appurtenances up to City standards will

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be refunded to the HOA.

- e. The HOA shall prepare and submit a replat to the Planning Department for review and approval by the Commission, and for acceptance of the streets (excluding alleys) by the City Engineer. Upon approval, the replat shall be recorded at the County thereby dedicating the streets and appurtenances to the City.
- f. The HOA shall modify and re-file, at its cost, the HOA documents to remove requirements specific to private street developments. The City Attorney shall review the modified HOA documents prior to their filing.

(q) *Points of access.* All residential subdivisions shall have at least two (2) points of access from improved public roadways. All entrances shall be consistent with the requirements of the Fire Code. The two points of access shall be from two different entrances either on a single public thoroughfare or on two public thoroughfares. Each point of access shall be designed to safely cross any flood prone areas. The primary point of access shall be designed to not be impacted by a 25 year rain event. The secondary point of access shall be designed to not be impacted by a 10 year rain event. Said points of access shall comply with the TCSS and the *Drainage Design Manual*.

(r) *Traffic impact analysis.*

- (1) A Traffic Impact Analysis (TIA) worksheet, as promulgated by the Director and City Engineer, shall be submitted with the first project application to include an adequate facilities plan, preliminary plat, construction plans, and/or final plat.
- (2) A TIA is required when:
 - a. according to the thresholds established on the TIA Worksheet;
 - b. on street parking is requested in a commercial area; and/or
 - c. a traffic light is desired.

Sec. 82-54. - Stormwater management.

(a) *Drainage Improvements.*

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- (1) Drainage facilities shall be designed to meet the City's drainage requirements as approved by the City Engineer and shall be designed and constructed in accordance with the TCSS and *Drainage Design Manual*.
- (2) Stormwater management facilities, to include retention/detention ponds, shall be located on private property and maintained by the property owner or an approved home owners association unless otherwise approved by the City Engineer.
- (3) Pre-existing drainage ways shall not be dedicated to or maintained by the City unless approved by City Council.
- (4) All new subdivisions or modifications to existing subdivisions near the Guadalupe River and creeks are encouraged to follow best practices for stormwater design and stormwater quality near the river and tributaries as well as any City adopted guidelines, as applicable.

(b) *Flood hazard standards.*

- (1) All plats and subdivisions shall comply with standards and regulations contained within Chapter 54 (*i.e.*, floodplain management) of the City's Code of Ordinances.
- (2) The land subject to flooding as identified in the Federal Insurance FEMA Rate Maps report titled "*The Flood Insurance Study for the City of Kerrville*", as may be amended, with accompanying flood hazard maps, shall serve as the basis for identifying those lands susceptible to flood conditions.
- (3) During preparation of the preliminary plat, the developer shall study and establish floodplain and floodway elevations if such elevations had not been established previously.
- (4) Lands that are to be platted for development, and which are susceptible to flooding, shall be in accordance with current City Code requirements for finished floor elevations (FFE's).

Sec. 82-55. - Parks and open space standards; preservation of natural features.

(a) *Purpose and Effect.*

- (1) The purpose of these requirements is to provide parks and park land to

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support residential development within the City and the ETJ. Public parks provide a variety of outdoor recreational opportunities to residents of new subdivisions and developments. It is the policy of the City to require residential developments to contribute park land or fees in lieu of land dedication in proportion to the needs of future residents and within close proximity to their homes.

- (2) In order to accomplish the objectives of this section, all residential subdivisions within the City shall dedicate park land or pay fees in lieu of dedication. For multiple family projects that are not required to dedicate park land, payment of in lieu fees may be deferred until the time of building permit application.
- (3) All subdivisions shall comply with City's Parkland Dedication ordinance.

(b) *Preservation of Natural Features.* Natural features include large trees, water courses, historic spots, and similar community assets which, if preserved, will add attractiveness and value to the property. Nature features shall be identified on a site plan prior to preliminary plat approval. If considered to be of significant value to the property, neighborhood, or community, the Commission may require the preservation of some or all of these natural features.

Sec. 82-56. - Subdivision Design Standards.

- (a) *Technical Construction Standards and Specifications (TCSS).* The TCSS are the design standards for the City and are available on the City's website. Public review is also available in the office of the City Secretary and Development Services during business hours.
- (b) *Monuments.* Monuments shall be established to define public right-of-way in accordance with the TCSS and applicable state law related to surveying. Variances from these requirements may be allowed by written authorization of the City Engineer in cases where rock strata, unusual soil conditions, major trees, fences, or other obstacles are encountered.
- (c) *Blocks; lots.*
 - (1) Blocks
 - a. Block length shall not exceed one thousand two hundred feet (1,200.0'),

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as measured from the centerline of one intersecting through street to the centerline of another intersecting through street.

- b. All lots within each phase of a development shall be numbered consecutively within each block. Each block shall have an alpha or numeric designation (e.g., "Block A", "Block 6", etc.).

(2) Lots

- a. Insofar as practical, side lot lines shall be at right angles to street lines or radial to curved street lines. Each lot shall have direct frontage onto a public street or to an approved public way, private street, or irrevocable access easement. Each lot shall have at least thirty feet (30.0') of abutting frontage on such street or easement.
- b. Single- and two-family lots may not be "through lots" to a collector or thoroughfare (i.e., shall not back up to a public or private street) unless fully screened a six foot (6.0') solid wood or masonry fence. Single- and two-family lots shall not have direct (i.e., driveway) access onto any arterial or future collector street, as such are shown on the *Thoroughfare Plan*. Where a subdivision abuts or contains an existing or proposed arterial street, the City may require marginal access streets, rear service alleys, or such treatment as may be necessary for adequate protection to residential properties and to afford separation of through and local traffic.
- c. The size, shape, and orientation of lots shall be in accordance with the type of development and use contemplated and, for properties that are located within the City, as established in the Zoning Code. The minimum size of residential lots not served by both City water and wastewater services shall be as follows:
 1. Five (5) acres for lots where an individual water well is planned to be the source of potable water, and an on-site sewage facility (OSSF) will be used for wastewater disposal.
 2. One (1) acre for lots; served by a public water system and served by an on-site sewage facility (OSSF) if such OSSF is installed in compliance with County rules for OSSFs;
 3. Lot size shall be dictated by the zoning if served by a community,

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public or shared water system and also a municipal sewage collection system.

- d. The City shall have the right to disapprove any lot which, in its opinion, will not be suitable for the purpose intended or which is so oddly shaped as to create an irregular or difficult building envelope or that does not fully contain a building envelope that meets all applicable size and setback requirements. Sharp angles between lot lines and flag or "panhandle" lots shall be avoided unless some physical attribute of the property requires such angles or flag lot configuration. Flag lots shall have a minimum street frontage in compliance with the Zoning Code or fifty feet (50.0'), whichever is greater.
- e. All lot lines shall, to the greatest extent possible, align along City, County, school district, and other jurisdictional boundary lines such that lots are fully within one jurisdiction or other.
- f. No structure shall be constructed across a tract boundary or lot line.

(d) *Driveways, fire lanes, and access easements.*

- (1) Driveways. Driveways shall be designed in accordance with Chapter 90, City's Code of Ordinances, as amended, the Fire Code, and constructed in accordance with the TCSS. Driveway approaches shall be designed in such a way that stormwater does not flow from the street onto private property.
- (2) Fire lanes. Fire lanes shall be designed and constructed in accordance with the Fire Code.
- (3) Access easements. Easements shall be required, when necessary, to allow convenient access to other adjacent property(s) due to such having minimal or inadequate public street access, location of median opening, etc. The City Engineer and the Planning Director have the authority to require such access easement(s) when needed. All access easements require approval from the City Attorney.

(e) *Sidewalks.*

- (1) All sidewalks shall comply with the sidewalk ordinance of the City Code with respect to width and location.

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- (2) For existing lots, sidewalks shall be constructed concurrent with construction of the first structure on any lot or tract of land, whether or not the tract of land is platted or being subdivided.
- (3) Unless sidewalks already exist, multi-family, nonresidential developments, colleges and universities, hospitals, and other campus-like facilities shall construct sidewalks within all street rights-of-way adjacent to all tracts or lots utilized or intended to be utilized for any development purposes, whether platted or unplatted, to the full length of the frontage of the lot or tract involved, said construction to be:
 - a. Concurrent with construction of the first structure on any lot or tract of land, whether or not the tract of land is platted or being subdivided;
 - b. Concurrent with the construction of the addition to an existing building or buildings, regardless of the amount of additional square footage; or
 - c. Concurrent with the construction of an additional building(s) on a lot or tract regardless of the amount of additional square footage.
- (4) For single- and two-family residential developments, sidewalks shall be constructed prior to the acceptance of public utilities. For existing lots, sidewalks shall be constructed concurrent with construction of the first structure on any lot or tract of land, whether or not the tract of land is platted or being subdivided.
- (5) Sidewalks shall be constructed in the rights-of-way of all streets, public or private, pursuant to these regulations.
- (6) The Director shall not issue any final utility clearance or certificate of occupancy until all sidewalks required to be constructed have been finally completed or repaired and approved by the City Engineer.
- (7) A developer may apply to the City to receive a waiver from the sidewalk requirements. Such waivers are heard by City Council and shall require a super majority (3/4 majority) vote of the entire Council for approval. City Council shall consider the following criteria for whether to grant a waiver:
 - a. Topographic restrictions such as slope and drainage structures make the construction and subsequent use of a sidewalk unmanageable;

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- b. Whether all property(s) adjacent to the subject property, whether or not such property(s) is separated from the subject property by a public or private road, alley, or easement, is exempted from sidewalk construction by operation of these regulations;
- c. Whether all property(s) adjacent to the subject property is developed property, whether or not separated from such subject property by a public or private road, alley, or easement, and does not have existing sidewalks as of the effective date of these regulations; or
- d. If it is shown to the satisfaction of City Council that any of the requirements of this section, if complied with, would work an undue hardship on the property owner, the requirements required herein would not be in the best interest and general welfare of the public, and that the intent of these regulations was being met by the granting of such waiver.
- f. *Compliance with other laws.* All sidewalks required by these regulations shall comply with all federal, state, and local laws, including those requiring certain accessibility standards. Where there are instances of conflicting requirements, the most restrictive standards apply.

Sec. 82-57. - Alleys.

- (a) Alleys shall not be allowed except within certain zoning districts or to connect to a subdivision with existing alleys for the purpose of providing continuity. If alleys are constructed or required, the following standards shall be met:
 - (1) In residential zoning districts, alleys shall be parallel, or approximately parallel, to the streets.
 - (2) Alleys shall be designed and paved in accordance with the TCSS and shall be privately owned and maintained by an HOA that is formed in accordance with these regulations.
 - (3) Where the deflection of alley alignment occurs, the design of the paving and property line shall be as established by the TCSS.
 - (4) Dead-end alleys are prohibited. Alleys shall have adequate turnouts and street entrances such that vehicular traffic flow is continuous and efficient. Where a temporary dead-end alley situation is unavoidable, a temporary

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turnaround “bulb” or turnout onto a street, either of which will need a temporary easement for street/alley purposes, shall be provided as determined by the City Engineer.

- (5) Alleys may not exceed a maximum length of one thousand two hundred feet (1,200.0'), as measured along the centerline of the alley and between intersections with other alleys or entrances onto streets. City Council may approve a waiver for an overlength alley upon consideration of the following:
 - a. Alternative design which would reduce alley length;
 - b. The effect of overlength alleys upon access, congestion, delivery of municipal services, and upon convenience to residents of the subdivision in accessing rear driveways;
- (6) Public utilities shall be placed in a platted easement.

- (b) Means of mitigation, including additional mid-block alley turnouts, limitation on the number of lots to be served along a single alley segment, temporary points of access, and additional fire protection measures.

Sec. 82-58. - Streetlights.

- (a) The developer shall install fully functional streetlights in accordance with the TCSS.
- (b) Streetlights shall be installed in the right-of-way unless an alternative placement is approved by the City Engineer or Commission.
- (c) Street light easements of ten feet (10.0') in width shall be provided for the purpose of service wire installation, if needed and when necessary for service.

Sec. 82-59. - Street names and Traffic Control Signs/Devices.

- (a) Proposed streets which are in alignment with already existing, or approved, named streets, shall bear the same names of existing (or approved) streets. In no case shall the names for proposed streets duplicate existing streets' names or like-sounding street names, irrespective of the use of the suffixes such as street, avenue, boulevard, driveway, place, or court. Proposed

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street names shall be included with a preliminary plat and are subject to the Director's approval in accordance with the City's addressing policy to avoid street naming conflicts.

- (b) Street name signs and traffic control signs and devices shall be installed by the developer prior to acceptance of public infrastructure by City Engineer, final plat approval, and recordation at the County. The design and placement of all signs shall be submitted to, and approved by, the City Engineer prior to installation, and all traffic control signs and devices shall be designed and placed in accordance with the latest edition of the Federal Highway Administration's (FHWA's) "*Manual on Uniform Traffic Control Devices for Streets and Highways*" ("MUTCD"), as amended.

Sec. 82-60. - Addressing.

The Director shall have the authority to assign street addresses for individual lots or building sites located within the City. A person making application for approval of a subdivision shall request and obtain a designation of street addresses by the Director prior to approval of the final plat. The assignment of individual street addresses shall comply with the City's addressing policy.

Sec. 82-61. - Easements.

- (a) The City may require easements for access, poles, wires, conduits, storm and wastewater, gas, water, or other utility lines or their appurtenances. The developer shall be responsible for acquisition of all necessary easements, on-site and off-site, if such are necessary to serve the proposed development.
- (b) Easements shall be a minimum of twenty feet (20.0') in width. Easements of the same or greater width may be required where necessary for the extension of existing or planned utilities.
- (c) The full width of all easements for City water and wastewater facilities shall be fully upon one lot and may not straddle a common lot line.
- (d) Public water, wastewater, and drainage easements shall be dedicated to the City and shown on the final plat for the specific use or uses intended, and shall not be used by private utility providers unless approved by the City Engineer. The City has no obligation to maintain drainage easements or facilities not dedicated to the City.

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Sec. 82-62. - Utility placement.

- (a) All utilities shall be placed underground or if the developer so elects, they may be placed overhead only if located on pre-existing utility poles. If no pre-existing poles exist, utilities may be placed overhead but only if located entirely behind the front face of the building on private property and within a recorded a utility easement that is at least fifty feet (50.0') away from any single-family zoning district or dwelling.
- (b) High-voltage and large gas distribution lines may be allowed overhead or over-ground if a waiver is granted by City Council.

Sec. 82-63. - Large tracts and developments.

- (a) When the land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged to allow for the extension of future streets and for logical re-subdivision in the future.
- (b) Developments of a large scale nature under single ownership or condominium arrangement which would result in significant change to existing topographic and landscape features, traffic and drainage patterns, parking and other development changes that would impact the community shall be required to submit a plat of the proposed development for Commission review and approval in the manner prescribed by these regulations.

Sec. 82-64. - ETJ subdivisions; rural subdivision standards.

[Intentionally left blank as standards may be adopted pursuant to an interlocal agreement with County.]

Sec. 82-65. - Homeowners' associations (HOAs).

- (a) *Purpose.* The purpose for the establishment of an HOA for residential developments is to create an entity that owns and is responsible for maintaining commonly owned properties pursuant to the plat, private amenities, private streets, and riparian areas for the communal good of the development's property owners and residents. The ownership and maintenance of property and amenities shall be organized and established to exist in perpetuity.
- (b) *Applicability.* An HOA shall be established for any subdivision or development

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that contains any of the following: a private amenity, street, or drainage facility; a floodplain; or open space that will not be dedicated to the City. For purposes of this section, the terms "Homeowners' Association" and "HOA" are interchangeable with the term "Property Owners' Association" for multi-family and non-residential developments.

(c) *Descriptions of elements requiring an HOA.* Any of the following elements created as part of a subdivision or development, and not dedicated to the City, shall require the formation and continued operation of a mandatory HOA:

- (1) Amenity center (e.g., private swimming pool, club house, tennis court, recreation center, playground, etc.);
- (2) Entry features, signage, and landscaping;
- (3) Open space, walkways and trails that will not be dedicated to the City;
- (4) Ponds, including those for detention/retention of stormwater;
- (5) Water features and fountains;
- (6) Private streets, alleys, and internal sidewalks, including security stations and gates, perimeter security fencing, etc.;
- (7) Thoroughfare screening walls, fences, and landscaping; and
- (8) Any other non-public and commonly owned facilities.

(d) *Procedure for HOA formation.* The establishment of a required HOA shall occur prior to final plat approval and acceptance of the public improvements, and generally using the following procedure:

- (1) Documents submitted for review. The declaration, by-laws, covenants, and other necessary documents establishing an HOA shall be submitted to the City for review and approval by the City Attorney for conformance with this and other applicable ordinances prior to submission of the final plat and prior to issuance of a letter of final acceptance for the subdivision or recordation of the plat. HOA documents shall include descriptions of all areas and amenities for which the HOA is responsible for maintenance, and shall outline the organization and governance of the HOA.

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- (2) Recordation. All HOA documents shall be recorded at the County prior to the recordation of the final plat. Two (2) copies of the recorded documents shall be submitted to the Director prior to or simultaneously with the final plat application.
- (3) Additional phases. An additional phase to an existing subdivision is not required to establish a separate and distinct HOA, provided that the existing, recorded HOA documents are amended to incorporate the area of the new subdivision phase and to adopt the responsibility of all areas and amenities for which the HOA is responsible for maintenance. The procedure for review and recordation of the HOA amendment documents is as set forth above.

(e) *Notice to purchasers*. For any subdivision that will have an HOA, notice shall be posted in a prominent place at all model homes and sales offices stating the following:

- (1) That an HOA has been established for the subdivision;
- (2) That membership in the HOA is mandatory for all lot owners; and
- (3) That the developer is required to provide to any person, upon their request, a complete copy of the HOA documents and a five (5)-year projection, at a minimum, of association dues, income and expenses.

(f) *General requirements*. The following shall be set forth in the HOA documents:

- (1) A statement that membership in the association is mandatory for all owners of property within the subdivision;
- (2) A listing of all areas and amenities that the association will be responsible for maintaining, including legal descriptions for land parcels, if applicable; and, such maintenance areas shall be clearly shown as dedicated to the association on the final plat;
- (3) By-laws related to the governance of the association;
- (4) Covenants for maintenance assessments, which shall run with the land;
- (5) Responsibility for liability insurance and local taxes;

Attachment A

- (6) Statement that the authority for enforcement of association rules and regulations is solely the responsibility of the association and is not, in any way, the responsibility of the City;
- (7) Authority for the association to secure funds from its members sufficient to meet its responsibilities, which shall include the ability to collect dues, to increase dues, to charge special assessments, and to place liens against property for failing to pay dues and assessments.
- (8) Provision that no amendment of the association documents relating to maintenance of association areas or amenities, or related reserve funds (as applicable), shall occur without prior City approval;
- (9) Written release of adequate funds for maintenance to benefit the City; written indemnification of the City outlining that under no circumstances shall the City be liable to the association or any property owner or their respective heirs, executors, administrators, devisees, personal representatives, successors or assigns for any damages, injuries (including death), and/or liability resulting from any amenity, on the private streets, within or adjacent to any association area or amenity;
- (10) Written assurance of funds based on an accredited cost projection analysis within a specific reserve account of the association for the maintenance and removal of amenities as determined by the City;
- (11) Written consent giving the City the authority to take the actions for violations; and
- (12) Other City requirements as applicable.

(g) *Violations, revocations, and liens.*

- (1) The City will notify the HOA of violations of any of the regulations specified within this section.
- (2) Failure to bring the subdivision into compliance with these regulations may cause the City to revoke the specific approval of the HOA or take other remedies as outlined in this section.
- (3) The City shall have all lien, assessment, and enforcement rights granted therein to the HOA, and the City shall have the ability to enforce the liens

Attachment A

and assessments, and avail itself of any other enforcement actions available to the City pursuant to state law and City regulations.

- (4) Should the HOA fail to carry out its duties as specified in these regulations, the City shall have the right and ability, after due notice to the HOA, to perform the duties required by this or any other ordinance, regulation or agreement with the City in order to bring the HOA into compliance therewith. The City shall have the right and ability, after due notice to the HOA to assess the HOA, for the full amount owed and/or assess the property owners on a pro rata basis for all costs incurred by the City in performing said duties if the HOA fails to do so. Said assessment shall constitute a lien, in favor of the City, upon the property for which the assessment is made.



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

SUBJECT: Ordinance No. 2021-25, second reading. An Ordinance amending Ordinance No. 2019-14, which created a Planned Development District on an approximate 58.74 acre tract of land out of the Joseph S. Anderson Survey No. 141, Abstract No. 2 and the J.S. Sayder Survey No. 142, Abstract No. 290; generally located north of and in the 1000 to 1200 block of Thompson Drive (Spur 98); said amendment to update the previously adopted Concept Plan and the Land Use Table; establishing a penalty and effective date; and providing other matters relating to the subject.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 16, 2021

SUBMITTED BY: Drew Paxton

EXHIBITS: 20210928_Ordinance_2021-25 The Landing Concept Plan second reading.pdf

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Proposal

The applicant is proposing to update the Concept Plan and Land Use Table for the existing Planned Development District. The new Land Use Table includes a similar mix of uses from the previous table, but also updates the table to match the current zoning code.

Procedural Requirements

15 letters were mailed 7/22/2021, to adjacent property owners. The public notice was published in the Kerrville Daily Times on 7/15/2021. Two written comments were received,

and four persons spoke during the public hearing and first reading of the Ordinance at the September 14, 2021 City Council meeting.

Staff Analysis and Recommendation

Consistency with the Kerrville 2050 Comprehensive Plan: The property is located in Strategic Catalyst Area 3. The vision for this area is one that facilitates the creation of mixed-use, riverfront developments along its key corridor, Thompson Drive. Development should be oriented towards the River and engaged with adjacent businesses and structures. Entertainment/Mixed-Use and some Transitional Residential place types are appropriate around the lake.

The expanded land use table for the PD includes more options for mixed use by adding townhomes to several areas within the development.

Adjacent Zoning and Land Uses:

Subject Property

Current Zoning: PD 19-14

Existing Land Uses: Multifamily apartments and an office building

Direction: North

Current Zoning: C-2 (across the Guadalupe River)

Existing Land Uses: various commercial uses

Direction: South

Current Zoning: outside the City Limits

Existing Land Uses: single family estate lots

Direction: East

Current Zoning: Mixed Use

Existing Land Uses: Vacant property

Direction: West

Current Zoning: outside the City Limits

Existing Land Uses: single family estate lots

Thoroughfare Plan: This development has multiple access points to Thompson Drive, a secondary arterial.

Traffic Impact: To be determined based on each development project.

Parking: To be determined based on each development project.

Recommendation: Approve the ordinance including the updated concept plan and land use table. All other conditions from the previous PD Ordinance 2019-14 shall apply.

On August 5th, the Planning and Zoning Commission recommended the case with a unanimous vote.

On September 14, 2021, the City Council approved Ordinance No. 2021-25 on first reading without the C-3 Zoning.

R3 and Townhomes were added at the request of MacDonald Companies, and C3 was removed as per City Council.

RECOMMENDED ACTION:

Approve Ordinance No. 2021-25 on second reading.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2021-25**

**AN ORDINANCE AMENDING ORDINANCE NO. 2019-14, WHICH
CREATED A PLANNED DEVELOPMENT DISTRICT ON AN
APPROXIMATE 58.74 ACRE TRACT OF LAND OUT OF THE
JOSEPH S. ANDERSON SURVEY NO. 141, ABSTRACT NO. 2,
AND THE J.S. SAYDER SURVEY NO. 142, ABSTRACT NO. 290;
GENERALLY LOCATED NORTH OF AND IN THE 1000 TO 1200
BLOCK OF THOMPSON DRIVE (SPUR 98); SAID AMENDMENT
TO UPDATE THE PREVIOUSLY ADOPTED CONCEPT PLAN
AND THE LAND USE TABLE; ESTABLISHING A PENALTY AND
EFFECTIVE DATE; AND PROVIDING OTHER MATTERS
RELATING TO THE SUBJECT**

WHEREAS, on July 9, 2019, City Council approved Ordinance No. 2019-14 to create a Planned Development (Zoning) District (“PDD”) on an approximate 58.74 acre tract of land out of the Joseph S. Anderson Survey Number 141, Abstract No. 2, and the J.S. Sayder Survey No. 142, Abstract No. 290, generally located north of and in the 1000 to 1200 block of Thompson Drive (the “Property”), to allow for a mixed use development, such development subject to a concept plan and land use table applicable to the PDD; and

WHEREAS, the owner of the Property has requested to amend the PDD by updating the concept plan and land use table to in part, align with the current Zoning Code, which was adopted after the approval of the PDD; and

WHEREAS, the Planning and Zoning Commission and City Council, in compliance with the laws of the State of Texas and the ordinances of the City of Kerrville, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, City Council, in the exercise of its legislative discretion, has concluded that the Zoning Code should be amended as provided herein;

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

SECTION ONE. Ordinance No. 2019-14 is amended as follows:

A. Master Plan: the Master Plan for the Property, formerly known as the “Concept Plan”, which was attached to Ordinance No. 2019-14 as an exhibit, is amended and replaced with the document attached hereto as **Exhibit A**.

B. Land Use Table: the uses permitted for the PDD are as specified on the land use table for the Property, which is included as part of the Master

Plan, attached as **Exhibit A**, and titled “*The Landing: Land Use Summary*”.

SECTION TWO. Except as amended by this Ordinance, the provisions of Ordinance No. 2019-14 remain in full force and effect.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided however, to the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

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. City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. 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.

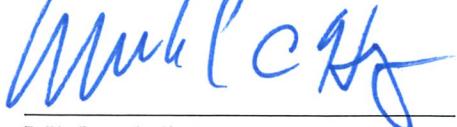
SECTION SIX. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method 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 14 day of SEPTEMBER, A.D., 2021.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the day of , A.D., 2021.

APPROVED AS TO FORM:

A blue ink signature in cursive script, appearing to read "Michael C. Hayes".

Michael C. Hayes, City Attorney

Bill Blackburn, Mayor

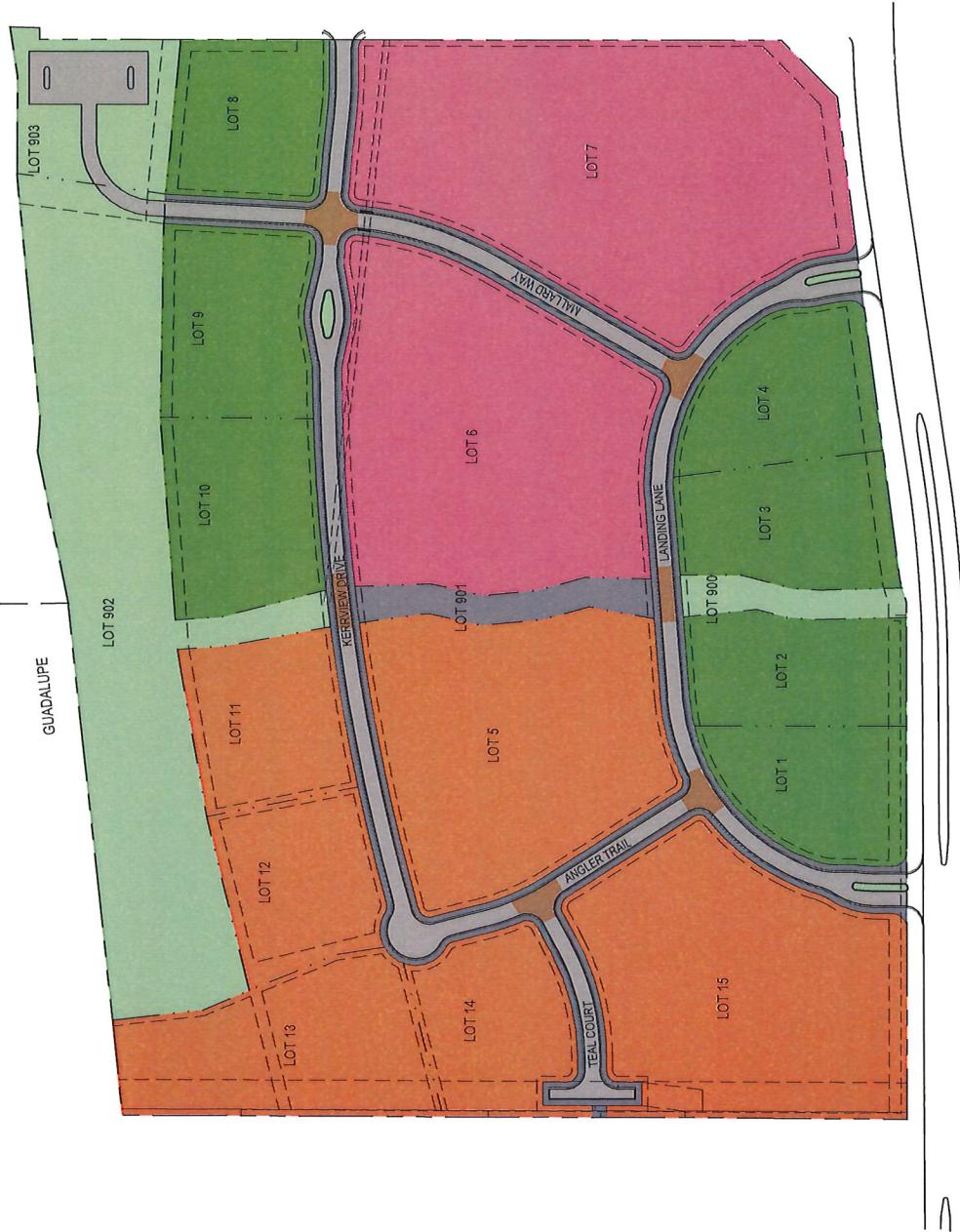
ATTEST:

Shelley McElhannon, City Secretary

Exhibit A

PDD Notes:

1. A PORTION OF THIS PROPERTY IS LOCATED WITHIN THE 100-YEAR FLOODPLAIN FLOOD ZONE "A" ACCORDING TO FLOOD INSURANCE RATE MAPS (FIRM) MASONICS.
2. STREETS WITHIN THIS DEVELOPMENT WILL BE BUILT ACCORDING TO CITY OF KERRYVILLE STANDARD SPECIFICATIONS.
3. ALL CURB WITHIN THIS PHASE IS TO BE STANDARD CURB AND GUTTER PER CITY OF KERRYVILLE STANDARD SPECIFICATIONS.
4. STANDARDS FOR DEVELOPMENT WITHIN THIS PDD SHALL BE PER APPPLICABLE CITY STANDARDS, EXCEPT AS OTHERWISE NOTED BELOW OR SHOWN HEREON.
5. ALL BUILDING SETBACKS ARE AS SHOWN HEREON.
6. MAXIMUM BUILDING HEIGHT WITHIN THIS PDD SHALL BE SIXTY (60) FEET.
7. OFF-STREET PARKING REQUIREMENT SHALL BE 1.5 PARKING SPACES PER DWELLING UNIT FOR LIFE CARE DEVELOPMENT HOUSING AND ONE-BEDROOM SINGLE OR MULTI-FAMILY RESIDENTIAL OFF-STREET PARKING REQUIREMENTS FOR ALL OTHER LAND USES SHALL BE IN ACCORDANCE WITH THE CITY ZONING CODE.



Site Plan

Scale: $1 = 20$



Kerrville, Texas

The Landing Master Plan

MacDonald
COMPANIES
Affordable Lifestyle. Community Values.

Kerrville, Texas

Exhibit A

The Landing Land Use Summary			
Lot No.	Land Use	Site Area (Acres)	Address
1	Retail Trade II	1.47	1211 Landing Lane
2	Retail Trade II	1.47	1171 Landing Lane
3	Retail Trade II	1.73	1131 Landing Lane
4	Retail Trade II	1.76	1091 Landing Lane
5	Retail Trade II or Artisan's / Craftsman's Workshop or R-3 (including Townhomes)	4.83	1247 Landing Lane
6	R-3	5.99	1152 Mallard Way
7	R-3	7.55	1151 Mallard Way
8	Professional Office or Restaurant, General	1.61	1090 Kerrview Drive
9	Professional Office or Restaurant, General	1.89	1110 Kerrview Drive
10	Professional Office or Restaurant, General	1.92	1130 Kerrview Drive
11	Professional Office or Restaurant, General or R-3 (including Townhomes)	1.68	1140 Kerrview Drive
12	Professional Office or Restaurant, General or R-3 (including Townhomes)	1.67	1150 Kerrview Drive
13	Professional Office or Restaurant, General or R-3 (including Townhomes)	2.56	1160 Kerrview Drive
14	Professional Office or R-3 (including Townhomes)	1.65	1148 Angler Trail
15	Professional Office or R-3 (including Townhomes)	5.22	1248 Angler Trail

Exhibit A

Retail Trade II includes the following uses*
alcoholic beverage sales for off-premise consumption
Book sales
businesses primarily engaged in the sale of storage buildings
businesses primarily engaged in the sale, rental, or repair of used furniture
Camera and photographic supply
Department, variety, and general merchandise stores
Drug stores
Florists
Food sales
Furniture, floor covering, upholstery, and curtain stores
Hardware, paint, glass, and wallpaper stores
Lawn and garden supply, nurseries, and landscaping
Limited Restaurants
Luggage and leather goods sales
Mail order and direct sale establishments
Sale of new auto parts
Sales of new household appliances
sales or rental of new or use merchandise, except used appliances
Sewing, needlework establishments
Specialty clothing and shoe stores
Sporting goods stores
Stationery stores
Tobacco products sale
Toy, gift, and novelty shops
*Businesses shall be limited to a building with a gross floor area not exceeding 100,000 square feet.
Restaurant, Limited: A building or part thereof used in the preparation and retail sale for on-premise consumption of food and beverages, excluding the sale of alcoholic beverages and restaurants with drive-through service.



Location Map

Case # PZ-2021-18

Location:
The Landing Subdivision

Legend

200' Notification Area
Subject Properties



0 150 300 600

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.



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

SUBJECT: Financial update for month ending August 31, 2021.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 07, 2021

SUBMITTED BY: Julie Behrens

EXHIBITS: [20210928_Presentation_Finance.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Financial update for period ending August 31, 2021.

RECOMMENDED ACTION:

Information only.



Financial Update

**City Council Meeting
September 28, 2021**





Summary

- **“Current Budget” refers to budget after completion of the mid-year budget amendment approved by Council as well as line item transfers made by departments (no impact on overall budget)**
- **FY2021 was budgeted lower than FY2020**
 - FY2021 budget was built during the worst of the COVID shutdowns
 - FY2021 budget very conservative
- **For General Fund, Water Fund, & Golf Fund**
 - Revenues were estimated as of 9/22/2021, however an accrual process takes place after 3 billing cycles in October are completed
 - Expenses were not estimated
 - Still a full month of purchasing remaining
 - In midst of paving season, which brings larger purchases than other months
- **Development Services & Hotel Occupancy Tax Funds**
 - Both revenues and expenses were estimated as of 9/22/2021
- **Other funds will be estimated during the month of October**
- **Estimates can change based on many factors into October due to payment of expenses incurred during FY2021 and accrual processes that take place after 3 Utility Billing cycles have been completed in October & 1 cycle in November**

General Fund Summary

General Fund Revenues FY2021 Year-End Estimates

- **Property Tax: (includes current year, prior year, and penalty & interest)**
Budget: \$10,234,372
Estimate: \$10,296,711
Estimated Better than Budget: \$63,000 – more payments were received from prior year taxes & penalty & interest than budgeted
- **Sales Tax currently**
Budget: \$7,353,281
Estimate: \$8,895,484
Estimated Better Than Budget: \$1,542,203
 - **August sales tax (June sales) up 17.3% (15.1% when excluding 2 out of period payments)**
 - **September sales tax (July sales) up 13.5%**
 - **Increase driven by retail, food service, manufacturing, and wholesale trade**

General Fund Summary

Franchise Fees

Budget: \$2,033,550

Estimate: \$1,919,054

Estimated Worse than Budget: \$114,496

Other Revenue

Budget: \$8,877,047

Estimate: \$9,005,412

Estimated Better than Budget: \$128,365

Other Revenue

- **Includes Inter-governmental, Service, Recreation, Grants & Donations, Interest & Misc., & Transfers-In**

General Fund Summary

Overview of Revenues

General Fund Revenues	FY2021 Budget	Current FY2021 Actual	Y-T-D	FY2021 Estimate Better or Worse than Budget
			FY2021 Estimate	
Revenues				
Taxes				
Property Tax	\$ 10,234,372	\$10,266,803	\$10,297,711	\$ 63,339
Sales Tax	7,353,281	7,945,484	8,895,484	1,542,203
Franchise Fees	2,033,550	1,522,464	1,919,054	(114,496)
Total Taxes	\$ 19,621,203	\$19,796,858	\$21,112,249	\$ 1,491,046
Permits & Fees	24,195	22,492	25,000	805
Inter-Governmental	1,461,057	1,426,514	1,480,000	18,943
Service Revenue	3,569,038	3,483,239	3,569,038	-
Recreation	674,430	754,591	817,899	143,469
Fines & Forfeitures	485,500	346,429	370,000	(115,500)
Grants & Donations	29,500	86,118	86,118	56,618
Interest & Misc.	245,970	260,472	270,000	24,030
Transfers-In	2,387,357	2,214,099	2,387,357	-
Total General Fund Revenue:	\$ 28,498,250	\$28,390,712	\$30,117,661	\$ 1,619,411

Notes:

- **Estimated as of 9/22/2021**
- **Revenues shown by category, in line with budget book**
- **Currently evaluating additional factors and data**

General Fund Summary

Overview of Expenses As of 8-31-2021

General Fund	Current FY2021 Budget	Y-T-D	
		FY2021 Actual	
Expenses			
Personnel	\$ 20,783,202	\$18,379,190	
Supplies	1,535,737	1,182,925	
Maintenance	3,271,728	2,101,052	
Services	2,331,535	2,006,301	
Other	460,192	251,602	
Capital Outlay	152,210	144,042	
Transfers-Out	328,647	301,260	
Total General Fund Expenses	\$ 28,863,251	\$24,366,372	

Notes:

- **Not estimating expenses at this time**
- **September typically heavy purchasing month**
- **Larger expenses, such as paving, still pending**



Water Fund Summary

Water Fund Revenues FY2021 Year-End Estimates

- **Water Sales:**

Budget: \$6,315,482

Estimate: \$6,097,939

Estimated Worse than Budget: \$217,543

- Water revenues budgeted using average rainfall year, plus growth
- Through April, water revenues were trending ahead of budget
- Rainfall, especially during July & August (typical heavy irrigation months) had a significant effect on water sales.
- July & August 2021 rainfall 4" more than same period 2020

- **Sewer Sales**

Budget: \$5,758,854

Estimate: \$5,983,981

Estimated Better Than Budget: \$225,127

- Sewer sales are more stable due to residential sewer averaging (less weather dependent)
- Commercial sewer sales based on actual water consumption

Water Fund Summary

Overview of Revenues

Water Fund	FY2021 Budget	Current	Y-T-D	FY2021 Estimate	FY2021 Estimate Better or Worse than Budget
			FY2021 Actual		
Revenues					
Water Sales	\$ 6,315,482	\$ 5,454,376	\$ 6,097,939	\$ (217,543)	
Sewer Sales	5,758,854	5,437,621	5,983,981	225,127	
Reuse Sales	145,495	128,605	143,000	(2,495)	
Waste Disposal Fees	394,000	415,020	449,125	55,125	
Other	448,838	508,000	515,000	66,162	
Total Revenues	\$ 13,062,669	\$11,916,021	\$13,189,045	\$ 126,376	

Notes:

- **Revenues estimated as of 9/22/2021**
- **Revenues shown by category, in line with budget book**
- **Waste disposal fees continue to be strong**
- **“Other” category includes: water & sewer tap fees, meter sales, lab testing fees, service charges & penalties, interest & other misc.**
- **Still many factors that cannot be determined at this time, including a year-end accrual process**

Water Fund Summary

Overview of Expenses

Water Fund	FY2021 Budget	Y-T-D	
		Current	FY2021
Personnel	\$ 3,470,132	\$ 3,094,984	
Supplies	793,474	561,236	
Maintenance	942,486	673,496	
Services	1,095,604	872,505	
Other	335,125	203,527	
Capital Outlay	153,340	158,558	
Transfers-Out	6,426,508	6,713,298	
Total WF Expenses	\$ 13,216,669	\$12,277,603	

Notes:

- **Did not estimate expenses**
- **A full month of expenses remain unspent or unpaid which could create dramatic change**
- **Expenses shown by category, in line with budget book**
- **Service category includes water, electric, natural gas, which are higher in the last few months**
- **Equipment maintenance is currently lower than budget as are water system maintenance and chemicals, which is typical with more rain**

Golf Fund Overview

Golf Fund Revenues	Current FY2021 Budget	Y-T-D FY2021 Actual	FY2021	FY2021 Estimate Better or Worse than Budget
			Estimate	
Recreation	866,705	934,230	1,025,000	158,295
Misc	1,000	19,665	19,665	18,665
Transfer In	80,000	74,167	80,000	-
Total Revenue	\$ 947,705	\$ 1,028,061	\$ 1,124,665	\$ 176,960
Expenditures	952,859	857,168		
Net	(5,154)	170,893		

Notes:

- **Revenues estimated as of 9/22/2021 – expecting to end FY2021 \$177K better than budget**
- **Did not estimate expenses**
- **Golf has continued to show growth throughout the year**
 - **Two large tournaments & one high school tournament**
 - **Schools are practicing again**
 - **New software company has wide reach for increased marketing**
 - **COVID restrictions could be driving people to the course for outdoor activity (especially in early months of the fiscal year)**

Development Services Fund Overview

Development Services Fund	Current FY2021 Budget	Y-T-D FY2021 Actual	FY2021 Estimate	FY2021 Estimate Better or Worse than Budget
Revenues				
Permits & Fees	\$ 613,830	\$ 414,233	485,000	(128,830)
Transfer In	272,260	249,572	272,260	-
Total Revenue	886,090	663,805	757,260	(128,830)
Expenditures				
	1,018,747	896,672	1,018,747	-
Net	\$ (132,657)	\$ (232,867)	\$ 261,487	\$ (128,830)

Notes:

- **Estimated revenues and expenses as of 9/22/2021**
- **Development Service Fund revenues difficult to predict – timing of upcoming projects is the largest determining factor**
- **Expecting net loss of \$ 128K for FY2021**
- **Healthy fund balance can assume the loss (\$330K)**
- **Multiple large development projects in the works that will likely hit in early FY2022**

HOT Fund Summary

Hotel Occupancy Tax Fund	FY2021 Budget	Current Actual	Y-T-D	FY2021	
				Estimate	Better or Worse than Budget
Revenues	\$ 1,281,685	\$ 1,478,776	\$ 1,579,945	\$ 298,260	
Expenses	1,281,685	1,150,055	1,217,864	(63,821)	
Net	\$ -	\$ 328,722	\$ 362,081	\$ 362,081	

Notes:

- **Estimated revenues & expenses as of 9/22/2021**
- **Estimating FY2021 revenues: \$298K better than budget**
- **Estimating FY2021 expenses: \$64K better than budget**
- **Short-term rental revenue continues on upward trend**
- **Kerrville being a “drive destination” makes it a great option for vacationers with travel restrictions**
- **Kerrville Sports Complex and Golf continue to increase tournaments that draw teams that spend the night**
- **More large events took place than originally anticipated when budget was created**



Year End Process

- **9/30/2021- Fiscal Year 2021 ends**
- **10/1/2021 - Finance will begin year-end close processes, which will continue through the month of October**
- **11/15/2021-11/19/2021 - Audit field work (Interim audit documents were completed in August and early September)**
- **November Council Meeting -Year-end financial report presented**
- **November - Final budget book presented**
- **November or December Council Meeting - Budget Amendment will be presented to Council**
 - **Council will give direction regarding transfer of FY2021 Year End funds**
- **February 2022 - Comprehensive Annual Financial Report will be presented to Council by the City's audit firm, BKD**
- **February 2022 – new budget process begins!**



Council Questions or Comments?





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

SUBJECT: Update from the 2021 Texas Legislative Sessions.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 17, 2021

SUBMITTED BY: Mike Hayes

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

The City Attorney will provide an update to Council regarding laws and other issues that resulted from the 2021 Texas Legislative sessions.

RECOMMENDED ACTION:

Report only.



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

SUBJECT: City's ongoing preparedness and response to COVID-19 (Coronavirus); and Declaration of local state of disaster due to a public health emergency, Review of Declaration of local state of disaster due to a public health emergency, March 20, 2020.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Aug 13, 2021

SUBMITTED BY: Eric Maloney

EXHIBITS: [20200922_Resolution_16-2020 Extending Mayor's Disaster Declaration Covid-19 7-28-20.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

This is a regular briefing on the responsiveness to changing conditions and situations related to Covid 19, as well as an opportunity to review the Disaster Declaration revised March 20, 2020.

RECOMMENDED ACTION:

Discussion and possible review of the declaration.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 16-2020**

**A RESOLUTION AUTHORIZED BY SECTION
418.108(B) OF THE TEXAS GOVERNMENT CODE
EXTENDING THE MAYOR'S DECLARATION THAT
COVID-19 (CORONAVIRUS) POSES AN IMMINENT
THREAT OF DISASTER WITHIN THE CITY OF
KERRVILLE AND DECLARING A STATE OF
DISASTER WITHIN THE CITY**

WHEREAS, on March 16, 2020, Mayor Bill Blackburn, acting in accordance with authority granted to him under the City's Charter and Section 418.108(a) of the Texas Government Code, declared a local state of disaster ("disaster declaration") for the City due to concerns related to the coronavirus disease 2019 (COVID-19); and

WHEREAS, the Mayor revised and reissued the disaster declaration on March 18, 2020 and March 19, 2020 to account for new information and health recommendations; and

WHEREAS, Section 418.108(b) of the Texas Government Code provides that the disaster declaration may not be continued for a period of more than seven days except with the consent of City Council; and

WHEREAS, City Council, pursuant to its adoption of Resolution No. 06-2020 consented to the Mayor's declaration and extended it in accordance with state law; and

WHEREAS, the Mayor, on today's date, has issued a revised declaration, which revises his previously issued declaration to update it to current conditions and needs; and

WHEREAS, City Council believes that the conditions necessitating the disaster declaration will continue to exist for a period of more than seven days; and

WHEREAS, City Council supports the disaster declaration signed by Mayor Bill Blackburn on July 28, 2020, and consents to its continuation for a period of more than seven days;

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

City Council hereby ratifies the disaster declaration signed by Mayor Bill Blackburn on July 28, 2020 and consents to its continuation indefinitely or until such time as it is terminated by order of the Council. Said declaration is attached hereto as **Exhibit A**.

PASSED AND APPROVED ON this the 28 day of July, A.D., 2020.

ATTEST:


Shelley McElhannon, City Secretary


Bill Blackburn, Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

**DECLARATION OF LOCAL STATE OF DISASTER DUE TO A PUBLIC
HEALTH EMERGENCY – EXTENDED (4th Declaration)**

**A DECLARATION OF THE MAYOR OF THE CITY OF
KERRVILLE, TEXAS, DECLARING THAT COVID-19
(CORONAVIRUS) REMAINS AN IMMINENT THREAT OF
DISASTER WITHIN THE CITY OF KERRVILLE AND
EXTENDING THE DECLARATION OF A STATE OF DISASTER
WITHIN THE CITY; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City of Kerrville, Texas (the “City”) from on or before the 16th day of March 2020, prepared for damage, injury, or loss of life resulting from the novel coronavirus (COVID-19), which has been recognized globally as a contagious respiratory virus; and

WHEREAS, it is critical that the City continue taking actions to respond to and mitigate the spread of COVID-19 to protect the health and welfare of the public; and

WHEREAS, extending the City’s *Declaration of Local State of Disaster Due to a Public Health Emergency* will continue to help facilitate and expedite the use and deployment of resources to enhance the City’s ongoing response and mitigation to COVID-19; and

WHEREAS, on March 13, 2020, the Governor of the State of Texas certified that COVID-19 poses an imminent threat of disaster and declared a state of disaster for all counties in Texas, has extended his declaration several times, and to date, has issued approximately twenty-two orders, many of which remain in effect, in an effort to mitigate said disaster; and

WHEREAS, the Texas Department of State Health Services (“DSHS”) has previously determined, including an updated declaration issued on May 15, 2020, that as of March 19, 2020, COVID-19 represented and continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, the Mayor urges all citizens of Kerrville and this community to continue to monitor government websites such as the Centers of Disease Control and Prevention (“CDC”), DSHS, and the Texas Governor as well as news sources in an attempt to remain aware and vigilant about COVID-19 and the evolving situation; and

WHEREAS, the Mayor, in seeking information from national, state, and local experts continues to believe that extraordinary measures must continue to be taken to respond to and to mitigate the spread of COVID-19 and its impact to the public health and welfare;

NOW, THEREFORE, BE IT PROCLAIMED BY THE MAYOR OF KERRVILLE:

SECTION ONE. Extending Declaration of Local State of Disaster. A local state of disaster (“disaster declaration”) was previously declared for the City of Kerrville, Texas, pursuant to Section 418.108(a), Texas Government Code, on March 16, 2020, and then revised on March 18, 2020 and March 19, 2020. The Mayor hereby extends the March 19, 2020, declaration in accordance with law.

SECTION TWO. Duration of Local State of Disaster. Pursuant to Section 418.108(b), Texas Government Code, the state of disaster shall continue for a period of not more than seven days from the date of this declaration unless continued or renewed by Kerrville City Council.

SECTION THREE. Publicity and Filing. Pursuant to Section 418.108(c), Texas Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary, to include posting it on the City’s website.

SECTION FOUR. Continuing the Activation of the City Emergency Management Plan. Pursuant to Section 418.108(d), Texas Government Code, this declaration of a local state of disaster continues the activation of the City’s Emergency Management Plan.

SECTION FIVE. Public Meetings - Audience and presenter social distancing; public testimony and public hearing input. City Council meetings and meetings of other City Boards and Commissions may be delayed, rescheduled, or conducted in accordance with alternate measures as permitted by law. To reduce the chance of COVID-19 transmission, the City shall hold its public meetings in a manner intended to separate, to the maximum practical extent, audience and presenters from personal contact with other members of the community, City Council and other Board and Commission members, and City staff. Public testimony and public hearing input for public comment and on all items on the agenda at public meetings of the City Council and City Boards and Commissions shall be provided in a manner that best serves these purposes, but balancing the right of a person to make a public statement, orally and in person, virtually, or in writing but keeping in mind the public health and safety. The City shall establish and provide notice of its *Council Meeting Procedures during Disaster Period* and shall also provide notice on its website of the meeting schedule for City Council and its other Boards and Commissions and the health measures applicable to each.

SECTION SIX. Municipal Court. All court proceedings in the City’s Municipal Court may be altered or even postponed in accordance with state law, including orders and direction from the Texas Supreme Court and the state’s Office of Court Administration.

SECTION SEVEN. City Manager Authority. The City Manager, or designee, is authorized to take the following actions, but shall provide notice of such to City Council following such action:

- a. make application for local, state, and federal assistance as necessary and/or applicable;
- b. accept on behalf of the City services, gifts, grants, equipment, supplies, and/or materials from private, nonprofit, or government sources;
- c. suspend disconnections, fees, and penalties related to the City's provision of services.

SECTION EIGHT. Limitation of Declaration. This disaster declaration does not extend to law enforcement activities, emergency responses, or to school districts or private school facilities within the City.

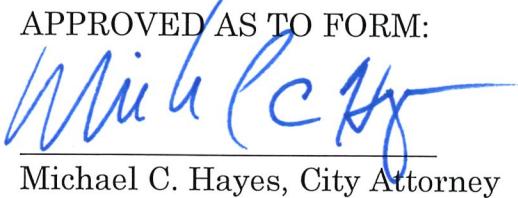
SECTION NINE. Effective Date. This proclamation shall take effect immediately from and after its issuance. This disaster declaration supersedes all previous declarations on this matter.

ORDERED and REVISED this the 28 day of July, 2020.

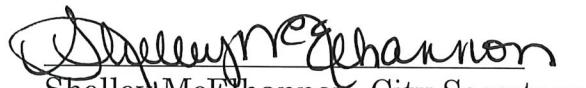
THE CITY OF KERRVILLE, TEXAS


Bill Blackburn, Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:


Shelley McElhannon, City Secretary



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

SUBJECT: Paid quarantine leave policy for fire fighters, peace officers, emergency communications personnel, and emergency medical technicians to become part of the City of Kerrville Personnel Policies and Procedures Manual.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 15, 2021

SUBMITTED BY: Kim Meismer

EXHIBITS: Paid Quarantine Leave Policy for Police and Fire - Effective 061521.pdf

Expenditure Required: **Remaining Budget Balance in Account:** **Amount Budgeted:** **Account Number:**
Unknown N/A Unfunded mandate. N/A

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Texas House Bill 2073 as passed by the 87th Legislature and signed by the Governor of Texas on June 15, 2021 to be effective immediately.

Pursuant to Texas Local Government Code Section 180.008, the City hereby adopts this paid quarantine leave policy for fire fighters, peace officers, emergency communications personnel, and emergency medical technicians (EMT) who are employed by the City and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

This policy will become part of the City of Kerrville Personnel Policies and Procedures Manual. The addition of this policy is being presented to City Council for approval as it may have a budgetary impact. Otherwise, and pursuant to the Charter, the City Manager has authority to adopt personnel policies without City Council action.

RECOMMENDED ACTION:

Staff recommends approval of the paid quarantine leave policy.

7.16 Paid Quarantine Leave Policy – Effective 06/15/2021

A. Purpose/Applicability. Pursuant to Texas Local Government Code Section 180.008, the City hereby adopts this paid quarantine leave policy for fire fighters, peace officers, emergency communications personnel, and emergency medical technicians (EMT) who are employed by the City and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

B. Definitions.

- “Emergency communications personnel” means an individual who is a paid employee of the City’s Police Department who monitors and answers incoming emergency 911 calls or supervises such employees.
- “Emergency medical technician” or “EMT” means an individual who is employed by the City’s fire department and certified as an EMT under Chapter 773, Texas Health and Safety Code.
- “Fire fighter” means a paid employee of the City’s fire department who: (a) holds a position that requires substantial knowledge of firefighting; (b) has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code; and (c) performs at least one of the following functions: (i) fire suppression; (ii) fire prevention; (iii) fire training; (iv) fire safety education; (v) fire maintenance; (vi) fire communications; (vii) fire medical emergency technology; (viii) fire photography; (ix) fire administration; or (x) fire arson investigation.
- “Health authority” means a physician appointed pursuant to state law to administer state and local laws relating to public health within the City’s jurisdiction.
- “Paid quarantine leave” means: (1) all employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits provided by the City; and (2) if applicable, reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation costs.
- “Peace officer” means police officers and marshals licensed by the Texas Commission on Law Enforcement and employed by the City.

C. Quarantine Leave. A City fire fighter, peace officer, emergency communications personnel, or EMT who is ordered to quarantine or isolate by the City Manager or his/her designee, or the local health authority due to a possible or known exposure to a communicable disease while on duty is entitled to receive paid quarantine leave for the duration of the leave.

D. No Reduction in Compensation and Benefits. The City will not reduce a fire fighter’s, peace officer’s, emergency communications personnel, or EMT’s sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with this policy.



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

SUBJECT: City Council Ethics policy.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 17, 2021

SUBMITTED BY: Councilmember Garcia
Councilmember Hughes

EXHIBITS: [20210928_Ethics Policy.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Councilmember Garcia requested this item be discussed by City Council at the regular September 28, 2021 City Council meeting. Councilmember Hughes provided co-sponsorship.

Review and discuss possible revisions to the Ethics policy.

RECOMMENDED ACTION:

Review and discuss the City's Ethics policy.

ETHICS POLICY

for Elected and Appointed Officials - City of Kerrville, Texas

I. Purpose.

City Council has adopted this Ethics Policy as a way to encourage and ensure the highest standards of personal and public conduct during tenure in office. Adherence to this Policy will help maintain confidence and trust in the representatives and decision-makers for the City of Kerrville, Texas (“City”), each of whom must remain independent, impartial, and accountable to the citizens and businesses that they serve. In addition to this Policy, elected and appointed officials must adhere to state laws, the City Charter, and other City policies, which govern their conduct.

II. Goals.

The goals of this Policy are that both Councilmembers and City Officials:

- A. comply with both the letter and spirit of the laws and policies affecting the operations of government;
- B. remain independent, impartial, and fair in their judgment and actions; and
- C. use their respective office or position for the public good and not for personal gain.

III. Definitions.

The following terms when used in this Policy have the following meanings:

Board means a board, commission, or committee of the City, in whatever form and whether advisory or nonadvisory and temporary or permanent.

City Council means the legislative and governing body of the City consisting of the mayor and councilmembers.

City Official means City Council and any appointed member of a Board.

IV. Standards of Conduct.

- A. *Act in the Public Interest:* Recognizing that stewardship of the public interest must be their primary concern, City Officials shall work for the common good of the whole City and not for any private or personal interest. Furthermore, each City Official shall assure fair and equal treatment of all persons and matters presented to them in their service to the City. City Officials are prohibited from using their positions to influence any City-government decision in which they have a personal interest. Under the City Charter, City Council assumes the duties of office without party or partisan mark or designation.

B. *Comply with Laws:* City officials shall comply with the laws of the nation, the State of Texas, and the City in the performance of their public duties. These laws include the United States and Texas constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures, open government; and the City Charter, ordinances, and policies. City officials acknowledge that most information created by a City Official, regardless of whether it is created on a personal electronic device or with a personal email account, is subject to public disclosure under the Texas Public Information Act.

C. *Civility:* The professional and personal conduct of City Officials must be above reproach and avoid even the appearance of impropriety. City Officials shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of the public or other City Officials and employees. Each Official should strive to promote and maintain courtesy, civility, and collegiality.

D. *Respect the Process:* City Officials shall perform their duties in accordance with the processes and rules of order established by the City Council, which govern the public deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

E. *Meeting Attendance:* City Officials are obligated to attend meetings and come prepared with an awareness and a fairly good and well-informed understanding of the agenda issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. City Officials shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or to otherwise interfere with the orderly conduct of meetings, all of which is in accordance with Council's applicable meeting rules and procedures.

F. *Meeting Preparation:* Where a question arises during the preparation for meetings and with the goal of making meetings as efficient as possible, City Officials should submit their question to the appropriate staff person for research and response prior to the meeting. The question and response may certainly be discussed during the upcoming meeting. In the case of City Council, the question should be submitted to the City Manager.

G. *Decisions Based on Merit:* City Officials should review the agenda material, participate in public discussion, and base all decisions on the merits and substance of the matter at hand.

H. *Communication:* Prior to taking final action on a matter under consideration, City Officials shall publicly share any substantive information, which they may have received from sources outside the public decision-making process that is relevant to such action by the Council or Board. Where a City Official cites to a document or information that is received through independent research or study, the City Official should provide a copy of such document to the other City Officials, or at a minimum, provide the citation to where the information may be found.

I. *Strict Confidentiality:*

1. In the course of performing official duties, City Officials may, and City Council will, be privy to confidential information, defined as any information that the City Official is notified is confidential at the time it is shared with the member or that a reasonable person would understand to be confidential from the totality of the circumstances surrounding how the member is made aware of the information. Every City Official shall maintain the strictest confidentiality of all such information received, regardless of whether said information is discussed in an Executive Session. No City Official shall divulge or cause or permit to be disclosed any confidential information to any person not included in the communication by which the City Official received the confidential information.

2. Legal counsel from and matters discussed with the City Attorney are confidential and legally protected by the attorney-client privilege. This privilege belongs to the entire City Council or Board and may be waived only by majority vote of the Council or Board. No member of Council or Board member shall divulge or disclose any such privileged matter unless the Council or Board has voted to waive the privilege.

J. Conflicts of Interest and Disclosure: City Officials shall familiarize themselves and adhere to the following conflicts of interest and disclosure statutes and principles:

1. Ch. 171, Tx. Local Gov't Code – requires City Council and some City Officials to file an affidavit disclosing a substantial interest in a business or property that would be beneficially affected by a decision of the Council or Board and thereafter abstaining from participation in discussion and a vote. Once disclosure is made, the City Official shall leave the meeting to ensure their presence does not hinder the discussion of the item or influence the vote.

2. Ch. 176, Tx. Local Gov't Code – requires City Council to file a conflicts disclosure statement disclosing any business relationship with a person or business doing business with the City or being considered by the City for a business relationship.

3. Section 176.003(a)(2)(B), Tx. Local Gov't Code – requires the disclosure of gifts of an aggregate value of more than \$250.00 in a twelve (12) month period, other than gifts of food, lodging, transportation, or entertainment and accepted as a gift.

4. Sections 553.001-553.003, Tx. Gov't Code – requires the filing of an affidavit before the date the City will acquire a property in which a public servant has an interest.

5. Chs. 36 and 39, Tx. Penal Code – penal Code provisions concerning corruption, including Section 36.02 prohibiting bribes, Section 36.08(d) prohibiting illegal benefits, Section 36.09 prohibiting receipt of prohibited gifts, Section 39.02 concerning abuse of official capacity, and Section 39.06(a) concerning misuse of official information.

K. Advocacy: City Officials shall not utilize the City's name or logo for purposes of endorsing any political candidate or business. City Officials shall only represent the official policies or positions of the City Council or Board to the best of their ability, and such representation may only occur upon receiving the specific approval of City Council or Board. When presenting

their individual opinions and positions, City Officials shall explicitly state they do not represent their body or the City nor will they allow any inference that they do.

L. *Confidential Information*: City Officials shall respect the confidentiality of information concerning City property, personnel, or proceedings of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal interests.

M. *Use of Public Resources*: City Officials shall not use public resources generally unavailable to the public, such as City staff time, equipment, supplies, or facilities for private gain or personal purposes.

N. *Representation of Private Interests*: In keeping with their role as stewards of public interests, City Officials shall not appear on behalf of private interests of third parties before the Council or Board.

O. *Policy Role of City Officials*: City Officials shall respect and adhere to the City's governmental structure as outlined in the City's charter, policies, and procedures. In this structure, the City Council determines the policies of the City with information, analysis, and advice provided by the public, Boards, and staff. City Officials therefore shall not interfere with the administrative functions of the City or the professional duties of the City staff; nor shall they impair the ability of staff to implement Council policy decisions.

P. *Independence of Boards*: Because of the value of the independent advice of Boards to the public decision-making process, City Officials shall refrain from using their position to unduly influence the deliberations or outcomes of Board proceedings.

Q. *Positive Workplace Environment*: City Officials shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses interacting with the City. City Officials shall recognize their special role in dealing with City employees and refrain from creating the perception of inappropriate direction to staff.

V. Implementation.

As an expression of the expected standards of conduct for City Officials, the Policy is self-enforcing. It therefore is most effective when City Officials are thoroughly familiar with it and embrace its provisions. Ethical standards will be included in the orientation for new Councilmembers and new Board members. City Officials entering office must sign the attached statement affirming that they have read, understood, and agree to follow this Policy. City Council shall periodically review this Policy and consider any revisions.

VI. Compliance and Enforcement.

The Policy expresses standards of ethical conduct expected for City Officials. City Officials have the primary responsibility to assure that ethical standards are understood and met and that the public maintains full confidence in the integrity of City government. Councilmembers, as well as Board members, have the responsibility to intervene when a City Official's actions appear to be in

violation of the Policy and such actions or inactions are brought to their attention. The City Council may impose sanctions, such as reprimand, formal censure, or loss of assignment on a City Official whose conduct does not comply with this Policy. The City Council also may act to remove members of Boards from office.

STATEMENT OF COMMITMENT
Ethics Policy for Elected and Appointed Officials - City of Kerrville, Texas

As a member of the Kerrville City Council or a City board, commission, or committee, I agree to uphold the Policy and conduct myself by the following model of behavior. I will:

- Recognize the worth of City Officials and employees and appreciate their individual talents, perspectives, and contributions;
- Help create an atmosphere of respect and civility where the public, City Officials, and City staff are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interests of the City;
- Treat all people with whom I come in contact in a manner I wish to be treated.

I affirm that I have read and that I understand, accept and support the Policy.

Name; Position; Council, Board, etc.

Signature

Date



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

SUBJECT: Amendments to Procedural Rules for Meetings – Kerrville City Council.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Jul 30, 2021

SUBMITTED BY: Mike Hayes

EXHIBITS: [20210928_ProceduralRulesforMeetings_081221 DRAFT redlined.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

At a previous meeting, Council discussed amending its Procedural Rules for Meetings. In accordance with this discussion, the City Attorney has amended the rules as indicated on the exhibit.

RECOMMENDED ACTION:

Consideration and possible action as to proposed amendments to the Procedural Rules for Meetings.

DRAFT 8/12/21

PROCEDURAL RULES FOR MEETINGS KERRVILLE CITY COUNCIL

SECTION ONE. GENERAL PROVISIONS

Rule 1.1 Scope of Rules; Intent. These rules govern the conduct of the Council at or in relation to its meetings and shall be interpreted to ensure fair and open deliberations and decision-making. The rules are intended to promote and maintain courtesy, civility, and collegiality during meetings. Acting as a governing body, Council is the ultimate authority in the application, interpretation, and enforcement of these rules.

Rule 1.2 Technical Parliamentary Forms Abolished. Except as specifically required by these rules, Council shall not use any formal points of parliamentary order, personal privilege, parliamentary inquiry, or other technical forms.

Rule 1.3. Rulings; Matters Not Covered. Rulings on procedure are governed by the presiding officer or by a majority of Council, which would prevail. Section 3.02 of the City Charter provides the following basis for this:

The Mayor shall preside at meetings of the Council and shall exercise such other powers and perform such other duties as are or may be conferred and imposed upon him by this Charter and the ordinances of the City.

Any matter or order or procedure not covered by these rules may be deferred to the presiding officer or legal counsel, as appropriate.

Rule 1.4 Interpretation. These rules are intended to supplement and shall be interpreted to conform to Texas law and the City's Charter and its ordinances. In general, these rules shall be interpreted to allow the majority to prevail but preserve the right of the minority to be heard.

Rule 1.5. Authority to Change and Adopt Rules of Procedure. Adoption and/or modification of rules governing City Council meetings is addressed in Section 3.04 of the Charter, which provides the following with respect to rules of procedure:

...The Council shall determine its own rules and order of business and keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and by vote of not less than a majority of all its members, expel from a meeting a member for disorderly conduct for the violation of its rules; but no member shall be expelled from a meeting unless notified of the charge against him and given an opportunity to be heard in his own defense.

SECTION TWO. TIME AND PLACE OF MEETING

Rule 2.1. Regular Meetings. Scheduling regular meetings is governed by Section 3.01 of the Charter and Section 2-31 of Article II of the Code of Ordinances. Section 2-31 of Article II of the Code of Ordinances provides:

City Council will hold its regular meetings on the second and fourth Tuesdays of each month, beginning at 6:00 p.m. The Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate.

Rule 2.2. Special Meetings/Informal Events.

(a) *Special Meeting.* A “special meeting” of Council is defined as a meeting where at a minimum, City business will be deliberated. A Council workshop or a meeting other than a regular meeting specified by 2.1, above, are examples. Section 3.01 of the Charter provides:

Special meetings shall be called by the City Secretary upon request of the Mayor, the City Manager, or a majority of the members of the Council.

The preferred method for a Councilmember seeking to call a special meeting is to do so at a regular meeting through the making of a motion under future agenda items. A Councilmember may, however, contact the City Secretary or City Manager in writing, which may include email, and request a meeting by also providing the purpose of the meeting and timing of such. The City Manager shall then seek to schedule the meeting with the Council if a majority of its members agree to do so. The City Secretary or City Manager shall notify Councilmembers of all special meetings.

(b) *Informal event.* It is important that when more than two Councilmembers are invited or may attend any event or gathering where City business may be discussed, the event should be posted as a precautionary measure. Such “informal events” may include a town hall discussion, informational gathering, or a community event at which one or more Councilmembers may present information concerning public business or policy. Where a Councilmember believes that such an event may occur, the Councilmember may request that the City Secretary or City Manager post the event, which the City Secretary shall then do. The City Secretary or City Manager shall notify Councilmembers of such events.

Rule 2.3. Quorum, Majority Voting. Quorum and majority voting are governed by Section 3.05 of the Charter, which provides:

A majority of all the members of the Council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

The affirmative vote of a majority of all the members of the Council shall be necessary to adopt any ordinance, resolution, or order; except that a vote to adjourn, or an action regarding the attendance of absent members, may be adopted by a majority of the members present.

SECTION THREE. AGENDA

Rule 3.1. Agenda Preparation; Councilmember Agenda Requests.

(a) The City Secretary shall prepare, post, and distribute notices of meetings and the assembled agenda packages. The City Manager is responsible for assembling the agenda package for each meeting.

(b) The preferred method for a Councilmember seeking to add an item to a future agenda is to do so at a regular meeting under future agenda items by consensus of Council or by majority vote. For purpose of these rules, “consensus” is defined as an informal understanding among the majority of Councilmembers present at the meeting.

(c) Any Councilmember, while outside of a regular meeting, wishing to have a matter heard at a City Council meeting shall make a written request, including via email, to the City Manager or City Secretary, and such request shall include the support of another Councilmember. The request shall contain a short summary statement of the proposed presentation and be submitted before 5:00 p.m. Monday, the eighth day preceding such meeting. The City Manager shall place a subject on the agenda if the subject is requested by a Councilmember in accordance with this section. Other persons may request that the City Manager place an item on the agenda pursuant to Rule 3.3.

Rule 3.2. Consent Agenda. In preparing an agenda, the City Manager may separately designate items as “Consent Agenda” which may be acted upon by the Council under Rule 6.5. The “Consent Agenda” shall consist of routine items, which in the City Manager’s determination, may be appropriately considered as a group, without separate discussion, at the Council meeting. Any item listed on the consent agenda may be removed by a member of Council or upon a request by staff or a member of the public.

Rule 3.3. Agenda Requests from Public. The preferred method for a person seeking to add an agenda item for Council consideration during a meeting is to do so at a regular meeting during the Visitors/Citizen Forum. Council may then agree to place this item on a future agenda. Alternatively, a person may make a written request for this action, including via email, to the City Manager or City Secretary. Any such request must include a “sponsorship” of the item from a Councilmember. Thus, the request should include either a statement that a named Councilmember has agreed to sponsor the item or that the requestor is seeking such sponsorship through the forwarding of his or her request to the entire Council. The request must also contain a short summary statement of the proposed presentation, the issue or question before Council, and shall be submitted before 5:00 p.m. Monday, the eighth day preceding such meeting. Despite this

timeline, however, a requestor should understand that the item may not be placed on the very next meeting agenda, but instead, due to necessary preparation and research, will be placed on another agenda in the very near future. Once the person's request has been placed on an agenda, neither that person nor anyone else may submit the item, or an item concerning a similar subject matter, for placement on an agenda for a period of one-hundred eighty (180) days unless the item was postponed to a future meeting or a Councilmember makes a written request for placement. This rule does not apply to the right to appeal or petition Council pursuant to City ordinance or other law.

Rule 3.4. Requests to Exclude Items. When a Councilmember will be absent from a meeting, the Councilmember may request that an item not be included and such request shall not be unreasonably denied.

Rule 3.5. Council Action to Defer, Continue, or Not Act. A Councilmember wishing to withdraw, defer, or continue an item may make a motion to that effect. Such a motion shall be considered before any other action on that item.

Rule 4. Conduct of Meetings

Rule 4.1. Determination of Quorum. Before proceeding with the business of the Council, the City Secretary shall make note of Members present and enter those names in the minutes. The presiding officer shall determine the presence of a quorum as required by law and these rules.

Rule 4.2. Call to Order. The presiding officer shall call the meeting to order.

Rule 4.3. Presiding Officer. The Mayor, or in the Mayor's absence or inability incapacity to perform pursuant to Section 3.02 of the Charter, the Mayor Pro Tem, shall be the presiding officer at all Council meetings. The presiding officer retains all rights and privileges of a Member of Council. If both the Mayor and Mayor Pro Tem are absent or unable to perform, the most senior Councilmember present shall preside. In the event two or more Members equally possess the greatest seniority then the eldest person among them shall preside.

Commented [MH1]: Revised here to make consistent with the most recent charter change. Charter provides for selection beyond the Mayor Pro Tem if necessary. Rules provide more specifics but do not conflict with Charter.

Rule 4.4. Control of Discussion. The presiding officer shall control discussion of the Council on each agenda item to assure full participation in accordance with these rules, the City Charter and the Code of Ordinances. The presiding officer will preserve order and decorum, preventing the impugning of any member's motives or other personal comment not relevant to the orderly conduct of business. The presiding officer may request, and restate as appropriate, that all speakers keep comments brief and relevant to the question before the Council. All visitors shall refrain from abusive, rude, or inappropriate conduct. *See Chapter 38 and Section 42.05 of the Texas Penal Code regarding the "hindering" or "disrupting" of official proceedings.*

Rule 4.5. Order of Consideration of Agenda. Each agenda item shall be introduced by the presiding officer. To introduce an item, it shall be sufficient to identify the item by the number assigned to it on the agenda. However, as provided in Section 3.06(a) of the City Charter:

Ordinances and resolutions shall be introduced only in written form.

After a measure is introduced, the standard procedure for consideration is as follows, but may be deviated from as provided below:

- (1) Reading of the measure by the presiding officer or other person designated by the presiding officer. Reading ordinances or resolutions by caption or summary is allowed if the full text is available as prescribed by the Charter. (Note: Section 3.06(a) of the Charter requires additional steps for ordinances: “No ordinance shall be passed until it has been read and voted upon in at least two regular meetings, except an emergency measure. The final reading of each ordinance shall be in full unless a written or printed copy thereof shall have been furnished to each member of the Council prior to such reading.”)
- (2) The City Manager or designee may present a staff statement or presentation with questions and discussion from City Council.
- (3) Public Comments.
- (4) Discussion.
- (5) Motion and second.
- (6) Vote.
- (7) If a majority of Council votes against a motion, the Councilmember making the original motion may amend that motion for reconsideration. In addition, any Councilmember may make an alternate motion for consideration related to that agenda item.

In the absence of objections of the presiding officer or a majority of Council, Council may vary the standard procedure. Informal voting by voice or a show of hands shall be used at the discretion of the presiding officer, unless a Councilmember requests a roll call vote or a roll call vote is otherwise required by state law. In case of a tie, the motion fails.

Rule 4.6. Discussion; referenced document. A Councilmember should speak only after being recognized by the presiding officer. A Councilmember shall limit remarks to the issue or question before Council. A Councilmember shall not be interrupted except by the presiding officer to enforce these rules. Anyone speaking shall be recognized by the presiding officer. Where a Councilmember plans to reference or cite a document that was not included as part of the agenda packet, the Councilmember ~~should shall~~ make copies a copy for each Councilmember and provide the document to the entire Council as soon as possible and prior to the meeting. The Councilmember may seek the aid of the City Manager in complying with this provision.

Rule 4.7. Presiding Officer's Right to Enter into Discussion. The Mayor (or other presiding officer) as a Member of the Council may enter into any discussion.

Rule 4.8. Limit on Remarks. Each Councilmember shall limit his or her remarks to a reasonable length. Toward that end, each Councilmember is limited to five minutes of speaking time per agenda item at one time, which a Councilmember may ask the presiding officer or Council to abide by and enforce. The allotted time includes questions asked of staff and citizens, the corresponding responses, and concluding remarks.

Rule 4.9. Call for Vote. At the conclusion (or closure) of debate or discussion, the presiding officer shall call for a vote, provided however, a majority of the Council present may require a vote at any time.

SECTION FIVE. CITIZEN PARTICIPATION

Rule 5.1. Public Participation.

- (a) *Purpose/Registration.* Comments and suggestions by visitors are highly valued and encouraged during those parts of a meeting designated for public participation. Speakers shall register in advance of the reading of a measure for consideration and shall limit their presentations to four minutes each. Time limitations of this rule may be extended by the consensus of Council or pursuant to majority vote.
- (b) *Special Meetings/Informal Events.* Visitors wishing to speak at a special meeting or informal event called and controlled by Council, including a workshop, may speak only during the appropriate agenda item for such purposes, which may be placed at the beginning of the meeting. This rule does not apply where a special meeting or informal event is not called nor controlled by Council and where Council will not deliberate or take action.
- (c) *Speaker Comments.* Speakers shall direct all remarks and questions to the Council, who may refer them to the City Manager for investigation, response, or other action. The "Texas Open Meetings Act" requires the City to post a notice, in advance, listing every topic or subject to be considered by the Council. This law may prevent the Council from considering a subject raised by a member of the public. In this case, the presiding officer may refer the matter, and the Council may direct that the matter be placed on the agenda for an upcoming meeting.
- (d) *Signs, etc.* Visitors are prohibited from bringing signs, placards, or anything else that may obstruct the views or seating into City Hall, the meeting room, or any location where Council is holding its meeting.

Rule 5.2. Manner of Addressing Council. A person desiring to address the Council shall step to the lectern or other alternate arrangement and state his or her name and address for the record before proceeding with comments. All comments from the public shall be directed to the Council.

Rule 5.3. Total Time Limits. Those members of the public speaking on items both on the agenda and not on the agenda are limited to four minutes of speaking time. A person may speak only once on any agenda item. However, Applicants, or those persons having placed an item on the agenda seeking a specific answer from the Council, may be allowed up to five minutes of total speaking time. Time limitations of this rule may be extended by the consensus of Council or pursuant to majority vote.

Rule 5.4. Remarks to be Germane/Non-redundant. Public comments must be kept relevant to the subject before the Council. The presiding officer shall rule on the relevance of comments. Persons making irrelevant, personal, impertinent, overly redundant, or slanderous remarks may be barred by the presiding officer from further comment before the Council during the meeting.

Rule 5.5. Matters not on the Agenda. Visitors may speak during the Visitor/Citizens Forum item on the agenda on items not specifically listed on the agenda. Discussion of matters not on the agenda is prohibited by the Texas Open Meetings Act. Council may provide or ask the City Manager to provide specific factual information in response to the inquiry, recite existing policy, or propose placing the issue on an upcoming meeting agenda.

SECTION SIX. COUNCIL ACTION

Rule 6.1. Motion Required. All action requiring a vote shall be moved by a Member of the Council. Each motion will require a second by another Member of the Council to be considered. A motion must be voted on or withdrawn before another motion for that same agenda item can be considered. Any Member of the Council can make an amendment to a motion. With a second, the amended motion is then voted on.

Rule 6.2. Motion to Reconsider. Except in case of a tie vote, a motion to reconsider may be made but only by a Councilmember who was on the prevailing side in the original action. This type of motion may only be made at the same meeting when the subject is considered. Rule 4.5 does not apply to this process.

Rule 6.3. Recording names of Moving Members. The City Secretary shall record the name of the Councilmember making each motion and corresponding second to the motion.

Rule 6.4. Separate Consideration. Except as otherwise required by these rules, each agenda item shall be voted upon separately and each separate vote shall be recorded by the City Secretary.

Rule 6.5. Action on Consent Agenda. Except as herein provided, the “Consent Agenda” shall be considered as a group without separate discussion on each item. When the Consent Agenda is

introduced, each Councilmember has the right to remove any item, in which case the item is handled under Rule 4.5. After items are removed, the presiding officer shall ask the Members to indicate their votes on the remaining Consent Agenda items. The City Secretary shall record the votes on each item separately.

Rule 6.6. Consideration Out of Order. With the consensus of Council or pursuant to majority vote, any agenda item may be considered out of order, at the request of any Councilmember.

Rule 6.7. Council Appointments. The Council may consider and make appointments to City boards and commissions by either of the following procedures:

- By direct motion. The Councilmember shall state the name of the person and the board to which they are being appointed. The motion will require a second, and a majority vote of the Council shall be required for appointment.
- By nomination process. The mayor shall open the floor for nominations, whereupon Councilmembers may put the names of appointees forward. The names submitted shall be debated. When the debate ends, the City Secretary shall call the roll of the Councilmembers, and each member shall cast their vote from those persons nominated. The nominee receiving the highest number of votes shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes as there are slots to be filled; however, a member shall not cast more than one vote for a single candidate. A majority of the members voting shall be required for appointment.

In accordance with Section 3.01 of the City Charter, all meetings of all boards, commissions and committees of the Council shall be open to the public and as provided by state law. The requirements of the Texas Open Meetings Act shall apply to all elected or appointed authorities, boards, commissions, Council, or other bodies of the City that are composed of a quorum of members of a particular body. However, the law's requirements shall not apply to a meeting solely among the City's professional staff.

Rule 6.8. Board Application Process. The City Manager shall ensure that public notice is provided to announce the opening of positions on various boards, such notice to be given at least 30 days prior to the date of the meeting that Council will consider such appointments. Where an unexpected vacancy occurs, the City Manager shall provide such notice not less than 14 days prior to the date of the meeting.

SECTION SEVEN. MISCELLANEOUS

Rule 7.1. Voting Required. Section 3.05 of the Charter requires Councilmembers to vote, as follows:

No member may be excused from voting except when such member has a conflict of interest as defined by law.

Procedural Rules for Meetings (Effective Feb. 1, 2007); Revised 9/8/09, 3/14/17, 3/28/17, 9/26/17, 9/25/18, 8/27/19

Any Council Member prohibited from voting by personal interest shall announce at the commencement of consideration of the matter and shall not enter into discussion or debate on any such matter. In that case, the member shall file with the City Secretary a written statement (electronic communications are considered acceptable) of the reason for abstaining. Any Councilmember refusing to vote – and not excused from voting – shall be considered in violation of the City Charter and will be recorded in the minutes as voting in the affirmative and may be held to further repercussions as deemed appropriate by the City Council.

Rule 7.2. Point of Order. A Councilmember may make a point of order to draw attention to a violation of these rules, such as the irrelevance or continued repetition of a speaker. Such action is not to be made because of disagreement over the subject matter of the discussion or an opinion. A point of order may be made at any point during a meeting and it may interrupt the pending discussion, takes precedence over that discussion or any other motion, and must be decided before any other discussion or action occurs. Following a point of order, the presiding officer shall immediately stop the discussion, acknowledge the point of order, and allow the Councilmember who raised it the opportunity to state the basis thereof. No debate concerning the point of order is permitted beyond a fair, reasonable clarification of the applicable rule. After hearing the basis upon which the point of order is made, the presiding officer must rule immediately subject to conferring with relevant authorities about the validity of the raised issue. The presiding officer may dispute the point of order, accept it and apply or comply with the applicable rule, or not accept the order. If a Councilmember believes that the ruling given by the presiding officer is incorrect, then a Councilmember may make the procedural motion “dissenting from the chair’s ruling.” This motion must then be seconded and put to the vote without debate. The result of the vote will determine whether the ruling is upheld or reversed.

Rule 7.3. Suspension of Rules. These rules or any part hereof may be suspended for a specific purpose or any single meeting by consensus of Council or pursuant to majority vote. This does not apply to those rules directly mentioned in the City Charter or other sections of the Code of Ordinances.

Rule 7.4. Informal Requests. A Member of the Council, before or during the consideration of any matter, or in the course of a hearing, may request and receive information, explanations, or the opinions of the City Manager or City Attorney.

Rule 7.5. Council attendance at board meetings.

A Councilmember may attend a board or commission meeting in their capacity as a Councilmember, but should not participate in the discussion or deliberation so as to avoid any undue influence or an issue of due process. A Councilmember may attend a board or commission meeting and participate in the discussion where they have a personal interest in an issue before the board or commission, such as attending a Planning and Zoning Commission meeting for property that he or she owns and that is subject to a zoning change.

Rule 7.6. Councilmember Requests of Staff. Pursuant to Section 6.05 of the City Charter, Council is generally limited to going through the City Manager with respect to a request to staff. The policy basis for this procedure includes helping to ensure the City Manager is aware of any issue raised by a Councilmember, promoting the “chain of command” management, and efficiency. Where such a request or inquiry is made to the City Manager, the City Manager will address the request or inquiry as efficiently as possible, based in part on the nature of the request and existing workload, and will communicate with the Councilmember as to the timing of a response. The Councilmember should provide as much information as possible to help ensure that the response adequately addresses the question. In most cases, the City Manager will provide the response to the entire Council. Where a request will, in the City Manager’s opinion, utilize a significant amount of staff time or other resources or divert from City policy, the City Manager may ask the Councilmember to place the issue on an agenda for Council direction.



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

SUBJECT: Appointment of City Council committee for Municipal Court Judges evaluations.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 17, 2021

SUBMITTED BY: Councilmember Eychner
Councilmember Hughes

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

At the September 14, 2021 City Council meeting, Councilmember Eychner requested the Council appoint a committee to evaluate the Municipal Court Judges; which was seconded by Councilmember Hughes.

The City has two (2) Municipal Court Judges. Mark Prislovsky was appointed in 1988 and M. Patrick Maguire was appointed in 2003. Both Judges terms expire December 31, 2021.

Per Texas State Law and the City Charter, the City Council appoints the judges for a term that may not exceed two years.

§ 29.005. Term of Office (Tx. Gov't Code)

The judge of a municipal court serves for a term of office of two years unless the municipality provides for a longer term pursuant to Article XI, Section 11, of the Texas Constitution. A municipal court judge who is not re-appointed by the 91st day following the

expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired.

Section 9.02. - Municipal Court Judge. (City Charter)

The Municipal Judge shall preside over the Municipal Court. He shall be appointed by the City Council. The Judge shall be appointed for a term not to exceed two (2) years, and shall hold office at the pleasure of the City Council. If for any reason the Judge shall temporarily fail to act, the Mayor or Mayor Pro Tem of the City is hereby authorized to appoint a replacement who shall act in the place of the Judge and who shall have all of the powers and discharge all of the duties of said office. During either twelve (12) month period beginning at the date of appointment, more than two (2) consecutive or six (6) total absences over and above prior approved vacation and sick leave, shall be cause for automatic removal from office by the City Council. The Judge, or anyone acting in his place, shall receive such compensation as may be determined by the City Council.

RECOMMENDED ACTION:

Appoint Councilmembers to evaluate Municipal Court Judges.



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

SUBJECT: Appointment of City of Kerrville delegate for the 2021 Texas Municipal League (TML) Annual Conference business meeting.

AGENDA DATE OF: September 28, **DATE SUBMITTED:** Sep 20, 2021
2021

SUBMITTED BY: Councilmember Garcia
Councilmember Clarkson

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Councilmember Garcia requested this item be discussed by City Council at the regular September 28, 2021 City Council meeting. Mayor Pro Tem Clarkson provided co-sponsorship.

The following is from the Texas Municipal League: "The primary function of the Texas Municipal League is advocating on behalf of its member cities. Many significant decisions affecting Texas cities are made by the Texas Legislature, not by municipal officials. Newly elected mayors and councilmembers quickly realize that the legislature can address virtually any aspect of city government. The number of city related bills as a percentage of total bills filed rises every year. Twenty years ago, around 17 percent of bills filed affected cities in some way. By 2021, that percentage has increased to almost 31 percent. In other words, more than a quarter of the legislature's work is directed at cities, and much of that work aims to limit municipal authority."

Based on a legislative program that is developed by member cities and adopted by the

TML board of directors, the League advocates against or for those efforts. The program is essential to the legitimacy of the League's advocacy efforts. To develop the program, city officials can provide input in primarily two ways."

One way is through the annual business meeting. Member cities can submit resolutions for consideration at the business meeting of each year's annual conference. Each city is asked to provide one delegate to serve as its liaison at the meeting. The delegates will be briefed on the content of the resolutions and given a chance to vote on whether they merit inclusion in the legislative program. The resolutions form the basis of a fixed legislative program.

The City of Kerrville is a member city of TML, giving it the right to select a delegate to attend and participate in the business meeting. This year the meeting will be held at the annual conference, which is scheduled to be held in Houston from October 6-8.

Based on the importance of forming a legislative program for TML and ensuring the City is represented at the business meeting, Councilman Garcia recommends that the City Council appoint one of its members to serve as the delegate at the annual business meeting.

RECOMMENDED ACTION:

Deliberate the appointment of a member of the City Council to serve as its delegate at the annual business meeting to be held during the 2021 TML Annual Conference.



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

SUBJECT: Appointments to the Kerrville Area Youth Leadership Academy (KAYLA).

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 17, 2021

SUBMITTED BY: Kim Meismer

EXHIBITS: [KAYLA Guidelines and Schedule - 2021-2022.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	C - Community / Neighborhood Character and Place Making
Guiding Principle	C1. Promote “aging in place” or full life-cycle amenities to address the needs and desires of children, teens, young families and single professional adults.
Action Item	C1.4 - Focus on developing programs, such as classes and sports leagues, to appeal to young adults

SUMMARY STATEMENT:

The Kerrville Area Youth Leadership Academy (KAYLA) will develop youth leaders committed to learning about local government and provide an overview of the complexity and variety of opportunities available through public service.

KAYLA is comprised of high school students in grades 9-12, with a maximum of 10 members. New appointments are made each year after the new school year has begun. Members can only serve one year on KAYLA.

The City received two additional applications for KAYLA, in addition to the five appointees named September 14, 2021.

- Joseph Borecky, Tivy High School

- Anna McCoy, Our Lady of the Hills, and currently home-schooled

RECOMMENDED ACTION:

Approve the appointment of: Joseph Borecky and Anna McCoy to the Kerrville Area Youth Leadership Academy (KAYLA) for the 2021-2022 school year.

Kerrville Area Youth Leadership Academy (KAYLA)

Class of 2021-2022

The Kerrville Area Youth Leadership Academy (KAYLA) will develop youth leaders committed to learning about local government and provide an overview of the complexity and variety of opportunities available through public service.

Eligibility:

- Kerr County resident & currently enrolled in 9th – 12th grade for the 2021-2022 school year.
- Must complete the KAYLA application in full and provide a letter of reference from their principal or nominating teacher.
- Must have a valid email address and must check the email address often. Notification of meetings will be sent via email to all KAYLA members.
- Must not have previously served as a member of KAYLA. Membership limited to one year.

Attendance Requirement:

Due to limited enrollment, attendance is very important. KAYLA members must be committed to attend all meetings and participate in at least one volunteer opportunity offered by the City. By signing the application, you commit to the following:

- Be on time for each KAYLA meeting. Meetings will start promptly at 4:30 pm.
- Stay for the duration of meeting – do not leave early. Meetings will end no later than 5:30 pm.
- Contact the Staff Liaison, at least 24 hours in advance, by email or text if you are unable to attend a KAYLA meeting for any reason.
 - Excused absences include: school activities and family emergencies. Must contact the Staff Liaison at least 24 hours in advance (if possible) to be considered for an excused absence - verification may be required.
 - Excessive absenteeism, as determined by the Staff Liaison, may be cause for immediate dismissal from KAYLA.

Term of Membership: One School Year (October – May)

Number of Members: Maximum of Ten

Regular Meeting Time: Second Thursday of each month (October – April) at 4:30 pm

Regular Meeting Place: Kerrville City Hall, 701 Main St., Kerrville, TX 78028

Staff Liaison:	Kim Meismer, Executive Director for General Operations. City of Kerrville, 701 Main Street, Kerrville, TX 78028 Ph. 830-258-1140, Fax: 830-792-8346 Email: kim.meismer@kerrvilletx.gov
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Kerrville Area Youth Leadership Academy (KAYLA)

Class of 2021-2022

Date	Event	
August 16, 2021	Applications Open	
August 27, 2021	Applications Close	
September 14, 2021	Committee Members Appointed by City Council	
KAYLA Meets the 2nd Thursday of Each Month 4:30 pm – 5:30 pm		
October 14, 2021	4:30 pm	Welcome, Meet the Mayor & City Manager
October 30, 2021	TBD	<i>Volunteer Opportunity – Family Fright Night & Movies in the Park</i>
November 11, 2021	N/A	NO MEETING - VETERAN'S DAY HOLIDAY
November 20, 2021	TBD	<i>Volunteer Opportunity – Holiday Lighted Parade</i>
December 9, 2021	4:30 pm	Library Campus Tour (Library, History Center, A.C. Schreiner House)
December 11, 2021	TBD	<i>Volunteer Opportunity – Gingerbread House Decorating - BHML</i>
January 13, 2022	4:30 pm	Overview of Fire Department with Tour
February 5-6, 2022	TBD	Annual Texas Youth Advisory Commission Summit – Killeen, TX ***Optional***
February 10, 2022	4:30 pm	Overview of Public Works Department with Tour
TBD	TBD	<i>Volunteer Opportunity – Daddy/Daughter Dance</i>
March 10, 2022	4:30 pm	Overview of Police Department with Tour
April 14, 2022	4:30 pm	Overview of Parks & Recreation Department with Tour
TBD	TBD	<i>Volunteer Opportunity - Mother/Son Dance</i>
Tuesday, May 10, 2022	6:00 pm	Recognition at City Council Meeting

Schedule for other volunteer opportunities will be available soon.



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

SUBJECT: Appointment to the Senior Services Advisory Committee.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 13, 2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS: [20210928_Roster_SSAC 8-2021.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	C - Community / Neighborhood Character and Place Making
Guiding Principle	C1. Promote “aging in place” or full life-cycle amenities to address the needs and desires of children, teens, young families and single professional adults.
Action Item	C1.6 - Provide service options for elderly persons who want to stay in their homes

SUMMARY STATEMENT:

Eight vacancies will exist September 30, 2021, utilizing the existing Ordinance membership made up of fourteen members. The Senior Services Advisory Committee is currently requesting City Council adopt a SSAC membership reduction to nine members. If the Ordinance is adopted, only three vacancies will exist.

Five applications have been received: Donald Hadley, Waverly Jones (reappointment), Mary Mays, Theresa Standage (reappointment), and Sandra Yarbrough (reappointment).

RECOMMENDED ACTION:

Appoint members.

SENIOR SERVICES ADVISORY COMMITTEE

Name	Term	Start date	Reappointment	End date	Position
Karen J. Burkett	1 & partial	8-Jan-19	9-Dec-20	30-Sep-22	
Marilyne Cizmich	1	15-Jan-20	n/a	30-Sep-22	
Christine Klima	1 & partial	8-Jan-19	9-Dec-20	30-Sep-22	Vice Chair
Karen Martin	1	9-Dec-20	n/a	30-Sep-22	
Karen Mattox	1	9-Dec-20	n/a	30-Sep-22	
Edward Niel Powers	1	9-Dec-20	n/a	30-Sep-22	
Janice Andersen	1	8-Jan-19	eligible	30-Sep-21	
Waverly Jones	1	8-Jan-19	eligible	30-Sep-21	Chair
Melba Maring	1	8-Jan-19	eligible	30-Sep-21	
Theresa Standage	1	12-Feb-19	eligible	30-Sep-21	
Sandra Yarbrough	1	12-Feb-19	eligible	30-Sep-21	
vacant				30-Sep-23	
vacant				30-Sep-22	
vacant				30-Sep-22	

Aug-21



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

SUBJECT: Appointment to the Main Street Advisory Board.

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 13, 2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS: [20210928_Roster_Main Street 8-2021.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	D - Downtown Revitalization
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

Five vacancies will exist September 24, 2021.

Six applications have been received: J. Clint Morris (reappointment), Lyndia Rector (reappointment), Sue Schulse, Melissa Southern (reappointment), Lanza Teague, and Marvin Willis.

RECOMMENDED ACTION:

Appoint members.

MAIN STREET

Name	Term	Start date	Reappointment	End date	Position
Diana L Howard	1	25-Aug-20	n/a	24-Sep-22	
Katherine Howard	1	18-Nov-20	n/a	24-Sep-22	Ex Officio
Anne Overby	1 & partial	24-Sep-19	25-Aug-20	24-Sep-22	
William Rector	1	18-Nov-20	n/a	24-Sep-22	Ex Officio
James Clint Morris	1	24-Sep-19	eligible	24-Sep-21	
Lyndia Rector	1	24-Sep-19	eligible	24-Sep-21	Vice Chair
Melissa Southern	1	24-Sep-19	eligible	24-Sep-21	
Michael Wellborn	1	24-Sep-19	eligible	24-Sep-21	
Vacant				24-Sep-23	

Aug-21



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

SUBJECT: Appointment to the Tax Increment Reinvestment Zone, Number One, Board of Directors. (This appointment is eligible for Executive Session 551.071).

AGENDA DATE OF: September 28, **DATE SUBMITTED:** Sep 13, 2021
2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS: [20210928_Roster_TIRZ.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	E - Economic Development
Guiding Principle	E4. Balance, broaden and diversify the City's tax base, shifting the tax burden away from residential property owners
Action Item	E1.4 - Improve the processes for business recruitment, expansion and retention among stakeholders, EIC and KEDC

SUMMARY STATEMENT:

Three vacancies exist due to terms expiring September 2021.

Three applications have been received that are eligible for appointment: Fred Gamble (reappointment), Katherine Howard (reappointment), and Bruce Stracke (reappointment).

RECOMMENDED ACTION:

Appoint members.

TAX INCREMENT REINVESTMENT ZONE (TIRZ)

Name	Term	Start date	Reappointment	End date	Position
Kenneth Early	1	20-Aug-20	n/a	30-Sep-22	Chair
John Harrison	1	20-Aug-20	n/a	30-Sep-22	
Patrick Murray	1	20-Aug-20	n/a	30-Sep-22	
Mindy N. Wendele	1	20-Aug-20	n/a	30-Sep-22	Vice-Chair
Fred L.Gamble	partial	20-Aug-20	eligible	30-Sep-21	
Katherine Howard	partial	20-Aug-20	eligible	30-Sep-21	
Bruce John Stracke	partial	20-Aug-20	eligible	30-Sep-21	

August 2021



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

SUBJECT: Appointment to the Zoning Board of Adjustment. (This appointment is eligible for Executive Session 551.071).

AGENDA DATE OF: September 28, 2021 **DATE SUBMITTED:** Sep 13, 2021

SUBMITTED BY: Shelley McElhannon

EXHIBITS: [20210928_Roster_ZBA 8-2021.pdf](#)

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

PAYMENT TO BE MADE TO: N/A

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

SUMMARY STATEMENT:

Three vacancies will exist September 30, 2021.

Three applications have been received that are eligible for appointment: Michael Killeen (reappointment) - currently an alternate position, Sam Ligon (reappointment), and Bill Morgan.

RECOMMENDED ACTION:

Appoint members.

ZONING BOARD OF ADJUSTMENT

Name	Term	Start date	Reappointment	End date	Position
Pablo Brinkman	partial	6/12/2018-A 2/12/2019-R	9-Dec-20	30-Sep-22	Chair
Ernest Garza	partial	8/13/2019-A 6/9/2020-R	30-Sep-20	30-Sep-22	
Jim Sandy	1	12/9/2020-A	n/a	30-Sep-22	Alternate
Paul Zohlen	1 & partial	3/12/2019-A 8/27/2019-R	9-Dec-20	30-Sep-22	Vice-Chair
Mike Asmus	partial	6/09/2020-A 12/9/2020-R	eligible	30-Sep-21	
Michael Killeen	partial	12/9/2020-A	eligible	30-Sep-21	Alternate
Sam Ligon	1 & partial	10/22/2013-A 2/13/2018-R	9/30/2019 eligible	30-Sep-21	

Aug-21