

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-04**

AN ORDINANCE CLOSING, ABANDONING, AND VACATING ALL RIGHT, TITLE, AND INTEREST IN A PUBLIC RIGHT-OF-WAY, CONSISTING OF AN UNIMPROVED, UNOPENED PORTION OF WEST ST. THAT EXISTS BETWEEN THE PROPERTIES ADDRESSED AS 620 AND 704 JUNCTION HIGHWAY (SH 27); SAID RIGHT-OF-WAY OUT OF THE WESTLAND PLACE ADDITION, A SUBDIVISION WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS, PURSUANT TO THE PLAT RECORDED IN VOLUME 1, PAGE 26 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS AND CORRESPONDING FIELD NOTES; AND, LOCATED WITHIN THE CITY OF KERRVILLE, TEXAS; FINDING THAT SAID PORTION IS NOT REQUIRED FOR FUTURE USE AS A PUBLIC STREET; ORDERING RECORDING; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THIS SUBJECT

WHEREAS, West Street, as located within the City of Kerrville, Texas, was created by plat and corresponding field notes on or about March 12, 1926, which documents were then filed within the property records of Kerr County, Texas (Vol. 1, Page 26 and Vol. 45, Page 335); and

WHEREAS, an unimproved and unopened portion of West Street exists between Lois Street and Junction Highway (SH 27), which is neither improved nor marked in any way; and

WHEREAS, West Street, as it exists in this location, has not been and is no longer required for public use as the City has no plans to improve, open, or maintain it as a public right-of-way; and

WHEREAS, a portion of West Street exists between the properties addressed as 704 and 620 Junction Highway (SH 27) (the "Right-of-Way Segment"); and

WHEREAS, the adjacent property owner to the west of this Right-of-Way Segment (704 Junction Highway) has plans for the continued use and the additional development of his property ("Owner"), and has asked the City to abandon, vacate, and thereafter convey such segment to him which will enable the additional development; and

WHEREAS, the Right-of-Way Segment requested to be abandoned and vacated is unimproved; will not be needed as a future public right-of-way; would require the expenditure of funds to improve; and even if improved, may pose safety hazards as to its use and travel between Lois Street and Junction Highway; and

WHEREAS, City staff recommends that the City formally close, abandon, vacate and thereafter convey the Right-of-Way Segment, subject to terms of this Ordinance; and

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

WHEREAS, Section 311.007 of the Texas Transportation Code authorizes any such city to abandon, vacate, or close any street or alley; and

WHEREAS, pursuant to Section 253.001 of the Texas Local Government Code, Council must adopt an ordinance directing the City Manager, upon closure, abandonment, and vacation, to execute a conveyance of the Right-of-Way Segment; and

WHEREAS, the Right-of-Way Segment was created by plat and accompanying field notes and as such, the rights vacated, abandoned, and closed by the City pursuant to this Ordinance will allow the City to convey fee ownership of the segment to the adjacent property (lot) owners, as appropriate; and

WHEREAS, City Council held an open meeting beginning at approximately 6:00 p.m. on January 10, 2023, as advertised, to consider public comments regarding the issue of closure, abandonment, and vacation of the Right-of-Way Segment; and

WHEREAS, pursuant to the actions contemplated to be taken below and in order to avoid any cost to the public required with respect to the future improvement and maintenance of the Right-of-Way Segment, City Council, acting pursuant to state law and to facilitate the additional development and use of property and avoid unnecessary costs and safety issues with respect to improving the Right-of-Way Segment, finds it to be in the public interest and advisable to close, abandon, vacate, and convey the Right-of-Way Segment, subject to the limitations and conditions which follow;

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

SECTION ONE. The facts and matters set forth in the preamble to this Ordinance are hereby found to be true and correct.

SECTION TWO. City Council finds that the Right-of-Way Segment is no longer essential to the safe and efficient flow of traffic. As an exercise of its discretion, City Council hereby closes, abandons, and vacates all of the City's right, title, and interest of the public in and to the Right-of-Way Segment, which is identified as follows, subject however, to the conditions and restrictions provided below:

That portion of an unimproved public right-of-way as it continues southwest from its intersection with the properties addressed as 704 and 620 Junction Highway (SH 27) to its intersection with Junction Highway (SH 27), and being more specifically described and depicted in Exhibit A, attached hereto and incorporated herein by reference.

The vacation, abandonment, and closure does not extend to any portion of West Street not described in **Exhibit A**.

SECTION THREE. The Right-of-Way Segment exists by virtue of a subdivision plat recorded at Volume 1, Page 26 of the Plat Records of Kerr County, Texas; along with corresponding Field Notes recorded at Volume 45, Page 335 of the Real Property Records of Kerr County, Texas. Pursuant to these records, the Right-of-Way Segment exists as a fee simple interest.

SECTION FOUR. The property abutting the Right-of-Way Segment is:

**620 Junction Highway, Kerrville, TX 78028
704 Junction Highway, Kerrville, TX 78028**

The listing above is made solely to facilitate indexing this Ordinance in the Real Property Records of Kerr County, Texas. If the listing is inaccurate or not comprehensive, it does not affect the validity of this Ordinance or the closure, abandonment, vacation, and conveyance of the Right-of-Way Segment.

SECTION FIVE. The City shall convey the Right of Way Segment to the owner(s) of the adjacent property(s) subject to the limitations and conditions found in Sections Six and Seven respectively, and the following:

- a) the City shall obtain an appraisal as to the value of the Right-of-Way Segment based upon its fee simple interest. Such appraisal will take into account existing property interests burdening and limiting the use of the segment as referenced in Section Six, such interests depicted in **Exhibit B**.
- b) in reviewing the appraisal, City staff shall also take into account the City's request to increase the area and purpose(s) of the existing interests referenced in Section Six, such request to be made to the property owner(s).
- c) The City Attorney is authorized to draft the appropriate deed and any other documents for such purposes. The conveyance instrument(s) shall account for the City's reservation and expansion of property interests for its existing and future public utility lines and drainage facility along with restricting above-ground improvements and uses in ways to protect those interests.
- d) Prior to the City's closure, abandonment, vacation, and conveyance of the Right-of-Way Segment, City staff shall account for the value of the interest, to include 1) the appraisal and its cost to obtain; 2) the configuration of the segment which is narrow and because of its shape and small area cannot be used independently under current zoning or under applicable subdivision or other development control ordinances; 3) the City's existing utilities which will remain within the segment and which the appraisal may account for; 4) the adjacent owner(s) conveyance of additional property (an easement, to include a property description obtained by the owner(s)) to account for an expansion of that area and use).

e) the conveyance(s) shall comply with state law which may include an appropriate payment from the adjacent property owner(s).

f) City staff will summarize the transaction(s) in writing and provide such summary to Council.

SECTION SIX. All presently existing water and wastewater lines and facilities, electric transmission and distribution lines and facilities, gas lines and facilities, communication lines and facilities, or any other public utility lines and facilities within the Right-of-Way Segment may remain in place despite this Ordinance and may continue to be used, repaired, enlarged, and maintained. Any person wanting removal of an existing utility line or facility must negotiate separately with the pertinent utility. Any person building on the Right-of-Way Segment without first reaching an agreement with a utility having a line(s) or facility(s) within the segment does so at its own risk. Upon the effective date of this Ordinance, no utility may add additional utility lines or facilities within the Right-of-Way Segment based on a claim that the Right-of-Way Segment is a public (street or alley) right-of-way. This closure does not give up any right arising other than from the plat and field notes creating the Right-of-Way Segment.

SECTION SEVEN. Within 12 months of the adoption of this Ordinance and pursuant to the City's Subdivision Code, any owner(s) adjacent to the Right-of-Way segment who acquires any portion of the segment shall submit, obtain approval, and officially record a subdivision plat(s) absorbing all of the abandoned Right-of-Way Segment or a proportionate amount thereof that the owner(s) has acquired, into the adjacent lot(s) and reconfiguration of said lot(s), meeting all requirements of the City's regulations. No plat will impair the rights retained by City pursuant to Section Six, above, unless in the course of platting, the owner(s), at its own expense, otherwise provides for those rights according to platting rules of general applicability. Further, the plat(s) shall note such previously established rights. Finally, the plat(s) shall reaffirm, convey, or cite the previous reservations and conveyances of a water and wastewater easement and drainage easement to the City to account for the existing main(s) and drainage facilities located within the Right-of-Way Segment, in a width not be less than twenty feet (20.0') and otherwise in compliance with the City's regulations. Such configuration is depicted in **Exhibit C**, but will be located with greater specificity in accordance with state law within the plat(s) or equivalent instrument(s).

SECTION EIGHT. The City Secretary is authorized and directed to prepare a certified copy of this Ordinance and furnish the same to abutting property owners, and in addition, record this closure, abandonment, and vacation Ordinance in the Real Property Records of Kerr County, Texas of all the right, title, or interest of the City in and to the Right-of-Way Segment, but only to that interest that City Council may lawfully close, abandon, and vacate, and subject to the limitations and conditions of this Ordinance.

SECTION NINE. The City Manager and City Attorney are authorized and directed to execute and deliver any document(s) and to take any action(s) necessary to complete the closure, abandonment, vacation, and conveyance.

SECTION TEN. This Ordinance shall become effective immediately after its second reading and final passage.

PASSED AND APPROVED ON FIRST READING, this the 10 day of
January, A.D., 2023.

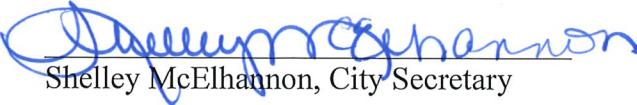
PASSED AND APPROVED ON SECOND AND FINAL READING, this the 24 day of
January, A.D., 2023.

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney


Judy Eychner, Mayor

ATTEST:


Shelley McElhannon, City Secretary



FIELD NOTES DESCRIPTION FOR 0.21 ACRE OF AN
UNOPENED SECTION OF WEST STREET IN THE CITY OF
KERRVILLE, KERR COUNTY, TEXAS

Being all of a certain tract or parcel of land out of Walter Fosgate Survey No. 120, Abstract No. 138, in the City of Kerrville, Kerr County, Texas; comprising part of an unopened section of West Street adjacent to Lot No. 2, Block 49, of Westland Place, a subdivision of record in Volume 1 at Page 26A of the Plat Records of Kerr County, Texas; and being more particularly described by metes and bounds as follows (record calls shown in parentheses):

BEGINNING at a $\frac{1}{2}$ " iron stake found at the south corner of said Lot No. 2 at the intersection with the northwest right-of-way line of said West Street, a reentrant corner of Lot No. 2-B of the Del Norte Addition Two, the replat of which is recorded in Volume 7 at Page 253 of the Plat Records of Kerr County, Texas;

THENCE, with the northwest right-of-way line of said West Street, the southeast line of said Lot No. 2, also being the southeast line of said Lot No. 2-B, N.44°53'35"E. 137.18 ft. (N.45°00'00"E. 137.01 ft.) to a $\frac{1}{2}$ " iron stake found at the most easterly corner of said Lot No. 2-B for the north corner of the herein described tract;

THENCE, upon, over and across said West Street, S.45°09'31"E. 50.00 ft. to a $\frac{1}{2}$ " iron stake set for the east corner of the herein described tract in the southeast right-of-way line of said West Street, the northwest line of Lot No. 1, Block 39, of said Westland Place;

THENCE, with the southeast right-of-way line of said West Street, S.44°53'35"W., with the northwest line of said Lot No. 1, at approximately 137 ft. passing its west corner, the northwesterly terminus of the northeast right-of-way line of an unopened part of Lucile Street, then with the northwest end of said Lucile Street, at approximately 177 ft. passing the northwesterly terminus of the southwest right-of-way line of said Lucile Street, the north corner of Lot No. 11, Block 38, then with the northwest line of said Lot No. 11 for a total distance of 204.38 ft. to a $\frac{1}{2}$ " iron stake set for the south corner of the herein described tract in the northeast right-of-way line of State Highway No. 27, Junction Highway;

THENCE, with the northeast right-of-way line of said State Highway No. 27, upon, over and across said West Street, N.60°12'52"W. 32.92 ft. to a $\frac{1}{2}$ " iron stake found in the northwest right-of-way line of said West Street, the south corner of said Lot No. 2-B of the Del Norte Addition Two;

THENCE, with the northwest right-of-way line of said West Street, the southeast line of said Lot No. 2-B: N.45°05'03"E. 76.00 ft. (N.45°08'00"E. 75.48 ft.) to a $\frac{1}{2}$ " iron stake found at an easterly corner of said Lot No. 2-B; and N.45°54'37"W. 18.47 ft. (N.45°47'04"W. 18.35 ft.) to the PLACE OF BEGINNING containing 0.21 acre of land, more or less, within these metes and bounds. Note: All set $\frac{1}{2}$ " iron stakes marked with red plastic cap inscribed with "VOELKEL SURVEYING".

Page 2 – 0.21 Acre of the “Unopened” part of West Street in the
City of Kerrville, Kerr County, Texas

I hereby certify that these field notes and accompanying plat are accurate descriptions of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are marked as stated. (Bearing basis = True north based on GPS observations)

Date surveyed: July 3 & September 10, 2019; December 7, 2022

Dated this 7th day of December, 2022

Don W. Voelkel

Don W. Voelkel
Registered Professional Land Surveyor No. 3990



I hereby certify that the lot and accompanying field name description are accurate representations of the property shown and described herein as determined by a survey made on the ground under my direction and supervision, and that all property lines are marked (Bearing back - True north based on CPM observation)

Date surveyed: July 3, 2019
Closed date: September 10, 2019
Don W. Vorel
Bullwinkle
Bullwinkle Professional Land Surveyor, No. 2020

SURVEY PLAT FOR 0.24 ACRES OF AN "UNPENDED" SURVEY PLAT FOR STREET, STREET ADDITION TO LOT NO. 23 OF THE NEIGHBORHOOD ADDITION IN VOLUME 122, PAGE 235 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS, OUT OF THE WALTER FOGGATE SURVEY, NO. 120, ABSTRACT NO. 138, IN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; THE 0.24 ACRES IS PART OF THE EIGHTH-OF-A-MILE OF WEST STREET AS ESTABLISHED BY THE PLAT OF VOLUME 122, PAGE 235 OF THE PLAT RECORDS OF KERR COUNTY, TEXAS.

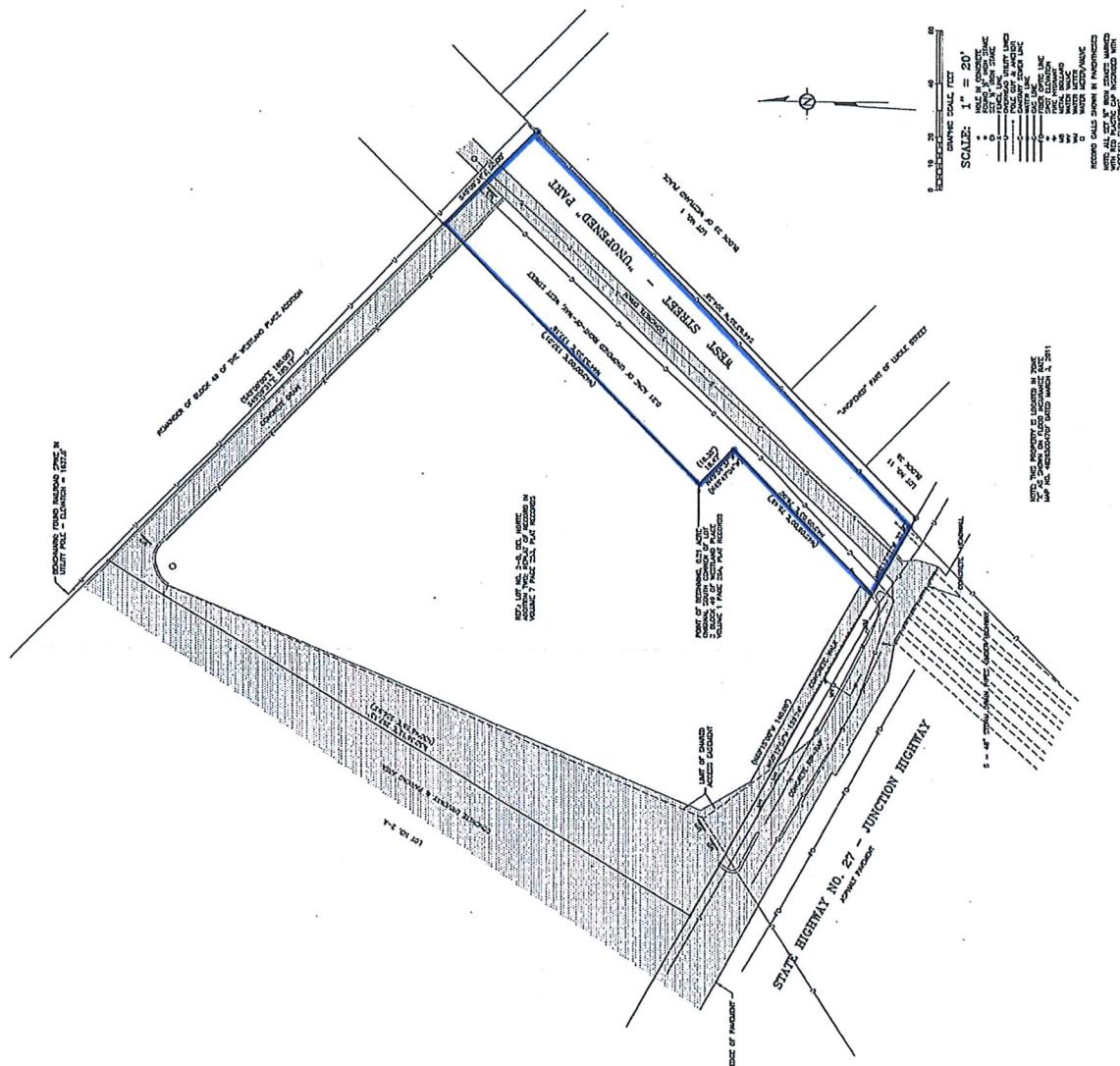
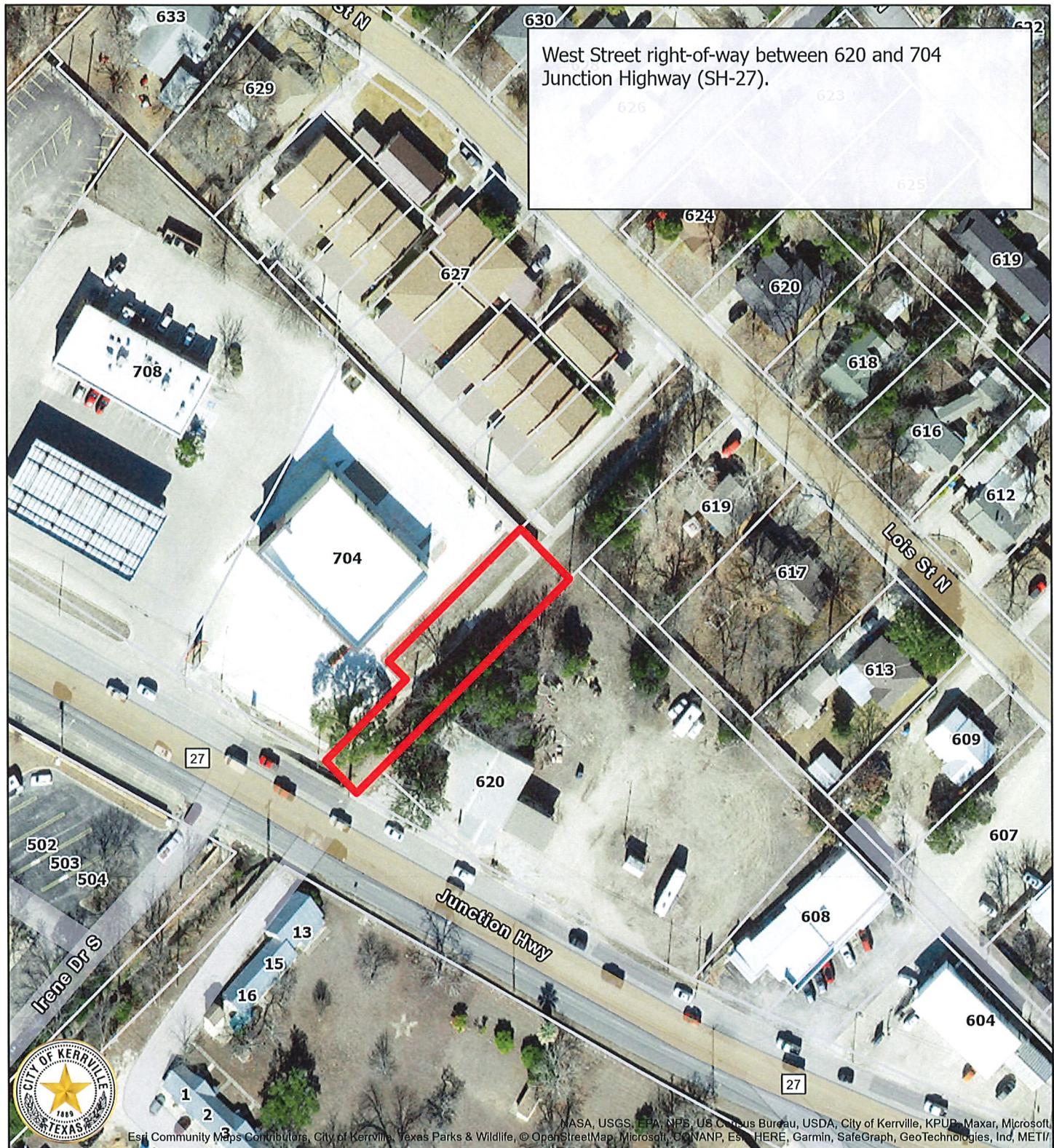


EXHIBIT A



Tax Parcel

Site Address Point

West Street Right-of-Way

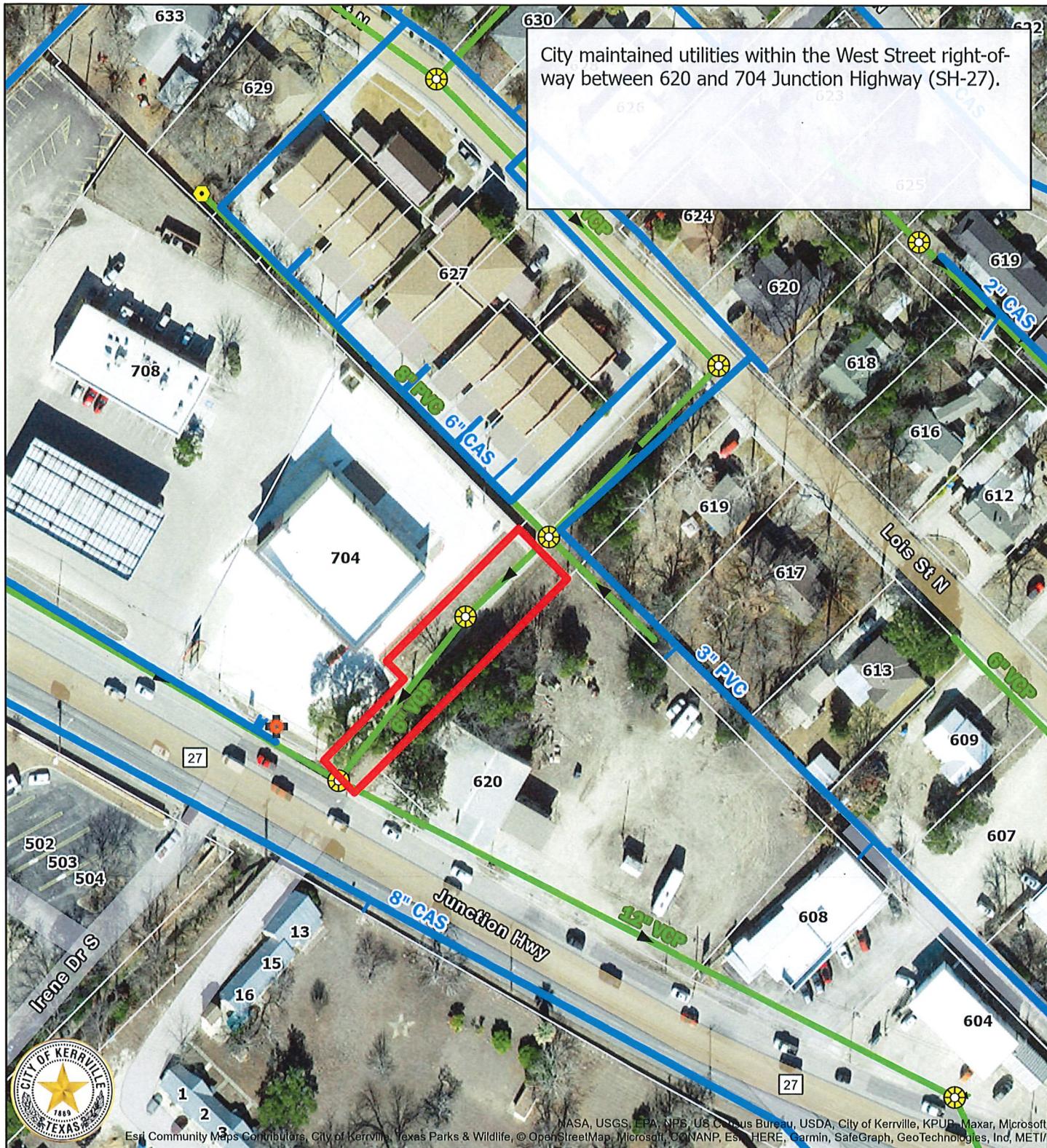


0 50 100
US Feet

01/18/2023 03:56 PM

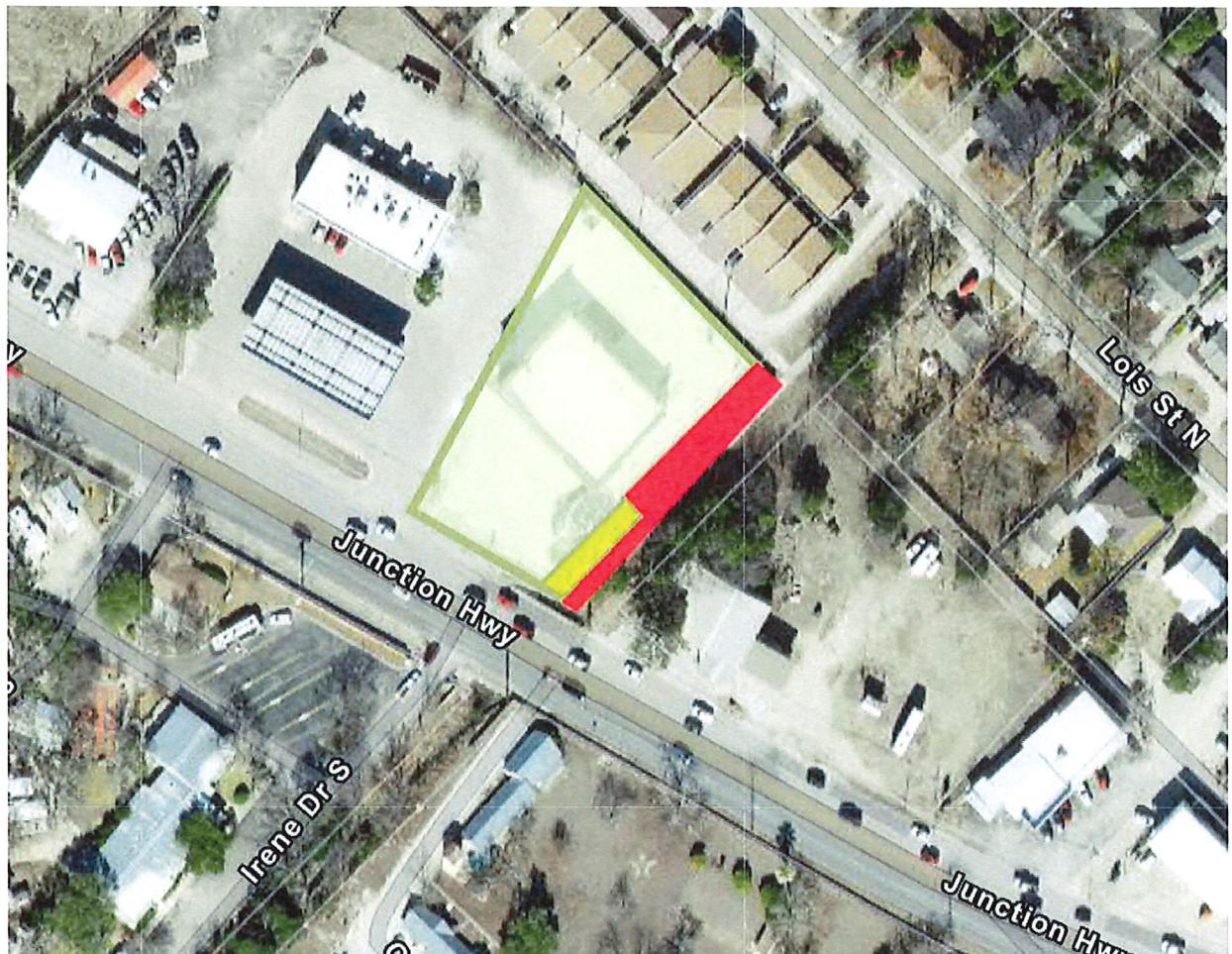
joyoung

EXHIBIT B



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.

Exhibit C



Red area (25.0' width) is the Right-of-Way Segment within which the City will reserve a general utility and drainage easement. The yellow area is property currently owned by the owner of 704 Junction Highway. The owner will grant the City a general utility and drainage easement for this area.

FILED AND RECORDED

Document Number: 23-00983

Document Type: ORDINANCE

Filing and Recording Date: 2/21/2023 8:59:46 AM

Number of Pages: 12

GRANTOR CITY OF KERRVILLE

GRANTEE PUBLIC, THE

Returned To: CITY OF KERRVILLE
701 MAIN ST
KERRVILLE, TX 78028

I hereby certify that this instrument was FILED on the date and times stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Kerr County, Texas.



A handwritten signature in black ink, which appears to read "Jackie 'JD' Dowdy", is placed over a horizontal line.

Jackie "JD" Dowdy, Clerk
Kerr County, Texas
By: DIANE RODRIGUEZ DEPUTY CLERK

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the Clerk.

DO NOT DESTROY - This document is part of the Official Public Record.

4000245

ORDINANCE 2023-04



Kerr County Clerk
700 Main Street
Kerrville TX 78028
830-792-2255

Customer CITY OF KERRVILLE
CITY OF KERRVILLE

TxId 4000245 2/21/2023 8:49 AM

Doc Number	GF Number	Document Type	Pages	Doc Fee Total
23-00982		ORDINANCE <i>NO. 2023-08</i>	16	\$82.00
23-00983		ORDINANCE <i>NO. 2023-04</i>	12	\$66.00
				Total Paid: \$148.00

Tender Information

Check #	Name on Check	Tender Type	Amount
0300	KESHA FRANCHINA	CREDIT CARD	\$148.00
			Total Paid: \$148.00

**All Transactions Approved**

Bureau: 8088171 - Kerr County, TX Clerk

Case Number or Name	Amount	Qty	Conv.	Result
			Fee	
Court Fees and Fines: kesha franchina	\$148.00	1	\$4.22	Approved
Payment ID: 100263452258				
Recordings				
Total Amounts + All Fees:	\$152.22			

BILLING INFORMATION

Payment will be billed to:

KESHA FRANCHINA

Card ending in ...0300 (Visa)

Processed at 02/21/2023 8:57:22 AM CST

LEGAL NOTICE

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