

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, APRIL 11, 2023, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

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

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



Kerrville2050



CITY COUNCIL MEETING AGENDA

APRIL 11, 2023 6:00 PM

CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



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

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

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

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

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

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

Thank you for your participation!

CALL TO ORDER:

INVOCATION AND PLEDGE OF ALLEGIANCE: *Led by Councilmember Joe Herring, Jr.*

1. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** *Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.*
2. **PRESENTATIONS:**
 - 2.A Kerrville Kindness award recognizing Friends of the Library.
 - 2.B Proclamation recognizing April 2023 as Friends of the Library month in Kerrville, Texas.
 - 2.C Presentation of the Texas Police Chief's Best Practices Program Re-accreditation Certificate.
 - 2.D Proclamation recognizing the week of April 09, 2023 as National Public Safety Telecommunications week in Kerrville, Texas.
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 City Council workshop minutes, March 28, 2023.
Attachment: 20230411_Minutes CC workshop 3-28-23 4pm.pdf

4.B City Council meeting minutes, March 28, 2023.

Attachment: 20230411_Minutes CC meeting 3-28-23 6pm.pdf

END OF CONSENT AGENDA.

5. ORDINANCE(S), FIRST AND ONLY READING:

Ordinance No. 2023-16. An Ordinance authorizing the issuance of City of Kerrville, Texas Waterworks and Sewer System revenue improvement bonds, Series 2023; approving and authorizing an official statement; authorizing the execution of a purchase contract and a paying agent/registrar agreement; and approving and authorizing other instruments and procedures related thereto.

Attachment: 20230411_Ord 2023-16 Revenue Bond W&WW.pdf

6. PUBLIC HEARING AND ORDINANCE(S), FIRST READING:

Ordinance No. 2023-12. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, such chapter more commonly known as the City's Zoning Code; by amending said code to revise regulations pertaining to the location of accessory buildings and structures within the front setback as to fences; providing a cumulative clause; providing for severability; providing an effective date; ordering publication; and providing other matters relating to the subject.

Attachments: 20230411_Ord 2023-12 Zoning Code amendment fence requirements.pdf

7. ORDINANCES, FIRST READING:

Ordinance No. 2023-13. An Ordinance amending Section 26-38 "Construction of Fences", Chapter 26 "Building and Building Regulations", of the Code of Ordinances, City of Kerrville, Texas; by clarifying what "Substantial Repairs" means; providing for an effective date; and providing other matters related to the subject.

Attachment: 20230411_Ord 2023-13 Fence building regulations.pdf

Ordinance No. 2023-14. An Ordinance amending in its entirety Article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations" of the Code of Ordinances of the City of Kerrville, Texas; regarding the abatement of unsafe buildings; containing a savings and severability clause; providing an effective date; ordering publication; and providing other matters relating to the subject.

Attachment: 20230411_Ord 2023-14 Unsafe Buildings.pdf

Ordinance No. 2023-15. An Ordinance amending Chapter 46 "Environment" of the Code of Ordinances, City of Kerrville, Texas, by adding a new Article IV "Junked Vehicles"; such Article to replace Article XI in Chapter 102; providing an effective date; and providing other matters relating to the subject.

Attachment: 20230411_Ord 2023-15 Junked Vehicles.pdf

8. ORDINANCES, SECOND READING:

Ordinance No. 2023-10, second reading. An Ordinance amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to reduce the number of members of the Library Advisory Board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to the subject.

Attachment: 20230411_Ord 2023-10 LAB membership amendment 2nd reading.pdf

Ordinance No. 2023-11, second reading. An Ordinance amending the City's Fiscal Year 2023 (FY2023) budget to reallocate funds for items encumbered within the City's Fiscal Year 2022 (FY2022) budget, but where such items were neither received nor paid for during FY2022; to transfer unspent FY2022 Street Maintenance Funds to the FY2023 Capital Projects Fund; to amend and add a fee to the Fee Schedule; and to make other amendments as provided.

Attachment: 20230411_Ord 2023-11 FY2023 budget amendment 2nd reading.pdf

9. **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.*

10. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.**

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

ADJOURN.



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

SUBJECT: Kerrville Kindness award recognizing Friends of the Library.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 23, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

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

RECOMMENDED ACTION:

Present award.



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

SUBJECT: Proclamation recognizing April 2023 as Friends of the Library month in Kerrville, Texas.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 23, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The City of Kerrville recognizes April 2023 as Friends of the Library month.

RECOMMENDED ACTION:

Present proclamation.



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

SUBJECT: Presentation of the Texas Police Chief's Best Practices Program Re-accreditation Certificate.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 21, 2023

SUBMITTED BY: Chris McCall, Police Chief

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A
Guiding Principle N/A
Action Item N/A

SUMMARY STATEMENT:

Chief Brian Vorauer, Fredericksburg Police Department and member of the Texas Police Chief's Association, will present the Kerrville Police Department with a Certificate of Re-Accreditation. This award acknowledges the Kerrville Police Department recently successfully completed an Accreditation Assessment and is certified as an Accredited Law Enforcement Agency by the Texas Law Enforcement Accreditation Program, administered by the Texas Police Chief's Association.

RECOMMENDED ACTION:

No action required.



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

SUBJECT: Proclamation recognizing the week of April 09, 2023 as National Public Safety Telecommunications week in Kerrville, Texas.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 29, 2023

SUBMITTED BY: Chris McCall, Police Chief

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

A Proclamation recognizing National Public Safety Telecommunicators Week April 9th to April 15th 2023.

RECOMMENDED ACTION:

No Action Required- Recognition only.



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

SUBJECT: City Council workshop minutes, March 28, 2023.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 23, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council workshop minutes held March 28, 2023 at 4:00 p.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230411_Minutes CC workshop 3-28-23 4pm.pdf*](#)

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

**MARCH 28, 2023 4:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On March 28, 2023 at 4:00 p.m., the City Council workshop was called to order by Mayor Judy Eychner at the City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

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

COUNCILMEMBERS ABSENT:

None

CITY STAFF PRESENT:

E.A. Hoppe, City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Kim Meismer, Asst City Manager
Shelley McElhannon, City Secretary
Julie Behrens, Director of Finance

Donna Bowyer, Code Enforcement
Ashlea Boyle, Director Parks & Rec
Guillermo Garcia, Exec Dir Innovation
Drew Paxton, Dir Planning & Zoning
Trina Sanchez, Asst Dir Building Svcs

VISITOR(S) PRESENT:

Julie Davis, Kerrville Convention and Visitors Bureau CEO
Suzanne Feezel, Anne Marie Scharrer, Jonathan Smith with Arsenal Advertising

1. PUBLIC COMMENT: None

2. INFORMATION AND DISCUSSION:

2A. Kerrville Convention and Visitors Bureau Rebranding update.

E.A. Hoppe introduced the item. Julie Davis provided information and introduced Advertising Executives Suzanne Feezel, Anne Marie Scharrer, and Jonathan Smith; who provided information and responded to questions.

2B. Unsafe Building Abatement, Chapter 26, Article VIII, City's Code of Ordinance.

E.A. Hoppe introduced the item, and Guillermo Garcia, E.A. Hoppe, and Mike Hayes provided information and responded to questions.

2C. Junked Vehicles, Chapter 102, Article XI, City's Code of Ordinance.

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

Mike Hayes provided information on items 2B and 2C.

Mayor Eychner made a motion that the City Council adjourn into closed executive session under 551.071 (consultation with attorney) and 551.087 (deliberation regarding economic development negotiations), seconded by Councilmember Brenda Hughes. The motion passed 5-0.

Mayor Eychner recessed the workshop, and convened the closed executive session at 5:10 p.m. in the Upstairs Conference Room.

3. EXECUTIVE SESSION:

3A. Workforce Housing development projects update (551.071, 551.087).

The closed executive session adjourned, and Council returned to workshop open session at 6:00 p.m. No action was taken during executive session

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: None.

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

APPROVED BY COUNCIL: _____ ATTEST:

Judy Eychner, Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: City Council meeting minutes, March 28, 2023.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 23, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council meeting minutes held March 28, 2023 at 6:00 p.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20230411_Minutes CC meeting 3-28-23 6pm.pdf*](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
MARCH 28, 2023 6:00 PM**

On March 28, 2023 at 6:00 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Councilmember Roman Garcia provided the invocation, and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

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

COUNCILMEMBER ABSENT:

None

CITY EXECUTIVE STAFF:

E.A. Hoppe, City Manager	Stephen Boyd, Asst Fire Chief
Mike Hayes, City Attorney	Ashlea Boyle, Director Parks & Rec
Michael Hornes, Asst City Manager	Kyle Burow, Director Engineering
Kim Meismer, Asst City Manager	Stuart Cunyus, Public Information Officer
Shelley McElhannon, City Secretary	Deidre Flores, Asst Director Parks & Rec
Julie Behrens, Director Finance	Chris McCall, Police Chief
Stuart Barron, Exec Director Public Works	Drew Paxton, Planning Director
Jacob Bogusch, Acct Intern	

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

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Announcements of Community Interest provided by Stuart Cunyus and Mayor Eychner.

2. PRESENTATION(S):

2A. Commendations for outgoing members of the Parks & Recreation Advisory Board.

Mayor Eychner provided commendations to the Parks & Recreation Advisory Board termed members: Morgan Bond, Charles Hueber, Erik Silvius, and Wayne Uecker. Other Parks & Recreation Advisory Board members in attendance: Russell Nemky and David Bartels, along with the Director Ashlea Boyle and Assistant Director Deidre Flores.

3. VISITORS FORUM:

The following person(s) spoke:

- Charlie McIlvain

4. CONSENT AGENDA:

Citizen Peggy McKay requested to speak on item 4B, and Councilmember Garcia requested to pull item 4A. Councilmember Garcia made a motion to approve the rest of the Consent Agenda, seconded by Councilmember Brenda Hughes. The motion passed 5-0.

4C. Agreement between City of Kerrville and Kerrville Convention & Visitors Bureau, Inc. for use of Hotel Occupancy Tax funds for the purposes of Capital Improvements

4D. City Council workshop minutes March 14, 2023.

4E. City Council meeting minutes March 14, 2023.

4F. City Council workshop minutes March 21, 2023.

END OF CONSENT AGENDA.

4A. Resolution No. 11-2023. A Resolution authorizing the Director of Parks and Recreation to adjust or waive fees for use of parks and other city facilities; repealing Reso. No., 08-2013.

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

Councilmember Garcia made a motion to table this indefinitely. Mayor Eychner called for a second, with no second forthcoming. Motion died for lack of second.

Councilmember Garcia made a motion to approve Resolution No. 11-2023 with an amendment to remove the ability for "increased fees". Mayor Eychner called for a second, with no second forthcoming. Motion died for lack of second.

Councilmember Garcia made a motion to adopt Resolution No. 11-2023 and amend it to the effect that the adjustment of fees will only apply to the 2024 total Solar Eclipse. Mayor Eychner called for a second, with no second forthcoming. Motion died for lack of second.

Councilmember Hughes made a motion to approve Resolution No. 11-2023, seconded by Councilmember Joe Herring, Jr. The motion passed 4-1 with Councilmember Hughes, Councilmember Kim Clarkson, Mayor Eychner, and Councilmember Herring voting in favor, and Councilmember Garcia opposed.

4B. Professional Services Agreement with Freese & Nichols, Inc. for the Wastewater Treatment Plant Clarifier #3 Rehabilitation project in the amount of \$165,000.00.

Shelley McElhannon read item 4B caption into the record.

The following person(s) spoke:

- Peggy McKay

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

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

5. PUBLIC HEARING(S) AND RESOLUTION(S):

5A. Resolution No. 10-2023. A Resolution granting a Conditional Use Permit to authorize a utility, private or franchise on property consisting of approximately 0.011 acres, out of the John A. Southmayd Survey No. 148, Abstract No. 288 in Kerr County, Texas, said property being within the 517.2 tract known as Kerrville-Schreiner Park, located at 2385 State Highway 173; said property is located within the Public and Institutional (PI) Zoning District; and making said permit subject to certain conditions and restrictions contained herein.

Shelley McElhannon read Resolution No. 10-2023 caption into record.

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

Mayor Eychner opened the public hearing at 6:32 p.m.

No person(s) spoke.

Mayor Eychner closed the public hearing at 6:33 p.m.

Councilmember Hughes made a motion to approve Resolution No. 10-2023, seconded by Councilmember Clarkson. The motion passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Easement Agreement for broadband communication equipment granted by the City of Kerrville, TX, to Hill Country Telephone Cooperative, Inc. on 0.011 acres out of a portion of Kerrville-Schreiner Park, 2385 State Highway 173.

Shelley McElhannon read item 6A caption into record.

Drew Paxton provided information and responded to questions.

Councilmember Hughes made a motion to approve the recording of the easement, seconded by Councilmember Herring. The motion passed 5-0.

7. ORDINANCES, FIRST READING:

7A. Ordinance No. 2023-10. An Ordinance amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to reduce the number of members of the Library Advisory Board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-10 caption into record.

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

Councilmember Hughes made a motion to approve Ordinance No. 2023-10 on first reading, seconded by Councilmember Clarkson. The motion passed 5-0.

7B. Ordinance No. 2023-11. An Ordinance amending the City's Fiscal Year 2023 (FY2023) budget to reallocate funds for items encumbered within the City's Fiscal Year 2022 (FY2022) budget, but where such items were neither received nor paid for during FY2022; to transfer unspent FY2022 Street Maintenance Funds to the FY2023 Capital Projects Fund; to amend and add a fee to the Fee Schedule; and to make other amendments as provided.

Shelley McElhannon read Ordinance No. 2023-11 caption into record.

Julie Behrens and E.A. Hoppe provided information.

Councilmember Garcia made a motion to approve Ordinance No. 2023-11 on first reading, seconded by Councilmember Herring. The motion passed 5-0.

8. INFORMATION & DISCUSSION:

8A. Financial Report Month-Ended 2/28/2023.

Julie Behrens provided information and responded to questions.

9. BOARD APPOINTMENTS:

9A. Appointment(s) to the Parks & Recreation Advisory Board.

Councilmember Clarkson made a motion to reappoint David Bartels and Michelle Yanez to a second term, and newly appoint Dalton Dover, Stephen Lynch, Lynn Paulo, and Wynita Yancy to the Parks and Recreation Advisory Board, seconded by Councilmember Herring. The motion passed 5-0.

10. EXECUTIVE SESSION: Executive Session not convened.

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

12. **ITEM(S) FOR FUTURE AGENDAS:** None

ADJOURN. The meeting adjourned at 7:06 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Judy Eychner, Mayor

Shelley McElhannon, City Secretary



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

SUBJECT: Ordinance No. 2023-16. An Ordinance authorizing the issuance of City of Kerrville, Texas Waterworks and Sewer System revenue improvement bonds, Series 2023; approving and authorizing an official statement; authorizing the execution of a purchase contract and a paying agent/registrar agreement; and approving and authorizing other instruments and procedures related thereto.

AGENDA DATE OF: April 11, 2023

DATE SUBMITTED: March 29, 2023

SUBMITTED BY: Julie Behrens, Director of Finance

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area W - Water / Waste-Water / Drainage

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council approved the Water/Wastewater Master Plan in 2022, which identifies needs in excess of \$120 million for the replacement of aging water and wastewater infrastructure, large maintenance expenses, and the expansion of the systems in anticipation of future growth. Near-term needs (within the next 3-5 years) in the amount of \$12-\$15 million were identified within the plan as well. Council directed staff to move forward with the issuance of Revenue Bonds to finalize and commit to the identified near-term needs. Staff, in conjunction with Hilltop Securities, the City's Financial Advisor, brought information to Council in January. Utilizing the Five Year Forecast and other factors, the debt capacity for the Water Fund was found to be between \$10.5 and \$12.5 million. Staff presented Water Fund forecasting information to Council on March 21, 2023 with the recommendation of issuing \$11.5 million, based on the most recent forecast. Staff completed the Bond Rating survey and subsequent ratings call and the City was issued a strong A+ rating for the issuance of Revenue Bonds. A Due Diligence call was held on March 29, 2023 with underwriters and Hilltop Securities. The underwriters feel comfortable with a sale of \$11.5 million, based on financial stability, the City's moderate growth, and the needs of the systems. On April 10, 2023, the City will receive pricing for Revenue Bonds and the final ordinance will be presented to Council on

Tuesday, April 11, 2023. A draft of the ordinance is included in the packet, which does not include final pricing.

RECOMMENDED ACTION:

Approve ordinance 2023-16 on first and only reading.

ATTACHMENTS:

20230411_Ord 2023-16 Revenue Bond W&WW.pdf

ORDINANCE NO. 2023-16

AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF KERRVILLE, TEXAS WATERWORKS AND SEWER SYSTEM REVENUE IMPROVEMENT BONDS, SERIES 2023; APPROVING AND AUTHORIZING AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF A PURCHASE CONTRACT AND A PAYING AGENT/REGISTRAR AGREEMENT; AND APPROVING AND AUTHORIZING OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

Date of Approval: April 11, 2023

ii
TABLE OF CONTENTS

Recitals	1
Section 1. AMOUNT AND PURPOSE OF THE SERIES 2023 BONDS	1
Section 2. DESIGNATION, DATE, DENOMINATIONS, NUMBERS, AND MATURITIES OF THE SERIES 2023 BONDS.....	2
Section 3. INTEREST.....	2
Section 4. CHARACTERISTICS OF THE SERIES 2023 BONDS	3
Section 5. FORM OF SERIES 2023 BOND	7
Section 6. DEFINITIONS.....	14
Section 7. PLEDGE; RATE COVENANT.....	21
Section 8. FUNDS	21
Section 9. REVENUE FUND	22
Section 10. INTEREST AND SINKING FUND.....	22
Section 11. RESERVE FUND	23
Section 12. EXCESS NET REVENUES	24
Section 13. DEFICIENCIES IN FUNDS	24
Section 14. CONSTRUCTION FUND.....	24
Section 15. INVESTMENTS.....	24
Section 16. SECURITY FOR FUNDS	25
Section 17. INSURANCE.....	25
Section 18. OPERATION AND MAINTENANCE; NO FREE SERVICE; NO COMPETITION.....	25
Section 19. ACCOUNTS AND RECORDS.....	26
Section 20. AUDITS	26
Section 21. SPECIAL COVENANTS	26
Section 22. ADDITIONAL PARITY OBLIGATIONS	27
Section 23. ORDINANCE A CONTRACT; AMENDMENTS	29
Section 24. REMEDIES IN THE EVENT OF DEFAULT	30

Section 25. DEFEASANCE OF SERIES 2023 BONDS.....	30
Section 26. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED SERIES 2023 BONDS.....	32
Section 27. CUSTODY, APPROVAL, AND REGISTRATION OF SERIES 2023 BONDS; BOND COUNSEL'S OPINION; CUSIP NUMBERS	33
Section 28. COVENANTS REGARDING TAX-EXEMPTION OF INTEREST ON THE SERIES 2023 BONDS	33
Section 29. SALE OF SERIES 2023 BONDS.....	35
Section 30. APPROVAL OF OFFICIAL STATEMENT	36
Section 31. AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS	36
Section 32. COMPLIANCE WITH RULE 15c2-12.....	36
Section 33. INCORPORATION OF RECITALS.....	40
Section 34. EFFECTIVE DATE.....	40

Signature Page

Exhibit A - FORM OF PAYING AGENT/REGISTRAR AGREEMENT

Exhibit B - WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH
FEDERAL TAX COVENANTS

Exhibit C - FORM OF PURCHASE CONTRACT

Exhibit D - DESCRIPTION OF ANNUAL FINANCIAL INFORMATION AND WRITTEN
PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH THE RULE

ORDINANCE NO. 2023-16

AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF KERRVILLE, TEXAS WATERWORKS AND SEWER SYSTEM REVENUE IMPROVEMENT BONDS, SERIES 2023; APPROVING AND AUTHORIZING AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF A PURCHASE CONTRACT AND A PAYING AGENT/REGISTRAR AGREEMENT; AND APPROVING AND AUTHORIZING OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

STATE OF TEXAS §
COUNTY OF KERR §
CITY OF KERRVILLE §

WHEREAS, the *City of Kerrville, Texas* (the “*City*” or “*Issuer*”) in Kerr County, Texas, is a political subdivision of the State of Texas operating as a home-rule municipality pursuant to the Texas Local Government Code and its City Charter, which was initially approved by the qualified voters of the City on February 24, 1942, and which has been amended from time to time, with the most recent amendments being approved by the qualified voters of the City on January 14, 2020; and

WHEREAS, the City Council of the City hereby finds and declares a public purpose and deems it advisable and in the best interests of the City to issue a series of bonds (defined in Section 2 hereof as the “*Series 2023 Bonds*”), to pay (i) costs relating to acquiring, constructing, enlarging, and equipping improvements the City’s combined waterworks and sewer system (the “*System*”), (ii) capitalized interest, and (iii) costs of issuance of the Series 2023 Bonds; and

WHEREAS, the Series 2023 Bonds hereinafter authorized and designated are to be issued and delivered pursuant to Chapter 1502, Texas Government Code, as amended, and other applicable laws; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code;

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

SECTION 1. AMOUNT AND PURPOSE OF THE SERIES 2023 BONDS. The bond or bonds of the City are hereby authorized to be issued and delivered in the aggregate principal amount of \$_____ **TO PAY (1) COSTS RELATING TO ACQUIRING, CONSTRUCTING, ENLARGING, AND EQUIPPING IMPROVEMENTS TO THE SYSTEM, (2) CAPITALIZED INTEREST AND (3) THE COSTS OF ISSUANCE RELATING TO THE SERIES 2023 BONDS.**

SECTION 2. DESIGNATION, DATE, DENOMINATIONS, NUMBERS, AND MATURITIES OF THE SERIES 2023 BONDS. Each bond issued pursuant to this Ordinance shall be designated: "**CITY OF KERRVILLE, TEXAS WATERWORKS AND SEWER SYSTEM REVENUE IMPROVEMENT BONDS, SERIES 2023**", and initially there shall be issued, sold, and delivered hereunder one fully registered bond, without interest coupons, dated April 1, 2023, in the respective denominations and principal amounts hereinafter stated, numbered T-1 (the "Initial Bond"), with the bonds issued in replacement thereof being in denominations of \$5,000 or any integral multiple thereof and numbered consecutively from R-1 upward, and payable to the respective initial registered owner thereof (with the Initial Bond being payable to the initial purchaser designated in Section 29 hereof), or to the registered assignee or assignees of said bonds or any portion or portions thereof (in each case, the "Registered Owner"), and said bonds shall mature and be payable serially on August 15 in each of the years and in the principal amounts, respectively, as set forth in the following schedule:

YEAR OF Maturity	Principal Amount	YEAR OF Maturity	Principal Amount	YEAR OF Maturity	Principal Amount
2027		2036		2045	
2028		2037		2046	
2029		2038		2047	
2030		2039		2048	
2031		2040		2049	
2032		2041		2050	
2033		2042		2051	
2034		2043		2052	
2035		2044		2053	

The term "Series 2023 Bonds" used in this Ordinance shall mean and include collectively the bonds initially issued and delivered pursuant to this Ordinance and all substitute bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term "Series 2023 Bond" shall mean any of the Series 2023 Bonds.

SECTION 3. INTEREST. The Series 2023 Bonds scheduled to mature during the years, respectively, set forth below shall bear interest from the dates specified in the FORM OF SERIES 2023 BOND set forth in this Ordinance to their respective dates of maturity or redemption prior to maturity at the following rates per annum:

MATURITY DATE (AUGUST 15)	INTEREST RATE	MATURITY DATE (AUGUST 15)	INTEREST RATE	MATURITY DATE (AUGUST 15)	INTEREST RATE
2027		2036		2045	
2028		2037		2046	
2029		2038		2047	
2030		2039		2048	
2031		2040		2049	
2032		2041		2050	
2033		2042		2051	
2034		2043		2052	
2035		2044		2053	

Interest shall be payable in the manner provided and on the dates stated in the FORM OF SERIES 2023 BOND set forth in this Ordinance.

SECTION 4. CHARACTERISTICS OF THE SERIES 2023 BONDS. (a) Registration, Transfer, and Exchange; Authentication. The City shall keep or cause to be kept at the designated corporate trust office of U.S. Bank Trust Company, National Association, Houston, Texas (the “*Paying Agent/Registrar*”), books or records for the registration of the transfer and exchange of the Series 2023 Bonds (the “*Registration Books*”), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers and exchanges under such reasonable regulations as the City and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers and exchanges as herein provided. Attached hereto as *Exhibit A* is a copy of the Paying Agent/Registrar Agreement between the City and the Paying Agent/Registrar which is hereby approved in substantially final form, and the Mayor and City Secretary of the City are hereby authorized to execute the Paying Agent/Registrar Agreement and approve any changes in the final form thereof.

The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each Series 2023 Bond to which payments with respect to the Series 2023 Bonds shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. To the extent possible and under reasonable circumstances, all transfers of Series 2023 Bonds shall be made within three business days after request and presentation thereof. The City shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless

otherwise required by law, shall not permit their inspection by any other entity. The Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, exchange and delivery of a substitute Series 2023 Bond or Series 2023 Bonds shall be paid as provided in the FORM OF SERIES 2023 BOND set forth in this Ordinance. Registration of assignments, transfers and exchanges of Series 2023 Bonds shall be made in the manner provided and with the effect stated in the FORM OF SERIES 2023 BOND set forth in this Ordinance. Each substitute Series 2023 Bond shall bear a letter and/or number to distinguish it from each other Series 2023 Bond.

Except as provided in (c) below, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Series 2023 Bond, date and manually sign the Paying Agent/Registrar's Authentication Certificate, and no such Series 2023 Bond shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Series 2023 Bonds and Series 2023 Bonds surrendered for transfer and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the City or any other body or person so as to accomplish the foregoing transfer and exchange of any Series 2023 Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Series 2023 Bonds in the manner prescribed herein. Pursuant to Chapter 1201, Texas Government Code, and particularly Subchapter D and Section 1201.067 thereof, the duty of transfer and exchange of the Series 2023 Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Certificate, the transferred and exchanged Series 2023 Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Series 2023 Bonds which initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(b) Payment of Series 2023 Bonds and Interest. The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Series 2023 Bonds, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Series 2023 Bonds.

(c) In General. The Series 2023 Bonds (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Series 2023 Bonds to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the City at least 50 days prior to any such redemption date), (iii) may be transferred and assigned, (iv) may be exchanged for other Series 2023 Bonds, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Series 2023 Bonds shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the City shall have certain duties and responsibilities with respect to the Series 2023 Bonds, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF SERIES 2023 BOND set forth in this Ordinance. The Initial Bond is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Series 2023 Bond issued in exchange for the Initial Bond issued under this Ordinance the Paying Agent/Registrar shall execute the PAYING

AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF SERIES 2023 BOND. In lieu of the executed Paying Agent/Registrar's Authentication Certificate described above, the Initial Bond delivered on the closing date (as further described in subparagraph (i) below) shall have attached thereto the Comptroller's Registration Certificate substantially in the form set forth in the FORM OF SERIES 2023 BOND below, manually executed by the Comptroller of Public Accounts of the State of Texas or by his duly authorized agent, which certificate shall be evidence that the Initial Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) Substitute Paying Agent/Registrar. The City covenants with the registered owners of the Series 2023 Bonds that at all times while the Series 2023 Bonds are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other agency with trust powers to act as and perform the services of Paying Agent/Registrar for the Series 2023 Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity and shall be an entity registered with the Securities and Exchange Commission. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later than 60 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Series 2023 Bonds, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Series 2023 Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(e) Book-Entry Only System for Series 2023 Bonds. The Series 2023 Bonds issued in exchange for the Initial Bond initially issued to the purchaser specified in Section 29 herein shall be initially issued in the form of a separate single fully registered Series 2023 Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such Series 2023 Bond shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York ("DTC"), and except as provided in subsection (i) hereof, all of the outstanding Series 2023 Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Series 2023 Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("DTC Participant") to hold securities to facilitate

the clearance and settlement of securities transaction among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Series 2023 Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Series 2023 Bonds, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Series 2023 Bonds, as shown on the Registration Books, of any notice with respect to the Series 2023 Bonds, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of Series 2023 Bonds, as shown in the Registration Books of any amount with respect to principal of or interest on the Series 2023 Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Series 2023 Bond is registered in the Registration Books as the absolute owner of such Series 2023 Bond for the purpose of payment of principal and interest with respect to such Series 2023 Bond, for the purpose of registering transfers with respect to such Series 2023 Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Series 2023 Bonds only to or upon the Ordinance of the registered owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of and interest on the Series 2023 Bonds to the extent of the sum or sums so paid. No person other than a registered owner, as shown in the Registration Books, shall receive a Series 2023 Bond certificate evidencing the obligation of the City to make payments of principal and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the registered owner at the close of business on the Record Date, the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(f) Successor Securities Depository; Transfers Outside Book-Entry Only Systems. In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the City to DTC or that it is in the best interest of the beneficial owners of the Series 2023 Bonds that they be able to obtain certificated Series 2023 Bonds, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Series 2023 Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Series 2023 Bonds and transfer one or more separate Series 2023 Bonds to DTC Participants having Series 2023 Bonds credited to their DTC accounts. In such event, the Series 2023 Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Series 2023 Bonds shall designate, in accordance with the provisions of this Ordinance.

(g) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Series 2023 Bond is registered in the name of Cede & Co., as nominee for DTC, all payments with respect to principal of and interest on such Series 2023 Bond and all notices with respect to such Series 2023 Bond shall be made and given, respectively, in the manner provided in the representation letter of the City to DTC.

(h) DTC Letter of Representation. The officers of the City are herein authorized for and on behalf of the City and as officers of the City to enter into one or more Letters of Representation with DTC establishing the book-entry only system with respect to the Series 2023 Bonds.

(i) Delivery of Initial Bond. On the closing date, one Initial Bond representing the entire principal amount of the Series 2023 Bonds, payable in stated installments to the initial registered owner named in Section 29 hereof, executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the initial purchaser or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar may cancel the Initial Bond and deliver to the initial registered owner or its designee one registered definitive Series 2023 Bond for each year of maturity of the Series 2023 Bonds, in the aggregate principal amount of all of the Series 2023 Bonds for such maturity.

SECTION 5. FORM OF SERIES 2023 BOND. The form of the Series 2023 Bonds, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment, and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas (to be attached only to the Initial Bond initially issued and delivered pursuant to this Ordinance to the initial purchaser named in Section 29 hereof), shall be, respectively, substantially as follows, with such appropriate variations, omissions, insertions, or completions as are permitted or required by this Ordinance.

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FORM OF SERIES 2023 BOND

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**PRINCIPAL
AMOUNT**

UNITED STATES OF AMERICA \$ _____
STATE OF TEXAS
CITY OF KERRVILLE, TEXAS
WATERWORKS AND SEWER SYSTEM REVENUE IMPROVEMENT BOND,
SERIES 2023

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATE OF SERIES</u>	<u>CUSIP NO.</u>
%	April 1, 2023		

REGISTERED OWNER:

PRINCIPAL AMOUNT:	DOLLARS
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ON THE MATURITY DATE SPECIFIED ABOVE, the City of Kerrville, Texas, in Kerr County, Texas (the “City”), being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns (hereinafter called the “registered owner”) the principal amount set forth above, and to pay interest thereon from the date of delivery of this Bond to the initial purchaser (as such date is shown on the “Registration Books” maintained by the “Paying Agent/Registrar”, which terms are hereinafter defined) until the earlier of the Maturity Date specified above or the date of redemption prior to maturity, at the Interest Rate per annum specified above, with interest being payable on February 15, 2024, and on each February 15 and August 15 thereafter; except that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND INTEREST ON THIS BOND are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the registered owner hereof upon presentation and surrender of this Bond at maturity, or upon the date fixed for its redemption prior to maturity, at the designated corporate trust office (the “Designated Trust Office”) of *U.S. Bank Trust Company, National Association, Houston, Texas*, which is the “Paying Agent/Registrar” for this Bond. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the registered owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the City required by the ordinance authorizing the issuance of the Bonds (the “Ordinance”) to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by

the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the registered owner hereof, at its address as it appeared on the 1st day of the month next preceding such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date" which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each registered owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice. Any accrued interest due upon the redemption of this Bond prior to maturity as provided herein shall be paid to the registered owner at the principal corporate trust office of the Paying Agent/Registrar upon presentation and surrender of this Bond for redemption and payment at the principal corporate trust office of the Paying Agent/Registrar (unless the redemption date is a regular semi-annual interest payment date in which case interest shall be paid in the normal course). The City covenants with the registered owner of this Bond that on or before each principal payment date and interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IF THE DATE FOR THE PAYMENT of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS BOND IS ONE OF A SERIES OF BONDS dated as of April 1, 2023, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$_____ **TO PAY (1) COSTS RELATING TO ACQUIRING, CONSTRUCTING, ENLARGING, AND EQUIPPING IMPROVEMENTS TO THE SYSTEM, (2) CAPITALIZED INTEREST AND (3) THE COSTS OF ISSUANCE RELATING TO THE SERIES 2023 BONDS.**

ON AUGUST 15, 20____, OR ON ANY DATE THEREAFTER, the Bonds of this Series maturing on and after August 15, 20____ may be redeemed prior to their scheduled maturities, at the option of the City, with funds derived from any available and lawful source, as a whole, or in part (provided that a portion of a Bond may be redeemed only in an integral multiple of \$5,000), at the redemption price of the principal amount of Bonds called for redemption, plus accrued interest thereon to the date fixed for redemption. The City shall determine the maturity or maturities, and the principal amount of Bonds within each maturity, to be redeemed. If less than all Bonds of a maturity are to be redeemed, the particular Bonds to be redeemed shall be selected by the Paying Agent/Registrar at random and by lot; provided, that during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bond of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds shall be selected in accordance with the arrangements between the City and the securities depository.

ADDITIONALLY, THE BONDS maturing on August 15 in the years 20__, 20__, 20__, and 20__ (the "Term Bond") are subject to mandatory redemption prior to maturity in part by lot, at a price equal to the principal amount thereof plus accrued interest to the date of redemption, on August 15 in the respective years and principal amounts shown below:

Term Bonds Maturing <u>August 15, 20</u>	Term Bonds Maturing <u>August 15, 20</u>
Mandatory <u>Redemption Date</u>	Redemption <u>Amount</u>
August 15, 20	
August 15, 20	*
Term Bonds Maturing <u>August 15, 20</u>	Term Bonds Maturing <u>August 15, 20</u>
Mandatory <u>Redemption Date</u>	Redemption <u>Amount</u>
August 15, 20	
August 15, 20	*
Term Bonds Maturing <u>August 15, 20</u>	Term Bonds Maturing <u>August 15, 20</u>
Mandatory <u>Redemption Date</u>	Redemption <u>Amount</u>
August 15, 20	
August 15, 20	*

The principal amount of the Term Bonds required to be redeemed pursuant to the operation of such mandatory redemption requirements may be reduced, at the option of the City, by the principal amount of any such Term Bonds which, prior to the date of the mailing of notice of such mandatory redemption, (i) shall have been acquired by the City and delivered to the Paying Agent/Registrar for cancellation, (ii) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City, or (iii) shall have been redeemed pursuant to the optional redemption provisions described in the preceding paragraph and not theretofore credited against a mandatory redemption requirement.

AT LEAST 30 DAYS PRIOR to the date fixed for redemption of Bonds prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, to the registered owner of each Bond to be redeemed at its address as it appeared on the 4th day prior to such redemption date. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds which are to be so redeemed, plus accrued interest thereon to the date fixed for redemption. If such written notice of redemption is mailed and if due provision for such payment is made, all as provided above, the Bonds which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding.

except for the right of the registered owner to receive the redemption price plus accrued interest from the Paying Agent/Registrar out of the funds provided for such payment.

THIS BOND MAY BE ASSIGNED and shall be transferred only in the Registration Books of the City kept by the Paying Agent/Registrar acting in the capacity of registrar for the Bonds, upon the terms and conditions set forth in the Ordinance. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond to the assignee in whose name this Bond is to be transferred and registered. The form of Assignment printed on this Bond shall be executed by the registered owner, or its duly authorized attorney or representative, to evidence the assignment hereof. The City shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such transfer, but the one requesting such transfer shall pay any taxes or other governmental charges required to be paid with respect thereto. The Paying Agent/Registrar shall not be required to make transfers of registration of this Bond (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Bond called for redemption prior to maturity, within 45 days prior to its redemption date. The registered owner of this Bond shall be deemed and treated by the City and the Paying Agent/Registrar as the absolute owner hereof for all purposes, including payment and discharge of liability upon this Bond to the extent of such payment, and the City and the Paying Agent/Registrar shall not be affected by any notice to the contrary.

IN THE EVENT ANY PAYING AGENT/REGISTRAR for the Bonds is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and promptly will cause written notice thereof to be mailed to the registered owners of the Bonds.

IT IS HEREBY CERTIFIED, RECITED, AND COVENANTED that this Bond has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Bond have been performed, existed, and been done in accordance with law; that this Bond is a special obligation of the City, secured by and payable from, together with all other outstanding "Parity Obligations" (as defined and described in the Ordinance) and any "Additional Parity Obligations" (as defined and described in the Ordinance) hereafter issued by the City, an irrevocable first and prior lien on and pledge of "Pledged Revenues" (as defined in the Ordinance) of the City's Waterworks and Sewer System.

THE REGISTERED OWNER HEREOF shall never have the right to demand payment of this Bond out of any funds raised or to be raised by taxation.

THE CITY HAS RESERVED THE RIGHT, subject to the restrictions stated in the Ordinance, to issue "Additional Parity Obligations" which also may be secured by and payable from an irrevocable first lien on and pledge of the aforesaid Pledged Revenues on a parity and of equal dignity in all respects with this Bond.

THE CITY ALSO HAS RESERVED THE RIGHT to amend the Ordinance with the approval of the registered owners of at least a majority in principal amount of all outstanding

“Parity Obligations” (which term is defined in the Ordinance and includes the Bonds and all Additional Parity Obligations issued on a parity therewith), subject to the restrictions stated in the Ordinance, or without the consent of the registered owners of the Parity Obligations if each rating agency then maintaining a rating on the Parity Obligations at the request of the City confirms in writing that such amendment would not cause such rating agency to withdraw or reduce its then current rating on the Parity Obligations.

BY BECOMING THE REGISTERED OWNER OF THIS BOND, the registered owner thereby acknowledges all of the terms and provisions of the Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the City, and agrees that the terms and provisions of this Bond and the Ordinance constitute a contract between each registered owner hereof and the City.

IN WITNESS WHEREOF, the City has caused this Bond to be signed with the manual or facsimile signature of the Mayor of the City and countersigned with the manual or facsimile signature of the City Secretary of the City, and has caused the official seal of the City to be duly impressed, or placed in facsimile, on this Bond.

(signature) _____ (signature) _____
 City Secretary _____ Mayor _____
 City of Kerrville, Texas _____ City of Kerrville, Texas

(CITY'S SEAL)

***FORM OF REGISTRATION CERTIFICATE OF
THE COMPTROLLER OF PUBLIC ACCOUNTS:**

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

(COMPTROLLER'S SEAL)

 Comptroller of Public Accounts
 of the State of Texas

*NOTE: The Comptroller's Registration shall appear only on, or be attached only to, the Bonds originally issued under this Ordinance.

FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

(To be executed if this Bond is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Bond has been issued under the provisions of the Ordinance described in the text of this Bond; and that this Bond has been issued in exchange for a Bond which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated

U.S. Bank Trust Company, National Association
Houston, Texas
Paying Agent/Registrar

By _____
Authorized Representative

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

/ _____ /
Please insert Social Security or Taxpayer (Please print or typewrite name and address,
Identification Number of Transferee including zip code of Transferee)
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____, attorney to
register the transfer of the within Bond on the books kept for registration thereof, with full power
of substitution in the premises.

Dated:

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.

INITIAL BOND INSERTIONS

The Initial Bond shall be in the form set forth above except that:

- (A) Immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall be completed with the words "As shown below" and "CUSIP NO. ____" shall be deleted.
- (B) The first paragraph shall be deleted and the following shall be inserted:

"ON THE RESPECTIVE MATURITY DATES specified below, the **CITY OF KERRVILLE, TEXAS** in Kerr County, Texas the "City"), being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), the respective Principal Installments specified below, and to pay interest thereon (calculated on the basis of a 360-day year composed of twelve 30-day months) from May 11, 2023 at the respective Interest Rates per annum specified below, payable on February 15, 2024, and on each February 15 and August 15 thereafter to the respective Maturity Dates specified below, or the date of redemption prior to maturity. The respective Maturity Dates, Principal Installments and Interest Rates for this Bond are set forth in the following schedule:

Maturity Date (August 15)	Principal Installment	Interest Rate

[Insert information from Sections 2 and 3 above]

- (C) The Initial Bond shall be numbered "T-1."

SECTION 6. DEFINITIONS. In addition to the capitalized terms which are defined in the recitals or in Section 1 through Section 4 of this Ordinance, the following words and terms used in this Ordinance shall have the following meanings unless the context or use indicates another meaning or intent.

"Additional Parity Obligations" shall mean the additional bonds, notes and other obligations which the City reserves the right to issue or enter into, as the case may be, in the future under the terms and conditions provided in Section 22 of this Ordinance and which are equally and ratably secured wholly or in part by a lien on and pledge of the Pledged Revenues on a parity with the lien on and pledge of the Pledged Revenues which secures the then Outstanding Parity Obligations.

“Annual Debt Service Requirements” shall mean, as of the date of calculation, the principal of and interest on all Parity Obligations coming due at Maturity or Stated Maturity (or that could come due on demand of the owner thereof other than by acceleration or other demand conditioned upon default by the City on such debt, or be payable in respect of any required purchase of such debt by the City) in such Fiscal Year, and, for such purposes, any one or more of the following rules shall apply at the election of the City:

- (1) **Committed Take Out.** If the City has entered into a Credit Agreement constituting a binding commitment within normal commercial practice to discharge any of its Funded Debt at its Stated Maturity (or, if due on demand, at any date on which demand may be made) or to purchase any of its Funded Debt at any date on which such Funded Debt is subject to required purchase, all under arrangements whereby the City's obligation to repay the amounts advanced for such discharge or purchase constitutes Funded Debt, then the portion of the Funded Debt committed to be discharged or purchased shall be excluded from such calculation and the principal of and interest on the Funded Debt incurred for such discharging or purchase that would be due in the Fiscal Year for which the calculation is being made, if incurred at the Stated Maturity or purchase date of the Funded Debt to be discharged or purchased, shall be added;
- (2) **Balloon Parity Debt.** If the principal (including the accretion of interest resulting from original issue discount or compounding of interest) of any series or issue of Funded Debt due (or payable in respect of any required purchase of such Funded Debt by the City) in any Fiscal Year either is equal to at least 25% of the total principal (including the accretion of interest resulting from original issue discount or compounding of interest) of such Funded Debt or exceeds by more than 50% the greatest amount of principal of such series or issue of Funded Debt due in any preceding or succeeding Fiscal Year (such principal due in such Fiscal Year for such series or issue of Funded Debt being referred to herein and throughout this Ordinance as “Balloon Parity Debt”), the amount of principal of such Balloon Parity Debt taken into account during any Fiscal Year shall be equal to the debt service calculated using the original principal amount of such Balloon Parity Debt amortized over the Term of Issue on a level debt service basis at an assumed interest rate equal to the rate borne by such Balloon Parity Debt on the date of calculation;
- (3) **Consent Sinking Fund.** In the case of Balloon Parity Debt, if the Designated Financial Officer shall deliver to the City a certificate providing for the retirement of (and the instrument creating such Balloon Parity Debt shall permit the retirement of), or for the accumulation of a sinking fund for (and the instrument creating such Balloon Parity Debt shall permit the accumulation of a sinking fund for), such Balloon Parity Debt according to a fixed schedule stated in such certificate ending on or before the Fiscal Year in which such principal (and premium, if any) is due, then the principal of (and, in the case of retirement, or to the extent provided for by the sinking fund accumulation, the premium, if any, and interest and other debt service charges on) such Balloon Parity Debt shall be computed as if the same were due in accordance with such schedule, provided that this clause (3) shall apply only to Balloon Parity Debt for which the installments previously scheduled have been paid or deposited to the sinking fund established with respect to such debt on or before the times required by such schedule; and provided further that this clause (3) shall not apply where the City has elected to apply the rule set forth in clause (2) above;

(4) Prepaid Debt. Principal of and interest on Parity Obligations, or portions thereof, shall not be included in the computation of the Annual Debt Service Requirements for any Fiscal Year for which such principal or interest are payable from funds on deposit or set aside in trust for the payment thereof at the time of such calculations (including without limitation capitalized interest and accrued interest so deposited or set aside in trust) with a financial institution acting as fiduciary with respect to the payment of such debt; and

(5) Variable Rate. As to any Parity Obligations that bear interest at a variable interest rate which cannot be ascertained at the time of calculation of the Annual Debt Service Requirement then, at the option of the City, either (A) an interest rate equal to the average rate borne by such Parity Obligations (or by comparable debt in the event that such Parity Obligations has not been Outstanding during the preceding 24 months) for any 24 month period ending within 30 days prior to the date of calculation, or (B) an interest rate equal to the 30-year Revenue Bond Index (as most recently published in The Bond Buyer), shall be presumed to apply for all future dates, unless such index is no longer published in The Bond Buyer, in which case an index of revenue bonds with maturities of at least 20 years which is published in a financial newspaper or journal with national circulation may be used for this purpose (if two series of Parity Obligations which bear interest at variable interest rate, or one or more maturities within a Series, of equal par amounts, are issued simultaneously with inverse floating interest rates providing a composite fixed interest rate for such Parity Obligations taken as a whole, such composite fixed rate shall be used in determining the Annual Debt Service Requirement with respect to such Parity Obligations);

(6) Guarantee. In the case of any guarantee, as described in clause (2) of the definition of Debt, no obligation will be counted as Parity Obligations for the purpose of the definition of "*Annual Debt Service Requirements*" unless the City has made such guarantee payable from the Pledged Revenues on a parity basis to the lien created on the Pledged Revenues hereby to secure the Parity Obligations, or if the City does not anticipate in its annual budget that it will make any payments on the guarantee. If, however, the guarantee is secured by the Pledged Revenues, as aforesaid, and the City is making payments on a guarantee or anticipates doing so in its annual budget, such obligation shall be treated as Parity Obligations and calculations of annual debt service requirements with respect to such guarantee shall be made assuming that the City will make all additional payments due under the guaranteed obligation. If the entity whose obligation is guaranteed cures all defaults and the City no longer anticipates making payments under the guarantee, the guaranteed obligations shall not be included in the calculation of Annual Debt Service Requirements;

(7) Commercial Paper. With respect to any Parity Obligations issued in the form of commercial paper with maturities not exceeding 270 days, the interest on such Parity Obligations shall be calculated in the manner provided in clause (5) of this definition and the maturity schedule shall be calculated in the manner provided in clause (2) of this definition; and

(8) Credit Agreement Payments. If the City has entered into a Credit Agreement in connection with an issue of Debt and secured its obligation under the Credit Agreement from the Pledged Revenues on a parity basis to the lien created on the Pledged

Revenues hereby to secure the Parity Obligations, payments due under the Credit Agreement (other than payments for fees and expenses), for either the City or the Credit Provider, shall be included in such calculation, except to the extent that the payments are already taken into account under (1) through (7) above and any payments otherwise included above under (1) through (7) which are to be replaced by payments under a Credit Agreement, from either the City or the Credit Provider, shall be excluded from such calculation.

With respect to any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and, with respect to prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

“Bond Counsel” shall mean an attorney or firm of attorneys nationally recognized as bond counsel and selected by the City.

“Business Day” shall mean any day which is not a Saturday, Sunday, legal holiday, or a day on which banking institutions in the City of New York, New York or in the city where the designated payment office of the Paying Agent/Registrar is located are authorized by law or executive order to close.

“Code” shall mean the Internal Revenue Code of 1986, and any amendments thereto.

“Credit Agreement” shall mean collectively, a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase Parity Obligations, purchase or sale agreements, interest rate swap agreements, currency exchange agreements, interest rate floor or cap agreements, or commitments or other contracts or agreements which (i) *the City is then authorized to enter into under the applicable laws of the State of Texas*, and (ii) are authorized, recognized and approved by the City Council of the City as a Credit Agreement in connection with the authorization, issuance, security, or payment of Parity Obligations.

“Credit Facility” shall mean (i) a policy of insurance or a surety bond, issued by an issuer of policies of insurance insuring the timely payment of debt service on governmental obligations, provided that a Rating Agency having an outstanding rating on the Parity Obligations would rate the Parity Obligations fully insured by a standard policy issued by the issuer in its two highest generic rating categories for such obligations; and (ii) a letter or line of credit issued by any financial institution, provided that a Rating Agency having an outstanding rating on the Parity Obligations would rate the parity obligations in its two highest generic rating categories for such obligations if the letter or line of credit proposed to be issued by such financial institution secured the timely payment of the entire principal amount of the Parity Obligations and the interest thereon.

“Credit Provider” shall mean any bank, financial institution, insurance company, surety bond provider, or other entity which provides, executes, issues, or otherwise is a party to or provider of a Credit Agreement or Credit Facility.

“Debt” shall mean:

(1) all indebtedness incurred or assumed by the City for borrowed money (including indebtedness arising under Credit Agreements) and all other financing obligations of the

City that, in accordance with generally accepted accounting principles, are shown on the liability side of a balance sheet;

(2) other indebtedness (other than indebtedness otherwise treated as Debt hereunder) for borrowed money or for the acquisition, construction, or improvement of property or capitalized lease obligations that is guaranteed, directly or indirectly, in any manner by the City, or that is in effect guaranteed, directly or indirectly, by the City through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise; and

(3) indebtedness secured by any mortgage, lien, charge, encumbrance, pledge or other security interest upon property owned by the City whether or not the City has assumed or become liable for the payment thereof.

For the purpose of determining the “Debt” of the City, there shall be excluded any particular Debt if, upon or prior to the Maturity thereof, there shall have been deposited with the proper depository (a) in trust the necessary funds (or investments that will provide sufficient funds, if permitted by the instrument creating such Debt) for the payment, redemption, or satisfaction of such Debt or (b) evidence of such Debt deposited for cancellation; and thereafter it shall not be considered Debt. No item shall be considered Debt unless such item constitutes indebtedness under generally accepted accounting principles applied on a basis consistent with the financial statements prepared by or for the benefit of the City in prior Fiscal Years.

“Designated Financial Officer” shall mean the chief financial officer of City, which is, at the time of adoption of this Ordinance, the Finance Director of City, or such other financial or accounting official of the City so designated by the City Manager of the City.“

“Fiscal Year” shall mean the twelve-month period commencing on October 1 and ending on the next September 30, or such other period commencing on the date designated by the City and ending one year later”

“Funded Debt” shall mean all Parity Obligations created or assumed by the City, either through the use of the proceeds or by an obligation of the City to pay, guarantee or otherwise provide for the payment thereof, which mature by their terms (in the absence of the exercise of any earlier right of demand), or that are renewable at the option of the City to a date, more than one year after the original creation or assumption of such Debt by the City”

“Government Obligations” shall mean direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, which may be United States Treasury Obligations such as its State and Local Government Series, which may be in book-entry form”

“Gross Revenues” shall mean all revenues, income, and receipts of every nature derived or received by the City from the operation and ownership of the System, including the interest income from the investment or deposit of money in any Fund created by this Ordinance, or

maintained by the City in connection with the System including, without limitation, impact fees charged by the System under authority of Chapter 395, Texas Local Government Code, for the construction of capital improvements or facility expansions pursuant to a capital improvement plan prepared in accordance with the provisions of Chapter 395, Texas Local Government Code.

“Holder”, “Bondholder” and “Registered Owner” or words of similar import each shall mean the registered owner of any Parity Obligation as shown on the Registration Books maintained by the Paying Agent/Registrar.

“Maturity” shall mean, when used with respect to any Debt, the date on which the principal of such Debt or any installment thereof becomes due and payable as therein provided, whether at the Stated Maturity thereof or by declaration of acceleration, call for redemption, or otherwise.

“Net Revenues” shall mean all Gross Revenues less Operation and Maintenance Expenses.

“Non-Recourse Debt” means any Debt secured by a lien (other than a lien on Pledged Revenues), liability for which is effectively limited to the property subject to such lien with no recourse, directly or indirectly, to any other property of the City attributable to the System; provided, however, that such Debt is being incurred in connection with the acquisition of property only, which property is not, at the time of such occurrence, owned by the City and being used in the operations of the City. “

“Operation and Maintenance Expenses” shall mean (i) all costs and expenses of operation and maintenance of the System, including all salaries, labor, materials, repairs and extensions necessary to provide efficient service; provided, an expense for a repair or extension is considered an “Operation and Maintenance Expense” only if, in the judgment of the governing body of the City, the repair or extension is necessary to (a) keep the System in operation and provide adequate service to the City and its residents, or (b) respond to a physical accident or condition that would otherwise impair the Parity Bonds; and (ii) payments made by the City from the Gross Revenues of the System under a contract between the City and an “issuer” (as defined in Section 1201.002, Texas Government Code, as amended) under which the City obtains from the issuer, or the issuer provides, part or all of the facilities or services of the System and if such contract so provides that such payments are an operating expense of the System.

“Outstanding” shall mean, when used with respect to Parity Obligations, as of the date of determination, all Parity Obligations theretofore delivered under this Ordinance and any ordinance authorizing Additional Parity Obligations, except:

- (1) Parity Obligations theretofore canceled and delivered to the City or delivered to the Paying Agent/Registrar for cancellation;
- (2) Parity Obligations deemed paid pursuant to the provisions of Section 25 of this Ordinance or any comparable section of any ordinance authorizing Additional Parity Obligations;
- (3) Parity Obligations upon transfer of or in exchange for and in lieu of which other Parity Obligations have been authenticated and delivered pursuant to this Ordinance and any ordinance authorizing Additional Parity Obligations; and

(4) Parity Obligations under which the obligations of the City have been released, discharged or extinguished in accordance with the terms thereof.

“Parity Obligations” shall mean, the Series 2023 Bonds, and any Additional Parity Obligations.

“Paying Agent/Registrar” shall mean the respective bank, trust company, financial institution or other entity named in the ordinance authorizing the issuance of each issue of Parity Obligations to provide paying agency and registrar services in connection with such issue of Parity Obligations”

“Pledged Revenues” shall mean the Net Revenues, plus any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter may be pledged to the payment of the Parity Obligations.

“Rating Agency” shall mean one or more nationally recognized credit rating agencies then maintaining a rating on the Parity Obligations at the request of the City”

“Reimbursement Obligation” shall mean any obligation contained in a Credit Agreement entered into by the City in connection with any Reserve Fund Credit Facility pursuant to which the City obligates itself to reimburse a financial institution, insurance company or other entity for amounts paid or advanced by such entity pursuant to a Reserve Fund Credit Facility. Reimbursement Obligations may be payable from and secured by a lien on Pledged Revenues which is on parity with, or subordinate to, the lien on Pledged Revenues which secures the Parity Obligations pursuant to this Ordinance”

“Reserve Fund Credit Facility” shall mean a Credit Facility which (i) the City is authorized to obtain pursuant to Section 1502.064, Texas Government Code, as amended, or other applicable law, (ii) may not be terminated by the Credit Provider providing such Credit Facility prior to the final maturity date of the series of Parity Obligations in connection with which such Credit Facility was issued, and (iii) may be drawn upon demand by the City to provide funds to pay principal and/or interest on the Parity Obligations in the event moneys on deposit in the Interest and Sinking Fund are insufficient to make such payment.

“Reserve Fund Requirement” shall mean, as of the date of issuance of any series of Parity Obligations, an amount equal to the average Annual Debt Service Requirements on the Parity Obligations Outstanding as of such date.

“Subordinate Obligations” means any Debt which expressly provides that all payments thereon shall be subordinated to the timely payment of all Parity Obligations then outstanding or subsequently issued.

“Stated Maturity” shall mean, when used with respect to any Debt or any installment of interest thereon, any date specified in the instrument evidencing or authorizing such Debt or such installment of interest as a fixed date on which the principal of such Debt or any installment thereof or the fixed date on which such installment of interest is due and payable.

“Term of Issue” shall mean with respect to any Balloon Parity Debt, a period of time equal to the greater of (i) the period of time commencing on the date of issuance of such Balloon Parity Debt and ending on the final maturity date of such Balloon Parity Debt or (ii) twenty-five years.

SECTION 7. PLEDGE; RATE COVENANT; SECURITY INTEREST. (a) The Parity Obligations, and the interest thereon, are and shall be payable from and secured by an irrevocable first lien on and pledge of the Pledged Revenues, and the Pledged Revenues are further pledged irrevocably to the establishment and maintenance of the Interest and Sinking Fund and the Reserve Fund hereinafter created.

(b) the City covenants and agrees with the holders of the Parity Obligations as follows:

(i) It will at all times fix, revise, maintain, charge and collect for services rendered by the System rates and charges which will produce Gross Revenues at least sufficient (A) to pay all current Operation and Maintenance Expenses, (B) to produce Net Revenues at least equal to 125% of the Annual Debt Service Requirements of all then Outstanding Parity Obligations for the current Fiscal Year, (C) to make all deposits now or hereafter required to be made into the Funds created, established, or maintained by this Ordinance, and (D) to pay all other obligations of the System reasonably anticipated to be paid from Gross Revenues during the current Fiscal Year.

(ii) If the System should become legally liable for any other obligations or indebtedness, the City shall fix, maintain, charge and collect additional rates and charges for services rendered by the System sufficient to establish and maintain funds for the payment thereof.

(c) Chapter 1208, Texas Government Code, applies to the issuance of the Series 2023 Bonds and the pledge of Pledged Revenues granted by the City under Section 7 of this Ordinance, and is therefore valid, effective, and perfected. If Texas law is amended at any time while the Series 2023 Bonds are outstanding and unpaid such that the pledge of the Pledged Revenues granted by the City under this Ordinance is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Series 2023 Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 8. FUNDS. The following special funds created pursuant to the ordinances authorizing the Outstanding Parity Obligations are hereby confirmed, and such funds shall be maintained and accounted for as hereinafter provided, so long as any Parity Obligations remain outstanding:

(a) Waterworks and Sewer System Bonds Revenue Fund, hereinafter called the “Revenue Fund”.

(b) Waterworks and Sewer System Bonds Interest and Sinking Fund, hereinafter called the “Interest and Sinking Fund”.

(c) Waterworks and Sewer System Bonds Reserve Fund, hereinafter called the “Reserve Fund”.

SECTION 9. REVENUE FUND. All Gross Revenues collected by the City shall be deposited upon receipt to the credit of the Revenue Fund. The Funds on deposit in the Revenue Fund shall first be used by the City to pay all Operation and Maintenance Expenses. The remaining funds on deposit therein shall be transferred from the Revenue Fund into the Interest and Sinking Fund and the Reserve Fund hereinafter described, and to satisfy any Reimbursement Obligation, in the manner and amounts hereinafter provided, and each of such Funds and the payment of such Reimbursement Obligation shall have priority as to such deposits in the order in which they are treated in the following sections.

SECTION 10. INTEREST AND SINKING FUND. Immediately after the delivery of any series of Parity Obligations, all moneys representing accrued interest, if any, received by the City upon the sale and delivery of such Parity Obligations to the initial purchaser thereof, together with all capitalized interest being financed with proceeds of such Parity Obligations, if any (but in no event in excess of the amount permitted by Section 1201.042(a)(1), Texas Government Code, as amended, or other applicable law), shall be deposited to the credit of the Interest and Sinking Fund. In addition, there shall be transferred Pledged Revenues from the Revenue Fund and deposited into the Interest and Sinking Fund the following:

(a) on or before the 25th day of each month, commencing with the month immediately following the issuance of any series of Parity Obligations, there shall be deposited into the Interest and Sinking Fund in approximately equal installments an amount as will be sufficient, together with other amounts, if any, then on deposit therein and available for such purpose, to pay the interest scheduled to come due on all Outstanding Parity Obligations on the next interest payment date.

(b) on or before the 25th day of each month, commencing with the twelfth (12th) month preceding the first principal payment date for a series of Parity Obligations, or commencing with the month immediately following the issuance of any series of Parity Obligations if delivery of such series of Parity Obligations is made less than twelve months preceding the first principal payment date for such series of Parity Obligations, there shall be deposited into the Interest and Sinking Fund in approximately equal installments an amount as will be sufficient, together with other amounts, if any, then on deposit therein and available for such purpose, to pay the principal scheduled to come due (either at stated maturity or due to mandatory sinking fund redemption) on all Outstanding Parity Obligations on the next principal payment date.

(c) on or before any optional redemption date set by the City for any Parity Obligations, there shall be deposited into the Interest and Sinking Fund an amount as will be sufficient to pay the principal of, premium, if any, and interest on the Parity Obligations scheduled to be redeemed on such optional redemption date.

The Interest and Sinking Fund shall be used solely to pay the principal of and interest on the Parity Obligations when due, and the City Manager and the Designated Financial Officer of the City are hereby authorized to cause funds to be transferred from the Interest and Sinking Fund to the Paying Agent/Registrar at the times and in the amounts to pay Annual Debt Service Requirements.

SECTION 11. RESERVE FUND. (a) Use of Funds. The Reserve Fund shall be used to pay the principal of or interest on the Parity Obligations at any time when there is not sufficient money available in the Interest and Sinking Fund for such purpose, or to pay the principal of or interest on the last maturing Parity Obligations. If the amount on deposit in the Reserve Fund consists of cash and investments and a Reserve Fund Credit Facility, all cash and investments shall be liquidated and withdrawn prior to drawing on the Reserve Fund Credit Facility. If more than one Reserve Fund Credit Facility is maintained in the Reserve Fund, any withdrawals on such Reserve Fund Credit Facilities shall be pro rata. The Paying Agent/Registrar shall maintain records showing the total amount drawn on, and available to be drawn under, a Reserve Fund Credit Facility to satisfy all or a portion of the Reserve Fund Requirement.

(b) Reserve Fund Requirement. The City is not required to fund the Reserve Fund so long as the Net Revenues for each of two consecutive Fiscal Years are equal to at least 1.35 times the average annual principal and interest requirements for all Outstanding Parity Obligations. At the time of Closing of the Bonds, the Net Revenues for the past two Fiscal Years were sufficient to satisfy this requirement, and thus the City is not required to make a deposit to the Reserve Fund based on the issuance of the Bonds. In the event that the Net Revenues for each of two consecutive Fiscal Years are less than 1.35 times the average annual principal and interest requirements for all then Outstanding Parity Obligations, the City will be required to (1) obtain a Reserve Fund Credit Facility in the amount of the Reserve Fund Requirement, or (2) commence making monthly deposits in the Reserve Fund and to continue such monthly deposits until the earlier of (i) such time as the Reserve Fund contains the Reserve Fund Requirement, or (ii) the Net Revenues in each of two consecutive years have been equal to not less than 1.35 times the average annual principal and interest requirements for the Bonds and all Parity Obligations Outstanding as of such date.

(c) Additional Deposits Upon Issuance of Additional Parity Obligations. As and when Additional Parity Obligations are delivered, the amount on deposit in the Reserve Fund shall be increased, if necessary, to the Reserve Fund Requirement after giving effect to the issuance of such Additional Parity Obligations. Any additional amount required shall be so accumulated by the deposit in the Reserve Fund of all or any part of said required additional amount in cash or a Reserve Fund Credit Facility immediately after the delivery of the then proposed Additional Parity Obligations, or (with the prior written consent of each then-existing Credit Provider of a Reserve Fund Credit Facility) by the deposit of said required additional amount (or any balance of said required additional amount not deposited in cash or a Reserve Fund Credit Facility as permitted above) in not more than sixty (60) approximately equal monthly installments, made on or before the 25th day of each month, commencing with the month immediately following the delivery of the then proposed Additional Parity Obligations.

(d) Additional Deposits to Cure Deficiencies. When and so long as the money and investments in the Reserve Fund total not less than the Reserve Fund Requirement (including the amount available to be drawn under a Reserve Fund Credit Facility), no deposits need be made to the credit of the Reserve Fund; but when and if the Reserve Fund at any time contains less than the Reserve Fund Requirement (other than with respect to the issuance of Additional Parity Obligations), the City covenants and agrees to cure the deficiency in the Reserve Fund Requirement within twelve (12) months from the date the deficiency occurred by:

(i) making monthly deposits from Pledged Revenues on the 25th day of each month in approximately equal amounts required to (A) first, if a draw has been made on a Reserve Fund Credit Facility, pay Reimbursement Obligations to restore the amount available to be drawn under such Reserve Fund Credit Facility to its original amount (and pay all other

amounts required by such Reserve Fund Credit Facility) by the end of such 12-month period (or earlier as required in an agreement between the City and the Credit Provider providing the Reserve Fund Credit Facility), and (B) second, restore the balance in the Reserve Fund to the Reserve Fund Requirement by the end of such 12-month period,

(ii) providing a Reserve Fund Credit Facility, if all Reimbursement Obligations on any then-existing Reserve Fund Credit Facility have been paid in full, or

(iii) providing a combination of (i) and (ii) above.

(e) Computation of Reserve Fund. For the purpose of determining the amount on deposit to the credit of the Reserve Fund, investments in which money in such account shall have been invested shall be computed at cost, and any Reserve Fund Credit Facility shall be computed at the maximum amount available to be drawn thereunder. The amount on deposit to the credit of the Reserve Fund shall be computed by the City at least annually, and shall be computed immediately upon any withdrawal from the Reserve Fund.

SECTION 12. EXCESS NET REVENUES. Subject to making the deposits into the Interest and Sinking Fund and the Reserve Fund, when and as required by this Ordinance in connection with the Parity Obligations, and after satisfying any Reimbursement Obligation in connection with a draw on any Reserve Fund Credit Facility, the City may utilize the excess Pledged Revenues for any lawful purpose.

SECTION 13. DEFICIENCIES IN FUNDS. If by the 25th day of any month the City shall fail to deposit into the Interest and Sinking Fund or the Reserve Fund the full amounts required by this Ordinance, amounts equivalent to such deficiencies shall be set apart and paid into said Funds from the first available and unallocated Pledged Revenues for the following month or months, if necessary and whichever is the earliest, and such payments shall be in addition to the amounts otherwise required to be paid into said Funds on the 25th day of each month.

SECTION 14. CONSTRUCTION FUND. There is hereby created and established in the depository of the City, a fund to be called the *City of Kerrville, Texas Waterworks and Sewer System Revenue Improvement Bonds (Series 2023) Construction Fund* (herein called the “**Construction Fund**”). All proceeds of the Series 2023 Bonds, other than accrued interest on the Series 2023 Bonds, shall be deposited in the Construction Fund. Money in the Construction Fund shall be subject to disbursements by the City for payment of all costs incurred in carrying out the purpose for which the Series 2023 Bonds are issued.

SECTION 15. INVESTMENTS. (a) In General. Funds on deposit in the Revenue Fund, the Interest and Sinking Fund, the Reserve Fund and the Construction Fund shall be secured by the depository bank of the City in the manner and to the extent required by law to secure other public funds of the City and may be invested from time to time in any investment authorized in the Public Funds Investment Act (Chapter 2256, Texas Government Code) and in accordance with the City's Investment Policy; provided, however, that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund will be available at the proper time or times when expected to be needed. Interest and income derived from such deposits and investments shall be credited to the Fund from which the deposit or investment was made and shall be used only for the purpose or purposes for which such Fund is required or permitted to be used, except for interest and income derived from deposits or investments in (i) the Reserve Fund which shall be transferred to the Interest and Sinking Fund if the amount then in

the Reserve Fund equals or exceeds the Reserve Fund Requirement, and (ii) the Construction Fund which may be transferred to the Interest and Sinking Fund to pay principal and interest on the Parity Obligations. Such investments shall be sold promptly when necessary to prevent any default in connection with the Parity Obligations.

(b) Transfer of Certain Investment Earnings to Rebate Fund. Notwithstanding the provisions of the preceding paragraph, interest and income derived from any investment of money on deposit in the Construction Fund, the Interest and Sinking Fund and the Reserve Fund shall first be transferred to the Rebate Fund established by Section 28(b) of this Ordinance at the times and in the amounts required to pay (or provide for the payment of) "Excess Earnings" as defined in Section 148(f) of the Internal Revenue Code of 1986, as amended.

SECTION 16. SECURITY FOR FUNDS. All Funds created by this Ordinance shall be secured in the manner and to the fullest extent permitted or required by law, and such Funds shall be used only for the purposes and in the manner permitted or required by this Ordinance.

SECTION 17. INSURANCE. The City shall cause the System to be insured as would usually be insured by entities operating similar facilities, with a responsible insurance company or companies, against risks, accidents, or casualties against which and to the extent insurance is usually carried by entities operating similar facilities, including, to the extent reasonably obtainable, fire and extended coverage insurance, but excluding insurance against damage by floods. Public liability and property damage insurance also shall be carried. At any time while any contractor engaged in construction work shall be fully responsible therefor, the City shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the Bondholders and their representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the City shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the City. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the City for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the System shall, at the option of the City, be (i) deposited in a special and separate fund, at an official depository of the City, to be designated the Insurance Account or (ii) deposited in the Interest and Sinking Fund and used to redeem the Outstanding Parity Obligations, but only if such insurance proceeds, together with all funds then on deposit in the Interest and Sinking Fund and in the Reserve Fund, are sufficient to immediately redeem all Outstanding Parity Obligations. The Insurance Account shall be held until such time as other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required.

SECTION 18. OPERATION AND MAINTENANCE; NO FREE SERVICE; NO COMPETITION. (a) Operation and Maintenance of the System. While any of the Parity Obligations are Outstanding the City covenants and agrees to keep and cause to be kept the System in good condition, repair, and working order, and to operate and maintain and cause to be operated and maintained the System in an efficient manner.

(b) No Free Service. The City will continuously and efficiently operate the System, and will maintain the System in good condition, repair and working order, all at reasonable cost. No free service of the System shall be allowed, and should the City or any of its agencies or instrumentalities make use of the services and facilities of the System, payment of the reasonable

value shall be made by the City out of funds from sources other than the revenues of the System, unless made from surplus or excess Pledged Revenues as permitted in Section 12 hereof.

(c) No Competition. The City will not grant any franchise or permit for the acquisition, construction or operation of any competing facilities which might be used as a substitute for the System's facilities, and, to the extent that it legally may, the City will prohibit any such competing facilities.

SECTION 19. ACCOUNTS AND RECORDS. The City shall keep or cause to be kept proper books of records and accounts in which complete and correct entries shall be made of all transactions relating to Gross Revenues, Pledged Revenues, Net Revenues and the Funds created pursuant to this Ordinance, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of any Holder.

SECTION 20. AUDITS. After the close of each Fiscal Year while any of the Parity Obligations are Outstanding, an audit will be made of the books and accounts relating to the Pledged Revenues, and the Funds created pursuant to this Ordinance, by an independent certified public accountant. As soon as practicable after the close of each such Fiscal Year, and when said audit has been completed and made available to the City, a copy of such audit for the preceding year shall be mailed to the Paying Agent/Registrar and to any Holders who shall so request in writing. The annual audit reports shall be open to the inspection of the Holders and their agents and representatives at all reasonable times.

SECTION 21. SPECIAL COVENANTS. The City further covenants and agrees that:

(a) Encumbrance and Sale. (i) Other than with respect to the Parity Obligations and except as provided in this Ordinance, the Pledged Revenues have not been pledged in any manner to the payment of any Debt of the City, or otherwise, and while any of the Parity Obligations are Outstanding, the City will not incur additional Debt secured by the Pledged Revenues in any manner, except as permitted by this Ordinance in connection with Additional Parity Obligations, unless said Debt is made junior and subordinate in all respects to the liens, pledges, covenants, and agreements of this Ordinance and any Ordinance authorizing the issuance of Parity Obligations.

(ii) So long as the Parity Obligations are Outstanding, and except as hereinafter specifically permitted in subparagraph (iii) below, the City shall not mortgage, encumber, sell, lease, or otherwise dispose of the System or any significant or substantial part thereof.

(iii) Notwithstanding the provisions in subparagraph (ii) hereof prohibiting the sale of any substantial part of the System, the City shall be authorized from time to time to sell any personal property contained in the System if such personal property is no longer needed or is no longer useful, and the sale thereof will not adversely affect the System or the operation and maintenance thereof. The proceeds from the sale of any personal property shall be used to replace or provide substitutes for the property sold, if, and to the extent, deemed necessary by the City, and all such proceeds which are not so used shall be deposited into the Interest and Sinking Fund.

(b) Title. The City represents that it lawfully owns or will lawfully own, and has or will have fee simple title and/or easement rights to the land upon which the System is or will be located, that the System will be constructed and completed in accordance with the plans to be approved and adopted by the City, that it warrants that it has or will obtain and will defend the title or easement rights to the aforesaid land for the benefit of the owners of the Parity Obligations against

the claims and demands of all persons whomsoever, and that it is lawfully qualified to pledge the Pledged Revenues to the payment of the Parity Obligations, in the manner prescribed herein, and has lawfully exercised such rights.

(c) Liens. The City will from time to time and before the same become delinquent pay and discharge all taxes, assessments, and governmental charges, if any, which shall be lawfully imposed upon it, or on the System, that it will pay all lawful claims for rents, royalties, labor, materials, and supplies which if unpaid might by law become a lien or charge upon the System, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and that it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment, or charge, and that no such claims which might be or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the City.

(d) Performance. It will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and each ordinance authorizing the issuance of Additional Parity Obligations, and in each and every Parity Obligation and pay from the Pledged Revenues the principal of and interest on every Parity Obligation on the dates and in the places and manner prescribed in this Ordinance and each ordinance authorizing the issuance of Additional Parity Obligations; and that it will, at the times and in the manner prescribed, deposit or cause to be deposited from the Pledged Revenues the amounts required to be deposited into the Interest and Sinking Fund and the Reserve Fund; and the owner of the Parity Obligations may require the City, its officials, agents, and employees to carry out, respect, or enforce the covenants and obligations of this Ordinance, including, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the City, its officials, agents, and employees.

(e) Legal Authority. The City is duly authorized under the laws of the State of Texas to create and issue the Parity Obligations; that all action on its part for the creation and issuance of the Parity Obligations has been duly and effectively taken, and that the Parity Obligations in the hands of the owners thereof are and will be valid and enforceable special obligations of the City in accordance with their terms.

(f) Permits. The City will comply with all of the terms and conditions of any and all franchises, permits, and authorizations applicable to or necessary with respect to the System, and which have been obtained from any governmental agency; and the City has or will obtain and keep in full force and effect all franchises, permits, authorizations, and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation, and maintenance of the System.

SECTION 22. ADDITIONAL PARITY OBLIGATIONS. (a) Conditions for the Issuance of Additional Parity Obligations. Subject to the provisions hereinafter appearing as conditions precedent which must be satisfied, the City reserves the right to issue, from time to time as needed, additional parity revenue obligations ("Additional Parity Obligations") for any lawful purpose, including but not limited to acquiring and constructing extensions and improvements to,

and acquiring equipment for, the System. Such Additional Parity Obligations, if and when authorized, issued, and delivered in accordance with the provisions hereof, shall be secured by and made payable equally and ratably on a parity with the then Outstanding Parity Obligations, from a first lien on and pledge of the Pledged Revenues. Such Additional Parity Obligations may be issued in such form and manner as now or hereafter authorized by the laws of the State of Texas for the issuance of evidences of indebtedness or other instruments, and should new methods or financing techniques be developed that differ from those now available and in normal use, the City reserves the right to employ the same in its financing arrangements provided only that the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(1) *No Default/Compliance with Covenants.* The Designated Financial Officer shall have executed a certificate stating (a) that, to the best of his or her knowledge and belief, the City is not then in default as to any covenant, obligation or agreement contained in any ordinance or other proceeding relating to any obligations of the City payable in whole or in part from, and secured by a lien on and pledge of, the Pledged Revenues that would materially affect the security or payment of the Parity Obligations, and (b) either (i) payments into all Funds or Accounts created and established for the payment and security of all Outstanding Parity Obligations have been made and that the amounts on deposit in such Funds or Accounts are the amounts then required to be on deposit therein or (ii) the application of the proceeds of sale of such Parity Obligations then being issued will cure any such deficiency.

(2) *Historical Net Revenue Test.* The Designated Financial Officer shall have executed a certificate to the effect that, according to the books and records of the City, the Net Revenues for the preceding Fiscal Year or for a 12 consecutive month period out of the 18 consecutive months immediately preceding the month the ordinance authorizing the issuance of the Parity Obligations is adopted are equal to at least 1.25 times the average Annual Debt Service Requirements for the proposed Additional Parity Obligations and all Parity Obligations then Outstanding. In making a determination of Net Revenues for the purpose described in this Section 22(a)(2), the Designated Financial Officer may take into consideration a change in the rates and charges for services and facilities provided by the System that became effective at least 30 days prior to the last day of the period for which Net Revenues are determined and, for purposes of satisfying the Net Revenues test described in the preceding sentence, make a pro forma determination of the Net Revenues of the System for the period of time covered by the Designated Financial Officer's certification based on such change in rates and charges being in effect for the entire period covered by the Designated Financial Officer's certificate.

(b) *Refundings.* Subject to the provisions of subsection (a) of this Section, Additional Parity Obligations may be issued from time to time (pursuant to any law then available) for the purpose of refunding Outstanding Parity Obligations and any subordinate lien obligations upon such terms and conditions as the governing body of the City may deem to be in the best interest of the City and, if less than all Outstanding Parity Obligations are refunded or if any subordinate lien obligations are refunded, the proposed refunding Parity Obligations shall be considered as Additional Parity Obligations under the provisions of this Section, but the certificates required in subsection (a) of this Section shall give effect to the issuance of the proposed refunding Parity Obligations (and shall not give effect to any Parity Obligations being refunded following their cancellation or provision being made for their payment).

(c) Non-Recourse Debt and Subordinate Obligations. Non-Recourse Debt and Subordinate Obligations may be incurred without limitation by the City, upon passage of an ordinance by the City Council of the City for the purpose of approving the issuance of Non-Recourse Debt or Subordinate Obligations, as the case may be, and approval of such Non-Recourse Debt or Subordinate Obligations by the Attorney General of Texas, to the extent required by law.

SECTION 23. ORDINANCE A CONTRACT; AMENDMENTS. (a) Ordinance a Contract. This Ordinance shall constitute a contract with the registered owners of the Parity Obligations, binding on the City and its successors and assigns, and shall not be amended or repealed by the City as long as any Parity Obligation remains Outstanding except as permitted in this Section.

(b) Amendments Without Notice to or Consent of Registered Owners. The City may, with notice to the provider of each Reserve Fund Credit Facility, if any, but without the consent of or notice to any registered owners, amend, change, or modify this Ordinance (i) as may be required by the provisions hereof, (ii) as may be required for the purpose of curing any ambiguity, inconsistency, or formal defect or omission herein, or (iii) in connection with any other change (other than any change described in clauses (i) through (iv) of the first sentence in subsection (c) below) with respect to which the City receives written confirmation from each rating agency then maintaining a rating on the Parity Obligations at the request of the City that such amendment would not cause such rating agency to withdraw or reduce its then current rating on the Parity Obligations.

(c) Amendments With Notice to and Consent of Registered Owners. In addition, the City may, with the written consent of the provider of each Reserve Fund Credit Facility, if any, and the registered owners of at least a majority in aggregate principal amount of the Parity Obligations then Outstanding affected thereby, amend, change, modify, or rescind any provisions of this Ordinance; provided that without the consent of all of the registered owners affected, no such amendment, change, modification, or rescission shall (i) extend the time or times of payment of the principal of and interest on the Parity Obligations, reduce the principal amount thereof or the rate of interest thereof, (ii) give any preference to any Parity Obligation over any other Parity Obligation, (iii) extend any waiver of default to subsequent defaults, or (iv) reduce the aggregate principal amount of Parity Obligations required for consent to any such amendment, change, modification, or rescission.

(d) Notice of Amendment. Whenever the City shall desire to make any amendment or addition to or rescission of this Ordinance requiring consent of the provider of each Reserve Fund Credit Facility and/or the registered owners of the Parity Obligations, the City shall cause notice of the amendment, addition, or rescission to be sent by first class mail, postage prepaid, to (i) the provider of each Reserve Fund Credit Facility, if any, and (ii) the registered owners (if the registered owners of all Parity Obligations or least a majority in aggregate principal amount of the Parity Obligations are required to consent) at the respective addresses shown on the Registration Books. Whenever at any time within one year after the date of the giving of such notice, the City shall receive an instrument or instruments in writing executed by the provider of each Reserve Fund Credit Facility and the registered owners of all or a majority (as the case may be) in aggregate principal amount of the Parity Obligations then Outstanding affected by any such amendment, addition, or rescission requiring the consent of the registered owners, which instrument or instruments shall refer to the proposed amendment, addition, or rescission described in such notice

and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City may adopt such amendment, addition, or rescission in substantially such form, except as herein provided.

(e) Effect of Amendment on Registered Owners. No Registered Owner may thereafter object to the adoption of any amendment, addition, or rescission which is accomplished pursuant to and in accordance with the provisions of this Section, or to any of the provisions thereof, and such amendment, addition, or rescission shall be fully effective for all purposes.

SECTION 24. REMEDIES IN THE EVENT OF DEFAULT. In addition to all of the rights and remedies provided by the laws of the State of Texas, it is specifically covenanted and agreed particularly that in the event the City (i) defaults in the payments to be made to the Interest and Sinking Fund or the Reserve Fund as required by this Ordinance or (ii) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, the following remedies shall be available (the occurrence of any such events is hereinafter referred to as an "*Event of Default*"):

(a) The holder or holders of any Parity Obligations shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to observe and perform any covenants, conditions, or obligations prescribed in this Ordinance.

(b) No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

The specific remedies herein provided shall be cumulative of all other existing remedies and the specifications of such remedies shall not be deemed to be exclusive.

SECTION 25. DEFEASANCE OF SERIES 2023 BONDS. (a) Defeased Series 2023 Bonds. Any Series 2023 Bond and the interest thereon shall be deemed to be paid, retired and no longer Outstanding a "*Defeased Bond*") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Series 2023 Bond, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the escrow agent named in the proceedings authorizing the defeasance of the Defeased Bonds (the "*Escrow Agent*") in accordance with an escrow agreement or other instrument (the "*Future Escrow Agreement*") for such payment (1) lawful money of the United States of America sufficient to make such payment and/or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the City with the Paying Agent/Registrar for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Series 2023 Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Series 2023 Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the revenues herein levied and pledged as provided in this Ordinance, and such principal and interest shall be

payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Bonds that is made in conjunction with the payment arrangements specified in subsection (a)(i) or (ii) of this Section shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the City expressly reserves the right to call the Defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Bonds immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Investment in Defeasance Securities. Any moneys so deposited with the Escrow Agent may at the written direction of the City be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Escrow Agent that is not required for the payment of the Series 2023 Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City, or deposited as directed in writing by the City. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Bonds may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section. All income from such Defeasance Securities received by the Escrow Agent which is not required for the payment of the Defeased Bonds, with respect to which such money has been so deposited, shall be remitted to the City or deposited as directed in writing by the City.

(c) Definition of Defeasance Securities. The term "Defeasance Securities" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date on the date the governing body of the City adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

(d) Paying Agent/Registrar Services. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) Selection of Series 2023 Bonds for Defeasance. In the event that the City elects to defease less than all of the principal amount of Series 2023 Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Series 2023 Bonds by such random method as it deems fair and appropriate.

SECTION 26. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED SERIES 2023 BONDS. (a) Replacement Bonds. In the event any Outstanding Series 2023 Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Series 2023 Bond, in replacement for such Series 2023 Bond in the manner hereinafter provided.

(b) Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen, or destroyed Series 2023 Bonds shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Series 2023 Bond, the registered owner applying for a replacement bond shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Series 2023 Bond, the registered owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Series 2023 Bond, as the case may be. In every case of damage or mutilation of a Series 2023 Bond, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Series 2023 Bond so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Series 2023 Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Series 2023 Bond, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Series 2023 Bond) instead of issuing a replacement Series 2023 Bond, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement bond, the Paying Agent/Registrar shall charge the registered owner of such Series 2023 Bond with all legal, printing, and other expenses in connection therewith. Every replacement bond issued pursuant to the provisions of this Section by virtue of the fact that any Series 2023 Bond is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Series 2023 Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Series 2023 Bonds duly issued under this Ordinance.

(e) Authority for Issuing Replacement Bonds. This Section of this Ordinance shall constitute authority for the issuance of any such replacement bond without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Series 2023 Bonds in the form and manner and with the effect, as provided in this Ordinance for Series 2023 Bonds issued in conversion and exchange for other Series 2023 Bonds.

SECTION 27. CUSTODY, APPROVAL, AND REGISTRATION OF SERIES 2023 BONDS; BOND COUNSEL'S OPINION; CUSIP NUMBERS. The Mayor of the City is hereby authorized to have control of the Series 2023 Bonds issued hereunder and all necessary records and proceedings pertaining to the Series 2023 Bonds pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by

the Comptroller of Public Accounts of the State of Texas. Upon registration of the Series 2023 Bonds said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate on the Series 2023 Bonds, and the seal of said Comptroller shall be impressed, or placed in facsimile, on the Series 2023 Bonds. The approving legal opinion of the City's Bond Counsel, and the assigned CUSIP numbers may, at the option of the City, be printed on the Series 2023 Bonds issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Series 2023 Bonds.

SECTION 28. COVENANTS REGARDING TAX-EXEMPTION OF INTEREST ON THE SERIES 2023 BONDS. (a) Covenants. The Issuer covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:

- (1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds of the Bonds or the projects financed therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;
- (2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;
- (3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;
- (4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;
- (5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;
- (6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with –

(A) proceeds of the Bonds invested for a reasonable temporary period of three years or less or, in the case of a refunding bond, for a period of 90 days or less, until such proceeds are needed for the purpose for which the Bonds are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(8) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and

(9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (9), a "Rebate Fund" is hereby established by the Issuer for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The Issuer understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Finance

Director to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(d) Allocation Of, and Limitation On, Expenditures for the Project. The Issuer covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this Ordinance (the “Project”) on its books and records in accordance with the requirements of the Internal Revenue Code. The Issuer recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the Issuer recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired. The Issuer agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Disposition of Project. The Issuer covenants that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) Written Procedures. Unless superseded by another action of the Issuer, to ensure compliance with the covenants contained herein regarding private business use, remedial actions, arbitration and rebate, the City Council hereby adopts and establishes the instructions attached hereto as Exhibit B as the Issuer's written procedures.

SECTION 29. SALE OF SERIES 2023 BONDS. The Series 2023 Bonds are hereby initially sold and shall be delivered to **FHN Financial Capital Markets**, as the representative (the “**Representative**”) of a group of underwriters (the “**Underwriters**”) for cash at a purchase price to \$_____ (which amount is equal to the par value thereof, plus a [net] original issue premium of \$_____, and less Underwriters’ discount of \$_____), and no accrued interest, all pursuant to the terms and provisions of a Purchase Contract in substantially the form attached hereto as Exhibit C which the Mayor, Mayor Pro-Tem, City Manager, and Finance Director are each individually authorized to execute and deliver. In satisfaction of Section 1201.022(a)(3), Texas Government Code, and upon consultation with the City’s Financial Advisor, the City Council hereby determines that the final terms of the Series 2023 Bonds as set forth in this Ordinance are in the City’s best interests. The City will deliver to the Representative an Initial Bond in the aggregate principal amount of \$_____, payable in principal installments on the dates and in the principal amounts shown in Section 2 hereof, and bearing interest at the rates for each

respective maturity as shown in Section 3 hereof. The Series 2023 Bonds shall initially be registered in the name of ***FHN Financial Capital Markets***.

SECTION 30. APPROVAL OF OFFICIAL STATEMENT. The City hereby authorizes the Mayor and the City Manager to approve the form and content of an Official Statement relating to the Series 2023 Bonds and any addenda, supplement, or amendment thereto, and to approve the distribution of the Official Statement in the reoffering of the Series 2023 Bonds by the Underwriters in final form, with such changes therein or additions thereto as the officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof. The preparation, distribution and use of a Preliminary Official Statement for the Series 2023 Bonds is also hereby approved.

SECTION 31. AUTHORITY FOR OFFICERS TO EXECUTE DOCUMENTS. The Mayor, Mayor Pro-Tem, City Manager, City Secretary and Designated Financial Officer of the City and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Series 2023 Bonds and the Paying Agent/Registrar Agreement.

SECTION 32. COMPLIANCE WITH RULE 15c2-12.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“**EMMA**” means the Electronic Municipal Market Access system established and maintained by the MSRB.

“**Financial Obligation**” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“**MSRB**” means the Municipal Securities Rulemaking Board.

“**Rule**” means SEC Rule 15c2-12, as amended from time to time.

“**SEC**” means the United States Securities and Exchange Commission.

(b) Annual Reports. The Issuer shall provide annually to the MSRB through EMMA financial information and operating data with respect to the Issuer of the general type included in the final Official Statement authorized by this Ordinance being the information described in Exhibit D hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit D hereto, or such other accounting principles as the Issuer may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the Issuer commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not

complete within such period, then the Issuer shall provide (1) unaudited financial statements for such fiscal year within such required time, and (2) audited financial statements for the applicable fiscal year to the MSRB through EMMA when and if the audit report on such statements become available.

If the Issuer changes its fiscal year, it will notify the MSRB through EMMA of the date of the new fiscal year end prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this paragraph (b).

The financial information to be provided pursuant to this paragraph (b) may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB through EMMA or filed with the SEC.

(c) Event Notices.

The Issuer shall file notice of the following events with respect to the Notes to the MSRB through EMMA in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of the holders of the Bonds;
8. Note calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the Issuer.
13. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such

an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

14. Appointment of a successor or additional trustee or the change of name of a trustee;
15. Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the Issuer in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer, and (b) the Issuer intends the words used in the immediately preceding paragraphs 15 and 16 and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The Issuer shall file notice with the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(d) Limitations, Disclaimers, and Amendments. The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Issuer in any event will give notice of any deposit made in accordance with Section 11 of this Ordinance that causes Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OF OBLIGATION OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.

The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Issuer (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

(e) Format, Identifying Information, and Incorporation by Reference. All financial information, operating data, financial statements, and notices required by this Section to be provided to the MSRB shall be provided in an electronic format and be accompanied by identifying information prescribed by the MSRB.

Financial information and operating data to be provided pursuant to subsection (b) of this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public on the MSRB's Internet Web site or filed with the SEC.

(f) Written Procedures. The Issuer hereby adopts, as a supplement (and not as a substitution or in replacement of) to the Issuer's existing informal policies and procedures pertaining to compliance with the Rule, the Written Procedures Relating to Continuing Compliance with the Rule, attached hereto as Exhibit D. The Issuer shall follow such written

procedures to assure compliance with the undertaking described above in this Section 32. The written procedures can be amended at the sole discretion of the Issuer and any such amendment will not be deemed to be an amendment to the undertaking described in this Section 32.

SECTION 33. INCORPORATION OF RECITALS. The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporates such recitals as a part of this Ordinance.

SECTION 34. EFFECTIVE DATE. Pursuant to Section 1201.028, Texas Government Code, this Ordinance shall be effective immediately upon adoption, notwithstanding any provision in the City Charter to the contrary.

[The remainder of this page intentionally left blank.]

***ADOPTED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS AT A
REGULAR MEETING HELD ON THE 11th DAY OF APRIL, 2023.***

APPROVED:

Mayor, City of Kerrville, Texas

ATTEST:

City Secretary, City of Kerrville, Texas

[SIGNATURE PAGE TO BOND ORDINANCE]

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

THE PAYING AGENT/REGISTRAR AGREEMENT IS OMITTED AT THIS POINT AS IT APPEARS IN EXECUTED FORM ELSEWHERE IN THIS TRANSCRIPT

EXHIBIT B

WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH FEDERAL TAX COVENANTS

A. Arbitrage. With respect to the investment and expenditure of the proceeds of the Series 2023 Bonds, the City's chief financial officer (the "**Responsible Person**"), which currently is the City's Director of Finance, will:

- (i) instruct the appropriate person or persons that the construction, renovation or acquisition of the facilities must proceed with due diligence and that binding contracts for the expenditure of at least 5% of the proceeds of the Series 2023 Bonds will be entered into within six (6) months of the date of delivery of the Series 2023 Bonds (the "**Issue Date**");
- (ii) monitor that at least 85% of the proceeds of the Series 2023 Bonds to be used for the construction, renovation or acquisition of any facilities are expended within three (3) years of the Issue Date;
- (iii) restrict the yield of the investments to the yield on the Series 2023 Bonds after three (3) years of the Issue Date;
- (iv) monitor all amounts deposited into a sinking fund or funds (e.g., the Interest and Sinking Fund), to assure that the maximum amount invested at a yield higher than the yield on the Series 2023 Bonds does not exceed an amount equal to the debt service on the Series 2023 Bonds in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Series 2023 Bonds for the immediately preceding 12-month period;
- (v) ensure that no more than 50% of the proceeds of the Series 2023 Bonds are invested in an investment with a guaranteed yield for 4 years or more;
- (vi) maintain any official action of the City (such as a reimbursement resolution) stating its intent to reimburse with the proceeds of the Series 2023 Bonds any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities;
- (vii) ensure that the applicable information return (e.g., IRS Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and
- (viii) assure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (A) at least every 5 years after the Issue Date and (B) within 30 days after the date the Series 2023 Bonds are retired.

B. Private Business Use. With respect to the use of the facilities financed or refinanced with the proceeds of the Series 2023 Bonds the Responsible Person will:

- (i) monitor the date on which the facilities are substantially complete and available to be used for the purpose intended;
- (ii) monitor whether, at any time the Series 2023 Bonds are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;
- (iii) monitor whether, at any time the Series 2023 Bonds are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the output of the facilities (e.g., water, gas, electricity);
- (iv) monitor whether, at any time the Series 2023 Bonds are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the facilities to conduct or to direct the conduct of research;
- (v) determine whether, at any time the Series 2023 Bonds are outstanding, any person, other than the City, has a naming right for the facilities or any other contractual right granting an intangible benefit;
- (vi) determine whether, at any time the Series 2023 Bonds are outstanding, the facilities are sold or otherwise disposed of; and
- (vii) take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the Ordinance related to the public use of the facilities.

C. Record Retention. The Responsible Person will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the Series 2023 Bonds and the use of the facilities financed or refinanced thereby for a period ending three (3) years after the complete extinguishment of the Series 2023 Bonds. If any portion of the Series 2023 Bonds is refunded with the proceeds of another series of tax-exempt obligations, such records shall be maintained until the three (3) years after the refunding obligations are completely extinguished. Such records can be maintained in paper or electronic format.

D. Responsible Person. The Responsible Person shall receive appropriate training regarding the City's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed or refinanced with the proceeds of the Series 2023 Bonds. The foregoing notwithstanding, the Responsible Person is authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

EXHIBIT C

FORM OF PURCHASE CONTRACT

THE PURCHASE CONTRACT IS OMITTED AT THIS POINT
AS IT APPEARS IN EXECUTED FORM ELSEWHERE IN THIS TRANSCRIPT.

EXHIBIT D

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION AND WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH THE RULE

I. Description of Annual Financial Information.

The following information is referred to in Section 32(b) of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the Issuer to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The annual audited financial statements of the Issuer or the unaudited financial statements of the Issuer in the event audited financial statements are not completed within twelve months after the end of any fiscal year.

2. Within twelve months after the end of any fiscal year, all quantitative financial information and operating data with respect to the Issuer of the general type included in the Official Statement under Table 1 and in Appendix A to the Official Statement under numbered Tables 1 through 7.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 above.

II. Written Procedures Relating to Continuing Compliance with the Rule

1. Capitalized terms used in this Exhibit C shall have the meanings assigned thereto in the Ordinance.

2. The Issuer is aware that the Rule was amended (the “Rule Amendment”) as of February 27, 2019 (the “Effective Date”) and has accommodated this Rule Amendment by adding subparagraphs (15) and (16) to Section 32(c) of the Ordinance.

3. The Issuer now establishes the following written procedures for satisfying its obligations pursuant to its undertaking described in Section 32 (the “Undertaking”), which written procedures have been developed based on the Issuer's informal policies, procedures, and processes utilized prior to the Effective Date for compliance with the Issuer's obligations under the Rule, the advice from and discussions with the Issuer's internal senior staff (including staff charged with administering the Issuer's financial affairs), its municipal or financial advisors, its legal counsel

(including Bond Counsel), and its independent accountants, to the extent determined to be necessary or advisable (collectively, the “Compliance Team”):

- (a) the Finance Director, or their assignee, (the “Compliance Officer”) shall be responsible for satisfying the Issuer's obligations pursuant to the Undertaking through adherence to these written procedures;
- (b) the Compliance Officer shall establish reminder or “tickler” systems to identify and timely report to the MSRB, in the format thereby prescribed from time to time, the Issuer's information of the type described in Section 32 of the Ordinance;
- (c) the Compliance Officer shall promptly determine the occurrence of any of the events described in Section 32(c) of the Ordinance;
- (d) the Compliance Officer shall work with external consultants of the Issuer, as and to the extent necessary, to timely prepare and file with the MSRB the annual information of the Issuer and notice of the occurrence of any of the events referenced in(a) and (b) above, respectively, the foregoing being required to satisfy the terms of the Undertaking;
- (e) the Compliance Officer shall establish a system for identifying and monitoring any Financial Obligations, whether now existing or hereafter entered into by the Issuer, and (upon identification) determining if such Financial Obligation has the potential to materially impact the security or source of repayment of the Bonds;
- (f) upon identification of any Financial Obligation meeting the materiality standard identified in (e) above, the Compliance Officer shall establish a process for identifying and monitoring any Issuer agreement to covenants, events of default, remedies, priority rights, or other similar terms under such Financial Obligation;
- (g) the Compliance Officer shall establish a process for identifying the occurrence of any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation, the occurrence of any of which reflect financial difficulties of the Issuer;

4. The Compliance Officer shall annually review these written procedures with the remainder of the Compliance Team, make any modifications on an internal document retained by the Compliance Officer and available to any “participating underwriter” (as defined in the Rule), if requested, and on the basis of this annual review (to the extent determined to be necessary or desirable), seek additional training for herself or himself, as well as other members of the Issuer's internal staff identified by the Compliance Officer to assist with the Issuer's satisfaction of the terms and provisions of the Undertaking.



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

SUBJECT: Ordinance No. 2023-12. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, such chapter more commonly known as the City's Zoning Code; by amending said code to revise regulations pertaining to the location of accessory buildings and structures within the front setback as to fences; providing a cumulative clause; providing for severability; providing an effective date; ordering publication; and providing other matters relating to the subject.

AGENDA DATE OF: April 11, 2023

DATE SUBMITTED: March 29, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area C - Community / Neighborhood Character and Place Making

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

As a part of the City's commitment to the regular review of the zoning code, the sections related to *Location of accessory buildings or structures beyond setback* has raised some concerns as it relates to fences. The City has had several building permit applications for fences to be built that do not conform to the "ornamental fence" style. Overall, the fence requirements lack definition and clarity. As this was discussed with the Planning and Zoning Commission, the following items were identified for a potential amendment to the code.

The goal is to amend the zoning code to provide both flexibility and clarity on the fence material regulations, allow for fence types/materials other than "ornamental fence", and continue to prevent view obstruction along the street. The Building Code chapter of the code needs a clarification related to fence repairs and if/when a permit is required.

Zoning:

Regarding fences in the front yard, as defined by the zoning district front ,

- shall not exceed 30 inches in height for solid fences, and/or
- shall not exceed 72 inches for see-through (or non-visibility obstructing) fences, i.e. post and rail, , hog wire panels, etc.
- fences may be constructed as a combination of solid and see-through, so long as the solid portions do not exceed 30 inches in height from the ground.
- Height shall be measured from the ground level, constructed berms, mounds, or retaining walls.

The following sections will be amended:

- 60-50(a) (7) a. - RE
- 60-50 (b) (7) a. - R-1
- 60-50 (c) (7) a. - R-1A
- 60-50 (d) (9) a. - R-2
- 60-50 (e) (7) a. - R-3
- 60-50 (f) (9) a. - RM
- 60-50 (g) (7) a. - RT
- 60-51 (a) (4) - C-1
- 60-51 (b) (4) - C-2
- 60-51 (c) (4) - C-3
- 60-52 (a) (6) - DAC
- 60-52 (b) (5) - MU
- 60-52 (d) (4) a. - PI
- 60-52 (e) (4) - AD

RECOMMENDED ACTION:

Approve Ordinance No. 2023-12 on first reading.

ATTACHMENTS:

[*20230411_Ord 2023-12 Zoning Code amendment fence requirements.pdf*](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-12**

**AN ORDINANCE AMENDING CHAPTER 60 OF THE CODE OF
ORDINANCES, CITY OF KERRVILLE, TEXAS, SUCH CHAPTER
MORE COMMONLY KNOWN AS THE CITY'S ZONING CODE; BY
AMENDING SAID CODE TO REVISE REGULATIONS
PERTAINING TO THE LOCATION OF ACCESSORY
BUILDINGS AND STRUCTURES WITHIN THE FRONT
SETBACK AS TO FENCES; PROVIDING A CUMULATIVE
CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING AN
EFFECTIVE DATE; ORDERING PUBLICATION; AND
PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

WHEREAS, on August 27, 2019, City Council adopted Ordinance No. 2019-17, which adopted the City's Zoning Code, which included a Land Use Table and Zoning Map, collectively referred to herein as the "Zoning Code"; and

WHEREAS, Ordinance No. 2019-17 was adopted in accordance with and pursuant to the City's Comprehensive Plan; and

WHEREAS, pursuant to requests from landowners concerning the installation of fences in front yards and clarifying the Zoning Code as necessary, City staff, the Planning and Zoning Commission, and City Council recommend the adoption of several amendments to the Zoning Code; and

WHEREAS, pursuant Section 60-73 of the Zoning Code, and in accordance with Texas Local Government Code Sections 211.006 and 211.007, notice has been given to all parties in interest and citizens by publication in the official newspaper for the City of Kerrville, Texas ("City"), and otherwise, of a hearing held before the City Council on April 11, 2023, which considered a report of the City's Planning and Zoning Commission regarding its recommendations on an ordinance, the adoption of which will result in a number of amendments to the Zoning Code as provided herein; and

WHEREAS, on April 11, 2023, City Council held a public hearing on the zoning amendments pursuant to the published notice and has considered the application, comments, reports, and recommendations of the Planning and Zoning Commission and staff, public testimony, and other relevant support materials;

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

SECTION ONE. Sec. 60-17 of the Zoning Code is amended with deletions indicated by red, strikeout (~~deleted~~) and additions indicated by blue, underline (addition) as follows:

“Sec. 60-17. - Terms defined.

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Screening fence means a fence or wall that may be part of the structure or a standalone feature that screens from view the interior of a property so that visibility through the fence or wall shall be prevented from the exterior side of the fence or wall.”

SECTION TWO. Sections 60-50, -51, and -52 of the Zoning Code are amended with deleted language indicated by red, strikeout (~~deleted~~) and new language indicated by blue, underline (addition) as follows:

A. “Sec. 60-50. – Residential zoning districts.

⋮

(a)(7) ~~Location of a~~ Accessory buildings or structures prohibited in
~~beyond~~ setback.

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

B. “Sec. 60-50. – Residential zoning districts.

⋮

(b)(7) ~~Location of a~~ Accessory buildings or structures prohibited in
~~beyond~~ setback.

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet

~~in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”~~

C. “Sec. 60-50. – Residential zoning districts.

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(c)(7) ~~Location of a~~ Accessory buildings or structures prohibited in beyond setback.

a. No structure in excess of 30 inches in height may exist ~~within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”~~

D. “Sec. 60-50. – Residential zoning districts.

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(d)(9) ~~Location of a~~ Accessory buildings or structures prohibited in beyond setback.

a. No structure in excess of 30 inches in height may exist ~~within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or~~

similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

E. “Sec. 60-50. – Residential zoning districts.

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(e)(7) *Location of a Accessory buildings or structures prohibited in beyond setback.*

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

F. “Sec. 60-50. – Residential zoning districts.

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(f)(9) *Location of a Accessory buildings or structures prohibited in beyond setback.*

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

G. "Sec. 60-50. – Residential zoning districts.

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(g)(7) ~~Location of a~~ Accessory buildings or structures prohibited in beyond setback.

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation."

H. "Sec. 60-51. – Nonresidential zoning districts.

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(a)(4) ~~Location of s~~ Structures prohibited in beyond setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation."

I. "Sec. 60-51. – Nonresidential zoning districts.

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(b)(4) ~~Location of s~~ Structures prohibited in beyond setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any

~~building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”~~

J. “Sec. 60-51. – Nonresidential zoning districts.

⋮

(c)(4) ~~Location of structures prohibited in beyond~~ setback. No structure in excess of 30 inches in height may exist ~~within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”~~

K. “Sec. 60-52. – Special districts.

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(a)(6) ~~Location of structures prohibited in beyond~~ setback. No structure in excess of 30 inches in height may exist ~~within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but~~

only where the height of the base does not exceed 30 inches.
No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

L. “Sec. 60-52. – Special districts.

:

(b)(5) ~~Location of structures prohibited in beyond~~ setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

M. “Sec. 60-52. – Special districts.

:

(d)(4) ~~Location of accessory buildings or structures prohibited in beyond~~ setback.

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line, create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation.”

N. "Sec. 60-52. – Special districts.

⋮

(e)(4) ~~Location of structures prohibited in beyond setback.~~ No structure in excess of 30 inches in height may exist ~~within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. No element of the fence may encroach beyond the property line,~~ create a visibility obstruction or otherwise interfere with pedestrian or vehicular circulation."

SECTION THREE. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. The terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance is declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

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

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

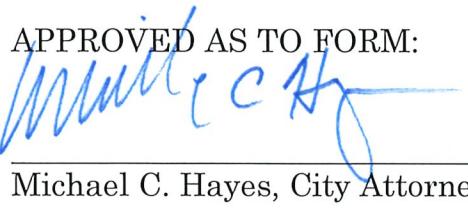
PASSED AND APPROVED ON SECOND AND FINAL READING, this
the ____ of _____, A.D., 2022.

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney



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

SUBJECT: Ordinance No. 2023-13. An Ordinance amending Section 26-38 "Construction of Fences", Chapter 26 "Building and Building Regulations", of the Code of Ordinances, City of Kerrville, Texas; by clarifying what "Substantial Repairs" means; providing for an effective date; and providing other matters related to the subject.

AGENDA DATE OF: April 11, 2023 **DATE SUBMITTED:** March 29, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area C - Community / Neighborhood Character and Place Making

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

As a part of the City's commitment to the regular review of the zoning code, the sections related to *Location of accessory buildings or structures beyond setback* has raised some concerns as it relates to fences. The City has had several building permit applications for fences to be built that do not conform to the "ornamental fence" style. Overall, the fence requirements lack definition and clarity. As this was discussed with the Planning and Zoning Commission, the following items were identified for a potential amendment to the code.

The goal is to amend the zoning code to provide both flexibility and clarity on the fence material regulations, allow for fence types/materials other than "ornamental fence", and continue to prevent view obstruction along the street. The Building Code chapter of the code needs a clarification related to fence repairs and if/when a permit is required.

To be consistent with many other thresholds in the Building Code, staff recommends that if 50% or more of the fence is being repaired, then a permit should be required.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-13 on first reading.

ATTACHMENTS:

[20230411_Ord 2023-13 Fence building regulations.pdf](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-13**

**AN ORDINANCE AMENDING SECTION 26-38
“CONSTRUCTION OF FENCES”, CHAPTER 26 “BUILDING
AND BUILDING REGULATIONS”, OF THE CODE OF
ORDINANCES, CITY OF KERRVILLE, TEXAS; BY
CLARIFYING WHAT “SUBSTANTIAL REPAIRS” MEANS;
PROVIDING FOR AN EFFECTIVE DATE; AND
PROVIDING OTHER MATTERS RELATED TO THE
SUBJECT**

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 Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, City staff recommends that City Council adopt this Ordinance which will amend Section 26-38 of the City’s Code of Ordinances (“Section 26-38”); and

WHEREAS, said amendment will clarify what the term “substantial repairs” means, which is used in Section 26-38 as a standard for when repairs to a fence requires a permit from the City; and

WHEREAS, City Council finds it to be in the public interest to adopt the amendment provided for herein;

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

SECTION ONE. Chapter 26 “Building Codes,” of the Code of Ordinances of the City of Kerrville, Texas, is amended by amending Section 26-38 with new language indicated by blue, underline (added) as follows:

“Sec. 26-38. – Construction of fences.

It shall be unlawful for any person, firm, or corporation to erect, construct, or to place or to have erected, constructed, or placed or to make substantial repairs, suffer, or permit a fence or any part of a fence of permanent construction without first obtaining a fence permit from building official. Such permit is subject to the submission of an application and the payment of a fee and any fence constructed without first being issued the required building permit will be subject to an additional fee. For purposes of this section, “substantial repairs” is defined as where 50% or more of the entire fence located on a property is being repaired or replaced. An owner shall not make repairs in smaller sections to avoid the 50% replacement threshold. “Fence” is defined as any wall, berm, or structure more than two and one-half feet in height erected, constructed, placed, or maintained

for the purpose of enclosing, screening, restricting access to or decorating the surrounding lot, parcel, building or structure, located entirely on private property."

SECTION TWO. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. The terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance is declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

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

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

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

Judy Eychner, 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: Ordinance No. 2023-14. An Ordinance amending in its entirety Article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations" of the Code of Ordinances of the City of Kerrville, Texas; regarding the abatement of unsafe buildings; containing a savings and severability clause; providing an effective date; ordering publication; and providing other matters relating to the subject.

AGENDA DATE OF: April 11, 2023

DATE SUBMITTED: March 29, 2023

SUBMITTED BY: Guillermo Garcia

EXHIBITS:

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

PAYMENT TO BE MADE TO: N\A

Kerrville 2050 Item? Yes

Key Priority Area H - Housing

Guiding Principle N/A

Action Item H2.6 - Implement an effective demolition program for substandard structures, including the adoption of the required ordinances

SUMMARY STATEMENT:

This ordinance is amending in its entirety Article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations". It is the purpose of the provisions of this Article to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy provided by City building codes or any other ordinances, rules, and regulations of the City or the laws of the state, whereby buildings or structures which from any cause endanger the life, limb, health, property, safety, or welfare of the general public or their occupants, may be required to be vacated, secured, repaired, or demolished. The ordinance was last updated on October 27, 1998. In 2019, the City of Kerrville adopted the Kerrville 2050 Comprehensive Plan and it identified the following action items:

- H2.6 - Implement an effective demolition program for substandard structures, including the adoption of the required ordinances;
- C5.1 - Enforce current minimum property standards for home/structure maintenance and increase proactive code enforcement;
- C5.5 - Implement an effective demolition program for substandard structures, including the adoption of the required ordinances.

The proposed ordinance was presented to the Building Boards of Adjustments and Appeals on February 23, 2023. The Building Board of Adjustments and Appeals unanimously recommended two amendments and approved recommendation of adoption.

The recommended changes:

1. Add the definition of dwelling to the listed definitions;
2. Sec. 26-243(a)(2) - "Repairs may only be deemed feasible if less than 50 percent of the structure or the building must be repaired or replaced." The board recommend replacing the word "building" with "dwelling".

While not making these specific changes, the City Attorney inserted the word "dwellings" in various parts of the Ordinance and included "dwelling" within any reference to "building". See Sec. 26-226.

City Council received a workshop briefing on this topic on Tuesday, March 28, 2023.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-14 on first reading.

ATTACHMENTS:

[*20230411_Ord 2023-14 Unsafe Buildings.pdf*](#)

D R A F T 4/6/23

CITY OF KERRVILLE, TEXAS ORDINANCE NO. 2023-14

AN ORDINANCE AMENDING IN ITS ENTIRETY ARTICLE VIII “UNSAFE BUILDING ABATEMENT” OF CHAPTER 26 “BUILDING AND BUILDING REGULATIONS” OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS; REGARDING THE ABATEMENT OF UNSAFE BUILDINGS; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, City Council finds that substandard buildings and properties with an accumulation of refuse, trash, debris, junk, materials, uncultivated vegetation and similar matter pose an immediate and substantial threat to public safety and welfare in numerous ways: fire fuel; breeding of mosquitoes, mice, snakes, and other vermin and insects; harboring of vagrants, runaway minors, stray animals, drug dealers and users; and poor aesthetic appearance; all of which singly and jointly tends to devalue neighboring properties and encourages crimes such as graffiti, vandalism, and others; and

WHEREAS, City Council desires to expedite the notice and hearing process on such properties to the extent feasible, while also giving due regard to private property rights of the owners, occupants, and lien holders of such properties; and

WHEREAS, City Council adopts this ordinance pursuant to state law, including Sections 216.001, 217.042, 54.032, and 54.043 of the Texas Local Government Code, defining nuisances and establishing an alternative adjudication process while still assuring due process in the enforcement of this Ordinance relating to dangerously damaged or deteriorated buildings or conditions caused by accumulations of refuse, vegetation, and other matter, and as otherwise provided for in Section 54.032, Texas Local Government Code; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Article VIII, Chapter 26, in its entirety for the policy reason expressed above;

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

SECTION ONE. Article VIII “Unsafe Building Abatement”, Chapter 26 “Buildings and Building Regulations,” of the Code of Ordinances of the City of

Kerrville, Texas, is amended by repealing it and replacing it in its entirety with new language that is underlined (added) as follows:

“ARTICLE VIII. - UNSAFE BUILDING ABATEMENT

Sec. 26-225. - Purpose.

The purpose of this article is to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy provided by City building codes or any other ordinances, rules, and regulations of the City or the laws of the state, whereby buildings, dwellings, or structures which from any cause endanger the life, limb, health, property, safety, or welfare of the general public or their occupants, may be required to be vacated, secured, repaired, or demolished.

Sec. 26-226. - Scope.

This article applies to all unsafe buildings, dwellings, or structures and imminently dangerous buildings, dwellings, or structures, as defined, and applies equally to new and existing conditions. For purposes of this article, “building(s)” may at times collectively refer to buildings, but includes dwellings and structures.

Sec. 26-227. - Definitions.

Appraised value means the value given the building by the Kerr County Appraisal District or successor.

Building means any structure or part thereof, erected for the support, shelter, or enclosure of persons, animals, belongings, or property of any kind.

Chief Building Official means the official designated by the City Manager within the department or designee.

City means the City of Kerrville, Texas, a home-rule municipality.

Board means the Building Board of Adjustment and Appeals of the City.

Building codes means any and all standardized building code adopted by the City Council, to include building codes for residential and commercial buildings, plumbing code, electrical code, mechanical code and fire code, and which may be amended.

Department means the Development Services Department of the City, or successor.

Imminent danger means a building where there is a considerable risk, danger, or peril and where accidents or injuries are likely to occur.

Owner means any person, agent, firm, or corporation named in the real property records of Kerr County as owning the property.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, or any part thereof.

Unoccupied building means any building that currently has no legitimate occupant or tenant or is occupied by persons who have no right to possession.

Unsafe building means any building or building that has been determined by the Board to be unsafe as provided within this article, the building codes, or by any other law.

Unsecured, unoccupied building means any building that currently has no legitimate occupant or tenant or is occupied by persons who have no right to possession and which has missing or unlocked doors and windows or other unsecured openings into the building through which an unauthorized person including a child, could enter. Any unoccupied, unsecured building is declared to be a public nuisance.

Sec. 26-228. - Declaration.

The City declares all unsafe buildings, dwellings, and structures, as defined, to be public nuisances and illegal and shall vacate, secure, repair, demolish, and/or relocate any occupants, as provided herein.

Sec. 26-229. - Enforcement official.

The Chief Building Official or designee shall enforce the provisions of this article.

Sec. 26-230. - Restrictions on employees.

An officer or employee connected with the department or a member of the Board, shall not have a financial interest in the furnishing of labor, material, or appliances for the construction, alteration, demolition, repair, or maintenance of a building, or in the making of plans or specifications therefor, unless he/she is

the owner of the building. An officer or employee shall not engage in any work which is inconsistent with his/her duties or with the interest of the department. Nothing contained herein prohibits a member of the Board from having financial interests in buildings which are not the subject of a hearing before the Board.

Sec. 26-231. - Liability.

An officer, employee, or member of the Board charged with enforcement of this article, acting for the City in the consequent scope of his/her office or employment, shall not thereby render himself/herself liable personally, and he/she is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the consequent scope of his/her office or employment. Any suit brought against any officer, employee, or member of the Board because of such act performed in the enforcement of any provision of this article shall be defended by the City Attorney.

Sec. 26-232. - Right of entry.

- (a) The Chief Building Official and/or authorized representative, subject to compliance with all applicable laws, may enter a building, dwelling, structure, or premises at all reasonable times to make an inspection or enforce any of the provisions of this article.
- (b) When entering a building or premises that is occupied, the Chief Building Official shall first present proper identification and request entry. If entry is refused, the Chief Building Official shall have recourse to every legal remedy to secure entry.
- (c) No person, owner, or occupant of any building or premises shall fail, after proper identification, to permit entry into any building or onto any property by the Chief Building Official for the purpose of inspections pursuant to this article.
- (d) The Chief Building Official, fire marshal, and other authorized representatives are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this article.

Sec. 26-233. - Public utilities.

- (a) The Chief Building Official may request the disconnection of public utilities without notice to the owner where a known dangerous condition related to the type of service provided exists, for as long as such condition exists. In all other instances, the Chief Building Official may seek the disconnection of

public utilities only after the owner has received notice and an opportunity to have a public hearing on the matter.

(b) Once utility services to a building or premises are disconnected pursuant to this article, reconnection of the services may not occur without the prior written approval of the Chief Building Official.

Sec. 26-234. - Requirements not covered by this article.

The Chief Building Official shall determine any requirement necessary for the strength or stability of an existing or proposed building, dwelling, or structure, or for the safety or health of the occupants thereof, which is not specifically covered by this article.

Sec. 26-235. - Emergency actions.

In cases where the condition of a building constitutes an imminent danger to the health, life, or safety of any person unless immediately vacated, repaired, or demolished, the Chief Building Official or fire marshal or their designees may cause such immediate vacation, repair, or demolition to the extent necessary to alleviate the imminent danger. The Chief Building Official shall mail notice of any such emergency action to the owner listed on the ad valorem tax roll to the address therein provided. The City shall collect the costs of such emergency action in the same manner as provided for in Section 26-250.

Sec. 26-236. - Offenses.

It is unlawful for any person to fail or refuse to:

- (1) Comply with a lawful order of the Chief Building Official or the Board;
- (2) Obstruct or interfere with the implementation of any action required by an order of the Chief Building Official or the Board; or
- (3) Remove a posted unsafe building placard without the permission of the Chief Building Official, or to enter a posted unsafe building, except for the purpose of inspection, making required repairs, or working to demolish.

Sec. 26-237. - Required actions.

The owner, lienholder, and/or mortgagee, as applicable, and in accordance with an order issued by the Board, is required to vacate, relocate occupants, secure, repair, and/or demolish a building that is:

- (1) Dilapidated, substandard, or otherwise unfit for human habitation, and is a hazard to the public health, safety, and welfare;
- (2) Regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or
- (3) Boarded up, fenced, or otherwise secured in any manner if:
 - a. The building constitutes a danger to the public even though secured from entry; or
 - b. The means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described in subsection (2) of this section.

Sec. 26-238. - Hearing before the Board.

- (a) The Chief Building Official shall request a public hearing before the Board for the purpose of determining whether a building is an unsafe building. The Chief Building Official shall present all cases before the Board.
- (b) In a public hearing to determine whether a building complies with the standards set out in this article, the owner, lienholder, and/or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work.
- (c) The Board, subject to a meeting notice in accordance with state law, may inspect any involved building, dwelling, structure, or premises during the course of a hearing provided the following are complied with:
 - (1) Notice of such inspection is given to the parties involved prior to making the inspection;
 - (2) The parties are allowed to be present during the inspection; and
 - (3) The facts observed and any conclusions are stated for the record.
- (d) The Board has the authority to grant a continuance from the proceedings upon good cause shown.

Sec. 26-239. - Time of notices.

- (a) The Chief Building Official shall issue a written notice of the public hearing to the owner of the building, and if applicable, the occupant. The notice must be served at least ten calendar days prior to the hearing date upon the owner of record and any occupant. The notice may be served either personally or by certified mail, return receipt requested. The executed return receipt is prima facie evidence of service. If the owner cannot be identified, notice must be posted on or near the front entrance of a building.
- (b) A notice must also be published in a newspaper of general circulation in the City once on or before the tenth calendar day before the date fixed for the hearing.
- (c) Written notice must also be provided to any mortgagee and lienholder in the same manner provided for in subsection (a) of this section. Notice shall also be filed in the real property records of Kerr County.
- (d) Failure of the Chief Building Official to serve any person required to be served does not invalidate any proceeding as to any other person properly served or relieve that person from any duty or obligation imposed by this article.

Sec. 26-240. - Content of notices.

The Chief Building Official shall ensure that the written notice includes:

- (1) The date, time, and place of the public hearing;
- (2) A statement that the City may, in accordance with state law, assess expenses on, and the City will then have a lien against, the property upon which the building is located. Such expenses may include any and all costs that the City has incurred in abating an unsafe building;
- (3) A statement that the owner, lienholder, and/or mortgagee, as applicable, is required to submit at the hearing proof of the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work;
- (4) The name and address of the owner of the affected property, if that information can be determined from a reasonable search of the real property records on file with the county, a legal description of the affected property, and a description of the proceedings;

- (5) An identification of the building, a description of each violation which allegedly exists at the building, a statement that the City may perform the required work to abate the violation if the owner fails to do so, and an explanation of the owner's right to a hearing; and
- (6) The published notice must contain only the address, legal description, and property owner(s) name(s).

Sec. 26-241. Minimum standards.

The building codes are the minimum standards that determine the suitability of a building for continued use or occupancy, regardless of the date of construction.

Sec. 26-242. – Application of standards.

The Board shall use the following standards in determining whether to declare a building unsafe and ordering the building to be vacated, secured, repaired, removed, demolished, and/or the occupants relocated:

- (1) The building, dwelling, structure, or any part thereof is likely to partially or fully collapse.
- (2) The building or any part thereof was constructed or maintained in violation of any provision of the building codes, or any other applicable ordinance or state or federal law.
- (3) Any wall or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- (4) The foundation or the vertical or horizontal supporting members are 25 percent or more damaged or deteriorated.
- (5) The nonsupporting coverings of walls, ceilings, roofs, or floors are 50 percent or more damaged or deteriorated.
- (6) The building has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
- (7) The building or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety, and welfare.

- (8) The building or any part thereof has inadequate means of egress as required by the building code.
- (9) The building does not have adequate light, ventilation, or sanitation facilities as required by the building codes.
- (10) Regardless of its structural condition, the building is not occupied by the owner, lessees, or other invitees, and is unsecured from authorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

Sec. 26-243. Board orders.

(a) If the Board determines that a building is unsafe, it shall proceed to determine whether the building shall be vacated, repaired, secured, demolished, and/or the occupants relocated under the standards contained herein and in accordance with the following:

- (1) If the building is in such a condition as to make it hazardous to the health, safety, or general welfare of its occupants or the public, it shall be ordered vacated and secured, and the order may also require the occupants to be relocated.
- (2) If the building can be feasibly repaired or the condition remedied so that it will no longer exist in violation of the provisions of this article, it shall be ordered remedied or repaired. Repairs may only be deemed feasible if less than 50 percent of the structure or the building must be repaired or replaced.
- (3) In any case where more than 50 percent or more of its value or building is damaged or deteriorated, a building shall be demolished or removed, and in all cases where a building cannot be repaired so that it will no longer exist in violation of the provisions of this article, it shall be demolished or removed.

(b) If the Board determines the building to be unsafe, it shall issue an order based upon this determination, requiring the owner of the building to vacate, repair, secure, demolish, and/or relocate the occupants from the building. The order shall specify a reasonable time as provided in Section 26-244 for the ordered actions to be taken by the owner and an additional reasonable time as provided in Section 26-244 for the ordered actions to be taken by the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided by the order. Each order requiring the repair,

removal, or demolition of a building shall require that a permit for such repair or demolition be obtained by the owner prior to commencing work required by the order.

(c) The Chief Building Official shall, no later than the next working day after the Board issues an order:

(1) Mail a copy of the order by certified mail, return receipt requested, to the owner and any record lienholder and mortgagee of the building; and

(2) Post an unsafe building placard in a conspicuous location at each doorway entrance to the unsafe building. Such placard shall remain posted until the required action is completed.

(d) The Chief Building Official shall, no later than ten calendar days after the date that the Board issues an order:

(1) Submit a copy of the order to the office of the City Secretary; and

(2) Publish in a newspaper of general circulation in the City a notice containing the street address or legal description of the property, the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained.

Sec. 26-244. Compliance time schedule.

(a) The Board in each unsafe building order shall, unless otherwise provided herein, require the owner, mortgagee, and/or lienholder to:

(1) Secure the building from unauthorized entry within 30 calendar days; or

(2) Repair, remove, or demolish the building, unless the owner, mortgagee, and/or lienholder establishes at the hearing that the work required cannot reasonably be performed within 30 calendar days.

(b) If the Board allows the owner, mortgagee, and/or lienholder more than 30 calendar days to repair, remove, or demolish the building, the Board shall establish specific time schedules for the commencement and performance of the work and shall require the owner, mortgagee, and/or lienholder to secure the property in a reasonable manner from unauthorized entry while work is being performed, as determined by the Board.

(c) The Board may not allow the owner, mortgagee, and/or lienholder more than 90 calendar days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, mortgagee, and/or lienholder:

(1) Submits a detailed plan and time schedule for the work at the hearing; and

(2) Establishes at the hearing the work cannot reasonably be completed within 90 calendar days because of the scope and complexity of the work.

(d) If the Board allows the owner, mortgagee, and/or lienholder more than 90 calendar days to complete any part of the work required to repair, remove, or demolish the building, the Board shall require the owner, mortgagee and/or lienholder to regularly submit progress reports to the Chief Building Official to demonstrate that the owner, mortgagee, and/or lienholder has complied with time schedules established for commencement and performance of the work. The order may require the owner, lienholder, and/or mortgagee to appear before the Board or the Chief Building Official to demonstrate compliance with such time schedules.

Sec. 26-245. Appeal.

The owner, lienholder, and/or mortgagee have the right to appeal the decision of the Board to district court. A notice of appeal must be filed with the district court clerk within 30 calendar days from the date the Board's order is mailed to the owner, lienholder and/or mortgagee.

Sec. 26-246. Performance of work; acceptable materials.

(a) Work shall be performed in an expeditious and workmanlike manner in accordance with the requirements of this article, the building code, all other applicable laws of the City, and accepted engineering practice standards.

(b) The securing of windows, doors, or any other opening allowing access to an unsecured unoccupied building shall be done with such materials and in such a manner as to effectively bar entrance to the building. Upon receipt of an order that requires the building to be secured, each and every accessible means of entry must be secured.

(c) Materials approved for use include plywood, lumber, steel, replacement glass, nails, screws, and bolts and other materials approved by the Chief Building Official.

(d) The use of cardboard, tar paper, window, and door screens or any other material that will not effectively prevent entrance is not sufficient to meet the requirements of this article or a Board order.

Sec. 26-247. Duty to secure unoccupied building.

An owner or person in control of an unoccupied building shall ensure that the building is in such condition that an unauthorized person, including a child, cannot enter into it through missing or unlocked doors or windows, or through other openings into the building.

Sec. 26-248. Offense.

It is unlawful to knowingly permit, allow, or suffer any unoccupied building under any person's ownership or control to be or remain in such a condition as to constitute an unsecured, unoccupied building as defined in this article. The issuance of an order by the Board under this article establishing times for the securing, vacating, repairing, and/or demolishing of any building shall not be construed to condone the violation of this section prior to the deadlines therefor established in such order. No testimony or other evidence provided by any person in a hearing conducted under this article may be used in any criminal prosecution against that person under this section.

Sec. 26-249. City's authority to secure a dangerous building.

(a) The City may secure a building that the Chief Building Official determines:

(1) Violates the minimum standards; and

(2) Is unoccupied or is occupied only by persons who do not have a right of possession to the building.

(b) Before the 11th day after the building is secured, the Chief Building Official shall give notice to the owner by:

(1) Personally serving the owner with written notice;

(2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;

(3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation within the City if personal service cannot be obtained and the owner's post office address is unknown; or

(4) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(c) The notice must contain:

(1) An identification, which is not required to be a legal description, of the building and the property on which it is located;

(2) A description of the violation of the municipal standards that is present at the building;

(3) A statement that Chief Building Official will secure or has secured, as the case may be, the building; and

(4) A detailed explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.

(d) The Board shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the City's securing of the building if, within 30 calendar days after the date the City secures the building, the owner files with the Board a written request for the hearing. The Board shall conduct the hearing within 20 calendar days after the date the request is filed.

(e) The City has the same authority to assess expenses under this section as it has to assess expenses under Section 26-250. A lien is created under this section in the same manner that a lien is created under Section 26-250 and is subject to the same conditions as a lien created under that section.

(f) The authority granted by this section is in addition to that granted elsewhere by this article.

Sec. 26-250. Abatement by City; imposition of lien for costs.

(a) If the unsafe building is not vacated, secured, repaired, removed, demolished, and/or the occupants are not relocated as specified in the unsafe building order within the allotted time, the Chief Building Official may cause the ordered action to be performed at the City's expense. If the ordered action is demolition of the unsafe building, demolition shall not occur until a magistrate has issued a seizure and demolition warrant supported by a probable cause affidavit stating that:

(1) The city has complied with the procedures set forth in this article;

(2) The Board's order authorizes demolition; and

(3) The time for appeal of the Board's order to district court under section 26-245 has expired and no appeal has been taken or, in the alternative, that the Board's order was appealed to district court but the appeal has been finally resolved in a manner that does not prohibit the City from proceeding with demolition.

(b) The owner of an unsafe building that is vacated, secured, repaired, removed, demolished, and/or the occupants are relocated by the City shall be charged for the expense of the City's work. Charges may include the expenses of inspection or testing by third parties, photography, publication, title search, attorney's fees, court costs, labor, and equipment costs for preparation of the premises, work to secure, repair, demolish, clean up and/or remove debris, and landfill fees.

(c) The Chief Building Official shall certify the expenses incurred in enforcing the provisions of this article and forward such certification document to the City's Finance Department. The City shall assess the expenses on, and have a lien against, the property on which the building was located, unless it is a homestead as protected by the state Constitution.

(d) The Chief Building Official shall provide notice of the lien to the property owner and file the lien in the real property records of the county on a form approved by the City Attorney. The lien notice must contain the name and address of the owner if that information can be reasonably determined, a legal description of the real property on which the building was located, the amount of expenses incurred by the City, the interest rate to be charged, and the balance due.

(e) The City's lien is a privileged lien subordinate only to tax liens. Such lien shall bear interest at the rate of ten percent per annum until paid.

(f) The City shall extinguish and file a release of lien in the real property records of the county if the property owner or another person having an interest in the legal title to the property reimburses the city for the total amount due.

Sec. 26-251. Other remedies.

(a) The remedies provided for herein are available to the City in addition to any penal or other remedy provided by law or equity which the City, state, or any other person may have to remedy the unsafe building condition.

(b) The City may direct the City Attorney to bring a civil action in a court of competent jurisdiction to collect the amount due plus all associated costs and fees. The City Attorney is authorized to make use of whatever legal or equitable remedies are available to collect said monies due.

Sec. 26-252. Civil penalties.

(a) The Board may assess and the City may recover a civil penalty against the owner at the public hearing, in an amount not to exceed \$1,000.00 a day for each violation, unless the owner provides proof that the property is the owner's lawful homestead, in which case the amount may not exceed \$10.00 per day for each violation, provided further, that the Chief Building Official has shown to the Board's satisfaction that:

(1) The owner was notified of the requirements of this article and the owner's need to comply with the requirements;

(2) After notification, the owner committed an act in violation of this article or failed to take an action necessary for compliance.

(b) If the Board assesses such a civil penalty, the City Secretary shall file a certified copy of the order containing such penalty with the county district clerk's office no later than three working days after such order from the Chief Building Official.

Sec. 26-252. Prior offenses.

An offense committed before the effective date of the ordinance from which this article is derived is covered by those sections of this article repealed herein as they existed on the date on which the offense was committed and the former ordinance is continued in effect for this purpose.”

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.

SECTION FIVE. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Clerk 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.

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

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

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

DRAFT

Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary



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

SUBJECT:

Ordinance No. 2023-15. An Ordinance amending Chapter 46 "Environment" of the Code of Ordinances, City of Kerrville, Texas, by adding a new Article IV "Junked Vehicles"; such Article to replace Article XI in Chapter 102; providing an effective date; and providing other matters relating to the subject.

AGENDA DATE OF: April 11, 2023

DATE SUBMITTED: March 29, 2023

SUBMITTED BY: Guillermo Garcia

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area C - Community / Neighborhood Character and Place Making

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

This ordinance is amending Chapter 46 by adding a new Article IV "Junked Vehicles". This article will replace Article XI in Chapter 102. A vehicle determined to be a "junked vehicle", as defined, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way is detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism; creates a fire hazard; is an attractive nuisance creating a hazard to the health and safety of minors; produces urban blight adverse to the maintenance and continuing development of the City; and is a public nuisance. The ordinance was last updated on November 27, 2001.

City Council received a workshop briefing on this topic on Tuesday, March 28, 2023.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-15 on first reading.

ATTACHMENTS: [20230411_Ord 2023-15 Junked Vehicles.pdf](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-15**

**AN ORDINANCE AMENDING CHAPTER 46 “ENVIRONMENT”
OF THE CODE OF ORDINANCES, CITY OF KERRVILLE,
TEXAS, BY ADDING A NEW ARTICLE IV “JUNKED VEHICLES”;
SUCH ARTICLE TO REPLACE ARTICLE XI IN CHAPTER 102;
PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER
MATTERS RELATING TO THE SUBJECT**

WHEREAS, City Council, pursuant to the constitution and laws of the State of Texas, including Article 11, Section 5 of the Texas Constitution as a home-rule city and Chapter 683 of the Texas Transportation Code regulating junked vehicles, has the authority to adopt regulations and exercise its police powers for the public health, safety, or general welfare of the citizens of Kerrville; and

WHEREAS, City Council previously declared junked vehicles within the City to be a public nuisance and provided for the abatement and removal of such nuisances as codified in Chapter 102, Article XI of the City’s Code of Ordinances; and

WHEREAS, due to changes in state law, it is necessary to amend these regulations to bring those provisions current with the enabling authority of such state law; and

WHEREAS, City Council finds it necessary to amend the City’s junked vehicle regulations to reflect changes and amendments to state law and to further clarify and amend the appeal and hearing process for owners of vehicles that have been declared junked vehicles; and

WHEREAS, the amendments include moving the regulations into Chapter 46 of the Code of Ordinances, which contains regulations applicable to environmental issues and other defined nuisances; and

WHEREAS, City Council finds that the following amendment to the Code of Ordinances is reasonable and beneficial for the public health, safety, and general welfare of the citizens of Kerrville and a proper exercise of the City’s police power;

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

SECTION ONE. Chapter 102 “*Traffic and Vehicles*”, Article IX “*Junked Vehicles*”, of the Code of Ordinances of the City of Kerrville, Texas, and its enabling ordinance (Ordinance No. 01-24) are repealed and replaced in their entirety with a new Article IV, of Chapter 46, as follows.

SECTION TWO. Chapter 46 “*Environment*” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article IV “*Junked Vehicles*”, which will add the language indicated by blue, underline (added) as follows:

“ARTICLE IV. - JUNKED VEHICLES”

Sec. 46-71. – Junked vehicle declared to be public nuisance.

A vehicle determined to be a junked vehicle, as defined herein, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way is detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism; creates a fire hazard; is an attractive nuisance creating a hazard to the health and safety of minors; produces urban blight adverse to the maintenance and continuing development of the City; and is a public nuisance.

Sec. 46-72. - Definitions.

Antique vehicle means a passenger car or truck that is at least 35 years old.

City means the City of Kerrville, Texas, a home-rule municipality.

City Manager means the City Manager of the City, or designee.

Collector means the owner of one or more antique or special interest vehicles who acquires, collects, or disposes of antique or special interest vehicles or parts of them for personal use in order to restore or preserve an antique or special interest vehicle for historic interest.

Enforcement authority means any full-time, regularly salaried peace officer or code enforcement officer employed by the City.

Inoperable means the inability to start the engine of a motor vehicle and drive the vehicle under its own power a distance of more than 300 feet.

Junked vehicle means a vehicle that:

(1) Is self-propelled; and

(2) Displays an expired license plate or registration sticker or does not display any license plate or registration sticker; and

(3) Is:

- (a) Wrecked, dismantled, partially dismantled, or discarded; or
- (b) Inoperable and has remained inoperable for more than:
 - i. 72 consecutive hours, if the vehicle is on public property; or
 - ii. 30 consecutive days if the vehicle is on private property.
- (c) A junked vehicle includes the following:
 - i. An aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and
 - ii. A watercraft that does not have lawfully on board an unexpired certificate of number and is not a watercraft described by Section 31.055, Parks and Wildlife Code, as applicable to vessels provided with a federal valid marine document.

Special interest vehicle means a motor vehicle of any age that has not been changed from the original manufacturer's specification and, because of its historic interest, is being preserved by a hobbyist.

Sec. 46-73 - Enforcement.

- (a) The enforcement authority is authorized to administer the procedures set forth herein and may enter upon private property, in accordance with federal and state law, for the purposes specified in this article to examine vehicles or parts thereof, obtain information as to the identity of vehicles, and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article.
- (b) The Municipal Court for the City shall have jurisdiction to conduct hearings and issue all orders necessary to enforce this article.

Sec. 46-74. - Applicability.

Nothing in this article affects state or local laws that authorize the immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

Sec. 46-75. - Offense.

- (a) Any person who maintains or permits a public nuisance as defined in Section 46-72 on public or private property commits a misdemeanor, and upon conviction, shall be subject to a fine not to exceed \$200.00. Each day a violation continues constitutes a separate offense.
- (b) The enforcement authority shall emphasize and prioritize abating junked vehicles that present an obvious appearance of not being functional as a means of transportation. As an example, if the visual appearance of such a vehicle from a public place or public right-of-way would cause a reasonable person to believe the vehicle is mechanically unserviceable, then immediate action shall be taken to abate the nuisance. The following examples are provided to give guidance to such enforcement, but is not intended to be an exhaustive list:
 - (1) the vehicle has one or more wheels blocked up from the ground.
 - (2) the vehicle has one or more broken windows, severe body damage, is missing body parts, is dismantled or partially dismantled, has parts out of place such as exhaust or the transmission touching the ground, or has one or more flat tires.
 - (3) the vehicle has grass and weeds growing up around it, making it obvious that it has not moved in some time.
 - (4) the vehicle has junk and debris visible through the windows that would cause a reasonable person to believe it is being used for storage rather than transportation.

Sec. 46-76. - Junked vehicles prohibited on public property.

- (a) It is unlawful for a person to cause or permit a junked vehicle or a part of a junked vehicle to be placed or to remain on any public property or public right-of-way.
- (b) A vehicle that remains in violation of this section for a period of more than 48 hours constitutes an abandoned motor vehicle and may be dealt with under processes defined by state law for removal of abandoned motor vehicles.

Sec. 46-77. - Junked vehicles prohibited on private property.

- (a) It is unlawful for a person that owns or controls real property to maintain, allow, cause, or permit a junked vehicle to be placed or to remain on the property.
- (b) It is unlawful for a person to maintain, allow, cause, or permit a junked vehicle to be placed or to remain on real property without the permission of the owner of the property.

Sec. 46.78. - Defenses to prosecution.

- (a) The following are defenses to prosecution under Section 46-77:
 - (1) The vehicle or vehicle part is completely enclosed within a building and is not visible from the street or other private or public property;
 - (2) The vehicle or vehicle part is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a collector on the collector's property; if the vehicle or part and the outdoor storage area, if any, are maintained in an orderly manner, not a health hazard, and, screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.
 - (3) The vehicle is completely covered by a heavy duty, contour-fitting cover, in relatively good condition and without significant holes or tears, so that no part of the vehicle except the tires is exposed to public view and it is the only one on the property; or
 - (4) The vehicle is in an appropriate storage facility maintained by the City or approved by the City.
- (b) This section does not allow a person to leave a junked vehicle on private property without the permission of the owner of the property.

Sec. 46-79. - Notice to abate nuisance vehicle.

- (a) For nuisance vehicles as described in Section 46-77, the enforcement authority shall give written notice by certified mail, five-day return requested to:
 - (1) the last known registered owner of the vehicle;

(2) any lienholder of record; and

(3) the owner or occupant of:

A. the property on which the vehicle is located; or

B. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(b) If the post office address of the owner is unknown, the notice may be placed on the vehicle or hand-delivered to the owner.

(c) The notice must state:

(1) The existence and nature of the nuisance;

(2) That the nuisance must be abated within ten days after receipt of the notice;

(3) That a public hearing must be requested within the ten-day period or it will be automatically waived; and

(4) That if the nuisance is not removed and a hearing is not requested within the ten-day period, the enforcement authority will remove or cause the removal of the nuisance vehicle.

(d) If any notice is returned undelivered, official action to abate the nuisance vehicle shall be continued to a date not less than ten days after the date of return.

(e) For nuisance vehicles on public property as described in Section 46-76 which are not dealt with as abandoned motor vehicles, written notice shall be given as described in subsection (a) of this section, except that the enforcement authority shall mail notice to the owner or manager of the public premises and to the owner or occupant of the premises adjacent to the public right-of-way.

(f) The relocation of a junked vehicle that is a public nuisance to another location within the City or Kerr County after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

Sec. 46-80. - Public hearing in municipal court.

- (a) Upon the timely request for a hearing of any person to whom a notice was given regarding a nuisance vehicle, a public hearing shall be held before the City's municipal court judge. The court shall provide notice of the time, date, and location of the hearing to each person who submitted a timely request for a hearing.
- (b) The issue at the hearing is whether the vehicle is a nuisance vehicle.
- (c) At the hearing, unless demonstrated otherwise, the vehicle is presumed to be inoperable.
- (d) If the judge finds the vehicle to be a nuisance vehicle, the judge shall order abatement and removal.
- (e) Any order requiring the removal of a junked vehicle or vehicle part shall include a description of the vehicle, the vehicle identification number, and license number, if the information is available at the site. For an aircraft, the information must include the federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47. For a watercraft, the information must include identification number as set forth in the watercraft's certificate of number.

Sec. 46-81. - Removal of nuisance vehicle.

The enforcement authority may remove a nuisance vehicle at any time following a public hearing and order of the judge or following the waiver of a hearing.

Sec. 46-82. - Disposal of nuisance vehicle.

- (a) The City Manager shall dispose of a nuisance vehicle or vehicle part by removal to a scrapyard, demolisher, or any suitable site operated by the City for processing as scrap or salvage, and any reconstruction or work to make the vehicle operable after being removed is prohibited.
- (b) If removal occurs by the City, a junked vehicle is prohibited from being reconstructed or made operable.
- (c) City Council has determined that where the City Manager finds that commercial disposition of junked vehicles are not available or are inadequate, the City may operate its own disposal site and make final disposition of nuisance vehicles or vehicle parts at the disposal site or the City may transfer

the vehicles or vehicle parts to another disposal site if the disposal is only as scrap or salvage.

Sec. 46-83. Notice to state.

The enforcement authority shall give notice to the Texas Department of Transportation of the removal of a nuisance vehicle not later than five days after its removal. The notice shall identify the vehicle or vehicle part.”

SECTION THREE. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict. This Ordinance repeals Ordinance No. 01-24.

SECTION FOUR. The terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance is declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

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

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

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

Judy Eychner, 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: Ordinance No. 2023-10, second reading. An Ordinance amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to reduce the number of members of the Library Advisory Board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to the subject.

AGENDA DATE OF: April 11, 2023

DATE SUBMITTED: March 29, 2023

SUBMITTED BY: Kim Meismer, Assistant City Manager

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Over the summer of 2022, the City of Kerrville and Kerr County extended a previous Interlocal Agreement for Library and Animal Services. That Interlocal Agreement had previously been entered into in 2017 and revised in 2019. The 2019 revision provided for an individual to be appointed by the Kerr County Commissioner's Court to serve on the City's Library Advisory Board. Subsequent amendments were made to the Library Advisory Board Ordinance to accommodate this appointment.

Due to the November 2022 action taken by the Kerr County Commissioner's Court to terminate the recently extended Interlocal Agreement between the City of Kerrville for library services and Kerr County for animal service, effective March 13, 2023, the City Council has requested to amend the Library Advisory Board Ordinance by removing the language allowing for one member of the Library Advisory Board be appointed by the Kerr County Commissioner's Court.

The Library Advisory Board is currently composed of six members. Approval of Ordinance No. 2023-10 will change the composition to five members. All remaining members of the Library Advisory Board are currently Kerrville residents, as well as citizens of Kerr County. Revisions to "Sec. 66-34. Composition of and appointment to the Board; terms; vacancies;

absences, officers, compensation; meetings.

a. The board shall be composed of five members with appointments to be made as follows:

- Council shall appoint four members; and
- the Friends of the Butt-Holdsworth Memorial Library shall appoint one of its members."

On March 28, 2023, City Council unanimously approved Ordinance No. 2023-10 on first reading.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-10, on second reading.

ATTACHMENTS:

[*20230411_Ord 2023-10 LAB membership amendment 2nd reading.pdf*](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-10**

**AN ORDINANCE AMENDING CHAPTER 66,
“LIBRARY,” OF THE CODE OF ORDINANCES OF
THE CITY OF KERRVILLE, TEXAS; BY AMENDING
ARTICLE II “LIBRARY ADVISORY BOARD” TO
REDUCE THE NUMBER OF MEMBERS OF THE
LIBRARY ADVISORY BOARD; CONTAINING A
CUMULATIVE CLAUSE; CONTAINING A SAVINGS
AND SEVERABILITY CLAUSE; AND PROVIDING
OTHER MATTERS RELATING TO THIS SUBJECT**

WHEREAS, the City of Kerrville, Texas (“City”), owns and administers the Butt-Holdsworth Memorial Library (“Library”); and

WHEREAS, City Council previously established a Library Advisory Board (“LAB”) for the purpose of advising and making recommendations to the City Council on matters pertaining to the Library; and

WHEREAS, City Council believes it necessary to decrease the membership of the LAB, with the total membership decreasing to 5 members; and

WHEREAS, City Council finds it to be in the public interest to amend Chapter 66, Article II 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. Section 66-34 of Chapter 66 “Library,” Article II “Library Advisory Board” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) as follows:

“Sec. 66-34. Composition of and appointment to the Board; terms; vacancies; absences, officers, compensation; meetings.

(a) *Composition.* The board shall be composed of ~~six~~ five members with appointments to be made as follows:

(1) Council shall appoint four members; and

~~(2) The Kerr County Commissioners Court shall appoint one member; and~~

~~(32) The Friends of the Butt-Holdsworth Memorial Library shall appoint one of its members.”~~

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 28 day of MARCH, A.D., 2023.

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

Judy Eychner, 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: Ordinance No. 2023-11, second reading. An Ordinance amending the City's Fiscal Year 2023 (FY2023) budget to reallocate funds for items encumbered within the City's Fiscal Year 2022 (FY2022) budget, but where such items were neither received nor paid for during FY2022; to transfer unspent FY2022 Street Maintenance Funds to the FY2023 Capital Projects Fund; to amend and add a fee to the Fee Schedule; and to make other amendments as provided.

AGENDA DATE OF: April 11, 2023

DATE SUBMITTED: March 29, 2023

SUBMITTED BY: Julie Behrens , Director of Finance

EXHIBITS:

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

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

This ordinance is authorizing the amendment of the FY2023 budget. This amendment consists of clean up directly related to items that were budgeted in FY2022 but not received until FY2023. The Water Fund had a surplus (revenues better than expenses) at the end of FY2022 of \$521,817. The FY2023 Water System Maintenance Account budget will need to utilize \$186,000 of this surplus to accommodate the Granular Activated Carbon for the Water Plant that was ordered in FY2022 but not received until FY2023. Staff recommends transferring \$325,000 of the excess to the Water Asset Replacement fund to support replacement of vehicles and equipment in the Water Fund. The General Fund had unspent funding allocated in FY2022 for streets maintenance in the amount of \$400,000. Staff recommends transferring this amount to the CIP project for streets maintenance, as has been done historically, in order to ensure that allocations for streets are restricted for that use. In the General Asset Replacement Fund, the following items were budgeted but not received in FY2022:

Streets Paver: \$425,000

Ambulance: \$250,000

Upfitting of 3 new Police Vehicles: \$59,873

These items will need to be reallocated within the F2023 Asset Replacement Budget.

Additionally, Right of Way Fees are recommended to be added to the FY2023 Fee Schedule including a General Right of Way Fee, Mailbox Fee, and clarification on the Flatwork Fee to include "driveway".

On March 28, 2023, City Council approved Ordinance No. 2023-11 unanimously.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-11 on second reading.

ATTACHMENTS:

[*20230411_Ord 2023-11 FY2023 budget amendment 2nd reading.pdf*](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-11**

AN ORDINANCE AMENDING THE CITY'S FISCAL YEAR 2023 (FY2023) BUDGET TO REALLOCATE FUNDS FOR ITEMS ENCUMBERED WITHIN THE CITY'S FISCAL YEAR 2022 (FY2022) BUDGET, BUT WHERE SUCH ITEMS WERE NEITHER RECEIVED NOR PAID FOR DURING FY2022; TO TRANSFER UNSPENT FY2022 STREET MAINTENANCE FUNDS TO THE FY2023 CAPITAL PROJECTS FUND; TO AMEND AND ADD A FEE TO THE FEE SCHEDULE; AND TO MAKE OTHER AMENDMENTS AS PROVIDED

WHEREAS, Ordinance No. 2022-25, approved by City Council upon second reading on September 13, 2022, adopted the Fiscal Year 2023 budget ("FY2023") for the City of Kerrville, Texas; and

WHEREAS, within the City's Fiscal Year 2022 budget ("FY2022"), funding for several capital items though encumbered were not expended because the City did not receive the items due to supply chain shortages; and

WHEREAS, the timing of street maintenance projects, which were budgeted within the FY2022 budget, prevented completion prior to fiscal year-end, and thus, funding for such projects needs to be transferred to the Capital Projects Fund within the FY2023 budget for completion; and

WHEREAS, several fees within the FY2023 budget need to be increased and a right-of-way permit fee added; and

WHEREAS, City Council finds that amending the FY2023 budget as provided herein is in the best interest of the citizens of the City of Kerrville;

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

SECTION ONE. In accordance with Section 8.06 of the City Charter, the Official Budget for Fiscal Year 2023 is amended as set forth in **Attachment A**.

SECTION TWO. In accordance with Section 102.009, Texas Local Government Code, the City Manager or designee shall provide for a filing of a true copy of this amendment in the office of the Kerr County Clerk.

PASSED AND APPROVED ON FIRST READING, this the 28 day of MARCH, A.D., 2023.

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

Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes

Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

ATTACHMENT A
FY2023 Budget Amendment
March 28,2023

General Fund

Description	Account Name	Account	Debit	Credit
FY2022 Streets Maintenance				
Carryover	Transfer Out - General Capital Projects	01-0100-9070	400,000	
FY2022 Streets Maintenance				
Carryover	Transfer In - General Fund	70-7001		400,000
TOTAL GENERAL FUND			400,000	400,000

Water Fund

Description	Account Name	Account	Debit	Credit
Carbon for TTHM at Water Plant	Water System Maintenance	02-0202-2500	186,000	
FY2022 Surplus	Transfer Out - Asset Replacement	02-0200-9019	325,000	
FY2022 Surplus	Transfer In - Water Fund	19-7002		325,000
TOTAL WATER FUND			511,000	325,000

Asset Replacement

Description	Account Name	Account	Debit	Credit
Streets Paver - Budgeted FY2022 / Received FY2023	Machinery, Tools & Equipment	18-1861-5300	425,000	
Ambulance - Budgeted FY2022 / Not yet received	Vehicles	18-1821-5200	250,000	
Upfitting for 3 KPD Vehicles - (FY2022)	Vehicles	18-1813-52000	59,873	
TOTAL ASSET REPLACEMENT			734,873	-

ATTACHMENT B
FY2023 Budget Amendment
March 28,2023

Fee Additions

Right-of-Way Fees

Description	Amount	Per
General Right of Way Permit	\$ 300.00	Per Permit
Residential Mailbox Permit	\$ 30.00	Per Permit
Drive Way / Sidewalk Permit	\$ 150.00	Per Permit