



**KERRVILLE CITY COUNCIL AGENDA**  
**REGULAR COUNCIL MEETING, JUNE 25, 2019, 6:00 PM**  
**CITY HALL COUNCIL CHAMBERS**  
**701 MAIN STREET, KERRVILLE, TEXAS**



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

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**CALL TO ORDER:**

*Mayor Bill Blackburn*

**INVOCATION:**

*Offered by Councilmember Clarkson*

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

*Led by Councilmember Clarkson*

**1 ANNOUNCEMENTS OF COMMUNITY INTEREST:**

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

**2 VISITORS/CITIZENS FORUM:**

*Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. City Council may not discuss or take any action on an item but may place the issue on a future agenda. The number of speakers will be limited to the first ten speakers, and each speaker is limited to four minutes.*

**3 PRESENTATIONS:**

3.A. Present Commendation to Zoning Board of Adjustment past member, for serving as the Chair of the Zoning Board of Adjustment

Attachments:

[20190625\\_Commendation\\_ZBA for D Almond.pdf](#)

**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. ORDINANCE, SECOND READING: Ordinance No. 2019-15. An ordinance amending Chapter 102 "Traffic and Vehicles", by adding a new section 102-119 "Operation prohibited within city limits; Exception", to the Code of Ordinances of the City of Kerrville, Texas; the new section 102-119 to prohibit through truck traffic on specified streets, roadways, or highways within the City and providing an exception; containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters related to the subject

Attachments:

[20190625\\_Ordinance\\_2019-15 Traffic and Vehicles Operation Prohibited within City Limits.pdf](#)

4.B. ORDINANCE, SECOND READING: Ordinance No. 2019-12. An ordinance amending in its entirety Chapter 10 "Alcoholic Beverages" of the Code of Ordinances of the City of Kerrville, Texas; regarding the City's authority over the sale of alcoholic beverages, to include the process for the City's imposition and collection of fees, to prohibit sales within areas zoned for residential use, to prohibit sales within three hundred feet of churches, public hospitals, schools, and child-care facilities, and to adopt a variance process applicable to such distance requirement; containing a savings and severability clause; providing for an effective date; ordering publication, and providing other matters relating to the subject

Attachments:

[20190625\\_Ordinance\\_2019-12 Alcoholic Beverages.pdf](#)

4.C. Resolution No. 15-2019. A resolution supporting the Kerrville Area Performing Arts Council's (KAPAC) application for Kerrville to be recognized as a certified "Music Friendly Community" through the Texas Governor's Office

Attachments:

[20190625\\_Resolution\\_15-2019 KAPAC Application.pdf](#)

4.D. Resolution No. 16-2019. A resolution authorizing the waiver of fees regarding Public Safety staffing and other applicable fees for the Kerrville Chalk Festival scheduled to be held October 12-13, 2019 in Peterson Plaza

Attachments:

[20190625\\_Resolution\\_16-2019 Chalk Festival Waiver of Fees.pdf](#)

[Chalk Festival - Security Request.pdf](#)

4.E. Resolution No. 17-2019. A resolution extending the term of the Charter Review Commission through November 5, 2019

Attachments:

[20190625\\_Resolution\\_17-2019 Extending KCRC Terms.pdf](#)

4.F. Monthly Community Improvement Project (CIP) Report

Attachments:

[20190625\\_Report\\_Monthly Community Project Status Report.pdf](#)

4.G. Minutes for the Regular City Council meeting held June 11, 2019

Attachments:

[20190625\\_Minutes\\_City Council Regular minutes 6-11-19.pdf](#)

4.H. Minutes for the City Council Workshop held June 18, 2019

Attachments:

[20190625\\_Minutes\\_City Council Workshop 6-18-19.pdf](#)

**END OF CONSENT AGENDA**

**5 PUBLIC HEARING AND ORDINANCE, FIRST READING:**

5.A. Ordinance No. 2019-14. An ordinance creating a "Planned Development District" for R-3 (Multifamily), Retail Trade II, Professional Office, Restaurant (General), and Custom Manufacturing on an approximately 58.74 acres, consisting of land out of the Joseph S. Anderson Survey No. 141, Abstract No. 2, and the J. S. Sayder Survey No. 142, Abstract No. 290, within the City of Kerrville, Kerr County, Texas; and generally located north of the intersection of Thompson Dr (Highway 98) and James Rd.; adopting a concept plan and conditions related to the development of said district; containing a cumulative clause;

containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject

Attachments:

[20190625\\_Ordinance\\_2019-14 Planned Development District - Thompson Drive.pdf](#)

[20190611\\_2019-021\\_LocationMap.pdf](#)

[20190611\\_2019-021\\_ConceptPlan.pdf](#)

[20190611\\_2019-021\\_MetesBounds.pdf](#)

**6 CONSIDERATION AND POSSIBLE ACTION:**

6.A. Economic Development Incentive Agreement between Kerrville's 4th on the River, Inc. and the City of Kerrville, Texas, Economic Improvement Corporation

Attachments:

[20190625\\_Agreement\\_Krvl 4th on River and EIC for Arcadia Theater.pdf](#)

6.B. Economic Incentive Agreement between the Kerrville 4th on the River and the City of Kerrville, TX utilizing Hotel Occupancy Tax Funds for the renovation of the Arcadia Theater

Attachments:

[City Attorney finalizing Agreement](#)

6.C. Construction contract with ACE Co. for the Hill Country Drive Reconstruction project in the amount of \$162,291.15

Attachments:

[20190625\\_Bid\\_Hill Country Drive Recommendation Letter.pdf](#)

[20190625\\_Bid\\_Hill Country Drive Bid Tab.pdf](#)

6.D. Resolution No. 20-2019. A resolution amending the City of Kerrville Fee Schedule by adopting a fee to be charged with respect to an application for a variance to the distance limitations per chapter 10 of the City Code; and revising the existing fees applicable to residential building permits

Attachments:

[20190625\\_Resolution\\_20-2019 Amending Fee Schedule Residential Building Permits.pdf](#)

[20190625\\_Resolution\\_Exhibit A.pdf](#)

**7 INFORMATION & DISCUSSION:**

7.A. Financial update for the month ended May 31, 2019.

Attachments:

[20190625\\_Presentation\\_May 2019 financial presentation.pdf](#)

[20190625\\_Presentation\\_May 2019 financial summary.pdf](#)

**8 BOARD APPOINTMENTS:**

8.A. Appointment to the Planning and Zoning Commission for the alternate position. (This item is eligible for Executive Session, Section 551.074: Personnel Matters.)

Attachments:

[20190625\\_Board Sheet\\_Planning and Zoning Commission.pdf](#)

**9 ITEMS FOR FUTURE AGENDAS:**

*City Council may suggest items or topics for future agendas.*

**10 EXECUTIVE SESSION:**

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

10.A.Section 551.074: Personnel Matters; Appointment to the Planning and Zoning Commission Attachments:

**11 ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY:****ADJOURNMENT**



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

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**SUBJECT:** Present Commendation to Zoning Board of Adjustment past member, for serving as the Chair of the Zoning Board of Adjustment

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 10, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190625\\_Commendation\\_ZBA for D Almond.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

Recognize past member D. Almond for serving on the Zoning Board of Adjustment.

**RECOMMENDED ACTION:**

Present Commendation.



**City of Kerrville**

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**RESOLUTION OF COMMENDATION**

**WHEREAS**, **DANNY ALMOND** has served as a member of the Zoning Board of Adjustment as an alternate member beginning October 25, 2016; he was appointed as a regular member on April 11, 2017. He has served as Chair since February 2019, and

**WHEREAS**, **DANNY ALMOND** has served faithfully and dutifully on said board;

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

That **DANNY ALMOND** be recognized for outstanding service as a member of the Zoning Board of Adjustment, and that on behalf of the citizens of Kerrville, as well as for ourselves individually, we wish to express our sincere appreciation for contributions to the city and the community.

PASSED AND APPROVED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
ATTEST:

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Shelley McElhannon, City Secretary

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Bill Blackburn, Mayor

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*Judy Eychner*  
Judy Eychner, Mayor Pro-Tem

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Gary Cochrane, Councilmember

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Kim Clarkson, Councilmember

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Delayne Sigerman, Councilmember



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

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**SUBJECT:** ORDINANCE, SECOND READING: Ordinance No. 2019-15. An ordinance amending Chapter 102 "Traffic and Vehicles", by adding a new section 102-119 "Operation prohibited within city limits; Exception", to the Code of Ordinances of the City of Kerrville, Texas; the new section 102-119 to prohibit through truck traffic on specified streets, roadways, or highways within the City and providing an exception; containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters related to the subject

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 19, 2019

**SUBMITTED BY:** David Knight

**EXHIBITS:** [20190625\\_Ordinance\\_2019-15 Traffic and Vehicles Operation Prohibited within City Limits.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	M - Mobility / Transportation
<b>Guiding Principle</b>	M1. Promote a safe, reliable, sustainable and affordable transportation system
<b>Action Item</b>	M1.6 - Develop a plan that would minimize cut-through commercial traffic in residential areas

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**SUMMARY STATEMENT:**

The Kerrville Police Department has conducted targeted enforcement of traffic violations on Riverhill Blvd. on a regular basis to address the concerns of the residents and enhance public safety. This has been an ongoing effort going back to 2002 and has been continued contingent upon patrol staffing and traffic unit availability. Other enforcement assets through cooperation with DPS have also been utilized in this effort. Signage that is currently in place indicating a restriction to through traffic for vehicles in excess of 7,000

lbs. is not enforceable due to the absence of an ordinance and other requirements. The establishment of a 7,000 lb. limit further complicates enforcement efforts due to the challenges created in visually identifying vehicles that exceed the weight classification. The concerns of residents in the area specifically related to their perceptions of traffic issues on Riverhill Blvd. have been a catalyst for frustration and complaints for the past two decades. A component of the issue is a perceived large volume of commercial truck traffic using Riverhill Blvd. as a pass through between SHWY 173 and SHWY 16 which significantly increases traffic counts, traffic noise and roadway damage/deterioration associated with larger and heavier vehicles. Residents in the area have observed that heavy vehicle traffic counts, noise and trucks using the roadway as a pass through are commonplace. In September 2002, a City of Kerrville Engineering Division stop warrant analysis was conducted in response to citizen requests for the placement of multiway STOP signs at three intersections on Riverhill Blvd. in hopes of abating the perceived traffic issues. The average daily traffic count on Riverhill Blvd. from the 200 Blk. - 500 Blk. ranged from a low count of 617 vehicles to a high count of 1,330 vehicles. In October 2018, the Police Department Traffic Unit conducted a data analysis on Riverhill Blvd. over 14 days to bracket timeline of potential violations as reported by residents. The measured data indicates that the average amount of daily traffic (AADT) for this roadway was 1,230 vehicles. Of those vehicles 97.5% were small and medium size vehicles and 446 were trucks, about 32 per day. The Police Department assisted in development of an ordinance and enforcement strategy to address perceived large vehicle pass through traffic in residential areas, identified as an action item under the Kerrville 2050 Key Priority Area of Mobility/Transportation. Adoption of this ordinance provides for future additions to restrict commercial vehicle cut-through traffic on other residential area streets as determined to be necessary.

First reading of Ordinance 2019-15 was approved 4-0 on June 11, 2019.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2019-15 on second reading.

**CITY OF KERRVILLE, TEXAS**  
**ORDINANCE NO. 2019-15**

**AN ORDINANCE AMENDING CHAPTER 102 "TRAFFIC AND VEHICLES", BY ADDING A NEW SECTION 102-119 "OPERATION PROHIBITED WITHIN CITY LIMITS; EXCEPTION", TO THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS; THE NEW SECTION 102-119 TO PROHIBIT THROUGH TRUCK TRAFFIC ON SPECIFIED STREETS, ROADWAYS, OR HIGHWAYS WITHIN THE CITY AND PROVIDING AN EXCEPTION; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, cut-through traffic on streets through residential areas is a growing concern for some City residents; and

**WHEREAS**, following investigations of complaints in several areas, which included vehicle counts, speed studies, and on-scene observations, the City's Public Works and Police Departments found that a significant amount of such cut-through traffic consists of commercial vehicles passing through a neighborhood without at least 1 trip end, origin, or destination within that neighborhood; and

**WHEREAS**, residential streets are not designed to carry high volume or heavy loaded through traffic; and

**WHEREAS**, this unnecessary through traffic causes unwanted noise, dust, pollution, and safety issues for residents; and

**WHEREAS**, in addition to pollution and safety issues, cut-through commercial traffic causes pavement deterioration of neighborhood roads since such roads are not designed for what at times is high volume, heavy commercial traffic, which in most cases, is seeking to bypass larger roads; and

**WHEREAS**, the City has the authority to regulate heavy truck traffic on the public roadways of the City pursuant to Sections 311.001 and 621.303 of the Texas Transportation Code; and

**WHEREAS**, based upon the concerns raised and subsequent investigations and studies conducted by staff, City Council finds that it is in the best interest of the health, safety, and welfare of its citizens to prohibit through truck traffic on certain streets within the City; and

**WHEREAS**, City Council further finds that the prohibition of through truck traffic on designated streets will help prolong the life of those streets; and

**WHEREAS**, City Council finds it to be in the public interest to amend Chapter 102 of the Code of Ordinances of the City of Kerrville, Texas, to prohibit through-traffic on an appropriate street(s) within the City;

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

**SECTION ONE.** The foregoing recitals are found to be true and correct, are adopted by City Council, and made a part hereof for all purposes as findings of fact.

**SECTION TWO.** Chapter 102 "Traffic and Vehicles" of the Code of Ordinances for the City of Kerrville, Texas, is amended by adding a new Section 102-119 "Operation Prohibited within City Limits; exception" as indicated by the language that is underlined (added) as follows:

**"Sec. 102-119. - Operation prohibited within City limits; exception.**

It is unlawful for any person to drive or operate any truck or tractor-trailer combination which has dual or tandem rear axles on any street, roadway, or highway or segment of such street, roadway, or highway within the City limits when such street is marked with a sign prohibiting through truck traffic; provided, however, that this prohibition does not apply to trucks being used to make deliveries or pick-ups from a residence or business located on said street or street segment. When signs are erected giving notice thereof, through truck traffic is prohibited upon those streets or portions of streets as follows:

ON	FROM	TO
Riverhill Boulevard	State Highway 16 South (Medina Highway)	State Highway 173 (Bandera Highway)

”

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

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

**SECTION SEVEN.** 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.

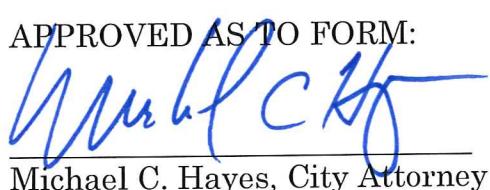
**PASSED AND APPROVED ON FIRST READING, this the 11 day of JUNE A.D., 2019.**

**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2019.**

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Bill Blackburn, Mayor

APPROVED AS TO FORM:



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Michael C. Hayes

ATTEST:

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Shelley McElhannon, City Secretary



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

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**SUBJECT:** ORDINANCE, SECOND READING: Ordinance No. 2019-12. An ordinance amending in its entirety Chapter 10 "Alcoholic Beverages" of the Code of Ordinances of the City of Kerrville, Texas; regarding the City's authority over the sale of alcoholic beverages, to include the process for the City's imposition and collection of fees, to prohibit sales within areas zoned for residential use, to prohibit sales within three hundred feet of churches, public hospitals, schools, and child-care facilities, and to adopt a variance process applicable to such distance requirement; containing a savings and severability clause; providing for an effective date; ordering publication, and providing other matters relating to the subject

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** May 31, 2019

**SUBMITTED BY:** Drew Paxton

**EXHIBITS:** [20190625\\_Ordinance\\_2019-12 Alcoholic Beverages.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

Since at least 1933, the City of Kerrville has regulated various aspects of the sale of alcoholic beverages. The City has enacted regulations prohibiting the sale of alcoholic beverages within 300 feet of any church or school. It is in the public interest to amend Chapter 10, "Alcoholic Beverages", to clarify the City's authority over the sale of alcoholic beverages, to include the process for the City's imposition and collection of fees, the prohibition of sales within areas zoned for residential use, and the prohibition of sales within 300 feet of churches, public hospitals, schools, and child-care facilities, and to adopt

a variance process to such distance requirement.

This item was first presented for City Council consideration on May 28, 2019. City Council deferred item. Taking into consideration the recommendation from City Council, this item has been edited to remove the provision that would have granted a variance to the distance requirement that would have allowed the sale of alcoholic beverages within 300 feet of a church or school within the Central Business District or Downtown Core or mixed use districts. All variances to the distance requirement will only be granted upon approval of City Council.

First reading of Ordinance 2019-12 was approved 4-0 on June 11, 2019.

Two "Whereas" clauses related to the Downtown Exception were removed that were inadvertently overlooked. Some questions regarding ordinance provisions were raised at the public hearing on June 11, 2019. The City Attorney reviewed these questions and has determined that no further changes are required.

**RECOMMENDED ACTION:**

Approval of Ordinance No. 2019-12 as presented.

**CITY OF KERRVILLE, TEXAS**  
**ORDINANCE NO. 2019-12**

**AN ORDINANCE AMENDING IN ITS ENTIRETY CHAPTER 10 “ALCOHOLIC BEVERAGES” OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS; REGARDING THE CITY’S AUTHORITY OVER THE SALE OF ALCOHOLIC BEVERAGES, TO INCLUDE THE PROCESS FOR THE CITY’S IMPOSITION AND COLLECTION OF FEES, TO PROHIBIT SALES WITHIN AREAS ZONED FOR RESIDENTIAL USE, TO PROHIBIT SALES WITHIN THREE HUNDRED FEET OF CHURCHES, PUBLIC HOSPITALS, SCHOOLS, AND CHILD-CARE FACILITIES, AND TO ADOPT A VARIANCE PROCESS APPLICABLE TO SUCH DISTANCE REQUIREMENT; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, the Texas Legislature narrowly circumscribes a home-rule city’s authority to regulate alcoholic beverages; and

**WHEREAS**, the City, pursuant to the authority granted by the state, has regulated various aspects of the sale of alcoholic beverages since at least 1933, such regulations found within Chapter 10 “Alcoholic Beverages” of the City’s Code of Ordinances (“Chapter 10”); and

**WHEREAS**, pursuant to the authority found within Section 109.33 of the Texas Alcoholic Beverage Code, the City, per Section 10-6 of its Code of Ordinances, previously enacted regulations prohibiting the sale of alcoholic beverages within 300 feet of any church or school; and

**WHEREAS**, Section 109.33, Texas Alcoholic Beverage Code, also authorizes a city to allow a variance to this distance requirement under certain conditions, which to date, the City has not adopted; and

**WHEREAS**, the City’s Comprehensive Plan (*Kerrville 2050*) encourages the development of compact, pedestrian-scaled, mixed-use neighborhoods and commercial districts to create a livable and sustainable community; and

**WHEREAS**, while reviewing Chapter 10 with respect to this issue, City staff found other language that should be amended to clarify the City’s authority over the sale of alcoholic beverages within the City; and

**WHEREAS**, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Chapter 10, by amending it in its entirety to clarify the City's authority over the sale of alcoholic beverages, to include the process for the City's imposition and collection of fees, to prohibit sales within areas zoned for residential use, to prohibit sales within 300 feet of churches, public hospitals, schools, and child-care facilities, and to adopt a variance process applicable to such distance requirement;

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

**SECTION ONE.** Chapter 10 "Alcoholic Beverages," 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:

**"Sec. 10-1. – Local fee; certificate.**

(a) There is levied and assessed and shall be collected by the City a fee from every person pursuing or engaging in any business within the City for which a permit or license is required by the Texas Alcoholic Beverage Code (the "Code"). Such fee shall be in an amount equal to one-half of the state fee charged for such permit or license as such fee now exists or shall from time to time be established or modified pursuant to the Code, except for a brewer's permit, brewpub license, or license issued for a similar business, in which case the City shall charge the fee applicable for an on-premises retailer. The City adopts those exemptions from the permit and license fee requirement as are provided in the Code.

(b) Upon payment to the City Secretary of the applicable fee prescribed in this section and presentation to the City Secretary of a permit or license duly issued by the state to the applicant or person paying such fee, the City Secretary shall, in the name of the City, issue and deliver to such applicant or person a certificate to engage in the business within the City of the character described in and authorized by the permit or license from the state held by such applicant or person. The certificate so issued in the name of the City will authorize the conduct of such business upon the premises described in the permit or license from the state and remain in force only so long as such permit or license from the state remains in force. The holder of the state permit or license shall publicly display the certificate from the City on the premises together with the state permit or license.

(c) A certificate issued by the City under the terms of this chapter shall be issued in conjunction with the permit or license issued and/or renewed by the Texas Alcoholic Beverage Commission (TABC) or every two years from the date issued. No part of the City fee may be refunded if a permit or license issued by the state is terminated before its expiration date.

**Sec. 10-2. – Sale of beer and wine prohibited in residential areas.**

Pursuant to the authority granted by the Texas Alcoholic and Beverage Code, the sale of beer and wine within residentially zoned areas within the City is prohibited, which is in accordance with the Zoning Code of the City, as may be amended.

**Sec. 10-3. – Sales limited near church, school, hospital, or child-care facility.**

**(a) Church and public hospital.**

- (1) The sale of alcoholic beverages within 300 feet of a church or public hospital is prohibited.
- (2) The measurement of the distance between the place of business where alcoholic beverages are sold and a church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

**(b) Public and private schools.**

- (1) The sale of alcoholic beverages within 300 feet of a public or private school is prohibited.
- (2) The measurement of the distance between the place of business where alcoholic beverages are sold and a public or private school shall be in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections.

**(c) Child-care facility.**

- (1) The sale of alcoholic beverages within 300 feet of a “day-care center” or a “child-care facility” as those terms are defined by Section 42.002 of the Texas Human Resources Code, is prohibited.

(2) The measurement of the distance between the place of business where alcoholic beverages are sold and a day-care center or child-care facility shall be in a direct line from the property line of the day-care center or child-care facility to the property line of the place of business, and in a direct line across intersections.

(d) Responsibility for measurements. The City Manager or designee is responsible for the measurement of distances under this section.

(e) Exceptions. The above regulations prohibiting the sale of alcoholic beverages within specified distances from churches, public hospitals, public and private schools, and child-care facilities are subject to any and all conditions and exceptions established in the Texas Alcoholic Beverage Code.

(f) Notices. Every applicant for an original alcoholic beverage permit or license for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public or private school, measured along street lines and directly across intersections, shall give written notice of the application to the official of the public or private school before filing the application with the Texas Alcoholic Beverage Commission and the City. A copy of the notice must be submitted to the Commission and the City with the application. This section does not apply to a permit or license covering a location where minors are prohibited from entering the premises under Section 109.53, Texas Alcoholic Beverage Code.

(g) Variances to distance requirement. A property owner may apply to City Council for a variance from the distance limitations provided by this section. The property owner must file a request for variance on a form provided by the City, pay the applicable fee, and specify the grounds supporting the variance as specified below. Upon submission of an administratively complete application, the City Manager or designee shall then place the variance application on a meeting agenda. City Council may allow a variance to this section if it determines that the enforcement of the regulation in a particular circumstance:

(1) is not in the best interests of the public;

(2) constitutes waste or inefficient use of land or other resources;

- (3) creates an undue hardship on the applicant for a permit or license;
- (4) does not serve its intended purpose;
- (5) is not effective or necessary; or
- (6) for any other reason the City Council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community.

(h) Public hearing. City Council may not grant a variance under this section except after a public hearing for which notice has been given not less than ten days prior to the hearing date both in the official City newspaper and by regular United States mail to property owners within 200 feet of the place of the business requesting a variance. The City shall send the notice to all such owners at the address indicated on the last approved City tax roll. The notice area for a variance request shall be measured in a direct line from the property line of the place of business.

(i) Refiling. When City Council denies an application or when the applicant has withdrawn a request after the giving of public notice, the City will not accept a new application for a variance for a period of 12 months from the date of a denial or withdrawal unless the variance is denied without prejudice.

(j) Fee. City Council may establish a reasonable fee for the administrative costs with processing a variance under this section, which such fee shall then be specified within the City's Fee Schedule.

**Sec. 10-4. – Selling of alcoholic beverages restricted to certain hours.**

- (a) Any person, firm, or corporation authorized to offer for sale alcoholic beverages within the City may do so only during the hours authorized under Chapter 105, Texas Alcoholic Beverage Code.
- (b) Pursuant to Section 105.03, Texas Alcoholic Beverage Code, extended hours for the sale of mixed beverages are adopted, so that the holder of a mixed beverages late hours permit may sell and offer for sale mixed beverages between midnight and 2:00 a.m. on any day.

(c) Pursuant to Section 105.05, Texas Alcoholic Beverage Code, extended hours for the sale of beer are adopted, so that the holder of a retail dealer's on-premises late hours license may sell, offer for sale, and deliver beer between midnight and 2:00 a.m. on any day.

**Sec. 10-5. – Penalty for selling alcoholic beverages in violation of chapter.**

A person, firm, or corporation subject to this chapter who sells an alcoholic beverage without having paid the fee herein levied; or, violates, disobeys, omits, neglects or refuses to comply with any other part of this chapter commits a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$200.00. In addition, the City Secretary shall report any such failure to pay the fee to the Texas Alcoholic Beverage Commission.”

**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 11  
day of June, A.D., 2019.

PASSED AND APPROVED ON SECOND AND FINAL READING,  
this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2019.

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Bill Blackburn, Mayor

APPROVED AS TO FORM:



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Michael C. Hayes, City Attorney

ATTEST:

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Shelley McElhannon, City Secretary



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

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**SUBJECT:** Resolution No. 15-2019. A resolution supporting the Kerrville Area Performing Arts Council's (KAPAC) application for Kerrville to be recognized as a certified "Music Friendly Community" through the Texas Governor's Office

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** May 24, 2019

**SUBMITTED BY:** Ashlea Boyle

**EXHIBITS:** [20190625\\_Resolution\\_15-2019 KAPAC Application.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D4. Encourage and program Downtown public events and create more gathering places that promote and enhance Downtown as an arts, culture and music center
<b>Action Item</b>	D4.3 - Partner with Downtown stakeholders and others to program more Downtown events (art, music, recreation, Farmers Market, special interests) to attract greater public and visitor traffic

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**SUMMARY STATEMENT:**

Attached is a resolution of support for Kerrville to be considered a Certified Music Friendly Community. This is an initiative of the newly established Kerrville Area Performing Arts Council (KAPAC). The City has a representative that serves on this council. KAPAC is interested in applying to become a certified Music Friendly Community. This is a fairly new program through the Texas Governor's Office. The purpose of the designation is to provide Texas communities with a network for fostering music industry development, and sends a clear message to industry professionals that certified communities are serious about attracting and developing music industry growth. Providing a resolution of support would satisfy the City's demonstration of community partnership for the application process.

**RECOMMENDED ACTION:**

Approve Resolution No. 15-2019 as presented.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 15-2019**

**A RESOLUTION SUPPORTING THE KERRVILLE AREA  
PERFORMING ARTS COUNCIL'S (KAPAC) APPLICATION FOR  
KERRVILLE TO BE RECOGNIZED AS A CERTIFIED "MUSIC  
FRIENDLY COMMUNITY" THROUGH THE TEXAS  
GOVERNOR'S OFFICE**

**WHEREAS**, the "Music Friendly Community" certification program is a program through the Texas Governor's office, which is intended to provide Texas communities with a network for fostering music industry development; and

**WHEREAS**, a community designated as a "Music Friendly Community" sends a clear message to industry professionals that a particular community is serious about attracting and developing music industry growth; and

**WHEREAS**, by adopting this Resolution of support, the City of Kerrville demonstrates the community partnership of Kerrville toward being recognized as a "Music Friendly Community"; and

**WHEREAS**, City Council finds it to be in the public interest to adopt this Resolution in support of the City being certified as a "Music Friendly Community" through the Texas Governor's office;

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

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

**SECTION TWO.** City Council understands, acknowledges, and agrees to the following requirements for certification as a "Music Friendly Community" through the Texas Governor's office:

- a. To host, through the use of its City Hall Council Chambers or another City facility, a Music Friendly Community Workshop hosted by the Texas Music Office;
- b. To establish a "Music Office" and/or liaison within the City organization or another entity closely tied to the City, such as the Citizens and Visitors Bureau;

- c. To Register through the Texas Music Office's Texas Music Industry Directory, which includes the sharing of music directory data and establishing protocols for keeping such information up to date;
- d. To demonstrate partnerships with the community's music-related 501c3 nonprofits to foster community development; and
- e. To collaborate with music education programs, to include are colleges or universities.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D.,  
2019.**

\_\_\_\_\_  
Bill Blackburn, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary



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

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**SUBJECT:** Resolution No. 16-2019. A resolution authorizing the waiver of fees regarding Public Safety staffing and other applicable fees for the Kerrville Chalk Festival scheduled to be held October 12-13, 2019 in Peterson Plaza

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** May 17, 2019

**SUBMITTED BY:** Ashlea Boyle

**EXHIBITS:** [20190625\\_Resolution\\_16-2019 Chalk Festival Waiver of Fees.pdf](#)  
[Chalk Festival - Security Request.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D4. Encourage and program Downtown public events and create more gathering places that promote and enhance Downtown as an arts, culture and music center
<b>Action Item</b>	D4.3 - Partner with Downtown stakeholders and others to program more Downtown events (art, music, recreation, Farmers Market, special interests) to attract greater public and visitor traffic

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**SUMMARY STATEMENT:**

Pursuant to a request from The Cailloux Foundation, a resolution has been prepared for waiving fees for the Kerrville Chalk Festival event to be held October 12-13, 2019 in Peterson Plaza. The resolution includes waiving fees for staff time, security, and permit fees such as the special event permit (\$30 per permit), temporary mobile food permit (\$35 per permit), and tent/structure permits (\$20 per permit). The total value of this request is estimated at \$3,236. The total value may vary depending on the number of food vendors and tents.

A resolution authorizing the waiver of these fees, should City Council choose to do so, is

attached. The fees for this event have been waived by City Council since 2015.

**RECOMMENDED ACTION:**

Approve Resolution No. 16-2019 as presented.

**CITY OF KERRVILLE, TEXAS**  
**RESOLUTION NO. 16-2019**

**A RESOLUTION AUTHORIZING THE WAIVER OF FEES  
REGARDING PUBLIC SAFETY STAFFING AND OTHER  
APPLICABLE FEES FOR THE KERRVILLE CHALK FESTIVAL  
SCHEDULED TO BE HELD OCTOBER 12-13, 2019, IN PETERSON  
PLAZA**

**WHEREAS**, organizers of the Kerrville Chalk Festival (the "Event") plan to hold the Event for the fourth straight year; and

**WHEREAS**, the Event is scheduled to be held on October 12-13, 2019, in Peterson Plaza; and

**WHEREAS**, the organizers have requested that the City provide in-kind police services provided by the Kerrville Police Department ("KPD") during the Event, to include overnight security; and

**WHEREAS**, KPD has previously provided such services for the Event and estimates that this year's costs for the same services is approximately \$2,560.00; and

**WHEREAS**, the organizers also seek waivers from the payment of fees for the City's special event permit, temporary event permit, and tent/structure permits; and

**WHEREAS**, City Council determines that waiving the City's public safety staffing fees for the Event and other applicable fees all of which is estimated to be valued at \$3,236.00, is an appropriate use of public funds as it will help ensure a safe and enjoyable activity that further promotes the City;

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

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

**SECTION TWO.** City Council authorizes a waiver of the City's public safety staffing fees and other applicable fees in an amount up to \$3,236.00, such fees as set out within the City's Fee Schedule, and relating to the October 12-13, 2019, Kerrville Chalk Festival.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D.,  
2019.**

\_\_\_\_\_  
Bill Blackburn, Mayor

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

  
Michael C. Hayes, City Attorney

T:\Legal\FINANCE\Fee Schedule\Reso\Waiver\_Security Fee KCF\_06419.docx

May 9, 2019

Ms. Rosa Ledesma  
City of Kerrville-Parks and Recreation Specialist  
Parks and Recreation Department  
2385 Bandera Highway  
Kerrville, Texas 78028

Dear Rosa,

The Kerrville Chalk Festival is a celebration of art, family and community in downtown Kerrville. Festival attendees watch as 65 large-scale chalk murals are created before their eyes on Peterson Plaza. Add live music, an interactive children's zone, as well as food trucks, downtown shops and eateries, and you have the setting for a most memorable experience. 2019 Festival proceeds benefit Our Lady of the Hills Regional High School.

The Cailloux Foundation respectfully requests that security fees are waived and that the Kerrville Police Department provide for the following:

- A minimum of three officers onsite on October 12 and 13; between the hours of 9am – 5pm.
- One officer onsite on the evenings of October 12 and 13; between the hours of 5pm - 9am.

Anticipated attendance is 10,000 people over the course of the two day event. Security is needed for the safety of all persons, equipment, tents, merchandise and artwork that will be onsite the entire weekend.

Your support will provide our community with a dynamic art event to boost tourism, increase local economic development and free entertainment as well as direct support to Our Lady of the Hills Regional High School.

Visit [kerrvillechalk.org](http://kerrvillechalk.org), email [info@kerrvillechalk.org](mailto:info@kerrvillechalk.org), or please call me at (830) 895-5222 with any additional questions you may have.

Thank you again for your thoughtful consideration of this request.

Sincerely,

Katharine Boyette  
Events Coordinator/Festival Director  
The Cailloux Foundation



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

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**SUBJECT:** Resolution No. 17-2019. A resolution extending the term of the Charter Review Commission through November 5, 2019

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 13, 2019

**SUBMITTED BY:** Mike Hayes

**EXHIBITS:** [20190625\\_Resolution\\_17-2019 Extending KCRC Terms.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

On November 27, 2018, the City Council approved a Charge to and Schedule for the Charter Review Commission. City Council appointed seven members to the Charter Review Commission, with a term of six months, but provided that City Council could extend the term. The Charter Review Commission met eight times since its creation, with plans to meet at least once more before providing its recommendations to the City Council. In order to give the Charter Review Commission enough time to conduct its review, submit its recommendations to the City Council, and to be available for input through a potential November 2019 election including these recommendations, it is in the public interest to extend the term of the Charter Review Commission through November 5, 2019.

**RECOMMENDED ACTION:**

Approve Resolution No. 17-2019.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 17-2019**

**A RESOLUTION EXTENDING THE TERM OF THE  
CHARTER REVIEW COMMISSION THROUGH  
NOVEMBER 5, 2019**

**WHEREAS**, on November 27, 2018, City Council approved a *Charge to and Schedule for the Charter Review Commission* (the “Charge”); and

**WHEREAS**, on January 8, 2019, City Council then made 7 appointments to the Charter Review Commission (“CRC”); and

**WHEREAS**, the Charge set the CRC’s term at 6 months, but also provided that City Council could extend the term; and

**WHEREAS**, the CRC has met 8 times since its creation, with plans to meet at least once more before providing its recommendations to City Council; and

**WHEREAS**, in order to give the CRC enough time to conduct its review, submit its recommendations to City Council, and to be available for input through a potential November 2019 election including these recommendations, Council finds it to be in the public interest to extend the term of the CRC through November 5, 2019;

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

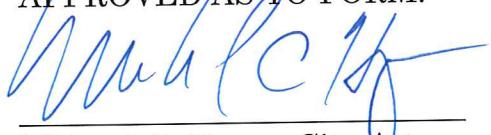
City Council extends the term of the Charter Review Commission through November 5, 2019, in accordance with the Charge.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_, A.D.,  
2019.**

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Bill Blackburn, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

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Shelley McElhannon, City Clerk



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

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**SUBJECT:** Monthly Community Improvement Project (CIP) Report

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 14, 2019

**SUBMITTED BY:** Kyle Burow

**EXHIBITS:** [20190625\\_Report\\_Monthly Community Project Status Report.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

This item will be presented monthly to provide updates on the City's Community Improvement Projects.

**RECOMMENDED ACTION:**

Information only. No action required.

Monthly CIP Project Status Report

	Project Name	Description	Design			Construction			Comments
			Firm	Contract Amount	Estimated Completion	Contractor	Budget Amount	Estimated Completion	
1	2019 Slurry Seal Project	Year 4 Slurry Seal Streets	6S Engineering	\$5,500.00	Complete	Intermountain Slurry Seal, Inc.	\$170,182.75	Sep-2019	Construction contract awarded 4/09 for Year 4 slurry seal streets. Construction to be completed by September 30, 2019.
2	Parking Garage Maintenance/Repairs	Maintenance and cosmetic repairs necessary to prolong the life of the existing garage structure.	M&S Engineering	\$36,000.00	Complete	SCS	\$695,531.72	Dec-2018	Construction contract award 6/12. Repairs complete. City crews performing additional painting and signage.
3	Parking Garage Enhancements/ Water Street Streetscape	Address physical and functional necessities of the amenities surrounding the parking garage structure along Sidney Baker and Water Street	Peter Lewis Architects	\$24,400.00	Summer 2019	TBD	TBD	TBD	EIC funded design. EIC funding agreement awarded at CC meeting on April 9, 2019. Design contract executed and preliminary design commenced.
4	A.C. Schreiner House (529 Water Street)	Examine concepts for interior of building for future renovation	Scott Schellhase	\$25,000.00	2018	TBD	TBD	TBD	Close to agreement with prospective tenant regarding deal points/MOV. Next step is design of concepts for facility/grounds with estimate of construction/renovation costs.
5	Reuse Distribution Mains	~30,000 LF of distribution lines from pump station to Comanche Trace, Riverhill, Schreiner Univ., & Sports Complex	Freese & Nichols	\$926,500.00	Complete	Qro Mex Construction	\$6,000,000.00	Jan-2019	Partial EIC funded. Construction generally complete. City exploring funding sources and solutions for intermediate and long term replacement of flood damaged utility lines.
6	Aerial Pipe Bridge Removal	Removal of flood damaged utility bridge and lines near low water crossing adjacent to Loop 534	N/A	N/A	N/A	J3 Company	\$285,900.00	Mar-2019	Contractor completed removal of infrastructure. City seeking reimbursement via State Disaster Recovery Funds. Forensic study of damage engaging.
7	Tennis Center Improvements	Improve ADA access, resurface existing courts, address drainage, parking, lighting, and landscaping issues, & evaluate existing facilities	Schrickel, Rollins, and Associates	\$161,500.00	Summer 2018	JK Bernhard	\$1,453,939.00	Dec-2019	Total project budget of \$1.75 million. Phase 1 construction commenced early March 2019.
8	River Trail Extension to Schreiner University	Approximately 1+ mile trail extension from G Street to Schreiner University and adjacent neighborhood	Hewitt Engineering	\$102,980.00	Jun-2019	TBD	TBD	TBD	EIC funding agreement approved in Jan. 2019. Design complete. City acquiring easements from property owners and permits from state agencies. Project is currently advertising for bid with anticipated CC award in August 2019.
9	Aquatics Center Feasibility Study	Assessment of the Olympic Pool complex to include public/stakeholder meetings and recommendations for enhancement	MarmonMok	\$85,000.00	May-2019	N/A	N/A	N/A	Second community input meeting held 11/29. Consultant further developing cost estimates and phasing plans after investigation of existing shell.
10	Public Safety Complex Feasibility Study	Analyze options for building size, location, and use with budgets	Brinkley Sargent Wigington Architects	\$99,260.00	May-2019	N/A	N/A	N/A	Consultant has completed needs assessment and conceptual layouts, in addition to site assessments and phasing options. Exploration of options underway.
11	Legion Lift Station and Force Main	8.5 MGD lift station, ~4,000 LF of force main, and ~1,000 LF of gravity main	Freese & Nichols	\$734,000.00	Nov-2018	Keystone Construction	\$5,493,663.00	Early 2020	Funding application approved by Texas Water Development Board. Contract awarded early Jan. 19. Construction began March 2019.
12	WTP Clarifier Rehab	Replace hardware in existing clarifier	Freese & Nichols	\$132,600.00	Complete	Keystone Construction	\$796,000.00	Jul-2019	Clarifier equipment purchase contract awarded 7/24. General installation contract awarded at 11/13 meeting. Demolition of clarifier equipment complete. Installation commenced to be complete early July.
13	WTP THM Control Facility	Alternative solutions to meet TCEQ and EPA compliance followed by design of chosen disinfection process	Freese & Nichols	\$312,000.00	Oct-2018	Dowtech Specialty Contractors, Inc.	\$4,100,000.00	Early 2020	Funding approved by Texas Water Development Board. Construction commenced in April.
14	Request for Proposals for public/private workforce housing project at Loop 534	City issued RFP for development of City owned property on Loop 534 for a mixed use development to include workforce/attainable housing.	TBD	TBD	TBD	N/A	N/A	N/A	RFP will be reissued after bid award for Olympic Drive extension.
15	Long Range Water Supply Plan	Planning for 100 years of future water sources for City of Kerrville	Lloyd Gosselink	\$99,700.00	Complete	N/A	N/A	N/A	City Council workshop held 5/21. Community presentation anticipated late July. Scheduling meeting with partners to discuss findings and recommendations. CC meeting presentation late July.
16	Landfill Permitting, Phase 3	Prepare application for major amendment to TCEQ permit for municipal landfill for expansion	LNV	\$500,000.00	Sep-2019	N/A	N/A	N/A	Application deemed administratively complete by TCEQ. TCEQ complete with technical review. Currently in draft permit review by TCEQ.
17	Schreiner/Clay Roundabout	Concept plan to construct roundabout at the intersection of Schreiner Street and Clay Street	6S Engineering	\$28,175.00	Dec-2018	TBD	TBD	TBD	Design evaluation complete. Survey work completed. Easements/ROW acquired.
18	Hotel /Conference Center	Legislative effort with 2019 State Legislature for tax reimbursement			Jun-2019				Legislative bill signed into law by Governor 6/16/19. Next step is to examine feasibility in greater detail, then issue RFP for public private partnership.
19	Drainage Master Plan	Assessment of 12 known drainage areas, provide prioritization list, and review drainage policy and criteria	LNV, Inc.	\$204,348.00	Jul-2019	N/A	N/A	N/A	Draft report complete with review of sites and data for known problem areas. Initial presentation to CC on 6/25.
20	Strategic Housing Plan	Examine state of housing market, gaps, and impediments to housing, and strategies to address obstacles.	Community Development Strategies	\$24,250.00	Aug-2019				Mayor's Workforce Housing Taskforce met June 19th to initiate the development of a Strategic Housing Plan and conduct community interviews. Data gathering still underway. Next meeting anticipated mid-summer.
21	KUTS - Clay Street South	Kerrville Urban Trail System (KUTS) pilot trail project to improve walkability along Clay Street from Schreiner Street to Water Street	OLA	Partnership	Summer 2019				The City has partnered with the KUTS group to coordinate the placemaking efforts along the Clay St. South corridor. Preliminary concept drawings have been developed. Elements of these concepts are being incorporated into the Downtown Parking Garage design as well as the Schreiner/Clay Roundabout design. Presentation to CC anticipated in July.
22	Pavement Management Plan Update	Update City's pavement rehabilitation and maintenance plan	6S Engineering	\$107,750.00	Jul-2019	N/A	N/A	N/A	Street data acquisition complete. Preliminary draft report complete. Initial presentation to CC on 6/25.
23	Olympic Drive Extension	Extension of roadway and utilities from existing Olympic Drive to Loop 534	CEC	\$156,000.00	Sep-2019	TBD	TBD	TBD	Contract executed in May. Preliminary design has commenced.
24	Hill Country Drive Reconstruction	Reconstruction of ~250-ft of Hill Country Drive near SH 16 to assist with drainage and roadway issues	6S Engineering	\$24,580.00	May-2019	ACE Co.	\$162,292.15	Oct-2019	Design completed. Construction contract to CC on 6/25 for award.
25	Clock Tower Elevator	Enclosure of existing elevator shaft serving Peterson Plaza Clock Tower and Parking Garage	Beatty Palmer Architects	\$48,025.00	Aug-2019	TBD	TBD	TBD	Contract executed in May. Preliminary design has commenced.
26	Boating Center	Examine feasibility of boating center on Nimitz Lake	Kimley Horn	\$19,500 (Privately funded)	TBD				Contracted executed. Kickoff meeting scheduled for early July.



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

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**SUBJECT:** Minutes for the Regular City Council meeting held June 11, 2019

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 06, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190625\\_Minutes\\_City Council Regular minutes 6-11-19.pdf](#)

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

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**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

Minutes for the Regular City Council meeting held June 11, 2019.

**RECOMMENDED ACTION:**

Approve minutes as presented.

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
JUNE 11, 2019

On June 11, 2019, at 6:00 p.m. the meeting was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Councilmember Gary Cochrane, followed by the Pledge of Allegiance led by Councilmember Cochrane.

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Kim Clarkson	Councilmember
Gary Cochrane	Councilmember
Delayne Sigerman	Councilmember

COUNCILMEMBER ABSENT:

Judy Eychner	Mayor Pro Tem
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CITY EXECUTIVE STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Shelley McElhannon	City Secretary
Stuart Cunyus	Public Information Officer
Amy Dozier	Director of Finance
David Knight	Chief of Police
Kim Meismar	Executive Director for General Operations
Drew Paxton	Executive Director of Development Services
Dannie Smith	Fire Chief
Charvy Tork	Director of Information Technology

VISITORS PRESENT: On file in City Secretary's Office for required retention period.

**1. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

Items of Interest to the Community were presented by Stuart Cunyus, Councilmember Kim Clarkson, and Councilmember Delayne Sigerman.

**2. VISITORS FORUM:**

The following persons spoke:

- Hamilton Morris
- Jack Burch
- Robert Davis
- Bruce Stracke

**3. PRESENTATIONS:**

3A. Mayor Bill Blackburn presented the Upper Guadalupe River Authority a Certificate of Recognition for receiving *The Friend of Conservation Award* by the Texas State Soil and Water Conservation Board.

3B. Mayor Blackburn presented Resolution of Commendations to Gary Cooper, Robert Naman (absent), and Delayne Sigerman, for their service on the Economic Improvement Corporation.

**4. CONSENT AGENDA:**

Councilmember Cochrane moved to approve Items 4A and 4B as presented. Councilmember Sigerman seconded, and the motion passed 4-0.

4A. Purchase of two Generators for Water Production Division, for the total cost of \$171,926.00.

4B. Minutes for the regular City Council meeting held May 28, 2019.

**END OF CONSENT AGENDA:**

**5. PUBLIC HEARINGS AND RESOLUTIONS:**

5A. Ordinance No. 2019-15 amending Chapter 102 "Traffic and Vehicles", by adding a new section 102-119 "Operation prohibited within city limits; Exception", to the Code of Ordinances of the City of Kerrville, Texas; the new section 102-119 to prohibit through truck traffic on specified streets, roadways, or highways within the City and providing and exception; containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters relating to the subject.

Mayor Blackburn opened the public hearing at 6:25 p.m.

Chief David Knight presented the ordinance and responded to questions.

The following persons spoke:

Peggy McKay  
George Baroody

Councilmember Clarkson moved to approve Ordinance No. 2019-15 as presented. Councilmember Cochrane seconded, and the motion passed 4-0.

Mayor Blackburn closed the public hearing at 6:41 p.m.

**6. ORDINANCES, FIRST READING:**

6A. Ordinance No. 2019-12 amending in its entirety Chapter 10 "Alcoholic Beverages" of the Code of Ordinances of the City of Kerrville, Texas; regarding the City's authority over the sale of alcoholic beverages, to include the process for the City's imposition and collection of fees, to prohibit sales within areas zoned for residential use, to prohibit sales within three hundred feet of churches, public hospitals, schools, and child-care facilities, and to adopt a variance process applicable to such distance requirement; containing a savings and severability clause; providing for an effective date; ordering publications, and providing other matters relating to the subject.

Drew Paxton presented the ordinance, and Drew Paxton and Mike Hayes responded to questions.

The following person spoke:  
George Baroody

Councilmember Sigerman moved to approve Ordinance No. 2019-12 on first reading as presented. Councilmember Clarkson seconded, and the motion passed 4-0.

Mike Hayes advised that he will address certain issues raised before the second reading of the ordinance.

**7. ORDINANCE, SECOND READING:**

Ordinance No. 2019-10, amending the 2019 Fiscal year budget to account for the transfer of excess funds, the receipt of additional revenue, and to make other amendments as provided herein.

Amy Dozier presented the ordinance, and responded to questions from the Council.

Councilmember Sigerman moved to approve Ordinance 2019-10 on second reading. Councilmember Clarkson seconded, and the motion passed 4-0.

**8. ITEMS FOR FUTURE AGENDAS:**

Councilmember Sigerman advised that the Kerrville Homeless research is nearing completion, and she should be ready to provide a follow-up report in the near future.

**9. EXECUTIVE SESSION:**

Mayor Blackburn moved to go into executive session under Sections 551.087 and 551.072 of the Texas Government Code. Councilmember Cochrane seconded, and the motion passed 4-0.

Mayor Blackburn recessed the open session at 6:53 p.m., and Council convened in closed executive session.

At 7:23 p.m., the Council reconvened in open session.

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

Mayor Blackburn announced that no action was taken in executive session.

**9. ADJOURNMENT.**

The meeting was adjourned at 7:23 p.m.

APPROVED: \_\_\_\_\_

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Bill Blackburn, Mayor

ATTEST: \_\_\_\_\_  
Shelley McElhannon, City Secretary



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

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**SUBJECT:** Minutes for the City Council Workshop held June 18, 2019

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 06, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190625\\_Minutes\\_City Council Workshop 6-18-19.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

Minutes for the City Council Workshop held June 18, 2019

**RECOMMENDED ACTION:**

Approve minutes as presented.

CITY COUNCIL MINUTES  
WORKSHOP

KERRVILLE, TEXAS  
JUNE 18, 2019

COUNCILMEMBERS PRESENT:

Bill Blackburn	Mayor
Judy Eychner	Mayor Pro Tem
Gary Cochrane	Councilmember
Delayne Sigerman	Councilmember

COUNCILMEMBER ABSENT:

Kim Clarkson	Councilmember
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CITY STAFF PRESENT:

Mark McDaniel	City Manager
E.A. Hoppe	Deputy City Manager
Mike Hayes	City Attorney
Shelley McElhannon	City Secretary
Ashlea Boyle	Director of Parks and Recreation
Amy Dozier	Chief Financial Officer
David Knight	Chief of Police
Kim Meismer	Executive Director of General Operations
Dannie Smith	Fire Chief
Charvy Tork	Director of Information Technology

VISITORS PRESENT:

No visitors were present.

**1. CALL TO ORDER**

On June 18, 2019 at 10:00 a.m., the Kerrville City Council Workshop was called to order by Mayor Bill Blackburn in the City Hall Council Chambers at 701 Main Street.

**2. DISCUSSION AND DIRECTION TO STAFF REGARDING THE DRAFT FISCAL YEAR 2020 BUDGET.**

Mark McDaniel introduced the agenda item, advised Council that the budget remains in draft, was not balanced as yet, and still required Council input.

Amy Dozier presented the draft budget and reviewed the following topics:

- 2A. General Fund
- 2B. Development Services Fund
- 2C. General Debt Service Fund
- 2D. General Capital Projects Fund
- 2E. General Asset Replacement Fund

Staff members Mark McDaniel, EA Hoppe, Mike Hayes, Amy Dozier, Ashlea Boyle, Chief David Knight, Kim Meismer, Chief Dannie Smith, and Charvy Tork responded to City Council questions.

**3. ADJOURNMENT**

The meeting adjourned at 11:54 a.m.

APPROVED:

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Bill Blackburn, Mayor

APPROVED: \_\_\_\_\_

ATTEST:

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Shelley McElhannon, City Secretary



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

---

**SUBJECT:** Ordinance No. 2019-14. An ordinance creating a "Planned Development District" for R-3 (Multifamily), Retail Trade II, Professional Office, Restaurant (General), and Custom Manufacturing on an approximately 58.74 acres, consisting of land out of the Joseph S. Anderson Survey No. 141, Abstract No. 2, and the J. S. Sayder Survey No. 142, Abstract No. 290, within the City of Kerrville, Kerr County, Texas; and generally located north of the intersection of Thompson Dr (Highway 98) and James Rd.; adopting a concept plan and conditions related to the development of said district; containing a cumulative clause; containing a savings and severability clause; establishing a penalty or fine not to exceed \$2,000 for each day of violation of any provision hereof; ordering publication; and providing other matters relating to the subject

**AGENDA DATE OF:** June 25, 2019

**DATE SUBMITTED:** May 31, 2019

**SUBMITTED BY:** Rebecca Pacini

**EXHIBITS:** [20190625\\_Ordinance\\_2019-14 Planned Development District - Thompson Drive.pdf](#)  
[20190611\\_2019-021\\_LocationMap.pdf](#)  
[20190611\\_2019-021\\_ConceptPlan.pdf](#)  
[20190611\\_2019-021\\_MetesBounds.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	L - Land Use
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

PROPOSAL

Public hearing, consideration, and action to adopt Ordinance No. 2019-14 to change the

zoning from District 7-W to Planned Development District (PDD) on approximately 58.74 acres of land out of the Joseph S. Anderson Survey No. 141, Abstract No. 2, and the J. S. Sayder Survey No. 142, Abstract No. 290, within the City of Kerrville, Kerr County, Texas; and generally located north of the intersection of Thompson Drive (Highway 98) and James Road. (File No. 2019-021).

## STAFF ANALYSIS

**CONSISTENCY WITH THE KERRVILLE 2050 COMPREHENSIVE PLAN:** The property is located in Strategic Catalyst Area 3. The vision for this area is one that facilitates the creation of mixed-use, waterfront developments along its key corridor, Thompson Drive. Development should be oriented towards the River and engaged with adjacent businesses and structures. Entertainment/Mixed-Use and some Transitional Residential place types are appropriate around the lake.

## ADJACENT ZONING AND LAND USES

### Subject Property

Current Zoning: West District 7 (7-W)

Existing Land Uses: Single-family residential and vacant

Direction: Northwest

Current Zoning: Not applicable, outside of the City limits

Existing Land Uses: Single-family residential

Direction: Northeast

Current Zoning: Guadalupe River District (GR)

Existing Land Uses: Home improvement store

Direction: Southeast

Current Zoning: West District 7 (7-W)

Existing Land Uses: Agricultural

Direction: Southwest

Current Zoning: Not applicable, outside of the City limits

Existing Land Uses: Single-family residential

The uses which are permitted as a matter of right or permitted upon issuance of a conditional use permit in the 7-W zoning district are indicated by the letters "P" and "C," respectively, in the following table:

## 7-W DISTRICT PERMITTED & CONDITIONAL USE TABLE

Agricultural - General C  
Bed and Breakfast P  
Dwelling, Multiple Family P  
Dwelling, RC District Uses (with plat) P  
Education, Secondary and College C  
Education, Primary C  
Institutional and Public Use Facilities C  
Life Care Development P  
Manufacturing, Custom P  
Personal Services I C  
Personal Services, Limited C  
Restaurant, General C  
Restaurant, Limited C  
Retail Trade - Limited C  
Tourist/Visitor & Recreation Service C

The change in zoning is being sought in order to establish a Planned Development District with the following uses as defined in the Zoning Code, Art. 11-I-3:

#### THE LANDING PLANNED DEVELOPMENT DISTRICT USE TABLE

Custom Manufacturing

Greenbelt

Private Park

Professional Office

Public Park

“R-3” Multifamily Residential

Restaurant, General

Retail Trade II

**THOROUGHFARE PLAN:** Thompson Drive (Highway 98) is designated a Secondary Arterial. Secondary arterials primarily serve local trips of moderate length, support

circulation and access in localized areas with higher traffic volumes, and connect to the principal arterials. Kerrville's standard cross section for a secondary arterial is a four-lane undivided roadway. In higher activity areas, the City may consider an alternate design with two through lanes and a center two-way left-turn lane. This also provides the option of allocating right-of-way width for other uses such as bike lanes, pedestrian facilities, and/or on-street parking. The current cross-section of Thompson Drive is a four lane divided roadway with a center turn lane and medians.

TRAFFIC IMPACT: To be determined

PARKING: To be determined

Planning and Zoning Commission held a public hearing on May 2, 2019, and recommended approval with the amendment to restrict the height on Lots 13, 14, and 15 to no more than two stories in a vote of 5-0 in favor.

**RECOMMENDED ACTION:**

Planning and Zoning Commission recommend approval of Ordinance No. 2019-14 as presented.

**CITY OF KERRVILLE, TEXAS**  
**ORDINANCE NO. 2019-14**

AN ORDINANCE CREATING A “PLANNED DEVELOPMENT DISTRICT” FOR R-3 (MULTIFAMILY), RETAIL TRADE I, RETAIL TRADE II, PROFESSIONAL OFFICE, RESTAURANT (GENERAL), AND CUSTOM MANUFACTURING ON AN APPROXIMATELY 58.74 ACRE TRACT OF LAND OUT OF THE JOSEPH S. ANDERSON SURVEY NO. 141, ABSTRACT NO. 2 AND THE J.S. SAYDER SURVEY NO. 142, ABSTRACT NO. 290; WITHIN THE CITY OF KERRVILLE, KERR COUNTY, TEXAS; AND MORE GENERALLY LOCATED NORTH OF THE INTERSECTION OF THOMPSON DRIVE (SPUR 98); ADOPTING A CONCEPT PLAN AND CONDITIONS RELATED TO THE DEVELOPMENT OF SAID DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING A PENALTY OR FINE NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

**WHEREAS**, the Planning and Zoning Commission of the City of Kerrville, Texas and the governing body of the City of Kerrville, in compliance with the laws of the State of Texas and the ordinances of the City Kerrville, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, the governing body, in the exercise of the legislative discretion, has concluded that the Zoning Ordinance and Zoning Map should be amended;

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

**SECTION ONE.** The property described in **Exhibit A** (the “Property”) is removed from Zoning District 7-W and placed within a newly created Planned Development District (“PDD”) for development and use as provided herein.

**SECTION TWO.** The Property may be developed and used but only in accordance with the following conditions:

**A. Permitted Uses:** The following uses are permitted within the Planned Development District subject to the conditions provided herein and the applicable regulations for each use as provided within the Zoning Code: R-3 (multifamily), Retail Trade I, Retail Trade II, Professional Office, Restaurant (General), and Custom Manufacturing. All uses of the Property

shall be permitted only in the location shown on the Concept Plan, attached as **Exhibit B**. Should a desired alteration or change in use represent a substantial departure from this approved plan, then such may be allowed only after resubmittal of the amended plan to the City, and the same approval process applicable to amendments to zoning ordinances.

- B. Prohibited Uses:** Any use not specifically allowed in Section A is expressly prohibited, to include Fuel Sales.
- C. Concept Plan:** The development and use of the Property shall be substantially in accordance with the Concept Plan attached as **Exhibit B**, hereafter referred to as the “Concept Plan”. Minor modifications to streets, number and alignment of buildings, building areas and footprints, open spaces, and pedestrian access shown on the Concept Plan may be made at the time of Site Plan approval, as specified in Section D, below, so long as the general alignment of streets, building areas, and lot layouts are substantially maintained and the location and boundaries of the lots are not altered.
- D. Development Site Plan:** Prior to the City’s acceptance of any civil construction or building plans, a Development Site Plan shall be submitted pursuant to City regulations.
- E. Floodplain Improvements and Maintenance:** A portion of the floodplain area is to be dedicated to the City at the time of final plat. Prior to approval of a final plat for any portion of the Property, the owner and/or developer of the property must enter into an agreement(s) with the City setting for the terms and conditions relating to the responsibility for:
  - 1. Development and maintenance standards for the flood plain and all improvements located within the floodplain;
  - 2. Trail and trailhead improvements; and
  - 3. Land acquisition necessary to complete recreational trail.
- F. Density:** As applied to the development of R-3 (multifamily) uses, the number of units per lot and the number of units per acre are limited to the specific amounts specified on the Concept Plan.

**G. Setbacks and Height:** With the exception of Lots 13-15 and structures located thereon limited to two stories, the Property shall be developed with the minimum setbacks from the Property lines and limited to a maximum height of sixty feet (60.0'), both of which are as specified on the Concept Plan.

**H. Lot Coverage:** The maximum building gross floor areas will comply with the square footage specified on the Concept Plan.

**I. Open Spaces:** All landscaped open spaces within the Property, such as the "green belt" specified on the Concept Plan and Lot 902, as specified on the "final plat", shall be maintained and managed by a Property Owners Association (POA).

**J. Parking:** The design, number of parking spaces, and aisle dimensions shall comply with the City regulations in effect at the time individual building permits are submitted to the City unless as specified on the Concept Plan. All required parking spaces shall be constructed of asphalt or concrete and shall be marked and kept available for residents, customers, and employees.

**K. Parking Lot Lighting:** All outside pole lights shall be of a "shoe box" design and shall be located, shielded, and aimed in such a manner so as not to allow light to directly fall on adjacent roadways and/or properties.

**L. Parking Lot and Travel Lane Surface:** The vehicle and pedestrian traveling lanes and storage areas shall be asphalt, concrete, or such other surface in order to prevent mud, dirt, or other loose materials from being removed from the property and tracked onto the public rights-of-way by vehicles traveling from the property.

**M. Sidewalks:** The construction of sidewalks shall be required and constructed in accordance with City regulations in effect at the time building permits are submitted. A sidewalk will not be required on James Road.

**N. Signage:** The design, installation, location, and maintenance of signs shall comply with City sign regulations existing at the time of permitting for the sign.

**O. Landscaping Regulations:** Landscaping shall be installed in accordance with the following:

1. Planting materials planted on the Property shall be from the list of recommended plants set forth in the most recent edition of *Recommended Plants for the Kerrville Area* published by the City at the time of planting.
2. All landscaping shall be maintained in a healthy, growing condition.

**P. Screening:** Screening shall be required in accordance with City regulations in effect at the time individual building permits are submitted to the City.

**Q. Trash and Other Solid Waste:** Solid waste collection bins and dumpsters shall be equipped with lids and screened with a gate with an opaque screen on one side and material finished to look substantially like the adjacent building(s) on the remaining three sides.

**R. Outdoor Storage and Display:** The outdoor storage of any materials, supplies, inventory, and/or equipment, whether in cargo containers or similar containers or buildings, is prohibited except on a temporary basis for construction-related purposes.

**S. Platting:** The development of this property shall be subject to the City's Subdivision Regulations.

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

**SECTION FOUR.** The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided however, to the extent of any irreconcilable conflict with the provisions of this Ordinance and other ordinances of the City of Kerrville governing the use and development of the Property and which are not expressly amended by this Ordinance, the provisions of this Ordinance shall be controlling.

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

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

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

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

**PASSED AND APPROVED ON FIRST READING**, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.

**PASSED AND APPROVED ON SECOND AND FINAL READING**, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2019.

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Bill Blackburn, Mayor

APPROVED AS TO FORM:

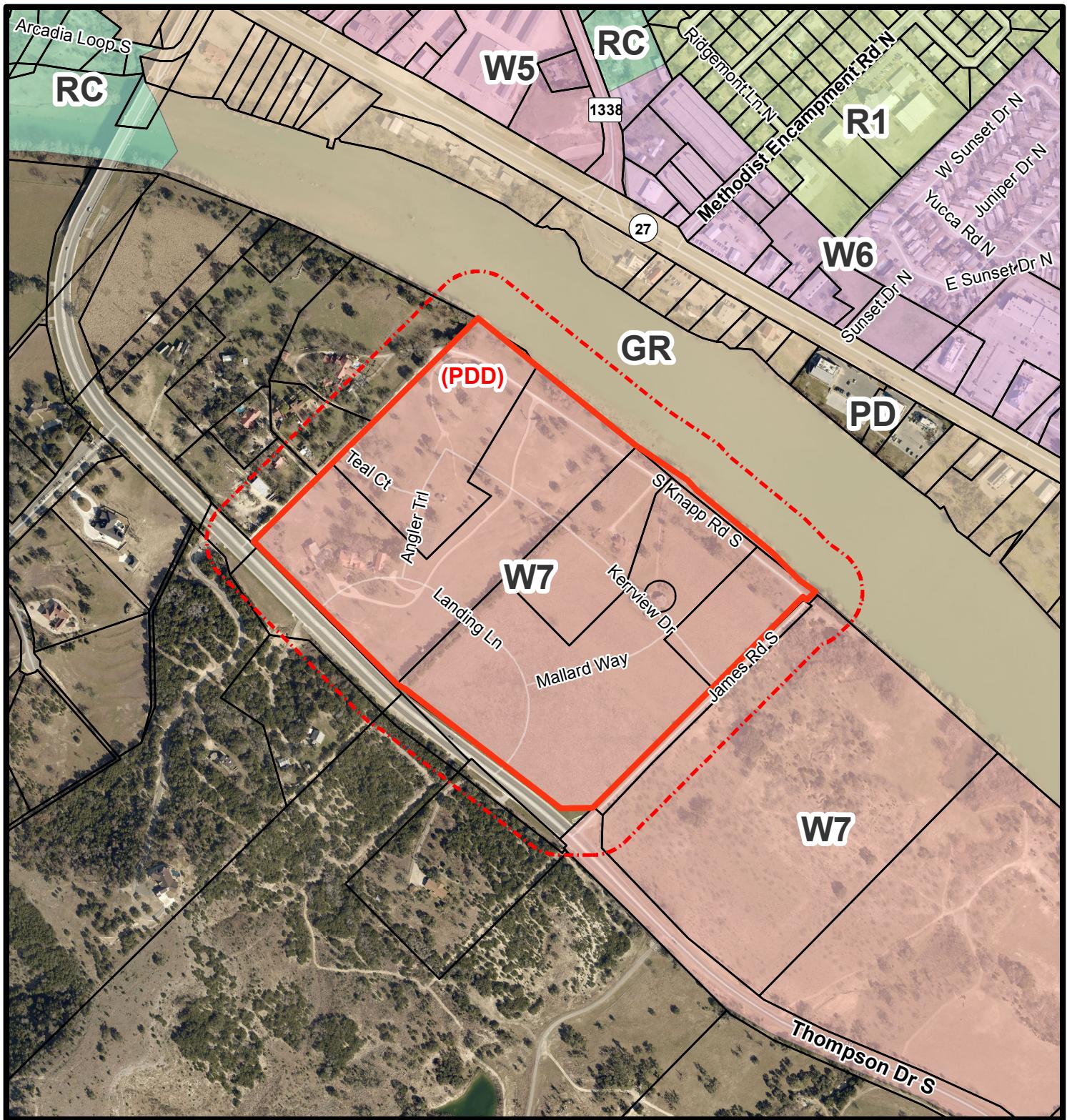
ATTEST:

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Michael C. Hayes, City Attorney

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Shelley McElhannon, City Secretary



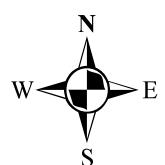
## Location Map

Case # 2019-021

Location:  
Thompson Dr

Legend  
200' Notification Area  
Subject Properties  
Current Zoning  
Requested Zoning

TEXT  
(TEXT)

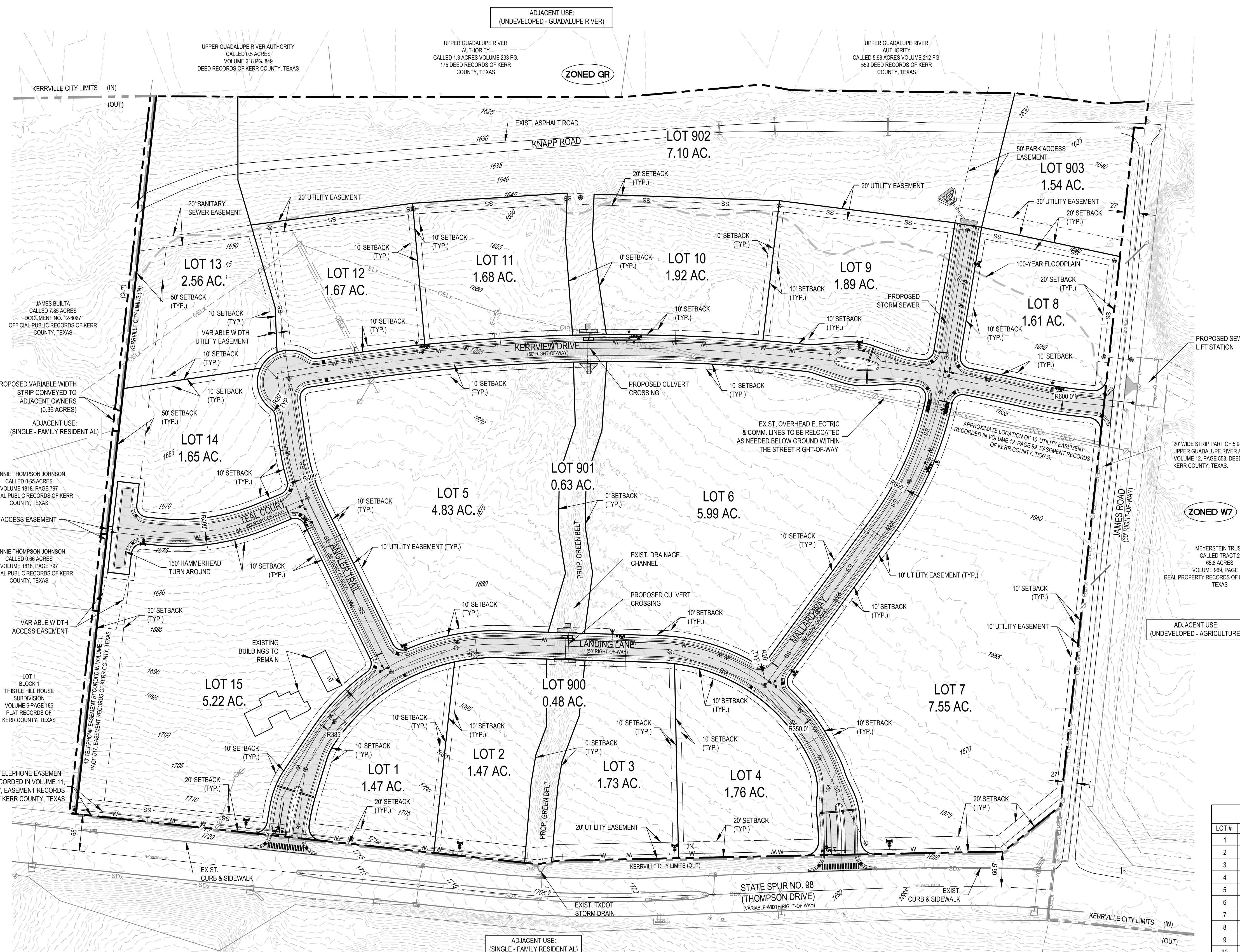


0 200 400 800

Scale In Feet

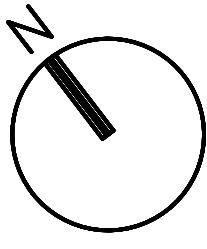
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

Z:\PROJECTS\2739 - 58 Ac. Commercial Tract\10 - 58 Ac Platting & Constr Plans\Exhibits\273910 PDD CONCEPT PLAN EXHIBIT.dwg



## LOCATION MAP

SCALE: 1" = 1000'



SCALE: 1"=100'

document is released for  
VIEW PURPOSES ONLY,  
FOR CONSTRUCTION  
purposes prepared under the  
specification of Edgar A. Munoz,  
Certified Professional  
Engineer, State of Texas,  
Registration No. 103673.  
APRIL 2019

S: 

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**Y COMMENTS 3/20/2019**

COMMENTS 4/8/2019

PDD CONCEP<sup>T</sup> PLAN  
FOR  
THE LANDING - MIXED USE DEVELOPMENT  
KERRVILLE, TEXAS

DATE: APRIL 8, 2019

0. 2739.10

ED BY: RAW

BY: MH

# 1 OF 1

THE LANDING: LAND USE SUMMARY						
LOT #	LAND USE	SITE AREA	# OF RES. UNITS	RES. UNITS/AC.	BLDG. GFA	ADDRESS
1	RETAIL TRADE II	1.47 ACRES	--	--	38,400 SF	1211 LANDING LANE
2	RETAIL TRADE II	1.47 ACRES	--	--	38,400 SF	1171 LANDING LANE
3	RETAIL TRADE II	1.73 ACRES	--	--	45,200 SF	1131 LANDING LANE
4	RETAIL TRADE II	1.76 ACRES	--	--	46,000 SF	1091 LANDING LANE
5	RETAIL TRADE II OR CUSTOM MANUF.	4.83 ACRES	--	--	126,200 SF	1247 ANGLER TRAIL
6	R-3	5.99 ACRES	98	16.4	156,800 SF	1152 MALLARD WAY
7	R-3	7.55 ACRES	160	21.2	197,300 SF	1151 MALLARD WAY
8	PROF. OFFICE OR RESTAURANT, GENERAL	1.61 ACRES	--	--	42,000 SF	1090 KERRVIEW DRIVE
9	PROF. OFFICE OR RESTAURANT, GENERAL	1.89 ACRES	--	--	49,400 SF	1110 KERRVIEW DRIVE
10	PROF. OFFICE OR RESTAURANT, GENERAL	1.92 ACRES	--	--	50,200 SF	1130 KERRVIEW DRIVE
11	PROF. OFFICE OR RESTAURANT, GENERAL	1.68 ACRES	--	--	43,900 SF	1140 KERRVIEW DRIVE
12	PROF. OFFICE OR RESTAURANT, GENERAL	1.67 ACRES	--	--	43,600 SF	1150 KERRVIEW DRIVE
13	PROFESSIONAL OFFICE	2.56 ACRES	--	--	66,900 SF	1160 KERRVIEW DRIVE
14	PROF. OFFICE OR R-3 (INCL. TOWNHOMES)	1.65 ACRES	25	15.2	43,100 SF	1148 ANGLER TRAIL
15	PROF. OFFICE OR R-3 (INCL. TOWNHOMES)	5.22 ACRES	48	9.2	136,400 SF	1248 ANGLER TRAIL
900	GREENBELT 1	.48 ACRES	--	--	--	1151 LANDING LANE
901	GREENBELT 2	.63 ACRES	--	--	--	1152 LANDING LANE
902	PRIVATE PARK	7.10 ACRES	--	--	--	1002 MALLARD WAY
903	PUBLIC PARK	1.54 ACRES	--	--	--	1001 MALLARD WAY
	STREET R.O.W.	5.98 ACRES				
	TOTAL ACREAGE	58.73 ACRES				

# MATKIN HOOVER

## ENGINEERING & SURVEYING

8 SPENCER ROAD, SUITE 100, BOERNE, TEXAS 78006  
PHONE: 830-249-0600 FAX: 830-249-0099  
TEXAS REGISTERED SURVEYING FIRM F-10024000

### FIELD NOTES FOR A 58.74 ACRE TRACT OF LAND

A 58.74 ACRE TRACT OF LAND OUT OF THE JOSEPH S. ANDERSON SURVEY NO. 141, ABSTRACT NO. 2, AND THE J. S. SAYDER SURVEY NO. 142, ABSTRACT NO. 290, KERR COUNTY, TEXAS, AND BEING A PORTION OF THE CALLED 27.52 ACRE TRACT RECORDED IN DOCUMENT NO. 18-01649, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS, ALL OF THE CALLED 21.16 ACRE TRACT DESIGNATED AS "TRACT ONE", ALL OF THE CALLED 6.03 ACRE TRACT DESIGNATED AS "TRACT TWO", RECORDED IN DOCUMENT NO. 12-00573, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS, AND ALL OF THE CALLED 4.01 ACRE TRACT RECORDED IN DOCUMENT NO. 12-00575, OFFICIAL PUBLIC RECORDS OF KERR COUNTY, TEXAS. SAID 59.09 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**Beginning** at a point in the northeast right-of-way line of State Spur No. 98 (Thompson Drive), the southwest boundary line of the called 27.52 acre tract, said point bears S 45°04'05" E, a distance of 12.30' from a  $\frac{1}{2}$ " iron rod with red plastic cap stamped "Cude" found at the west corner of the called 27.52 acre tract, the south corner of Lot 1, Block 1, Thistle Hill House Subdivision No. 1, recorded in Volume 6, Page 186, Plat Records of Kerr County, Texas;

**(1) Thence**, departing the northeast right-of-way line of State Spur No. 98 (Thompson Drive), over and across the called 27.52 acre tract the following three (3) courses and distances:

- a. **N 45° 06' 40" E, a distance of 380.08'** to a point for angle;
- b. **N 45° 06' 47" E, a distance of 336.45'** to a point for angle;
- c. **N 45° 06' 23" E, a distance of 627.25'** to a point for corner in the northeast boundary line of the called 27.52 acre tract, the southwest boundary line of Upper Guadalupe River Authority (UGRA) and recorded in Volume 218, Page 849, Deed Records, Kerr County, Texas, said point being near the 1622' contour line of the Guadalupe River (Kerrville Lake), said point bears S 51° 01' 14" E, a distance of 10.95' from a calculated point in the southeast boundary line of a called 7.85 acre tract of land recorded in Document No. 12-8067, Official Public Records of Kerr County, Texas, the north corner of the called 27.52 acre tract and the west corner of the called 0.5 acre tract;

**(2) Thence**, along the meanders of the 1622' contour line, the northeast boundary line of the called 27.52 acre tract, the called 6.03 acre tract, the called 21.16 acre tract, and the called

4.01 acre tract, the southwest meander line of the Guadalupe River (Kerrville Lake), the following courses and distances:

- a. **S 51° 01' 14" E, 330.07'** to a point for angle;
- b. **S 51° 14' 22" E, 535.10'** to a point for angle;
- c. **S 56° 26' 37" E, 261.88'** to a point for angle;
- d. **S 40° 47' 22" E, 57.54'** to a point for angle;
- e. **S 50° 32' 38" E, 342.61'** to a point for angle;
- f. **S 50° 32' 38" E, 72.99'** to a point for angle;
- g. **S 44° 36' 51" E, 165.42'** to a point for angle;
- h. **S 54° 03' 44" E, 84.53'** to a point for corner at the east corner of the called 4.01 acre tract;

(3) **Thence, S 46° 39' 46" W**, along the southeast boundary line of the called 4.01 acre tract, **a distance of 51.20'** to a cotton spindle set for corner in the centerline of Knapp Road at the east corner of a 20' wide strip (portion of James Road) which is part of a called 5.98 acre tract recorded in Volume 212, Page 558, Deed Records of Kerr County, Texas;

(4) **Thence, N 45° 04' 29" W**, along a southwest boundary line of the called 4.01 acre tract, the centerline of Knapp Road, the northeast line of the 20' wide strip (portion of James Road), **a distance of 20.00'** to a cotton spindle found for interior corner at an interior corner of the called 4.01 acre tract and at the north corner of the 20' wide strip (portion of James Road), in the northwest line of James Road;

(5) **Thence, S 44° 55' 31" W**, along the northwest line of the 20' wide strip (portion of James Road), the northwest line of James Road, the southeast boundary line of the called 4.01 acre tract, **a distance of 539.81'** to a  $\frac{1}{2}$ " iron rod found for angle at the south corner of the called 4.01 acre tract, the east corner of the called 21.16 acre tract;

(6) **Thence**, continuing along the northwest line of the 20' wide strip (portion of James Road), the northwest line of James Road, the southeast boundary line of the called 21.16 acre tract, the following courses and distances:

- a. **S 44° 54' 29" W, 725.61'** to a Texas Department of Transportation (TxDot) Type 1 concrete marker found for angle;

b. **S 46° 17' 03" W, 4.81'** to a  $\frac{1}{2}$ " iron rod found for angle at the east end of a cutback line at the intersection of the northwest line of the 20' wide strip (portion of James Road), the northwest line of James Road, with the northeast right-of-way line of State Spur No. 98;

**(7) Thence, S 89° 56' 21" W**, along said cutback line, **a distance of 135.09'** to a  $\frac{1}{2}$ " iron rod found for angle;

**(8) Thence**, along the northeast right-of-way line of State Spur No. 98, the following courses and distances:

a. **N 52° 27' 24" W, 828.91'** to a  $\frac{1}{2}$ " iron rod found for angle;

b. **N 61° 11' 52" W, 38.67'** to a TxDot Type 2 concrete marker found for angle;

c. **N 45° 04' 50" W**, at 21.53' pass the surveyed south corner of the called 27.52 acre tract, **a total distance of 865.17'** to the **POINT OF BEGINNING** and containing **58.74 acres** of land, more or less.

Note: This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



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

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**SUBJECT:** Economic Development Incentive Agreement between Kerrville's 4th on the River, Inc. and the City of Kerrville, Texas, Economic Improvement Corporation

**AGENDA DATE OF:** June 25, 2019

**DATE SUBMITTED:** Jun 18, 2019

**SUBMITTED BY:** EA Hoppe

**EXHIBITS:** [20190625\\_Agreement\\_Krvl 4th on River and EIC for Arcadia Theater.pdf](#)

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$600,000 (EIC)	N/A (EIC)	N/A (EIC)	Amy

**PAYMENT TO BE MADE TO:** Kerrville 4th on the River (KFOR)

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D1. Create a “living room” for the community and a “front door” for visitors—a full-service destination that attracts anchor uses and increased residential and mixed-use development.
<b>Action Item</b>	D1.6 - Support new anchors in the Downtown, such as the A. C. Schreiner Mansion or the Arcadia, to increase public and visitor traffic

**SUMMARY STATEMENT:**

The Arcadia Theater located in Downtown Kerrville along Water Street was recently acquired by the non-profit entity, Kerrville 4th on the River. The non-profit intends to conduct a \$2.3 million renovation of the facility in order to utilize the building for live music and other performances. These performances would have a catalyzing effect for Downtown Kerrville and its merchants by increasing patron foot traffic in the area. The scale and quality of the proposed performances could also have a likely effect of drawing in patrons from outside the local market, enhancing the local tourism industry and hotel occupancy rates.

Supporting the conversion of the Arcadia Theater to a live music event venue was identified as a specific Action Item in the Kerrville 2050 Comprehensive Plan under the Downtown Revitalization Guiding Principal of creating a “living room” for the community and a “front door” for visitors – a full service destination that attracts anchor uses and increased residential and mixed-use development. As such, the non-profit entity has requested public assistance with the funding of the renovation effort. Kerrville 4th on the River has requested \$600,000 from the Economic Improvement Corporation (EIC) towards the overall \$2.3 million construction budget as part of a combination Quality of Life and Business Development project. An additional \$400,000 has been requested from previously collected Hotel Occupancy Tax (HOT) Funds, which will be submitted to the City Council at a later date, as HOT Funds are under the purview of the City of Kerrville City Council. The remainder balance of the renovation funds are intending to be raised via donation and private philanthropy.

## PROJECT HISTORY

Winter/Spring 2019: City/KEDC receives EIC funding request application from Kerrville 4th on the River (KFOR). Additional project materials are sought, including an updated construction budget and 5 year operational proforma.

May 2019: A GO Team meeting was conducted.

May 20, 2019: EIC and City Council received a tour of the Arcadia facility. EIC received a presentation from Kerrville 4th on the River regarding their funding request. Staff was directed to draft an economic development grant agreement, and set a public hearing date for June 17th.

June 13, 2019: EIC reviewed a draft Agreement in Executive Session.

June 17, 2019: EIC Public Hearing was conducted and Agreement was approved by the EIC (7-0).

## **RECOMMENDED ACTION:**

Approve Agreement as presented.

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## ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN KERRVILLE'S 4TH ON THE RIVER, INC. AND THE CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION

This Economic Development Incentive Agreement ("Agreement") is entered into as of the Effective Date by and between **KERRVILLE'S 4TH ON THE RIVER, INC.** ("KFOR"), a Texas non-profit corporation, and the **CITY OF KERRVILLE, TEXAS, ECONOMIC IMPROVEMENT CORPORATION** ("EIC"), a Texas nonprofit corporation established pursuant to Section 4B of Tex. Rev. Civ. Stat. Art. 5190.6 (otherwise known as the Development Corporation Act of 1979 and now codified in Chapters 501-505 of the Texas Local Government Code), hereafter referred to as "the Act", each acting by and through their duly authorized officers. KFOR and EIC are sometimes collectively referred to herein as "Parties" and individually as "Party".

### **WITNESSETH:**

**WHEREAS**, EIC was formed to administer the sales and use tax approved by the qualified voters of Kerrville, Texas, in May 1995 and collected for projects including:

*...land, buildings, equipment, facilities, and improvements* found by the EIC to be required or suitable for use for professional and amateur sports, including children's sports, athletic, *entertainment, tourist, convention*, and public park purposes and events, including stadiums, ball parks, *auditoriums, amphitheaters, concert halls*, parks and park facilities, open space improvements, museums, *exhibition facilities, and related store, restaurant, concession*, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by Section 505.152 of the Act (emphasis supplied); and

**WHEREAS**, pursuant to the Act, EIC is authorized to provide funding relating to the construction of projects which EIC finds to be encompassed within the definition of "Projects", as that word is defined by Chapters 501 and 505 of the Act; and

**WHEREAS**, KFOR is a Texas nonprofit corporation that organizes and/or sponsors community events within the City of Kerrville, such as Kerrville's Fourth

# **D R A F T 6/18/19**

on the River, that often involve live entertainment as an element; and

**WHEREAS**, KFOR owns the Property (as defined below) on which is located the Arcadia Theater (“Arcadia”) a movie theater originally constructed in downtown Kerrville in 1926; and

**WHEREAS**, KFOR intends to remodel the Arcadia and use, and authorize others to use, the Arcadia for live music performances and other public events; and

**WHEREAS**, KFOR will upgrade the Property to comply with accessibility and building code regulations and construct additional improvements to the Property with the goal of opening the Arcadia to the public for scheduled events on or before July 3, 2020; and

**WHEREAS**, KFOR is expected to initially invest over \$2 Million to improve the Property; and

**WHEREAS**, KFOR has advised EIC that an agreement with EIC to provide an economic development grant to KFOR to defray a portion of the construction costs would induce KFOR to proceed with completion of the design and construction of the Improvements, as defined below; and

**WHEREAS**, EIC has determined that such a grant complies with the Act and is in keeping with the mission of EIC and *City of Kerrville Economic Improvement Corporation 4B Sales Tax Funding Request Guidelines and Procedures* in that it will enhance the “quality of life” within the community; and

**WHEREAS**, on June 17, 2019, in a meeting that was open to the public in accordance with the Texas Open Meetings Act, EIC held a public hearing pursuant to Section 505.159 of the Act related to the proposed expenditure of 4B Revenues for the purposes provided above;

**WHEREAS**, EIC finds that it will be in the public interest to enter into an agreement with KFOR to provide a grant of 4B Revenues (as defined below) to KFOR for a portion of its cost necessary for the costs of the Improvements; and

**NOW THEREFORE**, for and in consideration of the recitals set forth above and the promises made herein, KFOR and EIC agree as follows:

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## Article I Definitions

For purposes of this Agreement, each of the following terms has the meaning set forth herein unless the context clearly indicates otherwise:

“4B Revenues” means the \$0.005 local sales and use tax collected by EIC pursuant to the Act.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“Arcadia” means the theater located on the Property.

“Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“City” means the City of Kerrville, a Texas home rule municipality located in Kerr County, Texas.

“Commencement of Work” means that (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for work associated with the Improvements; (ii) all necessary permits for work associated with the Improvements have been issued by all applicable governmental authorities; and, (iii) KFOR’s contractor has mobilized with laborers physically located on the Property who are actively constructing the Improvements (inclusive of performing any demolition of portions of the Property for which is necessary to construct the Improvements).

“Completion of Work” means the date (i) the Improvements have been substantially completed; and, (ii) a certificate of occupancy has been issued by City for KFOR’s occupancy and use of the Arcadia.

“Control,” or any derivation thereof, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of securities, by contract or otherwise.

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“Deed of Trust” means a Deed of Trust in the form substantially as set forth in **Exhibit C**, attached hereto and incorporated herein by reference, conveying a first lien on the Property to Michael C. Hayes, Trustee, for the benefit of EIC in the amount of the Grant for the purpose of securing the repayment of the Note.

“Effective Date” means the date (a) an authorized representative of each of the Parties has signed this Agreement and (b) City’s City Council has authorized EIC to make the Grant pursuant to this Agreement.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns, or work stoppages.

“Grant” means the amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) paid by EIC to KFOR as provided in this Agreement and the Note (defined below).

“Improvements” means the list of demolition, renovation, remodeling, and other improvements made to the Arcadia, as more fully described in **Exhibit A**.

“Note” means a promissory note in the form substantially as set forth in **Exhibit B** attached hereto and incorporated herein by reference.

“Person” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“Project” means the design, plans, construction, renovation, and installation of the Improvements at the Property.

“Property” means that certain 0.361 acre, more or less, tract of land located in the City of Kerrville, Kerr County, Texas, and more fully described in **Exhibit D** of that certain Special Warranty Gift Deed dated November 6, 2018, from Arcadia Theatre, LLC to KFOR and recorded as Instrument No. 18-07183, Official Public Records, Kerr County, Texas, including all improvements located thereon (including the Arcadia).

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“Related Agreement” means that certain *Agreement between City of Kerrville, Texas, and Kerrville’s Fourth on the River, Inc. for use of Hotel Occupancy Tax Funds for Improvements* entered into as of the approximate date herewith.

“Required Use” means KFOR’s continuous operation of the Arcadia as a public live music and performing arts venue and related activities.

## Article II Term

2.1. Effective Date and Termination. The term of this Agreement (the “Term”) commences on the Effective Date, and terminates on the earlier of:

- (a) October 1, 2023;
- (b) Three years after the Completion of Work;
- (c) when terminated by mutual agreement of the Parties;
- (d) if Commencement of Work does not occur by the date set forth in Section 4.5 and EIC elects to terminate this Agreement by providing notice to KFOR before Commencement of Work actually occurs;
- (e) if Completion of Work does not occur by the date set forth in Section 4.5 and, EIC elects to terminate this Agreement by providing notice to KFOR before Completion of Work actually occurs;
- (f) when terminated pursuant to Articles VIII or IX; or
- (g) at KFOR’s sole and absolute discretion, upon KFOR’s return of the Grant to EIC.

2.2 Rights Upon Termination. Upon termination of this Agreement, all rights, duties, and obligations of any kind under this Agreement will automatically expire and terminate and be of no other force and effect except to the extent such obligations expressly survive the termination of this Agreement.

## Article III 4B Revenue Grant

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3.1 Payment of Grant. Subject to KFOR's compliance with this Agreement, EIC agrees to pay the Grant to KFOR on or after January 1, 2020, upon delivery to EIC of a request for payment of said amount accompanied by (i) appropriate evidence, in the EIC's sole opinion, that KFOR possesses or controls enough funds, which, when combined with the Grant, is enough to pay for construction of the Improvements along with an appropriate amount of additional funding, not less than 10% of the overall cost of the Improvements, to cover any contingencies; (ii) appropriate evidence of the date of Commencement of Work; (iii) documentation that KFOR has incurred, or contractually obligated itself to incur, not less than \$2.0 Million related to the Project; (iv) execution by KFOR and delivery to EIC of the Note and Deed of Trust; and (v) recording of the Deed of Trust in the Official Public Records of Kerr County, Texas.

3.2 Grant Limitations. Under no circumstances shall the obligations of EIC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, EIC shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by KFOR. None of the obligations of EIC under this Agreement may be pledged or otherwise encumbered by KFOR in favor of any commercial lender and/or similar financial institution.

3.3 Current Revenue. The Grant will be paid solely from lawfully available funds that have been appropriated by EIC. EIC shall have no obligation or liability to pay any installment of the Grant except as allowed by law. EIC shall not be required to pay any installment of the Grant if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 Grant Limited to "Costs". Payments made by EIC to KFOR from 4B Revenues will be limited to the payments of "costs" as defined by the Act and as specified above for the Project; provided, however, for purposes of this Agreement, "costs" do not include funds spent by KFOR relating to the purchase of the Arcadia or interest or other fees paid by KFOR related to borrowing funds for the purpose of paying for the Project.

## Article IV Conditions to the Economic Development Grant

4.1 Generally. The obligation of EIC to provide the Grant and the right of KFOR to retain the Grant without an obligation to repay all or any portion of the Grant to EIC, shall be conditioned upon continued compliance with, and satisfaction of, each of the terms and conditions of this Agreement by KFOR and specifically, each

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of the conditions set forth in this Article IV.

4.2 Good Standing. KFOR shall not have incurred a breach or default of this Agreement or any Related Agreement beyond any applicable notice and cure period.

4.3 Development Regulations. KFOR shall comply with all applicable development regulations and ordinances of the City, including, but not limited to, all applicable building codes, sign code, and zoning, in its construction and use of the Improvements. KFOR's failure to comply with this provision constitutes a breach of this Agreement.

4.4 Required Use. Commencing on the Completion of Work and continuing thereafter until the termination of this Agreement, KFOR shall not use the Arcadia for any purpose other than the Required Use, and the operation and occupancy of the Arcadia in conformance with the Required Use shall not cease for more than six (6) months, except in connection with and to the extent of an event of Force Majeure.

4.5 Commencement and Completion of Work. Subject to extension of such deadline relating to events of Force Majeure, Commencement of Work of the Improvements shall commence not later than January 6, 2020. Subject to extension of such deadline as the result of events of Force Majeure, Completion of Work of the Improvements shall occur not later than October 1, 2020.

## 4.6 Operations.

(a) During each Operational Year, KFOR shall operate the Arcadia with a net positive financial position. KFOR shall provide a financial statement to EIC not later than thirty (30) days after the end of each Operational Year, such financial statement to be in a form and to include such information as required by EIC, in its sole opinion.

(b) During each Operational Year, KFOR shall conduct the following minimum number of paid ticketed events attended by at least the following cumulative number of attendees for all events:

<i><b>Operational Year</b></i>	<i><b>Minimum Events</b></i>	<i><b>Minimum Attendees</b></i>
1 <sup>st</sup>	24	6,000
2 <sup>nd</sup>	30	7,500
3 <sup>rd</sup>	36	9,000

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(c) In determining the number of attendees, the following shall not be included:

(1) KFOR's directors, officers, and employees;

(2) Volunteers recruited by KFOR (volunteers of the organization conducting the event are counted);

(3) Directors, officers, employees, or volunteers of the Kerrville Chamber of Commerce or Kerrville Convention and Visitors Bureau.

(d) KFOR's failure to comply with the performance standards set forth in Sections 4.6(a) and (b), above, shall constitute a breach of this Agreement, and EIC may, at its option, following written notice to KFOR, terminate this Agreement. In the event of termination of this Agreement by EIC pursuant to this Section 4.6, or in the event following the end of the third Operational Year it is determined that KFOR failed to comply with the performance standards set forth in Sections 4.6(a) or (b) without terminating this Agreement, KFOR shall be obligated to refund the Grant to EIC.

(e) For purposes of this Agreement:

(1) The first Operational Year shall be the period beginning on the date of Completion of Work (*i.e.*, the date City issues a Certificate of Occupancy for the Arcadia following completion of construction of the Improvements) and ending on the last day of the calendar month in which the first (1<sup>st</sup>) anniversary of the date of Completion of Work falls;

(2) The second Operational Year shall be the twelve (12) calendar month period beginning on the day after the end of the first Operational Year; and

(3) The third Operational Year shall be the twelve (12) calendar month period beginning on the day after the end of the second Operational Year.

4.7 City's Use. Following its opening, KFOR shall allow City use of the Arcadia on six (6) dates each calendar year in not less than four (4) hour blocks for each date. Such dates will not include Friday or Saturday evenings or holidays, unless otherwise agreed by the Parties. To the extent that the opening occurs during a partial year, City may elect to reserve a pro-rated amount of dates. City's requests for use shall be subject to prior reservations for which KFOR has entered a written

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agreement with the third party for use of the Arcadia on the City's requested date(s). This obligation of KFOR to provide for the City's use shall end on the termination of this Agreement.

## 4.8 Records and Reports.

(a) KFOR shall keep and maintain complete and accurate records relating to its costs of designing and constructing the Project, separate and identifiable from its other records, for three (3) years following the termination of this Agreement. EIC and its representatives shall be entitled to inspect KFOR's records during the term of this Agreement and for three (3) years thereafter, upon reasonable notice at KFOR's offices in Kerrville, Texas.

(b) Except for the first month of the first Operational Year, KFOR shall provide City written reports not later than the 15th day of first (1<sup>st</sup>) and seventh (7<sup>th</sup>) month of each Operational Year during the term of this Agreement detailing the use of and attendance at events held at the Arcadia during the preceding six (6) month period, which report shall include zip code information on users, guests, and invitees as a way for the Parties to assess the number of out-of-area visitors attending events at the Arcadia.

4.9 Securing Repayment of Grant; Note and Deed of Trust. As a condition for receiving the Grant, KFOR agrees to sign the Note and Deed of Trust to secure the repayment of the Grant when such repayment is required pursuant to Section 2.1, Section 4.6, Article VIII, or Section 9.2. The Parties agree that KFOR's obligation to repay the principal amount due on the Note, including all accrued interest thereon, shall be extinguished not later than sixty (60) days after the end of the third Operational Year, and EIC will execute a release of the lien set forth in the Deed of Trust, if KFOR has otherwise complied with this Agreement, including, but not limited to, complying with the performance standards set forth in Sections 4.6(a) and (b) for all three Operational Years.

## Article V Sale of Project, Merger or Consolidation of KFOR

5.1 Sale of KFOR Assets. A sale of all or any of the assets of KFOR shall not release KFOR from its duties and responsibilities to EIC under the terms of this Agreement and shall not result in the assignment of this Agreement by such acquiring entity without prior written consent from EIC, which will not be unreasonably withheld; provided, that KFOR's proposed successor shall have the financial condition to fully satisfy KFOR's duties and responsibilities hereunder and

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agrees to assume KFOR's responsibilities under this Agreement. EIC may, in its sole discretion, reasonably determine whether such proposed successor's financial condition is satisfactory.

5.2 Merger. In the event of any proposed merger or other consolidation of KFOR with any third party not affiliated with KFOR, not later than thirty (30) days prior to any such merger or consolidation, KFOR shall provide EIC with information and assurance reasonably acceptable to EIC regarding: (i) the surviving entity's assumption and satisfaction of the KFOR's obligations hereunder; and (ii) the financial condition of the surviving entity upon such merger or other consolidation to demonstrate that the surviving entity shall have the financial condition to fully satisfy KFOR's duties and responsibilities under this Agreement.

5.3 EIC Rights. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that EIC shall have no right to approve or disapprove any sale or merger transaction of any kind involving KFOR. In the event of any sale or merger involving KFOR or its affiliates, the surviving entity shall assume KFOR's obligations and rights hereunder and be entitled to any and all benefits to be received pursuant to this Agreement.

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## **Article VI** **KFOR's Representations and Warranties**

KFOR represents and warrants as of the date hereof:

- (a) KFOR is a Texas non-profit corporation existing in good standing and authorized to do business in the State of Texas;
- (b) Execution of this Agreement has been duly authorized by KFOR and this Agreement is not in contravention of KFOR's corporate charter, or any agreement or instrument to which KFOR is a party or by which it may be bound as of the date hereof;
- (c) No litigation or governmental proceeding is pending, or, to the knowledge of KFOR, threatened against or affecting KFOR, which may result in a material adverse change in KFOR's business, properties, or operations sufficient to jeopardize KFOR's legal existence or for-profit viability; and
- (d) No written application, written statement, or correspondence submitted by KFOR to EIC in connection with this Agreement, or in connection with any transaction contemplated hereby, to the knowledge of KFOR, contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading.
- (e) Except as expressly set forth in this Article VI, KFOR makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

## **Article VII** **EIC'S Representations and Warranties**

EIC represents and warrants as of the date hereof:

- (a) EIC, to the best of the knowledge of its Board of Directors, is legally authorized to enter into this Agreement by virtue of the statute under which it is governed and by the authorities and powers vested in it as a corporation duly and properly organized under the Act;
- (b) Execution of this Agreement has been duly authorized by EIC in accordance with the Act;

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(c) No litigation or governmental proceeding is pending, or, to the knowledge of any of EIC's officers, threatened against or affecting EIC, which may result in EIC's inability to meet its obligations under this Agreement; and

(d) Except as expressly set forth in this Article VII, EIC makes no other representation or warranty of any kind in connection with or related to the provisions of this Agreement.

## **Article VIII** **Conditions Under Which EIC May Suspend Performance** **of Its Obligations Under This Agreement**

EIC may, at its sole option and after fifteen (15) days written notice to KFOR, suspend EIC's performance under this Agreement until such time as KFOR shall have cured the condition(s) and so notified EIC, in writing, that the condition(s) have been cured:

(a) KFOR becomes insolvent;

(b) The appointment of a receiver of KFOR, or of all or any substantial part of the Property, and the failure of such receiver to be discharged within sixty (60) days thereafter;

(c) The adjudication of KFOR as bankrupt;

(d) The filing by KFOR of a petition to be adjudged as bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding; or

Should any of the foregoing conditions not be cured by KFOR within ninety (90) days after the onset of the condition, KFOR will be considered to have breached this Agreement and EIC may, at its option, with written notice to KFOR, terminate this Agreement and KFOR shall be obligated to refund the Grant to EIC. Termination of this Agreement pursuant to this Article VIII shall also constitute a default pursuant to the provisions of the Note and Deed of Trust.

## **Article IX** **Remedies**

9.1 Notice and Opportunity to Cure. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, by any Party,

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or any successor to such Party, such defaulting or breaching Party (or successor) shall upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In the event that remedial action is not taken or not diligently pursued and the default or breach shall not be cured or remedied within a reasonable time (but in no event later than ninety (90) days from the date of notification of such breach), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, seeking specific performance and/or injunctive relief, enforcement by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with this Agreement, as required by the Act. This provision and specifically the KFOR's right to receive notice and have time to cure shall not apply to KFOR's compliance with the provisions of Article IV.

9.2 Termination. Upon breach of this Agreement by either Party and the failure to cure as permitted by Section 9.1, the non-breaching Party shall have the sole right and discretion to either terminate this Agreement and/or pursue any and all remedies which may be provided by law and this Agreement. Each Party acknowledges and agrees that no Party hereunder shall be entitled to recover any amounts in excess of the Grant contracted for under this Agreement.

9.3 Delay Not Waiver. Any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not, so long as the breach or default by another Party shall be continuing, operate as a waiver of such rights or to deprive it of or limit such rights in any way; nor shall any waiver in fact be made by any party with respect to any specific default by any other party except to the extent specifically waived in writing.

## Article X General Provisions

10.1 Severability. The provisions of this Agreement are severable, and if for any reason a provision of this Agreement is determined to be invalid by a court having competent jurisdiction over the subject matter of the invalid provision, the invalidity shall not affect other provisions that can be given effect without the invalid provision. Further, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

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10.2 Amendment. This Agreement may be amended only by written amendment signed by both Parties.

10.3 Venue. All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in Kerrville, Kerr County, Texas. Venue shall lie in a state court of competent jurisdiction in Kerr County, Texas; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof.

10.4 Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as follows:

For EIC

*President*

City of Kerrville, Texas, Economic Improvement Corporation  
701 Main Street  
Kerrville, Texas 78028  
Facsimile: (830) 792-3850

*With a copy to:*

*City Manager*

City of Kerrville  
701 Main Street  
Kerrville, Texas 78028  
Facsimile: (830) 792-3850

For KFOR

Benjamin Modisett, President  
Kerrville's 4th on the River, Inc.  
P.O. Box 295081  
Kerrville, Texas 78029-5081  
ben@calliouxfoundation.org

# D R A F T 6/18/19

10.5 Assignment. This Agreement is binding upon the Parties and their successors and assigns. Except as set forth in Article V, this Agreement may not be assigned by either Party without the specific prior written consent of the other, which consent will not be unreasonably withheld. In the event that a Party consents to any valid assignment of this Agreement by the other Party, the assigning Party shall be relieved of any and all obligations and liabilities on the part of such assigning Party under this Agreement.

10.6 Parties in Interest. Nothing in this Agreement shall entitle any party other than KFOR or EIC to any claim, cause of action, remedy, or right of any kind except as expressly provided in Article IX.

10.7 Interpretation. Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

10.8 No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties.

10.9 Survival of Terms. All rights, duties, liabilities, and obligations accrued prior to termination shall survive termination.

10.10 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof.

10.11 Recitals. The recitals to this Agreement are incorporated herein.

10.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

10.13 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

10.14 Employment of Undocumented Workers. During the term of this Agreement, KFOR agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), KFOR shall repay the Grant herein and any other funds received by KFOR from EIC as of the date of such

# **D R A F T 6/18/19**

violation within 120 days after the date KFOR is notified by EIC of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. KFOR is not liable for a violation of this Section by a subsidiary, Affiliate, or franchisees of KFOR or by a person with whom KFOR contracts, or any other Person other than KFOR.

*(Signature Page to Follow)*

# D R A F T 6/18/19

SIGNED AND AGREED on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF KERRVILLE, TEXAS ECONOMIC  
IMPROVEMENT CORPORATION**

By: \_\_\_\_\_  
Kenneth Early, President

**Attest:**

By: \_\_\_\_\_  
Cheryl Brown, Recording Secretary

**Approved as to Form:**

By : \_\_\_\_\_  
Michael C. Hayes, Attorney for EIC

SIGNED AND AGREED on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**KERRVILLE'S 4<sup>TH</sup> ON THE RIVER, INC.**

By: \_\_\_\_\_  
Benjamin Modisett, President

**D R A F T 6/18/19**

**EXHIBIT A**

**IMPROVEMENTS**  
**(description of project)**



**D R A F T 6/18/19**

**EXHIBIT B**  
**FORM OF PROMISSORY NOTE**

## PROMISSORY NOTE

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Borrower:** Kerrville's 4th on the River, Inc., a Texas non-profit corporation

**Borrower's Mailing Address:** P.O. Box 295081, Kerrville, Kerr County, Texas 78029-5081

**Lender:** City of Kerrville, Texas, Economic Improvement Corporation, a Texas non-profit corporation

**Place for Payment:** 701 Main Street, Kerrville, Kerr County, Texas 78028

**Principal Amount:** SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)

**Annual Interest Rate:** THREE PERCENT (3.00%).

**Maturity Date:** The later of (a) October 1, 2023, or (b) the third (3rd) anniversary of the date Completion of Work of the Project as defined in the Economic Development Incentive Agreement.

**Annual Interest Rate on Matured, Unpaid Amounts:** Maximum allowed by law.

**Terms of Payment (principal and interest):**

**Date Annual Interest Commences to Accrue on Principal:** The date Lender advances to Borrower ("the Funding Date") the Principal Amount in accordance with the provision of the Economic Development Incentive Agreement.

**Payment Date:** The Principal Amount and all accrued interest shall be paid in one (1) installment on the Maturity Date.

**Reduction and Forgiveness of Principal:** Lender understands and agrees that the Principal Amount shall be reduced and forgiven in accordance with Section 4.9 of the Economic Development Incentive Agreement, which provision is incorporated herein by reference.

**Security for Payment:** This Note is secured by a lien described in that certain deed of trust of even date herewith signed by Borrower and granted to Michael C. Hayes, Trustee, for the benefit of Lender, said deed of trust lien attaching to the real property located in Kerr County, Texas, and described more fully in **Exhibit A**, attached hereto and incorporated herein by reference.

**Other Security for Payment:** None.

Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. After maturity, Borrower promises to pay any unpaid principal balance plus interest at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower may pay the unpaid balance of the Principal Amount, in whole or in part, and all accrued interest thereon at any time prior to the Maturity Date without penalty.

If Borrower defaults in the payment of this note or in the performance of any obligation in any instrument securing or collateral to this note, including, but not limited to, a default of the Economic Development Incentive Agreement, and such default continues for a period of thirty (30) days after Lender sends Borrower written notice of such default, Lender may declare the unpaid principal balance, earned interest, and any other amounts owed on the note immediately due. Borrower and each surety, endorser, and guarantor waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney's fees and court and other costs if this note is placed in the hands of an attorney to collect or enforce the note. These expenses will bear interest from the date that Lender sends Borrower written demand to pay such expenses, at the Annual Interest Rate on Matured, Unpaid Amounts. Borrower will pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by the note and will be secured by any security for payment.

Interest on the debt evidenced by this note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this note and all other instruments concerning the debt.

Borrower acknowledges and agrees that the loan represented by this note is made pursuant to and subject to that certain Economic Development Incentive Agreement dated and effective June \_\_, 2019, between Borrower and Lender ("the Economic Development Incentive Agreement"), the terms of which, to the extent that they affect and govern the payment of the Principal Amount and interest in this Note are incorporated herein by reference.

Borrower and Lender further acknowledge that the Economic Development Incentive Agreement is entered pursuant to the Development Corporation Act, Chapters 501-505, Texas Local Government Code (the "Act"). Borrower and Lender understand, acknowledge, and agree that the proceeds advanced by Lender will be used to pay costs for the construction of the Improvements (as defined in the Economic Development Incentive Agreement) and constitutes a Project under the Act.

Borrower is responsible for all obligations represented by this note.

When the context requires, singular nouns and pronouns include the plural.

**KERRVILLE'S 4<sup>TH</sup> ON THE RIVER, INC.**

By: \_\_\_\_\_  
Benjamin Modisett, President

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Being a tract of land containing 0.361 acre in the B.F. Cage Survey No. 116, Abstract No. 106, Kerrville, Texas, and being a portion of what is commonly known as Lot 5 of Block 24 of the J.D. Brown's Addition to the City of Kerrville as recorded in Volume 1, Pages 1 through 6 of the Kerr County Plat Records, Kerr County, Texas, and being composed of four tracts collectively containing said 0.361 acre; said four tracts are listed herein in the chronological order of the conveyances; a 0.261 acre tract conveyed to Hall Industries from J.F. Johnson of record in Volume 62, Page 622 of the Kerr County Deed Records (K.C.D.R.), a 0.05 acre tract conveyed to Hall Industries from Doris Johnson of record in Volume 87, Page 257 of the K.C.D.R., and a 0.04 acre tract and a 0.01 acre tract conveyed to Hall Industries from Doris Johnson of record in Volume 87, Page 258 of the K.C.D.R.; said four tracts also being collectively conveyed to David Jackson, Trustee, from Hall Industries by instrument of record in Volume 455, Page 356 of the Kerr County Real Property Records and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the southwest right-of-way line of Water Street which bears S 45 deg. E, 183.1 feet from the intersection of the southeast right-of-way line of Sidney Baker with the southwest right-of-way line of Water Street; said point being the north corner of the herein described tract and being located along a lead expansion joint in a terrazzo sidewalk and being located northeast one foot off the northeast face of the Arcadia Theatre;

THENCE S 45 deg. 13' E, 15.66 feet to a point in another lead expansion joint for the most northerly northeast corner of the herein described tract and the north corner of a tract conveyed to Kenneth Krohn from Doris Johnson by deed of record in Volume 419, Page 52 of the Kerr County Real Property Records;

THENCE S 44 deg. 15' W, passing at one foot the northeast face of the Arcadia Theatre and continuing along the center of the party wall of said Theatre and Krohn tract for a total distance of 56.39 feet; S 44 deg. 40' E, 4.77 feet to a point on the southeast face of the wall of said Theatre;

THENCE with said southeast face, S 44 deg. 23' W, 30.25 feet to a point for a reentrant corner of the herein described tract;

THENCE through the interior of one story building, S 45 deg. 00' E, 12.71 feet to a point atop a concrete retaining wall;

THENCE with the southeast line of said Theatre property and the northwest line of the NCNB tract, S 45 deg. 00' W, 163.37 feet to an iron rod found for the south corner of the herein described tract on the low bank of the Guadalupe River;

THENCE with the low bank of said river along a line parallel to the river's waters edge, N 45 deg. 00' W, 82.75 feet to an iron rod found for the west corner of the herein described tract;

THENCE N 45 deg. 00' E, passing at 62.50 feet a 3/8" iron rod and continuing for a total distance of 172.75 feet to the most westerly northeast corner of the herein described tract;

THENCE S 44 deg. 04' E, passing at 10.00 feet the north corner of the auditorium portion of said Theatre, and continuing along the northeast face of said auditorium for a total distance of 25.90 feet to a point in the center of a party wall and being a reentrant corner of the herein described tract;

THENCE with the center of said party wall the following courses:

N 44 deg. 42' E, 9.90 feet;

S 44 deg. 52' E, 17.77 feet;

N 45 deg. 12' E, 6.25 feet;

S 44 deg. 17' E, 5.72 feet;

N 44 deg. 15' E, 61.61 feet to the POINT OF BEGINNING and containing 0.361 acre, more or less, within these metes and bounds.

**D R A F T 6/18/19**

**EXHIBIT C**  
**FORM OF DEED OF TRUST**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

**STATE OF TEXAS**                    §  
    §  
**COUNTY OF KERR**                    §

**Deed of Trust**

**Terms**

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Grantor:** Kerrville's 4th on the River, Inc., a Texas non-profit corporation

**Grantor's Mailing Address:** P.O. Box 295081, Kerrville, Kerr County, Texas 78029-5081

**Trustees:** Michael C. Hayes

**Trustee's Mailing Address:** 701 Main Street, Kerrville, Kerr County, Texas 78028

**Lender:** City of Kerrville, Texas, Economic Improvement Corporation, a Texas non-profit corporation

**Lender's Mailing Address:** 701 Main Street, Kerrville, Kerr County, Texas 78028

**Obligation**

**Note**

**Date:** \_\_\_\_\_, 20\_\_\_\_

**Original principal amount:** \$600,000.00

**Borrower:** Kerrville's 4th on the River, Inc.

**Lender:** City of Kerrville, Texas, Economic Improvement Corporation

**Maturity date:** As set forth in the Promissory Note secured hereby.

**Other Debt:** None

**Property (including any improvements):** An approximately 0.361 acre tract of land situated in the B.F. Cage Survey No. 116, Abstract No. 106, Kerr County, Texas, said tract of land being more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference.

**Prior Lien:** None

**Other Exceptions to Conveyance and Warranty:** (i) Any and all matters affecting the state of title to the Property recorded in the appropriate public records of Kerr County, Texas, or visible or apparent from an inspection of the Property, and (ii) all zoning, building and other laws, regulations and ordinances of any and all municipal, governmental and quasi-governmental bodies and agencies having jurisdiction over the Property or any part thereof.

For value received and to secure payment of the Obligation, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Prior Lien and Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

### **Clauses and Covenants**

#### **A. Grantor's Obligations**

Grantor agrees to—

1. keep the Property in good repair and condition;
2. pay all taxes and assessments on the Property before delinquency, not authorize a taxing entity to transfer its tax lien on the Property to anyone other than Lender, and not request a deferral of the collection of taxes pursuant to section 33.06 of the Texas Tax Code;
3. defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;
4. obey all laws, ordinances, and restrictive covenants applicable to the Property; and
5. if the lien of this deed of trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments.

#### **B. Lender's Rights**

1. Lender may appoint in writing a substitute trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the Obligation are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.

3. Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at Lender's discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.

4. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

5. If there is a default on the Obligation or if Grantor fails to perform any of Grantor's obligations, and the default continues for a period of 30 days after Lender sends Grantor written notice of such default, Lender may—

a. declare the unpaid principal balance and earned interest on the Obligation immediately due;

b. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and

c. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

6. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

#### **C. Trustee's Rights and Duties**

If directed by Lender to foreclose this lien, Trustee will—

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;

2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;

3. from the proceeds of the sale, pay, in this order—

a. expenses of foreclosure, including a reasonable commission to Trustee;

b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;

- c. any amounts required by law to be paid before payment to Grantor; and
- d. to Grantor, any balance; and

4. be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

#### **D. General Provisions**

1. If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

2. Recitals in any trustee's deed conveying the Property will be presumed to be true.

3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

4. This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.

5. If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.

6. Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

7. Grantor assigns to Lender absolutely, not only as collateral, all present and future rent and other income and receipts from the Property. Grantor warrants the validity and enforceability of the assignment. Grantor may as Lender's licensee collect rent and other income and receipts as long as Grantor is not in default with respect to the Obligation or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the Obligation and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due with respect to the Obligation and the deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the Obligation or performance of this deed of trust, Lender may terminate Grantor's license to collect rent and other income and then as Grantor's agent may rent the Property and collect all rent and other income and receipts. Lender neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Lender may exercise Lender's

rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Lender's rights and remedies and then to Grantor's obligations with respect to the Obligation and this deed of trust in the order determined by Lender. Lender is not required to act under this paragraph and acting under this paragraph does not waive any of Lender's other rights or remedies.

8. Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

9. In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

10. When the context requires, singular nouns and pronouns include the plural.

11. The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

12. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

13. If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

14. Grantor and each surety, endorser, and guarantor of the Obligation waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

15. Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

16. If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

17. Grantor acknowledges that this deed of trust and the Note are made pursuant to and subject to that certain Economic Development Incentive Agreement dated and effective June \_\_, 2019, between Grantor and Lender ("the Economic Development Incentive Agreement"), the terms of which, to the extent that they affect and govern the payment of the Principal Amount and interest in the Note or the terms of this deed of trust, are incorporated herein by reference. Grantor

further acknowledges that the Economic Development Incentive Agreement is entered pursuant to the Development Corporation Act, Chapters 501-505, Texas Local Government Code (the “Act”). Grantor understands, acknowledges, and agrees that the proceeds advanced by Lender will be used to pay costs for the construction of the Improvements (as defined in the Economic Development Incentive Agreement) and constitutes a Project under the Act. Lender understands and agrees that the Principal Amount of the Note shall be forgiven in accordance with Section 4.9 of the Economic Development Incentive Agreement, which provision is incorporated herein by reference.

18. Grantor hereby grants Lender a right of first refusal with respect to Grantor’s power to authorize any third party (other than Lender pursuant to its rights as set forth in this instrument) to pay ad valorem taxes on the Property and authorize a taxing entity to transfer its tax lien on the Property to that third party. Grantor’s authorization to any third party (other than Lender) to pay the ad valorem taxes and receive transfer of a taxing entity’s lien for ad valorem taxes shall be null and void and of no force and effect unless Lender, within ten days after receiving written notice from Grantor, fails to pay the ad valorem taxes pursuant to Lender’s rights as set forth in this instrument.

### **KERRVILLE’S 4TH ON THE RIVER, INC.**

By: \_\_\_\_\_  
Benjamin Modisett, President

### **ACKNOWLEDGMENT**

STATE OF TEXAS                    §  
    §  
COUNTY OF KERR §

This instrument was acknowledged before me, the undersigned authority, on \_\_\_\_\_, 20\_\_\_\_, by Benjamin Modisett, President of Kerrville’s 4th on the River, Inc., a Texas non-profit corporation, for and on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_

**D R A F T 6/18/19**

**EXHIBIT D**  
**PROPERTY DESCRIPTION**

**EXHIBIT D**  
**PROPERTY DESCRIPTION**

Being a tract of land containing 0.361 acre in the B.F. Cage Survey No. 116, Abstract No. 106, Kerrville, Texas, and being a portion of what is commonly known as Lot 5 of Block 24 of the J.D. Brown's Addition to the City of Kerrville as recorded in Volume 1, Pages 1 through 6 of the Kerr County Plat Records, Kerr County, Texas, and being composed of four tracts collectively containing said 0.361 acre; said four tracts are listed herein in the chronological order of the conveyances; a 0.261 acre tract conveyed to Hall Industries from J.F. Johnson of record in Volume 62, Page 622 of the Kerr County Deed Records (K.C.D.R.), a 0.05 acre tract conveyed to Hall Industries from Doris Johnson of record in Volume 87, Page 257 of the K.C.D.R., and a 0.04 acre tract and a 0.01 acre tract conveyed to Hall Industries from Doris Johnson of record in Volume 87, Page 258 of the K.C.D.R.; said four tracts also being collectively conveyed to David Jackson, Trustee, from Hall Industries by instrument of record in Volume 455, Page 356 of the Kerr County Real Property Records and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the southwest right-of-way line of Water Street which bears S 45 deg. E, 183.1 feet from the intersection of the southeast right-of-way line of Sidney Baker with the southwest right-of-way line of Water Street; said point being the north corner of the herein described tract and being located along a lead expansion joint in a terrazzo sidewalk and being located northeast one foot off the northeast face of the Arcadia Theatre;

THENCE S 45 deg. 13' E, 15.66 feet to a point in another lead expansion joint for the most northerly northeast corner of the herein described tract and the north corner of a tract conveyed to Kenneth Krohn from Doris Johnson by deed of record in Volume 419, Page 52 of the Kerr County Real Property Records;

THENCE S 44 deg. 15' W, passing at one foot the northeast face of the Arcadia Theatre and continuing along the center of the party wall of said Theatre and Krohn tract for a total distance of 56.39 feet; S 44 deg. 40' E, 4.77 feet to a point on the southeast face of the wall of said Theatre;

THENCE with said southeast face, S 44 deg. 23' W, 30.25 feet to a point for a reentrant corner of the herein described tract;

THENCE through the interior of one story building, S 45 deg. 00' E, 12.71 feet to a point atop a concrete retaining wall;

THENCE with the southeast line of said Theatre property and the northwest line of the NCNB tract, S 45 deg. 00' W, 163.37 feet to an iron rod found for the south corner of the herein described tract on the low bank of the Guadalupe River;

THENCE with the low bank of said river along a line parallel to the river's waters edge, N 45 deg. 00' W, 82.75 feet to an iron rod found for the west corner of the herein described tract;

THENCE N 45 deg. 00' E, passing at 62.50 feet a 3/8" iron rod and continuing for a total distance of 172.75 feet to the most westerly northeast corner of the herein described tract;

THENCE S 44 deg. 04' E, passing at 10.00 feet the north corner of the auditorium portion of said Theatre, and continuing along the northeast face of said auditorium for a total distance of 25.90 feet to a point in the center of a party wall and being a reentrant corner of the herein described tract;

THENCE with the center of said party wall the following courses:

N 44 deg. 42' E, 9.90 feet;

S 44 deg. 52' E, 17.77 feet;

N 45 deg. 12' E, 6.25 feet;

S 44 deg. 17' E, 5.72 feet;

N 44 deg. 15' E, 61.61 feet to the POINT OF BEGINNING and containing 0.361 acre, more or less, within these metes and bounds.



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

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**SUBJECT:** Economic Incentive Agreement between the Kerrville 4th on the River and the City of Kerrville, TX utilizing Hotel Occupancy Tax Funds for the renovation of the Arcadia Theater

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 18, 2019

**SUBMITTED BY:** EA Hoppe

**EXHIBITS:**

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<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$400,000	\$400,000	N/A (HOT Reserve Fund)	N/A (HOT Reserve Fund)

**PAYMENT TO BE MADE TO:** Kerrville 4th on the River

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<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	D1. Create a “living room” for the community and a “front door” for visitors—a full-service destination that attracts anchor uses and increased residential and mixed-use development.
<b>Action Item</b>	D1.7 - Support the conversion of the Arcadia Theater to a live music event venue

**SUMMARY STATEMENT:**

The Arcadia Theater located in Downtown Kerrville along Water Street was recently acquired by the non-profit entity, Kerrville 4th on the River (KFOR). The non-profit intends to conduct a \$2.3 million renovation of the facility in order to utilize the building for live music and other performances. These performances would have a catalyzing effect for Downtown Kerrville and its merchants by increasing patron foot traffic in the area. The scale and quality of the proposed performances could also have a likely effect of drawing in patrons from outside the local market, enhancing the local tourism industry and hotel occupancy rates.

Supporting the conversion of the Arcadia Theater to a live music event venue was identified as a specific Action Item in the Kerrville 2050 Comprehensive Plan under the Downtown Revitalization Guiding Principal of creating a “living room” for the community and a “front door” for visitors – a full service destination that attracts anchor uses and increased residential and mixed-use development. As such, the non-profit entity has requested public assistance with the funding of the renovation effort. Kerrville 4th on the River has requested \$600,000 from the Economic Improvement Corporation (EIC) towards the overall \$2.3 million construction budget as part of a combination Quality of Life and Business Development project. An additional \$400,000 has been requested from previously collected Hotel Occupancy Tax (HOT) Reserve Funds, which was directly submitted to the City, as HOT Funds are under the purview of the City of Kerrville City Council. The remainder balance of the renovation funds are intending to be raised via donation and private philanthropy.

The HOT-related Economic Incentive Agreement generally mirrors the terms of the EIC Agreement. However, the HOT-related Agreement has been drafted as a ten year agreement, as opposed to the three year EIC Agreement. In addition, the HOT Agreement also has a provision for an easement to be relayed to the City from the property owner for the purposes of eventually constructing an extension of the River Trail in the area.

A copy of the Agreement will be provided to the City Council in advance of the Tuesday Regular City Council meeting.

**RECOMMENDED ACTION:**

Authorize the City Manager to finalize and execute the Agreement.



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

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**SUBJECT:** Construction contract with ACE Co. for the Hill Country Drive Reconstruction project in the amount of \$162,291.15

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 14, 2019

**SUBMITTED BY:** Kyle Burow

**EXHIBITS:** [20190625\\_Bid\\_Hill Country Drive Recommendation Letter.pdf](#)  
[20190625\\_Bid\\_Hill Country Drive Bid Tab.pdf](#)

---

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$162,291.15	\$1,322,861.97	\$1,625,723.10	01-0161-2420

**PAYMENT TO BE MADE TO:** ACE Co.

---

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	W - Water / Waste-Water / Drainage
<b>Guiding Principle</b>	W7. Develop and maintain a long-range plan for stormwater/drainage management, addressing and prioritizing infrastructure needs and identifying funding sources
<b>Action Item</b>	W7.3 - Explore a variety of options, including bond funding or city-wide drainage fees, to address drainage infrastructure concerns

**SUMMARY STATEMENT:**

Hill Country Drive near Sidney Baker has historically been known as a drainage problem area in storm events and is identified as one of 13 problem areas listed in the Stormwater Master Plan currently being conducted. The existing storm drain system results in roadway storm water overtopping the street surface, street closures, and frequent stalling of vehicles due to the roadway sag being located at the flowline of two large drainage outfall pipes. City staff hired 6S Engineering to assist in designing a mitigation strategy to help better alleviate the drainage issues along Hill Country Drive associated with smaller storm events, recognizing this as the first phase in a series of improvements that will need to be made to mitigate larger storm events.

The project entails the removal of existing asphalt for approximately 250 linear feet near Sidney Baker (Highway 16) to the west, and to raise the roadway enough to allow for storm water drainage flows to enter into the existing culverts without ponding along Hill Country Drive during small storm events. Design documents were recently completed, and the project was placed for advertisement with the bid opening held June 14, 2019. Four bids were received with ACE Co. as the lowest apparent qualified bid. 6S Engineering and City staff evaluated the bid and recommend awarding the construction contract to ACE Co. to complete the project in the amount of \$162,291.15.

**RECOMMENDED ACTION:**

Authorize the City Manager to execute a construction contract with ACE Co.



June 18, 2019

Mr. Kyle Burow, P.E., CFM  
City of Kerrville  
701 Main Street  
Kerrville, TX 78028

Reference: 2019 Hill Country Drive Reconstruction

Dear Mr. Burow:

6S Engineering, Inc. has reviewed the bid proposals for the above referenced project. There were four (4) bidders for the project. It is recommended that ACECO Construction, Inc. be awarded the Base Bid contract for the Base Bid amount of \$162,291.15. If there are any questions or concerns, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink that reads "Jess W. Swaim".

Jess Swaim, P.E.  
Vice President

**BID TAB**  
**HILL COUNTRY DRIVE - KERRVILLE, TX**

\* Mathematical Error corrected by Engineer



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

---

**SUBJECT:** Resolution No. 20-2019. A resolution amending the City of Kerrville Fee Schedule by adopting a fee to be charged with respect to an application for a variance to the distance limitations per chapter 10 of the City Code; and revising the existing fees applicable to residential building permits

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 19, 2019

**SUBMITTED BY:** Amy Dozier

**EXHIBITS:** [20190625\\_Resolution\\_20-2019 Amending Fee Schedule Residential Building Permits.pdf](#)  
[20190625\\_Resolution\\_Exhibit A.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

Adjustments to the Fee Schedule are being proposed due to the following:

1. House Bill 852 was recently signed into law by Governor Abbott. The law prohibits cities from using the value of a dwelling or the cost of any construction as a basis for building permit fees. The law is effective immediately. The City's fee structure previously used valuation to determine permit fees. Going forward, staff proposes basing the permit fee on square footage rather than value. We expect this fee structure change to be revenue neutral and fees generated will not be in excess of costs required to issue the permit.
2. Ordinance No. 2019-12 amends the Alcoholic Beverage chapter (Chapter 10) of the City's Code of Ordinances. The ordinance includes the adoption of a variance process related to the distance requirement of establishments selling alcohol from churches, public

hospitals, schools and child-care facilities. The ordinance references a fee for the variance request, but the City's current fee structure does not contain that fee. Staff proposes a fee of \$150 for this variance request, which is the same amount currently charged for a zoning variance request.

**RECOMMENDED ACTION:**

Approve Resolution No. 20-2019 as presented.

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 20-2019**

**A RESOLUTION AMENDING THE CITY OF KERRVILLE FEE SCHEDULE BY ADOPTING A FEE TO BE CHARGED WITH RESPECT TO AN APPLICATION FOR A VARIANCE TO THE DISTANCE LIMITATIONS PER CHAPTER 10 OF THE CITY CODE; AND REVISING THE EXISTING FEES APPLICABLE TO RESIDENTIAL BUILDING PERMITS**

**WHEREAS**, the City Council of the City of Kerrville adopted a Fee Schedule by Resolution No. 91-138 on September 24, 1991, and has amended said document on a number of occasions; and

**WHEREAS**, as part of the City's amendments to Chapter 10 "Alcoholic Beverages" of the City's Code of Ordinances, which in part, adopted a variance process applicable to distance limitations imposed on specified sellers of alcoholic beverages, the Development Services Department recommends amending the City's Fee Schedule to adopt a fee to be charged with respect to an application for said variance; and

**WHEREAS**, in order to comply with a new state law (House Bill 852), the Development Services Department also recommend revising existing fees applicable to residential building permits, as required in connection with the construction or improvement of a residential dwelling; and

**WHEREAS**, City Council has determined it is in the public interest of the citizens of Kerrville to establish and revise such fees as provided herein;

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

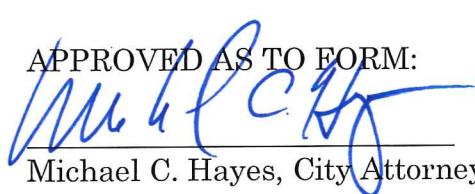
City Council amends the Fee Schedule of the City of Kerrville, Texas, as set forth in **Exhibit A**, and attached and incorporated herein by reference, such changes to be effective immediately.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2019.**

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Bill Blackburn, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

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Shelley McElhannon, City Secretary

**City of Kerrville  
Fee Schedule Change**

<b>Current</b>			<b>Proposed</b>		
<b>BUILDING PERMITS (single family):</b>			<b>BUILDING PERMITS (single and two family residential):</b>		
Basic Permit (value up to \$1,000) <b>plus</b>	\$25.00	per permit	Minimum charge	\$25.00	per square foot (all floor area under roof)
<u>\$1,001 - \$50,000</u>	<u>\$5.00</u>	<u>per \$1,000</u>	New construction	<u>\$0.36</u>	<u>per square foot (all floor area under roof)</u>
<u>\$50,001 - \$100,000</u>	<u>\$4.00</u>	<u>per \$1,000</u>	Addition	<u>\$0.36</u>	<u>per square foot (all floor area under roof)</u>
<u>\$100,001 - \$500,000</u>	<u>\$3.00</u>	<u>per \$1,000</u>	Alteration	<u>\$0.21</u>	<u>per square foot (all floor area under roof)</u>
<u>\$500,001 and up</u>	<u>\$2.00</u>	<u>per \$1,000</u>	Fire Repair	<u>\$0.21</u>	<u>per square foot (all floor area under roof)</u>
			Storage Buildings > 200 sq feet	<u>\$0.21</u>	<u>per square foot (all floor area under roof)</u>
			Building permit extension		50% of original permit fee
<b>ALCOHOLIC BEVERAGE DISTANCE VARIANCE REQUEST:</b>					
<u>none</u>				\$150.00	per request



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

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**SUBJECT:** Financial update for the month ended May 31, 2019.

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 18, 2019

**SUBMITTED BY:** Amy Dozier

**EXHIBITS:** [20190625\\_Presentation\\_May 2019 financial presentation.pdf](#)  
[20190625\\_Presentation\\_May 2019 financial summary.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

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**SUMMARY STATEMENT:**

**GENERAL FUND:**

Year to date through May 31, 2019, the General Fund has recorded revenue of \$21.0 million compared to expense of \$16.6 million. It is normal for revenue to be higher than expenditures at this time of year because most property taxes are due by January 31st. Items to note for May include:

1. Strong sales tax performance continues. Year to date, sales tax is up 4.8% over 2018 and is 2.6% better than budget, led by increases in retail, food service, manufacturing and construction. May's numbers are unusually low because 2 large tax payers prepaid sales tax in April that the City would normally receive in May.

**WATER FUND:**

Year to date through May 31, 2019, the Water Fund received revenues of \$7.3 million compared to expenditures of \$8.1 million. Notable activity includes:

1. Water and reuse sales are lower than budget and FY2018 due to record rainfall amounts in October 2018 followed by continuing higher than average rainfall. Year to date rainfall amounts in FY2019 are 22" higher than the same period in FY2018. Year to date consumption is down 15%. Water sales are very volatile and highly weather dependent. We are hoping to make up some of the lost revenue in the dryer summer months, but may be facing a shortfall for the year.
2. Sewer sales are lower than budget. Residential sewer averaging for the next 12 months was set in April. Average residential consumption gallons were 4% lower during the averaging period in FY2019 compared to FY2018. This seems to be related to decreased residential irrigation during the sewer averaging period due to rain. We are currently projecting a \$225K sewer revenue shortfall for the year due to decreased sewer averaging combined with lower commercial sewer revenue related to reduced consumption.
3. Water expenditures are better than budget due to lower than anticipated chemical and maintenance costs. In addition, staffing vacancies in Water Distribution have created salary savings.

#### DEVELOPMENT SERVICES FUND:

Year to date through May 31, 2019, the Development Services Fund received revenues of \$783 thousand compared to expenditures of \$885 thousand. Revenue includes transfers in from the General Fund and Water Fund of \$472 thousand and permit and fee revenue of \$310 thousand. FY2019 expenditures include a transfer of \$379 thousand to a project fund for the code rewrite and Development Services software projects. The Development Services Fund was broken out of the General Fund in FY2019. For presentation and comparison purposes, FY2018 financial information is shown in the Development Services Fund rather than the General Fund.

#### GOLF FUND:

Year to date through May 31, 2019, the Golf Fund received revenues of \$543 thousand compared to expenditures of \$583 thousand. FY2019 revenue is lower than budget and FY2018 primarily due to record rainfall in October and continuing bad weather days.

#### HOTEL OCCUPANCY FUND:

Year to date through May 31, 2019, the Hotel Occupancy Fund received revenues of \$893 thousand compared to expenditures of \$865 thousand.

**RECOMMENDED ACTION:**

Information only; no action required.



# **Financial update for the month ended May 31, 2019**

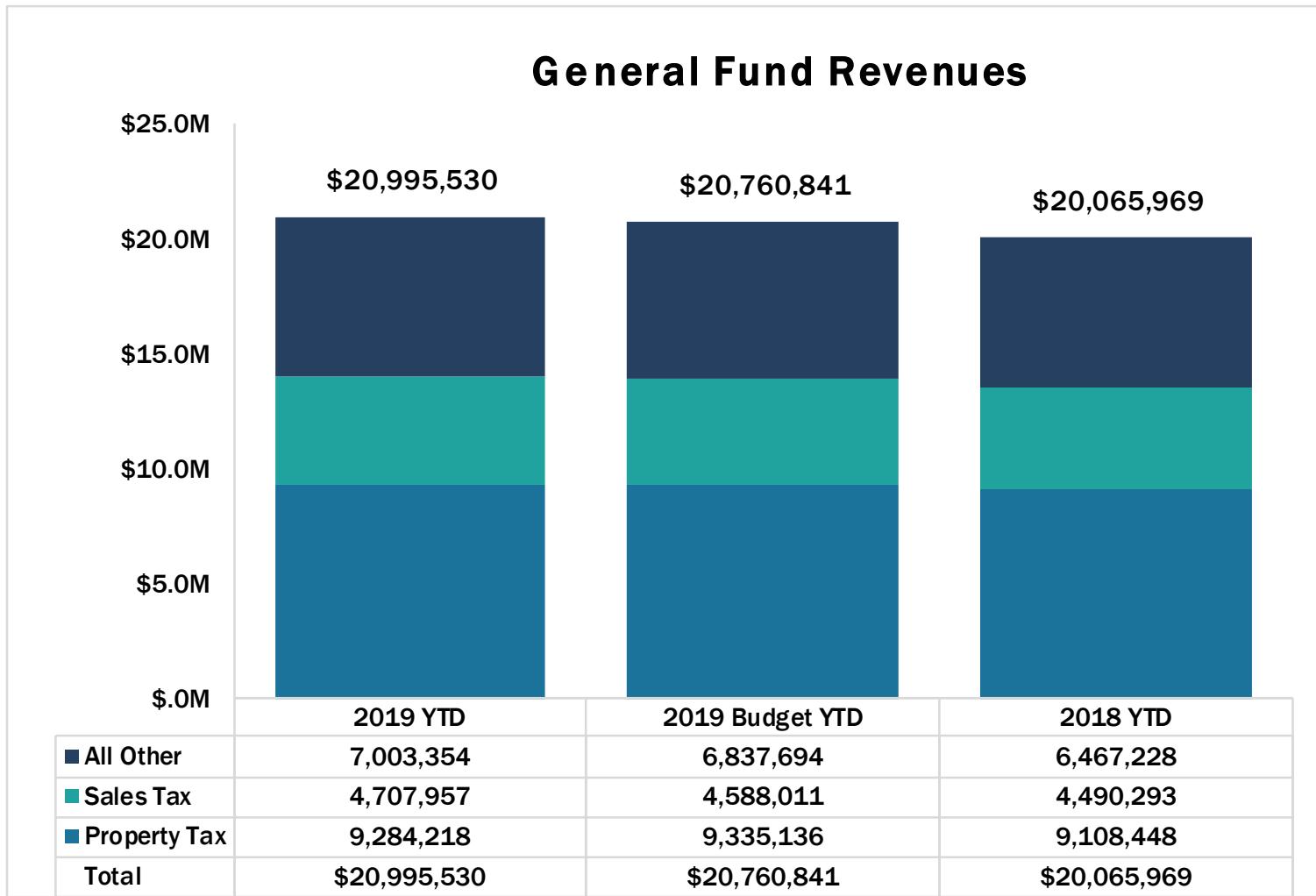
**City Council Meeting  
June 25, 2019**



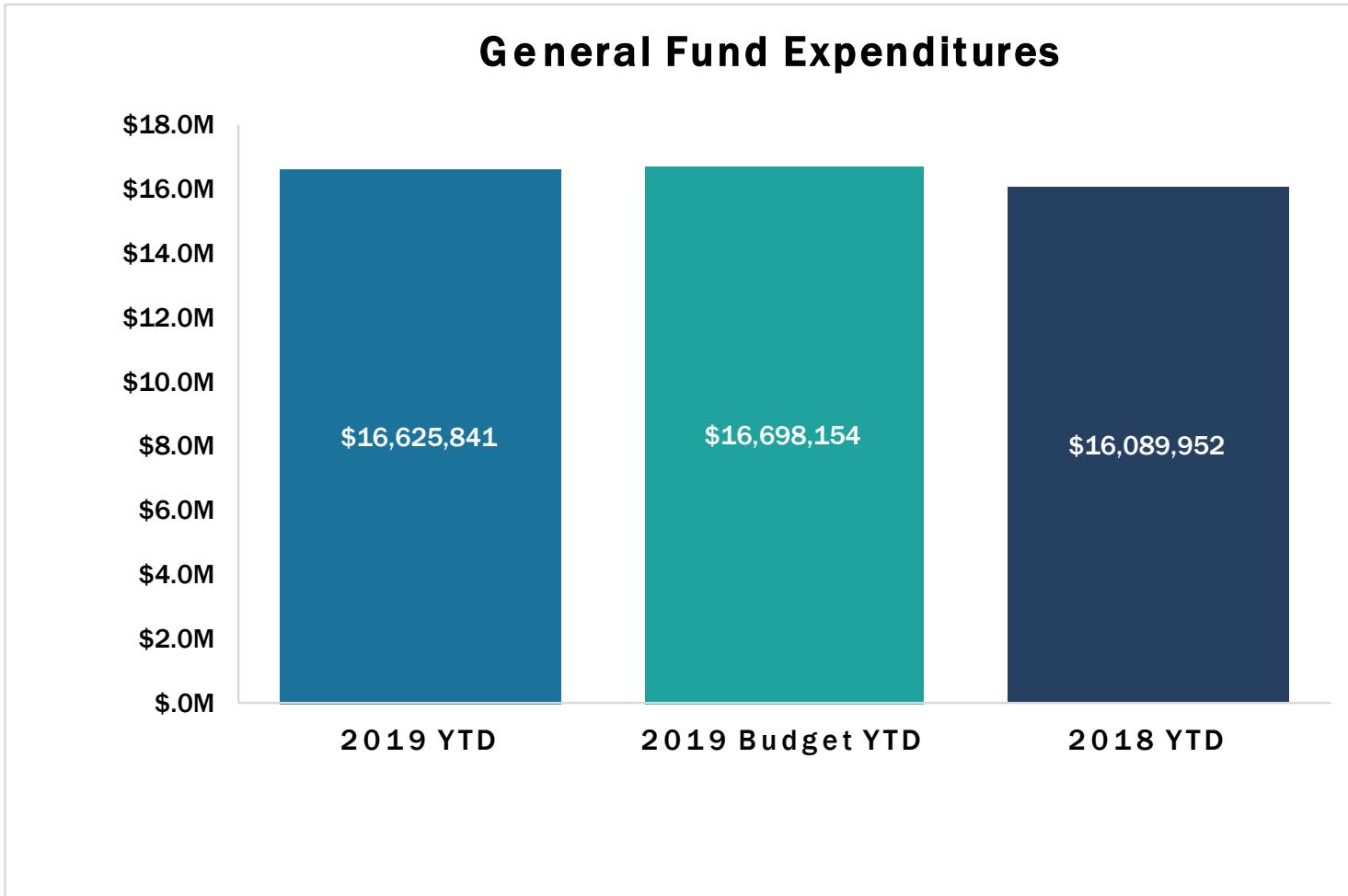
# General Fund Summary

Fund	Total	Year to Date	Year to Date	Better /	Year to Date	Change
	FY2019	FY2019	FY2019	(Worse)	FY2018	from
	Budget	Budget	Actual	than Budget	Actual	FY2018
<b>General Fund</b>						
Revenues						
Property Tax	\$ 9,628,930	\$ 9,335,136	\$ 9,284,218	\$ (50,918)	\$ 9,108,448	\$ 175,771
Sales Tax	7,049,268	4,588,011	4,707,957	119,947	4,490,293	217,664
Other Revenue	<u>10,525,312</u>	<u>6,837,694</u>	<u>7,003,354</u>	<u>165,660</u>	<u>6,467,228</u>	<u>536,126</u>
Total Revenue	27,203,510	20,760,841	20,995,530	234,689	20,065,969	929,561
Expenditures	<u>27,203,510</u>	<u>16,698,154</u>	<u>16,625,841</u>	<u>72,313</u>	<u>16,089,952</u>	<u>535,889</u>
Net	-	4,062,687	4,369,689	307,002	3,976,017	393,672

# General Fund Revenues



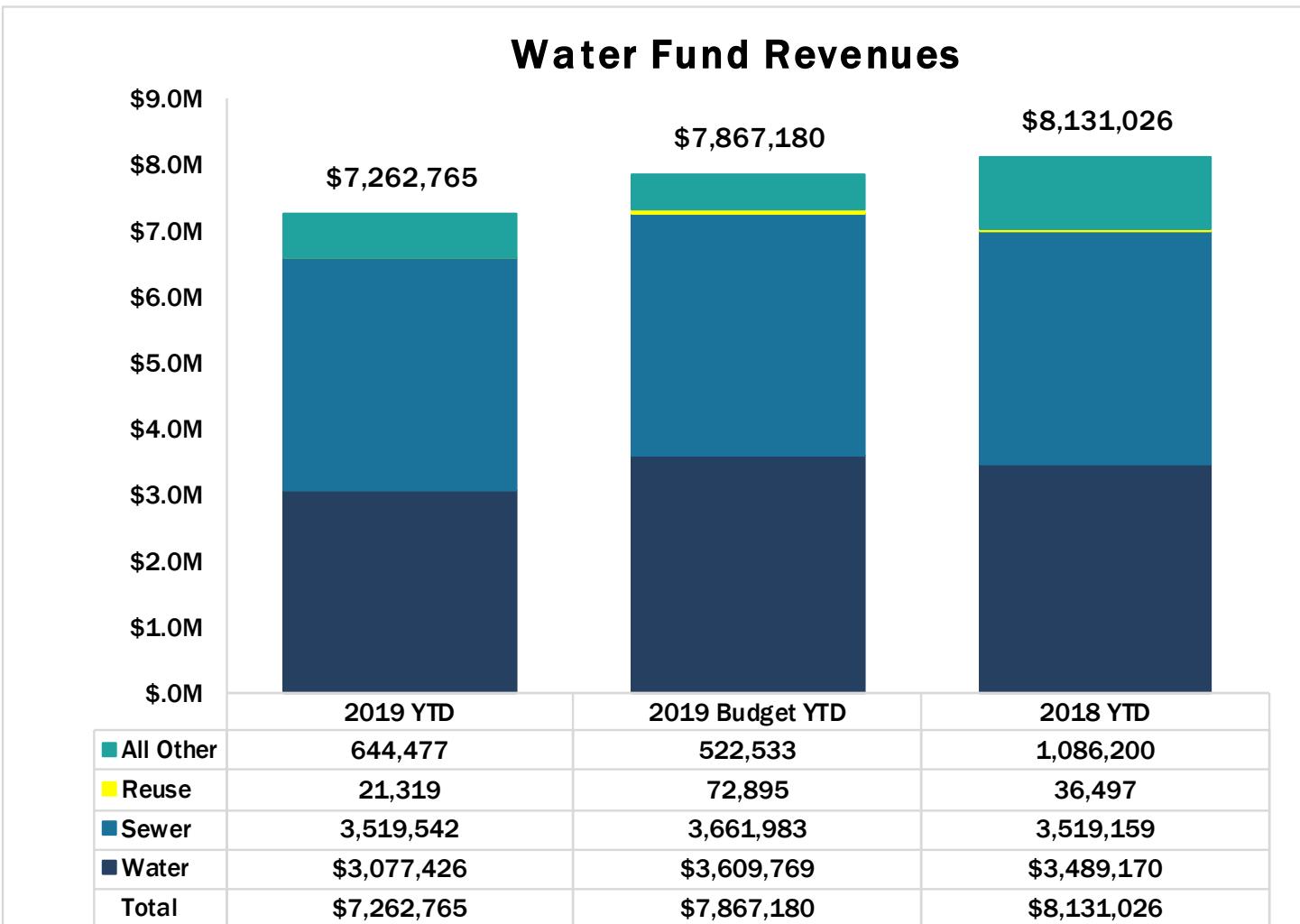
# General Fund Expenditures



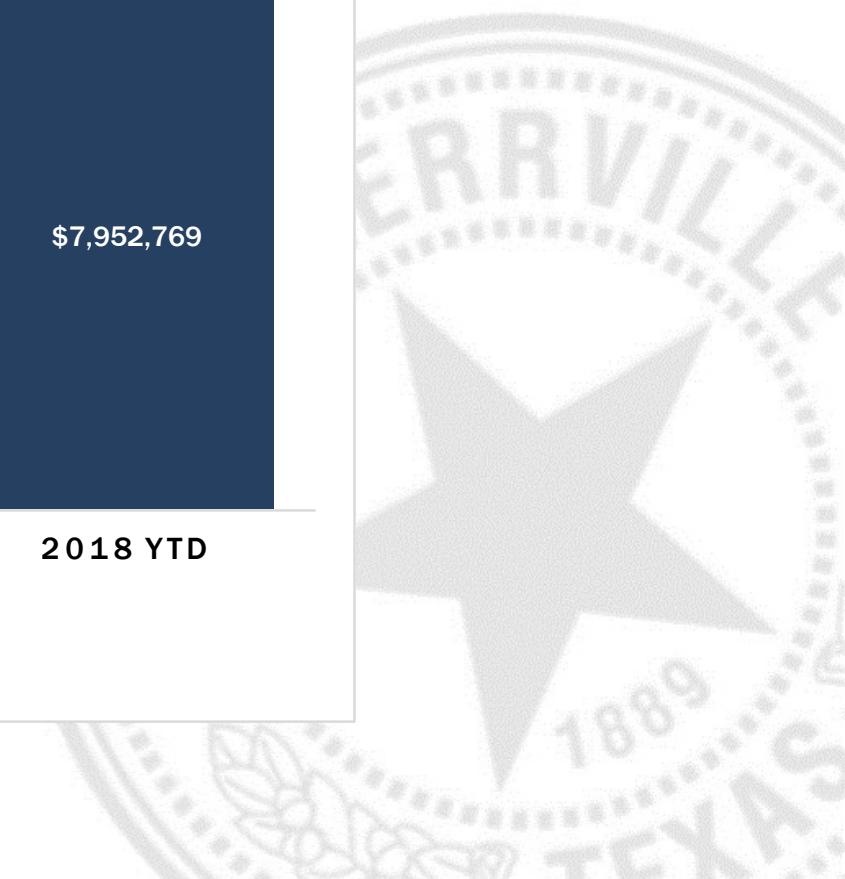
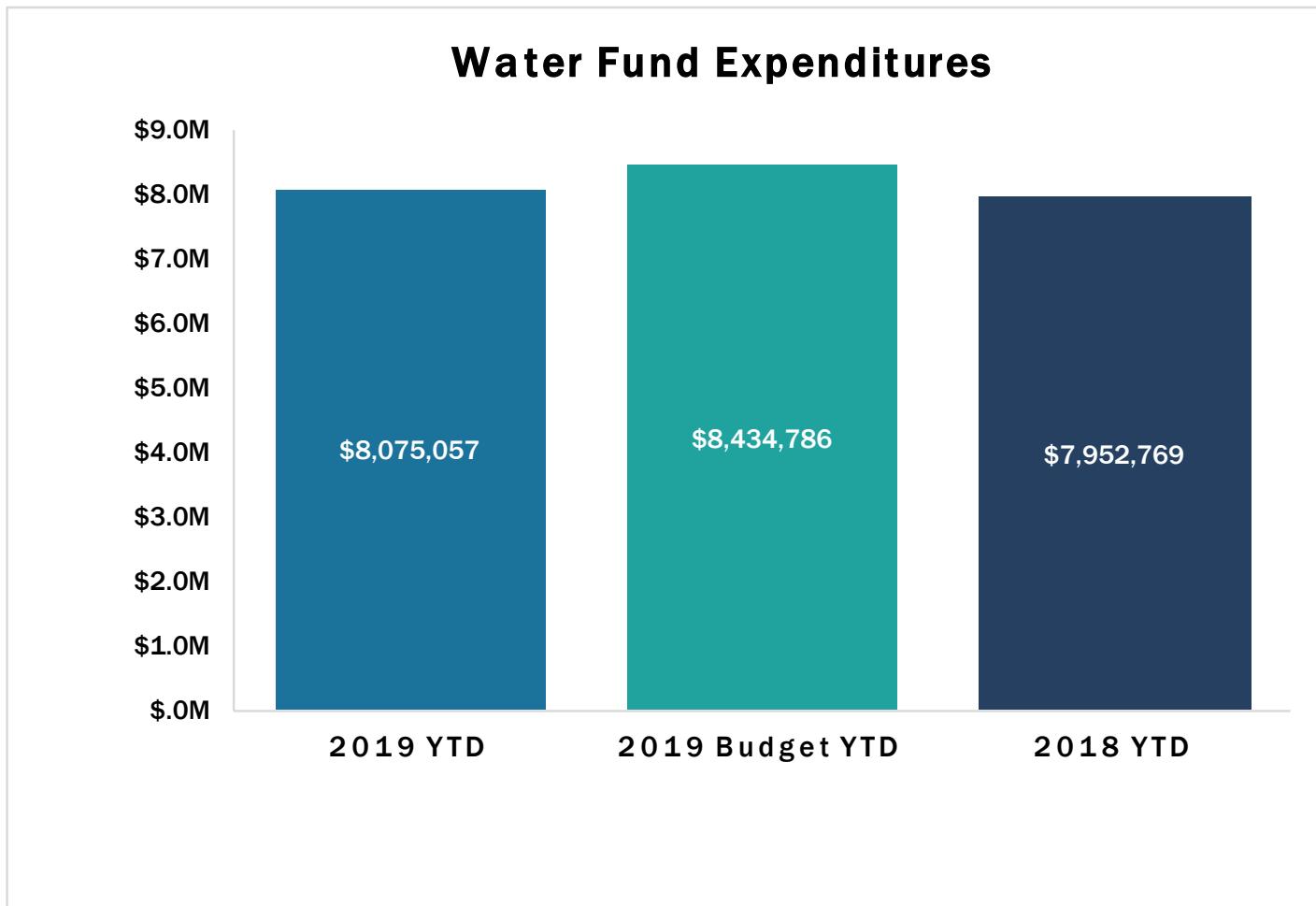
# Water Fund Summary

Fund	Total	Year to Date	Year to Date	Better /	Year to Date	Change
	FY2019	FY2019	FY2019	(Worse)	FY2018	from
	Budget	Budget	Actual	than Budget	Actual	FY2018
<b>Water Fund</b>						
Revenues						
Water Sales	6,072,434	3,609,769	3,077,426	(532,343)	3,489,170	(411,744)
Sewer Sales	5,559,473	3,661,983	3,519,542	(142,440)	3,519,159	383
Reuse Sales	122,625	72,895	21,319	(51,575)	36,497	(15,178)
Other Revenue	776,200	522,533	644,477	121,944	1,086,200	(441,723)
Total Revenue	12,530,732	7,867,180	7,262,765	(604,415)	8,131,026	(868,262)
Expenditures	12,530,732	8,434,786	8,075,057	359,728	7,952,769	122,289
Net	-	(567,606)	(812,293)	(244,687)	178,258	(990,551)

# Water Fund Revenues



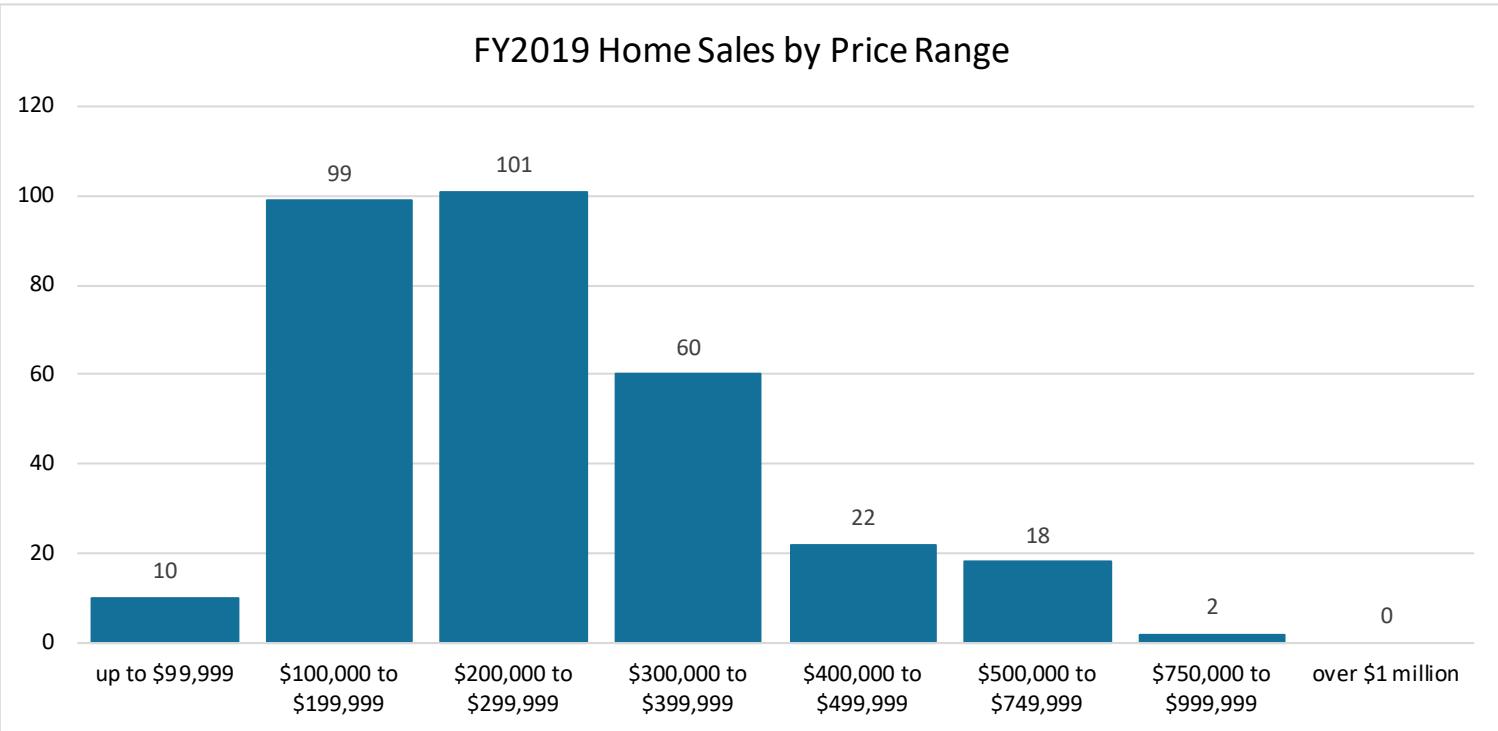
# Water Fund Expenditures



# Other Funds Summary

Fund	Total	Year to Date	Year to Date	Better / (Worse)	Year to Date	Change
	FY2019	FY2019	FY2019	than Budget	FY2018	from
	Budget	Budget	Actual		Actual	FY2018
<b>Development Services Fund</b>						
Revenues						
Permits & Fees	510,000	340,000	310,370	(29,630)	396,520	(86,150)
Transfer In	708,688	472,458	472,458	-	-	472,458
Total Revenue	1,218,688	812,458	782,829	(29,630)	396,520	386,309
Expenditures	1,218,688	938,792	885,399	53,393	460,675	424,723
Net	-	(126,334)	(102,570)	23,764	(64,155)	(38,414)
<b>Golf Fund</b>						
Revenues	1,015,947	628,297	543,286	(85,011)	578,319	(35,033)
Expenditures	1,015,947	613,660	582,921	30,739	567,957	14,964
Net	-	14,636	(39,635)	(54,272)	10,362	(49,997)
<b>Hotel Occupancy Tax Fund</b>						
Revenues	1,329,750	808,514	893,430	84,916	820,042	73,388
Expenditures	1,329,750	945,032	864,958	80,075	779,550	85,408
Net	\$ -	\$ (136,518)	\$ 28,472	\$ 164,990	\$ 40,492	\$ (12,020)

# Real Estate Update



	YTD FY2018	YTD FY2019	Change
Median Price:	\$ 230,000	\$ 240,000	4.3%
Average Price:	\$ 256,284	\$ 270,759	5.6%
Total Homesites Sold:	321	312	(9)
Average Days on Market:	104	90	(14)
Total Volume Sold:	\$ 82,129,264	\$ 84,476,656	2.9%

**City of Kerrville**  
**Financial Summary**  
**For the Month Ended May 31, 2019**

<b>Fund</b>	Total	Year to Date	Year to Date	Better /	Year to Date	Change	<b>Variance</b>
	FY2019	FY2019	FY2019	(Worse)	FY2018	from	
	Budget	Budget	Actual	than Budget	Actual	FY2018	Explanation
<b>General Fund</b>							
Revenues							
Property Tax	\$ 9,628,930	\$ 9,335,136	\$ 9,284,218	\$ (50,918)	\$ 9,108,448	\$ 175,771	
Sales Tax	7,049,268	4,588,011	4,707,957	119,947	4,490,293	217,664	note A
Other Revenue	10,525,312	6,837,694	7,003,354	165,660	6,467,228	536,126	
Total Revenue	27,203,510	20,760,841	20,995,530	234,689	20,065,969	929,561	
Expenditures	27,203,510	16,698,154	16,625,841	72,313	16,089,952	535,889	
Net	-	4,062,687	4,369,689	307,002	3,976,017	393,672	
<b>Water Fund</b>							
Revenues							
Water Sales	6,072,434	3,609,769	3,077,426	(532,343)	3,489,170	(411,744)	note B
Sewer Sales	5,559,473	3,661,983	3,519,542	(142,440)	3,519,159	383	note C
Reuse Sales	122,625	72,895	21,319	(51,575)	36,497	(15,178)	note B
Other Revenue	776,200	522,533	644,477	121,944	1,086,200	(441,723)	note D
Total Revenue	12,530,732	7,867,180	7,262,765	(604,415)	8,131,026	(868,262)	
Expenditures	12,530,732	8,434,786	8,075,057	359,728	7,952,769	122,289	note E
Net	-	(567,606)	(812,293)	(244,687)	178,258	(990,551)	
<b>Development Services Fund</b>							
Revenues							note F
Permits & Fees	510,000	340,000	310,370	(29,630)	396,520	(86,150)	
Transfer In	708,688	472,458	472,458	-	-	472,458	
Total Revenue	1,218,688	812,458	782,829	(29,630)	396,520	386,309	
Expenditures	1,218,688	938,792	885,399	53,393	460,675	424,723	note G
Net	-	(126,334)	(102,570)	23,764	(64,155)	(38,414)	
<b>Golf Fund</b>							
Revenues	1,015,947	628,297	543,286	(85,011)	578,319	(35,033)	note H
Expenditures	1,015,947	613,660	582,921	30,739	567,957	14,964	
Net	-	14,636	(39,635)	(54,272)	10,362	(49,997)	

**City of Kerrville**  
**Financial Summary**  
**For the Month Ended May 31, 2019**

<b>Fund</b>	Total	Year to Date	Year to Date	Better /	Year to Date	Change	<b>Variance</b>
	FY2019	FY2019	FY2019	(Worse)	FY2018	from	
	<b>Budget</b>	<b>Budget</b>	<b>Actual</b>	<b>than Budget</b>	<b>Actual</b>	<b>FY2018</b>	<b>Explanation</b>
<b>Hotel Occupancy Tax Fund</b>							
Revenues	1,329,750	808,514	893,430	84,916	820,042	73,388	
Expenditures	1,329,750	945,032	864,958	80,075	779,550	85,408	
Net	\$ -	\$ (136,518)	\$ 28,472	\$ 164,990	\$ 40,492	\$ (12,020)	

**Notes:**

- A. Sales Tax** - Strong sales tax performance continues. Year to date, sales tax is up 4.9% over 2018 and is 2.6% better than budget, led by increases in retail, food service, manufacturing and construction. May's numbers are unusually low because 2 large tax payers prepaid sales tax in April that the City would normally receive in May.
- B. Water Sales** - Water (including reuse) sales are lower than budget and FY2018 due to record rainfall amounts in October 2018 followed by continuing higher than average rainfall. YTD rainfall amounts in FY2019 are 22" higher than the same period in FY2018. YTD water consumption is down 15%. Water sales are very volatile and highly weather dependent. We are hoping to make up some of the lost revenue in the dryer summer months, but may be facing a shortfall for the year.
- C. Sewer Sales** - Residential sewer averaging for the next 12 months was set in April. Average residential consumption gallons were 4% lower during the averaging period in FY2019 compared to FY2018. This seems to be related to decreased residential irrigation during the sewer averaging period due to rain. We are currently projecting a \$225K sewer revenue shortfall for the year due to decreased sewer averaging combined with lower commercial sewer revenue related to reduced consumption.
- D. Water Fund Other Revenue** - FY2019 revenue is lower than FY2018 revenue because FY2018 includes a one-time \$415K transfer related to the December 2017 debt refinancing and a \$62K transfer from the asset replacement fund to reclass asset purchases for financial reporting purposes.
- E. Water Expenditures** - FY2019 expenditures are better than budget due to lower than anticipated and maintenance costs. In addition, staffing vacancies in Water Distribution have created salary savings.
- F. Development Services Fund** - The Development Services Fund was broken out of the General Fund in FY2019. For presentation purposes, FY2018 information is shown in the Development Services Fund.
- G. Development Services Fund Expenditures** - FY2019 includes a transfer of \$379K to a projects fund for the code rewrite and Development Services software projects.
- H. Golf Fund Revenue** - FY2019 revenue is lower than budget and FY2018 revenue due to record rainfall in October and continuing bad weather days.



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

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**SUBJECT:** Appointment to the Planning and Zoning Commission for the alternate position. (This item is eligible for Executive Session, Section 551.074: Personnel Matters.)

**AGENDA DATE OF:** June 25, 2019      **DATE SUBMITTED:** Jun 07, 2019

**SUBMITTED BY:** Shelley McElhannon

**EXHIBITS:** [20190625\\_Board Sheet\\_Planning and Zoning Commission.pdf](#)

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

**PAYMENT TO BE MADE TO:** N/A

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

**SUMMARY STATEMENT:**

An alternate position on the Planning and Zoning Commission is vacant.

**RECOMMENDED ACTION:**

Appoint alternate member to the Planning and Zoning Commission.

## **PLANNING AND ZONING COMMISSION**

	<u>Original Appt</u>	<u>Re-Appt Date</u>	<u>Exp Date</u>
WALLER, ROBERT, Chair	07-09-13	01-08-19	01-01-21
HARMON, GARRETT, Vice-Chair	06-25-13	01-08-19	01-01-21
BYROM, TRICIA	06-12-18		01-01-20
JONES, DAVID THOMAS	12-13-16	01-09-18	01-01-20
ZUBER, RUSTIN	12-10-13	01-08-19	01-01-21
<b><u>ALTERNATES:</u></b>			
MORGAN, WILLIAM	06-12-18	01-08-19	01-01-21
VACANT			

**CITY STAFF:** Rebecca Pacini, Chief Planning Officer

**Qualifications:** At least four of the regular members shall be residents and eligible voters of the city; one regular member may reside in the city's extraterritorial jurisdiction (ETJ) and must be an eligible voter of Kerr County. At least one alternate member shall be a resident and eligible voter of the city; one alternate member may reside in the city's extraterritorial jurisdiction (ETJ) and must be an eligible voter of Kerr County.

**Powers and Duties:**

1. Shall formulate and recommend to the city council for adoption a Comprehensive Plan for the orderly growth and development of the city and its environs. On a yearly basis the commission shall review and if necessary recommend such changes in the plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety and general welfare of the citizens of the city.
2. Shall formulate a zoning plan (ordinance) as may be deemed best to carry out the goals of the Comprehensive Plan; hold public hearings and make recommendations to the city council relating to the creation, amendment, and implementation of zoning regulations and districts as provided in state law.
3. Shall exercise all powers of a commission as to approval or disapproval of plans, plats, or replats as set out by state law and the city's subdivision regulations.
4. Shall initiate for consideration at public hearings, proposals for the original zoning of annexed areas or for the change of zoning district boundaries on an area wide basis.
5. Shall consider and take appropriate action, upon written request, variances as prescribed to the city's subdivision and sign regulations.
6. Shall from time to time recommend such changes to the subdivision regulations, sign regulations, and any other ordinance the city council assigns to their review that will facilitate the general health, safety and welfare of the citizens of the city.

**Term of Office:** Two years. No regular member shall serve more than three consecutive full terms on the Commission without having at least one full year off the Commission between terms.

**Quorum:** Three (may include alternate member but only when substituting for and acting as regular member)

**Number of Members:** Five regular members and two alternates.

**Meeting Time & Place:** First and third Thursdays, 4:30 p.m., City Hall, Council Chambers.

**Absences:** Any member who is absent from twenty-five percent (25%) of the board's regular meetings during any twelve (12) month period, or who is absent from any three (3) consecutive regular meetings, shall be considered for removal by the city council. The staff member has the responsibility of reporting a member's non-attendance to the city council in writing, and the city secretary shall notify the board member in writing that their non-attendance has been reported to the city council. However, a member whose absences are directly related to a medical or family emergency may seek consideration from the board upon which they serve to qualify such absences as excused.