

# **AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING**

**TUESDAY, APRIL 25, 2023, 6:00 P.M.**

**CITY HALL COUNCIL CHAMBERS**

**701 MAIN STREET, KERRVILLE, TEXAS**

## **The Community Vision**

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

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



Kerrville2050



**CITY COUNCIL MEETING AGENDA**  
**APRIL 25, 2023 6:00 PM**  
**CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS**



K  
KERRVILLE  
TX

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

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

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

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

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

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

Thank you for your participation!

---

**CALL TO ORDER:** Mayor Judy Eychner

**INVOCATION AND PLEDGE OF ALLEGIANCE:** Led by Mayor Pro Tem Kim Clarkson





1. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.
2. **PRESENTATIONS:**
  - 2.A Kerrville Kindness award recognizing Delayne Sigerman and the Kerrville Sisters in Service.
  - 2.B Kerrville Kindness award recognizing Kerrville Pets Alive.
  - 2.C Kerrville Fire Department Unit Citation of Merit.
  - 2.D Kerrville Fire Department Person of the Year Awards for Officer, Firefighter, and EMS.
  - 2.E Proclamation recognizing April 2023 as the Kerrville Board of Realtors Fair Housing month in Kerrville, Texas.
3. **VISITORS/CITIZENS FORUM:** Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.
4. **CONSENT AGENDA:** These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:




- 4.A Resolution No. 13-2023. A Resolution authorizing a collection fee in the amount of 30% of debts and accounts receivable due and owing the Kerrville Municipal Court when such amounts have been referred to an attorney for collection.  
Attachment: [20230425\\_Reso 13-2023 Municipal Court collection fee Linebarger.pdf](#)
- 4.B Memorandum of Understanding between National Emergency Management and Response (EMR) and the City of Kerrville.  
Attachment: [20230425\\_MOU Emergency Services -final draft.pdf](#)
- 4.C Memorandum of Agreement between the City of Kerrville and the Federal Emergency Management Agency (FEMA), Integrated Public Alert & Warning System (IPAWS) Program Management Office. Regarding the use of: TX City of Kerrville Interoperable System(s) and IPAWS OPEN Planform for Emergency Networks (IPAWS-OPEN).  
Attachment: [20230425\\_Contract FEMA for IPAWS - emergency communications.pdf](#)
- 4.D City Council meeting minutes, April 11, 2023.  
Attachment: [20230425\\_Minutes CC meeting 4-11-23 6pm.pdf](#)

**END OF CONSENT AGENDA.**

**5. ORDINANCES, SECOND READING:**

-  5.A Ordinance No. 2023-12, second reading. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, such chapter more commonly known as the City's Zoning Code; by amending said code to revise regulations pertaining to the location of accessory buildings and structures within the front setback as to fences; providing a cumulative clause; providing for severability; providing an effective date; ordering publication; and providing other matters relating to the subject.  
Attachment: [20230425\\_Ord 2023-12 Zoning Code fence requirements 2nd reading.pdf](#)
-  5.B Ordinance No. 2023-13, second reading. An Ordinance amending Section 26-38 "Construction of Fences", Chapter 26 "Building and Building Regulations", of the Code of Ordinances, City of Kerrville, Texas; by clarifying what "Substantial Repairs" means; providing for an effective date; and providing other matters related to the subject.  
Attachment: [20230425\\_Ord 2023-13 Fence building regulations 2nd reading.pdf](#)
-  5.C Ordinance No. 2023-14, second reading. An Ordinance amending in its entirety Article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations" of the Code of Ordinances, City of Kerrville, Texas; regarding the abatement of unsafe buildings; containing a savings and severability clause; providing an effective date; and providing other matters relating to the subject.  
Attachment: [20230425\\_Ord 2023-14 Unsafe Buildings 2nd reading.pdf](#)
-  5.D Ordinance No. 2023-15, second reading. An Ordinance amending Chapter 46 "Environment" of the Code of Ordinances, City of Kerrville, Texas, by adding a new Article IV "Junked Vehicles"; such Article to replace Article XI in Chapter 102; providing an effective date; and providing other matters relating to the subject.  
Attachment: [20230425\\_Ord 2023-15 Junked Vehicles 2nd reading.pdf](#)

**6. CONSIDERATION AND POSSIBLE ACTION:**

-  6.A Resolution No.12-2023. A Resolution approving the use of Tax Increment Funding in the amount of \$52,500 pursuant to a recommendation from the Reinvestment Zone Number One, City of Kerrville Texas; such funding to be used by the City as part of its local match for a Community Development Block Grant, all of which the City will use for improvements, including sidewalk and traffic signal reconstruction, within the City's Tax Increment Reinvestment Zone.  
Attachment: [20230425\\_Reso 12-2023 TIRZ for CDBG local match.pdf](#)

- 6.B Negotiation of and authority to execute a Construction Agreement with Elecnor Belco Electric, Inc. for the Kerrville Downtown Revitalization Program Intersection Improvements project in the amount of \$308,313.40.

*Attachments: [20230425\\_Bids\\_CDBG Downtown Intersection Improvements\\_Bid Summary.pdf](#)  
[20230425\\_Letter\\_CDBG Downtown Intersection Improvements\\_Recommendation of Award.pdf](#)*

**7. INFORMATION & DISCUSSION:**

- 7.A Financial Report for month-ended March 31, 2023, and presentation of the Popular Annual Financial Report (PAFR).

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

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

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

**ADJOURN.**



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

**SUBJECT:** Kerrville Kindness award recognizing Delayne Sigerman and the Kerrville Sisters in Service.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** March 29, 2023

**SUBMITTED BY:** Mayor Judy Eychner

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

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

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

**SUMMARY STATEMENT:**

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

**RECOMMENDED ACTION:**

Present award.



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

**SUBJECT:** Kerrville Kindness award recognizing Kerrville Pets Alive.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** March 29, 2023

**SUBMITTED BY:** Mayor Judy Eychner

---

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

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

---

<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:**

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

A Kerrville Kindness Award is extended to the Kerrville Pets Alive for the kind donation of the microchip scanner to the City of Kerrville. The microchip scanner will be used by the Public Works Department when picking up deceased animals on roadways.

During pick up by a City employee, the animal will be scanned for a microchip. If so, the information will be added to the daily report by that employee. The City will then notify KPA, who will contact the owner to help bring closure to the loss of a pet.

**RECOMMENDED ACTION:**

Present award.



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

---

**SUBJECT:** Kerrville Fire Department Unit Citation of Merit.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 13, 2023

**SUBMITTED BY:** Eric Maloney, Fire Chief

**EXHIBITS:**

---

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

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

---

<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:**

N/A

**RECOMMENDED ACTION:**

Chief Maloney will present the commendation. No Council action required.



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

---

**SUBJECT:** Kerrville Fire Department Person of the Year Awards for Officer, Firefighter, and EMS.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** March 17, 2023

**SUBMITTED BY:** Eric Maloney, Fire Chief

**EXHIBITS:**

---

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

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

---

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

---

**SUMMARY STATEMENT:**

N/A

**RECOMMENDED ACTION:**

Chief Maloney will present the commendations. No Council action required.



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

---

**SUBJECT:** Proclamation recognizing April 2023 as the Kerrville Board of Realtors Fair Housing month in Kerrville, Texas.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 18, 2023

**SUBMITTED BY:** Mayor Judy Eychner

---

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

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

---

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

---

**SUMMARY STATEMENT:**

The City of Kerrville recognizes April 2023 as Kerrville Board of Realtors Fair Housing month.

**RECOMMENDED ACTION:**

Present proclamation.





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

**SUBJECT:** Resolution No. 13-2023. A Resolution authorizing a collection fee in the amount of 30% of debts and accounts receivable due and owing the Kerrville Municipal Court when such amounts have been referred to an attorney for collection.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 14, 2023

**SUBMITTED BY:** William Tatsch, Assistant City Attorney

**EXHIBITS:**

<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

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

**SUMMARY STATEMENT:**

The City Council previously approved a Contract for Fine and Fees Collection Services with Linebarger Goggan Blair Sampson, LLP ("Linebarger") for the collection of debts and accounts receivable due and owing to the Kerrville Municipal Court. Article 103.0031(b), Texas Code of Criminal Procedure, permits a governmental unit to authorize the collection of a 30% collection fee on the debts and accounts receivable collected by an attorney. Such collection fees would be paid to Linebarger, which would allow the Kerrville Municipal Court to receive 100% of the debts and accounts receivable Linebarger collects on behalf of the City and its Municipal Court.

**RECOMMENDED ACTION:**

Approve Resolution No. 13-2023.

**ATTACHMENTS:**

[\*20230425\\_Reso 13-2023 Municipal Court collection fee Linebarger.pdf\*](#)

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

**A RESOLUTION AUTHORIZING A COLLECTION FEE IN THE  
AMOUNT OF 30% OF DEBTS AND ACCOUNTS RECEIVABLE  
DUE AND OWING THE KERRVILLE MUNICIPAL COURT  
WHEN SUCH AMOUNTS HAVE BEEN REFERRED TO AN  
ATTORNEY FOR COLLECTION**

**WHEREAS**, City Council, by its adoption of Resolution No. 09-2023, approved the Contract for Fine and Fees Collection Services with Linebarger Goggan Blair & Sampson, LLP for collection services of unpaid fines, fees, and court costs, as ordered paid by the judge of the Kerrville Municipal Court; and

**WHEREAS**, Pursuant to Article 103.0031(b), Texas Code of Criminal Procedure, City desires to authorize a collection fee in the amount of 30% of the City's Municipal Court's debts and accounts receivable referred to Linebarger Goggan Blair Sampson, LLP for collection;

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

**SECTION ONE.** Pursuant to Article 103.0031(b), Texas Code of Criminal Procedure, City Council hereby approves and authorizes a collection fee in the amount of 30% of the City's Municipal Court's debts and accounts receivable that are more than 60 days past due and have been referred to Linebarger Goggan Blair Sampson, LLP for collection.

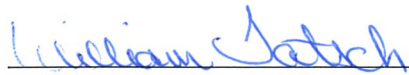
**SECTION TWO.** This Resolution shall become effective immediately upon its passage.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D.,  
2023.**

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

  
\_\_\_\_\_  
William L. Tatsch, Asst. City Attorney

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



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

**SUBJECT:** Memorandum of Understanding between National Emergency Management and Response (EMR) and the City of Kerrville.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 14, 2023

**SUBMITTED BY:** Eric Maloney, Fire Chief

**EXHIBITS:**

<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

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

**SUMMARY STATEMENT:**

The National Emergency Management and Response (EMR), formerly known as the Baptist Child & Family Services (BCFS) Health and Human Services Emergency Management, provides key resources, assets, and personnel support during planned and no-notice events within the City of Kerrville. The City of Kerrville entered into a Memorandum of Understanding (MOU) with BCFS Emergency Management in April 2018 for these services. BCFS Emergency Management recently changed organizational structure and is now operating under the non-profit name of National EMR. The MOU will allow the City of Kerrville to request resources, assets, and staffing to support the Emergency Management operations for planned or extended operations. There is a potential cost for these services provided by BCFS to support emergency management during a declared emergency for extended periods of time. The City of Kerrville will only be charged if we agree to the terms and cost.

**RECOMMENDED ACTION:**

Authorize the City Manager to enter into agreement with National Emergency Management and Response.

## MEMORANDUM OF UNDERSTANDING

This Agreement is by and between:

- **Emergency Management and Response ("EMR")**, 7451 FM 3009 Schertz, Texas 78154. and
- **The City of Kerrville** (hereinafter "Kerrville"), 701 Main Street, Kerrville, Texas, 78028.

**WHEREAS** Kerrville could benefit with the temporary provision and use of EMR' resources that would supplement Kerrville's resources during incidents or disasters; and

**WHEREAS** EMR would consider providing Kerrville with temporary access to the EMR' resources as they are available; and

**WHEREAS** EMR employs Incident Management, Medical, Case Management and Mental Health response personnel and owns emergency response resources including Mobile Command Platforms, mass transportation assets, communications equipment, mass care resources and other related and supportive resources that could assist as temporary resource(s) to establish and conduct emergency, recovery, and/or steady state-type functions; and

**WHEREAS** the parties hereto wish to express their agreement in which EMR would make resources available, in accordance with conditions and stipulations specified herein.

**WHEREAS** Kerrville has determined that the services intended to be provided by EMR are professional services requiring work that is predominantly mental or intellectual rather than physical or manual, requiring special knowledge or attainment, and a high order of learning, skill, and academic intelligence or alternatively, are necessary to preserve or protect the public health or safety of the persons within the jurisdiction of Kerrville.

**NOW, THEREFORE** in consideration of the mutual promises contained herein EMR and Kerrville express their agreement and define the duties, scope, responsibilities, conditions, and stipulations of the parties as follows:

This Agreement is effective from the date of last signature for one (1) year ("Term"). Each Term shall automatically renew for a subsequent period of the same length as the initial Term unless either party gives the other written notice of termination at least fourteen (14) days prior to expiration of the current Term, or as otherwise set forth under Section 10 herein."

1. The parties acknowledge that the basis of this agreement is emergency need, and the parties will work together to agree on administrative issues related to this agreement, including necessary supporting information as required for payment, or to resolve any issues that may arise that are not specifically addressed through this Agreement. EMR will invoice Kerrville for services provided under this Agreement. Kerrville will assure each invoice is paid within fourteen (14) calendar days from the date it receives the invoice. Payments not received within the defined terms are subject to a 1.5% monthly finance charge (18% per annum). Kerrville understands its timely payments to EMR are fundamental to the strict performance

requirements of this Agreement. As such, EMR may terminate this Agreement immediately and seek all relief available pursuant to law if any payment is not received timely. Kerrville will notify EMR, in writing, of any errors or objections (each a "Disputed Invoice") within three (3) calendar days from the date upon which Kerrville receives the invoice specifying those items at issue. EMR will review and respond to Kerrville within four (4) calendar days and notify Kerrville if any invoice adjustment is appropriate. Kerrville's failure to timely notify EMR of any such errors or objections will constitute a waiver of any future objection to such invoice(s).

2. Kerrville agrees to provide EMR with contact information of personnel authorized to submit requests for resources for approval to Kerrville and to utilize the EMR Emergency Response toll free number (800. 337.0373) to request activation of available EMR resources. (See Attachment 'A' – Authorized Requestors).
3. Kerrville agrees that any EMR resource that is, or becomes, inoperable or unavailable at the time of request(s) will not obligate EMR to provide an alternative for, or backup to, the requested resource. EMR cannot make any guarantees it can support, in full or in part, a request made by Kerrville.
4. Kerrville agrees that EMR' resources are to be utilized for emergency incidents that are geographically located within Kerrville's city limits.
5. To the extent authorized under applicable law, Kerrville agrees that EMR will not be held responsible or liable for any mechanical, equipment, or programming failures, defects, or appropriate use of equipment, or any other requested EMR resources, including but not limited to EMR's personnel or its vendors deployed to assist with any emergency type service made available through this Agreement. To the extent authorized under applicable law, Kerrville agrees it shall indemnify and hold EMR and its respective legally affiliated entities, agents, employees, and officers harmless of all legal liability for any injuries or damage suffered by Kerrville (including its employees or those acting on behalf of Kerrville or in conjunction therewith) that is, or may have been, proximately caused by EMR.
6. Relative to each requested resource, EMR personnel will support, operate and/or oversee the requested resource to the extent deemed appropriate by EMR. Alternatively, and to the extent authorized under applicable law, Kerrville agrees that EMR will not be held responsible or liable for any procedures or processes undertaken at the request of Kerrville and shall indemnify and hold EMR and its respective legally affiliated entities, agents, employees, and officers harmless of all legal liability for any such processes or procedural undertakings that are non-conforming to that which is requested by Kerrville.
7. Regarding EMR resources left to the responsibility and operation of Kerrville personnel, Kerrville agrees to perform all reasonable and necessary maintenance on requested resources during and immediately after its use before returning, as deemed appropriate and necessary by EMR. During use, particularly for extended periods of time, Kerrville agrees to monitor and maintain vehicle fuel and fluid levels at appropriate levels and in a timely manner. Kerrville will also make best efforts to ensure the security and safety of EMR' requested resource(s). Mechanical issues or concerns will be reported to the designated EMR representative without fail or delay.

8. To the extent authorized under applicable law, Kerrville agrees that it is responsible for all damages to requested resource(s) that may occur during use by Kerrville. Kerrville agrees to provide the funding, timely, for all repairs or replacements made necessary as the result of its use of the requested resource(s).
9. Kerrville understands and agrees that, under certain circumstances, it may task EMR for goods, supplies, and services for reimbursement. Kerrville will provide written notification to EMR of its situation and unmet needs and will work with EMR to determine those specific resources; supplies, materials, and/or personnel that will be required to fill the need. EMR will then provide Kerrville with a written proposal delineating those resources, anticipated response time and pricing necessary to meet those needs of Kerrville. Kerrville may accept, negotiate, or decline the proposal. If/once approved by Kerrville, Kerrville would then issue a bilateral task order which will serve as the mechanism for securing the necessary resources from EMR, and source for calculation and reimbursement from Kerrville to EMR. *This is only for any response conditions requiring reimbursement.* (See Attachment 'B' - Reimbursable Task Orders Process).
10. This Agreement shall remain in full force and effect during the term set forth above unless any of the following occur:
  - i. Either Kerrville or EMR terminates this Agreement upon 14 days' notice to the other party with or without cause, or
  - ii. The parties mutually agree to terminate this Agreement on a given day/time.
11. This Agreement may not be assigned, in whole or in part, by either of the parties to another without the prior written consent of the other Party EMR may utilize vendors resources as needed during an operation, but such use shall not excuse either party from meeting its obligations under this Agreement.
12. This Agreement constitutes the entire understanding and agreement of, and between, the parties with respect to the subject matter hereof, and supersedes all prior representations and agreement, verbal or written. While the parties may add to or modify this Agreement by subsequent signed writings, this Agreement shall not be varied except by an instrument in writing, duly executed by an authorized representative of each party.
13. If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, the balance of this Agreement remains enforceable to the extent allowed by law.
14. Any notice, consent, demand, or request required or permitted by and directly related to the establishment, continuance, renewal, or cancellation of this Agreement shall be in writing and deemed to have been sufficiently given when personally delivered to or sent via certified overnight mail, addressed as follows:

**CITY OF KERRVILLE:**

Address: \_\_\_\_\_  
City, ST Zip: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Email address: \_\_\_\_\_

**EMR:**

7451 FM 3009  
Schertz, Texas 78154  
Direct: (210) 801-7951  
Lisa Amaya, Executive Director  
[LA0915@NationalEMR.us](mailto:LA0915@NationalEMR.us)

15. The validity, construction, scope, and performance of this Agreement shall be governed by the applicable laws of the State of Texas. Further, each party consents to the exclusive jurisdiction and venue of the courts located in Bexar County, Texas, with respect to all matters arising out of, or related to, this Agreement.
16. The signatories hereto warrant and represent that they have authority to bind their principals and that the parties hereto are the correct parties to the Agreement as to the promises exchanged herein.

**CITY OF KERRVILLE**

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EMERGENCY MANAGEMENT AND  
RESPONSE**

\_\_\_\_\_  
Lisa Amaya, EMR Executive Director

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
04-17-23

\_\_\_\_\_  
Date



**Attachment A: Authorized Requestors**

Position	Name	Contact Phone Number	Contact Email Address
Fire Chief	Eric Maloney	830-257-8449	<a href="mailto:Eric.maloney@kerrvilletx.gov">Eric.maloney@kerrvilletx.gov</a>
Police Chief	Chris McCall	830-257-1301	<a href="mailto:Chris.mccall@kerrvilletx.gov">Chris.mccall@kerrvilletx.gov</a>
EMC	Jerremy Hughes	830-257-8449	<a href="mailto:Jerremy.hughes@kerrvilletx.gov">Jerremy.hughes@kerrvilletx.gov</a>
Deputy Fire Chief	Steven Boyd	830-257-8449	<a href="mailto:Steven.boyd@kerrvilletx.gov">Steven.boyd@kerrvilletx.gov</a>
Deputy Police Chief	Jerel Haley	830-257-1302	<a href="mailto:Jerel.haley@kerrvilletx.gov">Jerel.haley@kerrvilletx.gov</a>

## **Attachment B: Reimbursable Task Orders - Process**

Kerrville understands and agrees that, under certain circumstances, it may task EMR for goods, supplies, and services for reimbursement. Kerrville will provide written notification to EMR of its situation and unmet needs and will work with EMR to determine those specific resources; supplies, materials, and/or personnel that will be required to fill the need. EMR will then provide Kerrville with a written proposal delineating those resources, anticipated response time and pricing necessary to meet the needs of Kerrville. Kerrville may accept, negotiate, or decline the proposal. If/once accepted Kerrville would then issue a bilateral task order which will serve as the mechanism for securing the necessary resources from EMR, and source for calculation and reimbursement from Kerrville to EMR.

- The task order will delineate those specified resources EMR agrees to provide to Kerrville and for an agreed upon initial number of days. Kerrville agrees to pay all staffing and transportation rates as well as negotiated rates for goods, supplies, equipment, and services, which will be provided for in EMR's proposal. EMR will be responsible for directly compensating all providers of goods and services provided to Kerrville.
- EMR will invoice Kerrville bi-monthly for services provided. Kerrville will assure each invoice is paid within fourteen (14) calendar days from the date Kerrville receives the invoice. Payments not received within the defined terms are subject to a 1.5% monthly finance charge (18% per annum). Kerrville understands its timely payments to EMR are fundamental to the strict performance requirements of this Agreement. As such, EMR may terminate the agreement immediately if payment is not received in a timely manner. Kerrville will notify EMR, in writing, of any errors or objections (each a "Disputed Invoice") within three (3) calendar days from the date upon which Kerrville receives the invoice specifying those items at issue. EMR will review and respond to Kerrville within four (4) calendar days and notify Kerrville if any invoice adjustment is appropriate. Kerrville's failure to timely notify EMR of any such errors or objections will constitute a waiver of any future objection to such invoice(s). Invoice details and necessary supporting documentation shall be specified in the task order from Kerrville to EMR.



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

**SUBJECT:** Memorandum of Agreement between the City of Kerrville and the Federal Emergency Management Agency (FEMA), Integrated Public Alert & Warning System (IPAWS) Program Management Office. Regarding the use of: TX City of Kerrville Interoperable System(s) and IPAWS OPEN Platform for Emergency Networks (IPAWS-OPEN).

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 18, 2023

**SUBMITTED BY:** Eric Maloney, Fire Chief

**EXHIBITS:**

<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

<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:**

The City of Kerrville purchased RAVE mass communications software in December 2021 after identifying a mitigation gap from Winter Storm URI. Currently, we utilize the RAVE software for mass notifications to employees and we started the enrollment process of 11,000 landlines in the City of Kerrville. RAVE mass communications software can provide non-emergency and emergency notification to employees, businesses, and citizens of Kerrville. However, the software is limited to business, citizen and visitor enrollment to receive notifications.

In January 2022, the City of Kerrville Emergency Management started the process for federal and state authorization to use the Federal Emergency Management Agency's (FEMA) Integrated Public Alert & Warning System (IPAWS). IPAWS is FEMA's national system for local alerting that provides authenticated emergency and life-saving information to the public through mobile phones using Wireless Emergency Alerts, to radio and television via the Emergency Alert System, and on the National Oceanic and Atmospheric Administration's Weather Radio. The FEMA IPAWS integrates with RAVE to allow for local emergency alerts

to citizens, visitors within a geographic area. This allows immediate notification in the event of an emergency, disaster, or serious threat.

In 2021, Kerr County was already approved to use IPAWS with their current mass communication software CodeRED. Therefore, we had to coordinate with Kerr County Emergency Management, Texas Department of Emergency Management (TDEM), and FEMA to justify and authorize the City of Kerrville to use IPAWS.

In March 2023, FEMA approved the application and subsequently TDEM approved in April 2023. Once we received final approval from TDEM, the Memorandum of Agreement was provided for final authorization and to set up an account for the City of Kerrville.

**RECOMMENDED ACTION:**

Authorize the City Manager to finalize and ratify the Memorandum of Agreement.

**ATTACHMENTS:**

[\*20230425\\_Contract FEMA for IPAWS - emergency communications.pdf\*](#)

# **Memorandum of Agreement between the TX City of Kerrville**

**and the**



## **Federal Emergency Management Agency Integrated Public Alert and Warning System (IPAWS) Program Management Office**

---

### **Regarding the use of: TX City of Kerrville Interoperable System(s) and IPAWS OPEN Platform for Emergency Networks (IPAWS-OPEN)**

Version 4.8

04/11/2023

**WARNING:** This document is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of the FEMA Integrated Public and Warning System and the FEMA Disclosure Offices.

FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

## Document Change History

Version	Date	Author	Description
4.0	06/13/2019	Al Kenyon	Updated COG MOA with stakeholders' input
4.1	06/13/2019	Al Kenyon	Delete CISO and CIO signature blocks per CIO Corrected IPAWS Suite #, Zipcode
4.2	6/20/2019	Gustavo Barbet Jr	Fixed grammatical errors and made minor wording changes throughout document
4.3	9/6/2019	Mark Lucero	Changes to Section 3.0 from paragraph to bullet format
4.4	1/31/2020	Gustavo Barbet Jr	Updated FEMA CISO POC
4.5	6/30/2020	Gustavo Barbet Jr	Updated FEMA CISO POC
4.6	10/15/2020	Mark Lucero, Al Kenyon, Justin Singer	Authority Section, Version History Page, and Footer Updates
4.7	5/24/21	Mark Lucero	Update AWS Cloud, IPAWS-OPEN Tech Lead
4.8	4/26/2022	Gustavo Barbet Jr	Updated FEMA CISO POC



FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

## MEMORANDUM OF AGREEMENT

### 1.0 SUPERSEDES: //

### 2.0 INTRODUCTION

The purpose of this memorandum is to establish a management agreement between the TX City of Kerrville hereinafter referred to as the Collaborative Operating Group (COG), and the Federal Emergency Management Agency (FEMA) IPAWS Program regarding the utilization and security of TX City of Kerrville Interoperable System(s) (as shown in Appendix A), which interoperate with the IPAWS-Open Platform for Emergency Networks (IPAWS-OPEN). The expected benefit is to enable information interoperability across emergency response organizations and systems as intended by the FEMA IPAWS Program.

This agreement will govern the relationship between the Collaborative Operating Group and FEMA, including designated managerial and technical staff and system users associated with the aforementioned COG. As indicated within the terms of this agreement, both parties agree to allow system interoperability through the use of SOAP over HTTPS via the public internet. Under this agreement, no direct or networked connection using VPN (or equivalent technology) between the systems named in Appendix A and IPAWS-OPEN is allowed. In the event a direct connection is required, an Interconnection Security Agreement must be executed.

### 3.0 AUTHORITY

This agreement is authorized under the following authorities and regulations:

- Section 706 of 47 U.S.C. 666, The War Powers Act: Provides for Presidential Access to commercial communications during "a state of public peril or disaster or other national emergency"
- Public Law 93-288, The Stafford Act. Sec. 202. Disaster Warning: Directs FEMA to provide technical assistance to State and local governments to ensure that timely and effectively disaster warning is provided
- Public Law 114-143, The IPAWS Modernization Act: Enacts to law the policy statement and similar requirements found in Executive Order 14307
- Sec. 202. Disaster Warning: Directs FEMA to provide technical assistance to State and local governments to ensure that timely and effectively disaster warning is provided
- Executive Order 13407 of June 26, 2006, Public Alert and Warning System: Established as policy the requirement for the United State to have an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people
- 47 CFR Part 10, Wireless Emergency Alert (WEA): Provide for alert and warning to devices on wireless carrier networks
- 47 CFR Part 11, Emergency Alert System (EAS): Provide for alert and warning over TV and radio broadcast

### 4.0 BACKGROUND

It is the intent of both parties to this agreement to establish and utilize a standardized web based application interface (as defined by the IPAWS-OPEN Web Service Interface Design Guidance) between the information technology (IT) systems shown below to facilitate the exchange of emergency messages within the production environment. The testing of the interoperability of these systems has been performed through the use of FEMA's Test and Development environment to ensure the transference and receipt of emergency messages using approved messaging standards. The interoperability between these systems is supported by the use of SOAP over HTTPS via the public internet.

### 5.0 COMMUNICATIONS

Frequent formal communications are essential to ensure the successful management and operation of system interoperability. Both parties agree to maintain open lines of communication between designated staff (as indicated in Appendix B) at both the managerial and technical levels. All communications described herein must be conducted in writing and may be disseminated by electronic means unless otherwise noted.



## FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

The owners of the respective systems agree to designate and provide contact information for technical leads for their respective systems, and to facilitate direct contacts between technical leads to support the management and operation of system interoperability. To safeguard the confidentiality, integrity, and availability of the systems and the data they store, process, and transmit, both parties agree to provide notice of specific events within the timeframes indicated below:

- **Security Incidents:** Technical, administrative and/or help desk staff will immediately notify their designated counterparts by telephone or e-mail when a security incident(s) is detected and/or a violation of the Rules of Behavior (see Appendix C) has been identified. Both parties agree to make the appropriate technical and administrative individuals available for all necessary inquiries and/or investigations. Containment and/or resolution procedures will be documented by the identifying party and after-action reports generated and submitted to the system owner and/or designated security officials within five (5) business days after detection of the incident(s).
- **Disasters and Other Contingencies:** The FEMA IPAWS Program Office will notify the COG by telephone, e-mail or other acceptable means in the event of a disaster or other contingency that disrupts the normal operation of IPAWS-OPEN.
- **System Interconnections:** This MOA is intended for systems interoperating with IPAWS-OPEN using SOAP over HTTPS via the public Internet. If in the future, an interconnection (i.e. dedicated system-to-system connection) is required to IPAWS-OPEN, this MOA must be updated and an Interconnection Security Agreement (ISA) must be executed. If a change in status from interoperating to interconnected system is required, the initiating party will notify the other party at least 3 months before the planned interconnection is to be in place.
- **Discontinuation of Use:** In the event the use of IPAWS-OPEN is no longer required, the COG agrees to immediately notify, in writing, the FEMA IPAWS Program Office at which time the COGID and associated access credentials will be deactivated.
- **Personnel Changes:** Both parties agree to provide notification of changes to their respective system owner or technical lead. In addition, both parties will provide notification of any changes in the point of contact information provided in Appendix B. All relevant personnel changes and changes to contact information must be provided within 5 business days of the change.

## 6.0 TYPE OF INTERCONNECTIVITY

Both parties agree that the COG will utilize only the assigned COGID, associated credentials and digital certificates provided by the FEMA IPAWS Program Office to support interoperability between the system(s) listed in Appendix A and IPAWS-OPEN. In addition, all interoperable systems must be configured to interface with IPAWS-OPEN over the public Internet using only approved web service standards and associated requirements. A listing of approved web service standards and supporting requirements can be obtained from the IPAWS-OPEN Web Service Interface Design Guidance document.

In the event, a dedicated connection is required, both parties will agree to negotiate and execute an Interconnection Security Agreement (ISA) as required per Department of Homeland Security (DHS) policy which must be signed by all required parties before the interconnection is activated. Proposed changes to either system that affect system interoperability will be reviewed and evaluated to determine the potential impact. If the proposed changes impact the agreed upon terms, the MOA will be renegotiated and executed before changes are implemented.

## 7.0 SECURITY

To ensure the joint security of the systems and the message data they store, process, and transmit, both parties agree to adhere to and enforce the Rules of Behavior (as specified in Appendix C). In addition, both parties agree to the following:

- Ensure authorized users accessing the interoperable system(s) receive, agree to abide by and sign (electronically or in paper form) the IPAWS-OPEN Rules of Behavior as specified in Appendix C. Each jurisdiction is responsible for keeping the signed Rules of Behavior on file or stored electronically for each system user.

FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

- Utilize FEMA approved PKI certificates to digitally sign messages as they are transported over the public Internet.
- Certify that its respective system is designed, managed and operated in compliance with all relevant federal laws, regulations, and policies.
- Document and maintain jurisdictional and/or system specific security policies and procedures and produce such documentation in response to official inquiries and/or requests.
- Provide physical security and system environmental safeguards for devices supporting system interoperability with IPAWS-OPEN.
- Ensure physical and logical access to the respective systems as well as knowledge of the COGID and associated access criteria are only granted to properly vetted and approved entities or individuals.
- Where applicable, ensure that only individuals who have successfully completed FEMA-required training can utilize the interoperable systems to issue alerts and warnings intended for distribution to the public.
- Where applicable, document and maintain records of successful completion of FEMA-required training and produce such documentation in response to official inquiries and/or requests.

## 8.0 PROFICIENCY DEMONSTRATION

Once enabled, each COG operating under this agreement must demonstrate their ability to compose and send a message through the IPAWS-OPEN system at regular intervals. Such demonstration must be performed on a monthly basis through generation of a message successfully sent through the IPAWS-OPEN Training and Demonstration environment.

## 9.0 ASSOCIATED SOFTWARE REQUIREMENTS

The COG will need to select a software package which will allow the COG to properly populate a Common Alerting Protocol (CAP) message which complies with both the *OASIS Common Alerting Protocol Version 1.2* and the *OASIS Common Alerting Protocol, v. 1.2 USA Integrated Public Alert and Warning System Profile Version 1.0*. With respect to the software and the software vendor selected FEMA expects the selected software to provide the following minimum critical capabilities and services:

- Permissions:
  - The ability to assign and manage user permissions; and
  - The ability to retrieve and view IPAWS Alerting Permissions
- Proficiency:
  - The provision of vendor support, to include user training, and around the clock technical support; and
  - The ability to submit both live and test digital certificates, with clear, easily identifiable information that indicates the environment to which the software is pointed (Live or Test)
- User Interface:
  - The provision of an intuitive user interface, to include help menus; and
  - The ability to notify the user of digital certificate expiration; and
  - The ability to constrain event types and geocodes to user permissions; and
  - The ability to send one alert to multiple channels; and
  - The provision of displays that show required fields based on selected channel; and
  - The ability to pre-populate fields to the greatest extent possible; and
  - The ability to support templates; and
  - The ability to create a polygon or circle, of less than 100 nodes; and



FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

- The ability to update or cancel an alert, without having to reenter all of the data; and
- The ability to alert the end user if a software license has expired; and
- Clear explanations if alert information is case sensitive when entered
- Confirmation and Error Checking:
  - The ability to pre-check an alert message for errors, prior to sending; and
  - The ability to create free-form 90-character WEA text, while preventing prohibited characters; and
  - The provision to IPAWS of alert status codes for any sent alert, with a clear definition of whether the codes are advice codes or error codes, along with the meaning of those codes; and
  - The provision of user confirmation of connectivity to IPAWS; and
  - The ability for users to see alert history and/or logs

#### 10.0 COST CONSIDERATIONS

This agreement does not authorize financial expenditures by the COG on behalf of FEMA. The FEMA IPAWS Program is responsible for the costs associated with developing, operating and maintaining the availability of the IPAWS-OPEN system. The COG is responsible for all costs related to providing their users with access to IPAWS-OPEN via the public Internet. These costs may include hardware, software, monthly Internet charges, completion of security awareness training and other related jurisdictional costs.

#### 11.0 PROPERTY OWNERSHIP

Each Party agrees and acknowledges that nothing in this Agreement shall be construed as giving a party any proprietary rights in or to the intellectual property of the other party. Each Party further agrees that nothing in this Agreement shall be construed as creating or granting to a party any implied or express license in or to the intellectual property of the other party.

#### 12.0 TIMELINE

This agreement will remain in effect based on the life of the Authority to Operate (ATO) for IPAWS-OPEN or a maximum of three (3) years after the last date on either signature in the signature block below. Upon expiration of the IPAWS-OPEN ATO or after three (3) years (whichever comes first), this agreement will expire without further action and system access privileges will be revoked. If the parties wish to extend this agreement, they may do so by reviewing, updating, and reauthorizing this agreement. This agreement supersedes all earlier agreements, which should be referenced above by title and date. If one or both of the parties wish to terminate this agreement prematurely, they may do so upon 30 days' advanced notice or in the event of a security incident that necessitates an immediate response. This agreement may be suspended by FEMA for failure to perform the Proficiency Demonstration for two consecutive months. A suspended COG may be reinstated upon a completion of a successful Proficiency Demonstration.

FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

**SIGNATORY AUTHORITY**

I agree to the terms of this Memorandum of Agreement. Noncompliance on the part of either organization or its users or contractors concerning the policies, standards, and procedures explained herein may result in the immediate termination of this agreement.

**TX City of Kerrville Official**

**Name: E.A. Hoppe**

**Title: City Manager**

**Federal Emergency Management Agency**

**IPAWS-OPEN System Owner**

**Name: Mark A. Lucero**

**Title: Chief, IPAWS Engineering**

*E.A. Hoppe*

4/11/2023

(Signature

Date)

**Mark Lucero**

4/11/2023

**TX City of Kerrville**

**87 Coronado Drive**

**Kerrville**

**TX-78028**

(Signature

Date)

**Attn: IPAWS-OPEN System Owner, Suite 5NW-0309**

**Federal Emergency Management Agency**

**500 C Street SW**

**Washington, D.C. 20472-3153**

## FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

**Appendix A****Listing of Interoperable Systems**

The FEMA IPAWS Program recognizes that Emergency Management organizations may utilize multiple tools to facilitate the emergency management process. As a result, jurisdictions may need to interoperate with IPAWS-OPEN using more than one system. In order to comply with DHS policy, all systems interoperating with IPAWS-OPEN must be documented and supported by a Memorandum of Agreement. As a result, this appendix must be completed to identify all systems associated with the COG and used for interoperating with IPAWS-OPEN. This Appendix must be amended as applicable systems are added or removed from operations.

- IPAWS-OPEN**

Function:	IPAWS-OPEN is the backbone system that structures the alert and distributes the message from one interoperating and/or interconnected system (message sender) to another interoperating and/or interconnected system (message recipient).
Location:	AWS GovCloud (US) East Region, West Region
Description of data, including sensitivity or classification level:	Messaging data is considered Sensitive But Unclassified (SBU) information and does not contain Personally Identifiable Information (PII), Financial data, Law Enforcement Sensitive Information or classified information. Each message that flows through the IPAWS-OPEN system will be associated to a specifically assigned system User ID and COGID as captured within the message elements. This information will be retained in system logs.

The systems listed below are managed and operated by the COG and are subject to the terms defined within the Memorandum of Agreement including the Rules of Behavior in Appendix C. Each interoperable system will be assigned unique authentication credentials, which must be protected by the COG. In the event these credentials are compromised, the COG is expected to immediately contact the FEMA IPAWS Program Management Office. The systems listed below are only allowed to interoperate with IPAWS-OPEN based on the criteria set forth within the IPAWS-OPEN Web Service Interface Design Guidance.

**Rave Mobile Safety**

Function	Location	Description of data, including sensitivity or classification level
Issue Public Alerts via IPAWS	Somerville, MA; Santa Clara, CA	Public Alerts via authorized dissemination channels

*\*Add additional tables as needed.*

FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

## **Appendix B**

### **COG Point of Contact Information**

**Designated COG Primary Point of Contact:**

**Name:** Eric Maloney

**Title:** Fire Chief

**Business Email Address:** eric.maloney@kerrvilletx.gov

**Primary Phone Number:** 830-257-8449

**Alternate Phone Number:**

**Organization:** TX City of Kerrville

**Mailing Address:** 87 Coronado Drive

**Kerrville, TX, 78028**

**Designated Alternate Point of Contact:**

**Name:** Jeremy Hughes

**Title:** Emergency Management Coordinator

**Business Email Address:** jeremy.hughes@kerrvilletx.gov

**Primary Phone Number:** 830-257-8449

**Alternate Phone Number:**

**Organization:** TX City of Kerrville

**Mailing Address:** 87 Coronado Drive

**Kerrville, TX, 78028**

**Designated Technical Point of Contact:**

**Name:** Charvy Tork

**Title:** Director of Information Technology

**Business Email Address:** charvy.tork@kerrvilletx.gov

**Primary Phone Number:** 830-258-1290

**Alternate Phone Number:**



FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

**Organization: TX City of Kerrville****Mailing Address: 219 Clay Street****Kerrville ,TX, 78028**

**FEMA: Integrated Public Alert and Warning System  
Open Platform for Emergency Networks (IPAWS-OPEN)**

Contact Name	Contact Number	Email Address	Summary of System Responsibilities
Lytwaive Hutchinson	202-212-2480	lytwaive.hutchinson@fema.dhs.gov	Chief Information Officer, FEMA
Gregory Edwards	202.374.5392	Gregory.edwards@fema.dhs.gov	Chief Information Security Officer
Mark Lucero	202-646-1386	mark.lucero@fema.dhs.gov	System Owner
Gary Ham	703-899-6241	gary.ham@associates.fema.dhs.gov	FEMA PMO - IPAWS-OPEN
Gustavo Barbet	202-212-3586	gustavo.barbet@associates.fema.dhs.gov	FEMA ISSO - IPAWS-OPEN
Cameron Hayes	720-838-1621	cameron.hayes@associates.fema.dhs.gov	IPAWS-OPEN Tech Lead



FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

## Appendix C

### IPAWS-OPEN Rules of Behavior

#### 1.0 INTRODUCTION

The following rules of behavior apply to all persons with application access to TX City of Kerrville Interoperable System(s) and/or who have been issued a COGID with associated credentials for IPAWS-OPEN. These individuals shall be held accountable for their actions related to the information resources entrusted to them and must comply with the following rules or risk losing their access privileges. The Rules of Behavior apply to users on official travel as well as at their primary workplace (e.g., Emergency Operations Center – EOC) and at any alternative workplace (e.g., telecommuting from a remote or satellite site) using any electronic device including laptop computers and portable electronic devices (PED's). PED's include personal digital assistants (PDA's) (e.g. Palm Pilots), cell phones, text messaging systems (e.g., Blackberry), and plug-in and wireless peripherals that employ removable media (e.g. CDs, DVDs, etc.). PEDs also encompass USB flash memory (thumb) drives, external drives, and diskettes. These Rules of Behavior are consistent with existing DHS policies and DHS Information Technology (IT) Security directives and are intended to enhance the awareness of each user's responsibilities regarding accessing, storing, receiving and/or transmitting information using IPAWS-OPEN.

#### 2.0 APPLICATION RULES

##### 2.1 Official Use

- IPAWS-OPEN is a Federal application to be used only in the performance of the user's official duties in support of public safety as described in the National Incident Management System (NIMS).
- The use of the IPAWS-OPEN for unauthorized activities is prohibited and could result in verbal or written warning, loss of access rights, and/or criminal or civil prosecution.
- By utilizing IPAWS-OPEN, the user of the interoperable system(s) consents to allow system monitoring to ensure appropriate usage for public safety is being observed.
- TX City of Kerrville will be held accountable for safeguarding all configuration items and information entrusted to them by FEMA. TX City of Kerrville is expected to manage the relationship with supporting vendors, consultants and any other entities providing system support on their behalf. In addition, TX City of Kerrville will be held accountable in the event of a security breach or disclosure of sensitive configuration information such as digital certificates. TX City of Kerrville understands that the use of digital signatures, used on their behalf, is binding and TX City of Kerrville will be held accountable accordingly. In the event sensitive information is mishandled, utilization of IPAWS-OPEN may be immediately revoked by FEMA.
- If software interoperating with IPAWS-OPEN enables users to geo-target public alert messages by means of geospatial polygons or circles, then the user shall restrict any such geospatial boundaries so as to remain within the geographical limits of their public warning authority (or as near as possible), as determined by applicable state and/or local laws and duly adopted operational plans.

##### 2.2 Access Security

- All Email addresses provided in connection with interoperable system(s) user accounts must be associated to an approved email account assigned by the user's emergency management organization. The use of personal email accounts to support emergency messaging through IPAWS-OPEN is prohibited.
- Upon approval of the MOA by FEMA, a COG account with COGID and Digital Certificate will be created and issued to the designated technical representative. All individuals with knowledge of these credentials must not share or alter these authentication mechanisms without explicit approval from the FEMA IPAWS Program.

FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

- Every interoperable system user is responsible for remote access security as it relates to their use of IPAWS-OPEN and shall abide by these Rules of Behavior.

### 2.3 Interoperable System User Accounts and Passwords

- All users must have a discrete user account ID which cannot be the user's social security number. To protect against unauthorized access, passwords linked to the user ID are used to identify and authenticate authorized users.
- Accounts and passwords shall not be transferred or shared. The sharing of both a user ID and associated password with anyone (including administrators) is prohibited.
- Accounts and passwords shall be protected from disclosure and writing passwords down or electronically storing them on a medium that is accessible by others is prohibited.
- The selection of passwords must be complex and shall:
  - Be at least eight characters in length
  - Contain a combination of alphabetic, numeric and special characters
  - Not the same as any of the user's previous 8 passwords.
- Passwords shall not contain any dictionary word.
- Passwords shall not contain any proper noun or the name of any person, pet, child, or fictional character. Passwords shall not contain any employee serial number, Social Security number, birth date, phone number, or any information that could be readily guessed about the creator of the password.
- Passwords shall not contain any simple pattern of letters or numbers, such as "qwerty" or "xyz123".
- Passwords shall not be any word, noun, or name spelled backwards or with a single digit appended, or with a two-digit "year" string, such as 98xyz123.
- Pass phrases, if used in addition to or instead of passwords, should follow the same guidelines.
- Passwords shall not be the same as the User ID.
- Users shall either log off or lock their workstations when unattended.
- Workstations shall be configured to either log off, or activate a password-protected lock, or password-protected screensaver within fifteen (15) minutes of user inactivity.
- Locked sessions shall remain locked until the user re-authenticates.
- Workstations shall be protected from theft.
- A user's account shall be automatically locked after three consecutive failed logon attempts.
- The automatic lockout period for accounts locked due to failed login attempts shall be set for a minimum of twenty (20) minutes.
- A process shall exist for manually unlocking accounts prior to the expiration of the twenty (20) minute period, after sufficient user identification is established.
- Sessions shall automatically be terminated after sixty (60) minutes of inactivity.
- Users are required to change their passwords at least once every 90 days.



FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

- Passwords must be promptly changed whenever a compromise of a password is known or suspected.

#### 2.4 Integrity Controls & Data Protection

- All computer workstations accessing IPAWS-OPEN must be protected by up-to-date anti-virus software. Virus scans must be performed on a periodic basis and when notified by the anti-virus software.
- Users accessing interoperable system(s) to utilize IPAWS-OPEN must:
  - Physically protect computing devices such as laptops, PEDs, blackberry devices, smartphones, etc;
  - Protect sensitive data sent to or received from IPAWS-OPEN;
  - Not use peer-to-peer (P2P) file sharing, which can provide a mechanism for the spreading of viruses and put sensitive information at risk;
  - Not program computing devices with automatic sign-on sequences, passwords or access credentials when utilizing IPAWS-OPEN.

Users may not provide personal or official IPAWS-OPEN information solicited by e-mail. If e-mail messages are received from any source requesting personal information or asking to verify accounts or other authentication credentials, immediately report this and provide the questionable e-mail to the Local System Administrator and/or the TX City of Kerrville Help Desk.

- Only devices officially issued through or approved by DHS, FEMA and/or approved emergency management organizations are authorized for use to interoperate with IPAWS-OPEN and use of personal devices to access and/or store IPAWS-OPEN data and information is prohibited.
- If a Blackberry, smartphone or other PED is used to access the interoperable system(s) to utilize IPAWS-OPEN, the device must be password protected and configured to timeout or lock after 10 minutes of inactivity.
- If sensitive information is processed, stored, or transmitted on wireless devices, it must be encrypted using approved encryption methods.

#### 2.5 System Access Agreement

- I understand that I am given access to the interoperable system(s) and IPAWS-OPEN to perform my official duties.
- I will not attempt to access data, information or applications I am not authorized to access nor bypass access control measures.
- I will not provide or knowingly allow other individuals to use my account credentials to access the interoperable system(s) and IPAWS-OPEN.
- To prevent and deter others from gaining unauthorized access to sensitive resources, I will log off or lock my computer workstation or will use a password-protected screensaver whenever I step away from my work area, even for a short time and I will log off when I leave for the day.
- To prevent others from obtaining my password via "shoulder surfing", I will shield my keyboard from view as I enter my password.
- I will not engage in, encourage, or conceal any hacking or cracking, denial of service, unauthorized tampering, or unauthorized attempted use of (or deliberate disruption of) any data or component within the interoperable system(s) and IPAWS-OPEN.
- I agree to inform my Local System Administrator when access to the interoperable system(s) and/or

FOR OFFICIAL USE ONLY // CONTROLLED UNCLASSIFIED INFORMATION

IPAWS-OPEN is no longer required.

- I agree that I have completed Computer Security Awareness training as may be required by my jurisdiction prior to my initial access to the interoperable system(s) and IPAWS-OPEN and that as long as I have continued access, I will complete Computer Security Awareness training on an annual basis. If my jurisdiction does not provide Computer Security Awareness training, I will complete the FEMA self-study course *IS-906: Workplace Security Awareness* (<https://training.fema.gov/is/courseoverview.aspx?code=IS-906>) on an annual basis.

## 2.6 Accountability

- I understand that I have no expectation of privacy while using any services or programs interoperating with IPAWS-OPEN.
- I understand that I will be held accountable for my actions while accessing and using interoperable system(s) and IPAWS-OPEN, including any other connected systems and IT resources.
- I understand it is my responsibility to protect sensitive information from disclosure to unauthorized persons or groups.
- I understand that I must comply with all software copyrights and licenses pertaining to the use of IPAWS-OPEN.

## 2.7 Incident Reporting

- I will promptly report IT security incidents, or any incidents of suspected fraud, waste or misuse of systems to the Local System Administrator and/or the TX City of Kerrville Help Desk.

## 3.0 IPAWS-OPEN Rules of Behavior Statement of Acknowledgement

*I have read and agree to comply with the requirements of these Rules of Behavior. I understand that the terms of this agreement are a condition of my initial and continued access to TX City of Kerrville Interoperable System(s) and IPAWS-OPEN and related services and that if I fail to abide by the terms of these Rules of Behavior, my access to any and all IPAWS-OPEN information systems may be terminated and I may be subject to criminal or civil prosecution. I have read and presently understand the above conditions and restrictions concerning my access.*

Printed Name (as listed in Appendix B): Eric Maloney

Signature:

*Eric Maloney*

Date:

4/11/2023



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

---

**SUBJECT:** City Council meeting minutes, April 11, 2023.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** March 23, 2023

**SUBMITTED BY:** Shelley McElhannon, City Secretary

**EXHIBITS:**

---

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

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

---

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

---

**SUMMARY STATEMENT:**

City Council meeting minutes held April 11, 2023 at 6:00 p.m., City Hall.

**RECOMMENDED ACTION:**

Approve minutes as presented.

**ATTACHMENTS:**

[\*20230425\\_Minutes CC meeting 4-11-23 6pm.pdf\*](#)

**CITY COUNCIL MINUTES  
REGULAR MEETING**

**KERRVILLE, TEXAS  
APRIL 11, 2023 6:00 PM**

On April 11, 2023 at 6:00 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Councilmember Joe Herring, Jr. provided the invocation, and led the Pledge of Allegiance.

**COUNCILMEMBERS PRESENT:**

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

**COUNCILMEMBER ABSENT:**

None

**CITY EXECUTIVE STAFF:**

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

Stuart Cunyus, Public Information Officer  
Guillermo Garcia, Exec Dir Innovation  
Eric Maloney, Fire Chief  
Chris McCall, Police Chief  
Drew Paxton, Planning Director  
Trina Rodriguez, Assistant Director Finance

**VISITORS PRESENT:**

Anne Berger-Entrekin, Financial Consultant with Hilltop Securities  
Jay Juarez, Bond Counsel with McCall, Parkhurst & Horton

**1. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

Announcements of Community Interest provided by Stuart Cunyus, Mayor Eychner, Councilmember Brenda Hughes, Councilmember Herring, and Councilmember Roman Garcia.

**2. PRESENTATION(S):**

2A. Kerrville Kindness award recognizing Friends of the Library.

Mayor Eychner recognized the Friends of the Library for supporting the mission of the Library. Friends of the Library represented by Skye Alexander, Marian Clemens, Jennifer Daschel, Martha Mitchell, Rebecca Silva, Kay Stewart, Lenore White, and Phyllis Young. The Library Director Danielle Brigati and Reference Librarian Diane Miller were present with the members.

2B. Proclamation recognizing April 2023 as Friends of the Library month in Kerrville, Texas.

Mayor Eychner proclaimed April 2023 as Friends of the Library month in Kerrville, Texas. Friends of the Library present were Skye Alexander, Marian Clemens, Jennifer Daschel, Martha Mitchell, Rebecca Silva, Kay Stewart, Lenore White, and Phyllis Young, along with the Director of the Library Danielle Brigati and Reference Librarian Diane Miller.

2C. Presentation of the Texas Police Chief's Best Practices Program Reaccreditation Certificate.

On behalf of the Texas Police Chief Association, Fredericksburg Police Chief Brian Vorauer presented the Kerrville Police Department with a Certificate of Reaccreditation,

acknowledging the Kerrville Police Department successfully completing the Accreditation Assessment and recertified as an Accredited Law Enforcement Agency. Kerrville Police Chief Chris McCall received the Certificate of Reaccreditation.

2D. Proclamation recognizing the week of April 09, 2023 as National Public Safety Telecommunications week in Kerrville, Texas.

Mayor Eychner proclaimed the week of April 09, 2023 through April 15, 2023 as National Public Safety Telecommunications week in Kerrville, Texas, which was received by Telecommunication Supervisor Frank Galvan, and Telecommunication Specialists Karla Garcia, Cristina Germany, Catherine Larson, Danielle Reeh, and Tinlee Sanchez.

**3. VISITORS FORUM:** None.

**4. CONSENT AGENDA:**

Councilmember Garcia made a motion to approve the Consent Agenda, seconded by Councilmember Herring. The motion passed 5-0.

4A. City Council workshop minutes March 28, 2023.

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

**END OF CONSENT AGENDA.**

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

5A. Ordinance No. 2023-16. An Ordinance authorizing the issuance of City of Kerrville, Texas Waterworks and Sewer System revenue improvement bonds, Series 2023; approving and authorizing an official statement; authorizing the execution of a purchase contract and a paying agent/registrar agreement; and approving and authorizing other instruments and procedures related thereto.

Shelley McElhannon read Ordinance No. 2023-16 caption into record.

Julie Behrens and Anne Berger-Entrekin provided information and responded to questions; Jay Juarez was in attendance.

Councilmember Hughes made a motion to approve Ordinance No. 2023-16 on first and only reading, seconded by Councilmember Kim Clarkson. The motion passed 5-0.

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

6A. Ordinance No. 2023-12. An Ordinance amending Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, such chapter more commonly known as the City's Zoning Code; by amending said code to revise regulations pertaining to the location of accessory buildings and structures within the front setback as to fences; providing a cumulative clause; providing for severability; providing an effective date; ordering publication; and providing other matters relating to the subject.

Shelley McElhannon read item Ordinance No. 2023-12 caption into record.

Drew Paxton and Mike Hayes provided information and responded to questions.

Mayor Eychner opened the Public Hearing at 7:03 p.m.

No person(s) spoke.

Mayor Eychner closed the Public Hearing at 7:03 p.m.

Councilmember Garcia made a motion to approve Ordinance No. 2023-12 with a proposed amendment to ask staff to look at that language "of the see through materials" to figure

out if there's a better way we can word that, just cause it says that the material must consist of see-through materials. The material being used to build that example fence is wood and wood is not see-through. Mayor Eychner called for a second, with no second. Motion died for lack of second.

Councilmember Hughes made a motion to approve Ordinance No. 2023-12 on first reading, seconded by Councilmember Herring. The motion passed 5-0.

## **7. ORDINANCES, FIRST READING:**

7A. Ordinance No. 2023-13. An Ordinance amending Section 26-38 "Construction of Fences", Chapter 26 "Building and Building Regulations", of the Code of Ordinances, City of Kerrville, Texas; by clarifying what "Substantial Repairs" means; providing for an effective date; and providing other matters related to the subject.

Shelley McElhannon read Ordinance No. 2023-13 caption into record.  
Drew Paxton provided information and responded to questions.

Councilmember Clarkson made a motion to approve Ordinance No. 2023-13 on first reading, seconded by Councilmember Herring. The motion passed 5-0.

7B. Ordinance No. 2023-14. An Ordinance amending in its entirety Article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations" of the Code of Ordinances of the City of Kerrville, Texas; regarding the abatement of unsafe buildings; containing a savings and severability clause; providing an effective date; ordering publication; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-14 caption into record.  
Guillermo Garcia provided information and responded to questions.  
The following person(s) spoke:

- Doug Nelson

Councilmember Garcia made a motion to adopt Ordinance No. 2023-14 with the changes as reflected in the first whereas, seconded by Councilmember Hughes. The motion passed 5-0.

7C. Ordinance No. 2023-15. An Ordinance amending Chapter 46 "Environment" of the Code of Ordinances, City of Kerrville, Texas, by adding a new Article IV "Junked Vehicles"; such Article to replace Article XI in Chapter 102; providing an effective date; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-15 caption into record.  
Guillermo Garcia, Mike Hayes, and E.A. Hoppe provided information and responded to questions.

Mayor Eychner made a motion to approve Ordinance No. 2023-15 on first reading, seconded by Councilmember Hughes. The motion passed 5-0.

## **8. ORDINANCES, SECOND READING:**

8A. Ordinance No. 2023-10, second reading. An Ordinance amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to reduce the number of members of the Library Advisory Board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to the subject.



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

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

8B. Ordinance No. 2023-11, second reading. An Ordinance amending the City's Fiscal Year 2023 (FY2023) budget to reallocate funds for items encumbered within the City's Fiscal Year 2022 (FY2022) budget, but where such items were neither received nor paid for during FY2022; to transfer unspent FY2022 Street Maintenance Funds to the FY2023 Capital Projects Fund; to amend and add a fee to the Fee Schedule; and to make other amendments as provided.

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

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

9. **EXECUTIVE SESSION:** Executive Session not convened.

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

11. **ITEM(S) FOR FUTURE AGENDAS:**

- Councilmember Garcia requested amending Section 26-38 Code of Ordinances constructing of a fence to look at the height definition of a fence. Mayor Eychner called for a second, with no second. Future agenda item died for lack of second.

**ADJOURN.** The meeting adjourned at 7:41 p.m.

**APPROVED BY COUNCIL:** \_\_\_\_\_

APPROVED:

ATTEST:

\_\_\_\_\_  
Judy Eychner, Mayor

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



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

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

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 13, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

<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

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	C - Community / Neighborhood Character and Place Making
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

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

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

Zoning:

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

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

The following sections will be amended:

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

On April 11, 2023, City Council unanimously approved Ordinance No. 2023-12 on first reading.

#### **RECOMMENDED ACTION:**

Approve Ordinance No. 2023-12 on second reading.

#### **ATTACHMENTS:**

[\*20230425\\_Ord 2023-12 Zoning Code fence requirements 2nd reading.pdf\*](#)

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

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

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

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

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

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

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

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



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

“Sec. 60-17. - Terms defined.

⋮

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

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

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

⋮

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

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

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

⋮

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

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum

height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

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

:

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

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

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

:

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

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



~~front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.

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

:

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

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.

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

:

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

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

~~in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.

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

:

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

a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.

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

:

(a)(4) ~~Location of s~~ Structures prohibited in ~~beyond~~ setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through



materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation."

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

⋮

- (b)(4) ~~Location of s~~Structures prohibited in-beyond setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation."

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

⋮

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

only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction or, otherwise interfere with pedestrian or vehicular circulation.”

K. “Sec. 60-52. – Special districts.

⋮

- (a)(6) ~~Location of s~~Structures prohibited in-beyond setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

L. “Sec. 60-52. – Special districts.

⋮

- (b)(5) ~~Location of s~~Structures prohibited in-beyond setback. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited. Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in



width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

M. “Sec. 60-52. – Special districts.

⋮

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

- a. No structure in excess of 30 inches in height may exist within a front setback except that fences are allowed up to a maximum height of six feet ~~between the front wall of any building and the front property line, except that ornamental fencing up to six feet in height is permitted. Ornamental fencing does not include chain link fencing, which is prohibited.~~ Fencing materials must consist of see-through materials and may include wrought iron, chain link, and/or other wire-type fencing. Fences may include a solid base using wood, brick, rock, concrete, or similar material but only where the height of the base does not exceed 30 inches. Poles, posts, and columns may be used as part of the fence, but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

N. “Sec. 60-52. – Special districts.

⋮

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

but in no case may they be greater than 24 inches in width. No element of the fence may encroach beyond the property line, create a visibility obstruction, or otherwise interfere with pedestrian or vehicular circulation.”

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

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

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

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

**PASSED AND APPROVED ON FIRST READING, this the 11 day of April, A.D., 2023.**

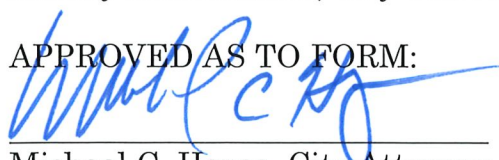
**PASSED AND APPROVED ON SECOND AND FINAL READING, this the \_\_\_\_ of \_\_\_\_\_, A.D., 2022.**

ATTEST:

\_\_\_\_\_  
Judy Eychner, Mayor

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

APPROVED AS TO FORM:

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

T:\Legal\DEVELOPMENT SERVICES (Planning)\Zoning\ORD\Fences\Amendments re front yard fences\_041823.docx



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

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

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 13, 2023

**SUBMITTED BY:** Drew Paxton, Planning Director

**EXHIBITS:**

<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

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	C - Community / Neighborhood Character and Place Making
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

**SUMMARY STATEMENT:**

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

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

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

On April 11, 2023, City Council unanimously approved Ordinance No. 2023-13 on first reading.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-13 on second reading.

**ATTACHMENTS:**

[20230425\\_Ord 2023-13 Fence building regulations 2nd reading.pdf](#)



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

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

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

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

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

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

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

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

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

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

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

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

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

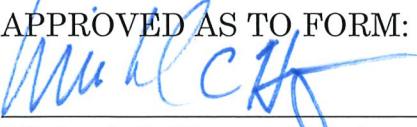
**SECTION FOUR.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City’s Charter, the City Secretary is authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

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

**PASSED AND APPROVED ON FIRST READING, this the 11 day of April, A.D., 2023.**

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

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Michael C. Hayes, City Attorney

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



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

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

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 13, 2023

**SUBMITTED BY:** Guillermo Garcia

**EXHIBITS:**

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

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

**Kerrville 2050 Item?** Yes

**Key Priority Area** H - Housing

**Guiding Principle** N/A

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

**SUMMARY STATEMENT:**

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

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



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

The recommended changes:

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

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

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

On April 11, 2023, City Council unanimously approved Ordinance No. 2023-14 (with amendments) on first reading.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-14 on second reading.

**ATTACHMENTS:**

[\*20230425\\_Ord 2023-14 Unsafe Buildings 2nd reading.pdf\*](#)

**CITY OF KERRVILLE, TEXAS  
ORDINANCE NO. 2023-14**

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

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

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

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

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

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

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

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

## **“ARTICLE VIII. - UNSAFE BUILDING ABATEMENT**

### **Sec. 26-225. - Purpose.**

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

### **Sec. 26-226. - Scope.**

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

### **Sec. 26-227. - Definitions.**

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

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

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

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

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

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



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

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

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

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

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

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

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

#### **Sec. 26-228. - Declaration.**

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

#### **Sec. 26-229. - Enforcement official.**

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

#### **Sec. 26-230. - Restrictions on employees.**

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

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

#### **Sec. 26-231. - Liability.**

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

#### **Sec. 26-232. - Right of entry.**

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

#### **Sec. 26-233. - Public utilities.**

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



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

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

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

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

**Sec. 26-235. - Emergency actions.**

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

**Sec. 26-236. - Offenses.**

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

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

**Sec. 26-237. - Required actions.**

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



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

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

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

#### Sec. 26-239. - Time of notices.

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

#### Sec. 26-240. - Content of notices.

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

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



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

#### **Sec. 26-241. Minimum standards.**

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

#### **Sec. 26-242. – Application of standards.**

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

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

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

#### **Sec. 26-243. Board orders.**

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

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

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



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

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

- (1) Mail a copy of the order by certified mail, return receipt requested, to the owner and any record lienholder and mortgagee of the building; and
- (2) Post an unsafe building placard in a conspicuous location at each doorway entrance to the unsafe building. Such placard shall remain posted until the required action is completed.

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

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

#### **Sec. 26-244. Compliance time schedule.**

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

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

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

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

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

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

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

#### **Sec. 26-245. Appeal.**

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

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

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

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

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



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

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

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

**Sec. 26-248. Offense.**

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

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

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

- (1) Violates the minimum standards; and
- (2) Is unoccupied or is occupied only by persons who do not have a right of possession to the building.

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

- (1) Personally serving the owner with written notice;
- (2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;
- (3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation within the City if personal service cannot be obtained and the owner's post office address is unknown; or

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

(c) The notice must contain:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

#### **Sec. 26-251. Other remedies.**

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

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

#### **Sec. 26-252. Civil penalties.**

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

- (1) The owner was notified of the requirements of this article and the owner's need to comply with the requirements;
- (2) After notification, the owner committed an act in violation of this article or failed to take an action necessary for compliance.

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

#### **Sec. 26-252. Prior offenses.**

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

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

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



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

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

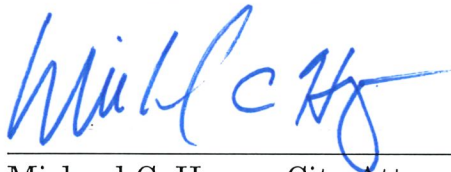
**PASSED AND APPROVED ON FIRST READING, this the \_\_\_\_ day of \_\_\_\_\_, A.D., 2023.**

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

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:



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

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





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

---

**SUBJECT:**

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

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 13, 2023

**SUBMITTED BY:** Guillermo Garcia

**EXHIBITS:**

---

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

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

---

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	C - Community / Neighborhood Character and Place Making
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	N/A

---

**SUMMARY STATEMENT:**

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

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

On April 11, 2023, City Council unanimously approved Ordinance No. 2023-15 on first reading.

**RECOMMENDED ACTION:**

Approve Ordinance No. 2023-15 on second reading.

**ATTACHMENTS:**

[20230425\\_Ord 2023-15 Junked Vehicles 2nd reading.pdf](#)

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

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

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

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

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

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

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

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

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

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

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

**“ARTICLE IV. - JUNKED VEHICLES**

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

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

**Sec. 46-72. - Definitions.**

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

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

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

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

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

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

*Junked vehicle* means a vehicle that:

(1) Is self-propelled; and

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

(3) Is:



(a) Wrecked, dismantled, partially dismantled, or discarded; or

(b) Inoperable and has remained inoperable for more than:

i. 72 consecutive hours, if the vehicle is on public property; or

ii. 30 consecutive days if the vehicle is on private property.

(c) A junked vehicle includes the following:

i. An aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and

ii. A watercraft that does not have lawfully on board an unexpired certificate of number and is not a watercraft described by Section 31.055, Parks and Wildlife Code, as applicable to vessels provided with a federal valid marine document.

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

#### **Sec. 46-73 - Enforcement.**

(a) The enforcement authority is authorized to administer the procedures set forth herein and may enter upon private property, in accordance with federal and state law, for the purposes specified in this article to examine vehicles or parts thereof, obtain information as to the identity of vehicles, and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article.

(b) The Municipal Court for the City shall have jurisdiction to conduct hearings and issue all orders necessary to enforce this article.

#### **Sec. 46-74. - Applicability.**

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



**Sec. 46-75. - Offense.**

- (a) Any person who maintains or permits a public nuisance as defined in Section 46-72 on public or private property commits a misdemeanor, and upon conviction, shall be subject to a fine not to exceed \$200.00. Each day a violation continues constitutes a separate offense.
- (b) The enforcement authority shall emphasize and prioritize abating junked vehicles that present an obvious appearance of not being functional as a means of transportation. As an example, if the visual appearance of such a vehicle from a public place or public right-of-way would cause a reasonable person to believe the vehicle is mechanically unserviceable, then immediate action shall be taken to abate the nuisance. The following examples are provided to give guidance to such enforcement, but is not intended to be an exhaustive list:

  - (1) the vehicle has one or more wheels blocked up from the ground.
  - (2) the vehicle has one or more broken windows, severe body damage, is missing body parts, is dismantled or partially dismantled, has parts out of place such as exhaust or the transmission touching the ground, or has one or more flat tires.
  - (3) the vehicle has grass and weeds growing up around it, making it obvious that it has not moved in some time.
  - (4) the vehicle has junk and debris visible through the windows that would cause a reasonable person to believe it is being used for storage rather than transportation.

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

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

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

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

**Sec. 46.78. - Defenses to prosecution.**

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

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

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



- (2) any lienholder of record; and
- (3) the owner or occupant of:
  - A. the property on which the vehicle is located; or
  - B. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (b) If the post office address of the owner is unknown, the notice may be placed on the vehicle or hand-delivered to the owner.
- (c) The notice must state:
  - (1) The existence and nature of the nuisance;
  - (2) That the nuisance must be abated within ten days after receipt of the notice;
  - (3) That a public hearing must be requested within the ten-day period or it will be automatically waived; and
  - (4) That if the nuisance is not removed and a hearing is not requested within the ten-day period, the enforcement authority will remove or cause the removal of the nuisance vehicle.
- (d) If any notice is returned undelivered, official action to abate the nuisance vehicle shall be continued to a date not less than ten days after the date of return.
- (e) For nuisance vehicles on public property as described in Section 46-76 which are not dealt with as abandoned motor vehicles, written notice shall be given as described in subsection (a) of this section, except that the enforcement authority shall mail notice to the owner or manager of the public premises and to the owner or occupant of the premises adjacent to the public right-of-way.
- (f) The relocation of a junked vehicle that is a public nuisance to another location within the City or Kerr County after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

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

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

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

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

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

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



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

**Sec. 46-83. Notice to state.**

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

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

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

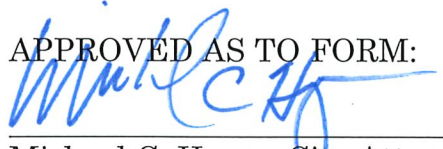
**SECTION FIVE.** Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

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

**PASSED AND APPROVED ON FIRST READING, this the 11 day of April, A.D., 2023.**

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

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Judy Eychner, Mayor

ATTEST:

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



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

**SUBJECT:** Resolution No.12-2023. A Resolution approving the use of Tax Increment Funding in the amount of \$52,500 pursuant to a recommendation from the Reinvestment Zone Number One, City of Kerrville Texas; such funding to be used by the City as part of its local match for a Community Development Block Grant, all of which the City will use for improvements, including sidewalk and traffic signal reconstruction, within the City's Tax Increment Reinvestment Zone.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 12, 2023

**SUBMITTED BY:** Megan Folkerts, Senior Management Analyst

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
52,500	NA	52,500	70-7000-5100

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

<b>Kerrville 2050 Item?</b>	Yes
<b>Key Priority Area</b>	D - Downtown Revitalization
<b>Guiding Principle</b>	N/A
<b>Action Item</b>	D5.3 - Make Downtown more pedestrian-friendly by improving walkways, adding accessibility ramps, beautifying the area with landscaping and street trees, etc.

**SUMMARY STATEMENT:**

At the September 8, 2022 Tax Increment Reinvestment Zone (TIRZ) meeting, the TIRZ board recommended funding \$52,500 for purposes of fulfilling the local match component of the Downtown Community Development Block Grant (CDBG) Program that was awarded to the City in 2022.

The project to be funded by this grant specifically aligns with Chapter 310.010 of the Local Government Code, which dictates that TIRZ funds can be utilized for the construction of a road, sidewalk, or other public infrastructure in or out of the zone, including the cost of acquiring the real property necessary for the construction of the road, sidewalk, or other public infrastructure.

This proposed project involves the reconstruction of the pedestrian ramps at the crosswalks, and reconstruction of the traffic signals at the Earl Garrett and Water Street intersection. This

also includes pedestrian signalization improvements and turn lane reconfiguration for safer pedestrian accessibility.

Texas Tax Code Sections 311.008(b)(1) and (b)(4)(B) are applicable to this project because they will upgrade the pedestrian access in the TIRZ district through reconstructed sidewalks, and reconstructed traffic and pedestrian signalization.

**(b) A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to:**

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means and sell real property, on the terms and conditions and in the manner it considers advisable, to implement project plans;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality or county to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

**(4) consistent with the project plan for the zone:**

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities;

The applicable construction project utilizing these funds is also set for Council consideration later in this agenda.

**RECOMMENDED ACTION:**

Approve Resolution No. 12-2023.

**ATTACHMENTS:**

[\*20230425\\_Reso 12-2023 TIRZ for CDBG local match.pdf\*](#)



CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 12-2023

A RESOLUTION APPROVING THE USE OF TAX INCREMENT FUNDING IN THE AMOUNT OF \$52,500 PURSUANT TO A RECOMMENDATION FROM THE REINVESTMENT ZONE NUMBER ONE, CITY OF KERRVILLE, TEXAS; SUCH FUNDING TO BE USED BY THE CITY AS PART OF ITS LOCAL MATCH FOR A COMMUNITY DEVELOPMENT BLOCK GRANT, ALL OF WHICH THE CITY WILL USE FOR IMPROVEMENTS, INCLUDING SIDEWALK AND TRAFFIC SIGNAL RECONSTRUCTION, WITHIN THE CITY'S TAX INCREMENT REINVESTMENT ZONE

WHEREAS, City Council, pursuant to Chapter 311 of the Texas Tax Code as known as the Tax Increment Financing Act (the "Act") and its adoption of Ordinance No. 2018-19, previously designated a geographic area within the City as a tax increment reinvestment zone ("TIRZ"); and

WHEREAS, Ordinance No. 2018-19 designated the TIRZ as "Reinvestment Zone Number One, City of Kerrville, Texas" (the "Zone") and established a tax increment fund for the Zone (the "TIF Fund") pursuant to the Act; and

WHEREAS, the goal of the Zone and the use of the TIF Fund, in accordance with the Act, is to fund the construction of needed public infrastructure and to encourage private development within the boundaries of the Zone; and

WHEREAS, during an open meeting held on September 8, 2022, the Board of Directors for the Zone, pursuant to its powers under the Act, voted to make a recommendation to the City Council that revenue accumulated within the TIF Fund be used to account for the City's local match for a Community Development Block Grant ("CDBG"), said agreement is attached as **Exhibit A**; and

WHEREAS, pursuant to an agreement that the City will enter into with Elecnor Belco Electric, Inc., the City will use the CDBG to fund a pedestrian accessibility improvement project within the boundaries of the Zone (the "Project"); and

WHEREAS, the Act contemplates the construction of roads, sidewalks, or other public infrastructure within the Zone's boundaries; and

WHEREAS, the Project includes the reconstruction of pedestrian ramps at various crosswalks, reconstruction of the traffic signals at the Earl Garrett and Water

Street intersection, pedestrian signalization improvements, and turn lane reconfiguration for safer pedestrian accessibility; and

**WHEREAS**, City Council desires to approve the recommendation from the Board of Directors of the Zone for the use of TIF Funds to account for the City's local match of the CDBG;

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

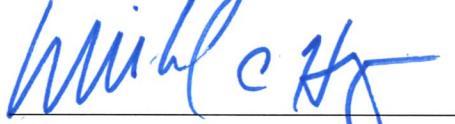
**SECTION ONE.** All of the above findings are found to be true and correct.

**SECTION TWO.** City Council authorizes the use of TIF Funds in the amount of \$52,500.00 to account for the City's match toward a CDBG. The City will use the CDBG to contribute funding towards a project that is aligned with the Zone and its adopted project plan to construct, reconstruct, or install public works, facilities, or sites or other public improvements, including pedestrian walkways as part of the City's agreement referenced above.

**PASSED AND APPROVED ON this the \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2023.**

\_\_\_\_\_  
Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

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



## TEXAS DEPARTMENT OF AGRICULTURE

## GRANT AGREEMENT

<b>GRANTEE</b>	Kerrville
<b>GRANT PROGRAM</b>	CDBG - Downtown Revitalization Program - 2021
<b>PROJECT TITLE</b>	CDBG - Downtown Revitalization Program - 2021
<b>CFDA NUMBER</b>	14.228
<b>PERFORMANCE PERIOD/ AGREEMENT TERM</b>	3/1/2022 Through 2/29/2024
<b>AUTHORITY AND PURPOSE</b>	
<p>The United States Government has awarded Community Development Block Grant ("CDBG") funds to the State of Texas for activities authorized under Title I of the Housing and Community Development Act of 1974 ("HCD Act"), as amended (42 U.S.C. 5301 et seq.). The Texas Department of Agriculture ("Department") administers the State Community Development Block Grant ("TxCDBG") Program pursuant to Texas Government Code §487.051.</p> <p>Grant Recipient has submitted a request for assistance under this Grant Program, hereinafter referred to as the "Application," hereby incorporated by reference into this Grant Agreement ("Agreement"). This Agreement sets forth the obligations of the parties along with the terms and conditions under which the Department will provide Grant Program funds to Grant Recipient under this award. Grant Recipient agrees to administer the project as described herein ("Project"), and the Department agrees to fund the Project up to the Grant Amount.</p>	
<b>PROJECT DESCRIPTION</b>	
<p>Sidewalk reconstruction and accessibility improvements on Water Street.</p> <p>Grant Recipient agrees to carry out the Project and complete all approved activities in accordance with the terms of this Agreement, including the following Exhibits which are attached hereto and incorporated into this Agreement: Performance Plan and Specific Award Conditions (Exhibit A), Project Budget (Exhibit B), General Terms and Conditions (Exhibit C), Certifications and Assurances (Exhibit D), and to comply with all statutes and regulations as applicable to this award and such regulations and procedures as the Department may prescribe.</p>	
<b>TOTAL GRANT AMOUNT NOT TO EXCEED</b>	\$350,000.00
<b>MATCH AMOUNT</b> (if applicable)	\$52,500.00



GRANTEE	GRANTOR
Kerrville	<b>TEXAS DEPARTMENT OF AGRICULTURE Trade and Business Development</b>
701 MAIN STREET KERRVILLE, Texas 78028-5301	1700 N Congress Ave Austin, TX 78701
<b>AUTHORIZED SIGNATORY/AUTHORITY TO BIND</b>  Each person signing the Agreement certifies that he or she is authorized by the Grantor or Grant Recipient to sign and execute the Agreement and to bind such party to its terms, performances, and conditions.	
PRINTED NAME AND TITLE OF PERSON SIGNING: E.A. Hoppe	PRINTED NAME AND TITLE OF PERSON SIGNING: Karen Reichel
DATE SIGNED: 2/24/2022	DATE SIGNED: 3/1/2022

## **Exhibit A**

### **Performance Plan and Specific Award Conditions**

#### **A. Eligible Use of Funds**

1. As a condition of receiving this award, Grant Recipient shall administer the Project funded under this Agreement and complete all activities described in this Exhibit A in accordance with the Project Schedule and performance goals outlined herein. Grant Recipient shall perform and complete all work and activities in a manner satisfactory to the Department and consistent with the terms of conditions of this Agreement and applicable statutes and regulations.
2. The use of Grant Program funds is premised upon, and conditioned on, Grant Recipient fulfilling one of the program's national objectives. Grant Recipient certifies that the activity (ies) carried out under this Agreement will meet the national objective of Prevention/Elimination of Slums or Blight. If Grant Recipient fails to meet a national program objective, as specified in this Exhibit A, Grant Recipient shall reimburse the Department all grant funds received under this Agreement within 30 days of notice or such timeframe as requested by the Department.
3. Grant Recipient will undertake the following activities and provide the following levels of program services.

#### **The City of Kerrville - 03L**

Grant Recipient shall address the following local need:

Deteriorated and non-ADA complaint sidewalks resulting in hazardous pedestrian traffic.

Grant Recipient shall complete the following work:

Install approximately sixty linear feet (60 l.f.) of sidewalk, two hundred twenty linear feet (220 l.f.) of concrete curb, eight (8) curb ramps, electrical controls and conduit, eight (8) pedestrian signals, eight (8) traffic signals, and all associated appurtenances.

Grant Recipient shall perform this work in the following location(s):

Water Street. This location is more fully described in Figure A1 below, which is incorporated herein. In the event of a conflict between this description and Fig A1, Figure A1 controls.

These activities shall benefit 21,270 persons, of which 10,270 or 48.28 percent are of low- to moderate-income.

4. Grant Recipient shall ensure that all required engineering services are completed as required by state law, including preliminary and final design plans and specifications, interim and final inspections, and all relevant special services. Grant Recipient shall ensure that all projectrelated administration activities are completed as described in the current TxCDBG Project Implementation Manual.

## **B. Prohibited Activities**

Grant Recipient may only use grant funds to carry out the activities described in this Agreement. Grant Recipient is prohibited from charging to this award the costs of ineligible activities, including those described at 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

## **C. Timeline**

Grant Recipient will comply with the following Project Schedule. Failure to meet any of the below milestones may result in sanctions as outlined in the TxCDBG Project Implementation Manual, Requests for Applications, other published guidance, and conditions of this agreement.

Pre-Agreement Cost Begins:	5/3/2021
Grant Contract Period Begins:	3/1/2022
Environmental Review/Plans & Specifications Recommended to be Complete:	9/1/2022
Group B Forms Required to be Complete:	3/1/2023
Project Recommended to be Complete, including inspections:	11/1/2023
Grant Contract Period Ends:	2/29/2024
Final Payment and Closeout Documentation Required to be Submitted:	4/29/2024

## **D. Special Conditions**

Grant Recipient agrees and assures the Department that it will comply with all the special provisions and requirements of the award described herein.



1. **Compliance:** It is understood and agreed by the parties that performances under this Agreement must be rendered in accordance with the Housing and Community Development Act of 1974 as identified in the Authority and Purpose of the Agreement; the policies, procedures and regulations of the Department; assurances and certifications made to the Department by Grant Recipient; and assurances and certifications made to HUD by the State of Texas with regard to the operation of the TxCDBG Program. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by both parties, it is agreed by the parties that performance is subject to and governed by the provisions of the TxCDBG Project Implementation Manual and any amendments thereto. Further, the Department may from time to time during the period of performance of this Agreement issue policy directives which serve to establish, interpret, or clarify performance requirements under this Agreement. Such policy directives shall be promulgated by the Department in the form of TxCDBG issuances, shall have the effect of qualifying the terms of this Agreement and shall be binding upon Grant Recipient, as if written herein, provided, however, that the policy directives and any amendments to the TxCDBG Project Implementation Manual shall not alter the terms of this Agreement so as to release the Department from any obligation specified in Section 4 of Exhibit C to reimburse costs incurred by Grant Recipient prior to the effective date of such amendments or policy directives. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal or State laws or regulations are automatically incorporated into this Agreement without written amendment and shall become effective on the date designated by such law or regulation.
2. **Environmental Review:** Grant Recipient understands and agrees that it is responsible for environmental review, decision-making, and action under 42 U.S.C. 5304(g), the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 et seq.], and other provisions of law which further the purposes of NEPA, as specified in 24 CFR 58.5. Grant Recipient shall comply with the environmental review procedures set forth in 24 CFR Part 58, the TxCDBG Project Implementation Manual, and all other applicable federal, state, and local laws insofar as they apply to the performance of this Agreement. Neither Grant Recipient nor any participant in the development process, or any of their contractors, may commit grant or other funds on an activity or project, or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site, until Grant Recipient has completed the environmental review process and the Department has authorized use of grant funds or approved the Grant Recipient's request for release of funds and related certification.
3. **Citizen Participation:** Grant Recipient shall provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which the funds provided under this Agreement are used, in accordance with 24 CFR 570.486 and this Agreement.
4. **Public Hearings:** Grant Recipient shall hold a public hearing concerning any activities proposed to be added, deleted, or substantially changed, as determined by the Department, from the activities specified in the Application or the Performance Plan. Prior to the programmatic closure of this Agreement, Grant Recipient shall hold a public hearing to review its performance under this Agreement. For each public hearing scheduled and conducted by Grant Recipient, Grant Recipient shall comply with the hearing requirements specified in the TxCDBG Project Implementation Manual.
5. **Complaint Procedures:** Grant Recipient shall maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Such procedures shall comply with the Department's requirements. Grant Recipient shall ensure that its citizens are aware of the location and hours at which they may obtain a copy of the written procedures and the address and phone number for submitting complaints.

6. Department Recognition: Grant Recipient shall have signage placed in a prominent visible public area identifying the project as funded by the Department. The signage must be legible from a distance of at least three feet and comply with the wording, size and formatting requirements set forth in the TxCDBG Project Implementation Manual.
7. Program Income: In the same manner as required for all other funds under this Agreement, Grant Recipient shall maintain records of the receipt, accrual, and disposition of all program income (as defined at 24 CFR 570.489(e) and the TxCDBG Project Implementation Manual) generated by activities carried out with grant funds made available under this Agreement. The use of program income by Grant Recipient shall comply with the requirements set forth at 24 CFR 570.489(e). Grant Recipient shall use such income during the Agreement Term for activities permitted under this Agreement prior to requesting additional funds from the Department. Grant Recipient shall provide reports of program income to the Department with each payment request in accordance with the payment procedures described herein, and at the termination of this Agreement. All unexpended program income shall be returned to the Department at the end of the Agreement Term, unless otherwise specifically provided within this Agreement.
8. Disbursement of Certain Funds: Funds for construction activities under this Agreement will not be disbursed to Grant Recipient until all requirements identified as Group B in the TxCDBG Project Implementation Manual, Section 2.2, have been satisfied. These requirements must be satisfactorily completed no later than twelve (12) months after the Agreement start date. In accordance with Sections 17 and 18 of Exhibit C, the Department may terminate this Agreement immediately if these special conditions are not met by the date identified in the Project Schedule above as Group B Forms Required to be Complete.
9. Grant Recipient shall provide to the Department a copy of the Final Inspection Approval letter from the Texas Department of Licensing and Regulation for the plans and specifications specified in the Performance Statement.



**Exhibit B****Budget****A. Approved Budget**

1. It is understood and agreed that the total amount of funds under this award shall be used for the Project outlined in this Agreement. Grant Recipient shall expend funds under this award in accordance with the approved budget specified herein. All Project-related expenses must be reasonable and necessary.
2. The Department may require a more detailed budget breakdown than the one contained herein, and Grant Recipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Department.
3. Any amendments to the Project Budget must be approved in writing by both the Department and Grant Recipient.

<b>HUD Activity</b>	<b>Awarded Amount</b>
03L	\$260,000.00
Engineering	\$55,000.00
Admin	\$35,000.00
<b>Total Grant Awarded</b>	<b>\$350,000.00</b>
<b>Committed as Match</b>	<b>\$52,500.00</b>
<b>Match Ratio</b>	<b>15.00%</b>

**B. Pre-Award Costs**

The Department may reimburse allowable administrative and engineering expenditures made by Grantee prior to the effective date of the Agreement if incurred after 5/3/2021, and if Grantee complied with all requirements for the release of such funds.



**Exhibit C****General Terms and Conditions – Federal Grant****SECTION 1. COMPLIANCE WITH APPLICABLE LAWS**

Grant Recipient agrees to administer the award and carry out the Project in compliance with all of the obligations described in this Agreement and shall ensure that the Project is financed, constructed, operated and maintained in accordance with all federal, state and local laws, ordinances, regulations, and published program guidance/Project Implementation Manual that are in any manner applicable to the activities performed by Grant Recipient under this award, its agents, employees, subgrantees, contractors and subcontractors pursuant to this Agreement. Failure to comply with such laws, ordinances, regulations and guidance shall be grounds for termination of this Agreement for cause.

**SECTION 2. AVAILABILITY OF FUNDS**

Grant Recipient shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the actual receipt by the Department of funds appropriated to the Department by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. If said funds or any part thereof are or become unavailable, the Department may immediately terminate this Agreement or reduce the Grant Amount, as applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the Department or an event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations.

**SECTION 3. ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND ACCOUNTING STANDARDS**

Grant Recipient shall comply with, to the extent applicable, the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), and the Texas Grant Management Standards ("TxGMS") promulgated by the Texas Comptroller of Public Accounts pursuant to the Uniform Grant and Contract Management Act (Tex. Gov't. Code Chapter 783). Grant Recipient agrees to adhere to the administrative requirements, accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred under the award

**SECTION 4. METHOD OF PAYMENT**

A. Funds will be disbursed for actual eligible costs incurred by Grant Recipient in connection with this Agreement. Determination of allowable costs shall be made in accordance with applicable government-wide cost principles under 2 CFR 200 Subpart E, the TxGMS, this Agreement, and the provisions of such regulations and procedures as the Department may prescribe.

B. Payment requests shall be submitted to the Department in the manner and on the form required by the Department. Payment shall be made on an eligible cost reimbursement basis only and in such amounts and increments approved by the Department for various phases of work following submission by Grant Recipient of a proper request for payment, including applicable, accurate and complete supporting documentation that substantiates the payment request in accordance with the Performance Plan and the Project Budget.

C. The Department shall pay to Grant Recipient funds available under this Agreement based upon information submitted by Grant Recipient for allowable costs permitted under the Agreement and consistent with the Project Budget. The Department will notify Grant Recipient if there are concerns about the project and shall not make disbursement of any such payment until the issues of concern are resolved and the Department has reviewed and approved such payment request. The Department may deny a payment request if the Department determines that the request is not supported by sufficient documentation.

D. The Department will not reimburse Grant Recipient for any costs incurred either prior to the effective date of the Agreement or after the termination or expiration date of the Agreement, unless otherwise stated herein or agreed to in writing by the Department.

E. The Department will not make final payment to Grant Recipient until all reports, unexpended program income and other deliverables required under the Agreement have been submitted to the Department in acceptable form.

## **SECTION 5. MATCHING AND COST SHARING REQUIREMENTS**

Grant Recipient shall demonstrate to the satisfaction of the Department that it has complied with all matching and cost sharing requirements, if any, of this Agreement. Requests for reimbursement will only be paid after Grant Recipient provides documented minimum expenditure of matching funds in an amount proportionate to the reimbursement request.

## **SECTION 6. FINANCIAL MANAGEMENT**

A. Grant Recipient shall maintain a financial management system that meets the standards for fund control and accountability as established in 2 CFR 200 Subpart D, the TxGMS and this Agreement, as applicable, and that will facilitate an effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. 7501-7507). Grant Recipient agrees to keep all project accounts and records that fully disclose the amount and disposition by Grant Recipient of the proceeds of the award, the total cost of the project in connection with which the award is given or used, the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the Project. Grant Recipient's failure to comply with these requirements may result in termination of the award.

B. Grant Recipient shall maintain a financial management system that provides:

- (1) Accurate, current and complete disclosure of all financial activities related to this Agreement, in accordance with Generally Accepted Accounting Principles;
- (2) Records that clearly identify the source and application of all funds used for the purposes described in the approved grant application, attached hereto and made a part hereof which is part of the Agreement. These records shall, at a minimum, contain information pertaining to Agreement awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and program income;



- (3) Effective internal and accounting controls over all funds, property, and other assets. Grant Recipient shall have in place a system for safeguarding all such assets and shall assure that they are used solely for authorized purposes; and
- (4) Accounting records that are supported by source documentation.

C. Grant Recipient shall ensure that the funds provided by the Department to Grant Recipient under this Agreement are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.

## **SECTION 7. PROCUREMENT STANDARDS**

Grant Recipient shall procure property, supplies, equipment, and services with funds provided under this Agreement in a manner consistent with (1) current program policy, (2) federal, state and local laws, (3) 2 CFR 200 Subpart D, and (4) the TxGMS, as applicable. The Department assumes no responsibility for contractual and administrative matters associated with Grant Recipient's procurement of such property, supplies, equipment, and services. No provider of property, supplies, equipment, and services to Grant Recipient shall be deemed a third-party beneficiary of this Agreement.

## **SECTION 8. PROPERTY MANAGEMENT STANDARDS**

Grant Recipient shall use and dispose of property in a manner consistent with 2 CFR 200 Subpart D and TxGMS, as applicable, if such property has been furnished by the Department or acquired or improved in whole or in part with federal or state funds or if the cost of such property was charged to a project supported by federal or state funds.

## **SECTION 9. REPORTING REQUIREMENTS**

A. Grant Recipient shall submit timely, complete, and accurate progress/performance/financial reports in the manner and form specified by the Department. These reports shall be submitted to the Department on a periodic basis, as prescribed in the Specific Award Conditions (Exhibit A).

B. Agreement obligations will remain in force until all final reports are reviewed and approved by the Department. The final report shall include a comparison of actual expenditures with the budget line items shown in the Project Budget.

C. Extensions to the reporting due dates prescribed in the Specific Award Conditions may be granted by the Department upon receipt of a written request from Grant Recipient.

D. If reports are not submitted by Grant Recipient as required, the Department may, in its sole discretion, withhold payments under this Agreement or any other grant agreement entered into between the Department and Grant Recipient, terminate this award, or initiate other remedies for noncompliance as appropriate and permitted under this Agreement, 2 CFR 200 Subpart D or the TxGMS.

## **SECTION 10. RECORD RETENTION**



A. Grant Recipient shall maintain and retain all financial and statistical records, performance records, supporting documents, and all other records related, in any way, to this Agreement and award for a period of three (3) years from closeout of the grant from the federal awarding agency to the Department. If any litigation, claim, audit, administrative review or other action is initiated before the expiration of the record retention period, all records and supporting documents shall be retained until all issues and matters are resolved and final action taken.

B. The preceding record retention requirement is subject to the following exception: Records pertaining to nonexpendable property acquired with award funds shall be retained for three years after final disposition of such property.

C. The Department reserves the right to direct Grant Recipient to retain documents for a longer period of time or transfer certain records to Department custody when it is determined the records possess longer term retention value.

D. Grant Recipient shall include the substance of this Section in all subawards and subcontracts.

## **SECTION 11. INSPECTIONS AND MONITORING**

A. Grant Recipient shall monitor the performance of all activities undertaken pursuant to this Agreement to assure that time schedules are being met, projected work and tasks are being accomplished and other performance goals are being achieved. Grant Recipient is accountable to the Department for the use of the funds provided and shall assure the award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

B. Grant Recipient agrees to notify the Department in writing of any circumstances or conditions that may negatively affect or are negatively affecting program objectives or performance as soon as they are known. These conditions include but are not limited to circumstances and problems that prevent the meeting of time schedules and goals or preclude the attainment of project work within established time periods. In its notification, Grant Recipient shall include a statement of the action taken or contemplated by Grant Recipient to correct the problems and the time frame within which corrective action will be taken.

C. Grant Recipient's progress will be monitored periodically by the Department to ensure that the Project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed.

D. The Department may, at any time, require that Grant Recipient provide such other information as is deemed necessary by the Department to enable it to fully monitor the Agreement and award.

E. The Department may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits, inspections or monitoring reviews. The Department may require Grant Recipient to take timely and appropriate action on all deficiencies pertaining to the award detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, the Department may impose additional conditions on the use of funds to ensure future compliance. Failure of Grant Recipient to take timely and appropriate action on all deficiencies may result in the withholding or suspension of funds under the Agreement, termination of the award, or any other remedy which may be available to the Department.

F. Grant Recipient understands and agrees that it shall repay funds disbursed to Grant Recipient under this Agreement for disallowed costs identified through audits, inspections or monitoring reviews, and the repayment of such disallowed costs shall be paid by Grant Recipient from non-grant funds. Disallowed costs are those charges determined to not be allowed in accordance with the applicable cost principles or other conditions contained in this Agreement.

## **SECTION 12. AUDITS, INVESTIGATIONS AND ACCESS TO RECORDS**

A. Grant Recipient agrees to make available to the Department, any federal agency whose funds are expended in the course of this Agreement, the State Auditor's Office, any other appropriate unit or agency of the State or Federal government, and any of their duly authorized representatives, for purposes of audit and examination, all accounting records, books, documents, files and other papers that are pertinent to the award as may be necessary to facility the review and audit of Grant Recipient's operations, administration, receipt and use of funds under this award. Such authority to audit and right to access shall continue as long as the records are retained by Grant Recipient. Grant Recipient agrees to cooperate fully with such agencies in the conduct of the audit or investigation. Grant Recipient shall ensure that the substance of this clause concerning the authority to audit funds and the requirement to cooperate is included in all subawards and contracts it awards.

B. When reasonable and practical to do so, the Department shall provide prior notice of all visits entailing inspections, audits and other reviews. However, the Department retains the right to make unannounced visits, inspections and audits as deemed necessary.

C. All audit reports shall be promptly delivered to Grant Recipient for review. Grant Recipient shall cooperate with the Department to assure timely and appropriate resolution of audit findings and recommendations.

D. When audits disclose overpayments to Grant Recipient, the Department may, at its option, either require Grant Recipient to repay the overpayment or deduct the amount of overpayment from monies due the Grant Recipient under the Agreement. Any overpayments not repaid through actual repayment or by deduction within thirty (30) days of notice to Grant Recipient shall be charged simple interest at ten percent (10%) per annum. The thirty (30) day notice of repayment or deduction shall commence upon sending, either by United States postal service or electronic mail, of written notice to Grant Recipient.

## **SECTION 13. AUDIT REQUIREMENTS**

A. If Grant Recipient expends \$750,000 or more during its fiscal year in federal awards, Grant Recipient must have a single or program-specific audit conducted for that year in accordance with applicable federal laws and regulations, including 2 CFR Part 200, Subpart F.



B. All audits shall be conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS).

C. If Grant Recipient has a financial audit performed during the term of this Agreement, Grant Recipient shall provide to the Department, upon request, information about the audit or information regarding where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which award funds are included.

D. Failure to comply with audit requirements may adversely affect this award, other grant agreements between Grant Recipient and the Department, and future awards to Grant Recipient.

#### **SECTION 14. MODIFICATIONS AND AMENDMENTS**

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by the parties to the Agreement.

B. Amendments will generally be required when any of the following are anticipated: (1) a change to the scope, location, or objectives of the Project, including purpose or beneficiaries; (2) revision to the Project Budget, including budget category expenditure variances and transfer of expenditures to an unbudgeted line item; and (3) a need to extend the availability of Grant funds or Performance Period.

C. A request for modification or amendment to the Agreement shall be submitted to the Department in writing, including an explanation or justification for the request, no later than thirty (30) days prior to the end of the agreement term. A request for an extension must be supported by documentation of extenuating or unforeseeable circumstances beyond Grant Recipient's control which prevented completion of the Project within the agreement term and include a revised performance plan and schedule showing when major milestones will be completed for each activity. Requests may be submitted to the Department for approval less than thirty (30) days prior to the end of the agreement term but only for good cause as determined by the Department based on the justification submitted with the request.

D. Such amendments shall not invalidate the Agreement, nor relieve or release the Department or Grant Recipient from its obligations under the Agreement except as specifically set out therein.

E. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal or State laws or regulations are automatically incorporated into this Agreement without written amendment and shall become effective on the date designated by such law or regulation.

#### **SECTION 15. INDEMNIFICATION**

A. To the extent allowed by law and the Constitution of the State of Texas, Grant Recipient and the Department shall each be responsible for the acts or omissions of their respective agents and employees.



B. Grant Recipient shall, to the extent allowed by law and the Constitution of the State of Texas, indemnify and hold harmless the Department, its officers, agents, employees and representatives from any and all liability, actions, claims, demands or suits, and all related costs, attorney fees and expenses arising out of or related to (1) the work, services, or materials provided under this Agreement; (2) any failure of Grant Recipient to perform its obligations under this Agreement; or (3) any improper or deficient performance of such contractual obligations. The Department shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

C. This Section shall survive the expiration or termination of the Agreement.

## **SECTION 16. AWARD CLOSEOUT**

A. Closeout of the award shall be based upon a determination that all applicable administrative actions and all required Project-related activities have been completed in accordance with the terms of this Agreement and all applicable laws and regulations.

B. Upon the Department's review of all financial, performance, and other reports required, the Department may make upward or downward adjustments to the allowable costs, within the limits of the Grant Amount, on the basis of the information contained in the reports.

C. Whether or not audits were conducted during the agreement term, a final financial and compliance audit may be initiated up to three years after the agreement completion date beginning with the date Grant Recipient submits the final reports.

D. Any award funds not expended by Grant Recipient in conjunction with the Project prior to the end of the Agreement Term, including any authorized extensions, shall be forfeited.

## **SECTION 17. SUSPENSION AND TERMINATION**

A. Termination for Cause: If the Department determines that Grant Recipient has committed a material breach or default of any covenant, warranty, obligation or agreement under this Agreement, failed to fulfill or perform any obligation under this Agreement, or failed to comply with any of the terms or conditions of this Agreement, in whole or in part, and such breach, default or failure is not cured within fourteen (14) days after the Department's notice or such longer period as the Department may specify in such notice, the Department may place Grant Recipient in default status and take any or all of the following actions:

- (1) Suspend activities under the Agreement upon thirty (30) days advance written notice by the Department and withhold further payments. The notice of suspension shall state the reason for the action, the effective date of the suspension, the corrective action that must be taken and the time period during which the corrective action must be accomplished.
- (2) Terminate the Agreement for cause, in whole or in part, upon thirty (30) days advance written notice by the Department. The Notice of Termination shall state the reason for the action, the effective date of the termination and the closeout procedures to be followed. As of the effective date of a termination for cause, Grant Recipient shall immediately cease incurring additional obligations of award funds. Grant Recipient shall have no right to utilize award funds to pay any costs incurred after the effective date of a termination for cause.

- (3) Terminate the Agreement for cause, in whole or in part, immediately effective upon notice, whenever the Department determines that Grant Recipient has jeopardized the safety and welfare of the public, materially failed to comply with the terms and conditions of the Agreement, or whenever the fiscal or programmatic integrity of the Agreement has been compromised. The notice of termination pursuant to this provision shall state the reason for the action, the effective date of the termination and closeout procedures to be followed. As of the effective date of such a termination for cause, Grant Recipient shall immediately cease incurring additional obligations of award funds. Grant Recipient shall have no right to utilize award funds to pay any costs incurred after the effective date of the termination.
- (4) Invoke any other remedy or remedies that may be legally available.

B. Termination for Convenience: Either party may terminate this Agreement at any time for convenience by providing a written notice to the other party at least thirty (30) days in advance of the intended date of termination.

C. Mutual Termination: This Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

D. Effect of Termination: Upon receiving a notice of termination of this Agreement, Grant Recipient shall immediately cease all activities under this Agreement unless the Department expressly directs otherwise. Each party shall be released from all obligations to the other party arising after the date of the termination or expiration, except for those that by their terms survive such termination or expiration.

## **SECTION 18. CORRECTIVE ACTIONS/REMEDIES FOR NONCOMPLIANCE**

A. In addition to any other rights or remedies available at law or in equity, if Grant Recipient fails to comply with any term, condition, requirement, or provision of this Agreement, in whole or in part, the Department may take one or more of the following actions:

- (1) Temporarily withhold payment of funds pending correction of the default by Grant Recipient;
- (2) Disallow all or part of the cost of the noncompliant activity or action and reduce the Grant Award by such amount;
- (3) Wholly or partially suspend or terminate the award and this Agreement as provided in this Agreement;
- (4) Withhold further awards to Grant Recipient;
- (5) Require Grant Recipient to repay award funds that the Department determines were not expended in compliance with this Agreement or any applicable statutes or regulations;
- (6) Impose an administrative penalty which results in a reduction of the budget line item for grant administration; or
- (7) Invoke any other remedy or remedies that may be legally available.

B. Failure to comply with any terms of this Agreement include, but are not limited to, the following:

- (1) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directives as may become applicable at any time;
- (2) Failure, for any reason, of Grant Recipient to fulfill in a timely and proper manner its obligations under this Agreement;
- (3) Ineffective or improper use of funds provided under this Agreement; or



- (4) Submission by Grant Recipient to the Department reports that are incorrect or incomplete in any material respect.

C. The Department reserves the right to immediately cancel this Agreement, in whole or in part, without penalty and without an opportunity for Grant Recipient to cure if:

- (1) award funds are misused;
- (2) Grant Recipient commits fraud through intentional, reckless or grossly negligent conduct; or
- (3) Grant Recipient knowingly made any false statements or misrepresentations in the Application or any certification, report or other information submitted to the Department under this Agreement.

D. In the case of a cancellation, suspension or termination, monies already received by Grant Recipient under this Agreement may be owed back to the Department and the Department may also declare Grant Recipient ineligible to receive any further awards until the entire obligation has been repaid to the Department.

## **SECTION 19. ASSIGNABILITY OF AGREEMENT, SUCCESSORS IN INTEREST**

A. Grant Recipient shall not assign or transfer this Agreement, or any part thereof, without prior written consent of the Department. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by the Department. No approval by the Department of any assignment or transfer shall be deemed to create any obligation of the Department in addition to those set forth in this Agreement.

B. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective representatives, successors and permitted assigns.

## **SECTION 20. SUBAWARDS/SUBCONTRACTS**

A. Approvals: Whenever Grant Recipient intends to subcontract any work or services under this Agreement, Grant Recipient shall not enter into any contracts with any agency or individual in the performance of this Agreement without the written consent of the Department prior to the execution of such contract. It is understood that consent of the Department to subcontract in no way relieves Grant Recipient of any of its duties or obligations under this Agreement nor precludes the Department from taking any action which may be available to it under this Agreement or otherwise in law.

B. Monitoring: Grant Recipient shall monitor all work and services on a regular basis to assure they are carried out in accordance with this Agreement. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

C. Content: With any subgrantee or subcontractor, Grant Recipient must have a written contract that complies with applicable requirements and regulations. All work or services covered under this Agreement which is contracted by Grant Recipient shall be subject to all provisions of this Agreement. Grant Recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.



D. Selection Process: Grant Recipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be maintained in Grant Recipient's files along with documentation concerning the selection process and made available upon request.

## **SECTION 21. COPYRIGHTS**

Grant Recipient may exercise its rights to ownership of materials developed during the course of a grant-supported project by copyrighting the materials. However, Grant Recipient (and all subgrantees) must grant to the Department and to the federal agency providing the funds (as applicable), for governmental purposes, a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use these materials and to authorize others to do so. This license to the Department covers any and all materials developed under the grant agreement (deliverables). The license to the Department does not preclude Grant Recipient from exercising its right of ownership of the materials, or to prevent Grant Recipient from selling or licensing the materials. If the materials are to be licensed or sold by Grant Recipient, then the net proceeds constitute program income as defined, and the funds must be treated accordingly.

## **SECTION 22. INDEPENDENT CONTRACTOR**

Nothing contained in this Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between Grant Recipient and the Department. Grant Recipient shall at all times remain an "independent contractor" with respect to the work and services to be performed under this Agreement.

## **SECTION 23. CONFLICT OF INTEREST**

A. In the administration of the award, the performance of activities under the Agreement, and the procurement of supplies, equipment, construction and services, Grant Recipient shall comply with all conflict of interest prohibitions and disclosure requirements required by applicable law, rules and policies, including 2 CFR 200.317-200.319 and Chapter 176 of the Texas Local Government Code. If circumstances arise during the course of the Agreement that constitute a conflict of interest, actual or potential, or reasonably creates an appearance of impropriety, Grant Recipient shall promptly notify the Department.

B. Grant Recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts/agreements supported by award funds, which includes the following:

- (1) No employee, officer or agent of Grant Recipient shall participate in the selection, or in the award, or administration of, a contract/agreement supported by award funds if a conflict of interest, real or apparent, would be involved.
- (2) Grant Recipient shall not assign an employee to the Project if the employee:
  - a. owns an interest in or is an officer or employee of a third-party business entity that has or may have an agreement with Grant Recipient relating to the project;
  - b. has a direct or indirect financial interest in the outcome of the project; or
  - c. has performed services regarding the subject matter of the project for an entity that has a direct or indirect financial interest in the outcome of the project.

- (3) Grant Recipient will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest, or personal gain.

C. Grant Recipient shall include in all subawards and subcontracts any necessary provisions to eliminate or neutralize conflicts of interest.

## **SECTION 24. SEVERABILITY**

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Agreement.

## **SECTION 25. PUBLIC/CONFIDENTIAL INFORMATION**

A. Public Information: Grant Recipient understands that the Department will comply with the Texas Public Information Act, Chapter 552 of the Texas Government Code ("PIA"). Information, documentation, and other material in connection with this Agreement and award may be subject to public disclosure pursuant to the PIA. Grant Recipient is required to make any information created or exchanged with the Department pursuant to this Agreement, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public.

B. Client Data and Other Sensitive Information: Grant Recipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided. Grant Recipient must comply with 2 CFR 200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.1, and other information Grant Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

## **SECTION 26. WAIVER**

The parties expressly agree that no provision of the award or Agreement is in any way intended to constitute a waiver by the Department or the State of Texas of any immunities from suit or from liability that the Department or the State of Texas may have by operation of law. Any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under the Agreement or under any provision of law, nor shall any action taken by the Department in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. The Department's failure to act with respect to a breach by Grant Recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Department to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

## **SECTION 27. GOVERNING LAW AND VENUE**

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

#### **SECTION 28. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the parties relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

#### **SECTION 29. EFFECTIVE DATE**

This contract is not effective unless signed by the Commissioner of the Department or by his authorized designee.



## Exhibit D

### Certifications and Assurances – CDBG Grant

By signature hereon, Grant Recipient hereby certifies and assures, with respect to this award and performing its responsibilities under this Agreement, that it will comply with all applicable laws, regulations, executive orders, policies, guidelines and requirements.

1. LEGAL AUTHORITY – Grant Recipient represents that it possesses legal authority to enter into the agreement, including all understandings and assurances contained therein. A resolution, motion or other similar action has been duly adopted or passed as an official act of Grant Recipient’s governing body, directing and authorizing the person identified as the official representative, or the designee of Grant Recipient, to act in connection with the agreement, to provide such additional information as may be required, to sign and execute the agreement on behalf of Grant Recipient, and to validly and legally bind Grant Recipient to all of its terms, performances, and provisions.
  
2. AFFIRMATIVELY FURTHER FAIR HOUSING – Grant Recipient certifies that it will comply with the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), and implementing regulations at 24 CFR Part 100, and that it will affirmatively further fair housing as specified by the Department.
  
3. ANTI-LOBBYING – Grant Recipient certifies that no federal appropriated funds have been paid or will be paid to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on its behalf to obtain, extend, or modify this agreement or grant. If non-federal funds are used by Grant Recipient to conduct such lobbying activities, Grant Recipient shall promptly file the prescribed disclosure form. In accordance with 31 U.S.C. § 1352(b)(5), Grant Recipient acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditure prohibition and the declaration requirement.
  
4. CHILD SUPPORT PAYMENTS – Grant Recipient represents and warrants that it will included the following clause in the award documents for every subaward and subcontract and will require subrecipients and subcontractors to certify accordingly: “Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.”
  
5. CITIZEN PARTICIPATION – Grant Recipient certifies it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.
  
6. CLEAN AIR AND WATER POLLUTION CONTROL – Grant Recipient represents and warrants that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Regional Office of the Environmental Protection Agency (EPA).

7. CONSERVATION – Grant Recipient represents and warrants that it will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), related to protecting components or potential components of the national wild and scenic river system.
8. CONTRACT OVERSIGHT – Grant Recipient represents and warrants that it will maintain oversight to ensure that all terms, conditions, and requirements of the agreement, including these certifications and assurances, are met and that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
9. COMPLIANCE WITH LAWS, RULES AND REQUIREMENTS – Grant Recipient represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all award requirements imposed by applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Grant Recipient represents and warrants that it will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Grant Recipient, the more restrictive requirement applies.
10. CYBERSECURITY TRAINING (Local Government System) – Grant Recipient represents and warrants its compliance with Section 2054.5191 of the Texas Government Code relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.
11. DEBARMENT AND SUSPENSION – Grant Recipient certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the United States General Services Administration.
12. DISCLOSURE OF VIOLATIONS OF FEDERAL CRIMINAL LAW – Grant Recipient represents and warrants its compliance with 2 CFR 200.113, which requires the disclosure in writing of violations of federal criminal law involving fraud, bribery, and gratuity violations potentially affecting the award and the reporting of certain civil, criminal, or administrative proceedings to SAM.
13. DISCLOSURE PROTECTIONS FOR CERTAIN CHARITABLE ORGANIZATIONS – Grant Recipient represents and warrants that it will comply with Section 2252.906 of the Texas Government Code, relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.
14. DISCRIMINATION PROHIBITED – In accordance with Section 2105.004 of the Texas Government Code, Grant Recipient represents and warrants that it will not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion.
15. DISPLACED PERSONS – Grant Recipient certifies that it will minimize displacement of persons as a result of activities performed under this award and that it will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§4601 - 4655) and implementing regulations at 49 CFR Part 24 and 24 CFR Part 42 Subpart A, which provide for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs. Grant Recipient further certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with grant funds.



16. DISPUTE RESOLUTION – The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the agreement.

17. DRUG-FREE WORKPLACE – Grant Recipient represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.

18. ENVIRONMENTAL STANDARDS – Grant Recipient certifies it will comply with environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and related Federal authorities, including notification of violating facilities pursuant to Executive Order 11738.

19. EQUAL EMPLOYMENT OPPORTUNITY – Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” Grant Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the U.S. Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with federal funds pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any program involving such grant, contract, loan, insurance, or guarantee, the equal opportunity clause provided under 41 CFR 60-1.4(b).

20. EXCESSIVE FORCE – It has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations, and a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

21. EXCLUDED PARTIES – Grant Recipient certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” published by the United States Department of the Treasury, Office of Foreign Assets Control.

22. FAIR LABOR STANDARDS – Grant Recipient certifies that it will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. §§ 201 - 219) and the Intergovernmental Personnel Act of 1970, as applicable.

23. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY – Grant Recipient represents and warrants that it will comply with the Federal Funding Accountability and Transparency Act requiring recipients and subrecipients of federal financial assistance to obtain a Data Universal Numbering System (DUNS) number and will report the DUNS number to the grantor as a condition of receiving a federal grant or award. Furthermore, Grant Recipient must be registered in the federal SAM and continue to maintain an active SAM registration with current information at all times during which the term of this award is in effect. Furthermore, no contract, award, subgrant will be made by Grant Recipient to another party if said party is listed in the Excluded Parties List System in the federal SAM.



24. FLOOD INSURANCE – Grant Recipient represents and warrants that it will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act (42 U.S.C. § 4001 et seq), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

25. HISTORIC PRESERVATION – Grant Recipient assures compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 USC §470f), Executive Order 11593, and the Archeological and Historical Preservation Act of 1974 (54 USC §§ 312501 - 312508).

26. LEAD-BASED PAINT – Grant Recipient represents and warrants that it will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures, and the implementing regulations at 24 CFR Part 35.

27. NONDISCRIMINATION – Grant Recipient certifies that it will comply with all state and federal statutes relating to nondiscrimination, including the following:

- The Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.)
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
- The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)
- The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

28. OPEN MEETINGS – If Grant Recipient is a governmental entity, Grant Recipient represents and warrants that it will comply with Texas Government Code, Chapter 551, which requires all regular, special or called meetings of a governmental body to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

29. POLITICAL ACTIVITY – Grant Recipient certifies that it will comply with provisions of federal law which limit certain political activities of employees whose principal employment is in connection with an activity financed in whole or in part by federal funds (5 U.S.C. § 1501 et seq.).

30. REPORTING SUSPECTED FRAUD AND UNLAWFUL CONDUCT – Grant Recipient represents and warrants that it will comply with Section 321.022 of the Texas Government Code, which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

31. SECTION 3 – Grant Recipient certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 and implementing regulations at 24 CFR Part 75, which require that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

32. SPECIAL ASSESSMENTS – Grant Recipient represents and warrants that it will not attempt to recover any capital costs of public improvements assisted in whole or part with grant funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (a) such funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from other revenue sources; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the jurisdiction certifies that it lacks sufficient grant funds to comply with the requirements of subclause (a).

Failure to comply with applicable assurances may result in the withholding or suspension of funds, termination of the award, or other available remedies, and Grant Recipient may be ineligible for future awards if the Department determines that any of the following has occurred: (1) Grant Recipient has made false certification, or (2) Grant Recipient violated the certification by failing to carry out the requirements as noted above.



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

**SUBJECT:** Negotiation of and authority to execute a Construction Agreement with Elecnor Belco Electric, Inc. for the Kerrville Downtown Revitalization Program Intersection Improvements project in the amount of \$308,313.40.

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** March 31, 2023

**SUBMITTED BY:** Kyle Burow, Director Engineering

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
\$308,313.40	\$356,567.90	\$426,310.00	Project #70-22006

**PAYMENT TO BE MADE TO:** Elecnor Belco Electric, Inc.

**Kerrville 2050 Item?** Yes

**Key Priority Area** D - Downtown Revitalization

**Guiding Principle** N/A

**Action Item** D5.3 - Make Downtown more pedestrian-friendly by improving walkways, adding accessibility ramps, beautifying the area with landscaping and street trees, etc.

**SUMMARY STATEMENT:**

In March 2021, City Council authorized a grant application for the Texas Downtown/Main Street Community Development Block Grant Program (CDBG) for accessibility and intersection improvements on Water Street in the Downtown area. In October 2021, staff was notified that Kerrville was selected for CDBG funding and elected to continue the efforts in the application phase with Kimley-Horn to complete the design of the CDBG project. The scope of the project is to perform a full intersection and traffic signal rebuild at Water Street and Earl Garrett to include new curb ramps, new crosswalks, updated pavement markings, and new pedestrian and traffic signal equipment.

The project was placed for advertisement, the bid opening was held March 21, 2023 and three bids were received, with Elecnor Belco Electric, Inc. as the apparent low bid. Staff and Kimley-Horn evaluated the bid and recommend awarding the base bid for a total contract amount of \$308,313.40.

**RECOMMENDED ACTION:**

Authorize City Manager to finalize and execute contract.

**ATTACHMENTS:**

[20230425\\_Bids\\_CDBG Downtown Intersection Improvements\\_Bid Summary.pdf](#)

[20230425\\_Letter\\_CDBG Downtown Intersection Improvements\\_Recommendation of Award.pdf](#)



**APPARENT LOW BIDDERS****Kerrville Downtown Revitalization Program Intersection Improvements**

Bid Summary	
Engineers Estimate	\$391,770
Total Bids	3
AMLT \$	\$68,104.10
AMLT %	22.09%
Average Bid	\$479,790.97

	Bidder	BASE BID	ADDITIVE ALTERNATE NO. 1	ADDITIVE ALTERNATE NO. 2
1	Elecnor Belco Electric, Inc. <i>Submitted: 3/21/2023 2:55:10 PM</i>	\$308,313.40	\$52,294.00	\$24,070.00
2	E-Z Bel Construction, LLC <i>Submitted: 3/21/2023 2:52:58 PM</i>	\$376,417.50	\$74,764.75	\$11,280.00
3	Jerdon Enterprise, LP <i>Submitted: 3/21/2023 2:08:18 PM</i>	\$754,642.00	\$102,420.00	\$12,705.00

*Bids opened at: 3/21/2023 3:00:13 PM*



April 14, 2023

Kyle Burow, PE  
Director of Engineering  
City of Kerrville  
701 Main Street  
Kerrville, Texas 78028

RE: ***Kerrville Downtown Revitalization Program Intersection Improvements  
Contract Award Recommendation***

Dear Mr. Burow:

On Tuesday, March 21, 2023, a total of three (3) Contractor bids were submitted for the above referenced project. The following summary represents the bidders and their total contract bid with the Engineer's opinion of probable construction cost (OPCC), in sequential order from lowest to highest:

1. **Elecnor Belco Electric, Inc.** .....\$ **384,677.40**
  - a. **Base Bid – \$308,313.40**
  - b. Add. Alt #1 – \$52,294.00
  - c. Add. Alt #2 – \$24,070.00
2. **Engineer's OPCC** .....\$ 391,770.00
  - a. Base Bid – \$311,025.00
  - b. Add. Alt #1 – \$71,415.00
  - c. Add. Alt #2 – \$9,330.00
3. **EZ Bel Construction, LLC** .....\$ 462,462.25
  - a. Base Bid – \$376,417.50
  - b. Add. Alt #1 – \$74,764.75
  - c. Add. Alt #2 – \$11,280.00
4. **Jerdon Enterprises** .....\$ 869,767.00
  - a. Base Bid – \$754,642.00
  - b. Add. Alt #1 – \$102,420.00
  - c. Add. Alt #2 – \$12,705.00

The bid format for this contract is Low Qualified Bid. Kimley-Horn reviewed the unit prices bid by each Contractor and each bid is considered responsive based on the unit price review. The lowest responsive bidder for this contract is Elecnor Belco Electric, Inc. with a total base bid of \$308,313.40, Add. Alt. 1 bid of \$52,294.00, and Add. Alt. 2 bid of \$24,070.00, resulting in a total contract bid of \$384,677.40. After further discussions with City staff, it has been determined that only the base bid component of this

contract will be authorized. This decision does not impact the results of the lowest responsive bid selection.

As part of the qualifications component of this bid solicitation, each Contractor was required to provide a contracts list breakdown and references for projects of similar size and scope. Elecnor Belco Electric, Inc. is a new potential vendor for the City of Kerrville and Kimley-Horn San Antonio office has not worked with them directly. For the bid evaluation, Kimley-Horn performed outreach to each reference provided. We were able to make successful contact with three of the references, each of which relayed positive responses. The scope of work that was performed on their referenced projects is consistent with the scope of work identified in this bid solicitation. Also noted during our reference checks was that Elecnor Belco Electric performs all of the signal work with internal forces and has the knowledge and capability for traffic signal reconstruction and intersection improvements. Lastly, the references indicated that Elecnor Belco Electric communicated well and completed their work within the allotted schedule.

Based on Kimley-Horn's review of the unit bid prices, reference checks, and discussions with City staff on Elecnor Belco Electric, Kimley-Horn recommends award of this contract to Elecnor Belco Electric, Inc. for the base bid component of this contract in the amount of \$308,313.40. As a contract formality and with any contract, Kimley-Horn does recommend the City verify authenticity of the performance and payment bonds prior to contract execution.

Attached with this contract award recommendation is a complete bid tabulation of all submitted bids and a bid comparison between Elecnor Belco Electric, Inc. and the Engineer's OPCC. Elecnor Belco Electric, Inc.'s base bid is 9.9% below the responsive Contractor base bid average and 0.9% below the Engineer's base bid OPCC. Please note the bid submitted by Jerdon Enterprises was significantly higher than other bids submitted and considered an outlier, therefore their bid was not factored into average calculations.

If you have any questions regarding the information submitted with this contract award recommendation please contact me at 210.321.3404, or [stephen.aniol@kimley-horn.com](mailto:stephen.aniol@kimley-horn.com).

Sincerely,

**KIMLEY-HORN AND ASSOCIATES, INC.**

**TBPE# 928**



By: Stephen J. Aniol, P.E.  
Project Manager

#### Attachments

1 – Bid Tabulation

2 – Low Bidder Comparison





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

**SUBJECT:** Financial Report for month-ended March 31, 2023, and presentation of the Popular Annual Financial Report (PAFR).

**AGENDA DATE OF:** April 25, 2023

**DATE SUBMITTED:** April 18, 2023

**SUBMITTED BY:** Julie Behrens , Director of Finance

**EXHIBITS:**

<b>Expenditure Required:</b>	<b>Remaining Budget Balance in Account:</b>	<b>Amount Budgeted:</b>	<b>Account Number:</b>
NA	NA	NA	NA

**PAYMENT TO BE MADE TO:** NA

**Kerrville 2050 Item?** No

**Key Priority Area** N/A

**Guiding Principle** N/A

**Action Item** N/A

**SUMMARY STATEMENT:**

Financial report for month-ended March 31, 2023 and presentation of the Popular Annual Financial Report (PAFR).

**RECOMMENDED ACTION:**

NA