

**CITY OF KERRVILLE, TEXAS  
RESOLUTION NO. 40-2025**

**A RESOLUTION DECLARING THE PUBLIC NEED AND NECESSITY TO ACQUIRE FEE SIMPLE TITLE TO TWO TRACTS OF LAND, THE FIRST APPROXIMATELY 8.0 ACRES AND THE SECOND APPROXIMATELY 2.67 ACRES; BOTH TRACTS OF LAND OUT OF THE THOMAS HAND SURVEY NO. 115, ABSTRACT NO. 193, KERR COUNTY, TEXAS; THE ACQUISITIONS FOR THE CONTINUATION AND DEVELOPMENT OF A MEMORIAL CEMETERY AND PUBLIC PARK HONORING CAPTAIN JOSEPH A. TIVY AND FAMILY AND AUTHORIZING THE CITY ATTORNEY TO PROCEED WITH ACTIVITIES NECESSARY TO ACQUIRE SAID PROPERTIES, INCLUDING INSTITUTION OF CONDEMNATION PROCEEDINGS TO ACQUIRE THE NECESSARY LAND RIGHTS THROUGH THE USE OF THE CITY'S EMINENT DOMAIN AUTHORITY**

**WHEREAS**, Captain Joseph A. Tivy (born February 25, 1818; died July 5, 1892), was the first mayor of the City of Kerrville upon the City's incorporation in 1889; and

**WHEREAS**, Captain Tivy gave land for the site of the first public school in the City as well as additional land to be sold to finance the construction and furnishing of said school; and

**WHEREAS**, because of Captain Tivy's role as one of the founders and organizers of both the City of Kerrville and the Kerrville public school system, the preservation of the memory of Captain Tivy and the historical legacy he represents is of tremendous public interest; and

**WHEREAS**, the heritage of our nation's founders and organizers, as well as those who shaped states and cities throughout the country, is preserved for the education of future generations and is memorialized in many ways, including through the preservation of the burial places of men and women who played such influential roles in local, state, and national history; and

**WHEREAS**, the burial site of Captain Tivy, while not ignored, has been largely neglected and not well preserved over a large portion of the 133 years since his death; and

**WHEREAS**, a significant reason for the absence of an active and consistent preservation effort with respect to Captain Tivy's burial site has been the confusion

which has arisen over many decades as to the ownership of the burial site and the related access road to the site; and

**WHEREAS**, one way to assure the perpetual preservation and maintenance of Captain Tivy's burial site would be the acquisition of fee simple title to each of the tracts consisting of a combined approximately 10.67 acre burial site and its related access way (collectively the "Burial Site") by the City for the purpose of establishing a memorial cemetery and public park honoring Captain Tivy, said properties being more specifically described and depicted in **Exhibit A**, which is appended hereto and incorporated for all purposes; and

**WHEREAS**, because the City, as a Texas home rule city, is empowered under Texas Local Government Code Sections 251.001(a)(1) and (5), to pursue acquisition of property through the use of eminent domain to in part, establish cemeteries, and because of the status of the property as a private burial plot, and because of Captain Tivy's role as a founder of the City of Kerrville, the City is the only local governmental entity that has both the strong public interest in preserving Captain Tivy's burial site and the eminent domain authority to acquire the site; and

**WHEREAS**, City Council finds that it is in the public interest to pursue acquisition of the Burial Site, to include the use of its eminent domain authority, for the purpose of continuing and further developing a memorial cemetery and public park;

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

**SECTION ONE.** The above captions and recitals are incorporated herein for all purposes.

**SECTION TWO.** In order to preserve the Burial Site, City Council finds that it is necessary and in the public interest to acquire fee simple title to the Burial Site, as described and depicted in **Exhibit A** for the purpose of continuing and further developing a memorial cemetery, public park, and access way.

**SECTION THREE.** The determination of necessity to exercise the power of eminent domain by City Council in this matter is made according to reason and judgment with due regard and consideration of the relevant facts, circumstances, and alternatives, and the knowledge, which existed at this time.

**SECTION FOUR.** The City Attorney is authorized to take such steps as he determines reasonably necessary to acquire fee simple title to the Burial Site, to

include its access from Cypress Creek Rd., and as described in **Exhibit A**, for the purposes stated therein, including, the engagement of appraisers, surveyors, title companies, attorneys, and other professionals as he may determine necessary to assist in the acquisition of the Burial Site. The City acting by and through its City Attorney and its contractual eminent domain attorneys, is hereby directed and authorized to institute and prosecute to conclusion all necessary proceedings in eminent domain to condemn the Burial Site and to acquire such interest in land if the City is unable to acquire such through negotiation, and to take any other legal action necessary or incidental to such acquisition or eminent domain proceeding to investigate, survey, specify, define, and secure the necessary property right.

**SECTION FIVE.** The authorization granted to the City Attorney and the contractual eminent domain attorneys in Section Four, above shall include the authority to file on behalf of the City, a petition in eminent domain to acquire any or all of the properties described in Section One above, for the purposes of continuing and further developing a memorial cemetery, public park, and access way, in accordance with Chapter 251 of the Texas Local Government Code and Chapter 21 of the Texas Property Code.

**SECTION SIX.** If any provision, section, subsection, sentence, clause, or phrase of this Resolution, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Resolution shall not be affected, it being the intent of the City Council in adopting this Resolution that no portion hereof, or provisions, or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Resolution are declared to be severable for that purpose.

**MOTION FOR APPROVAL TO STATE AS FOLLOWS:** *I move approval of Resolution No. 40-2025 to include that the City of Kerrville, Tx. authorize the use of the power of eminent domain to acquire the Burial Site for the purpose of continuing and further developing a memorial cemetery and public park.*

City Secretary to take record vote as follows:

	YES	NO
Joe Herring, Jr., Mayor	<u>X</u>	—

Delayne Sigerman, Place 1	<u>X</u>	—
Jeff Harris, Place 2	<u>X</u>	—
Kent McKinney, Place 3	—	<u>X</u>
Brenda Hughes, Place 4	<u>X</u>	—

PASSED AND APPROVED ON this the 09 day of December, A.D.,  
2025.

  
Joe Herring, Jr., Mayor

APPROVED AS TO FORM:

  
Michael C. Hayes, City Attorney

ATTEST:

  
Shelley McElhannon, City Clerk

EXHIBIT A



V.749 Checkmate in 107 moves by Marin in October 2015